Mediation in the Administrative Court of Thailand: Experiences and Current Situation*

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1. Preface

The Administrative Court of Thailand has the authority and duty to perform a judicial review of the legality of administrative acts. It has the competency to try and adjudicate cases involving disputes between an administrative agency or State official and a private individual, or between an administrative agency and a State official. Disputes may be in connection with the issuance of a by-law, order or any other act; with the neglect of official duties required by law or the performance of such duties with unreasonable delay; or with an administrative contract.[1]

The *Act on Establishment of the Administrative Courts and Administrative Court Procedure B.E.2542* (1999) has no provision determining the Administrative Court's power and duties in relation to using mediation to settle disputes. Therefore, the court tries and adjudicates cases in relation to damages and remedies to plaintiffs. For example, if the court is of the opinion that an administrative order issued by a State official is unlawful; the court will revoke such order. If the State official neglects official duties required by law to be performed, the court will issue an order requesting the relevant administrative agency to perform the duties within a specified time fixed by the court. If an administrative act is the cause of damages to a plaintiff, the court may issue an order requesting an administrative agency to pay for damages claimed for tort liability or to pay compensation for damages relating to a lawful act which has no tort liability.

The Thai Administrative Court has been operating now for 18 years. During that time, a number of administrative judges have noticed that in some cases the plaintiffs misunderstood the facts of the case and that if they had been provided with accurate information they would not have filed their case against administrative agencies or State officials. In other cases, the period of time required to try a case and deliver a decision meant that the plaintiff could not be remedied for damages in time. In other cases, even though the final decision was made in time, the compensation for damages awarded could not compensate the plaintiffs completely or permanently. Consequently, in the interest of justice, the judges (judges-rapporteur) in charge of these cases have strived to find the optimal solution within the extent of their own power and duties. The court ordering the parties concerned to give statements can also present an opportunity to provide them with accurate information. The parties concerned can understand the problems or restrictions that the other party must deal with. This can provide an opportunity to negotiate and jointly settle the dispute. So, the giving of statements by parties concerned can, in fact, be a mediation procedure which occurs during the court inquiry.

In practice though, these judges only played the role of “a neutral third party” by asking the parties concerned to present their opinions and solve the dispute between themselves. For instance, a judge may query whether it is possible that the accused administrative agency could change an administrative order or whether they have an alternative way to provide the relevant public service which would constitute an acceptable balance between the needs of the two parties. In other words, it seems that alternative dispute resolution, or ADR, occurs during the court inquiry by “a neutral third party” who is an administrative judge. It is a kind of “mediation” or “conciliation” rather than the exercise of the court’s power to impose a compromise (Court Imposed Compromise) on the two parties. There are also some judges who play a more active role than “a neutral third party” but this runs the risk of creating distrust in parties concerning the impartiality of the administrative judge.

2. Experience with Mediation applied in the Administrative Court of Thailand

Thai administrative judges have employed mediation during court inquiries so that a dispute can be settled promptly without any party winning or losing the case. In some cases, mediation can also help retain good relations among the parties concerned as they must continue to live together as co-workers. In trying and adjudicating administrative cases, it is important to balance the interests of both parties. As at least one of the parties is a State agency or official, it is essential to consider whether there will be an impact on public interest or affect other people. An administrative judge who is in charge of conducting mediation must be aware of this issue. Since the establishment of the Administrative Court in 2001, the number of cases filed in the Administrative Courts of First Instance and the Supreme Administrative Court total 149,469. However, according to records, mediation has been employed in not more than 100 of these cases (including successful and unsuccessful settlements). Hence, it would be fair to say that administrative judges have been prudent in selecting cases for which mediation would be appropriate.

According to Thai administrative judges, there are several types of cases for which mediation is appropriate. Following are some examples.

