SUPREME ADMINISTRATIVE COURT OF THAILAND

QUESTIONNAIRE

Seminar – September 23th, 2014

HOW TO REDUCE THE JUDGMENT PERIOD?

1) Acceleration of trials by the procedural rules period

1.1) Once the petition has been introduced, is there a period during which parties (plaintiff, defendant or third parties) are expected to present their observations? If so, how is this period set? What kind of penalties may a party see imposed in case of non-respect of an assigned period?

Once the petition or a plaint had been filed to the court, an administrative judge is entrusted by the chamber to be the judge-rapporteur performing the duties to examine and give his or her opinion on fact and legal issues for supplementing the consideration of the case. The judge-rapporteur shall exercise power to inquire the fact issue and the procedure in relation to the inquiry of fact in accordance with Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) and Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000).

According to the aforementioned law, ***there are four processes under fact finding process from the party's documents (the plaint, the answer, the objection to the answer and the supplementary answer)*** The judge-rapporteur shall examine a plaint and if is of the opinion that the plaint is complete and correct, the judge-rapporteur shall issue an order accepting it and instructing the defendant to prepare an answer[1]. Within thirty days or the period of time specified by the Court, a defendant shall submit an answer and evidence together with their copies to the Court.[2] The defendant may make a counter-

[1] **Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000)**

Clause 42 "when the judge-rapporteur is of the opinion that a plaint is complete and correct, he or she shall issue an order accepting it and instructing the defendant to prepare an answer. In this instance, a copy of the plaint and copies of evidence shall also be served. In the case where it is considered appropriate, the issue on which the defendant must answer may also be determined or the service may also be made of evidence relevant to or useful for the trial of the Court, except for the case prescribed under Clause 61.

....."

[2] **Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000)**

Clause 43 "the defendant shall submit an answer in a clear manner and with indications of the denial and admittance of the allegations in the plaint; the relief sought in a request attached to the plaint and the reasons

claim in the answer. ***In the case where the defendant fails to submit to the Court an answer as well as evidence within the specified period of time, it shall be deemed that the defendant has admitted the facts as stated in the allegation by the plaintiff, and the Court shall proceed with the trial and adjudication of the case as it deems just.***

When the defendant submitted the answer, the Court shall furnish a copy of the answer together with a copy of evidence to the plaintiff for the purpose of the plaintiff's objection to, or admittance of, the answer and the evidence submitted to the Court by the defendant within thirty days or the period of time specified by the Court.[3] ***In the case where the plaintiff fails to prepare an objection to the answer and notify it in writing to the Court to proceed with the trial and adjudication of the case within such period of time, the Court may issue an order striking the case out of the case-list in which is Court's discretion to proceed the said action.*** However, the Court shall exercise discretionary power in accordance to Principle of Suitability and Principle of Necessity together with the plaintiff's intent that whether he or she fails to comply with Court' order or abandon legal case on purpose.

The objection to the answer submitted by the plaintiff may be made only in respect of the issues as invoked in the plaint or the answer or as determined by the Court. When the objection to the answer is submitted, the Court shall serve on the defendant a copy of the plaintiff's objection to the answer, for the purpose of submitting to the Court a supplementary answer, within fifteen days or within the period of time specified by the Court. Upon of the lapse of such period of time or upon the submission of the supplementary answer by the defendant, the judge in charge of the case shall have the power to prepare a memorandum and submit it to the chamber for further consideration.

1.2) Are interventions of third parties in trial in a particular framework?

A third parties can becoming a party to the case by way of interpleading, whether voluntarily or being summoned by the Court to appear in the case by reason of being an interested person or a person likely to be

---

therefor and shall furnish evidence as determined by the judge-rapporteur. In this connection, there shall be prepared and furnished together with the answer one certified copy, or such number of certified copies as determined by the judge-rapporteur, of the said answer or evidence. This shall be done within thirty days as from the date of receipt of the copy of the plaint or within the period of time specified by the Court."

[3] **Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000)**

Clause 47 "If the plaintiff wishes to raise an objection to the answer, an objection to the answer shall be prepared it and submitted to the Court together with one copy, or such number of copies as determined by the Court, of the objection, Within thirty days as from the date of receipt of the copy of the answer or within the period of time specified by the Court.

....."

affected by the outcome of the case. Clause 78 of the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000).provided that a third person who is not a party to the case may become a party by way of interpleading and, in this instance, the provisions of article 57 and article 58 of the Civil Procedure Code shall apply *mutatis mutandis*.

