

# The Constitutional Court of Korea

## PRESS RELEASE

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### Case on the National Greenhouse Gas Reduction Targets Addressing the Climate Crisis

August 29, 2024, 2020Hun-Ma389, 2021Hun-Ma1264, 2022Hun-Ma854, 2023Hun-Ma846 (consolidated), reviewing the constitutionality of Article 42, Section 1, Item 1 of the *Framework Act on Low Carbon, Green Growth*, etc.

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#### Summary of the Facts

1. This case concerns whether the following, among others, infringe the fundamental rights, including the environmental right, of Complainants in addressing the climate crisis:

- (1) Article 8, Section 1 of the *Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis* (hereinafter referred to as “*Carbon Neutrality Framework Act*”) and Article 3, Section 1 of the Enforcement Decree of the same Act, which prescribe the 2030 national greenhouse gas (GHG) reduction target of the Republic of Korea; and
- (2) The part setting the sectoral and annual GHG reduction targets for the period from 2023 to 2030 in the *First National Plan for Carbon Neutrality and Green Growth* that the government of the Republic of Korea established on April 11, 2023 (hereinafter referred to as “sectoral and annual reduction targets of the case”).

Article 8, Section 1 of the Carbon Neutrality Framework Act prescribes that the government shall set “a national mid- and long-term greenhouse gas reduction target” “to reduce national greenhouse gas emissions by a ratio prescribed by Presidential Decree not less than 35 percent from the 2018 level by 2030.” Article 3, Section 1 of the Enforcement Decree of the same Act prescribes that ratio as 40 percent.

The part setting the sectoral and annual GHG reduction targets for the period from 2023 to 2030 in the First National Plan for Carbon Neutrality and Green Growth is an administrative plan in which the government set specific numerical targets of the national GHG emissions and removals by sector and by year in accordance with Article 8, Section 2 and Section 3 of the Carbon Neutrality Framework Act in order to achieve the aforementioned mid- and long-term reduction target.

2. Complainants of the case **2020Hun-Ma389**, born between February 15, 2001 and November 6, 2006, are members of the youth environmental organization ‘Youth 4 Climate Action’. On March 13, 2020, they filed a constitutional complaint regarding, among others, Article 42, Section 1, Item 1 of the former *Framework Act on Low Carbon, Green Growth* (hereinafter referred to as “**former Green Growth Act**”) and Article 25, Section 1 of the Enforcement Decree of the same Act. They submitted an application to add Article 8, Section 1 of the *Carbon Neutrality Framework Act* to the subject matter of review on February 16, 2022 and another application to add Article 3, Section 1 of the Enforcement Decree of the *Carbon Neutrality Framework Act* to the subject matter of review on June 8, 2022.

Complainants of the case **2021Hun-Ma1264** filed a constitutional complaint regarding Article 8, Section 1 of the *Carbon Neutrality*

*Framework Act* on October 12, 2021.

Complainants of the case **2022Hun-Ma854**, as an unborn fetus and those born between January 4, 2012 and March 25, 2022, filed a constitutional complaint regarding Article 3, Section 1 of the Enforcement Decree of the *Carbon Neutrality Framework Act* on June 13, 2022. As fetus Complainant was born on October 6, 2022, the party information was corrected accordingly.

Complainants of the case **2023Hun-Ma846** filed a constitutional complaint regarding the *First National Plan for Carbon Neutrality and Green Growth* on July 6, 2023, arguing that, among others, the part setting the sectoral and annual reduction targets of the case and the part establishing the fiscal investment plan for the period from 2023 to 2027 (hereinafter referred to as “**fiscal investment plan of the case**”) therein infringed fundamental rights, including the environmental right.

In the course of deliberating the cases above, the Constitutional Court of Korea consolidated the four cases on February 15, 2024 and held hearings on April 23 and May 21. On August 29, 2024, the Constitutional Court declared the decision as follows.

## Key Holdings of the Decision

1. Article 8, Section 1 of the *Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis* (as enacted by Act No. 18469 on September 24, 2021) does not conform to the Constitution. The abovementioned provision stays in force until its amendment within the time limit of February 28, 2026.

