



## Presentation form

*Name of the Court:* The Supreme Administrative Court of Thailand

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### 1. NATIONAL JUDICIAL ORGANISATION

#### 1.1. General presentation of the judicial organisation and position of the administrative jurisdictional order

The foundation of the Administrative Court was laid down in the late nineteenth century when the Council of State was first created in 1874. The Council of State was established to be responsible for advising the King on important state affairs and legislation, including assisting the King handling a complaint filed by the aggrieved people. After the Revolution in 1932, the Council of State was recreated as an administrative tribunal and legal advisory body of the Government. Later, the petition commission was set up in the Council of State to hear petitions submitted by the people aggrieved by actions of government officials. The committee would gather facts and evidence, and propose the appropriate recommendation to the Prime Minister to make a final order which would be binding on the concerned authorities. In 1997, the competence of handling administrative cases was shifted to the Administrative Courts of Thailand as stipulated by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Administrative Courts which were inaugurated on 9<sup>th</sup> March 2001 are an independent judicial organization separate from the Courts of Justice and other courts. The establishment of the Administrative Courts marked the introduction of the dual court system in Thailand whereby the Administrative Courts exercise judicial power in the administrative justice system distinct from the civil and criminal justice system under the jurisdiction of the Courts of Justice. The Administrative Courts have two levels; the Administrative Courts of First Instance and the Supreme Administrative Court. The Courts have the competence to try and adjudicate

administrative cases arising from the exercise of administrative power provided by law or from the carrying out of an administrative act, as provided by the law. The judicial review would guarantee that the rights and liberties of the people are not be deprived by the unlawful act of an administrative agency or a State official, under the principle of the Rule of Law. The Administrative Court procedure is inquisitorial which the Courts have a significant role in proceeding a trial and actively find the facts and evidence, not limited to facts or evidence adduced by the parties to the case. The inquisitorial system is used to ensure that cases will be fairly adjudicated by the Administrative Courts.

## **1.2. Key dates in the evolution of the administrative jurisdictional order and the control of administrative acts**

The Administrative Court was first established by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) as an independent judicial body separated from other courts to adjudicate administrative cases. The Supreme Administrative Court and the Central Administrative Court then were formally inaugurated on 9<sup>th</sup> March 2001. As of the year of 2019, there are 14 Regional Administrative Courts in operation. It has been 18 years since the Administrative Courts were established. As time passes, the Administrative Court provides not only an effective dispute adjudication mechanism, but its judgments also provide a reliable source of reference for all parties concerned. Unsurprisingly, the academic intensity in administrative law studies following the inauguration of the Administrative Court has been growing considerably. The following judgments of the Supreme Administrative Court offer an illumination of some aspects of administrative law that have come under scrutiny in recent times.

In the Supreme Administrative Court Judgment No. A.117/2548 decided in 2005, the plaintiffs were ethnic minorities residing in Mae Ai District. The District Chief of Mae Ai exercised his power under the National Act, B.E. 2508 (1965) and the Rule of the Central Registry on Civil Registrations, B.E. 2535 (1992) to grant the plaintiffs Thai Nationality, add their name to a housing register, and issue them identification cards. On 5<sup>th</sup> February 2002, the District Chief issued a notification expunging the record of persons including the plaintiffs in a registration database and annulling identification cards. The Supreme Administrative Court held that the notification issued by the District Chief to remove the name of persons including the plaintiffs from a housing register constituted an administrative order which had an effect on the status, rights and obligations of the persons concerned on a permanent basis. The persons' names were removed from the house record, their Thai citizenship was revoked, and they had to return their identification card. Prior to issuing the notification, an official must inform the concerned parties of sufficient facts and afford them with an opportunity to object and present evidence, pursuant to the Administrative Procedures Act, B.E.2539 (1996). However, the District Chief failed to follow the procedure prescribed by the Act so the order issued by the District Chief was unlawful and shall be revoked.

In January 2012, the Supreme Administrative Court ruled against the Department of Pollution Control to remedy Karen villagers who suffered from lead contamination in Klity creek in the Supreme Administrative Court Judgment No. A.743/2555. Lead Concentrates (Thailand) Co. illegally discharged contaminated water from a factory to the Klity Creek; as a result, the plaintiffs were not able to use water because the Klity Creek was contaminated by lead. Although, the factory was closed, the Department of Pollution Control did not clean up and rehabilitate the polluted Klity Creek. The Court found that the Department mishandled Klity Creek incident by rehabilitating the creek with unreasonably delay and delaying the construction of a dyke to block lead-contaminated sediment from spreading so harmful pollution spread into the environment and affected nearby residents. The Court ordered the Department to pay compensation to 22 Karen villagers, set up a plan, and improve environmental quality in the Klity Village by testing lead levels in the water, creek sediment, plant and fish until the lead levels in the water did not exceed the standard levels at least one year and publicising the result of the test at the office of the village headman.

### **1.3. Criteria of competence of the administrative jurisdiction**

The Administrative Courts have two levels: Administrative Courts of First Instance and the Supreme Administrative Court.

The Administrative Courts of First Instance have the competence to try and adjudicate cases involving a dispute over an unlawful act of an administrative agency or a State official (issuing a rule or and order, or performing other acts), a dispute over the failure of an administrative agency or a State official to perform an official duty or the delay of performing the duty, a dispute over a wrongful act or other liability of an administrative agency or a State official, a dispute over an administrative contract, cases where an administrative agency or a State official is required to submit to the Court to mandate a person to act or restraint an act, and other cases as prescribed by the law.

The Supreme Administrative Court has a jurisdiction over cases involving a dispute over a decision of a quasi-judicial commission as prescribed by the General Assembly of the Judges of the Supreme Administrative Court, a dispute over the legality of a Royal Decree or by-law issued by the Council of Ministers or with the approval of the Council of ministers, other cases as prescribed by the law, and cases appealed against a judgment or an order of an Administrative Court of First Instance.

## **2. ORGANISATION OF THE ADMINISTRATIVE JURISDICTIONAL ORDER**

### **2.1. Key founding texts**

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

## 2.2. Organisation and competence of the administrative jurisdiction

### 2.2.1. General organisation of the administrative jurisdictional order

*Is administrative justice rendered by specialized courts or by specialized chambers set within jurisdictions with a general competence? Does the administrative jurisdiction include several levels of jurisdiction (first instance, appeal, cassation)? Are there specialized administrative courts?*

The Administrative Courts are an independent judicial body separate from the Courts of Justice. They have jurisdiction to adjudicate administrative cases as prescribed by the law. They are divided into two levels: Administrative Courts of First Instance (the Central Administrative Court and Regional Administrative Courts) and the Supreme Administrative Courts. There is no specialized administrative court in Thailand.

### 2.2.2. Internal organisation of administrative courts and composition of the bench of judges

*Are administrative courts organized in chambers or divisions? Are these chambers or divisions specialized? Are there several degrees of formation of the court (single judge, collegiate panels with three, five ... judges, full court)?*

The Administrative Courts are organized in divisions. There are 2 specialized divisions in the Administrative Courts of First Instance: Environmental Divisions, and Personnel Administration Divisions. The Supreme Administrative Court has 5 specialized divisions as follows:

1. Environmental Divisions;
2. Personnel Administration Divisions;
3. Budgetary and Financial Discipline Divisions;
4. Public Administration Division; and
5. Wrongful Acts and Other Liabilities Division

In the Administrative Courts of First Instance, at least three judges constitute a quorum for trial and adjudication. While, at least five judges form a quorum for trial and adjudication in the Supreme Administrative Court.

### 2.2.3. Do administrative courts have advisory powers (advice to the administration, government, parliament, etc.)?

The Administrative Courts have no advisory powers.

### 2.2.4. Tools and documentary resources available to judges

There is an intranet system providing resources available to judges, apart from the Court's Public Law Library which is well known for its important and diverse collections.

### 2.3. Status of administrative judges

*How is the recruitment of judges organised (competitive exam, political appointment, peer election...)? What are their statutory guarantees while in office, particularly in terms of independence?*

The recruitment of judges of the Administrative Courts of First Instance is organised by a highly competitive exam. The Judicial Commission of the Administrative Courts would select qualified candidates who pass an exam and an interview and whose five pieces of document demonstrating work experience, academic papers, or researches are approved, to be appointed as a judge of the Administrative Courts of First Instance. A list of those nominated would be submitted to the Prime Minister who will tender it to the King for royal appointment. While, the judges of the Supreme Administrative Court are appointed either by the promotion of judges of the Administrative Court of First Instance or by the nomination of a person who is not an administrative judge and suitable for a position to be appointed as a judge of the Supreme Administrative Court. The selected person would be appointed if the Senate grants an approval. Upon the approval, the Prime Minister will tender the list to the King for royal appointment.

