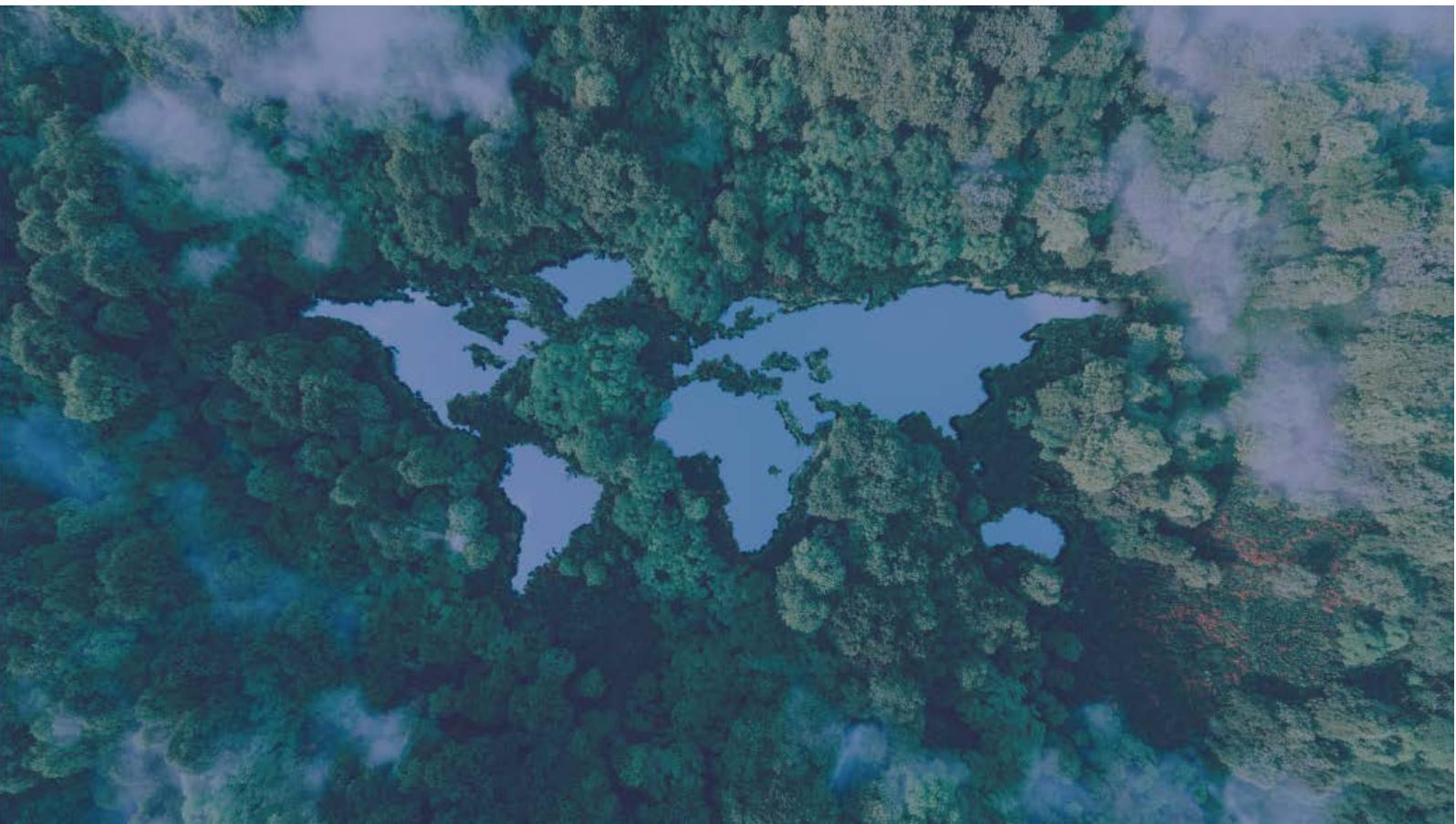




**British Institute of
International and
Comparative Law**

Global Perspectives on Corporate Climate Legal Tactics: Japan National Report

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**British Institute of
International and
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Executive Summary

This report examines corporate climate litigations in Japan. There are three parts: causes of actions, procedures and evidence, and remedies.

Part 1 discusses current laws as causes of actions. Specifically, regarding climate change laws, the Act on the Promotion of Global Warming Counter-measures and the Climate Change Adaptation Act do not satisfy the justiciability or threshold requirements of judicial review. On the other hand, the Basic Act on the Environment has been referred to in an administrative case. Furthermore, the Environmental Impact Assessment Act has been applied in administrative cases but not in civil cases. Regarding human rights laws, constitutional environmental rights, which are not explicitly stated in the Constitution, have been advocated through interpretation. Still, in civil litigations, fundamental human rights are not directly employed as a cause of action. The health-related personal right, which is not explicitly stated in the Civil Code, has been developed by case laws. Yet, the Japanese courts have been cautious in recognising such a right. In a recent civil case in Kobe, plaintiffs developed a new cause of action, i.e. the right to enjoy a stable climate, and the case is pending at the Court of Appeal. Regarding tort law, despite the Civil Code Article 709, no cases have applied it as a cause of action thus far. On financial laws, it is highly expected that shareholders would challenge business strategies based on Climate-related Financial Disclosures. Regarding consumer protection law, fraud law, contractual obligations and planning and permitting laws, there have been no cases in climate change litigations.

Part 2 turns to procedures and evidence. Regarding actors, individuals or groups of individuals residing near coal-fired power plants are typical plaintiffs, and litigation is often brought against electricity power generators and power retailers. In addition, in civil cases, whether or not courts accept the rights invoked in a lawsuit based on an individual's personal rights is a matter of merit rather than standing, as long as the plaintiff asserts those rights. Meanwhile, in administrative cases, the grant of standing is contingent upon being a person with a recognised legal interest. Moreover, justiciability has been a threshold issue in administrative cases, and not necessarily in civil cases. Also, jurisdiction is not a particular legal issue in Japan. Regarding group litigation, Japan has no such system in environmental protection nor a class action system. Apportionment, in terms of how liability to reduce emissions should be allocated to each emitter or defendant, is a rising challenge for the Japanese courts. However, apportionment in the sense of the burden of litigation costs by the losing party is not adopted in Japan. Until now, claims for a civil injunction against corporations for the risk of violating the health-related right to personhood are the most used arguments. In relation to causation, different types of evidence have been used in civil injunction proceedings, such as reports from the Intergovernmental Panel on Climate Change and Japan's Meteorological Agency. Furthermore, the statute of limitations does not take effect if the infringement continues.

Part 3 takes on remedies. For pecuniary remedies, it is possible to be sought under Article 709 of the Civil Code, but no such cases have been observed yet. For non-pecuniary remedies, Japanese courts have been cautious towards civil litigations seeking injunctions against future emissions. The Supreme Court has established a standard of factors for determining illegality that is more demanding compared to the damages. A new type of Alternative Dispute Resolution, i.e. the National Contact Point established under the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises, provides other types of remedies, including disclosure.

