

Company AS TALLINNA VESI
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Title The Supreme Court made a decision in administrative case No 3-16-2267, and left partly

Yesterday, on the 20 February 2020, the Supreme Court made a decision in administrative case No 3-16-2267, and left partly unsatisfied the complaint of AS Tallinna Vesi for compensation of damage caused by the Regulation No 99, of 29 November 2019 of the Government of the Estonian Republic, as well as the related penalty fee for late payment. AS Tallinna Vesi submitted the claim on the basis that the limits on zinc, copper and chrome established by the government were unconstitutional.

On 13 November 2016, AS Tallinna Vesi filed a complaint with the Tallinn Administrative Court under the State Liability Act for the compensation of direct damage in the amount of EUR 1,136,191 (including excess pollution charge of EUR 1,002,138 and the income tax paid in the amount of EUR 134,053) caused by Article 8 (2) of the Regulation No 99 as well as corresponding penalty for late payment. The damage occurred due to the unlawful limits being established since 1 January 2013. After the entry into force of Article 8 (2) of the Regulation No 99 it was stipulated that the wastewater should be as pure as the water in water bodies. The established standards for wastewater are even stricter compared to the standards stipulated for drinking water. As a result of this change, the limit value for copper, zinc and total chromium in wastewater declined to the extent that it was impossible for AS Tallinna Vesi to ensure the compliance of wastewater discharged into water according to the environmental requirements. Therefore, AS Tallinna Vesi was required to pay an increased environmental fee, and lost the opportunity for reducing pollution charges under the Environmental Charges Act. AS Tallinna Vesi found that the damage is caused by a significant breach of the public authority's obligation as the Regulation No 99 was established without any substantive analysis (including the ignorance of investment needs of companies who are bound with nature and water). Explanatory memorandum to the Regulation No 99 does not indicate how the established limit values (which do not have a transitional period) are achievable, especially considering that these values are not technologically achievable even to date. Unjustifiably stricter requirements were set for discharging wastewater into the sea compared to discharges into rivers and lakes. Unconstitutionality (disproportionality) of the established limits is confirmed by the amendment of



the Regulation No 99, since 1 January 2017, when the previous limits were re-established. If the relevant natural circumstances, technological possibilities, economic effects and technological capabilities of the undertakings would have been duly taken into account when establishing the Regulation No 99, the limits would have been stipulated to the extent permitted by the law and the damage to AS Tallinna Vesi would have never occurred.

The Supreme Court found in the 20 February 2020 decision that the damage to AS Tallinna Vesi was not caused by the state legislation, i.e Regulation No 99, but was caused by the special water permit issued to the company, on the basis of which also the obligation to pay environmental charges was determined. In assessing the legality of the Regulation No 99, the Supreme Court did not deem it necessary to take into account the fact that the company was granted an environmental permit within the limits set by the Regulation No 99. Despite the request of the Company, the Supreme Court also dismissed the constitutional review proceedings of Regulation No 99 despite the fact that in 2017 the limits for heavy metals were significantly reduced.

The costs of the proceedings were left to be paid by the Government of the Estonian Republic.

Viive Ligi, a judge of the Supreme Court, expressed a dissenting opinion on the Supreme Court decision, and did not agree with the majority opinion according to which the damage claim was dismissed. Viive Ligi found that there was a causal link between the Regulation No 99 adopted in 29 November 2019, and the damages caused to AS Tallinna Vesi and the case should have been sent back to the first instance.

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