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Can Finnish Citizens Insist State Action Against Climate Change: A Comparative Review of Dutch and Finnish Legislation in the Light of the Urgenda Case

Bachelor's thesis

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ABSTRACT

This paper compares the legislation, case law and legal literature of the Netherlands and Finland in order to find out do the citizens of Finland have the legal tools to compel their government to reduce the national greenhouse gas emissions. This paper was inspired by an environmental landmark case Urgenda et al. v. Government of Netherlands, in which the claimants sued the government of the Netherlands demanding the court to order the government to reduce the state's greenhouse gas emissions. The claimants based their claims in a governmental duty of care and tort law. This paper answers the question of what kind of legal tools, if any, exist in the Finnish legislative context that could be used to reach a similar result to the one reached in the Netherlands. Also, how viable would the Finnish legislative counterparts be compared to the ones used by Urgenda et al. be if such a lawsuit happened in Finland? And finally, if are there any alternative legal tools that could be used to achieve a similar judgement to Urgenda case in Finland, what are they?

The hypothesis of this paper is that the Finnish tort law does not suit this kind of lawsuits. While the hypothesis was found to be true in this paper, a Finnish declaratory judgement was found to suit the purposes of such a lawsuit satisfactorily as an alternative instead of tort law.

Keywords: Urgenda, Climate Change, Tort Law, Finland, Netherlands

INTRODUCTION

This Bachelor's Thesis compares the legislative approaches of the legal systems of the Netherlands and Finland in terms of environmental claims made by the citizens against their state of residency. This comparison is inspired by the *Urgenda Foundation v. Government of Netherlands (Ministry of Infrastructure and the Environment)* -case (Urgenda Case). The claimants of the Urgenda Case pursued establishing a governmental duty of care for climate change mitigation, on which they based their tort claim requiring the state to take action against dangerous climate change by cutting the country's greenhouse gas (GHG) emissions.[1]

The relevancy and urgent nature caused by the threats of climate change have become evident to most of us during the last few years. In addition to the Urgenda Case, in recent years, several environmental lawsuits demanding emission reductions have been adjudicated all over the world, such as Armando Ferrao Carvalho and Others v. The European Parliament and the Council, Juliana v. United States of America, among others. A new approach of citizens taking action in the form of lawsuits seems to have become a global trend in the movement against climate change.

In terms of natural science, the number of parts per million of CO2 in the atmosphere considered to be the threshold after which climate change is likely to be irreversible is rapidly closing in. Already in 2013, in their fifth assessment report, the Intergovernmental Panel on Climate Change (IPCC) stated that even a complete cessation of CO2 emissions then would have only caused the global average temperature to stay at the same level as in 2013 for many centuries.[2] In reaction to the threat, the international community has taken some actions during the last decades. The Paris Agreement set the goal of limiting the GHG concentrations at or below 450 carbon dioxide

1 J. van Zeben. (2015). Establishing a Governmental Duty of Care for Climate Change Mitigation: Will Urgenda Turn the Tide? *Transnational Environmental Law,* 4 (2), 339-357. 344.

2 Collins, M., R. Knutti, J. Arblaster, J.-L. Dufresne, T. Fichefet, P. Friedlingstein, X. Gao, W.J. Gutowski, T. Johns, G. Krinner, M. Shongwe, C. Tebaldi, A.J. Weaver and M. Wehner, 2013: Long-term Climate Change: Projections, Commitments and Irreversibility. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. 1033.

equivalent parts per million. This was done in order to limit the global average temperature from rising over 2° Celsius. As a result of the rather clear consensus about the primary catalyst of climate change being the actions of humans, it follows that human institutions, for instance, ministries of environment, have the power to make decisions when it comes to methods of solving the problem.[3]

According to the fifth assessment report of the IPCC: "Effective mitigation will not be achieved if individual agents advance their own interests independently."[4] The urgency of the matter is established clearly by the IPCC's fifth assessment report which states that in a scenario where no additional GHG mitigation action is taken compared to 2014, the global mean surface temperatures will rise in 2100 to 3,7°-4,8°C over the pre-industrial levels.[5]

For the aforementioned reasons, the possibility for citizens to have tort claims against their states for taking insufficient action for mitigating GHG emissions is a new and intriguing subject. Climate change is a global threat, and if not appropriately dealt with, will cause harm and sorrow to peoples of all states in one form or another. Therefore, it seems logical that some individuals have taken interest in the efforts that their governments have taken to mitigate these effects. If the standards for reaching the required levels of action are as high as found in the court's decision in the Urgenda case, many other states would have the threat of a lawsuit hanging over them. This paper looks into Finland since it has a similar climate policy and execution of that policy compared to the Netherlands, but the geographical and legislative situations between the countries differ. The fact that both states are Member States of the European Union, and therefore committed to taking measures to prevent catastrophic climate change, looking into the possibility to duplicate the Urgenda claim successfully in Finland might give an indication if such a thing would be possible in other EU states as well.

