

Report of Thailand

“The Status of Administrative Judges”

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(English Version)

The Status of Thai Administrative Judges

General Background

The topic of the status of Thai administrative judges has been strongly analyzed recently. This is because the Administrative Court of Thailand has been established after the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)¹ came into force. The said Constitution provides that there shall be four courts, namely, the Constitutional Court, the Courts of Justice, the Administrative Court and the Military Courts. Thence the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was enacted and came into force. As a result, the Supreme Administrative Court and the Central Administrative Court has been in operation since 9th March B.E. 2544 (2001). The Administrative Court of Thailand has fully performed its official duties since then.

The establishment of the Administrative Court of Thailand is in accordance with legal principle of the control of administrative structure and activity organization. It is obvious that it shall require judges who are specialized in public law and administrative law as well as administration of State affairs. The recruitment and training for administrative judges (1) in Thailand should be based on regulations and recruitment process which are different from those in practice of other courts although career advancement (2), benefit, guarantee and professional ethics (3) are similar to those of judges of the Courts of Justice.

Before making a study into further details, one should notice that in the administrative court proceeding of Thailand, there are "judges who make the conclusion" who has the duty to present his statement over a case in hearing of a chamber. Meanwhile, one should note that judge who makes the conclusion is only an administrative judge and his status is equal to those of the other judges in the same organization.

1. The Recruitment and Training for Administrative Judges

A. Qualifications of Candidates

The person eligible for appointment as a judge of the Supreme Administrative Court shall have an experience in the administration of State affairs and be of expertise in administrative law. In the Thai system, the persons eligible for appointment as a judge of the Supreme Administrative Court are classified into 3 groups such as the group of persons from public sector in an administrative line, the group of persons from academic sector such as instructors in universities, especially in public law and the group of legal officer such as judges, public prosecutors and lawyers. As provided in section 13 (4) of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), the person eligible for appointment to become a judge of the Supreme Administrative Court must be a Thai who is not less than forty five years, is at present or was in the past a Law Councilor, a member of the Petition Committee, a Councilor of State, serving or

¹ Coup d' état by Royal Thai Army on 19th September, B.E. 2549 (2006) annulled this Constitution. Nevertheless, the Administrative Court has been existing because the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) was not abrogated.

having in the past served in a position not lower than Senior Judge of a Chamber of an Administrative Court of First Instance, or in a position not lower than that of judge of the Supreme Court of Justice or its equivalent or judge of the Supreme Military Court, or in a position not lower than that of Regional Chief Public Prosecutor or its equivalent, or in a position not lower than that of Director – General or its equivalent or other equivalent position in a State agency as prescribed by the Judicial Commission of the Administrative Courts (JCAC) (such as serving or having, in the past, served in a position of Commanding General or its equivalent with the rank of not lower than Police Lieutenant General in Royal Thai Police, serving or having, in the past, served in a position of Director-General or its equivalent with the rank of not lower than Lieutenant General, Vice Admiral, Air Marshal in the Ministry of Defense), or a lecturer in the fields of law, political science, public administration, economics, social science or in a subject related to the administration of State affairs in a tertiary education institution and hold or have, in the past, held the position of Professor or adjunct Professor, is or had, in the past, been an attorney at law for not less than twenty years with experience in administrative cases in accordance with the rules prescribed by the JCAC.

B. The Selection of Judges of the Supreme Administrative Court

a) The Authority for on Selection of Judges of the Supreme Administrative Court

Under section 15 and section 16 of Act on Establishment Administrative Courts and Administrative Courts Procedure, B.C. 2542, the Judicial Commission of the Administrative Courts (J.C.A.C) shall have authority to consider and select persons who have qualifications under section 13 and are suitable for appointment as judges of the Supreme Administrative Court and then present the list of nominated persons to the Prime Minister. The Prime Minister shall submit such a list to the Senate within fifteen days as from the date of receipt thereof. Upon its approval, the Prime Minister shall tender it to the King to grant royal proclamation of appointment.