Under section 57 of the Civil Procedure Code, any third person may become a party by way of interpleading of his own motion, when it is necessary for the acknowledgement, protection, or enforcement of a right enjoyed by him or when he has a legal interest in the result of a case; or by being summoned to appear in the case: (i) on the application of any party by a motion showing that he may sue, or be sued, by such party by virtue of a right of recourse, or of a right to compensation in case the judgment is given against such party; or (ii) by an order of the court when it thinks fit, or upon the application of any party, in the case where the appearance of the third person is required by law, or is deemed necessary by the court in the interests of justice.

1.3) *Can the judge rule on a petition in the absence of a motion by the defence? If so, does the defendant dispose of the specific possibility of a plea?*

Normally, there are four processes under fact finding process. However, ***if the Court is of the opinion that it is not necessary to complete every process of the fact finding (such as, clear, undisputed or undeniable fact) it may skip some processes.*** When the judge-rapporteur has considered the facts from the plaint, the answer, the explanations of the parties and the other facts obtained by the Court and is of the opinion that the facts are sufficient for the Court to deliver a judgment and the judge-rapporteur is of the opinion that such case can be adjudicated on the basis of facts in the plaint without the need for any subsequent fact finding (whether the four processes have been completed or not), the judge-rapporteur shall have the power to prepare the judge's memorandum of the conclusion of facts, the issues and the opinions on which decisions must be given together with the file of the case for submission to the chamber for further consideration and proceedings.[4] In the memorandum, the judge in charge of the case shall present his opinions on the direction in which the case shall be adjudicated.

The plea to the judgment can be done in two types, normal appeal process and the request for retrial. An appeal of a judgment or an order shall be submitted to the Court of First Instance that has passed the judgment or the order within 30 day as from its passing date. If no appeal is submitted

[4] Clause 60 of the **Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000)**

within such period of time, that case shall be deemed final (Section 73 paragraph one of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)).

As for the request for retrial, In the case where the Administrative Court has passed a judgment or issued an order disposing of an administrative case, the party or a third person who may be affected by the result of the case may file an application to the Administrative Court for a new trial and judgment or for issuing a new order disposing of the case in the following circumstances:

(1) The Administrative Court erred in hearing facts or there appears fresh evidence which may result in material alteration of the finally heard facts

(2) The real party or the third person did not appear in the proceedings or appeared but was unreasonably refused an opportunity to participate in the proceedings;

(3) There occurred in the process of trial and judgment a material impropriety which results in an unfair result of the case;

(4) The judgment or order has been passed or issued in reliance on any facts or law and subsequent material alteration of such facts or law results in the judgment order being contrary to the law then in force.[5]

1.4) Do practicable rules in terms of procedural period vary depending on whether parties are represented or not by barrister?

Representing by a barrister or not, the parties shall be govern with the same procedural rules, which the inquisitorial procedure is employed by the Administrative Court. Under the inquisitorial procedure, the fact-finding undertaking belongs to the judge (or so called Judge-Rapporteur) so as to

[5] **Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)**

Article 75 "In the case where the Administrative Court has passed a judgment or issued an order disposing of an administrative case, the party or a third person who is interested or who may be affected by the result of the case may file an application to the Administrative Court for a new trial and judgment or for issuing a new order disposing of the case in the following circumstances:

(1) the Administrative Court erred in hearing facts or there appears fresh evidence which may result in material alteration of the finally heard facts;

(2) the real party or the third person did not appear in the proceedings or appeared but was unreasonably refused an opportunity to participate in the proceedings;

(3) there occurred in the process of trial and judgment a material impropriety which results in an unfair result of the case;

(4) the judgment or order has been passed or issued in reliance on any facts or law and subsequent material alteration of such facts or law results in the judgment or order being contrary to the law then in force.

The application under paragraph one may be submitted only when the party or third person has, without fault, no knowledge of such circumstance in the previous hearing.

The application for a new trial or for a new order shall be submitted within ninety days as from the day such person has known or should have known of the ground for the new trial and judgment or for the new order but not later than five years as from the Administrative Court having the judgment or disposing order."

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. Moreover, 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. Hence, lawyers are not exactly required.

1.5) Regarding expertise, are there specific rules?

Clause 55 paragraph one of Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000) provides that the Court shall have the power to appoint an expert for studying, examining or analyzing any matter in connection with the case, provided that it is not the determination of a question of law, and then preparing a report or giving statements to the Court together with Clause 6 last paragraph of Recommendation of the President of Supreme Administrative Court on Administrative Case Proceeding concerning Environmental Issue provides that to appoint an expert, the Court shall take these qualification into account as follows; impartiality knowledge, experience, working record and principle and theory expert presents together with conflict of interest of such expert.