This paper answers the research question: what kind of legal tools Finnish citizens can use to insist the government make GHG emission reductions? As the Urgenda case was based on tort law, this

[3] J. Cook, N. Oreskes, P. T. Doran, W. R. L. Anderegg, B. Verheggen, E. W. Maibach, J. S. Carlton, S. Lewandowsky, A. G. Skuce, S. A. Green, D. Nuccitelli, P. Jacobs, M. Richardson, B. Winkler, R. Painting, K. Rice. (2016). Consensus on Consensus: A Synthesis of Consensus Estimates on Human-Caused Global Warming. Retrieved from https://iopscience.iop.org/article/10.1088/1748-9326/11/4/048002, 2 January 2020. 6.
[4] IPCC, 2014: Summary for Policymakers. In: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. 5.
[5] *Ibid.* 8.

paper contemplates how viable tool would the Finnish tort law be in compelling the government to reduce the national GHG emissions. In addition, this paper aims to present some Finnish alternatives to tort law, if it wouldn't be a suitable option for achieving the goal of the claimants. It is important to note that this paper does not aim to make normative claims in terms of whether Finnish citizens should pursue such endeavours as Urgenda et al. have in the Netherlands.

As a result of the practical, problem-solving nature of the Finnish legislation, finding suitable provisions for such a landmark lawsuit is hard and will probably force any party attempting to replicate the Urgenda case in Finland to search for more unconventional approaches. The Scandinavian legal family is known for legislating in order to address real-life issues occuring in the society, instead of a more theoretical approach. This manifests in the legislation being rigid and purely pragmatically oriented and can hinder parties pursuing to make landmark claims in the courts. Therefore, I hypothesise that under the current legislation, the Finnish citizens cannot force the government to reduce the national GHG emissions. The differences between the legislative systems in terms of constitutions, civil law, and case law may turn out to render campaigns using comparable legislative tools as used in the Urgenda case futile in the Finnish legal context. Even if this is the case, this paper will search for and present the most suitable alternatives to the legal tools used by the claimants in the Urgenda case and highlight characteristics of the Finnish legal system deem such an alternative necessary.

The research method used in this paper is qualitative. This paper is based on information gathered about the Urgenda case from the case judgement and research papers written on it. Other non-numerical data is gathered from research papers and reports comparing the Finnish and Dutch approaches in constitutional and tort law to the issue along with the two countries' policies on climate change and GHG emissions. Also, for overall understanding of climate change this paper utilises the meta-analyses based on "thousands of scientific papers published each year"[6], made by the International Panel on Climate Change, and other sources written on the causes and effects of climate change.

In order to find out whether Finnish citizens have plausible chances to claim tort or other forms of remuneration or performance from the government for poor GHG emission mitigations, this paper looks into two aspects surrounding the issue. Firstly, procedural aspects of the case in the form of

[6] *About the IPCC*. IPCC. Retrieved from https://www.ipcc.ch/about/

the question of eligibility to make a claim. After looking into who, if anyone, is eligible to make an Urgenda claim in Finland, the next procedural aspect looked into is class action legislation of both countries.

After the procedural aspects of such a claim, this paper focuses on comparing the substantive merits of the claims in the two legal systems of Netherlands and Finland. In this context, the most important aspects to look into are the constitutions of the two states and the Civil Codes of the Netherlands and the Tort Liability Act of Finland. One of the major obstacles an Urgenda Claim may encounter in Finland is the lack of hard law giving the court the power to order a defendant to make a performance to the claimant, but instead, the Finnish laws on tort revolve mostly around monetary reparations. Also, there is a big temporal problem in using tort law, because the claim is trying to prevent dangerous climate change which has not yet occurred. Thus the damages have not occurred yet either, making damage compensation questionable.

It is important to note that the aspects of the Urgenda case which this paper looks into do not cover even nearly all of the arguments and intricacies of this landmark lawsuit. For instance, neither, the substantive or the procedural parts of this paper cover the international legislation concerning the case, as a result of the limited length of this paper. Also, this paper relies on the assumption that the scientific evidence about climate change and its dangers brought forward by Urgenda et al. is trustworthy and that the Dutch courts' interpretation of their validity is correct. This assumption should not be interpreted to signify that this paper considers the consequences of climate change to be the same in both states.

1. Procedural Aspect

In order to look into whether it is possible to make similar claims to the one made by Urgenda et al. in Finland, it is essential to distinguish the most important characteristics of the case. By the most important characteristics in this context, I mean the most difficult aspects of the claim for the claimants to uphold in court. In terms of procedural law, this means an individual's or organisation's eligibility to make such a claim and whether it can be made as a class action or not.

First, a few facts about the case made in the Netherlands. On the 20th of November 2013, a Dutch foundation named Urgenda filed a summons to the District Court of Hague against the Kingdom of Netherlands and the Ministry of Infrastructure and Environment of the Netherlands. The claimants of which were Urgenda et al., et al. meaning the 886 individuals represented by the foundation. The summons included general knowledge about climate change, its causes and probable consequences, as well as the legal arguments of Urgenda with the core pursue of reaching a court order to force the state to take the necessary actions to reach GHG emission reductions of 40% compared to the levels of 1990 by 2020.[7]

After the district court had ruled in favour of the claimants by demanding the government to reduce GHG emissions by 25-40%, the state of the Netherlands appealed the judgement at the Hague Court of Appeal in 2015. The court upheld the previous judgement. Despite all of the aforementioned, the government pursued to appeal again in the supreme court. On the 20th of December 2019, the supreme court rejected the appeal of the government.