2.1 Dispute Cases on Nuisance or Annoyances

Disputes that arise from nuisance usually involve neighbors who raise birds or animals; noise disturbance, such as loud noises at work, disturbing prayer; or unpleasant smells in the workplace. In general, the plaintiff has the right to directly file a case against a person who creates annoyance with the Court of Justice. But according to Thai law, a local officer will be put in charge of such a case. If the local officer does not deal with the matter effectively, the aggrieved person has the right to file a case against that local officer who is a State official with the Administrative Court. This avoids direct conflict with neighbors as it is Thai custom that amicable relationships between neighbors should always be preserved. In such cases, the judge may decide that the dispute can be resolved by mediation during the court inquiry. Following is a case example.

The plaintiff was aggrieved by noise and heat from air conditioner and refrigerator compressors belonging to a convenience store located next to the plaintiff's residence. The plaintiff complained to the director of the local district office who had the authority to deal with such problems but he failed to resolve the issue. The plaintiff then filed a case with the Administrative Court. A quorum of judges inquired into the facts given by the two parties and subsequently requested that the defendant order the convenience store owners to move the compressors to a lower level and behind a concrete fence in order to reduce the noise and prevent the heat blowing into the plaintiff's residence. The defendant promised to solve the problem and the convenience store subsequently moved the compressors. The nuisance was settled and the plaintiff withdrew the case.[2]

2.2 Dispute Cases on Examination and University Admission

In cases involving examinations or university entrance admission, judges can issue an order for provisional remedial measures before delivery of a decision but there are sometimes legal and practical restrictions. Therefore, in general, if it is not a plaint against an examination system or national admission test the results of which are binding on many people, but an objection against individual qualifications or specific conditions of the plaintiff, the judges will inquire into facts as is appropriate and allow parties to provide accurate information. This often results in the rapid settlement of the dispute.[3] Following is a case example.

The plaintiff was an applicant for acceptance into a junior high school (Grade 7). The defendant was the school director. The plaintiff was selected as one of 96 students eligible to be admitted and receive a 3-year-scholarship. The school fixed the date on which the plaintiff along with parents was to be informed of school regulations and confirm their intention to accept admittance to the school. The plaintiff informed the school that she would not be able to be present on that day because she would be out of the area and requested that the parents be able to come alone to confirm the intention to be admitted to the school on behalf of the plaintiff. On the specified day, the parents came to confirm the plaintiff's intention but the school rejected the parent's right to do so and stated that the plaintiff had to come in person. The school promptly issued a disqualification announcement for the plaintiff on the school website and announced a list of 12 substitute applicants who were requested to come at a later date and confirm their intention to be admitted in place of disqualified applicants. The plaintiff returned from her other activities later the same afternoon and was informed of the disqualification. The plaintiff then filed a plaint requesting that the court issue a provisional remedial measure before delivery of a decision and that the defendant admit the plaintiff to study in the school until the court decision was made or until the court ruled otherwise. Therefore, the judge–rapporteur issued an order summoning the disputing parties to give statements and additional facts. The parents disclosed that the reason why the plaintiff was unable to confirm her right in person at 10 a.m. on the specified day was because the plaintiff had to take an entrance examination at another school in Bangkok and would make a decision later where to study. The defendant explained that the school had announced the list of substitute applicants, so it was impossible to return the right to the plaintiff as the substitute applicant selected would suffer damage as a result. In this case, the

judge-rapporteur decided that the use of mediation would affect the interest of the substitute applicant who had already confirmed their right. In any event, even though the parties could not reach an agreement, it seemed the two parties understood each other better. After being selected to study at the other school in Bangkok, the plaintiff withdrew the case.[4]

2.3 Dispute Cases on Expropriation of Immovable Property

In one case, a plaintiff, who was the owner of immovable property, filed a case requesting to be paid more than the compensation being offered by the State. In this case, the question was only whether the plaintiff was reasonably and fairly compensated or not. However, in other cases, a plaintiff has requested the court to examine the legality of administrative actions concerning expropriation. Some of these cases may be appropriate for a mediation process. Following are case examples.