The Judicial Commission of the Administrative Court was created by the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) to be responsible for the management of judges' appointments, assignments and transfers and for the consideration of disciplinary actions. The formation of the J.C.A.C would guarantee administrative judges' independence towards the Executive branch of Government since the administrative judges would be removed from his or her office or be expelled merely by a resolution of J.C.A.C.

## 3. PROCEDURAL RULES BEFORE ADMINISTRATIVE COURTS

### 3.1. Types of plea

*What kind of petition may applicants file before administrative courts? May applicants only request the invalidation of an administrative act? May administrative courts rule on compensatory claims?*

Applicants may file a plaint with the Administrative Courts requesting the Courts to invalidate an unlawful administrative act if an administrative agency or a State official is accused of unlawfully issuing a by-law or an order, or perform or restraint an act. The applicants may also request the Courts to compel an administrative agency or a State official to perform a function when they are accused of neglecting a duty or performing a duty with unreasonable delay. The Courts do not only have power to invalid an unlawful act or compel the administrative agency or a State official to perform a duty but the Courts also have power to rule on compensatory claims in a dispute over the wrongful act or other liability of an administrative agency or a State official, or an administrative contract.

### 3.2. Emergency procedures

*Are there any emergency procedures available before administrative courts? In the affirmative, do they cover the whole field of administrative law or do they concern only specific areas of administrative action (individual freedoms, public procurement, etc.)?*

The emergency procedures are available before the administrative courts as prescribed in the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999). When a plaintiff filed a case with the Court requesting for invalidation of a by-law or an order, the by-law or the order was not immediately suspended. However, the plaintiff may request in the plaint or submit an application to the Courts for suspending the execution of a by-law or order provisionally pending the trial of the Courts at any time before the Courts deliver a judgment or issue an order disposing of the case. Additionally, a plaintiff may request the Courts at any time before the Courts deliver a judgment or issue an order disposing of the case to prescribe a provisional remedial measure or means before the delivery of judgment or a means for the protection of his or her benefits pending the trial of the Court or for the purpose of execution of a judgment in any cases other than the dispute over the revocation of a by-law or order.

### 3.3. Procedural principles before administrative courts

*What are the rules governing the conduct of litigation before administrative courts? What are the guarantees offered to litigants? What are the principles governing the relationship between judges and litigants?*

The Administrative Court procedure is prescribed in the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) and the Rule of the General Assembly of Judges of the Supreme Administrative Court, B.E. 2543 (2000). The Administrative Courts have power to adjudicate cases under an inquisitorial system, according to clause 5 of the Rule of the General Assembly of Judges of the Supreme Administrative Court. It is the system where the Court actively finds the facts to determine a case and has a significant role in the Court proceeding. The inquisitorial system is a unique characteristic of administrative court proceedings. This system is used because one of the parties is an administrative agency or State official exercising administrative power and usually most of the documentary evidence is in the possession of the administrative agency or State official. The other party is therefore at a disadvantage in trial and adjudication. The Administrative Courts play the important role of gathering the facts and relevant evidence which is not limited to the evidence presented by the parties. Moreover, the Courts play a significant role in managing the proceedings. The parties to the case merely assist the Courts in the finding of facts. Other than the application of the relevant provisions of laws, the Administrative Courts also determine the scope of issues in dispute. The parties may make suggestions, but the Courts hold the final say in the direction of the proceedings. The Courts may summon a person to give evidence which was not adduced by the parties. This enables the Courts to discover the detailed truth on all issues, so as to pass a judgment that takes into account all relevant considerations, especially, where the

balance of public and private interests is at stake. The proceedings mostly are conducted through written statements and presentations. The examination or interrogation of oral evidence before the Court is limited.

With these expansive powers, however, there comes a stringent system of checks and balances. A Judge-Rapporteur is required to compile the facts of the case and present his or her opinion to the chamber and a Judge-Commissioner of Justice. The Judge-Commissioner of Justice adds another dimension to the proceedings by performing his or her own assessment of facts and forming an independent opinion which is subsequently presented to the judges in the chamber before judgment. This opinion offers another perspective to the case and aids in the deliberations of the judges. Although not binding, a powerful opinion structured on firm legal reasoning and supported by clear and incontrovertible precedent would be highly persuasive. Departing from such an opinion would require the chamber of judges to come up with an even more persuasive and respectable argument, since both opinions would be published for examination by the public. These mechanisms ensure that administrative justice is fairly and efficiently delivered to the public. The trust and confidence of the public in the administrative justice system in turn promotes an effective modernization of administrative law in Thailand.

