

Climate Change Litigation in Japan

A Short Overview of Japanese Characteristics within International Trends with Focus on Administrative Cases

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I. INTRODUCTION

The worldwide problem of climate change has been dominating media, science, national and international legislation and many other aspects of everyday life around the world for several years. It is a fact that greenhouse gases (GHGs) are essential, as they absorb the radiation leaving the terrestrial surface and thereby preserve heat and energy in the atmosphere, which is necessary for the survival of plants, animals, human beings and all other parts of the complex biological systems as they exist on earth at this moment. However, the higher concentrations of GHGs in the atmosphere caused by emissions around the world lead to proportionally greater atmospheric absorption and reflection of heat and energy and therefore result in an increase in the overall temperatures on earth.

The global warming already going on has been identified by scientists as one of the biggest global threats to humankind in the 21st century. The impact of global warming specifically includes a sharp increase in heat waves and other weather disasters, coastal flooding etc. These impacts are expected to lead to a drastic rise in climate-related deaths, either directly

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from weather disasters or indirectly from the effects of weather disasters on access to nutrition around the world.¹

Recent reports of the Intergovernmental Panel on Climate Change (IPCC) show that climate change is happening right now, and many recent weather disasters, e.g., droughts, floods, storms etc., are already direct consequences of global warming.² According to the reports, the global average temperature has already risen by 1.1°C and is likely to rise by another 1.5°C even before 2040. That means that the outer limit stipulated in the Paris Agreement³, of an increase in temperature of less than 2.0°C and aiming for a 1.5°C-increase compared to pre-industrial levels,⁴ would be reached well before the year 2050.⁵ According to the IPCC reports, the coming years offer the last chance to get on the right track to comply with the limits set in the Paris Agreement.⁶ Furthermore, one can say that the IPCC has established itself as the preeminent authority in climate research and receives highest international recognition. That human behavior enhances climate change and that the accumulation of GHG emissions in the atmosphere leads to global warming due to absorption and reflection of terrestrial radiation, which has been studied by the IPCC, can therefore be said to be common knowledge.⁷

The above reasons have led to many instances of climate-change-related litigation around the world.⁸ Among these have been administrative climate change cases decided before Japanese courts. The article at hand will focus on these litigations so far and put them in the context of climate change

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- 1 M. ROSSO GROSSMAN, Climate Change and the Individual, *The American Journal of Comparative Law* 66 (1) (2018) 345–378, 346.
 - 2 D. HANSCHER/M. SCHULTZE, Menschenrechtliche Aspekte des Klimaschutzes, *Klima und Recht* 2022, 166–171, 167.
 - 3 Paris Agreement under the United Nations Framework Convention on Climate Change, adopted in 2015, 195 member states.
 - 4 M. RODI/M. KALIS, Klimaklagen als Instrument des Klimaschutzes, *Klima und Recht* 2022, 5–10, 8.
 - 5 T. SONOHARA [苑原俊明], 気候訴訟と国際人権法: Urgenda 財団対オランダ王国事件 [Climate Litigation and International Human Rights Law: Urgenda Foundation v. State of the Netherlands], *大東法学 Daitō Hōgaku* 30 (2) (2021) 119–140, 120.
 - 6 RODI/KALIS, *supra* note 4, 5.
 - 7 RODI/KALIS, *supra* note 4, 7; S. KUBOTA [久保田修平], 気候変動時代における企業法務と ESG 投資、SDGs: 気候変動訴訟の動向も踏まえて [Corporate Legal Affairs and ESG Investments in the Era of Climate Change, SDGs: Taking Trends in Climate Change Litigation into Consideration], *環境法研究/人間環境問題研究会 編 Kankyō-hō Kenkyū/Ningen Kankyō Mondai Kenkyū-kai hen* 46 (2021) 33–51, 33.
 - 8 S. MUNDY/P. TEMPLE-WEST/K. TALMAN/G. TETT, Climate change activism heads to the courtroom, *The Financial Times Limited*, 29 September 2021, at <https://www.proquest.com/docview/2587611587?pq-origsite=primo>.

litigation worldwide. It will first provide a short overview of climate change litigation in Japan by giving a general overview of the situation of GHG emissions in Japan as well as the international commitments Japan has entered into and national legislation introduced so far. The article will then explain the characteristics of climate change litigation in general and briefly introduce the Japanese cases, some of which are still in proceedings. After that, the article will explain in detail the decisions in the Japanese administrative cases, these being the Kōbe Case⁹ and the Yokosuka Case¹⁰, presenting and critically assessing the plaintiffs' specific claims and the defendants' arguments as well as the reasonings of the respective courts. The second part of this article will identify the characteristics of Japanese climate change litigation by placing these cases in the context of international trends based on a few international landmark cases, to which the relevant Japanese cases and their characteristics and issues will then be compared. Finally, the findings will be summarized in the conclusion.

II. AN OVERVIEW OF CLIMATE CHANGE LITIGATION IN JAPAN

1. General Overview

a) Situation of GHG emissions and anti-measures in Japan

Japan ranks the fifth in the world in GHG emissions after China, the United States, India and Russia. The reason for this is that the vast majority of Japanese emissions originate from the energy sector which, for the most part, still depends on coal-fired power plants for the generation of energy. Although this dependency was declining slightly until 2010, the Tōhoku Earthquake and Tsunami on 11 March 2011, paired with the Fukushima Daiichi Nuclear Disaster,¹¹ led to a drastic shift in Japanese energy policy.

9 There is an administrative as well as a civil case against the same coal-fired power plants in Kōbe. As the focus of this article lies on administrative cases, the term "Kōbe Case" here in principle refers to the administrative case, unless otherwise stated. Citizens' Committee on the Kōbe Coal-Fired Power Plant v Japan, Ōsaka District Court, 15 March 2021, Case No. 2018 gyō u 184; Ōsaka High Court, 26 April 2022, Case No. 2021 gyō ko 46; Supreme Court, 9 March 2023, Cases No. 2022 gyō tsu 198, 2022 gyō hi 215.

