CHO:2023:62

Protection of the environment - Climate change - Annual climate report - Additional measures - Appeal against an administrative decision - Inaction of the public authority - Jurisdiction of the Court of Justice

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The Government had submitted to Parliament the annual climate report referred to in the Climate Change Act.

In the Supreme Administrative Court, the appellants demanded that the Council of State's decision be annulled and that the matter be referred back to the Council of State for further preparation. According to the appeal, the annual climate report did not contain the statutory assessment of the additional measures needed to achieve the targets, although before information on the collapse of carbon sinks in the land-use sector since the adoption of the annual report had shown the need for such further action. By not taking the decision provided for by law according to the appellants, the Council of State had acted at least passively in such a way that the legal protection of the party concerned and the safeguarding of fundamental rights required the possibility of appealing against the Council of State's decision, even though no actual administrative decision had been taken in the matter.

The Supreme Administrative Court did not examine the appeal. The Supreme Administrative Court found that the Government's decision to submit the annual climate report to Parliament was not an administrative decision against which an appeal could be lodged. The Supreme Administrative Court held that the legality of the Council of State's decision-making procedure

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assessment as intended by the appellants could be subject to judicial review if failure to take a decision at that stage would lead to an outcome contrary to the Climate Change Act or if the Government's actual conduct showed that it had no intention of taking the decision.

appropriate decisions to achieve the objectives and obligations required by law within a sufficiently short timeframe. The Supreme Administrative Court found that the Government had not, when adopting the annual climate report, taken a decision on the measures required to reduce carbon sinks or on the unnecessary nature of such measures, or failed to examine the issue of those measures. Nor could it be concluded from the evidence in the case that the Council of State's decision in this at that stage meant an unlawful failure to comply with the objectives and obligations of the Climate Change Act. The Council of State's decision could not be regarded as an administrative decision open to appeal and the appeal had to be dismissed as inadmissible.

Vote 3-2.

Administrative Procedure Act § 6, § 8(1), § 13(1) and § 81(2)(2)

Constitution of Finland § 20, § 21(1), § 22 and § 46(1)

Climate Act Sections 1, 2 and 7, Section 16(1), Section 17(1) and Section 18(1)

The decision under appeal

Council of State 27.10.2022 No YM/2022/71

Decision of the Supreme Administrative Court

The Supreme Administrative Court did not examine the appeal.

Decision of the Council of State

(1) By the decision referred to in the complaint, the *Government has* submitted to Parliament the Government's Annual Climate Report 2022.

In its decision, the Council of State has stated, inter alia, that:

(2) Every calendar year, the Government submits an annual climate report to Parliament in accordance with Section 18 of the Climate Act.
The Annual Climate Report examines the overall greenhouse gas emissions trend and the adequacy of planned actions to meet the targets for the next 15 years, and assesses the implementation status of the adaptation plan.

(3) According to Statistics Finland's flash estimate data, the land use sector changed from a sink to an emission source for the first time in 2021. As a result, Finland's net emissions started to increase and are now above 2005 levels. Emissions increased by 4% compared to the previous year.

(4) The conversion of the sink to an emission source is estimated to be due to slowed tree growth and high felling rates. Based on the scenarios used in the annual climate report, it can be estimated that current and planned measures in the emissions trading and burden sharing sectors are sufficient to meet the emission reduction targets. However, there is considerable uncertainty in achieving the targets and the scenarios used do not take into account the increase in energy prices or the evolution of emissions and sinks in the land-use sector.

Claims and explanations before the Supreme Administrative Court

(6) In their joint appeal, the *Finnish League for Nature Conservation and Greenpeace Norden* have demanded that the Government's decision be annulled. The matter must be referred back for reconsideration in order to comply with the obligations under Articles 16(1) and 17(1) of the Climate Act and to ensure that the objectives referred to in Article 2 of the Act are achieved.

In support of their appeal, the appellants put forward, inter alia, the following arguments:

(7) According to Section 16(1) of the Climate Change Act, the Government must monitor the implementation of the climate policy plans referred to in the Act sufficiently to ascertain whether the objectives set in the plans for mitigation of and adaptation to climate change and the objectives referred to in Section 2 are being achieved. On the basis of this monitoring, the Council of State shall, if necessary, decide on additional measures required to achieve the objectives. According to Article 17(1) of the Act, the Government shall amend the climate policy plans in accordance with the decision on additional measures.

(8) In July 2022, the Government adopted a climate plan for the land use sector and reported to Parliament on the plan. The plan was adopted six weeks after the news of Finland's carbon sinks becoming an emission source became public. Despite recommendations from the Climate Panel and the Finnish Environment Institute, the plan did not include measures to address the carbon sink. In adopting the Land Use Sector Climate Plan, the Government only launched further studies and set targets for various processes. However, the quantitative impact of these measures was not assessed in terms of the achievement of the objectives of the Climate Act. Furthermore, the measures were policy orientations, preparatory work and studies, the final outcome of which was not subject to political decisions. The Government's decisions on additional measures cannot therefore be regarded as decisions on the additional measures necessary to achieve the objectives of Section 2 of the Climate Change Act in the current situation, within the meaning of Section 16(1) of the Climate Change Act. Nor are the measures included in the climate plan for the land use sector in accordance with Article 17(1) of the Climate Act.

