

# The Climate Show – Episode 27

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## Transcript

00:00:04 Linnéa Nordlander

Hi and welcome to the Climate Show, a podcast that explores the law and politics of climate change.

00:00:09 Linnéa Nordlander

This podcast is brought to you by the University of Copenhagen.

00:00:16 Beatriz Martinez

Hi. We are Beatriz Martinez and Linnéa Nordlander.

00:00:19 Alessandro Monti

And Alessandro Monti.

00:00:20 Beatriz Martinez

And we are your host at the climate show.

00:00:25 Linnéa Nordlander

The green transition opens up new questions of justice as some parts of the population are disproportionately impacted by measures to mitigate and adapt to climate change. This has led to an increase in litigation with cases that challenge laws, projects and policies that aim to address climate change.

00:00:40 Beatriz Martinez

In today's episode, we discussed the notion of just transition litigation with Professor Annalisa Savaresi, who is the lead author of a newly published article in Nature Sustainability. Congratulations to her and also to you Linnéa. Since you are a co-author of this piece.

00:00:55 Beatriz Martinez

In this episode, we discussed the role of justice in the green transition and what the future might hold for this area of the law.

00:01:01 Linnéa Nordlander

Annalisa Savaresi is professor of international environmental law at the Centre for Climate Change, Energy and Environmental Law at the University of Eastern Finland. She is also the director for Europe for the Global network of Human Rights and the Environment. She's a renowned expert on the relationship between human rights and climate change. This is Professor Savaresi's second time on the climate show. She has previously been on the show in episode 3 to talk about her research on climate change litigation.

00:01:29 Linnéa Nordlander

Annalisa thank you so much for joining us today and welcome back to the climate show.

00:01:33 Annalisa Savaresi

Thank you for having me back on the show. It's a pleasure to be here.

00:01:36 Linnéa Nordlander

And so you're here today to talk to us about an article that you are the lead author on, which was recently published in Nature, Sustainability.

00:01:44 Linnéa Nordlander

And that article conceptualises the notion of Just transition litigation, and many of our listeners are probably familiar with the term green transition. But could you explain what just transition is and what role litigation plays there?

00:01:59 Annalisa Savaresi

Sure, the term just transition is to address the socioeconomic and environmental implication of moving to low carbon climate resilient societies.

00:02:09 Annalisa Savaresi

Originally it focused on the impact of climate action on workers and communities, with the aim to ensure an equitable distribution of the benefits and burdens of climate policies in line with principles of justice over time, it's fair to say that this idea is broadened to consider the impacts across.

00:02:29 Annalisa Savaresi

All sectors of society.

00:02:32 Annalisa Savaresi

They deal with just transition, therefore acknowledges the climate policies can create new injustices or exacerbate existing ones, especially in the energy sector and in socioeconomic structures. So our article conceptualises just transition.

00:02:52 Annalisa Savaresi

Litigation, which is described as lawsuits questioning the fairness and justice of climate laws, projects and policies.

00:03:00 Annalisa Savaresi

There's also so questioning the necessity of climate action, but rather how it is designed and delivered.

00:03:06 Annalisa Savaresi

And this mitigation, previous competing ideas of what is just in a given context, often amplifying the voices of marginalized groups who may be disproportionately affected by climate measures such as workers or indigenous peoples, women, local communities.

00:03:25 Annalisa Savaresi

Often these groups.

00:03:27 Annalisa Savaresi

Also lack representation in decision making processes, which makes the decision-making processes problematic at many levels.

00:03:37 Linnéa Nordlander

And you of course mentioned how this very heavily relates to climate change and climate change policies, and of course, climate change litigation is something that is.

00:03:47 Linnéa Nordlander

Also on the rise alongside this and is something that your work has focused quite extensively on. So how is just transition litigation different from climate change litigation?

00:03:57 Annalisa Savaresi

Just transition litigation is closely related to, but these things from climate change litigation when we did spend a lot of time with our co-authors.

00:04:05 Annalisa Savaresi

Discussing this difference.

00:04:08 Annalisa Savaresi

In essence, climate change litigation involves cases addressing issues of climate science policy or law, and often.