10 Yokosuka Citizens v Japan, Tōkyō District Court, 27 January 2023, Cases No. 2019 gyō u 275, 2019 gyō u 598.

11 The Tōhoku Earthquake and Tsunami on 11 March 2011, also known as 東日本大震災 *Higashi Nihon Dai-shinsai* [Great East Japan Earthquake] in Japan, had a seismic magnitude of 9.0–9.1 and was the fourth most powerful earthquake worldwide and the most powerful earthquake in Japan since the beginning of modern record-keeping in 1900. Lasting for approximately six minutes with its epicenter in the Pa-

With the resulting shutdown of all nuclear power plants in Japan, reliance on fossil fuels, especially coal-fired power plants, once again starkly increased. Right now, even new coal-fired power plants are in planning or under construction in Japan even as other parts of the industrialized world may be in the process of gradually shutting down their coal-fired power plants and replacing them with sources of renewable energy.¹²

Despite the increase in coal-fired power plants, Japan has signed and accepted the Paris Agreement and thereby has committed itself to achieving the goal of net zero emissions by 2050. On the national level, Japan with its Nationally Determined Contribution (NDC) has furthermore committed to a 46% reduction in its GHG emissions by 2030 compared to the peak of emissions in 2013. As for national legislation, the Law Concerning the Promotion of the Measures to Cope with Global Warming¹³ includes the binding goal of net zero emissions by 2050 as well. Moreover, it puts the obligation on state and local authorities, private citizens, businesses, and other private organizations to respect the goal of net zero emissions and other objectives stipulated in the Paris Agreement.¹⁴

b) Climate change litigation

aa) Characteristics of climate change litigation in general

Climate change litigation is not a technical term with a clear definition.¹⁵ It usually describes any kind of litigation that has the objective of legal protection of the climate, e.g., by requesting specific climate-protective mea-

cific Ocean less than 100 km off the coast of Japan's Tōhoku area, the earthquake triggered an enormous tsunami that hit land shortly after, with earthquake and tsunami causing approximately 20,000 deaths and more than 200,000 people losing their homes. Furthermore, the tsunami caused a nuclear disaster at Fukushima Daiichi Nuclear Power Plant, which included the meltdown of three reactors and the discharge of large amounts of contaminated water and caused the evacuation of hundreds of thousands of residents in the surrounding areas.

12 T. SHIMAMURA [島村健]/S. SUGITA [杉田峻介]/N. IKEDA [池田直樹]/M. ASAOKA [浅岡美恵]/J. WADA [和田重太], 日本における気候訴訟の法的論点: 神戸石炭火力訴訟を例として [Legal Arguments in Climate Litigation in Japan: Taking the Kōbe Coal-Fired Power Case as an Example], 神戸法學雑誌 Kōbe Hōgaku Zasshi 71 (2) (2021) 1–88, 3.

13 地球温暖化対策の推進に関する法律 Chikyū ondanka taisaku no suishin ni kansuru hōritsu, Law No. 117/1998.

14 Y. NISHIKAWA, Guest Post: Climate Litigation in Japan: Citizens' Attempts for the Coal Phase-Out, Climate Law Blog, 1 June 2022, at <https://blogs.law.columbia.edu/climatechange/2022/06/01/climate-litigation-in-japan-citizens-attempts-for-the-coal-phase-out/>.

15 RODI/KALIS, *supra* note 4, 6.

asures, forbidding activities whose impact would harm the climate or even requesting damages for losses caused by climate change. Such actions may be directed against the state, other public authorities or against private companies or individuals.¹⁶

There are many different kinds of climate change litigation. In some cases, the plaintiffs try to force governments towards regulatory actions. In other cases, they might be seeking remedies for harm suffered as a result of GHG emissions or injunctions to prevent or stop such harm from occurring. Basically, climate change litigation can be divided into administrative and civil cases depending on the defendant.

In administrative cases, the defendant is the state, including the relevant ministries or local authorities, and the goal of the litigation may be to have an administrative decision declared invalid, e.g., planning permission approvals granted by authorities etc., or to force the administrative authorities to render specific decisions or even specific legislation to reach goals stipulated by international agreements by changing the regulatory framework.

Most administrative cases are brought on the grounds of human rights. As the relevant legal interest, human rights may be enshrined in national constitutions or legislation as well as in universal or regional human rights treaties. A “right to a healthy environment” or a “right to climate protection” seem to be gaining recognition around the globe in national as well as international legal systems.¹⁷ To derive such a human right, plaintiffs generally argue from multiple other human rights or other parameters enshrined in national constitutions or international agreements, e.g., the right to life, the right to freedom, provisions on environmental protection.

In civil cases, on the other hand, the defendants are private companies or individuals, and the goals of litigation include damages for the harm caused by certain emissions or injunctions to prevent expected future harms. These cases are usually brought before courts under the respective nation’s tort law.¹⁸

However, individual plaintiffs or environmental organizations suing on behalf of their members often face several administrative and other legal issues when they try to bring their cases before the competent courts.¹⁹ These issues include standing, as plaintiffs in principle need to prove they have a personal stake in the controversy.²⁰ This often creates a hurdle, as it

16 T. HEYMANN, *Klimaklagen – von grundrechtlichen Schutzpflichten und zivilrechtlicher Haftung*, *InfrastrukturRecht* 2022, 60–64, 60.

17 HANSCHER/SCHULTZE, *supra* note 2, 167.

18 F. FELLEBERG, *Rechtsschutz als Instrument des Klimaschutzes – ein Zwischenstand*, *Neue Zeitschrift für Verwaltungsrecht* 2022, 913–920, 913, 914.

19 ROSSO GROSSMAN, *supra* note 1, 348.

20 ROSSO GROSSMAN, *supra* note 1, 353.

is difficult to connect mostly objective environmental matters, e.g., protection of the atmosphere and other community resources, with subjective legal interests.²¹ Furthermore, the derivation of a subjective right that can confer standing is a common issue in many jurisdictions.²² Plaintiffs will often argue that a “right to climate protection” or “right to a healthy environment” derives from constitutional or international human rights, but in most jurisdictions the constitution clearly does not specifically mention a “right to climate protection”. Therefore, deriving one requires a substantive legal argument that ties into other parameters that are part of the constitution or international agreements.

Another issue plaintiffs widely face is the separation of powers.²³ Political questions should in principle be decided by parliaments or other legislative authorities which are often bound directly only by a rather vague constitutional framework. Legislative authorities have the prerogative to assess²⁴ and make specific decisions on how to resolve a certain problem.²⁵ And while executive authorities on the other hand are bound to national laws, they still often have broad discretion in their decision-making processes. Therefore, judicial authorities must always assess whether the questions before them are actually theirs to decide and if they were not overstepping the thin line between the three separate state powers by deciding them.²⁶ Where specific legislation is required or where executive authorities do have broad discretion in their decision-making, the scope of judicial review is very limited and courts may only overturn the status quo in cases of evident administrative abuses.²⁷

And then, the burden of proof becomes an issue, especially in civil cases where plaintiffs have sued private companies or individuals on the basis of tort law, claiming damages or seeking injunctions. In principle, in civil procedure law the burden of proof lies with the party whose legal position would improve if the specific fact were proven, i.e., in most constellations of climate change litigation, with the plaintiff. With regard to the defendant’s specific action and the harm suffered by the plaintiff, however, it is often very difficult to prove a direct causal connection. Proving this direct causation is therefore often a significant hurdle for plaintiffs in civil cases.²⁸