(9) The actual effects of the Government's decision-making procedure arise from the procedure in violation of the Climate Change Act in connection with the annual climate report. According to Section 18(2)(2) of the Climate Change Act, the Government must assess the adequacy of the current and planned measures set out in the climate policy plans with regard to the achievement of the objectives set for the next 15 years and make an assessment of the impact of the measures referred to in Section 16(1) of the Act on the climate change.
the need for further action to achieve the objectives. The Government's annual climate report should therefore have included a sufficiently thorough and comprehensive assessment of, for example, the adequacy of the objectives and actions of the land use sector climate plan in relation to the objectives of Section 2 of the Act. An assessment of the need

for further action is necessary, but the Council of State
however, considers that the actions under the Land Use Sector Climate Plan and the Medium Term Climate Plan would be sufficient.

(10) The Annual Climate Report 2022 approved by the Government is the first under the new Climate Act

(11) The annual climate report has not assessed, as required by Section 18(1)(2) of the Climate Act, the following. the adequacy of the measures set out in the climate policy plans and the need for further action, in a manner that could trigger further action proceedings under Articles 16(1) and 17(1) of the Act. The Government is therefore not obliged to take the necessary measures to
§failed to address and examine in the annual climate report the need for additional measures to achieve the climate objectives in a situation where, in the light of the available data and expert assessments, the need for additional measures was obvious. The gap between the carbon sinks needed to meet the climate policy objectives and the land use sector carbon sinks according to Statistics Finland's 2021 flash estimate is
very substantial and immediate, and can be considered a "relatively significant need for further action", as the government's explanatory memorandum states. The Government has therefore failed to fulfil its obligation under that provision to decide, on the basis of the monitoring, on further measures if necessary, and its obligation under Article 17(1) of the Climate Act to decide to amend the climate policy plans.

(12) According to the transitional provision in Section 23 of the Climate Act, the climate plan for the land use sector must be updated by the 2027-2031 parliamentary term at the latest.Since the carbon sinks of the land use sector constitute half of the carbon neutrality target of the Climate Act, the adoption of the climate plan for the land use sector will no longer be able to achieve the carbon sink targets for 2021-2030 and 2035 under the Climate Act. Moving the appeal to 2027-2031 would therefore render the appeal ineffective in terms of the Climate Act's carbon neutrality objective, EU obligations and the purpose of the Act as a whole.

(13) The Government has failed to take a formal decision on the matter, as required by the Climate Change Act. The Government's inaction in this case has had a de facto and direct legal effect on the exercise of the right of appeal by the appellants.

(14) Although the inaction of a public authority cannot, as a rule, be the subject of an appeal, the right of appeal can, under certain conditions, be interpreted broadly. According to the preamble to the Act on Administrative Procedure, the need to protect the legal interests of the party concerned and the obligation to safeguard fundamental rights may require a right of appeal even in the absence of an actual administrative decision. In addition, ignoring a clear claim in the decision-making process has been considered to be equivalent to a decision of inadmissibility.

(15) The scope of the right of appeal has been expanding in case law, inter alia, because of the need to protect fundamental and human rights. For example, Article 6(1) of the European Convention on Human Rights also covers rights that are not subjective in the traditional sense, such as those relating to the protection of the environment. decisions that have an impact on the enjoyment of human rights. Another reason for interpreting the right of appeal broadly is that the right to legal protection under Article 21 of the Constitution does not apply if it is not possible to appeal against the lack of additional measures resulting from the inaction of the public authorities. Furthermore, Article 22 of the Constitution requires the public authorities to safeguard fundamental and human rights. The

obligation of the State to ensure the effective exercise of rights is also a well-established principle in the case law of the European Court of Human Rights.

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(18) Although the Annual Climate Report is decided by the General Council of State, it is not an administrative decision within the meaning of the Administrative Procedure Act. Neither are other government reports to Parliament that serve the interaction of supreme governmental bodies.

(19) The nature of the annual climate report as a reporting and monitoring tool is clear from the preambles to both the repealed Climate Change Act and the current Climate Change Act and its amending Act. According to the Government's proposal for the Climate Change Act 2015, the annual climate report will provide Parliament with information on a calendar year basis on
emission trends, the achievement of the emission reduction targets in the medium-term climate policy plan and any additional measures needed to meet the targets. The annual climate report
is based on the monitoring data for the emission reduction targets in the medium-term climate policy plan and takes into account any additional measures decided to achieve emission reductions. The annual report will be treated in the same way as the reports to Parliament referred to in Article 46 of the Constitution.

(20) According to Section 21b of the Climate Act, which entered into force on 1 March 2023, the Government's decision on climate policy plans can be appealed to the Supreme Administrative Court. The right of appeal thus applies to decisions of the Council of State on the approval of climate policy plans referred to in Sections 9-12 of the Act and to decisions to amend a plan referred to in Section 17 of the Act.

(21) The annual climate report is not comparable to climate policy plans under Sections 9-12 of the Climate Change Act. The annual climate report is a tool for reporting and monitoring climate policy and the decision to issue an annual report does not directly affect the rights, obligations or interests of any party. The Annual Climate Report allows parliamentary monitoring of the implementation of climate policy plans. In the context of the annual report, Parliament can assess the implementation of climate policy plans and consult experts.

(22) The annual climate report and its content are laid down in Section 18 of the Climate Act. The annual climate report is not intended to take a position on the procedure for additional measures referred to in Sections 16 and 17 of the Climate Act. The decision on additional measures will be taken on the basis of the monitoring of the implementation of the climate policy plans in a separate Council of State
by decision in connection with the decision referred to in Section 16(1) of the Climate Act.

