

South Korea's Landmark Climate Cases: Asia's First Public Hearing on Four Climate Lawsuits

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1. Background

The Constitutional Court in Korea will hold a public hearing for four climate lawsuits against the government four years after the first case was filed in 2020. The four constitutional appeals have been merged, of which public hearings will take place twice - the first on April 23rd and the second in May, marking Asia's first public hearing on climate litigation.

It is difficult to tell when the final ruling comes out, but there is a good chance that the court will reach a decision within this year, and it will be the very first decision by the highest court on the state's climate action in Asia.

Each lawsuit raises slightly different legal provisions, but they all agree on one thing: the government's climate goals are unconstitutional and violate the human rights of the plaintiffs. Consequently, these cases frame climate change as a matter of human rights, suggesting it's the government's duty to address and protect its citizens in this regard.

Meanwhile, the National Human Rights Commission(NHRC), the independent government body on human rights matters, has already issued an independent opinion on this to the government and also to the Court. Following an investigation on the impact of climate change on human rights, in December 2022, the NHRC, for the first time, submitted [an opinion to the government](#) stating that climate change is a human rights issue, and therefore, it is the state's obligation to protect citizens from it.

In August 2023, in consideration of the significance of these cases, the NHRC even decided to submit [an opinion to the Constitutional Court](#) that the government's carbon neutrality act contains unconstitutional clauses because they fail to implement minimum protection measures for the freedoms and rights of current and future generations that are violated by the effects of climate change. Now, all that remains is the public hearing and the court's ultimate ruling.

2. Key facts of the case

1) *Youth Climate Litigation*

[*Do-Hyun Kim et al. v. South Korea*](#)

- On March 13, 2020, nineteen youth activists filed suit against the government alleging that insufficient action on climate change violates their fundamental rights, including the right to live and a clean environment.

2) *Citizen Climate Litigation*

[*Byung-In Kim et al. v. South Korea*](#)

- On October 12, 2021, 123 plaintiffs filed a constitutional lawsuit against the South Korean government. The 123 plaintiffs are members of civil society organisations, leaders of political parties, and general citizens affected by climate change.
- The plaintiffs argue that the government has failed to protect their fundamental rights from climate change by setting the Nationally Determined Contributions (NDC) at “more than 35% from 2018 level” in the Article 8 of the Framework Act on Carbon Neutrality and Green Growth.

3) *Baby Climate Litigation*

[*Woodpecker et al. v. South Korea*](#)

- On June 13, 2022, 62 children - mainly under the age of five back then - filed a constitutional claim against the government, with having their parents as legal representatives.
- The plaintiffs argue that the current NDC will result in a disastrous level of climate change leading to violation of their fundamental rights.

4) *Litigation against the government's Carbon Neutrality Implementation plan*

[*Min-A Park v. South Korea*](#)

- In July 2023, 51 Korean nationals filed another constitutional appeal against the government.
- The plaintiffs argue that the government has failed to protect their fundamental rights from climate change by establishing an inadequate implementation plan for the 2030 NDC, the 1st Carbon Neutrality Plan.

3. Expected grounds for contention in court

1) Climate Change a Matter of Fundamental Rights?

- The plaintiffs argue that climate change poses a serious threat to fundamental rights, and if the state fails to adequately protect against it, the Constitutional Court should intervene.
- On the other hand, the government asserts that climate change-induced damages are abstract and uncertain future events, thus not subject to judicial review. The extent to which the irreversibility of damages and the temporal gap between emissions and harm in climate change science are considered will be crucial in determining the judgement.

2) Is South Korea Doing Its Fair Share in Climate Response?

- The plaintiffs believe that South Korea's efforts fall well short of those of other industrialised nations, whilst the government claims that its efforts are comparable.
 - **Plaintiffs**
 - **Insufficient NDC:** South Korea's current climate plans are not sufficient to keep temperature increase within the 1.5°C, thus violating the state's obligation to protect fundamental rights.
 - **Comparison with Other Nations:** When comparing the NDC reduction rates from 2010 to 2030, most developed countries have set reduction targets ranging from 40% to 60%, while South Korea's target is only 27%.
 - **Impact on Future Generations:** Scientific models indicate that South Korea's reduction target could potentially lead to a 3°C increase in global temperatures, resulting in catastrophic consequences.
 - **The Government**
 - The South Korean government has enacted several policies under the Framework Act on Low Carbon, Green Growth, and the Framework Act on Carbon Neutrality and Green Growth, with the aim of reducing greenhouse gas emissions. Consequently, it argues that it cannot be deemed in violation of its obligation to safeguard fundamental rights.
 - South Korea's greenhouse gas reduction target is based on a linear reduction path from 2018 to achieve carbon neutrality by 2050, which is similar to the reduction targets of other major economies.
 - South Korea's export-oriented industrial structure, mainly focused on manufacturing, poses challenges for greenhouse gas reduction efforts.

3) How Far Should the Discretion of the Government and the Legislature Be Acknowledged?