In the first case, the plaintiff was the owner of two shop houses which were expropriated for sky train construction. The plaintiff thought that the boundary line of expropriation did not include the whole area of the two shop houses and therefore wished the defendant to exclude those parts from expropriation in order that the plaintiff could continue to run their business. The plaintiff filed a case with the court and the judge-rapporteur used mediation during the court inquiry. The person authorized to act on behalf of the defendant reported suggestions given during mediation to the defendant and the defendant agreed not to demolish the parts of the shop house outside the boundary line of expropriation and would be responsible for reconstruction and renovation of remaining parts so that the plaintiff could continue operations. When informed of the agreement reached by the two parties (out-of-court-settlement), the court struck the case from the case list.[5]

This case is a good example of the merits of mediation. Obviously, if the Court chose normal case proceedings instead of mediation, the issue of dispute would only be whether the defendant's action was legitimate. Normal case proceedings would also be time-consuming and it is highly likely that the plaintiff's shop houses would be entirely demolished before the case finished. Thus, although the plaintiff would have been given a judgment, the remedy for the grievance would only have been monetary compensation. However, through mediation the plaintiff was able to run their business in the remaining parts of the shop houses.

In the second case, the plaintiff was the owner of a shop house which was expropriated for sky train construction. The plaintiff; however, refused to allow demolition of the shop house or the removal of property. The defendant notified the plaintiff of the scheduled time for the demolition so the plaintiff later filed a case with the court and claimed that if the demolition and removal of property were to proceed, important evidence needed to prove how much the plaintiff should receive in compensation would be destroyed and this would cause difficulty in burden of proof. In this case, the judge-rapporteur used mediation during the court inquiry. It turned out that the plaintiff just wanted to delay the removal of property because there was a large machine installed in the building and the owner did not have the equipment needed to remove it. Therefore, the judge-rapporteur asked the defendant whether he could assist the plaintiff in removing that machine and the defendant stated that such assistance would not cause

any difficulty. Consequently, the removal of property proceeded and the building was demolished. The construction of the sky train system was completed on time. As the dispute had been resolved, the case was stricken from the list of active cases.[6]

2.4 Dispute Cases on Environment

In one case, administrative agencies and State officials from various agencies jointly implemented a beach renovation project which aimed to prevent beach erosion caused by waves during the monsoon season. The project utilized a "hard–structural solution" in which huge cement bars were buried into the beach and covered up with sand. However, the plaintiffs didn't agree with this method. They thought that sand-filling the beach was the only proper solution. Therefore, they filed a case with the court and requested that the legitimacy of acts by the administrative agencies involved and of every State official at every stage of the project's implementation be investigated.

The mediation method employed in this particular case used a technique that the judge-rapporteur had been trained in as part of a training course on administrative dispute mediation in Germany. The method focused on using a flip chart. The mediation process went smoothly because both parties thoroughly understood every stage of mediation and were able to propose various options which led to mutual agreements. Negotiation was also amicably settled. In the negotiation process, the defendants proposed that they were willing to cancel the use of the hard-structural method and to adopt the sand-filling method. Although the plaintiffs were worried about some technical details of the sand-filling method such as the source of sand to be used, the amount of sand and the optimal slope of the sand-fill; the judge-rapporteur saw an opportunity for the dispute to be mutually terminated. However, the plaintiffs asked for a pause in the mediation procedure in order to consult with their colleagues. After the consultation, they declared to the court that, for the sake of good governance standards on beach conservation projects in the future, they would not terminate the dispute and asked to leave the mediation process.

At this point, the court's attempt at mediation was deemed unsuccessful. However, the defendants informed the Court on the same day that although mediation was unsuccessful, they were willing to comply with their proposals made during mediation and decided to implement the sand-fill method instead of the hard-structural method. Thus, although mediation in this case was unsuccessful, it led to major changes that contributed to the termination of the main cause of the dispute. Eventually, through court proceedings, the minor causes of the dispute that still remained could be settled in a timely manner.[7] This case example shows that utilization of international mediation methods and techniques in Thai administrative cases can actually occur in practice.

Stage of mediation process in which a flipchart board was used to gather data. This particular technique was derived from the mediation approach used in the German Administrative Court.

Stages of mediation process in which both parties fully cooperated and participated in the procedures.