(23) The measures to achieve the objectives of Section 2 of the Climate Change Act are defined in the climate policy plans. The annual climate report or other sectoral monitoring may identify the need for further action, but the preparation and decision making on these actions is not done in the context of the annual report. The assessment of the need for additional measures in the annual climate report is not a prerequisite for initiating the preparation of additional measures referred to in Section 16(1) of the Climate Act. The procedure for additional measures may be initiated irrespective of

the outcome of the assessment of the need for further action in the Annual Climate Report. The decision on the Annual Climate Report is not

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(24) In their reply, *the appellants* have argued, inter alia, that achieving the objectives of the Climate Change Act. in the long term, and also the provision in Section 16(1) of the Climate Act on adequate monitoring, require that the need for additional measures be assessed regularly. The Government's annual climate report is a key instrument for this purpose. The need for additional measures under Section 16(1) of the Climate Act has been so great in the light of the 2021 blackout that the need for additional measures has been so great in the past.
obvious that a decision on further action should have been taken in the context of the Annual Climate Report. Any other interpretation would raise the threshold for application of the provision so high that it would be meaningless in practice.

Grounds for the decision of the Supreme Administrative Court

1. Setting up a question

(25) The first question to be decided is whether the Government decision referred to in section 18(1) of the Climate Act, by which the Government submits to Parliament the annual climate report under that section, can be regarded as.
an administrative decision within the meaning of Section 6(1) of the Act on Administrative Procedure, against which an appeal may be lodged.

(26) If the above-mentioned decision of the Council of State is not to be regarded as an administrative decision subject to appeal, it must then be decided whether the decision of the Council of State referred to in the appeal nevertheless contains an administrative decision that is not subject to appeal under Section 16 of the Climate Act.
§a decision or failure to take a decision within the meaning of Article 5(1) and Article 17(1) which has been is considered an administrative decision within the meaning of Section 6(1) of the Administrative Procedure Act and is subject to appeal.

2. Applicable and relevant legal provisions

(27) Pursuant to Section 6(1) of *the Administrative Procedure Act, an* appeal may be lodged against.
a decision by which the authority has decided an administrative case or has declared it inadmissible. According to paragraph 2 of that Article, no appeal may be lodged against a decision which relates only to the preparation or execution of a case.

(28) According to Article 8(1) of the Act, the decision of the General Council of State is subject to appeal to the

Supreme Administrative Court.

(29) According to Article 13(1) of the Act, an appeal may be lodged on the grounds that the decision is unlawful.

(30) Under Article 81(2)(2) of the same Act, the administrative court shall dismiss an appeal as inadmissible if the decision is not open to appeal.

(34) According to Article 46(1) of the Constitution, the Government must submit an annual report to Parliament on the activities of the Government and the measures it has taken in response to decisions of Parliament, as well as a report on the management of the State finances and compliance with the budget. Pursuant to subsection 2 of the said section
other reports are submitted to Parliament in accordance with the provisions of the Constitution, other laws or the Rules of Procedure of Parliament.

(35) According to Section 1 of the *Climate Change Act, the* Act sets out the objectives and framework for planning Finland's climate policy and monitoring its implementation. The purpose of the Act is: 1) to enhance and coordinate
designing and monitoring the implementation of measures to mitigate and adapt to climate change; 2) strengthening opportunities for Parliament and the public to participate and influence climate policy design.

(36) According to Section 2(1) of the Climate Act, the objective of the Act and the climate policy planning system under it is to contribute to ensuring that greenhouse gas emissions are reduced and removals from sinks increase in the manner and within the time periods specified in paragraphs 1 to 4 of the Act. Pursuant to subsection 2 of the said Article, the objective of the Act and the climate policy planning system thereunder is also to contribute to ensuring Fulfilling obligations to reduce and monitor greenhouse gas emissions, enhance sinks and adapt to climate change arising from agreements binding Finland and European Union legislation. According to subsection 3 of the said section, the aim of the Act and the climate policy planning system under it is also to: 1) ensure
contribute to the equity and sustainability of climate action; 2) contribute to safeguarding the ability of Sámi people to maintain and develop their language and culture.

(37) According to Section 7(1) of the Climate Act, the climate policy planning system under the Act consists of the following climate policy plans: 1) a long-term climate plan; 2) a national
a climate change adaptation plan; 3) a medium-term climate plan; 4) a land-use sector climate plan. According to paragraph 2 of the said Article, the climate policy planning system shall define the objectives of reducing greenhouse gas emissions, enhancing sinks and adapting to climate change, as well as the measures to be taken to achieve them in the different sectors of government.

(38) According to Section 16(1) of the Climate Change Act, the Government shall monitor the implementation of the climate policy plans referred to in Sections 9 to 12 sufficiently to ascertain whether the mitigation and adaptation objectives set out in the plans and the objectives referred to in Section 2 are being achieved. On the basis of this monitoring, the Council of State shall, if necessary, decide on additional measures required to achieve the objectives.

(39) According to Section 17(1) of the Climate Change Act, the Government must amend the climate policy plans referred to in Sections 9-12 in accordance with the decision on additional measures referred to in Section 16(1). When amending

the plans, the provisions of sections 13 and 14 concerning the procedure for preparing the plans shall apply.

(41) According to Article 9(2) of the *Convention on Access to Information, Public Participation in Decision-making and Access t o Justice in Environmental Matters* (Treaty Series 121-122/2004, hereinafter referred to as the Aarhus Convention), each Party shall ensure, in accordance with its national legislation, that those who are members of the public, (a) whose interests are sufficiently affected, or alternatively (b) who claim that their rights are being impaired, if so required by a Party's administrative justice system, have access to judicial and/or other legally constituted means of redress.
before an independent and impartial body, the legality of the substance of any decision, act or omission covered by the provisions of Article 6 or of the procedures relating thereto, and, accordingly, of any other decision, act or omission.
the legality of the substance of the decision, act or omission or of the procedures relating thereto, falling within the scope of the relevant provisions of this Convention, for review in accordance with the provisions of national law and without prejudice to paragraph 3 of that Article.

