

## National Report of Thailand

### *“The Administrative Judge and Environmental Law”*

by the Administrative Court of Thailand

Report to the 11<sup>th</sup> Congress of IASAJ

Cartagena, Colombia, April 2013

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### Introduction

The Administrative Court of Thailand was established by virtue of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), which is the first constitution expressly providing the Administrative Court into a dual-court system. The Administrative Court has competence over administrative cases<sup>1</sup>.

The Parliament of Thailand, consisting of the House of Representatives and the Senate, then enacted the Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999), which came into force since 11<sup>th</sup> October B.E. 2542 (1999). This Act regulates the category of administrative cases under the competence of the Administrative Court, administrative court procedure, including the establishment and the competence of the Administrative Court, Administrative Judges, Judicial

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<sup>1</sup>Constitution of the Kingdom of Thailand, B.E. 2540 (1997)

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

There shall be the Supreme Administrative Court and Administrative Courts of First Instance, and there may also be the Appellate Administrative Court.”

Commission of the Administrative Court (J.C.A.C.), and the Office of the Administrative Courts which is responsible to the administration of the Court.

Act on Establishment of Administrative Court and Administrative Court Procedure of Thailand, B.E. 2542 (1999) regulates the structure of the Administrative Court, composing of the Supreme Administrative Court<sup>2</sup> and the Administrative Courts of First Instance – separated into the Central Administrative Court<sup>3</sup> and the Regional Administrative Courts – and the Office of the Administrative Courts.

Apart from the Constitution and Act on Establishment of Administrative Court and Administrative Court Procedure of Thailand B.E. 2542 (1999), the general assembly of judges of the Supreme Administrative Court, by virtue of the provisions of Section 44 and Section 66 of the Act, hereby issued the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000). The Rule clearly prescribes the rules and regulations on the filing of administrative cases, the interpleading, the summoning a person, an administrative agency or a State official to become a party in the case, the adjudication of administrative cases, the admissibility in evidence, and prescription of provisional remedial measures before delivery of judgment than those provided in the aforementioned Act.

Even though Constitution of the Kingdom of Thailand B.E. 2540 (1997) was later replaced by Constitution of the Kingdom of Thailand B.E. 2550(2007), the present constitution, the Administrative Court still has competence over administrative cases. Constitution of the Kingdom of Thailand B.E. 2550 (2007), moreover, clearly regulates the jurisdiction and competence of the Administrative Court.<sup>4</sup>

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<sup>2</sup>Officially opened on 9<sup>th</sup> March B.E. 2544 (2001)

<sup>3</sup>Officially opened on 9<sup>th</sup> March B.E. 2544 (2001)

<sup>4</sup>**Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

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

The Administrative Court, as one of the judiciary, has a key function in providing administrative justice for the public. As for environmental cases, most cases filed to the Administrative Court are the disputes involving unlawful administrative acts, or negligence of official duties arisen from an administrative agency or a State official insufficient to control projects or activities impacting on environment. These cases should be immediately tried in order to remedy grievance or injury to the party and to prevent adverse impacts on ecology, economy, and society. Due to the complexity of environmental issues, in certain cases, environmental experts are required in the inquiry of facts by the Administrative Court for thorough trial. However, the impacts on the economy and society will unavoidably occur when the Administrative Court delivers a judgment or an order related to environment issues.

The environmental divisions of the Administrative Court in the Administrative Courts of First Instance and the Supreme Administrative Court were established on 5<sup>th</sup> July B.E. 2554 (2011)<sup>5</sup> and officially operated nationwide on 2<sup>nd</sup> August B.E. 2554 (2011) in order to be a particular channel for adjudicating administrative cases concerning environmental issues. In the trial of these cases, after the competent official examines the complaint, the cases then are directed to the Chief of the Environmental Division without being submitted to the President of the Administrative Court of First Instance as in the regular cases. This particular procedure decreases unnecessary bureaucracy in accepting complaints. Moreover, the environmental divisions consist of knowledgeable judges in environmental laws. The trial and case management of the environmental cases in the Administrative Court is then swift and effective.

This report shall illustrate the role of “*The Administrative Judge and Environmental Law*” as follows:

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The powers under paragraph one of the Administrative Courts shall not include the final decision of the organs under the Constitution, which is deemed the direct exercise of power as prescribed by the Constitution of such a particular organ.

There shall be the Supreme Administrative Court and Administrative Courts of First Instance, and there may also be the Appellate Administrative Court.”

<sup>5</sup>The Recommendation of the President of the Supreme Administrative Court Re: The Establishment of Environmental Division in the Administrative Court of First Instance and the Recommendation of the President of the Supreme Administrative Court on the Administrative Court Proceedings concerning Environmental Issue were announced in the Government Gazette Volume 128 Part 54 A dated 4<sup>th</sup> July B.E. 2554 (2011). The establishment of environmental division in the Administrative Court shall come into force as the date of 5<sup>th</sup> July B.E. 2554 (2011), the day following the date of its publication in the Government Gazette.

## **1. THE SOURCES OF THE ENVIRONMENTAL LAW**

The environmental law shall be defined as every rule and regulation directly or impliedly involving the relationship between people's conduct and environment<sup>6</sup>. These rules and regulations occur and can be enforced according to social agreement.

As a law, the sources of environmental law are arisen from written statutes, judge-made law, regulations of government agency, customary laws, or general principles of law.

As aforementioned, the purpose of the environmental law is to preserve and protect *all natural environments* such as water source, forest, mineral, wildlife and energy, and *the man-made environment* that is socio-cultural environment and arts of local community. In other words, the environmental law aims at preserving and protecting national ecology and citizens from environmentally affected activities. Therefore, the environmental law includes every rule and regulation regarding the preservation of natural resources, the pollution control and solution, including the development of health care and quality of life. Generally, the sources of these rules and regulations are originated from internal and external laws.

**1.1. What are the national sources of environmental law (Constitution, Parliament Act, ...)? Which authorities are competent for enacting them (government, parliament, State governments, agencies, local authorities, ...)?**

Thailand statutes concerning environmental issues appear in Constitution, Acts of Parliament, and subordinate legislations issued by virtue of the Acts concerning environment.

The hierarchy of Thailand environmental law is divided into 3 categories as follows:

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<sup>6</sup>The definition of "Environment" is the relationship among the living things, their habitats and other surrounding environment. Such surrounding environment is composed of the living things and non-living things and/or the natural and cultural arts which are man-made productions, such as buildings, monuments, parks and ancient castles. Although the man-made environment has an effect on human lives and activities, it also supports livelihoods of human being.

To sum up, the environment is all *living things*, which are categorized into plants and animals, *non-living things* which are categorized into man-made things, such as buildings, public aqueducts, roads, zoos, and ancient or historical monuments, and *nature-made things*, such as atmosphere, mountains, sea, beaches, coasts and forests.

### **1) Constitution of the Kingdom of Thailand**

Constitution of the Kingdom of Thailand, B.E. 2550 (2007) was drafted by Constitution Drafting Commission, Constituent Assembly by the approval of the Legislation and the resolution of the referendum. President of the National Legislative Assembly then had graciously presented this draft constitution to the King for his signature as the Constitution of the Kingdom of Thailand. This Constitution regulates State policy for environmental management, as prescribed in Section 85<sup>7</sup> of the Constitution. Section 85 provides the State has to set the principles of land use nationwide and to keep in mind the conformity to the natural environment be it land, water, ways of life of local community and the effective preservation and maintenance of natural resources, and to set standards on sustainable land use which allow people in the area affected by the implementation of that land use principles to participate in decision making process. For the sustainable use of natural resources, the town planning must be planned, developed, and performed efficiently and effectively. This provision, in addition, establishes management plan for water and natural resources systematically for the public interest. Section 85 also allows people to participate in the preservation and the protection of natural resource exploitation and biodiversity. Finally, according

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#### **<sup>7</sup>Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

Section 85 “The State shall implement the land, natural resources, and environment policy as follows:

(1) to set the principles of land use nationwide and to keep in mind the conformity to the natural environment be it land, water, ways of life of local community and the effective preservation and maintenance of natural resources, and to set standards on sustainable land use which allow people in the area affected by the implementation of that land use principles to participate in decision making process;

(2) to distribute the ownership of land equitably and take action to allow farmers have ownership or right on agricultural land throughout by land reform or other methods and to provide water sources to the farmer for their sufficient and proper use to suit their agriculture;

(3) to provide effective town planning develop, and carry out the town planning with efficiency and effectiveness for the sake of the sustainable preservation of natural resources;

(4) to provide the plan to manage water resources and other natural resources systematically for public interest, including to allow people to participate in preservation, maintenance and exploitation of natural resources and biological diversity in a well-balanced manner; and

(5) to support, maintain and protect the equality of environment under a sustainable development, as well as to control and eliminate pollution which affect to people's health, well-being, and quality of life of the people by allowing the people, local communities, and administrative organization to participate in formulating of the operation plan.”

to State Policy subject to Section 85, the State shall promote, maintain, and protect the quality of environment, according to the sustainable use principal, and shall control and eliminate the pollution hazards to health, sanitary, safety, and quality of life of people by regulating that people, local community, and local administration organizations shall have participation in determining the measures.

In addition, Constitution of the Kingdom of Thailand, B.E. 2550 (2007) contains legal principles on environmental rights such as assembly rights of local community to protect the sustainable use of natural resources and biodiversity (Section 66), rights of access into public information owned by the State (Section 56), public hearing rights in environmental management (Section 57), and standing to sue State and an administrative agency to responsible for environmental protection (Section 60). The Constitution also regulates the rights and duties of people, a group of people, and private organizations in environmental protection.

## **2) Acts of Parliament: Environmental Law**

Acts of Parliament are formal laws enacted by the Legislation (the Parliament) and were enforceable after the announcement of the Acts in the Government Gazette. In Thailand, there are many acts on environmental laws such as Enhancement and Conservation of National Environment Quality Act, B.E. 2535 (1992)<sup>8</sup>, Fisheries Act, B.E. 2490 (1947), Building Control Act, B.E. 2522 (1979), Wild Animal Conservation and Protection Act, B.E. 2535 (1992), Factory Act, B.E. 2535 (1992), etc. The purpose of these acts is to manage and preserve natural resources and environment, including eliminating pollutions.

There are 5 categories of acts on environmental laws as follows:

### ***(2.1) Acts as Fundamental Law in Determining National Environment Policy***

***Enhancement and Conservation of National Environment Quality Act, B.E. 2535 (NEQA 1992)*** is deemed to be a fundamental law on environmental issues. The purpose of the NEQA 1992 is to determine national policy on the promotion and preservation of the quality of environment by allowing the participation of people and private organizations in the policy determination. The NEQA 1992 sets environmental protection standards in order to protect, preserve, and maintain natural resources and environment for the future.

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<sup>8</sup> Enhancement and Conservation of National Environment Quality Act, B.E. 2535 (1992) is named by Ministry of Natural Resources and Environment. (source: <http://www.mnre.go.th>) Another name translated by Council of State, a legal consultant of the government, is "Improvement and Conservation of National Environment Quality Act, B.E. 2535 (1992)." (source: <http://www.lawreform.go.th>)

Moreover, the NEQA 1992 describes the power and duties between an administrative agency and other related organizations in the coordination and incorporation for the promotion and preservation of environmental quality. The NEQA 1992 also establishes *National Environment Board*<sup>9</sup>, consisting of Prime

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**<sup>9</sup>Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992)**

Section 13 “The National Environment Board, is the committee appointed by law, shall have the power and duty as follows:

(1) to submit policy and plan for enhancement and conservation of national environmental quality to the cabinet for approval.

(2) to prescribe environmental quality standards pursuant to Section 32

(3) to consider and give approval to the Environmental Quality Management Plan proposed by the Minister according to Section 35.

(4) to consider and give approval to the Changwat Action Plan for environmental quality management according to Section 37.

(5) to make recommendations to the cabinet in respect of financial, fiscal, taxation and investment promotion measures for the implementation of the policy and plan for enhancement and conservation of national environmental quality.

(6) to propose for amendment or improvement of laws relating to the enhancement and conservation of environmental quality to the cabinet.

(7) to consider and give approval to the action plan for prevention and remedy of danger caused by contamination of pollutants or spread of pollution proposed by the Pollution Control Committee pursuant to Section 53(1).

(8) to consider and give approval to the setting of emission or effluent standards proposed by the Minister pursuant to Section 55.

(9) to supervise, oversee and expedite the enactment of royal decrees and issuance of ministerial regulations, rules, local ordinances, notifications, by-laws and orders which are necessary to ensure systematic operation or the laws relating to enhancement and conservation of environmental quality to the fullest extent possible.

(10) to submit opinion to the Prime Minister for his direction in case it appears that any government agency or state enterprise infringes or refrains from complying with the laws and regulations for environmental protection which may cause extensive damage to the environment.

(11) to specify measures for the strengthening and fostering of co-operation and co-ordination among government agencies, state enterprises, and the private sector in matter concerning the promotion and conservation of environmental quality.

(12) to supervise the Fund management and administration.

Minister as a president and the Minister of Natural Resources and Environment as a vice president. The main responsibilities of the National Environment Board are as follows:

- Submitting a policy and plan to promote and preserve the quality of environment to present to the cabinet for the approval
- Setting the standard on the quality of environment
- Approving the management plan on environment
- Providing advice on environmental issues to related administrative agencies responsible for the issues in order to consider and solve environmental problems

These responsibilities are useful for the protection of natural resources and environment in Thailand.

### ***(2.2) Acts concerning the Preservation of Natural Resources***

The main purpose of the acts in this category is to allocate the exploitation of natural resources, and to provide protective measure. The acts concerning the preservation of natural resources have long been enacted. The examples of these acts are Forest Act, B.E. 2484 (1941), Fisheries Act, B.E. 2490 (1947), National Park Act, B.E. 2504 (1961), Field Dyke and Ditches Act, B.E. 2505 (1962), National Reserved Forest Act, B.E. 2507 (1964), Petroleum Act, B.E. 2514 (1971), Wild Animal Preservation and Protection Act, B.E. 2535 (1992), and Plant Varieties Protection Act, B.E. 2542 (1999), etc.

### ***(2.3) Acts concerning the Control of Environmental Pollution***

Unlike Japan or the United States of America, Thailand currently does not have specific laws directly protecting and solving environmental problems. However, there are many related acts useful for the control of environmental problems in certain businesses. These acts impliedly assist solving environmental pollution.

The categories of these related acts are as follows:

- 1) Laws concerning water pollution<sup>10</sup> such as Enhancement and Conservation of National Environment Quality Act, B.E. 2535 (1992), Canal Act

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(13) to submit reports on national environmental quality situation to the cabinet at least once a year.

(14) to perform other functions as may be provided by this Act or other laws to be within the authority of the National Environment Board.”

<sup>10</sup>**Laws concerning Water Pollution**

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Laws concerning water pollution are available in many aspects, for example, some involving the water pollution management, some dealing the prohibited activities which cause water pollution and some relating to the remedies causing by water pollution as follows;

**A. Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992)**

Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992) provides these legal provisions concerning the controlling and improvement of the water pollution issues as follows:

**1) Setting the Water Quality Standards**

Generally, the water quality standards are measures for relating people using as a guideline in water consumption, including preventing wastewater from their businesses. Section 32 of Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992) confers the scope of water quality standards, which reads:

Section 32 “For the purpose of environmental quality enhancement and conservation, the National Environment Board shall have the power to prescribe by notifications published in the Government Gazette the following environmental quality standards:

(1) Water quality standards for river, canal, swamp, marsh, lake, reservoir and other public inland water sources according to their use classifications in each river basin or water catchment.

(2) Water quality standard for coastal and estuarine water areas.

(3) Groundwater quality standards.

.....”

**2) Wastewater Treatment or Waste Disposal from the Controlled Polluting Areas**

Regarding to wastewater disposal from the controlled polluting areas, Section 69 of Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992) regulates that “The Minister shall, with the advice of the Pollution Control Committee, have the power to publish notification in the Government Gazette specifying the types of point sources of pollution that shall be controlled in regard to the discharge of wastewaters or wastes into public water sources or into the environment outside the limits of limits of such point sources, in conformity with the effluent standards set pursuant to Section 55, or the standards set by any government agency by virtue of the other laws which remain in force according to Section 56, or the standards set by the Changwat Governor in special case for the pollution control area according to Section 58.”

**3) Duties of the Owner or Possessor of the Controlled Water Polluting Sources**

The Minister of the Ministry of National Resources and Environment shall have power to publish notification in the Government Gazette specifying the types of point sources of

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pollution that shall be controlled in regard to the discharge of wastewater into public water sources or into the environment outside. The owner or possessor of the controlled water polluting sources then has the duties as follows;

(1) To construct, install or bring into operation an on-site facility for wastewater treatment or waste disposal pursuant to Section 70 of Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992)

(2) To inform the pollution control official to check and modify or improve the functioning system of the facility for wastewater treatment or waste disposal, in case if any point source of pollution has had an on-site facility for wastewater treatment or waste disposal before the date of notification of the Minister under Section 69, pursuant to Section 70 paragraph two of Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992)

(3) To send the wastewaters or wastes to the central wastewater treatment plant or central waste disposal facility pursuant to Section 71 of Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992)

(4) To send the wastewaters or wastes for treatment or disposal by such Service Contractor pursuant Section 74 of Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992)

(5) To determine a temporary method for the treatment of wastewaters or disposal of wastes, with the advice of the pollution control official, pursuant to Section 75 of Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992).

(6) To collect statistics and data showing the daily functioning of the said facility or equipment and instrument, and make detailed notes thereof to be kept as recorded evidence and shall submit report summarizing the functioning results of the facility, equipment or instrument to the local official pursuant to Section 80 of Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992)

#### **4) Wastewater Treatment or Waste Disposal from the Point Sources of Pollution**

The owner or possessor of the point source of pollution is required to treatment the wastewaters or dispose the wastes generated by his activities by sending to the central wastewater treatment plant or to a service contractor according to Section 70 and 72 of Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992).

Also, Section 77 paragraph two of Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992) regulates that “Regulations, rules and methods for conveyance, collection and transport of wastewaters or wastes from the point sources of pollution to the central wastewater treatment plant or central waste disposal facility as well as prescription, prohibitions, restrictions and other conditions for discharging and draining of wastewaters or wastes from factories and other point sources of pollution under Section 72 into the systems of central wastewater treatment or central waste disposal facilities shall be prescribed by the ministerial regulation.”

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## **B. Specific Laws concerning the Control and Improvement of Water**

### **Pollution**

#### **1) Canal Act R.S. 121, B.E. 2445 (1902)**

This act provides the controlling provisions to water pollution of canals as follow:

Section 6 “If possible to do any other means, no person shall pour such rubbishes or filths into canals, also, no person shall pour, throw such said matters into ditch waterways, which flow into rivers. Any person who violates this provision shall be liable to a fine of not exceeding twenty Baht or an imprisonment of not exceeding one month, or to both.”

#### **2) Navigation in Thai Water Act, B.E. 2456 (1913)**

This act provides the controlling provisions to water pollution as follows:

Section 119 “No person shall pour, throw or do any means whatsoever, rocks, pebbles, sand, earth, mud, ballast, things or any waste substance, except oil and chemical product, into any river, canals, marsh, reservoir or lake which is a communication path or for common use of the public or the sea within Thai waters, so that it may cause the water shallow, being sediment or dirty, unless permission is obtained from the Master of Harbour. Any person who violates this provision shall be liable to an imprisonment of not exceeding six months or a fine of not exceeding ten thousand Baht, or to both, and shall also compensate any expenses incurred in the cleaning or rehabilitating thereof.”

Section 119 bis “No person shall pour, throw or do any means whatsoever, oil and chemical product, into any river, canals, marsh, reservoir or lake which is a communication path or for common use of the public or the sea within Thai waters, so that it may poison any living things or harm the environment or cause danger to the navigation thereto. Any person who violates this provision shall be liable to an imprisonment of not exceeding three years or a fine of not exceeding sixty thousand Baht, or to both, and shall also compensate any expenses incurred in the cleaning or rehabilitating thereof.”

Section 204 “Any person who, by any means whatsoever, pours, throws or releases petroleum or oil mixed with leaking water into any port area, river, canal, lake or inner sea within Thai waters, shall be liable to imprisonment of not exceeding one year or to a fine from two thousand to twenty thousand Baht, or to both.”

Remark: This Act is generally inclusive only throwing prescribed matters from vessels which cruise within the territorial waters, but exclusive throwing from the business places or houses.

#### **3) Water Hyacinth Eradication Act, B.E. 2456 (1913)**

The objective of this Act is to control the quantity of water hyacinths as follows:

Section 3 “the people in each locality are responsible to eradicate such water hyacinth as prescribed under Section 5, which is to take on land, then, to dry and to fire. In case of a massive of water hyacinth that unable to eradicate solely, Section 4, the local official is

empowered to order persons to collectively eradicate such water hyacinth. Regarding to the controlling the spread of water hyacinth, Section 7, No person shall take water hyacinth into the prohibited areas, also, no grow, plant or spread such water hyacinth to that said areas, including to throw water hyacinth into water resources.”

