



**Recommendation of the President of the Supreme Administrative Court  
on Administrative Court Procedure  
Relating to Environmental Issues<sup>1</sup>**

---

Whereas environmental problems impact on public interest and overall State administration, it is appropriate that an administrative court procedure relating to environmental issues be quickly established so as to provide timely prevention of adverse impacts that may occur to the ecology, society, and the economy as well as to provide effective reparations to injured or aggrieved parties.

By virtue of Article 28 of the *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999)*, Clauses 6 (5) and (6) and the *Rules of Judicial Commission of the Administrative Court on the Powers and Duties of the President of the Supreme Administrative Court and the President of the Administrative Court of First Instance, and Administrative Court Administration, B.E. 2544 (2001)*; the President of the Supreme Administrative Court hereby issues the following Recommendation:

**Clause 1.** In this Recommendation:

“An administrative case relating to an environmental issue” refers to disputes between government agencies, State agencies, State enterprises, local administrative organizations or organizations as stipulated in the Constitution or between State officials and private entities. It also refers to disputes between State officials, government agencies, State agencies, State enterprises, local government organizations, organizations as stipulated in the Constitution or between State officials themselves with such disputes deriving from the exercise of administrative authority or the carrying out of administrative activities according to environmental laws and laws relating to the protection or conservation of natural environment, plants, animals, or living things, including natural resource management, health care protection, management of environment, weather, landscape, arts and culture or other relevant laws and cases prescribed by the Notification of the President of the Supreme Administrative Court.

In the event that there is a question as to whether or not an administrative case is related to an environmental issue, the President of the Administrative Court of First Instance is empowered to make the decision for the Administrative Court of First Instance.

---

<sup>1</sup> Published in the Government Gazette, Vol. 128, Part 54a Page 18, dated 4 July B.E. 2554 (2011)

The President of the Supreme Administrative Court is empowered to make the decision for the Supreme Administrative Court.

**Clause 2.** In considering the completeness of a plaint in accordance with Section 45 of the *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999)*, the Court shall consider the following:

(1) The action constituting the cause of filing the plaint, including facts or behavior related to that action. If the facts are sufficient to understand that the plaintiff was affected, or may inevitably be affected, by that action, it can be held that this is sufficient to proceed with adjudication of the case;

(2) In regard to a request for the court to issue a court order because the administrative case relating to an environmental issue has special characteristics in terms of the redress for damages to a plaintiff which are different from a general administrative case, the request and the court order shall be considered to cover the following matters:

(a) Cost of damages to health such as cost of medical treatment, loss of family support, funeral expenses, compensation for physical incapacity, loss of earnings due to the inability to work, mental injury, medical expenses, or follow-up expenses after the date of filing a plaint;

(b) Cost of damages to natural resources and the environment such as expenses for restoration of natural resources and the environment as well as non-pecuniary damages such as the loss of ecosystem and natural resources;

(c) Cost of damages to the way of life of a community such as the loss of community identity or the loss of arts and culture.

If the request or court order is incomplete, the Court shall order the Plaintiffs to make corrections or explain the facts further, or question the Plaintiffs or the relevant agencies, depending on the situation, so as to correct the deficiencies in the plaint.

**Clause 3.** In an administrative case relating to an environmental issue which may affect public interest, consideration shall be given to persons who are aggrieved or injured, or may inevitably be aggrieved or injured, as having the right to file a plaint with the Administrative Courts. Consideration shall be broad and take into account community rights, traditional local community rights, rights of indigenous people, private organizations, associations, juristic persons, or interested groups which have been damaged by the environmental issue. Consideration should also be given to provisions of the Constitution regarding the liberty to unite and form an association, union, federation, co-operative, farmers' group, private organisation, non-governmental organisation or any other group.

In considering the time-limit for filing a plaint, the Court shall refer to the time for the submission of a plaint pursuant to Section 52 of Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).

In the event that an application is filed for an exemption from Court fees, the Court shall consider the impact on, or benefits to, the public; the status of the applicant who files a plaint for environmental remedies; or any undue difficulties an applicant may encounter without the exemption of Court fees pursuant to Section 45/1 of Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).

**Clause 4.** In an administrative case relating to an environmental issue which may affect public interest, whether present or future, the Court shall have the power to prescribe provisional remedial measures or means before the delivery of a judgment without any application made by the Plaintiff.

**Clause 5.** In the case where the Court prescribes provisional remedial measures or means before the delivery of a judgment to order an administrative agency or a State official to perform duties in accordance with the rules and procedure prescribed by the Court, the Court shall issue an order to a relevant Administrative Court Officer to monitor compliance with the Court's provisional remedial measures or means order, and to periodically report to the Court. If there is a violation of such provisional remedial measures or means order, the Court shall, as it thinks fit, have power to carry out such provisional remedial measures or means.

**Clause 6.** The Court shall impose guidelines for the rapid inquiry into facts and specify the issue regarding which the Defendant must submit a response, including the submission of relevant evidence for trial and adjudication. While the Defendant prepares the response, the Court has the authority to inquire into the facts and other relevant evidence, and to concurrently appoint experts, as deemed appropriate, to obtain opinions on any technical matters in connection with the case.

