



Ympäristöministeriö
Miljöministeriet
Ministry of the Environment



Access to justice to challenge violations of laws relating to the environment – recent developments in Finland

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Access to justice under Article 9(3) in cases of omissions/passivity of public authorities

- General rule: appeals must be based on an administrative decision; inaction by a public authority cannot as a rule constitute grounds for launching an appeal before administrative courts.
- Right to institute actions in accordance with the Environmental Protection Act (527/2014).
- Administrative complaints procedure: The Chancellor of Justice and the Parliamentary Ombudsman
 - The procedure is free and open to everyone
 - They can also initiate their own investigations and request a police or pretrial investigation
 - The decisions lack an enforcement mechanism but are generally respected.



Recent challenges to the Finnish system 1/2: First climate judgment

- First climate case decided by the Supreme Administrative Court in June 2023 ([KHO:2023:62](#))
- case dismissed on procedural grounds by a 3-2 vote
- the NGOs submitted that government inaction effectively constituted an administrative decision not to adopt such additional climate policies as needed to achieve the binding climate targets under the Finnish Climate Act of 2022
- in addition to arguments derived from national law, NGOs invoked human rights, including Articles 6 and 13 of the European Convention on Human Rights, as well as the Aarhus Convention



Judgment: inadmissible “at this stage”

“...the need to secure fundamental rights and fulfil international obligations for the sake of climate mitigation and adaptation, which is essential for the future of humanity, should be especially considered when reviewing the obligation of the public authorities to guarantee the observance of basic rights and liberties and human rights. **This may also require the right to appeal in a situation where an actual administrative decision has not been made.**” (para 58)

the Court found no grounds to conclude that the Government’s conduct:

“...would mean an **illegal neglect of the objectives and obligations** of the Climate Act.” (para 70)

Therefore, the Court could not find the appeal admissible “at this stage”. It indicated that this might change if the Government continued to remain passive



Dissenting opinion

- the Government's adoption of the annual Climate Report to the Parliament should be regarded as **including a position on no need for additional measures**, and that this constituted a legal basis for finding the appeal admissible.

"States governed by the rule of law must have mechanisms in place to allow for the judicial review of actions that can be assessed to be related to fundamental rights, such as safeguarding a healthy and dignified environment also in the future." (p. 21)

- **Broad access to justice** is particularly important in the context of existential threat such as climate change, and in line with the objectives of the Convention and its Article 9(3).



Challenge 2/2: Access to Justice –provisions in recent EU legislation

- Revised Air Quality Directive, Soil Monitoring and Resilience Directive, Regulation on preventing pellet losses, revision of EU legislation on Packaging and Packaging Waste...
- Access to judicial procedures to challenge omissions of authorities.
- Possible solutions:
 - Constructing an administrative (complaints) procedure whereby a decision is produced and access to administrative courts secured.
 - Interpreting passivity as a refusal/negative decision that can be appealed
- The Government EU Affairs Department, the Ministry of Environment and the Ministry of Justice are cooperating to support experts dealing with EU environmental legislative proposals.



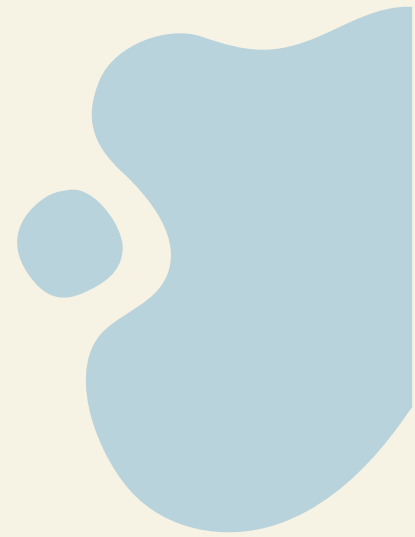
Thank you for your attention!

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