00:04:17 Annalisa Savaresi

These beautiful high profile strategic lawsuits with this, some of these climate change mitigation does raise profiles of justice. These do not focus on the transition itself, instead just transition litigation.

00:04:35 Annalisa Savaresi

Centers around the impacts of climate measures, oftentimes without referencing climate change at all. In other words, applicants in just transition litigation do not really engage with systemic issues of climate justice. But.

00:04:52 Annalisa Savaresi

And instead they are rather interesting. They're very specific local impacts of a given project or activity.

00:04:59 Annalisa Savaresi

In this connection, it's important to differentiate these cases also from what the literature describes as anti regulatory or anti climate litigation, which opposes actively climate initiatives. So during this distinction is very important because data bases on climate litigation for example, do not capture just transition litigation.

00:05:18 Annalisa Savaresi

In a significant way. The result is at present, and we know very little about this phenomenon at the aggregate level. You know it's happening globally, but we do know.

00:05:31 Annalisa Savaresi

Exactly where and how and how much.

00:05:35 Linnéa Nordlander

So it may be difficult to say too much about the role that litigation will play in advancing or hindering the just transition, but could you maybe expand a little bit on how you envision the role of litigation in that respect and if there are any cases that illustrate that tension?

00:05:54 Linnéa Nordlander

Especially well.

00:05:55 Annalisa Savaresi

Sure. So litigation can both hinder or advance just transition, it may limit policy options or slow down projects to address the grievances of affected communities.

00:06:09 Annalisa Savaresi

To the threats of legal challenges, has already led to controversial policy reforms in the EU in the US, which are aimed at expediting the transition by streamlining licences processes for renewable energy projects or facilitating the resource extraction of, for example.

00:06:28 Annalisa Savaresi

Critical minerals. These reforms, however, sometimes curtail established rights.

00:06:35 Annalisa Savaresi

And this is exactly where things become difficult. One key example we discussed in the paper comes from Norway, where the Sami indigenous peoples opposed project for wind farms in an area where they were traditionally grazing their reindeer.

00:06:57 Annalisa Savaresi

Now this is a very important case because it showcases how.

00:07:03 Annalisa Savaresi

The licences were set aside by the Norwegian Supreme Court because they violated the cultural rights of the of the Sami so this case is really highlighting the justice dilemmas of the transition.

00:07:20 Annalisa Savaresi

Well, there is the cost of moving away from fossil fuels. What is owed to those affected, like displaced workers or impacted communities. And these questions are increasingly being raised in court.

00:07:32 Linnéa Nordlander

And I think that ties well with these three types of justice framings for just transition claims that you and your co-authors identify in the article. So you identify distributive procedural and recognition justice. And how are these three types of cases different?

00:07:50 Linnéa Nordlander

And what are the implications of the different types of arguments?

00:07:54 Annalisa Savaresi

So clearly we did not invent anything here, but rather relied on the standard categorizations that exist in the literature in environmental, climate, energy, justice, even now, as you apply these categories to just transition litigation, we identified as distributive justice claims both.

00:08:14 Annalisa Savaresi

Address the fair allocation and benefits and burdens of the transition so.

00:08:18 Annalisa Savaresi

Cases under this framing often contest disproportionate impacts, such as those affected by communities near wind farms or hydroelectric dams.

00:08:29 Annalisa Savaresi

In regard to procedural justice, we identify this frame when talking about cases on the fairness of decision-making processes themselves.

00:08:43 Annalisa Savaresi

For example, indigenous peoples that we are giving extensively in a number of signs that the impact assessments for various projects were inadequate, and their voice is not being heard.

00:08:56 Annalisa Savaresi

Relatively, the question of recognition justice concerns the rights and interests of specific groups, and especially those that have to be heard and are not being heard.

00:09:12 Annalisa Savaresi

So it's really important to understand that these frames can interact with one another and are not mutually exclusive.

00:09:21 Annalisa Savaresi

The Norwegian case I mentioned earlier was arguably combining all these three different frames, but it's true that in other cases we see one frame being predominant over the others. What these frames enable us to do is to really connect this sort of grievances to broader conversations about.