**4) Official Irrigation Act, B.E. 2485 (1942)**

These provisions are provided to control the water pollution as follows:

Section 4 “Irrigation means any undertaking carried out by the Royal Irrigation Department procure water or to retain, store, reserve, control, supply, drain or allocate water for agriculture, energy, public utilities or industry and includes the prevention of damage caused by water as well as navigation within the Irrigation Area.”

Section 27 “No person shall lead or allow his cattle to go down the first and second category Irrigation Waterway or to tread on the Embankment, Berm, or the compound of Irrigation structure except in the fixed area where the same is allowed, or upon authorization in writing from the official.”

Section 28 “No person shall throw rubbish, carcass, waste crops, ashes, or filth in the Irrigation Waterway or render the water harmful to cultivation or consumption.

No person shall discharge the liquid that may render the natural water polluted, harmful, or poisonous chemical into the Irrigation Waterway that may render the water harmful to agriculture, consumption or health.”

Remark: This Act came into effect only for the State irrigations, not inclusive other water resources such as rivers, canals or water resources which belong to people even connecting to the State irrigations, due to this Act contains criminal penalties which required such a rigorous interpretation.

**5) Fisheries Act, B.E. 2490 (1947)**

This act is provided to control the water pollution as follow:

Section 19 “No person shall pour, throw away, drain or lay in the fisheries such poisonous substance as determined by the notification of the Minister in the Government Gazette, or do any act that stupefies the aquatic animal, or pour, throw away, drain or lay in the fisheries any substance in the manner that is dangerous to aquatic animals or cause pollution therein, except for the experiments for scientific benefit which have already been permitted by competent official.”

**6) National Park Act, B.E.2504 (1961)**

This act is provided to control the water pollution as follow:

Section 16 “Within the national park, no person shall:

.....

(2) Collect, find out, take away, do any matter whatsoever with purport to harm or decay timber, timber-gum, gum-turpentine, turpentine oil, mineral resources or other natural resources;

.....  
swamp”

(5) Alter waterway or decrease water in waterway, rivulet, marsh, canal,

The action under Section 16(2) causes the dangerous and degenerate to the natural water. As for the action under Section 16(5), it is matter to alter waterway or decrease water in waterway.

**7) Mineral Act, B.E. 2510 (1967)**

These provisions are provided to control the water pollution as follows:

Section 62 “The holder of *Prathanabat* (Mining Leases) shall not mine within fifty meters of a highway or public waterway, unless the Prathanabat allows him to do so or he has obtained a license from the Local Mineral Industry Official, however, he must comply with the conditions prescribed in such a license.”

Section 63 “The holder of *Prathanabat* (Mining Leases) shall not obstruct, destroy or undertake any work which may be detrimental to the use of highways or public waterways, unless he has obtained a license from the Local Mineral Industry Official and he must comply with the conditions prescribed in such a license.”

Section 67 “The holder of a *Prathanabat* (Mining Leases) shall not discharge outside his mining area any slime or tailings resulting from his mining operation unless such water does not contain solid matter in excess of the amount prescribed in a Ministerial Regulation.

When it is necessary, the Minister is empowered to issue a license to omit the enforcement of the first paragraph and he may prescribe any condition as he deems appropriate.”

**8) Petroleum Act, B.E. 2514 (1971)**

There are such provisions to control the water pollution within this Act as follow:

Section 75 “In conducting petroleum operations, the concessionaire shall take appropriate measures in accordance with good petroleum industry practice to prevent pollution of any place by oil, mud, or any other substance.

In the event of that pollution of any place by oil, mud, or any other substance result from the concessionaire’s petroleum operations, the concessionaire shall take immediate action to combat such pollution.

In the case where the concessionaire fail to proceed, or proceeds under paragraph two in delay, or if immediate action not taken may result in more damage, the Department of Mineral Fuels or other person designated by the Director-General may proceed to make good such pollution on behalf of or jointly with the concessionaire at the concessionaire’s expense.”

**9) Artesian Water Act, B.E. 2520 (1977)**

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Artesian Water Act, B.E. 2520 (1977) provides provisions relating to the control of water pollution as follows:

Section 16 “No one shall be granted permission for exploitation of groundwater by regardless of whether he/she has an ownership or possessory right of the land situated in Groundwater area unless Director-General or his/her delegate grants him/her a license.

Asking for permission, to permit, asking for a license and to grant a license shall be in accordance with any criteria, methods, and conditions as specified in ministerial rule.

To permit or grant a license, including not permitting or not granting a license shall be considered within ninety days as from the date of receipt of an application containing full detail as specified in ministerial rule.”

**10) Building Control Act, B.E. 2522 (1979)**

Building Control Act, B.E. 2522 (1979) provides provisions relating to the control of water pollution as follows:

Section 8 “For the sake of stability, Public health, safety, fire protection and environmental conservation, Planning and architecture and to accommodate the traffic as well as others matters compellingly necessary to comply with this Act. The Minister, with the advice of the Council Building, has the power to issue regulations.

.....

(6) Management system relating to environment surrounding the building such as lighting systems, ventilation, drainage and solid waste disposal and sewage.”

**11) Conservation of Public Water Supply Canals Act, B.E. 2526 (1983)**

Conservation of Public Water Supply Canals Act, B.E. 2526 (1983) provides provisions relating to the control of water pollution as follows:

Section 14 “No one shall pour or discard anything or vent or amassing waste water into water supply canals, distributary canal or inundation canal.”

Section 15 “No one shall discard carcasses, garbage or sewage into water supply canals.”

Section 16 “No one shall wash his/her cloth or anything or taking baths in the immediate vicinity of the water supply canal.”

**12) Wild Animal Preservation and Protection Act, B.E. 2535 (1992)**

Wild Animal Preservation and Protection Act B.E. 2535 (1992) provides provisions relating to the control of water pollution as follows:

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Section 38 “No person shall, within a Wild Animal Sanctuary, possess or occupy the land, or build up, or any other means whatsoever construct, or cut, fell, clear, burn, or destroy trees or any other flora, dig for minerals, excavate ground or rock, pasture animals, change the waterway or cause the water in the river, stream, marsh or swamp to overflow, dry up or become poisonous, or endanger the wild animal.

In cases where it is necessary to implement for purposes of protection, maintenance and improvement of a Wild Animal Sanctuary, or for educational purposes and scientific research, or to facilitate the residing in or sojourn in or render safety and inform the public, the Director-General is empowered to order in writing the competent officer of the Royal Forest Department or the Department of Fisheries, whichever the case may be, to perform any such activity in a Wild Animal Sanctuary, and he shall comply with the rules laid down by the Director-General with the approval of the committee.”

**13) Factory Act, B.E. 2535 (1992)**

Factory Act, B.E. 2535 (1992) provides provisions relating to the control of water pollution as follows:

Section 8 “For the purpose of control of the engagement in a factory business, the Minister shall have the power to prescribe the Ministerial Regulations with which any or all groups of factory under Section 7 must comply with respect to the following matters.

.....

(5) To adopt the standards and methods of controlling the discharge of wastes, pollutants or anything that affects the environment as a result of the engagement in a factory business.

.....

The Ministerial Regulations under paragraph one may exempt the factory of any type, kind, or size from performing any matter and such Ministerial Regulations may require the matters of technical details or of rapid changes according to the social conditions to be in accordance with the criteria prescribed by the Minister upon publication in the Government Gazette.”

**14) Public Health Act, B.E. 2535 (1992)**

Public Health Act, B.E. 2535 (1992) provides provisions relating to the control of water pollution as follows:

Section 25 “In the event of an occurrence that may cause annoyance to dwellers in the vicinity or to person experiencing it, such occurrence by the following shall be deemed nuisances

(1) a water resource, drainage, shower room, toilets, or dung or ashpit, or any other place situated at an unsuitable locality, which is dirty, or accumulating or amassing any waste causing foul odor or toxic substance dust or becoming or is likely to become a breeding place for carriers of disease or causing degradation or may be hazardous to health;

.....

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(3) any building which is a dwelling place of human beings or animals, factory, or business establishment, without air ventilation, water drainage, disposal of sewage, or control of toxic substances, or with such but without adequate control to prevent foul odor or toxic substance dust, thus causing degradation or which may be hazardous to health”

Section 35 “For the purpose of overseeing marketplaces, the local government shall have the power to issue local regulations as follows:

.....

(4) To prescribe criteria and procedure to be complied with by the marketplace establishing licensee with regard to maintenance of cleanliness and orderliness within the marketplace in accordance with health and hygiene, provision of places for collecting or disposing of sewage or waste, drainage, air ventilation, prevention of nuisances and prevention of the spreading of contagious diseases.”

#### **15) Public Cleanliness and Orderliness Act, B.E. 2535 (1992)**

Public Cleanliness and Orderliness Act, B.E. 2535 (1992) provides provision relating to the control of water pollution as follows:

Section 23 “No one shall pour or discard gravel, rock, soil, slime, sand, or construction material into waterway or pile the said object or act in any manners causing the said object flow into waterway.

Local official or official have power to order any persons committing any manners as specified under paragraph one to remove the said object away from waterway within the period of time specified by local official or official. If such guilty act is an obstacle for water venation or cause water ventilation pipe, pitch or canal shallow, local official or official have power to order any persons committing any manners as specified under paragraph one to restore the waterway to its former condition. If such persons refuse to comply with an official’s order, other than offence in charge of petty offence, local official or official shall take legal action against the said person in charge of offence according to this act.”

Section 30 “No one shall pour, leave or put excrement or urine out of building or vehicle into waterway.”

Section 33 “No one shall pour or discard sewage, waste, waste water or any other things into waterway or road.”

#### **16) Estate Development Act, B.E. 2543 (2000)**

Estate Development Act, B.E. 2543 (2000) provides provisions relating the control of water pollution as follows:

Section 16 “Committee is empowered to prescribe regulations in relation to estate development according to Section 14 (1) in order to prescribe criteria planning, project and procedure relating to estate development for the purpose of public health, conservational environment, transportation, traffic, safety, public utility and city planning as well as any other matters necessary for land allocation to be suitable with landscape in each province by prescribing condition on the following matters;

R.S. 121, B.E. 2445 (1902), Navigation in Thai Water Act, B.E. 2456 (1913), Water Hyacinth Eradication Act, B.E. 2456 (1913), Official Irrigation Act, B.E. 2485 (1942), Fisheries Act, B.E. 2490 (1947), National Park Act, B.E. 2504 (1961), Mineral Act, B.E. 2510 (1967), Petroleum Act B.E. 2514 (1971), Groundwater Act, B.E. 2520 (1977), Building Control Act B.E. 2522 (1979), Water Supply Canal Act, B.E. 2526 (1983), Wild Animal Preservation and Protection Act, B.E. 2535 (1992), Factory Act, B.E. 2535 (1992), Public Health Act, B.E. 2535 (1992), Public Cleanliness and Orderliness Act, B.E. 2535 (1992), Estate Development Act, B.E. 2543 (2000), and Penal Code.

2) Laws concerning garbage and waste<sup>11</sup> such as Enhancement and Conservation of National Environment Quality Act B.E. 2535 (NEQA 1992),

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.....

(3) drainable water system, wastewater treatment system and disposal of garbage.

(4) systems and standards of public utility and public service which are necessary for conservation of environmental quality, promotion of good quality of life and community administration.”

### **17) Penal Code**

Penal Code provides provisions relating the control of water pollution as follows:

Section 237 “Whoever, introducing the poisonous substance or any other substance likely to cause injury to health into the food or water into any well, pond or reservoir, and such food or water to be existed or to be provided for the public consumption, shall be imprisoned as from six months to ten years and fined as from one thousand Baht to twenty thousand Baht, or both.”

Section 380 “Whoever, causing the water in the well, pond or reservoir provided for public using to be filthy, shall be imprisoned not out of one month or fined not out of one thousand Baht, or both.”

Section 396 “Whoever, leaving the carcass able to be bad to smell on or near the public way, shall be fined not out of five hundred Baht.”

### **<sup>11</sup>Laws concerning to Waste and Sewage**

In order to control and cope with waste and sewage problem, other than Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992), there are particular laws empowering local administration to take action to control and cope with the said problem. Moreover, there are the laws aiming to maintain cleanness by prescribing the people’s duties to maintain cleanliness as follows:

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**A. Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992)**

Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992) provides provisions relating to control and cope with rubbish and sewage problem as specified in division 4, part 6 on other kind of pollution and hazardous waste as follows:

Section 78 “The collection, transport and other arrangements for the treatment and disposal of garbage and other solid wastes; the prevention and control of pollution from mining both on land and in the sea; the prevention and control of pollution from the exploration and drilling for oil, natural gas and all kinds of hydrocarbon both on land and in the sea; and the prevention and control of pollution resulting or originated from the discharge of oil and the dumping of wastes and other matters from sea-going vessels, tankers, and other types of vessel, shall be in accordance with the governing laws related thereto.

From above-mentioned provision, it can be seen that Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992) does not aim to interfere any operations relating to control and cope with waste and sewage governed by particular laws by prescribing such operation to be responsible by other government organizations supervising the matters thereof before this act comes in to force.”

**B. Laws relating to the Control of waste and sewage**

The particular laws relating to the control of waste and sewage which are applicable at the present can be divided into two categories as follows:

**1) Laws aiming to Maintain Cleanliness;**

**(1) Public Health Act, B.E. 2535 (1992)**

Public Health Act, B.E. 2535 (1992) provides provision relating to control and cope with waste and sewage problems as follows:

Section 4 “In this Act,

“sewage” means excrement or urine, and including any other thing that is filthy or gives foul odor;

“waste” means waste paper, waste cloth, waste food, waste goods, waste materials, plastic bag, food container, soot, animal dung or carcasses, including any other thing swept away from road, market place, animal farm, or other places, and including infectious waste, toxic or hazardous waste from community”

Section 25 “In the event of an occurrence that may cause annoyance to dwellers in the vicinity or to person experiencing it, such occurrence by the following shall be deemed nuisances:

(1) A water resource, drainage, shower room, toilets, or dung or ashpit, or any other place situated at an unsuitable locality, which is dirty, or accumulating or amassing any waste causing foul odor or toxic substance dust or becoming or is likely to become a breeding place for carriers of disease or causing degradation or may be hazardous to health;

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(2) A farming of animals in a place or by any method or in excessive number that causes degradation or may be hazardous to health;

(3) Any building which is a dwelling place of human beings or animals, factory, or business establishment, without air ventilation, water drainage, disposal of sewage, or control of toxic substances, or with such but without adequate control to prevent foul odor or toxic substance dust, thus causing degradation or which may be hazardous to health;

(4) Any action causing odor, light, ray, noise, heat, toxic substance, vibration, dust, fine powdery substance, soot, ash, or any other action to the extent of degradation or which may be hazardous to health;

(5) Any other cause prescribed by the Minister and promulgated in the Government Gazette.

Moreover, there are still ordinances of Bangkok metropolitan on private market B.E. 2518 clause 10 and clause 14, ordinances of Bangkok metropolitan on public market B.E. 2519 clause 10 and ordinances of Bangkok metropolitan on Control of Hawker stalls clause 11 containing matters with respect to control and disposal of garbage and sewage”.

**(2) Public Cleanliness and Orderliness Act, B.E. 2535 (1992)**

Public Cleanliness and Orderliness Act, B.E. 2535 (1992) provides provision relating to control and cope with waste and sewage problem as follows:

Section 8 “Any owner or occupier of a building or land shall be liable over the following matters;

1) Put a treepot on the pathway or plant a tree at the outside building that he\she is owner or occupier and neglect to take care his\her tree causing it withered or untidy or neglect to take care his\her tree. As a result, sewage or waste lays scattered on treepot or outside the building.

2) The failure to take care his\her tree or crops ,that he\she plants or it grow naturally in his\her land, causing it withered or untidy or failure to prevent any persons from disposing a sewage or waste in his\her land.

If the failure to take care his\her tree or crop according to (2) is easily observed by public, the owner or occupier of a building shall be liable under this act.

Section 13 “The owner of car using his\her car to contain animal, gravel, rock, soil, mud, sand, sewage, waste or any other things, shall maintain his\her car in good condition in order to prevent animal dung from being fallen, leaked, blown, spread, or diffused into the rode including prevent oil leaking from his\her car into the road.

If any matters under paragraph one occur, an official, traffic official or a police having the duties to control traffic have power to order an rider to bring his\her car to police station, land transport office or local administration office and seizes such car until fine has been paid by owner or occupier of car.”

Section 18 “No one shall discard, put or pile ruin of car into rode or public place.”

Section 19 “No one shall lay, put or pile any objects on the road unless to do such manner in the area that local administrative official or official prescribe such area ,with consent of traffic official, as permission area.”

Section 26 “No one Shall discard sewage, waste or pour or pile gravel, rock, soil mud sand or any other things in the grass area owned by local government, other government organization or state enterprise.”

Section 29 “No one shall leave excrement or urine into public place or any other places that local government provides for doing such matter.”

Section 30 “No one shall pour, leave or discard excrement or urine out of his\her building or vehicle into waterway.”

Section 31 “No one shall;

(1) Expectorate or spit saliva, mucus, betel saliva or to blow the nose, pour or discard any other things into the road or public car’s floor or vessel’s floor

(2) Discard sewage or waste in public place, out of dish or any places that local government provides for doing such matter.”

Section 32 “No one shall;

(1) Discard sewage or waste into public place

(2) The failure to clean his\her building causing sewage or waste is likely to be easily observed by people from public place.”

Section 33 “No one shall pour or discard sewage, waste, waste water or any other things into waterway or road.

Any manners as specified under paragraph shall not apply to owner or occupier of boat, float-house which park or being in area that local administrative official has not provide public toilet or any containers for keeping sewage or waste.”

**2) Laws on the Disposal of Waste and Sewage of Local Government**

The following laws are the laws on the disposal of garbage and sewage of local government which the law prescribing the duty of local government;

**(1) Municipal Act, B.E. 2496 (1953)**

Section 50 “Subject to the provisions of the law, District Municipality, having the duty, shall be made in municipal area, as follows:

.....

(3) to clean the road or pathway and public place including to rid the waste and sewage

.....

(7) to promote and develop woman, children, juveniles, elders and disable person

.....”

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Section 54 “Subject to the provisions of the law, Town Municipality may perform any activity in Municipal Area, as follows:

(1) to provide the market, pier and ferry ;

.....

(7) to maintain and promote to earn a living of private persons;

.....

(11) to improve the slum and maintain the cleanness and order of locality;

**(2) Tambon Council and Tambon Administrative Organisation Act,**

**B.E. 2537 (1994)**

Tambon Council and Tambon Administrative Organisation Act, B.E. 2537 (1994)has some section relating to laws concerning waste and sewage:

Section 67 “Subject to this act, it is the duty of the Tambon Administrative Organisation to do the following in its territory:

.....

(2) keep the roads, waterways, paths and public places clean, and also provide garbage and sewage service;

.....

(7) protect, look after and maintain natural resources and the environment

(8) maintain art, customs, local knowledge and local culture”

**(3) Bangkok Metropolitan Administration Act, B.E. 2528 (1985)**

Bangkok Metropolitan Administration Act, B.E. 2528 (1985) has some sections relating to laws concerning waste and sewage:

Section 89 “Subject to other laws, it is the duty of Bangkok Metropolitan Authority to do the following in its territory:

.....

(4) keep the country clean and tidy

.....

(14) develop and conserve the environment”

**(4) Pattaya City Administration Act,B.E.2542 (1999)**

Pattaya City Administration Act, B.E.2542 (1999) has some section relating to laws concerning waste and sewage:

Section 62 “Subject to this act, it is the duty of Pattaya City Administrative Authority to do the following in its territory:

.....

- 
- (7) keep the country clean and tidy
  - (8) disposal of waste and wastewater treatment
  - .....”

**(5) Provincial Administration Act, B.E. 2540 (1997)**

Provincial Administration Act, B.E. 2540 (1997) has some section relating to laws concerning waste and sewage:

Section 45 “Subject to this act, it is the duty of the Provincial Administrative Authority to do the following in its territory:

- (1) Enact the regulations not contrary to or inconsistent with the laws
- (2) Draw up the Provincial Administrative Plans and Coordinate to draw up the Provincial development plan according to the provincial Cabinet
- (3) Support District Council and other local government for local development.
- (4) Coordinate and cooperate in carrying out the duties of the District Council and other local governments
- (5) Allocation of funds, which by law must be provided to the District Council and other local governments
- (6) Authority of the province according to the Provincial Government Act B.E. 2498 (1955), within the Tambon Council.
- (7) Protection and maintenance of natural resources and the environment
- (7 bis) Maintain traditional art and local culture
- (8) Create affairs within other local government authorities which under the provincial administration and those affairs shall be carried out together by local governments or preparing by the Provincial Administrations as prescribed in the Ministerial Regulations
- (9) Create any other affairs as defined in this Act or other laws define as powers and duties of the Provincial Administration

The authority of the central government or provincial government may assign to the Provincial Administration Organization Act as prescribed by the Ministerial Regulations."

