

South Korea's Landmark Climate Cases: Asia's First Public Hearing on Four Climate Lawsuits - *Summary of the First Hearing*

May 2024

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1. The second public Hearing

- Date: May 21 (Tues)
- 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: testimony on international negotiations by experts called by the petitioners and the government, witness examination, court's questioning of the representatives, final statement from three petitioners in three lawsuits, closing arguments by counsel from both sides.
- **Final speakers and speaking order for the petitioner side:**
 - **Youth Climate Lawsuit:** KIM Seo-Kyung, activist (Age 21; Aged 17 at the time of filing the Youth Climate Lawsuit in 2020)
 - **Citizens' Climate Lawsuit:** HWANG In-Cheol Hwang, Climate Energy Team Leader at Green Korea
 - **Children's Climate Lawsuit:** HAN Je-Ah, petitioner (6th grade at an Elementary School; 4th grade at the time of filing the Children's Climate Lawsuit in 2022)

→ The script of final statements of the three petitioners will be shared on the day of the hearing.

2. Key points of the first public hearing

- Key points under the key question: Do the government's greenhouse gas reduction targets infringe upon the petitioners' fundamental rights?

→ Are Korea's 2030 targets and implementation pathways sufficient to protect fundamental citizen rights?

Petitioners: The Paris Agreement's 1.5-degree temperature target is a goal agreed upon by countries across the globe to prevent climate catastrophe. However, the greenhouse gas reduction targets submitted as part of countries' Nationally Determined Contributions (NDCs) are insufficient, with average global temperatures projected to rise up to 2.9 degrees. An infringement upon the petitioners' fundamental rights due to climate change is therefore inevitable, as the targets - including Korea's - fail to meet the minimum measures required to safeguard the fundamental rights of citizens.

Government: The Korean government is actively engaging in global climate response and employing all means feasible to attain carbon neutrality by 2050. Under the progression principle set forth in Article 4 of the Paris Agreement, it is impossible to regress from a goal once established and, therefore, a goal should be set carefully. Furthermore, implementing a goal is more important than the goal itself.

→ Compared with other major countries' reduction targets, is Korea making sufficient efforts to uphold fundamental rights by assuming its 'fair share'?

Petitioners: The Climate Action Tracker has assessed that South Korea's NDCs are "[highly insufficient](#)" to meet the temperature goals set by the Paris Agreement.

The NDCs submitted by each country under the Paris Agreement must be sufficient to achieve the temperature limitation goal and meet each country's 'fair share' in compliance with the 'common but differentiated responsibilities' (CBDR) principle. Failure in this regard would render the international community's goals relating to the climate crisis unattainable. The greenhouse gas reduction target submitted by Korea, a developed country, is significantly lower than those of other major countries. An evaluation of its level of ambition shows the target is

insufficient and would result in a 3-degree global average temperature increase. Korea cannot expect or demand other countries to step up if it fails to meet its own fair share. The country's shortcomings would ultimately increase the likelihood of global failure in addressing climate change, and significantly infringe upon the petitioners' fundamental rights.

Government: The essence of the Paris Agreement lies in empowering each country to autonomously establish and implement their NDCs, taking into account the lessons learned from the shortcomings of the Kyoto Protocol. Korea, projected to reach its emission peak later than other countries, must achieve reductions within a short timeframe. Therefore, the 40% reduction target presents a formidable challenge demanding nationwide participation and a significant socioeconomic transition. It must be considered that Korea relies more heavily on manufacturing in its industrial structure compared to other countries, which adds complexity to achieving immediate emissions cuts.