What makes this case special in a procedural law context? The Urgenda Case has distinctive features which render it a somewhat peculiar legal proceeding when it comes to civil cases in general. The Urgenda case is a tort lawsuit against the state of which the claimants are a non-governmental organisation and 886 Dutch citizens. The fact that an organisation makes tort claims

[7] Summons in the Case: Urgenda Foundation v. Kingdom of the Netherlands. Version of 25 June 2014, 21.

on behalf of other people was questionable, especially on behalf of future generations of Dutch citizens.

1.1. Eligibility to make a claim

The question of what makes a person eligible to make a civil claim in accordance with the laws of a state is of high relevance in order to find out whether an "Urgenda claim" might also triumph in Finland.

In the Netherlands, there are provisions for limiting who is allowed to bring an action to the court. Firstly, they have to be an individual or a legal person. Secondly, they have to have a sufficient personal interest in the claim.[8] Urgenda is a legal person, but as a result of one of the defended parties of the claim being the future generations of the Dutch people, the state asked the court for its opinion and denied its liabilities towards them. [9]

According to the Finnish procedural law, a claimant and a defendant are required to have case legitimation in order to be eligible to participate in the civil procedure.[10] Regarding the Urgenda case, the question of eligibility to participate in the procedure lies with the claimant. Therefore this sub-chapter focuses on the claimant's case legitimation instead of the defendant's.

In Finland, the courts are not allowed to process a case in which the claimant lacks case legitimation. This quality of case legitimation is described as an inherent right of the subjects whom *de facto* have a valid connection to the processed case. It is important to understand that under Finnish procedural law case legitimation cannot be transferred by any means to a person initially lacking it e.g. an agreement from a person with case legitimation agreeing to transfer it to a person who does not have it.[11]

Regardless of the aforementioned, the concept of case legitimation in Finnish property law revolves entirely around the procedure, not the substantive part of the case.[12] For instance, in the

[8] Art. 3:303 BW
[9] ECLI:NL:RBDHA:2015:7196, 34.
[10] Frände, D., Havanssi, E., Helenius, D., Koulu, R., Lappalainen, J., Lindfors, H., Niemi, J., Rautio, J., Virolainen, J. (2012). *Prosessioikeus.* (4th ed.) Helsinki, Finland: Sanoma Pro. 416.
[11] *Ibid.* 416.
[12] *Ibid*. 416.

same instant person A claims tort from person B as a result of A receiving damage from B allegedly punching person A, all of the substantive features of B maybe punching A should not be taken into account when assessing case legitimation. In order to find out whether A and B have case legitimation, we need to find out only whether A has claimed tort from B. If a claim has been made, the case legitimation has been established, regardless of whether there exists any truth in the substantive part of the claim. Therefore, it seems that when it comes to purely procedural law, there are no evident issues with any individual pursuing a similar lawsuit in Finland arising from the lack of sufficient interest in the case.

1.2 Class Action

In the Netherlands, a class action can be brought to court by a foundation or association.[13] The prerequisites for this kind of an approach are laid out in the Dutch Civil Code book 3. According to article 305a concerning collective actions, there are four relevant requirements for a class action to be possible in the Netherlands. Firstly, initiation by a foundation or an association whose by-laws clearly set that the aim of the entity is to protect "specific interests", for protection of which the class action is issued. This criterion is fulfilled by Urgenda since it has in its by-laws the provision that one of the foundation's key aims is to promote sustainable development.

In the Dutch Civil Code exists another possibility in the form of giving a foundation or association a mandate to bring an action to the civil court when it fulfils certain criteria. The foundation or association needs to have full legal capacity, the action needs to be for the "protection of general interests or the collective interests of other persons", the objectives set out in the by-laws of the foundation or the association are required to represent the same interests as does the action brought to court, and the foundation or association has to have made sufficient efforts to enter into a dialogue with the defendant before taking the action to court.[14] The Dutch Urgenda Foundation is a foundation with an "aim for a fast transition towards a sustainable society", thus fulfilling the civil code's requirements for filing such a claim.[15]

[13] Art. 3:305 BW
[14] Ibid. 3.305 BW
[15] *Home*. Urgenda Foundation. Retrieved from https://www.urgenda.nl/en/home-en/

Regarding class actions in Finland, a peculiarity in the legislation is the fact that one cannot utilise the same means as Urgenda did in getting their action to the court. In Finland, the Class Action Law is of very restricted nature, and it only gives one institution, the Finnish Consumer Ombudsman, the power to bring class actions to the court.[16] While the characteristic of the Urgenda case being a class action, in theory, should not affect the grounds of the claimants or the result of the proceeding, the vast amount of co-plaintiffs might have created some legitimacy to the claims of Urgenda et Al. Class-actions typically have problems with hindering the individual claimants' agency in the case.[17] This wouldn't be relevant in a case like this since the success of the case would have a universal effect giving benefits to every claimant and other people also. Thus the fact that it is not possible to pursue a lawsuit such as this in the form of a class action against the state, at this point in time, might have a negative effect on some potential Finnish "Urgenda" claimants' case.

