



BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University

VOLUME 13, NUMBER 1 (2020)

ISSN 2029-0454



Cit.: *Baltic Journal of Law & Politics* 13:1 (2020): 163-190

DOI: 10.2478/bjlp-2020-0007

THE CONCEPTUALIZATION OF ENERGY JUSTICE: THE EU SPHERE

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Received: June 8, 2020; reviews: 2; accepted: July 30, 2020.

ABSTRACT

The regulation of the energy sector in the EU addresses different challenges in pursuance of ensuring the functioning of the energy system. One of the most pressing current energy issues in the EU is household access to energy services, which is acknowledged as social justice concern. Provided that access to universal service in the EU is recognised as a right of households, the article aims to introduce the advanced concept of energy justice designed for the investigation of households' ability to access sufficient energy service in the EU. The article is organized in three parts. The first part specifies the roots of energy justice. The second part assesses whether the constituent elements of energy justice comply with EU fuonding values. Lastly, the more comprehensive concept of energy justice is presented with underlying rationale.

KEYWORDS

Energy justice, EU values, energy service, energy law

INTRODUCTION

The contemporary issues of climate change, energy security, and access to universal service in the EU are characterized by concerns of justice. In comparison to the challenges the EU faces, on a global scale the world is facing similar challenges related to inadequate energy access, energy security and transition to low-carbon energy.¹ Therefore, the examination of the key issues in energy and their effect on environment, economy and households requires the conceptualization of energy justice. In the absence of a common concept it would be impossible to agree on common underlying values to be appreciated. Hence, without agreement on common values to be of highest importance that requires legal protection, there are no normative bases against which action, processes, policies and effects may be evaluated. Therefore, the need to introduce the concept of energy justice is apparent with a view to attaining social justice in the EU energy system.

Each challenge contains specific causes, features and consequences for the economy, public and environment. There seems no agreement about a common concept of energy justice that encapsulates particularities of energy security, environment protection and households access to energy service in the EU that in some instances overlap as well as contradict in their outcomes. Since the demands of justice with respect to energy challenges varies, the concept of energy justice should be crafted to examine the resulting injustice against the appreciated values in particular area. This article conceptualizes energy justice as related to the energy challenges of household access to energy service in the EU.

The article aims to introduce a concept of energy justice that is coherent and tailored to the investigation of the households ability to access to energy service in the EU. Due to the set aim, the author sets the following objectives: to specify the roots of the current concept of energy justice; to stipulate whether the constituent elements of the tenets of energy justice comply with the EU founding values; to present the more coherent framework of the concept of energy justice.

In order to attain the set objective the author employs document analysis on the advancement of the concept of energy justice and comparative method on the identifying the core features of energy justice based on the framework of environmental justice.

The need to consider justice in energy is conditioned by the recognition of energy service significance to the human well-being that just recently landed in the discourse on energy issues in the EU. The shortage of access to energy service strips

¹ Andreas Goldthau and Benjamin K. Sovacool, "The uniqueness of the energy security, justice, and governance problem," *Energy Policy* 41 (2012): 232.

many of basic goods such as heating, lighting, transportation, as well as obstruct develop capabilities.² Energy justice requires “an equitable distribution of energy service” based on the derivative entitlement “to the basic goods that these services provide or make it possible to secure”.³ The capabilities approach is a great example how values build in energy, the philosophical basis of which comes from examining the regulation and operation of energy system affecting the households inability to access to sufficient energy service in the EU. Additionally, the underlying rationale of energy justice implementation in energy system apprehended as “a precondition for the realization of social justice.”⁴ However, the idea of justice in access to energy service in the EU requires indicating the adherence to a value or a set of values that the EU appreciate and protect in pursuance of social justice.

While the divergent approaches to energy justice exist, the application of the concept accommodates to different challenges in energy examination. Energy justice may be applied to energy policy examination under the conceptual framework of energy justice.⁵ Also energy justice is tailored to the injustice investigation in energy production⁶ and consumption.⁷ Additionally, the consideration of energy justice may come from the energy activist and advocacy groups that articulate and elaborate of energy justice frame.⁸ Other literature tries to introduce the normative version of energy justice by setting the energy justice metric underlined with competing aims in economy, environment and politics related to energy.⁹ Furthermore, a special justice framework to advocate for the recognition of geographical circumstances on energy injustice has been introduced.¹⁰ Further, other researchers emphasize climate change¹¹ and energy security¹² as the pivotal challenges of energy system in the light of energy justice. Given the divergent application capabilities of energy justice, the agreement upon a common concept is problematic, since this reveals the complexity of the energy system and how the injustice manifests in energy.

² Benjamin K. Sovacool, Roman V. Sidortstov, and Benjamin R. Jones, *Energy security, equality, and justice* (London and New York: Routledge, 2014), 47.

³ *Ibid.*, 26.

⁴ Benjamin K. Sovacool, *supra* note 3, 47.

⁵ Darren McCauley, Raphael Heffron, Hannes Stephan, and Kirsten Jenkins, “Advancing Energy Justice: The Triumvirate of Tenets,” *International Energy Law Review* 32(3) (2013).

⁶ Raphael J. Heffron and Darren McCauley, “Achieving sustainable supply chains through energy justice,” *Applied Energy* Vol. 123 (2014).

⁷ Sara Marie Hall, “Energy Justice and Ethical Consumption,” *Local Environment* 18(4) (2013): 422.

⁸ Sara Fuller and Darren McCauley, “Framing energy justice: perspectives from activism and advocacy,” *Energy Research & Social Science* 11 (2016): 2.

⁹ Raphael James Heffron, Darren McCauley, and Benjamin K. Sovacool, “Resolving society’s energy trilemma through the energy justice metric,” *Energy Policy* 87 (2015).

¹⁰ Stefan Bouzarovski and Neil Simcock, “Spatializing energy justice,” *Energy Policy* 107 (2017): 640.

¹¹ Karen Bickerstaff, Gordon Walker, and Harriet Bulkeley, “Introduction: making sense of energy justice”; in: Karen Bickerstaff, Gordon Walker, and Harriet Bulkeley, eds., *Energy justice in a changing climate: social equity and low-carbon energy* (London and New York: Zed Books, 2013).

¹² Benjamin K. Sovacool, *Energy & Ethics: Justice and the Global Energy Challenge* (New York: Palgrave Macmillan, 2013).

