

Problems of liability for mental distress in Fukushima:

Evacuation stress, solitary deaths, suicides, and excess abortions

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Abstract:

With over 2.5 million claimants and a scope of up to 200 billion Euros, the Fukushima Nuclear Accident constitutes the largest civil liability case in legal history. While the majority of compensation claims is dealt with under the government's guidelines outside of courts, several thousand pending lawsuits are based on the tortious liability of TEPCO in more problematic cases – often dealing with mental distress. Although domestic nuclear law imposes strict liability, recent court judgments, largely unknown outside of Japan, had to deal with very difficult questions of causation, e.g. when awarding damages for evacuees who committed suicide out of frustration in the wake of the accident. Drawing on fieldwork on nuclear-related deaths (関連死 *kanren-shi*) in Japan in 2012 and 2016, this paper presents a translation and critique of the first ruling of a Japanese court on a “nuclear suicide” (Fukushima District Court of 26 August 2014), particularly with regard to causation, contributory negligence and the calculation of damages. This precedent spearheaded a line of similar progressive judgments in Japan, which demonstrate the way in which cause-lawyering and activist courts create judge-made nuclear law, including the March 17, 2017 decision to hold the state jointly liable. Finally, by way of an assessment of actual cases of evacuation stress, solitary deaths, suicides, and excess abortions in Japan, the paper offers a number of conclusions on the gaps in other nuclear liability regimes.