Furthermore, there are other laws relating to the control and management of waste and sewage such as;

- 1) Canal Act R.S. 121, B.E. 2445 (1902)
- 2) Navigation in Thai Water Act, B.E. 2456 (1913)
- 3) Official Irrigation Act, B.E. 2485 (1942)
- 4) Organisation of Railway and Highway Act, B.E. 2464 (1921)
- 5) National Park Act, B.E. 2504 (1901)

Public Health Act, B.E. 2535 (1992), Public Cleanliness and Orderliness Act, B.E. 2535 (1992), Municipality Act, B.E. 2496 (1953), Tambon Council and Tambon Administrative Organisation Act, B.E. 2537 (1994), Bangkok Metropolitan Administration Act, B.E. 2528 (1985), Pattaya City Administration Act, B.E. 2542 (1999), District Administrative Organization Act, B.E. 2540 (1997), Canal Act R.S. 121, B.E. 2445 (1902), Navigation in Thai Water Act, B.E. 2456 (1913), Official Irrigation Act, B.E. 2485 (1942), Organisation of Railway and Highway Act, B.E. 2464 (1921), National Park Act, B.E. 2504 (1901), Building Control Act B.E. 2522 (1979), Land Traffic Act B.E. 2522 (1979), Water Supply Canal Act, B.E. 2526 (1983), Factory Act, B.E. 2535 (1992), Highway Act, B.E. 2535 (1992), and Penal Code.

#### ***(2.4) Acts concerning the Urban Environment Management***

The social problems occur in the urban environment are, for example, the lack of dwelling places, health care, public nuisance, overpopulation, dirt, and etc. Consequently, the purpose of the acts in this category is to solve aforementioned problems. These laws are Town Planning Act, B.E. 2518 (1975), Building Control Act, B.E. 2522 (1979), Public Health Act, B.E. 2535 (1992), Public Cleanliness and Orderliness Act, B.E. 2535 (1992), Town Planning Act, B.E. 2518 (1975), Estate Development Act, B.E. 2543 (2000), National Housing Authority Act, B.E. 2537 (1994), Land Consolidation for Agriculture Act, B.E. 2517 (1974), National Health Act, B.E. 2550 (2007), etc.

#### ***(2.5) Acts concerning the Conservation of the Cultural Environment***

The intention of the acts in this category is to manage and conserve cultural environment pertaining to heritage such as ancient monuments, objects of arts, and valuable places. The acts in this category are Act on Ancient Monuments, Antiques, Objects of Art and National Museum, B.E. 2504 (1961), Town Planning Act, B.E. 2518 (1975), Building Control Act, B.E. 2522 (1979), etc.

- 
- 6) Building Control Act, B.E. 2522 (1979)
  - 7) Land Traffic Act, B.E. 2522 (1979)
  - 8) Water Supply Canal Act, B.E. 2526 (1983)
  - 9) Factory Act, B.E. 2535 (1992)
  - 10) Highway Act, B.E. 2535 (1992)
  - 11) Penal Code

### **3) Subordinate Legislation on Environment**

Each act as fundamental law empowers the Executive branch to issue subordinate legislations such as Royal Decrees, Ministerial Regulations, rules, regulations or notifications without proposing the laws to the Parliament. Subordinate legislations will contain many details necessary to ensure that the act will operate successfully and accomplish the intention of each act.

The subordinate legislations regarding to the protection and preservation of natural resources and the control of pollutions are as follows:

#### ***(3.1) Ministerial Regulations and Ministerial Notifications***

Ministerial Regulations are issued by Minister by virtue of the acts, with the approval of the Cabinet. Ministerial Notifications are also issued by Minister according to the authorization of the fundamental laws; however, Ministerial Notifications do not require the approval of the Cabinet.

Ministerial Regulations and Ministerial Notifications concerning environmental issues are as follows:

- Ministerial Regulation No. 2 (B.E. 2535)(1992) issued under Factory Act, B.E. 2535(1992) Re: Location, Environment, Description and Interior of the Factory, Machinery, Equipment or Materials to be used in a Factory, Factory Worker, Control of a Release of Waste, Pollutants or Other Materials affecting the Environment, and Safety in Operating Factory.

- Ministerial Regulation No. 3 (B.E. 2535) (1992) issued under Enhancement and Conservation of National Environment Quality Act B.E. 2535 (1992)<sup>12</sup>

- Ministerial Regulation No. 44 (B.E. 2538) (1995) issued under Building Control Act, B.E. 2522 (1979)<sup>13</sup>

- Ministerial Regulation on the Elimination of Contaminated Waste, B.E. 2545 (1999)

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<sup>12</sup>The intention to enact this regulation is the area around Koh Yung, Koh Mai Pai, Koh Pee Pee Don, Poh Pee Lay, Koh Beeh Tae including the waters surrounding the island has natural ecosystems different to the other areas in general. The natural ecosystems may be destroyed or have been affected by human activities easily. It shall be assigned such areas to be the environmental protection areas in order keep natural ecosystems not are changed.

<sup>13</sup>The reason to enact this regulation is the increasing of building for residential use and running the same business or many businesses together, it should stipulate the wastes water treatment system and the elimination of contaminating solid Waste in order to enhance the public health control and Maintain environmental quality. This regulation must be enacted.

-Notification of Ministry of Industry No. 2(B.E. 2536) (1993) issued under Factory Act, B.E. 2535 (1992) Re: Contaminant Limits in Industrial Air Discharge

- Notification of the Ministry of Science, Technology and Environment (present is Ministry of Natural Resources and Environment) Re: Standard on Polluted Water Discharge of Gas Stations (B.E. 2545) (2002)

- Notification of Ministry of Natural Resources and Environment (B.E. 2549) (2006) Re: Standard on Wasted Water Discharge of Community's Waste Water Treatment System

- Notification of Ministry of Natural Resources and Environment B.E. 2553 (2010) Re: Standard on Benzene Vapour Discharge from Oil Depot

### ***(3.2) Notifications, Rules, and Regulations concerning Environmental Issues***

The authorities empowered to issue notifications, rules, and regulations are State agencies and committees responsible for the enforcement of the primary law in order to manage and preserve the environment, including controlling environmental pollution. The by-laws are as follow;

- Notification of the Department of Industrial Works Re: Storing, Eradicating, Eliminating, Burying, Discharging, Transferring, and Transporting Garbage or Waste Matters (No.1), B.E. 2531 (1988)

- Notification of the Marine Department No. 67/2534 Re: Permission on Discharge of All Types of Effluent into the Waterway

- Notification of National Environment Board No. 20 (B.E. 2543) (2000) issued under Enhancement and Conservation of National Environment Quality Act B.E. 2535 (1992) Re: Groundwater Quality Standards

- Notification of Pollution Control Committee Re: Types of Factories allowed to Discharge Effluent in Different Controlling Standards from the Notification of the Ministry of Science, Technology, and Environment No. 3 (B.E. 2539) (1996)

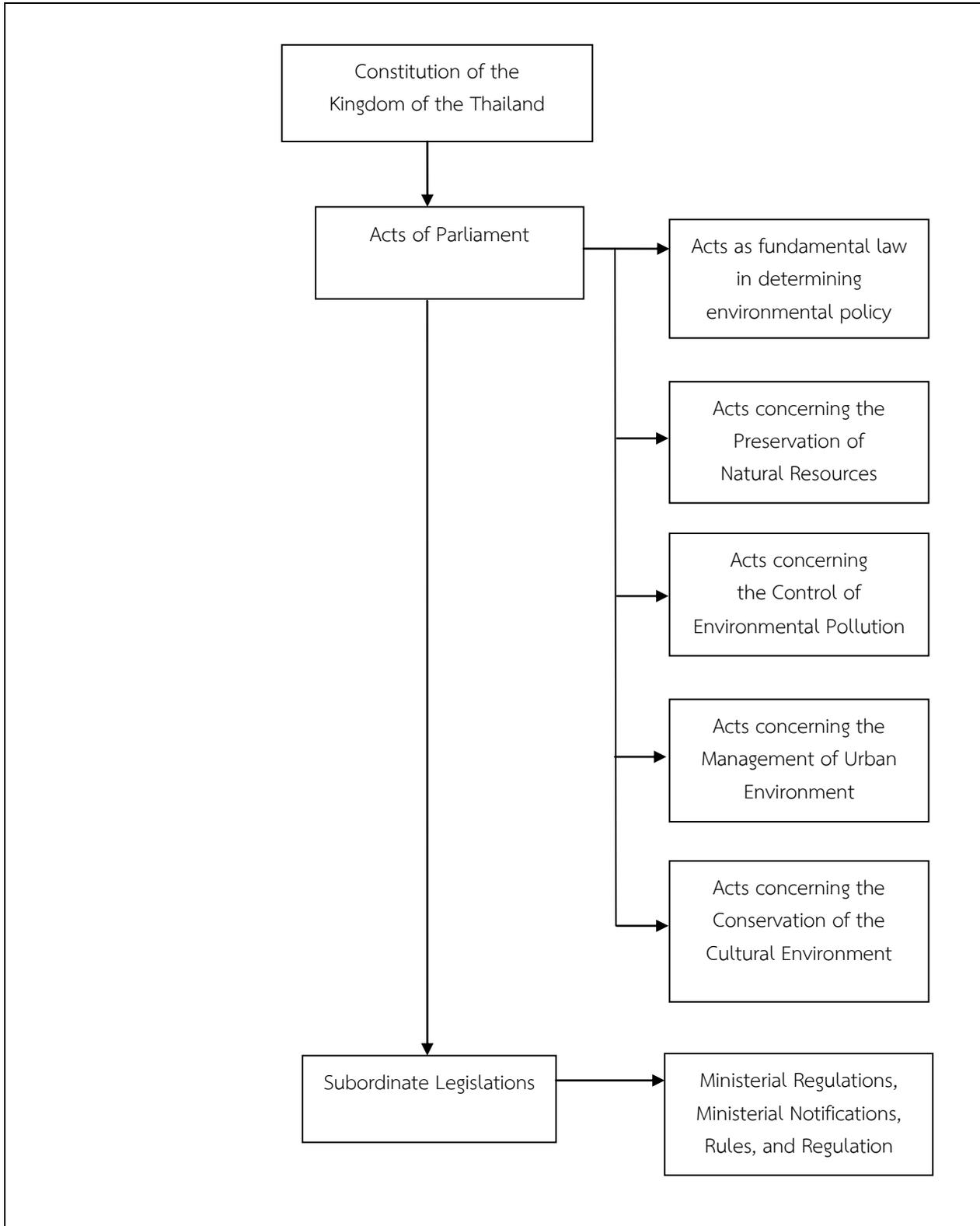
- Rule of the Department of Industrial Works on Report of the Analysis of Amounts of Pollutants, B.E. 2528 (1985)

- Bangkok Metropolitan Administration Regulation Re: Effluent Control, B.E. 2534 (1991)

- Bangkok Metropolitan Administration Regulation on Standard on Solid Waste Management of Building and Health Stations, B.E. 2545 (2002)

As aforementioned environmental laws, Thailand has many environmental laws to manage and protect natural resources and environment, and to control pollutions. However, Thailand still lacks the unity of law since there are many laws enacted to solve the same environment issues. Accordingly, Thailand faces the problems of the law enforcement by relating officers and the conflict of laws.

## The Sources of Environmental Law from Internal Law of Thailand



## **1.2 What are the supranational sources (general public international law, regional conventions, ...) concerning environmental law that judges must enforce?**

In order to consider whether an international treaty or agreement is the source of Thai environmental law, one should consider from the general concept of law and State practice in the adoption of international treaties and agreements as an internal law. Regarding to this issue, Section 190 of Constitution of the Kingdom of Thailand<sup>14</sup> shall be taken into account. In the past, Thailand was ruled by an Absolute Monarchy system, empowering the King to sign international treaties and agreements. However, after Thailand had changed into Democratic system with the King as the head of State, the King applies the aforementioned power through the Cabinet. The Constitution, moreover, specifies which international treaties and

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### <sup>14</sup>**Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

Section 190 “The King has the prerogative to conclude a peace treaty, armistice and other treaties with other countries or international organizations.

A treaty which provides for a change in the Thai territories or the Thai external territories that Thailand has sovereign right or jurisdiction over such territories under any treaty or an international law or requires the enactment of an Act for its implementation or results in the binding of trade, investment budget of the country significantly must be approved by the National Assembly. In such case, the National Assembly must complete its consideration within sixty days as from the date of receipt of such matter.

Before the conclusion of a treaty with other countries or international organizations under paragraph two, the Council of Ministers must provide information thereon to the public, conduct public consultation and state information in relevant thereto to the National Assembly. In such case, the Council of Ministers must submit negotiation framework to the National Assembly for approval.”

Upon giving signature to the treaty under paragraph two, the Council of Ministers shall, prior to give consent to be bound, facilitate the public to get access to the details of such treaty. In the case where the application of such treaty has affected the public or small and medium entrepreneurs, the Council of Ministers must revise or render remedy to such effects rapidly, expediently and fairly.

There shall be a law determining measure and procedure for the conclusion of a treaty having immense effects to economic or social security of the country or resulting in the binding of trade or investment of the country significantly and the revision or rendering of remedy to the effects of such treaty with due regard to the fairness among the beneficiaries, the affected persons and the general public.

A matter arising from the provisions of paragraph two falls within the jurisdiction of the Constitutional Court and the provisions of section 154 (1) shall apply mutatis mutandis to the referring of the matter to the Constitutional Court.”

agreements are required the approval of the Parliament<sup>15</sup>. If the Constitution does not specify, the Cabinet has capacity to sign those international treaties and agreements without submitting them to the Parliament to be approved. Subsequent to the approval of the international treaties and agreements by State, State is bound upon them. The following procedure is the adoption of these international treaties and agreements to be enforced as an internal law or so called “implementation”.

In Thailand, international treaties and agreements are divided into 2 categories:

1) International treaties or agreements which do not require the approval of internal law

The international treaties or agreements in this category bind Thailand for merely international level, not in domestic level.

2) International treaties or agreements which must be implemented into the internal law

International treaties or agreements in this category bind State and citizens to perform upon them. The international treaties or agreements relating environmental issues fall into this category. Therefore, the environmental law must be enacted in order for the environmental international treaties or agreements to be enforced.

The adoption of international treaties and agreements in Thailand environmental legal system has significant characteristics as given below:

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<sup>15</sup>Section 190 paragraph two specifies which treaties and international agreements required the approval of the Parliament into 5 categories as the following;

1. A treaty which provides for a change in the Thai territories
2. A treaty which provides for a change in the Thai territories or the Thai external territories that Thailand has sovereign right or jurisdiction over such territories under any treaty or an international law
3. A treaty which requires the enactment of an Act for its implementation. This process is called “Accession”. These treaty appear in two forms are the treaty which affect to the right or freedom assured by the Constitute and the treaty which affect to the implement acts.
4. A treaty which affects immensely to economic or social security of the country
5. A treaty which results in the binding of trade, investment budget of the country significantly

1) The international treaties and agreements bind Thailand as a Party. There is the responsibility of State not to enact law in conflict of these international treaties and agreements

The international treaties or agreements<sup>16</sup> on environment involving Thailand are:

- Convention on Biological Diversity (CBD)

Thailand signed the Convention on Biological Diversity, but Thailand has not ratified to be a Party to the CBD. However, there are many Thai internal laws consistent with the principles of the CBD such as Forest Act, B.E. 2484 (1941) amended B.E.2532 (1989), National Park Act, B.E.2504 (1961), National Reserved Forest Act B.E. 2507 (1964), Plant Variety Act, B.E. 2518 (1975) and B.E.2535 (1992), Protection and Promotion of Thai Traditional Medical Knowledge Act, B.E. 2542 (1999), and Plant Varieties Protection Act, B.E. 2542 (1999).

- Ramsar Convention 1971

Thailand is a Party of Ramsar Convention

- Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal 1989 (Basel Convention)

Thailand ratified to be a Party to Basel Convention

2) Judges try and adjudicate cases without considering international treaties or agreements unless the international treaties or agreements are implemented into internal laws. In the case that the international treaties or agreements are contrary to the internal laws, the Court will enforce the internal laws.

Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) regulates the appointment of “Judge-Commissioner of Justice” or the judge who makes the conclusion for the case. The Judge-Commissioner of Justice is responsible for summarizing facts, law and providing an opinion submitted to the chamber for trial and adjudication. International environmental laws then are taken into account by the Judge-Commissioner of Justice in order to analyze the case even though the

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<sup>16</sup>Department of Natural Resources and Environmental Policy and Planning, International Obligations. Accessed on 2 August 2012. (source: <http://www.onep.go.th/download/soe42/21.doc>)

Administrative Court of Thailand does not directly adopt environmental international treaties or agreements to be applied as an internal law.

### **1.3 Does the administrative judge enforce the general principles of environmental law? Has he/she contributed to developing them?**

The Administrative Court of Thailand regularly applies the general principles of environmental laws in the trial and adjudication. Moreover, the Administrative Court has attempted to refer these general principles in judgments and orders in order to develop them.

The general principles of the environmental law referred in the court judgments and orders are given below:

#### **1) Prevention Principle**

Prevention Principle is an important principle originated from the concept that the prevention of damage to environment must be exercised together with the solution to environmental problems. This principle exploits certain technology to specify or find appropriate measures on preventing environmental impacts or harms, future impacts or harms, or having impact or harm at least as possible whether or not the costs and benefits analysis has been conducted. According to this principle, State shall enact internal laws to effectively prevent pollutions on environment.

The Prevention Principle is also provided in the main Thailand environmental law, which is Enhancement and Conservation of National Environment Quality Act, B.E. 2535 (1992), especially in the part of Environmental Impact Assessment.

The Administrative Court of Thailand, in addition, adopts the Prevention Principle in the trial and adjudication according to the cases given below:

#### Supreme Administrative Court Judgment No. A.<sup>17</sup> 44/2550

The Court held that the issuance of cemetery and crematory establishment license inside the National Park and close to public ways, which was the watercourse to the community, may have adverse impact on community. The impact was arisen from the construction of cemetery and crematory causing sewage, bacteria, and malodor spread into community's water source for consumption and animal raise.

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<sup>17</sup> "A." refers to "an appeal against the judgment of the Administrative Court of First Instance."

Supreme Administrative Court Order No. 592/2552

The Supreme Administrative Court amended the Central Administrative Court's order and prescribed the National Environment Board and 8 joint defendants to temporarily suspend projects or activities until the Court's judgment or order is subsequently delivered. In addition, the National Environment Board had to announce Map Ta Phut and neighboring areas to be a pollution control area. The Court had found that the projects or activities that the Defendants had approved were composed of high pollution industries which could potentially increase pollutions in Map Ta Phut and neighboring areas and were tough to mitigate the damage afterwards. Most environmental problems always had long-term impacts on people's health, and the damage was incalculable. The monetary compensation for the damage was not a proper remedial measure to solve environmental problems, compared to other measures such as a preventive measure.

**2) Polluter Pays Principle (PPP)**

The Polluter Pays Principle is developed from economic principle into environmental rules. According to the PPP, the producers of pollution source or polluters hold responsibility for actual damage since the polluters knows and understands every process of their environmentally affected businesses. The PPP also establishes public awareness of the environmental preservation for the next generation. The liability in PPP is broader than tort liability since the responsibility falls to polluters whether the damage will occur or not. According to Principle 16 of the 1992 Rio Declaration, the polluters may be liable for taxation (or so called "environmental tax"), fees, or damages; otherwise, the polluters may have physical liability such as the imposition of waste elimination measures.

The PPP is provided in the NEQA 1992 for the civil liability of the polluters, who cause life, body, property harms including the spread-out of pollutants to environment. Furthermore, Hazardous Substance Act, B.E. 2535 (1992) regulates that persons involving in the transfer of hazardous substances are jointly and severally liable for tort liability of importers, exporters, possessors, sellers, or transferors of such substances.

Administrative cases involving the Polluter Pays Principle are as follows:

Central Administrative Court Judgment No. 637/2551

The Administrative Court of Thailand held that Section 97 of Enhancement and Conservation of National Environment Quality Act, B.E. 2535

(1992) ruled that the owners or possessors of pollution source, causing damage to the property of State or any private persons, shall be liable to pay compensation or damages, regardless of whether the leakage or contamination of pollution was the result of a willful or negligent act of the owner or possessor thereof. If State had expenses for the clean-up of pollution, the compensation or damages must be paid to State. In this case, the Pollution Control Department (the Defendant) did not request expenses for the clean-up of pollution from T. Company, the polluter. As a consequence, the Pollution Control Department was negligent of duties in claiming compensation or damages from T. Company, who caused damage to natural resources.

