

Case Study : "In dubio pro Leo?"



(Credit: PORR, Vienna)

Mr Leo owns a building company.

He carries out a number of important building projects. The beginning of any project is the excavation of the earth as shown on the picture. The workers remove the soil with hydraulic excavators. Every building site produces masses of soil and raises the question what to do with this amount of earth, stones and other material.

In 2022 Mr Leo had an idea. His trucks transported the top layer of the excavated soil to the premises of the company and unloaded it there. Mr Leo felt that he could make some money with it.

The so called "topsoil" or "mothersoil" is very fertile. Previously, at least 10 local farmers and 5 gardeners had asked Mr Leo whether he could sell them the topsoil for agricultural use. They were all willing to pay a good price. Mr Leo already concluded five contracts. One day, Mr Donald, a competitor, detected, what he calls "a mountain of polluted soil" on the site of Leo's company. He pressed charges against him at the State Inspection Authority and gave notice of an "ongoing environmental crime". In the following days Mrs Miller, officer and prosecutor at the State Inspection Authority, paid a visit to the site of Leo's company and found a serious violation of EU und National waste law. By her decision of 5 January 2023 the State Inspection Authority ordered Mr Leo to pay a

fine of 50.000 Euro.

Reasons given in the decision:

- Mr Leo committed an illegal act. He operated an "unauthorized waste site".
- The unloading of soil on the site of the company is to be seen as a disposal of waste.
- For a building company, soil (not directly used at the building site) is waste, something to get rid of.
- It is not relevant that the soil is undoubtedly of the highest quality, meaning class A 1 "topsoil" or "mothersoil" and does not cause any danger for the environment (especially not for the groundwater).
- Mr Leo lacks an "end-of-waste-certification" under national law.
- Article 6 of the National Code on Waste reads: "End-of-waste-certificate:
Soil that has been excavated during a building project and brought away from the building site is waste. It can only end being waste if the State Inspection Authority issues a valid end-of-waste-certificate which has to be applied for by the holder of the waste."
- Last but not least: In the spirit of the EU Directive on Environmental Liability, that – due to a political crisis in the Member State – has not yet been transposed into national law but will be next year – the fine against Mr Leo has to be dissuasive, consequently a harsh one.

Mr Leo was out of his mind and hired the "best lawyer in town" Prof. Dr Sharp. The latter brought an action to the competent Court of First Instance and contends: His client is an innocent victim of a true legal jungle in the field of waste law. Even legal scientists cannot give a clear answer to the question whether a specific material is waste or not. When things are so unclear, there is only one decision for the Court under the Rule of Law and under its guiding principle of "in dubio pro reo": acquittal! In the unlikely event that the court should hesitate:

- It is a clear legal error to treat topsoil and its storage as waste, cf. Art 2 No 1 (c) EU Directive on Waste.
- Topsoil is a high quality product and has a market price. It is a new business sector for Mr Leo who will continue to sell this precious agricultural product to farmers and gardeners (witnesses: 10 local farmers and 5 gardeners). Yesterday, the company of the client was renamed in "Building and Gardening by Leo".
- The legal requirement of the so called "End-of-waste-certification" is null and void. It constitutes a manifest violation of Article 5 and Article 6 of the EU Directive on Waste and has to be set aside by this Court.

I am looking forward to our discussion!