Legal basis under Austrian law and Austrian case law for lighting installations/light poles.

- The entirety of the administrative activities encompassed by the term road administration and aimed at the construction and maintenance of public roads is to be assigned to the private-sector sphere of activity of the responsible legal entities. (1 Ob 20/80). This means that ultimately the installation operator/mayor bears responsibility if organisational errors are attributable to them.
- Road construction and the maintenance of roads and their facilities constitute private-sector administration (1 Ob 139/10p).
- Provisions of the Austrian Road Traffic Act: § 31 para. 1 StVO, in conjunction with § 32 para. 1 StVO, provides, among other things, that the installation and maintenance of street-lighting equipment must be carried out by the road maintainer at its own expense.

Liability for structures under § 1319 ABGB

- § 1319. If a person is injured or other damage is caused by the collapse or detachment of parts of a structure erected on a property (light poles are regarded as structures: 7 Ob 148/15p; 8 Ob 103/17f), damages must be paid unless the owner of the building or structure proves that they exercised all care required to avert the danger. In practice, this reversal of the burden of proof is difficult to overcome without evidence in accordance with ÖNORM B 1301 or a technical inspection by qualified experts.
- Particularly high standards of care are required for buildings or structures that are entered by large numbers of people, project into the road space, or are by their nature particularly susceptible to weather influences (5 Ob 118/19t; 10 Ob 12/23x).
- In cases of contractual liability (e.g. toll roads or short-term parking zones, stadiums, shopping centres, exhibition centres, railway stations, etc.), liability already arises in the event of slight negligence.

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office@ttengineering.at
www.ttengineering.at

- Liability for structures is even stricter because liability applies from slight negligence onwards, there is also a reversal of the burden of proof (I must prove that I am not at fault), and, in addition, proof of causation is considerably facilitated (the light pole falls over; therefore the cause is assumed to be inadequate maintenance or inspection).
- For the durability of light poles, the following will have to be examined:
  How was the duty to inspect organised?
  How were the inspectors/inspection procedures selected?
  Were the inspections documented, and if so, how?
  Both the question whether the performance of public-safety measures was transferred to another party and the extent to which any duty to instruct or supervise may have been breached must be assessed (1 Ob 121/08p).
- The owner is liable for all reasonable and required safeguarding and monitoring measures according to the circumstances (8 Ob 611/89). The extent to which suitable precautions against the occurrence of damage are reasonable is determined by the circumstances of the individual case, since a general boundary can only be found within a broader framework defined by common understanding and reason. The circumstances determine the requirements imposed on the owner bound by the duties of care, i.e. the person who had the power of disposition necessary to control the danger (2 Ob 47/14x). Relevant circumstances include: stadiums, crowds, exposed locations, previous incidents, shopping centres, etc.
- A breach of the objectively required duty of care presupposes, in any event, that the danger was recognisable or at least foreseeable. Structures such as light poles constitute a latent danger, since, like all engineering structures, they are exposed to a wide variety of influences that may shorten their service life (5 Ob 150/06d).

Liability of the road/path maintainer

- A road/path maintainer is liable for the road/path and its installations in the event of gross negligence. A light pole, however, is neither the road/path nor one of its installations, but rather an obstruction to the road/path. Therefore, liability for a light pole arises from slight negligence with a reversal of the burden of proof under § 1319 ABGB (2 Ob 256/09z). A danger resulting from the statics and dynamics of the structure must have materialised contrary to legitimate expectations of safety or the safety precautions taken. The owner of the structure is liable for damage caused by its defective condition if the injured party, in justified reliance on the structure being safe, was permitted to enter its physical sphere of influence (8 Ob 52/11x). The criterion of reasonableness requires consideration of what can be expected according to general and equitable principles. The individual measures to be taken by a road/path maintainer depend on the nature of the road/path, in particular its intended use, its geographical situation and the resulting level of use that can reasonably be expected.

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- The individual measures to be taken are determined by what is appropriate and objectively reasonable for maintenance, taking into account the nature of the road/path, in particular its intended use, its geographical situation in the natural environment and the resulting level of reasonably expected use (traffic requirements) (2 Ob 115/08p).
- The criterion of reasonableness requires consideration of what can be expected according to general and equitable principles. The individual measures to be taken by a road/path maintainer depend on the nature of the road/path, in particular its intended use, its geographical situation in the natural environment and the resulting level of reasonably expected use (traffic requirements), and on what is appropriate and objectively reasonable for its maintenance (2 Ob 115/08p).
- Where a protective statute is violated, strict proof of causation is not required. In such cases, prima facie evidence supports the conclusion that the damage to be prevented was caused by the prohibited conduct. It is then for the defendant owner to seriously cast doubt on the causality of the breach of duty by rebutting the prima facie evidence weighing against them (6 Ob 303/05k). Thus, one may also speak of a reversal of the burden of proof with regard to causation.
  Consequence: inspections are necessary. Without documented inspections, it will not be possible to prove absence of fault or to negate causation.

