A STUDY ON THE STATE OF JUDICIAL REVIEW FOR NUCLEAR SAFETY REGULATION IN JAPAN

Masaaki Hori
Japan Energy Law Institute
Address: KDX Gotanda Bldg., 8F 7-9-2
Nishigotanda Shinagawa-ku, Tokyo 141-0031 Japan
E-mail: m-hori@jeli.gr.jp

Abstract

Since the Fukushima accident, various forms of lawsuits related to nuclear power plants have been filed.

The judgment frameworks applied by the judiciary now differ from lawsuit to lawsuit. And in March 2016, a court granted a petition seeking a provisional disposition to suspend operations of a nuclear power plant that met the regulatory standards established by the regulatory authority. Under Japanese law, nuclear power plants conforming to the nuclear regulations may be forced to suspend their operations due to civil lawsuits. Nevertheless, this also means that it is arguable that such judicial decisions pose a realistic risk to the functioning of Japan's nuclear power, which is positioned as an "important base-load power source" in the Japanese energy policy. The courts are wondering how much deference should be given to the decisions by the regulatory authority—for example, the regulatory standards, safety reviews, and so on.

In this paper, I discuss how the judiciary should approach such lawsuits, including addressing the level of deference that courts should afford administrative standards and decisions. I take the position that although deference should be given, trials are meaningless if courts simply ratify administrative decisions without a thorough examination. Therefore, there is a need for a new judgment framework that avoids this extreme position.

This approach is not a new one, but before the Fukushima accident, this judgment framework was only applied in an "extremely perfunctory manner," and, as a result, reviews were conducted on a shallow level. This implies that the judiciary was unable to perform its function of checking the administration. Therefore, it is necessary to examine the best way to apply this judgment framework in the future.

Introduction

Before the Fukushima Daiichi nuclear accident (hereafter "Fukushima accident") on March 11, 2011, the state of judicial review of lawsuits related to the cancellation of installation permits for nuclear power plants or the suspension of their operations (hereafter "lawsuits related to nuclear power plants") was based on the following assumption: nuclear power plants are facilities that accumulate highly specialized scientific knowledge, which is required to evaluate their safety. However, the duty of courts is to resolve disputes in accordance with the law. Therefore, judges are not required to have the same level of scientific knowledge as scientific experts, but rather the skill needed to make scientifically valid legal judgments based on evidence offered by plaintiffs and defendants. Based on these assumptions, the then-dominant view was to adopt a judgment framework in which, rather than reviewing the actual safety evaluations conducted by the regulatory authorities, judges gave deference to the regulatory authorities and their expertise and only reviewed whether their processes were reasonable.(1) Although this judgment framework is a compelling one, before the Fukushima accident, it was applied in an "extremely perfunctory manner"(2) (i.e., reviews were conducted on a shallow level); as a result, with the exception of a few cases,(3) courts did not uphold claims brought by plaintiffs in lawsuits that were related to nuclear power plants. It has been pointed out that, for administrative lawsuits in general in Japan, judicial checks on administrative authority do not function sufficiently,(4) and there is a similar situation for lawsuits related to nuclear power plants. This resulted in the judiciary being unable to prevent the Fukushima accident.(5)

However, after the Fukushima accident, the situation surrounding lawsuits related to nuclear power plants changed considerably. The judgment frameworks applied by the judiciary now differ from lawsuit to lawsuit. While some rulings have adopted the conventional judgment framework, in some cases, courts have raised questions regarding the content of the regulatory standards established by regulatory authorities and have specified the necessary requirements for improving the safety of nuclear facilities and used these as the basis for their judgments. The latter judicial judgments do not defer to the specialized knowledge possessed by regulatory authorities and, thus, fall outside the conventional judgment framework. This paper discusses how the judiciary should approach lawsuits related to nuclear power plants based on a review of subjects, including the current state of such lawsuits in Japan.

Overview of Trends in Lawsuits Related to Nuclear Power Plants Before and After the Fukushima Accident

Before the Fukushima Accident

As noted previously, with the exception of very few cases, judicial judgments in lawsuits related to nuclear power plants before the Fukushima accident only ratified the decisions made by regulatory authorities. This trend is rooted in the judgment framework set forth by the Supreme Court in a case involving an administrative lawsuit seeking cancellation of the installation permits for the nuclear reactors at the Ikata Nuclear Power Plant (October 29, 1992; hereafter "the Ikata ruling").