Country	Net emissions(million tons)		Reduction rate in 2030 compared to 2018	Average annual reduction rate from 2018 to 2030
	2018	2030		
Germany	838.5	450.5	46.3%	5.05%
US	5989.7	3281.0	45.2%	4.89%
France	427.2	235.8	44.8%	4.83%
UK	469.4	261.6	44.3%	4.76%
Canada	713.3	425.0	40.4%	4.22%
Italy	388.5	233.1	40%	4.17%
South Korea	686.6	436.6	36.4%	3.7%
Japan	1186.9	760.0	36%	3.65%

→ **When considering the concept of a 'carbon budget', are Korea's climate targets and the pathways to achieve them adequate to protect the petitioners' fundamental rights and consistent with intergenerational justice?**

Petitioners: Greenhouse gases released into the atmosphere accumulate and continually elevate temperatures. This process is comparable to the water level gradually increasing when a tap is left running in a bathtub. Just as there is a cap on the amount of water that can be discharged until it reaches a certain level in the bathtub, there is a similar limit on the amount of greenhouse gases that can be emitted in order for a specific temperature limitation goal to be reached. The estimated remaining amount of carbon that can be emitted is known as the

'carbon budget'. Furthermore, what determines the level of global temperature rise is not the achievement of a greenhouse gas emissions target at a specific point in time, but rather the total amount of greenhouse gases emitted throughout the process of reaching the target. Ultimately, compliance with the carbon budget determines whether the temperature limitation goal is met.

Reports from the German and European Union scientific advisory bodies have presented the opinion that it is reasonable and fair to distribute the remaining carbon budget among countries on a per capita basis. The German Federal Constitutional Court considered Germany's remaining carbon budget in its ruling, adopting the per capita basis. An evaluation of Korea's carbon budget on a per capita basis shows that, it would be depleted before 2030.

Indeed, Korea's current reduction target and implementation plans would nearly exhaust the country's carbon budget before 2030, leaving almost nothing for future generations. Moreover, the government has shifted the majority of the greenhouse gas reduction burden onto future generations through a steep greenhouse gas emissions reduction pathway, thereby violating intergenerational equity and infringing upon the basic rights of future generations.

Government: The carbon budget serves as a valuable framework for establishing a global goal; nevertheless, it cannot determine the appropriateness of individual countries' greenhouse gas reduction targets. Furthermore, the allocation of carbon budgets to countries according to the per capita principle is inherently arbitrary. Debates encompass diverse considerations including emissions magnitude, and GDP, among others, yet finding a consensus or a definitive benchmark remains elusive. Additionally, assigning quotas to nations in such a manner contravenes the spirit of the Paris Agreement, which is based on voluntary, bottom-up implementation.

It is true that the reduction target is high in the latter stages of the implementation plan. This is because it takes time for the actual effects to manifest after the full implementation of the reduction policy. Korea requires a major improvement in its industrial structure while the development of necessary technologies takes significant time. Thus, there is a time lag between policy implementation and its effects.

→ When considering the global emission reduction pathways presented in the IPCC report, is Korea making sufficient efforts to reduce greenhouse gases?

Petitioners: Taking into account the principle of common but differentiated responsibilities as outlined in the Paris Agreement, it is imperative for Korea, an advanced nation, to establish targets surpassing the global reduction pathway so that the reduction pathway advocated by the IPCC is met. While the IPCC's

average reduction pathway proposes a 43% reduction by 2030 compared to 2019 levels, Korea falls behind at 34% based on the same benchmark.

Government: The IPCC report outlines a global-level reduction rate under assumptions of carbon budgets or specific target temperatures, instead of detailing reduction rates for individual countries. Moreover, these figures are expressed as ranges and probabilities. Thus, it is difficult to evaluate the sufficiency of Korea's reduction targets based on such criteria.

→ **Does the absence of greenhouse gas reduction targets and implementation regulations after 2030 constitute a violation of citizens' fundamental rights?**

Petitioners: Korea's Framework Act on Carbon Neutrality and its Enforcement Decree only specify the country's 2030 greenhouse gas reduction target as a 40% reduction compared to 2018 levels, without further establishing a target or yearly measures for the period beyond 2030. The German Federal Constitutional Court ruled that the absence of post-2030 reduction targets in the German Federal Climate Protection Act was unconstitutional. In response, the amended German Federal Climate Protection Act brought forward the country's carbon neutrality target by five years, from 2050 to 2045, and strengthened the 2030 target from 55% to 65%. Moreover, the amended Act introduced a binding 2040 target by delineating specific numerical objectives in the statute, rather than providing vague targets. This underscores the German government's commitment to go beyond mere goal setting and to actively implement those goals.