According to paragraph 3 of the said Article, each Party shall ensure that members of the public who meet the requirements, if any, set out in national legislation have, in addition to and without prejudice to the review procedures referred to in paragraphs 1 and 2 of the said Article, the possibility to have recourse to administrative or judicial procedures for the review of acts or omissions of individuals and public authorities which are in conflict with the provisions of its national environmental legislation.
in conflict.

3. Legal assessment and conclusion

3.1 Planning system, reporting and monitoring under the Climate Change Act

(42) The reformed Climate Act (423/2022) entered into force on 1 July 2022.The Supreme Administrative Court notes that the basic nature of the Climate Act remained a framework law that provides for a planning system for climate policy and monitoring of its implementation. The Climate Act guides the planning of climate policy. The Act applies to the
the role of public authorities and municipalities in drawing up climate policy plans and ensuring their implementation. The Climate Change Act does not directly oblige private parties to take climate action.

(43) The revised Climate Act includes a carbon neutrality target for 2035 and emission reduction targets for 2030 and 2040, as well as an updated target for 2050. The Act also includes a target for increasing sinks to achieve the carbon neutrality target and beyond 2035.

(44) The achievement of the objectives set out in Section 2 of the Climate Change Act is ensured by the climate policy planning system set out in Chapter 2 of the Act. According to Section 7(2) of the Climate Change Act, the

climate policy planning system determines the objectives of reducing greenhouse gas emissions, enhancing sinks and reducing emissions of greenhouse gases.

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(45) Reporting and monitoring under the Climate Change Act is regulated in Chapter 3 of the Act. The Government reports to Parliament on the climate policy plans it has adopted. The Government shall monitor
the implementation of the climate plans and the adequacy of the targets referred to in Section 2 of the Act, decides, if necessary, on additional measures necessary to achieve the plans and the targets referred to in Section 2 of the Act, and amends
climate plans in accordance with that Decision. The Government also submits an annual climate report to Parliament every calendar year.

3.2 Appealability of the Government's decision on the Annual Climate Report

(46) The Government's annual climate report to Parliament is laid down in Section 18 of the Climate Act. This provision corresponds to Section 14 of the repealed Climate Act (609/2015). According to the preambles to the above-mentioned provisions (HE 82/2014 vp and HE 27/2022 vp), the annual climate report, which is submitted every calendar year, enables Parliament to regularly monitor the implementation of national climate policy, to hold a debate on the basis of the assessment of the situation and to influence
climate policy as a whole. The Annual Climate Report would also inform key climate policy actors and the public about the effectiveness of climate policy and the implementation of plans. According to the general explanatory memorandum of the repealed Climate Act (HE 82/2014 vp), the annual climate report can be submitted to Parliament as part of the annual report of the Government.

(47) According to Section 18(1)(2) of the Climate Act, the annual climate report must contain an assessment of the adequacy of the current and planned measures set out in the climate policy plans in terms of achieving the objectives set for the next 15 years and an assessment of the measures required to achieve them, as referred to in Section 16(1)(2) of the Climate Act.
the need for further action.

(48) According to Article 3 of the Constitution, which regulates the division of state functions and parliamentarianism, legislative power is vested in Parliament. Governmental power is exercised by the President of the Republic and the Council of State, whose members must enjoy
the confidence of Parliament. Judicial power is exercised by independent courts, the Supreme Court and the Supreme Administrative Court being the highest courts.

(49) The Supreme Administrative Court states that the annual climate report is a report submitted to Parliament in accordance with other legislation, as referred to in Article 46(2) of the Constitution. The Government's annual climate report, like other reports submitted to Parliament under that provision, serves the purpose of

communication and interaction between Parliament, which exercises legislative power, and the Government, which exercises governmental power.

(50) According to Rule 19(1) of the Rules of Procedure of Parliament, the adoption of the Government's report is announced in plenary session. According to Rule 34 of the Rules of Procedure, the committee must, without undue delay, examine the matters referred to it and, depending on the nature of the matter, submit a report to plenary. Under Rule 55 of the Rules of Procedure, other than

the bills are debated in plenary in a single reading.

(52) The Supreme Administrative Court states that, in its report on the climate report, Parliament will, if necessary, take a position on, inter alia, whether the report contains the information and assessments provided for in Section 18 of the Climate Act and any other information that Parliament may deem necessary. Parliament shall also decide what measures it considers appropriate to take on the basis of the report. According to Article 60 of the Constitution, ministers are accountable to Parliament for their official acts. In line with the process described above, the preparation and discussion of the annual climate report is part of climate policy, which consists of a dialogue between Parliament and the Government, which is politically responsible to Parliament.

(53) The Annual Climate Report and the annual data and information on the adequacy of climate action that it provides are a key part of the planning system of the Climate Change Act, so they have a central explanatory role in the climate policy decision-making system as such. The Supreme Administrative Court states that However, the submission of the annual climate report by the Government to Parliament or its consideration by Parliament does not, in principle, involve decisions whose legality could be subject to judicial review.

(54) The Supreme Administrative Court holds, for the reasons set out in paragraphs (49), (52) and (53) above, that the Government's decision to submit the annual climate report to Parliament does not constitute a decision of the kind referred to in Article 6 of the Act on Administrative Proceedings.
an administrative decision within the meaning of § § 1(1), against which an appeal may be lodged.