00:09:40 Annalisa Savaresi

Justice that have happened in the literature before, and surely after this.

00:09:46

Work.

00:09:47 Linnéa Nordlander

So the article also finds that just transition litigation is expanding. What factors do you believe drive that growth and what do you think the future looks like for this type of litigation

00:09:58 Annalisa Savaresi

So clearly as the reason it's not only by the business and Human Rights Centre where it shows the rapid expansion of renewable energy.

00:10:08 Annalisa Savaresi

Infrastructure and the extraction of transition minerals are.

00:10:13 Annalisa Savaresi

Hot spots for obvious litigation. We're seeing more of this litigation worldwide, but this currently limited aggregate data on this phenomenon. As I've already said.

00:10:26 Annalisa Savaresi

Despite the lack of this data

00:10:28 Annalisa Savaresi

Evidence suggest that these cases are becoming more frequent as the transition intensifies, and one of the things that, for example, we are seeing in Finland is increasingly contestations are concerned.

00:10:41 Annalisa Savaresi

I mean.

00:10:42 Annalisa Savaresi

Policies over land uses being articulated.

00:10:48 Annalisa Savaresi

Amongst others, in the events that hinge, for example, on planning law, property law and so on. So there is a lot on this in practice happening, but we are not presently able to capture it.

00:11:04 Linnéa Nordlander

Yeah. And so, it seems like this is expanding, but it's difficult to make a concrete assessment without the data to support it. But looking to the future, in your view, what would a successful just transition look like, and can litigation contribute to achieving that?

00:11:21 Annalisa Savaresi

So many just transition cases are now brought to the strategic aims.

00:11:27 Annalisa Savaresi

But to address specific local issues.

00:11:30 Annalisa Savaresi

So, a successful outcome in that perspective means resolving these local grievances, and this is exactly what the Holy Grail of a just transition is. How do we make this happen and the scale needed with the urgency needed, but without making this happen to people?

00:11:51 Annalisa Savaresi

Bringing the people with us. So, in this connection, the Sami Wind Farm Case is a cautionary tale, because even after a favorable ruling, enforcement has remained a challenge, and we realize the need for effective implementation mechanism associated with the just transition. So, which goes well beyond the courts.

00:12:11 Annalisa Savaresi

It entails all the various institutional arrangements that are being set in place to make the just transition happen. It has to do with finance that to do with commissions, various bodies that institutionalized.

00:12:24 Annalisa Savaresi

the just transition and make it happen on the ground? Yeah, difficult, but hopefully possible.

00:12:32 Linnéa Nordlander

We're hoping before we wrap up, is there anything else that you would like to raise that we haven't talked about yet?

00:12:40 Annalisa Savaresi

Well, just to say that it's been a fascinating journey, of course, and we are very much at the beginning of this research agenda. We set out to explore with the Nature paper and it's clear that we urgently need to decarbonize while ensuring justice for all.

00:13:00

And.

00:13:01 Annalisa Savaresi

Just transition litigation sheds light on the tensions associated with the transition, but hopefully we'll also enable us to identify the solutions that we need. And of course, that's very much wishful thinking for the time being. But hopefully in a few year's time you have me on the show.

00:13:21 Annalisa Savaresi

Again to tell you the results that we can achieve.

00:13:26 Annalisa Savaresi

So I remain hopeful.

00:13:29 Linnéa Nordlander

I think that's a very hopeful and positive note to end on. And of course, you're welcome back anytime, but I'd like to thank you so much for taking the time to come on the show today. It's been a pleasure talking to you and we of course look forward to having you back in the future and especially with an even more hopeful episode.

00:13:51 Linnéa Nordlander

Thank you for listening to this episode. If you're interested in reading the article we discussed in the episode and learning more about Professor Savaresi's work and the work that we do at CLIMA on the intersection of human rights and climate change, check out the links.

00:14:03 Linnéa Nordlander

In.

00:14:03 Linnéa Nordlander

The show notes you can also find the link to episode 3 of this show there, in which Professor Savaresi discussed her research on rights-based climate change litigation.

Stay tuned for our next episode.