21 HANSCHER/SCHULTZE, *supra* note 2, 170.

22 RODI/KALIS, *supra* note 4, 7.

23 RODI/KALIS, *supra* note 4, 6.

24 Einschätzungsprärogative.

25 RODI/KALIS, *supra* note 4, 7.

26 ROSSO GROSSMAN, *supra* note 1, 357.

27 FELLEBERG, *supra* note 18, 914.

28 ROSSO GROSSMAN, *supra* note 1, 360.

bb) Short introduction to Japanese climate change litigation

In recent years, several climate change cases have been litigated in Japanese courts. They all have concerned the construction and/or commissioning of coal-fired power plants. While some civil actions have been brought directly against electricity suppliers (Sendai²⁹, Kōbe³⁰), other administrative actions have been directed against the Japanese government over its approvals of electricity suppliers' plans to construct and/or put into operation new coal-fired power plants (Kōbe, Yokosuka).³¹ The most famous example is the Kōbe Case, in which the plaintiffs lost in the first instance before the Ōsaka District Court as well as on appeal before the Ōsaka High Court.³² The plaintiffs decided to request a final appeal before the Japanese Supreme Court, which was the first climate-change-related case to reach the highest court of Japan. However, in March 2023 the Supreme Court issued its decision rejecting the request for a final appeal and upholding the Ōsaka High Court's judgment.³³

Four main points have been debated regarding the Japanese cases so far. As in many other jurisdictions, the question in Japan has been whether plaintiffs lack standing to even bring their claims before the courts in response to a governmental action that may affect the climate. This is at issue in many climate change litigation cases. Often it may be questionable how the plaintiffs could be directly affected by the measures at issue.³⁴ Furthermore, the specific rights that confer standing on the plaintiffs can be problematic in climate change related matters, as no explicit "right to climate protection" nor anything comparable exists on the constitutional level or in any other national legislation. Therefore, such a right can only be derived from other rights and principles.

Another set of questions that has come up in Japan as well as in many administrative cases internationally is how much discretion executive governmental bodies have with regard to their climate change policies and the specific measures they may take. To what extent are they bound by international

29 Sendai Citizens v Sendai Power Station, Sendai District Court, 28 October 2020, Case No. 2017 u 1175; Sendai High Court, 27 April 2021, Case No. 2020 ne 372.

30 Citizens' Committee on the Kōbe Coal-Fired Power Plant v Kōbe Steel Ltd., et al., Kōbe District Court, 20 March 2023, Case. No. 2018 u 1551.

31 N. KOJIMA [小島延夫], 世界の気候訴訟の今日 [Worldwide Climate Litigation Today], 自由と正義 Jiyū to Seigi 73 (3) (2022) 18–25, 24; SHIMAMURA/SUGITA/IKEDA/ASAOKA/WADA, *supra* note 12, 3, 4.

32 Ōsaka District Court, *supra* note 9; *see infra* at 2. a) bb); Ōsaka High Court, *supra* note 9; *see infra* at 2. a) cc).

33 Supreme Court, *supra* note 9; *see infra* at 2. a) dd).

34 SHIMAMURA/SUGITA/IKEDA/ASAOKA/WADA, *supra* note 12, 87.

law (e.g., the Paris Agreement) or their self-imposed greenhouse gas (GHG) reduction targets? And furthermore, when may a court declare a measure invalid that the executive branch has taken? Therefore, the justiciability of the controversy is often at issue due to the principle of separation of powers.³⁵

Thirdly, there is often a problematic lack of clarity about how and in what circumstances plaintiffs can address, through litigation, a government's failure to legislate, e.g., if it has failed to implement measures consistent with international GHG emissions goals. In particular, it is questionable whether plaintiffs can sue governments to enact specific laws in this context.³⁶

Lastly, a frequent issue in civil cases is what specific rights plaintiffs can base their tort claims on and what kind of evidence plaintiffs must come forward with to prove a breach of a duty of care. Here, a clear distinction must be made between emissions of pollutants and GHG emissions. Because there are often concrete legal standards for the concentration of air pollutants, it is significantly easier in a tort case to prove violations of personal rights from air pollutants than from GHG emissions.

2. *Administrative Cases*

a) *The Kōbe Case*

aa) *Overview of facts*

There were already two coal-fired units in operation at the Kōbe Power Plant even before plans were made to construct the new units being challenged in this case. The Kōbe Power Plant is located in the southern part of the city of Kōbe, about 500 meters from the residential area of Nada-ward and roughly fifteen minutes by car from the city center. The power plant was built and is owned by Kobelco Power Kōbe No. 2 Inc. and is operated by Kōbe Steel Ltd. The generated electricity is purchased and traded by the electricity supplier Kansai Electric Power Co., Inc. The two existing units had an output of about 1,300 megawatts. In 2018, the three companies started planning the construction and operation of two more units at the power plant. This plan would double the output, but also the emissions of harmful air pollutants and CO₂. With all four units in operation, the Kōbe Power Plant would emit about fourteen million tons of CO₂, more than all of Kōbe, a city of 1.5 million. Despite opposition from residents of the region, plans for the construction and operation of the two additional units were submitted to the government in 2018. An

35 M. ASAOKA [浅岡美恵], 世界の気候変動訴訟の動向: 日本における気候変動訴訟への示唆 [Worldwide Trends in Climate Change Litigation: Implications for the Climate Change Litigation in Japan], 環境と公害 Kankyō to Kōgai 49 (1) (2019) 31–36, 35.

36 KOJIMA, *supra* note 31, 25.

Environmental Impact Assessment (EIA)³⁷ was conducted and a Final Notice³⁸ issued by the Ministry of Economy, Trade and Energy (METI), thus allowing the three companies to go ahead with their plans.³⁹ Following this, several residents of the region lodged two court actions: one, an administrative action against METI requesting the revocation of the Final Notice and seeking a declaration that the government of Japan was violating the law by not incorporating the goals of the Paris Agreement into national law; the other, a civil action against the three companies, calling for an injunction to stop the construction and planned operation of the two additional units. In both actions, the residents are represented by the Citizens' Committee on the Kōbe Coal-Fired Power Plant.

bb) Summary of the first instance decision (Ōsaka District Court, 15 March 2021) of the Kōbe Case⁴⁰

On 19 November 2018, several citizens of the city of Kōbe filed an administrative action before the Ōsaka District Court. They sought revocation of the Final Notice of the EIA of two new coal-fired power plant units issued by METI. Furthermore, they requested that the court declare that the failure of METI to enact regulatory standards for CO₂ emissions into domestic law, consistent with the Paris Agreement, was unlawful.⁴¹ On 15 March 2021, the Ōsaka District Court rejected the plaintiffs' request for revocation of the Final Notice. The court ruled that the plaintiffs lacked standing to pursue the claims related to GHG emissions, as not incurring the harmful health consequences of global warming was an interest of the general public rather than an individual interest. Furthermore, the court declined to declare the Final Notice invalid as the plaintiffs had requested, because the determination to issue the Final Notice was within the discretion of METI and the specific determination in this case constituted neither a deviation nor an abuse of discretionary power.