In the Ikata ruling, the Supreme Court determined the role of the judiciary in lawsuits related to nuclear power plants, which is to review two issues: (1) whether there are any irrational aspects of the deliberations and decisions by the authorities in light of the present level of scientific knowledge, and (2) whether there are any errors or omissions that are difficult to overlook in the investigation and deliberations and in the judgment process. The Supreme Court further concluded that although the burden of proof concerning both issues originally lies with the plaintiff, the burden should be on the defendant authorities "considering that all materials related to safety reviews of the nuclear reactor facilities are held by the defendant authorities." That is, the conclusion was based on the possession of evidentiary materials.[(6)] As stated above, the Ikata ruling was based on the then-dominant view concerning the state of judicial review of lawsuits related to nuclear power plants, after which it became the basis for the judgment framework used in administrative lawsuits.

In civil lawsuits, the question regarding the appropriateness of the judgment framework of the Ikata ruling, which was issued in the context of an administrative lawsuit on a different subject and under a different judicial structure, became a point of contention. The first ruling in a civil lawsuit, which sought to prohibit the construction of the Onagawa Nuclear Power Plant (January 31, 1994), adopted a similar judgment framework to the Ikata ruling, and this subsequently became the leading case for civil lawsuits. In other words, before the Fukushima accident, courts adopted the judgment framework of the Ikata ruling for both administrative and civil lawsuits.

One opinion of the judgment framework of the Ikata ruling is as follows: the court "allowed the authorities room for discretion in judgements on safety of the nuclear power plant but also demonstrated an approach in which the scope of this discretion was limited and the trial was conducted with a stricter method of control than the discretionary control methods used in the past".[(7)] Nevertheless, as it has been noted, the court applied this judgment framework in an "extremely perfunctory manner," and as a result, lawsuits related to nuclear power plants began following a procedure in which courts simply ratified judgments made by authorities.

After the Fukushima Accident

After the Fukushima accident, various lawsuits related to nuclear power plants have been filed. To date, 41 such lawsuits related to nuclear power plants have been filed, 30 of which are pending (as of July 19, 2018).(8) Attention has been focused on the fact that among the various forms of lawsuits, the number of civil lawsuits has increased, with a particular increase in petitions seeking provisional dispositions(9) to suspend operations at nuclear power plants.(10) If multiple lawsuits filed in different courts are seeking a provisional disposition to suspend operations at the same nuclear power plant, so long as one court determines that operations should be suspended—even if all of the other courts decide not to suspend operations—the ruling would take effect immediately, and operations at the nuclear power plant could be suspended. In March 2016, a court upheld a petition seeking a provisional disposition to suspend operations at an operating nuclear power plant that met the regulatory standards established by the regulatory authority; this was the first case wherein an operating nuclear power plant was brought to a halt by a judicial decision.(11) It is expected that, under Japanese law, nuclear power stations that clear the legal barriers of nuclear regulations may be forced to suspend their operations due to civil lawsuits. Nevertheless, it can also be argued that judicial judgments now pose a realistic risk to the functioning of Japan's nuclear power plants, which are positioned as an "important base-load power source" in Japanese energy policy.(12)

As noted previously, the question of whether it is appropriate to adopt the judgment framework of the Ikata ruling—an administrative lawsuit—in civil lawsuits is a point of contention. In the absence of a Supreme Court ruling on this issue, the question of whether district courts and High Courts should rely on the Ikata ruling is left to the discretion of the presiding judge. Presently, there are some rulings that have presented judgment frameworks similar to the Ikata ruling; in other cases, however, courts have questioned the content of regulatory standards established by regulatory authorities, specified the necessary requirements for improving safety of the nuclear facilities, and used these requirements as the basis for their judgments.

