Japanese Climate Litigation and the Development of Personal Rights

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Abstract

Since climate change was recognised as a global concern, there has been a growing number of climate-related cases around the world. While the development of climate litigation in Japan is often overlooked in the academic literature, Japanese citizens in fact have instituted four lawsuits that all aim to stop the construction and operation of coal-fired power plants, as the use of coal in the power generation sector is primarily responsible for the total emissions of greenhouse gases in Japan. Accordingly, this article aims to introduce the recent climate-related cases and to show how human rights-based concepts are utilized with the intention of incorporating environmental claims. More specifically, the development of the concept of personal rights (Jinkaku-ken, 人格権) is discussed, primarily by examining the arguments made in the tort law-based climate cases.

Keywords

Japan – climate litigation – environmental human rights – coal-fired power plants – personal rights – right to a peaceful life
1 Introduction

As the threat and harm of climate change become more visible, a growing number of climate-related cases have been initiated around the world in the past few years. In Japan, the first climate case was filed in 2017, and in 2023 there are four pending or decided legal cases.\(^1\) It should be noted that the term ‘climate litigation’ in this article takes a broader definition to include cases in which climate change or enforcement of climate action may not be the core point of dispute but the issue is raised by the plaintiffs with the intention to prevent the adverse effects of climate change.\(^2\) To determine this, the background of the cases and motivations of the citizens bringing claims have been considered. Taking a broader definition of climate litigation is necessary in analysing the Japanese climate context because the cases that are known as climate litigation in Japan do not primarily address greenhouse gas (GHG) emissions or a climate change policy; they often include stronger arguments on (air) pollution as a strategic choice, which makes it difficult to draw a clear line between a climate case and an air pollution case. Moreover, the legal arguments used in climate litigation show great resemblance to those used in litigation on pollution, as all the climate cases in Japan are focused on attempting to stop the construction and operation of coal-fired power plants based on personal rights and the right to a peaceful life.

This article aims to give an overview of the Japanese climate litigation and to contribute to the discussion on the greening of human rights,\(^3\) which can be considered a global trend, by analysing how the traditional concept of ‘personal rights’ (Jinkaku-ken, 人格権) in Japan is expanding to incorporate claims related to climate and the living environment. Firstly, in Section 2.1, some background information is provided to illustrate the current situation regarding the use of coal in the energy sector in Japan, and the national GHG reduction policies in place. Secondly, in Section 2.2, two civil law cases on coal-fired power

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\(^1\) In the Sabin Center database, two civil law cases, two administrative law cases, and additionally one complaint procedure by the OECD National Contact Point, are registered, Sabin Center for Climate Change Law, ‘Japan’ (Global Climate Change Litigation) <http://climatecasechart.com/non-us-jurisdiction/japan/>.

\(^2\) While a narrow definition of climate litigation requires the issues of GHG emissions or climate change policy to be raised directly and expressly, broader definitions are also adopted, often in the Global South context and in jurisdictions where climate cases are not as prevalent as countries like the US, Ivano ALOGNA and others, ‘Climate Change Litigation: Global Perspectives – An Introduction’ in Ivano ALOGNA and others (eds), Climate Change Litigation: Global Perspectives (Brill Nijhoff 2021) 15–17; see also Jacqueline PEEL and Hari M OSOFSKY, Climate Change Litigation Regulatory Pathways to Cleaner Energy (CUP 2015) 8–9.

plants are introduced, with a brief reference to two administrative law cases. Section 3 examines the concept of traditional personal rights to life, bodily integrity, and health (Shintaiteki jinkaku ken, 身体的人格権) and the right to a peaceful life (Heion seikatsu ken, 平穏生活権). Moreover it addresses how those rights and new types of rights, such as the ‘right to a healthy and peaceful life’, a new variant of the right to a peaceful life, and ‘the right to a stable climate’, are invoked in the recent climate litigation.

Further, the article focuses on the discussion of the Japanese climate cases, especially on civil law cases, to illustrate environmental human right concepts and to examine arguments in light of Japanese case law and the development of personal rights found in the literature. Administrative law cases are presented but not discussed in detail, as those have fewer human rights implications.