The plaintiffs' requests and the main issues in the first instance decision are:

(1) Revocation of the Final Notice of the EIA

37 環境影響評価(書) *Kankyō eikyō hyōka(sho)*.

38 確定通知 *Kakutei tsūchi*.

39 S. SUGITA [杉田峻介], 神戸製鋼の新設石炭火力発電所に関する公害調停・訴訟 [Mediation and Litigation against Pollution Regarding Kōbe Steel's Newly Constructed Coal-Fired Power Plants], 環境と公害 *Kankyō to Kōgai* 49 (1) (2019) 37–43, 37.

40 Ōsaka District Court, *supra* note 9.

41 SUGITA, *supra* note 39, 41.

- (2) The unlawfulness of METI's failure to incorporate CO2 emissions standards consistent with the Paris Agreement into domestic law

(1) Revocation of the Final Notice of the EIA

Regarding revocation of the Final Notice of the EIA, there are three main legal issues:

The first issue is whether the Final Notice constitutes an administrative disposition under Art. 4 of the Administrative Case Litigation Act⁴². If not, the Final Notice could not be subject to an appeal. In order to be an administrative disposition, the Final Notice must be an action by the country or public entity that brings into being a "legal relationship" between the entity and the affected persons by defining the scope of the respective parties' rights and duties. Here, the court held that the issuance of a Final Notice by METI legally grants approval for the construction and therefore directly establishes the rights of the people and equally defines the scope of those rights.

Secondly, the plaintiffs' standing is in question, especially regarding the issues relating to the Final Notice. The issue here is whether the legal provisions in question are intended to protect the plaintiffs' individual interests. METI argued that the provisions are only intended to protect the interests of the general public. But the court held that they were intended to protect both the general public's as well as individual interests, i.e., the health of local residents affected by air pollution. However, the court held that such individual interests did not include the interest not to incur harm from global warming caused by CO2 emissions and instead regarded this interest to be of a general public rather than an individual nature.

Thirdly, the validity of the Final Notice issued by METI is at issue. Here, the EIA and the factors assessed in the EIA are important. The plaintiffs claimed that certain factors should have played an important role in the EIA, e.g., the PM 2.5 impact on people's health, the air quality being monitored from vehicle emissions monitoring stations rather than general air quality monitoring stations, the rise in CO2 emissions, the possibility of using other energy sources, the likelihood of the implementation of environmental protection measures in this project, public opinion, and the governor's opinion as well as the opinion of the Ministry of Environment. Furthermore, the plaintiffs argued that because these factors were not sufficiently considered, the Final Notice of the EIA should be declared invalid. However, METI argued that the EIA was adequate as it was and that it was within METI's discretion to decide which factors to assess in completing the EIA. Finally, the court found that the standards based on which the EIA

42 行政事件訴訟法 *Gyōsei jiken soshō-hō*, Law No. 139/1962.

needs to be conducted are rather unclear; in order to declare the Final Notice invalid, there must have been a deviation from the scope of or an abuse of discretionary authority. METI did not address the factors that the plaintiffs raised. Nonetheless, the court did not find that the material facts assessed lacked foundation or were extremely unreasonable in light of socially accepted norms and therefore decided that the issuance of the Final Notice was within the discretionary authority of METI.

(2) The unlawfulness of METI's failure to incorporate CO2 emissions standards consistent with the Paris Agreement into domestic law

With regard to METI's failure to incorporate CO2 emissions standards consistent with the Paris Agreement into Japanese domestic law, there are two main legal issues:

Firstly, the plaintiffs' standing to ask the court to declare METI's failure to legislate unlawful is questionable. Standing is assessed, again, under Art. 4 of the Administrative Case Litigation Act, which requires that rights and duties have been formed that create a "legal relationship" between the parties. The question the plaintiffs raised here, however, is one of the legality of general laws and regulations. The court therefore found that no concrete "legal relationship" had been constituted between the parties. Furthermore, even if legislated, such CO2 emissions standards would not be intended to protect individual interests. So, all in all, regarding the alleged unlawfulness of METI's failure to legislate CO2 emissions standards in accordance with the Paris Agreement, the court found that the plaintiffs lacked standing.

Secondly, it must be assessed whether this failure is actually unlawful, i.e., whether METI was actually required to legislate CO2 emissions standards. Here the court did not make any assessment due to plaintiffs' lack of standing regarding the issue.

cc) Summary of the appeal decision (Ōsaka High Court, 26 April 2022) of the Kōbe Case⁴³

After the Ōsaka District Court rejected the plaintiffs' request to revoke the Final Notice issued by METI on 15 March 2021, the citizens filed an appeal before the Ōsaka High Court on 26 March 2021, in which they argued that the GHG emissions could infringe on their rights because climate change harms a person's life, body, and property. Moreover, they claimed that the Ōsaka District Court's decision to deny them standing constituted a violation of their right of access to the courts. Moreover, the appellants request-

⁴³ Ōsaka High Court, *supra* note 9.

ed that the court reassess the appropriateness of the EIA and the Final Notice. On 26 April 2022, the Ōsaka High Court upheld the judgment of the Ōsaka District Court and rejected the request to revoke the Final Notice. The citizens expressed their intent to continue to litigate the case before the Supreme Court.

The main issues on appeal are:

- (1) The appellants' standing to seek revocation of the Final Notice
- (2) The validity of the Final Notice

(1) The appellants' standing to seek revocation of the Final Notice

The appellate court found that the appellants could not be denied standing as plaintiffs based on possible harms to their health and living environment on the grounds of air pollution (particularly from PM 2.5).

However, the court upheld the decision to deny plaintiffs standing on the basis of them possibly being harmed by climate change caused by CO₂ emissions.

The court found that, although the power plants may raise CO₂ emissions, standing could not be found on these grounds. Standing under administrative law requires that legally protected individual interests of the plaintiffs be at risk. However, the specific amount of CO₂ emissions that could constitute such a risk is still under debate within Japan and on an international level. Accordingly, under the current circumstances, no specific individual interest that would confer standing on plaintiffs could be found.

Nevertheless, the court made it clear that reducing CO₂ emissions and fighting climate change were important, and it urged policy makers to act. It regarded this issue as constituting a generalized public interest rather than a legally protected individual interest.