(55) The Act (108/2023), which entered into force on 1 March 2023, added provisions on appeals, among other things. Section 21b of the Act provides for an appeal against a Government decision on a climate policy plan. According to the preamble to the section (HE 239/2022 vp), the appeal provided for in the provision would not apply to
for example, the annual climate report or a government decision to set up a climate panel. The Supreme Administrative Court concludes that the appealability of the annual climate report should therefore not be assessed differently, also on the basis of the new appeal rules.

3.3 Other grounds of appeal against a decision of the Council of State

(56) According to the appellants, the Government, in its annual climate report to Parliament, has, inter alia, made a decision not to examine the question of the application of the provisions of Article 16(1) of the Climate Change Act to the issue of climate change.
the need for additional measures to achieve the objectives set out in the climate plans or provided for in paragraph 2 of the Act. Alternatively, the Government has decided not to take the additional measures required under Section 16(1) of the Climate Act. According to the applicants, in so doing the Council of State has
the decision referred to in Article 6(1) of the Administrative Procedure Act, against which an appeal may be lodged.

The appellants have also argued that, in the light of Articles 21 and 22 of the Constitution, the decision of the Council of State should be subject to appeal even if the Council of State is considered to have failed to take a decision on the matter.

(58) The appealability of an administrative decision is governed by a general provision in Article 6 of the Administrative Procedure Act. It provides that an appeal may be lodged against a decision by which an administrative authority has decided an administrative case or has dismissed it as inadmissible. According to the detailed reasoning of Article 6 (HE 29/2018 vp), the need for legal protection of the party concerned and the obligation to safeguard fundamental rights may require a right of appeal even in a situation where no actual administrative decision has been taken. The Supreme Administrative Court notes that the wording of the said Article 6 reflects the prevailing principle in administrative law that in principle inaction or delay on the part of the authorities does not give rise to an appealable decision. Moreover, the Code of Administrative Procedure does not contain any provisions on appeals for inaction or delay. However, the need to safeguard fundamental rights and the fulfilment of international obligations in the context of climate change mitigation, which is essential for the future of humanity as a whole, must be taken into particular consideration when assessing the duty of public authorities to safeguard human rights and fundamental rights. This may, in the preamble to the Administrative Procedure Act
requires a right of appeal even in the absence of an actual administrative decision.

(59) The plans under the Climate Act and their timeliness and monitoring are key factors in achieving the climate objectives under Section 2 of the Climate Act. The Supreme Administrative Court notes that, according to Article 16(1) of the Climate Act, the Government decides, on the basis of the monitoring provided for in the Act, on additional measures, if necessary, to achieve the objectives set out in the climate policy plans and the objectives laid down in Article 2 of the Act. According to the preamble to Section 16 of the Climate Act (HE 27/2022 vp), the monitoring data and additional measures referred to in paragraph 1 of that section could be assessed in the annual climate report under Section 18 of the Act or in another sectoral assessment of the climate policy plans, which could, for example, be an assessment of the implementation of the plans or a mid-term review. According to the drafts, the Council of State would, if necessary, decide on the measures necessary to achieve the objectives.
further action on the basis of the Annual Climate Report or other sectoral assessment. The Government would then decide on the amendment of the climate policy plans in accordance with the provisions of the Climate Change Act on additional measures.

(60) The Supreme Administrative Court states that, in accordance with Section 16(1) of the Climate Act and its preamble, the Government's decision on additional measures is legally independent of the decision to be submitted to Parliament under Section 18 of the Act.
on the Council of State's decision on the annual climate report. The assessment of the need for further action in the annual climate report, or the possible absence of such an assessment, therefore does not directly affect the
the obligation of the Government to monitor the implementation of climate policy plans as laid down in Section 16(1) of the Climate Act and, on the basis of the monitoring, to decide on additional measures to achieve the objectives, if necessary.

(61) The partly revised planning system of the Climate Change Act has applied to the land use sector from 1 July 2022. Considering the date of 26 October 2022 for the Council of State's decision on the Annual Climate Report, the time available for assessing the need for additional measures under Section 16 of the Act has been quite short for the land use sector. The failure to take decisions under Articles 16 and 17 of the Climate Change Act does not, therefore, in these circumstances, constitute a

(63) On the basis of the above (60), the Supreme Administrative Court considers that the Council of State's decision does not concern a matter within the meaning of Article 9(2) of the Aarhus Convention which could be considered as.
in particular the interests of any person within the meaning of the Convention. For the reasons set out in paragraph 61 above, the Supreme Administrative Court considers that the Council of State's decision also does not constitute an act or omission of a public authority within the meaning of Article 9(3) of the Convention which could be contrary to the provisions of national environmental law and which should give rise to a right of recourse to judicial proceedings by the public.

(64) The appellants have based their view on the appealability of the Government's decision in particular on the fact that the Government should have taken a decision on additional measures in the context of the annual climate report, when carbon sinks turned out to be significantly lower than anticipated.

(65) The Supreme Administrative Court finds that the principle of the rule of law enshrined in Article 2 of the Finnish Constitution and Article 3 of the Constitution.
the principle of the separation of powers requires, on the one hand, the safeguarding of the tripartite nature of State power and, on the other, the protection of human and fundamental rights of present and future generations, in the light of Articles 2, 6 and 8 of the European Convention on Human Rights and Articles 20, 21 and 22 of the Constitution.

(66) Based on the best scientific evidence, climate change is a matter of human destiny, threatening the livelihoods of current and future generations on Earth unless urgent and effective action is taken to limit emissions and conserve and enhance carbon sinks. Therefore, postponing action will shift responsibility to the future and make it more difficult to achieve the 1.5°C maximum temperature increase target of the Paris Agreement (Sops 75-76/2016). On the other hand, the primary responsibility for meeting international obligations lies with democratically elected political decision-makers. It is for the courts, on appeal, to ensure that
the decisions taken by political decision-makers are in accordance with the law and do not obstruct the exercise of human and fundamental rights.