2 Background

2.1 GHG Emissions and the Reduction Targets

To give a brief background, Japan is one of the world’s five largest emitters of carbon dioxide and largely depends on coal for electric power generation. While Japan hit its lowest record of GHG emissions in the Fiscal Year (FY) 2020, with 1.15 billion tons, the cause is attributed to the temporary decrease in the energy demand and consumption as a result of slowed economic activity due to the COVID-19 pandemic. In 2019, GHG emissions amounted to more than 1.2 billion tons, and 85% of the annual GHG emissions were the carbon dioxide emissions from power generation. Moreover, the energy sector

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4 Japan Center for Climate Change Actions, 'Deta de Miru Onshitsukoukagasuhaisyutsuryou (Sekai)' (Japan Center for Climate Change Actions) <https://www.jccca.org/global-warming/knowledge>.4
accounts for the largest proportion of the direct emission of carbon dioxide in Japan (40.4% in FY 2020).\(^8\) While fossil fuel dependency declined to 81% in FY 2010, it increased again after the 2011 Tohoku earthquake and tsunami, which resulted in the forced shutdown of nuclear power plants.\(^9\) The amount of carbon dioxide emissions subsequently peaked in FY 2013, with 1.4 billion tons of emissions,\(^10\) and fossil fuel dependency was 85.5% in FY 2018.\(^11\)

In its Nationally Determined Contribution (NDC) issued in April 2021, Japan declared its intention to reduce its GHG emissions by 46% in FY 2030 from the FY 2013 levels and to achieve net zero by 2050.\(^12\) Nationally, the Act on Promotion of Global Warming Countermeasures was revised in May 2021, and the revised Act explicitly included the objectives laid down in the Paris Agreement as a basic principle.\(^13\) Article 2 (2) of the Act on Promotion of Global Warming Countermeasures further states that citizens, the State, local authorities, business operators, and other private organisations must cooperate to achieve net zero and the objectives laid down in Article 2 (1) (a) of the Paris Agreement.\(^14\)

On the other hand, Japan still has 169 active coal-fired power plants, and two additional power plants are planned to be constructed.\(^15\) Based on this, all the climate cases in Japan seek a remedy to stop the construction or operation of...

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\(^{8}\) Followed by the industrial sector (24.3%), Japan Center for Climate Change Actions, ‘Nihon no Bumonbetsu Nisankatanso Haisyutsuryou (2020 Nendo)’ (Japan Center for Climate Change Actions) <https://www.jccca.or.jp/download/65477>.


\(^{10}\) ibid.


\(^{12}\) Japan’s Nationally Determined Contribution (NDC) <https://unfccc.int/sites/default/files/NDC/2022-06/JAPAN_FIRST%20NDC%20%28UPDATED%20SUBMISSION%29.pdf>.

\(^{13}\) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change, Chikyuuondanka Taisaku no Syushin ni kansuru Houritsu (Act on Promotion of Global Warming Countermeasures) 1998, art 2 (2) <https://elaws.e-gov.go.jp/document?awid=410AC000000017>; Ministry of the Environment Government of Japan, ‘Chikyuuondanka Taisaku Suisin Hou to Chikyuuondanka Taisaku Keikaku’ (Ministry of the Environment) <https://www.env.go.jp/earth/ondanka/domestic.html>.

\(^{14}\) ibid.

\(^{15}\) At the time of writing in July 2023, Japan beyond Coal, Map and Data (Japan beyond Coal, 2020) <https://beyond-coal.jp/map-and-data/#tab1>.
coal-fired power plants that hinder Japan’s pathway to a complete phasing-out of coal use.

2.2 **Japanese Climate Cases**

2.2.1 *Sendai Citizens v Sendai Power Station (Sendai)*

The first climate case in Japan was brought by citizens in Sendai, north-east Japan, to request an injunction to the operation of a newly established coal-fired power plant, Sendai Power Station. On their website, the citizens stated that they aimed to protect their health and the environment by stopping the operation of the power plant. In 2014, it was reported that a new coal-fired power plant would be built in Sendai, and in 2016, citizens formed a committee to campaign against its construction. The citizen's committee collected 47,599 signatures to oppose the construction plan, yet the Sendai Power Station started its test operation in June 2017. Subsequently, 124 citizens in Sendai filed a complaint against the Sendai Power Station in September 2017. The citizens made tort law claims based on the personal rights to life, health, and bodily integrity, the right to a peaceful life, and the right to biodiversity. Claims concerning GHG emissions and biodiversity were withdrawn by the citizens due to the practical difficulty of arguing those claims in the absence of legal precedents, as well as the advice by the District Court, which stated that the right to biodiversity was not an established right. The claim based on air pollution and the appeal to consider GHG emissions as an aggravating factor were similarly rejected by both the Sendai District Court and the Sendai High Court, but the Sendai District Court added a sentence saying that there is a social responsibility to the company to communicate well with citizens when building and operating a coal-fired power plant.