### **3) Public Participation Principle**

Public Participation Principle is another essential principle found in Principle 10 of the 1992 Rio Declaration. According to the principle, State will allow public participation in the determination of State or administrative agencies regarding the management of natural resources or any projects or activities affecting environment, including right to remedy in social impacts causing by environmental issues. Public Participation Principle is important to the sustainable development. The core concept of principle of sustainable development is the environment belongs to any persons in society; therefore, everyone shall have participation in the management and sustainable use of natural resources.

Section 67 of Constitution of the Kingdom of Thailand, B.E. 2550 (2007) recognizes public participation rights of people and local community in the conservation, preservation, and the sustainable use of natural resources and biodiversity. In addition, the NEQA 1992 provides people the access to official information concerning environment, and allows people to cooperate and assist State officials in the enhancement and conservation of environment quality.

Thailand administrative cases concerning Public Participation Principle are as follows:

#### Supreme Administrative Court Order No. 247/2552

The Supreme Administrative Court held that the assembly group called “Sri Tawaravadee Group” (the Plaintiff) had an aim to conserve refined art and culture of their community for the public interest in accordance with the principle of rights of traditional community. The Plaintiff’s rights was recognized by Sections 64, 66, and 67 of Constitution of the Kingdom of Thailand, B.E. 2550 (2007); therefore, the Plaintiff was an unavoidably injured or aggrieved person according to Section 42 paragraph one of Act on Establishment of Administrative Court and Administrative Court Procedure of Thailand, B.E. 2542 (1999).

Central Administrative Court Judgment No. 637/2551

The twenty two joint Plaintiffs had standing to sue as recognized by Section 67 of Constitution of the Kingdom Thailand, B.E. 2550 (2007), asserting the public participation of people and local community in the conservation, preservation, and the sustainable use of natural resources and biodiversity. Consequently, the Plaintiffs had standing to sue the Pollution Control Department (the Defendant) in delaying to coordinate, restore, or eliminate the contamination of lead in Klity Creek.

**4) Sustainable Development Principle**

Sustainable Development Principle is the new paradigm for the development consistent with the nature's limit. Sustainable Development is the national development concerning social and economic contexts together with the integration and interdependence of the ecology. The exploitation of natural resources shall be sufficient for the needs of the present and available for the future generations for their own needs.

Thailand administrative cases concerning Sustainable Development principle are as follows:

Supreme Administrative Court Judgment No. A. 51/2547

The Supreme Administrative Court held that the Notification of Minister of Agriculture and Cooperatives prohibiting the use of certain types of fishing instruments in Prachuap Khiri Khan, Chumphon, and Surat Thani provinces, where were the egg-laying spots of important economic aquatic creatures was an essential measure for aquatic creatures preservation on sustainable basis. The earnings of the Plaintiff were affected from the Notification only three months. Moreover, the Plaintiff was still able to do fishery outside conservative areas and use other allowable instruments for fishery. The Notification was issued by virtue of Section 50 paragraph two of Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in order to preserve the sustainable use of aquatic creatures under limited time and areas, without adverse impacts on natural resources and freedom of occupation. Therefore, the Notification was lawful.

Supreme Administrative Court Judgment No. A. 204/2552

The Supreme Administrative Court held that the Nakhonsawan Inland Fisheries Research and Development Center (the Defendant No.1) discharged untreated wastewater directly into Bueng Boraphet Lake without considering the lake impact. The Defendant No. 1's act was against its duties to maintain the sustainable use of aquatic creatures and water resources, and caused water-

consuming issues for people residing around the lake. Such act was contrary to the Principles of Good Governance. Therefore, the Defendant No.1 committed a wrongful act arising from the neglect of official duties under section 9 paragraph one (3) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999).

#### **1.4 Is the environmental law considered as a human right or a fundamental right in a constitutional or conventional sense?**

Constitution of the Kingdom of Thailand, B.E. 2550 (2007), which is the fundamental law, has recognized the environmental law as human rights or fundamental rights in sections below:

- 1) Section 66<sup>18</sup> – Assembly rights of local community to preserve, participate, and maintain the sustainable use of natural resources and biodiversity
- 2) Section 67<sup>19</sup> – Rights to live in good and healthy environment, and rights to participate in the enhancement and conservation of environmental quality

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#### **<sup>18</sup>Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

Section 66 “Persons assembling as to be a community, local community, or traditional local community shall have the right to conserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion.”

#### Case Example

Supreme Administrative Court Order No. 96/2555: The Supreme Administrative Court ruled that the Plaintiffs lived and cultivated in Tambon Na-Rek, Panusnikom District, that under the supervision of Tambon Na-Rek Administrative Authority (the Defendant No.1). The Plaintiffs were the people who had the rights to participate in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment including biodiversity and sustainable balance in such area according to Section 66 and Section 67 paragraph one of Constitution of the Kingdom of Thailand, B.E. 2550 (2007). The Plaintiffs then were the persons who were inevitably aggrieved or injured or may inevitably be aggrieved or injured in consequence of the Defendants acts.

#### **<sup>19</sup>Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

Section 67 “The right of a person to participate with State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life, shall be protected appropriately.

3) Section 57<sup>20</sup> – Rights to access information prior to the permission or operation of any projects impacting on environment, and right to express his opinions in public hearing process

According to environmental rights protected under the Constitution, a person whose environmental rights are violated can raise the case to the Court to invoke such provision, or directly enforce the State to perform comply with rights and liberty under the Constitution, if the specific law allows. In addition, State shall promote, support, and assist any persons for the exercise of their rights under the Constitution (Section 28)<sup>21</sup>.

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Any project or activity which may seriously affect the quality of the environment, natural resources and biological diversity shall not be permitted, unless its impacts on the quality of the environment and on health of the people in the communities have been studied and evaluated and consultation with the public and interested parties have been organized, and opinions of an independent organization, consisting of representatives from private environmental and health organizations and from higher education institutions providing studies in the field of environment, natural resources or health, have been obtained prior to the operation of such project or activity.

The right of a community to sue a government agency, State agency, State enterprise, local government organization or other State authority which is a juristic person to perform the duties under this section shall be protected.”

<sup>20</sup>**Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

Section 57 “A person shall have the right to receive information, explanation and justification from a government agency, State agency, State enterprise or local government organization before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or a local community and shall have the right to express his opinions on such matters to the concerned agencies for their consideration.

The State shall organize public consultation thoroughly before the making of social, economic, politic and cultural development plan, the expropriation of immovable property, the making of town and country planning, the determination of land use, and the enactment of rule which may affect material interest of the public.”

<sup>21</sup>The Constitutional Court had affirmed this principle without referring to Section 28 of Constitution of the Kingdom of Thailand, B.E. 2550 (2007) in the Constitutional Court Judgment No. 3/2552; Supreme Administrative Court sent the arguments of the Plaintiffs (Mr. Paiboon Kongkert and 211 joint plaintiffs) to ask whether the Constitutional Court considered Section 46 paragraph one of Enhancement and Conservation of Nation Environmental Quality Act, B.E. 2535 (1992) was contrast with Section 56 and Section 59 paragraph two of Constitution of the Kingdom of Thailand, B.E. 2550 (2007) (During the consideration of the Constitutional Court, Constitution of the Kingdom of Thailand, B.E. 2550 (2007) had been promulgated. Since the issues to be considered in Constitution of the Kingdom of Thailand, B.E.

Besides recognizing the environmental rights for the people, Constitution of the Kingdom of Thailand, B.E. 2550 also prescribes the duties on environmental protection for those and authorities are as follows:

1) Section 73<sup>22</sup> – Any persons have a duty to conserve natural resources and environment

2) Section 85<sup>23</sup> – State has a duty to promote and support the

2540 (1997) were the same principles as Constitution of the Kingdom of Thailand, B.E. 2550 (2007). Therefore, the Constitutional Court ruled this plaint based on the provisions of Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

*One sentence states that “...Since Constitution of the Kingdom of Thailand, B.E. 2550 (2007) had committed to provide the rights and freedom, this commitment was enforced immediately which no need any implementation to come into force. To enforce Section 46 paragraph one of Enhancement and Conservation of Nation Environmental Quality Act, B.E. 2535(1992) must comply and follow to Section 67 paragraph two. Therefore, whether a project or an activity that required the preparation of an environmental impact assessment report or a project or activity that does not require preparation of an environmental impact assessment report according to Section 46 paragraph one of aforesaid act may seriously affect the quality of the environment, natural resources and on health of the people in the communities.*

*The person or community has the right to file a case with the Administrative Court according to Section 67 paragraph three. This filing has been requesting the Court to have judgments or orders to the government agency, state enterprise or private sector which operates those projects or activities to study and evaluate environment quality and health, and to organize public hearing The opinions of an independent organization, consisting of representatives from private environmental and health organizations and from higher education institutions providing studies in the field of environment, natural resources or health, have been obtained prior to the operation of such project or activity according to Section 67 paragraph two.”*

<sup>22</sup>**Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

Section 73 “Every person shall have a duty to serve in armed forces, render assistance in providing public calamity prevention and rehabilitation, pay taxes, render assistance to the official service, receive education and training, protect, preserve and pass on the national arts and culture and local wisdom and conserve natural resources and the environment as provided by law.”

<sup>23</sup>**Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

Section 85 “The State shall act in compliance with the land use, natural resources and environment policies as follows:

(1) Preparing and applying the rule on the use of land throughout the country with due regard to the compliance with environmental condition, nature of land and water and the way of life of local communities, the efficient measures for preservation of natural resources, the sustainable standard for land use and opinion of the people in the area who may be affected by the rule on the use of land;

participation of people in the conservation and exploitation of natural resources and environment

3) Section 290<sup>24</sup> – Local authorities have duties to manage, maintain, and exploit natural resources and environment

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(2) Distributing the right to hold land fairly, enabling farmers to be entitled to the ownership or the right in land for agriculture thoroughly by means of land reform or by other means, and providing water resources for the distribution of water to farmers for use in agriculture adequately and appropriately;

(3) Preparing town and country planning, and developing and carrying out the plan effectively and efficiently for the purpose of sustainable preservation of natural resources;

(4) Preparing systematic management plan for water and other natural resources for the common interests of the nation, and encouraging the public to participate in the preservation, conservation and exploitation of natural resources and biological diversity appropriately;

(5) Conducting the promotion, conservation and protection of the quality of the environment under the sustainable development principle, and controlling and eliminate pollution which may affect health and sanitary, welfare and quality of life of the public by encouraging the public, the local communities and the local governments to have participation in the determination of the measures.”

<sup>24</sup>**Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

Section 290 “A local government organization has the powers and duties to promote and conserve the quality of the environment as provided by law.

The law under paragraph one shall at least contain the following matters as its substance:

(1) the management, preservation and exploitation of the natural resources and environment in the area of the locality;

(2) the participation in the preservation of natural resources and environment outside the area of the locality only in the case where the living of the inhabitants in the area may be affected;

(3) the participation in considering the initiation of any project or activity outside the area of the locality which may affect the quality of the environment, health or sanitary conditions of the inhabitant in the area;

(4) the participation of local community.”

## **2. THE COMPETENCE OF THE ADMINISTRATIVE JUDGE IN THE ENVIRONMENTAL FIELD**

**2.1 Do the environmental cases fall totally or partially within the competence of the administrative judge? Are the judiciary courts also competent? Are there specialized courts?**

In Thailand, the judicial system is a dual-court system that separates the competence to try and adjudicate between the Courts of Justice and the Administrative Court. The Courts of Justice have power to try and adjudicate all general cases which were not specified within the jurisdiction of other courts such as civil cases and criminal cases<sup>25</sup>. For administrative cases<sup>26</sup>, such cases fall into the power and competence of the Administrative Court. Generally, the judicial system is organized by Constitution of the Kingdom of Thailand as follows:

1. The Constitutional Court
2. The Courts of Justice
3. The Administrative Court
4. The Military Court

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<sup>25</sup>**Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

Section 218 “The Courts of Justice have the power to try and adjudicate all cases except those specified by this Constitution or the law to be within the jurisdiction of other Courts”

<sup>26</sup>**Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

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

The powers under paragraph one of the Administrative Courts shall not include the final decision of the organs under the Constitution, which is deemed the direct exercise of power as prescribed by the Constitution of such a particular organ.

There shall be the Supreme Administrative Court and Administrative Courts of First Instance, and there may also be the Appellate Administrative Court.”

However, each court has the distinctive jurisdiction and competence to try and adjudicate over cases in its powers prescribed by virtue of Thailand Constitution and laws.

Section 9 paragraph one of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) regulates that “Administrative Court has the competence to try and adjudicate or give orders over the following matters;

1) The case involving a dispute in relation to an unlawful act by an administrative agency or a State official;

2) The case 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) The case involving a dispute in relation to a wrongful act or other liabilities of an administrative agency or a State official;

4) The case involving a dispute in relation to an administrative contract;

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

6) The case involving a matter prescribed by law under the jurisdiction of the Administrative Court.”

The President of the Supreme Administrative Court established the environmental divisions in the Administrative Courts of First Instance and the Supreme Administrative Court, according to Notifications of the President of the Supreme Administrative Court Re: The Establishment of the Environmental Division in the Administrative Courts of First Instance and Re: The Establishment of the Environmental Division in the Supreme Administrative Court by virtue of Section 7 paragraphs two and three, and Section 7/1<sup>27</sup> of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999).

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<sup>27</sup>**Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)**

Section 7/1 “In the case where a division or an organ called by other names is established in the Supreme Administrative Court or the Administrative Courts of First Instance, the Chief Judge of Division or the Chief Judge of Organ called by other names, one each thereof, shall be empowered to be responsible for division or section’s works prescribed by the J.C.A.C.”

Besides, by virtue of the law, the President of Supreme Administrative Court issued the Recommendation of the President of the Supreme Administrative Court on the Administrative Court Proceedings concerning Environmental Issue, dated 29<sup>th</sup> June B.E. 2554 (2011). This Recommendation of the President of Supreme Administrative Court is regarded to be a practical guideline to try and adjudicate or give orders in the environmentally-related administrative cases.

The definition of an administrative case relating to environmental issues is a dispute between a State agency, State enterprise, local government organization, organ under the Constitution or State official on one part and a private individual on the other part, or between a State agency, State enterprise, local government organization, organ under the Constitution or State official on one part and another such agency, enterprise, organization or official on the other part, relating to the exercise of administrative power or the administrative activities as provided by environmental law, including the protection or conservation of natural environment, plants, animals, or living things, the natural resources management, health care, the management of environment, the management of weather, the management of landscape, culture and arts management or other relating laws and cases prescribed by Notification of the President of the Supreme Administrative Court.

The Courts of Justice<sup>28</sup> have the competence to try and adjudicate civil cases, criminal cases and other cases which were not specified within the jurisdiction of other courts. As for environmental cases, there is the Recommendation of the President of the Supreme Court on the court proceedings concerning environmental issue, which defines the meaning of “environmental case” as follows:

1. Civil cases relating to the damages to plaintiffs resulting from destruction or impact on the natural resources, social environment or ecosystem.
2. Civil cases relating to act or refrain from any act by the defendants to protect the natural resources or community environment.
3. Civil cases relating to compensation for damages by the defendants to eliminate pollution, restore environment, or compensate the value of the damaged natural resources.

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<sup>28</sup> The environmental division in the Supreme Court was established in B.E. 2548 (2005). After that, in B.E.2549 (2006), the environmental divisions in the Court of Appeal were established. Lastly, the environmental divisions in the Civil Court were established on 25<sup>th</sup> May B.E. 2554 (2011).

4. Civil cases relating to compensation for damages by the defendants affecting life, body, health or other rights of plaintiffs resulting from the pollution that the defendants pollute or the pollutants that the defendants are liable for.

From above shown that the Administrative Court has competence to try and adjudicate only such environmental disputes between an administrative agency or a State official on one part and a private sector on the other part, or between an administrative agency or a State official on one part and another such agency or official on the other part relating to the exercise of administrative power as provided by laws or the administrative activities in the environmental disputes. The Courts of Justice have power to try and adjudicate such environmental disputes arising from the act of private sector affecting to the environment.

The examples of environmental cases involving the competence of the trial and adjudication of the Administrative Court are as follows:

1. Cases relating to an unlawful act by an administrative agency or a State official according to Section 9 paragraph one of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) are; 1) filing to the revocation of the cemetery and crematory establishment license issued by the Sub-district Chief officer of Sam Roi Yot (Supreme Administrative Court Judgment No. A.44/2550), 2) filing to the revocation of the resolution of Sub-district Administrative Organization on the landfill construction at Khon Kean Province (Supreme Administrative Court Judgment No. A.244/2553), 3) filing to the revocation of Notification of the Electricity Generating Authority of Thailand on the location selection of the 500 Kilowatt concrete pole (Supreme Administrative Court No. A.801/2551).

2. Cases relating 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 according to Section 9 paragraph one (2) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) are; 1) filing to the relocation of the landfill site in Tumbon Rachathewa (Supreme Administrative Court Judgment No. A.79/2547), 2) filing to request the Pollution Control Department to restore Klity Creek under environmental law (Central Administrative Court Judgment No. 437/2551), 3) filing to request the National Environment Board to issue the notification of the pollution control areas at Map Ta Phut Municipality area and nearby (Rayong Administrative Court Judgment No. 32/2552).

3. Cases relating to a wrongful act of an administrative agency or a State official arising from the exercise of power under the law or from a law,

administrative orders or other orders, or from the neglect of official duties required by the law to be performed or the performance of such duties with unreasonable delay according to Section 9 paragraph one (3) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) are; 1) filing an administrative agency or a State official for negligence in supervising radioactive substances, causing the radioactive leak (Central of Administrative Court No. 1820/2545), 2) filing Electricity Generating Authority of Thailand for the negligence in releasing the polluted air without air pollution treatment under the emission control standards, causing physical and mental injury to other persons (Chiang Mai Administrative Court Judgment No. 60-77/2552 and No. 64/2548), 3) filing the administrative agency or State official in discharging wastewater into the public canal without wastewater treatment (Supreme Administrative Court No. A.204/2552).

4. Cases relating to an administrative contract according to Section 9 paragraph one (4) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) are; 1) filing on the administrative contract between the Governor of the Bangkok Metropolitan Administration and the Limited Partnership on providing waste disposal service within Rachathewa area (Supreme Administrative Court Judgment No. A.79/2547), 2) filing on the administrative contract between Pattaya City and a private sector on the construction of sewerage and wastewater management system (Supreme Administrative Court Order No. 152/2548), 3) filing on the administrative contract between Ministry of Agriculture and Cooperatives and a private sector on mangrove forest concession (Supreme Administrative Court Order No. 130/2544).

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 according to Section 9 paragraph one (5) and (6) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999); however, there is no environmental case pursuant to Section 9 paragraph one (5) and (6).

In a case where a dispute on the court jurisdiction and competence in an environmental case between the Courts of Justice and the Administrative Court arises, the Commission on Jurisdiction of Courts established by Constitution of the Kingdom of Thailand has power and duties to determine such dispute.

## 2.2 What are the criteria of competences between administrative courts, judiciary courts and specialized courts?

The legal proceeding in environmental cases is related to the jurisdiction of both the Courts of Justice and the Administrative Court; that is to say the nature of the environmental cases is able to be a civil case, a criminal case and an administrative case. Arising from the dispute relating to the environmental cases, there are 3 features in filing a plaint as follows:

1. The criminal plaint against the defendants requiring the criminal penalties<sup>29</sup> prescribed by environmental law.
2. The civil plaint against the defendants requiring the compensations in life, health or property which affected by the act of the defendants<sup>30</sup>.
3. The administrative plaint against an administrative agency or a State official in consequence of an act affecting the rights and duties of people. People are entitled to file such cases to the Administrative Court requiring an administrative agency or a State official to refrain from any act or revoke such administrative order<sup>31</sup>. Moreover, the Administrative Court is empowered to issue decree for compensation.

As aforementioned, the nature of environmental cases can possibly be civil cases, criminal cases, and administrative cases, and can fall within the power and competence of trial and adjudication of both courts; the Courts of Justice and the Administrative Court. Consequently, the conflict of court competent jurisdiction issue arises. **“The Committee on Determination of Powers and Duties of among Courts”** is then established by virtue of Act on Determination of Powers and Duties of among Courts, B.E. 2542 (1999)<sup>32</sup> to solve the issue.