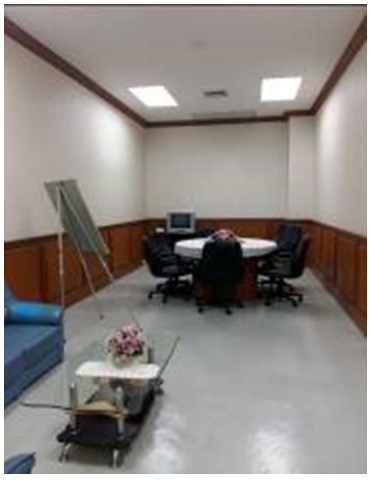
3. A Pilot Project on Case Management Promoting Cooperation in Dispute Resolution

A pilot project on Case Management Promoting Cooperation in Dispute Resolution was initiated by Honorable Boonanan Wannapanit,[8] Judge of the Supreme Administrative Court, when he held the position of President of the Songkhla Administrative Court. The project aimed to systematically apply knowledge on dispute mediation in actual administrative cases. In this project, administrative judges who were not directly responsible for such cases were appointed as mediating judges, except in cases of necessity or as the President saw appropriate.[9] Moreover, to conform to the international management system of mediation in Courts on the separation of individuals, cases, and rooms; the case docket system of the project was separated from the main docket system and a separate room was allocated for mediation.

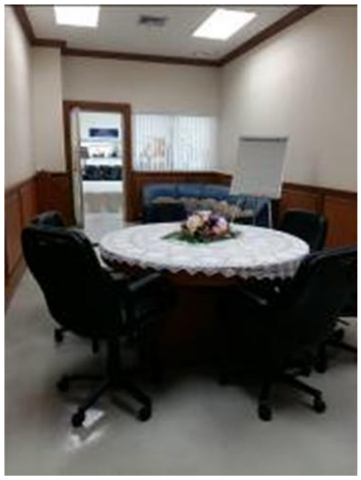
The Project's first mediating judge, Hon. Wichchai Dhampradip, President of a Chamber of the Administrative Court of First Instance, attached to the Supreme Administrative Court during an interview for the Pilot Project's data collection process.

The Project's second mediating judge (current), Hon. Pairoj Minden, President of the Songkhla Administrative Court, during the mediation process.

The mediation room.



Inside the mediation room.



Round table used in the mediation

Statistics of the Pilot Project

Filed cases			Finished cases					Remains
By parties	By panel	Total	Successful	Un successful	Parties not attending	Not approved by the President	Total	
11	9	20	4	3	7	3	17	3

As of 31st March 2019

The statistics show that during the three years after the Pilot Project was initiated not many cases were filed. However, successful cases outnumber unsuccessful cases so it is assumed that the project was successful.

Hon. Pairoj Minden, President of the Songkhla Administrative Court and the current mediating judge of the Pilot Project, gave preliminary remarks about the project as follows;[10]

(1) The parties accept and trust the Mediating Judge which results in smooth mediation.

(2) The use of such international mediation techniques such as flip charts may be inappropriate in some cases because some parties do not understand the stages and process of international mediation.

(3) The selection of the most appropriate mediation technique must be considered on a case-by-case basis.

(4) The parties are usually satisfied with the outcomes of mediated cases because mediation can solve the problem. Even if the mediation is unsuccessful, the parties are still satisfied because it leads to a better understanding among the parties.

4. The current status of "dispute mediation" in the Thai Administrative Courts

The "Act on Establishment of Administrative Courts and Administrative Court Procedure (No.12), 2019" was promulgated on 1st May 2019. This Act allows dispute mediation in administrative courts by a judge who has no direct responsibility in such cases.[11] However, the Act does not grant power to the Administrative Courts to mediate disputes relating to the legitimacy of administrative acts, which is covered by Section 9, paragraph one (1) of *the Act on Establishment of Administrative Courts and Administrative Court Procedure, 1999.* Nevertheless, the Thai Administrative Courts have the authority to mediate dispute cases relating to neglect of official duties required by the law or the performance of duties with unreasonable delay according to Section 9 paragraph one (2) of the same Act, a wrongful act or other liability according to Section 9 paragraph one (3), or a dispute in relation to an administrative contract according to Section 9

paragraph one (4).[12] The promulgation of the Act mentioned is; however, an important step in administrative dispute mediation in Thai Administrative Courts.

