NATIONAL REPORT OF THAILAND

"Review of Administrative Decisions of Government

by The Administrative Court of Thailand" [1]

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Introduction

The Administrative Court of Thailand was established by virtue of the Constitution of the Kingdom of Thailand 1997, and the Act on Establishment of Administrative Court and Administrative Court Procedure 1999. Nevertheless, it was not until March 9, 2001 that the inauguration of the Supreme Administrative Court, and the Central Administrative Court had been eventually witnessed. The creation of the Administrative Court as an organization exercising judicial power within the administrative justice system heralds an introduction of a 'multi-court system' in Thailand where the Administrative Court is distinct from the Court of Justice, the Military Court, and the Constitutional Court.

The origin of the Administrative Court of Thailand can be traced back to the year 1874, and its development can be divided into 4 significant stages.

The first stage began in June 14, 1874 in the reign of King Chulalongkorn (King Rama V). The King established the Advisory Organ of the State called "the Council of State." The Council of State at that time performed a consultative function and an adjudicative function similarly to the

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French Conseil d'Etat. Indeed, parts of the powers and duties of the 1874 Council of State are missions performed by the Administrative Court in the present day.

The second stage took place in the year 1932. After the change of political regime from the Absolute Monarchy into the Constitutional Monarchy, the government, under the initiative of Dr. Pridi Phanomyong, proposed a bill on the establishment of the Council of State. The bill was approved and came into effect in 1933. The Council of State, at that time, had advisory role for the government and adjudicative function similar to the French Conseil d'Etat. However, its adjudicative role required separate legislation to specify the types of administrative cases and administrative procedure which was not passed. This meant the Council of State could not exercise its intended adjudicative function. In 1949, the Petition Act 1949 was promulgated and the "Petition Commission" was set up in order to examine petitions filed by people having grievance or damages caused by State officials.

The third stage of development occurred in 1979. A reform of the law on the Council of State was carried out which saw an amalgamation of the Law Councillors under the Act on the Council of State 1933 and the Petition Councillors under the Petition Council Act 1949. Under the new legislation, the Council of State was vested with an adjudicative function, but it had to submit its decisions to the Prime Minister for his approval. This system was inspired by the French system of "*la justice retenue*" before 1872.

The final stage of development started when the Constitution of the Kingdom of Thailand 1997 was promulgated, and it provided for the establishment of the Administrative Court alongside the Court of Justice, the Military Court, and the Constitutional Court.

This report seeks to provide an overview of the scope of the jurisdictional competence of the Administrative Court of Thailand with the emphasis on its power to review the administrative act regarded as a by-law and an administrative order, as well as the limitations of its jurisdictional competence. The issues relating to the administrative court procedure, and the

execution of administrative cases by the court are provided respectively. In addition, examples of some relevant case law are also described for a better apprehension.

1. Jurisdiction or Competence of The Administrative Court

The Administrative Court is tasked with a mission to review and control the exercise of power of the executive and administrative organs whether the power is exerted in accordance with the legislative intent in order to prevent an abuse or misuse of power. In this regard, it enables private individuals or corporations to seek relief for grievances caused by actions of administrative agencies or State officials.

The scope of competence of the Administrative Court was initially designated in Article 276 paragraph one of the 1997 Constitution, which reads:

"***Article 276***. *Administrative Courts have the powers to try and adjudicate cases of dispute between a State agency, State enterprise, local government organization, or State official under the superintendence or supervision of the Government on one part and a private individual on the other part, or between a State agency, State enterprise, local government organization, or State official under the superintendence or supervision of the Government on one part and another such agency, enterprise, organization or official on the other part, which is the dispute as a consequence of the act or omission of the act that must be, according to the law, performed by such State agency, State enterprise, local government organization, or State official, or as a consequence of the act or omission of the act under the responsibility of such State agency, State enterprise, local government organization or State official in the performance of duties under the law, as provided by law*."

However, the 1997 Constitution was later abrogated. The new Constitution, the Constitution of the Kingdom of Thailand 2007 confers the

scope of power on the Administrative Court through Article 223 paragraph one, which reads:

"***Article 223***. *Administrative Courts have the power to try and adjudicate cases of disputes between a government agency, State agency, State enterprise, local government organization, Constitutional organization, or State official on one part and a private individual on the other part, or between a government agency, State agency, State enterprise, local government organization, Constitutional organization, or State official on one part and another such agency, enterprise, organization or official on the other part, which is the dispute as a consequence of the exercise of an administrative power provided by law, or as a consequence of the administrative activities of a government agency, State agency, State enterprise, local government organization, Constitutional organization or State official, as provided by law, as well as to try and adjudicate other cases as prescribed by the Constitution and law to be under the jurisdiction of the Administrative Courts.*"

As perceived from the foregoing paragraph, one can see that the criteria for determining the competence of the Administrative Court are more clearly defined in comparison with the previous provision as provided for in the 1997 Constitution. In this connection, such criteria can be illustrated as follows:

(1) Disputing Party

(2) Characteristics or nature of dispute

(3) The power conferred on the Parliament to enact the Act which details the power of the Administrative Court

(1) Disputing Party:

The 2007 Constitution provides well-defined wording concerning a disputing party which is a State agency or State official. This can be explained that previously, under the Constitution of 1997, a State official or

agency that was deemed a party of an administrative dispute falling under the power of the Administrative Court must be a State official or agency which was under the superintendence or supervision of the government only as provided in Article 276 of the 1997 Constitution as "*a State agency, State enterprise, local government organization, or State official under the superintendence or supervision of the Government*". This gave rise to a question of legal interpretation whether or not a dispute would fall within the competence of the Administrative Court in a case where there was the exertion of administrative power or the carrying-out of administrative act by a State agency or official who was not under the superintendence or supervision of the government, i.e. an independent regulatory agency, an independent body created under the Constitution, and a non-governmental organization. In order to avoid such a problem, the term "*under the superintendence or supervision of the Government*" was excised, and the wording "*Constitutional organization*" has been added in Article 223 paragraph one of the 2007 Constitution. Under Chapter 11 of the Constitution, the "constitutional organization" can be classified into 2 categories, namely:

a) Independent organizations, which comprise the Election Commission, the Ombudsmen, the National Counter Corruption Commission, and the State Audit Commission, and;

b) Other organizations, which include the Public prosecutors, the National Human Rights Commission, and the National Economic and Social Council.

The provision of Article 223 paragraph one of the new Constitution, therefore, clarifies that all types of State agencies or officials can be the parties of disputes which fall within the power of the Administrative Court, if the nature of such disputes are prescribed in the Constitution.

(2) Characteristics or nature of dispute:

The 2007 Constitution more clearly defines the characteristics or nature of a dispute which is under the competence of the Administrative Court. Since Article 276 of the previous Constitution provided the characteristics of an administrative dispute as "… *the dispute as a consequence of the act or omission of the act that must be, according to the law, performed by such State agency, State enterprise, local government organization, or State official, or as a consequence of the act or omission of the act under the responsibility of such State agency, State enterprise, local government organization or State official in the performance of duties under the law,…"*, there appeared a problem of interpretation whether or not this provision intended to include a dispute in connection with an administrative contract. In order to resolve the interpretation problem, the 2007 Constitution uses the wording "… *as a consequence of the exercise of an administrative power provided by law, or of the carrying out of an administrative act…"* which clarifies that the disputes falling within the scope of competence of the Administrative Court must possess either of the following characteristics:

a) **The dispute as a consequence of the exercise of an administrative power as provided by law**: That is to say, the dispute must arise from any types of "administrative acts" which may be either administrative juristic acts (a by-law, and administrative orders), or administrative real acts; or

b) **The dispute as a consequence of the carrying out of an administrative act**: This refers to a dispute which arises from a wrongful act or other liability, or from an administrative contract, or the neglect of official duties required by the law to be performed or the performance of such duties with unreasonable delay.

(3) The power conferred on the Parliament to enact the Act which details the power of the Administrative Court:

As perceived from the wording "…,*as provided by law*,…" in Article 223 paragraph one of the Constitution, it expresses that the Constitution confers the power on the Parliament to enact an Act in order to specify additional details regarding the power of the Administrative Court so far as they are not contrary to or inconsistent with the provision of the Constitution. Such additional details are set forth in the Act on Establishment of Administrative Courts and Administrative Court Procedure 1999. Furthermore, Article 223 paragraph one also expresses that apart from the disputes provided under this provision, the Administrative Court also have the power to try and adjudicate other cases or matters which are prescribed by the Constitution[2], or by the law to be under the jurisdiction of the Administrative Court.[3]

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[2] According to Article 253 paragraph one of the Constitution of 2007, dispute relating to decision of the Financial Discipline Committee falls under the power of the Administrative Court, as follows:

"***Article 253.*** *The State Audit Commission has the powers and duties to determine standards relating to State audit, to provide opinions, suggestions and recommendations for the correction of faults in State audit and to appoint the independent Financial Disciplinary Committee to render decisions on actions relating to financial discipline, finance and budget and the cases of dispute in relation to the decisions of the Financial Discipline Committee shall be under the jurisdiction of the Administrative Courts.*"

[3] Article 9 paragraph one (6) of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999 states:

"***Article 9.*** *Administrative Court have the competence to try and adjudicate or give orders over the following matters: ….*

(6) the case involving a dispute in relation to the matters prescribed by the law to be under the jurisdiction of Administrative Courts."

From the aforementioned, it is obvious that the Constitution lays down only a broad framework regarding the power of the Administrative Court, while the additional details relating to the types of administrative actions which falls within the jurisdictional competence of the Administrative Court are set forth in Article 9 paragraph one of the Act on Establishment of Administrative Courts and Administrative Courts Procedure 1999 as listed below:

(1) Actions alleging unlawfulness of administrative acts under Article 9 paragraph one (1): An action under this Article is instituted in order to allege that a by-law, an administrative order or "other act" as issued or performed by an administrative agency or State official is unlawful. If the Court finds its unlawfulness, the Court shall, in case of an unlawful by-law or order, order its revocation. Though the Court jurisdiction governs a vast area of by-law and order, the judicial review of legislative statue or any law of the same level are not in the jurisdiction of the Administrative Court.

(2) Actions alleging the administrative agency or State official's neglect of official duties required by the law to be performed or unreasonable delay in performing such duties under Article 9 paragraph one (2): An action under this provision can only be instituted where an administrative agency or State official has a particular duty to perform under the law but neglects it or performs with unreasonable delay. In this case, the Administrative Court may issue a decree by directing Head of the administrative agency concerned or the State official in question to perform the required duty within the time specified by the Court.

(3) Actions alleging the administrative agency or State official's wrongful act or other liability under Article 9 paragraph one (3): These actions may, on careful analysis, be classified into 4 categories, namely:

1) a case involving a dispute in relation to a wrongful act of an administrative agency or State official arising from the exercise of power under the law or from a by-law, administrative order or other order;

2) a case involving a dispute in relation to other liability of an administrative agency or State official arising from the exercise of power under the law or from a by-law, administrative order or other order;

3) a case involving a dispute in relation to a wrongful act of an administrative agency or State official arising from the neglect of official duties required by the law to be performed or the performance of such duties with unreasonable delay and;

4) a case involving a dispute in relation to other liability of an administrative agency or State official arising from the neglect of official duties required by the law to be performed or the performance of such duties with unreasonable delay.

(4) Actions concerning administrative contracts under Article 9 paragraph one (4): The definition of "administrative contract" is indeed set forth in Article 3 of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999, which reads "*a contract of which at least one of the parties is an administrative agency or a person acting on behalf of the State and which exhibits the characteristic of a concession contract, public service contract or contract for the provision of public utilities or for the exploitation of natural resources*." The definition indicates that despite these essential characteristics of an administrative contract are stated, the word "including" is well understood that there are other contracts which are administrative in nature, as exemplified by the case below.

- The contract contained specific provisions remarkably giving privileges to the administrative agency party, as reflected, for example, in the clause allowing the administrative agency to terminate the contract unilaterally without the other committing a fundamental breach, or the clause whereby the administrative agency was authorised to instruct the contractor to perform extra work other than that specified in the contract whilst the contractor was disallowed to raise objections. The fact that the contract was also standardised also added to the special feature of the contract in the sense of facilitating the

exercise of the administrative power or the attainment of administrative operation. This contract was held to be an administrative contract which the Administrative Court has competence to accept for trial (Order of the Supreme Administrative Court No. 104/2001).

Indeed, many contracts have so far been held to be administrative contracts by the Administrative Court, as envisioned from the following.

- A joint venture for expanding the telephone services, which is, in character, a concession contract and a contract for the provision of public services (Order of the Supreme Administrative Court No. 622/2002);

- A contract whereby the government agency allowed its government official to take leave for an educational pursuit overseas and agreed to have that official back to the official service upon his return from the study is taken as a contract intended to provide public services and establishing privileges in favour of the State, hence an administrative contract (Order of the Supreme Administrative Court No. 127/2001);

- A contract for the construction of a residential building for government officials had special characters for the purpose of facilitating the exercise of the administrative power. The parties also agreed to price adjustment. This contract was held to be an administrative contract. (Order of the Supreme Administrative Court No. 104/2001);

- A contract for sale of an immovable property under the Act on Expropriation of Immovable Property 1987 for construction of a special highway is a contract for the provision of public utilities (Order of the Supreme Administrative Court No. 9/2003).

(5) Actions required by law to be submitted by the administrative agency or State official to the Court for compelling a person's action or omission under Article 9 paragraph one (5): No example of actions of this type can be found in judgments and orders of the Administrative Court. However, in prescribing a decree in this kind of administrative case, the Administrative Court

shall call into play the provisions concerning execution in the Civil Procedure Code, which, according to Article 72 paragraph one (5)[4] of the Act, apply *mutatis mutandis*. The Court may elect from a variety of decrees, as exemplified below.

1) The Administrative Court may order an arrest and detention of the person failing to comply with an order of the local official issued under the building control law. In effect, a decision of Committee on the Determination of the Powers and Duties among Courts has been given in connection with this case. In its Decision No. 16/2002, an application was made for an order arresting and detaining the violator of the local official's order made under Article 43 paragraph one (1) of the Building Control Act 1979. Committee on the Determination of the Powers and Duties among Courts held that the Court with competence to determine such application and order the requested order for securing compliance with the administrative order of the local official was the Administrative Court.

2) The Administrative Court may issue a decree compelling the owner or occupier of the structure that invaded the river to demolish the invading part in accordance with the Thai Waters Navigation Act.

(6) Actions involving a dispute in relation to the matters prescribed by the law to be under the jurisdiction of Administrative Courts under Article 9 paragraph one (6): As this action appears to be of peculiarity, the Act on Establishment of Administrative Court and Administrative Court Procedure 1999 makes no specific provision as to execution in this case. Its execution is thus left dependent on the nature of the case, e.g. the case challenging the determination of an appeal made by the Appeal Committee under the Town Planning Act 1975.[5] As this case is also the case of contesting an administrative order under Article 9 paragraph one (1), the Court may order its revocation under Article 72 paragraph (1).

[4] ordering a person to act or refrain from any act in compliance with the law.

[5] The law expressly provides that such a case is to be referred to the Administrative Court.

It should also be noted that, normally, persons aggrieved by administrative acts shall initiate legal action in an Administrative Court of First Instance, unless provisions of law specifically state that a plaint should be filed directly at the Supreme Administrative Court[6]. The General Assembly of Judges of the Supreme Administrative Court is empowered to stipulate other cases which would be filed directly at the Supreme Administrative Court, but to date, such a stipulation has not yet been made. Other cases that are filed directly at the Supreme Administrative Court include disputes on the validity of a Royal Decree or regulations issued by or with the consent of the Council of Ministers. Otherwise, the Supreme Administrative Court exercises appellate jurisdiction over appeals from the First Instance Courts.