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1. Causes of Action

A. Climate Change Law/Environmental Law Statutory Provisions

Regarding Climate change laws, the Act on the Promotion of Global Warming Counter-measures (APGWC, Act No. 117 of 1998, amended in 2021) and the Climate Change Adaptation Act (CCAA, Act No. 50 of 2018) are major statutes contributing to a carbon-zero society. Under the APGWC, the national government shall establish a Global Warming Countermeasure Plan (GWCP, art. 8), and local governments are to endeavour to establish GWCPs. In addition, the national government and local governments shall establish Action Plans for measures to reduce the amount of carbon emissions, in line with the GWCP. The GWCP and the National Action need to be approved by the Cabinet. Also, the CCAA mandates the national government to establish a Climate Change Adaptation Plan (CCAP, art. 7), and local governments are to endeavour to establish CCAPs.

Arguably, in judicial practices, these plans do not satisfy the justiciability/threshold requirements of judicial review. The Paris Agreement or International Covenants on Human Rights can be interpretative sources of domestic statutes and regulations but not yet fully argued in courts as independent legal sources because most international treaties and agreements entail domestic laws.

Also, these governmental duties do not find ways to connect corporate duties while corporate strategy/activities will be made in line with these plans. In conclusion, there have been no court cases yet of which causes of action rely upon APGWC or CCAA.

Regarding environmental laws, the Basic Act on the Environment (BAE, Act No. 91 of 1993) was referred in the Actions for the Revocation of Administrative Disposition addressed to Kobe Steel Ltd. against the State of Japan¹ (hereinafter referred to as Kobe Administrative case), to identify legal basement of legal interests not to be harmed by CO₂ emissions, in vain.

Also, the Environmental Impact Assessment Act (EIA, Act No. 81 of 1997, lastly amended in 2021) has been applied in the past two administrative actions; the Kobe Administrative case and Actions for the Revocation of Administrative Disposition addressed to JERA Co., Inc. against the State of Japan² (hereinafter JERA's case) in the Kobe Administrative case. There, the plaintiffs argued that the EIA reports for the construction of the coal-fired power plants in question were substantively illegal as they

¹ 15 March 2021, the Osaka District Court, 2018 (Gyou-U)184; 26 April 2022, the Osaka High Court, 2021(Gyo-Ko)46; 9 March 2023, the Supreme Court, 2022 (Gyu-Tsu)198/(Gyo-Hi)215.

² 27 January 2023, the Tokyo District Court, 2019 (Gyou-U)275/2019(Gyou-U)598; 22 February 2024, the Tokyo High Court (Gyo-Ko)56.

did not consider the cumulative impact of CO₂. In the JERA case, the “Simplified Replacement Assessment,” established for the pattern of replacement with less environmental impact, was applied. In the actual case, the power plant has hardly been in operation since 2000, but the Simplified Replacement Assessment was applied because the estimated emissions were lower than in 1970, when the plant was operating at its maximum capacity. JERA argued that the actual reduction of the environmental impact is not required, in comparison with the situation when the previous plant was operating in the recent past. Notably, both assessments formally met the requirements under the EIA Act.

In civil cases, on the contrary, the EIA Act was never referenced in relation to the contentious issue of climate change.

The problem is that the EIA and the Electricity Business Act (EBA, Act No. 170 of 1964), which provides for special regulations in assessments for electricity business operators, are inadequate in their regulatory framework in terms of regulating greenhouse gas emissions and remain inconsistent with the Paris Agreement, even after its conclusion and ratification by Japan in 2015, as explained below.

The introduction of an environmental assessment system in Japan began to be discussed in the late 1970s, when a variety of pollution problems including the “Big Four” (the Minamata case, the Niigata Minamata case, the Yokkaichi asthma case and the Itai-itai case), were becoming more pronounced. However, the system was initially introduced in the form of a Cabinet decision due to the view that it would be a barrier to industrial development. Finally, after a series of setbacks, the current EIA Act was enacted in 1997. Since the assessment is to be conducted by the business operators and is required to be a long-term and costly procedure, the projects that are required to be assessed are basically limited to those that are large in scale and are likely to have a significant environmental impact, from the perspective of the burden on the business operators. In practice, however, the Ministry of Economy, Trade and Industry (METI), which has substantial licensing authority for the establishment of power plants under the EBA, has considerably loose criteria for examination. For example, the selection of items to be assessed can be done by the operators, and the opportunity for the public to express their opinions is limited.

Additionally, this opportunity is only guaranteed from the stage of the scoping document when the project concept is being set to some extent. Therefore, there have been many cases in which a formal perfunctory assessment was conducted by the business operators with a view to project implementation, and the Minister of METI simply issued a final notice in response to the assessment. Since this is an aspect of the assessment procedure that is aligned with the result of the project implementation, it was sometimes derided as “*Awasu-mento*” - match the procedure to the positive result (obtainment of final notice) - a word play on the similarity in pronunciation of the Japanese word between “*awasu* (match)” and “*assess*”.

Thus, Japan's Environmental Impact Assessment Act is structured in such a way that it is easy for developers to obtain the government's endorsement. However, it is still a lengthy and costly process, and it is easy to imagine that the desire on the part of the project operator to avoid the assessment process will naturally result. As pointed out in the background of the Sendai case³, the power plant of Sendai Power Station, the defendant in the case, was designed to generate slightly less power than the scale of power generation for which an assessment is required. The long-term, high-cost assessment was also a barrier to the Japanese government, which faced a crisis of power shortages in the aftermath of the Great East Japan Earthquake and tsunami, as the government sought to rapidly expand thermal power generation capacity that could immediately replace nuclear power plants.

In order to minimize the barriers as much as possible, the Japanese government adopted the Director-General's Summary referred to in the Kobe Administrative case⁴. This summary was referred to in the Minister's Opinion on the assessment report for the construction of Kobe Steel's power plant, and the criteria for review were significantly loosened. In addition, the Guidelines for Replacement of Thermal Power Plants shortened the time required for assessment and made it possible to construct power plants at an early date. These guidelines were formally applied in the JERA's case.⁵

In JERA's case, the application of the Simplified Replacement EIA, another special procedure created by the government after the Earthquake, was also contested. This system was established to reduce the time required to the assessment of the replacement of thermal power plants, provided that the replacement does not worsen the current environmental impact⁶. The plaintiffs insisted that the alleged construction plan substantially does not fall into the scope of that guideline because of several reasons. Some of their points are as follows: [1] achieved improvement of air quality after a considerable time period of approximately five years between the final shutdown (from the plaintiffs' view, another launch of the coal-fired power plant construction can no longer be regarded as replacement); [2] JERA applied data as reference for the environmental impact of the previous power plant was at the time of its maximum operation in 1970, which is extremely old. The plaintiffs argue that the reduction of environmental impact needs to be examined to compare with the situation of the recent past. 3] In the selection of investigation point of air pollutant concentrations on land, only the location and distance from the new power plant are taken into consideration, and diffusion due to wind and topography is not taken into account, which is in violation of the conditions of the Guidelines.

