Climate change and the individual in the Finnish legal system

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Abstract

The Climate Act (2015) requires that state bodies adopt and update strategic plans for both climate change mitigation and adaptation. These plans shall be observed when developing other public plans. Individuals and organizations are entitled to obtain information and to present their opinion. In permit procedures individuals may obtain compensation from the permit-holder in case of environmental damage. Claims for compensation may also be brought in civil and criminal cases but only if there is evidence that climate change has caused environmental damage or other losses. Presently, this is unlikely. Class actions are not permitted in environmental cases.

1. The regulatory basis of climate law

Finland is a member state of the European Union and party to all essential environmental conventions. So, at the international and the EU level, Finland is committed to fulfil the imposed and agreed commitments. The most relevant sectors in terms of climate change are industry, forestry, traffic and agriculture. The physical impacts of climate change have been rather soft so far but especially water-related risks (flood), changes in the agricultural sector and flora are included in national mitigation and adaptation strategies.¹

Citizens’ rights to participate in administrative procedures as well as the right to obtain environmental information are legally guaranteed without proof of interest. Environmental law does not specifically include or exclude climate change as an argument for action. As far as energy law is concerned,

¹ For comparative aspects on climate instruments see Hollo (2012), pp. 229–272. Finland’s National Strategy for Adaptation to Climate Change. Publications of the Ministry of Agriculture and Forest 1a/2005, Summary: ”The Finnish Meteorological Institute compiled the climate change scenarios based on the existing international and national data. According to the estimates on the future climate change in Finland, by 2080 the average temperature could rise by 4 - 6°C and the average precipitation would grow by 15 - 25 %. Extreme weather events, such as storms, droughts and heavy rains, are likely to increase.” See also Hollo et al. (2011), pp. 399–432.

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citizen’s rights seem for the most not to be relevant unless measures or decisions involve environmental consequences or risks.

In public procedures, citizens may direct their claims both against public bodies, companies and private actors. Also, the official principle requires as a rule that authorities arbitrate between the parties as set by law. In some fields, e.g. in water and mining law, the authority also settles compensation claims between the permit-holder and other parties. In this context, today theoretically, the assessment of dam-age might cover also future losses caused by climate change, supposed that the project would in size be responsible for a share of global warming as well as for its national impacts.

2. Implementation of the international climate change agenda concerning mitigation and adaptation as basis for claims of individuals (Climate Act)

Finland has implemented its international climate obligations by several legal instruments within the framework of the European Union. National law incorporates rulings concerning emissions trading, the use of renewable energy and more. Binding law concerning specifically and comprehensively the impacts of climate change does not exist. Instead, programmes and strategic instruments dealing with mitigation and adaptation, based on scientific data, have been adopted nationally.

The Finnish Climate Act (CA, 609/2015, ilmastolaki; following is based on an unofficial English translation adopted by the Finnish Government, available at Finlex Data Bank) addresses in particular public authorities as they have to enforce climate strategies and land use plans. Several ministries have adopted political mitigation and adaptation strategies for over 10 years by now. Basically, the Climate Act regulates strategic planning, under the perspective of EU law. One additional purpose of the Act is to “strengthen the opportunities of Parliament and the public to participate in and affect the planning of climate change policy in Finland. This Act lays down provisions on the tasks of state authorities in drawing up climate change policy plans and ensuring their implementation” (CA Sec. 2.1).

As a rule, the Finnish legal order does not set direct climate-related obligations on business actors or individuals, as the position is that the State, and to some extent communities, are the only actors in the field. Their responsibility is to transpose internationally binding commitments and recommendations into national law and, as in this case, into strategic plans. Concerning the business sector, the Kyoto Mechanisms, especially the Emissions Trading Scheme of the EU, are the most important instruments. Strategic plans function in the background of planning measures and may influence argumentation in those procedures.

