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## How to consider justice in climate policy?

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Discussion paper

### 1. INTRODUCTION

The past years have seen a substantial increase in both political interest towards and research concerning the justice of climate measures, i.e. how a transition towards carbon neutrality can be accomplished fairly. The question of climate policy justice is reflected in societal reactions, for example, in the yellow-vests movement (gilets jaunes) in France or the peat debate in Finland. Already a decade ago, justice was a central factor in decision making concerning the German *Energiewende*. How fairly people feel they are being treated by climate policy will pivotally influence how they accept climate measures and, ultimately, how we succeed in mitigating and adapting to climate change. However, societal discussion has mainly emphasised income distribution questions, despite the need for a broader perspective on justice.

One of the key characteristics of climate policy is that it fixes global and intergenerational injustices<sup>1</sup>. The advantages created through climate emissions production, or the disadvantages and risks caused by climate change are not equally distributed between regions, economic sectors, or populations (e.g. Robinson & Shine 2018). Neither are the effects of climate policy distributed equally (Carley & Konisky 2020, Lamb et al. 2020, Markkanen & Anger-Kraavi 2019). For example, companies developing clean technologies and sustainable business models benefit from climate policy. On the other hand, climate policy -induced increases in living costs, increased difficulties in practising certain livelihoods, or decreased employment opportunities are often experienced as unjust. While each country that practises climate policy responds to acute demands for justice expressed by actors and groups, we must concurrently observe the global context, the long timescale, and existing societal injustices (Biermann & Kalfagianni 2020, Juhola 2019). Viewing all changes as injustices may needlessly delay climate change prevention or adaptation. Clarifying and objectively assessing what a just transition is in the context of climate policy is therefore necessary.

A just transition is mentioned in the Paris climate agreement, where it is mainly used in reference to conducting just climate policy from the perspective of employment and workforce. A just transition is included more precisely in the European Green Deal programme (European Commission 2019). Its central thought is “leave no one behind”. This means increasing opportunities for citizen participation as well as paying attention not only to workforce but also to sectors and areas most affected by

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<sup>1</sup> Here, climate policy means measures conducted by public governments, which are aimed at preventing and adapting to climate change. Several means exist for achieving climate targets. Several different policy instruments in all societal sectors will be needed to reach sufficient emissions reductions.

transitions. Concurrently, the necessary changes caused by climate change mitigation and adaptation efforts become more acceptable and also progress faster.

The world is not just in its present state regarding the possibilities or resources and their utilisation available to different groups of people or nations. The present state is also transforming; climate change may alter the living conditions for different groups of people through flooding, drought, snow cover, or extreme temperatures. Regional changes in weather and climate conditions may need to be interpreted from the perspective of justice. Climate policy strives to mitigate changes and enable adaptation. In the best case, climate policy can help remove existing injustices, such as environmental degradation caused by the use and production of fossil fuels. Sometimes, however, climate policy leads to existing injustices (e.g. human rights violations, child labour, local environmental catastrophes) being merely transferred from one sector to another (e.g. from the production of fossil fuels to the mining of critical minerals and materials). Thus, advancing the examination of justice, striving to reduce existing injustices, and appropriately compensating for newly forming injustices are important.

This conversation opener departs from the premise that mitigating and adapting to climate change are imperative from the perspective of global and intergenerational justice. Finland is bound by the Paris climate agreement and by EU climate policy. Finland must manage its share of the common target, and a national carbon neutrality goal will be added to Finnish climate legislation. This working paper uses the conceptualisation of three dimensions of justice and augments it with cross-cutting levels of justice and the human rights perspective. The working paper also discusses what can be considered just and how justice can be viewed from a legal perspective. It produces background information on the concept of justice for evaluating Finnish climate policy, while also considering the cascading effects of Finnish climate policy measures and global supply chains.

Based on academic research literature, we examine what considering justice means in the context of climate policy. We will map the general principles of justice and the preconditions that basic and human rights place on climate policy. The working paper aims to be a conversation opener regarding the different dimensions of justice and how deliberating and evaluating these dimensions could be intertwined more tightly as part of climate policy decision-making. This examination of the different dimensions of justice will be worked towards an evaluation framework in sector-specific stakeholder workshops. The aim of the Finnish Climate Change Panel's project Climate Policy Justice<sup>2</sup> is to produce questions to facilitate evaluating climate policy justice for decision-making.

