

Abstract

Over the past several decades, climate change litigation (CCL) has rapidly increased worldwide, mainly in Western countries. Accordingly, most scholarship has focused on those areas, and Japan has received scant attention. However, Japan had the first climate change case in 2017 and three other cases in 2018 and 2019, claiming injunction against the operation and construction of coal-fired power plants (CFPP). Considering that Japan still has many CFPPs in operation, there may be some obstacles that hinder the further development of Japanese CCL. This study aims to investigate the obstacles that hinder the development of Japanese CCL.

Chapter 2 unveiled strong influence, similarities, and differences between the past environmental cases, including anti-pollution cases and current climate change cases. Through this clarification, two aspects of Japanese climate change cases, the extensional nature of the past environmental cases and unprecedented legal features stemming from the uniqueness of climate change issue, were confirmed. These two features of Japanese climate change cases underlined the whole dissertation and offered essential viewpoints following each chapter.

Chapter 3 provided detailed descriptions of four Japanese climate change cases, which have received scant attention from the international scholarship. There, attempts of plaintiffs and attorneys to persuade judges by intentionally positioning climate change cases in the extensional context of the past air pollution cases were revealed. Also, the defendants' rebuttals clarified many legal issues, including plaintiffs' standing, causal proofs, and justifiability, all of which have been often observed in climate change cases in many other countries too. Moreover, features of arguments in Japanese climate change cases, a large part of those are occupied with standing and causal proof, were described.

Chapter 4 investigated institutional obstacles based on the descriptions made in Chapter 2 and Chapter 3. The applied methods to clarify institutional obstacles were LOS framework, which revealed the likelihood that social activists might choose legal mobilization. The fundamental three indicators, access to the court, existing law, and judicial receptiveness, were employed with a slight modification to analyze Japan's socio-legal situation related to climate change issues properly. In concrete, the first indicator, access to the courts, including investigation of regulations of standing and available resources that the general public can access to initiate legal cases. Here, resources consist

of financial resources such as funding or donations and accessibility to the legal professionals, mainly attorneys. Next, the second indicator, existing law, included the favorable laws and legal precedence, especially anti-pollution cases, a category of environmental cases. Then, the third indicator, judicial receptiveness, examines the judicial tendency of Japan, including anti-pollution and environmental cases.

Chapter 5 explored cognitive obstacles through a questionnaire survey and semi-structured interviews. There, motivations and expectations of the plaintiffs of four cases were revealed, which helped them to overcome the hurdles. Also, their recognition of the difference in legal strategies between past air pollution cases and climate change cases and the lengthy period of legal proceedings was unveiled. These two components may affect plaintiffs' cognitive obstacles because Japan's environmental cases, especially past anti-pollution cases, partly promoted legislation preserving and promoting a favorable environment. The obtained results showed that cognitive hurdles consisted of people's low awareness of climate urgency and uncertainty in required costs, lengthy period, and the outcome of legal proceedings.

Chapter 6 then argued future changes in those revealed obstacles, accompanied by possible development of Japanese CCL. Three types of institutional obstacles were firstly examined. For access to the court, strict regulation of standings may be loosened with the adaptation of alternative pathways likewise Germany. An increase in attorneys observed may also familiarize them with the general public. Also, installing expanded loser pays rule and distributing more judicial information may also function. Second, for the available laws, further legislation relevant to climate mitigation and adaptation, as well as an increase in foreign cases, may help Japanese courts in handling climate change cases, although foreign climate cases cannot be directly applied. Third, considering judicial receptiveness, expansion of case categories covered by lay judges, and development of legal education may promote judges' receptiveness both from inside and outside the court.

Subsequently, it explored a possible path Japanese CCL may hence follow, by comparison with the trajectory the U.S. tobacco litigation trailed. First, the history of U.S. tobacco cases was described with the distinction of three waves. Next, the U.S. trajectory of climate change cases to date was explained to clarify similar periodical features to U.S. tobacco cases' history. Then it compared those two types of legal cases to identify three waves in U.S. climate change cases in the same manner of U.S. tobacco cases. Finally, the current situation of Japanese CCL symbolized in four climate cases was compared with U.S. tobacco cases' trajectory. It concluded that the current status of Japanese CCL

was characterized as similar to the first wave of U. S. tobacco litigation.

Chapter 7 concluded the whole dissertation, confirming key findings and limitations which show direction to future research.

Some implications could be drawn through those abovementioned observations. First, it added another piece of empirical data of climate change cases in East Asia to global society. Especially, this study is the first piece that provided a detailed description and academic exploration of four Japanese climate cases in litigation. Considering that most literature on climate change cases remains in the Western countries so far, this supplement may be significant. Second, it attached a new field of climate change to the Japanese scholarship in policymaking litigation by locating it in the extension of the trajectory of the environmental litigation. Finally, it prospected one possible change of climate policy through further development of Japanese CCL, through the comparison with the trajectory of the past U.S. tobacco litigation.