The CA provides for following definitions (Sec. 5):

3) mitigation of climate change means preventing the generation of anthropogenic greenhouse gas emissions and preventing them from entering the atmosphere, and also mitigating or eliminating other effects of climate change;

4) adaptation to climate change means measures taken to prepare for and adapt to climate change and its effects, and measures that can be used for benefitting from the effects of climate change;

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Those definitions are in line with the concepts in international climate law (United Nations Framework Convention on Climate Change, UNFCCC, and its protocols). Concerning its legal context, the CA states (Sec. 1.2): “The goals of the Act and of the planning of climate change policy carried out in accordance with it are:

1) to ensure the fulfilment of obligations under the treaties binding on Finland and under the legislation of the European Union to reduce and monitor greenhouse gases;

2) to reduce anthropogenic emissions of greenhouse gases into the atmosphere, to mitigate climate change through national actions, and to adapt to climate change.

In addition to the strategies required by the CA, municipalities and also companies have adopted climate strategies for their internal use, without further legal implications. For instance, the cities in the Helsinki Metropolitan Area approved in 2007 a Climate Strategy to the Year 2030.\(^2\) The strategy is used for development programmes inter alia in order to achieve sustainable consumption of natural resources and improve general material efficiency. The strategy serves also as a basis for land-use planning especially as traffic and energy issues, but also building infrastructures, are concerned.

Point (2) of Sec. 5 of the Climate Act mentioned above is interesting for the estimate of how individuals (and non-governmental organizations, NGOs) may enforce their individual environmental rights: “to mitigate climate change through national actions, and to adapt to climate change”. The available national provisions for mostly originate from European or international law and as such are directed to authorities. But there is, in my view, a certain demand for imposing the State to allow participation when adopting “national actions”. Presently, this is not done by the Climate Change Act as its task is not to interfere with the enforcement of other legal statutes. But this seems not to prevent the authority to consider climate risks in a substantial case both in terms of mitigation and adaptation, especially as there is an environmental obligation behind, for instance reduction of emissions, traffic plans or waste recovery.

Thus, substantially or in terms of combating global warming, the obligations of the Climate Act are rather weak but perhaps not irrelevant for the future interpretation of substantial laws. The individual has rights towards the state and other communities, especially as the Constitution is concerned. According to Sec. 20 of the present Constitution of 2000 (731/1999) everyone is invested with the rights provided for in the Aarhus Convention,\(^3\) i.e. the right to get information and to participate also when the individual has no legal standing in the matter.\(^4\) In addition, further legislation in the environmental

\(^2\) [https://www.hsy.fi/sites/Esitteet/EsitteetKatalogi/Raportit/Helsinki_Metropolitan_Area_Climate_strategy_summary.pdf](https://www.hsy.fi/sites/Esitteet/EsitteetKatalogi/Raportit/Helsinki_Metropolitan_Area_Climate_strategy_summary.pdf). Accessed 22 August 2018.

See also:
“Fortum’s climate strategy among the best in the world” - [https://www.fortum.com/media/2008/09/fortums-climate-strategy-among-best-world](https://www.fortum.com/media/2008/09/fortums-climate-strategy-among-best-world). Accessed 22 August 2018.

\(^3\) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998). See also Hollo et al. (2013), pp. 1–79.

\(^4\) Constitution Sec. 20 para 2: “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.”

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field as well as general rules on administrative procedures invite individuals to participate in proce-
dures, in many cases without proving to be a party to the case.

3. Initiatives in the field of mitigation

3.1 General legislation

There is no tailored mechanism for climate change mitigation for modes of land use and manage-
ment. Initiatives may be presented to political bodies of the State and the communities (which also
have the possibility to use climate strategies and planning measures for enforcement). But national
law sets limits to what requirements may be imposed on actors and companies. E.g. environmental
permits may not limit the choice of energy sources. In a case concerning zoning, the city had adopted
a climate programme, the aim of which was to densify the settlement structure. In addition to other
reasons, this climate-based argument justified the rejection of a claim for a review of the zoning plan
(Decision of the Supreme Administrative Court 29.12.2017/6894, KHO 2017:202, Finlex Data Bank).

Climate change mitigation presupposes scientific knowledge about the causes of global warming.
This again, under the perspective of human activities, means that strategies must tackle the essential
sources in a variety of businesses. Some of them are spot-based, mostly industrial and energy-produc-
ing units, others are diffuse. Emissions from diffuse sources from agriculture and traffic require for
mitigation other mechanisms than point-sources. These are usually economical and voluntary or
based on contractual arrangements. Not all sources are caused by human activities; also natural pro-
cesses emit greenhouse gases, especially methane.