³ Supra n.3.

⁴ Supra n.1.

⁵ Supra n.2.

⁶ Tadashi Otsuka, 2020. *Environmental Law*. Yuhikaku, p189.

Since Japan, having ratified the Paris Agreement in 2015, has established GHG reduction targets as a national goal, installation and operation regulations regarding domestic power plants should be implemented in a manner that ensures consistency with these targets. In particular, a cumulative impact assessment should be incorporated for greenhouse gases⁷. However, the current EIA Act and the EBA do not take such view, remaining in place with standards that were loosened significantly after the earthquake, and a rush of construction was triggered by power generation companies that sought to take advantage of this opportunity. Kobe Steel and JERA are those examples. These series of legal flaws were challenged in the Kobe administrative case and JERA's cases. The Kobe Administrative case was decided by the Supreme Court. Also, the plaintiffs of JERA's Yokosuka case obtained expect appealed the case to the Tokyo High Court's decision on 22 February 2024 that dismissed the plaintiffs' claim. The appellants may appeal.

B. Human Rights Law

Fundamental human rights guaranteed to the people by the Constitution of Japan "shall be "conferred upon the people of this and future generations as eternal and inviolable rights" (Constitution of Japan, art. 11). "Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs." (art. 13). In addition, as a positive right to the State, art. 25(1) of the Constitution stipulates that "every citizen has the right to a minimum standard of living that is healthy and cultural." On the basis of these provisions, constitutional environmental rights, which are not explicitly stated in the Constitution, have been advocated through their interpretation⁸.

However, in Japanese civil litigation, it is rare for a claim to be based on a violation of human rights provided for in the Constitution or international conventions on human rights, including the constitutional environmental rights. This is because the courts understand that in civil litigation the Constitution does not directly discipline the rights and obligations between private parties, but has indirect effect through general principles of civil law⁹. This can be also said about international human rights treaties, which are not usually self-executing unless expressly provided for, and only regulate rights and obligations of private parties through development of domestic legislation. Such treaties are usually regarded to be interpretive sources of national law¹⁰.

⁷ IFC Guidebook https://www.ifc.org/wps/wcm/connect/58fb524c-3f82-462b-918f-0ca1af135334/IFC_GoodPracticeHandbook_CumulativeImpactAssessment.pdf?MOD=AJPERES&CVID=kbnYgI5

⁸ Nobuyoshi Ashibe supplemented by Kazuyuki Tahashi, *Constitution* 281 (7th ed., 2019).

⁹ *Id.* at 112.

¹⁰ Miyoko Tsujimura, *Constitution* 37 (7th ed., 2021).

Under these backgrounds, fundamental human rights are not directly employed as a cause of action in the following civil climate change cases but are referred to as sources to argue the content of the civil personal rights.

In the two civil injunctive actions¹¹, the cause of action is the health-related right to personhood, or if translated in the narrower traditional context, the personal right to life, body and health, which is not explicitly stated in the Civil Code but has been established by case laws¹². However, since an injunction requires an imminent danger to life, body and health of individual plaintiffs, plaintiffs argue that the personal right to life, body and health expands to include the interest to live peacefully without fears or serious concerns in a healthy environment. The right to peaceful and secure life, which may justify an injunctive relief before an imminent danger, has been developed in the lower court cases with certain level of environmental risks that amount to fears or concerns of reasonable citizens, especially in the context of injunctions against hazardous waste facilities¹³. However, the courts are generally very cautious about admission of this right, as the courts fear it may open a gate for a flood of injunctions, by enabling them at an earlier stage of causal relations even when specific harms are not materialized or imminent dangers to life and health may be relatively subjective.

In the Civil Injunction against Kobe Steel Ltd. et al.¹⁴ (hereinafter referred to as Kobe Civil case), the health-related right to personhood not to be affected by the negative impacts caused by CO₂ emissions is preliminary claimed as a cause of action. The health-related right to personhood can prevent or reduce probable harm of climate disasters intensified by the defendants' CO₂ emissions, if the individual emissions of CO₂ from the facilities in question will probably cause the individual damages of the plaintiffs or incur imminent dangers to the plaintiffs' life, body or health by such emissions.

As a secondary claim, the plaintiffs claim the right to peaceful and secure life, or the right to enjoy a stable climate. This right can constitute a cause of action in preventing or reducing the CO₂ emissions by the defendants when the court finds that the defendants infringe this right by increasing the risk of climate disasters unreasonably on the plaintiffs.

The Kobe District court generally accepted the legal theory of the former cause of action:

“The legal interests claimed by the plaintiffs are human life, physical safety and health, and as stated above, it is clear that these legal interests are protected by the health-related personal right. Even if the basis for the plaintiffs' request for an injunction is the

¹¹ Supra n.3.

¹² Osaka High Court, 27 Nov. 1975 (Hanrei Jiho no. 797 p.36), Kobe District Court, 31 Jan. 2000 (Hanrei Jiho no. 1726 p.20), Nagoya District Court, 27 Nov. 2000 (Hanrei Jiho no.1746 p.3).

¹³ Sendai District Court, 28 Feb. 1992 (Hanrei Jiho no. 1429 p.109)

¹⁴ Kobe District Court, 20 March 2023 (LEX/DB25594806)

infringement of their health-related personal rights due to global warming caused by CO₂ emissions, such circumstances should be taken into account in determining whether there is a concrete danger of infringement and should not affect the determination of whether the infringed interests are protected by the health-related personal rights.”

However, the court dismissed the case by denying the existence of a concrete danger and the legal causation between the individual emission by the defendants and the individual harms on the plaintiffs as follows:

“There is a risk of damage occurring in the places where the plaintiffs live, but the probabilities of those predictions becoming realized, the extent of actual disasters, and the actual locations where disasters will occur may vary. Whether or not the plaintiffs will really suffer harm to their lives, bodies or health will depend on these various uncertainties. Therefore, at the present time, it cannot be accepted that a concrete danger of harm to the life, body or health of the plaintiffs has arisen.”

“The causal link between the damage caused by CO₂ emissions exists between the totality of all anthropogenic CO₂ emissions on the planet and the totality of all damage that may be caused to humans on the planet by climate change. The new power plant is expected to emit 6.92 million tons of CO₂ per year at an annual utilization rate of 80%, which, even if it must be said to be a large amount in itself, is only 0.02% of the annual energy source emissions on a global scale. In light of the above, the relationship between the damage that may be caused to the plaintiffs and the CO₂ emissions from the power plant is extremely tenuous, and the court cannot find an enough nexus where CO₂ emissions from the new facility can be rightly attributable to the harm that may be caused to the individual plaintiffs.”

