

## **Bundesverwaltungsgericht, Urteil vom 25. Januar 2006, - Az. 8 C 13.05 -**

The claimant owns an office building on the territory of the defendant. The defendant, a municipality, has a bye-law according to which all landowners are obliged to get connected to the municipal heating network. The aim of this bye-law is - according to its first article - the protection of ambient air and the climate system as natural foundations of life. The heating network is based on combined heat and power generation. In 1997 the claimant applied for an exemption from her obligation under the bye-law because she intended to install an independent heating powered by natural gas for her building.

The application was dismissed by the competent municipal authority on grounds of climate protection.

The claimant brought proceedings submitting that the German constitution restricts the legislative power of municipalities to local affairs and, thus, a bye-law pursuing global aims as climate protection was void. Moreover, the obligation to get connected to the municipal heating network was contrary to Community law, particularly to the principle of free movement of goods and services (Art. 28, 49 EC) and the Community rules on competition (Art. 81, 86 EC).

Her case was dismissed in all instances. The Federal Administrative Court as supreme instance held that the legislative powers conferred upon municipalities by the German Constitution comprised the pursuit of global climate protection even though this aim is not limited to the local area. The protection of the natural foundations of life and particularly the reduction of greenhouse gases is not only a major objective of the German Constitution it is also an international commitment under the Kyoto Protocol, the Council Decision 2002/358/CE of 25 April 2002 and the EC-Directive establishing a scheme for greenhouse gas emission allowance trading within the European Community. Thus all public authorities - including the municipalities - are obliged to contribute to this aim.

The Court also found that the obligation to get connected to the municipal heating network is compatible with Art. 28 and 49 EC (free movement of goods and services). Due to its local limitation it has no effects on trade between Member States and even if it had such effects it would be justified on grounds of environmental protection (case C-379/98 "PreussenElektra"). For the same reason it is also in accordance with the Community rules on Competition. Art. 86(2) EC allows restrictions on competition in case of undertakings which fulfil particular tasks of general interest (case C-393/92 "Almelo"). Here the particular task assigned to the municipal supplier of long distance heat is the protection of the climate system which can only be achieved when all landowners purchase the environmentally compatible energy based on combined heat and power generation.