Mitigation measures should be in line with the precautionary principle. The UNFCCC states: “The
Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate
change and mitigate its adverse effects. Where there are threats of serious or irreversible damage,
lack of full scientific certainty should not be used as a reason for postponing such measures, taking
into account that policies and measures to deal with climate change should be cost-effective so as to
ensure global benefits at the lowest possible cost” (Art. 3.3).

The following shows some examples of Finnish substantial law in relation to climate change mitiga-
tion. From the perspective of international climate law, Finland offers a model of how greenhouse gas
emissions from forestry may be neutralized. This is based on the strategic approach of international
climate law that natural forests are allocated as sinks. Forests store carbon, and they become carbon
dioxide sinks when they are increasing in growth or area. About 22.8 million hectares (75%) is under
forests in Finland, representing about 10% of the forest area in Europe (215 million ha). The Natural
Resources Institute gives following information about forest sinks: “The annual net sink of forests var-
ies annually mainly due to harvesting but the average sink has been about 38 million CO2 equivalent
tones over the last 10 years. Concurrently the wood products gave a net sink of 2 million tonnes of
CO2. Recently the forest sink has covered about 60% of the Finland’s total emissions excluding the
emissions and removals of land use and forestry.” The amount of sinks requires often complicated
calculations and statistics. Being highly dependent on the national income from pulp industry and

5 The Finnish Natural Resources Institute “Luke”: https://www.luke.fi/wp-content/uploads/2017/06/finlands-forests-facts-2017-www.pdf.
6 Ibid.

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forestry, Finland pursues at the same time a high percentage of forests as sinks. In this respect, Finland’s National Forest Strategy 2025 is loaded with tensions because of the three strategic objectives of the strategy. The visions are: (1) Finland is a competitive operating environment for forest-based business, (2) forest-based business and activities and their structures are renewed and diversified and (3) forests are in active, economically, ecologically and socially sustainable, and diverse use.\(^7\)

The forest strategy strongly focuses on biodiversity and ecological forestry practices but less on mechanisms for the creation of sinks. There is altogether a strategic statement (pp. 27–28):

> Forests as a carbon sink have been a significant means of mitigating climate change in Finland. Whereas the international benchmark level agreed upon for 2020 is 17–18 million tons in carbon dioxide equivalent, the carbon sink has been larger than this as harvesting volume have been lower than those indicated in the National Forest Programme 2015. As wood consumption increases, forests will lose their significance as carbon sinks and emphasis in climate change mitigation will shift to replacing fossil raw materials by renewable ones, including wood.

In Finland most forests are owned by private persons and organizations. This is reflected in the forest legislation as a relatively strong protection of the actors’ interests as owners and producers. It is natural that the national strategy to some extent emphasizes the importance of those interests in the national economy. The forest legislation itself provides for forest management plans, which serve as a basis for harvesting and other measures. In principle, such measures do not need a permit, but they may be interrupted if conditions set by the law are not followed up. Since environmental law, especially the law on nature conservation, has to be respected in forestry as well, the interests of owners and conservationist may collide and cases come up to court. The National Climate Strategy covers forest management as well and it should be taken into account in forestry planning as far as possible. That approach seems to be in line with the principle of sound forestry: forest planning measures may recommend modes of soil treatment and harvesting, which favour for instance the creation of sinks and other mitigating goals. However, if such requirements cause remarkable losses to forest owners, subsidies should be paid. For this purpose the environmental aid of the Common Agricultural Policy (CAP) has been available.