[16] Ryhmäkannelaki 13.4.2007/44, 4 §.
[17] Perino, M. A. (1997). Class action chaos--the theory of the core and an analysis of opt-out rights in mass tort class actions. *Emory Law Journal 46(1),* 85-162. 138.

2. Substantive aspect

All of the substantive aspects of the Urgenda case and its potential Finnish counterpart cannot be investigated in this paper. Therefore, only the most controversial and unorthodox characteristics arguments and peculiarities are evaluated. A major aspect supporting Urgenda's claim is the duty of care of the state of the Netherlands towards its citizens. Additionally, the form of remuneration will be discussed since it's one of the difficult questions in the context of Finnish tort law.

In order for Urgenda to gain a remedy, in the form of the state taking action in reducing the GHG emissions, the Dutch Civil Code provides article 162 of Book 6. "The relevant provision in this case is Article 162 of Book 6 of the Dutch Civil Code. This provision stipulates that a person can be held liable if there is a violation of a personal right, a breach of a statutory duty or a breach of the unwritten standard of due care that must be observed in society."[18]

In terms of the substantive assessment, this text does not concentrate on human rights since both of the countries compared here are part of the European Convention on Human Rights. Instead, the focus of this text will be on comparing domestic legislations of these states in tort law, constitutions and other relevant legislation.

Shortly on why these laws are relevant: Constitutions of both states have provisions the provisions having the highest legislative domestic priority in terms of environmental protection. Tort law is of high relevance since generally environmental damage restitution is governed by the tort laws of the state in question. This roots in the fact that the interests of individuals, "private rights", are considered to be rights that need be protected by laws, in the case of environmental and other damage, tort law.[19]

[18] de Graaf, K. J., Jans, J. H. (2015). The Urgenda Decision: Netherlands Liable for Role in Causing Dangerous Global Climate Change. *Journal of Environmental Law*, 27 (3), 517-527. 519.
[19] Louise, M.-L. (Ed.). (1999) *The Law of Environmental Damage*. Cambridge, USA: Kluwer Law International. 145.

2.1. Constitution

Regardless of the country at hand, an obligation of the government to take action has to be shown by establishing through law that the state is, in fact, the agent responsible for preserving the habitability of the country. In the Netherlands, this is quite straightforwardly written in the constitution. Article 21 of the constitution of Netherlands declares the responsibilities in the state regarding the environment: "It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment."[20] According to Urgenda et al., this article of the constitution imposes a duty of care on the state

In Finland, there are differences regarding the article of the constitution written on the environmental responsibilities compared to its Dutch counterpart. Nevertheless, the core substance includes similar obligations to the state. The Finnish constitution article 20 distributes the responsible actors for the environment and nature. According to the supreme domestic legal instrument in the state "everyone" is responsible for nature, its biodiversity and the national heritage. The public authorities have an additional responsibility to "endeavour to guarantee for everyone the right to a healthy environment" and to provide "everyone the possibility to influence the decisions that concern their own living environment".[21]

2.1.1. Contractual Obligation Through Duty of Care

Urgenda et al. managed to convince the district court of Hague and the court of appeal of the duty of care for the state arising from the constitution and international law. Duty of care is a norm based in the doctrine of humanitarian intervention which in essence gives the international community a responsibility to protect individuals. This does not only concern states that have no part in the activities that need to be intervened in but principally the governments of the states in which the actions are taking place.[22] For instance, if a certain state is infringing on its citizens' human rights, also that state has the responsibility to protect those citizens from these violations.

[20] Grondwet voor het Koninkrijk der Nederlanden, 21 §
[21] Suomen perustuslaki, 20 §
[22] L. Arbour. (2008). The responsibility to protect as a duty of care in international law and practice. *Review of International Studies,* 34 (3), 445-458. 448.

Only in a situation when the primary state fails to fulfil its responsibilities, the international community is required to fulfil their duty of care towards these individuals.

In the Urgenda case, the claimants argued that the doctrine of duty of care coupled by article 21 of the Dutch constitution manifests as an obligation described by the article 296 of book 3 of the Dutch Civil Code, thus mandating the court to give an order to the state to make performance in the form of GHG emission cuts. A major argument of the claimants, in this case, was rooted in the fact that geographically the state of Netherlands has certain characteristics that make its citizens especially vulnerable to the likely consequences of dangerous climate change: "Nearly one third of the Netherlands lies below mean sea level, and the land surface is still subsiding up to 1 m per century." [23] This makes the Netherlands one of the first countries in the world to suffer greatly from the rising of the sea level caused by climate change.[24]

When it comes to Finland, of course, the government has the same duty of care towards its citizens as the Dutch government has. The problem is the fact that the Finnish tort legislation has no counterpart for article 296 of book 3 of the Dutch Civil Code. Although in theory, the primary way of fulfilling tort obligations in Finland is to fulfil the existing obligation by making a performance, there is little to no case law of the Finnish courts ruling in such a way.[25]

The differences between the two countries are not limited to only legislation. The geography of Finland is not similar to the Netherlands. Studies modelling the future up to the year 2100 show that even with different rates of climate change, the amount of flooding and their severity in Finland and other Nordic countries might even decrease.[26] Flooding, of course, is only one of the possible impacts of climate change could have on Finland, but it is one of the most predictable phenomena caused by climate change.[27] Many other dangers, such as humanitarian crisis and mass immigration, are very hard to model at this point due to the vast amount of variables related to them.