To capture the nature of energy justice under one definition is unsatisfactory; therefore, the literature on energy justice apprehended the one to be an analytical tool, a decision making tool and a conceptual tool.¹³ As the analytical tool, the concept of energy justice may be understood as the sum of built-in value categories that should be examined in aggregation in order to reach the coherent outcome of energy regulation and justice.¹⁴ Accordingly, the energy justice contains the topics of energy efficiency, energy externalities, human rights and social conflicts, energy and due process, energy poverty, energy subsidies, energy resources and climate change.¹⁵ As the decision making tool, energy justice is guided by eight principles: affordability, availability, due process, information, prudence, intergenerational equity, intragenerational equity, responsibility – of the same importance, but carrying different weights, which has to be followed by decision-making processes of authorities and consumers.¹⁶ With regard to a decision-making tool, the latter should be supplemented with the additional two principles of resistance and intersectionality.¹⁷

The idea of energy justice gains much attention in the discourse on energy, which develops supplemented by new insights on the issues' nature and demands for energy justice. This development mode enables the concept of energy justice to be complemented with new value driven characteristics that specify the constituent elements and criteria. To that end, the conceptualized version of justice in energy, affirmed as the triad of tenets composed of distribution, recognition and procedural justice,¹⁸ sets strong foundations for more comprehensive framework to be applied on energy injustices in the EU. In accordance to the EU values of the respect for human dignity, democracy, freedom, equality, the rule of law and respect for human rights,¹⁹ the demands for energy justice within inherent values unfold within the tenets of distributive, recognition and procedural justice plus capabilities approach on justice.

¹³ Benjamin K. Sovacool, *et al.*, "New frontiers and conceptual frameworks for energy justice," *Energy Policy* 105 (2017): 677.

¹⁴ Benjamin K. Sovacool and Michael H. Dworkin, *Global energy justice: problems, principles, and practices* (Cambridge: Cambridge Law Press, 2014), 14.

¹⁵ *Ibid.*

¹⁶ Benjamin K. Sovacool, *supra* note 12, 219.

¹⁷ Benjamin K. Sovacool, *et al.*, *supra* note 13: 687.

¹⁸ Darren McCauley, Raphael Heffron, Hannes Stephan, and Kirsten Jenkins, *supra* note 5: 107.

¹⁹ *The Treaty on European Union*, Official Gazette (2012, no. 13-390), art. 2.

Table 1. The values of the European Union in the framework of energy justice

Elements of energy justice framework	The founding values of the European Union (TEU)			
	Freedom	Equality	Human dignity	The rule of law
Capabilities	+	+	+	
Distribution justice	+	+		
Recognition justice		+		
Procedural justice				+

The contribution of this article to the latter discourse rests in the justification of a new distinct category of capabilities in the energy justice frame that emphasizes the need to secure opportunities for human functioning with the minimum well-being requirement. The demands for justice are justified if they advance justice on the set of values, and do not present only one perfect justice.²⁰ Also the freedom appreciated by the capabilities approach acknowledges the rights and corresponding responsibilities of the individual honoured with the freedom to choose the social realization.²¹ Lastly, the current tenets are supplemented with new criteria such as the difference principle, which justifies resulting inequalities in distribution on the ground of reciprocity and enables them to offset the manifestation of inequality in distribution of access to energy service in the EU.

1. THE ENERGY JUSTICE: VALUES AND ROOTS

In pursuit of the design of the concept of energy justice that enables the investigation of justice in the households' access to energy service in the EU, the first part of the article undertakes to identify the roots of current energy justice version. In that regard, the following article seeks to present the background of energy justice and implied values that enable a more developed and comprehensive energy justice framework to be built. Correspondingly, treating the notions of justice and environmental justice is worthy for several reasons.

Firstly, the articulation of justice may be performed based on the preferred values that enable the favouring of one interest against the other. The article presents possible explanations for justice which may appear contradictory and how they are incorporated in the contemporary perception(s) of energy justice.

Secondly, the environment and energy are closely connected, in terms of energy being extracted and harvested from the environment, despite the negative

²⁰ Amartya Sen, *The Idea of Justice* (London: Penguin Books, 2009), 9.

²¹ *Ibid.*, 19.

impact on environment in the production and consumption of energy. In order to explain the foundation of energy, the comparisons between environmental justice and the current version of energy justice must be performed. The juxtaposition of the former and latter frames reveals the core of the concept of energy justice.

1.1. VALUES IN ENERGY JUSTICE

Efforts to define "justice" have sparked debate between philosophers for the considerable part of human history. Different schools of thought have tried to define "justice" based on distinct and contradicting values. For instance, from the libertarian view the paramount value for a human being is freedom, and the adherents to this view advocate for free choice and minimal government intervention.²² This occasionally extends the value of freedom to the economic freedom of the market and political freedom in democratic regimes. To the extent of energy, freedom as a value is important for energy end-users' empowerment to freely choose suppliers, resources, consumptions volumes and practices. The libertarian view stands in contrast to egalitarian theory, which supports the principle of equality for all people and appreciates equality more than freedom. In other words, in the case of energy all end-users should be able to enjoy the benefits of energy service equally. While both principles are value driven and recognised in democratic regimes, they are hardly balanced in practice when a policy decision should be made and measures implemented.

While the acknowledged values of equality and freedom divide the community in the political right and left, the question is how to balance the contradicting values and related interests. To that end the concept of justice referred to as fairness, essentially meaning the fair distribution of goods, may provide a suitable tool.²³ The inherent difference principle in justice as fairness seems pertinent to justice in energy conceptualization to offset the discrepancies of strict application of freedom as well as equality in effect, process or action examination. More on the difference principle will be presented in the section on distribution justice.

Furthermore, the idea of the greatest happiness for the majority championed by the utilitarian appears reasonable and sound as a policy objective. Nevertheless, it falls short of recognition of vulnerable and deprived social groups in the justice investigation of policy and measures. While some suggestions emphasise the righteousness of process, as in deontology, others argue for attention to justice

²² Milton Friedman and Rose Friedman, *Free to choose: a personal statement* (Florida: Harcourt Books, 1990), 29.

²³ John Rawls, *Justice as fairness: a restatement*, ed. Erin Kelly (Cambridge & London: The Belknap Press of Harvard University Press, 2001).

conceptualization aimed at its effect.²⁴ In the case in which the focus is on the consequences of action, justice is achieved when opportunities for persons to realize their functioning are ensured.²⁵ On the whole the perception of the idea of justice depends on how the priority of value or mix of values are appreciated.

While justice theory has a long history, energy justice has been acknowledged as a meaningful concept only just recently. From a cosmopolitan viewpoint, energy justice is understood as "a global energy system that fairly disseminates both the benefits and costs of energy service, and one that has representative and impartial energy decision-making."²⁶ The contemporary notion of energy justice affirms the requirement of fairness in the distribution of energy service without specifying the underlying values employed in distribution. However, what is fair and just depends on the recognised value of the community or political structure. Hence, the proposed definition set guidelines on the distribution and procedural requirements of energy justice designed for the general application in energy. The normative element in energy justice is contained in the idea of how things ought to be or what justice is.²⁷ In other words, the effort is to attain the perfect justice in what may seem like a justifiable objective, despite being unattainable in practice.