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16 English summary of the case and the links to the original complaint and judgments in Japanese can be found in the Sabin Center’s database, *Sendai Citizens v Sendai Power Station (Sabin Center for Climate Change Law)* <http://climatecasechart.com/non-us-case/sendai-citizens-v-sendai-power-station/>.  
19 ibid.  
20 *Sendai Citizens v Sendai Power Station* (n 16).  
21 ibid.
2.2.2 Citizen’s Committee on the Kobe Coal-Fired Power Plant v Kobe Steel Ltd., et al (Kobe Civil)

In Kobe, two coal-fired power plants were planned to be constructed. In response to this construction plan, citizens established a committee, with support from experts and environmental protection organisations, and campaigned against the construction. The citizens stated that they aimed to prevent global warming, climate change, and air pollution so that children could have a better future. The citizens attempted to hold a mediation with Kobelco Power Kobe No. 2, but the construction started during the mediation procedure. Consequently, in September 2018, a group of 40 citizens submitted a civil law complaint against the three companies that were responsible for the construction plan and the subsequent operation of the coal-fired power plants. The citizens in this case made traditional tort claims, based on personal rights to life, health, and bodily integrity, as well as new types of claims based on the right to a peaceful and healthy life and the right to a stable climate. In March 2023, Kobe District Court rejected the request to an injunction of the coal-fired power plants, and the case was appealed.

2.2.3 Citizen’s Committee on the Kobe Coal-Fired Power Plant v Japan and Yokosuka Climate Case

Additionally, two similar administrative law complaints were filed against Japan, one in Kobe concerning the same power plants described above and one in Yokosuka. Those two complaints requested the cancellation of the Notice of Finalization issued by the Minister of Economy, Trade and Industry by arguing that the minister had failed to exercise his regulatory power to prevent the
construction of coal-fired power plants. However, acquiring standing has been a major obstacle for citizens in administrative cases, as the Japanese judiciary is of the opinion that issues related to climate change are considered matters of public interest that cannot be claimed by individuals.\(^\text{28}\) The case in Kobe was decided with the Supreme Court’s refusal to hear the case, and the Yokosuka case is currently on appeal.

3 Environmental Human Rights Invoked in Civil Litigation

While administrative lawsuits seek their bases in specific legislation, such as the Air Pollution Control Act and Water Pollution Prevention Act, the legal basis of a request for an injunction in a civil lawsuit is found in personal rights, and issues related to environment and climate change are addressed by expanding the scope of the existing concept of personal rights. In this section, the development of personal rights and their application in climate litigation are discussed.

3.1 The Concept of Personal Rights

3.1.1 Personal Rights to Life, Bodily Integrity, and Health

Firstly, personal rights are a concept derived from the ideas reflected in Article 11 and Article 13 of the Constitution and protect various rights and interests, including life, bodily integrity, health, freedom, reputation, and privacy.\(^\text{29}\) While the concept of personal rights was initially opposed by the Supreme Court judges due to the concern for legal instability in recognising such a vague right,\(^\text{30}\) the right is now widely utilized in civil law cases as a legal basis to protect a variety of rights related to personal wellbeing.\(^\text{31}\) Nagoya District Court, for instance, recognised personal rights as a legal basis for tort claims related to


\(^{31}\) OSAKA (n 29) 397.
air pollution while declining the claims based on the right to environment by emphasizing the importance of protecting a person’s life and health.\(^{32}\)

This traditional concept of personal rights protecting physical health of an individual is now well-accepted in the judiciary and is also referred to as traditional personal rights or physical personal rights to distinguish them from the right to a peaceful life and other types of personal rights.

### 3.1.2 Right to a Peaceful Life

Secondly, the right to a peaceful life, a variant of a personal right, is derived from the interpretation of personal rights and has been increasingly recognised, especially in lower courts in the context of air and water pollution.\(^ {33}\) The right to a peaceful life protects a wide range of interests and can be utilised in various contexts like personal rights, yet protection is given to more subjectively oriented claims such as the fear of health risks and emotional distress.\(^ {34}\) Examples include the request for compensation related to the voluntary evacuation following the Fukushima Daiichi nuclear power station incident\(^ {35}\) and the request for an injunction or a change in the operation of certain facilities, such as waste disposal plants.\(^ {36}\) While purely subjective interests or mere discomfort do not lead to a violation of the right to a peaceful life,\(^ {37}\) more subjective elements are taken into account as the reasonableness of the fear is determined according to the average person’s standards.\(^ {38}\) This subjective

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\(^{35}\) Damages arising from forced evacuation would be addressed based on traditional personal rights or property rights, ibid 112.

