

ABTRACT

Thesis Title : Provisional Measures before Judgment of
Administrative Case Litigation

Student's Name : Pol.Lieutenant Tummanoon Somsak

Degree Sought : Master of laws Academic year 1997

Advisor Committee :

1.Assoc.Prof.Dr.Boonsri Mewongukote Chairperson

2.Dr.wichai Sungprapai

According to administrative law principle,the provisional measures before judgment of administrative case litigation is the process stipulated with the aim for treating and remedying the troubles or damages which is happened or going to happen to individual affected by the provisional administrative actions before the judgment of administrative case litigation by requesting the temporary halt of administrative order proceedings.

In countries having administrative court as a separated part from the court of justice such as France and Germany,they also stipulate the provisional measures before judgment of administrative case litigation. By principle the two countries should be different from each other.But when considering their conditions and exceptions,they are not entirely different.Some

of the differences may come from different ways of thinking and evolution of mass law or administrative law of the two countries.

Nowadays Thailand does not have the administrative court separating from the court of justice. Thus the court of justice is responsible for judging administrative case litigation as if it were another common civil case and the court has modified the code of laws for civil litigation to use in administrative case litigation as well. It is at present inappropriate and incompatible with the principles, ways of thinking and nature of the administrative case litigation. Therefore, those measures cannot be effectively enforced nor can effectively protect individual affected by the administrative actions.

From the analysis study of the nature of problems concerning provisional measures before judgment of administrative case litigation, it recommends to enact the provisional measures before judgment of administrative case litigation as a separated part from the provisional measures before judging of civil case litigation by stipulating two considerations on requests to the court for the provisional measures before judgment of administrative case litigation, as follows:

Firstly, the petitioner shall prove to the court that

the administrative order or administrative legal act would cause damages to the petitioner beyond any repair or remedy thereafter.

Secondly, the request for the court order to halt or suspend the execution of administrative order or administrative legal act shall not interrupt with governing the country and cause any damages to public interest.

In judging the administrative dispute by the petition judging committee of the Juridical Council Office, the analysis study found out that the stipulation of measures or provisional measures before making the final decision of the petition can not be enforced effectively due to the conditions set in the petition judging committee regulations regarding the submission and delivery of the petition. In considering and judging the petition, the petitioner is required to prove to the petition judging committee that the matter is necessary and urgent. The petition Judging committee also has its own limitations in the nature of organization which can not judge and give orders directly. Furthermore, the steps of judging and directing process is rather protracted and not compatible with the conditions stipulated in the mentioned regulation. Therefore, it should be revised by permitting the use of provisional measures when it is necessary which would make it more suitable and compatible with the petition judging committee's present petition system.