The Committee on Determination of Powers and Duties of among Courts consists of the President of the Supreme Court of Justice as Chairperson,

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<sup>29</sup> For example; forest laws, wild animal conservation laws

<sup>30</sup> For example; filing a wrongful case pursuant to Civil and Commercial Code of Thailand

<sup>31</sup> For example; the revocation order of the factory permit, the order of construction prohibition

<sup>32</sup> Act on Determination of Powers and Duties of among Courts, B.E. 2542 (1999) is named by the Supreme Court of Thailand.(source: <http://www.supremecourt.or.th>) Another name translated by Council of State is “Act on Adjudication of Power and Duty of Courts, B.E. 2542 (1999)” (source: <http://www.Lawreform.go.th>).

the President of the Supreme Administrative Court, the Chief of the Military Judicial Office, and four other qualified persons as member.

The sued party and the court itself can consider the competent jurisdiction. If the sued party consider that such case is under the jurisdiction of another court, such party may file a petition with the plaintiff-receiving court. The petition shall be submitted, in case of the Courts of Justice or the Military Court, before the date of taking evidence; or in case of the Administrative Court or another court, before the date of first hearing. The plaintiff-receiving court shall temporarily stay the proceedings and deliver without delay its opinion to the court whose jurisdiction is considered competent by the party. The courts concerned shall proceed as follows:

1) If the opinion-delivering court considers that the case is under its jurisdiction and the opinion-receiving court has the same opinion, the latter shall notify its opinion to the former to resume the proceedings;

2) If the opinion-delivering court considers that the case is under the jurisdiction of another court considered by the party and the opinion-receiving court has the same opinion, the latter shall notify its opinion to the former; the opinion-delivering court may, as it deems appropriate for the benefit of justice, order the case to be transferred to such court or to be disposed of in order for the party to file the plaintiff with the competence court;

3) If the opinion-delivering court and the opinion-receiving court have conflicting opinions with regard to the competent jurisdiction over the case, the former shall submit the matter to the Committee on Determination of Powers and Duties of among Courts; the Committee shall make a determination within thirty days from the date receiving the matter. In case of necessity, the committee may extend the period to not longer than thirty days with a record of reasons for such necessity.

The order of the court pursuant to (1) and (2) and the determination of Committee with regard to the competent jurisdiction of the court according to (3) shall be final. Any higher court of its hierarchy shall be prohibited to raise and reconsider such competent jurisdiction issue.

The abovementioned matters shall apply *mutatis mutandis* to the case where the court itself considers the competent jurisdiction before delivering the judgment.

Since the operation of the Administrative Court in B.E. 2544 (2001), there is a case filed to the Committee for determination on court jurisdiction in the

environmental case between the Courts of Justice and the Administrative Court only; the Decision of the Committee on Determination of Powers and Duties of among Courts No.15-17 and No.24/2546.

The Plaintiffs claimed that the Electricity Generating Authority of Thailand, the Defendant, a body responsible for controlling and supervising the spread of pollutants, constructed the factory without any suitable controlling measures, which caused the pollutant spread. The Committee therefore had an opinion that the case in relation to a wrongful act of an administrative agency or a State official arising from the negligence in its statutory duties according to Section 9 paragraph one (3) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999). Consequently, the case was under power and adjudication of the Administrative Court.

The Decision of the Committee on Determination of Powers and Duties of among Courts No.15-17 and No. 24/2546 is the fundamental case that shows the crucial role of the Committee in determination on court jurisdiction in the environmental case of Thailand.

### **2.3 In cases of administrative courts competence, which is the competent court in the first instance? And on appeal?**

The environmental cases that fall within the power and competence of the Administrative Courts of First Instance is administrative cases pursuant to Section 223 of Constitution of the Kingdom of Thailand, Recommendation of the President of the Supreme Administrative Court on the Administrative Court Proceedings concerning Environmental Issue, together with Section 9<sup>32</sup> of Act on

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<sup>32</sup>**Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)**

Section 9 “Administrative Court has the competence to try and adjudicate or give orders over the following matters:

(1) The case involving a dispute in relation to an unlawful act by an administrative agency or State official, whether in connection with the issuance of a rule or order or in connection with other acts, by reason of acting without beyond the scope of powers and duties or in a manner inconsistent 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 unnecessary process or excessive burden to the public or amounting to undue exercise of discretion;

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

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

According to Section 10 of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999), the Administrative Courts of First Instance have the competence to try and adjudicate cases within the jurisdiction of the Administrative Court except the cases falling within the jurisdiction of the Supreme Administrative Court. Also, Section 11<sup>33</sup> of aforementioned Act, regulates that the Supreme Administrative Court has the competence to try and adjudicate the following matters:

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

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

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

(6) The case involving a matter prescribed by the law to be under the jurisdiction of the Administrative Court.

The following matters are not within the jurisdiction of the Administrative Court;

(1) The action concerning military disciplines;

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

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

<sup>33</sup>**Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)**

Section 11 “The Supreme Administrative Court has the competence to try and adjudicate the following matters:

1) The case involving a dispute in relation to a decision of a quasi-judicial commission as prescribed by the General Assembly of the Judges of the Supreme Administrative Court;

2) The case involving a dispute in relation to the legality of a Royal Decree or by-law issued by the Council of Ministers or with the approval of the Council of Ministers;

3) The case prescribed by the law to be within the jurisdiction of the Supreme Administrative Court;

4) The case in which an appeal is made against a judgment or order of an Administrative Courts of First Instance.”

1) The case involving a dispute in relation to a decision of a quasi-judicial commission as prescribed by the General Assembly of the Judges of the Supreme Administrative Court;

2) The case involving a dispute in relation to the legality of a Royal Decree or by-law issued by the Council of Ministers or with the approval of the Council of Ministers;

3) The case prescribed by the law to be within the jurisdiction of the Supreme Administrative Court;

4) The case in which an appeal is made against a judgment or order of an Administrative Courts of First Instance.”

The example cases involving the power and competence to try and adjudicate of the Supreme Administrative Court are:1) the revocation of the resolution of the Council of Ministers on the compensation measure to whom affected by noise pollution from Suvarnabhumi International Airport (Supreme Administrative Court Judgment No. D.13/2552), 2) the revocation of the unlawful Ministerial Regulation issued by Minister of Ministry of Agriculture and Cooperatives by virtue of Ministerial Regulation No.366, B.E. 2511 (1968) (Supreme Administrative Court Judgment No. D.11/2545),3) the revocation of Royal Decree on determining Koh Samet to be the National Park (Supreme Administrative Court Order No. D.7/2554).

### **3. THE PROCEEDINGS**

#### **3.1 Access to justice**

In order to accept a plaint for consideration, the Administrative Court shall examine that the plaint is consistent with the conditions of the filing of an administrative case such as a dispute prescribed by law to fall within the jurisdiction of the Administrative Court; the plaintiff shall be any person who is aggrieved or injured or who may inevitably be aggrieved or injured; the relief sought by the plaintiff shall be issued under court decree; the plaint shall be filed within the prescription; the plaintiff shall proceed the process or procedure for the redress of the grievance or injury required by law before filing the plaint. These conditions of filing are applied in the environmentally-related administrative cases as well. Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) does not clearly separate administrative court procedure in environmentally-related administrative cases from the general administrative cases. Basically, both cases are not distinguishably separated from each other. However, The President of the Supreme Administrative Court also

recommended that the guidance in practice in judicial rule of the administrative case concerning environmental issue.

The initial condition of filing the administrative case is an aggrieved or injured person who has rights to file a case. An aggrieved or injured person in environmental issues shall have broadly impact than that of the regular administrative cases. Therefore, clause 3 of the President of Supreme Administrative Court Recommendation in the administrative court concerning environmental issue regulates that the person who is aggrieved or injured or who may inevitably be aggrieved or injured shall be broadly taken into account, by recognizing community rights, local community, indigenous local community, private organizations, associations, juristic persons or groups, all of which shall have environmental interest, including Constitutional provisions about freedom of assembly as associations, private organizations, unions, farmer's groups, NGOs (Non-government Organization), federations or other group.

An aggrieved or injured person can be explained as follows:

***3.1.1 Which are the admissibility criteria of the proceedings initiated by a natural person (infringement of a subjective right or an own interest, actio popularis, ...)?***

The person who has the right to file a case to the Administrative Court must be a person who is aggrieved or injured by Section 42 paragraph one of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999), providing that "Any person who is inevitably aggrieved or injured or who may inevitably be aggrieved or injured in consequence of an act or omission by an administrative agency or State official or who has a dispute in connection with an administrative contract or other case falling within the jurisdiction of an Administrative Court under Section 9 may, provided that the redress or alleviation of such grievance or injury or the termination of such dispute requires a decree as specified in section 72, file a case with an Administrative Court." Therefore, an aggrieved or injured person can be classified into two main characteristics as follows:

1) ) The revocation of rules or administrative orders or the negligent of State officials to perform the official duty or performed the duty with

unreasonable delay

The category of this case is under Section 9 paragraph one (1) and (2) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542(1999). A plaintiff is entitled to file a case if the plaintiff has grievance or the plaintiff's interests has been affected by the negligence of duty or the performance of the duty with unreasonable delay. It is unnecessary that the plaintiff's rights or interests must be directly affected, for example:

**Supreme Administrative Court Order No.96/2555:** this case involves a dispute arisen from an unlawful act by an administrative agency or State official in the issuance of an administrative and the negligence of official duties required by the law to be performed. With respect to the right of filing, The Supreme Administrative Court concluded as follows:

*“The cause of action in this case arose from the Defendant No. 1’s order in granting the building permit to Mr. Anun to construct a premise for pig farming business without conducting the public hearing process with the forty two plaintiffs and local residents to vote for or against the pig farming business. The grant of the building permit would finally lead to the pig farming business. Obviously, the pig farming would cause water pollution, and waste, smell and sounds of animals having an adverse impact on quality of environment. The Minister of Natural Resources and Environment has determined that the pig farming was a source of pollution needed to control wastewater before releasing into the public water source and environment. Notifications of the Ministry of Natural Resources and Environment Dated 7 November B.E. 2548 (2005), then, were enacted to control wastewater discharged from pig farming into the public water source and environment. The Plaintiffs claimed that they had lived and cultivated crops near the disputed area, which was the local community under the Defendant No. 1’s jurisdiction. According to Sections 66 and 67 of Constitution of the Kingdom of Thailand, B.E. 2550 (2007), the Plaintiff had rights to participate in the conservation, preservation, and exploitation of natural resources and biological diversities. The plaintiff also had rights in protecting, promoting, and preserving the quality of environment in order to live in the environment which was not hazardous to his or her health, sanitary condition, welfare, and quality of life. The Plaintiffs, therefore, were persons who might inevitably be aggrieved in*

*consequence of an act or omission by both defendants. To redress the grievance, the Plaintiffs requested the Court to enforce both defendants to revoke the building permit for pig farming and rearrange the public hearing process under Section 72 paragraph one (1) and (2) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999). Consequently, the Plaintiff entitled to file a case against both defendants to the Administrative Court subject to Section 42 paragraph one of the aforementioned Act.”*

2) The wrongful act or other liabilities and the cases related to the administrative contract.

This type of cases falls under Section 9 paragraph one (1) and 2) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999). A plaintiff must prove that their rights were affected to be considered as a person who has the rights to file a case. In other words, the Plaintiff must be a party to the contract or be a person who is aggrieved or injured from the wrongful act occurred by an administrative agency or State official. The Administrative Court determines that a person who is aggrieved or injure in this meaning is narrowly interpreted.

For *actio popularis* (Open Standing) case, the Supreme Administrative Court has ruled that the general principles providing that any persons are not allowed to file a case to the Administrative Court for the revocation of rules and order, on the ground that that they are one of people (*actio popularis*) or they are taxpayer. Such persons have not been affected by the rules or administrative orders, nor stakeholders in the revocation of the rules or the administrative orders (The Supreme Court Order D. 31/2551).

***3.1.2 What are the admissibility criteria of the proceedings initiated by legal persons (in particular for associations, the NGO and public persons having competence in the environmental field)? Do presumptions of interest exist for prompting legal action?***

**A juristic person** is an assumed person recognized by the law to have and hold rights as a natural person in filing an administrative case under the principal “a person who is aggrieved or injured, may file a case with the Administrative Court.” However, the consideration of any juristic person as a person who is aggrieved or injured or not must be considered from the objective of the juristic person establishment and its domicile or the area involved. If there is

any composition missing, such juristic person is not deemed to be an aggrieved or injured person who may file a case to the Administrative Court.

**Cases Example:**

**Central Administrative Court Judgment No. 1763/2549**

The Plaintiff (Foundation for Anti Air Pollution and Environmental) is a juristic person working with public and private agencies to improve and protect environmental quality from waste water of residual waste and air toxicity in Bangkok, rural areas and other Provinces. The Foundation operates according to section 6 of Enhancement and Conservation of Nation Environmental Quality Act, B.E. 2535 (1992) and Section 56 of Constitution of the Kingdom of Thailand, B.E. 2540 (1997). It has registered as an NGO with the Ministry of Technology Science and Environmental Protection and Natural Resources under Section 7 of the said Act. Therefore, when there is an incident occurring from the neglect of official duties of the Defendant (Bangkok Mass Transit Authority) on environmental protection, the main responsibility of the Plaintiff, the Plaintiff was entitled to file the case. Although the plaintiff has not been domiciled in the government surveyed area with pollution higher than the standard, the Plaintiff is a person, who is aggrieved or injured, may file a case to the Administrative Court.

**Supreme Administrative court Order No.592/2552**

Anti-Global Warming Associate, Assembly of NGOs for the Protection conservation Environment and Natural Resources and other people domiciled in Map Ta Phut community and nearby area filed a case against the National Environment Board (Defendant No.1) and the eight defendants over the case of unlawfully approved the 76 projects or activities. Those projects or activities could potentially cause severe affect to Map Ta Phut community and nearby. They approved such projects or activities without studying and evaluating impacts on environment, natural resource, health of people in the community and without consulting with the public and interested parties and opinions of an independent organization. They did not follow the process as stated in Section 67 paragraph two of Constitution of the Kingdom of Thailand, B.E. 2550 (2007) which could cause severe damage to environmental quality, natural resource, health of the plaintiff and people in such area. The Plaintiff requested the court to revoke the Environmental Impact Assessment (EIA) reports of the projects or

activities and revoke a permit to build projects or activities affecting environmental quality, natural resource and health of people in this area. Moreover, the Defendants and relating sectors should provide the study and assessment of people's health provide the public hearing and consult with an independent organization. The Plaintiffs requested the Court to order any provisional remedial measure or means before the delivery of a judgment. The Supreme Administrative Court considered that the rights in accordance with Section 67 of Constitution of the Kingdom of Thailand, B.E. 2550 (2007) shall be protected immediately once the Constitution was promulgated. The administrative agency or State official cannot claim that the rights had not been ratified by law in order to refuse to provide the rights protection. Therefore, prior to operating any projects or activities which may cause severe impacts to environment, natural resource, and health; the process under Section 67 must be completed. The eight defendants approved 76 projects and activities without completing Section 76 paragraph two. The act of eight defendants could be a wrongful act. Additionally, the projects or activities that eight defendants approved were composed of high pollution industries which could potentially increase pollutions in Map Ta Phut and neighboring areas and were tough to mitigate the damages afterwards. Consequently, the Court considered that there was adequate reason to prescribe provisional remedial measure. However, the provisional remedial measure would constitute any barriers to the administration of State affairs or to public service. If any obstacles occur, they are the result from the Defendants' failure to perform official duties required by the law or performing such duties with unreasonable delay. And, if projects and activities are completely processed according to section 67 paragraph two of the Constitution, the Court would consider issuing provisional remedial measures or means in the different. Then, the Defendants may request the Administrative Court of First Instance to revise or revoke the provisional remedial measure or means. Nevertheless, concerning the preliminary projects or activities characteristic, the Court found that some projects or activities may not create serious impacts to the community but they were simply the projects or activities of monitoring or pollution treatment or were solely the additional equipment to the main projects or activities. Consequently, it was not appropriate to prescribe the provisional remedial measure or means to every project or activity. The Supreme Administrative Court amended the Administrative Court of First Instance's order

and prescribed provisional remedial measure or means to only such projects or activities which required the completed process. Exceptionally, the other orders have been affirmed.

**A group of people**, not having the status of a person, is not able to file a case to the Administrative Court. Nonetheless, Section 66<sup>33</sup> and Section 67<sup>34</sup> of Constitution of the Kingdom of Thailand, B.E. 2550 (2007) have guaranteed the right of communities to participate in environmental conservation, as well as the right to sue the government sectors. These constitutional provisions also recognize the right of assembly groups as a community or indigenous communities to sue the government sector in exercising its power affecting the environmental quality within the community. According to clause 3 of Recommendation of the President of the Supreme Administrative Court, Recommendation of the President of the Supreme Administrative Court on Administrative Court Procedure concerning

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<sup>33</sup> **Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

Section 66 “Persons assembling as a community, local community or traditional local community shall have the right to preserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion.”

<sup>34</sup> **Constitution of the Kingdom of Thailand, B.E. 2550 (2007)**

Section 67 “The rights of a person to participate with State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life, shall be appropriately protected.

Any project or activity which may seriously affect communities with respect to the quality of the environment, natural resources and biological diversity shall not be undertaken, unless its impacts on the quality of the environment and health of the people in the communities have been studied and evaluated and consultation with the public and interested parties have been organized, and opinions of an independent organization, consisting of representatives from private environmental and health organizations and from higher education institutions providing studies in the field of environment, natural resources or health, have been obtained prior to the operation of such project or activity.

The right of a community to take legal action against a government agency, State agency, State enterprise, local government organization or other State authority which is a juristic person to enforce the performance of duties under these provisions shall be protected.”

Environmental Issue, a person who is inevitably aggrieved or injured or who may inevitably be aggrieved or injured, having the right to file a case, should be considered in a broad meaning regarding community rights, local community, indigenous community, private organizations, associations, juristic persons or groups with an environmental interest, including, the Constitutional provisions relate to freedom of assembly as associations, unions, farmer groups, NGOs, federations or other groups, for example:

The Plaintiff and other people assembled a group called “*Sri Tawaravadee*” having a purpose to study history and archaeology and to preserve and protect historical and archaeological areas of Nakhonpathom Province and build conscious of ownership of cultural heritage to the community for development and education. When the forming of the Plaintiff’s group is for overall benefits of the community and the nation, according to community rights of the indigenous community containing long social and cultural nature, the Plaintiff’s rights shall be protected according to sections 64, 66 and 67 of Constitution of the Kingdom of Thailand, B.E. 2550 (2007). Therefore, the Plaintiff is deemed to be a person who is inevitably aggrieved or injured or maybe aggrieved or injured pursuant to Section 42 paragraph one of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999). **(Supreme Administrative Court Order No. 114/2551)**

In summary, although the administrative cases concerning environmental issues do not have any rules on an aggrieved or injured person, this issue shall be considered from provisions of the Constitution, and Recommendation of the President of the Supreme Administrative Court. The Administrative Court of Thailand, now, is likely to consider the scope of a person who is inevitably aggrieved or injured in the broad range.

### **3.2 The procedure**

**3.2.1 *Is there a preliminary administrative appeal procedure (optional or mandatory)?***

Filing environmentally-related administrative case with the Administrative Court is applied the same basis of the appeal procedure as general

administrative cases. Section 42 paragraph<sup>35</sup> two of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) provides that in the case where the law provides for the process or procedure for the redress of the grievance or injury in particular matter, the filing of an administrative case with respect to such matter may be made only after the process or procedure has been proceeded. The law divides the process and procedure before filing a case to the Administrative Court into two cases;

1) In case that there are specific laws requiring a particular process or procedure for redressing the aggrieved or injured, the plaintiff shall proceed such process and procedure specified by law. Then, such person shall has the rights to file a case with the Administrative Court. The provisions concerning to environmental issue are provided in various laws such as Section 87<sup>36</sup> of Enhancement and Conservation of Nation Environmental Quality Act, B.E. 2535 (1992) which allow the challenge of the order by filing a petition to the Pollution Control Committee within thirty days from the date of receiving the order of the pollution control official and appeal to the Minister within thirty days from the date of receiving Notification of the Pollution Control Committee's decision.

2) In case that there is no specific law providing for the process or procedure for the redressing of grievance or injury as in any particular matter, in

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<sup>35</sup>**Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)**

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

<sup>36</sup>**Enhancement and Conservation of Nation Environmental Quality Act, B.E. 2535(1992)**

Section 87 “The owner or possessor of the point source of pollution, the Service Contractor licensed to render services of wastewater treatment or waste disposal, the Monitoring Control Operator or any other person who is not satisfied with the order of the pollution control official under Section 82 (2), (3), (4) or (5), is entitled to challenge such order by petition to the Pollution Control Committee within thirty days from the date of receiving the order of the pollution control official.

If the petitioner does not agree with the decision of the Pollution Control Committee, he shall appeal to the Minister within thirty days from the date of receiving notification of the Pollution Control Committee's decision.

The decision of the Minister shall be final.”