(67) In the Finnish system of administrative law, an appealable decision is consistently considered to be.
according to Article 6(1) of the Administrative Procedure Act, a decision by which an authority has decided a case or has declared it inadmissible. The established interpretation is that, unlike in some other countries, the inaction of a public authority cannot be countered by a complaint or an action for inaction. Inaction by public authorities
or failure to take a decision required by law can be remedied by lodging an administrative complaint with the supreme law enforcement or other supervisory authorities. In the cases referred to in Article 20 of the Act on Administrative Procedure, it is possible to bring an administrative dispute before an administrative court under the

on a fast-track schedule.

conditions laid down in that Act.

(68) In this case, neither the Annual Climate Report itself nor the decision to take action to reduce carbon sinks, following the Government's decision to submit the report to Parliament, has been taken. Nor has the case on that point been dismissed as inadmissible under Article 6(1) of the Code of Administrative Procedure.

on a fast-track schedule.

(70) On the basis of the annual climate report and the opinion of the Ministry of the Environment on the matter, the Government has started to prepare further measures, and decisions on, inter alia, sinks have been announced for later.
On the basis of the information available in the case, it cannot be concluded that the Council of State's decision, once it has been taken.
to submit an annual climate report to Parliament would constitute an unlawful failure to comply with the objectives and obligations of the Climate Change Act. As the time for assessing the need for possible further action has been relatively short since the entry into force of the new Climate Change Act, this is not the situation referred to in paragraph (69) above. On these grounds, the Supreme Administrative Court cannot at this stage examine the appellants' appeal against the Government's decision.

3.4 Conclusion

(71) On the basis of the foregoing, the Supreme Administrative Court considers that the decision of the Council of State referred to in the appeal does not contain a decision against which an appeal may be lodged. The appeal must therefore be dismissed
inadmissible under Article 81(2)(2) of the Administrative Procedure Act.

The case was decided by President Kari Kuusiniemi and Advocates General Mika Seppälä, Tuomas Kuokkanen, Jaakko Autio and Robert Utter. The rapporteur in the case was Mr Kemppainen.

Statement of vote

Opinion of Tuomas Kuokkanen, Legal Adviser, dissenting, supported by Mika Seppälä, Legal Adviser:

"I consider that the Council of State's decision contains an appealable solution. As the majority view is different, I have no basis for assessing whether the appellants have a right of appeal and whether the appeal should be dismissed or upheld."

Justification

I agree with paragraphs 25 and 27-55 of the majority's reasoning. I disagree with paragraph 26 on the wording of the question and with paragraphs 56 to 71 of the decision. I justify paragraph 26 and the decision from paragraph 56 onwards as follows:

1. Question wording

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If the Government's decision to submit the annual climate report to Parliament is not to be regarded as an administrative decision subject to appeal as such, it must then be decided whether the Government's decision contains

On the basis of the above, the Government's decision to submit the annual climate report to Parliament is not, as such, an administrative decision against which an appeal can be lodged. However, it remains to be determined whether the Council of State's decision contains a statement on further measures which is to be regarded as an administrative decision within the meaning of Article 6(1) of the Code of Administrative Procedure and against which an appeal may be lodged. On that basis, the decision could be regarded as appealable, notwithstanding the fact that the Climate Act did not contain any provisions for appeal at the time when the Council of State adopted the contested decision.

Decision.

I note that if the complaint is admissible, the only issue to be assessed is whether the Council of State's decision violates the Climate Change Act. It is not within the competence of the Supreme Administrative Court to take a view on which measures would be appropriate and whether such measures would certainly lead in all respects to the international objectives binding on Finland and laid down in the Climate Law. However, it is open to judicial consideration whether the Council of State's position is based on sufficient evidence and whether it is justified in terms of climate change mitigation or adaptation.

According to Section 6(1) of the Act on Administrative Procedure, the starting point is that an administrative decision by which an administrative case is decided or dismissed is considered appealable. The Government's proposal for this paragraph
the detailed explanatory memorandum to the proposal states that it is not possible to list in a general provision all the situations in which a measure taken by a public authority includes an administrative decision that is subject to appeal (HE 29/2018 vp). The appealability of a decision has to be assessed on a case-by-case basis in accordance with the principles set out in Article 21(1) of the Constitution, taking into account the need for legal protection of the party concerned, the legal effects of the decision and case law.
According to the detailed reasoning, when assessing the appealability of an administrative decision, particular attention is paid to whether the decision contains a ruling that has a direct effect on a person's rights, obligations or interests.
a legally defined interest. The boundaries of appealability are influenced by fundamental rights provisions, international human rights treaties and EU law requirements on access to justice.

Climate change is seen as a matter of human destiny. There is scientific consensus on its general causes and consequences. Climate change is caused by various human activities that have increased greenhouse gas emissions and reduced nature's capacity to sequester greenhouse gases, in particular by reducing carbon sinks. In March 2023, the Intergovernmental Panel on Climate Change (IPCC) published the summary report of its 6th Assessment Report. According to the IPCC, human-induced greenhouse gas emissions have caused the average global temperature to rise by about 1.1 degrees Celsius since pre-industrial times. The changes resulting from global warming are unprecedented in their magnitude and rapidity, according to the report. The impacts of climate

change and the risks to humans and biodiversity will increase as the climate warms. Rapid and far-reaching reductions in greenhouse gas emissions are needed to offset the rise in temperatures. In addition, the slower the rate of decarbonisation, in particular through carbon sinks, the more important it will be to remove carbon dioxide from the atmosphere.

