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Publication of environmental information on the internet: Industry wins test case against Ministry for Environment NRW

Dusseldorf – The Administrative Court of Arnsberg decided in a test case on Tuesday that the decree given by the Ministry for Environment of the State of North-Rhine Westphalia (NRW) to publish the results of official environmental inspections of industrial enterprises and power plants on the internet was unlawful. The subject matter of the test case was the application submitted by an industrial enterprise from Westphalia for the issue of a temporary injunction against the State NRW. The industrial enterprise was represented by Luther Rechtsanwaltsgesellschaft mbH (Administrative Court of Arnsberg, decision of 10 June 2014, ref. 4 L 867/13).

“Since last year the environmental authorities in NRW have been publishing their reports about environmental inspections of industrial enterprises and power plants on the internet. The authorities were obliged to do so according to a decree given by the NRW Ministry for the Environment. The reports also contain deficiency statements and specifications about alleged infringements of environmental law. Some of the companies concerned are thus denounced as an environmental polluter without the accusations having been previously examined before a court or another independent authority” said Dr Stefan Altenschmidt of Luther. The corporate lawyer and expert for environmental and constitutional law represented the industrial enterprise before the administrative court and raised constitutional concerns against the decree given by the NRW Ministry for the Environment.

“The Administrative Court of Arnsberg has now put an end to this practice,” explains Dr Stefan Altenschmidt. “It emphasised that the publication of alleged infringements on the internet constitutes a serious restriction of the companies’ fundamental rights of informational self-determination and freedom to pursue a trade. The publication of environmental deficiencies endangers the reputation of the company concerned as well as its business relationships. The Court explicitly referred to the terms and conditions of big groups such as Siemens, which demand the compliance with environmental law from their suppliers. The business relationships to such groups are endangered by the publication of alleged infringements on the internet. According to the Court there is no legal basis for this practice. Consequently, the Ministry for the Environment may not prescribe this practice by decree.”

“The current decision serves as a model for a multitude of similar cases in North-Rhine Westphalia and the other states. On the basis of this precedent also other industrial enterprises and power plant operators will demand from the environmental authorities not to disclose on the internet any incriminating information gathered from environmental inspections. Moreover, this case shows the significant risks authorities run by a careless use of the internet and its possibilities”, comments the lawyer the consequences of the Court’s decision.

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Brief Profile Luther

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