The court added that its judgment merely clarified that no such legally protected individual interest currently existed but that a legally protected individual interest might be found in the future depending on further social developments affecting the definition of this interest.

(2) The validity of the Final Notice

Firstly, the appellate court ruled that not being harmed by CO₂ emissions was not a personal interest protected by law and therefore did not constitute a basis for challenging the validity of the Final Notice according to Art. 10 (1) Administrative Case Litigation Act. The court thus did not decide whether the CO₂ emissions infringe on such an interest. The issues in Japan's fight against climate change were fundamentally a matter for Japanese policy makers to determine at their discretion. Therefore, it was not

for the court to evaluate whether certain measures infringed on this interest as a factor by which to determine the validity of a Final Notice.

Secondly, as the Ōsaka District Court had already determined, the decision to issue a Final Notice was within the discretion of METI. The court explained that the decision was to be made based on political, scientific and technical expertise. However, the standard for declaring such a Final Notice invalid required a finding of abuse or deviation from the bases for rendering the decision.

Thirdly, the court determined that such an abuse or deviation by METI could not be found. The court admitted that examples of EIAs including assessments and predictions of PM 2.5 were to be found both inside Japan and abroad and that they were conducted with accuracy. It also found that it would have been possible to conduct such a PM 2.5 assessment and prediction in this case as well. However, the mere fact that none was conducted for this EIA did not render it invalid, because there was no general standard that required the EIA to include such a PM 2.5 assessment and prediction under the current circumstances. It was at METI's discretion to decide what factors the EIA must consider based on its own political, scientific and technical expertise.

Lastly, the other arguments by which the appellants sought to establish that the Final Notice was invalid, though important environmental considerations and potentially suitable solutions that would bear reconsideration, could not render the Final Notice invalid.

dd) Summary of the final appeal decision (Japanese Supreme Court, 9 March 2023) of the Kōbe Case⁴⁴

On 6 May 2022, the citizens filed a request for a final appeal of the Ōsaka High Court's decision of 26 April 2022 before the Supreme Court, the first time a climate change litigation had come before Japan's highest court. However, on 9 March 2023 the Supreme Court rendered its decision to reject the plaintiffs' request for a final appeal and upheld the Ōsaka High Court's appeal decision. The reasoning was that the request did not satisfy the specific grounds for a final appeal as required under Art. 312 of the Code of Civil Procedure⁴⁵. No more detailed explanation was provided.

⁴⁴ Supreme Court, *supra* note 9.

⁴⁵ 民事訴訟法 *Minji soshō-hō*, Law No. 109/1996.

*b) The Yokosuka Case*⁴⁶

On 27 May 2019, the second administrative court action related to climate change – after the Kōbe Case – was filed before the Tōkyō District Court. In the Yokosuka Climate Case, several citizens filed an administrative lawsuit against the Japanese Minister of Economy, Trade and Industry, requesting revocation of the Final Notice of the EIA for the planned construction of two new coal-fired generating units at the Yokosuka power plant, which METI had issued according to Art. 46 (17) (ii) of the Electricity Business Act⁴⁷. The plaintiffs argued that the construction and operation of coal-fired power plants is inconsistent with both Japan's commitment towards reaching net zero as well as the Paris Agreement. The plaintiffs' theory here was quite similar to that in the Kōbe Case. But unlike the Kōbe Case, the plaintiffs in this case alleged that the operator of the Yokosuka power plant (JERA) had unjustly exploited the simplified EIA procedures introduced by the Japanese government for replacement of and upgrades to coal-fired power plants after the Fukushima Daiichi nuclear incident.⁴⁸ On 27 January 2023, after more than three and a half years, the Tōkyō District Court finally rendered its judgment.

The first question that the court dealt with was whether the Final Notice constituted an administrative disposition according to the Administrative Case Litigation Act. This was a requirement for the plaintiffs to be able to file an administrative complaint against it. The court found that it did, as the issuance and receipt of the Final Notice were requirements for JERA to start the operation of the coal-fired power plants. Therefore, the Final Notice directly furnished JERA with a concrete legal right.

The second point at issue was standing. In its decision the court found that plaintiffs who lived in close proximity to the power plant had standing as it could be expected that they would be directly affected and maybe harmed by air pollution from the power plant. This constituted their concrete legal interest in requesting the revocation of the Final Notice. However, the court also clarified that possible harm from climate change was not a legally protected individual interest and therefore denied standing on those grounds. Finally, only plaintiffs who lived within 20km of the coal-fired power plant were recognized as having standing, and only on the basis of

46 Yokosuka Citizens v Japan, Tōkyō District Court, 27 January 2023, Cases No. 2019 gyō u 275, 2019 gyō u 598.

47 電気事業法 *Denki jigyō-hō*, Law No. 170/1964.

48 H. TAKAHASHI [高橋英恵], CO₂排出削減へ 日本 4 件目の気候変動訴訟! 横須賀石炭火力訴訟の争点とは? [Towards the Reduction of CO₂ Emissions, Japan's 4th Case of Climate Change Litigation! Issues of the Yokosuka Coal-Fired Power Case?], 社会民主 *Shakai Minshu* 771 (2019) 57–61, 58.

air pollution. Therefore, all claims related to harm from climate change caused by CO₂ emissions, which are not categorized as pollutant emissions, were dismissed due to lack of standing.

The third issue was the validity of the Final Notice. Here, the plaintiffs argued that METI should have considered the use of alternative fuels before issuing the Final Notice. However, the court found this was not necessarily required. Plaintiffs also asserted that PM 2.5 emissions should have been assessed as part of the EIA. The court also rejected this, as there was no legally binding requirement for such a PM 2.5 assessment.

Furthermore, the court rejected plaintiffs' contentions about abuse of the simplified EIA procedures introduced by the Japanese government for replacement of and upgrades to coal-fired power plants after the Fukushima Daiichi nuclear incident, finding that the simplified procedures could be used for the EIA when the specific power plant and its planned construction and operation were within the scope of the guidelines for the simplified procedures. In this case, the replacement of a power plant as in Yokosuka was found to meet the scope of the guidelines. The court found no other defects in the procedure that culminated in the EIA.

Furthermore, the court found that there were no sufficient indications for a severe environmental impact from replacing the coal-fired power plant. Finally, the validity of the Final Notice was upheld, as no procedural or substantive defects could be found, and in particular, no deviation or abuse of power by METI.

So, the court in the Yokosuka Case ruled in favor of METI, just as the court in the Kōbe Case had, and it, too, dismissed any claims based on the expected effects of climate change because it could not discern a legally protected, individual interest, and the plaintiffs therefore lacked standing.