Thai administrative legal system, the plaintiff shall appeal to the officer who issues the administrative order within fifteen days from the date of receiving the administrative order. Section 44<sup>37</sup> of Administrative Procedure Act, B.E. 2539 (1996) is the standard law that provides the process or procedure for the redress of the grievance or injury before filing a case to the Administrative Court.

However, there are cases for ordering revocation of administrative orders which are not appealed to the administrative agency before filing with the court, for instance,

1) In case of the revocation of an administrative order issued by the Minister under Section 44 of Administrative Procedure Act, B.E. 2539 (1996).

2) In case of the revocation of an administrative order of the various committees, whether it is established by the law, under Section 48<sup>38</sup> of Administrative Procedure Act, B.E. 2539 (1996).

3) In case of the revocation of the general administrative orders or other orders of Administrative Agency (or State Official) such as a lawsuit for ordering the revocation of Notification of Hin Lek Fai Sub-District Administrative Organization regarding to the investigation of the prices of the underground water supply construction, which considered as a general administrative order. The Plaintiff, therefore, filed a case with the Administrative Court without an appeal (Supreme Administrative Court Judgment No. A. 138/2549).

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<sup>37</sup>**Administrative Procedure Act, B.E. 2539 (1996)**

Section 44 “Subject to Section 48, in the case where any administrative act is not issued by a Minister and there is no law specifically providing for an administrative appeal proceeding, the participant may appeal against the administrative act by filing the appeal with the issuing official within fifteen days as from the date he or she is notified thereof.

The appeal shall be made in written form specifying the cause of dispute and the facts or legal grounds referred to.

The appeal shall not stay the enforcement of the administrative act unless an order to stay the enforcement is made under Section 56 paragraph one”

<sup>38</sup>**Administrative Procedure Act, B.E. 2539 (1996)**

Section 48 “The participant shall have the right to appeal against the administrative act of any committee, whether or not established by law, to the Petition Council under the law on the Council of State both on matter of facts and matter of law within ninety days as from the date he or she is notified of such act. If such committee is a quasi-judicial committees, the right to appeal and the period of appeal shall be in accordance with the provision of law on the Council of State.

4) An order which is clearly and seriously erred. It deems that the order is not even issued. The Supreme Administrative Court Judgment No. A. 47/2546 has laid out a principle that the act which can be clearly and seriously erred in terms of law. It deems that it was not even issued. Thus, the Plaintiff has the right to file a case without appeal.

5) The administrative order which states that those who do not agree with the administrative order can file a case with the court without appeal. The Supreme Administrative Court Order No. 565/2546 ruled that the Defendant issued an order for the Plaintiff to pay compensation to the Defendant within forty five days from the date of the receipt of the order. If the Plaintiff did not agree with this order, the Plaintiff shall file a case with the Administrative Court within ninety days. As stated in the order, the plaintiff directly filed a case with the Administrative Court without appeal. If the court considered this reason not to accept the Plaintiff's filing, it will be unfair to enforce the law. Hence, the Court accepted the plaint for consideration.

***3.2.2 Within what period after the enactment of the administrative decision does a legal action have to be taken? (common law time limits, specific time limits depending on the applicant, ...)?***

The period of time for filing an administrative case relating to the environment is the same as that of a general administrative case. The criteria on the period of time for filing a case are as follows:

1) Filing regarding to an administrative agency or a State official acting unlawfully under Section 9 paragraph one (1) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) shall be filed within ninety days from the date that the cause of action is known or should have been known, according to Section 49 of the same Act.

2) Filing regarding 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 according to Section 9 paragraph one (2) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) shall be filed to the Court within ninety days from the date the cause of action is known or should have been known, or within the expiration of ninety days as from the day the plaintiff made a request in writing to an administrative agency or a State official for the performance of duties under the law and has not received a written explanation from the administrative agency or a State official or has received the same but such explanation is considered by the plaintiff to be

unreasonable, as the case may be, unless otherwise provide by a specific law under Section 49 of the same Act.

3) Filing regarding to 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, administrative orders or other orders, or from the neglect of official duties required by the law to be performed or the performance of such duties with unreasonable delay according to Section 9 paragraph (3) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) shall be filed within one year as from the day the cause of action is known or should have been known but the filing shall not be later than ten years as from the date of such cause of action under to Section 51 of the same Act.

4) Filing involving a dispute in relation to an administrative contract under Section 9 paragraph one (4) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) shall be filed within a period of 5 years as from the day the cause of action is known or should have been known but the filing shall not be later than ten years as from the date of such cause of action under to Section 51 of the same Act.

Nonetheless, whatever the type of the dispute is, if it is the case concerning the protection of public interest or a status of an individual person, it may be filed any time. Or if the Court is of the opinion that the case, so filed, will be of public benefit, upon the lapse of time within which an administrative case can be filed, the Administrative Court may accept the case for trial and adjudication under Section 52<sup>39</sup> of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999). These principles have played an important role in the period of time for filing of the administrative case concerning environmental issue. This is due to the condition of the administrative case concerning environmental issue. It not only has an impact on any individual but also affects all people. The result of the filing an administrative case is to protect the rights or remedy not only to the individual who solely filed, but also to

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<sup>39</sup>**Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)**

Section 52 “An administrative case concerning the protection of public interest or a status of an individual person may be filed at any time.

Upon the lapse of time within which an administrative case can be filed, if the Administrative Court is of the opinion that the case, so filed, will be of public benefit or will occur a necessary cause, the Administrative Court may, whether at its own initiative or upon an application of a party, accept the case for trial and adjudication.”

those who have been generally affected. Thus, it can be further said that the filing an administrative lawsuit relating to the environment has tended to protect the public interest or benefit by enabling these administrative cases to be filed upon the lapse of time. Moreover, Clause 3 of Recommendation of the President of the Supreme Administrative Court on Administrative Court Proceeding concerning Environmental Issue also prescribes that to consider the period of time for filing a case, the Court should pay more attention to the rules related to the period of time for filing a case according to Section 52 of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999).

The fact that three Plaintiffs filed a case with a court for ordering the revocation of the order of the Defendant No.1 (Governor of Chiang Rai Province) that approved the Defendant No.2 (the Chiang Rai City local Administration) to dump the garbage in the disputed area. Although, the Plaintiff filed a case upon the lapse of time for filing the case, the operation of disposing the garbage outside the territory of the Chiang Rai City local administration of the Defendant No.2 may affect the health, welfare or quality of life of the people and adversely affect the quality of the environment in such area. Moreover, the cause of the nuisance which was the cause of the filing of cases had continued until the date of filing. Hence, this case is for public benefit according to Section 52 paragraph two of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999). The Administrative Court is able to accept the case for trial (Supreme Administrative Court Judgment No. A. 356/2550).

### ***3.2.3 Does the appeal have a suspensive effect? If not, are there any summary proceedings (suspension, provisional measures, ...)?***

Clause 69 of Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000) mentions that 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, unless the Court orders otherwise. Section 66 of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) states that “In the case where the Administrative Court considers it appropriate to prescribe provisional remedial measures or means in favor of the party concerned before delivery of judgment whether an application therefor is made by such person or not, the Administrative Court shall have power to prescribe provisional measure or means and issue an order towards the administrative agency for compliance therewith in accordance with the rules and procedure prescribed by the General Assembly of Judges of the Supreme Administrative Court.” Clauses 69 to 77 of Rule of the General Assembly

of Judges of the Supreme Administrative Court on Administrative Court Procedure B.E. 2543 (2000) indicate provisional remedial measures before delivery of judgment into two cases, which are; suspension of the execution of by-laws or administrative orders and provisional remedy

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 Court considers that by-laws or administrative orders are unlawful and the continued application of such by-law or administrative order will subsequently result in grave injury which is difficult to be remedied. Moreover, the suspension of the execution does not constitute any barrier to the administrative of the state affairs or to public services such as;

**In the case of the prohibition to transfer coal by the cargo ships through the Tah Chin River in Samut Sakhon province, until scientifically inspected and proved of the water quality in Tah Chin River.** In this case, the Plaintiff claimed that he was a resident of Tah Chalom, Samut Sakhon Province. Originally the Plaintiff was living a normal life, later he suffered from the pollution of Tah Chin river. Moreover, the Governor of Samut Sakhon Province (the Defendant) did not strictly prohibit to perform any activities with the coal transferring operator who used the wrong type of ships or unauthorized ships. This may be the cause of the pollution of Tah Chin River. The Plaintiff had a constitutional right to file a case against the Defendant. However, the Defendant had neglected his duty and failed to investigate the cause of the pollution of water in Tah Chin River. Then, the Plaintiff filed a case with the Administrative Court requesting the Defendant to perform the water quality examination and test in Tah Chin River and requesting the court to order provisional remedial measures or means by prohibiting to transfer of the coal by the cargo ships through Tah Chin River in Samut Sakhon Province until scientific examination and test of water quality in Tah Chin River finished. *The Central Administrative Court ruled that the Plaintiff was a person who was aggrieved or injured from the pollution of Tah Chin River.* Moreover, the Defendant did not strictly control coal transferring operator using the wrong type of ships or unauthorized ships. It may cause of the pollution in Tah Chin River. The Plaintiff exercised his constitutional right to complain against the Defendant to perform official duty. Nevertheless, the Defendant neglected official duty to inspect the causes of the pollution of Tah Chin River, the plaint hence was valid. If the water in Tah Chin River had been polluted as the Plaintiff's claim, it would widely affect the quality of the Plaintiff's life and people nearby. The Plaintiff requested for provisional remedial measures or means

before delivery judgment to prohibit coal cargo ships to pass through Tah Chin River in Samut Sakhon Province for a temporary period until the Defendant had scientifically examined the water quality in Tah Chin River. It requested the Defendant to restore the environment in Samut Sakhon area. The residents in such area had normal life and sustainable environment that would not cause any harm to the public, health, welfare or quality of life which were guaranteed and provided by the Constitution. Therefore, it had sufficient reasons for the Court to issue provisional remedial measures or means before delivery of judgment according to the request of the Plaintiff. Additionally, the Defendant had suspended measures for all the operation of the coal cargo. If the Court had a provisional remedy as the Plaintiff's request, it would not cause problems and barriers for the management of the Defendant. Thus, the Court ordered a provisional remedy before delivery of judgment according to the request of the Plaintiff. The Court ordered the Defendant to strictly control and monitor the performance of duties of the government officials and to prohibit the operation of the coal cargo ship to pass through Tah Chin River in Samut Sakhon Province. (Central Administrative Court Order No. E.<sup>40</sup> 4/2554)

For the provisional remedy, there is a case to be brought forward as an example as follows, the case requesting for the suspension of any projects or activities that may cause severe effects on the quality of the environment in the Map Ta Phut and nearby area. This case, the Anti-Global Warming Association, the assembly of NGOs for the Protection conservation Environment and Natural Resources and other people domiciled in Map Ta Phut community and nearby area filed a case against the National Environmental Committee (the Defendant No.1) and the eight Defendants over the case of unlawfully approved the 76 projects or activities. Those projects or activities could potentially cause severe effect to Map Ta Phut community and nearby. They approved such projects or activities without studying and evaluating impacts on environment, natural resource, health of people in the community and without consulting with the public and interested parties and opinions of an independent organization. They did not follow the process as stated in Section 67 paragraph two of Constitution of Thailand, B.E. 2550 (2007) which could cause severe damage to environmental quality, natural resource and health of the Plaintiff and people in such area. The Plaintiff requested the court to revoke the Environmental Impact Assessment (EIA) reports of the projects or activities and revoke the permit to operate projects or activities affecting damage to environmental quality, natural resource and health of people in this area.

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<sup>40</sup> "E." refers to "an environmental case."

Moreover, the Defendants and relating sectors should provide the study and assessment of people health and the public hearing and consult with an independent organization. The Plaintiff requested the Court to order any provisional remedy for 76 projects aforesaid. *The Supreme Administrative Court considered that* the Rights in accordance with Section 67 of Constitution of the Kingdom of Thailand, B.E. 2550 (2007) shall be protected immediately once the Constitution was promulgated. The administrative agency or State official cannot claim that the rights had not been ratified by law in order to refuse to provide the rights protection. Therefore, prior to operating any projects or activities which may cause severe impacts to environment, natural resources, and health; the process under Section 67 must be completed. The eight Defendants approved 76 projects and activities without completing Section 76 paragraph two. The act of eight Defendants should be a wrongful act. Additionally, the projects or activities that the eight Defendants approved were composed of high pollution industries which could potentially increase pollutions in Map Ta Phut and neighboring areas and were tough to mitigate the damages afterward. Consequently, the Court considered that there was adequate reason to prescribe provisional remedial measures. This provisional remedial measure would constitute any barriers to the administration of State affairs or to public service. Any obstacles may occur due to the issuance of Provisional Remedy Measure directly caused by the Defendants' failure to perform official duties required by the law or performing such duties with unreasonable delay. If projects and activities were processed completely according to Section 67 paragraphs two of the Constitution, the court would consider issuing provisional remedy in the different way. The Plaintiffs shall request to the Administrative Court of First Instance to revise or revoke that provisional remedial measures. Nevertheless, concerning the preliminary projects or activities characteristic, the Court found that some projects or activities may not create serious impacts to the community, they were simply the projects or activities of monitoring or pollution treatment or were solely the additional equipment to the main projects or activities. Consequently, it was not appropriate to prescribe the provisional remedial measures to every project or activity. The Supreme Administrative Court amended the order of the Administrative Court of First Instance and prescribed provisional remedial measures or means to only such projects or activities which required the completed process. Exceptionally, the orders have remained the same as the orders of the Administrative Court of First Instance. (Supreme Administrative Court Order No. 592/2552).

For the case relating to environment, the President of the Supreme Administrative Court specified in Recommendation of the President of the

Supreme Administrative Court on Administrative Court Proceeding concerning Environmental Issue that administrative case concerning environmental issue has affected the public interest at present and in the future, the court shall consider temporarily provisional remedial methods before delivery of judgment without the plaintiff's request.

***3.2.4 Are there any other specific procedural rules in the environmental field?***

Thai legal system has no particular administrative procedure law relating to the environment. Therefore, administrative procedure law relating to the environment shall rely on the basis as well as hearing procedure in the court. Nowadays, 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.

Moreover, the Administrative Court are currently drafting Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure Concerning Environmental Issue B.E. .... (....).

**3.3 The powers of the judge**

***3.3.1 What are the powers of the judge responsible for the investigations/during the preparation stage (assessment, amicus curiae, on-the-spot investigation, communication of data by the State or the economic operators, ...)?***

The inquiry of facts in administrative case relating to environmental issue is identical with any other administrative cases. 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)<sup>41</sup> and Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000). The competence of Administrative Court to inquire the facts has been divided into 2 parts as follows:

1. Inquiry of facts from the pleading

The judge-rapporteur has the power to inquire the facts for supplementing the consideration of the dispute from the pleading submitted by the party. Pleading therefore means the plaint, the answer, the objection to the answer and the supplementary answer and any other relevant documents.

When the case has been filed to the court, the judge-rapporteur entrusted by the chamber will examine such plaint. If he or she finds that a plaint is complete and correct, he or she shall issue an order accepting it as “the plaint” and instructing the defendant to prepare “the Answer”. Regarding to characteristic of administrative case relating to environmental issue that is necessary to be settled more rapidly than other kinds of administrative case, the Court may determine the issue on which the defendant must answer in order to object the plaint or specify

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**<sup>41</sup>Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)**

Section 61 “Any administrative judge entrusted by the chamber shall have the following powers:

(1) to issue an order summoning an administrative agency or State official concerned to give statements or opinions in writing in connection with the performance of work of the administrative agency or State official involved;

(2) to issue an order summoning an administrative agency or State official to furnish an object, document or other relevant evidence or give opinions on any particular matter or send a representative or State official of that administrative agency to give explanations or statements for supplementing the consideration;

(3) to issue an order summoning the parties to give statements or evidence for supplementing the consideration;

(4) to issue an order summoning the person concerned with case to give statements or furnish evidence for supplementing the consideration;

(5) to inquire into or issue an order on any matter which does not amount to the delivery of judgment, in accordance with the rule prescribed by the General Assembly of Judges of the Supreme Administrative Court.

In the case of compelling necessity, the administrative judge or person entrusted by the administrative judge has power to examine a place, person or any other object for supplementing the consideration.”

all of evidence relevant to or useful for the trial of the Court in order to order the plaintiff to submit the said document.<sup>42</sup>

When the answer is made by the defendant, which is required to be clear, by indication of denial and admittance of allegation in the plaint, the relief sought in a request attached to the plaint and the reasons therefor or give an answer in an issue determined by the judge-rapporteur and also, evidence as determined together with the answer within thirty days as from the date of receipt of the copy of the plaint or within the period of the time specified by the Court.<sup>43</sup> The Court shall submit a copy of the answer together with a copy of evidence to the plaintiff. The plaintiff has 2 options to take action on the matter therefor as follows; 1) raise “an objection to the answer” in order to deny or admit an answer or evidence submitted to the Court by the defendant in the issue raised in plaint, answer or issue determined by the Court within thirty days as from the date of receipt of a copy of the answer or within the period of time specified by the Court.<sup>44</sup> 2) notify it

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<sup>42</sup>**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.

.....”

<sup>43</sup>**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 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.”

<sup>44</sup>**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.

.....”

in writing to the Court within the said period that the plaintiff does not wish to raise the objection but wishes the court to proceed with the trial and adjudication of the case. If the plaintiff fails to submit an objection to the answer and notify it in writing to the court, 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. (Supreme Administrative Court order No. 723/2548)

Upon the receipt by the Court of the objection to the answer from the plaintiff, the judge-rapporteur shall submit the objection to the answer to the defendant for the purpose of submitting to the Court a supplementary answer within fifteen days as from the date of receipt of the copy therefor or within the period of time specified by the Court and when upon the receipt by the court of a supplementary answer from the defendant. A copy of such supplementary answer shall be served on the plaintiff.

## 2. Inquiry of facts by the Court in other procedures

Inquiry of facts from the pleading as aforementioned, it can be deemed as general and principal procedure of inquiry of facts by the Court. However, the competence of the Court to inquire the facts is not limited only from evidence presented by each party in the pleading but also in some circumstance; the Court may examine and inquire into the facts as deemed appropriate. (Section 55 paragraph three of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) and Clause 50 paragraph one of Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000)). Thus, from abovementioned, the Court has the unlimited competence to inquire the facts by hearing oral evidence, documentary evidence, expert evidence or other evidence other than the evidence adduced by parties as specified in Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000) or as deemed appropriate.

1) Inquiry of facts from each party and the witness concerned with case

Section 61 paragraph one (3) and (4) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) stipulates that the judge-rapporteur has the power to issue an order summoning the parties or the person concerned with case to give statements or evidence for

supplementing the consideration in which the examination shall be conducted by the Court. For instance, if the Court finds that a plaint is not clear or incomplete, the Court shall has the competence to issue an order summoning an agency concerned to correct such incompleteness (according to Clause 2 last paragraph of Recommendation of the President of Supreme Administrative Court on Administrative Case Proceeding concerning Environmental Issue). If the plaintiff does not give statements or evidence as prescribed by Court's order, the Court may strike the case out of the case-list. (Clause 53 of Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000))

Moreover, even the Court has conducted inquiry of facts proceeding from the pleading. If the Court finds that the fact of the case which the court obtained from the said proceeding is not clear, the court may inquire each party further to get clear fact of case. For example, the Court may conduct inquiry of facts proceeding in order to obtain the facts of the case and evidence relevant to the damage for supplementing of exercise the discretion to specify the damage.

To issue an order summoning the person concerned with case to give statements, the Court shall determine issue of the fact in clear manner and give the parties concerned an advance notice of the schedule of an inquiry. However, if the facts to be inquired into has no effect on the trial and adjudication of the case or has been to the knowledge of the parties concerned, the Court may omit the giving of a notice of the schedule of the inquiry to such parties.

## 2) Inquiry of facts from document or object

Section 61 paragraph one (2) provides that the judge-rapporteur shall have the power to issue an order summoning the administrative agency or State official or the person concerned with case to furnish any document or evidence to the Court. (Clause 54 of Rule of the General Assembly of Judges of The Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000)), such manner may occurs, if the Court thinks fit or upon an application by a party.

## (3) An appointment of an expert witness

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. The cases involving the matter thereof;

Central Administrative Court Judgment No. 1414/2544

It was the case involving a dispute in relation to an unlawful act by an administrative agency or state official from the neglect of official duties required by law to be performed with unreasonable delay. The Plaintiff filed that he was aggrieved from the Defendant no.5's rice mill located in nearby the Plaintiff's house. The dust arising from the Defendant's rice mill caused grievance and disturbance to the Plaintiff. As a result, The Plaintiff and his family member experienced physical health and mental health problems until the filing dates for seven years. The Plaintiff served a complaint on agencies concerned with this matter since B.E. 2537 (1994) but to no avail. This case had the one critical issue the Court needed to consider whether the dust and nuisance arising from grinding of rice exceeded the maximum standard. To settle the said issue, the Court appointed Department of Pollution Control as an expert in order to measure noise and dust level arising from such rice mill. Remanded the case to Administrative court of first instance for further proceeding.