The said Act designates that both parties and the Court may ask or initiate mediation before the date of the fact inquiry termination.[13] For the Supreme Administrative Court, although it has the competence to mediate disputes, mediation is limited to cases that are filed to it directly. This means that a case which is initially under the jurisdiction of the Administrative Court of First Instance but for which an appeal is subsequently filed with the Supreme Administrative Court cannot be mediated at the appeal stage.[14] Before the Courts grant approval to mediate, they must first consider whether any laws prevent the case from entering mediation.[15] Moreover, mediation of disputes must be executed within the time period set by the mediating judge. This is to ensure that mediation does not cause an unreasonable delay in trial and adjudication.[16] Also, all stakeholders in mediation must not reveal any information disclosed during mediation.[17]

In the case that both parties successfully agree and the issues of the case are resolved, the chamber for trial and adjudication will render a judgment accordingly (consent judgment). The parties are unable to appeal this kind of judgment, except for reasons specified by law.[18] However, should mediation be complete and the parties have been able to agree on only some issues of the case, the Courts will take note of the agreement on those issues and continue the proceedings for unsettled issues. The Court will then render a final judgment which incorporates the agreements that have been made.[19]

From the aforementioned, it can be seen that mediation of disputes is a viable option for some cases. However, one important factor contributing to successful mediation of administrative disputes is the effective performance of the mediating judges.

5. Demeanor and tasks of mediating judges[20]

Laws designate that mediating judges hold no duty in the normal procedure of cases so as to reassure the parties that any information, emotions, and personal feelings disclosed or expressed during the mediation process do not cause prejudice in the consequent court adjudication. Mediating judges should always be neutral and unbiased when performing their duties.

Therefore, mediating judges have to exhibit proper demeanor in all mediation stages[21] because inappropriate demeanor may create doubt among the parties regarding the mediating judges 'neutrality.

Neutrality of mediating judges can be categorized into two types as follows:

(1) Personal neutrality: Mediating judges must not be involved in the disputes or be directly affected by the outcome or receive any personal gain from the outcome. These criteria prevent bias for or against parties, dispute subjects, or options for dispute resolution.

(2) Neutrality on adjudication procedures: Mediating judges must be aware that he/she performs duties for all parties. Therefore, plan and execution of mediation must reveal neutrality to all parties by not showing intimacy, fondness, or dislike for any of the

parties. Should there be any circumstance that requires mediating judges to be involved with just one party, all parties must be well-informed regarding the mediating judge's roles and duties in such situations. This is to avoid or prevent distortion or misunderstanding of their good will and neutrality.

Apart from proper demeanor during the execution of duty, mediating judges must also be aware of their roles and missions in the mediation process.

There are four missions of mediating judges as follows:

(1) *Building trust*: Mediating judges have to create a comfortable and stress-free atmosphere for the parties. The parties must not feel that they are combating with one another. The main goal is to build trust between the parties so that constructive cooperation can occur. Mediating judges must provide enough opportunities for each party to state clearly what they want and the benefits they wish to receive.

(2) *Enhancing each party's negotiation capacity*: Mediating judges have to support a dialogue between the parties. Apart from the intention to create equal acknowledgement of information and comprehension of facts, judges should try to enhance each party's capacity to negotiate for their own interests. This would also result in a fair consideration of options between the parties.

(3) *Stimulation*: Mediating judges must stimulate dialogue between the parties, as well as discussion of other aspects of the dispute which the parties have not previously considered. They have to motivate the parties to share their views and, in some cases, resolve situations in which the parties do not reveal their thoughts and feelings, or do not communicate.

