

## 外国語要旨

Judicial Active role in the context of compensation litigation in the medical field in Japan and its impact--Based on a comparison with medical and pharmaceutical cases in the United States

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In compensation litigation concerning side effects of pharmaceuticals or vaccination, the judicial courts judge breaches of obligation generously by national governments, industries, and medical care providers who represent defendants under the relief of victim. At the same time, the courts show needs of introduction for policy and remedy system for medical safety, and have some influence for legislative and/or administrative body. In medical malpractice cases, the courts admit the doctor's duty by relaxation of the burden of proof or introduction of new legal principle like informed consent or considerable possibility. I position these judicial works as an active role of the courts. On the other hand, the amount of compensation in those medical malpractice cases has been kept low by the consolation payment. These treatment is kept balance for against admitting the negligence leniently for the relief of victim.

The reason why the courts admit negligence leniently in compensation litigation is based on impartiality orientation in Japan. Japan tends to prefer to share the damage fairly rather than to pursue who should bear the responsibility. Furthermore, the defendants often are prospected they have deep pocket enough to pay compensation. The background circumstances which have made such operations theoretically possible include the practical wide acceptance of the balancing of interests theory (Rieki-kouryo) in the study of civil law, and the resulting ability of judges to interpret law flexibly at their own discretion. This is a result of entrusting Japan's compensation system entirely to professional judges and in judges earning the public's trust.

On the other hand, there appear to be limits on the operation of balancing of interests entrusted to the discretion of judges. This is a result of the fact that the objectification of value judgments which balancing of interest predicts is actually difficult and its criteria are unclear, resulting in a lack of grounds for explaining why certain values take precedence. Specifically, objective grounds and criteria for giving higher value to damage relief are not clear, and such lenient legal interpretations cause a results like difficulty of admitting original burden .

As comparative law, the United States have a high number of law suits cases predominantly. Reform of the medical litigation system has tended to discourage plaintiffs from initiating litigation rather than restricting amounts of compensation or imposing a statute of limitations. Background factors affecting this litigation in the United States include, in addition to political factors such as insurance crises caused by compensation litigation, system like the punitive damages and the jury system. It appears

that the reason is that under those courts system, the goals have been easily understood judgment standards, objectivity, and formal operation. In contrast, in the United States, it is extremely rare to hold the federal government liability for similar cases of the side effects of pharmaceuticals or vaccination cases. Although a new theory regarding the relief of victims in medical malpractice litigation has developed, its application is limited based on objectivity and formal prerequisites, and not only do policy considerations also define relief of damage as a purpose, consideration of the chilling effects on medical treatment settings is also an important factor. In the United States, the courts tend to realize individual justice.

In the past time, Japan need the relief of the victim by admitting negligence generously under the rapid economic growth. While the present pharmaceutical side effect damage relief system in Japan, in which cases where cause and effect relationships are undeniable, are basically the object of relief, is attempting to broadly expand that relief. I think that it is under this broad relief system that the strict enforcement of liability for negligence in compensation litigation will also be confirmed. If rather than both patient plaintiffs and physicians being forced to conclude with vague responsibility and low compensation, judgments are made clearly acknowledging the negligence of physicians or cause and effect, wouldn't it be better to order high compensation, and if not negligent, to show that there is no liability for compensation for damage? The reason is that it is possible to take measures to effectively prevent inappropriate actions, and to prevent the chilling effects on activities to the provision of medical treatment. Compensation litigation has taken on a variety of functions—including rapid and extensive relief of damage, investigations into cause, and policy proposals—but in the future, compensation litigation should clarify the roles of the judiciary by approximating its essential principle of liability for negligence through links with a variety of other systems.

By limiting the role of judicial courts, the role of judicial courts becomes more clearly on the function of policy making or the relief of victim. The courts can induce policy making or economic activity in the future without threat effect rather than pose threatening effects.