From the abovementioned, it is obvious that the representatives of each branch of the sovereignty power: legislative power, namely; executive power and judicial power, participate in the procedure on selecting judges of the Supreme Administrative Court. The participation of such representatives is meant for checks and balances and transparency for the procedure on selecting judges of the Supreme Administrative Court, shall be scrutinized by various organs. This brings legitimacy to the Supreme Administrative Court, hence, can function with independence and impartiality.

In order to avoid nepotism in the selection of the judges of the Supreme Administrative Court, J.C.A.C is then set up and entrusted with power to select persons with qualifications and suitability for appointment as judges of the Supreme Administrative Court. J.C.A.C is established by the authority given by the Constitution and the Act on Establishment Administrative Courts and Administrative Courts Procedure. It has the competence to discharge in the personnel administration for both, the Supreme Administrative Court and the Administrative Courts of First instance I, e.g. appointment, removal, promotion, increase of salaries, vacation, or imposition of disciplinary punishment to judges of the Administrative Court.

The members of J.C.A.C consist of: Judges of Administrative Court as its majority. Nine of its member are six judges of Supreme Administrative Court elected by judges of the Supreme Administrative Court and three judges of the Administrative Courts of First instance elected by judges of the Administrative Courts of First Instance.

The expert members who are to be selected by the Senate and the Council of Ministers are the minority.

Thus, it could render the J.C.A.C. with more diversity and legitimacy, meanwhile it shelters the Administrative Court to be free from interferences of any political organ.

b)The Procedure of Selection of Justices of the Supreme Administrative Court

J.C.A.C. shall select and appoint Justices of the Supreme Administrative Court through the following steps.

(1) J.C.A.C. shall provide an announcement of accepting application of persons qualified and suitable for judgeship of the Supreme Administrative Court, carry out checking of the preliminary qualifications of those applicants.

(2) J.C.A.C. shall provide the announcement of the roster of persons passing the preliminary qualification assessment. The mentioned persons are eligible for the work evaluation in professional works, academic works, administrative case works, or academic works involving administrative cases.

(3) J.C.A.C. shall provide an announcement the roster of persons having passed the abovementioned evaluation and eligible for appointment to be judges of the Supreme Administrative Court. Then, the list of persons shall be proposed for public hearing; the list must be submitted to state agencies and broadcasted in radios as well as publicized in printing media, in order to give an opportunity for people to make any objection. In the past, the period of the public hearing procedure is set up by J.C.A.C. for one month. Although there is no law requiring that the public hearing process be used, every of the three previous selections of judges of the Administrative Court was equipped with the public hearing.

The persons having passed the evaluation and in objected in the public hearing are then qualified for medical check-up, in both physical and mental health.

(4) The J.C.A.C. shall announce the list of persons who passed the medical checkup and are entitled to an interview.

(5) The list of nominated persons who passed the above said procedures shall then be presented to the Prime Minister in order to submit to the Senate for approval within fifteen days as from the date of the receipt thereof. Upon the receipt of such list, the personal records of each nominated person shall be examined. In the case where there is no doubt or problem found, the Senate shall give the approval.

(6) The J.C.A.C. shall announce the list of persons considered meeting the eligibility requirements for the appointment as judges of the Supreme Administrative Court.

The persons approved by the Senate who hold any positions or engage in occupations or professions or undertake any activity under the prohibitions prescribed by law shall resign from the position to which the prohibition relates or shall present to the Prime Minister convincing evidence indicating the cessation of the occupation, profession or any act under such prohibition within fifteen days as from the date the Senate gives the approval.

(7) The persons who are appointed as judges of the Supreme Administrative Court shall be granted an audience with the King for swearing in ceremony prior to taking office.

c) The Selection of Judges of the Supreme Administrative Court for Appointment as President of the Supreme Administrative Court, Vice President of the Supreme Administrative Court, and Senior Judge of a Chamber of the Supreme Administrative Court

The selection of judges of the Supreme Administrative Court to assume the posts of President of the Supreme Administrative Court, Vice President of the Supreme Administrative Court, and the Senior Judges of Chambers of the Supreme Administrative Court can be categorized into two cases: the general selection, and the selection in compliance with the transition provision of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), which is the procedure applied at the inception of the Administrative Court.

The selection procedure pursuant to the transition provision of Section 98 paragraph three of the Act on Establishment of Administrative Courts and Administrative Court Procedure is as follows: Upon the appointment by the King of judges of the Supreme Administrative Court under paragraph one, the duty of the Committee for the Selection of Judges of the Supreme Administrative Court shall be terminated. Judges of the Supreme Administrative Court shall elect among themselves one of the judges of the Supreme Administrative Court as President, two Vice Presidents of the Supreme Administrative Court, and four Senior Judges of the Chambers of the Supreme Administrative Court, and Section 15 paragraph two and paragraph three shall be apply *mutatis mutandis*.

Where a judge of the Supreme Administrative Court is elected as the President of the Supreme Administrative Court, the J.C.A.C. shall propose the nomination to the Prime Minister in order to subsequently submit to the Senate for approval within fifteen days as from the date of the receipt of the nomination. Upon its approval, the Prime Minister shall tender it to the King for royal appointment. In this regard, the judge of the Supreme Administrative Court who assumes the post as the first President of the Supreme Administrative Court of Thailand is Mr. Ackaratom Chularat.

In respect to the procedure for appointment of Vice Presidents, and Senior Judges of the Chambers of the Supreme Administrative Court, after the appointment of judges of the Supreme Administrative Court, the list of nominees shall be submitted to the Prime Minister to tender to the King for royal appointment without the approval of the Senate.

With regards the general selection procedure, the J.C.A.C. is empowered to consider and select any qualified persons to appoint as the President, Vice Presidents

of the Supreme Administrative Court, and Senior Judges of Chambers of the Supreme Administrative Court. After the President of the Supreme Administrative Court is selected, the J.C.A.C. shall propose the nomination to the Prime Minister in order to subsequently submit to the Senate for approval within fifteen days as from the date of the receipt of the nomination. Upon its approval, the Prime Minister shall tender it to the King for royal appointment.

As for the nomination of the Vice Presidents, and Senior Judges of the Chambers of the Supreme Administrative Court, the list of judges nominated shall also be submitted to the Prime Minister to tender to the King for royal appointment. In addition, under the legal system of Thailand as stipulated by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and the Organic Law on Counter Corruption, B.E. 2542 (1999), any State officials holding a high-ranking positions shall submit to the National Counter Corruption Commission the account presenting particulars of assets and liabilities of themselves, and those of related persons, namely their spouses and children who have not yet become *sui juris* upon taking office, once in every three years while being in office and upon vacation of office.

Judges of the Supreme Administrative Court are deemed the State officials prescribed by the laws. Therefore, they shall submit to the National Counter Corruption Commission the accounts presenting particulars of assets and liabilities of themselves, and those of related persons within thirty days as from the date of taking office.

C. The Character and the Content of the Training

Unlike the practice of the National Administration School of France, the selection procedures and the training for administrative judges or the senior officials in Thailand are yet to be established. However, the aforesaid character and content of the selection procedures for the judge of the Administrative Court illustrates a profound understanding of administrative law as well as an expertise in public administration held by each selected candidates.

Mainly, the candidates for the administrative judges shall have proficient comprehension in public law and administrative law. Apart from the other aforesaid qualification provided by Section 13 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), the candidates shall complete the training in public law or administrative law program, which has the minimum requirement on the minimum number of periods of training and the scope of training determined by the Judicial Commission of the Administrative Courts (J.C.A.C.)²

² The Notification of the J.C.A.C. on the "Standard of the administrative law or public law program" which J.C.A.C. certifies according to The Notification of the J.C.A.C. on the "Qualification of the candidates for the judgeship in administrative court of first instance signed on 9th February B.E.2548 (2005)." require the candidates for the judgeship of the administrative court to complete the aforesaid program in order to earn the right to submit an application. As affirmed in this notification, the program shall constitute at least 250 hours of training and its curriculums shall be divided into basic principle of public law, basic principle of administrative law, the structure of administrative body and local administration, and the law on administrative court procedure and distinctive administrative law.

The requirement on completion of this training program is mandatory for the candidates, since lawyers graduated from Thai universities are lack of opportunities to academically focus on public law or administrative law during their studies in bachelor degree level for having insufficient curriculum on public law or administrative law in many universities. Therefore, expertise in various areas are mostly developed during the master degree or the doctorate degree level.