In appointing an expert, the Court shall consider the impartiality, knowledge, experience, and work experience of the expert, including the reliability of principles and theories proposed by the expert as well as any conflicts of interest.

**Clause 7.** For the purpose of expedient court proceedings without unreasonable delay, the Court shall grant permission, if necessary, to a Defendant who applies for an extension of the period given for submitting a response. In the case

where the facts are complicated, the Court shall extend the time for the Defendant to prepare a response as the Court thinks fit.

**Clause 8.** When the Defendant submits a response to the Court, if the facts inquired from the party or the Court are sufficient for trial and adjudication, the Court shall deliver a copy of the response together with relevant evidence to the Plaintiff, including a summary of facts and opinions for preparing a memorandum of the judge-rapporteur to the chamber for further consideration and proceedings.

**Clause 9.** In inquiries into facts relevant to proving cause and damages which are complicated and present technical difficulties, the Court shall consider the following matters:

(1) In the event that there is a claim for damages, in addition to hearing the facts and evidence presented by the Plaintiff, the Court may make further inquiries into the facts and evidence to determine fixed damages. In the case where the Court considers that there are actual damages without any explicit evidence, the Court shall have power to exercise its discretion to determine the lump sum damages as it deems appropriate according to the circumstances and the gravity of such acts;

(2) In the event that damages occur which the Court determines as future damages, the Court shall inquire into the facts for determining the compensation to be included in the judgment. An example would be a case in which an injured person is affected by radioactive pollution or other toxic substance and suffers from chronic illness, the Court shall determine the damages according to actual damage. In the case where no expert is appointed, the Court shall appoint an expert to assist the Court such as an occupational and environmental medicine specialist;

(3) In the event that damage occurs to natural resources, the Court shall appoint a specific expert to collect evidence regarding the cause of damage, damages of ecological loss, expenses on environmental restoration and clean-up of natural resources; including any measures for protection, reservation, preservation or restoration of natural resources for further trial and adjudication;

(4) In the event that damage arises from pollution, in determining the damages, the Court shall appoint an expert with specialized knowledge such as an expert in the field of noise and air or hazardous waste who may be an academic in an administrative agency, to assist the Court in determining the damages derived from pollution;

(5) In the inquiry into facts, if it appears to the Court that the damage occurring to the Plaintiff is more than that requested by the Plaintiff, the Court shall notify the Plaintiff regarding this issue.

**Clause 10.** In examining a disputed area, the Court shall proceed as follows:

(1) Before examination of the area, the Court shall make thorough plans for such examination. In the event that the situation changes after planning, the Court shall find an appropriate and reasonable solution. The Court shall proceed cautiously and maintain impartiality and equality so as to avoid any misunderstanding;

(2) In the event that the parties confront each other or a third party in a way which may give rise to violence or create a hindrance to the examination of the area, the Court shall order the Office of Administrative Court to coordinate with public authorities or police officers in advance so as to maintain public order in that area;

(3) Before examining an area, the Court shall notify the parties and any persons residing in the area that such an examination is under a Court order and shall require all such parties and persons to facilitate the proceeding and that any person obstructing such proceeding may be acting against the law;

(4) When the examination of the area is completed, the Court shall record the court procedures and any incidents occurring during the examination in the memorandum of proceedings.

**Clause 11.** The Court shall consider and give reasons for any claims, issues, or arguments which a party raises including establishing precedents on good governance, social norms, and the protection of public interest. The Court shall also be aware of impacts on the economy, society and the administration of State affairs, including the protection, preservation, conservation, or restoration of natural resources or the environment, sustainable development, future impacts on natural resources, the environment, life or health care and the rights of future generations.

**Clause 12.** The Court shall determine damages according to the facts of each case such as medical expenses or follow-up medical expenses since the date of filing the case, health damages, damages for the loss of earning due to the inability to work, future damages, mental damages or non-pecuniary damages, natural resource damages, clean-up of pollution expenses, damages for the restoration of natural resources, damages to community rights and way of life of the community. The Court may reserve judgment for future damages.

In the event that the Court decides that a person that is liable for an offence must restore the environment, the Court should set conditions in the judgment for that person to follow. Such conditions should be appropriate to the situation.

**Clause 13.** In the event that the Court issues an order, the Court shall consider whether or not the order should have retrospective or prospective effects. The Court shall take into account the effectiveness of remedies for the Plaintiff and the environment, including the prospective effects resulting from the judgment.

In the event that the Court orders an administrative agency or a State official to carry out an action, the Court shall explicitly prescribe a time-limit for the administrative agency or State official to perform such action. In addition, the Court shall take into account the severity of the impact on the environment and prescribe a reasonable time for the administrative agency or State official to carry out such action.

**Clause 14.** In the event that the Court reserves judgment in an order, if it appears to the Court during the time set by such order that facts upon which the reserved judgment was based arise or change, the Court shall inquire into those facts and may reconsider such reserved judgment.

**Clause 15.** In addition to what is set in this Recommendation, the Court shall reduce and quicken court proceedings and casework in order to bring cases to a speedy conclusion.

Given on the 29<sup>th</sup> Day of June B.E. 2554 (2011)

Hassavut Vititviriyakul  
Dr.iur. Hussavut Vititviriyakul  
President of the Supreme Administrative Court