\(^{36}\) ibid 107–108.

\(^{37}\) ibid 109.

aspect of the right to a peaceful life seems to enable litigants to pursue more ambitious goals in climate litigation.

3.1.3 Right to Environment
Additionally, the notion of the right to environment emerged in academic theory in Japan in 1970 based on the interpretation of Articles 13 and 25 of the Constitution.39 The right to environment was invoked in several instances, such as in a case requesting an injunction of the construction and operation of heavy oil-fired power plants, but was never recognised by the judiciary.40

As the right to environment has been already rejected, recent climate cases do not attempt to claim the existence of the right to environment but to expand the scope of traditional personal rights and/or the right to a peaceful life.

3.2 Argumentation Found in Climate Litigation
3.2.1 Personal Rights to Life, Bodily Integrity, and Health
In Kobe Civil, the plaintiffs repeatedly stated that climate change was no longer an uncertain threat but a real danger to people's life, bodily integrity, health, and living environment and claimed the necessity to recognise legal remedies to protect the environment, which was not covered by the traditional interpretation of ownership under Japanese tort law.41 According to the traditional interpretation, ownership requires belonging to a specific individual and exclusive control over the object. The ocean, for example, is considered being unable to be owned by anyone since it is directly managed by the State and no specific person can exert exclusive control.42 The environment, which is common property, is interpreted as being not owned by anyone and thus cannot be protected by anyone.43 On the other hand, the plaintiffs argued that the modern interpretation should be that environment is owned by everyone and each member of the community who shares rights and interests arising from the environment should be able to request an injunction against the violation of the shared interest.44 The above interpretation of shared ownership allowing every individual to pursue a remedy under tort law opens the path for citizens to defend the environment. At the same time, this approach deviates

41 Kobe Complaint (n 22) 34–35.
42 Supreme Court of Japan App No Shouwa 55 (Gyou Tsu) 147 (16 December 1986) 3.
43 Kobe Complaint (n 22) 35.
44 ibid.
from the traditional tort rules and gives much uncertainty to the defendants as an unlimited number of persons may be able to sue them. This concern and difficulty are also acknowledged by the lawyers in *Kobe Civil*, and as a strategic choice, both Sendai and Kobe citizens argued that the emissions of air pollutants violate personal rights to life, bodily integrity, and health or the right to a peaceful life as they could cause or worsen respiratory and cardiac diseases.

Moreover, Kobe citizens state that damage to their life, body, and health is a direct violation of their traditional personal rights and it is also a violation of traditional personal rights if the process of the carbon dioxide emissions by the operation of coal-fired power plants causing high temperature leading to increased disasters and diseases is scientifically evidenced and that it is highly likely that there is damage to the plaintiffs’ life, body, and health. They argue that the act of emissions violates the right to peacefully live with a stable climate even if the causal relationship between the emissions and the damage cannot be proved sufficiently, if the emissions carry irrational risks through a long-term and intentional activity.

### 3.2.2 Right to a Peaceful Life, the Right to a Healthy and Peaceful Life, and the Right to a Stable Climate

The Kobe citizens claimed that the right to a peaceful life includes the right to a healthy and peaceful life, which refers to the right to sustainably live with clean air, and the right to a stable climate.

Firstly, Kobe citizens invoked the right to a stable climate as a basis for preventing activities that have a serious influence on the climate and the global environment. Kobe citizens claim that the right to a stable climate can prevent activities that damage the climate and global environment. In response, Kobe Steel and others, the defendants of *Kobe Civil*, state that the right to a stable climate is equally ambiguous as the right to environment and infringes legal stability. They argue that personal rights to be protected must be clear and concrete and the existence of danger or threat must be objective and real. However, the plaintiffs argue that their claims are different from those