[23] G. H. P. Oude Essink, E. S. van Baaren, P. G. B. de Louw. (2010). Effects of climate change on coastal groundwater systems: A modeling study in the Netherlands. *Water Resources Research,* 46 (10). Retrieved from https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2009WR008719 . 1.
[24] Ibid., 2.
[25] Aurejärvi, E. (Ed.) (1998). *Velvoiteoikeuden Oppikirja.* Helsinki, Finland: Condictio. 128.
[26] N. Veijalainen, E. Lotsari, P. Alho, B. Vehviläinen, J. Käyhkö. (2010). National Scale Assessment of Climate Change Impacts on Flooding in Finland. *Journal of Hydrology,* 391 (3-4), 333-350.
[27] Archer, D. (2013). Impacts of Climate Change. *The Climate Crisis: An Introductory Guide to Climate Change*, 151-190. 170.

2.2. Compensation

In claiming tort from the state of Netherlands, Urgenda et al. decided to pursue that the court orders the state to reduce the joint GHG emissions in the Netherlands, instead of claiming monetary damages.[28] The decision to not strive for damages to be paid for the claimants is a key factor regarding the success of the claim. By waiving such demands, and focusing on the court order, a claimant is according to the Dutch Civil Code required to show only "a substantial responsibility for the defendant."[29] Also, even a "threat" of damage is a sufficient basis for a court order to be made under Dutch law.[30]An interesting aspect arising from the Dutch case law, is the fact that Dutch courts are prohibited from ordering the government to legislate according to the court's orders.[31] The real-life implications of the court order demanded by Urgenda and granted by the court remain to be seen.

In the Finnish tort law context while seldomly ruled by the courts, the general rule, in theory, is to use remuneration in kind as the compensation for tort claims. This method of resolving tort aims straightforwardly for ordering the tortfeasor to fulfil their primary duties instead of making an effort to compensate the damages caused by their actions/inactions by paying damages.[32]

According to Charlie Webb's article on performance and compensation, in private law, the protected interests of individuals can be divided into two distinct categories which include the primary rights, which are protected by establishing duties to the other party to do or refrain from doing a certain action, and secondary interest which takes place in a situation where the other party has already infringed on the primary rights thus creating a right to "correct" the infringement. This secondary interest is often fulfilled by compensation.[33] This distinction is important since treating the two interests as the same is a mistake. After all, the primary interest was the one that was intended by the parties in the first place, thus, it should be looked at in a different context than the secondary interest. In many cases making this distinction is not difficult since the two interests more or less cannot coexist, as a result of the fact that the secondary interest arises only when the

[28] ECLI:NL:RBDHA:2015:7196, *supra nota, 9, 29.*
[29] M. Faure, M. Peeters. (Eds.) (2011). *Climate change liability*. Cheltenham, UK: Edward Elgar Publishing. 232.
[30] Cox, R. H. J. (2014). The Liability of European States for Dangerous Climate Change. *Utrecht Journal of International and European Law,* 30 (78), 125-135. 129.
[31] Ibid. 134.
[32] Aurejärvi, E. (1998) *Supra nota* 24, 128.
[33] C. Webb. (2006). Performance and Compensation: An Analysis of Contract Damages and Contractual Obligation. *Oxford Journal of Legal Studies,* 26, 41-71. 43.

primary interest has been breached e.g. the right of the citizens to live in a healthy environment is not at all the same as the right to be compensated for the infringement of this right.

The distinction between the two types of interests is crucial when it comes to environmental class actions against the state. The importance of the primary interest of the claimants is emphasized by the fact that the claimants in the Urgenda case did not even consider the secondary interest worth pursuing. There may be multiple reasons for this. Firstly, the aforementioned Dutch legislation resulting in a decreased requirement of showing responsibility for environmental damage when the claimants demand solely a court order instead of claiming damages.[34] Secondly, the failure of the state to fulfil the primary interest results not just monetary losses but also possible personal injuries and many other possible unpredictable aspects e.g. disruptive migration events ultimately having roots in climate change related phenomena such as droughts.[35] Pursuing to claim damages for the later consequences of climate change are not in any way easily proved in court and could result in hindering the main interest of the claim, that is pursuing to reduce the national GHG emissions.