III. JAPANESE CHARACTERISTICS WITHIN INTERNATIONAL TRENDS

1. General Overview of Climate Change Litigation Worldwide

a) Goal of influencing the public discourse

Climate change and global warming have led to much climate-change-related litigation, not only in Japan but worldwide. Notable examples are the lawsuits against BMW and Daimler, in which the plaintiff is the German environmental organization Deutsche Umwelthilfe⁴⁹, over alleged insufficiency of the defendants' measures to decrease CO₂ emissions. Another example is Greenpeace v Volkswagen, where Greenpeace took issue with Volkswagen's alleged failure to comply with the Paris Agreement's

49 Can be translated as "German Environmental Aid".

temperature goals. One of the few examples of a civil action that has actually succeeded is the famous case in the Netherlands against the Shell corporation,⁵⁰ in which the first-instance court⁵¹ ruled that Shell, a private company, was required to drastically reduce⁵² its GHG emissions based on international human rights law.⁵³ This case has had a very important impact on other cases of civil climate change litigation, but the details are outside this article's focus on administrative cases.

Although climate change litigation has not often succeeded due to the administrative and legal hurdles explained above, it attracts public attention and can therefore both enhance major investments as well as lead to follow-up costs for the relevant companies nevertheless.⁵⁴ Even if the plaintiffs in climate change litigations are not immediately successful regarding the court decision, the mere matter of climate change litigation is still likely to influence public discourse. And in some cases, the ultimate goal of litigation may be to bring the issues before the public eye rather than actually winning the case.⁵⁵

b) The Urgenda Case⁵⁶

The first successful climate change litigation in an EU member state was the Urgenda Case, brought in the Netherlands by the environmental organization Urgenda Foundation against the Dutch government. The highest court of the Netherlands⁵⁷ ruled in December 2019 that the state was required to reduce its GHG emissions by 25% compared to 1990 levels by the year 2020.⁵⁸ The plaintiff's claims were based on rights derived from the

50 Milieudefensie et al. v Royal Dutch Shell, Rechtbank Den Haag, 26 May 2021 (C/09/571932 / HA ZA 19-379; ECLI:NL:RBDHA:2021:5337).

51 The Hague District Court.

52 At least by 45% until 2030 compared to the emissions level in 2019.

53 T. SONOHARA [苑原俊明], 新たな気候訴訟と国際人権法: 地球の友オランダ支部ほか対 ロイヤル・ダッチ・シェル社 事件 [New Climate Litigation and International Human Rights Law: Dutch Branch of Friends of the Earth et al v. Royal Dutch Shell], 大東法学 Daitō Hōgaku 31 (1) (2021) 171–190, 171, 172.

54 S. MUNDY/P. TEMPLE-WEST/K. TALMAN/G. TETT, Climate change activism heads to the courtroom, The Financial Times Limited, 29 September 2021, at <https://www.proquest.com/docview/2587611587?pq-origsite=primo>.

55 FELLEBERG, *supra* note 18, 913.

56 Urgenda Foundation v Kingdom of the Netherlands, Hoge Raad, 20 December 2019 (19/00135; ECLI:NL:HR:2019:2006).

57 Hoge Raad.

58 M. WELLER/M. TRAN, Klimawandelklagen im Rechtsvergleich – *private enforcement* als weltweiter Trend?, Zeitschrift für Europäisches Privatrecht 2021, 573–605, 590.

European Convention on Human Rights (ECHR) and the state's obligation to protect them under the ECHR, which the Dutch state had ratified.⁵⁹ The court reasoned that the principle of separation of powers was not at issue here as the legislative authorities could still decide on specific measures and the court had only determined the remaining emissions budget, which the government was bound by anyway.⁶⁰

*c) People's Climate Case (Carvalho)*⁶¹

There has also been prominent climate change litigation at the European Union (EU) level. In the People's Climate Case (Carvalho) several individuals jointly filed an action for annulment before the European Court of Justice (ECJ), seeking replacement of the EU directive on climate protection⁶² by stricter and more effective GHG reduction goals. However, due to the strict and qualified requirements for an individual plaintiff to establish standing at the EU level⁶³, the Court of Justice of the European Union (CJEU) ruled the case inadmissible.⁶⁴

*d) Constitutional complaints against the German Climate Protection Act before the German Federal Constitutional Court*⁶⁵

The most important climate change litigation in Germany so far has been the Federal Constitutional Court's decision on several constitutional complaints over the German Climate Protection Act⁶⁶ of March 2021. The plaintiffs asserted a "right to an ecological subsistence level"⁶⁷ or a "right to a humane future"⁶⁸ derived from the human rights guarantees of the

59 T. SHIMAMURA [島村 健], SDGs と気候訴訟 [SDGs and Climate Litigation], ジュリスト Jurisuto 1566 (2022) 49–55, 51; SONOHARA, *supra* note 5, 122.

60 HEYMANN, *supra* note 16, 60, 61.

61 Armando Ferrao Carvalho et al. v The European Parliament and the Council, ECJ, 8 May 2019 (T-330/18; ECLI:EU:T:2019:324); CJEU, 25 March 2021 (C-565/19 P; ECLI:EU:C:2021:252).

62 Directive (EU) 2018/410 of the European Parliament and of the Council.

63 According to the "Plaumann test" by the CJEU, for admissibility of an action for annulment individual plaintiffs need to prove that they are individualized in a similar manner as a direct addressee.

64 FELLEBERG, *supra* note 18, 918.

65 Neubauer et al. v Germany, Bundesverfassungsgericht, Entscheidung des Ersten Senats, Decision of the First Senate of the Federal Constitutional Court from 24 March 2021 (BvR 2656/18; BVerfGE 157, 30–177; engl. translation available at http://www.bverfg.de/e/rs20210324_1bvr265618en.html).

66 Bundes-Klimaschutzgesetz vom 12. Dezember 2019 (BGBl. I S. 2513).

67 Grundrecht auf ein ökologisches Existenzminimum.

68 Recht auf menschenwürdige Zukunft.

German constitution. They argued that the then-current Climate Protection Act failed to protect these rights and therefore constituted a violation of the government's obligation to protect.⁶⁹ However, the court clarified that a violation of an obligation to protect human rights had to be evident. The court did not directly comment on the existence of a "right to an ecological subsistence level" or a "right to a humane future" under German constitutional human rights law.⁷⁰