Even though the current concept of energy justice is unsatisfactory for the examination of households' access to energy service in the EU, the suggested definition sets a strong foundation for the conceptualization of energy justice. The tenets of distributive and procedural justice are contained in the suggested definition of energy justice. It enables the selection of the priority of value (or mix of values) that would guarantee a fair outcome in terms of sufficient access to energy service for all households and strong involvement of households in important decision-making. On that account fairness implies for the equality at minimum access to energy service and for freedom to choose the supplier, source, consumption volumes and practices. Procedural justice supported by a due process requirement complements the conceptualization with legal process and enforcement capacity. Provided that the values of equality and freedom are prioritized values to be respected and protected, despite resulting in contradictory outcomes in some instances, the current definition contains the social and market perspectives that enable an accommodation of the latter view within the EU context.

²⁴ Benjamin K. Sovacool and Michael H. Dworkin, "Energy justice: Conceptual insights and practical applications," *Applied Energy* 142 (2015): 437.

²⁵ Amartya Sen, *supra* note 20.

²⁶ Benjamin K. Sovacool and Michael H. Dworkin, *supra* note 24: 436.

²⁷ Benjamin K. Sovacool and Michael H. Dworkin, *supra* note 14, 19.

1.2. ENERGY JUSTICE VERSUS ENVIRONMENTAL JUSTICE

The predominant view of energy justice focuses on the triad of tenets that address unjust occurrences in the energy system. This view has its roots in the previously acknowledged issues of environmental injustices in the US.²⁸ The close connection between energy and environment, such as pollution from energy,²⁹ establishes favourable conditions for the application of the climate frame on energy in order to identify injustice in the energy system and propose proper solutions. Due to the latter’s similarities, the literature on the examination of energy justice in the low carbon transition integrates into the same framework of environmental justice³⁰ as well as the examination of justice throughout the supply chain of energy resources.³¹

Furthermore, the discussion environmental issues and challenges closely relates to the energy sector, which has similar concerns of benefits and cost distribution. In the context of climate change and environmental protection, the concept of environmental justice or ‘climate frame’ makes a distinction between distributive and procedural justice, while each dimension is further characterized by responsibility, rights and recognition criteria.³² Environmental justice, on the one hand, relates to distribution of “environmental benefits and ills,” and on the other hand to distribution of coherent responsibilities.³³ In sum, the climate frame has been taken into energy discourse as a useful vehicle to examine and address energy injustices.

Table 2. Comparison of the concepts energy justice and environmental justice

	Distributive justice			Procedural justice		
	Responsibility to take action	Rights to protection	Recognition of inequalities	Responsibility to take action	Rights to protection	Recognition of inequalities
Distributive justice		Fair distribution of cost and benefits				

²⁸ Andrew Dobson, *Justice and the Environment: Conceptions of Environmental Sustainability and Theories of Distributive Justice* (Oxford: Clarendon Press, 1999).

²⁹ Jason Byrne and Chloe Portanger, “Climate Change, Energy Policy and Justice: A Systematic Review,” *Analyse & Kritik* 02 (2014): 316.

³⁰ Sara Fuller and Harriet Bulkeley, “Energy justice and low-carbon community programmes in the UK”: 64; in: Karen Bickerstaff, Gordon Walker, and Harriet Bulkeley, eds., *Energy justice in a changing climate: social equity and low-carbon energy* (London and New York: Zed Books, 2013).

³¹ Raphael J. Heffron and Darren McCauley, *supra* note 6.

³² Sara Fuller and Harriet Bulkeley, *supra* note 30: 64.

³³ Kirsten Jenkins, et al., “Energy Justice: A Conceptual Review,” *Energy Research & Social Science* Vol. 11 (2016): 178.

Recognition justice			Recognition of vulnerability			
Procedural justice					Participation in decision-making	Remove barriers for engaging in decision making

For the purpose of rectifying injustices in energy, the triad of recognition, distributive and procedural justice, usually applied in environmental sphere, shifts to the energy sector and provides a reasonable theoretical basis. The concept of energy justice borrows and incorporates these three fundamental elements, encompassing distributive and procedural justice, and justice as recognition.³⁴ In order for the coherent execution of conceptual application, the exploration divides into a three-pronged test in the following fashion: what the concern is – distribution; who is affected – recognition; and proposing strategies for remediation – procedure.³⁵ The basic assumptions of the tenets’ interrelatedness states that “meaningful recognition and fair procedures are prerequisites to distributional justice,”³⁶ or procedure and recognition are distinct type of injustice in themselves linked to inequalities resulting from distribution.³⁷ On than account recognition stands for identification of the social group with special needs suffering injustice in energy system, while distributive justice refers to specific injustice related to dissemination of disproportionate costs and benefits between end-users, and procedural justice covers the possible solution to mitigate and remedy injustice.

In comparison with the environmental frame, the tenets of energy justice follow the same assumptions. In the broadest sense the respective tenets are characterized by the assumptions of distributive justice, which focus on fair distribution of resources; procedural justice on due process requirements; and recognition reveals which groups are mistreated or disregarded.³⁸ The elaboration on the securement of fair distribution of benefits and externalities as well as participation of community or citizens affected in the decision-making process, with due regard to recognition of specific social groups needs, combines the concepts of environmental and energy justice. Nevertheless, the environmental frame has a few important attributes such

³⁴ Stefan Bouzarovski, *Energy Poverty. (Dis)Assembling Europe's Infrastructural Divide* (Switzerland: Palgrave Macmillan, 2018), 26.

³⁵ Kirsten Jenkins, *et al.*, *supra* note 33: 176.

³⁶ Ross Gillard, Carolyn Snell, and Mark Bevan, “Advancing an energy justice perspective of fuel poverty: Household vulnerability and domestic retrofit policy in the United Kingdom,” *Energy Research & Social Science* 29 (2017): 54

³⁷ Gordon Walker and Rosi Day, “Fuel poverty as injustice: Integrating distribution, recognition and procedure in the struggle for affordable warmth,” *Energy Policy* 49 (2012): 70

³⁸ Stefan Bouzarovski, *supra* note 34, 26.

as categories of right and responsibility, which the current conceptualized version of energy justice lacks. Although the concept of energy justice does not incorporate all elements of the environmental frame, the latter provides a useful vehicle due to similarities in examination of injustice in energy policy and regulation.

Overall, the contemporary apprehension of energy justice rests to a great extent on the environmental frame developed and designed for environmental injustice investigation. The commonalities and interrelatedness between energy and environment make it possible to adapt environmental frame with some adjustment to the area of energy. In addition to the adapted framework on energy, the current version of energy justice augments the implied values of the tenets in the light of the notion of fairness.

2. THE TRIAD OF TENETS

A comparison of the current versions of energy justice and environmental justice informs on underpinning tenets of energy justice. However, there is a need for more explanation and elaboration on the constituent elements of each of the tenets. Therefore, this article seeks to specify the appreciated values in energy justice that comply with the EU's founding values. This objective will be pursued in the elaboration of the explicit and implied values in each of the tenets and how they relate to the constituent elements of distribution, recognition and procedural justice.