4) The inspection of the place, person or any other object

Clause 56 of Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000) provides that the judge-rapporteur or the person entrusted by the Court has power to inspect the place, person or any other object for supplementing the consideration. The Court shall give the parties an advance notice of the date, time and place of the inspection in order to afford the parties an opportunity to present an objection or give factual explanation. In this instance, the parties shall be at liberty to attend such inspection. The aforementioned proceeding may be conducted, if the Court thinks fit or upon an application by a party. The Court may issue an order that the audio, visual or audio-visual recording be made throughout the currency of, or in any part of, the proceeding in order that it can be used as evidence supplementing the file of the case (Clause 59 of Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000)).

Moreover, Clause 10 of Recommendation of the President of the Supreme Administrative Court on Administrative Case Proceeding concerning

Environmental Issue lays down the principle that to conduct proceeding outside the Court room, the Court is necessary to maintain the impartiality strictly together with a plan in detail to inspect any places the court intends to use as the Court room. For example, in the case that the circumstance changes, what is the resolution for such changing circumstance? Should the Court coordinate with the police to maintain good order in such area? The cases involving the matter thereof;

Central Administrative Court Judgment No. 2258/2545

It was the case involving a dispute in relation to an unlawful act by an administrative agency or state official from the neglect of official duties required by law to be performed. In this case, the Defendant No. 1 who was an official failed to order the Plaintiff's neighborhood refrain from causing a disturbance by cooking on the roadside which caused smoke and foul odor into the Plaintiff's house. The Court ordered an Administrative Case Official to inspect the place in dispute in order to obtain the fact whether smoke and foul arising from the Plaintiff's neighborhood's act. Moreover, the Court conducted an inquiry of the facts proceeding at the Plaintiff's house.

5) To transfer an issue to another Administrative Court to hear evidence

The Court may, if it thinks fit in the interest of the trial of the case, appoint another Administrative Court of First instance to render assistance in the inquiry of facts in any particular issue and request the Administrative Court so appointed to furnish the report on the result of the inquiry of facts, the memorandum of giving of statements by witnesses and documents or evidence to the Court making the appointment (Clause 58 of Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court procedure, B.E. 2543 (2000)).

However, inquiry of the facts in administrative case concerning environmental issue, the Court shall prescribe the direction to inquire the fact. For instance, to determine an issue that the Court wish to know in case that the defendant is required to raise an answer or the plaintiff raises a supplementary answer. Furthermore, while the Court is waiting for an answer being made by the defendant, the Court may inquire other facts or evidences simultaneously.

***3.3.2 Is the legal control limited to the control of the regularity of the procedure? Does his/her control cover the substance of the decision?***

To exercise the administrative power or carry out administrative acts according to the laws concerning any of following matters; environment, the

protection and conservation of natural quality, plant, animal or living things, natural resource management, the organization of human environment, weather, landscape, Art & Culture or any other relevant laws, shall be under the jurisdiction of the Administrative Court to review the legality of the said exercise of the Administrative power or carry out administrative acts pursuant to Section 223 paragraph one of Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

The scope of exercise the power of the Administrative Court to review legality in administrative case concerning environmental issue therefor has the same scope with general administrative case. It means that the scope therefor shall be under Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) empowering Administrative Courts to have the competence to try and adjudicate or give orders over the case involving a dispute in relation to an unlawful act by an administrative agency or State official, whether in connection with the issuance of a by-law or order or in connection with other act, by reason of acting without or beyond the scope of the powers and duties or inconsistently with the law or the form, process or procedure which is the material requirement for such act or in bad faith or in a manner indicating unfair discrimination or causing unnecessary process or excessive burden to the public or amounting to undue exercise of discretion (Section 9 paragraph one (1) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)). To sum up, the Administrative Court has the competence to review a legality of exercise an administrative power or carry out administrative act both in case of procedural and substantial issue.

To review a legality of the exercise of administrative power or carry out administrative acts, the Administrative Court shall consider whether the exercise of administrative power or carry out administrative acts is done without or beyond the scope of the powers and duties or inconsistently with the law or the form, process or procedure which is the material requirement for such act.

**Cases involving acting without or beyond the scope of the powers;**

Supreme Administrative Court Judgment No. A. 79/2547

In the case where the Chief Executive of the Rachathewa Subdistrict Administrative Organization issued a new license to the Defendant No.6 providing waste disposal service after the Administrative Court of First Instance revoked a previous license was deemed as inconsistency with Section 62 of Public Health Act providing that “A person whose license is revoked shall not apply for a license to operate the business for which the license has been revoked until a period of one year from the date of the revocation of the license has expired.” Therefore, the issuance of such license was unlawful.

Supreme Administrative Court Judgment No. A. 37/2553

In case that Office of Natural Resources and Environmental Policy and Planning examined an report on environmental impact and propose preliminary opinion relating to the said report to the committee of experts with respect to consideration of report on environmental impact assessment of industrial estate project, such act was not unlawful act as the Plaintiff claimed because Office of Natural Resources and Environmental Policy and Planning exercised the power pursuant to Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992). On the issue of who belonged to the power to approve the report on environmental impact, such power belonged to the committee of experts.

Supreme Administrative Court Judgment No. A. 21/2555

The Director-General of Marine Department permitted the Industrial Estate Authority of Thailand (IEAT) to construct a building encroaching into waterways by reclaiming the land and constructing the Map Ta Phut Industrial Port without publication of the characteristic of building or encroaching building in Government Gazette. As a result, the Director-General of Marine Department could not rely on such criteria as criteria for issuing permission on similar case. It did not cause that the Director-General of Marine Department's order was unlawful.

To review a legality of the exercise of administrative power or carry out administrative acts, the Administrative Court shall consider whether the exercise administrative power or carry out administrative acts is done in bad faith or in a manner indicating unfair discrimination or causing unnecessary process or excessive burden to the public or amounting to undue exercise of discretion.

**Cases involving acting in bad faith;**

Supreme Administrative Court Judgment No. A. 79/2547

In case where the Chief Executive of the Rachathewa Subdistrict Administrative Organization cited in the license for waste disposal issued to the Defendant No.6 that the Defendant No.6 conducted a study on the purpose of environment protection by the inspection of Department of Pollution Control. Such act was deemed as an unlawful exercise of discretion to hear the fact because to inspect the place intended to be the location of waste disposal business and giving an opinion and instruction by department of pollution control could not deemed as conduction of Environmental Impact Assessment (EIA).

Supreme Administrative Court Judgment No. A. 241/2552

Although, the laws provided in case that excavation or reclamation of land causes damage to natural resources or private property belonging to any person, any persons who do the said act shall make compensation to injured party. However, it was clear that such legal remedy therefor was unable to redress or alleviate damage to environment on the ground that land evacuation done by both defendants has adverse impact on natural water resources and shrimp farmer. Therefore, the Mayor of Pak Nam Leamsing subdistrict has authority under Section 31 of Excavation and Reclamation Act, B.E. 2543 (2000) to issue an order to prohibit excavation or reclamation of the Plaintiffs.

Supreme Administrative Court Judgment No. A. 7/2555

National Committee on Fishery Planning had a resolution to have each province determine lighted Anchovy fishery area in accordance with landscape of each province. Consequently, The National Committee on Fishery Planning issued a notification to determine lighted Anchovy fishery area within three nautical miles from island located in Krabi province by regard of Krabi's landscape consisting of many islands. Therefore, it was a reasonable exercise of discretionary power according to National Committee on Fishery Planning's direction.

***3.3.3 Is the control exerted by the administrative judge a control of rights? Is it also a control of appropriateness?***

Thai Administrative Court have the competence to review a legality of by-law or administrative act both in procedural and substantial issue of the exercise administrative power or carry out administrative acts as mentioned in session 3.3.2

To review of Suitability of the exercise of discretionary powers of administrative agency, the Administrative Court has the competence to control administrative agency not to exercise discretionary powers without or beyond the scope of powers and duties by relying on Principle of Suitability, Principle of Necessity and Principle of Proportionality in narrow sense as legal instrument for supplementing of consideration of Suitability of the exercise discretionary powers of administrative agency.

However, Thai Administrative Court realizes that judicial power should not interfere with the exercise of discretionary powers of administrative agency because legislative intent aims to empower administrative agency to exercise such power.<sup>45</sup>

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<sup>45</sup>Supreme Administrative Court Judgment No. A. 244/2553

**Cases involving a review of legality and a merit of Discretionary powers of administrative agency;**

Supreme Administrative Court Judgment No. A. 79/2547

In case that the Chief Executive of the Rachathewa Subdistrict Administrative Organization issued a license for waste disposal service by landfill to private sector, even though, he knew the Department of Pollution Control's recommendation instructing that such area was not suitable for waste disposal service. Therefore, the permission therefore was done by regardless of the impact on environmental quality, public health or people's living quality. Not only it could be deemed that Chief Executive of the Rachathewa Subdistrict Administrative Organization exercised discretionary power to hear the fact unreasonably, but also it could be deemed that he did not exercise power to promote and conserve environment according to Constitution of the Kingdom of Thailand.

Supreme Administrative Court Judgment No. A. 333/2549

The committee of experts with respect to the consideration of the environmental impact on mine project and petroleum exploration and production project considered the report on environmental impact assessment of project that the Plaintiff applied for a license of a limestone mining industry and agreed with the subcommittee on Environmental Natural and Cultural conservation based on the Environmental Quality Management Planning. As a result, the committee of experts therefore had a resolution to disapprove the report on environmental impact assessment of project of the Plaintiff. Therefore, it was deemed that the committee of experts exercised discretionary power with reasonable and lawful manner. The Plaintiff's claim, contending that the committee of experts therefore considered the said resolution without exploration report, analyze, research, or any supplementary document, was unreasonable.

Supreme Administrative Court Judgment No. A. 341/2549

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Although, Constitution of the Kingdom of Thailand provides provision to prescribes the duties for administrative agency to conduct public hearing before conducting any project or activity which may seriously affect the quality of the environment, not only such provision was not compulsory provision applied to all state's projects but also there was no implementation of law to follow Constitution of the Kingdom of Thailand. From above-mentioned statement, to conduct public hearing before the construction of the waste disposal system provided by the local administration, it was discretion of state official to consider by relying on principle of suitability. Administrative Court was unable to interfere to review a suitability of exercise of discretionary power instead of state official who was directly responsible for such project as a part of public administration.

The Notification of Ministry of the use of push net with the engine-driven boat dated on 17<sup>th</sup> July B.E. 2546 (2003) on the prohibition of the use of push net with the engine-driven boat for fishery in some area was conservative aquatic animal species measure and local fishery. Although, such measure had an impact on liberty in occupation of the Plaintiff, the Plaintiff was still able to bring his boat to conduct fishery outside prohibited area or adjusted the way to conduct fishery. Moreover, such notification did not prohibit a fishery absolutely and there were no any measures that were as effective as the said measure. Therefore, it was not deemed that the Notification thereof had an adverse impact on the Plaintiff's liberty in occupation. Especially, when compared between the damage the Plaintiff suffered and the public interest, Notification of Ministry of Agriculture and Cooperatives was obviously issued by reasonable exercise of discretionary power.

### ***3.3.4 Which is the degree of judicial review?***

To review the administrative act by the Administrative Court, there are no levels of judicial review and levels of Judicial Scrutiny. It means that the Court will review all case with the same standard of judicial review. In this respect, it can be seen that the characteristic of the exercise of power of administrative agency to act consisting of mandatory power, which do not empower administrative agency to act freely, and discretionary power, both discretion in decision-making and analyzing discretion, which empower administrative agency to act freely within the scope of laws.

To review whether the act of administrative agency is legal, the levels of scrutiny will be stricter in case of mandatory power, but the levels of scrutiny will not be so strict that the Administrative Court can decide instead of administrative agency in case of the review of the exercise of discretionary power of administrative agency.

### ***3.3.5 What are the measures that the judge can decide?***

*- May the judge cancel only the decision or may he also alter the decision?*

Section 72 of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) provides that in delivering a judgment, the Administrative Court has power to issue a decree for any of the following:

(1) Ordering revocation of a by-law or an order or restraining an act in the whole or part, in the case where it is alleged in the case filed that an

administrative agency or a State official has done an unlawful act under Section 9 paragraph one (1)<sup>46</sup>;

(2) Ordering the head of an administrative agency or a State official concerned to perform the duty within the time prescribed by the Administrative Court, in the case where it is alleged in the case filed that the administrative agency or State official has neglected the duty or performed the duty with unreasonable delay<sup>47</sup>;

(3) Ordering the payment of money or the delivery of property or the performance or omission of an act with or without prescribing the time and other Conditions<sup>48</sup>, in the case where the case filed is in connection with a wrongful act

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<sup>46</sup>**Case involving where the Administrative Court issues a decree to revoke an administrative act;**

Supreme Administrative Court Judgment No. A. 286-291/2553: in this case, the Court revoked an administrative act of the Defendant refusing to issue a sand extraction license for B.E. 2545 (2002) by specifying that the judgment shall be in effect as from the date the Court delivered a judgment and ordered the Defendant to pay compensation to the Plaintiff No.1 and the Plaintiff No.3 within sixty days as from the date the Court delivered a judgment.

<sup>47</sup>Supreme Administrative Court Judgment No. A. 558/2551: in this case, the Supreme Administrative Court held that Sub-district Administrative Organization had duties to collect and dispose a rubbish as specified by law. When Sub-district Administrative Organization used its own land located adjacent to the Plaintiff's land for purpose of the landfill site. While garbage dump was not full, Sub-district Administrative Organization failed to prevent foul odor and infection arising from garbage. As a result, some garbage was found on the garbage dump causing foul odor and the stagnant water contaminating with garbage in which it could be breeding ground for the disease vector. Moreover, there was no effective the system to prevent water from flowing outside garbage dump in which it may cause disturbance to the Plaintiff who was the owner of land located adjacent to a landfill site. From above-mentioned statement, it was clear that Sub-district Administrative Organization failed to perform the official duties required by law to be performed. In this case, the Supreme Administrative Court hold that Sub-district Administrative Organization failed to perform the official duties required by law by not disposing garbage causing a lot of garbage scattered in the landfill site and not conserved natural resource and environment in its area of responsibility. Thus, the Court ordered Sub-district Administrative Organization to dispose garbage found on garbage dump area within ninety days and shall not discard garbage into garbage dump until Sub-district Administrative Organization finished disposing garbage. Also, Sub-district Administrative Organization shall specify the method of garbage disposal in accordance with sanitary standard.

<sup>48</sup> (A) The case where the Administrative Court orders the payment of money or the delivery of property or the Performance or omission of an act with prescribing the time and other Conditions;

or liability of an administrative agency or State official or in connection with an administrative contract;

(4) Ordering a treatment towards the right or duty of the person concerned, in the case where it is requested in the case filed that the Court give a judgment declaring the existence of such right or duty;

(5) Ordering a person to act or refrain from any act in compliance with the law.

In issuing the decree under paragraph one (1), the Administrative Court may direct that it should have a retrospective or non-retrospective effect or prospective effect to any particular time or may prescribe any condition therefor, as justice in a particular case shall require.<sup>49</sup>

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Supreme Administrative Court Judgment No. A. 415/2550: In this case, the Court laid down the principle relating to the prescription for the future damages by Court, when there were not sufficient evidences showing whether the Plaintiff No.1, 2, 4, 7 to 12 were likely possible to be such a cancer or other illnesses resulting from the radioactive leak. Also, they were considered by the physician to follow up their blood test and chromosomal study not less than 10 years. As the consequence, the Court was unable to order in case of the medical treatment for the future at the time of giving the judgment but the Court may reserve in the judgment the right to revise such judgment for a period not exceeding two years as from the date the judgment was delivered pursuant to Section 444 paragraph two of Civil and Commercial Code.

(B) The case where the Administrative Court orders a person to act or refrain from any act by prescription the time and other Conditions;

Supreme Administrative Court Judgment No. A. 89/2553: In this case, the Court held that, pursuant to Section 72 paragraph 1 (3) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) provides that “In delivering a judgment, the Administrative Court has the power to issue a decree for any of the following: ..... (3) Ordering the payment of money or the delivery of property or the performance or omission of an act with or without prescribing the time and other conditions, in the case where the case filed is in connection with a wrongful act or liability of an administrative agency or a State official or in connection with an administrative contract,” the Administrative Court had the power to order both defendants to dispose garbage and sewage dumped in the Plaintiff’s land unlawfully and also, they shall get out of the soil contaminating with garbage and improve soil condition back to its former condition. However, they shall act the matter therefore by not causing the damage to the Plaintiff within ninety days as from the date judgment was delivered. Other than revision, it shall be enforced according to the Administrative Court of first instance. In conclusion, it can be seen in this case that the Administrative Court ordered administrative agency to act and refrain from acting. Furthermore, the Court prescribed period of time to enforce the judgment.

<sup>49</sup> The case where the Administrative Court prescribes the condition for revocation an administrative act as justice in a particular case;

In the case where the Administrative Court gives a final judgment revoking a by-law, the result of the judgment shall be published in the Government Gazette and such publication shall be treated as the revocation of that by-law.

In the case where the Administrative Court issues a decree directing any person to pay money or deliver the property specified in the judgment, if such person fails to pay the money or deliver the property, the Administrative Court may issue an order of execution against the property of that person.

In the case where the Administrative Court issues a decree under paragraph one (5) or under paragraph four, the provisions of Civil Procedure Code on execution of judgment shall apply *mutatis mutandis*.

In passing a judgment of the case, the Administrative Court shall order the return of the whole or part of the Court fees in proportion to the winning in the case.

From aforementioned provision, it can be said that the power to issue a decree by the Court depends on what types of case are. For instance, if it is the case involving with environmental issue and the plaintiff claims that the cause of action is based on the unlawful act of administrative agency or a state official, the Court, therefore, will have competence to withdraw or revoke the said administrative acts. However, Section 72 of the said Act only empowers the Court to revoke administrative acts, not empowers the Court to revise the said administrative acts to be lawful. Thus, Thai Administrative Court has no competence to issue a decree in the said manner.

- *Does he have a power of sanction? Can he use it on his own initiative or only if requested by one of the parties?*

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Supreme Administrative Court Judgment No. A. 49/2554: in this case, the Plaintiff asked the Court to revoke order permitting the construction of bridge on the ground that the defendant failed to conduct public hearing process before constructing the bridge which could be regarded as the project having deleterious effects on environment, health and public interests. The construction of the bridge without conducting the public hearing process was in a manner inconsistent with the procedure which is the process or material requirement for such act and it became an unlawful act. However, the unlawful act can be corrected by conducting the public hearing process before removing the bridge according to Regulation of the Office of the Prime Minister on the Public Hearing Process, B.E. 2548 (2005). As a result, the Court held that the bridge should not be suddenly removed since the process of the public hearing can be established. Moreover, the removal of the bridge may be disadvantageous to the public interest in terms of budget in either removing or constructing the bridge. If people living in the area near the bridge disagree with the construction of the bridge, the bridge should then be removed.

Pursuant to Section 72 of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999), the Court has no the competence to issue a decree in the said manner.

*- Can he award damages? How does he calculate the quantum of the damages?*

Pursuant to Section 72 (3) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999), lays down the principle that an Administrative Court has the power to issue a decree ordering the payment of money or the delivery of property or the Performance or omission of an act with or without prescribing the time and other Conditions, in the case where the case filed is in connection with a wrongful act or Liability of an administrative agency or State official or in connection with an administrative contract. Thus, the Administrative Court has the competence to adjudicate by issuing a decree ordering any person to pay compensation.

With respect to the criteria for specifying the damage, there is no the certain criteria therefore. It means that the Court shall determine the extent of the compensation according to the actual consequences of the injury in the case. such as medical treatment, damages for the loss of earning on account of disability to work, damages for mental distress or damages which are not pecuniary loss, damages for natural resource, pollution charge, damages for Natural resource restoration and damages against local community right and community's way of life. Other than any damages at the present, the Court may reserve in the judgment the right to determine the future damages (Clause 12 paragraph one of the Recommendation of the President of the Supreme Administrative Court on Administrative Case Proceeding concerning Environmental Issue). The Court shall determine the manner and the extent of the compensation according to the circumstances and the gravity of the wrongful act according to Section 438 of Civil and Commercial Code.

