

Constitutional Complaint by “Youth 4 Climate Action”

(Executive Summary)

7 April 2020



Youth4ClimateAction Constitutional Complaint

➤ Parties

1. Petitioners: 19 Members of Youth4ClimateAction
 - Co-counsel for the Petitioners: S&L Partners and Solutions or Our Climate

2. Respondents:
 - National Assembly of Korea
 - President of Korea

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➤ Claims

Petitioners ask the Constitutional Court to find:

- Article 42(1)1 of the Framework Act on Low Carbon, Green Growth (as enacted on 13 Jan 2010) (the “**Statutory Provision**”) unconstitutional.
- The exercise of governmental power by the Respondent President abolishing the “2020 Greenhouse Gas Emission Reduction Target” as set out in Article 25(1) of the Enforcement Decree of the Framework Act on Low Carbon, Green Growth (the “**Enforcement Decree Provision**”) unconstitutional.
 - The target was abolished when the Enforcement Decree Provision was amended on 24 May 2016.
- The Enforcement Decree Provision as amended on 31 Dec 2019 unconstitutional.

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➤ Infringed Rights

- The right of younger generations to life, the pursuit of happiness, and to resist against human extinction (Article 10 of the Constitution)
- The right of younger generations to live in a healthy and pleasant environment (Article 35(1) of the Constitution)
- Inequality between the adult generation who can enjoy the relatively pleasant environment and the youth generation who must face the fatal climate change disaster (Article 11 of the Constitution)
- The obligation of the State to prevent disasters and to protect the citizens from the dangers of environmental disasters (Article 34 of the Constitution)
- Nondelegation doctrine, i.e., prohibition against blanket delegation of authority to lower-level regulations (Article 75 of the Constitution)
- Legal protection of the environmental rights (Article 35(2) of the Constitution)
- Prohibition of under-protection

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➤ Reasons for the Claims

❖ Summary of the Case

- 1. Fatal Risk Posed by Climate Change:** The following facts are undisputed among global climate scientists, global leaders (e.g., UNFCCC, Paris Agreement, IPCC), and the Korean government
 - If the current temperature trend continues, humans will face unbearable climate crisis
 - The earth's temperature has already risen by about 1.1°C from pre-industrial levels
 - In order to contain the rise of the earth's temperature to 1.5 °C (or well below 2°C) in accordance with the Paris Agreement, the concentration of carbon dioxide in the atmosphere should be maintained below 430 (or 450ppm).
 - However, it has been largely agreed that with the current global GHG reduction targets, the earth's temperature will increase by more than 3 °C by the end of the 21st century.

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➤ Reasons for the Claims

❖ Summary of the Case

2. Irrevocable damage to be suffered by younger generations

- Petitioners not only are being affected by climate change at present but will also face irrevocable damage from climate crisis in the future.
- There is inevitable generational inequality between the parents' generation and the children's when it comes to damage caused by climate change.

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➤ Reasons for the Claims

❖ Summary of the Case

- 3. Insufficient and unconstitutional measures taken by the Korean Parliament and the government regarding GHG emissions**
 - As the 5th largest emitter of GHG among OECD countries, Korean Parliament and the government have constitutional obligation to protect its people from climate crisis caused by GHG emissions.
 - However, (i) the Statutory Provision legislated by the Korean Parliament gave the government total discretion to set the GHG reduction target without providing any specific guidelines, (ii) the President repealed by way of amending the Enforcement Decree the initial “2020 GHG reduction target” in 2016 without any implementation, and (iii) the reduction target set by the Enforcement Decree Provision is far short of what is necessary to satisfy the temperature rise threshold acknowledged by the global community.

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➤ Reason for the Claims

❖ Unconstitutionality of the Statutory Provision and Enforcement Decree Provision

1. Infringement of Petitioners' Basic Rights

- Korea is facing imminent environmental crisis from climate change. Respondents have the constitutional obligation to protect the basic rights of its citizens. As such, Respondents have to effectively regulate GHG emissions in Korea to contain the rise of the earth's temperature to, at the least, to a level compatible with the Paris Agreement.
- However, Respondents are insufficiently regulating GHG emissions in Korea, in violation of the constitutional principles of nondelegation and prohibition against under-protection. In so doing, Respondents are infringing the basic rights of Petitioners guaranteed under the Constitution (e.g., right to life and right to clean environment).

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➤ Reasons for the Claims

❖ Unconstitutionality of the Statutory Provision and Enforcement Decree Provision

2. Violation of the Nondelegation Doctrine/Principle Against Blanket Delegation (Art. 75 of Constitution) and the Legal Guarantee of the Environmental Right (Art. 35(2) of Constitution)

- The Statutory Provision does not provide for any standards or scope for setting a GHG reduction target. Instead, it merely states that “The government shall determine a GHG reduction target.”
- In doing so, the Statutory Provision violates Article 75 of the Constitution that requires a specific scope of delegation when a law delegates certain matters to its enforcement decree (i.e., the prohibition against blanket delegation).
- The Statutory Provision also violates Article 35(2) of the Constitution that provides that “the substance of environmental right shall be determined by the Act” (i.e., the legal guarantee of the environmental right).

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➤ Reasons for the Claims

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3. Infringement of Petitioners' Right to Life and Right to Environment

A. Climate Crisis in Korea and Specific Damage to Petitioners

- Signs of serious environmental disasters and increased health risk due to climate change are even noted in official documents from the Korean government:
 - temperature rise, subtropicalization, rising sea temperature and sea levels, and increasing extreme weather conditions in Korea are already evident
 - Increasing damages to property and people's health due to heavy rain, typhoons, and heavy snow caused by climate change
- The foregoing damages are infringing the basic rights of citizens of Korea, let alone Petitioners.

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B. Violation of the Principle Against Under-Protection

- The Constitutional Court in Korea has held that the standard of review in determining whether the State fulfilled its obligation to protect the rights of its citizens to live in a healthy and pleasant environment is to apply the principle of prohibition against under-protection. The test is whether the State has taken, at the least, adequate and effective minimum protective measures to protect rights of the citizens.
- However, (i) the Statutory Provision legislated by the National Assembly of Korea gave the government total discretion to set the GHG reduction target without providing any specific guidelines, (ii) the President repealed by way of amending the Enforcement Decree the initial “2020 GHG reduction target” in 2016 without any implementation, and (iii) the reduction target set by the Enforcement Decree Provision is far short of what is necessary to satisfy the temperature rise threshold acknowledged by the global community.
- As such, the Statutory Provision and Enforcement Decree Provision do not pass the test of “at the least, adequate and effective minimum protective measures to protect rights of the citizens.”

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4. Standing

- This constitutional complaint satisfies all requirements of standing
 - Subject matter of the constitutional complaint is the Act and the Enforcement Decree that are the outcome of the exercise of legislative rights of the National Assembly of Korea and the President
 - Petitioners are suffering direct, present, and relevant harm from the Statutory Provision and Enforcement Decree Provision in question
 - Petitioners have satisfied the exhaustion of remedy
 - There is no issue of statute of limitations