Regardless of the aforementioned scepticism towards Finnish courts ordering remuneration in kind, it cannot be stated with unwavering certainty that such a ruling would not be possible in a Finnish Urgenda case counterpart, as a result of the exceptional nature of such a case, in addition with the fact that according to the literature the principal way of fulfilling tort obligations in Finland is remuneration in kind, even though this way of resolving tort obligations is unheard of in Finnish case law.[36]

2.2.2. Problem of temporality

In tort law generally, one of the prerequisites for successful tort claims is the occurrence of damages.[37] If an agent is to be found liable for tort for their actions, it would seem reasonable for some concrete damage to have taken place. In the Netherlands, there is a provision which erases

[34] Faure M., Peeters M. (2011) *Supra nota* 30, 232.
[35] P. J. Smith. (2007). Climate Change, Mass Immigration and the Military Response. *Orbis.* 51 (4), 617-633.
[36] Aurejärvi E. (1998) *Supra nota* 24, 128.
[37] W. H. Van Boom. (2005). Compensating and Preventing Damage: Is There any Future for Tort Law? Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=942710, 15 January 2020. 4.

this requirement. In the Dutch Civil Code it can be found that in a situation where an agent is "legally obliged to do or not to do something, the court shall order him, upon request or claim of the entitled person, to carry out this specific performance."[38] As a result of Urgenda's claim having the aim of requesting the state to perform in accordance with their duty of care relating to the environment of Netherlands, the standard prerequisite of the claimant having been damaged is not relevant in this case.

In the search for legislation supporting an Urgenda claim in Finland, the temporal aspect at first seems problematic. In the Finnish Tort Liability Act, monetary compensation is the only method of compensation mentioned. This is important since the prerequisite for monetary compensation is that measurable and clear damage has occurred. Taking into account the fact that an Urgenda claim relies entirely on the fact that the scientific consensus on climate change has predicted that at this rate dangerous climate change will happen, it is clear that there are no damages to be claimed through this traditional tort law tradition yet.

Of course, Urgenda did not ask the court to award damages but to order the government to take sufficient action to reduce GHG on the basis of the state's duty of care towards its citizens.[39] The lack of Finnish precedents giving court orders for fulfilling tort obligations in the form of performance is an issue here. Regardless, there exists Finland's Act on Compensation for Environmental Damage (ACED) which might help a Finnish Urgenda claim to circumvent this problem.[40] The act covers environmental damages in the form of contamination of water, air and soil, and other corresponding disturbances. According to article 6 of the act, expenses for preventative measures are to be also compensated. This clearly establishes that claiming tort for potential environmental damages in a preventative manner is possible. It is yet unclear is it solely possible to claim remuneration in kind, since the Act on Compensation for Environmental Damage mentions only the compensation of expenses rising from the preventative measures.

According to ACED, damages that have been inflicted to a certain area can be compensated. This gives an indication that the situations that the act was legislated for protecting individuals from other private subjects of law. In the government's proposal of the act, the purpose of the law is not

[38] Art. 3:296 BW
[39] ECLI:NL:GHDHA:2018:2610
[40] Laki ympäristövahinkojen korvaamisesta 737/1994

to achieve environmental policy goals.[41] Also, the act is supposed to give clarity to the act on Neighbor Relations and its provisions on the burden of proof.[42] These characteristics of ACED seem to imply that it would not be suitable for use in Finnish counterparts of the Urgenda case.

2.3. Declaratory Judgment

The constitution of the Netherlands gives the state an obligation to take care of the environment and keeping the country habitable. Likewise, the Finnish constitution has similar requirements concerning the government's responsibilities towards the environment. In the Urgenda et al. case, Urgenda and the co-plaintiffs used the duty of care of the state arising from the constitution to make a tort claim in order to get the judges to rule a court order demanding the state to take necessary actions by cutting GHG emissions of the country. In Finland, the problem with a similar approach is the narrow nature of the tort legislation of the legal system, the tort liability act mentions only monetary compensations without any references to remuneration in kind and the Act on Compensation for Environmental Damage's usability in this manner is at the least highly questionable.

Taking into account the symbolic nature of the Urgenda case and its judgement in the form of a court order, the Finnish legal system has a legal tool of a different theoretical nature but which might have a similar real-life implication if ruled by a court. A declaratory judgement in Finland is a ruling which closely resembles the common law "mandamus", in a way that it confirms an existing legal state, e.g. declaring that a contract between two parties is in fact valid. In assessing whether a declaratory judgement would be a valuable tool in the context of giving the citizens of Finland a method of obliging the state to take action against climate change, it is crucial to assert reasonable goals and contemplate which legal tools have the best chances of achieving those them.

Declaratory judgements in Finland answer to two questions: does a certain legal relation between the parties exists and if it does, what are the implications of it existing? It is important to note that

[41] HE 165/1992
[42] Laki eräistä naapuruussuhteista 13.2.1920/26

a declaratory judgement, as is evident by its name, is not enforceable, as a result of the lack of obligation to make a performance.[43] Therefore, if the court would rule in favour of the claimants, the ruling would not in itself order the state to make any performance i.e. take action to cut the country's emissions. Instead, the court would merely confirm the obligations of the state relating to the conservation of a healthy environment for the citizens and describe what this obligation entails.

If the purpose of the Urgenda plaintiffs was for the court to literally force the state to cut the country's emissions a Finnish declaratory judgement would not be comparable. Yet again, if the point of the Dutch case was to be symbolic along with bringing more attention to the real issue of negligent and inadequate climate policy of Netherlands, a declaratory judgement recognising and confirming the de facto existing legal state in which according to the constitution the government officials of Finland are responsible for the healthy environment in the country, such a judgement could be considered comparable to Urgenda et al. case in Finland.