(4) *Ensuring fair dispute resolution*: Mediating judges must not give legal advice to the parties, but focus on ensuring that the parties do not breach the rules as mutually agreed. They have to ensure that the rules are balanced so that no side can take unfair advantage, and that dispute issues do not increase. In addition, they should facilitate a change in attitude of the parties which usually tends to look back into the past rather than consider the benefits of sustainable coexistence in the future.

The demeanor and execution of tasks of the mediating judge are deemed important. Therefore, in the initial stage of implementing dispute mediation in the Thai Administrative Court, the provision of training for mediating judges should be a priority. Such training will enable judges to perform their duties correctly and effectively.

6. Conclusion

As mentioned earlier, mediation of disputes in the Thai Administrative Courts has been implemented by administrative judges in order to provide parties with better, more sustainable, and faster alternatives to dispute resolution. Judges have to take many factors into consideration including duty, responsibility, limitations to judicial discretion of government agencies, the interests of the public and other stakeholders, and the degree of difficulty and

sensitivity when compared to normal court proceedings. However, administrative judges are willing to employ mediation when it will benefit both parties.

Initially, mediation during court inquiry was a subject of contention. There was some doubt as to its feasibility or appropriateness. However, as a starting point, a comparative study between previously mediated cases in the Thai Administrative Courts and those in other countries was conducted. A seminar was held for Thai administrative judges to brainstorm ways to implement Alternative Dispute Resolution (ADR). Later, German administrative judges were invited to demonstrate mediation methods in order to provide understanding of the mediation methods used by German Administrative Courts. Subsequently, six administrative judges and two court officials attended a training course on administrative case mediation in Germany. At the same time, two administrative judges attended a training course on ADR in Singapore. Then, the Court held thee seminars to disseminate knowledge on the German system of mediation and conciliation.[22] Information from research studies and the outcomes from the activities just mentioned were consolidated to form the basis of a study report on the Development of Dispute Mediation on Administrative Cases in the Thai Administrative Court during 2543 B.E. (2000) - 2558 B.E. (2015). This report was subsequently used as a reference for the next stage of development. Later, the Songkhla Administrative Court initiated a Pilot Project on the Systematic Implementation of ADR in Administrative Disputes.

The Thai Administrative Courts are now ready to provide mediation as an alternative option in dispute resolution to parties in some cases. Although the provisions on "dispute mediation" in *the Act on Establishment of Administrative Courts and Administrative Court Procedure (No.12), 2019* might create some limitations to the use of mediation in administrative disputes, those limitations can be regarded as challenges to Thai administrative judges in delivering justice. If administrative judges are able to successfully mediate administrative disputes that the law currently allows, there may be an opportunity for the Thai Administrative Courts to propose an amendment to the Act so that the Courts are able to mediate all types of administrative cases in the future.

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Endnotes

[*] This article was amended from the article entitled *Why should "mediation" be applied in the Administrative Court of Thailand?* written for participants attending a lecture entitled "Experience on Mediation Applied in Administrative Case Proceedings and the launching of a pilot project in order to apply International Standards for Mediation Practices in Administrative Case Proceedings at the Songkla Administrative Court". It was also used in part for the workshop on "Alternative Dispute Resolution: ADR" broadcasted through the Video–Conferencing System between the State Courts of Singapore and the Administrative Court of Thailand on 27 May 2019 at 12.30 – 15.30 hrs. at the Seminar Room 2, B1 Floor, the Administrative Court Premises, as part of the Project of Exchange and Learning Knowledge on Modern Administrative Law and Management Systems for Court Excellence.

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[1] The Act on Establishment of the Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)

Section 9. Administrative Courts have the competence to try and adjudicate or give orders over the following matters:

(1) cases involving a dispute in relation to an unlawful act by an administrative agency or a State official, whether in connection with the issuance of a by-law or an order or in connection with any other act, by reason of acting without or beyond the scope of powers and duties or inconsistently with the law or the form, process or procedure which is the material requirement for such act or in bad faith or in a manner indicating unfair discrimination or causing an unnecessary process or an excessive burden to the public or amounting to an undue exercise of discretion;

(2) cases involving a dispute in relation to an administrative agency or a State official neglecting official duties required by the law to be performed or performing such duties with unreasonable delay;

(3) cases involving a dispute in relation to a wrongful act or any other liability of an administrative agency or a State official arising from the exercise of power under the law or from a by-law, an administrative order or any other order, or from the neglect of official duties required by the law to be performed or the performance of such duties with unreasonable delay;

(4) cases involving a dispute in relation to an administrative contract;

(5) cases prescribed by law to be submitted to the Court by an administrative agency or a State official for mandating a person to do a particular act or refraining therefrom;

(6) cases involving a matter prescribed by the law to be under the jurisdiction of Administrative Courts.