1.1. Categories of administrative decisions eligible for review (administrative regulations/individual decisions)

The jurisdictional competence of the Administrative court over administrative actions in connection with the issuance of a by-law or an administrative decision or order made by an administrative agency or State official is governed under Article 9 paragraph one (1), which reads:

"***Article 9.*** *Administrative Court have the competence to try and adjudicate or give orders over the following matters:*

(1) the case involving a dispute in relation to an unlawful act by an administrative agency or State official, whether in connection with the issuance of a by-law or order or in connection with other act, by reason of acting without or beyond the scope of the powers and duties or inconsistently with the law or the form, process or procedure which is the material

[6] ***Article 10.*** *An Administrative Court of First Instance has the competence to try and adjudicate cases within the jurisdiction of the Administrative Court except the cases falling within the jurisdiction of the Supreme Administrative Court.*

requirement for such act or in bad faith or in a manner indicating unfair discrimination or causing unnecessary process or excessive burden to the public or amounting to undue exercise of discretion;…"

Hence, the categories of administrative acts eligible for review by the Administrative Court as directed by the foregoing paragraph are as follows:

(1) A by-law issued by an administrative agency or State official;

(2) An order issued by an administrative agency or State official; or

(3) Other act performed by an administrative agency or State official

(1) A by-law issued by an administrative agency or State official:

The definition of a "by-law" is provided under Article 3 of the Act on Establishment of Administrative Courts and Administrative Courts Procedure 1999 as follows:

"***by-law*** *means a Royal Decree, Ministerial Regulation, Notification of a Ministry, ordinance of local administration, rule, regulation or other provision which is of general application and not intended to be addressed to any specific case or person*"

As from the definition given, a "by-law" can be classified as the following:

(a) Royal Decree, Ministerial Regulation, and Notification of a Ministry: They are regarded as by-laws due to their nature, as well as they are mandated by laws.

(b) Ordinance of local administration: This type of by-law is issued by local administration which may be named differently according to the laws on establishment of different local administrative organs.

(c) Rule, and Regulation: these types of by-laws include the rules or regulations of a ministry, bureau, department, province, State enterprise, public university, or public organization, etc.

(d) Other provision which is of general application and not intended to be addressed to any specific case or person: this type of by-law may be named differently from the by-laws which are mandated by the provisions of law. For instances, the Civil Service Commission Regulation, or Notification. Thus, it is important to consider the attributes or characteristics in which a by-law possesses as follows:

(1) Persons subject to a by-law are defined into categories or groups, without referring to the names of any particular persons, e.g. foreigners, civil servants, lawyers, and students, etc. Therefore, the numbers of persons subject to the by-laws cannot be exactly specified;

(2) A by-law must be made on the basis of the quality of being abstract. For instances, a prohibition which states that "No person shall smoke on any public buses", or "Civil servants shall be in uniform dresses every Monday."

(2) An order issued by an administrative agency or State official:

The definition of "order" is not provided under the Act on Establishment of Administrative Courts and Administrative Court Procedure 1999. However, there are ample precedents established by the Administrative Court that the definition of "Administrative Order" as provided by the Administrative Procedure Act 1987 shall be applied by analogy in the case where the lawfulness of the issuance of such order is challenged.

Under Article 5 of the Administrative Procedure Act 1987, the "Administrative Order" is defined as listed below:

"***administrative order*** *means:*

(1) the exercise of power under the law by an official to establish juristic relations between persons (i.e., the State agency and the individual) to create, modify, transfer, preserve, extinguish or affect the individual's status of rights or duties, permanently or temporarily, such as giving an order or permission or approval, deciding an appeal, certifying and registering, but shall not include the issuance of a by-law;

(2) other acts as prescribed in the Ministerial Regulation"

There exists an explanation regarding the characteristics of "administrative order" that it is a statement ordering a person to act or refrain from any act, or allowing a person to perform any act. However, an "administrative order" displays the characteristics which distinguish itself from a by-law since it possesses none or either of the essential characteristics of a "by-law". For instance, a Dean of a public university makes an order by virtue of the university regulations to remove the names of students, who were caught cheating in an exam, from the registration list. The Dean's order is an "administrative order" resulted from the exercise of power in accordance with the law which by nature affects the legal right or status of a particular type of person. In another instance, a local administrative official under the Building Control Act 1979 makes an order to prohibit any person from entering a specified area or building. This order arises from the exercise of power in accordance with the law which has a binding effect to any person in general on a specific area or a specific building.

(3) Other acts performed by an administrative agency or State official:

Although the word “other act” is prescribed broadly under Article 9 paragraph one (1), it should be noted that “other act” indicates other administrative acts which exclude a “by-law” and an “administrative order”. Therefore, “other act” in this manner would refer to the exercise of power in accordance with the law in the form of administrative real acts. For instance, a local administrative official makes an order to demolish a building which was constructed without a building license, and no correction was possible. However, the owner of such building has not complied with the order so given. The law empowers the local official to enforce his or her order by proceeding to the demolition of such building. This demolition action is an administrative real act.

However, the Supreme Administrative Court embraces broad interpretation of “other act” under Article 9 paragraph one (1). For examples, it has been held that a case brought to challenge the official’s determination of the location of pedestrian bridges is a dispute related to an unlawful act of an administrative agency or State official in connection with “other act” (Judgment of the Supreme Administrative Court No. 93/2002); and in a case where Bangkok Metropolitan Authority proceeded with the construction of soccer field on the land which the National Housing Authority reserved for public park has been held that it is a dispute in connection to “other act” (Judgment of the Supreme Administrative Court No. 3/2002).

1.2. The criteria for determining the jurisdictional competence of the Administrative Court, and some decisions of the Executive or public authorities which cannot be submitted to review, by reason of the nature or substance of such decision

(1.2.1) Criteria for determining the jurisdictional competence of the Administrative Court

As already stated earlier, the scope of jurisdictional competence of the Administrative Court over administrative disputes is stipulated in Article 9 paragraph one of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999. However, with respect to a dispute arising from an administrative act whether or not it is regarded as a by-law, an administrative order, or other acts as provided under Article 9 paragraph one (1), the following criteria must be applied in the determination of the jurisdictional competence of the Administrative Court.

(1) Disputing party

(2) Characteristics or nature of dispute

(1) Disputing Party:

The definition of a "party" is prescribed under Article 3 of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999, which reads:

"***Party*** *means a plaintiff, and a defendant and shall include a person, administrative agency or State official becoming a party to the case by way of interpleading, whether voluntarily or becoming summoned by an Administrative Court to appear in the case by reason of being an interested person or a person likely to be affected by the outcome of the case, and, for the purpose of the proceedings, shall also include the person authorized to represent the aforesaid person.*"

In this connection, a party in an administrative dispute under the foregoing paragraph can be classified as follows:

(1.1) a plaintiff: Since it is not prescribed under Article 9 paragraph one (1) who the plaintiff is, a plaintiff may be a private individual, an administrative agency, or State official.

(1.2) a defendant: Under Article 9 paragraph one (1), a defendant shall be an administrative agency or State official only.

(1.3) administrative agency: the definition of 'administrative agency' is provided under Article 3 of the Act, which reads,

"administrative agency" *means a Ministry, Sub-Ministry, Department, Government agency called by other name and ascribed the status as a Department, provincial administration, local administration, State enterprise established by an Act or Royal Decree or other State agency and shall include an agency entrusted to exercise the administrative power or carry out administrative acts.*

Therefore, "administrative agency" can be categorized into 6 categories as listed below:

(1.3.1) Central Administration, which includes a Ministry, a Sub-Ministry, a Department, or a Government agency called by other name and ascribed the status as a Department, e.g. Office of the Civil Service Commission.

(1.3.2) Provincial Administration, which includes Provinces.[7]

[7] Thailand is divided into 76 provinces. Bangkok is a local administration with a special status.

(1.3.3) Local Administration, which refers to a Municipality, a Sub-district Local Administration, Bangkok, and Pattaya.

(1.3.4) State enterprises established by an Act, e.g. Port Authority of Thailand, Provincial Electricity Authority, etc. **State enterprises established by a Royal Decree issued in accordance with the Act on Establishment of Government Organizations 1953**, e.g. Public Warehouse Organization, Bangkok Mass Transit Authority, etc. However, these state enterprises shall not include those established in the form of a private company or a public company, e.g. Transport Company Limited or Thai Airways International Public Company Limited, or those established by the cabinet's resolutions or by rules or regulations of government agency, e.g. Thailand Tobacco Monopoly.

(1.3.5) Other State agencies include state agencies which are neither government agencies nor state enterprises, e.g. Bank of Thailand, War Veterans Organization of Thailand, Thailand Research Fund, and Suranaree University of Technology. In addition, "other State agency" shall include public organizations established by a Royal Decree issued in accordance with Public Organization Act 1999, e.g. Office for National Education Standards and Quality Assessment (Public Organization), Office of the State Audit Commission, and Office of the Courts of Justice.

(1.3.6) Private entities entrusted by law to exercise the administrative power or to carry out administrative acts, e.g. Medical Council of Thailand, Lawyers Council of Thailand, Teachers' Council of Thailand, and Architect Council of Thailand, etc.

(1.4) State official: Article 3 of the Act also defines the meaning of "State Official" as follows:

"***State official*** *means*

(1) Government official, official, employee, group of persons or person performing duties in an administrative agency;

(2) quasi-judicial commission or committee or person empowered by law to issue any by-law, order or resolution affecting persons; and

(3) person who is under the superintendence or supervision of administrative agencies or State officials under (1) or (2)"

Therefore, "State official" can be classified as follows:

(1.4.1) Government official of an administrative agency, e.g. civil servant, and police official, etc.

(1.4.2) Official of an administrative agency

(1.4.3) Employee of an administrative agency

(1.4.4) Group of persons of an administrative agency, e.g. university council, local council, etc.

(1.4.5) Person performing duties in an administrative agency, e.g. a Director-General of a Department, a Rector of a University, or an Executive Director of a public organization, etc.

(1.4.6) Quasi-judicial commission which is defined under Article 3 of the Act as "*quasi-judicial commission means a committee established under the law which provides for the organization and procedure for the adjudication of disputes in respect of rights and duties under the law.*" For example, Information Disclosure Tribunal under Official Information Act 1997; and Appeal Committee under Building Control Act 1979, etc.

(1.4.7) Committee empowered by law to issue any by-law, order or resolution affecting persons, e.g. Civil Sevice Commission, and Selection Committee for the National Television and Broadcasting Affairs etc.

(1.4.8) Person empowered by law to issue any by-law, order or resolution affecting persons, e.g. “local official” under Building Control Act 1979.

(1.4.9) Person who is under the superintendence or supervision of administrative agencies or State officials, e.g. a sub-district chief and a village chief are both under the superintendence of a provincial governor.

(2) Characteristics or Nature of Dispute:

Since a private individual or State official may also get involved in a dispute which can be either criminal or civil by its nature, it is equally important to take into account the criterion relating to the characteristics or nature of dispute whether or not it possesses the characteristics of an administrative dispute which falls within the power of the Administrative Court to try and adjudicate. The nature of an administrative dispute provided under Article 9 paragraph one (1) of the Act can be indicated as follows:

2.1 an unlawful act in relation to the issuance of a by-law by an administrative agency or State official

2.2 an unlawful act in relation to the issuance of an administrative order by an administrative agency or State official

2.3 other unlawful act performed by an administrative agency or State official

In a case where the Administrative Court finds a by-law, an administrative order or “other act” as issued or performed by an administrative agency or State official is unlawful, the Court shall order revocation of such by-law or such order or restraining of such act as stipulated under Article 72 of the Act, which reads:

*"**Article 72**. In delivering a judgment, an Administrative Court has the power to issue a decree for any of the following:*

(1) ordering revocation of a by-law or order or restraining an act in whole or in part, in the case where it is alleged in the case filed that an administrative agency or State official has done an unlawful act under Article 9 paragraph one (1);"

However, from the information indicated above, there remains some of relevant case law which illustrate a controversial issue as to which criterion, either the criterion relating to "disputing party", or "characteristics of a dispute", to be implemented in the determination of the Administrative Court as follows:

Constitutional Court Judgment No. 52/2003

The power exercised by the Election Commission to conduct investigations and inquiries for fact-finding and to make decision on arising problems or disputes under the laws referred to in Article 144 paragraph two of the 1997 Constitution was deemed the exercise of constitutional power, which had caused the decision of the Election Commission made by virtue of Article 145 paragraph one (3) to be final. The nature of such power exercised shall not be deemed administrative.

Supreme Administrative Court Judgment No. A.[8] 271/2006, and Supreme Administrative Order No. 668/2006

Article 10 of the Act on the Organization to Assign Radio Frequency and To Regulate the Broadcasting and Telecommunication Services 2000 empowered the Senate to participate in the selection process of members

[8] "A." refers to "an appeal against the judgment of the Administrative Court of First Instance."

of the National Broadcast and Telecommunication Commission (NBTC). The exercise of power of the Senate in this matter shall be deemed neither the legislative power exercised by a legislative organ, nor the constitutional power exercised by a constitutional organ. Therefore, the Senate as an organ using the power conferred by the aforementioned Act shall be deemed an administrative agency in accordance with Article 3 of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999. Consequently, a dispute arising from the selection process of members of NBTC shall be considered an administrative case which fell within the jurisdictional competence of the Administrative Court.

Supreme Administrative Court Order No. 178/2007

In a case where the plaintiffs (consisting of five foundations) filed a case against the Council of Ministers in order to invalidate the cabinet resolution and suspend the signing of the bilateral trade pact, also known as the Japan-Thailand Economic Partnership Agreement (JTEPA), the Supreme Administrative Court held that the signing of such agreement was the use of executive power in accordance with the Constitution for the purpose of international relations. Thus, this case was not within the jurisdiction of the Administrative Court.

Supreme Administrative Court Order No. 468/2007

By virtue of Article 145 (3) of the 1997 Constitution, the Election Commission has the power to conduct investigations and inquiries for fact-finding, and to make decision on arising problems or disputes under the Election of Members of Local Council or Local Administrator Act 2002. In this case, the order made by the Election Commission to revoke the right to stand for election of the plaintiff was deemed an act committed by a “constitutional organ”. As the result, a dispute arising from the exercise of constitutional power of a

constitutional organ shall not fall within the jurisdiction of the Administrative Court.

Supreme Administrative Court Order No. 547/2008

Although the signing of the joint communiqué with Cambodia regarding the bid to have the Preah Vihear ruins listed as a World Heritage site by the 1st Defendant (Minister of Foreign Affairs) with the approval of the 2nd Defendant (the Council of Ministers) was carried out on behalf of Thai government in connection with foreign affairs, such act had prejudicially affected the rights or interest of Thai people in maintaining the rights and duties to possess and preserve their own territory, land, and civilization, which constituted the cultural heritage of their nation, the rights to work in such area, as well as their constitutional rights. Thus, such an act committed by the government shall be deemed an administrative act carried out by State officials, which fell under the jurisdictional competence of the Administrative Court. The joint communiqué between Thai and Cambodia made by the defendants without approval from the Parliament as set forth by Article 190 paragraph two of the 2007 Constitution was deemed an unlawful act by an administrative agency or State official in connection with other act which fell within the jurisdiction of the Administrative Court pursuant to Article 9 paragraph one (1) of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999.

(1.2.2) Decisions of the Executive or public authorities which cannot be submitted to review, by reason of the nature or substance of such decision

There exist certain exceptions whereby decisions of the executive or public authorities are excluded from the jurisdictional competence of the Administrative Court for the trial and adjudication. These include the following exceptions:

a) Exceptions as provided by the 2007 Constitution;

b) Exceptions as provided by the Act on Establishment of Administrative Court and Administrative Court Procedure 1999;

c) Exceptions as provided by laws; and

d) Exceptions established by the precedent of the Administrative Court and the Commission on Jurisdiction of Courts.

Kindly note that all relevant case-law concerning these exceptions will be illustrated in 1.3.

a) Exceptions as provided by the 2007 Constitution:

The Constitution of the Kingdom of Thailand 2007 contains certain provisions in relation to the restriction of the jurisdiction of the Administrative Court as demonstrated below:

(1) Restriction of the jurisdiction of the Administrative Court pursuant to Article 223 paragraph two of the 2007 Constitution, which reads "*The jurisdiction of the Administrative Courts under paragraph one does not include the adjudication of disputes made by Constitutional organization as the direct exercise of their powers under the Constitution*."

Previously, the terminology "constitutional organ" was interpreted by the Constitutional Court broadly as "any organs as prescribed in the Constitution" which was severely criticized by public lawyers because that would also include local administration. Subsequently, the Constitutional Court gave a new interpretation of this wording as "organs established in accordance with the Constitution" which referred to the Parliament, the Cabinet, courts and independent regulatory agencies. Moreover, there was an apprehension that if an organ was regarded as an "organ established in accordance with the Constitution", a dispute caused by any act committed by such an organ was deemed to be excluded from the jurisdiction of the Administrative Court. Such apprehension occurred without taking into account the factual basis with respect

to the following questions: whether or not the act performed by such an organ was deemed the exercise of power as prescribed by law; and whether the law itself which authorized such power was either derived from the Constitution or an Act of Parliament; and finally, whether the act performed possessed any of a political, administrative, or criminal nature.

Nevertheless, the aforementioned issues have finally been solved by Article 223 paragraph two of the 2007 Constitution, since it obviously designates that if a "constitutional organization" adjudicates a dispute as the direct exercise of its power under the Constitution, such a dispute cannot be submitted to the Administrative Court to review.

The direct exercise of power of a "constitutional organization" under the Constitution is ascribed to the exercise of power of the Election Commission as prescribed under Article 236 paragraph one (5) of the Constitution, which reads:

"***Article 236.*** *The Election Commission shall have the following powers and duties: …*

(5) to conduct investigations and inquiries and to make decisions on arising problems or disputes under the laws referred to in Article 235 paragraph two;…."

However, there remains a question to be addressed whether or not the direct exercise of power of a "constitutional organization" under the Constitution would refer to the power exercised by the National Counter Corruption Commission as provided under Article 250 paragraph one (3) of the Constitution, which states "…*to investigate and decide whether a state official who holds an executive post or a Government official who holds a position from the Director level upwards or the equivalent has become unusually wealthy or has committed an offence of corruption, malfeasance in office*…". Since in such a case, the act committed by a State official is not only deemed to be a criminal offence, but also a disciplinary offence. Thus, if the exercise of power of the National Counter Corruption Commission is also described as the direct exercise of power of a "constitutional organization" under Article 223 paragraph two of

the Constitution, it is worth noting that a decision made by the Commission against any State official will not possibly be appealed to the Administrative Court.

(2) Restriction of the jurisdiction of the Administrative Court pursuant to Article 219 paragraph three of the 2007 Constitution. This provision directs that all election related cases must fall within the jurisdictional competence of the Court of Justice, which reads:

"…The Supreme Court of Justice has the power to try and adjudicate the election related cases and the suspension of the right to vote at an election of members of the House of Representatives and acquisition of senators, and the Court of Appeal has the power to try and adjudicate the election related cases and the suspension of the right to vote at an election of members of a local assembly or local administrators; provided that, the rules and procedure for trial and adjudication of such cases shall base upon inquisitorial system in accordance with the rules and procedure provided by a general meeting of the Supreme Court of Justice and shall be conducted without delay…"

b) Exceptions as provided by the Act on Establishment of Administrative Court and Administrative Court Procedure 1999:

There are some certain matters excluded from the jurisdiction of the Administrative Court. Such the matters are set forth in Article 9 paragraph two which reads:

"*The following matters are not within the jurisdiction of Administrative Courts:*

(1) The action concerning military disciplines;

(2) The action of the Judicial Commission under the law on judicial service;

(3) The case within the jurisdiction of the Juvenile and Family Court, Labor Court, Tax Court, Intellectual Property and International Trade Court, Bankruptcy Court or other specialized courts."

Examples of the aforesaid matters as provided by the Act are given below:

1. The action concerning military disciplines: this type of action includes military disciplinary proceedings, e.g. confinement order, salary reduction order, etc.

2. The action of the Judicial Commission under the law on judicial service: a disciplinary sanction made by the Judicial Commission on a judicial judge is an action which falls within the jurisdiction of the Court of Justice.

3. The case within the jurisdiction of specialized courts (Juvenile and Family Court, Labor Court, Tax Court, Intellectual Property and International Trade Court, and Bankruptcy Court): These types of specialized courts are under the jurisdiction of the court of justice.

c) Exceptions as provided by laws:

There exist some restrictions on the competence of the Administrative Court as provided for in the following provisions:

- **The Emergency Decree Relating to Thai Asset Management Corporation 2001** places a restriction under Article 11 that the law relating to the establishment of administrative court and administrative court procedure shall not apply in the proceeding in connection with Thai Asset Management Corporation's non performing asset management, and the issuance of a regulation, order, administrative adjudication, permission by and any acts of the Board of Directors or Executive Board of Directors in connection with the management of non-performing assets under the Decree.

- Pursuant to **Chapter 2 (Duties of maintaining internal security), Article 23 of the Internal Security Act 2008**, any regulation,

notification, order, or action under this chapter is not subject to the law on administrative procedures, and any court case arising therefrom shall fall within the power of the courts of justice.

d) Exceptions established by the precedent of the Administrative Court and the Commission on Jurisdiction of Courts

There are the precedents of the Commission on Jurisdiction of Courts and the precedents of the Supreme Administrative Court, which reflect the limitation of the Administrative Court's jurisdictional competence. Such precedents fall under the following broad categories:

1. Legislative proceedings;
2. Act of State and matters which directly concern the executive policy;
3. Matters concerning judicial acts;
4. Criminal proceedings;
5. Civil proceedings;
6. Internal administrative measures;
7. Activities of religious organizations; and
8. Disputes relating to land titles.

1.3. Relevant case-law illustrating the extent and limits of the scope of the competence of the court in charge of review.

(1.3.1) Case-law illustrating exceptions as provided by the 2007 Constitution:

Supreme Administrative Court Order No. 9/2007

The order and notification of the Election Commission relating to the vote count for the election of members of Sub-district Local Administration Council was deemed the exercise of power of a constitutional organ as specifically provided by the Constitution. Thus, such order shall not be regarded as an administrative act which fell under the jurisdictional competence of the Administrative Court.

Supreme Administrative Court Order No. D.[9] 31-32/2007, and Supreme Administrative Court Judgment No. D. 11/2009

The notification of the Election Commission with respect to the election of Senator on a constituency basis shall be deemed the exercise of administrative power, or the carrying out of administrative action by the Election Commission or by the Office of the Election Commission in accordance with the resolution of the Election Commission, which was not an adjudication of a case by virtue of the powers directly granted by the Constitution. Hence, a dispute in this matter shall be under the jurisdiction of the Administrative Court, and be directly filed with the Supreme Administrative Court pursuant to the Organic Act on the Election Commission 2007 and Article 11 (3) of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999.

Supreme Administrative Court Judgment No. D. 250/2006

In spite of the fact that the Election Commission (the defendant) was an independent organization established by virtue of the Constitution as a "constitutional organ", it did not always follow that the power exercised by such an organ would be regarded as the exercise of constitutional power in every case, since the power may be exercised as prescribed either by the Constitution, or by acts of Parliament. In a case where a constitutional organ exercised the power as prescribed by an act of Parliament, such power shall be deemed an administrative power which fell under the competence of the

[9] "D." refers to "a case directly filed with the Supreme Administrative Court."

Administrative Court. In this case, the order of the Election Commission was made by virtue of Article 10 of the Organic Act on the Election Commission 1998, and Regulation of the Election Commission concerning the Election Commission and Director of Provincial Administrative Organization 2000. Thus, such the order which affected the legal rights and duties of persons shall be deemed an administrative order.

(1.3.2) Case-law illustrating exceptions as provided by the Act on Establishment of Administrative Court and Administrative Court Procedure 1999:

(1) The action concerning military action:

Supreme Administrative Court Order No. 223/2004

The suspension order of a military officer in accordance with the Rule of Ministry of Defense concerning suspension order from military service 1985 shall be deemed an action concerning military action. Therefore, a dispute arising from such action shall not fall within the jurisdictional competence of the Administrative Court.

(2) The action of the Judicial Commission under the law on judicial service:

Supreme Administrative Court Judgment No. A. 15/2003

The order for the appointment of Disciplinary Inquiry Committee made by the Judicial Service Commission shall be deemed a procedure pursuant to the law on Judicial Service. Consequently, a dispute arising therefrom shall not be under the jurisdiction of the Administrative Court.

(3) The case within the jurisdiction of specialized courts including the Juvenile and Family Court, Labor Court, Tax Court, Intellectual Property and International Trade Court, Bankruptcy Court:

Supreme Administrative Court Order No. 561/2005

The plaintiff alleged that the issuance of a marriage certificate was unlawful, and then, requested for the revocation of the marriage certificate. The Supreme Administrative Court held that the dispute arising therefrom shall be deemed a family matter, which fell within the jurisdiction of the Juvenile and Family Court.

Supreme Administrative Court Order No. 378/2006

The contentious issues concerning salary during suspension period, severance pay, and remuneration of private school teachers shall be deemed a dispute relating to the rights and duties in accordance with employment contract or agreement on terms of employment which shall be under the jurisdictional competence of the Labor Court.

Supreme Administrative Court Order No. 152/2006

A dispute relating to the Revenue Office's denial of the request for tax return shall fall within the scope of jurisdictional competence of the Tax Court pursuant to Act for the Establishment of and Procedure for Tax Court 1985.

Ruling of Commission on Jurisdiction of Courts No. 9/2003

Although the decision of the trademark registrar concerning the trademark registration was considered an "administrative order", the counterclaim made against such the registrar's decision shall be deemed a civil dispute relating to trademark which was an exception to the general principle of administrative law.

Supreme Administrative Court Order No. 499/2003

The notification made by the official receiver in accordance with the judgment of the Bankruptcy Court shall be deemed a proceeding pursuant to the Bankruptcy Court procedure.

(1.3.3) Case-law illustrating exceptions as provided by law:

No example of relevant case-law regarding the exceptions as provided by the Emergency Decree Relating to Thai Asset Management Corporation 2001, and the Internal Security Act 2008 can be found in judgments or orders of the Administrative Court.

(1.3.4) Case-law illustrating exceptions as established by the precedents of the Administrative Court and Commission on Jurisdiction of Courts:

(1) Legislative proceedings

Supreme Administrative Court Order No. 802/2008

The plaintiff filed a case with the Administrative Court to order the revocation of Electricity Generating Authority of Thailand Act 1968 with regards the derogation of rights. The Supreme Administrative Court rendered its decision that the power in the abrogation or amendment of Electricity Generating Authority of Thailand Act 1968 lied outside its judicial domain since it was considered a legislative power vested in the Legislative branch, which was not subject to review by the Administrative Court.

Supreme Administrative Court Order No. 802/2008

The Bill drafting of “Praboromarajchanok Institute Act…” by the Ministry of Public Health was the drafting of a legislative proposal which was a preparation stage before it became an Act of Parliament. Such act was not derived from the exercise of administrative power or the

carrying out of administrative action which affected the rights or status of person. Hence, it did not fall within the jurisdiction of the Administrative Court.

(2) Act of State and matters which directly concern the executive policy

Supreme Administrative Court Order No. 78/2004

The Supreme Administrative Court ruled that the signing of the bilateral Memorandum of Understanding between the Thai Government Pharmaceutical Organization and Ministry of Public Health and Child Welfare of the Republic of Zimbabwe regarding the transfer of technology in manufacturing anti-HIV drugs shall be considered an act committed on behalf of the Thai government in connection with international relations. A dispute concerning the matter shall not be deemed an administrative dispute.

Supreme Administrative Court Order No. 626/2003

The notification made by Bangkok Metropolitan Administration to award the outstanding school executive principals with award plates and scholarships for overseas study tour shall be regarded a matter concerning the executive policy which was not bound by any laws to perform accordingly. Consequently, the refusal by Bangkok Metropolitan Administration to arrange overseas study tour for the Plaintiff shall not be deemed an unlawful act by an administrative agency, or the neglect of its official duties required by the law to be performed or the performance of such duties with unreasonable delay pursuant to Article 9 paragraph two (1) and (2) of Act on Establishment of Administrative Courts and Administrative Court Procedure 1999 which shall not fall within the jurisdiction of the Administrative Court.

(3) Matters concerning judicial acts

Supreme Administrative Court Order No. 342/2005

In a case where the Plaintiff alleged that he had suffered from the judgment rendered by the Defendants (including eight judges of the Court of Justice), the Supreme Administrative Court ruled that the delivery of judgment by the Defendant shall be deemed a judicial act which lied outside the scope of jurisdictional competence of the Administrative Court.

(4) Criminal proceedings

Supreme Administrative Court Order No. 922/2005

A dispute relating to a wrongful act of an inquiry official in connection with the exercise of power in the criminal proceedings shall not be deemed an administrative case which fell under the jurisdiction of the Administrative Court.

Ruling of Commission on Jurisdiction of Courts No. 22/2004

The police detention was the power conferred on an inquiry official as specifically provided by the Criminal Procedure Code which led to the penalty imposed on criminal offenders. A dispute relating to the wrongful act in connection with the exercise of power in the criminal proceedings shall, therefore, be within the jurisdiction of the Court of Justice.

(5) Civil proceedings

Supreme Administrative Court Order No. 355/2004

An official letter made by Treasury Department to notify its refusal to enter into the compromise agreement offered by the Plaintiff shall not be deemed an administrative order. It was merely an act performed as a party to the dispute under the civil proceedings.

(6) Internal administrative measures, circulars, directives

Supreme Administrative Court Order No. 78/2004

The Defendant, Office of the Civil Service Commission of Local Administration, made a resolution to turn down the Plaintiff's request to change the career field. The Supreme Administrative Court held that the resolution was merely an advisory process offering to the authority which was deemed an administrative measure undertaken before making an administrative order. The resolution by its nature shall not be deemed an administrative order.

Supreme Administrative Court Judgment No. A 282/2007

Article 22 of the Firearm, Ammunition, Explosive Articles, Firework and Firearm Imitation Articles Act 1947 stipulates that the Defendant, Commissioner-General of the Royal Thai Police, is authorized to issue a firearm license to a person eligible to own and use firearms, or to carry firearms. Thus, a decision to grant such a license to the Plaintiff shall be deemed discretionary power. In this case, the directives concerning the grant of firearm license as set forth by the Defendant were specifically applied within the Defendant's agency, not to the public or private individual as the guidelines in the exercise of a discretionary power. Therefore, such directives shall be deemed internal administrative measures, which lied outside the scope of jurisdictional competence of the Administrative Court.

(7) Activities of religious organizations

Supreme Administrative Court Order No. 415/2005

The Sangha Supreme Council's decision to dismiss a monastic chief shall be regarded an act in connection with the administration of Buddhist Sangha pursuant to the Sangha Act 1952. A dispute relating such matter shall not be deemed an administrative act which fell within the scope of the Administrative Court jurisdiction.

(8) Disputes relating to land titles

Rulings of Commission on Jurisdiction of Courts

In the case where a dispute related to a crucial question with respect to the right of ownership over the land whether it belonged to the Plaintiff or was considered a public domain, the Commission on Jurisdiction of Courts held that a dispute relating to a private individual's land title shall be adjudicated in accordance with the Civil and Commercial Code, and together with the Land Code, which fell under the jurisdictional competence of the Court of Justice.

2. Procedure

2.1. General description of applicable procedural rules

The Administrative Court's proceedings of Thailand have four distinctive features.

Firstly, the inquisitorial procedure is employed by the Administrative Court. The fact-finding undertaking belongs to the judge (or so called Judge-Rapporteur) so as to render comprehensive necessary facts for the case. Such facts, therefore, will not be limited to those presented or alleged by the disputed parties. The judge thus carries out a very important duty in the proceedings by inquiring of the parties: the litigants and other relevant parties[10]. All in all, administrative procedures aim at striking balance between the parties, one of which is a private citizen and the other the State organ, with the use of this inquisitorial methodology to call evidence in possession of the Sate organs.

Secondly, most proceedings will be conducted through written statements and presentations in contrast with the civil procedure which often permits facts presented by the parties and evidence from oral arguments by the

[10] *Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure* 2000, Clause 5.

parties or their legal representatives. Therefore, an important aspect of administrative cases rests upon evidence which is written correspondence between the parties. However, the parties shall have the right to present their additional statements and orally adduce evidence supporting such statements to the Court on the first hearing day.

Thirdly, the flexible and simple procedures are applied to the administrative cases. Most of the people that appear in the Administrative Court can represent themselves and are not required to hire a lawyer. In addition, filing an administrative case has no specific form but a plaint shall be submitted in writing, written in polite and courteous language and shall contain all case filing requirements as prescribed by law.[11] In a case that any plaint does not complete all particulars as prescribed by law or is ambiguous or incomprehensible, the Secretariat General of the Administrative Court shall give advice to the plaintiff for the purposes of correction or amendment of the plaint[12]. Besides this, a plaint may not only be submitted to a competent official of an Administrative Court by the plaintiff or an authorised person but also be submitted by registered post.[13]

Finally, procedures for administrative cases have another distinctive attribute: the balance of powers among the administrative judges to ensure accuracy of facts and decision. In principle, the Judge-Rapporteur has the most important role in the compilation and ascertaining of facts. He/She must present a summary of facts and issues of the case to other judges in the chamber and the Judge-Commissioner of Justice[14] who is not the member of the chamber for his/her consideration. Before the chamber reaches its decision, the Judge-Commissioner of Justice will present his/her opinion.[15] The system in which the 'declaration' of the Judge-Commissioner of Justice is presented helps foster prudence and accuracy of decision of each chamber; should the chamber adopt a decision which is different from the opinion of the Judge-Commissioner of

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[11] *Act on Establishment of Administrative Court and Administrative Court Procedure 1999,* Article 45 paragraph one.

[12] *Act on Establishment of Administrative Court and Administrative Court Procedure 1999,* Article 45 paragraph two.

[13] *Act on Establishment of Administrative Court and Administrative Court Procedure 1999,* Article 46.

[14] His or her role is similar to the French "Commissaire du gouvernement" or "rapporteur public".

[15] *Act on Establishment of Administrative Court and Administrative Court Procedure 1999,* Article 58 paragraph one.

Justice, it must display a stronger and more credible reasoning. Comparison of the chamber's decision and the Judge-Commissioner of Justice's opinion is made available by the compulsory publication requirement of both documents.

(2.1.1) Where can these rules be found; by which statute or regulations are they defined?

Sources of law concerning the Administrative Court Procedure are:

(1) **Act on Establishment of Administrative Court and Administrative Court Procedure 1999**

This Act, as a primary legislation on administrative case proceedings, provides all principles or standards of the administrative case procedure while subordinate legislations shall be produced for its details or implementation.

(2) **Act on the Determination of the Powers and Duties among Courts 1999**

When the conflict of jurisdiction between courts of justice and administrative and military courts occurs, the case in dispute shall be referred to the Commission on Jurisdiction of Courts. The Act on the Determination of the Powers and Duties among Courts provides the rules and processes on such referral. Details or implementation will be specified by subordinate legislations.

(3) **Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure 2000**

Article 44 and Article 66 of the Act on Establishment of Administrative Court and Administrative Court Procedure provide that any action in connection with the filing of a case, the interpleading, the summoning of a person, an administrative agency or a State official to become a party to a case, the proceedings, the hearing of evidence, the adjudication of an administrative case and the prescription of provisional relief measures or means before delivery of a judgment other than those already

provided in the Act shall be in accordance with the rules and procedures prescribed by the Rules of the General Assembly of Judges of the Supreme Administrative Court. Thus, the General Assembly of Judges of the Supreme Administrative Court (The General Assembly), by virtue of the provisions of Article 44 and Article 66 of the Act, issues the Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure 2000. The Rules provide the procedures of both the Administrative Courts of First Instance and the Supreme Administrative Court in all events from case filing to judgment issuance.

(4) **Rules of the General Assembly of Judges of the Supreme Administrative Court on Chamber, Distribution of Case Files and Transfer of Cases, Performance of Official Functions, Challenge of Administrative Judges, Performance of Functions of Administrative Case Officials, and Power of Attorney in Administrative Case Proceedings 2001**

Article 29 paragraph one, Article 45 paragraph five, Article 56 paragraph three, Article 57 paragraphs five and six, Article 61(5) and Article 63 paragraph two of the Act on Establishment of Administrative Court and Administrative Court Procedure provide that all details concerned shall be in accordance with the rules or regulations prescribed by the General Assembly of Judges of the Supreme Administrative Court. Therefore, the General Assembly, by virtue of the mentioned provisions of the Act, issues these Rules.

(5) **Rules of the General Assembly of Judges of the Supreme Administrative Court on proceedings and adjudication of an administrative case transferred from a petition submitted to the Petition Commission pursuant to Council of State Act 2001**

Article 103 paragraph three of the Act on Establishment of Administrative Court and Administrative Court Procedure provides that when the operation date for the Central Administrative Court has been published, all petitions submitted to the Petition Commission pending its consideration or already adjudicated by the Petition Commission but pending the direction by the Prime Minister shall be transferred to the Central Administrative Court. If the Central Administrative Court considers it as the case under Article 9 of this Act, it shall proceed with the trial and adjudication. Article 103 paragraph five of the aforesaid Act also provides that the proceedings and

adjudication of the case transferred shall be in accordance with the regulation prescribed by the General Assembly of Judges of the Supreme Administrative Court but shall not be contrary to or inconsistent with the provisions of this Act. Again, the General Assembly, by virtue of the provisions, issues the Rules which provide the case proceedings concerning such a petition.

(6) **Regulations of the Judicial Commission of the Administrative Court on Power and Duty of the President of the Supreme Administrative Court and the President of an Administrative Court of First Instance, and Administrative Court Administration 2001**

Article 28 paragraphs one, two and three of the Act on Establishment of Administrative Court and Administrative Court Procedure provide that the President of the Supreme Administrative Court, the Vice Presidents of the Supreme Administrative Court. the President of an Administrative Court of First Instance, the Vice Presidents of an Administrative Court of First Instance shall have the responsibility in ensuring the proper operation of such Courts in accordance with the regulation prescribed by the J.C.A.C. with the approval of the General Assembly of Judges of the Supreme Administrative Court. Consequently, such a Regulation regarding powers and duties of the President of the Supreme Administrative Court and the President of an Administrative Court of First Instance was issued.

(7) **Regulations of the Commission on Jurisdiction of Courts on the process of case referral for its consideration and adjudication 2001**

Article 17 of the Act on the Determination of the Powers and Duties among Courts provides that the Commission on Jurisdiction of Courts shall have power issuing a regulation in relation to the process of case referral for its consideration and adjudication and other relevant processes. This Regulation, now, has been implemented.

(8) **Civil Procedure Code**

Articles 63, 64 and 72 of the Act on the Establishment of Administrative Court and Administrative Court Procedure 1999 provide that the provisions concerning the challenge of judges, contempt of court and execution according to the Civil Procedure Code shall apply *mutatis*

mutandis. In addition, clauses 77 and 78 of the Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure 2000 provide that the provisions of the Civil Procedure Code concerning a provisional remedial measure and an interpleading shall apply *mutatis mutandis*. This means that, apart from the provisions specified, other provisions of the Civil Procedure Code shall not apply *mutatis mutandis.*

(9) **General principles of law regarding Administrative Court Procedure**

Clause 5 paragraph two of the Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure 2000 provides that in the case where any particular matter has not been specifically provided by the law or the Rules under paragraph one, the general principles of law relating to Administrative Court Procedure shall apply. Such general principles of law include all procedures universally applied by an Administrative Court or Administrative Tribunal in other countries.

(2.1.2) Are the various procedural steps in the hands of the parties and/or the court and which role do they respectively play?

The inquisitorial procedures employed encourage an active role of the Administrative Judge in managing and controlling cases once issued. For example, if Judge-Rapporteur is of the opinion that the plaint has incompleteness which is capable of correction or the plaintiff has failed to make correct payment of the Court's fee, he/she has power to order the plaintiff to make correction or make correct payment of the Court's fee within the specified period of time[16]. Another example is the power of the President of the chamber designating a particular day as the ending date of the fact inquiry. The Administrative Judge also has power on a determination of issues, a determination of defendant and a determination of decrees. It cannot be denied that an Administrative Judge plays an important role on the control of

[16] *Act on Establishment of Administrative Court and Administrative Court Procedure* 1999, Article 57 and *Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure* 2000, Clause 37 paragraph two.

administrative case's proceedings. Nevertheless, a general principle of the system of trial of case, which emphasizes impartial and efficient trial; for example, the hearing of the case of both parties, the trial within the scope of the plaint and the relief sought by the plaintiff, and the challenge of judges, etc, is strongly complied with.

(2.1.3) Is there a prosecutor? If so which role does he/she play?

In Administrative Court's proceedings, the public prosecutor is not generally required. This is because the inquisitorial nature of the Administrative Court's proceedings, mostly conducted through written correspondence between the parties together with facts and evidence gathered by the Judge-Rapporteur. As for the role of Thai public prosecutor, it is mainly on criminal prosecution. In civil and administrative disputes, however, the government agencies or State officials may be represented by a public prosecutor upon a request to the Office of the Attorney General.

Similar to the French Council of State, the Administrative Court creates an internal body namely the Judge-Commissioner of Justice in order to balance powers among the administrative judges and ensure the accuracy and fairness of the judgment. The Judge-Commissioner of Justice is not the member of the chamber; however, before the chamber reaches its decision, the Judge-Commissioner of Justice will present his or her opinion. The chamber has to consider that whether or not it should adopt a decision which is different from the opinion of the Judge-Commissioner of Justice. In such a case, the chamber must display a stronger and more credible reasoning. Comparison of the chamber's decision and the Judge-Commissioner of Justice's opinion is made available by the compulsory publication requirement of both documents.

(2.1.4) Are the court proceedings mainly written or oral i.e. do the parties communicate by exchanging written presentations or in the form of an oral debate before the court?

Administrative Court Procedure has an important principle that proceedings shall be presented in writing including the plaint, the answer, the objection to the answer, the supplementary answer, the memorandum of proceedings, the parties' statements, the statement of the Judge-Commissioner of Justice and the judgment and order of the Court. However, the chamber

conducting the trial and adjudication shall hold at least one hearing to afford the parties the opportunity to make oral statements before it. Therefore, the parties shall have the right to present their additional statements and adduce evidence supporting such statements to the chamber on the hearing day. To be noted that such parties' right is not right to take any evidence but it is right on the affirmation or rebuttal of issues of facts and law. It is not a compulsory procedure so the parties may be absent therefrom.[17]

(2.1.5) Is the case determined by a single judge or a panel of judges?

The cases filed with the Administrative Court have to be determined by a panel of judges. In an Administrative Court of First Instance, there shall be at least three administrative judges of an Administrative Court of First Instance to constitute a quorum for trial and adjudication. If the President of an Administrative Court of First Instance thinks appropriate, a "special chamber" consisting of the two or more chambers of the Administrative Court of First Instance may be constituted[18]. In a case of any of the following descriptions, the President of an Administrative Court of First Instance, again, may order the determination of any issue or case by the General Assembly of Judges of the Administrative Court of First Instance:

(1) a case involving a large number of people or an important public interest;

(2) a case having issues needing the determination with regard to a significant principle of administrative law;

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[17]*Act on Establishment of Administrative Court and Administrative Court Procedure* 1999, Article 52 paragraph two and *Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure* 2000, Clause 84.

[18]*Act on Establishment of Administrative Court and Administrative Court Procedure 1999, Article 54 paragraph two and Rules of the General Assembly of Judges of the Supreme Administrative Court on Chamber, Distribution of Case Files and Tranfer of Cases, Performance of Official Function of Administrative Case Official and Power of Attorney in Administtative Case Proceeding,* 2001, Clauses 6, 8.

(3) a case likely to have the effect of reversing or varying precedents of the Administrative Courts of First Instance or of the Supreme Administrative Court;

(4) a case the amount of dispute of which is high.

The General Assembly of Judges of an Administrative Court of First Instance shall consist of every judge of that Administrative Court of First Instance who is present to perform duties. However, the number of the judges shall not be less than a half of that of judges of such an Administrative Court of First Instance. The President of that Administrative Court of First Instance shall preside over the General Assembly. The decision of the General Assembly shall be by the majority of votes. In the case of an equality of votes, the person presiding over the meeting shall have an additional vote as casting vote[19].

Similar to the Administrative Court of First Instance, there shall be at least five administrative judges of the Supreme Administrative Court to constitute a quorum for trial and adjudication. If the President of the Supreme Administrative Court thinks appropriate, a "special chamber" consisting of the two or more Supreme Administrative Court's chambers may be constituted[20]. Nonetheless, an issue or case decided by a General Assembly of the Supreme Administrative Court shall be performed not only when the President of the Supreme Administrative Court thinks appropriate, but also when it is required by law or by the regulation prescribed by the General Assembly of Judges of the Supreme Administrative Court. The General Assembly shall consist of all existing judges of the Supreme Administrative Court provided that there shall be not less than one-half of judges of the Supreme Administrative Court, and the President of the Supreme Administrative Court shall preside over the General Assembly. The decision of the Supreme Administrative Court shall be by a

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[19] *Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure* 2000, Clause 94.

[20] *Act on Establishment of Administrative Court and Administrative Court Procedure* 1999, Article 54 paragraph one and *Rules of the General Assembly of Judges of the Supreme Administrative Court on Chamber, Distribution of Case Files and Tranfer of Cases, Performance of Official Function of Administrative Case Official and Power of Attorney in Administtative Case Proceeding*, 2001, Clauses 5, 8.

majority of votes and, in the case of an equality of votes, the person presiding over the meeting shall have an additional vote as casting vote[21].