The objective of the Nature Conservation Act (1096/1996) is inter alia to maintain biological diversity and to promote sustainable use of natural resources and the natural environment.\(^8\) This Act does not meet the challenge that climate change would occasionally nullify conservation values and require adaptive measures. Some conservation nature areas are also preserved under the obligation not to interfere in the ecosystem by human activities. It seems however, that the practices concerning management of state conservation areas could be adapted to the recommendations of the National Climate Strategy especially as forests and aquatic areas as well as Natura 2000 sites are concerned. One aspect is the protection of genetic resources especially in forests (70% of the area) and swamps (28% of the area).\(^9\) The natural values of marshland are, despite the fact that a great part of marshland is protected as conservation areas, under threat because of the peat production and also, especially

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\(^7\) [https://mmm.fi/documents/1410837/1504826/National+Forest+Strategy+2025/197e0aa4-2b6c-426c-b0d0-f8b0777332](https://mmm.fi/documents/1410837/1504826/National+Forest+Strategy+2025/197e0aa4-2b6c-426c-b0d0-f8b0777332).

\(^8\) See also Act on Managing the Risks Caused by Alien Species (1709/2015).

\(^9\) The concepts of forest and swamp are overlapping.

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historically, due to drainage of wetland for agricultural purposes.10 Peat production releases methane and impairs the capacity of swamps to serve as sinks. Individuals in the neighbourhood and NGOs may take action against peat production, but mainly referring to dust and noise. The UNFCCC does not, as it seems, apply to peat production outside forests. However, the Finnish Government has initiated studies in order to find climate-friendly methods for the use or re-use of marshland.

### 3.2 Climate oriented mitigation

The objective of some laws is tailored for mitigating negative impacts caused by global warming. Some of those laws have their origin in European law, for instance flood risk abatement, forest fire prevention and provisions favouring the use of renewable energy. Waste law, which is based on the concept of life cycle, is relevant for mitigation as well. As an example, I will just mention the Finnish Flood Risk Management Act (620/2010). Maps are prepared for the significant flood risk areas, which may be flooded at different probabilities. The map also shows the potential adverse consequences of such floods. A flood risk management plan is prepared for river basins11 with one or several designated significant flood risk areas and a significant flood risk area in the coastal area. Water management mechanisms tend to belong both to mitigation and adaptation but this act has mainly a strategic function with anticipation of risks.

The measures that adaptation would need in a real situation are mainly regulated under water and planning law. See e.g. Water Act (579/2011, Ch. 18 Sec. 4): “If exceptional natural conditions or other force majeure event causes a flood or another such change in the water body or in its water conditions that may pose a general hazard to human life, safety or health or causes major damage to private or public interests, the permit authority shall order the state supervisory authority or the party responsible for a water resources management project to undertake the temporary measures necessary to eliminating the danger or minimising the damage. Such an order may be given notwithstanding the provisions laid down in this Act or in regulations in permits or decisions issued under it.”

The Flood Risk Act has or may have legal implications, for instance building restrictions or servitudes for flood basins. For this reason participation of landowners and other interested individuals (“everyone”) is required when approving the plan. The authority must reserve everyone the opportunity to examine the proposal concerning the designation of significant flood risk areas referred and the proposal for a flood risk management plan and their background documents. Also, the opportunity shall be given to present one’s opinion on the proposals in writing or electronically.

### 4. The national adaptation strategy

In the project and environmental legislation adaptive measures are basically dealt with as any other project. There is no comprehensive law concerning climate change adaptation either. However, the approach in case of adaptation seems to be less strategic than in preventive situations because adaptive measures tend to be more case-related and therefore regulated by sectoral rules, for instance by land use planning or building permits. The question is to what extent the climate argument may be

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10 Finland comprises land areas 303,891 km², inland waters 34,544 km² and sea areas 52,470 km². The uplift brings annually 7 km².

11 Main concept of the Water Framework Directive 60/2000/EC.
used in (administrative) cases concerning building on shores, on flood risk management and more. For this purpose adaptation strategies have been adopted.

The National Adaptation Strategy 2022, based on the Climate Act, was prepared by the Ministry for Agriculture and Forestry and approved by the Government 20 November 2014. It is an update of the national strategy 2005. The status of the Government’s decision is political, not legally binding but it shall be taken into account by public authorities in their sectoral planning measures. However, the objective to achieve is that the Finnish society as a whole is able to cope with the risks related to climate change and to adapt to changes. For this the strategy does not address public bodies only but sets strategic goals for other actors as well. There are three interim targets. First, adaptation shall become part of planning and operations of business areas and business actors. Secondly, actors shall acquire necessary tools for the evaluation and control of climate risks. Third, research, development programmes, information and education favour capacity of adaptation, adoption of innovative solutions and awareness of climate risks.

