

On February 22, 2024, the Tokyo High Court dismissed all of the citizens' (appellants) appeals.

Firstly, regarding the non-recognition of the threat of climate change in the first instance judgment, the court recognized the danger of climate change as fact, citing both the IPCC Fifth Assessment Report and IPCC Special Report on Impacts of Global Warming of 1.5°. The court stated, "Indeed, it is a serious and grave situation that climate change is causing weather disasters and changes in ocean conditions in various parts of the world, including Japan, and causing various damages to people." On this point, the court acknowledged the effects of climate change on marine ecosystems, in response to the appellants' claims.

Secondly, concerning the standing, the court stated that the Basic Matters relating to the Guidelines to be Established by the Competent Minister in Accordance with the Provisions of the EIA Act, as well as Ministerial Order of EIA, clearly treats greenhouse gases differently from other evaluation items for which studies, forecasts, and assessments should be conducted to ascertain the effects on human health and the living environment, with the aim of ensuring the protection of human health and the preservation of the living environment. Consequently, the court concluded that the abovementioned regulations governing CO<sub>2</sub> did not include the intent to protect the individual interests of each person. Furthermore, it stated that "the interest to not suffer damage caused by global warming due to CO<sub>2</sub> cannot be legally protected as concrete individual interests that are not absorbed by general public interests" because the alleged power plant is not considered to particularly increase the threat of damage in relation to a specific range of individuals.

Thirdly, regarding the non-consideration of the alternatives of fuel sources, the court denied illegality because the based regulations of the conducted EIA "only require consideration of multiple alternatives for the structure or layout of the power generation facilities, the location where the project will be implemented, or the scale of the project".

Fourthly, regarding the fact that carbon dioxide has not been selected as a consideration factor at the planning phase, the court stated that "The annual emissions of CO<sub>2</sub> from the operation of the new power plant (approximately 7.26 million tCO<sub>2</sub>/year) are only about 1/5000th of the global CO<sub>2</sub> emissions in 2015 and about 0.64% of Japan's total CO<sub>2</sub> emissions in 2006. The CO<sub>2</sub> emitted by the thermal power plant itself does not directly affect the environment. It causes climate change on a global scale in combination with emissions from other sources, to materialize natural disasters resulting various types of damage. Therefore, it is difficult to conclude that the CO<sub>2</sub> emissions from the new power plant alone will significantly increase the scale or frequency of damage caused by disasters due to global warming". Additionally, the court noted that the alleged operator plans to adopt USE power generation equipment to reduce CO<sub>2</sub> emissions. Further, the EIA Guideline for power plants states that CO<sub>2</sub> is not an item that is expected to have a significant environmental impact in a typical project.. Consequently, the court concluded that it was not illegal not to select CO<sub>2</sub> as a consideration factor in the planning stage.

Fifthly, regarding the application of the Improvement and Replacement Rationalization Guideline, the applied "Simplified Replacement Assessment" in this case is principally applicable in the case of replacement when the environmental impact has been reduced. In

reality, however, the power plant before the replacement in this case had hardly been in operation since 2000. Thus, in 2015, when the construction of the two power plants was planned, the local air quality had improved considerably and stably. However, the court held that, even under these circumstances, a reduction in the actual environmental impact compared to recent operations was not a necessary requirement for the application of the Simplified Replacement Assessment. Therefore, there was nothing illegal in applying this type of Assessment on the grounds that emissions were lower than in 1970, when the plant was operating at maximum capacity.