Since distribution, recognition and procedural justice has been designed for different purposes within one framework, it is important to explain not only how they can be applied separately on energy policy and regulation, but due consideration can be given to a holistic application. It must be noted that the holistic approach to energy justice is redundant without indicating the corresponding values. Therefore, the previously mentioned values in justice apprehension should be translated in the conceptualization of energy justice. Based on this, the following sections elaborate the constituent element of each of the tenets and underlying values together with few advancements with respect to complementary principles and values.

2.1. DISTRIBUTIVE JUSTICE

Distributive justice is the first tenet in the framework of energy justice that may be ascribed as a cornerstone. It articulates the significant elements that enable an examination of how the distribution should be executed, who the actors are, and what the object of distribution is. Building on the current work on energy justice and accommodating the challenge of households to access energy service in the EU, this

section elaborates on the more developed constituent elements of what, who, and how.

Table 3. Distributive justice frame in the concept of energy justice

Constituent elements	Values	Criteria
Distribution mode	Freedom, equality	Freedom, equality (needs), difference principle
Object of distribution		Households access to energy service
Distribution recipients		Affluent households, households in energy poverty, vulnerable households

In general, distributive justice suggests that physical security and conditions that create it, namely, employment, shelter, air, water and environment, are basic human rights.³⁹ Even though energy is not mentioned as a basic human right, the realization of it exists as an opportunity to utilize energy service within decent living standards, which should be understood as a derivative entitlement. In other words, it is reasonable to suggest that if social justice translates into more or less equal opportunity(s) to obtain “the basic goods of life” and “develop capabilities”, then fair distribution of energy service is critical.⁴⁰

While the *what* and *who* issues are less debatable in distributive justice, the mode of distribution opens more discussions. One may argue that socially just societies act “for the equitable distribution of these basic goods”,⁴¹ however, the interpretation of what is equitable with respect to mode of distribution is highly debatable. Due to different schools of thought, mode of distribution may be justified on the basis of different values such as equality, utility or freedom that promote different objectives of the maximization of welfare, the respect of freedom and the cultivation of virtue.⁴² If the distribution of energy service would be performed based on the utility the energy confers on the end-user, then priority would be awarded to the ones that most benefit from the energy consumption such as intensive energy users. Meanwhile, the libertarian view on distribution would argue that energy service should be distributed to the ones that deserves the most by freely taking action that should be remunerated. The freedom to act underlies the mode of market distribution, where competition and private initiative uplift the winners and down elevate the losers. Lastly, the concept of intragenerational equity refers to equality where the distribution should be performed “in accordance with the needs of recipient.”⁴³ This is mainly due to human needs’ variations based on “the specific

³⁹ Benjamin K. Sovacool and Michael H. Dworkin, *supra* note 24: 440.

⁴⁰ Benjamin K. Sovacool, Roman V. Sidortstov, and Benjamin R. Jones, *supra* note 2, 25.

⁴¹ *Ibid.*, 31.

⁴² Michael J. Sandel, *Justice: what’s the right thing to do?* (New York: Farrar, Straus and Giroux, 2009), 19.

⁴³ Benjamin K. Sovacool, Roman V. Sidortstov, and Benjamin R. Jones, *supra* note 2, 31.

cultural and historical context."⁴⁴ Overall, households should effectively utilize from distribution despite the identified mode of distribution.⁴⁵

In energy there is a tendency to use the same principal and value to address inherently different problems and challenges. The same is true in the distribution of households' access to energy service in the EU, where market and freedom are the prescription for every shortcoming. The drawback of trying to address all issues in distribution of energy service with one principle is the failure to encompass specifics of each situation with resulting negative externalities. For instance, the market approach, based on the freedom, is employed to ensure low-price, reliable supply, efficient consumption through price system and satisfy households' needs, and it shows how different objectives are unsatisfactorily pursued with the same tool. Nevertheless, there is a growing advocacy to balance market with social approach,⁴⁶ which may be viewed as a social justice requirement, where the freedom is balanced against the equality. In this vein, the difference principle as a vehicle to narrow the gap between worst-off and well-off that justifies inequalities resulting from market failures presents the opportunity for a balancing act.

To the extent of the demands of energy justice in the EU, the requirements for distribution mode extension may be added to the political philosophy doctrines on justice. In this vein, the political theory of justice as fairness⁴⁷ deals with distribution within the basic structure of institutions that should ensure "fair, efficient, and productive system of social cooperation" in the long-term.⁴⁸ On that note the theory of justice sets out two principles that explain possible social and economic inequalities arising from distribution in line with principle of justice. The second principle of justice consists of two conditions: fair equality of opportunity and the difference principle.⁴⁹ The resulting social and economic inequalities from distribution are just, provided that "they are attached to offices and positions open to all under conditions of fair equality of opportunity" and "they to be to the greatest benefit of least-advantaged members of society."⁵⁰ Here, the emphasis should be added on the difference principle that permits inequality from distribution of primary goods, while least advantaged, namely, "belonging to the income class with lowest expectations,"⁵¹ are treated within reciprocity with well-off individuals.

Due to this, the difference principle confers social requirements on the distribution of goods in terms of balancing freedom and equality. The well-off

⁴⁴ *Ibid.*, 45.

⁴⁵ Benjamin K. Sovacool and Michael H. Dworkin, *supra* note 24: 440.

⁴⁶ Kim Talus, *Introduction to EU Energy Law* (Oxford University Press, 2016), 60.

⁴⁷ John Rawls, *supra* note 23, 50.

⁴⁸ *Ibid.*, 50.

⁴⁹ *Ibid.*, 42.

⁵⁰ *Ibid.*, 43.

⁵¹ *Ibid.*, 59.

households freely choose which energy service to use and adjust the consumption volumes to internal preferences, but the granted freedom in access to energy service should bear the costs. In other words, equality requires for the well-off households to pay extra for energy service in order to secure for vulnerable household to access to energy service. In the context of the EU energy system, it sets the basis for justifying the public support of households in energy poverty at the expense of affluent households. It also validates the coordination between the functioning of liberal energy market in the EU and execution of social support in the EU through public intervention measures to narrow the widening gap between household in the access to energy service.

To the extent of the households' access to sufficient energy service in the EU, there is a need to elaborate and define the notions of access and energy service. For the purpose of distributive justice, access should mean physical connection as well as freedom of choice in the utilization of energy.⁵² The access in legal terms should be considered as conditions enabling or impeding to effectively utilize energy service. The conditions may be related to internal conditions that households are able to alter and external condition that are outside direct control of households. The former encompass the characteristics of low-income, inefficient consumption, special needs and being uninformed. The latter concerns the regulated and unregulated activities of suppliers and competent authorities. On that account the access refers to the households' capacity to effectively acquire the sufficient level of energy service due to proper conditions.