### **Cases involving the matter thereof;**

#### Supreme Administrative Court Judgment No. A. 317/2553

In this case, the Supreme Administrative Court held that to pay compensation to aggrieved person aimed to restore aggrieved person back to his\her former condition, not aimed to punish any person committing a wrongful act and the damages shall be direct consequence of the exercise power of administrative agency of state official or from a by-law, administrative act or other orders, or from the neglect of official duties required by the law to be performed or the performance of such duties with unreasonable delay under Section 9 paragraph

one (3) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999). The damages shall be a proximate consequence of the actual damage. For instance, the damage arising from being unable to conduct mining business in the area the Plaintiff was granted a mining license but if the damage arising from the Plaintiff's speculation shall not be deemed as direct consequence of wrongful act of administrative agency of state official.

*- May he order restoration? Is it an obligation for him to order it or is it only a possibility? What form can the restoration take (physical compensation, financial compensation, ...)?*

The characteristic of a decree that the Court can issue shall be in accordance with Section 72 of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999). Thus, the forms of a decree issued by the Court will depend on the plaintiff's application which must be consistent with the forms of a decree the Court has the power to issue as specified by law. The said provision does not mention the matter relating to the reinstatement of the party back to former position.

However, the case involving a dispute in relation to a wrongful act or other liability of an administrative agency or State official arising from the exercise of power under the law or from a by-law, administrative order or other order, or from the neglect of official duties required by the law to be performed or the performance of such duties with unreasonable delay pursuant to Section 9 (3) paragraph one of Act on Establishment of Administrative Court and Administrative Court Procedure B.E. 2542 (1999) in which Section 72 (3) of the said act lays down the principle that the Court has the power to order an administrative agency or state official to pay a money or delivery a property or the performance or omission of an act. From above-mentioned statement, it may be implied that a decree according to Section 72 (3). For instance, in case where the Administrative Court orders the administrative agency or State official to pay the damages, such as medical treatment, compensation, etc., to the plaintiff or the Administrative Court orders the administrative agency or State official to act. It can be deemed as a decree ordering the party back to former position.

### **Cases involving the matter thereof;**

Supreme Administrative Court Judgment No. A. 89/2553

In this case, the Court held that in case where two defendants dumped the garbage in the Plaintiff's land, such act shall be deemed as an unlawful and wrongful act against the Plaintiff. However, the Court did not order two defendants to remove garbage and sewage out of the Plaintiff's land in which it was not suitable. Two defendants were still required to redress such grievance arising from their wrongful act and they shall not commit a wrongful act again. Thus, two defendants were unable to claim that they would be aggrieved, if they redressed the grievance arising from their wrongful act. They could not rely on aforementioned reasons as an excuse in order not to act in any manner to redress the grievance the Plaintiff suffered.

Moreover, the President of the Supreme Administrative Court, by virtue of Section 28 of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) together with Clause 6 (5) and (6) of Rule 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), hereby issued Recommendation of the President of the Supreme Administrative Court on Administrative Court Proceeding concerning Environmental Issue to use as a guideline for Administrative Court Judges to try and adjudicate environmental cases. To issue a decree of the Administrative Court, not only the Court shall rely on the rules as prescribed by Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), but also the Court shall take the said the Recommendation into account (especially Clauses 12-16) as a guideline for issuing a decree in administrative case concerning environmental issue. It means that in issuing a decree, the Administrative Court may direct that it should have a retrospective or non-retrospective effect or prospective effect to any particular time or may prescribe any condition therefor, by regard of the effectiveness of the remedy to the Plaintiff and environment together with the effect that may arise from the judgment. In case where a decree ordering an administrative agency or a State official to act, the Court may order the administrative agency or State official to perform the duty within the time prescribed by the Administrative Court by regard of an adverse impact against environment and ordinary period of time in

which an administrative agency or a State official is able to finish the said official duty.

#### **4. THE ENFORCEMENT OF THE COURT DECISION**

##### **4.1 Are there any specific mechanisms for the execution of judicial decisions (power of injunction, periodic penalty payment, and other measures of coercion against the administration agency or the economic operators)?**

The execution of judgment is an essential part of the administrative court procedure as such process is an indicator of effectiveness of the judgment.

There is no law specifically prescribed an execution procedure on environmental cases. Therefore, the Administrative Court of Thailand has to apply the general rule for administrative execution procedure in Section 77 (3) of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) <sup>50</sup> which provides that the Office of the Administrative Courts shall have powers and duties to conduct execution of decree made by the Administrative Court.

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##### **<sup>50</sup> Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)**

Section 77 “The Office of the Administrative Court shall have powers and duties, as follows:

- (1) to be responsible for Secretariat’s works of the Administrative Court;
- (2) to carry on activities with respect to administrative cases as directed by the Administrative Court;
- (3) to conduct execution of decree made by the Administrative Court;
- (4) to study and compile information in the interest of Administrative court’s performance;
- (5) to analyze causes of the filing of administrative cases for purpose of making suggestions to State agencies concerned with regard to direction for the improvement of public administration;
- (6) to publish and disseminate judgments or orders of the Administrative Court;
- (7) to provide training and knowledge development for administrative judges, officials of the Office of the Administrative Court and other officials concerns of the State as well as co-ordinate with other agencies concerned for developing principles of public law, administration of state affairs and personnel in the field of public law;
- (8) to perform other acts under the provisions of this Act or as the law proscribed to be under the responsibility of the Office of the Administrative Court.”

#### **4.1.1 The Execution Procedure**

When an administrative dispute arises and the Administrative Court passes the judgment, if the judgment is not appealed within 30 days as from the date of passing the judgment, the Court then has the power to issue a decree and to give a direction or measure for execution of judgment under Section 72 of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999). The Administrative Court of First Instance that tries and adjudicates the case is the executing court. (Supreme Administrative Order No. 185/2552 and No. 520/2554)

The execution procedure is characterized as follow:

***(1) Cases involving a dispute in relation to an unlawful act under Section 9 (1)*** within that are classified into 2 categories

(1.1) The Administrative Court issues judgment ordering revocation of by-law. In this regard, the execution of judgment is not needed as the final judgment will be published in Government Gazette and such publication shall be treated as the revocation of that by-law.

The Office of the Administrative Courts has duty to complete the process by assigning the administrative case official who is responsible of the case to send the judgment to the Secretariat of the Cabinet for publication in Government Gazette.

(1.2) The Administrative Court issues judgment ordering revocation of an administrative order. Section 70 paragraph one and Section 72 paragraph two of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) prescribes that the decree shall be complied with as from the day specified in the judgment, and the judgment shall be binding on the parties as from the day the judgment is deemed final. As the judgment has self-revoking effect on the disputed administrative order, therefore, it is unnecessary for the court to issue a decree and assign an execution officer. (Supreme Administrative Court Order No. 385/2554)

***(2) Cases involving a dispute in relation to a wrongful act or other liabilities under Article 9 paragraph one (3), and cases involving a dispute in relation to administrative contract under Section 9 paragraph one (4)***

Both are cases in which the court has power to issue decree ordering the payment of money or the delivery of property or the performance or omission of an act with or without prescribing the time and other conditions therein. And if the judgment debtor fails to pay money or deliver property, the Court may issue an

order of execution against the property of that person (Section 72 paragraph four). In this case, Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) allows for the application of Civil Procedure Code on Execution of Judgment *mutatis mutandis*.

As can be seen, there are 2 forms of execution under this category;

1) Cases where the Administrative Court issues a decree ordering the payment of money or delivery of property

*a. When the Administrative Court issues a decree ordering the payment of money.*

*- In the event that Civil Procedure Code is applicable*

The Civil Procedure Code can be applied when the judgment debtor is a private person, State enterprise (in some cases) or professional association, and only apply strictly under the proceedings of seizure and attachment of property belonging to the judgment debtor for sale by auction to satisfy the judgment creditor. The proceedings will be carried on by the administrative case official appointed by the Court as an executing officer.

*- In the event that Civil Procedure Code is inapplicable*

Even though Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) allows for the application of Civil Procedure Code on Execution of Judgment *mutatis mutandis*, Civil Procedure Code still cannot be applied to some administrative cases where the judgment debtors are central administrations, provincial administrations, and local administrations. The reason for such exclusion is that these agencies' properties are not liable for execution under Section 285 paragraph one (4) of Civil Procedure Code<sup>51</sup>, together with Section 1307 of Civil and Commercial Code<sup>52</sup>.

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<sup>51</sup>**Civil Procedure Code**

Section 285 "The following properties of a judgment debtor are not liable to execution:

.....

*(4) Property which, by law, is not transferable or is not liable to execution", together with Section 1307 of the Civil and Commercial Code which states that "No seizure of State property can be effected, whether such property forms part of its domain public or not, ..."*

<sup>52</sup>**Civil and Commercial Code**

Section 1307 "No seizure of State property can be effected, whether such property forms part of its domain public or not"

However, if such agencies fail to comply with the Court decree ordering the payment of money, then the Office of the Administrative Courts shall have the duty to conduct the execution of decree made by the Administrative Court. (Section 77 of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999))

The Office of the Administrative Courts issues Rule of the Office of the Administrative Courts on the Execution of Administrative Court Decree, B.E. 2544 (1999) (Second Amendment to the Rule of the Office of the Administrative Courts on the Execution of Administrative Court Decree, B.E. 2555 (2012)) which gives The Bureau of Decisions Execution powers and duties to follow up and provide a report on the compliance of a Court decree. If there is failure to comply with the Court decree, the Bureau of Decisions Execution shall provide the Court with the report on such failure. And If the Court gives further directions, the Bureau shall conform to that direction and report to the Court periodically.

*b. When the Administrative Court issues a decree ordering the delivery of property.*

If any person as judgment debtors fails to deliver the property which can be considered as failure to comply with the court decree, the court shall issue a decree ordering the delivery of property. The Office of the Administrative Courts shall have duties to follow up and provide the court with the report on compliance with judgment.

However, if the judgment debt or fails to pay the money or deliver the property under the judgment, the Administrative Court may issue an order of execution against the property of that person. In which case, the Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) allows for the application of the Civil Procedure Code for Execution of Judgment *mutatis mutandis*.

2) Cases where the Administrative Court issues a decree ordering the performance or omission of an act

The Administrative Court may issue a decree ordering the performance or omission of an act with or without prescribing the time and other conditions. In which case, Rule of the Office of the Administrative Courts on the Execution of Administrative Court Decree B.E. 2544 (1999), also give the administrative executing officer the powers and duties to conduct execution of eviction and removal of structure (Clause 123 to 133).

(3) ***Other cases:*** such as, the Administrative Court issues a decree ordering a treatment towards the right or duty of the person concerned under Section 72 (4), in which case the law empowers the court to issues a declaratory judgment; *or* the Administrative Court issues a decree ordering a person to act or refrain from any act in compliance with the law under Section 72 (5), in which case the application of the Civil Procedure Code for execution of judgment *mutatis mutandis*.

***(4)Cases involving a matter prescribed by the law to be under the jurisdiction of the Administrative Court under Section 9 paragraph one (6)***

As to date, there are no law prescribed any environmental matters to be under the jurisdiction of the Administrative Court according to Section 9 paragraph one (6) yet; therefore, the execution of environmental judgment under this Article has not been applied.

However, if a third party suffers damage from the compliance of the Court decree by the administrative agencies or State officers; he may file a petition to the execution court for a relief. (Supreme Administrative Court Order No. 520/2554)

The Administrative Court also provides the practice for the effective execution that, at the first stage of execution, the President of the Supreme Administrative Court or the President of an Administrative Court of First Instance shall advised the judgment debtor (the administrative agency or State official as defendant) the execution notification. When the decree is still not satisfied, then the Court shall issue the execution warning with time limit. And if the ignorance still occurs, the Court will notify such ignorance to the Prime minister, as head of the Executive, in writing. Moreover, the ignorance shall be notified to the Cabinet, the House of Representative and the Senate through the Administrative Court and the Office of Administrative Courts' annual report.

#### **4.1.2 The Execution of Decrees by the Office of the Administrative Courts**

Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) specifies that the Office of the Administrative Courts shall have powers and duties to conduct execution of decrees made by the Administrative Court, the Office of the Administrative Courts, therefore, issues the Office of the Administrative Courts on the Execution of Administrative Court Decree, B.E. 2544 (2001) (and Second Amendment to Rule of the Office of the Administrative Courts on the Execution of Administrative Court Decree, B.E. 2555 (2012)) to bring about the standards and the effectiveness of administrative

procedure in execution of the Court order and decree. The Rule also defines executing agencies, including their powers and duties. The key agency in executing the court orders and decrees is the Bureau of Decisions Execution.

Powers and duties of the Bureau of Decisions Execution can be considered in 2 aspects:

(1) **When the Administrative Court decree expressly specifies therein the period of time within which an administrative agency or a State official is to comply with**, and specifies also that such administrative agency or State official must provide the report on compliance to the Bureau of Decisions Execution within the period of time. The said Rule gives the administrative executing official duties as follow;

If the administrative agency or State official has given report on compliance to the Bureau of Decisions Execution, the Bureau shall notify such report to the Court. If the Court orders further measures of execution, the Bureau shall carry on as such and notify the Court periodically.

If such period of time for the administrative agency or State official to provide the report on compliance with the Bureau has elapsed, the Bureau shall give a written warning to the administrative agency or State official, and extend the notification time for not exceeding 7 days from the date of receiving the written warning.

If the administrative agency or State official provide the report on compliance within such time, whether the decree has been complied wholly or partly, or the decree has not been complied with or without reasonable grounds, the Bureau shall notify the Court. If the Court orders further measures of execution, the Bureau shall carry on as such and notify the Court periodically.

If the administrative agency or State official fails to provide the report on compliance with such time, the Bureau shall notify the Court. If the Court orders further measures of execution, the Bureau shall carry on as such and notify the Court periodically.

(2) **When the Administrative Court decree does not expressly specifies therein that the administrative agency or the state official must provide the report on compliance with the Bureau of Decisions Execution**, and does not expressly specifies therein the period of time within which the administrative agency or the state official is to comply with, the Bureau shall give a written notification to an administrative agency or a State official asking for the compliance outcome without delay.

In addition, Rule of the Office of the Administrative Court on the Execution of Administrative Court Decree, B.E. 2544 (2001) also specifies measures of execution such as; measures for revocation of by-law, measures for other cases execution, measures for executing performance or omission of an act, measures for eviction and removal of structure, measures for provisional remedial measures before delivery of judgment, measures of seizure property, measures to conform with writ of execution, including issuance of the writ, the delivery of writ, etc.

#### **4.2 What are the courses of legal action available against such decision? Are they appeal of common law?**

The appellate procedures on environmental cases is generally similar those of other administrative cases, that is, 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 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)).

The appellate procedure of Thai Administrative Court adopts no system of “leave to appeal”. Also, there is no provision providing no appeal shall lie to the court. Besides, Clause 100 paragraph one of Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000) prescribes that

*“An appeal against a judgment or an order of an Administrative Court of First Instance which is not prescribed to be final under the law or this Rule shall be lodged to the Supreme Administrative Court”.*

In contrary, an appeal against a judgment or an order of the Administrative Court of First Instance which the law or this Rule prescribes to be final shall not be lodged to the Supreme Administrative Court.

However, Clause 101 paragraph two of Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000) prescribes that

*“the questions of facts and law intended to be invoked, in lodging an appeal, shall be clearly stated by the appellant in the appeal, shall be stated by the appellant in the appeal and shall be those already duly invoked in the Administrative Court of First Instance. But, if any question is that concerned with*

*public good order or that related to public interest, the appellant may invoke such question in an appeal itself or at any time during the currency of the appeal.”*

As mentioned above, there is no a significant difference between environmental cases and other administrative disputes relating to its appeal procedure.

Nevertheless, the Recommendation of the President of the Supreme Administrative Court on the Administrative Court Proceedings concerning Environmental Issue expressly provides ***“the reservation to supplement judgment”*** in the environment proceeding; that is damage assessment in environmental judgment shall be counted on all damages including compensation for health damages, damages for the loss of earning, future damages, mental damages or damages for non-pecuniary, natural resource damages, clean-up cost, rehabilitation cost, and cost of community rights and community way of life. These damages, sometimes, could not be seen, at the time of passing the judgment; thus, the Administrative Court may fix a period of time within which the Court can reserve its power to determine any unforeseeable future damages (pursuant to Section 444 of Civil and Commercial Code and Clause 13 paragraph one of the Recommendation of the President of the Supreme Administrative Court on the Administrative Court Proceedings concerning Environmental Issue). Where in the course of the reservation period, there is any change or modification in the facts or circumstances on which the reservation to supplement judgment has been grounded, the Court shall make an enquiry and may give an appropriate order regarding the reservation. In doing so, if the Parties are not satisfied with the said order, the law conserves them the right to appeal against the supplemental judgment, even when the primary judgment is deemed final. Those situations can be seen within 4 of these scenarios;

(1) When the Administrative Court of First Instance has fixed a reasonable period of time of the reservation to supplement judgment in the primary judgment and there is no appeal against such judgment within the period of time specified under Section 73 paragraph one of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999), subsequently, such judgment is deemed final. And afterward, within the course of reservation period, the Court issues supplemental judgment giving additional damages to the Plaintiffs, both parties then have the rights to file an appeal against the supplemental judgment within thirty days as from the date of passing the supplemental judgment (Section 73 paragraph one also applies).

(2) When the Administrative Court of First Instance has fixed a reasonable period of time of the reservation to supplement judgment in the primary

judgment and there is an appeal against such judgment to the Supreme Administrative Court, subsequently, the case is still pending the Supreme Administrative Court's adjudication. And afterward, the Administrative Court of First Instance issues a supplemental judgment fixing additional damages under the reservation to supplement judgment imposed in the primary judgment, both Parties then have the right to file an appeal against the supplemental judgment within thirty as from the date of passing the supplemental judgment (Section 73 paragraph one also applies) and the appeal of supplemental judgment case shall be merged to the appeal of the primary judgment case for trial and adjudication in combination.

(3) When the Administrative Court of First Instance has fixed a reasonable period of time of the reservation to supplement judgment in the primary judgment and the Supreme Administrative Court finally delivers the judgment affirming the judgment of the Administrative Court of First Instance; therefore, the Supreme Administrative is of the opinion that the reservation posed in the primary judgment is correct. And afterward, the Administrative Court of First Instance passes the supplemental judgment fixing additional damages under the reservation imposed in the primary judgment, both Parties then have the right to file an appeal against the supplemental judgment within thirty as from the date of passing the supplemental judgment (Section 73 paragraph one, here too applies)

(4) When the Administrative Court of First Instance has not posed a period of time of the reservation to supplement judgment in the primary judgment and there is an appeal against the judgment, afterward, the Supreme Administrative Court finally delivers the judgment reversing or amending the judgment of the Administrative Court of First Instance including passing the supplemental judgment fixing additional damages under the reservation to supplement judgment imposed in the primary judgment. In which case, the parties then cannot appeal the Supreme Administrative Court's supplemental judgment, since such judgment is made by the Supreme Administrative Court and is become final under Section 73 paragraph four of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (2000).

An interesting example of the imposition of the reservation to supplement judgment had been made by Supreme Administrative Court Judgment No. A. 415/2550:

The Central Administrative Court Judgment (Central Administrative Court Judgment No. 1820/2545) gave reasons for the imposition of the reservation to supplement judgment as follow;

*“In case of the future medical treatment, there are no obvious evidences to show that whether the Plaintiffs were likely to conceive such cancer or other illnesses resulting from the radioactive leakage. Also, the physician had given his opinion to the Court saying that Plaintiffs need to be followed up with their blood test and chromosomal study for at least 10 years. Subsequently, the Court is unable to fix the cost of future medical treatment at the time of passing this judgment. However, the Court can impose the reservation to supplement judgment to alter and modify this judgment in awarding additional future damages for period of not exceeding two years from the date this judgment is made, pursuant to Section 444 paragraph two of Civil and Commercial Code”*

This case was later appealed to the Supreme Administrative Court. And while it was pending the Supreme Administrative Court’s adjudication, the Plaintiffs filed a request to the Central Administrative Court asking for the supplemental judgment awarding additional damages including 1. Part of future Medical expenses incurred after the judgment date, 2. Future medical expenses from preventive measure taken by the Plaintiffs, and 3. Medical expenses arising from the disease cancer calculated by each individual amount of risk.

The Central Administrative Court dismissed the case. The Plaintiffs No. 2 and No. 3 appealed only for damages.

The Supreme Administrative Court ruled on both appeals. In the appeal against the court order of dismissal, the Supreme Administrative Court ruled and gave reason as following;

*“This Court can issue supplemental judgment awarding additional medical expenses only when the Court of First Instance has already determined such expenses and there are additional evidence and necessity to increase the awarded damages afterward. Also, the limitations of such issuance must be within 2 years. The future medical expenses claimed by Plaintiffs in this case are new future claims unrelated to the damages initially awarded by the Court of First Instance. It is, therefore, in no power of this Court to award such claims”.*

This case shows one distinction between the appeal of general administrative cases and one of the environmental cases, that the previous one can only be submitted once but the latter, in some cases, can be submitted twice.

Please be noted, Section 75 of Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999);

*“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”.*

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