Duty to ensure public/traffic safety

- Duties to ensure public/traffic safety arise from the general legal duty not to endanger the physical integrity or property of another person (7 Ob 614/86).
- A danger giving rise to liability exists where, according to general life experience and customary behaviour, there was a calculable probability of damage occurring.
- Duties to ensure public/traffic safety apply under criminal law and civil law alongside, and possibly beyond, an administrative decision.
- Anyone who creates, allows to continue or maintains a source of danger must take the necessary precautions to avert harm as far as reasonably possible, insofar as the source of danger is recognisable as such to them (SZ 30/22, SZ 43/124, ZVR 1998/143 and many others).

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- Duties to ensure public/traffic safety apply to the person who can recognise the danger and take the necessary protective measures, i.e. the person who controls the danger. Anyone who creates a source of danger or allows it to remain within their sphere must take the necessary and reasonable precautions to avert harm to others as far as possible (see 2 Ob 79/11y with further references; RIS-Justiz RS0022778, RS0023251, RS0023719). According to settled case law, anyone who opens an area of land owned by or under their control to traffic - even if only to a defined group of persons - must in particular ensure public/traffic safety (RIS-Justiz RS0023355 [T10, T19]) (2 Ob 70/12a).

Failure to observe liability for structures, liability of the road/path maintainer and the duty to ensure public/traffic safety may give rise to suspicion of gross negligence.

- The decisive criterion for assessing the degree of negligence is not the number of provisions infringed, but the seriousness of the breaches of duty of care and the probability of damage that was recognisable to the employer (RIS-Justiz RS0085332). The essential question is whether, viewed objectively, very simple and obvious considerations concerning employee protection were disregarded (10 ObS 27/09g; RIS-Justiz RS0030644 [T34], RS0085228, 4 Ob 35/13w). Gross negligence is conspicuous carelessness, an exceptional and striking neglect of a duty of care, in particular a breach of accident-prevention requirements. A series of individual acts which would not each constitute gross negligence on their own may, taken together, amount to gross negligence. A complaint concerning a dangerous situation, particularly by the Labour Inspectorate and/or the accident-prevention service of the accident insurance institution, will generally lead to an assumption of gross negligence. The same applies if an employee has drawn the employer's attention to the existing dangerous situation, or if relevant occupational accidents have already occurred (repeatedly) or were known to have nearly occurred.
- Errors from the past that should have been noticed or eliminated do not excuse gross negligence. Nevertheless, remedial measures may require time. Failure to issue warnings can amount to slight or gross fault (1 Ob 35/87). The objection that “one did not notice or see it” is also frequently rejected by the courts. The concept of “ought to have known” generally depends on whether, applying ordinary and objectively required care, a defect - for example in fire protection - was recognisable or should have been noticed.

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- If a road/path maintainer fails to carry out reasonable investigations in order to clarify the extent of the road/path area to be maintained (for example by consulting “plans” available to them), this constitutes gross negligence (2 Ob 299/04s).

General notes

- Changes to standards may result in obligations to retrofit. After the expected service life of an installation or building component, increased inspection and protective measures are required. Expert reports can provide exculpatory evidence. Negligence in the selection of contractors or experts should be avoided. Inspections, training and instruction must be documented. A risk analysis is helpful in demonstrating that the scope of the measures taken corresponds to the required duty of care.
- There is no gross negligence where the inspection is entrusted to a specialist company, i.e. an external “expert”, and the specialist company was selected with due care (avoidance of negligent selection).
- Anyone who fails to perform actions required by laws, regulations, administrative decisions or contracts as a result of prior conduct creating a danger or expected duties to ensure public/traffic safety is liable as a guarantor under § 2 StGB.
- ÖNORM B 1300 has existed since 2012 and ÖNORM B 1301 since 2016. They have been amended in part and serve the structural safety of buildings and structures, the avoidance of administrative-criminal, criminal and civil liability, and have undoubtedly brought about a new approach to the safety of buildings and structures.

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