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<sup>2</sup> Additional information on the Justice in climate change policy -project, coordinated by the Finnish Climate Change Panel, can be found on <https://www.ilmastopaneeli.fi/en/projects/#justice-in-climate-change-policy>

## 2. THREE DIMENSIONS OF JUSTICE

A division between different dimensions of justice, frequently used in environmental and energy justice research, can be used when examining climate policy justice (Schlosberg 2007, Jenkins et al. 2016, Sovacool et al. 2019, Williams & Doyon 2019, Smaal et al. 2020). This division emphasises that justice is not only a question of distributive justice, i.e. of how the benefits and costs of climate policy are distributed within a society (e.g. Rawls 1971), but attention must also be paid to sociocultural, i.e. recognitive justice, and procedural justice (see Table 1).

**Table 1.** Three dimensions of justice and two cross-cutting viewpoints of justice

<b>Distributive justice</b>	<b>Recognitive justice</b>	<b>Procedural justice</b>
<p>How do planned policy measures influence the distribution of benefits and disadvantages?</p> <p>How can existing injustices be lessened through planned policy measures?</p> <p>What compensation measures can be used to minimise the disadvantages caused by climate policy?</p>	<p>Who, where, and what kinds of needs and worldviews are considered in policy preparation, decision-making and implementation?</p> <p>Have vulnerable groups been identified and considered adequately and fairly?</p> <p>Can planned policy measures be used to improve the circumstances of vulnerable groups?</p>	<p>Is the decision-making process just? Can citizens and different groups influenced by policy measures take part and affect decisions, and have their viewpoints been considered?</p>
<p>Cross-cutting the above: <b>Global (i.e. cosmopolitan) justice</b></p>		
<p>Cross-cutting the above: <b>the human rights viewpoint:</b> possibilities for a good life for all, the acknowledgment of different needs, participation by all</p>		

**Distributive justice** focuses on how the benefits and disadvantages created by sustainability transitions are distributed throughout society. What are the essential benefits and disadvantages? Who are they distributed between? What would be a just basis for this distribution? (Sovacool et al. 2019, Williams & Doyon 2019). Distributive justice therefore draws attention, for example, to the distribution of different economic resources, well-being and health effects, and environmental risks. Regarding climate change adaptation, the focus is both on how the risks caused by climate change and the benefits and disadvantages caused by adaptation measures are distributed. With climate change mitigation, the focus is on the effects caused by mitigation measures. Efficient prevention and successful adaptation are the bases of distributive justice. The end result cannot be just without them (Ciplet & Harrison 2020).

The distributive effects of climate policy can be directed at different areas of life, for example housing, nutrition, mobility opportunities, livelihoods and employment, safety, or at the general opportunities of influencing one's own life and participating in society (Carley & Konisky 2020, Järvelä et al. 2020, Kaljonen et al. 2020, Mullen & Marsden 2016). Many of these are also linked to factors secured by basic and human rights. Considerations of justice can utilise subjects familiar from impact evaluation, and evaluate the magnitude, duration, persistence, and likelihood of both direct and indirect benefits and

disadvantages, and the size of the group of people or area that the effects pertain to. Additionally, it is essential to consider how these effects are intertwined, how they cumulate, and how they are distributed temporally.

*Restorative justice* has been raised as an issue in connection to and separately from distributive justice. Restorative justice denotes the compensation of realised disadvantages or the mitigation of their effects through various measures that level out distributive effects (Williams & Doyon 2019). These measures include income redistributions, education, employment efforts, and regional development (e.g. Green & Gambhir 2020). Regarding environmental effects, measures for restorative justice also include ecological or climate emissions compensations or measures that strive to mitigate harm caused by climate change (e.g. Hyams & Fawcett 2013). With the help of restorative justice measures unjust policy measures can be made more just and acceptable. Indeed, it is important to examine distributive justice from the perspective of both individual policy measures and policy mixes (see Kivimaa & Kern 2016, Rogge & Reichardt 2016).