The strategy identifies 12 different areas of action. The estimate of global warming in this report bases on the fifth evaluation report of the Intergovernmental Panel on Climate Change, (IPCC), which gives higher numbers for Finland than for the rest of the Globe (between 2.3 and 6 centigrade by 2100). According to the strategy, the main meteorological change would be increasing amounts of rain. For this article the approach would be to examine how the strategy addresses issues concerning decision-making and the role of individuals. As said above, strategies are mostly weak in terms of hard law. But looking at the mentioned objectives of the strategy, some soft law input seems to be feasible. The information and communication approach relates to the legal position of individuals, to their right to be informed and to participate in planning and permit procedures. Even if climate change at present is not in substantial law a ground for legal action, it seems logical to open participation for individuals in cases where operators motivate their projects on climatic grounds. This would be the case especially in issues concerning the use of energy sources (wind, water energy, peat). There are constitutional and administrative reasons for the deservedness of the Government to interfere in the legal system. The legislation related to operations in the climate field has been developed mostly on a sectoral basis. Therefore, the communication between strategic tools and the need to update laws is in my view not efficient yet. However, in the strategy there is a statement to work on: “When preparing and enforcing laws for business sectors the changes of the climate and the climatic risks shall be taken into account.”

Let us take two recent examples for the preparation of environmental laws. How are climate aspects been taken into account when adopting the Environmental Pollution Control Act (527/2014) and the Water Act (587/2011), the two most important statutes in the field? The first act applies to activities causing pollution in the environment. The gases provoking global warming are not pollutants and therefore they fall beyond the application area of this act. However, the act states that one objective is to prevent climate change and to support sustainable development. The act itself does not set any climatic targets, wherefore the statement is merely declarative without a right of individuals to bring action unless there is a risk of pollution. The objective of the Water Act does not at least explicitly refer to prevention of global warming. Instead, the act is intended to promote, manage and allocate the use of water resources and the aquatic environment in a manner that is socially, economically and ecologically sustainable. Though not evidenced in legal practice, the formulation leaves open the question to what extent climate change might be relevant when considering the approval of an application. Large water management projects are commonly known to have relevance for either combatting or

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provoking global warming. When considering the conditions for granting a water permit, the concept of "public interest" is decisive. Also, the preparatory works do not indicate whether or to what extent climate issues might be relevant in this discretion. The position seems to be negative.

Considering those comments on legislation in force, one may recognize that in procedures concerning the acts and the liability of the actors concerned there is, eventually, an interest of individuals to participate or to bring action on climatic grounds. The difficulty to proceed lies in the fact that so far individuals would hardly be capable to argue in terms of climate change in a concrete permit matter. As far as strategic instruments are concerned, the present CCA does provide limited possibilities for public participation. This should be improved. Climate law would otherwise consist just of a dialogue between authorities or authorities and operators.

5. Application of the principles of public environmental law

Even if there is no specific legislation on the right of the individual to act in issues concerning climate change, the rules and principles in relation to environmental protection apply at least indirectly in planning and permit procedures, where climate change is one criterion for environmental or social suitability or sustainability. Climate arguments may be raised for instance in permit cases concerning the energy or mining sectors. In a case concerning construction of a water energy plan (Supreme Administrative Court 22.5.2017/2367, KHO:2017:87, Finlex Data Bank), climatic aspects were taken into account as benefits. Essentially, the decision was about the correct implementation of the Water Framework Directive and its environmental goals, not explicitly about the relevance of climate facts.

Despite the position that the Climate Act does not regulate climate goals substantially, the Parliament reserved the option for later considerations. According to the Constitution, citizens do not have a legal ground for obliging the State to reach specific environmental quality targets or to take specific climatic measures. According to the Constitution, the legislator shall enact necessary rulings for the enforcement of environmental liability of everyone. In the end, the individual (and organisations) is merely invested with the procedural right to participate and to appeal against administrative decisions. Cases may be brought by individuals and NGOs to the administrative body and before the administrative court of appeal. The environmental standards or level of technical measures may be reviewed and determined by the court. The range of such discretion is rather broad in environmental law, since laws cannot set precise figures for emissions and nuisances. Case law tends therefore to be influential for the legal practice. The court may take into account or emphasize the relevance of scientific and other information more efficiently than the first administrative instance.