With respect to distribution of energy service, there are possible variations of that should be distributed from the households' perspective, which may relate to goods, energy supply, energy service and etc. There should be some convincing explanation of what in this case should be fairly distributed. In this context, in some instances the terms in literature and policy documents are used interchangeably; for instance, the energy supply may refer to energy service and vice versa. In addition to the changing reference to terms, the next issue is the alteration of the definition of energy service. In some contexts energy service may cover components of energy, environment, technology, human and physical capital beyond technological and social spheres.⁵³ In other contexts energy service refers to energy carriers and measured "units, temperature or heat".⁵⁴ To a great extent in the energy literature the focus is on the energy service as energy carriers without due regard to human wellbeing,

⁵² Kirsten Jenkins, *et al.*, *supra* note 33: 178.

⁵³ Stefan Bouzarovski and Saska Petrova, "A global perspective on domestic energy deprivation: Overcoming the energy poverty–fuel poverty binary," *Energy Research & Social Science* 10 (2015): 34.

⁵⁴ Andreas Goldthau and Benjamin K. Sovacool, *supra* note 1: 233.

namely, experienced satisfaction or energy benefits.⁵⁵ However, the presented conceptualization of energy justice in the EU focuses on the access to energy service, where the energy service is understood as the benefits received by end-users by converting electricity into useful service such as heating, lighting, cooling, washing, coking and other benefits.

For the purpose of energy justice in the households' access to energy service in the EU, the who refers to the household customers and vulnerable consumers as separate categories of end-users. Taking into consideration the divergent situations of households, the household customers should be split into the categories of affluent household customers and household in energy poverty. The similar distinction between this kind of household is performed in categorizing households into an inability to access the sufficient amount of energy service, and household with low-income, but high consumption due to inefficiency, and households in energy poverty due to financial and technical constrains.⁵⁶ With regard to vulnerable consumers, this category of end-users is labelled as a household with specific needs, in some instances prescribed as critical dependence, or/and gained social status that make them more vulnerable than other household customer; therefore, special treatment should be attributed to this particular group of households. Even though a vulnerable customer may not be in energy poverty, its characteristics make them more likely to find themselves in energy poverty. Also these latter households may be more challenged in gaining access to energy service in comparison to other households, namely, to effectively exercise the implied right to energy service.

The investigation of injustice in energy in the EU requires embodying the EU founding values in the energy justice. Also the EU context requires the balancing of values in the distribution of access to energy service in the EU. Here the access means the removal of impediments for actual and effective access and energy service refers to the benefits of heating, cooling, food storage and cooking enjoyed by the households. Meanwhile, the balancing act may be performed based on the difference principles to offset the inequalities in distribution, where some households can acquire the benefits of freedom and market mechanisms, while other households are unable to secure the sufficient access to energy service.

2.2. RECOGNITION JUSTICE

The demands of energy justice calls for the recognition of the heterogeneity of disadvantaged social groups treated unfairly in energy related social arrangements

⁵⁵ *Ibid.*

⁵⁶ Raffaele Miniaci, Carlo Scarpa, and Paola Valbonesi, "Energy affordability and the benefits system in Italy," *Energy Policy* (2014): 3.

and practices in order to comply with social justice requirements. The recognition of justice with regard to justice-based policies includes that the public policies should redress disadvantaged social groups and provides a level playing field.⁵⁷ For the latter to be substantiated, recognition as justice brings it about that all individuals possess the right “to pursue social esteem under fair conditions of equal opportunity.”⁵⁸ Also, more importantly, it argues for the capacity of individual to claim the protection from the competent authorities and government with opportunity for redress. This section presents recognition justice and its constituent elements.

Table 4. Recognition justice frame in the concept of energy justice

Constituent elements	Value	Criteria
Form of recognition	Equality	Misrepresentation, disregard, negative domination, failure to recognise, misrecognising, ineffective rights
Special needs		Health, age, family status
Impediments		Consumer state and knowledge, public policies, social arrangements
Source of impediments		Institutions, public authority, social processes, entities

As recognition justice, injustice may manifest itself in a number of ways. The social phenomenon of misrepresentation, disregard, misrecognition or other vices confronted in the access to energy service may be attributed to injustice situations and also to the form of recognition as justice. With reference to environmental justice, recognition requirement manifests itself as a form of negative domination, misrepresentation, or failure to confer effective rights.⁵⁹ Due to the shift of environmental frame to energy system, the suggested forms of negative recognition point to possible injustice instances in the access to energy service. In fact, the form of recognition may refer to wide spectrum of manifestation from “failure to recognise” to “misrecognising”.⁶⁰ Misrecognition as a separate form of injustice specifies the institutionalized patterns to refute individuals and social groups from functioning in society as partner worthy of respect.⁶¹ The latter is characterized by manifestation in public life and may be objectively ascertained by whether impediments are created for peer participation in society without erroneous subjectivity being affected.⁶² Even though the forms of unrecognition appear to be ascribed as injustice, it does not conform to the legal categorization of injustice, but gives moral assessment on social vices.

⁵⁷ Ross Gillard,Carolynn Snell, and Mark Bevan, *supra* note 36: 54.

⁵⁸ Nancy Fraser, “Social justice in the age of identity politics: redistribution, recognition, participation,” *Discussion Papers* (1998): 101.

⁵⁹ Kirsten Jenkins, *et al.*, *supra* note 33: 176.

⁶⁰ *Ibid.*

⁶¹ Nancy Fraser, *supra* note 58: 100.

⁶² *Ibid.*: 101.

Each social group with special needs encounters different obstacles when aiming to utilize electricity supply that arise in a variety of contexts in the EU. This is due to the internal heterogeneity embedded in the context,⁶³ where the economic and social context helps to reveal the instances of inequalities that some households suffered from.⁶⁴ The characterizing criteria of unrecognised social groups in energy is special needs with exclusion on intrinsic characteristics of minorities, or unemployment.

At the supply side of the energy chain in the EU, the impediments for energy utilization by households may represent a lack of obligation fulfilment by the supplier as well as households' deprivation due to different potentiality to utilize from the electricity supply. Accordingly, the impediment for special needs satisfaction may be internal, depending on consumer state and knowledge, and external conditioned to public policies and social arrangements. The nature of impediments in electricity supply utilization correlates with needs identification, form(s) of recognition and operational context.⁶⁵ This supports the idea of a close linkage between special needs of social groups, impediments hindering needs fulfilment, source of impediments and forms of social vices that should be explored in a coherent frame.