Korea fails to enact legal provisions to ensure compliance with its reduction targets. Thus, if targets are not met in the preceding year, there is no regulation to guarantee implementation in the current or following year. Considering that the Korean government has never once achieved its greenhouse gas reduction targets, the absence of provisions in the Framework Act on Carbon Neutrality to ensure this compliance is unconstitutional and in violation of the government's obligation to protect citizens' fundamental rights.

Government: The government has set mid-to-long-term reduction targets - i.e., achieving carbon neutrality by 2050 and a 40% reduction by 2030 - and put in place yearly and sectoral measures to achieve such targets. Thus, it cannot be seen as unconstitutional. Moreover, the Paris Agreement requires the submission of more advanced greenhouse gas reduction targets than the previous ones every five years. Therefore, it is difficult to concede that there is a lack of targets after 2030.

→ **Is the government's abandonment of the 2020 reduction target unconstitutional?**

Petitioners: The now-defunct Framework Act on Low Carbon, Green Growth lacked provisions guaranteeing the implementation of Korea's greenhouse gas reduction targets. The government failed to achieve the 2020 greenhouse gas reduction target established in 2010 - instead, emissions continued to increase during that period. In 2016, the government unilaterally abandoned the 2020 greenhouse gas reduction target by amending the Enforcement Decree. Moreover, the 2030 greenhouse gas reduction target presented to the international community in that year essentially deferred the 543 Mt (megatonne) reduction target, which should have been achieved by 2020, by a decade. Similarly, the current Framework Act on Carbon Neutrality also lacks the means to enforce its objectives. Therefore, the statute is unconstitutional due to its violation of the duty to safeguard fundamental citizen rights.

Government: It should be viewed as a shift in the targeted timeframe in line with international trends during the transition from the Kyoto Protocol regime to the Paris Agreement, rather than focusing on whether the goals were achieved or not.

2. Developments in the South Korean government's greenhouse gas reduction targets

2009

- December 7 to 18: Conference of Parties held in Copenhagen, Denmark (COP15).
- The Lee Myung-Bak administration submitted a 2020 reduction target (543 Mt) to the UNFCCC Secretariat, pledging to reduce emissions by 30% compared to the projected emissions for 2020 (776 Mt).
- The National Assembly passed the Framework Act on Low Carbon, Green Growth. The statute came into effect together with the Enforcement Decree on April 14, 2010.

2010

- April 14: The Enforcement Decree of the Framework Act on Low Carbon, Green Growth stipulates reduction targets.
- Article 25(1) sets a 30% reduction target compared to 2020 Business As Usual (BAU). The 2020 BAU refers to the projected future emissions assuming no additional reduction measures are taken beyond current policies.

- “The greenhouse gas reduction target shall be to reduce national greenhouse gas emissions by up to 30/100 compared to the greenhouse gas emissions forecast for 2020.”

2015

- June: The Park Geun-Hye administration submitted the country's 2030 targets to the UNFCCC, which were similar to the existing 2020 goals but with a ten-year delay in the timeline (a 37% reduction compared to the projected emissions for 2030 - 536 Mt).
- December: The international community adopted the Paris Agreement at the Paris Conference of Parties (COP21).

2016

- May 24: The Park Geun-Hye administration amended Article 25(1) of the Enforcement Decree of the Framework Act on Low Carbon, Green Growth.
- The government abandoned the 2020 target and replaced it with a target for 2030.
 - “The greenhouse gas reduction target shall be to reduce the national greenhouse gas emissions by 37/100 by 2030 compared to the projected greenhouse gas emissions for 2030.”

