



Korean Carbon Neutrality Act Ruled Unconstitutional

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The Paris Agreement aims to hold the increase in global average temperature to well below 2°C above preindustrial levels and to pursue efforts to limit the increase to 1.5°C. Under the Paris Agreement, each country must submit Nationally Determined Contributions (NDCs) every five years. From 2023, the Conference of the Parties will conduct a Global Stocktake (GST) every five years to assess collective progress on these goals.

In October 2018, the Intergovernmental Panel on Climate Change (IPCC)'s Special Report on Global Warming of 1.5 degrees Celsius underscored the need for carbon neutrality (net-zero carbon emissions) by 2050 to meet the target. It prompted many nations including Korea to declare commitment to carbon neutrality, with Korea enacting the Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis (the "**Carbon Neutrality Act**") in September 2021.

On 29 August 2024, the Constitutional Court of Korea ruled Article 8(1) of the Carbon Neutrality Act unconstitutional for failing to specify quantitative reduction targets for the period from 2031 to 2049.

The Constitutional Court's ruling is Asia's first climate litigation case. It highlighted the importance of maintaining an appropriate "pace of progression" in climate efforts, warning that leaving reduction targets solely to government discretion could not guarantee gradual but continuous reduction, shift the burden to future generations, and hinder carbon neutrality.

1. Key takeaways

Whilst the Court held that Article 8(1) of the Carbon Neutrality Act is unconstitutional, it required the Government to enact revised legislation by 28 February 2026.

The basis for its judgment was that Article 8(1) failed to provide any quantitative criteria for the reduction targets from 2031 to 2049 in violation of both the Principle Against Underprotection and the Principle of Statutory Reservation.

The Court stressed the need for legal safeguards to ensure the carbon reduction process proceeds at a suitable pace.

Given the significant impact of setting reduction targets from 2031 to 2049 or strengthening climate regulation on national industries, the Government is expected to consult stakeholders across various sectors. Active engagement from industries will be crucial in shaping a reasonable climate policy.

2. Article 8(1)

Article 7(1) under the Carbon Neutrality Act sets out the national vision for the transition to a carbon-neutral society by 2050. Under Article 8(1), by 2030, national GHG emissions must be reduced by at least 35% of the 2018 levels, with the exact figure to be set out in the Presidential Decree. Article 3(1) of the Enforcement Decree specifies the reduction amount to be 40% of the 2018 levels. This percentage was also submitted as Korea's NDC to the UNFCCC Secretariat in 2021.

Under the Act, the Government must review the mid- to long-term reduction targets every five years, having regard to domestic and international developments, including the Paris Agreement. Adjustments or new targets shall be made as necessary according to the "principle of progression" under Article 4 of the Paris Agreement and Article 8(4) of the Carbon Neutrality Act.

3. Constitutional Court's judgment

The claimants argued that the absence of reduction targets for 2031 to 2049 under Article 8(1) of the Carbon Neutrality Act, constituted a failure by the government to meet its duty to provide minimum protection, in violation of the Principle Against Underprotection. The Court held as follows.

Principle Against Underprotection

Article 8(1) only stipulates the target up to 2030 and provides no quantitative criteria for the targets from 2031 through 2049. Further, there is no mechanism in the Carbon Neutrality Act and the Presidential Decree which ensures gradual but continuous reductions necessary to achieve carbon neutrality by 2050. As a result, the undue burden is shifted onto future generations, failing to offer the minimum protection needed to address the climate crisis, and violating the Principle Against Underprotection.

Principle of Statutory Reservation

Article 8(1) lacks even an approximate quantitative criteria for reduction targets from 2031 to 2049. However, planning

GHG reduction targets and pathways requires a very high level of social consensus due to the various conflicting interests involved and accordingly, pursuant to the Principle of Statutory Reservation, the approximate quantitative criteria for reduction targets from 2031 should have been established through the law enacted by the National Assembly, which reflects the highest level of social consensus other than the Constitution. The Constitutional Court further emphasised that, as future generations will face greater impact from the climate crisis with limited opportunity to participate in the current legislation process, legislators have a duty to make the law more concrete and specific as far as setting mid- to long-term GHG reduction plans is concerned.

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