The court rejected the secondary claim based upon the right to peaceful and secure life, showing their cautiousness for the legal theory itself, finding:

“The plaintiffs' fears about the damage caused by global warming should be said to be fears about uncertain future dangers, and cannot be regarded as serious fears that should be the subject of legal protection at the present time. If the plaintiffs' argument is that the right to enjoy a stable climate should be recognized as a right to protect the peace and security of life from the fear and anxiety of global warming even in such cases, the right to enjoy a stable climate is nothing more than a claim for the preservation of a stable climate generally at a stage before any concrete danger to the individuals arise, although it takes a form based on their individual interest of peace and security of life.”

In Sendai Power Station case¹⁵ (hereinafter referred to as “Sendai Power Station case”), the cause of action based upon the right to peaceful and secure life related to CO₂

¹⁵ Sendai District Court 28 Oct. 2020 (Hanrei Jiho no.2467 p.86), Sendai High Court 27 April 2021 (Hanrei Jiho no. 2510.p.14).

emissions was dropped and the main issue was narrowed down to such a right related to air pollution risks from the facility by the court's suggestion. In the context of the finding on the legality of the facility, the Sendai High Court said as follows:

“At present, in order to realize a decarbonized society, the government is considering plans to fade out inefficient coal-fired thermal power generation and to supply energy through the use of renewable energy sources, but these plans are still in a transitional stage and the coal-fired power generation, which accounts for a significant proportion of the energy supply, is still a major source of energy. The usefulness and public nature of the plant, which is one of coal-fired power plants that account for a significant portion of the energy supply, is not immediately negated at this stage.”

In summary, when the traditional personal right to life, body and health is employed as a cause of action, the imminent dangers and the legal causation between the individual emissions and the individual damages will become high hurdles. On the other hand, Japanese courts are still very cautious about admission of the new developing right, the right to peaceful and secure life, as an injunctive cause of action in the area of climate change litigation, viewing such a claim is still premature as legally protected interests. The balancing of domestic public benefits and the worldwide damages to be caused by the coal fired power plants will be another issue where we need to persuade the courts that reduction of CO₂ emissions from certain categories of industries should be prioritized.

To conquer these legal difficulties, the plaintiffs of the Kobe Civil case recently added a new cause of action, the right to continue to live in a stable and healthy environment at the Court of Appeal. See 2C(i).

C. Tort Law

Infringement of the right to personhood constitutes tort and allows the victim to claim damages from the perpetrator (Civil Code Art. 709). However, this article does not explicitly provide for restoration to the original state or an injunction against the infringing acts. In addition, as injunctions against acts of infringement based on rights to personhood are recognized in judicial precedents, and plaintiffs need to show infringement of their rights or legally protected interests in the case of tort anyway, the tort theory was not chosen as a cause of action in the above two cases. However, the joint tort theory is currently experimentally argued in the Kobe Appeal court in order to apply Civil Code Art. 719 (1) *Mutatis Mutandis* in the context of collective emissions by coal fired power plants in Japan. Art 719(1) stipulates, “If more than one person has inflicted damage on another person by a joint tort, each of them is jointly and severally liable to compensate for the damage. The same applies if it cannot be ascertained which of the joint tortfeasors inflicted the damage.”

In Kobe case, the plaintiffs must prove causal relation between the individual emission from the facility and the individual damage inflicted upon the plaintiffs. The Kobe district court denied the legal causation saying the nexus in question is too weak. Then Art. 719 comes in as it has two distinctive functions; joint liability and presumption of causation (shift of burden of proof). In the case of cumulative contention of numerous emission sources, we cannot identify who really caused the specific damage but by the help of the second sentence of Art 719 (1), all of them can be jointly liable when the total emissions caused the damage, unless they can successfully prove they did not contribute to the result at all. The Japanese Supreme court made a judgment for the carpenters who suffered Mesothelioma from asbestos they were exposed to in various construction sites. Even though they could not identify the specific exposure sources of the construction materials, the top three manufacturers were ordered to jointly pay the compensation based upon the application of Art 719(1) *Mutatis Mutandis*. (Supreme Court, 2021.5.17, Minshu 75-5-1359). The application of Art. 719 in the context of climate change is a new challenge and there is no precedence.

i. Public and private nuisance

Japan has no concept of nuisance, using the umbrella torts concept following the European continental legal concept (Civil Code art. 709 and after). The causation issue will be contested such as “a drop in the ocean” arguments by defendants (corporations) when parties claim tort damages or injunctive relief(see 2C(ii)).

ii. Negligent failure to mitigate or adapt to climate change

Negligence is an element of tort remedies and can be argued in courts in both civil (Civil Code Art. 709) and governmental tort remedies (National Compensation Law Art. 1). However, no negligent cases are found so far due to no findings of governmental or corporate duties.

iii. Negligent or strict liability for failure to warn

The Supreme Court supported regulatory negligence (National Compensation Law Art. 1) in cases dealing with mercury poisoning (*Minamata*, from chemical factories, 2004), Pneumoconiosis (lung disease from coal drilling, 2004), and asbestos (2021) in addition to corporative negligence. Therefore, one could argue negligent liability for failure to regulate timely and appropriately in climate cases, but not yet found such cases.

iv. Trespass

Japan has no concept of trespass, using the umbrella torts concept following the European continental legal concept (Civil Code art. 709 and after).

v. Impairment of public trust resources

Japan has no concept of public trust doctrine, using the umbrella torts concept following the European continental legal concept. (Civil Code art. 709 and after)

vi. Fraudulent misrepresentation

Japan has many cases where parties claim fraudulent misrepresentation in consumer litigation (Civil Code art. 94, Consumer Contract Act art.4, etc.). In 2023, Kiko Network, an environmental non-profit organization and Japan Environmental Lawyers for Future, jointly filed a claim against JERA for its carbon zero electricity advertisement, with Japan Advertisement Review Organization (JARO), a private self-regulating entity established by the advertise industry in Japan. This seems to be a first greenwash claim here in Japan. The claim is based upon Consumer Basic Act, Act against Unjustifiable Premiums and Misleading Representations and Environmental Labeling Guideline issued by the Ministry of Environment. Two other claims were filed against J-Power and Kansai Electric Power Company. JARO has kept silence so far. If any qualified consumer organizations find certain advertisements are seriously misleading consumers as greenwash, then they can file injunctions straightly against those advertising companies.

vii. Civil conspiracy

Japan has some cases where parties claim civil conspiracy or equivalent reasoning in consumer litigation (Civil Code art. 96, Consumer Contract Act art.4 etc.) . However, Japan finds no such cases in climate law so far.

viii. Product liability

Japan has many cases where parties claim fraudulent misrepresentation in consumer litigation (Product Liability Act art.3, Consumer Contract Act art. 4, etc.) and ADR. However, Japan finds no such cases in climate law so far.

ix. Insurance liability

Japan has many cases where parties claim insurance liability in litigation and ADR (Insurance Act art. 28, etc.) against the insurance institutions. The more disaster that derives from climate change such as flood, the more insurance premium these institutions request and fewer disputes rejecting the insurance claims with reasons of climate change.

x. Unjust enrichment

Civil Code art. 703 speculates unjust enrichment. However, Japan has no climate cases where parties claimed unjust enrichment so far.