The judicial independence is the principle governing the relationship between judges and litigants. Administrative judges are independent and impartial as they are protected from interference of the Executive branch of Government. They shall be removed from his or her office or be expelled merely by a resolution of the Judicial Commission of the Administrative Court.

### **3.4. Reference standards for the control exercised by administrative judges**

*In relation to which norm (regulations, laws, international conventions, constitution ...) do administrative judges control administrative acts? Are they competent to control the conformity of laws and regulations with the Constitution (constitutional judicial review)? Are they competent to control the conformity of laws and regulations with international treaties (judicial review of international law)?*

The Administrative judges have power to review the legality of administrative acts conducted under the law including by-laws, acts, the Constitution, and non-written laws, such as customs or general principles of law. The judges are also competent to review the legality of by-laws – a royal decree, a ministerial regulation, a notification of a ministry, an ordinance of a local administration, a rule, and a regulation – with the Constitution.

### **3.5. Scope and nature of administrative judicial review**

*May administrative judges control all acts taken by the administration? Are certain acts exempted from this control?*

The Administrative Courts of First Instance have power to review the act of an administrative agency or a State official carried out under the law, such as the issuance of a by-law or an order, the performance or restraint of other acts, the failure to perform duties

mandated by the law or perform the duties with unreasonable delay, and a wrongful act or other liability. In addition, the Administrative Courts have power to resolve a dispute arising from an administrative contract. While, the Supreme Administrative Court has power to review the decision of a quasi-judicial commission, and the legality of a Royal Decree or a by-law issued by or with the consent of the Council of Ministers. However, some acts of an administrative agency or a State official which are considered as an administrative act may not be reviewed by the Administrative Courts as specified in the Act on Establishment of Administrative Courts and Administrative Court Procedure – the action concerning military disciplines, the action of the Judicial Commission under the law on judicial service, or the action which falls within the jurisdiction of the Juvenile and Family Courts, Labour Courts, Tax Courts, Intellectual Property and International Trade Courts, Bankruptcy Courts or other specialised Courts. Other than the unreviewable acts prescribed by the law, there are acts that are exempted from the Court's control, the act of government and an administrative measure, for instance.

*Which degree of control is used by administrative judges? Does this degree of control vary according to the nature of the challenged act and/or the margin of appreciation left to the administration?*

The degree of control used by administrative judges varies according to the nature of the challenged act. The judges have power to review the legality of administrative acts whether the issuance of a by-law or an order, or action or omission of act is lawful. They also are able to determine whether an administrative agency or a State official wrongfully acts, is liable under the laws, or neglects a duty or performs a duty with unreasonable delay. While, a dispute arising from an administrative contract, the judges have power solely to solve the dispute between an administrative agency and a private individual who is a contracting party.

Under the principle of the separation of power, the Administrative Courts as a judicial branch shall not aggrandise their power by directly exercising executive power so they are not able to substitute its analysis to amend administrative acts. However, the Courts may give remarks on the direction or the procedure for the execution of the judgment.

### **3.6. Dissident opinions**

*When judges disagree with a ruling, are they allowed to express a dissenting opinion? In the affirmative, may they express it in all cases?*

A judgment or an order is made by the majority opinion of judges in the Chamber, except some orders can to be issued by one judge. When a judgment or an order of the Supreme Administrative Court or of the Administrative Court of First Instance Court is given by several judges, the judge who disagrees with the majority opinion may write a dissenting opinion to express his or her opinion in the judgment or the order.

### 3.7. Alternative methods of dispute resolution

*Are there alternative dispute resolution methods? Please specify.*

According to the Act on Establishment of the Administrative Courts and Administrative Court Procedure B.E.2542 (1999) which is recently amended, the Administrative Courts have power to resolve a dispute by mediation in the case involving a dispute in relation to an administrative agency or a State official neglects official duty required by the law to be performed or performs such duties with unreasonable delay, a wrongful act or other liability of an administrative agency or a State official arising from the exercise of power under the law or from a 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, an administrative contract, and other cases as prescribed by the Rule of the General Assembly of Judges of the Supreme Administrative Court.

The parties or one party with another party's consent may file a request for mediation to the Court any time from the date of filing a case with the Court until the date of fact inquiry termination. The Court may also initiate mediation with the consent of the parties. The judge who is not involved with a case would be assigned as a mediator.

