

Legal Case Study About the Lawsuit to the Korea government's 8th Basic Plan for Electricity Supply and Demand

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1. Introduction

Since the 2011 Fukushima nuclear accident and the 2016 Kyongju earthquake, domestic concern for nuclear power has grown rapidly and demands for nuclear safety have come to the fore. As a result, the current government has announced the eighth basic plan for power supply in 2017, which has a lot of radical changes. This has led to disagreements among related stakeholders, leading to legal disputes.

In this study, we will review the basic outline of the Eighth Basic Plan for Electricity Supply and Demand, and analyze main legal issues of administrative revocation lawsuit against the Korea government for cancelling the Plan.

2. Eighth Basic Plan and Administrative Lawsuit

2.1 Eighth Basic Plan for Electricity Supply and Demand

In December 2017, the Ministry of Commerce, Industry and Energy has announced the eighth basic plan for power supply and demand. Reflecting the energy conversion road map, which is the basic direction of the current government energy policy, to reduce the number of nuclear power plants gradually and to expand renewable energy to 20% of the generation capacity by 2030, the project will focus on the early abolition of coal power generation and LNG conversion. Among them, the main issues that the plaintiffs of the lawsuit are having trouble with are related to nuclear power plants plans: first, the cancellation of six new nuclear power plants construction; second, the suspension of life extension of 10 old nuclear power plants; third, the early closure of Wolsong 1, which takes into account power supply and demand. As of 2017, the government plans to reduce the total number of

nuclear power plants from 24, 22.5 GW by 2030 to 18, 20.4 GW.

2.2 Revocation lawsuit of the Eighth Basic Plan for Electricity Supply and Demand

In January 2018, the plaintiffs, comprised of 216 persons, including civilian and environmental group representatives from nuclear-related regions, nuclear-related labor unions such as nuclear suppliers, nuclear equipment manufacturers, and nuclear radiation safety management service companies has filed a lawsuit against the Korea government for cancelling the Eighth Basic Plan for Electricity Supply and Demand. Plaintiffs argued that the Plan had a direct and detrimental effect on the rights of the plaintiffs in the lawsuit.

2.2.1 Issue1. Disposability of Basic Plan for Electricity Supply and Demand. The first major issue is whether the Plan has an administrative disposition power or not. The ultimate purpose of administrative litigation lies in the relief of the people's rights from administrative acts. In the case of an administrative litigation, the revocation lawsuit, is subject to "disposition, etc.", and "disposition" means the act or exercise of public power as a law enforcement on concrete facts performed by the administrative office, it means reconciliation. Therefore, it should be recognized that the Plan has a "nature as an administrative disposition" in order to be relieved through a lawsuit of revocation.

From that point, the plaintiffs claim that the plan has an administrative disposition power because the plan will dominate government's nuclear power plant project and damage to the plaintiffs' interest. So the Plan shall be the object of this lawsuit. By the way, the government is in the position that the plan is only a sketch of future energy mix. It does not have a disposability power. This lawsuit should be dismissed.

2.2.2 Issue2. Plaintiffs' Legal Eligibility (Status).

The second major issue is the eligibility (status) of plaintiffs. Plaintiff eligibility means that only a person who is violated or damaged by law by the administrative act seeks the profit or cancelling the government's action under administrative lawsuit. If a Plaintiff is only a bystander or has an indirect relationship with the government's action, the Plaintiff shall not be considered as an eligible plaintiff of lawsuit and the lawsuit shall be dismissed.

The plaintiffs claim that this plan will undermine the concrete and direct economic benefits of the plaintiffs. Defendant, the Korea government, counter argues that the claims is about collateral and superficial damages, not the direct and specific victims' damage. Thus this lawsuit should be dismissed.

2.2.3 Issue3. Consistency with Energy Basic Plan.

The third major issue is a consistency with the Energy Basic Plan. In January 2014, the Ministry of Commerce, Industry and Energy announced the Second Energy Basic Plan. The plaintiffs believe that this is the highest plan of the energy sector and that all fields of the energy sector are systematically linked to and coordinated with other energy-related schemes, so that the philosophy and basic principles of Energy Basic Plan shall govern the 8th basic plan as highest and earlier plan. In detail, the Energy Basic Plan covers the expansion of the proportion of nuclear power by 2935 to 43 GW by 2035, while the 8th basic plan for power supply is from 20.5 GW to 20.4 GW by 2030. There is an undue discrepancy between the two plans.

Thus, the plaintiffs argue that this supply and demand plan is very different from the basic energy plan, so that even basic rationality is not available and should be cancelled. Government's counter argue is that plan is just a plan for future, so government has a very large autonomous authority for administrative planning.

2.2.4 Issue4. Abuse of Discretionary Authority.

The last major issue is an abuse of Discretionary Authority. The plaintiffs argue that current government planning process is only based on the president's pledge. There is no clear and firm process for hearing people's opinion before proceeding the

Plan. This is an act of defection beyond a government discretion. In the case of Switzerland, the national opinion was collected through a referendum five times prior to the nuclear power plant, and in Germany, after 20 years of discussions, the legislative process was applied for nuclear power plants. However, it is said that the sudden change comparing with the 7th power supply and demand plan to rapidly reduce the size of nuclear power in the 8th plan is that government abuse its' the discretion.

Thus the plaintiffs asserted that the plan is an outcome of the administrative act of abandonment of discretionary rights, so it should be canceled as a defective administrative act, although the government insist that it has a very diverse discretionary scope in the administrative plan and the plan is under a legitimate procedure and law.

3. Conclusion

In the future, the court will closely examine whether the plan has the disposition power to be the object of the administrative litigation and whether the plaintiffs are qualified as specific and direct victims of the plan. This lawsuit shall be a very meaningful legal case in the fields of legal academy and nuclear industry.

REFERENCES

- [1] Park Kyunsung, "Public Administrative Law", Parkyoung-sa, 2014.
- [2] Korea Electricity Paper webpage, <http://www.electimes.com/article.php?aid=1527642514158450003>, searched on September 1, 2018.