

Supplemental Brief for the Constitutional Complaint by “Youth 4 Climate Action”

(Executive Summary)

Filed 26 January, 2021

Youth4ClimateAction_Supplemental Brief

- **On 26 January 2021, Petitioners filed a Supplemental Brief for the Constitutional Complaint (“Supplemental Brief”) with respect to the “violation of the State’s obligation to protect basic rights concerning the response to climate change and greenhouse gas (“GHG”) reduction.”**
- **Specifically, the Supplemental Brief discusses the following:**
 - 1. State’s obligation to respond to climate change has legal basis on the Constitution.**
 - 2. State has violated such obligation by failing to enact adequate and effective law to reduce GHG.**
 - 3. Petitioners have valid standing.**

Youth4ClimateAction_Supplemental Brief

- **State’s obligation to respond to climate change has legal basis on the Constitution.**
 - A. State’s Obligation to Protect Basic Rights Concerning to Response to Climate Change and GHG Reduction**
 1. While the current Constitution as amended in 1987 does not explicitly stipulate “the obligation to respond to climate change and to GHG reduction,” the Constitution guarantees “the environmental right to live in a healthy and pleasant environment” (Article 35), “the state’s obligation to prevent disasters and to protect safety” (Article 34(6)), and “the state’s obligation to protect health and safety” (Article 34(5)) are collectively more than enough reasons for acknowledging the “obligation to respond to climate change and GHG reduction” as one that has legal basis on the Constitution.
 2. The Constitutional Court has held that “a petition to the Constitutional Court may be brought for an infringement of the citizens’ environmental rights caused by complete legislative omission or significantly insufficient legislation for protecting the environmental right” (Constitutional Court’s decision No. 2006-hunma-711).
 3. Responsibility of an individual state in responding to GHG is crucial in combatting climate change.

Youth4ClimateAction_Supplemental Brief

- **State's obligation to respond to climate change has legal basis on the Constitution.**
 - B. Overcoming Constitutional Crisis re Response to Climate Change: the need for judicial action when the politics has stopped to function**
 1. The National Assembly (the legislative branch under the Korean Constitution) enacts a legislation to cope with climate change and the Government (the executive branch headed by the President under the Korean Constitution) carries out the obligation to reduce GHG emissions.
 2. Judicial action on seemingly political issues are called for when citizens' constitutional demands for their survival and the continuation of their communities are at stake.
 3. There were both non-enforcement as well as abandonment of the 2020 GHG Reduction Target. The issue would be whether the current GHG reduction target is ineffective and inefficient, thus resulting in a violation of the prohibition of the underprotection principle, a type of a standard of review used to examine the violation of the State's duty to protect citizens' lives and safety.
 4. The Constitutional Court should refer to the Dutch precedent and exercise its discretionary power in recognizing that the current legislation and administrative measures are so ineffective and insufficient as to constitute an infringement of citizens' basic rights.

Youth4ClimateAction_Supplemental Brief

- **State has violated constitutional obligation by failing to enact adequate and effective law to reduce GHG.**
 - A. Respondent National Assembly has violated its obligation to enact law with regard to GHG reduction to address climate change**
 - 1. The fundamental problem with the Low Carbon Act is that it does not provide basic standards for setting GHG reduction targets and measures to ensure their implementation.
 - Article 42(2) of the Low Carbon Act that provides, “(when it establishes the reduction target) the Government should take into consideration domestic conditions and trends in other countries” is unconstitutional because such provision violates the Prohibition of Blanket Delegation Principle and the Prohibition of Underprotection Principle.
 - There is no mechanism or regulation to control and to guarantee the Government’s practical and responsible enforcement of GHG reduction targets.

Youth4ClimateAction_Supplemental Brief

- **State has violated constitutional obligation by failing to enact adequate and effective law to reduce GHG.**
 - A. Respondent National Assembly has violated its obligation to enact law with regard to GHG reduction to address climate change**
 - 2. It is possible to correct the defects of the unconstitutionality through a constitutional amendment of the provision subject to review in this case.
 - Once the Constitutional Court declares the decision of nonconformity under the Constitution, the National Assembly as the legislative body can accordingly amend or newly establish some provisions of Article 42 of the Low Carbon Act over a certain period, (i) prescribing effective control methods and procedures regarding the Government's arbitrary change to the GHG reduction target, and (ii) requiring the Government to report to the National Assembly annually about the result of implementation of GHG reduction target, and if there occurs extra emissions exceeding the GHG reduction target, enacting an appropriate law to require a legal accountability about the excess.

Youth4ClimateAction_Supplemental Brief

- **State has violated constitutional obligation by failing to enact adequate and effective law to reduce GHG.**
 - A. Respondent National Assembly has violated its obligation to enact law with regard to GHG reduction to address climate change**
 - 3. Petitioners' standing based on the significantly inadequate legislation
 - If there is complete legislative omission or partial omission due to substantially inadequate protection of the environmental rights, resulting in an infringement of the environmental rights of the people, one can seek relief from the Constitutional Court (Constitutional Court's decision No. 2006-hunma-711).
 - There is no issue of the statute of limitations, as if a clear violation of basic rights is expected in the future, the problem of the statute of limitation will not be raised (Constitutional Court's decision No. 2005-hunma-997).

