

ABSTRACT

The study on "The Administrative Orders in which there is more than one organs to participate in the administrative consideration : a case study on the Rule of the Prime Minister's Office on the criteria and practice of liability for wrongful act of official, B.E. 2539" aims to study only the case where there is procedure of the administrative consideration in order to issue the orders, in which there is not only one organ, but there are several administrative organs participating in the administrative consideration procedure. The study is to find out that what type of all administrative organs are, whether or not they have legal status and what types of legal status the decisions or opinions of those administrative organs appearing in the said administrative consideration procedure are.

This thesis employs the administrative consideration procedure according to the Rule of the Prime Minister's Office on the criteria and practice of liability for wrongful act of official, B.E. 2539 as the case study of the said case in order to perceive the more concrete problems. This is because for the administrative consideration procedure according to the said Rule, there are several administrative organs participating in the administrative consideration procedure in order to lead to the issuance of administrative orders requesting the officials to pay the compensation viz.: the Committee to Verify the Facts of Liability for Wrongful Act, the appointer of the Committee to Verify the Facts of Liability for Wrongful Act, the Ministry of Finance and the State organs issuing the administrative orders.

The first problem to consider is that the Rule of the Prime Minister's Office on the criteria and practice of liability for wrongful act of official, B.E. 2539 has the legal status as "Regulation" or "Administrative Internal Rule". Then, the significant problem which is the main aim of this study is considered how the status of organs and opinions of each administrative organ participating in the administrative consideration procedure according to the said Rule have legal status. The final issue is the problem in the appeal of the administrative orders requesting the official to pay the compensation.

It is found from the study that the Rule of the Prime Minister's Office on the criteria and practice of liability for wrongful act of official, B.E. 2539 is issued without any reference of legal provisions that by which legal provisions of law such Rule was issued. Consequently, it lacks the sources of powers in issuing the regulation. This Rule has legal binding only as

“the Administrative Internal Rule”, which is the use of powers to supervise by the supervisors in issuing the internal Rule to set forth the practical guideline for their subordinates. With regard to the decisions or opinions of each organ participating in the said administrative consideration procedure, it is found that if they are only in the step within the administrative internal process which are not effective to the external party, they have no status as the administrative orders, but they may only be either the advice or the opinion. The opinion of the certain organs may be effective with a variety of intensity. Particularly, the opinion of the Ministry of Finance requested by the State agency rendering administrative orders to pay the compensation, it shall be bound as per such opinion. The last issue is the problem to appeal the administrative orders requesting the officials to pay compensation in which the person who has powers to consider the appeal shall be bound as per the opinion of the Ministry of Finance. This is useless for the appeal system. The author is of opinion that the said problem should be redressed by amending the laws to be explicit that for the notification of orders, the orders shall be notified to the related parties that each particular person has the rights to file the case to the court without any appeal again, that is to say, the officials who receive the orders shall be able to file the case to the Administrative Court directly.

In conclusion, the problems which are found mostly come from the legal provisions which are not explicitly and clearly stipulated. This causes the problems and loopholes in enforcing the laws. Therefore, all related organs should expedite the process to find out the resolutions or defects by amending the legal provisions and setting forth the principles which are more explicit in order to redress the problems and prevent from problems of inconsistent interpretation or practical problems or works according to the laws including all problems which may arise thereafter.