Additionally, even though a declaratory judgement confirming a certain legal truth may not be as concrete of a measure as a court order, this does not signify that such an effort would not have real-life impacts. The political pressure and attention that is caused by a ruling confirming the state's responsibilities of which the citizens may not have even been familiar with the provision in the first place may actually solidify in the form of the state cutting the emissions. According to Gordin J. Borrie, a public body is very likely to obey the implications of a declaratory judgement ruled "against" them.[44] Therefore, such a judgement could potentially fulfil the primary interests of the citizens, as well as a court order, would.

[43] Jokela, A. (2015). *Pääkäsittely, todistelu ja tuomio. Oikeudenkäynti III.* (2nd ed.) Helsinki, Finland: Talentum. 500.
[44] Borrie, G. J. (1955). The Advantages of the Declaratory Judgment in Administrative Law. *The Modern Law Review*, 18 (2), 138-147. 138.

CONCLUSION

The prospect of an impending global catastrophe in the form of dangerous climate change is an issue concerning many people in 2020. A landmark case adjudicated in the Netherlands, Urgenda et al. v. The State of Netherlands is an example of an increasing worry concerning global warming, climate change and their consequences for this generation and others to come. The claim made by the claimants in this seminal case is that their government has not cut its emissions to the level that is needed for avoiding dangerous climate change. The claimants argued so, even though the government's emission cutting has been in line with the international and EU level requirements. Their arguments were based on the scientific literature that they presented to the court and which the courts found convincing enough to rule in favour of the claimants.

The legislative context of the Netherlands in terms of its civil code, constitution and case law suited Urgenda's case well enough for it to be successful. The theoretical and unspecific manner of wording in the legislation allowed for the claimants to require a court order to be issued demanding the state to cut its emissions based on tort legislation in the Dutch Civil Code. This paper has studied whether such an approach could be used in a different legal context of Finland. While Finland and the Netherlands are both EU Member States and resemble each other in many ways the legal systems and their legislations are built in an entirely different framework, thus making the hypothesis to the aforementioned research question at least sceptical of a possibility of using a similar strategy of making a successful claim. The sceptical hypothesis towards the question facilitated a different research question asking which, if any, other approaches could be used for such an aim in the context of the Finnish legal system.

The purely procedural requirements of the states differ in the sense that in Finland the legislation gives only the Finnish Consumer Ombudsman the power to initiate class-action lawsuits. The Dutch approach for class-actions, while not being entirely free for anyone to initiate, gives more freedoms in terms of possible claimants. The prerequisites for an entity initiating a class action in the Netherlands are tailor-made for Urgenda as an organization, possibly for this reason the lawsuit was created this way. The importance of the lawsuit being a class-action in this context comes purely from its appearance and its ability to get publicity with a large number of claimants. Theoretically, and in terms of rule of law also hopefully, this should not have an impact on the

merits and success of the case, but unfortunately, at least in the case of Urgenda et al., the sheer number of the claimants had a positive effect on its public image and credibility. Also, in a case such as this, class-actions' typical problem of possibly hindering the individual claimants' autonomy would not be relevant since the claimants' interests aren't monetary and they can't be furthered better individually. The fact that in Finland, this sort of class action is impossible under the current legislation, might hinder its chances of success in court proceedings. Otherwise, the Finnish procedural law regarding the eligibility of making a claim is quite straightforward and lacks narrow demands. The requirement of case legitimation is a question of whether the person or entity truly has commenced the procedure in the first place, instead of giving any other requirements for gaining case legitimation.

Comparing the two states' legislations, case law and legal systems in order to find out whether the Finnish legislative context offers possibilities for a case comparable to Urgenda et al. v. The State of Netherlands to be successful extends far beyond the environmental legislation of the two countries. Especially the differences between the tort laws of the countries highlight the fact that the countries belong to altogether different legal families. When the phrasing used in legislation is composed for specific real-life purposes, the legislation's malleability suffers, and new laws are needed to tackle the latest issues. This is highlighted by Finland's Tort Liability Act's focus on tackling practical problems in a sense that it does not provide a possibility for courts to order compensation in the form of performance differs from the Dutch Civil Code's more all-encompassing theoretical approach which is more flexible and fits better for giving prospects to landmark cases.

It is important to note that the Finnish approach is an understandable and efficient one since many tort law cases would become excessively complicated if the courts would start ordering the defendants to make performances in the form of remuneration in kind. For instance, if A has hired B to paint A's fence and B has failed to make performance in the form of painting the fence, it would seem counterintuitive for the courts to order B to paint the fence instead of ordering B to compensate the losses A has suffered. Often, in a situation like this, the relationship between the parties has been damaged, and neither of them wants to interact with each other. Also, if the person responsible of compensating the other party's losses fails to compensate as well, the idea of government forcing B to paint A's fence seems a lot less practical compared to retaining the monetary compensation through the bankruptcy ombudsman.