To avoid confusion due to the adoption of different judgment frameworks without rational reason, a Supreme Court ruling on this issue is much awaited. However, it seems that the residents avoid the Supreme Court ruling and expect that the district courts and the High Courts will reach different judgments.(13)

Policy Proposed in Response to the Fukushima Accident

The most distinctive characteristic of lawsuits related to nuclear power plants is that they involve highly specialized scientific content. Based on this perspective, two policies have been proposed "to improve judicial judgments related to nuclear power, for which specialized knowledge is required,"

namely to (1) “grant quasi-judicial power to the regulatory authorities” (processes such as fact-finding by the regulatory authorities would be binding on the courts to a certain extent) and (2) “to establish specialised courts within courts”.[14] These policy proposals are premised on the need to establish a system in which the judiciary can correct errors made by the administration and operators to achieve an ideal level of nuclear safety. In lawsuits that deal with highly specialized scientific content, such as lawsuits related to nuclear power plants, because there are no objections to the view that courts should incorporate specialized knowledge when rendering judgments, these policy proposals can be regarded as ways of introducing specialized knowledge more effectively than under the current court system.[15]

First, the proposal to “grant quasi-judicial power to the regulatory authorities” would involve a system where an independent administrative committee, composed of experts with high levels of expertise, makes an initial decision on petitions such as those seeking to revoke power plant installation permits, and if a concerned party objects to the result of that initial decision, a case is then filed with the High Court, which would then enter a judgment.[16] The judgment made by the administrative committee is equivalent to a lower court ruling. This proposal appears to be modelled on the system in place in the United States.

It should further be noted that in Japan, after the Fukushima accident, certain scholars advocated for granting quasi-judicial power to the regulatory authorities; however, such a system was not introduced. This was partly because, at the time, the system of adjudication under the Japan Fair Trade Commission,[17] which adopted a similar framework to that described above, had just recently been abolished. One reason why this system was abolished concerns a proposal to enable lawsuits regarding dispositions by the Japan Fair Trade Commission to be brought directly in district courts,[18] because it was impossible to fairly review whether administrative dispositions issued by the Japan Fair Trade Commission were appropriate. Moreover, the current law is based on the assumption that installation permits and other licenses are issued after sufficient deliberation by the regulatory authorities. Therefore there is a view that even if regulatory authorities were to conduct quasi-judicial review procedures, this would not necessarily contribute to resolving disputes.[19] The above points suggest that a system in which a new administrative committee with quasi-judicial powers is established as a separate entity[20] would be more effective than a system in which quasi-judicial power is granted directly to the existing regulatory authorities.

Next, the proposal “to establish specialised courts within courts” likely requires no explanation. The proposal aims to further strengthen the expertise of courts.

Nevertheless, these policies have only been proposed and have not yet been introduced in the

actual court system. In other words, in terms of the incorporation of specialized knowledge, even though the current court system is noted to be lacking in this area, some courts have criticized the rationality of the regulatory standards, which are established by the regulatory authorities who do possess this expertise. In contrast, some courts pass judgments that appear to ratify the decisions by the regulatory authorities without criticism. Thus, there is considerable confusion surrounding the state of these judicial judgments. Further, this confusion is demonstrated through examples in which different courts have reached opposite conclusions about the same power plant after the Fukushima accident.

Analysis of Representative Lawsuits After the Fukushima Accident

This paper addresses the "Fukui District Court Decision" (April 14, 2015) and the "Osaka High Court Decision" (March 28, 2017) on petitions seeking provisional disposition to suspend the operations of reactors 3 and 4 of the Takahama Nuclear Power Plant. These decisions, which are unrelated court rulings, were made on the basis of completely antithetical judgment frameworks despite having the same subject matter (i.e., the same power plant). One court suspended operations at the plant without deference to the regulatory authorities, while the other gave excessive deference to the regulatory authorities and denied the petition to suspend operations. Therefore, the two judgments provide a useful reference point for confirming the state of confusion surrounding judicial decisions.

Fukui District Court Decision (April 14, 2015)

In this decision, the court questioned the rationality of the regulatory standards, and ultimately concluded that the risk presented by the nuclear power plant was too great, despite conforming to the regulatory standards. First, the court explained that "[t]he rationality demanded in the new regulatory standards should be understood as having established strict content regarding absolutely no risk of serious disaster occurring if the installation of the power plant conformed to the standards." Next, the court reasoned that "[t]he new regulatory standards are overly lenient and even if the nuclear power plant did conform to these, safety would not be secured." "[A]ccordingly, without judging whether the nuclear power facility conforms to the new regulatory standards, the concrete risk of an infringement of personal rights of the plaintiffs cannot be denied." Based on this reasoning, the court granted the petition to suspend operations.