The following input in recognition justice has the aim of determining the source of injustice manifestation. Here, there are two possible ways for injustices manifestation from the social structures and institutions, and social processes.⁶⁶ In some instances, the responsibility to protect, categorized as obligation, i.e. taking positive action, may be implied from the power to act. The power to act is usually conferred on public authorities by mandating to implement public policies. However, the authority is not always the source of discrimination; there are strong societal biases to "cultural domination," recurrent cases of "non-recognition" and "stereotyping."⁶⁷ Accordingly, the social vices emerging from institutional and social arrangement in access to energy service should be uncovered. Also, negative recognition may originate from entities which are not part of the public authority. This scenario appears possible in the energy system in the EU, where undertakings are conferred with the public service obligation to supply electricity to vulnerable households or with the obligation of supplier of last resort. Consequently, the forms of unfair treatment may manifest themselves as an act or omission from the institutions or entities conferred with corresponding duties that are implied or explicit.

⁶³ Ross Gillard,Carolynn Snell, and Mark Bevan, *supra* note 36: 55.

⁶⁴ Udo Pesch, *et al.*, "Energy justice and controversies: Formal and informal assessment in energy projects," *Energy Policy* 109 (2017): 830.

⁶⁵ Nancy Fraser, *supra* note 58: 103.

⁶⁶ Ross Gillard,Carolynn Snell, and Mark Bevan, *supra* note 36: 55.

⁶⁷ Kirsten Jenkins, Darren McCauley, Raphael Heffron, and Hannes Stephan, "Energy Justice: A Whole Systems Approach," *Queens Political Review* Vol. 2, No. 2 (2014): 78.

The identification of the source enables them not only to design tailored solutions to the form of recognition, but also elaborate on the scope of responsibilities conferred.

While the recognition as justice refers to external input, it also makes reference to internal characteristics of the group of households. The purpose of recognition is to introduce remedy for injustice by employing human needs as vehicles and dismissing the perspective on recognition as a generic human need.⁶⁸ Here the category of need is introduced that characterizes the social group based on specific needs and its effect on the wellbeing, which are not inherent to all households and make some households more vulnerable than others. One may argue that the needs are subjective preferences; however, the distinction of needs as objective condition and wants as individual preferences overrides this concern. The basic needs may be deliberated by experts, with an account of experiences under consideration.⁶⁹ Furthermore, the recognition of certain needs and vulnerabilities of individuals is not the only useful data to be obtained, but also it legitimises certain claims for redress.⁷⁰ Respectively, the needs of households in distributive justice supplemented with social groups' specific needs in recognition justice presents a more comprehensive view, which is enable to advance on policy design in the EU in order to satisfy the needs as well as identify proper forms of redress.

With respect to value driven conceptualization of energy justice in the EU, the recognition justice distinction into the separate tenet in the energy justice conceptualization is underpinned by the EU value of equality. The same equality demand may be derived from the category of human needs within the notion of basic human needs of "physical survival/health and personal autonomy".⁷¹ In this case autonomy refers to interdependence and interaction between individuals to comprehend their capabilities.⁷² Additionally, the normative conception of participatory parity suggests two conditions for social arrangements to be just, namely, the distribution of resources should ensure participants independence and "voice", and the institutionalized cultural patterns ensures equal respect and equal opportunity to social esteem, make reference to the value of equality.⁷³ Based on that, the demand of equality in access to sufficient energy service in the EU correlates with the equality in the recognition justice.

Due to the apparent need to recognise special needs of social groups, recognition as justice should be examined as a separate concern. Recognition as

⁶⁸ Nancy Fraser, *supra* note 58: 102.

⁶⁹ Ian Gough, "Climate change and sustainable welfare: the centrality of human needs," *Cambridge Journal of Economics* 39 (2015): 1201.

⁷⁰ Gordon Walker and Rosie Day, *supra* note 37: 72.

⁷¹ Ian Gough, *supra* note 69: 1197.

⁷² *Ibid.*: 1199.

⁷³ Nancy Fraser, *supra* note 58: 102.

justice highlights the comprehension of difference between social groups and satisfying the special needs.⁷⁴ However, in distributive justice the criterion of household need is construed within economic rationale. The focus is on individual needs to sustain wellbeing, where identified needs are understood as universal and common to all household. However, it must be acknowledged that the sharp distinction between recognition and distribution justice is redundant, since their overlap in their areas of concern, even though they do not correspond in their requirements.⁷⁵ Thus, there are reasonable grounds to argue that recognition and distribution are two distinctive "spheres of justice".⁷⁶ An analytical distinction is performed on cultural injustice related to recognition and the economic injustice to redistribution.⁷⁷ Even though they concern different domains, both should be incorporated in the same energy justice framework to sufficiently capture claims of social equality and recognise the difference of social groups.⁷⁸ Overall, without establishing the separate tenet of recognition justice, distributive justice will not possess sufficient completeness to take the task of rectifying energy injustice into a full view of social justice.

2.3. PROCEDURAL JUSTICE

Justice requires setting up an effective process in the access of energy service that guarantees the protection of the corresponding right to access sufficient energy service – procedural justice requirement. Respectively, the process should be fair and the energy policy and regulation should comply with due process. This translates into the responsibility on the competitive authorities in the EU to respect the rule of law as the community value enacted in primary law.⁷⁹ While procedural justice relates to democratic governance and the due process, the rule of law as the EU founding value, underpinned by due process, presents a coherent argumentation for the prescription of the build-in value in procedural justice.

The literature on this matter elaborates on the preferred constituent elements of procedural justice to be translated into the legal process with the reference to the "participatory justice",⁸⁰ or "public participation" and "due process".⁸¹ Based on the

⁷⁴ Gordon Walker and Rosy Day, *supra* note 37: 71.

⁷⁵ David Schlosberg, "Defining the justice of environmental justice: global movements north and south," *Environmental Politics* 13, No. 3 (2004): 530.

⁷⁶ Nancy Fraser, *supra* note 58: 104.

⁷⁷ Nancy Frazer, "From Redistribution to Recognition? Dilemmas of Justice in a 'Post-Socialist' Age," *Political Science* (2003): 72.

⁷⁸ Nancy Fraser, *supra* note 58: 98.

⁷⁹ *The Treaty of European Union*, *supra* note 19, art. 2.

⁸⁰ Gordon Walker and Rosy Day, *supra* note 37: 72.

⁸¹ Benjamin K. Sovacool, Roman V. Sidortstov, and Benjamin R. Jones, *supra* note 2, 27.

environmental frame and in accordance to UN’s Aarhus Convention,⁸² the constituent elements of procedural justice are “information accessibility, participation in decision-making and effective forms of redress in law.”⁸³ Additionally, the procedural justice relates to “free prior and informed consent”, representation in decision-making, and access to information.⁸⁴ The latter categorization reiterated in other literature on the procedural justice exploration.⁸⁵ Based on preceding research on energy justice, the primary concern of procedural justice is the questions of ‘how’ and ‘who’,⁸⁶ which require thorough examination.

