

Legal Review: Issuance of Separate Permits for a Nuclear Reactor for Research

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1. Introduction

With regard to the nuclear reactor permission system under the Atomic Energy Act of the Republic of Korea, two types of permits must be obtained for nuclear power reactors under Article 11 and Article 21 of the Atomic Energy Act: construction permits and operation permits. Concerning nuclear reactors for research, however, only one permit is required: a dual permit that authorizes both construction and operation, under Article 33 of said act. This permit can be obtained by submitting an application for a dual construction and operation permit to the regulatory authority.

The question is whether a dual permit can be issued for nuclear reactors for research under any circumstances. If the literal provisions of the Atomic Energy Act are applied rigorously even in cases where it is realistically difficult to submit a dual permit application or issue a dual permit for construction and operation considering the power output, usage, and design complexity of nuclear reactors for research, separate permits for construction or operation shall never be issued, with only dual permits for construction and operation issued. For the Hanarao research reactor, a dual permit was issued with a condition attached thereto based on the literal provisions of the Atomic Energy Act at the time of its construction, although an application for and issuance of a dual permit for its construction and operation were impossible at the time. This is in violation of the purport of the law that provides for a dual permit.

What measures must be taken then to construct a nuclear reactor that does not meet the requirements for issuance of a dual permit under applicable provisions of the Atomic Energy Act, as in the case of the Hanarao reactor? There are two options in legal terms.

The first option is to revise Article 33 of the Atomic Energy Act to allow issuance of a separate permit. The second option is to adopt a different interpretation of the applicable provisions of the Atomic Energy Act. In connection with the second option, we have so far relied upon literal interpretation of the legal provisions, i.e. whether it is possible to issue a separate permit on the basis of wording. Thus, we have employed an interpretation that it is impossible to issue a separate permit. However, there are several methods of construing legal provisions. Therefore, there is a sufficient need to determine whether issuance of a separate permit is impossible under different interpretations of legal provisions under such methods.

If issuance of a separate permit is acknowledged as impossible according to different interpretations of the

law, separate construction and operation permits cannot legally be issued in the same situation as that involving the Hanaro reactor. Therefore, revision of the law can be the only method in such case.

In order to determine whether issuance of a separate permit is allowed by different interpretations of the legal provisions, it is imperative to initially hold deliberations on various legal interpretations, matters of special consideration in construing the law, and multiple-stage permit issuance procedures for a legal interpretation enabling a separate permit.

2. Legal Interpretation

Legal interpretation means clarifying the meaning and details of legal provisions, which are general and abstract, by applying them to specific cases. More specifically, under the major premise of Article 33 of the Atomic Energy Act, which states any person who wishes to construct and operate a nuclear reactor for research shall obtain the permit of the Minister of Science and Technology, said provision must be interpreted under the minor premise of an actual aspiring licensee submitting an application for a dual construction and operation permit.

Approaches to construing the law are categorized into literal interpretations, historical interpretations, systematic interpretations, and teleological interpretations as follows:

2.1. Literal Interpretation

This approach defines the ordinary (linguistic) meaning of legal language or the normative meaning of legal texts according to sentence structure. In the case of legal interpretation under said approach, issuance of a separate permit for a nuclear reactor for research is deemed impossible.

2.2 Historical Interpretation

Under this approach, a specific law is understood in line with the legislators' original intention. It seeks to clarify the intent of the legislators at the time of legislation by analyzing the legislation-related materials at the time.

The legislator's intent can be confirmed through the meeting minutes of a legislative body, written rationale for legislation, written opinion of the submitter of a bill, and so forth.

However, the law may incorporate meaning not recognized by the legislators. In addition, the meaning

of the law may vary at present and in the future, depending on interpretation. Thus, this approach has inherent limitations.

2.3. Systematic interpretation

Since the law gives rise to a system, each legal provision must be interpreted in a way that is in conformity with the entire legal system. Under this approach, legal provisions are understood under certain organized, legal connections.

2.4. Teleological interpretation

This is a method to understand legal provisions in accordance with the objective purpose, spirit, philosophy, and legislative purport of the law. Among the different means of interpretation of the law, this approach should be given the highest priority.

Under this approach, the meaning of the law is not 'confirmed', but 'organized' or 'formed.'

For example, pursuant to Article 811 of the former Civil Act, a divorced woman is prohibited from remarrying within six months following a divorce. However, this provision should not apply to a woman who immediately remarries her divorced husband or whose ex-husband is sterile.

3. Courts' Approach to Construing the Law

The Constitutional Court and Supreme Court of Korea take the approach of teleological interpretation as follows:

'The concept of literature is relative, and the object of governance by law is a constantly changing social phenomenon. Therefore, a teleological interpretation must be employed in light of the motive, purport, and purpose of legislation as well as social convention to the extent that it does not damage legal stability and predictability.'

As an example of judicial precedents based on this approach, copying a document was not deemed a crime of private document forgery and alteration under Article 231 of the Criminal Act prior to September 12, 1989. However, the September 12, 1989 ruling of the Supreme Court (docket no. 87 do 506) adopted a teleological interpretation, acknowledging such document as an object of a crime of forgery and alteration.

4. Rationale for Introduction of Separate Permit Procedures

First, transparency of administration is enhanced by ensuring that administrative procedures are fully identifiable.

Second, safety is improved through accommodation of the latest science and technological advances.

Third, it is possible to protect the rights of interested parties at an early date.

Fourth, licensees' investments are protected.

5. Rationale for Dual Permit for Nuclear Reactor for Research

The purpose of a dual permit is to promote the interests of licensees. However, issuance of a dual permit would be effective only when issuance of a dual permit guarantees public safety in practical and technical terms.

6. Conclusion

Even though the Atomic Energy Act sets forth the principle of issuing a dual permit for nuclear reactors for research, it is deemed possible to issue a separate permit for the following reasons, considering the purpose of the Atomic Energy Act (i.e. promotion of atomic energy and public safety), methods of legal interpretation, reasons for introduction of multiple-stage permission procedures, need for a dual permit, and so on.

First, a dual application does not necessarily mean that a dual permit will be issued. Issuance of a permit for those meeting the permit requirements has the nature of a discretionary act. Accordingly, a dual application does not necessarily require issuance of a dual permit.

Second, most of the provisions that pertain to nuclear power reactors requiring separate permits apply *mutatis mutandis* to nuclear reactors for research. Thus, the separate permit system for construction and operation form the basis of the permit system for nuclear reactors under the Atomic Energy Act.

Third, issuance of a separate permit promotes safety of nuclear reactors, which also serves the public interest.

Fourth, if issuance of a dual permit is impossible from a practical or technical point of view, adoption of separate permit procedures may lessen the burden related with a dual permit on the part of licensees.

REFERENCES

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