Osaka High Court Decision (March 28, 2017)

In this decision, the court first asked the operator to prove that the nuclear power plant conformed

to the regulatory standards established by the regulatory authorities. It then asked the plaintiff-residents to prove "whether the regulatory standards themselves were rational in consideration of current scientific and technological knowledge" and "whether the review and judgment performed by the regulatory authorities, which concluded that the nuclear power plant did conform to the regulatory standards, were rational."

The court found that "[a]lthough some questions remain unanswered regarding the Fukushima Daiichi nuclear accident, such as the specific state and cause of damage to," "repeated investigations, including evaluations of the design basic earthquake ground motion and design basic tsunami, earthquake-proof safety of buildings and structures and equipment and piping, and measures against major accidents, based on the latest scientific and technological knowledge" had been conducted. Thus, the court held that the standards "cannot be considered irrational" and denied the petition to suspend operations at the plant.

Brief Summary

As discussed below, civil lawsuits and administrative lawsuits exist concurrently in the Japanese litigation system. Moreover, civil lawsuits are not bound by administrative standards, and judgments made in civil lawsuits can supersede the standards where sufficient grounds exist. In this respect, the "Fukui District Court Decision" is legitimate. Nevertheless, given that courts have limited specialized scientific knowledge, the Fukui District Court Decision has been criticized as somewhat extreme; that is because it completely disregarded the administrative decision of the regulatory authorities by questioning the very rationality of the regulatory standards that were compiled by the regulatory authorities based on their specialized knowledge, and granted a petition to suspend operations "without going as far as judging whether the nuclear power facility conforms to the new regulatory standards".(21)

By contrast, in the "Osaka High Court Decision," the court assigned the burden of proof regarding the rationality of the regulatory standards to the residents. This made it more difficult to raise substantive objections to the administrative decisions than in the Ikata ruling, where the burden of proof was ascribed to the defendant authorities based on uneven access to materials. This could also imply that all judgments regarding the rationality of regulatory standards are being delegated to the administration, and when we consider that a nuclear power plant disaster occurred under the old regulatory standards, such an approach is not valid. The overwhelming danger inherent in nuclear power plants and the possibility for errors in decisions of the regulatory authorities has already been witnessed by the Fukushima accident.(22)

The reason for this variation in judicial judgments is that courts are in a quandary about how much deference should be given to the regulatory authorities, the regulatory standards established by the regulatory authorities, and the safety reviews conducted by the regulatory authorities based on those standards.

Before the Fukushima accident, courts entrusted problems that required enormous amounts of knowledge, such as lawsuits related to nuclear power plants, to the specialized knowledge of the regulatory authorities, who were experts in their fields. As a result, courts reduced the complexity of the decision-making process in such cases. However, the Fukushima accident suggested that such an approach should be reformed. In other words, a skeptical view surfaced in courts that questioned the appropriateness of entrusting judgments only to experts in the relevant fields.(23)

In light of this, theoretical studies have indicated that it is necessary to give deference to administrative standards in civil lawsuits, and decisions that completely disregard administrative determinations are problematic. However, simply ratifying administrative decisions defeats the purpose of conducting a trial; therefore, there is a need for a new judgment framework that avoids both of these extreme positions.(24) In other words, courts should maintain the stance of deference to the administration while also engaging in a closer look, and they should supersede administrative decisions where sufficient grounds exist.

At present, however, it is precisely these “extreme positions” that are being advanced by courts, as demonstrated in the Fukui District Court and the Osaka High Court decisions.

Ideal State of Judicial Review of Lawsuits Related to Nuclear Power Plants

Relationship Between Civil and Administrative Lawsuits and Regulatory Standards

In criticizing the theory stated above, some legal scholars have argued that the concurrent system of administrative and civil lawsuits should be reconsidered from the perspective of dividing their respective functions and that lawsuits related to nuclear power plants should be only administrative lawsuits.(25) However, this proposal has faced severe opposition.

