

Federal Constitutional Court rejects complaints against night flight regulations

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Facts

Decisions

Comment

By way of three decisions, the Second Chamber of the First Senate of the Federal Constitutional Court rejected three constitutional complaints for adjudication against the Federal Administrative Court's decision concerning night flight regulations affecting Berlin Schoenefeld Airport.

According to the decisions, the night flight routes did not disproportionately hurt the plaintiffs' rights.

Facts

The original flight routes were modified following a 2006 Federal Administrative Court judgment and in 2009 became subject to regulations following an amendment to the original plan approval order.

The night flight regulations proposed the following operation hours at the new Berlin airport:

- midnight to 5:00am: no flight operations;
- 11:30pm to midnight and 5:00am to 5:30am: limited flight operations; and
- 10:00pm to 11:30pm and 5:30am to 6:00am: flight operations generally approved.

The plaintiffs lived near the airport and claimed that the new regulations would compromise their rights to health and to be heard.

The plaintiffs argued that the new plan approval order was invalid for various reasons.

Decision

The Federal Constitutional Court concluded that the new night flight regulations did not violate the plaintiffs' rights under Articles 2 and 103 of the Constitution.

In its decision, the Federal Administrative Court had held that, in view of the planning threshold pursuant to Section 2(2) of the Aircraft Noise Act, the planning approval authority did not require aviation noise impact research to determine this limit.

Further, the Federal Administrative Court had explained, in a way that was constitutionally unobjectionable, why it considered the individual traffic segment and applicable night flight demand forecasts to be permissible.

After weighing the conflicting interests between the plaintiffs and airport with regard to the aircraft noise, the Federal Administrative Court had held that the plaintiffs were ultimately unharmed. The court had recognised the value of 'core night' periods and stressed the importance of night-time rest, as well as taking an overall view of the total noise pollution caused by the permitted exceptions.

According to the Federal Constitutional Court, contrary to the plaintiffs' view, the Federal

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Administrative Court had made no constitutionally objectionable misweighting of the night-time rest issue.

The Federal Administrative Court had held that Berlin Brandenburg Airport could justifiably allow unlimited air traffic until 11:30pm and from 5:30am, while honouring the night-time rest between 11:30pm and 5:30am. The court had largely ignored local residents' noise protection concerns in view of the weighty interests of international air traffic at what would be the only international airport in the region. However, the court had also stressed that between 10:00pm and 11:30pm and between 05:00 am and 05:30am, "the night may not become the day".

According to the Federal Administrative Court, proportionality would be maintained as long as the planning approval authority complies with the requirement to moderate air traffic during night-time hours.

Comment

The Federal Constitutional Court's decisions are another step towards realising one of the largest infrastructure projects in Germany: the new Berlin Brandenburg Airport. However, an operational start date has not yet been decided.

The decisions appropriately weighed the legal interests of affected property owners with those of the general public.

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