The character and nature of Thai education system mentioned above resulted in the set up of the program of study by the Office of the Administrative Court. This program focuses on the training of administrative judge on public and administrative law, which can be divided into two sections. First, the basic structure and the necessary information concerning the operation of the court, which will commence right after the selection of administrative judge is finished. The other part of the program is the continuing training aiming to equip administrative judges with useful and necessary information needed for their work.

2. Personnel Administration Management of the Administrative Judge

Section 12 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) states that in the Supreme Administrative Court, there shall be administrative judges of the following positions: President of the Supreme Administrative Court; Vice President of the Supreme Administrative Court; Senior Judges of Divisions of the Supreme Administrative Court; Judges of the Supreme Administrative Court; provided that the number thereof shall be prescribed by the J.C.A.C. with the approval of the House of Representatives and the Senate.

A. The Evaluation of Performance.

Since Thai Administrative Court is still in its early stage, there are only 17 judges of the Administrative Supreme Court³. All judges do not have to undergo the official evaluation; nonetheless, the unofficial evaluation does exist for the efficiency of each judges judging by the amount of work (the number of cases finished, the case finished within timeframe, the participation in court activities, etc.) and qualitative evaluation (quality of the fact finding process, quality of the decision/order, etc.). The official evaluation is still under development.

B. The Rule Concerning Career Advancement and the Vacation of Administrative Judge

Section 277 of the Constitution of the Kingdom of Thailand, B.E.2540 (1997) along with the Act on Establishment of Administrative Courts and Administrative Court Procedure state that the Judicial Commission of the Administrative Courts shall have the supreme power in personnel administration management of the administrative judge,

³ Section 98 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) state that in the first stage of the establishment of the administrative court, the number of judges of the administrative court shall not be more than twenty three persons. At first, there were only 17 judges, however there were 2 attempts to recruit more judges in B.E. 2547 (2004) and B.E. 2549 (2006). In each attempt, there were only 4 of the candidates selected.

such as the authority to select the President of the Supreme Administrative Court, the Vice President of the Supreme Administrative Court and the Senior Judges of Divisions of the Supreme Administrative Court ⁴

The procedures for the selection and promotion to a higher position are governed by the Rules of the J.C.A.C. which has been approved by the plenary assembly of the Supreme Administrative Court. Under Clauses 6, 7 and 8 of the Judicial Commission of the Administrative Courts, dated 18th July 2001 the promotion of the Administrative Court judges is carried out by the J.C.A.C. which is empowered to appoint qualified persons to be the President, Vice Presidents and Senior Judges of chambers of the Supreme Administrative Court. That is to say, a Senior Judge of a chamber of the Supreme Administrative Court must remain in his or her office for at least three years. Vice President is selected from Senior Judges of chambers, who must remain in their offices for at least two years. The President is chosen from the Vice Presidents who must stay in their offices for at least two years.

With regard to the vacation of office of the judges of the Supreme Administrative Court, Section 21 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) provides that an Administrative Court judge shall be removed from his or her office upon: death, resignation, retirement (reaching the age of sixty five years), becoming disqualified or having prohibited characters under Sections 13, 14 or 18. Moreover, the removal from the office results from being a bankrupt or an incompetent or quasi-incompetent person having an unsound mind or mental disorder; or having a disease or a physical or mental disorder unsuitable for the office of a judge as specified in the notification of the J.C.A.C. and with an approval by the general assembly of judges of the Supreme Administrative Court; or being removed from the office; or finally being expelled. All of the above-stated cases shall be presented to the King for the Royal proclamation to vacate office (with the exception for the case of the death of any judges.)

The judges who decide to resign from official service shall tender the letter of resignation to the President of the Supreme Administrative Court and they shall be deemed to be annulled of the office, immediately after permission by the President. If the President considers it necessary for the official service, the President may withhold the permission for resignation for duration of not more than three months as from the date of tender of the resignation. However, if the judge resigns with an intent of holding a position designated by the Constitution, political position, or with that of becoming a candidate for an election, the resignation shall become effective from the date of his or

⁴ Section 15 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) states that The J.C.A.C. shall consider and select persons with qualifications under section 13 and with suitability for appointment as judges of the Supreme Administrative Court and shall then present the list of nominated persons to the Prime Minister, and the Prime Minister shall submit such list to the Senate within fifteen days as from the date of the receipt thereof. Upon its approval, the Prime Minister shall tender it to the King for royal appointment.

