

Brief summary of the Estonian Supreme Court's decision (Oct 11, 2023) on the building permit for the Enefit-280 oil plant (in English)

In May 2020, the Tartu Administrative Court [allowed a complaint by Fridays for Future Estonia](#) (officially MTÜ Loodusvõlu), an organization of young Estonian climate activists, seeking to nullify a permit issued to the state-owned energy group Eesti Energia for the construction of a new shale oil plant. Shale oil is a fossil fuel produced from oil shale (a coal-like fossil fuel found in Estonia) and exported outside the EU to be used as fuel on long-range ships.

Fridays for Future alleged that the municipality of Narva-Jõesuu issued the construction permit without adequately assessing its climate impacts and the commitments made under the Paris Agreement, as well as the European Union's objective to achieve climate neutrality by 2050. The court named two Eesti Energia subsidiaries as third parties, and the Ministry of the Environment (now Ministry of Climate) as an administrative body.

The courts of [first](#) and [second](#) instance did not uphold Fridays for Future's complaint, stating that the construction permit does not cover carbon emissions from the use of the oil produced in the plant, but only the impacts of the construction activity itself. The circuit court also stated that a construction permit does not regulate the use of the building in the future, but only the process of construction and the impacts that it causes.

They also denied two requests for preliminary injunction to halt construction of the plant as not currently justified because the plaintiff's claims relate to impacts that would occur during the plant's operation, rather than construction. However, the Tartu Circuit Court granted a preliminary injunction in May 2021 and temporarily [suspended](#) the construction permit after it

appeared that the impacts of the construction to the nearby Natura 2000 area had not been thoroughly assessed. Around two months later the injunction was [lifted](#) and the construction continued.

In 2022, the Supreme Court of Estonia accepted the complaint but denied a request for preliminary injunction.

On October 11, 2023, the Supreme Court upheld the claim and nullified the construction permit. Although the case was mostly built on climate arguments, especially on the shortcomings of climate impact assessment, and most of the Supreme Court's judgement focuses on climate change matters, the court eventually did not nullify the construction permit on climate change grounds, but because there were other deficiencies with the environmental impact assessment, such as the failure to evaluate the impact on another Natura 2000 area and to evaluate climate sensitivity (or resilience) of the installation. For the first time in Estonia, the Supreme Court stated that the mitigation of climate change is a constitutional obligation. More precisely, that the Estonian constitution requires a proportionate contribution to the Paris climate agreement goal to keep the global average temperature increase significantly below two degrees, preferably within 1.5 degrees of pre-industrial levels.

The court stated that the emissions of the plant should be compared to Estonian national climate targets to assess whether the plant's climate impact is unacceptably large. Therefore, Scope 3 emissions that are emitted outside the borders of Estonia do not need to be accounted for. The court also explained that the oil plant operator's participation in the EU Emissions Trading System (ETS) may not be sufficient to meet Estonia's national climate targets and additional national targets may be necessary.

In 2020, when the permit was issued, Estonia had very relaxed climate targets. The court considered it justified to base the climate impact assessment on these and did not agree that the authority should have taken into account the EU climate neutrality target, because despite the government agreeing to it, at the time it was not legally binding. The Supreme

Court found that the construction of the plant does not obviously prevent Estonia from fulfilling these relaxed targets, therefore the climate impact was not the reason to nullify the permit. However, the court explicitly noted that when the integrated environmental permit is issued in the near future, the related impact assessment must be based on the recently updated stricter climate targets.

The court made it clear that the authority must deny a permit to a project with a significant climate impact unless there is an overriding 'existential state interest' that would outweigh it. Otherwise it will unduly restrict the freedoms of individuals or the public interest in the future to curb climate change. The greater the risk of missing the climate targets, the greater must be the overriding interest. The court implied that if the risk of meeting the climate targets cannot be clearly excluded, the authority should not grant a permit to this project, because in the view of the court, in the case in question no such 'existential state interest' can be detected at present.

The court ordered the municipality of Narva-Jõesuu to assess the environmental impacts that had not been properly assessed before and decide again whether to grant a new construction permit.

11/10/2023. Supreme Court decision (in Estonian)

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The Work Plan of J&E has received funding from the European Union through its LIFE+ funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein.