

Review on the adequacy of the penalty regulations related to nuclear inspections

Sangcheol Hyung

Korea Institute of Nuclear Nonproliferation and Control, 1418 Yuseong-daero, Yuseong-Gu, Daejeon, Korea
wakendragon@kinac.re.kr

1. Introduction

What action can be taken if the nuclear licensees do not cooperate with the government or the entrusted agency in conducting nuclear inspections? Currently, Article 49 of the act on Physical Protection and Radiological Emergency (hereinafter referred to as "APPRE") imposes punishment on those who do not receive, refuse, or interfere with inspection. Penalties are also imposed for false statements. It also specifies differently for physical protection inspection and radiological disaster prevention inspection. This paper will review Article 49 of the APPRE from the perspective of whether it is right to treat both inspections differently and whether it is appropriate to impose punishment.

2. The pattern of being punished related to inspection

2.1 Regulations on Penalty Related to Inspection

Article 49 of the APPRE provides for different cases of punishment in the course of conducting inspections under Article 12 and inspections under Article 38.

Article 49 (Penalty Provisions)

Any of the following persons shall be punished by imprisonment with labor for not exceeding three years or by a fine not exceeding 30 million won:

3. Any person who fails to undergo an inspection, in violation of Article 12 (1) or any person who refuses, interferes with, or evades an inspection under Article 38 (1) or 44 (2), or makes a false statement.

This paper will examine where this difference came from below.

2.2. Comparison of Physical Protection Inspection and Radiological Disaster Prevention Inspection

Article 12 of physical protection inspection states "Every nuclear licensee shall have the physical protection of nuclear facilities, etc. inspected by the Nuclear Safety and Security Commission". It is stipulated that nuclear business operators are obligated to undergo physical protection inspection, so if they do not undergo the inspection, will they be punished?

On the other hand, article 38 of radiological disaster prevention inspection states "The Nuclear Safety and Security Commission may inspect nuclear licensees."

When it is literally interpreted, nuclear licensees are not obligated to undergo inspections, but the Nuclear Safety and Security Commission (hereinafter referred to as "NSS") has the authority to perform inspections. Therefore, article 49 stipulates that if the NSSC conducts an inspection, any person who refuses,

interferes with, or evades an inspection shall be punished.

2.3. Inspection method

In the case of physical protection inspections, the operators are obliged to undergo inspections, so the operators should voluntarily prepare for inspections and apply inspections, and after then the government should take action? Physical protection inspections include initial inspections, periodic inspections, special inspections and transportation inspections. Among them, the initial inspection and transport inspection shall be carried out at the request of the operator, but the special inspection and regular inspection shall be carried out by the Nuclear Safety and Security Commission without going through the application procedure of the operator. [1]

In the case of radiological disaster prevention inspection should the government notify the inspection plan, and does the operator not have to take any action before then? Radiological disaster prevention inspection include pre-use inspection, periodic inspection and special inspection. [2]

In the case of pre-use inspection, an application shall be made by the operator, as for the initial inspection or transport inspection among physical protection inspections.

2.4 Small conclusions

The statement that the nuclear business operator must undergo an inspection and the statement that the Nuclear Safety Commission can perform the inspection are merely different descriptions of the same content and different viewpoints. Granting government departments the authority to conduct inspections is the same meaning as imposing an obligation on nuclear operators to undergo inspections. Therefore, I do not think it is appropriate to treat the two tests differently, as in Article 49 of the current Radiation Prevention Act.

3. Sanction against a person who has made a false statement

3.1 Constitutional Right to refuse to state

Pursuant to Article 44 of the APPRE, the NSSC may assign its subordinate public officials to make inquiries to interested persons. And article 49 states that those who make false statements are punished by imprisonment for up to three years or a fine of up to 30 million won. According to the Nuclear Safety Act, they

are sentenced to imprisonment for up to one year or fines up to 10 million won.

However, according to Article 12 (2) of the Constitution, no citizen shall be tortured or be compelled to testify against himself/herself in criminal cases. Therefore, it is necessary to consider whether it is appropriate to impose punishment for making false statements in administrative inspections.

3.2 An example of criminal punishment for a person who makes a false statement

Looking for examples of imposing punishment for making a false statement, it can be seen that a witness who has sworn under the law is punished by a criminal when making a false statement.

CRIMINAL ACT

Article 152 (Perjury, Malicious Perjury) (1) A witness who, having sworn according to Acts, gives false statement, shall be punished by imprisonment for not more than five years or by a fine not exceeding ten million won.

Article 154 (Fraudulent Expert Opinion, Interpretation, and Translation) An expert witness, interpreter, or translator who, having sworn according to Acts, gives a false expert opinion or a false interpretation or a false translation, shall be punished in accordance with the provisions of the preceding two Articles.

ACT ON TESTIMONY, APPRAISAL, ETC. BEFORE THE NATIONAL ASSEMBLY

Article 14 (Perjury) (1) If a witness or appraiser who has taken an oath under this Act makes a false statement (including written responses) or appraisal, he/she shall be punished by imprisonment with labor for not less than one year but not more than ten years: Provided, That if he/she confesses his/her guilt before his/her offense is detected, the punishment may be reduced or exempted.

3.3 Cases of imposing an administrative fine

There is no punishment for perjury without oath in the proceedings of an investigative agency or general administrative office. In civil lawsuits, even if you lie in various preparations or affidavits, criminal penalties will not be imposed on the grounds that there is no oath. However, it only imposes a fine for administrative order.

FRAMEWORK ACT ON NATIONAL TAXES

Article 88 (Punishment for refusal to execute duties, etc.) The head of the tax office shall impose and collect a fine of not more than 20 million won on those who falsely state or refuse to perform their duties in response to questions from tax officials under the provisions of the tax law and the right to

investigate.

ACT ON SUPPORT FOR THE PROTECTION OF TECHNOLOGY FOR SMALL AND MEDIUM ENTERPRISE

Article 35 (Fines) 1 A fine of not more than 10 million won may be imposed on those who fail to submit data under Article 8-2 (4) or submit false data or who refuse, obstruct or evade investigations by relevant public officials.

3.4 Small conclusions

Imposing punishment in the administrative examination process to prevent false statements could violate the Constitution, which does not force criminal unfavorable statements. Therefore, it is necessary to consider making revisions by referring to other laws that impose administrative fines instead of punishment.

4. Conclusion

Since physical protection inspection and radiological disaster prevention inspection are essentially the same administrative action, it is appropriate to treat the case of rejecting or interfering with them equally.

A fine is a sanction imposed on simple negligence that may indirectly impede the administrative order, whereas administrative punishment is a sanction imposed on violators who directly infringe administrative purposes or social legal interests.[3]

The purpose of the Radiation Disaster Prevention Act is to protect the lives and property of the people. I think it is appropriate to impose penalties for receiving radioactive or nuclear material or sabotaging nuclear facilities without legitimate authority because it can be considered that this purpose has been directly violated. However, avoiding the temple or making a false statement cannot be seen as a direct violation of this purpose. The same is true of false statements. It seems that it is appropriate to impose an administrative fine.

REFERENCES

- [1] Article 18 of enforcement decree of the APPRE
- [2] Article 2 of Regulations on the Inspection of Radioactive Disaster Prevention for Nuclear Operators
- [3] Ministry of Government Legislation, Act and subordinate statute design intermediate course, p.147, 2012.