However, the order accepting the plaint is made by a single judge (a judge-rapporteur)[22] while the order rejecting the plaint is made by a panel under the recommendation of the judge-rapporteur[23].

2.2. What conditions must be fulfilled in order to confer the right to make a claim for review? Must the plaintiff show some form of personal interest? If so, is it defined in a broad or narrow manner? Please provide relevant case-law.

To consider the Court's power on the acceptance of a case filed, the three basic conditions shall be deemed to affect such consideration: interested person, jurisdiction, and power to issue a decree. This means that the Court shall not only consider the plaintiff's standing but the Court shall also consider its jurisdiction and its power to issue decree. Particularly, if the dispute concerning an unlawful administrative decision made by an administrative agency or State official under Article 9 paragraph one (1) of the Act on Establishment of the Administrative Court and Administrative Court Procedure, the Court must consider its power to redress or alleviate the plaintiff's grievance or injury or the termination of such dispute by the issuance of a decree as specified in Article 72 paragraph one (1) of the said Act.

In addition, the 2007 Constitution bestow to the Ombudsmen and the National Human Rights Commission the power to submit a certain matter to the Administrative Court. Therefore, the person aggrieved, the Ombudsmen, and the National Human Rights Commission are the persons entitled to file an administrative case with the Court.

To answer this question, an interested person shall be elucidated via the law and regulations provided, and precedents laid down. The right and power of the Ombudsmen and the National Human Rights

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[21] *Act on Establishment of Administrative Court and Administrative Court Procedure* 1999, Article 68.

[22] *Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure* 2000, Clause 42 paragraph one.

[23] *Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure* 2000, Clause 37 paragraph two.

Commission to submit a certain case to the Court will also be clarified to complete all respects of the standing issue.

(1) <u>Interested Person</u>

(1.1) Provisions of law and regulations

(1.1.1) The plaintiff shall be the person who has the right to file an administrative case and has capacity to sue.

(1.1.1.1) ***Standing to sue***

The plaintiff shall be the person who has the right to file an administrative case with an Administrative Court as provided in Article 42 paragraph one of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999 as follows:

"*Any person who is inevitably aggrieved or injured or who may inevitably be aggrieved or injured in consequence of an act or omission by an administrative agency or State official or who has a dispute in connection with an administrative contract or other case falling within the jurisdiction of an Administrative Court under Article 9 may, provided that the redress or alleviation of such grievance or injury or the termination of such dispute requires a decree as specified in Article 72, file a case with an Administrative Court*".

According to the Article 42 paragraph one of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999, the principle on "interested person" is applied. Suffice to say that the plaintiff must be an interested person. In particular, the dispute in relation to an unlawful administrative decision made by an administrative agency or State official, personal interest applied is in a broad manner. In order to prove standing, the plaintiff only shows that his/her interest is affected by such an action (intérêt froissé). However, the opposing party shall be an administrative agency or State official and the relief sought must be under the power of the Court as prescribed in Article 72 of the same Act. Therefore, to be a person who has the right to file an administrative case with the Administrative Court, the

plaintiff must not only show how his/her interest is affected but he/she must also indicate what is an administrative agency or State official giving rise to the filing of the case, and what is the relief the plaintiff sought by.

An interested person, who has a right to file a case against an administrative decision to the Court, can be classified into two groups: an aggrieved or injured person directly falling beneath an administrative decision (divided in two types: by-laws and administrative order), and an aggrieved or injured person affected by the enforcement of an administrative decision. In order to clearly understand the two groups of interested persons, some of administrative cases will be exemplified.

(a) An aggrieved or injured person directly falling beneath an administrative decision

- Falling beneath an administrative decision: by-law

Supreme Administrative Court Judgment No. D. 5/2006

In this case, the plaintiffs (Foundation for Consumers and others) sought the Court's order to revoke Royal Decree stipulating powers, rights and benefits of EGAT Pcl 2005 and the Royal Decree stipulating time clause for repealing the law governing EGAT 2005. When the Court came to make a decision on the standing to sue of the Foundation, it was of opinion that the Foundation was established under Civil and Commercial Code and its objectives were to promote and safeguard the rights of consumers and to encourage the consumer protection organizations' activities concerning their protection and public interest. The case filed concerning the protection of public interest of the electricity users, public domain, and social and economic stability so the action of the Foundation was within its objectives. The Foundation, therefore, was a person who is aggrieved or injured or who may inevitably be aggrieved or injured in consequence of the implementation of the two Royal Decrees.

As for electricity users, although they were not persons directly aggrieved or injured from the implementation of such Royal Decrees, they were entitled to participate in the public hearing process according to the Regulation of the State Enterprise Corporatization Policy Committee on Public

Hearing 2000 which was a substantial process prior to the enactment of the two Royal Decrees. In addition, after the enactment of the two Royal Decrees, the electricity users were entitled to reserve stock of EGAT Pcl prior to other people. Therefore, electricity users were persons aggrieved or injured or who might inevitably be aggrieved or injured in consequence of the enactment of the two Royal Decrees**.**

In case of state enterprise employees of Electricity Generating Authority of Thailand (EGAT), the transformation of the EGAT as a State enterprise into a public company (EGAT Pcl) directly affected the status of their employees so they were persons aggrieved or injured or who might inevitably be aggrieved or injured in consequence of the enactment of the two Royal Decrees**.**

Supreme Administrative Court Judgment No. D. 51/2006

The Plaintiff (a media consumer) filed a case challenging the legality of the enactment of the Royal Decree Determining the Time for Repealing the Royal Decree Governing the Establishment of Mass Communication Organisation of Thailand 1977, 2004. The case filed involving a dispute in relation to the legality of a Royal Decree which was under the competence of the Supreme Administrative Court; however, the plaintiff who was a media consumer of the Mass Communication Organisation of Thailand (M.C.O.T.) failed to demonstrate the grievance or injury directly or inevitably affecting to him or others according to the enactment of such a Royal Decree. Therefore, he had no standing to sue pursuant to Article 42 paragraph one of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999.

Supreme Administrative Court Judgment D. 118/2007

The Plaintiff (Thai citizen owning a network of national telecommunications and a public service user) filed a case challenging legality of Notification of the National Telecommunications Commission regarding the Access and Interconnection 2006. He claimed that the enforcement of such a Notification caused damage to citizen and the country as well as the plaintiff himself so he sought the Court's order to revoke that Notification. The Court ruled that a person entitled to file a case according to Article 42 paragraph one of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999 not only had to be a person who opined that a by-law an order

or an act was unlawful but also a person who was aggrieved or injured or who might inevitably be aggrieved or injured in consequence of the Notification in dispute. The plaintiff failed to clearly demonstrate the grievance or injury directly or inevitably affecting to him according to the issuance of the Notification; therefore, he was not a person who was aggrieved or injured or who might inevitably be aggrieved or injured in consequence of the Notification. In other words, he had no standing to sue.

Supreme Administrative Court Judgment No. D. 33/2008

General principle of law on administrative procedure is that any person entitled to file a case with the Administrative Court for a revocation of a by-law or an administrative order shall be an interested person on such a dispute. Additionally, he/she shall demonstrate the relationships between his/her interest and the cause of action and indicate the effect of a by-law and an order in dispute as well as how the relief sought shall be beneficial to him/her. Only a person whose interest is affected as a popular complaint (actio popularis) or a tax-payer shall not be deemed as an interest person entitled to bring a by-law or an administrative order in dispute to the Court for its consideration and adjudication. In this case, the plaintiff claimed that as a tax-payer, he was aggrieved or injured in consequence of the Royal Decree governing the Emoluments of Privy Councilor and Statesman 2007. The Court ruled that the enactment of such a Royal Decree did not affect the plaintiff's tax obligation. Thus, the plaintiff was not a person who was aggrieved or injured or who might inevitably be aggrieved or injured in consequence of an issuance of that Royal Decree and he had no standing to sue according to Article 42 paragraph one of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999.

- Falling beneath an administrative decision: administrative order

Supreme Administrative Court Order No. 40/2007

A Student who was evaluated as "failed" for all subjects enrolled causing incomplete graduate course work was a person aggrieved or injured or who might inevitably be aggrieved or injured and entitled to seek the Court's order revoking the Announcement of Examination Results. Although the student has again enrolled in the subjects he had failed, it did not mean that the

student admitted the results of such an Announcement. Therefore, the student was entitled to file a case revoking the Announcement of Examination Results.

(b) An aggrieved or injured person affected by the enforcement of an administrative decision

Supreme Administrative Court Order No. 494/2006

Because the demolition of the Yarnnawa Temple's building might cause damage to the plaintiffs' building which was next to such demolished building. Therefore, the permission order of the director of the Sathon District on the demolition of the Yarnnawa Temple's building caused grievance or injury or might inevitably cause grievance or injury to the plaintiffs who stayed in the building beside such a building.

(1.1.1.2) *Capacity to sue*

There is no specified provision of the Act on Establishment of Administrative Court and Administrative Court Procedure governing capacity. However, we are generally accepted that capacity to sue concerning civil dispute shall be applied. Furthermore, Article 22 of the Administrative Procedure Act 1996 provides conditions relating to capacity on the performance of an action in administrative proceedings which lay general principles on capacity to sue. Later, capacity to sue is prescribed in clauses 26 and 27 of the Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure 2000 as follows:

"***Clause 26****. An incompetent person may file an administrative case only upon compliance with the provisions of the Civil and Commercial Code governing capacity. In the case where it is required by the law that permission or consent be first obtained, the plaint shall also be accompanied by a letter of permission or a letter of consent.*

Clause 27. *In the case where a minor who is not below fifteen years of age wishes to file an administrative case on his/her own motion, the Court may, if it thinks fit, permit the minor to file an administrative case on his/her own motion. In such a case, the competent official of the Court*

shall notify it to that minor's legal representative and the Court may issue an order instructing such legal representative or other person concerned to give statements of fact to the Court for supplementing its consideration".

(1.2) Precedent

An interested person is not only provided by law and regulations, the Supreme Administrative Court also produces various outstanding judgments becoming precedents as follows.

(1.2.1) Juristic person

There is no provision of law concerning right of juristic person to file an administrative case to the Court, however, the Supreme Administrative Court delivers many judgments concerning a right of juristic person to have access to the Court. It can be concluded that a juristic person, within its objectives, may file a case with the Court relating to the protection of the members' interests. Nevertheless, a juristic person, as an interested person concerning public interest, has not been obviously developed yet. The juristic person entitled to bring a case to the Court can be classified into two groups: an association and a foundation.

(a) Association

Supreme Administrative Court Judgment No. D. 15/2002

Professional Guide Workers Union of Thailand files a case to the Court for the protection of the members' interests.

Supreme Administrative Court Order No. 65/2007

TDA Diving Association (Thailand) and others filed a case challenging the Notification of the Phuket governor on "Prohibition on the operation of an activity destroying national resources and environment of the Phuket ocean".

Supreme Administrative Court Order No. 665/2005

Thailand Association of Teachers of Dancing filed a case challenging the letter of notice of the Deputy Governor of the Sports Authority of Thailand - suggesting the plaintiff to replace the competition title "Thailand lnternational Ballroom Dancing Championships 2004" with "Thailand lnternational Ballroom Dancing Contests 2004".

Supreme Administrative Court Judgment No. A. 283/2008

National Parents Network Association and others filed a case challenging the legality of the process of public hearing conducting by Chulalongkorn University Council.

Supreme Administrative Cour Judgment No. A.593/2006

Thai Private Vehicle Inspection Association filed a case challenging the Notification of the Department of Land Transport on "model size and standard of the vehicle inspection machine, and gadgets or facilities for vehicle inspection."

(b) Foundation

Supreme Administrative Court Order No. 659/2005

Foundation for Consumers and others filed a case requesting the Court's decree ordering the Office of the Permanent Secretary to perform its duty by making an order to stop ITV's broadcasting because of the breach of contract.

Supreme Administrative Court Judgment No. D. 35/2007

In this case, the plaintiffs (Foundation for Consumers and others) sought the Court's order to revoke the Royal Decree Determining Powers, Rights and Benefits of PTT Public Company Limited 2001 and the Royal Decree Determining the Time for Repealing the Laws Governing the Petroleum Authority of Thailand 2001.

Foundation was established under Civil and Commercial Code and its objectives were to promote and safeguard the rights of consumers and to encourage the consumer protection organizations' activities concerning their protection and public interest. This case concerned the protection of public interest and it was deemed to be an action within the Foundation's objectives.

The Foundation, therefore, was a person who is aggrieved or injured or who may inevitably be aggrieved or injured in consequence of the implementation of the two Royal Decrees pursuant to Article 42 paragraph one of the Act on Establishment of the Administrative Court and Administrative Court Procedure 1999.

(1.2.2) Group of persons

Similar to a juristic person, there is no provision of law provided that a group of persons has right to file an administrative case with the Court. However a group of persons would be entitled to be a plaintiff if its interest is proved. In particular, disputes regarding environmental issues or consumer affairs are more frequently filed by the group of persons concerned, for instance: the Central Administrative Court's judgment No. 66/2002. The plaintiff (Progressive Farmers' Group of Khum Sung) filed a case involving the Committee of farmer's reconstruction and development fund, and the Secretary General of Farmer's Reconstruction and Development Fund performing their official duties with negligence or delay.

(1.2.3) A special issue on an interested person

Supreme Administrative Court Order No. 547/2008

The plaintiffs (the nine Thai citizens) sought the Court's order to nullify the cabinet's endorsement of Cambodia's map of Preah Vihear and a joint declaration to be presented to the World Heritage Commission of Unesco. The Court ruled that the plaintiffs were Thai citizens having a duty to uphold the national interest and to obey the law. The joint declaration affected the rights and duties of the plaintiffs and other Thai people. The litigation of the plaintiff aimed at the protection of national interest, Thai territory and sovereignty as well as the right of people pursuant to the Constitution. Therefore, Thai citizens were bound by the joint declaration and the nine plaintiffs were persons aggrieved or injured or might inevitably be aggrieved or injured

pursuant to Article 42 paragraph one of the Act on Establishment of the Administrative Court and Administrative Court Procedure 1999.

(2) <u>Requirement for the preliminary redress for the grievance before filing a case with the Administrative Court</u>

Article 42 paragraph two of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999 provides that:

"*In the case where the law provides for the process or procedure for the redress of the grievance or injury in any particular matter, the filing of an administrative case with respect to such matter may be made only after action has been taken in accordance with such process and procedure and an order has also been given thereunder or no order has been given within a reasonable period of time or within such time as prescribed by law*".

In the case where the law prescribes for a process or procedure to redress the grievance or injury, a plaintiff is obliged to exhaust such remedy before exercising his/her rights to file the case with the Administrative Court. If no such law is specified, and an administrative act challenged is characterized as an administrative order which is not made by a committee or a minister, Article 44 paragraph one of the Administrative Procedure Act 1996 provides that an appeal shall be made to the officer of whom the order is challenged within fifteen days as from the date of receiving the notification of the order.

(3) <u>Ombudsmen</u>

Apart from the person entitled to file a case under Article 42 of the Act on Establishment of the Administrative Court and Administrative Court Procedure, Article 245 paragraph one (2) of the present Constitution (as well as Article 198 of the 1997 Constitution), Article 43 of the aforesaid Act, and clause 28 of the Rules of the General Assembly of Judges or the Supreme Administrative Court on Administrative Court Procedure, too, empower the Ombudsmen to submit the case, where they opine that any by-law, any order or

any other administrative juristic act begs the question of the constitutionality or legality, to the Administrative Court:

- Article 245 (2) of the Constitution of the Kingdom of Thailand 2007 provides that

"*The Ombudsmen may submit a case to the Constitutional Court or the Administrative Court when they see that there is any of the following cases:*

(1) ……;

(2) the by-law, order or act of any person under Article 244 (1) (a) beg the question of the constitutionality or legality, the Ombudsmen shall submit the matter together with their opinion to the Administrative Court. The Administrative Court shall decide the case in accordance with the Act on Establishment of the Administrative Court and Administrative Court Procedure without delay".

- Article 43 of the Act on Establishment of the Administrative Court and Administrative Court Procedure 1999 provides that

"*In the case where an Ombudsman is of the opinion that any by-law or act of an administrative agency or State official is unconstitutional, the Ombudsman shall have the right to refer the case, together with the opinions thereon, to an Administrative Court. In presenting such opinions, the Ombudsman shall have such rights and duties as if the Ombudsman were the person entitled to file a case under Article 42.*"

- Clause 28 of the Rules of the General Assembly of Judges or the Supreme Administrative Court on Administrative Court Procedure 2000 provides that

"*The referral by an Ombudsman of a matter, together with the opinions thereon, to the Court in the case where the Ombudsman is of the opinion that any by-law or act of an administrative agency or State official is unlawful as provided in Article 43 shall be in the form of a plaint containing such particulars as provided in Article 45.*

In proceeding under paragraph one, the Ombudsman may authorize an official of the Office of Ombudsmen to file an administrative case and carry out administrative proceedings on his/her behalf."

The example of the case transferring from the Ombudsman is the Songkhla Administrative Court's judgment No. 495/2003. In this case, the Ombudsman filed a case with the Administrative Court for its decision on the act of the Minister of Interior, the Deputy Commissioner-General and the Commissioner-General of the Royal Thai Police, and the riot police to dispel a demonstration of protesters against the Thai-Malaysian gas pipe-line project begs the question of the constitutionality pursuant to Article 44 of the 1997 Constitution. The Songkhla Administrative Court ruled that according to Article 198 of the 1997 Constitution and Article 43 of the Act on Establishment of the Administrative Court and Administrative Court Procedure, 1999, the Ombudsman shall have a power to submit the case to the Administrative Court and shall have a right and duty as if the Ombudsman were the person entitled to file a case. However, the case referred must fall within the jurisdiction of the Administrative Court pursuant to Article 9 of the said Act. The dispute concerned was a part of a criminal justice procedure of State Officials; therefore, it fell outside the jurisdiction of the Administrative Court.

(4) <u>National Human Rights Commission</u>

The power of National Human Rights Commission to submit certain cases to the Administrative Court is newly prescribed in Article 257 (3) of the 2007 Constitution. It empowers the National Human Rights Commission to submit the case where the Commission agrees with the complainant that the provisions of any law are detrimental to human rights and beg the question of the constitutionality and legality as provided by the Act on Establishment of the Administrative Court and Administrative Court Procedure 1999. However, there has not any amendment of the said Act or the Rules of the General Assembly of Judges or the Supreme Administrative Court on Administrative Court Procedure

for the implementation of that provision of the Constitution yet. Consequently, the case exemplified has not been brought to the Court.

2.3. Does the plaintiff have direct access to the court, or is he/she obliged to submit his/her demand through a counsel/attorney?

As mentioned in 2.1.4, because most Administrative Court's proceedings are conducted in writing and the Judge-Rapporteur is a key person to gather all facts and evidence relevant. He/she shall perform his duties in the interest of both parties and shall give both parties opportunities to review and present an objection to the facts and evidence discovered by the judge, before being compiled as part of the proceedings of the case. Furthermore, a plaintiff may represent himself before the Court. Therefore, a lawyer is not generally required.

2.4. Can a legal demand be submitted to an administrative court using electronic technologies (Internet)?

Regarding the filing of a plaint with the Court, the plaintiff may submit it by hand or may designate a representative to submit it instead. Registered post is allowed as another channel to file the case with the Court. The Administrative Court, now, is studying the possibility to develop the e-Court and e-Filing in order to enhance the better Court's service to the public. However, there are two main obstacles for the success of using electronic technologies: the Court's policy on such an issue and the law and regulations concerned. Because computer's literacy rate of Thai people is poor and law on an electronic signature is not reliable, the Court has to take a thorough study on strength and weakness on using of electronic technologies. In addition, there is no law and regulation allowing the Administrative Court to use electronic technologies so it is necessary to amend the Court's procedural law for such adoption.

2.5. Is there some form of public or private legal aid system aimed at providing assistance to a person who cannot afford an attorney?

As mentioned previously in 2.3, the plaintiff may represent themselves before the Court so a lawyer is not required. In addition, the Secretariat General of the Administrative Court set up a consultancy group to assist people who want to bring an administrative case to the Court. Although public legal aid is not established, there is a private legal aid system, such as Lawyers Council of Thailand and Law Faculties, providing a marginalized and economically disadvantaged party with access to justice. This includes a legal representation in court proceedings for people who cannot afford a lawyer in civil, criminal and administrative disputes.

2.6. When a legal demand is submitted to a court, does this imply that the right for the relevant public authority to implement this decision is suspended, as long as the court hasn't settled the case?

The filing of a case to an Administrative Court for the purpose of the revocation of a by-law or administrative order does not constitute a ground for suspending the execution of such by-law or administrative order, such by-law or order in question remains in force prior to the delivery of a judgment or an adjudicating decision by the Court. The suspension of the execution of such by-law or administrative order, may take effect only by the Court orders. Therefore, if a plaintiff files a case to revoke a by-law or order, and the plaintiff desires the temporary suspension of the by-law or order, such plaintiff may make a request to suspend the suspension of such by-law or order by submitting an application at any time before the Court delivers a judgment or issues an order disposing of the case or make the request in his plaint. The application by the plaintiff must clearly indicate which by-law or administrative order the execution of which is intended to be suspended and how the continued applicability of such by-law or administrative order will subsequently result in injury whose remedy is difficult.

Nevertheless, even if the plaintiff did not submit an application to suspend the execution of a by-law or administrative order, if the Court is of the opinion that there are reasonable grounds to suspend the execution of the by-law or order which was the cause of action of the case, the Court has the power

to suspend the execution of such by-law or order, with or without a prior inquiry.

2.7. Can the court deliver an injunction ordering the Executive or a public authority to produce a document to which the other party could not have access before? (Provide relevant case-law)

The Administrative Court procedures employ the principle of the inquisitorial system, which allows the court to exercise its power in summoning all evidence if the court is of the opinion that it requires any. Therefore, if the applicant cannot present full information and evidence on the grounds that it does not have access to administrative documents, the parties just simply file the case to the court and inform the court to obtain such documents. The summoning of evidence by the court is very common. There is no need for particular petition for injunction.

2.8. Are there emergency procedures? Are they simply aimed at delivering preliminary injunctions (such as a Temporary Restraining Order) or at taking provisional measures, or can they also solve a fundamental question?

Under Article 66 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, 1999[24], there are 2 types of

[24] ***Article 66.*** *In the case where the Administrative Court considers it appropriate to prescribe provisional remedial measures or means in favor of the party concerned before delivery of judgment whether an application therefore is made by such person or not, the Administrative Court shall have power to prescribe provisional measure or means and issue an order towards the administrative agency for compliance therewith in*

emergency procedures in the Administrative Court. First, the procedure for the suspension of the execution of a by-law or administrative order. The other is the procedure for provisional remedy for temporary relief of grievances. The court's authority to exercise which procedure is based upon the demand of the plaintiff and the nature of dispute.

(1) <u>The suspension of the execution of a by-law or administrative order</u>

If a plaintiff files a case to revoke a by-law or order, and the plaintiff desires the temporary suspension of the by-law or order, such plaintiff may make a request to suspend the suspension of such by-law or order by submitting an application at any time before the Court delivers a judgment or issues an order disposing of the case or make the request in his plaint. The application by the plaintiff must clearly indicate which by-law or administrative order the execution of which is intended to be suspended and how the continued applicability of such by-law or administrative order will subsequently result in injury whose remedy is difficult.

An order to suspend the execution of a by-law or administrative order would be made if the Court is of the opinion that (1) the by-law or administrative order which gives rise to the filing of the case is possibly unlawful; (2) the continued applicability of such by-law or administrative order will subsequently result in grave injury which is difficult to be remedied; and (3) the suspension of the execution thereof does not constitute any barrier to the administration of State affairs or public services

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accordance with the rules and procedure prescribed by the General Assembly of Judges of the Supreme Administrative Court.

In prescribing the rules and procedure under paragraph one, there shall also be taken into consideration the responsibility of the administrative agency or State official as well as problems and obstacles likely to occur to the administration of state affairs.

(2) <u>The provisional remedy for temporary relief of grievances</u>

Similar to the suspension of the execution of such by-law or administrative order, the provisional remedy for temporary relief of grievances is not automatically applied when the plaintiff filed a case to an Administrative Court. Such measures shall be given only by the Court's orders. During trial, before delivery of judgment or the issuance of an order, if a party may suffer damages as a result of the other party's conduct, whether or not committed in good faith. A party may submit an application for a Court order prescribing an interlocutory procedure for protecting the interests of the applicant or for executing a judgment. An order refusing to accept or dismissing the application of the plaintiff or the party shall be final.

An order to allow provisional remedy for temporary relief of grievances would be made if the Court is of the opinion that the application has sufficient substance and reasons for the implementation of such requested protection measures. It must appear that the plaintiff's case possess substance for the defendant to be liable, that there are sufficient grounds for the implementation of such provisional remedial measures and that the plaintiff's grievances or injuries would be continued due to the acts of the defendant provided that regard shall be had of the responsibility of the administrative agency or State official as well as problems and obstacles likely to occur to the administration of State affairs.

The procedure for the demand of the suspension of the execution of a by-law or administrative order and the demand for provisional remedy for temporary relief of grievances, have to be pursuant to the Rules of the General Assembly of Judges of the Supreme Administrative Court, 2000 and the Act on Establishment of Administrative Court and Administrative Court Procedure, 1999. However, if the Court is of the opinion that the case is in need of expeditious proceeding, the court can conduct this procedure in a rush manner.

Nonetheless, if the granting of the suspension of the execution of a by-law or administrative order or the provisional remedy for temporary relief of grievances will determine the result of the case, such injunctions shall not be granted. For example, in the case where the plaintiff files the plaint demanding the court to reinstate the plaintiff to his former position (Central Administrative Court Interlocutory Order No. 231/2007) or the case where the student files the plaint demands the court to null the order of the dean that put the plaintiff on probation and failed his examination (Central Administrative Court Interlocutory Order No. 874/2007), the court cannot award a provisional measure or allow a preliminary injunction which has the same consequence to the request in the plaint, since such measure or injunction can be read as a determination of the dispute issue before the court can actually try the case and would be the violation of due process.

Another example is the Engineer Merit Board case. This case is about the revocation of the plaintiff license by the Engineer Merit Board. The plaintiff filed for the preliminary injunction requests the court to suspend the order of the Board. The court held that such injunction would be in conflict with the purpose of the establishment of the Engineer Merit Board which aims to supervise the activity and quality of the work of engineers in order to protect public interest since the work of engineer can have a broad effect in terms of public safety. Therefore the request for the suspension of the decision is not upheld (Central Administrative Court Interlocutory Order No. 477/2005).

3. The power exercised by the administrative court

3.1. What is the hierarchy of legal standards (Constitution, international law, statues) that the court takes into account when exercising legal review?

The hierarchy of legal standards in Thai legal system is as follows:

(3.1.1) Constitution and principles of constitutional value

The constitution and the principles of constitutional value, as the supreme law of the state, are the legal standards which the Administrative Court refers to.

For example, the court applies the concept of human dignity as a fundamental right guaranteed by the Constitution to revoke an act performed by a public enterprise. In a case, the court ruled that a passenger train whose window was blinded by a full display of advertising, causing the invisibility of the view outside of the train, is like a train with no windows resembling to the freight train car. Human beings are not merchandises that can be transported in a windowless train. This kind of train demeans the passenger's rights as human beings so this act of State Railway of Thailand was detrimental to human dignity (The Supreme Administrative Court Judgment No. A. 231/2007)

In another case, the court relies directly on the constitutional provisions for the revocation of administrative decision. In this case, the court held that a decision of the Public Prosecutor Commission that did not allow a candidate suffering from poliomyelitis to apply for the deputy prosecutor examination was illegal. Because they did not justify their decision with enough reasons to prove that the candidate did not have a proper physique or mind to work as a prosecutor. The Public Prosecutor Commission made the decision solely based on the physical disability of the candidate, without considering his mental ability to work as a prosecutor. The decision of the Public Prosecutor Commission therefore violated the principle of equality and non-discrimination under article 30 of the Constitution of 1997(the Supreme Administrative Court Judgment No. A.142/2004)

(3.1.2) International treaties and agreements

As for international law, the Thai legal system, particularly in public international law is *dualism*. Hence international law does not apply directly in Thai legal system. The administrative act which does not comply with treaties and international agreements cannot be reviewed in court. Nonetheless, several international principles have been adopted in the constitution and many

statues. In a way, the Court employs the standard of international law in judicial review as a result of international principles contained in national law and the constitution.

(3.1.3) Statues

Another level of law is the legislative statues. The Administrative Court shall take into account the statues which are related to the dispute in the cases. On top of that is the Act on Establishment of Administrative Courts and Administrative Court Procedure 1999 which is the law the court uses in court procedure.

(3.1.4) General principles of law

(1) General principles of law of administrative court procedure

Clause 5 of the Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, 2000 provides that the Thai administrative proceeding follow the inquisitorial system and in the case where any particular matter has not been specifically provided by the law or the Rules, general principles of law of administrative court procedure shall apply thereto.

The recent example of this underlying principle is the Supreme Administrative Court decision which recognized and applied the concept of the refund of court fee. In this case, the court held that the concept of the cost of proceeding in the administrative justice should be minimal is a general principle of law of administrative court procedure. The reason behind this principle is the concept that the Administrative Court is a form of public service. It is not an organization that seeks profit. And the collecting of court fee is of the purpose to prevent the plaintiff from abusing the administrative proceedings to compensate his damages excessively. Hence, when the case was dismissed without the plaintiff’s fault, the court fee should be refunded to the plaintiff. (The Supreme Administrative Court Order No. 169/2008)

Another example is the case where the court identifies the commencing date of the timeframe which the plaintiff is entitled to start filing the plaint to the court by using the principle stipulates in the Civil and Commercial Code. In this case the court had difficulty identifying the first date when the plaintiff filed the appeal to the minister for compensation under the Expropriation of Immovable Property Act, 1987. In making the decision, the court had to choose between the date when the plaintiff filed the appeal by postal service or the date when the minister received the appeal via postal delivery. Since under the Expropriation of Immovable Property Act, 1987, there is no explicit procedure of appeal to the minister, the court, by virtue of clause 5 of the Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, 2000, took into account the principle stipulated in the Civil and Commercial Code which provides that the intention expressed in the legal act shall be effective only when the receiver is aware of such intention. As a result, the court held that the first date when the appeal is effective, is the date when the minister received the appeal of the plaintiff by postal delivery. (The Supreme Administrative Court Order No. 283/2008)

(2) General principles of law

These principles are not prescribed in laws or regulations. They are unwritten principles of law that are referred to by the court as legal basis to justify the case. For example, the Resolution of the General Assembly of Judges of the Supreme Administrative Court No. 6/2001 that broadens the definition of "administrative contract" under article 3 of the Act on Establishment of Administrative Court and Administrative Court Procedure, 1999 to include the contract entered into between an administrative agency and a private person, authorizing the private person to carry out the execution of public service or to have direct participation in the execution of a public service, or the contract which establishes “*prerogative of the administration*” over the

private person which has become a general principle of law that has been referred to several times.