Regardless of the aforementioned, in the context of this paper, the Finnish Tort Liability Act suffers from a significant lack of versatility and flexibility in order to fit a case such as discussed in this paper. This results from the fact that monetary compensation paid as a form of remuneration from the government to the citizens for a failure to meet its responsibilities is not suitable in this context for many reasons. Firstly, the compensation should be paid to Finnish citizen, as a result of the all-encompassing nature of climate change. Financially this would not be in any way feasible, and it would defeat the purpose of such a lawsuit in the first place since the aim of suing the government for Urgenda et al. is not to get monetary compensation but to compel the government to reduce their GHG emissions. Secondly, monetary compensation as a form of remuneration requires already occurred damages. In the context of climate change many of the damages would take place decades to the future from this point in time, thus making the calculation and justification of the remuneration in the form of monetary compensation extremely difficult, unjustifiable and impossible to claim in court.

In terms of *de lege ferenda*, if the political aspirations in Finland would strive towards more stringent emission reductions, reforming the tort legislation to suit claims made against the government does not seem a reasonable option. For such aspirations, focusing on legislation that directly addresses the issue would be by far more solution-oriented and less complicated way of reaching the aforementioned political goals. E.g. reforming taxation legislation to make emission mitigation financially profitable would approach the problem directly instead of focusing on giving the legal subjects a way to confront the government's inaction. On the other hand, the lack of more versatile uses of the Tort Act of Finland could be used as a justification of refreshing the legislation in a manner that would allow the act to be used in landmark cases that lack legislation specifically made for them such as a situation discussed in this paper.

In terms of the two constitutions, unlike in terms of the tort legislations, the approaches are quite similar. Both states emphasize the government's responsibilities regarding the protection of the environment and the citizens' rights in terms of the environment. In the Netherlands, the authorities, solely, are responsible for the environment and its habitability, when in Finland, it is the responsibility of everyone for nature. This could seem like the Finnish authorities have a shared responsibility in terms of the environment, but the article specifically mentions the public authorities' responsibility to guarantee a healthy environment. Thus, both countries constitutions take a similar approach regarding provisions on the environment.

The unsuitable nature of the Finnish tort law might at first glance seem to make a citizen's claim requiring the Finnish state to cut its GHG emissions unattainable. In this paper's hypothesis, such a situation was proposed as a likely possibility. In light of this conclusion, it is important to look at the alternative approaches that the Finnish legal system has to offer. In order to assess the viability of a claim made in Finland, it is necessary to consider the intent of the Urgenda case. As mentioned before, the claimants of the case did not seek any monetary compensation but a court order for the government to make GHG emission cuts of 25-40% compared to the levels of 1990 by the year of 2020. From this, the motivation of the case being financial can be excluded, and instead, the purpose, of course, is to shift towards a stricter environmental policy of the state in order to reach the necessary emission cuts required for avoiding dangerous climate change.

Even though Urgenda et al. won the case at every instance of the courts in the Netherlands, the implementation of the court order is an obstacle since the executive branch of the state is the one being ordered to take action. Therefore, the enforcement of the court order is entirely dependable on the government's decision to take or not to take action in order to cut the national emissions, thus making the judgement of a somewhat symbolic nature. Therefore, in order for a legal tool in Finland to reach a similar result as the judgement did in the Urgenda case, the legal tool used is not strictly limited to tort legislation.

In terms of the desired outcome in the form of GHG emission cuts, a Finnish counterpart to the Urgenda claim could use a declaratory judgement. In Finland, a declaratory judgement is given by a court to confirm a legal relation or a legal state to be true or not to be true. A declaratory judgement could be a feasible option for a party desiring to have a judgement confirming and reminding of the government's responsibility to guarantee a healthy environment for the citizens to live in. The implications of such a judgement compared to a successful tort claim like Urgenda's might not differ much. The party wanting to make a difference would deliver their message close to as efficiently as a successful tort claim, and while the court would not *de jure* order the government to take action to cut emissions, it would clarify the correct interpretation of the constitution's provision on environmental issues. However, in looking at the option of a declaratory judgement used for this purpose, one must refrain from making too many assumptions about the court's judgements on such issue. It is not clear at all that the Finnish courts would rule in a manner that would be favourable to a party wanting the government to cut its emissions. As a result of this, it is important to note that this paper is looking to find feasible legal tools for pursuing a situation in which the state cuts its GHG emissions to a level for the avoidance of dangerous

climate change, not taking a stance on whether such tools should be used for this purpose, and not declaring whether the courts would rule in favour of such parties.

To conclude, Finnish citizens could, at least in theory, use tort law as a legal tool to insist the government to make GHG emission reductions. The problem with the tort law approach is the lack of case law supporting the notion that remuneration in kind would be utilised by any Finnish court. This lack of precedents leads me to the verdict that pursuing this kind of claim through tort law would not be a feasible option. Therefore, the hypothesis was correct in assuming that the practical nature of the Finnish legislation and its wording would lead to complications in this case. While other candidates for an alternative legal tool accomplishing the desired result were looked into, the most notable one is a declaratory judgement confirming the government's constitutional duty to keep the environment healthy. This kind of judgement has the potential to deliver a new policy driving message, possibly ending up in the claimants' desired outcome.

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