D. Company and financial laws

Japan has no cases where parties claimed damages based on financial laws. However, it is highly expected that shareholders would challenge business strategy based on Climate-related Financial Disclosures.

E. Consumer protection law

Japan has no cases where parties claimed consumer protection law. Regarding the group litigation, see 2B(iii).

F. Fraud Laws

Criminal Law art. 246 speculates Fraud. However, Japan has no climate cases relevant to this clause so far.

G. Contractual obligations

Japan has cases claiming contractual obligations such as solar-panel installations, but they are contractual disputes partly related to climate change mitigation and/or adaptation.

H. Planning and permitting laws

Japan has no cases where parties claimed Planning and permitting laws. In Japan, even if an enterprise is granted a permission on certain project, potential victims can file a civil litigation based upon civil law violations. Regarding the Environmental Impact Assessment Act, see A.

I. Other causes of action

N/A

Procedures and evidence

A. Actors involved:

i. Claimants

Individuals or groups of individuals residing near the facilities in question are typical plaintiffs. Environmental civil society organizations sometimes lead or support these cases because no law supports these organization's standing. Japan finds no cases by shareholders, but shareholders could file a 1) suit claiming investment damages made by false or deceptive statements or 2) shareholders representative action (*lis subrogatio*) (Companies Act, art. 847). In addition, consumer organizations can claim injunctive or monetary relief (see 2.B.iii). However, these shareholders or consumer climate cases would find challenges to overcome, such as proof of damages, causation, or remedies.

ii. Defendants

Electricity power generators, see 1. B.

Electric Power Retailer, see 1. B.

In Sendai case, Sendai Power Station Corporation was the defendant.

In Kobe Civil case, (1) Kobe Steel Ltd, (2) Kobelco Power Kobe No.2 Ltd. (subsidiary of Kobe Steel), and (3) Kansai Electric Power Company, are sued. (3) is the counterparty with whom a contract was signed to sell the total amount of electricity generated after the power plant went into operation.

In a mediation filed by Market Forces with Japan National Contact Point based upon the OECD guideline, Mizuho Financial Group, Inc. (Mizuho), Sumitomo Mitsui Banking Corporation (SMBC) and Mitsubishi UFJ Financial Group, Inc. (MUFG) were the respondents.

In Kobe Administrative Case and JERA's case, the State of Japan are sued.

iii. Third-party interveners

Code of Civil Procedure art. 42 speculates supporting intervention by a third party in order to assist either party. However, there are no interveners in the limited number of climate cases so far. Also, it is difficult to predict possible third-party at this point because Japan has observed quite limited number of climate cases.

iv. Potential claimants, defendants or third-party interveners

N/A

B. Procedural hurdles

i. Standing

In Japanese civil litigation, standing is “a procedural standing to seek, or to be sought for, a judgment on the merits with respect to an individual right that is the subject matter of litigation¹⁶” and is basically assigned to the parties with that kind of subject matter of the litigation. The judicial power in the current Japanese Constitution is defined as “the power of the state to adjudicate specific disputes by applying and declaring the law”. In addition, the Courts Act, which defines courts, states that “courts shall have the power to try all legal disputes, except as otherwise provided for in the Constitution of Japan, and shall have other powers specifically provided for by law” (Article 3, Paragraph 1 of the said Act), and that “legal disputes” here refers to “(1) disputes concerning the existence of concrete rights and obligations or legal relationships between the parties concerned,” and “(2) disputes that are resolved terminally by application of law (Article 3). Under this understanding of judicial power, the requirement for invocation of judicial power is that the plaintiff must be able to prove the existence of a concrete right. Therefore, it will be difficult to file a lawsuit in which the existence of a concrete right is not apparent, including emerging right such as right to a stable climate system. Also, in administrative cases, a legal interest that includes public interest elements and not purely personal private interests, such as environmental rights, is hardly admitted by the courts to fulfill the requirement to assign standing.

In the past, the Supreme Court dismissed an injunction against a thermal power plant without a merit, due to a lack of standing, where plaintiffs argued their standing as a public agent of the local environment itself, not claiming their own environmental rights¹⁷.

In the Kobe Civil Case, the defendant claimed dismissal of the case, arguing no legal or moral rights violation associated with CO₂ emissions on which the plaintiff relied, but the court admitted that global warming may cause infringement of a health-related personal right in general, as cited in 1B. In the administrative litigation against governments, standing is granted to “a person who has a legal interest” in seeking the revocation of a disposition¹⁸. In the Kobe Administrative case and JERA’s case, where plaintiffs challenged the final notice in the EIA procedure, the courts denied the plaintiffs’ standing based on two reasons: the individuality of the infringed legal interest

¹⁶ Makoto Ito, *Law of Civil Procedure* 122 (6th ed., 2019).

¹⁷ Saiko Saibansho [Sup. Ct.] 20 December, 1985, *Shumin* vol. 146, p. 339.

¹⁸ Administrative Case Litigation Act, art. 9 (1).

See <https://www.japaneselawtranslation.go.jp/ja/laws/view/3781>

and the necessity of legal protection of that infringement. For the first reason, Osaka District court in Kobe Administrative Case noted as follows.

“Article 9 of the Administrative Case Litigation Act¹⁹ provides for standing to file a suit for revocation. "Person who has a legally-protected interest" to seek revocation of the disposition prescribed in Paragraph 1 of the said article means a person whose right or legally protected interest has been injured or is likely to be necessarily injured by the disposition. If the administrative legislation that governs the disposition is construed to mean that the concrete interest of many and unspecified persons should not be merely absorbed in public interest in general but should be protected as a personal interest for each person entitled to the interest, such concrete interest falls under the scope of a legally protected interest, and therefore persons whose interest in this sense has been injured or is likely to be necessarily injured by the disposition should be deemed to have the standing to file a suit for revocation of the disposition”.