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45 Citizen's Committee, Plaintiffs' Fourth Preparation Document on *Citizen's Committee on the Kobe Coal-Fired Power Plant v Kobe Steel Ltd, et al.*, 33–34.
46 ibid.
47 Citizen's Committee, Plaintiffs' Second Preparation Document on *Citizen's Committee on the Kobe Coal-Fired Power Plant v Kobe Steel Ltd, et al.*, 3.
48 Kobe Complaint (n 22) 36.
49 ibid.
50 Citizen's Committee (n 45) 32.
51 ibid.
based on the right to environment, as the risk of global warming is an actual danger for the citizens and is more than a concern about the climate or a subjective interest.\textsuperscript{52} While the defendants repeated throughout the procedure that the negative impact of climate change is not objective, concrete, urgent, or serious,\textsuperscript{53} the plaintiffs referred to the IPCC reports and the decision in the \textit{Urgenda case} to show that global warming is a real danger.\textsuperscript{54} They claim that the Dutch government in \textit{Urgenda} has not disputed that climate change is a serious threat or danger and that should be accepted as a fact.\textsuperscript{55} They further claim, in reference to Article 2 of ECHR, that the urgency may not mean that danger is imminent, but nevertheless directly threatening to people.\textsuperscript{56}

Secondly, the plaintiffs argued that there was a violation of the right to a healthy and peaceful life as the plaintiffs were exposed to a number of unreasonable risks and feeling anxious or scared.\textsuperscript{57} They claimed that the serious sense of danger and anxiety, according to an average person’s standards, violated mental peace and peaceful life.\textsuperscript{58} Since the health risks by the power plants were not applied to specific individuals, the point of dispute addressed by the plaintiffs was whether the risks were unreasonable.\textsuperscript{59} In this argument, they referred to the risks that were socially considered appropriate to be prevented, based on the precautionary principle.\textsuperscript{60} In this regard, they stated that the nature and seriousness of an act, social necessity and alternatives, and measures taken to mitigate negative effects, should be considered.\textsuperscript{61} They emphasised that what mattered was if the risks can be socially accepted, even if the likelihood was not high enough to be considered a concrete danger in the traditional sense.\textsuperscript{62}

Similarly, they point out that being permitted in administrative law did not automatically mean that it was acceptable in civil law\textsuperscript{63} while the first-instance
judgment in Sendai stated that issues related to GHG may be primarily regulated by administrative law.64

3.2.3 Final Remarks

Overall, stopping the construction or the operation of a coal-fired power plant seems to be challenging in both the civil and administrative law arenas. The judgment in Citizen's Committee on the Kobe Coal-Fired Power Plant v Japan reveals that the interest to not incur damage by carbon dioxide emissions is not an individual interest to be protected according to the Court’s view on the current social situation.65 In Kobe Civil, the Kobe District Court did not recognise the impact of climate change as a violation of personal rights, since the expected damage is uncertain and the danger is not concrete enough.66 Moreover, the Kobe District Court did not recognise the right to a stable climate as a protected interest under the interpretation of personal rights, which should protect individual interests.67 However, considering the nature of personal rights encompassing a wide range of rights, including the relatively modern right to privacy, stretching their scope seems to be a significant step forward for claiming an injunction to the use of coal.

4 Conclusion

To summarise, Japan relies on coal-fired power plants for its energy supply, and the coal phase-out has been challenging. In order to influence Japan’s policy-making and raise awareness about the impact of coal on the environment and health, two civil and two administrative cases were brought before the courts. In the administrative cases, citizens struggled to acquire standing. In the civil law cases, citizen requested an injunction against the construction and operation of coal-fired power plants based on personal rights, and the scope of personal rights seems to be expanding. In Sendai, the citizens attempted to request an injunction against a coal-fired power plant for the first time. The final judgment did not deal with the issues of GHG emissions and the citizens’ claim on air pollution was also unsuccessful. In Kobe Civil, citizens tried deriving new types of rights, the right to a healthy and peaceful life and the right to a stable climate, by interpreting personal rights.

64  Sendai District Court, App No Heisei 29 (Wa) 1175 (26 August 2020) 17.
65  Osaka High Court, App No Reiwa 3 (Gyou Ko) 46 (26 April 2022) 28–30.
66  Kobe District Court, App No Heisei 30 (Wa) 1551 (20 March 2023) 96.
67  ibid 102.
Traditional personal rights to life, bodily integrity, and health require physical damage or a high probability of damage and causation. However, the right to a peaceful life seems to protect the mental interests of the citizens and prevent risks that can result in serious damage, even if the probability and causation are relatively unclear, meaning that the existence of risks itself could also be considered as damage according to the argumentation discussed in Section 3.2.1.68 However, the first-instance judgment of *Kobe Civil* shows that the impact of climate change and the anxiety thereof are too abstract to be a violation of personal rights or the right to a peaceful life. All the judgments so far rejected the citizens’ requests to stop the construction and operation of coal-fired power plants, and it would be revolutionary if the Japanese judiciary recognises a violation of personal rights based on GHG emissions under the current understanding of law.

68 Citizen's Committee (n 45) 36.