**Recognitive justice** considers the sociocultural differences between people and between groups of people, their different positions in society, and specific needs and vulnerabilities born through these differences. All these must be included when contemplating distributive justice and procedural justice (Williams & Doyon 2019). The aim is to avoid the dominance of certain sociocultural groups and to advance the realisation of the rights of those who are in vulnerable positions (Fraser 2000). Here, equal participation opportunities in society are at the core of justice. The indigenous Sámi people are one such acknowledgeable group in Finland (Jaakkola et al. 2018). However, recognitive justice also considers, for example, the positions of children or the elderly, different socioeconomic groups and immigrants. Regional, global, and intergenerational questions can also be included as part of recognitive justice. It is important to consider both the realisation of the rights of future generations, and how the differences between regions and nations affect how justice can be realised (McCauley & Heffron 2018). Recognitive justice can also be thought to include, for example, acknowledging the rights of animals and nature, despite traditional political and philosophical analyses of justice solely focus on justice between people (Celermaj et al. 2021, Schlosberg 2007).

**Procedural justice** is about the fairness of different decision-making processes. It considers the equality of participatory opportunities and the transparency and impartiality of decision-making and the accountability of decision makers to citizens and residents. It also includes, for example, the opportunity to appeal decisions. At the heart of procedural justice in connection to environmental and climate justice is the opportunity to bring forth grievances and to influence decisions relating to one's community, for example in connection with the placement of emission-releasing facilities (Schlosberg 2007). Procedural justice has expanded to addressing acceptability, supporting the resilience and capacity of participants, and decision-making processes at many levels (McCauley & Heffron 2018, Goddard & Farelly 2018). Procedural justice is also fundamental to Fraser's (2010) political justice, which includes how to define the questions under consideration, the people and spatial boundaries involved in the procedures, and the boundaries of the procedures themselves.