“When determining whether or not a person other than the party who has received the disposition has such legally-protected interest, the court shall not only rely on the language of the provisions of the governing laws and regulations based on which the disposition has been made, but also consider the purport and purpose of the laws and regulations as well as the contents and nature of the interest involved in the disposition, and in this case, when considering the purport and purpose of the laws and regulations, the court shall also make reference to the purport and purpose of any relevant laws and regulations that share the purpose with the governing laws and regulations, and when considering the contents and nature of the interest, the court shall take into account the contents and nature of the interest that is likely to be injured if the disposition is made in violation of the governing laws and regulations as well as how and to what extent that it is likely to be injured (Article 9 (2) of ACLA, *Citizens v. Japan*, 7 December, 2005, the Supreme Court, *Minshu* vol. 59 (10), p. 2645)”.

“In light of the fact that the provisions of the Environmental Impact Assessment Act and relevant regulations mentioned above intend to investigate, predict and evaluate the

¹⁹ Article 9 (Standing to sue)

Article 9(1)An action for the revocation of an original administrative disposition and an action for the revocation of an administrative determination (hereinafter referred to as “actions for the revocation of administrative dispositions”) may be filed only by a person who has legal interest to seek the revocation of the original administrative disposition or of the administrative determination (including a person who has legal interest to be recovered by revoking the original administrative disposition or administrative determination even after it has lost its effect due to the expiration of a certain period or for other reasons).

(2) (2)When judging whether or not any person, other than the person to whom an original administrative disposition or administrative determination is addressed, has the legal interest prescribed in the preceding paragraph, the court is not to rely only on the language of the provisions of the laws and regulations which give a basis for the original administrative disposition or administrative determination, but is to consider the purport and objectives of the laws and regulations as well as the content and nature of the interest that should be taken into consideration in making the original administrative disposition. In this case, when considering the purport and objectives of those laws and regulations, the court takes into consideration the purport and objectives of any related laws and regulations which share the objective in common with those laws and regulations, and when considering the content and nature of that interest, the court is to take into consideration the content and nature of the interest that would be harmed if the original administrative disposition or administrative determination were made in violation of the laws and regulations which give a basis therefor, as well as in what manner and to what extent that interest would be harmed.

Official translation available at: <https://www.japaneselawtranslation.go.jp/ja/laws/view/3781>

amount of emitted CO₂ from the perspective of global environmental preservation (of the entire earth or a large portion of the earth's environment), not from the perspective of figuring out the effects on human health, living environment, and natural environment, it is impossible to understand that the purpose and objective of the provisions of the Electricity Business Act regarding the final notice and change order is to curb the increase of carbon dioxide emissions to ensure legal interests of specific individuals living in specific areas, beyond the environmental conservation of Japan as a whole.”

“It is not considered that only residents living in the vicinity of the project area will suffer damage to their health due to global warming caused by carbon dioxide emissions, or that the degree of damage increases as one's residential area gets closer to the project area. In other words, the above-mentioned benefit of not suffering damage is equally enjoyed by an unspecified number of people, and it cannot be said that specific persons individually enjoy the benefit to the extent that they are distinguished from others. The benefit of not suffering damage to health, etc. due to global warming caused by carbon dioxide emissions is a benefit that belongs to the general public interest and should be pursued as part of the overall policy, not as a personal benefit that each individual should pursue based on his/her own judgment alone.”

“According to the evidence, it can be inferred that the impact of global warming is significant. However, it is the individuality of the legal interest that is the basis for eligibility of plaintiffs, not the magnitude of the impact on each individual, and therefore, the conclusion is not affected by this fact.”

Similarly, The Tokyo District Court in JERA's case stated as follows.

“(according to the relevant regulation,) Greenhouse gases such as carbon dioxide are clearly distinguished from atmospheric gases, which are considered to be environmental elements that may cause damage to human health, etc. The regulations only require the understanding of the "degree of quantity" of "environmental impact", not the direct impact on specific people or areas.”

“It must be understood that the interest of the residents in the vicinity not to suffer damage to their life, health, etc., due to the events accompanying the progression of global warming caused by carbon dioxide emissions from the project is protected as a general public interest.

“It is difficult to understand the purpose of protection as an individual interest of each person”.

Additionally, The Tokyo High 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 CO₂ 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 CO₂ 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.

For the second reason (the necessity of legal protection of that infringement), all administrative decisions interpreted the relevant laws and regulations to find that no legal interests specifically intended to protect plaintiffs are adversely affected by the governmental disposition on the EIA, which is alleged to accelerate global warming by the increased CO₂ emissions by the facilities. Among them, the Osaka High Court decision stated, "[I]t is difficult to say that a social foundation has been established to interpret the benefit of not being harmed by CO₂ emissions as an individual benefit that deserves legal protection (underlined in the original decision)." This conclusion only derives from a characterization of the legal interest protected by the EBA and EIA which are the basis for the disposition, and does not immediately negate the private right of "the benefit of not being harmed by CO₂ emissions" under private law. However, in Japan, with no administrative courts, where judges are in charge of both administrative and civil trials, one might find a negative impact on civil litigation. Still, the Kobe District Court decision mentioned above, which ruled that damages caused by CO₂ emissions are within the scope of protection of personal rights, was a small step forward.

In Europe and the U.S., many systemic mitigation cases²⁰ have been filed to directly challenge the validity of emission regulations on the grounds of human rights violations caused by climate change. Courts review the legality of laws or regulations when deciding an individual case. However, the abovementioned concept of judicial power in Japan hinders citizens from filing a systematic mitigation case in Japan, and most cases are project-based. This challenge means that the lawsuits must target some specific project entities responsible for their emissions. It will be challenging to determine the causal relationship between the human rights violations caused by climate change claimed by the plaintiffs and the defendant's emissions, as well as the redressability (whether the plaintiffs' damages can be remedied by enjoining the defendant's emissions). This issue is also problematic in the standing "legal interest" requirement review, focusing on the connection of the disposition (decision) and the damages.

²⁰ Annalisa Savaresi & Joana Setzer, Rights-based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers, *Journal of Human Rights and the Environment*, vol. 13 p. 21 (2022).

ii. Justiciability

In Japan, justiciability is an issue in two situations: when a court restrains itself from exercising its judicial power due to the separation of powers and when it refrains from deciding because it exceeds the scope of its judicial power. In Japan's climate change litigation, justiciability has been a threshold issue in administrative litigation, where courts have sometimes recognized the broad administrative discretion of an agency's action, such as issuing a final notice that would be revoked if illegal. Both in the Kobe Administrative Case and the JERA case, the courts held that a final notice, which is a part/step of the coal-fired power plant instalment licensing, based on the environmental assessment report, needs "a comprehensive judgment based on scientific and technical expertise is required", taking into consideration the overall socio-economic policy, such as which sectors should be obliged to reduce emissions and to what extent, in Japan's energy policy. The Courts also ruled that the decision-making power should be vested to the administrative agency by law within its discretion. In the Kobe Civil Case, the court held that the method and allocation of CO₂ reduction should be decided through the democratic process. Although justiciability is not a threshold issue in civil litigation, judges might hesitate to find infringement of rights and causal relationships in climate litigation.