First, in Japan, the judicial precedent and commonly accepted view is that administrative and civil lawsuits are not mutually exclusive, because the subject matter of the former lawsuits, which concerns approvals and licensing and are brought against the national government—under which the regulatory authorities operate—is different from the latter, which are brought against nuclear operators.(26) In

Japan, laws concerning administrative lawsuits have been established and interpreted based on the assumption that access to civil lawsuits will not be denied, and this assumption would be difficult to overturn. The argument that "lawsuits related to nuclear power plants should center upon administrative lawsuits" draws comparisons to legal systems in other countries, which exclude civil lawsuits under certain conditions;[27] however, it is necessary to consider the differences of background between these systems and the system in place in Japan.[28]

Second, the question regarding the best way to understand the relationship between civil lawsuits and regulatory standards has hitherto been discussed in relation to civil lawsuits related to pollution and nuisance. The basic approach here is that, although courts respect administrative standards, "actions that violate regulatory standards are illegal in principle," whereas "actions that conform to regulatory standards are not necessarily considered legal in terms of civil law and may still be considered illegal." There is a compelling reason for this approach, and it appears applicable in the case of lawsuits related to nuclear power plants.[29]

Moreover, in the context of administrative lawsuits, courts have recently expressed an intention to have some degree of involvement in the discretionary judgments of the administration and to check administrative powers.[30] However, this has been also criticized by some as insufficient yet.[31]

As noted above, the Fukushima accident demonstrated that judgments by regulatory authorities, which are composed of experts, can contain errors. Accordingly, in lawsuits related to nuclear power plants, experts believe that courts should maintain the ability to supersede administrative standards, while using these as a basis.

Reconsideration of the Ikata Ruling Judgment Framework

Given the context outlined above, when confronting lawsuits related to nuclear power plants, courts should maintain a stance of deference toward the administration, while also engaging deeper and considering the possibility of issuing judgments that supersede administrative standards where a sufficient reason to do so exists. When we consider that regulatory authorities can sometimes make erroneous decisions, courts must perform the function of checking administrative judgements on safety to ensure they are free from error, which also introduces transparency and a sense of pressure to their adjudication processes.

This preferred approach is not a new one. The existence of a similar approach has already been noted.

As discussed above, the judgment framework of the Ikata ruling can be viewed as follows: the court "allowed the authorities room for discretion in judgements on the safety of the nuclear power plant but also demonstrated an approach in which the scope of this discretion was limited and the trial was conducted with a stricter method of control than the discretionary control methods used in the past." Nevertheless, before the Fukushima accident, this judgment framework was applied in an "extremely perfunctory manner," and, as a result, reviews were only conducted on a superficial level, which implies that the judiciary was unable perform the function of checking the administration. Although the judgment framework of the Ikata ruling is a compelling one, the method by which it was applied was problematic; therefore, it is necessary to examine the best way to apply this judgment framework in the future.

Peculiarity of Lawsuits Related to Nuclear Power Plants: A Problem to be Addressed by the Judiciary?

Courts must tackle lawsuits related to nuclear power plants using the approach outlined above, in order to do so, a higher level of specialized scientific judgments is required than before. This could be criticized for imposing an excessive burden on the judiciary. However, the same problem also exists for lawsuits in other areas that involve specialized content, and one researcher has noted that judges are already issuing judgments effectively in these areas and that there is no need for lawsuits related to nuclear power plants to be the only exception.[(32)] However, given the peculiarity of lawsuits related to nuclear power plants as described below, a question arises regarding lawsuits that include other specialized content and whether they are of the same nature as those involving nuclear power plants.

Advocates of the previous research cite medical and architectural lawsuits as examples of other cases involving forms of specialized knowledge. While it is true that these areas involve specialized content, it can be argued that certain truths can be established through scientific methods in these fields. For such reasons, it should be possible for courts to make scientifically valid legal judgments by supplementing the specialized knowledge they have with methods such as the "expert opinion" procedure.

However, issues of the safety of nuclear power plants—the matter under dispute in lawsuits related to nuclear power plants—are often complicated due to a lack of scientific clarity and unified understanding (i.e., questions such as the probability of a giant earthquake). It is argued that such issues, in a scientifically uncertain area, should not be determined by delegating matters to experts, but rather be subject to social decision-making through public deliberation involving the interested parties and general public.[(33)] However, theoretical studies have indicated that Japan has been slow in establishing mechanisms for public participation in policy decisions and approval processes, not only

in the area of nuclear energy but also for the energy sector as the whole, and, as a result, the court was the only legal body through which citizens could voice their objections.[34] Moreover, it has also been argued that courtroom trials are not suitable for dealing with problems in scientifically uncertain areas.[35] Based on these reasons, one could also adopt the view that problems that ought to be resolved by the administration are not being resolved, and the resulting burden is being levied on the judiciary.