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

(1) actions concerning military discipline;

(2) actions of a Judicial Commission under the law on judicial service;

(3) cases within the jurisdiction of the Juvenile and Family Courts, Labour Courts, Tax Courts, Intellectual Property and International Trade Courts, Bankruptcy Courts or other specialized Courts.

[2] "Development of the Mediation and Conciliation Process for Administrative Cases during the year 2000-2015", Bangkok: Office of the Administrative Courts, 2015, pp. 161 – 162.

[3] In this case, the judge-rapporteur should have been more prudent during the court inquiry in order to avoid the parties becoming involved in an argument. If the plaintiff was accepted into the school, she would have been under the supervision of the defendant for a long time. Therefore, distrust between the parties stemming from their appearance in court could have had long-reaching effects.

[4] Songkhla Administrative Court Order, Black Case No.26/2016 Red Case No. 41/2016

[5] *Development of the Mediation and Conciliation Process for Administrative Cases during the year 2000-2015*, op.cit., pp. 164 – 165.

[6] Ibid., pp. 148 – 149.

[7] Judgment of the Songkhla Administrative Court, Black Case No. 2/2558, Red Case No. 6/2559 which is currently under adjudication of the Supreme Administrative Court.

[8] Currently, Honorable Boonanan Wannapanit is a Judge of the Supreme Administrative Court.

[9] *President of the Songkhla Administrative Court's suggestions No. 3/2558 on A Pilot Project on Case Management for Promotion of the Parties' Cooperation on Dispute Resolution* dated 23 December 2015

No.8: When the President approves the use of mediation, the President shall appoint a judge who has no direct responsibility in such cases to perform as a mediator. In case of necessity or if the President sees appropriate, he/she might task the panel judges or a judge in the panel to perform as a mediator.

[10] Information from a phone interviews on 5 April 2019

[11] Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)

Section 66/4 paragraph three: *The President of the Supreme Administrative Court or the President of an Administrative Court of First Instance, as the case may be, shall appoint an administrative judge who is not in charge of such case file, to perform duties as a mediator by taking into consideration the knowledge, the expertise and the integrity of such administrative judge.*

[12] Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)

Section 62/2: The Administrative Courts have power to mediate cases as follows:

(1) cases involving a dispute in relation to an administrative agency or a State official neglecting official duties required by the law to be performed or performing such duties with unreasonable delay;

(2) cases involving a dispute in relation to a wrongful act or other liability of an administrative agency or a State official;

(3) cases involving a dispute in relation to an administrative contract;

(4) other cases as specified in the Order of General Assembly of Judges of the Supreme Administrative Court.

In cases of dispute mediation in paragraph one related to a dispute involving money or property, the Cabinet may designate rules for the administrative agencies or State officials who are the parties to be granted approval from the Ministry of Finance or other competent agencies.

[13] Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)

Section 66/4: At any time since a case is filed with the Administrative Courts until the date of the fact inquiry termination, the parties may jointly submit an application to the Court requesting the mediation or one of the parties may submit an application to mediate the disputes and the other party agrees thereto. In such case, if the chamber for trial and adjudication thinks fit and the President of the Supreme Administrative Court or the President of an Administrative Court of First Instance, as the case may be, so agrees, the Court shall carry out the mediation between the parties. For those parties who have not agreed to mediate the disputes, the Court may proceed with the trial.

When the chamber for trial and adjudication thinks fit to mediate the disputes and the parties agree thereto, the provisions under paragraph one shall apply mutatis mutandis.