Redressability is not an issue in civil cases because the possible defendants would mostly be project-based or direct emitters. In such cases, remedies provided by the courts, such as injunction, would surely redress the legal damages of the plaintiffs.

iii. Jurisdiction

Jurisdiction is not a particular legal issue here in Japan. The general civil jurisdiction can be either the location of the main office or place of business of the defendant business (Article 4(1) and (4) of the Code of Civil Procedure) or the place of residence of the plaintiffs and other residents or the site where the violation of their rights occurred (Article 5(1) or (9) of the Code of Civil Procedure).

iv. Group litigation

In Japan, for consumer protection, certified consumer organizations can request an injunction against illegal acts by business operators (Arts. 12 and 13 of the Consumer Contract Act) or claim damages for victims against such businesses (Arts. 3 and 65 of the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers).

Japan has no such group litigation system in environmental protection, and, at present, there is no political climate for this type of new legislation. The Japan Federation of Bar Associations and some environmental law scholars have long called for introducing an organizational litigation system in environmental disputes.

In addition, a class action system has not been introduced in Japan, whereby some victims are class-certified to carry out litigation on behalf of a group of potential victims in the same victimized situation.

For this reason, environmental litigation in Japan takes the form of joint actions brought by dozens of local residents with the help of environmental NGOs. Thus, collective actions in Japan are little more than joint lawsuits by concerned individuals. In civil litigation, the aim of judgment is ultimately to determine whether the rights of individual plaintiffs are infringed by the acts of the defendants in question, while a case cannot be brought solely based on violation of the public interest apart from infringement of individual rights.

v. Apportionment

A new challenging issue in Japan is how liability to reduce emissions should be allocated to each emitter/defendant among myriad of historical emission sources worldwide. In the ongoing Kobe Civil case, the plaintiffs of the Court of Appeal are relying on the divided liability in (a) (see below) to require the defendant's new coal-fired power plants to halve its CO₂ emissions by 2030.

Japan's historical development on liability apportionment is as follows. From the 1960s to the 1970s, oil complexes were built one after another in coastal areas throughout Japan, with a concentration of thermal power stations and heavy chemical industry plants, and caused collective damages, such as bronchial asthma, to the surrounding population through serious air pollution. At that time, as it was unclear which emission sources contributed to the damages caused by pollution, and to what extent, the court cases argued and proposed the following legal apportionment theories: (a) the theory of divided liability, whereby each source is liable for reductions in proportion to the contribution of its emissions to the overall pollution, and (b) the theory of joint and several liability, whereby each source is liable for all necessary reductions including other entities' emissions jointly and severally with other sources. According to the idea (b), by analogy with Article 719 (1) of the Civil Code, which provides for joint torts, even if only one company out of many emission sources was chosen and targeted, that one company would be liable for all emission reductions necessary, including its contribution to pollution by other companies, with the maximum reduction up to the point where its emissions are reduced to zero. However, a requirement for such heavy liability should be stringent. There has to be a close enough connection between the defendant and the other emission sources to justify joint and several liability for others, e.g., geographical proximity or business connection through capitals, personnel, trading relations or cooperation. However, the geographical proximity and direct business linkages between companies, such as those of former oil complexes, are not found among today's huge sources of CO₂ emissions.

Regarding apportionment in the sense of the burden of litigation costs by the losing party, Japan has not adopted a system whereby the losing party bears the costs of litigation, including the winning party's legal fees. Therefore, when filing a civil injunction action, the burden of litigation costs on the losing party is not an obstacle to filing the action, except for the burden of the mandatory initial litigation stamp fees, which are relatively costly for individual plaintiffs.

vi. Disclosure

Code of Criminal Procedure act.316-25 speculates disclosure of evidence. However, Japan has no climate cases in which disclosure was in issue.

C. Arguments and defences

Claims for a civil injunction against corporations for risk of violating the health-related right to personhood are thus far the most used in climate change litigation. This section observes arguments and defences that have been effective or might be effective when considering civil injunction: (i) imminent danger to the plaintiff's rights (high degree of probability of infringement of the plaintiff's rights), (ii) causality, and (ii) illegality of coal-fired power plants.

i. Imminent danger to the plaintiff's rights

In the Kobe Civil case, the Kobe District Court denied the concrete risk of infringement of the right to life, body and health of the plaintiffs as follows:

“Whether or not the plaintiffs will suffer harm to their lives, bodies, or health will depend on these uncertainties. Therefore, at present, it cannot be accepted that an imminent danger of harm to the plaintiffs' life, body or health has arisen.”

The plaintiffs argue that an injunction should be granted if the risk, which should not be solely the probability of occurrence of damage but the whole product of the damage and the probability of occurrence of damage, is socially unacceptable. The Mito District Court decision of 18 March 2021 granted an injunction against the operation of the nuclear power plant based upon this formula²¹.

A more effective argument, however, can be to extend the limit of the health-related right to personhood toward the right to a stable and healthy environment to protect effectively the lives, bodies and health of the plaintiffs, the core of the protected interests of the right to personhood. It is difficult, not to say impossible, to establish the imminence of the violation of individual rights due to individual emissions, since it is

²¹ Mito District Court 18 March 2021 (Hanrei Jiho no. 2524/2525, p. 40).

undisputed that the contribution of the defendant's CO₂ emissions to climate change is limited among the total emissions. The increased risk of violation of the plaintiffs' rights to life, body and health is also minimal, if it cannot be said zero. On the other hand, it is relatively easier to argue that there is a concrete danger of a violation of the plaintiffs' right to live in a healthy environment because the defendant's failure to reduce its current substantial emissions of CO₂ will itself make it difficult to achieve the 1.5 °C target by consuming carbon budgets without legitimate reasons.

However, the first instance decision of the Kobe District Court held that such mental insecurity without concrete dangers to life, body, and health is not a legally protected interest and the court flatly rejected the right to a peaceful and secure life. The plaintiffs have subsequently added a new cause of action, the right to continue to live in a stable and healthy environment at the Court of Appeal. The new argument takes the 1.5°C target as an acceptable threshold for climate change. It considers that living in a world that exceeds the threshold means living an unstable life with continuous exposure to intensifying risks of climate disasters such as extreme heat and heavy rainfall and that such a life itself is a violation of the right to continue to live in a stable and healthy environment. This right is closely linked to the personal rights to life, body, and health, and extends the scope of protection provided by the health-related right to personhood. It is argued that a stable climate under the safe level of atmospheric concentration of CO₂ is essential for maintaining life, body, and health and that the benefit of living in such an environment is subject to legal protection as a content of the health-related right to personhood. Unlike the right to a peaceful and secure life claimed in the district court, the protected interest is not mental tranquility or security, but a stable daily life indispensable for the pursuit of happiness protected under Article 13 of the Constitution. In Japan, the right to a clean and healthy environment is not explicitly provided for in the Constitution, but this is an attempt to position the right to a clean and healthy environment, which is increasingly being recognized as a fundamental human right in the world, as a cause of action for a civil injunction.

ii. Causality

In Japan, causality is usually divided into (i) factual causality and (ii) proximate cause or legal causality. The Kobe District Court decision rejected the latter, without positively judging the former issue as follows:

“...the relationship between the damage that may be caused to the plaintiffs and the CO₂ emissions from the power plant is extremely tenuous, and the court cannot find an adequate nexus where CO₂ emissions from the new facility can be rightly attributable to the harm that may be caused to the power plant. The court cannot find an adequate nexus where CO₂ emissions from the new facility can be rightly attributable to the harm that may be caused to the individual plaintiffs.”

