

Constitutional Nonconformity Decision on the National Greenhouse Gas Reduction Target for Responding to the Climate Crisis

I. Overview of the Case and Subject Matter of Judgment

1. Overview of the Case

This case consolidates several constitutional complaints filed by claimants, including members of youth environmental organizations, fetuses, and children, who argue that the state's greenhouse gas reduction targets are insufficient, thereby infringing on their fundamental environmental rights and violating the state's duty to protect.

2. Subject of Judgment

A. Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis (hereinafter referred to as the "Carbon Neutrality Framework Act"), enacted as Law No. 18469 on September 24, 2021.

Article 8 (National Mid- and Long-Term Greenhouse Gas Reduction Targets) (1) The Government shall set a national medium- and long-term greenhouse gas emission reduction target (hereinafter referred to as "mid-to long-term reduction target") to reduce national greenhouse gas emissions by a ratio prescribed by Presidential Decree to the extent of not less than 35 percent from the 2018 levels by 2030.

B. Enforcement Degree of the Carbon Neutrality Framework Act (enacted as Presidential Decree No. 32557 on March 25, 2022)

Article 3 (National Mid- and Long-Term Greenhouse Gases Reduction Targets) (1) "Ratio prescribed by Presidential Decree" in Article 8 (1) of the Act means 40 percent.

C. The First National Carbon Neutrality and Green Growth Master Plan (hereinafter referred to as the "Master Plan"), established by the government on April 11, 2023

Related Areas

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The sections on “V. Mid- to Long-Term Reduction Targets” specifically “b. Sectoral Reduction Targets” and “c. Annual Reduction Targets” (hereinafter referred to as the “Sectoral and Annual Reduction Targets”)

II . Key points of the Constitutional Court Decision

1. Criteria for Assessing Environmental Rights Infringement

The Constitutional Court recognized the right to a healthy and pleasant environment as a fundamental right encompassing both freedom and claim-based rights, and determined that environmental rights have a comprehensive fundamental nature.

Article 35, Paragraph 2 of the Constitution stipulates, “the content and exercise of the environmental right shall be determined by law.” Accordingly, so it assesses whether adequate and efficient minimum protective measures have been taken in accordance with the ‘Principle of No Under-Protection,’ and evaluates if the law specifies the level of protection, in relation to the principle of legal reservation.

2. Judgment on Article 8, Paragraph 1 of the Carbon Neutrality Framework Act

A. Violation of the Principle of No Under-Protection

The Constitutional Court found it difficult to conclude that the 40% reduction target for 2030 set by Article 8, Paragraph 1 of the Carbon Neutrality Act was insufficient or that the method of achieving the target was ineffective. However, since Article 8, Paragraph 1 does not present any quantitative criteria for targets beyond 2030, it cannot ensure effective continuous reduction up to the 2050 carbon neutrality goal. Thus, the Court determined it violated the Principle of No Under-Protection by regulating reduction targets in a manner that shifts excessive burdens to the future.

B. Violation of the Principle of Legal Reservation to the Law

The Constitutional Court judged that setting the greenhouse gas reduction target for 2030 falls within specialized and technical areas, and considering socio-economic and diplomatic situations, not detailing this in the law does not constitute a violation of the Principle of Legal Reservation.

However, considering the diverse and potentially conflicting interests surrounding reduction targets, planning mid- to long-term greenhouse gas reduction targets and pathways requires a high level of social consensus. Thus, not specifying even a rough quantitative level for reduction targets from 2031 to 2049 violated the Principle of Legal Reservation, including the Principle of Parliamentary Reservation.

C. Judgment on the Sectoral and Annual Reduction Targets

The Sectoral and Annual Reduction Targets **involve adjusting reduction shares among sectors and the reduction pathway from 2023 to 2030. Given factors such as the time required for**

technology development and commercialization, and the lag between policy implementation and effect, it was not deemed a violation of the Principle of No Under-Protection solely because of shifting future burdens. The Court recognized that these targets were considered comprehensively with technical-economic conditions and inter-sectoral relationships. The Constitutional Court found that the specific adjustment of reduction proportions across sectors and the resulting reduction pathway from 2023 to 2030 has unavoidable aspects. These include the time needed for technological development and commercialization, as well as the time lag between the full implementation of policies and their effects. Since the targets take into account a comprehensive range of factors, such as technological and economic conditions and the interrelationship between individual reduction measures and sectors, the court ruled that the mere fact that some burden is shifted to the future does not constitute a violation of the Principle of Under-Protection Prohibition.

III. Implications

This decision by the Constitutional Court is the first in Asia to address a state's responsibility in responding to the climate crisis constitutionally, making it a landmark case with significant impact on South Korea's climate policy. The decision emphasizes the state's constitutional obligation to take substantial and specific measures to protect the environmental rights of its citizens, highlighting the need to raise the legal standards for climate policy formulation.

Compared to climate litigation cases in advanced countries like the Netherlands and Germany, this decision, while not specifying reduction target rates, applies similar logic by pointing out that the lack of post-2031 targets fails to adequately protect citizens' environmental rights.

This case is expected to stimulate further discussion on energy transition and could lead to a reorientation of policies towards balancing renewable energy expansion and low-carbon power sources, including nuclear energy. The decision strongly indicates the need for the government and National Assembly to swiftly develop specific climate response policies and underscores the importance of social dialogue and the involvement of various stakeholders in future climate policy development.

In light of this Constitutional Court's decision, Yulchon plans to actively provide legal advice on changes in Korea's climate policy and energy transition. We intend to offer tailored solutions for legal response strategies and policy formulation for climate crisis to the government, National Assembly, businesses, and civic organizations. Through this, Yulchon aims to play a crucial role as a partner in building sustainable climate policies and energy transition strategies.