

# Liability for damages due to export of toxic waste: final ruling

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## Decision Comment

In a long and extensive environmental liability suit in Sweden, approximately 800 Chileans sued a Swedish mining company. The claim was based on the grounds that the mining company had exported toxic waste to Chile which subsequently caused damage to the plaintiffs' health. The case regards a potentially tortious act which occurred more than 30 years ago and poses the question of whether a company can be liable for environmental damage disclosed long after the tortious act has taken place. [\(1\)](#)

### Decision

In March 2019 the Upper Norrland Court of Appeal ruled on the matter, following an appeal by the plaintiffs.

In order to determine which country's law applied to the case, the court examined a sequence of events that had influenced, to varying degrees, what had led to the alleged damage. According to the court, the decisive factor in the choice of law were acts and omissions that could be attributed to the Swedish mining company, as the case concerned this company's liability for damages.

Instead of determining the principal location of the causative events using quantitative criteria, the court considered it to be where the qualitatively important elements had their centre of gravity. Further, in contrast with the district court's conclusion, it held that the Swedish mining company's alleged negligence had its centre in Sweden and therefore Swedish tort law should be applied in this case (the law of the place in which a delict is committed).

According to Swedish law, claims for damages are time-barred after 10 years. The court held that the issue of limitation had to be assessed in the light of the course of events and the alleged negligence on which the plaintiffs had based their damages claim. Any subsequent damage that had been caused by the mining company's failure to act during the period after the toxic waste had been shipped to Chile would also advance the starting point for the limitation period. The question was when these failed measures could have been taken at the latest.

The court stated that the starting point for the limitation period occurred at some point in 1999, when the mining company would have been unable to take effective preventative measures. Since the plaintiffs had first made claims in 2013, the claim for damages was thereby time-barred and dismissed by the court.

The plaintiff's appealed the court's judgment; however, on 25 June 2019 the Supreme Court announced that it would not address the damages claim. Therefore, the Court of Appeal's ruling stands.

### Comment

While the legal process is finished, questions remain, as only the applicable law and limitation came to trial. These questions mainly concern:

- how strong the connection between damages and tortious acts must be; and
- in the case at hand, what proof the plaintiff would have needed to present regarding the mining company's knowledge.

The fact that limitation periods are counted from causative events may mean that a claim for damages is time-barred before any damage has occurred or has been perceived by the injured party. Should damage occur later, the injured party thus has no opportunity to succeed with a legal claim.

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However, a claim for damages that is time-barred when an injury is discovered long afterwards could be perceived as unsatisfactory. Yet, it is a deliberate statement from the legislature, motivated by the fact that no one should have to expect to be liable for an act more than 10 years earlier. To deviate from what is generally established on limitation would, according to the Court of Appeal, mean that the predictability of the substantive law is eroded – a predictability that is of central value in the rule of law. The above decision confirms that the general rules of limitation also apply to environmental damage.

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## **Endnotes**

(1) This article is part of a series on this case – for the other articles in the series, please see:

- "[Liability for damages due to export of toxic waste](#)"; and
- "[Liability for damages due to export of toxic waste: revisited](#)".

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