Acknowledging the irreversibility of the effects of excessive GHG emissions on global warming, the court did however find the existence of a constitutionally required national emissions budget based on the internationally recognized goal of limiting global temperature increase to 1.5°C or at most 2.0°C compared to pre-industrial levels as regulated in the Paris Agreement. According to the court's decision, there were different ways to allot the worldwide budget by country, but Germany, as an industrialized nation, was required to bear more responsibility and adhere to a stricter budget than other, less developed countries. Against this background, the German constitutional court also found that the principle of proportionality⁷¹ gave rise to a requirement of inter-temporal consideration⁷², meaning that violations of future generations' freedoms had to be considered when allotting emissions within Germany's remaining national emissions budget. Burdening future generations with radical emissions reduction measures could therefore constitute a violation of inter-temporal consideration.⁷³ In the end, it is clear that climate justice is mainly about justice for coming generations.⁷⁴

However, the "right to securing inter-temporal freedom"⁷⁵ can only be infringed on by actions of the state that relate to the total amount of permissible emissions in a specific timeframe, not by actions that only concern specific projects because the emissions generated by specific projects would only affect how emissions are allotted within the total amount of permissible emissions for the specified timeframe and thus would not burden future generations with further emissions reduction measures or infringe on the "right to securing inter-temporal freedom". Because the Climate Protection Act regulated the total amount of permissible emissions within a certain time frame but did so insufficiently, the court declared the

69 HEYMANN, *supra* note 16, 2.

70 FELLEBERG, *supra* note 18, 915.

71 Verhältnismäßigkeitsgebot.

72 Gebot intertemporaler Rücksichtnahme.

73 FELLEBERG, *supra* note 18, 916.

74 HANSCHER/SCHULTZE, *supra* note 2, 167.

75 Recht auf intertemporale Freiheitssicherung.

act unconstitutional, finding its measures neither concrete nor effective enough, irreversibly postponing most of the burden until after 2030 and not even stipulating specific measures to be taken after 2031, which would need to be drastic and would have to immensely infringe on the freedom of future generations.⁷⁶ Therefore, the court decided that the Climate Protection Act was unconstitutional and had to be amended to provide more effective measures and a just inter-generational distribution of the burden of emissions reductions.⁷⁷ However, the court also made it clear that an individual project's approval that affected GHG emissions pertained only to the distribution of emissions within the permitted amounts and could therefore not be similarly adjudicated.⁷⁸

The decision led to several amendments to the German Climate Protection Act. The reduction in emissions by 2030 compared to 1990 levels was amended from 55% to 65%, with a further reduction of 88% by 2040 and full GHG neutrality by 2045 in the newly amended version of the Climate Protection Act.⁷⁹ Nevertheless, the Deutsche Umwelthilfe and some individual climate activists regard these measures, too, as insufficient and have filed another constitutional complaint against the amended version of the Climate Protection Act before the Federal Constitutional Court.

Several constitutional complaints have also been filed against climate legislation on the federal state level in Germany. However, these have all been dismissed so far because the federal state constitutional courts have found that their legislators were not directly bound by emissions budgets generally concluded through international agreements that Germany, not its constituent federal states, had entered into.⁸⁰

What is very important to note about the decision of the German constitutional court is that, unlike pollutant emissions, to which statutory thresholds apply as well as channels for litigation to enforce them, no such specific statutory thresholds exist for GHG emissions.⁸¹ It seems that the decision by the German constitutional court may have opened new doors to contesting national GHG emissions budgets derived from internationally accepted temperature limits, similar to the way statutory thresholds on pollutant emissions function, although it has to be conceded that such national emissions budgets are clearly much less specific.

76 SHIMAMURA/SUGITA/IKEDA/ASAOKA/WADA, *supra* note 12, 2.

77 HEYMANN, *supra* note 16, 62.

78 FELLEBERG, *supra* note 18, 919.

79 SHIMAMURA, *supra* note 59, 52.

80 HEYMANN, *supra* note 16, 63.

81 FELLEBERG, *supra* note 18, 917.

The court also made it clear that the separation of powers must be honored, and the question how to allot emissions within the national budget always underlies the legislative authorities' prerogative to assess⁸² and make specific decisions.⁸³ The court's only role was to protect plaintiffs' human rights and to remind legislators to honor the emissions budgets to which they had bound themselves by international agreements and national legislation.

e) Characteristics and issues of international cases of climate change litigation

The decisions in administrative climate change litigation that have been successful so far show a clear trend. Rather than contesting specific projects that affect GHG emissions, e.g., construction or operation of specific coal-fired power plants, the successful cases have dealt with national emissions budgets under international agreements. They have based their arguments on the internationally accepted limits on temperature increases agreed upon internationally in the Paris Agreement and enacted through national legislation in many countries. Based on these, an approximate GHG emissions budget for each country can be derived, and the plaintiffs have demanded rational plans to adhere to it that do not excessively shift the burden to future generations.

However, among the difficulties found in climate change litigation internationally are the identification of plaintiffs' legal interest to base their claim on as well as separation-of-powers issues and the principle that political questions are to be decided by legislative powers, i.e., by parliaments.

Even if a subjective legal right of the plaintiffs has been found, another issue arising regularly is the basis for compelling the state to implement specific measures. Here, one concept is the doctrine of the state's obligation to protect, according to which the state must proactively protect the human rights of its citizens from infringements of a certain intensity.⁸⁴

2. Japanese Characteristics in Comparison

Unlike many cases from other countries, all the administrative climate change litigations in Japan so far have concerned specific projects, i.e., the construction and/or operation of specific coal-fired power plants. Although the plaintiffs in these cases argued from the Paris Agreement as well as from Japan's national legislation binding it to net zero emissions goals, it

⁸² Einschätzungsprärogative.

⁸³ HEYMANN, *supra* note 16, 63.

⁸⁴ HANSCHER/SCHULTZE, *supra* note 2, 169.

seems difficult to find a direct connection between a specific project and the net zero emissions goal itself, since the goal could still be reached if emissions are reduced in other areas. Therefore, the approval of specific projects is only a question of how emissions are allotted within the budgets given to comply with internationally accepted temperature limits.

Furthermore, plaintiffs' standing has been at issue in Japanese as well as international cases. A yet-unresolved problem regarding standing in Japan is what specific rights could confer standing to sue over expected harms from climate change. In other jurisdictions, such rights have generally derived from human rights, e.g., the right to life or to freedom, combined with constitutional parameters, e.g., principles on environmental protection. Another problem is how to substantiate the plaintiffs' individual concerns in each case. So far, Japanese courts have consistently denied plaintiffs standing to bring claims based on the effects of climate change, finding no protected individual interest. However, in its decision on appeal in the Kōbe Case, the Ōsaka High Court did make it clear that this might change depending on the vastly greater effects of climate change and global warming in the coming years as well as on the course of social developments and public discourse. So, there is still a possibility for plaintiffs to establish standing to bring claims based on climate-change-related harms in future cases. Nevertheless, the constitutional or other parameters that would confer standing are up for discussion, as is how to substantiate the individual's interest. When arguing from the effects of climate change, the individual's interest surely cannot be established by proximity to a particular project. As has been the case internationally, young plaintiffs might have an argument as they are more likely to be burdened by severe infringements on their freedoms due to future emissions reduction measures and the vastly greater effects climate change, e.g., weather disasters, they can expect to face.