The J.C.A.C. shall consider and select one judge of the Supreme Administrative Court as President of the Supreme Administrative Court and shall submit the nomination to the Prime Minister, and the Prime Minister shall submit it to the Senate within fifteen days as from the date of the receipt of the nomination. Upon its approval, the Prime Minister shall tender it to the King for royal appointment.

her resignation. In addition, the judge may resume his or her judgeship or in a position ranking not higher than or equivalent to his or her former position.

It is interesting to note that the retirement of judicial officers is distinguished from that of governmental officials. Although a judge shall retire at the age of sixty five years at the expiration of the fiscal year, he/she may remain in office until the expiry date of the fiscal year in which such a person may have seventy years of age. If he/she passes the assessment of physical and mental performance fitness, in accordance with the regulations, prescribed by the J.C.A.C.

Furthermore, the J.C.A.C. may pass a resolution removing any judge from office in the following circumstances:

(1) Gross negligence in the performance of duties or misconduct as prescribed in the judicial disciplines for administrative judges;

(2) Lack of ability to perform official duty or suffer an illness which undermines consistent performance of official duty but being short of a physical infirmity;

(3) Being imprisoned by a final judgment, except for the case of an offence committed through negligence or a petty offence;

(4) Being disqualified, under the prohibitions or bankrupt.

The Administrative Court judge may be expelled from his or her official office in the following circumstances:

(1) malfeasance in office;

(2) breach of vital discipline as prescribed in the code of disciplines for Administrative court judges;

(3) being imprisoned by a final judgment except for the case of an offence committed through negligence or a petty offence.

In consideration of the removal from the office of the Administrative Court judges, the J.C.A.C. shall appoint an investigatory committee consisting of four judges from the Supreme Administrative Court and one member from the Civil Service Commission appointed by the Civil Service Commission which has been appointed by the Civil Service Commission in order to conduct an investigation. The investigatory committee has the authority to summon any administrative agency or person to render facts or statements, or furnish documents or evidence relevant to the matter under investigation.

During the conduct of investigation, if the J.C.A.C. considers that the continuation of performance by the person against whom the investigation or consideration is directed, will cause detriment to the official service, it may pass a resolution to suspend the person from official service. If it appears that the person under suspension has not committed the action, under the investigation, such a person shall remain in his previous office.

c) The Transfer of Administrative Court judge

The Supreme Administrative Court is the sole and highest Administrative Court in Thailand. So, there is not any difficulty in transferring the judges of Administrative Court to another position in other regional courts. Additionally, for the reasons of impartiality and the requirements to hold not any other position as stated in the qualification of the Judges of the Supreme Administrative Court. So the rules on this matter are those judges can have no temporary duty in other governmental bodies. This is how the system works in Thailand.

3. The Rights and Duties, and Legal Guarantee of the Judges of the Administrative Courts

A. The Rights and Legal Guarantee

The rights and legal protection of the judges of the Administrative Courts derive from the Constitution and Acts of Parliament.

One can observe that the intention of law on the protection and guarantee of the judges of the Administrative Courts to ensure that they shall be free and independent from the sovereign power of other branches of government is manifested in Section 279 and Section 280 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which set forth "the Judicial Commission of the Administrative Courts or the J.C.A.C." The J.C.A.C. is deemed to be the supreme body responsible for personnel management of the entire administrative courts, including selection, suspension from the official service, and vacation of office of the judges of the Administrative Courts. The Constitution also stipulates the specific system of salary-scale and emoluments, promotion, and judicial disciplinary sanctions for judges of the Administrative Courts. In addition, the independent secretariat of the Administrative Courts is set forth, with the Secretary-General of the Office of the Administrative Courts as the superior responsible directly to the President of the Supreme Administrative Court.

