

Abstract

Tortious Liability of Officials Act B.E. 2539 (1996) is a law yet to protect a officials performing duties for the State not to solely be entirely liable for tort as well as protecting a competent official performing duties with due care but accidentally committing a minor error or trivial negligence, not to be liable for such act. This Thesis is focally determined to study personal liability of officials under the aforementioned Act which occurs in the case when a person tort-feasor is a personnel performing duties for the State, but not a officials under the meaning of such Act or in the case when a person tort-feasor is a official under the meaning of this law but has committed a tort causing the damage not because of the act in the course of performing his normal duty including the case when a official under the meaning of this law has committed an act willfully or wanton negligence in the course of his duty performance and causing a damage, as well. As a result of the study, I (Writer) finds that the personal liability of a official contains several issues which should be taken into considerations both on the matter of the extent of the meaning of the officials under said Act and the committing of an act of tort under this Act and whether or not a breach of a contract should be included, the scope and rule on a consideration as to whatever an act shall not be deemed to be an act in the course of duty performance and in the case when a official has committed a tort in the course of his duty performance which may be liable for payment of a compensation or may be subject to a recourse when such act is committed willfully or wanton negligence, thus, a consideration on the nature of such act wanton negligence and problem on the fixing of the amount of compensation and the right of recourse shall be determined including a consideration as to what a liability for tort shall consequently be resultant in the disciplinary liability.

From my point of view on the problems above, after the study and analysis were conducted, I have come up with the recommendations as follows:

Firstly, the meaning of "officials" under the Tortious Liability of Officials Act B.E. 2539 (1996) as provided for under Section 4 that a "officials" is a government

service official, staff, an employee or the other category of work performer disregarding whether or not he will be appointed as a member or under any other capacity and the principle on the consideration as to whoever shall be a official under this Act shall rely on the basis either such official "has received a salary or has been appointed to take a post" to perform duty in a government organization in a manner of performing a permanent and continuous work under which a salary rate and salary level promotion and disciplinary actions in accordance with the criteria prescribed by law, rules, procedures or regulations have been stipulated which consequently resulting in an overlap on law enforcements, thus, causing an injustice to a work performer. In order to establish the clarity and justice, I propose that the law be amended, particularly, the definition of a "officials" which should mean a "official assigned by an administrative organization to carry out the State activities when such activities are carried out for the State or public interest with exercise public authority" in the same way as French and German law system.

Secondly, the Tortious Liability of Officials Act B.E. 2539 (1996), specifying the commission of an act of a tort of a official, but, at the same time the nature of the commission of the act of such official consequently causing damage which is an act of a tort may likely be in the nature of a breach of a contract, as well. For example, the case of a train passenger being bitten by a bedbug on a train where the nature of the act shall be both a breach of a transportation contract and an act of tort, as well, thus, I wish to propose that the construction on an act of tort under this Act, apart from its meaning as a liability arising out of an act of tort of a official, shall inclusively cover an act in a manner of a breach of a contract consequently resultant in a damage, as well, which, in this connection, this breach of the contract or this act of tort will result in the differences of legal effect on the matter of fixing the damages and stipulation of the prescription.

Thirdly, an act in the course of duty performance bears an importance on the classification either an act of tort causing a damage shall be an act in the course of duty performance for which a government organization shall be responsible as a result of such tort under Section 5 of the Tortious Liability of Officials Act B.E. 2539 (1996), or

shall be an act not being in the course of duty performance for which the official committing a tort shall be responsible individually under Section 6 of the Tortious Liability of Officials Act B.E. 2539 (1996). However, such Act does not provide a definition on the meaning of the word, “an act in the course of duty performance” to mean “the act of a official in the course of his duty performance under the scope of his duty or derivatively as a result of duty performance under the scope of his duty including the assigned tasks from his organization or superior” with the scope of the consideration as to what shall be the act in the course of duty performance by basing the consideration on the following rules:

1) An act of a official in the course of normal duty performance or as a result of such act including the assigned tasks from his organization or superior with exercise public authority which shall be for the official interest.

2) An act of a official by relying on the opportunity in performing duty in the course of normal duty performance under the title even if it shall not be for the official interest.

3) An act of a official by using the government’s equipments and is contemplated for the official interest.

4) An act performed under the period close to the period of duty performance under the responsibility.

5) An act performed under a motivation or an understanding that it is for the official benefit.

An act under one of the above natures shall be deemed as an act in the course of duty performance and that an act other than prescribed under the above rules shall be deemed as an act not in the course of duty performance for which a official acting on shall be responsible individually under Section 6 of such Act.

Fourthly, the official committing a tort shall be liable individually by paying a compensation or being subject to a recourse in the case where the official has committed an act in duty performance willfully or wanton negligence under Section 8 and Section 10 of the Tortious Liability of Officials Act B.E. 2539 (1996), however, such

Act does not give any definition and the scope of the act willfully or wanton negligence. In order to clarify the meaning of such terminology, I propose that the expression, "wanton negligence" be defined as "an act without due care even trivially to the extent causing damage to the other person whereby the person committing such act can foresee that a damage is most likely possible but, contrarily, insists on the proceeding to commit such act by disregarding what damage may have occurred, and that under such situation, a person under the same nature and behavior of the doer will not act" by basing the considerations on an act through wanton negligence under the following rules:

1. Considering from the act in comparing with a hypothetical person having the same nature and behavior.

2. Considering the behavior and degree of seriousness of the act through wanton negligence.

However, on an act of a official in avoiding, violating or not complying with the prescribed rules in order to prevent a damage from occurring to the official entity, I am of the opinion that the seriousness of the act has possessed a characteristic of the standard deviation to a substantial extent which shall be considered as an act of wanton negligence.

Inasmuch as the problem on the fixing the amount of compensation and the right of recourse is concerned, I am of the opinion that a official, in committing a tort willfully in performing his duty, should be liable for such criticized act in full amount of the damage while a official committing a tort through wanton negligence in performing his duty should be liable for such damage in a manner of a punishment for such criticized act in accordance with the degree of seriousness of the circumstances by deducting part of the liability of the organization and other surrounding circumstances.

Fifthly, on the consequence of a tort liability toward the disciplinary liability, the commission of an offence of a official disregarding whether it shall be an act of personnel not being a official in accordance with the meaning under Section 4, shall not be an act in the duty performance under Section 6 but it shall be a willful and wanton

negligent related act of all levels and that even a trivial negligence, it shall all be the cause for disciplinary liability, however, such two offences do not fall under the same standard inasmuch as the adoption on the use of the penalty provision is concerned.