Viewed in this light, one could arrange the current situation as follows: we now face a situation where, eventually, an institutional design for shaping the social decision-making process must be established through administrative or legislative means. However, for the time being, the judiciary is obliged to function as the channel through which social decision-making is shaped, and, to enable it to perform that role, it is necessary to conduct investigations that also consider the possibility of changing the design of the court system (for example, considering whether to adopt the policy proposed above).

Conclusion

This paper has provided an overview of the state of lawsuits related to nuclear power plants in Japan. As a basic premise, currently, both civil and administrative lawsuits exist in the Japanese litigation system. In both kinds of lawsuits, due to limited specialized knowledge held by courts, the judiciary must give a certain degree of deference to the regulatory authorities, who have specialized knowledge, the regulatory standards established by the regulatory authorities, and the safety reviews conducted by the regulatory authorities. However, the judiciary must not entrust all specialized scientific determinations to the administration. Therefore, courts should approach lawsuits related to nuclear power plants from an intermediate position, maintaining a stance of deference toward the administration while also engaging deeper and reaching decisions that supersede administrative standards where necessary.

Such a judgment framework is not a particularly new one. It has already been demonstrated in the Ikata ruling; however, before the Fukushima accident, many courts only applied this judgment framework in an “extremely perfunctory manner,” which was problematic. Clearly, the Fukushima accident must be taken seriously, and the judiciary must perform the role of checking administrative determinations more stringently in the future than they did in the past. Therefore, it is necessary to examine the best way to apply this judgment framework, including redesigning the court system under which this is done.

End

[1] See Akio Morishima, "Genshiryoku Hatsuden ni Taisuru Shiho Shinsa" [Judicial Review in Nuclear Power Generation], *Journal of the Atomic Energy Society of Japan*, 58(9) (2016), p. 2

[2] See Shigeyuki Suto, "Kagakukenkyuhi Joseijigyo Kenkyuseikai-hokokusho" [Report on Research Achievements in the Grants-in-aid for Scientific Research Program] (2016), p. 2.

[3] Before the Fukushima accident, there were only two judgments where courts upheld claims filed by plaintiffs, one civil lawsuit and one administrative lawsuit. However, both judgments were overturned by higher courts and were regarded only as exceptions.

[4] See Masanori Okada, "Kiro ni Tatsu Saibankan (10) – Gyosei-sosho no Shinri to Saibankan no Sekinin: Sono Rekishi to Genjo" [Judges at the Crossroads (10) – Administrative Lawsuits Trials and the Responsibility of Judges: Past and Present], *Hanrei Jiho*, 2351 (2018), p. 122.

[5] See, e.g., Muneyuki Shindo, *Shihoyo! Omae ni mo Tsumi ga Aru* [Judiciary! You Too Are Guilty], Kodansha (2012), pp. 28–32.

[6] It has been pointed out that this legal technique is not only effective in creating equality between plaintiffs and defendants, but that the explanation of the decision framework by the respondent authorities also contributes in promoting judges' understanding of the decision framework by the authorities. See Hisashi Koketsu, "Ikata no Teishiki no Shatei" [The Range of the Ikata Precedent], in the memorial publication of Professor Ichiro Kato, *Hendosuru Nippon Shakai to Ho* [Japanese Society and Law in Change], Yuhikaku (2011), pp. 245–269.

[7] See Shigeru Takahashi, *Sentan Gijutsu no Gyosei Hori* [Administrative Legal Theory of Advanced Technology], Iwanami Shoten (1998), p. 89.

[8] See the website of "Lawyer Japan Liaison Meeting to abandoning nuclear power generation." http://www.datsugenpatsu.org/bengodan/list/ (last accessed July 19, 2018).

[9] Petitions for provisional dispositions are reviewed in trials in which the Civil Provisional Remedies Act applies and are judged using a simpler procedure of "decisions," rather than "rulings." In regular lawsuits, it is in principle that the judgment becomes enforceable after rulings are final and binding. In contrast in the case of provisional dispositions, orders are immediately enforceable once they are issued.