The above said provision of the 1997 Constitution is qualified by Chapter III of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) regarding the Judicial Commission of the Administrative Courts. Under the said Act, qualified members of the J.C.A.C. as set up by Section 279 of the Constitution with the President of the Supreme Administrative Court as the Chairman shall consist of six judges of the Supreme Administrative Court elected by judges of the Supreme Administrative Court, and three judges of the Administrative Courts of First Instance elected by judges of the Administrative Courts of First Instance, and the three expert members which two of them are elected by the Senate and the other by the Council of Ministers. Such outside expert members shall hold office for the term of two years, and may be re-elected, but may not serve for more than two consecutive terms.

In addition to the provision on personnel management, the independence of judges of the Administrative Courts is also guaranteed by Section 249 of the Constitution which provides that judges are independent in the trial and adjudication of cases in accordance with the Constitution and the law. The trial and adjudication shall not be subject to the hierarchical supervision, and the distribution of case files to judges shall be in accordance with the rules prescribed by law. Furthermore, the recall or transfer of case files shall not be permitted, except in the case where the objection of judges is raised, or the justice in the trial and adjudication of the case shall otherwise be affected.

B. The Rules Governing the Protection of Judicial Independence of the Administrative Judge

1. The Nontransferable Rule

According to last paragraph of Section 249 of the Constitution of the Kingdom of Thailand, B.E.2540 (1997) along with Section 27 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) a transfer of any administrative judge to hold another position in an Administrative Court must be upon consent of that administrative judge, and the approval of the J.C.A.C. in accordance with the regulation prescribed by the J.C.A.C. with the approval of the general assembly of judges of the Supreme Administrative Court. In order to clarify the aforementioned, on September, 4th B.E.2545 (2002), the Judicial Commission of the Administrative Courts had promulgated the regulation on "the transfer of the administrative judge" provided that the annual transfer of the administrative judge shall be conducted under two circumstances; the common annual transfer and the special transfer.

The common transfer is the rotation of position in the court. Generally, the transfer will be held and be in effect on April, 1st of every year. The transfer is for the purpose of replacing the retiring judges. In the case where there is more than one candidate for the position, the selection of the most suitable judge will be based upon their qualification. In addition to their qualification, the replacing judge will be choosing by seniority as well.

The special transfer is the transfer of judges to hold a new position in the newly established regional court, and the additional transfer which aims to bring about justice in administrative court procedure.

However, it is prohibited to transfer in order to demote judges to an inferior position. Also the serving term of judges in court of first instance shall not be more than 4 consecutive years at each court; however this does not apply to the Central Administrative Court of First Instance. Judges of the Administrative Court who assume the position in regional court shall take on the position for at least 2 years before he/she is eligible to file for a transfer to another court, however, with the approval from the J.C.A.C., this two-year requirement can be shortened.

2. The Prohibitions during the Currency of the Office

A stringent and scrupulous form has been set up on the prohibitions while holding the position of administrative judges in order to assure the independence of the administrative judges in trying and adjudicating cases. Article 14 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) stipulates that a judge of the Supreme Administrative Court shall not be under the following prohibitions during the currency of the office; being any other government official holding permanent position or receiving salaries, being an official or employee of a state agency or of any person, being a person holding a political position, member of a local assembly, local administrator, director or holder of a position responsible for the administration of a political party, member of a political party or official of a political party, being a director of a State enterprise, being a director in a State agency unless J.C.A.C.'s approval has been obtained, being a director, manager, or consultant or holding any other position of similar nature of work in a partnership or company, being an attorney at law or engaging in any other occupation or profession or holding any position or carry out any activity which is incompetent with the performance of duties as specified in the regulation prescribed by J.C.A.C.

3. The Prohibition in Recalling or Transferring the Cases Distributed to the Provided Judge of the Case or Division

The Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) prescribes the process of distributing a case as following,

When cases are filed with any Administrative Court, the President of the Supreme Administrative Court or Chief Justice of the Administrative Courts of First Instance shall comply with the following rules in connection with the distribution of case files within that Administrative Court;

1) in the case where a specialized division is established for any particular category of cases, the distribution of case files shall be made in accordance with the specialization of the division established therefore;

2).in the case where the area of responsibility of a division is arranged, the case the cause of action of which has arisen in the respective area shall be distributed to the division so arranged;

3).in the case where no arrangement of division is made per expertise under (1) or per area under (2), or various divisions have been arranged in the same manner, or the division responsible for such cases has such a large number of pending cases that further distribution of case files to such a division will cause a delay or affect justice, the distribution of case files shall be made by the method by which prediction may not be made as to which division the case file is to be distributed.