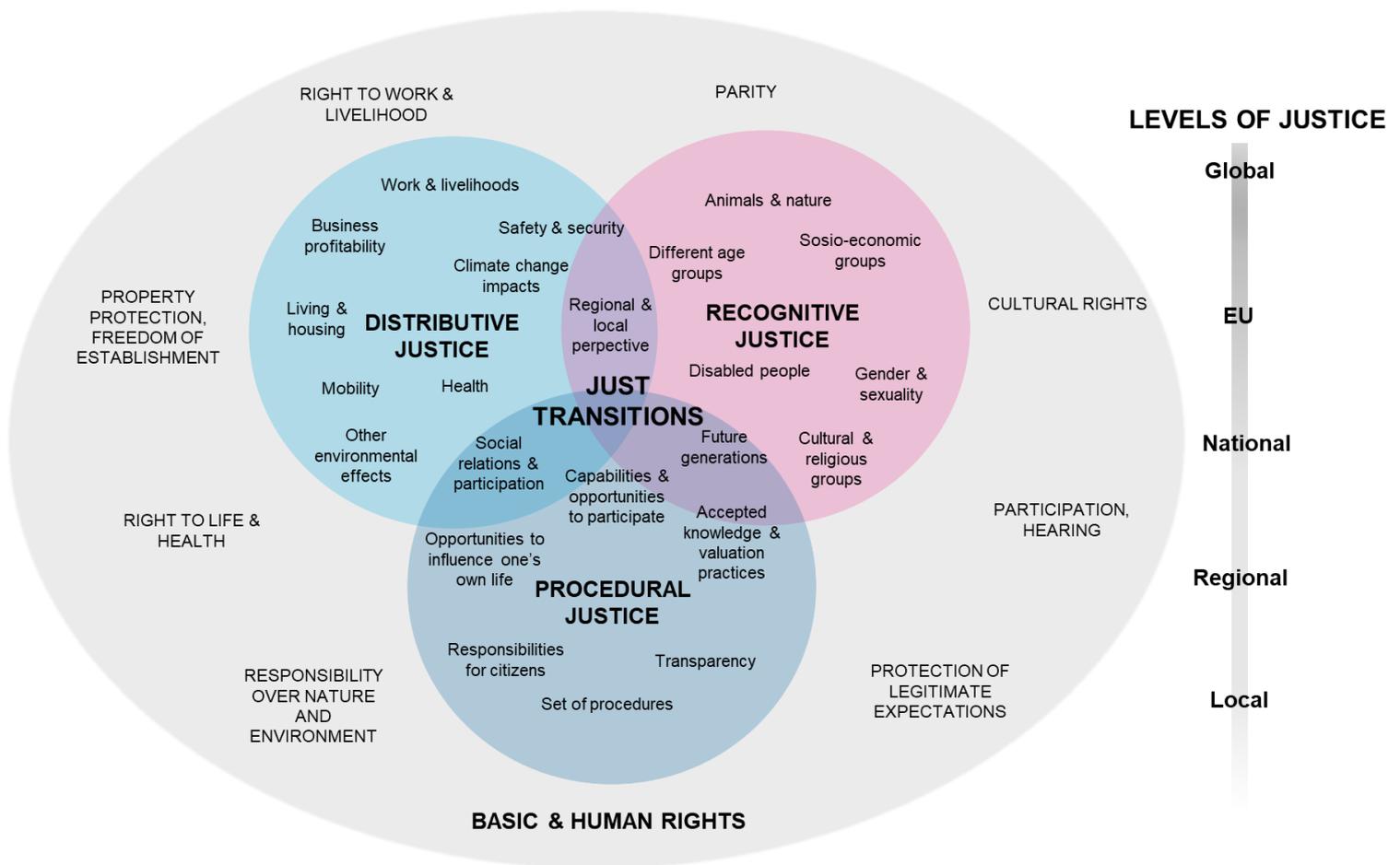
In relation to procedural justice, decision-making processes are broadly understood to include all stages from preparation to ex-post impact evaluation. Procedural justice is organically connected to recognitive justice. This particularly relates to how the different starting points and capabilities of people to participate in decision-making are taken into account, and what types of information and valuation methods are accepted. Enabling participation does not only mean different consultation processes. Instead, it can also be understood as a system that utilises different means in different situations (Chilvers et al. 2021). In this way, procedural justice can be safeguarded, for example, by strengthening the civil society's opportunities to create solutions and procedures for mitigating and adapting to climate change (Temper et al. 2018). It is also essential to transparently analyse the perceptions of different parties and evaluate their importance and weighting in relation to each other (Li & Wagenaar 2019). From the perspective of policy formulation, procedural justice not only has intrinsic value, but it is also a vessel for examining other dimensions of justice.

In addition to the abovementioned dimensions, we can also examine **cross-cutting viewpoints of justice**. Distributive justice has traditionally been examined at a national level (e.g. Sovacool et al. 2019), but if the analysis is expanded, it is possible to talk of cosmopolitan or global justice crosscutting through the abovementioned three dimensions. *Cosmopolitan justice* draws attention from a national to a global level and emphasises the equality of all humans, their equal rights, and their responsibilities for the well-being of others. From the perspective of climate policy, cosmopolitan justice is focal to how we consider the historical benefits certain nations have gained by producing cumulative climate emissions, especially as the worst-suffering countries have typically had relatively little influence on creating climate change (Helm 2009, Robinson & Shine 2018).

Global questions related to climate change mitigation pertain, for example, to how measures caused by global trade, resource flows, and emissions calculations affect other countries. For example, international trade and consumption increase Finland's actual consumption-based emissions by nearly 50% compared to production-based net emissions, which are reported as "Finnish emissions" (Friedlingstein et al. 2020). This can be seen as outsourcing Finnish emissions, for example to China. The global emissions created through Finnish consumption are a pivotal question of justice when aiming for very low emissions levels. Another example of the justice effects that Finnish consumption has on regions outside its borders are the ethical questions concerning rare earth minerals utilised in a sustainable energy transition, for example, the local environmental or human health and well-being - related effects of their mining (Martin & Iles 2020). The relationship between global and local justice is not always straightforward. Locally or nationally just policy may be globally unjust, and vice versa (Steviss & Felli 2020).