2) Trial acceleration in cases of emergency

2.1) Are there any procedures in order to shorten preliminary inquiry periods? If so, in which cases do specific procedural rules apply? Does the Judge have the possibility to consider whether these rules should be applied or not?

The inquisitorial procedures encourage an active role of the Administrative Judge in managing and controlling cases once issued. For example, the Administrative Judge has power on a determination of issues, a determination of defendant and a determination of decrees. Or if the Judge-Rapporteur is of the opinion that it is not necessary to complete every process of the fact finding (such as, clear, undisputed or undeniable fact) it may skip some processes. It cannot be denied that an Administrative Judge plays an important role on the control of 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.

2.2) *Is the judgment in certain litigation submitted to specific periods? If so, what is the type of litigation and the periods set? In cases of non-respect of these periods by the judge, what are the consequences for the outcome of the judgment?*

Thai legal system has no particular administrative procedure law. Therefore, administrative procedure law shall apply uniformly to every kind of dispute. Nonetheless, the President of the Supreme Administrative Court has announced Recommendation of the President of the Supreme Administrative Court on Administrative Court Proceeding concerning Environmental Issue. This is the guideline in the administrative proceedings with environmental case systematically. It consists of the conditions to file a case on the environment, the temporarily provisional remedial methods before delivery of judgment, the inquiry of facts in the trial, the judgment and reason in the judgment, as well as the enforcement or damages in the judgment to be consistent and appropriate for the case ruled on the administrative case relating to environment which required a fast path in ruling.

2.3) Can a case be judged by one judge, without public hearing, without intervention of the consultant judge or the public prosecutor and/or without a prior contradictory procedure? If so, how is the use of these techniques assessed? Is this choice questionable through the introduction of an appeal, a cassation or any other procedural option?

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

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.

Though the inquisitorial procedures encourage an active role of the Administrative Judge in managing and controlling cases and confer a lot of discretional power to judges, the procedure as stated in procedure law and regulation is strictly complied with. Judges in the administrative court shall conduct the procedure as the law prescribed; unless the law explicitly stated that such procedure is the discretion of the court (see 1.3).

3) Acceleration of the definitive ruling on the litigation

3.1) Are the possibities of a plea against jurisdictional decisions uniform or variable according to the kind of dispute or to its importance? What are the reasons justifying that a dispute cannot benefit from the possibilities of a plea as others?

As stated in 2.2, Thai legal system has no particular administrative procedure law. Therefore, administrative procedure law shall apply uniformly to all kind of dispute. If a party is not satisfied with the judgment or order of the Administrative Courts of First Instance, one can appeal to the Supreme Administrative Court within thirty days as from the date of passing the judgment or issuing the order. The appeal shall be submitted to the Administrative Courts of First Instance having passed the judgment or having issued the order[6]. The competent official of the Court shall conduct an examination of the appeal before the judge-rapporteur shall reexamine the appeal. If the judge-rapporteur is of the opinion that the appeal is complete, the appeal shall be submitted to the Supreme Administrative Court for trial in the same aspects as the Administrative Courts of First Instance's proceedings. The fact finding proceedings, however, shall be curtailed because it is unnecessary to proceed in four processes like the one done in the Administrative Courts of First Instance; merely two processes, namely considering from an appeal and an amendment of the appeal may conclude the case file, if the judge in charge of the case is of the opinion that the fact of the case is sufficient for the Court to try and adjudicate or to issue an order on the appeal. Afterwards, the hearing and the statement of the judge who makes the conclusion shall be conducted. *However, if it appears that questions of*

[6] **Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)**

Article 73 "An appeal against a judgment or an order of an Administrative Court of First Instance shall be submitted to the Administrative Court of First Instance that has passed the judgment or issued the order within thirty days as from the date of passing the judgment or issuing the order. If no appeal is submitted within such period of time, that case shall be deemed final.

The judgment or order under paragraph one shall include an order in connection with contempt of court or any other order which has the effect of disposing of the case.

In the case where the Supreme Administrative Court is of the opinion that an appeal contains insignificant questions of facts or questions of law determination, which are inappropriate, the Supreme Administrative Court may reject that appeal.

The judgment or order of the Supreme Administrative Court shall become final."

fact or questions of law are insufficient for adjudication, the Supreme Administrative Court shall have the power to reject that appeal for trial as well.

3.2) In case of annulment of the contested jurisdictional decision, does the judge of appeal or of cassation have the possibility or the obligation to solve the content of the dispute? In order to do this, does he/she have the possibility of ordering further measures of inquiry?