“It is reasonable to conclude that, to find a causal link to stop the socio-economic activities of another company based on an infringement of the health-related personal

rights, the link must be strong enough to be attributable to the occurrence of damage, and even if the CO₂ emissions from the new power plant in question are high, the link cannot be strong enough to be attributable to the occurrence of individual damage in light of a global scale.”

First, factual causation is likely to become an issue at the Court of Appeal. Therefore, when it is not known whose acts of multiple perpetrators have caused the harm, an argument is made by analogy to the second sentence of Article 719 (1) of the Civil Code, which presumes a factual causal relationship between the acts and consequences of all perpetrators and requires each perpetrator to prove the absence of a causal relationship. In other words, when individual damage through climate change is caused by the cumulative acts of harm by countless CO₂ emitters, i.e., if there is a causal link between the cumulative actions and the damage, the causal link between the individual acts of emissions and the results is presumed. The defendant bears the burden of proof that its emissions have not contributed in any way to the results. The basis for this idea is the Supreme Court’s decision of 17 May 2021²², which recognized the liability of the major building material manufacturers for victims who suffered from an asbestos disease as a result of exposure to a large number of asbestos building materials in numerous, unidentified construction sites, based on the analogy in the second sentence of Article 719 (1).

Concerning the legal causation, the issue is a refutation of the assessment that the linkage between the emission act and the damage is too weak, as stated in the Kobe District Court decision above. Concerning the cumulative global CO₂ emissions causing the damage, the carbon budget-saving effect of curbing the emissions from large individual sources is significant. If so, even if the link to the occurrence of individual damage is weak, the overall link to the deterrence of damage should be assessed as sufficient.

More fundamentally, the new cause of action submitted in the Appellate Court stated above may strengthen the causal linkage between continued mass emissions and the violation of the right to a stable and healthy environment, because the endpoint of the causation for the infringement of this right should be the unreasonable contribution to the atmospheric concentration of CO₂.

iii. Illegality.

The basis for the illegality of emissions from coal-fired power plants is disputed in the Kobe Civil case, as to why emissions from coal-fired power plants are regarded to be specifically illegal among numerous sources of CO₂ emissions. The district court

²² Supreme Court, 17 May 2021 (Minshu vol.75, no.5, p.1359).

dismissed the case without judging the illegality of such emissions. However, concerning the determination of causality, the Kobe District Court mentioned that the selection and decision of CO₂ emission reduction methods should be made through a democratic process from a policy perspective, and that specific emission sources among various sources cannot be legally targeted and identified as the object of attribution for the damage that may be caused to the individual plaintiffs.

In examining the illegality of the emissions as an air pollution facility, the Court of Appeal decision in the Sendai Power Station case affirmed the usefulness and public nature of coal-fired power stations under the National Energy Supply Plan.

In the Appellate court of the Kobe Civil case, the plaintiffs argue that, given the intensification of serious human rights violations in a world beyond the 1.5°C target, the continuation of massive emissions without abatement countermeasures from coal-fired power plants, which are significantly less carbon efficient and for which we have reasonable alternatives, should be declared illegal as a dangerous practice directly linked to human rights violations. This point depends on the extent to which the courts accept the predictions of climate science about a world with tightening carbon budgets and rising temperatures over 1.5 degrees Celsius.

D. Evidence

The Kobe District Court did not reduce or shift the burden of proof concerning the specific risk of infringement of rights and causal relationship, both of which are assumed to be borne by the plaintiff. This point is also an issue for the Court of Appeal.

Regarding the level of proof, both infringement of rights and causation are required to be established at a high level of probability.

The main types of evidence used in civil injunction proceedings include the following

- Various IPCC reports.
- Japan's Meteorological Agency's report on climate change.
- Defendants' environmental impact statement.
- Defendant's policy on CO₂ reduction measures.
- Data on estimated CO₂ emissions from large coal-fired power plants in Japan and other sources.
- Expert opinion on the general causal relationship between CO₂ emissions and climate change.
- Opinion of economists on the economic feasibility of coal-fired power plants.
- Statements by plaintiffs on the damage caused by climate change.

E. Limitation periods

The statute of limitations for claims for infringement of rights expires for torts that cause harm to life and limb after five years, three years (other than life and limb), from the time the victim learns of the damage and the perpetrator and 20 years from the time of the tortious act (articles 724 and 724-2 of the Civil Code).

The statute of limitations does not run if the infringement continues.

The Code of Civil Procedure (art. 135) provides an action seeking future performance may be filed only when it is necessary to claim this in advance. Monetary compensation for future damages can be provided in advance, but “if it is necessary” is strictly examined.

Remedies

A. Pecuniary remedies

Pecuniary damage based upon torts set forth in Article 709 of the Civil Code can be sought by those who suffer from damages caused by tortious CO₂ emissions. No such cases can be observed here in Japan yet, including climate change adaptation costs.

B. Non-pecuniary remedies

i. Injunctive remedies.

In two civil litigations addressed in this chapter, the plaintiffs sought an injunction against the defendant's business activities. As a straightforward means of reducing greenhouse gas emissions, an injunction to cease or limit the operation of such business activities can be effective.

However, Japanese courts have traditionally been extremely cautious in granting injunction orders. In deciding whether to grant a request for an injunction in a civil lawsuit, the Supreme Court has established a standard of factors for determining illegality that is more demanding compared to the damages²³.

ii. Disclosure and other types of remedies

In the Japanese NCP case against Mizuho et al., the complainant requested the enterprises to disclose key project information or any relevant situation regarding their engagement with project sponsors. However, the enterprises did not respond to this request, citing the fact that they are merely "lenders" and "have no direct involvement with the projects."

Regardless of its non-binding nature and negotiation-based procedural limits, environmental NGOs, as pioneered by the Japanese NCP under the OECD, are likely to be more critical of the information disclosed to investors and affected communities regarding climate change countermeasures to be taken by them. It is anticipated that movements outside of litigation may become more active, mainly through negotiations (lobbying) from NGOs who have become shareholders or consumer groups criticizing their greenwash.

²³ Supreme Court 7 July 1995 (Minshu vol. 49 no. 7. P. 1870 &2599)

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