Basic and human rights are central for policymaking in the Western countries. These universal rights include content related to distributive justice, especially to the actualisation of basic freedoms and needs. Equality and a ban on discrimination, along with protecting vulnerable groups are part of recognitive justice, and the participation and hearing of all individuals support democracy and the rule of law. Basic and human rights offer a clear foundation that justice assessments should be carried out on.

Dimensional classification is meant to ease the evaluation of justice. However, the dimensions of justice are intertwined and are not always straightforward to distinguish from one another. For example, when examining distributive and procedural justice it is important to identify and acknowledge vulnerable groups, and different worldviews and customs. The dimensions of justice can also be used to highlight matters that are focal to a just transition. These can also be expressed in the form of questions (Figure 1, p. 6).



**Figure 1.** Themes that should be considered when examining climate policy justice, categorised based on the three dimensions of justice (distributive justice, recognitive justice, procedural justice). Basic and human rights form the basis of justice. Justice can be assessed at different levels ranging from the local to the global.

### 3. WHAT IS JUST?

Various moral theories and applications of justice have affected the development of the three dimensions of justice (Schlossber 2007, Fraser 2010). However, on their own, the dimensions do not provide direct recommendations for what a just distribution of resources in relation to climate policy means in practice or how sociocultural recognition must be accomplished. Rather, they highlight those basic principles that can be used to evaluate justice as part of decision-making (Sikor 2014). The dimensions require different supportive criteria derived from the principles of justice (e.g. Biermann & Kalfagianni 2020). Disputes connected to the acceptability of policy are often derived from the different ways of understanding what is just (Ciplet & Harrison 2020).

Before the principles related to the actualisation of justice are defined, we must decide who are included in the sphere of justice (delimitations). The focus of 'just' policy has for long been on justice between the residents of a nation. However, climate policy expands 'justice' to a global level and involves future generations. Global and intergenerational perspectives are integral justifications for even being able to conduct climate policy in the first place. Occasionally, justice is extended to animals and to the intrinsic value of nature (see e.g. Celermajer et al. 2021), and the concept of animal rights has been discussed in Finland in connection with a renewal of the Finnish Animal Protection Act.

It is important to consider in any given assessment, what is the situation forming the basis of evaluating justice and how existing injustices and gained advantages are accounted for. From the perspective of low-carbon transitions, focusing on the present state and on the effects that change brings about may cause disregard of the injustices created by existing societal structures (Velicu & Barca 2020, Wood & Roelich 2020). It has been noted that individuals in more vulnerable societal positions are more likely to be more vulnerable to both climate change (Juhola 2019) and climate policy (Markkanen & Anger-Kraavi 2019). For example, the Sámi have raised the issues of adaptation measures requiring additional economic resources and that adaptation generates inequality and even poverty within and between Sámi communities (Furberg et al. 2011, Löf 2013, Näkkäläjärvi et al. 2020). On the other hand, energy poverty is manifested even in the current situation, and different genders, generations, or cultural groups have different opportunities, for example, in terms of land tenure, employment, and entrepreneurship. If climate policy shifts existing inequalities towards a better direction, the relative position of people benefitting from the current inequalities will deteriorate.

Climate policy cannot be expected to mend all existing inequalities. When planning and allocating resources for climate change mitigation and adaptation, it is essential to strive to prevent current inequalities from becoming worse or to prevent the creation of new inequalities without adequate compensation. This may mean forgoing gained advantages for those whose share of global resource consumption is at an unsustainable level in terms of planetary boundaries. We must additionally ensure that everyone is heard during decision-making, and not only those who can easily get their voices heard due to existing power structures (Shi et al. 2016). Different compensatory mechanisms, such as transition periods, monetary compensations, and industrial and regional subsidies are helpful for making changes acceptable (Green & Gambhir 2020). It is also a question of value choices and the weighting given to different effects: how many disadvantages or benefits climate policy can create so that the measures can still be regarded just considering all the dimensions and levels.