Another example is the “switch” case. This case is about the industrial standard for electrical switch set forth by the Ministry of Industry. The specifications of the standard were not directly described by the ministerial regulation but the regulation simply referred to the specifications which are described by the annex to the regulation. Only the regulation was published in the Government Gazette. On top of that, the specifications were in English. The Supreme Administrative Court ruled that the regulation was unlawful because it violated a general principle of law which requires that Thai legal texts must be in Thai language and published in the Government Gazette, and they should be clear enough for those involved to fully understand. (The Supreme Administrative Court Judgment No. D. 34/2007)

(3.1.5) By-laws

The court also has to take into account the legal standard stipulated in “by-laws” which mean royal decrees, ministerial regulations, notifications of a ministry, ordinances of local administrations, rules, regulations or other provisions which are of general application and not intended to be addressed to any specific case or person. These by-laws are subordinate legislation to the Act of Parliament.

3.2. When the Executive or a public authority delivers its interpretation of a statue, can the lawfulness of such interpretation be challenged in court? If so, according to which standards and criteria? In the opposite case, is the court bound by such interpretation?

The Administrative Court has jurisdiction over the legality of by-laws or administrative orders, hence if the interpretation of the statue by the Executive or public authority (including circular, internal practice of the agency) does not qualify as a by-law or an administrative order under article 9 of the Act

on Establishment of Administrative Courts and Administrative Court Procedure, 1999, then the Administrative Court shall not have the jurisdiction over such interpretation. For example, in the case where the plaintiff files a plaint to revoke the legal opinion of the Council of State which is a response to the inquiry of a local government on the issue of ambiguous regulation. Such opinion is merely the opinion of the defendant. In order for the opinion to take effect, the local government has to imply the opinion in its own order. The legal opinion of the defendant alone is not biding for the plaintiff in anyway. The plaintiff does not have the standing to sue in this case. Therefore the case was dismissed by the Supreme Administrative Court. (Supreme Administrative Court Order No. 628/2008)

In another decision, the Supreme Administrative Court held that the communication note circulated among the agencies is not subject to appeal because “it is not a decision which adversely affects the plaintiff.” (The Supreme Administrative Court Order No. 96/2008)

However, in the case about the "circular" of the Ministry of Finance which states that the right of the officials to housing allowance in case of hire-purchase or installment for home loan from the financial institution must be referred to article 13 of the Royal Decree on Official Housing Allowance, 1984. Accordingly, when the official who receives housing allowance in a form of hire-purchase or installment for home loan has moved to a new location, he will have to prove that he is eligible for the housing allowance at the new location and such official will need to actually rent an accommodation at the new location in order to sustain the housing allowance he received for his own house in his former location. The Supreme Administrative Court ruled that such “circular” may seem like an interpretation of the royal decree but it is binding and affects the rights of the official; consequently the affected official can bring the case to the Administrative Court. In this case, the Supreme Administrative Court held that the two circulars contradicted the Royal Decree on Official Housing Allowance, 1984. Therefore, the decision of the Secretary General of the Office of Basic Education Commission that rejected the right to reimbursement of housing

allowance to the plaintiff, which was based on the two circulars, is illegal. (The Supreme Administrative Court Judgment No. A. 52/2004 and No. A. 38/2003)

3.3. If the Executive gives its interpretation of treaty law, is the court bound by such interpretation?

Neither the Court of Justice, the Administrative Court, nor the Constitutional Court is bound by the interpretation of treaty law of the Executive.

Article 190 paragraph six of the Constitution of the Kingdom of Thailand 2007 provides the Constitutional Court with power to adjudicate whether a treaty in question is one of the treaties which must be approved by the National Assembly. Article 190 paragraph two of the Constitution 2007 provides that such treaties are those that provide for a change in the Thai territories, or extraterritorial areas in which the Kingdom has the sovereign rights, or any jurisdiction through treaty or international law or the Kingdom is required to enact an Act for implementation of the treaty or have a vast impact on the country's economic and social stability, or have a significant binding effect upon the trade, investment, or budget of the country. Therefore the Constitutional Court is not bound by the Executive's interpretation of treaty law.

3.4. Insofar as discretionary measures are concerned, which type of legal review does the court exercise? Provide, if possible, relevant case to show how the court verifies the reasonableness of a decision of the Executive or a public authority and checks whether the reasons are consistent with the content of the decision.

Under article 9 paragraph one (1) in conjunction with article 72 paragraph one (1) of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999, the Administrative Court has the competence to try and adjudicate or gives order over the case involving a dispute in relation to an administrative juristic act (a by-law or an administrative order)

by the discretion of an administrative agency or a State official, whether in bad faith or in a manner indicating unfair discrimination or causing unnecessary process or excessive burden to the public or amounting to undue discretion. If the Administrative Court deems that an administrative agency or a State official has done an unlawful act in the abovementioned manner, the Administrative Court has power to issue a decree ordering revocation of the unlawful act in whole or in part.

Cases involving undue discretion

For the undue discretion issue, the Administrative Court applies the principle of the proportionality to control the discretionary power of an administrative agency or a State official. Under the proportionality principle, the content or motive of a discretionary administrative act shall be in accordance with the objective of the law authorizing power to an administrative agency or a State official. It means that the discretionary act affecting the rights of the individuals has to be proportional with the objective of public interest in that law. Thus, the technique in balancing between the interest of the individuals and the public interest is indispensable.

For example; a group of fishermen challenged the validity of a regulation issued by the Ministry of Agriculture and Cooperatives that prohibited the use of some kind of fishing tools in the areas of Prachub Kiri Khan Province, Chumphon Province, and Surat Thani Province during the annual breeding season. As a result of the regulation, fishermen were prevented from carrying out fishing operation for six months every year. It was claimed that the measure had sent a detrimental impact on the local economy, education, social conditions and crime, as well as a restriction of the people’s rights and local way of life in conserving, maintaining, and utilizing natural resources. The Supreme Administrative Court stated that the measures imposed by the Ministry of Agriculture and Cooperatives were aimed at preventing new-born marine creatures from being caught in order to maintain the abundance of marine creatures that could be utilized on a sustainable basis. These measures were capable of achieving for those aims, and there were no other viable alternatives.

In addition, the fishermen were still at liberty to carry out their fishing in non-prohibited zone or otherwise modify their tools. Therefore, on the balance, there were greater common benefits to be gained against the effect on the local fishermen. For this reason, the measures issued pursuant to the lawful exercise of the Minister's discretion were legal. (Supreme Administrative Court Judgment No. A. 51/2004)

The next case concerns the use of force by an administrative agency or a State official under the principle of the proportionality in protection of public order. For example, although the demonstration of the plaintiffs, to obstruct the access to the Parliament, was not legally protected under article 63 of the Constitution of the Kingdom of Thailand 2007 which provided that a person shall enjoy the liberty of peaceful and unarmed assembly, the power of the administrative agency or a State official in controlling the public peace and order was not unlimited. On the contrary, that power was to be under the proportionality principle. It was meant that; firstly, the administrative agency or a State official had to inform the demonstrators about the measures and the effect of the measures in intervening such demonstration; secondly, the administrative agency had to choose the option that was justified to the circumstance in the present; in other words, the option which was justified was to be necessary, reasonable, and in accordance with the universal standards in manipulating the demonstration circumstance. In conclusion, the intensity of the measure of an administrative agency or a State official was to be proportional to the intensity of the demonstration act. (Central Administrative Court Order No. 464/2009)

Cases involving acting in a manner indicating unfair discrimination

For the unfair discrimination, causing unnecessary process, and excessive burden to the public issues, the Administrative Court also applies the principle of proportionality to control the discretionary power of an administrative agency or a State official.

- The defendant issued an auction announcement for a public procurement requiring for the measuring-height-equipment bidding. According to the auction document, it provided that a bidder whose products manufactured

in Thailand was required to submit a copy of business license along with his or her proposal. The business license was composed of ten documents in category. The plaintiff and the other two bidders submitted only the document no. 1 which was the license permit as the defendant used to accept such document in the other previous auctions. Later, the defendant terminated the auction by the reason that the plaintiff who was the only bidder left in the auction process failed to submit all the documents as required. The plaintiff claimed that the order of the defendant to terminate the auction was unlawful and requested the Administrative Court to revoke the order of the defendant. The Supreme Administrative Court stated that in the past even though the plaintiff and the other bidders submitted only the document no. 1, the defendant always allowed such performance without any arguments. Thus, it showed that the defendant admitted that to submit the document in part was not a substantial error which made the bidder unqualified. The Supreme Administrative Court therefore ruled that the defendant's order terminating the auction was unreasonable and an unfair discrimination. (Supreme Administrative Court Judgment No. A. 154/2004)

- The plaintiff filed an application requesting a resident permit subject to the Notification of the Immigration Bureau of the Regulation of Applying a Resident Permit for an Alien Investor in the Special Circumstance date July 29th 1997 which was issued under the Notification of the Interior Ministry of the Issuance of Resident Permit for an Alien Investor in the Special Circumstance dated July 1st 1997. Under those Notifications, the Immigration Commission under the approval of the Minister of Interior should grant a resident permit for an alien if he or she brought in at least 10 million baht to invest in the Kingdom and this must be certified with a letter issued by a commercial bank in Thailand providing evidence of financial remittance into Thailand, and such investment made by the applicant must be of an interest to the national economy. The plaintiff submitted an account book, which was a fixed deposit account in three consecutive years, of the Government Housing Bank as a documentary evidence of the investment acquisition. The Immigration Commission approved and had a resolution to grant a resident permit to the plaintiff. The Ministry of Interior disagreed and argued that the money deposited

in a fixed deposit account with three consecutive years was not the term of investment that must be certified by an agency under the Notification of the Interior Ministry of the Issuance of Resident Permit for an Alien Investor in the Special Circumstance. The Supreme Administrative Court stated that the objective of the Notification of the Interior Ministry of the Issuance of Resident Permit for an Alien Investor in the Special Circumstance was to facilitate an alien who would like to invest in Thailand in applying for a resident permit. Thus, the investment term under the said Notification of the Interior Ministry was not to make a profit, but to gain the capital into the economic system of the country. The investment of the plaintiff in a fixed deposit account with a local bank, the Government Housing Bank, was an investment since the Government Housing Bank could bring the money to invest as the bank's objectives and therefore would be of an interest to the national economy. In addition, there was a fact that the Ministry of Interior previously granted the resident permits to other 404 applicants who submitted similar documents to those of the plaintiff. Therefore, the order of the Ministry of Interior denying a resident permit to the plaintiff was contrary to the objective of law and was issued in a manner indicating unfair discrimination. (Supreme Administrative Court Judgment No. A. 25/2004)

- The plaintiff claimed that the installation of an electricity circuit box of the defendant, the Department of Rural Roads that had power to install a circuit box under the Rural Roads Act 1992, obstructed the access to the plaintiff's house and damaged the business of the plaintiff. The plaintiff used to ask the defendant to remove the circuit box to other area but the defendant denied. The defendant argued that the circuit box was legally installed and the installation had been done before the plaintiff reconstructed the house by removing out the fence and building a shop instead. The plaintiff requested the Administrative Court to order the defendant to relocate the circuit box to other area. The Supreme Administrative Court stated that there was no evidence supporting that the relocation of the circuit box would interfere with the electricity distribution. Additionally, the defendant previously used to relocate the circuit box out of the front of the house opposite to the plaintiff's house, upon the request of that house owner. The Court ruled that the defendant had acted

discriminately and ordered the defendant to relocate the circuit box out of the house of the plaintiff. (Supreme Administrative Court Judgment No. A. 102/2006)

Cases involving causing unnecessary process

- The plaintiff was one of the successors that were entitled to lands devolved by succession. However, the other four successors filed an application for registration of rights and juristic act for the inherited lands and submitted the document of land rights and the name list of successors which did not show the plaintiff's name to the defendant, who was an official of the Land Bureau in Satun Province. The defendant carried out the registration of those successors. The plaintiff argued that the registration was unlawful and asked the defendant many times to correct the registration. The defendant denied and notified the plaintiff to file a lawsuit instead. The Supreme Administrative Court stated that under article 61 of the Land Code in case where there appeared an inaccuracy or illegality in connection with the registration of rights and juristic act related to immovable property, the defendant shall submit a report with an opinion to his or her superior and the Director-General or Deputy Director-General of the Land Department, consecutively, to appoint a Committee of Enquiry. However, the defendant declined to do so and notified the plaintiff to file a lawsuit instead. The Supreme Administrative Court ruled that the defendant thus had done the unlawful act due to causing unnecessary process to the plaintiff. (Supreme Administrative Court Judgment No. A. 69/2004)

Cases involving causing excessive burden to the public

- The plaintiff and co-plaintiffs were co-owners of a land connecting to canal located in Bang-Yai District, Nonthaburi Province, and ran a hotel and canal cruise business for tourists. They claimed that the construction project of Nonthaburi Provincial Administrative Organization planning to build an elevated walkway along the canal in order to connect the elevated walkway to a public road would affect the rights of plaintiffs to access to the plaintiffs' land, and would damage the tourist business of the plaintiffs. In addition, it was unnecessary to build the elevated walkway for connecting to the public road as

there were other paths that were linked to the public road already. The plaintiffs filed a case requesting the Administrative Court to issue an order prohibiting the construction of the elevated walkway. The Supreme Administrative Court stated that the villagers of Bang-Yai District could still use the existing paths of the village as the way out to the public road. Thus, the elevated walkway project was not necessary. Therefore, on weighing the common benefit to be gained against the damage to the plaintiffs, the court ruled that such project would unreasonably cause excessive burden to the plaintiffs. Therefore, the Supreme Administrative Court issued an order restraining the project. (Supreme Administrative Court Judgment No. A. 394/2007)

However, the Administrative Court has also limited its power in judicial review of the discretionary decision of an administrative agency or a State official, as an example provided in Supreme Administrative Court Judgment No. A. 9/2006; the plaintiff, who was a teacher belonged to the defendant, the Office of the Basic Education Commission, was accused of doing a monetary fraud while he was a treasurer of the School Welfare. After interrogating the plaintiff, the Committee of Enquiry submitted a report with an opinion to the Teachers Civil Service Sub-Commission that the plaintiff had done a non-gross disciplinary breach and should be punished by reducing the salary of the plaintiff. The Teachers Civil Service Sub-Commission disagreed and stated that the plaintiff conducted a gross disciplinary breach as the plaintiff wrongly performed by exploitation of gains for himself, including committing gross misconduct under article 82 and article 98 of the Civil Service Act 2008. The plaintiff appealed the order to the Teachers Civil Service Commission. The OTCSC had a resolution that the plaintiff committed the gross misconduct under article 98 of the Civil Service Act 2008 only. The defendant then issued an order, subject to the resolution of the OTCSC, to dismiss the plaintiff out of the government service. The plaintiff filed a plaint to the Administrative Court claiming that the order of the defendant was unlawful and requested the Court to revoke such order. The Supreme Administrative Court stated that the defendant imposed a sanction in appropriate with the degree of the plaintiff’s guilty, and the punishment measure was according to the standard of the punishment, including suitable for the circumstance and the degree of the action. Thus, the

Supreme Administrative Court shall not review such discretionary act, except when it was abuse of power or illegal.