2. The complaints regarding Article 3, Section 1 of the Enforcement Decree of the *Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis* (as enacted by Presidential Decree No. 32557 on March 25, 2022), ‘B. Sectoral Reduction Targets’ and ‘C. Annual Reduction Targets’ of ‘V. Mid- and Long-Term Reduction Targets’ in the *First National Plan for Carbon Neutrality and Green Growth* that the government established on April 11, 2023 are all rejected.
3. The remaining complaints of Complainants are all dismissed.

## Relevant Provisions

### ○ Preamble of the Constitution of the Republic of Korea

We, the people of Korea, (···) having determined (···) to ensure security, liberty and happiness of ours and our posterity forever (···)

### ○ Article 35 of the Constitution of the Republic of Korea

- (1) All citizens shall have the right to live in a healthy and pleasant environment. The State and the citizens shall endeavor to conserve the environment.
- (2) The substance and the exercise of the environmental right shall be determined by Act.

### ○ Article 113 of the Constitution of the Republic of Korea

- (1) When the Constitutional Court makes a decision of the unconstitutionality of a law, a decision of impeachment, a decision of dissolution of a political party or an affirmative decision regarding a constitutional complaint, the concurrence of six Justices or more

shall be required.

## Summary of the Decision's Reasoning

1. The environment, the protected subject of the environmental right that guarantees “the right to live in a healthy and pleasant environment,” includes not only the natural environment but also the living environment, such as the artificial environment. Regarding climate risks which can damage all environments foundational to daily life and threaten, among others, life and physical safety, the duty of the State and the citizens to endeavor to “conserve the environment” includes the duty of the State to address the climate crisis by taking measures to mitigate such risks through reducing the causes of climate change and to adapt to its consequences.

When the Constitutional Court reviews whether the State failed to fulfill its duty to protect the citizens' right to live in a healthy and pleasant environment, the standard of review shall be ‘the principle of prohibition of insufficient protection’ which requires the State, at the very least, to take minimal protective measures that are appropriate and effective for protecting such right.

Whether the principle of prohibition of insufficient protection is violated in a specific case is determined by whether the substance of the ‘protective measure’ responding to the ‘risk situation’ calling for protection due to foreseeable infringement of fundamental rights has the required minimum characteristic as a protective measure that appropriately corresponds with the characteristic of the risk situation at issue. When such determination falls within a technical field of expertise or has an international aspect, the characteristic of the risk situation, etc.

shall be objectively examined based on ‘scientific facts’ and ‘international standards’.

Regarding whether the mid- and long-term reduction target set by Article 8, Section 1 of the *Carbon Neutrality Framework Act* and Article 3, Section 1 of the Enforcement Decree of the same Act and the sectoral and annual reduction targets of the case violated the principle of prohibition of insufficient protection, the following, among others, shall be determined considering scientific facts and international standards: whether the specific figure of the GHG reduction target corresponds to the share that the Republic of Korea should contribute in light of global reduction efforts; whether the system of setting the reduction target is institutionalized in a way that does not shift an excessive burden to the future in terms of the effects of climate change and the restrictions on GHG emissions; and whether the said system is institutionalized in a way that can effectively guarantee GHG reductions.

The question of to what degree the substance and the level of protective measures regarding the environmental right should be specified in statutes can be an issue of statutory reservation or parliamentary reservation.

Whether Article 8, Section 1 of the *Carbon Neutrality Framework Act* violated the principle of statutory reservation which includes the principle of parliamentary reservation shall be determined by considering the characteristic that its regulatory subject, namely the way the GHG reduction target is set, is required to possess as a protective measure

against the climate crisis.

2. It is difficult to conclude based on the figure of the reduction ratio alone — a 40 percent reduction of the national GHG emissions from the 2018 level, which Article 8, Section 1 of the *Carbon Neutrality Framework Act* and Article 3, Section 1 of the Enforcement Decree of the same Act set as the mid- and long-term reduction target for 2030 — that the target either notably fails to reach the share that the Republic of Korea should contribute in light of global GHG reduction efforts or shifts an excessive burden to the future in terms of the effects of climate change and the restrictions on GHG emissions.