The fair distribution of societal benefits and costs and the degree to which different groups and regions are considered can be justified by appealing to several ethical or socio-philosophical perspectives. These perspectives originate from the different ways of defining a good society, and they are partly complementary and partly contradictory to each other (e.g. Lamont & Favor 2017, Biermann & Kalfagianni 2020). For example, a liberalist stresses individual freedoms, a utilitarian maximises the common good, and a person stressing human capabilities considers individual needs for enabling a dignified life. The principle of cost effectiveness, which is frequently used in climate policy evaluations, is linked to maximisation of the common good, i.e. to the idea of achieving the most effective emissions reductions possible with the smallest utilisation of common resources. This perspective is important when planning national policies, but it is not enough in itself to achieve justice. A cost-effectiveness evaluation focuses on the national level and does not account for policies' local or global level effects or the different effects on different groups.

#### **4. JUSTICE FROM THE LEGAL SYSTEM VIEWPOINT**

Certain views concerning justice have become established as legal principles that are part of the international and national legal systems. In Finland, these principles influence, for example, the form of government, economic system, or the type of welfare state applied. Climate policy, as any other policy, is formulated based on these principles. Many rights guaranteed by international human rights agreements link to climate change and climate measures (UNEP 2015). The Paris Climate Agreement (introduction) states that measures addressing climate change must respect and advance, for example, the right to health, the rights of indigenous people, gender equality, and intergenerational justice.

Finland is a liberal democracy, where individual freedoms, equality between individuals, and equitable treatment are central principles. Justice is approached individualistically but recognising that people belong to different organisations or groups. On the other hand, the Finnish welfare state has, in addition to strong individual freedoms, stressed the provision of equal opportunities to all residents. This

emphasis is visible in the basic rights guaranteed by the Constitution. The human rights concept refers to rights secured by international human rights agreements. Basic and human rights can be considered as the guarantors and socially acceptable fundamental prerequisites for the realisation of justice. As basic rights are values and goals accepted into the highest source of law in the hierarchy of norms, they offer a strong backbone also for examining climate policy justice. However, it is difficult to appeal to advantages that are not basic rights.

Issues important to people and those seen as part of the State's role are listed in each country as basic rights. They relate to everyone's basic needs, i.e. freedoms and the division of basic commodities. Equality (The Constitution of Finland 6 §) is a central basic right in Finland. Everyone is equal and all have the same basic rights. Equality means de facto equality between different people. For example, the effect of a place of residence, age or disability is taken into account when assessing equal opportunities. Realising the same opportunities requires different resources for different people and people living in different circumstances.

Responsibility for the environment (The Constitution of Finland 20 §) is a basic right fundamentally related to climate policy. It states: "Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone". "The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment" (The Constitution of Finland 20.2 §).

In applied climate policy, the protection of property (15 §) and the right to work and the freedom to engage in commercial activity (18 §) are the basic rights that must be weighed alongside, and even against, environmental rights. Utilisation of personal property may have to be restricted to reach climate goals, and jobs and livelihoods may be lost during the transition. According to 15 § of The Constitution of Finland, "The property of everyone is protected", and according to 18 § "Everyone has the right ... to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice" (18.1 §). "The public authorities shall promote employment and work towards guaranteeing for everyone the right to work" (18.2 §). In practice, support and incentives are required from the state to enable people to find new employment, new livelihoods, and new use for their property. The freedom of movement and the freedom to choose a place of residence (9 §) demand that regions offer mobility options and, more broadly, prerequisites for a good life. The right to one's language and culture (17 §) relates, for example, to aiding the indigenous Sámi in adapting their traditional livelihoods. For the Sámi, adapting to climate change is a question of securing a future for their culture: how much adaptation can occur without losing the culture (Näkkälärvi et al. 2020).

The principle of legitimate expectations guarantees legal certainty and predictability during transitions. Transitional periods are often used when prohibiting action that is detrimental to nature and when imposing new environmental demands, to allow actors time to adapt. Just transition is developing into an independent legal principle as it is being codified in international and national climate law (Hildén et al. 2021).