In Finland, legislation related to climate policy developed gradually, initially as a result of international agreements and obligations under EU legislation. In addition, in the early stages of climate policy development in Finland
The key policy documents for the EU were the energy and climate strategies, of which there were several. The first climate law (609/2015) was intended to lay the foundations for a long-term, coherent and cost-effective climate policy. designing and implementing climate policy in a transparent and predictable way. The purpose of the law was to ensure public participation and closer involvement of Parliament in climate policy making.
in decision-making.

The ultimate objective of the UN Framework Convention on Climate Change (UNFCCC) (Treaty Series 61/1994) and its related legal instruments is to stabilise greenhouse gas concentrations in the atmosphere at a level that will prevent the. human activities cause dangerous disturbances to the climate system. The Kyoto Protocol to the Framework Convention (Treaty Series 12-13/2005, Amendment 112-113/2020) contains quantified greenhouse gas emission limitation and reduction commitments for the Protocol's commitment periods 2008-2012 and 2013-2020. The 2015 Paris Agreement (SopS 75-76/2016) aims to keep the global average temperature increase to well below 2°C, with the aim of limiting the average temperature increase to 1.5 degrees Celsius, relative to pre-industrial times, to strengthen adaptive capacity and climate resilience. The aim is to halt the increase in global emissions as soon as possible, followed by the fastest possible reduction in emissions. The aim is to achieve a balance between anthropogenic emissions and sinks by the end of the century.

The European Union is committed to reducing greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels. The EU also aims to be the first climate-neutral continent by 2050. These targets are enshrined in the so-called European Climate Action Plan, adopted in 2021.
Climate Change Act (EU) 2021/1119 EU climate policy and legislation includes numerous measures and regulations. Regulation (EU) 2018/841 of the European Parliament and of the Council on land use, land-use change and forestry (LULUCF Regulation) is an important instrument of EU climate policy. The LULUCF Regulation obliges Member States to
maintain the calculated greenhouse gas removals of the land use sector at or above its calculated emissions for the period 2021-2030.

The current Climate Act entered into force on 1 July 2022 and provides for the planning and monitoring of climate policy and national climate targets. New emission reduction targets for 2030, 2040 and 2050 have been added to the Climate Change Act, which has been extended to the land use sector and a target for enhancing sinks has been added. The content of the law is explained in more detail in paragraphs 42-45 of the Decision.

Climate change mitigation and adaptation challenge traditional problem-based administrative regulation and decision-making. Decision-making on climate policy is not a one-dimensional administrative process.
decision making where there is a precise object of the decision and the impact of the decision can be understood

unambiguously. By its very nature, climate action planning is broad and multidimensional. Decisions

As a new phenomenon, organisations have brought legal action against governments and companies in several countries in relation to climate change. According to the General Explanatory Memorandum to the Government Bill on the amendment of the Climate Change Act, climate lawsuits have in some cases been based on national law and in other cases on the international obligations of the state and on fundamental and human rights (HE 239/2022 vp, p. 13). According to the explanatory memorandum of the government proposal, the claims in the court cases have included, inter alia, the obligation of the state to
accelerate efforts to meet greenhouse gas emission reduction targets, or demonstrate that national emission reduction targets are insufficient or not even being pursued.

Climate-related litigation and enforcement proceedings have also been launched at international level. Several cases are pending before the European Court of Human Rights (ECtHR), which have invoked, among other things, the right of states to be heard.
inadequate action. Finland is a party to the ECtHR case Cláudia Duarte Agostinho and Others v Portugal (application number 39371/20), in which a group of Portuguese children and young people have challenged 33 States for inadequate climate action to the European Court of Human Rights. The case of Verein KlimaSeniorinnen Schweiz and others v. Switzerland (application number 53600/20) is also pending before the European Court of Human Rights. The appellants are the Swiss
an association against climate change. The questions addressed to the Swiss government by the ECHR concerned Articles 2 (right to life), 8 (right to private and family life), 6 (right to a fair trial) and 13 (right to an effective remedy) of the European Convention on Human Rights (ECHR) (Treaty Series 18 and 19/1990).
legal remedy). In addition to the ECtHR, various UN supervisory bodies have dealt with climate-related human rights complaints.

International climate lawsuits were also referred to in the Government proposal to amend the Climate Change Act (HE 239/2022 vp). According to the proposal, the question has been raised as to how legal certainty
in climate policy-making is implemented at national level. For this reason too, it was considered appropriate to supplement the Climate Change Act with provisions on appeals. Not providing for an appeal could, according to the proposal, lead to the pressure to appeal being channelled elsewhere, for example to the European Court of Human Rights.

The Aarhus Convention, referred to in paragraph 41, concerns, inter alia, public participation in decision-making and access to justice in environmental matters. Article 9(2) of the Convention does not apply to the decision of the Council of State which is the subject of the appeal. Nor does it directly concern the situation referred to in Article 9(3). Paragraph 3, as well as the objective, set out in the preamble to the Convention, of ensuring that the public has effective legal remedies to protect its legitimate interests and to enforce legislation, reflects the concern expressed in many recent climate change initiatives to ensure that the public has access to effective legal remedies to protect

its legitimate interests and to enforce legislation.
the trials are about. Citizens and organisations have initiated legal proceedings because they want to find out through the courts whether an act or omission by a public authority is in breach of national law.