If a dispute in the case is settled, the Court would render judgment according to the result of the mediation. If the parties settled a dispute in part, the Court would write down the terms agreed in the mediation in a memorandum of court proceedings and continue to adjudicate an unsettled dispute and then give a judgment over the unsolved dispute with the solved dispute. If the parties do not agree to the mediation or the mediation is unsuccessful, a court proceeding would be continued.

### 3.8. Digitised procedures

*Is there a specific digital procedure for the submission of claims?*

The Act of Establishment of the Administrative Courts and Administrative Court Procedure B.E. 2542 (1999) provides that a plaint may be submitted by an electronic mail, other digital media, or fax. The specific digital procedure of claim filing is specified in the Rule of the General Assembly of Judges of the Supreme Administrative Court on the Electronic Administrative Court Procedure, B.E. 2562 (2019). If a plaintiff files a case with the Administrative Court by an electronic mail or other digital media, he or she has to submit a plaint through an electronic ligation system which the Administrative Courts have recently launched, the plaintiff can submit the plaint in or out of the office hours of the Administrative Courts. If the plaint was filed with the Court out of the officer hours, the next office day after the plaint submission is deemed as the date of submission of the plaint. A plaintiff may also submit a plaint to the Court by fax to a number provided by the Court. The Plaintiff has to send an original copy of a plaint to an administrative court official as soon as possible after he or she has filed a plaint by fax. The date shown in a fax receipt is deemed as the date of submission of the plaint

#### **4. EFFECTS AND EXECUTION OF JUDGMENTS**

##### **4.1. Powers of administrative judges**

*May judges amend administrative acts by substituting their own analysis to that of the administration or may they only invalidate them? May they compel the administration to act in a specific way (power of injunction, penalties)?*

Judges have power to revoke a by-law or an order, or to order the restraint of an act. In a judgment, they may prescribe the effect of the invalidity of administrative acts to be retrospective or non-retrospective or prospective to any particular time, or any conditions. The judges may also give remarks on the direction or the procedure for the execution of the judgment. However, they have no power to amend the administrative acts by substituting their own analysis.

If the Administrative Court finds that an administrative agency or a State official fails to correctly or completely comply with the decree of the Administrative Court, or complies with the decree with unreasonable delay, the Court may impose an administrative fine, not exceeding fifty thousand baht in each time, on the administrative agency or the State official. If the State official fails to pay the fine, the Courts may issue an execution order against the State official's properties.

##### **4.2. Impact and authority of administrative judgements**

*To whom do decisions rendered by administrative judges apply (absolute effect – erga omnes - of res judicata, relative effect of res judicata)? What criterion is used to choose between these two options?*

A judgment or an order of the Court is generally binding on the parties involved in the case. However, some judgments or orders are binding on third persons; an eviction judgment or order is applicable to dependents dwelling in a place, a declaratory judgment or order confirming a status or capacity of a person or juristic person, or rights in a property is enforceable against a third person. In addition, a guarantor is also bound to a judgment or an order in the case where the guarantor provided a guarantee as required by a judgment or an order.

In case where the Administrative Court delivers a judgment revoking a by-law, the judgment is binding on the parties to the case, but the law requires the judgment to be published in the Government Gazette so that the revocation of the by-law will be publicly in effect on the day the judgment is published in the Government Gazette.

##### **4.3. Appeals**

*May rulings of administrative courts be challenged? What is the time limit for appeal? Before which authorities / jurisdictions can these rulings be challenged?*

A judgment or an order of the Administrative Courts of First Instance may be appealed. The appeal has to be submitted to the Administrative Court of First Instance that has made the judgment or the order within thirty days as from the date of delivering the judgment or the order.

## **5. STATISTICS**

### **5.1. Number of cases and time taken to judge cases (over the last 5 years)**

According to 2018 case statistics, 137,778 cases were submitted during calendar year 2017. Of these, 115,574 cases (83.88%) were completed: 86,906 cases (88.58%) were tried at the Administrative Courts of First Instance and 28,668 cases (72.28%) at the Supreme Administrative Court. In 2017, a total of 10,412 cases were tried and adjudicated. During the previous 5 years (2012 - 2016), the two levels of the Administrative Court averaged 9,963 cases per year.

### **5.2. Number of administrative judges**

43 judges of the Supreme Administrative Court  
184 judges of the Administrative Courts of First Instance

### **5.3. Economic and financial data (budget, etc.)**

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