According to 22 §, public authority must guarantee the realization of basic and human rights. Although the parliament is chosen democratically and represents the people, the constitution and human rights agreements are above it in hierarchy: they are meant to bind all hands of all parliaments globally. A state's responsibility is to execute basic and human rights even in situations when people themselves are incapable of doing so or are disinterested in demanding their implementation. Avoiding the restriction of basic rights is a primary goal of all basic rights. Basic rights can be restricted for an acceptable reason, such as the realization of another person's basic rights. Basic rights restrictions must follow the principle of proportionality and the requirement for exactness and precision. No normal legislation can restrict a basic right up to its so-called core, so that its fundamental substance is lost (Ministry of Justice Finland: Lainkirjoittajan opas [in Finnish]).

In Finland, the constitutional issues with proposed legislation are resolved at the Constitutional Law Committee. In PeVL 55/2018, the Committee weighed the climate goals in relation to the right to

property (15 § of The Constitution of Finland) and freedom of trade (18 § of The Constitution of Finland) and concluded that coal burning could be banned with a transition period and without compensations. In court, e.g. the rights of Sámi reindeer herders have been weighed against the rights of companies performing mechanical gold mining (KHO 2020:124). Similar reconciliation of conflicting rights is needed in climate policy.

If environmental rights are strengthened in a society, other basic rights may need reinterpretation. The legislator may add new rights to the constitution or further clarify old ones. Rights may also be removed from the constitution by following the constitutional order. Concurrently, the state could divest itself from international human rights agreements. Thus, even basic and human rights are not completely permanent.

The baseline justice in climate policy can be outlined based on basic and human rights and through various dimensions of justice. A state is responsible for guaranteeing at least the realization of fundamental freedoms and the actualization of basic needs and enabling equal opportunities for participating in defining the aforementioned.

Individuals are increasingly raising lawsuits where they demand states to safeguard their climate-related rights. The demands are based on national constitutions and international human rights agreements.

#### **Examples on climate policy and basic rights**

- In the Urgenda case (ECLI:NL:HR:2019:2006) resolved in the Netherlands in December 2019, the country's highest court of law imposed the government to intensify its climate measures.
- In Ireland, the High Court (Appeal No: 205/19) imposed the government to make a detailed plan of how internationally agreed and nationally appointed emissions reductions will be met. The verdict was given in September 2020.
- In March 2021, the German constitutional court gave its climate verdict (complaints 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20 and BvR 288/20), and imposed the federal government to set the path to climate neutrality that respects intergenerational justice.
- At the European Court of Human Rights, Portuguese youth (Duarte Agostinho and Others V. Portugal and 32 Other States) demand 33 countries, including Finland, to intensify their national climate measures and to act against climate change globally.

A climate lawsuit has not yet been brought against Finland at a national court.

## 5. CONCLUSIONS

The following conclusions are drawn from the examination above. They can be used as background for further developing the evaluation of climate policy justice and for guiding political decision-making:

- Climate policy is needed for safeguarding global and intergenerational justice. Failure to mitigate and adapt to climate change causes injustice.
- Climate policy measures have different effects on justice. Climate policy can help remove or decrease existing injustices, but concurrently it can produce new kinds of injustice. The evaluation of justice must consider existing injustices and inequalities as well as examine new injustices arising from climate policy.
- Climate policy justice can be evaluated through distributive, recognitive, and procedural justice. In addition, it is important to evaluate justice at different scales from local to global effects and from immediate to long-term effects. These dimensions and scales can be used to map the direct and indirect effects relevant for justice which must be considered transparently in climate policy deliberation and decision-making.
- The state is obligated by basic and human rights. Their specific content can be disputed but their binding nature cannot be removed through normal legislation. Basic and human rights - based evaluation offers a basis for conducting just climate policy. The rights grant everyone freedom and the fulfilment of basic needs. In Finland, everyone must be able to afford energy, food, and mobility. The freedom to choose a place of residence, profession, and livelihood, along with the right to one's own language and culture are notable rights from both the viewpoints of personal identity and social connections.
- Human rights must also be realised in global commodity production chains. Benefitting from slavery and inhumane working conditions is particularly unjust.
- New evaluation criteria and methods are needed to resolve situations, where evaluating climate policy justice causes conflicts. Such situations may emerge, when climate policy strengthens the basic rights connected to nature, the environment, and health while concurrently restricting the rights to practising a livelihood, occupation, or subsistence, or when promoting justice in Finland causes injustice elsewhere in the world.

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