Youth4ClimateAction_Supplemental Brief

➤ **State has violated constitutional obligation by failing to enact adequate and effective law to reduce GHG.**

B. Respondent President's violation of the duty to protect basic rights

1. Government's administrative legislation

- Government's constitutional duty to act to respond to climate change is obviously recognizable through the interpretation of the Constitution, and the Government's duty to set GHG reduction targets is also clearly prescribed in the statute, Article 42(1)1 of the Low Carbon Act.
- Under the current legal statutes, because Article 25(1) of the Low Carbon Decree, which is subordinate to the Low Carbon Act, sets forth the GHG reduction targets, the issue of complete omission or genuine non-performance is not applicable.
- However, a constitutional complaint to the Constitutional Court can be made regarding partial omission or quasi non-performance of the administrative enactment when the Low Carbon Decree concerning the reduction target of the GHG incompletely and inadequately sets forth the reduction target, resulting in a violation of the duty to protect basic rights.

Youth4ClimateAction_Supplemental Brief

➤ **State has violated constitutional obligation by failing to enact adequate and effective law to reduce GHG.**

B. Respondent President's violation of the duty to protect basic rights

2. Incompleteness and inadequacy of the 2030 GHG Reduction Target

- Only when the Korean government sets out in regulation the basic criteria and standard for setting a GHG reduction target above the minimum standard set forth in the international treaties, it will be seen as having taken the minimum measure to protect the basic rights of the Korean citizens.
- The target amount of GHG reduction as per the Low Carbon Decree fall short of the expected reduction of GHG to “well below 2C” suggested by the scientific community and the international standard.
- Recently, at the plenary session of the Respondent National Assembly of Korea on September 24, 2020, “A Resolution to address an emergency measure on the climate crisis” was passed. The figures set forth in this resolution coincide with the assertions of the Petitioners and international organizations.
- In other words, both the Respondent National Assembly and the Respondent President are publicly acknowledging that the Low Carbon Decree cited in this petition is insufficient and inadequate to fulfill the State's obligation to protect the basic rights.

Youth4ClimateAction_Supplemental Brief

➤ **State has violated constitutional obligation by failing to enact adequate and effective law to reduce GHG.**

B. Respondent President's violation of the duty to protect basic rights

3. Solution – Declaration of unconstitutionality of the 2030 GHG Reduction Target by the decision of constitutional nonconformity
 - If the Constitutional Court declares the provisions from the Low Carbon Act and the Low Carbon Decree applicable to the instant petition as unconstitutional, the Respondent National Assembly can revise Article 42 of the Low Carbon Act within a certain period of time, and/or the Respondent President can revise the GHG reduction target prescribed in Article 25(1) of the Low Carbon Decree.
 - There is sufficient scientific standard for the Respondent President to revise the Low Carbon Decree to revise the 2030 GHG reduction target without violating the Constitution.

Youth4ClimateAction_Supplemental Brief

➤ **State has violated constitutional obligation by failing to enact adequate and effective law to reduce GHG.**

C. Respondent President's abandonment and lack of enforcement of the 2030 GHG reduction target

1. President's omission or insufficient performance of duty to act

- After the lapse of December 31, 2020, the 2020 GHG reduction target year, it is objectively an indisputable fact that the Respondent President has failed to fulfill his duty to implement the 2020 GHG reduction target of 543 million tons.
- Furthermore, on May 24, 2016, the Respondent President revised Article 25(1) of the Low Carbon Decree by substituting the 2020 GHG reduction target with 2030 GHG reduction target. It was as if the 2020 GHG reduction target did not exist. It also exhibited an attitude of just giving up without putting in any serious effort.
- Even with the Respondent President's establishment of the 2030 GHG reduction target through the revision of the 2016 Low Carbon Decree, it is impossible to interpret that the Respondent President's constitutional commitment to implement the 2020 GHG reduction target is automatically eliminated.

Youth4ClimateAction_Supplemental Brief

- **State has violated constitutional obligation by failing to enact adequate and effective law to reduce GHG.**
 - C. Respondent President’s abandonment and lack of enforcement of the 2030 GHG reduction target**
 1. Government’s underprotection of basic rights in implementing the 2020 GHG reduction target
 - The standard of constitutional review for underprotection must be to ask whether the State has taken the appropriate and effective minimum protective measures.
 - Respondent President’s failure to enforce and thus abandon the 2020 GHG reduction target constitutes a “violation under the Constitution by infringing on the rights of the Petitioners to live in a healthy and pleasant environment when the State did not take appropriate and effective minimum protective measures and by under-implementing the State’s obligation to protect the basic rights.”

Youth4ClimateAction_Supplemental Brief

➤ **State has violated constitutional obligation by failing to enact adequate and effective law to reduce GHG.**

C. Respondent President's abandonment and lack of enforcement of the 2030 GHG reduction target

2. With respect to standing

- If the Respondent President's decision to abandon the 2020 GHG reduction target is viewed as having ended on December 31, 2020, the last day of the target year, there is no problem with the statute of limitation of the petition since the petition was filed on March 13, 2020 before December 31, 2020.
- Regarding the issue of statute of limitations, the following facts and reasons also should be recognized:
 - (i) that the Petitioners are minors and thus "*justifiable reason*" must be recognized;
 - (ii) that the statute of limitations for petitions is not applicable since the "*future damage*" will accumulate and continue to occur in the future; and
 - (iii) that the nature of the instant petition represents a strong case of *constitutional importance* for the interpretation of Constitution.