In the future, the role of the Court, especially of the Supreme Administrative Court, will probably be important for the development of climate change aspects in legal decision-making while interpreting permit and planning provisions, including the individuals’ right to act as parties. Already today they are invited to present their opinion in permit procedures also without a personal interest. Occasionally citizens have acted for instance in cases dealing with public nature conservation law. Similarly, action based on global warming could also be initiated, though probably today without success for lack of sufficient or legally relevant evidence.

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12 Section 20 para 1: “Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone.”

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6. The Position of human rights in Finnish climate law

As to human rights, Finland is party to the European Human Rights Convention, and also the Constitution imposes the State to respect human rights in all decision-making. The authorities do not need to refer to the provisions of the Constitution itself because the substantial and administrative legislation fulfils (or is considered to fulfil) sufficiently the protection of human rights. No cases concerning Finland of the European Human Rights Court are known to me in the field of climate change.

Citizens’ rights concerning environmental protection and human rights, including eventually climate change regulations, range under administrative law. It is unlikely that civil (or criminal) lawsuits based on tort could successfully be brought against authorities or companies on the basis of climate change rulings only. Class actions are not permitted in environmental cases. Climate change may cause environmental damage but in individual cases the causation link would hardly exist because the concept of environmental pollution refers to rather short-term changes in the environment. In civil law, citizens may raise compensation claims for environmental pollution (Environmental Damages Act 737/1994). The challenge in this context is to prove that the impact of climate change would cause environmental pollution or risks. Suits against public bodies or companies on the basis that they contribute to global warming may not, as it seems, lead to monetary liability unless proof of losses is presented.

In the case that citizens or NGOs consider that planning and other measures foreseen for mitigation or adaptation are not appropriate, claims may be brought before administrative courts (planning and permit authorities at the first instance). There are no decisions so far that such claims or suits were brought against actors or authorities without other dominant aspects than climate change.

7. Future opportunities and challenges ahead

There is so far no pending discussion about the right of individuals to bring action against operators or authorities solely on the ground of global warming. State liability based on tort is theoretically enforceable in cases where international or EU law commitments have not been transposed properly and this fact causes damage to individuals. As supranational climate law is not interpreted to have a direct effect on national law, Finnish law is not at this stage opening the court-way for actions, other than in connection with administrative planning or permit cases. It seems that individuals do not efficiently act as substantially involved parties because the regulations concerning mitigation are mainly based on public interests on safety and land use-planning, rather seldom on pure individual interests. Mitigation again is usually not based on the existence of realized negative impacts but on calculations and expectations. In some cases the situation may be different, especially where individual interests would be affected as is the case in the flood mitigation.

Adaptive measures have probably positive impacts on most involved parties but they still encumber the rights of others. In most cases the right to actively participate in decision-making concerning mitigation and adaptation is guaranteed. But often, in strategic contexts, the participation remains substantially without success if claims are based on climate change arguments only. One opening would be that citizens could efficiently challenge decision-making authorities about the appropriate enforcement of internationally adopted climate goals. It seems however that such a discourse is more political.

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13 Section 22: “The public authorities shall guarantee the observance of basic rights and liberties and human rights.”

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than legal by nature and should be held for instance in the Parliament and its Commissions or in other legislative bodies, not in the court.

The future will show if the climate argument will obtain more weight in administrative decision-making than it is today as a complementary to environmental interests. I assume that Finland would enter this path even without supranational commitments if the court practice decides to incorporate global warming in the rulings of environmental risks. This seems to take time, also depending on how foreign civil actions proceed as examples.

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Environmental Pollution Control Act (527/2014)

Finnish Constitution (731/1999)

Flood Risk Management Act (620/2010)

Forest Act (1093/1996)

Nature Conservation Act (1096/1996)

Waste Act (646/2011)

Water Act (579/2011)

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