Table 5. Procedural justice frame in the concept of energy justice

Constituent elements	Value	Criteria
Participation	Due process	Decision on energy policy, community measures
Consent		Free, prior, informed
Access to information		Effective, timely
Redress		Out-of-court dispute settlement, uncomplicated claims handling procedures, due terms and conditions of hearings

The conditions for accessible and effective participation in the energy related decision process for households guarantee fair outcomes to affected parties. Therefore, participation in the EU energy decision-making process may take many forms, in terms of capacity to influence the decisions on energy policy and capacity to engage in the energy related community measures. While the former consideration of procedural justice as a form of democratic governance is widely acknowledged, the latter, such as community energy schemes, voluntary sector initiatives and microgeneration, low-carbon initiatives,⁸⁷ are mainly unnoticed in the discourse on energy justice. In other words, the community level participation has more or less the same importance on guaranteeing fair process in the access to energy service in the EU in terms of democratic governance as the process of public policy on energy.

In the prevailing view on procedural justice, for the decision to be fair, one of the requirements is encapsulated in the affirmation from affected parties or representatives. For the voice to be heard in the public discussion, there should be effective legal mechanisms in place enabling public authorities to hear consumers within reasonable timeframe. In this case the decision-making process encompasses the period from the public policy design stage until its implementation. The

⁸² *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, UNECE (May 2020) // <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

⁸³ Gordon Walker and Rosy Day, *supra* note 37:72.

⁸⁴ Benjamin K. Sovacool, Roman V. Sidortsov, and Benjamin R. Jones, *supra* note 2, 26.

⁸⁵ Kirsten Jenkins, *et al.*, *supra* note 33: 185.

⁸⁶ Benjamin K. Sovacool and Michael Dworkin, *supra* note 24: 437.

⁸⁷ Ross Gillard, Carolyn Snell, and Mark Bevan, *supra* note 36: 55.

participation in decision-making to be effective does not mean the physical presence of all affected individuals in each step until the final decision is reached.⁸⁸ Effective participation is adequately ensured when related information is disclosed by public authorities in advance to the public and the final decision is made taking into account different views.

Participation in the energy decision-making is adequately fulfilled, provided that the affected parties consented to the participation in any form of energy governance – community and public policy. With regard to the affirmation of these decisions, consent should comply with the following: there must be no coercion to give consent; the consent must be given before an energy related decision is taken and an adequate access to related information provided.⁸⁹ Hence, the requirement to enable access to related information on consumer's behalf should be set as an inherent condition for warranting interested parties effective participation and valid consent. Nevertheless, for vulnerable households there are multiple impediments to effective participation and due process,⁹⁰ which correlates with the recognition justice requirement to comprehend the inherent differences of the social groups. The focus here should be on the level of engagement by public authorities with affected social groups and effective participation in the form of governance.

In the legal context, the outcome lacks legitimacy when procedural requirements are infringed upon, or the set process deviates from due process standards. In order to contain the constituent elements of procedural justice in the legal process, there should be legally recognised rights about participation in any form of energy governance. Such a legal right for a household, understood as the right to participate, should encompass the right to information and an obligation for the decision-making body to obtain the consent before long-term, sensitive and expensive decisions are taken. In the absence of legal right there is no other force, except legal enforcement, that would enable the households to participate in the low-carbon, co-generation activities and etc. that enable the securing of sufficient access to energy service.

Provided that the legally recognised rights are infringed upon, due process calls for effective forms of redress available to affected individuals and social groups by the decisions of public authorities and private entities actions or failures to act. Hence, an impartial body hearing households' claims should be present as the out-of-court dispute settlement with the claimants right to appeal the latter's body decision to the court. The terms and conditions for the hearing plays a critical role for effective redress as they may hinder the capacity to protect the rights of

⁸⁸ Kirsten Jenkins, *et al.*, *supra* note 33: 185.

⁸⁹ Benjamin K. Sovacool and Michael Dworkin, *supra* note 24: 440.

⁹⁰ Ross Gillard, Carolyn Snell, and Mark Bevan, *supra* note 36: 56.

household, provided that cumbersome requirements are placed on less informed households. In that sense, the good practice should be to enact laws or relevant legislation, where public authorities obliged to disclose information for the public to access it easily.⁹¹

Overall, procedural justice contains demands for legal process in the advancement of justice under the one of EU founding values of the rule of law. Contingent on the appreciated EU values, further requirements are specified to guide the energy policy in a view of households access to energy service. The elaboration with respect to participation, including consent and information access, and redress, discern the constituent elements of procedural justice into separate frame with the triad of tenets.

3. COHERENCE OF ENERGY JUSTICE

The suggested conceptualization of energy justice on the triad of tenets set the foundations for the diagnosis of injustice in the households' access to energy service in the EU. Nevertheless, some considerable demands of rights, responsibilities, minimum well-being are unspecified for a comprehensive and adequate concept of energy justice from the EU household perspective. In contemplation of the latter, the capabilities approach is presented to take into account the significant elements of rights and responsibilities that is missing in the current concept of energy justice. More importantly, the capabilities should go prior to other energy justice tenets, since they establish the justification for distribution and "what it takes to function in that distribution,"⁹² while regarding the recognition justice it is affirmed as the capability.⁹³

The comprehension of the fundamental nature of energy to human well-being has provoked a debate on energy deprivation from public institutions, scholars, social groups and communities. The questions emerge on how the well-being correlates with energy,⁹⁴ and why energy poverty as injustice in energy⁹⁵ is so important in today's policy agenda. In this vein the application of capabilities approach for the examination of injustice in energy is underpinned by the energy significance to human wellbeing with the reference to the person's ability to do and to be⁹⁶ related to the end-list of ten capabilities that need to be protected.⁹⁷ For the

⁹¹ Raphael J. Heffron and Darren McCauley, *supra* note 6: 2.

⁹² David Schlosberg, *supra* note 75: 520.

⁹³ *Ibid.*

⁹⁴ Rosi Day, Gordon Walker, and Neil Simcock, "Conceptualising energy use and energy poverty using a capabilities framework," *Energy Policy* 93 (2016): 255.

⁹⁵ *Ibid.*, 260.

⁹⁶ Martha Nussbaum, "Capabilities as fundamental entitlements: Sen and Social justice," *Feminist Economics* 9:2-3 (2003): 33.