[10] The different subject matter of trials in administrative and civil lawsuits is one reason why residents choose to file civil lawsuits. Civil lawsuits can address a wide range of problems, including occupational exposure and dangers related to transportation of fuel and so on. By contrast, in administrative lawsuits, which have primarily seek to revoke permits for installing nuclear reactors, only the illegality of the installation permits is called into dispute, which restricts the scope of review to issues of basic design. This was set out in the Ikata ruling: "In the safety review at the reactor installation permit stage, it was deemed appropriate to focus on only the safety of the nuclear reactors," and for this reason, the court decided that "matters such as the final disposal method for solid waste, the methods of reprocessing and transporting spent fuel, and the impact of the hot waste water should not be included in the safety review at the reactor installation permit stage." A study has shown that plaintiffs-residents choose to file civil lawsuits because the adoption of the basic design approach in administrative lawsuits restricts the scope of arguments concerning the safety of nuclear power plants in lawsuits. See Shigeyuki Suto, 'Genshiryoku-kisei no Tokushusei to Mondai' [Peculiarity and Problems of Nuclear Regulation], *Environmental Law Journal*, 1 (2014), pp. 55–56.

[11] Otsu District Court Decision on the petition seeking a provisional disposition to suspend the operations of reactors 3 and 4 at the Takahama Nuclear Power Plant (March 9, 2016). Also note that the lawsuits introduced later in this paper are examples of petitions for a provisional disposition to suspend the operations of reactors 3 and 4 of the Takahama Nuclear Power Plant, highlighting the current situation in which multiple lawsuits are filed against a single nuclear power plant.

[12] In the draft of Japan's 5th Basic Energy Plan (May 2018), compiled by an advisory body to the Ministry of Economy, Trade and Industry (Basic Policy Subcommittee of the Advisory Committee for

Natural Resources and Energy), nuclear power was positioned as an “important base-load power source that contributes to the stability of Japan’s long-term energy supply structure.” http://www.enecho.meti.go.jp/committee/council/basic_policy_subcommittee/pdf/basic_policy_subcommittee_002.pdf (last accessed June 21, 2018).
(13) See Sumiko Takeuchi, “Chisai ga Motometa ‘Akuma no Shomei’ wa Hitei mo: Jigyosha wa Shinshi ni Setsumei wo Tsukusu Beki” [The “Probatio Diabolica” Sought by the District Courts is Also Denied: Operators Must Provide Sincere and Full Explanations], *Energy Forum, May 2017* (2017), p. 92.
(14) See Akihiro Sawa, “Zoku Genshiryoku Anzen Kisei no Saitekika ni Mukete: Genshiryoku Anzen he no Shinrai Kaifuku no Michi to wa.” [Toward the Optimization of Nuclear Safety Regulation Continued: How to Restore Confidence in Nuclear Safety], The 21st Century Public Policy Institute (2015), p. 43.
(15) The current judicial system also includes an “expert testimony” procedure for introducing specialized knowledge. In addition to this, the 2003 amendment of the Code of Civil Procedure introduced measures to respond to the needs of technological advancement, including “Participation of Technical Adviser” in which the court can request the involvement of experts in a particular field as Expert Commissioners.
(16) Shindo, *op. cit.* note (5), pp. 173–174.
(17) Under this system, quasi-judicial power was delegated to the Japan Fair Trade Commission. In deference to the judgment of the Japan Fair Trade Commission as a specialized agency, any objections to its rulings were brought to the Tokyo High Court, and the decisions of the Japan Fair Trade Commission were equivalent to a judgment of first instance. Furthermore, where supported by substantial evidence, facts established by the Japan Fair Trade Commission were regarded as binding on the court, and in principle, evidence not presented below could not be presented to the court. Hidekatsu Hirabayashi, “Ronsetsu: Koseitorihiki Inkai no Shinpan Haishi ga Motarasu Mono” [What Would Come About If Hearing Procedure by Fair Trade Commission is Abolished], *Tsukuba Law Journal, 4* (2008), p. 37.
(18) Japan Business Federation, “Dokusen Kinshiho no Bapponkaisei ni Muketa Teigen: Shinsa Fufuku Moshitate no Kokusaiteki Ikōrufuttingu no Jitsugen o” [Proposal for Drastic Revision of the Anti-Monopoly Act: Toward an International Equal Footing for Review and Appeal Petitions] (2007). https://www.keidanren.or.jp/japanese/policy/2007/091.html (last accessed 28 June 2018)
(19) Fumito Tomooka, “Genpatsu ‘Saikadou’ ni Kakaru Senmonteki Chiken no Hanei: Shinkiseikijun o Meguru Hōteki Kadai” [Reflecting Expertise on the “Resumption” of Nuclear Power Operations: Legal Issues Surrounding New Regulatory Standards]. In Shigeru Takahashi Ed. *Fukushima Genpatsu Jiko to Hoseisaku: Shinsai Genpatsu Jiko kara no Fukko ni Mukete* [Fukushima Nuclear Accident and Legal Policy: Toward Reconstruction After the Earthquake and Nuclear Accident], Daiichi Hoki (2016), p. 168.
(20) Shindo, *op. cit.* note (5), pp. 173–174.
(21) Tadashi Otsuka, “Oi Genpatsu Unten Sashitome Sosho Daiichi Shinhanketsu no Igi to Kadai” [Significance and Issues of the Initial Ruling in the Lawsuit to Suspend Operations at the Oi Nuclear Power Plant], *Hogaku Kyoshitsu, 410* (2014), p. 92.
(22) Katsumi Yoshida, “Fukushima-go no Genpatsu Saiban to Shiho no Yakuwari” [The Nuclear Trials After the Fukushima Accident and the Role of the Judiciary], *Journal of the Atomic Energy Society of Japan, 59(5)* (2007), p. 39.
(23) Tsutomu Sata, “Genpatsu o Meguru Shihō Handan ga Wakarehajimeta” [Judicial Decisions Concerning the Nuclear Power Have Begun to Split], *Journal of the Atomic Energy Society of Japan, 58(8)* (2016), p. 20.
(24) See, e.g., Tadashi Otsuka, “Genpatsu no Kado ni yoru Kiken ni Taisuru Minji Sashitome Sosho ni tsuite” [On Civil Injunction Suits against the Risk due to the Operation of Nuclear Power Plants], *Environmental Law Journal, 5* (2016), p.104.
(25) See, e.g., Hikaru Takagi, “Genpatsu Sosho ni okeru Minjihō no Yakuwari: Oi San-yon Gouki Sashitome Hanketsu o Nento ni oite” [Role of Civil Law in Nuclear Lawsuits: With the Decision to

