

Shifting the Mitigation Burden: Outcomes and Implementation Opportunities of the Landmark South Korean Climate Case

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In August 2024, the Constitutional Court of Korea broke new ground in climate change litigation by finding Article 8(1) of South Korea's [Carbon Neutrality Framework Act](#) in violation of the right to a healthy environment. The ruling in [Do-Hyun Kim et al v South Korea](#) marks the first victory in East Asia for plaintiffs in a 'framework' case - which challenge governments' overall efforts to mitigate climate change - and aligns considerably with the findings of similar landmark decisions across the globe, such as [KlimaSeniorinnen](#), [Neubauer](#), [Urgenda](#) and [Klimaatzaak](#).

Summary of the Court's findings

[Do-Hyun Kim](#) primarily examines the ambition and implementation of South Korea's climate change policies. The plaintiffs, who included youth activists and children from four merged cases, argued that the alleged insufficient policies violated numerous constitutionally protected rights, such as the rights to a healthy environment, life, property and equality. The Court notably recognised the right to a healthy environment as the relevant substantive basis for the claim - which is a determination that it has rarely made in the past - and explicitly found that the right imposes to the State an obligation to mitigate climate change. In addition, South Korea must set and implement its climate policies in a forward-looking manner and ensure that 'no excessive burdens are shifted to the future' [page 19].

The Court held that South Korea violated the right to a healthy environment because it failed to quantify emissions reduction targets for the 2031-2049 period. This omission was significant because, given the global risks at stake, 'protective measures against the climate crisis' must be designed in accordance with scientific facts and international standards [page 16]. Although the Act allows for the revision of targets every five years, the absence of even rough quantitative criteria for the 2031-2049 period means that South Korea's climate mitigation efforts would rely 'solely on the short-term circumstances and conditions identified by the government at the time when the specific target values are determined' [page 25]. The Court accordingly explained that there is no mechanism in place to effectively safeguard future generations from shouldering a disproportionate share of the reduction burden. By not setting intermediate targets in the years leading up to its 2050 carbon neutrality goal, South Korea failed to carry out the minimum protective measures necessary to mitigate climate change.

The Court further explained that South Korea not only needed to set targets for the 2031-2049 period, it should have also enshrined those targets into law. This approach is important because determining targets and their respective reduction pathways imposes significant restrictions on fundamental rights. As such, the Court pointed out that various interests, including scientific, diplomatic and policy-related factors, 'may cause sharp conflict around the issue of specific reduction measures', and South Korea should have established the intermediate targets in law 'as the highest form of social consensus following the Constitution' [pages 30-31]. The Court thereby declared Art 8(1) of the Act unconstitutional and ordered the State to amend it by 28 February 2026.

Human rights to strengthen mitigation: convergences within global climate jurisprudence

The Court's approach is aligned with the findings of several other judgments across the globe in cases scrutinising government's conduct in the context of climate mitigation.

In stressing the relevance of the right to healthy environment, the Do-Hyun Kim judgment follows in the footsteps of other courts that have similarly relied on this right to assess the lawfulness of a State's climate efforts, including in Colombia ([Future Generations](#)), Nepal ([Shrestha](#)), Brazil ([PSB - Climate Fund](#)) and the United States ([Held v Montana](#)).

The risk of undermining the fundamental rights of future generations - who are inexorably faced with a disproportionate climate mitigation burden if meaningful efforts are not enhanced in due time - is also a key pillar of the Court's determination of

unconstitutionality. The Court notably recalled that, since 'future generations have even more limited participation in the democratic political process, judicial review of the fulfillment of the legislative duty [...] must be much stricter' in the area of climate governance [page 31]. In doing so, the Court openly embraced the findings of the German Constitutional Court in *Neubauer* and the Court of Appeal of Brussels in *Klimaatzaak*, both of which highlighted the detrimental consequences of today's inaction on the human rights and fundamental freedoms of youth and future generations.

Moreover, the Court's findings on the unlawful lack of mitigation planning between 2031 and 2049 echoes the reasoning of *KlimaSeniorinnen*, where the European Court of Human Rights (ECtHR) established the duty to 'set intermediate climate targets' as part of the State's duty to protect human rights from dangerous climate change [para 550(b)].

