



Study of Civil Liability for Nuclear Damage in the China's Civil Code-2021

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Abstract

China, as a major nuclear country, continues to use Coal as its main source of energy. That is why China's Long-Term Plan to reduce this share by 2050 through the development of a 300- to 400-Gigawatt Nuclear Electricity. The Fukushima Accident prompted China to reconsider its nuclear policy due to its geographical proximity to Japan and to pay more attention to the issue of nuclear damage compensation. China's nuclear laws and regulations, are complex and composed of many elements. It has not yet become a member of any international civil liability legal regimes. By 2021, China's most important provisions in this regard included two provisions called the "Official Replies in 1986 and 2007" until the Chinese Civil Code was adopted in 2020 and entered into force in 2021. This event, for the first time, made China have legal rules under national law level on nuclear civil liability

Keywords: Nuclear Damage, Nuclear Legislation, Nuclear Incident, Nuclear Civil Liability, China, Civil Code, Official Reply 2007.

Introduction

The beginning of 2021 coincided with an important legal event in China, the entry into force of civil code, which is a turning point in China's legislative system. It is a comprehensive, coherent, up-to-date, rational, strong and globalized law set out in seven books and 1260 articles.¹ The Seventh Book of this law is titled Tort Liability and the Eighth Chapter of this book is titled Liability for Ultra-hazardous Activities and the two articles 1237 and 1239 below this chapter deal with the provisions on civil liability for Nuclear Damage.² This paper introduces this new legislation and examines its interactions with other Chinese civil liability regulations on Nuclear Damage. We know that China, as a major nuclear country, continues to use Coal as its main source of energy, and the development of its Nuclear Electricity is estimated by the World Nuclear Association by 2050 at the rate of 300 to 400 Gigawatts of Nuclear Energy.³ By 2019, the country has 51 nuclear power plants in operation and 18 nuclear power plants under construction, and a capacity of 50,000 Megawatts of nuclear power is equivalent to 5% of China's electricity.⁴ During this rapid development, and with the Fukushima Accident and its extensive nuclear damage

in March 2011, immediately and on March 16 of that year, the State Council of China issued a statement suspending all development activities in the nuclear industry with the aim of reviewing its dimensions and rules of safety and civil liability.⁵ China's current nuclear legislative system is governed in a complex and joint and several manner by 11 national institutions.⁶ China is not a party to any of the international conventions on civil liability for nuclear damage,⁷ and its national laws were silent until 2021⁸, before which there were two instruments (official government replies) in 1986⁹ and 2007¹⁰. Which state some of the criteria for liability for nuclear damage.

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Article 1237 of this code states:

"Where a nuclear accident occurs at a civil nuclear facility or when nuclear materials are transported into or

¹ Civil Law of China, Translated and Researched by Abdolhossein Shiravi

² Civil Code of the People's Republic of China, http://english.www.gov.cn/archive/lawsregulations/202102/31/content_WS5fedad98c6d0f72576943005.html

³ Nuclear Power in China, WORLD NUCLEAR ASS'N, http://www.world-nuclear.org/info/inf_63.html

⁴ <https://world-nuclear.org/information-library/country-profiles/countries-a-f/china-nuclear-power.aspx>

⁵ Same reference.

⁶ Compensating Nuclear Damage in China, Liu Jing, Michael Faure, Volume 11, Issue 4 (2012) Global Nuclear Energy Law and Regulatory Symposium

⁷ <https://www.iaea.org/resources/legal/country-factsheets>

⁸ Wang Jin and Yan Baojiang, "Reflections and suggestions on accelerating the formulation of the Nuclear Safety Law in the context of rapid development of nuclear energy", Environmental Protection News, 10 April 2015.

⁹ 1986 OFFICIAL REPLY, STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA

¹⁰ 2007 OFFICIAL REPLY, STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA



out of a civil nuclear facility and damage is thus caused to another person, the operator of the facility shall bear tort liability. However, the operator shall not assume such liability if it can be proven that the damage is caused by a war, an armed conflict, a riot, or under other like circumstances, or the damage is intentionally caused by the victim."

Although this article does not include radiation activities, Article 1239 states extremely dangerous radiation activities under other rules:

"Where the possession or use of highly radioactive, causes damage to another person, the possessor or user thereof shall bear tort liability, provided that such a possessor or user shall not assume any liability if it can be proven that the damage was intentionally caused by the victim or caused by force majeure. Where the infringed person is grossly negligent for the occurrence of the damage, the liability of the possessor or user may be mitigated."

In the new Chinese law, only the above two articles address the issue of nuclear damage, and therefore it is a significant model for legal systems without the provisions of nuclear civil liability, because with a general provision or a single article, the general principles of the civil liability nuclear regime are expressed and postponed its details to downstream regulations. In this regard, according to Article 1244 of the Chinese Civil Code:

"Where there is a provision of law providing for a limit of compensation for liability incurred as a result of an ultra-hazardous activity, such provision shall be followed unless the damage is caused by the actor intentionally or with gross negligence."

Also, Article 11 of this law states in the first book and the following chapter of general regulations:

"Where there are other laws providing special provisions regulating civil-law relations, such provisions shall be followed."

Under Chinese law, there is no limit to the amount of compensation and liability of a nuclear operator, and the provisions on the obligation to insure or guarantee a nuclear operator are still silent.

In the official reply of 2007, the liability of the operators of nuclear power plants, spent fuel storages and waste transfer and processing up to 300 million renminbi¹ and other operators up to 100 million renminbi and the liability of the government in excess up to 800 million renminbi, which is higher than Approved by the Cabinet.² The 1986 official replay was not repealed, but in the conflict with the 2007 official reply, the

subsequent document takes precedence. Also, the issue of jurisdiction of the court dealing with nuclear damage is stated only in the 1986 document and the definitions related to nuclear damage, nuclear accident and operator are incompletely stated only in the 2007 document. Articles 11 and 1244 of China's new Civil Code authenticate the previous provisions of the 1986 and 2007 documents According to the expressly repeal in the last article(1260) of Civil Code 2021, the General Principles of Civil Law of the People's Republic of China ,has been repealed since the new law came into force.³ These principles contained some rules of civil liability for nuclear damage.

Absolute liability of the operator and exceptions of liability in the case of the Cairo force have been approved under Article 1237 of the new law as well as the official reply of 1986, and in the conflict between the two documents, civil law will prevail.

Conclusions

Although the passage of the Chinese Civil Code 2021 is considered an important change in the issue of civil liability for nuclear damage and increases the strength of its rules and regulations, but still some important issues must be pursued in the legal regime of this country:

- Dispersal of civil liability rules and regulations confuses operators, investors, executors, courts, victims and the international community.
- Not to accede to any of the international conventions.
- Some ambiguities, including in the definitions of terms and exceptions of liability.
- The liability ceiling is lower than the global average and needs to be reconsidered, although supplemental government coverage is a privilege.

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¹ Equivalent to US \$ 48 million in December 2021

² 2007 OFFICIAL REPLY, STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA

³ Article 1260 of Civil Code of the People's Republic of China,