- The government believes that decisions on climate action should be left to elected officials, considering various factors. They argue that such matters are not suitable for judicial review to maintain the separation of powers.
- However, the claimants argue that if these decisions infringe on fundamental rights, courts should intervene, despite the government's authority in policymaking.

4.Quotes

Sejong Youn, Attorney at Plan 1.5, Counsels for the Korean Climate Litigation,
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“This lawsuit is not just a symbolic lawsuit, but a lawsuit that we can and must win. The essence of the climate lawsuit is no different from the numerous constitutional issues related to fundamental rights that the Constitutional Court has judged, such as conscientious objection of military service or right to abortion. If we delay our response to reduce the burden of climate change, that burden will be passed onto future generations. Because the voice of the future generation is not properly reflected, their fundamental rights are being violated. And because there will be no opportunity to solve it later, a prompt decision by the Constitutional Court is urgently needed.

Over the past four years, courts around the world have issued rulings stating that the government's lax response to climate change violates human rights and fundamental rights. This climate constitutional petition case is the first in Asia to address this issue, drawing global attention. We are currently depleting the rights of future generations. This is clearly a violation of the rights of the minority by the majority, and preventing such infringements is the essential role and duty of the Constitutional Court.

The IPCC emphasises that the extent of reductions by 2030 will be a crucial determinant of the success or failure of climate change response. We hope that the Constitutional Court's judgement will mark the beginning of substantial climate action before the window of opportunity closes.”

Dr. Maria Antonia Tigre, Director, Global Climate Litigation, Sabin Center for Climate Change Law mb4913@columbia.edu

"Climate litigation is witnessing exponential growth worldwide, yet this growth remains uneven across regions. The recent positive development in Asian courts, especially from a rights-based perspective, echoes trends seen in Europe and Latin America.

While climate cases in the Global North often dominate headlines, those in the Global South often go unnoticed. However, each development, like this one, offers valuable insights for a comprehensive analysis of climate litigation trends globally. Positive rulings, like the one we're witnessing, have a ripple effect across borders.

They not only bolster pending cases but also inspire the filing of new ones. This cross-fertilization is crucial for advancing climate justice on a global scale."

**Mie Asaoka, President of Kiko Network, Attorney at Law,
(Japanese civil society's expectations of the Korean Constitutional Court)
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"South Korea and Japan are neighbouring countries and share the same problems in addressing the climate crisis. Future generations are the ones who will be forced to bear the damage and burden of inadequate climate change. The fact that the Constitutional Court of South Korea will face the young people's case for the government to raise the target head-on is a boost for Japan's current and future climate litigation. The decision will not only have a major impact on the Japanese courts, which still do not see climate change as a human rights issue, but will also accelerate transitioning away from fossil fuels in the Asian region."

5. FAQ

- **How are the cases in Korea related to other litigation cases around the world?**

[Neubauer, et al. v. Germany](#)

In 2021, the German Federal Constitutional Court made a landmark ruling declaring that the reduction targets outlined in the German government's climate protection law are unconstitutional. Notably, the German court deemed even more ambitious reduction targets unconstitutional, emphasizing the critical consideration of carbon budget depletion. This decision is particularly noteworthy given Germany's legal framework, which bears resemblance to Korea's Constitutional Court system, and the shared characteristics of their legal systems. The German climate ruling carries significant implications for South Korea.

[KlimaSeniorinnen v Switzerland \(ECtHR\)](#)

The recent landmark ruling from the European Court of Human Rights (ECtHR) on the Swiss elderly ladies case against Switzerland highlights that climate change is a matter of human rights and fundamental freedoms. The ruling carries implications for all the 46 signatory countries of the European Convention on Human Rights. It reaffirms that governments have an obligation to address climate change to prevent violations of fundamental rights.

- **When will the final judgement be made?**

While it's difficult to precisely predict when the Constitutional Court will reach a decision, a decision could be made within 2 to 4 months after the second public debate, scheduled for May.

- **How does the public hearing proceed on the day of 23rd April?**

- 12:30 (GMT+9): Press conference in front of the Constitutional Court
- 14:00~18:00 (GMT+9): Public hearing
 - The procedure during the public hearing includes presentations by representatives from both sides, followed by testimonies from expert witnesses, questioning of witnesses, and finally, questioning of representatives by the bench.
 - The Constitutional Court has requested expert witnesses on atmospheric science and climate diplomacy for both the government and the plaintiffs.
 - If you wish to attend the public hearing, you can apply through the website of the [Constitutional Court](#).

- **What happens after the Constitutional Court's ruling?**

If the Constitutional Court rules a law unconstitutional, the National Assembly must revise the unconstitutional provisions within the period specified by the court. Failure to do so within the specified period results in automatic nullification of the law. Hence, if the Constitutional Court declares the Framework Act on Carbon Neutrality and Green Growth's reduction target unconstitutional, it's expected that the National Assembly will amend the law to reflect the court's decision, leading to adjustments in enforcement decrees and basic plans accordingly.

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- If you would like to interview the plaintiffs, please do reach out.