Implementing the ruling: opportunities for fair share and consistent mitigation efforts

To date, *Do-Hyun Kimis* arguably the most consequential climate judgment in Asia, as it bolsters a pragmatic interpretation of the principle of intergenerational equity and sets the stage for future climate litigation cases in South Korea and throughout the region. However, issues around 1) the State's fair share of global mitigation efforts; and 2) the adequate implementation of existing targets are left partially unresolved.

While the Court established that States are required to determine 'their fair share of contributing to global reduction targets', it fell short of attaching any concrete consequence to this finding, stating that the lack of 'indisputable international consensus on the criteria for determining the specific contributions of individual countries' prevent the Court from assessing the lawfulness of the domestic mitigation target of 40% by 2030 compared to 2018 levels [pages 21-22]. On the contrary, courts in the Netherlands, Germany and Belgium have found that, although there are several scientific methods for determining a State's necessary emissions reductions to hold global warming to a particular temperature limit, this does not make it permissible for a State's required contribution to be chosen arbitrarily, notably in the context of human rights protection. The ECtHR also addressed this point in *KlimaSeniorinnen*, finding that the absence of an established methodology to determine a State's fair share cannot shield a State from its duty to quantify its residual national carbon budget (in particular, the ECtHR recalled *Neubauer's* findings that it is possible to determine a State's fair share budget on the basis of, inter alia, the international law principle of common but differentiated responsibilities [para 571]). As of 2024, some countries have already adopted domestic mitigation targets explicitly informed by fair share methodologies. For example, the *Finnish Climate Change Panel* assessed in 2019 'the fair and responsible contribution of Finland [...] to global efforts to restrict the increase in the global mean temperature to 1.5 degrees.' Following the Panel's recommendations, Finland accordingly revised its policies and enshrined the goal of climate neutrality by 2035 into law.

The plaintiffs also flagged that, in light of greenhouse gas (GHG) accounting discrepancies (such as using gross emissions for the base year and net emissions for the target year), the State's mitigation policies would fall short of the 2030 legislated target. A majority of five judges acknowledged the existence of a gap between the planned GHG reduction measures and what South Korea is required to achieve under its target, stating that such 'inconsistency would make it impossible to manage the reduction pathway scientifically and reasonably from a policy perspective' [page 41]. However, as a decision of unconstitutionality requires a supermajority of at least six out of nine judges, the Court did not reach a quorum on this point. In contrast, courts in other jurisdictions, including in Ireland (*FIE v Ireland*), France (*Grande-Synthe v France*), the United Kingdom (*FoE1; FoE2*) and Germany (*DUH and Bund v Germany*), have found a lack of consistency/inadequate implementation planning to be unlawful and ordered national governments to directly address shortcomings in their climate plans. Along these lines, *KlimaSeniorinnen* also established that States are required to properly implement their own climate mitigation targets under the European Convention on Human Rights [paras 549, 550(e)].

South Korea is required to quantify targets for the 2031-2049 period in line with its share of contribution based on scientific facts and international standards by 28 February 2026. Although no binding conclusions were made with respect to the ambition of South Korea's 2030 target or the adequacy of its implementation plan, the Court's analysis clearly highlighted shortcomings in these areas. As such, the ruling provides the State with a clear path forward in terms of addressing fundamental weaknesses in its climate strategy.

An analogous situation can be found in the implementation outcomes of the *Neubauer* case. Although the Court did not formally require the amendment of existing climate targets, Germany nevertheless increased its ambition and amended its 2030 mitigation target from 55% to 65% compared to 1990 levels, while also bringing forward its goal of climate neutrality from 2050 to 2045, in order to ensure stronger consistency with the judgment.

The implementation process of this ruling thus provides South Korea with a unique opportunity to tackle the open questions put forward by the Court. In particular, the State could build upon the precedent set by Germany to increase its climate ambition and go beyond the minimum standards outlined in the decision - notably by revising their climate policies such that they are in line with their fair share of the global carbon budget. These actions would ensure that South Korea is doing its part to prevent worsening climate change while also safeguarding the fundamental rights of future generations that rest at the heart of this judgment.

[please note that the page numbers refer to the unofficial English translation of the judgment, as published [here](#).]

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