3.5. Is the court empowered to quash (to declare null and void) the decision or to dismiss the legal demand? Instead of quashing the decision, is it within the authority of the court to amend or modify the decision? Can the court substitute an entirely new and different decision? Can the court reconsider the merits of the decision?

In an action alleging that an administrative agency or a State official has issued an unlawful by-law or an unlawful order under article 9 paragraph one (1) of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999, the Administrative Court has the power to issue a decree ordering revocation of such by-law or such order in whole or in part, according to article 72 paragraph one (1) of the same act.

However, in a rare case, the Supreme Administrative Court ruled that if the decision of the administrative agency or the State official was obviously and grossly illegal, such decision would presume to be legally non-existent and thus there was no need for the Court to issue an order revoking that unlawful decision again. In this case, the Supreme Administrative Court stated that the order of the defendant, the Pa-Juke Subdistrict Administrative Organization, requesting the plaintiff who was the Pa-Juke Subdistrict Administrative Organization's official to pay damages to the defendant without reporting to the Ministry of Finance for inspection as prescribed in the Notification of Ministry of Finance was obviously and grossly illegal. Thus, such order had no legal effect so there was no need for the Court to issue a decree ordering revocation of such order. (Supreme Administrative Court Judgment No. A. 47/2003)

The Administrative Court has no authority to amend, modify, or substitute the administrative decision, but it may give remarks or guidelines to an administrative agency or a State official on the direction or the procedure for

the execution of the judgment, according to article 69 paragraph one (8) of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999**.**

3.6. When the court quashes a decision taken by a public authority, does this take effect retroactively when the original decision was made, or simply when the court rules? Does the judge have power to fix the time from which the annulment operates? On what principles is a date chosen?

Pursuant to article 9 paragraph one (1) in conjunction with article 72 paragraph one (1) and paragraph two of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999, where an administrative agency or a State official has done an unlawful act, whether in connection with the issuance of a by-law or an order, the Administrative Court has power to issue a decree ordering revocation of the by-law or the order in whole or in part. In issuing such decree, the Administrative Court may direct that it should have a retrospective or non-retrospective effect or prospective effect to any particular time or may prescribe any condition therefore, as justice in a case shall require.

For example, the Council of Ministers approved a master plan to privatize the Electricity Generating Authority of Thailand (EGAT), a state enterprise and the country's largest power producer, thereby approving the enactment of two Royal Decrees on corporatization of State enterprises established by an Act of Parliament or a Royal Decree: one was the Royal Decree Stipulating Powers, Rights and Benefits of EGAT Public Company Limited 2005 which determined the privileges and exemptions of the privatized entity, and the other was the Royal Decree Stipulating Time Clause for Repealing the Law Governing EGAT 2005 which prescribed that the Electricity Authority of Thailand Act was repealed as of June 24th, 2005. The plaintiffs (the Foundation for Consumers and 11 members, a consumer advocacy network) were of the opinion that those Royal Decrees were unlawful on the grounds of a failure to arrange a public hearing and the deprivation of security in the

provision of public service by the State. They thereby requested the Royal Decrees to be annulled. The Supreme Administrative Court stated that according to the curriculum vitae of members of the corporate structuring committee, one member, Mr. Olarn Chaipravat, was the Vice-Chairman of the Audit Committee of Shin Corporation Public Company Limited which was a provider that provided telecommunication service to EGAT Public Company Limited. Mr. Olarn was therefore an interested party in the business of EGAT Public Company Limited. Thus, he possessed a prohibited quality which could impair the discharge of functions by the corporate structuring committee and constitute a breach of the principle of impartiality. His appointers knew or ought to have known of such a prohibited quality. The appointment order was therefore unlawful. As a result, all proceedings of the corporate structuring committee were either rendered invalid or ineffective. Additionally, the chairman of the public hearing committee was an assistant to the Minister of Natural Resources and Environment. Such person was a political position holder and therefore disqualified under article 5 (3) of the Rules of the State Enterprise Corporatization Policy Committee on Public Hearing 2000. Also, the committee failed to provide a summary of the essential substances of the two drafted Royal Decrees and did not publicize the hearing in one newspaper for a period of three consecutive days. On contrary, the committee announced the hearing in three separated newspapers, each for only one day. These discrepancies resulted in the public hearing being inconsistent with the intent behind the provisions of article 5 and article 19 paragraph one (9) of the State Enterprise Corporatization Act 1999. As regards the substance of the Royal Decree Stipulating Powers, Rights and Benefits of EGAT Public Company Limited 2005, it was found that the newly formed company had retained the power to expropriate immovable property, despite that such power should be exercised exclusively by the State. Such a grant of power affected the people’s rights in property and was inconsistent with article 48 and article 49 of the Constitution 2007 in conjunction with article 26 paragraph two of the State Enterprise Corporatization Act 1999. Furthermore, immovable property that had been obtained by way of expropriation was public domain which belonged to the State under article 1304 (3) of the Civil and Commercial Code, and was reserved

for official use under article 4 paragraph one of the State Land Act 1975. Thus, the Supreme Administrative Court issued a decree ordering revocation of the two Royal Decrees with retrospective effect to the date of coming into force of those decrees. (Supreme Administrative Court Judgment No. A. 5/2006)

In addition, Thailand also has the Administrative Procedure Act 1996 that provides the effect of the revocation of an administrative order. The said 1966 Act, influenced by the German model, is a significant tool to govern the way in which an administrative agency or a State official may prepare and issue an administrative order.

Under the Administrative Procedure Act 1996, the revocation of administrative orders is divided into two categories as follows;

1. <u>Revocation of an unlawful order</u>

- ***Revocation of an unlawful administrative order which gives benefit to the beneficiary of the order***

According to article 51 paragraph one and two of the Administrative Procedure Act 1996, in revoking an unlawful administrative order giving rise to the payment of money or the transfer of property or an advantage which is severable, the *bona fide* reliance of the beneficiary on the continued existence of such order and the public interest shall be taken into account. The *bona fide* reliance cannot be claimed unless the beneficiary has taken the benefit given by the order or preceded with the property which can no longer be cancelled or can be cancelled only suffering and unreasonable disadvantage.

Article 51 paragraph three of the same act provides that the beneficiary cannot claim *bona fide* reliance when: (1) he or she obtains the order with the assertion of a falsehood or the concealment of the fact which should be

revealed or threat or by bribery; (2) he or she obtains the order by giving information which was substantially incorrect or incomplete; (3) he or she is aware of the illegality of the order or unaware thereof due to gross negligence at the time of receiving such order.

For compensation, in the case where the order is revoked with the retrospective effect, the provisions of undue enrichment in the Civil and Commercial Code shall apply *mutatis mutandis* to the return of money, property, or other advantages the beneficiary has received. However, he or she shall be deemed in bad faith as from the moment he or she knows of the illegality of the order, or he or she should have known thereof if he or she had not been grossly negligent. And such person shall be liable to return the full amount of such money, property, or other advantages, according to article 51 paragraph four of the aforesaid act.

As for an order which is unlawful and is not subject to article 51 of the Administrative Procedure Act 1996, article 52 paragraph one of the aforementioned act provides that the person affected by the revocation of such unlawful order is entitled to compensation for *bona fide* reliance on the continued existence of the unlawful order. The claim for compensation must be submitted within one hundred and eighty days as from the date he or she is notified of such revocation. The compensation shall not exceed the advantages such person would receive if such unlawful order is not revoked, according to article 52 paragraph two of the Administrative Procedure Act 1996. However, the beneficiary cannot claim the compensation if he or she does not act under article 51 paragraph three (1)-(3) of the abovementioned act.

The revocation of the unlawful beneficial order under article 51 and article 52 of the Administrative Procedure Act 1996 shall be made within ninety days as from the date of knowing the ground for revocation of such order, except in the case where the order is issued with the assertion of falsehood or the concealment of a fact which shall be revealed or by threat or bribery, in accordance with article 49 paragraph two of the 1996 Act.

- ***Revocation of an unlawful order which does not give benefit to the beneficiary of the order***

An unlawful order which does not give benefit to the beneficiary of the order may be revoked, whether in whole or in part, according to article 50 of the Administrative Procedure Act 1996. However, there is no provision providing a condition in revoking an unlawful non-beneficial order as the revocation of such order does not affect the principle of the *bona fide* reliance of the beneficiary on the continued existence of the order and sets the beneficiary free from the unavailing order. In addition, the Administrative Procedure Act 1996 does not provide the time-limit in revoking such order; therefore, the unlawful non-beneficial order may be revoked at any time.

2. <u>Revocation of a lawful order</u>

- ***Revocation of a lawful beneficial order***

Article 53 paragraph four of the Administrative Procedure Act 1996 provides that a lawful beneficial order giving rise to the payment of money or the transfer of property or an advantage which is severable may be revoked only when: (1) there is no implementation or a delaying implementation of the order; (2) the beneficiary fails to observe or delays to comply with the conditions of the order.

In case of a lawful beneficial order which is not under article 53 paragraph four of the said act, article 53 paragraph two of the 1966 Act provides that the order may be revoked only when: (1) the revocation is permitted by law or the right of revocation is reserved in the order itself; (2) the order combined with a condition to be observed by the beneficiary but the beneficiary has not reserved within the specified period; (3) the official would be entitled, as a result of a subsequent change of facts and in circumstances, not to issue the order and if failure to revoke it would be detrimental to public

interest; (4) the authority would be entitled, on the ground of a change in the law, not to issue the order insofar as the beneficiary has not availed himself or herself of the advantages or had not received any contribution on the grounds of the order when failure to revoke it would jeopardize the public interest; (5) it is necessary to prevent or eliminate serious harm to the public interest or the individual.

In according to article 49 paragraph two of the Administrative Procedure Act 1996, the revocation of the lawful beneficial order under article 53 of the 1996 Act shall be made within ninety days as from the date of knowing the ground for revocation of such order, except in the case where the order is issued with the assertion of falsehood or the concealment of a fact which shall be revealed or by threat or bribery.

- ***Revocation of a lawful non-beneficial order***

Article 53 paragraph one of the Administrative Procedure Act 1996 provides that a lawful order which does not give rise to an advantage to a person for whom it is intended may be revoked, except when the order in similar content would have to be issued or when the revocation is not possible for other reasons; provided that, the interest of the third party shall be taken into account. However, the Administrative Procedure Act 1996 does not provide the time-limit in revoking such order, the lawful non-beneficial order may be revoked at any time.

According to article 53 paragraph one and two of the 1996 Act, a lawful order may be revoked, whether in whole or in part, with immediate effect or effect for the future as prescribed. Such order may not be revoked with retrospective effect as the order is legal since the date it is issued. For that reason, there is no reasonable cause to revoke the order retrospectively.

However, article 53 paragraph four of the abovementioned act provides that a lawful beneficial order giving rise to the payment of money or the transfer of property or an advantage which is severable may be revoked,

whether in whole or in part, either retrospectively or prospectively or with effect for the future as prescribed. The reason why such order may be revoked with retrospective effect is that the law wants to punish the beneficiary who is a factor causing the revocation of the order, by reason of the beneficiary not implementation or a delaying implementation of the order or failing to observe or delaying to comply with the conditions of the order (under article 53 paragraph four (1)-(2) of the Administrative Procedure Act 1996).

For compensation, where there is a revocation of the lawful beneficial order under article 53 paragraph two (3), (4), and (5) of the Administrative Procedure Act 1996, the beneficiary is entitled to compensation arising from his or her *bona fide* reliance on the continued existence of the lawful beneficial order. The claim for compensation must be submitted within one hundred and eighty days as from the date he or she is notified of such revocation. The compensation shall not exceed the advantages such person would receive if such lawful order is not revoked, according to article 52 paragraph two of the aforesaid act.

Under article 53 paragraph four (1)-(2) and paragraph five of the Administrative Procedure Act 1996, in case where a lawful beneficial order giving rise to the payment of money or the transfer of property or an advantage which is severable is revoked with retrospective effect, the provisions of undue enrichment in the Civil and Commercial Code shall apply *mutatis mutandis* to the return of money, property, or other advantages the beneficiary has received.

3.7. What means are available to a judge to compel the administration to enforce a decision which the executive does not wish to carry out?

Under the Act on Establishment of Administrative Court and Administrative Court Procedure 1999, the execution of judgment of the Administrative Court may be separated into 2 categories according to the nature of the case, as follows:

1. Cases that need to be executed by nature

Under article 72 paragraph one (5) and article 72 paragraph four and paragraph five of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999, in the case where the Administrative Court issues a decree ordering a person to act or refrain from any act in compliance with the law, or issues a decree directing any person to pay money or deliver the property specified in the court judgment, if such person fails to comply with the court judgment, the Administrative Court shall apply the provisions concerning execution in the Civil Procedure Code *mutatis mutandis*, according to article 72 paragraph one (5) of the same act.

2. Cases that do not need to be executed by nature

Article 72 paragraph one (1), article 72 paragraph two and paragraph three of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999 provide that the Administrative Court has power to issue a decree ordering revocation of a by-law or an order of an administrative agency or a State official.

- ***Revocation of an unlawful by-law of an administrative agency or a State official***

Article 72 paragraph one (1), and article 72 paragraph three of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999 provide that when the Administrative Court issues a decree ordering revocation of an unlawful by-law of an administrative agency or a State official in whole or in part, such by-law shall be revoked when the judgment revoking the by-law of the Administrative Court is published in the Government in order to publicly inform all the people concerned.

When a by-law is revoked by the Administrative Court's decree, it loses its legal existence so there is no need for the execution.

• ***Revocation of an unlawful order of an administrative agency or a State official***

Under article 72 paragraph one (1), and article 72 paragraph two of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999, in revocation of an unlawful order of an administrative agency or a State official in whole or in part, the Administrative Court has power to direct that such revocation should have a retrospective or non-retrospective effect or prospective effect to any particular time or may prescribe any condition therefore, as justice in particular case shall require.

In this case, article 72 paragraph two of the aforementioned act has only provided that the revocation of an unlawful order should have a retrospective or non-retrospective effect or prospective effect to any particular time or may prescribe any condition therefore, but has not mentioned that such revoked order should be published in the Government Gazette as a revoked by-law. The reason why an order which is revoked by a court judgment should not be published in the Government Gazette is that the nature of an order is a matter which is applied and is intended to be addressed to an individual in a specific case. Such person will directly be informed of the decree ordering revocation of order and the decree will have an effect in revoking the order automatically, therefore the Administrative Court has no need to issue any enforcement measure for the execution.

In practice, however, there are some difficulties to enforce an administrative agency or a State official to perform to the judgment of the Administrative Court in case where the Administrative Court has a decree revoking an unlawful order of an administrative agency or a State official. Such difficulties may be occurred by;

Firstly, the misunderstanding of a court judgment of an administrative agency or a State official; when an administrative agency or a

State official misunderstands the content of the court judgment, the Administrative Court will summon the head of such administrative agency or such State official to testify to the Administrative Court, and the Administrative Court will give remarks or guidelines to the administrative agency or the State official on the direction or the procedure for the execution of the judgment, according to article 69 paragraph one (8) of the Act on Establishment of Administrative Court and Administrative Court Procedure 1999.

Secondly, the resistance to a court judgment of an administrative agency or a State official; when an administrative agency or a State official neglects to comply with the judgment of the Administrative Court, the Administrative Court will summon the head of such administrative agency or such State official to testify to the Administrative Court why he or she does not comply with the court's decree. Eventually, the administrative agency or the State official will give in to the court's pressure and comply with the court's decree.