Another issue that comes up internationally as well as in Japanese cases has been the separation of powers. While some courts have come up with new explanations and new ways to construe the principle in order to reach matters that some may regard as political questions for legislative authorities to decide, Japanese courts have shown reluctance to even get close to, much less cross, the line that marks the separation of the three powers. However, one must also admit that the cases brought before Japanese courts so far have all been regarding specific projects, which made them difficult to decide based on internationally accepted temperature limits or emissions budgets. Given the constellations litigated before Japanese courts so far, it may be that analogous administrative law cases would turn out similarly elsewhere, too, even in countries that have already experienced "climate-friendly" court decisions.

IV. CONCLUSION

In summary, one can say that the administrative climate change litigations in Japan so far are only the beginning. As in other parts of the world, more cases will come, and in Japan, too, there will probably be cases regarding more than a specific project such as the construction or operation of coal-fired power plants.

It remains to be seen how plaintiffs can establish standing to bring claims over GHG emissions. It will depend on the plaintiffs' arguments as well as on the final reasoning of the court. But very likely, specific rights can be derived from constitutional or other parameters in Japan as well as in other jurisdictions. To establish an individual interest or concern, which is required to confer standing in an administrative case, it may not be the proximity to a specific power plant but rather the plaintiffs' youth that becomes the basis for claims regarding GHG emissions. There is a clear expectation that younger generations will face drastic emissions reduction measures and suffer more severe harm from weather disasters etc. caused by climate change compared to what can be felt today, which may be the point of argument in the future. Also, the Ōsaka High Court's decision on appeal in the Kōbe Case was promising regarding standing, as it clarified that future plaintiffs could potentially establish standing to bring claims over GHG emissions depending on further developments in the impacts of climate change as well as in public discourse.

Also, the reluctance of Japanese courts to render decisions on highly political issues may shift in the future depending on increasing impacts of global warming and climate change, which the whole society will face in the future.

Just like jurisdictions that have already experienced courts ruling in favor of climate activists, Japan is also bound to the internationally accepted temperature limits. Therefore, suits against legislative authorities based on temperature limits and required national emissions budgets, as they have succeeded in other jurisdictions, may follow in Japan. Such future court actions may request legislative authorities to establish more concrete plans to comply with temperature limits and to set up national emissions budgets that do not overburden future generations with emissions reduction measures and infringe on their freedoms in a way that would be disproportional compared to currently contemplated measures.

SUMMARY

Climate change is a worldwide problem that has found its way into courts of law all over the world. In Japan, too, there have been several instances of climate change litigation, both civil as well as administrative. So far, these have all been regarding the construction and/or operation of new coal-fired power plants. One case recently (decision from 9 March 2023) even reached Japan's highest court, the Supreme Court, which has led to a much higher presence of climate change litigation in Japanese media. However, all the cases of climate change litigation in Japan so far have not been successful.

The article at hand provides a short overview of climate change litigation in Japan first explaining the situation of GHG emissions in Japan and introducing international agreements as well as national legislation. After that, it explains the general characteristics of climate change litigation and briefly introduces the Japanese cases. Detailed discussions of the administrative cases litigated in Japan so far, the Kōbe Case and the Yokosuka Case, follow. The second part of the article identifies the characteristics of the Japanese cases in the international context and thereby introduces international landmark climate change cases before comparing the Japanese cases to them.

Although no plaintiffs in climate change litigation in Japan have succeeded so far, that may change. In particular, establishing plaintiffs' standing to sue over GHG emissions is a point that still needs further discussion in academia as well as by courts of law. Furthermore, it remains to be seen whether Japanese courts will be less reluctant to render decisions on highly political issues in the future. Cases in Germany and the Netherlands have shown that courts can take a very different approach. However, those cases have been very different from the Japanese cases in terms of the matters litigated and the kinds of arguments plaintiffs have sought to make. Time will tell how Japanese courts will decide in comparable cases.

ZUSAMMENFASSUNG

Der Klimawandel ist ein weltweites Problem, das auch in der Rechtsprechung in der ganzen Welt immer mehr Bedeutung erlangt. So sind auch vor japanischen Gerichten bereits einige Klimaklagen behandelt worden, sowohl zivilrechtliche als auch verwaltungsrechtliche Fälle. Bisher haben sich dabei in Japan sämtliche Fälle mit der Errichtung und/oder Inbetriebnahme von Kohlekraftwerken beschäftigt. Vor kurzem ist sogar ein Fall (Entscheidung vom 9. März 2023) vor dem höchsten japanischen Gericht, dem Obersten Gerichtshof, behandelt worden. Dies führte zu einer deutlich breiteren medialen Präsenz der Klimaklagen in Japan. Allerdings sind bisher sämtliche derartige Klagen in Japan ohne Erfolg geblieben.

Der vorliegende Artikel gibt einen kurzen Überblick über Klimaklagen in Japan. Zunächst wird die Situation der Treibhausgasemissionen in Japan erläutert. Sodann werden internationale Abkommen sowie nationale Gesetzgebung im Zusammenhang mit dem Klimawandel vorgestellt. Anschließend werden allgemein die Besonderheiten von Klimaklagen erklärt und die bisherigen japanischen Klagen kurz vorgestellt. In der Folge wird auf die verwaltungsrechtlichen Klagen in Japan, den Kōbe-Fall und den Yokosuka-Fall, im Detail eingegangen. Im zweiten Teil des Artikels werden sodann die Besonderheiten der japanischen Klimaklagen im internationalen Kontext herausgearbeitet. Dazu werden zunächst einige der bedeutendsten Klimaklagen auf internationaler Ebene kurz vorgestellt und die japanischen Fälle dann mit diesen verglichen.

Auch wenn die Klimaklagen in Japan bisher nicht erfolgreich waren, könnte sich das in Zukunft ändern. Dennoch ist zu erwarten, dass die Diskussion um die Begründung einer Klagebefugnis in Bezug auf Treibhausgasemissionen in Schrifttum und Rechtsprechung weitergehen wird. Weiterhin ist abzuwarten, ob japanische Gerichte in Zukunft bei hoch-politischen Fragen weniger zurückhaltend agieren werden. Die Fälle in Deutschland und den Niederlanden haben gezeigt, dass Gerichte neue Herangehensweisen finden können. Jedoch lagen die Fälle und die Argumentation der Kläger anders als in den bisherigen japanischen Fällen. Wie japanische Gerichte in vergleichbaren Fällen entscheiden, wird die Zukunft zeigen.