

## Abstract

Disciplinary proceedings of government officials are considered as an administrative act which impacts on rights and liberties of the punished government officials. Under the principle of legality of administrative action, the disciplinary proceedings of government officials, in general, have to be done within the scope provided and granted by law. The Constitution of the Kingdom of Thailand B.E. 2550 (2007) recognized the principle of protection of rights and liberties of person by the judicial organization in the second paragraph of Section 28 that a person whose rights and liberties recognized by this Constitution are violated can invoke the provisions of this Constitution to bring a lawsuit or to defend himself/herself in the Courts. From this aforesaid reason, there is a problem because the status of the exercise of power of the Judicial Commission who orders disciplinary punishment to the judiciary official is the administrative action. It should be under the review of the Administrative Courts. However, paragraph 2 (2) of Section 9 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) excludes the action of the Judicial Commission from the jurisdiction of the Administrative Courts. Contrarily, since paragraph 2 of Section 28 of the Constitution is a general legal provision which allows the person receiving the punishment to exercise the right in case of no any other channel to exercise the right to petition. The person can raise the said provision either to exercise the right to petition or as a defence in order to ask the Courts of Justice to revoke the illegal disciplinary punishment order. This is according to Section 218 of the Constitution which elaborates that 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.

From the study, it finds that in France the exercise of power of the Judicial Commission is similar to the exercise of power of the Judicial Commission in Thailand. However, France specifies that the disputes from the exercise of administrative power of the Commission are the disputes from the exercise of semi-administrative or semi-

judicial power. The disputes can be directly filed to the Council of State (Conseil d'Etat) or the Supreme Administrative Court, not the Administrative Courts of First Instance. In contrast, even though the Supreme Administrative Court of Thailand ruled that the exercise of power of the Judicial Commission is the exercise of administrative power, the legal provision excludes the Administrative Court from reviewing the legality of the Judicial Commission's action. This author opines that this issue violates the Legal State principle (Rechtsstaat) where the Court can review the discretion of the administrative branch whether it is beyond the scope of law or not. This aims to protect the rights of the person subject to the said action so such person will not be under the illegal exercise of power of the Judicial Commission.

This thesis, thus, aims to study the problems on the status of the Judicial Commission which orders the disciplinary punishment and the legal problems on the power of the Judicial Commission to do the disciplinary proceedings and on the rights to file a legal action against the disciplinary punishment order regarding their scope and extent. This thesis considers on the criteria for disciplinary proceedings of the judiciary officials and the civil servants as well as studies the relevant laws, regulations and orders including comparatively analyzing the powers and duties of the Commission and the disciplinary proceedings of the government officials in foreign countries and in Thailand. As a result, this author suggests the solution when the judicial official disciplinarily punished is not entitled to appeal the punishment order to the Administrative Court. Hence such judicial official should exercise such right to the Court of Justice, like civil servant who can file the case to the Administrative Court in case of unsatisfied with the ruling of an appeal. This is to remedy the damage and protect rights and liberties of the punished government official as well as to be in line with the intention of the Constitution. When comparatively studying with the disciplinary proceedings of civil servants, particularly the problems regarding the disciplinary system of the civil servants in Thailand, this author finds that there have been problems since the past. The Civil Service Act, B.E. 2551 (2008) reforms the disciplinary, appeal and complaint systems of the State agents, with objectives to create a faster and fairer systems on

disciplinary investigation, appeal and complaint. From the study, it finds that in relation to the disciplinary proceedings, the said Act establishes the Merit System Protection Commission (MSPC) in order to be responsible for the disciplinary work, appeal and complaint of the civil servants as well as for the establishment of the merit system protection, the promotion of the civil servants' discipline and etc.

The establishment of the MSPC in Thailand can be compared with the establishment of the U.S. Merit Systems Protection Board (MSPB) which is separated the role and duties from the Civil Service Commission (C.S.C.). This is to balance the power of each other. Moreover, it desires to let the MSPC be the dispute resolution committee which has specific expertise to consider the disputes regarding the governmental personnel management. This author is of an opinion that the formation of the MSPC in Thailand is a new way to reform the government service to be the same as other civilized countries. In addition, this can be used as a guideline for revision or amendment on the disciplinary proceedings of judiciary officials in the Courts of Justice in order to affirm the administration under the Legal State principle (Rechtsstaat) which focuses on the protection of rights and liberties of person violated by the exercise of power of the State organizations.