⁹⁷ *Ibid.*: 33.

conceptualization of energy justice in the EU, the deliberation should be on “what normative conclusions we draw from the fact of the basic capabilities.”⁹⁸ The idea for justification of the latter set is upheld in “the central requirements of a life with dignity,”⁹⁹ or that they possess value in themselves.¹⁰⁰ In comparison to one of the EU founding values, human dignity,¹⁰¹ this approach is also founded on the idea of dignity, which guides the demands for social realizations. Additionally, the rights protection are incorporated in the capabilities analytical model as ‘underlying variables’ – “entitlements, contextual variables, conversion factors” – substantiating ‘capabilities set’ significance for human development and well-being.¹⁰²

Provided that the basic capabilities are fundamental entitlements that ensure a life with dignity, the basic capabilities sustained when the secondary capabilities are satisfied that require energy service.¹⁰³ For instance, a basic capability referred to as good health requires secondary capabilities to be satisfied, such as being able to keep comfort temperature indoors – heating and cooling, and to store and cook meals.¹⁰⁴ The consequences of not having secure, accessible and affordable energy service possibly affect other activities of people daily lives. Lack of access to energy service leads to degradation of “access to education, health, information and participation in politics.”¹⁰⁵ Also the issue of vulnerability to the adequate access to energy service is not only constrained to household level, but has spread more consequences in the ‘energy chain’.¹⁰⁶

Table 6. Capabilities frame in the concept of energy justice

Constituent elements	Value	Criteria
Right	Dignity, freedom, equality	Households access to sufficient energy service
Responsibility		Use less energy and more efficiently
Basic minimum level		Household size, special needs, utilization capacity

The capabilities serve as justification for social sensitivity on households’ ability to access to energy service producing favourable basis for legal recognition of the right to access to sufficient energy service with corresponding responsibilities. In other words, the capabilities confer justification for “rights claims” despite both being

⁹⁸ Martha C. Nussbaum, “Capabilities and Human Rights,” *Fordham L. Rev.* 66 (1997): 296.

⁹⁹ Martha Nussbaum, *supra* note 96: 40.

¹⁰⁰ Martha C. Nussbaum, *supra* note 98: 286.

¹⁰¹ *The Treaty of European Union*, *supra* note 19, art. 2.

¹⁰² Polly Vizard, Sakiko Fukuda-Parr, and Diane Elson “Introduction: The Capability Approach and Human Rights,” *Journal of Human Development and Capabilities* 12:1 (2011): 4.

¹⁰³ Rosi Day, Gordon Walker, and Neil Simcock, *supra* note 94: 260.

¹⁰⁴ *Ibid.*: 259.

¹⁰⁵ Mikel González-Eguino, “Energy poverty: an overview,” *Renewable and Sustainable Energy Reviews* 47 (2015): 379.

¹⁰⁶ Stefan Bouzarovski, *supra* note 34, 111.

characterized as “fundamental entitlements.”¹⁰⁷ In this sense the human being has valid claims to securing basic capabilities by granted rights based on the virtue of being human.¹⁰⁸ However, there is still uncertainty with regard to the particular right to be respected and protected. The questions emerge to determine the nature of rights, who possess them, and what the right grants.¹⁰⁹ On that account, the household should be conferred with legal right to access to energy service that secure minimum energy needs in the light of social justice and the capacity of legal enforcement. To the extent that the right is respected and protected by state, it also confers responsibility on the households to take positive action in changing energy consumption practices in using less energy and more efficiently.

One of the constituent elements of the capabilities approach acknowledges the basic minimum level of human well-being. This intellectual exercise sets the requirement to sustain a “basic minimum level for individuals to flourish.”¹¹⁰ The elaborations on basic minimum level were dismissed in the theoretical approach and left for public policies to deliberate on the required threshold to be acceptable in particular situation and context.¹¹¹ However, in the examination of the link between well-being and energy the argument in favour of threshold level for basic and secondary capabilities is presented¹¹² that inevitably requires for some level of energy service. That level should be contingent on “household size, specific individuals' needs and circumstances and on the local environment.”¹¹³ Additionally, the ability to access energy service correlates with the capacity of conversion that entails that the same level of resources to different social groups is insufficient due to their needs as well as their capacity to utilize the resources into functioning.¹¹⁴ Consequently, the establishing of minimum threshold of access to energy service solves the energy poverty issue in pursuance of securing the decent well-being of households.

The conceptualized energy justice framework suggested above, consisting of three tenets, may be not comprehensive enough for the energy injustice’s valid examination and mitigation. The transposed tenets from the environmental frame lack the capacity to capture new demands for justice with regard to minimum well-being and respect of human dignity. However, some elements of the capabilities approach are linked with distributional justice, consisting of the distribution of goods

¹⁰⁷ Polly Vizard, Sakiko Fukuda--Parr, and Diane Elson, *supra* note 102: 12.

¹⁰⁸ Martha C. Nussbaum, *supra* note 98: 293.

¹⁰⁹ Martha Nussbaum, *supra* note 96: 37.

¹¹⁰ Martha C. Nussbaum, *supra* note 98: 284.

¹¹¹ *Ibid.*: 300.

¹¹² Rosi Day, Gordon Walker, and Neil Simcock, *supra* note 94: 261.

¹¹³ *Ibid.*: 260.

¹¹⁴ Martha C. Nussbaum, *supra* note 98: 284.

and the underlying processes to sustain distribution.¹¹⁵ In addition, the recognition tenet correlates with human respect inherent in the capabilities approach, while one admits the recognition as justice to possess the same weight to social life as other capabilities.¹¹⁶ In fact, the elaboration of environmental justice was articulated by some intellectual leaders that set limited capabilities on the stance with injustices in distribution, recognition or procedural justice and called for integrating, but not contradicting either of them.¹¹⁷ Nevertheless, it is reasonable to suggest that there is a need to extend the three tenets framework by incorporating the human well-being perspective, which justifies the benchmarking of minimum access to energy service within right and responsibilities of households.

CONCLUSIONS

The current triad of tenets application in energy injustice examination in the EU is unsatisfactory and should be complemented with a capabilities approach on several grounds. First, the basic capability for human well-being infers the requirement of a minimum set of energy services based on the recognition of energy significance on human well-being. Second, the capabilities approach contributes to the justification of the fair access to energy service by indicating the different opportunities for households to convert energy service into functioning. Third, the capabilities approach stipulates the basis for the legal recognition of the households' right to access to sufficient energy service and corresponding responsibilities. Therefore, the examination of households' capacity to access to sufficient energy service in the EU should follow the capabilities, distribution, recognition, and procedural justice.

The identified conceptualization of energy justice is not only supplemented with the additional category of the capabilities approach; each of its elements is reformulated with additional criteria to better capture the social justice requirement in the access to energy service in the EU. The suggested new principals in some instances overlap between categories due to the common underlying values, such as how human well-being utilized in distributional and capabilities justice as well as the category of need in distribution and recognition justice. In sum, the categories are framed in pursuit of revealing the particularities and challenges in the access to energy service in the EU and should be considered as the whole—in other words, the holistic view is preferred.

Another benefit of the conceptualization of energy justice from the EU perspective is the base for further development of energy justice in furtherance of

¹¹⁵ David Schlosberg, *supra* note 75: 520.

¹¹⁶ *Ibid.*: 520.

¹¹⁷ *Ibid.*: 528.

demands for the remedy of specific injustices in energy system. One of its possible accommodations is the development of evaluative criteria. Such evaluative criteria could be used to assess the energy measures' compliance with the demands of justice as well as to guide the policy makers on the pivotal points in households' access to energy service. Overall, there may be many forms of application of the suggested conceptualization(s) of energy justice on diagnoses of energy injustice.

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