Suspend Reactors 3 and 4 of the Oi Nuclear Power Station in Mind], *Jichi Kenkyu 91(10)* (2015), pp. 17–39.
[26] Shigeru Takahashi, *Gyosei Ho* [Administrative Law], Kobundo (2016), p. 53, p. 395.
[27] For example, this argument cites the German legal system, in which, "Civil lawsuits seeking the suspension of operations at nuclear power plants are expressly excluded through legislation." Takagi, *op. cit.* note (25), p. 22.
[28] Tadashi Otsuka, "Kankyo Minji Sashitome Sosho no Gendaiteki Kadai" [Contemporary Issues of Environmental Civil Injunction Lawsuits]. In Professor Takehisa Awaji's 70th Birthday Celebration, *Shakai no Hatten to Kenri no Sozo* [Societal Development and the Creation of Rights], Yuhikaku (2012), from p. 563.
[29] Tadashi Otsuka, "Oi Genpatsu Unten Sashitome Soshō Daiichi Shinhanketsu no Igi to Kadai" [Significance and Issues of the Initial Ruling in the Lawsuit to Suspend Operations at the Oi Nuclear Power Plant], *Hogaku Kyoshitsu, 410* (2014), p. 92.
[30] Shigeru Takahashi, "Genshiryokuho no Shomondai" [Problems in Nuclear Energy Law], *Environmental Law Journal, 5* (2016), p. 127.
[31] Okada, *op. cit.* note (4), p. 122.
[32] Yoshida, *op. cit.* note (22), p. 39.
[33] Tadashi Kobayashi, *Toransu Saiensu no Jidai: Kagaku Gijutsu to Shakai o Tsunagu* [The Age of Trans-science: Linking Science with Society], NTT Publishing, 2007.
[34] Noriko Okubo, "Enerugi, Kagaku Busshitsu, Mizu Kanri Seisaku ni okeru Shimin Sanka" [Citizen Participation in Policy for Energy, Chemical Substances and Water Management], *Administrative Law Journal, 12* (2016), pp. 1–25.
[35] Chihara Watanabe, *Sosho to Senmonchi* [Litigation and Expertise], Nippon Hyoronsha (2018), p. 147.