When a chamber in any Administrative Court has received a case file, the Senior Judge of a chamber of the Supreme Administrative Court or the Senior Judge of a chamber of an Administrative Court of First Instance in that chamber, as the case may be, shall appoint a judge in his or her chamber to be the Judge in Charge of the Case for collecting facts from the plaint and explanations of the parties and collecting relevant evidence, with the assistance from the administrative case official as entrusted by the judge in charge of the case. When a case file has been distributed to any judge in charge of the case or to any chamber, a recall or transfer of the case file may not be made, except for the following circumstances:

(1) When a case is transferred, in accordance with the regulation, prescribed by the general assembly of judges of the Supreme Administrative Court;

(2) When a challenge is made against the judge in charge of the case or when a challenge is made against a judge in the chamber carrying out the adjudication or a quorum can not be constituted in the original chamber;

(3) When the judge in charge of the case or the chamber carrying out trial and adjudication has a large number of pending cases, which will cause the delay and the judge or the division wishes to disown the case file under his or her, or its responsibility. Similarly one should farther take note that for a judgment or order of an Administrative Court, under section 67 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999), if such judgment or order is given or issued by several judges, the judgment will be made in accordance with the majority opinion and in the case where any judge has a dissenting opinion, it shall be written in such judgment or order.

4. The personnel management of the Administrative Court to make it an independent judicial body is done with the participation of Administrative Judges.

The Judicial Commission of the Administrative Court consists of the President of the Supreme Administrative Court six judges from the Supreme Administrative Court, three judges from the Administrative Court of First Instance, 2 expert members elected by the Senate and another expert member elected by the Council of Ministers.

The J.C.A.C. has authority in connection to judicial personnel management of the Administrative Court such as an appointment, a vacation, a promotion to a higher position, an increase in the salaries, a transfer, and disciplinary action.

C. Professional Ethics of Administrative Judges

As for Thailand, there has been a “Code of Ethics for Administrative Judges” in force for all administrative judges. And there are provisions under the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) in relation to prohibitions during the currency of the office and Notification of the Judicial Commission of the Administrative Courts on Judicial Disciplines for Administrative Judges dated 19th December 2001 being in force for all administrative judges as well.

If the system of prohibitions during the currency of the office with rigorous provisions and extensive substances is established for assuring judicial independence of administrative judges from other agencies exercising State power, Notification of the Judicial Commission of the Administrative Courts on Judicial Disciplines for Administrative Judges shall prove to be prescribed with the spirit of assuring and rendering justice in the trial and adjudication of administrative cases. 20 provisions under the said Notification shall provide rules applicable to administrative judges for both performance and non-performance of their official duties in handling cases. Any performances without faithfulness, maintenance of official confidentiality, responsibility for official duties and integrity as well as impartiality which are the core of judicial disciplines for administrative judges shall be deemed disciplinary breach, thence being vacated from office as the result of the disciplinary action, viz, removing from office or expelling, as the case may be.

Regarding administrative judge ethics prescribed by the President of the Supreme Administrative Court and having come into force since 3rd February 2003, they govern administrative judges’ acts both in personal life and in official duties. For example, administrative judges shall refrain from association with parties or stakeholders in a case under dispute as well as avoid associating with any notorious persons proving to destroy the public’s faith in bestowing justice of administrative judges on them. Besides, administrative judges shall be of carefulness on any enterprises, professions or works of spouse, close relatives or other persons living in their households which may affect their performance of duties or prestige, etc. Furthermore, all 14 administrative judge ethics call for administrative judges’ behavior in accordance with other code of ethics, viz, being free from prejudice, refraining from addressing the issue of facts in cases which may affect anybody, refraining from making criticism or giving an opinion to parties or third person concerning cases pending in court or being submitted to the court or being within the bounds of possibility towards the court, being thoughtful, prudent, cautious, industrious and speedy, being modest in behavior suitable for their own position, being neat in dress and polite in speech.