The Supreme Administrative Court has the power to retry the case in whole or in part and deliver a new judgment or an order, or conduct in accordance with the determination by the Supreme Administrative Court and deliver a judgment and an order in accordance with the nature of the case. It has the power to dismiss, affirm, return, and amend the judgment or order of the Administrative Courts of First Instance. Also, it shall dismiss the judgment or the order of the Administrative Courts of First Instance and put the file of the case to the Administrative Court of First Instance for delivering a new judgment or order.

4) Mechanisms for compensating the effects of the incompressible duration of jurisdictional procedures.

4.1) Are there any procedures allowing one judge or a college of judges to take the measures esteemed necessary in order to safeguard the interests of the parties pending the judgment on the content? Do these rules apply uniformly in the event of appeal or cassation?

The law has provided ***"interim relief measures"*** as a key mechanism that the administrative court may use to protect rights or to stop, prevent or relieve an expansion of damage, or to prevent the public interest from any damage before the court's adjudication. ***The Court in both instances has uniform inherent power to issue orders on its own initiative.*** A provision regarding the prescription of interim relief measures in administrative cases is provided in Article 66 of the Act on the Establishment of Administrative Court and Administrative Court Procedures B.E. 2542 (1999), which empowers the administrative court to prescribe any measures or methods to relieve any damage to relevant parties for a temporary period of time before the court's adjudication, regardless of whether there is any petition from any of such parties, and to render orders to relevant administrative entities or state officials for specific performances. Rules and procedures concerning the prescription of interim relief measures are prescribed by Clauses 69 to 77 of the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure B.E. 2543 (2000), which categorizes interim

relief measures into two measures namely, a suspension of execution of by-laws or administrative orders and provisional remedy

An order refusing to accept or dismissing the application for interim relief measures of the parties shall be final. However, if the Court issued interim relief measures, the stake holder has the right to appeal to the Supreme Administrative Court against such order; within thirty days as from the date such person has been notified or known of the Court's order.[7]

4.2) Do procedural rules allow one judge or a college of judges to pronounce judgment in a case, provisionally and rapidly, without this requiring a procedure for pronouncement on the content?

The filing of a case to the Administrative Court for the purpose of the revocation of a by-law or an administrative order does not constitute a ground for suspending the execution of such by-law or administrative order. The suspension of the execution of by-laws or administrative orders has a strict condition in considering more than provisional remedy. The Court shall order to suspend the execution of by-laws or administrative orders if the following three conditions are met: (1) a by-law or an administrative order which gives rise to the filing of the case is possibly unlawful, (2) the continued application of such by-law or administrative order will subsequently result in grave injury which is difficult to be remedied (3) the suspension of the execution thereof does not constitute any barrier to the administration of the state affairs or to public services. An order in connection with an application for ***the suspension of the execution of a by-law or an administrative order shall be issued by the chamber after the judge-commissioner of justice has presented his or her statement***[8]. If the court has rendered an order for suspension of execution under administrative rules or orders, it will result in a temporary delay or stay of enforcement under the administrative rules or orders.

Apart from the suspension of execution, the Administrative Court also have provisional remedy measures which are supplemental measures applied with other cases that the damage is not caused by administrative rules or orders for the purpose of temporary relief or protection of a party's interest. Under Clause 77 of the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure provides that the provisions under Category 1 of Division 4 of the Civil Procedure Code

---

[7] Clause 73 and Clause 76 of the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000)

[8] **Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000)**

Clause 72 "An order in connection with an application for the suspension of the execution of a by-law or an administrative order shall be issued by the chamber after the judge-commissioner of justice has presented his or her statement

……."

shall apply *mutatis mutandis* to the rules for the motion consideration, conditions of the court's issuance of order, and results of an interim relief order for any protective measure or an provisional remedy to protect a party's interest or for the enforcement of judgment as the nature of matter may allow and in accordance with these regulations and general principles regarding administrative case procedures. Hence it shall be satisfactory to the court that the petition has a merit and there is a sufficient ground to apply the provisional remedy measure as requested. In addition, the court shall take 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. An order of the Court prescribing any ***provisional remedial measure shall be made by the chamber but need not be made upon a statement of the judge-commissioner of justice of the case***[9]***.***

[9] **Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000)**

Clause 76 "An order of the Court prescribing any provisional remedial measure or means before the delivery of a judgment or a means for the protection of the applicant's benefits during the trial or for the execution of a judgment shall be made by the chamber but need not be made upon a statement of the judge-commissioner of justice of the case unless the chamber deems it appropriate to require the statement, in which case such statement may be made orally.

……."