RESPONSIBILITIES OF OWNERS OF FORMER MILITARY SITES IN GERMANY

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Abstract. The legal framework regarding the placement of liability following an accident or other impact emanating from a property is extremely important in the context of the remediation of military wastes. Because in Germany a very significant liability lies with a property owner, liability law must be considered in any discussion of the reuse of lands once subjected to bombardment or upon which military activities had taken place. Because airports have historically been the location of both military activities and heavy bombardment, these lands must be given priority with regards to munitions clearing, remediation, and conversion.

1. Introduction: Responsibilities on Sites with Hazards

The ownership of land and soil be represented in different manners within a society. In some forms of society, the individual, in a physical or legal sense, cannot own land or soil. Instead, ownership lies with the state or the society.

In other societies, anyone can own land, including the state, a body of public law, a citizen, a legal person such as a firm, etc. Models lying somewhere between these extremes are also conceivable. What remains unclear is how property law is to be applied to upwards to the atmosphere and, in the opposite direction, downwards into the soil. This question appears initially to be hypothetical, but its relevance is quickly apparent when at issue is not the utility of use by an owner, but rather liability in the case of an accident.

Who may make use of land and soil, and in what manner, is decided by the laws of a country. This approach to the protection of a society’s interests can vary greatly.

Every property owner in the Federal Republic of Germany must ensure that no third party is harmed by his property. This is not applied absolutely, as every member of a society taking active part in the society accepts a certain everyday risk. This general risk is most easily described by the simple example of how every individual venturing into the public transport system accepts that an accident is possible. In this case it is fully immaterial whether—in the
sense of an everyday risk—the accident is the fault of another individual or of the individual himself.

The individual property owner carries a certain responsibility to the greater society. All negative forces originating within the property cannot be permitted to leave the property. Thus, for example, commercial wastes can be stored on public lands only with the appropriate permit. The negative impacts must be contained on the property until their proper removal has been approved. The permits for such removal are often only granted for very special cases. The importance of the matter to the property owner plays no part in the decision to approval the removal of wastes. Instead, it is the welfare of the community that is considered.

In Germany, the harms emanating from a property that can be suffered by the greater community consist of two types: harm from an action and a harm resulting from the contamination of the property. So-called “interferer with third-party acts” (Handlungsstörer) and “disturber of the public order” (Zustandsstörer) are discussed in this context. When a person damages the environment through his actions, Handlungsstörer is the relevant term. The disruption is no longer taking place. A situation involving a Zustandsstörer is more complex. Pollution of the soil with contaminations can take place such that flows of contaminants negatively impact neighbouring properties. If the contamination involves, for example, a fuel line leaking kerosene over a period of many years, creating a large spill and leading to the contamination of a neighbouring property via flowing ground water, the case would involve a Zustandsstörer and the property owner would be responsible for the remediation of the pollution.

The responsibility of the property owner to the community is often very difficult to fulfil. An example of this are the troop training areas. On the one hand, the affected areas are very large: some are as large as 100 km². On the other hand, affected are often wooded areas protected under special conditions.

Every citizen is permitted by law to use the forest for recreational purposes. These include the collection of mushrooms and berries.

The granting of these access rights to the citizens forces the property owner to limit any hazards to the public found on the property. This also implies that in the case of a forest once used for military training, the risks faced by a user of the forest must be similar to those risks normally encountered when accessing a forest. The risks of tripping over a root in a forest and injuring oneself, accidentally stepping into a badger’s den, or becoming infected with a tapeworm, are normal risks accepted by those entering wooded areas. If a forest had been used as a troop training area and would be subsequently opened for public usage, the forest must be free of additional