The above section suggests that States governed by the rule of law must have mechanisms in place to allow for the judicial review of acts that can be judged to be related to the human rights of people.

According to the appellants, the Government, in its annual climate report to Parliament, has, inter alia, decided not to examine the question of the application of the climate change legislation referred to in Section 16(1) of the Climate Change Act.
the need for additional measures to achieve the objectives set out in the climate plans or provided for in paragraph 2 of the Act. In the alternative, the applicants submit that the Council of State has decided not to
the additional measures required under Section 16(1) of the Climate Act are taken. According to the applicants, in so doing the Council of State has acted within the meaning of Article 6(1) of the Law on Administrative Procedure.
a decision that can be appealed against.

I consider that the Government's decision is in itself a decision to issue an annual climate report under Section 18 of the Climate Act. The Council of State has not therefore taken a decision under Article 17 in relation to the additional measures under Article 16 by rejecting them or by failing to examine any of them within the meaning of the complaint.

The repealed Climate Act (609/2015) did not contain any appeal provisions, nor did the Climate Act (423/2022), which entered into force on 1 July 2022. As mentioned in paragraph 49 above, the Act (108/2023), which entered into force on 1 March 2023, added provisions on appeals to the Climate Act. The right of appeal applies to decisions of the Government on the approval of climate policy plans referred to in Articles 9 to 12 of the Climate Act, and
the decision to amend the plan referred to in Article 17 of the Act. However, neither the previous Act nor the Act which has now entered into force provides for the possibility of an appeal in a situation in which the provisions of Act 16 additional measures under § 17 shall not be expressly decided upon under § 17.

As stated above in the section on the starting point for legal discretion, Article 6 of the Administrative Procedure Act provides that a decision of a public authority is required for an appeal to be admissible. According to the detailed reasoning of the said Article 6 (HE 29/2018 vp), the need for legal protection of the party concerned and the obligation to safeguard fundamental rights may require a right of appeal even in a situation where no actual administrative decision has been taken. I note that the wording of the said Article 6 reflects the prevailing principle in administrative law, according to which the inactivity or delay of the authorities does not, in principle, give rise to an appealable decision.
The Administrative Procedure Act does not contain any provisions on appeals for inaction or delay. However, when assessing access to justice in the context of climate change mitigation and adaptation, which is essential for the future of humanity as a whole, particular account must be taken of the need to safeguard fundamental rights and ensure compliance with legal obligations relating to climate change. This may
as set out in the preamble to the Administrative Procedure Act, requires a right of appeal even in the absence of an actual administrative decision. The question must be decided on a case-by-case basis, taking into account the fact that this is a significant exception to the general rule of administrative law. The need for such a derogation must be sufficiently obvious having regard to all the facts of the case.

As described above, climate change is a key environmental issue. Climate policy has become more regulated and states are also required to take measures to mitigate and respond to climate change.

I note that when environmental decision-making is linked to a major and serious threat to the future, there is a need to. in accordance with Article 20 of the Constitution, seek to ensure broad participation. The right of participation is an essential element of the right to a right of appeal, and the fundamental right to the environment in Article 20 of the Constitution must be interpreted in conjunction with Article 21 of the Constitution. The possibility of a right of appeal must also be assessed in the light of the objective of the Aarhus Convention as stated above. The main objective of the Climate Change Act is also, according to Article 1 of the Act, to improve the public's access to information.
the right to participate in decision-making on climate policy. For these reasons, the appealability of the Council of State's decision cannot be interpreted restrictively.

The appealability of the Government's decision is also supported by the subsidiarity principle of the European Convention on Human Rights, according to which alleged violations of human rights must be dealt with in the first instance by national courts. The importance of this principle was underlined in the European Convention on Human Rights adopted in 2013.
the Fifteenth Protocol to the ECHR (Treaty Series 45 and 46/2021). The Protocol added to the preamble of the Convention a reference to the primary responsibility of the Contracting Parties, in accordance with the principle of subsidiarity, to safeguard the rights and freedoms set out in the Convention and its Protocols, and to the discretionary power of the European Court of Human Rights in this task, subject to review by the European Court of Human Rights.

In my view, in the absence of specific provisions in the law on the initiation of proceedings or the possibility of an appeal in a situation of inaction on the part of the authority, it is justified that the possibility of an appeal should be attached in the first instance to a decision-making situation which is otherwise provided for by law. Even in such cases, the content of the decision-making procedure provided for by law must be such that it is closely linked to the inaction of the public authority. If the law does not provide for such a decision-making situation, the possibility of bringing the matter before the court as an administrative dispute may be assessed as a secondary consideration if the conditions for doing so are otherwise fulfilled. Administrative appeal or liability provisions may also be relevant for judicial protection, but cannot be considered as sufficiently effective elements of judicial protection as such.

The planning system as a whole must be assessed against the provisions of the Climate Change Act. Decisions to approve actual plans are taken relatively infrequently, so that changes that become apparent in the middle of the planning period must be made as additional measures. This underlines the importance of a decision on additional measures.
The political dialogue between the Government and Parliament, channelled through the Annual Climate Report, will be the trigger for planning. This dialogue cannot be subject to appeal as such.
In this context, however, the Government has a statutory obligation under Section 18 of the Climate Act to present its views on the need for further measures. The Council of State's decision cannot be considered to be in line with

decision.

the planning system of the Climate Act if a decision on additional measures under Section 16 of the Climate Act is taken without this
would already be a statement in the annual report. For the reasons set out above, I consider that, although the decision to issue the annual climate report is not itself appealable, partial appealability may be based on the statement in the report that no further action is required. For the sake of clarity, as regards appealability

decision.

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