2020

- December: The Paris Agreement mandates member countries to submit greenhouse gas reduction targets every five years. The Moon Jae-In administration submitted its 2030 greenhouse gas reduction target to the UNFCCC and changed the calculation method.
 - The submitted plan changed the calculation method from the previous BAU approach (37% reduction compared to the 2030 BAU) to an absolute reduction target (24.4% reduction compared to 2017). However, while the calculation method changed, the absolute target remained the same at 536 Mt.
 - Nevertheless, the proportion of domestic reduction increased compared to the previous plan - domestic reduction increased from 16.5% to 21.4% while overseas reduction decreased from 7.9% to 3%.

2021

- September: The Framework Act on Carbon Neutrality was promulgated.
 - The greenhouse gas reduction target explicitly states a reduction of at least 35% compared to 2018 emissions by 2030.
- October: The 2030 reduction target was adjusted to a 40% reduction compared to 2018 emissions.

- However, the figure "40%" was calculated by applying different criteria for the base year and the target year - i.e. total emissions was used for 2018 and net emissions was used for 2030.
- Refer to the related Q&A below for more details.

2022

- March 25: **The Enforcement Decree of the Framework Act on Carbon Neutrality came into effect.**
- **The greenhouse gas reduction target is confirmed to be a 40% reduction by 2030 compared to 2018 emissions.**

4. Key Q&As

- **Total emissions and net emissions, what exactly do they mean?**

: 'Total emissions' refers to the combined amount of emitted greenhouse gases. On the other hand, 'net emissions' refers to the amount of emissions calculated by subtracting the amount of greenhouse gases absorbed by oceans, soils, forests, etc. from total emissions, which often results in a lower figure.

The total greenhouse gas emissions for 2018, which is currently used as the baseline in setting Korea's reduction targets, was 727.6 Mt. When the government announced its reduction target in 2021, it projected 2030 emissions to be 436.6 Mt (based on net emissions). At the time, the government was criticized for employing a "trick" by using the total emissions, a greater figure, for the base year while using the net emissions, a smaller figure, for the target year - this allowed it to maximize the reduction rate in contrast to allowing a direct comparison of total emissions to total emissions or net emissions to net emissions.

Petitioners: When comparing Korea's reduction targets with those of other countries or the IPCC pathways, it is essential to standardize the comparison based on net emissions. When comparing the net emissions baseline in 2018 with the target for 2030, the reduction rate level is only 36.4%, which highlights a more significant gap compared to the IPCC pathways or other major advanced countries.

The Government: Under the Kyoto Protocol regime, the targets were primarily set based on total emissions. However, the shift to net emissions for targets followed the approach adopted by many advanced countries during the transition to the Paris Agreement. There was no intention to inflate by using different criteria.

- **According to the Paris Agreement, countries are required to set their own reduction targets. Shouldn't domestic laws and autonomy take precedence over international law?**

: The primary aim of the Paris Agreement is to achieve specific temperature limitation goals and mitigate the impacts of climate change. While the Agreement allows countries to voluntarily set their NDCs, these targets must adhere to the principle of 'common but differentiated responsibilities' concerning temperature limitation goals. Hence, simply establishing targets, regardless of their content, is insufficient.

As a ratified signatory to the Paris Agreement, Korea is bound by international law to uphold its provisions. However, what holds greater importance is whether the government fulfills its obligation to safeguard the fundamental rights of its citizens from the impacts of climate change. Compliance with the objectives of the Paris Agreement can serve as a critical benchmark in determining the fulfillment of this duty.

- **While each country faces unique circumstances, why do legal rulings from abroad hold significance for Korea?**

: As climate change escalates, the failure of legislative and executive actions to meet the challenge at the scientifically demanded level is a common issue in many countries worldwide. Consequently, climate lawsuits have emerged in various countries, prompting judiciaries to assess their governments' responses to climate challenges. From this angle, climate litigation taking place in different countries shares considerable legal and factual similarities.

In particular, in climate lawsuits against governments, the primary issues often revolve around the infringement of constitutional rights or rights under international human rights agreements. Therefore, legal principles presented in overseas rulings carry significant implications for this case.

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