Regarding the means to secure the achievement of emissions targets, such as the implementation status review of annual reduction targets and the emissions trading scheme, it also cannot be said that the way GHG reduction targets are set under Article 8, Section 1 of the *Carbon Neutrality Framework Act* is not designed to effectively guarantee GHG reductions on the grounds that the statute does not specify that each year in case of failure to fulfill a quantitative reduction target, the unfulfilled amount shall be added to the subsequent reduction target.

However, Article 8, Section 1 of the *Carbon Neutrality Framework Act* does not provide a quantitative level of any form regarding the reduction targets for the years from 2031 to 2049, failing to effectively guarantee gradual and continuous reductions up to 2050, the target year for carbon neutrality. Thus, GHG reduction targets are governed in a way that shifts an excessive burden to the future.

Therefore, with regards to the governance of reduction targets for the years from 2031 to 2049, Article 8, Section 1 of the *Carbon Neutrality Framework Act* lacks the required minimum characteristic as a protective measure that corresponds with the risk situation of the climate crisis and thereby violated the principle of prohibition of insufficient protection.

Regarding the reduction target for 2030, Article 8, Section 1 of the *Carbon Neutrality Framework Act* only prescribes the minimum level of the reduction ratio compared with the 2018 level for the target year of 2030, delegating the concrete figure of the reduction ratio to Presidential Decree and having the reduction pathway follow the sectoral and annual reduction targets the government establishes. This cannot be deemed to violate the principle of statutory reservation. However, regarding the reduction targets for the years from 2031 to 2049, not prescribing any approximate quantitative levels and having the government decide on the matter every five years violated the principle of statutory reservation which includes the principle of parliamentary reservation.

Article 8, Section 1 of the *Carbon Neutrality Framework Act* failed to fulfill the State's duty to protect fundamental rights in violation of the principle of prohibition of insufficient protection and the principle of statutory reservation and thus infringes the environmental right of Complainants.

3. However, if Article 8, Section 1 of the *Carbon Neutrality Framework Act* loses its effect in its entirety, the quantitative intermediate target that exists prior to the target year for carbon neutrality, 2050, would be no longer in effect, resulting in a more unconstitutional situation where the institutional mechanism for GHG reductions rather regresses. Moreover,



the legislature has a wide legislative authority regarding how to set the level of quantitative GHG reduction targets for the years from 2031 to 2049, etc. Therefore, regarding Article 8, Section 1 of the *Carbon Neutrality Framework Act*, instead of declaring a simple unconstitutionality decision, the Court declares a decision of nonconformity to the Constitution, ordering it to stay in effect until its amendment by February 28, 2026.

Article 3, Section 1 of the Enforcement Decree of the *Carbon Neutrality Framework Act* simply sets the figure of the specific ratio of the mid- and long-term reduction target for 2030 as delegated by Article 8, Section 1 of the same Act. Therefore, it cannot be said that it violated the duty to protect fundamental rights in violation of the principle of prohibition of insufficient protection, and accordingly it does not infringe the fundamental rights, including the environmental right, of Complainants.

4. Regarding the sectoral and annual reduction targets of the case, it cannot be concluded that they violated the principle of prohibition of insufficient protection solely based on the specific arrangements of reduction ratios among each sector and on the resulting form of the reduction pathway from 2023 to 2030.

Regarding whether calculating and setting the figures of the national GHG emissions targets based on ‘gross emissions in the base year – net emissions in the target year’ in the sectoral and annual reduction targets of the case violated the principle of prohibition of insufficient protection or the principle of supremacy of law in relation to the system under the *Carbon Neutrality Framework Act*, four Justices are of the opinion that it did not, and five Justices are of the opinion that it did.

Accordingly, regarding the sectoral and annual reduction targets of the case, although the majority opinion is that they infringe the environmental right of Complainants and thus are unconstitutional, because it did not reach the quorum required for an affirmative decision on a constitutional complaint (six Justices) prescribed by Article 113, Section 1 of the Constitution, etc., a decision of rejection is declared.

5. As to the complaints regarding the former *Green Growth Act* and the Enforcement Decree of the same Act, personal justiciable interests no longer exist, and they cannot be deemed to require constitutional clarification. The fiscal investment plan of the case cannot be regarded as an exercise of state power which is subject to a constitutional complaint.