[14] Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)

Section 66/1: An Administrative Court of First Instance shall have the competence to mediate the disputes in a case falling within its jurisdiction. And, the Supreme Administrative Court shall have the competence to mediate the disputes in case falling within its jurisdiction and being brought before the Supreme Administrative Court in the first instance.

[15] Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)

Section 66/3: Mediation shall be prohibited in the following cases:

(1) the mediation that violates the law or is expressly prohibited by the law;

(2) the mediation that involve public order or good morals;

(3) the mediation that affects the status of an individual person or has adverse impacts on public interest;

(4) the mediation that seriously affects the law enforcement;

(5) the mediation that is beyond the rights, authorities and duties, or capacities of the parties;

(6) the mediation that relates to the decision of a quasi-judicial commission under Section 11 (1)

(7) the mediation that relates to the decision of a quasi-judicial commission required by the law to be brought before the Supreme Administrative Court;

(8) the mediation that falls under other characteristics prescribed by the Rule of the General Assembly of Judges of the Supreme Administrative Court.

[16] Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)

Section 66/5: The mediation shall be expediently carried out within the time specified by an administrative judge acting as mediator, and without causing unreasonable delay to the trial and adjudication thereof.

[17] Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)

Section 66/8: The parties participating in mediation, administrative judge acting as mediator, the person concerned to mediation, or any other person shall be prohibited to disclose, refer to, or adduce as evidence in court proceedings or use for any other proceedings in any manner, the following matters:

(1) the requests or consent of the parties to participate in mediation;

(2) the opinions or suggestions of the parties relating to direction or procedure for dispute resolution in mediation;

(3) the acceptances or statements made by the parties in mediation;

(4) the facts presented by the parties in mediation;

(5) the document drawn up solely for the purpose of mediation.

Any other information in relation to mediation apart from those under paragraph one may be disclosed or referred to, as prescribed by the Rule of the General Assembly of Judges of the Supreme Administrative Court.

Any evidence used in mediation shall not be prohibited under the provision provided in paragraph one, if such evidences is admissible in arbitration process, court proceedings, or any other proceedings by virtue of the law.

The arbitrator, the Court, and administrative agency, nor any person shall be permissible to hear or make use of facts deriving from the violation of this Section.

[18] Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)

Section 66/11: An appeal against a judgment of an Administrative Court of First Instance in a case where the Court has rendered its judgment in favor of mediation on the case issues that have been completed, either in whole or in part, in accordance with Section 66/10 shall not be permissible, except on the following grounds:

(1) where there is an allegation of fraud against one of the parties;

(2) where the judgment is alleged to infringe a provision of law concerning public order and good morals;

(3) where the judgment is alleged not to be in accordance with the mediation agreement.

An appeal against a judgment of mediation shall be submitted to the Court that has passed the judgment within thirty days as from the date of passing the judgment.

[19] Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)

Section 66/10: In the case where the mediation has been successful and all the issues of case have been completely resolved, an Administrative Court shall render a judgment accordingly. In the case where the mediation has resolved only some issues of case, the Court shall take note of agreement as settled thereof, then continue the proceedings for unsettled issues, and render final judgment by incorporating the disputes that have been settled.

[20] Prof. Dr. Roland Fritz, Description of a photo taken from a flip-chart board: Photo no.24 –Rules of good mediator, Pages 41-44, Document distributed as a part of a lecture under the *Training Programme on Mediation of Administrative Case Disputes*, in the Federal Republic of Germany, during 25 August – 5 September 2014. The original flip chart sheets are kept as reference document at the Public Law Library, the Office of the Administrative Court.

[21] Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)

Section 66/6: The administrative judge acting as mediator in his or her place shall be neutral and impartial in the performance of duties.

Provision of Section 63 shall apply mutates mutandis to the challenge and the withdrawal of an administrative judge acting as mediator.

[22] These projects were operated by the Technical Committee on Environmental Law (currently terminated), chaired by Hon. Suchart Mongkonlertlop who is currently a President of the Government Administration Case Division of the Supreme Administrative Court.