

## Abstract

The independent organizations under the Constitution of the Kingdom of Thailand B.E. 2550 (2007) are specified in Part 1 of Chapter XI their status as the independent organization under the Constitution. Furthermore, the Constitution elaborates powers and duties of each independent organization under the Constitution therein. With regard to the consequence of being the independent organization under the Constitution, such independent organization under the Constitution, thus, can exercise two types of powers i.e. power under the Constitution and the administrative power.

Where the independent organization under the Constitution exercises the administrative power, the action is under the judicial review of the Administrative Court in every case. On the other hand, if the independent organization under the Constitution exercises the power under the Constitution directly, such action of the independent organization under the Constitution cannot be reviewed by the Administrative Court. The Administrative Court does not have an authority to review the use of power under the Constitution because the Administrative Court only has a power to review the administrative disputes only. Hence, in case of constitutional disputes, the Administrative Court is not entitled to review. This leads to the separation of public disputes. The administrative disputes are under the review of the Administrative Court while the review of the constitutional disputes is depended on each case. With regard to whether the constitutional disputes are reviewed by the Constitutional Court or not, it has to consider whether the Constitution grants the power to the Constitutional Court to review such exercise of power under the Constitution or not.

Furthermore, in relation to the direct exercise of power under the Constitution of the independent organization under the Constitution, Section 233 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provide the exclusion of the jurisdiction of the Administrative Court in its second paragraph that in the event that the independent organization under the Constitution directly exercises it power under the Constitution,

such exercise of power is an adjudication power of the independent organization under the Constitution. Therefore, if the independent organization under the Constitution exercises the said power, such exercise of power is not under the jurisdiction of the Administrative Court. From this reason, paragraph 2 of Section 223 is the specific exclusion of the jurisdiction of the Administrative Court. This is further than the general power under the Constitution which is actually not under the jurisdiction of the Administrative Court. This paragraph provides that the direct exercise of power under the Constitution has to be adjudicated by the independent organization under the Constitution so it does not fall into the jurisdiction of the Administrative Court.

This thesis aims to study the problems on the adjudication power which is the direct exercise of power of the independent organization under the Constitution regarding its scope and extent. The study considers the legal precedent of the Administrative Court which has contemplated which case is the exercise of power under the said paragraph 2 of Section 223. If so, it is not under the jurisdiction of the Administrative Court. Moreover, this thesis also considers the principles concerning filing the lawsuit in foreign countries which are related to prosecution at the Administrative Court to protect the rights of individuals.

From the study, it finds that the legal precedents of the Administrative Court in many cases are unclear on which case is the aforesaid exercise of power of the independent organization under the Constitution which is excluded from the jurisdiction of the Administrative Court. On that account, it is ambiguous which case is the scope of the aforementioned exercise of power. There are some cases that the Administrative apparently adjudicated that the lawsuits regarding the exercise of power under the Constitution are the exercise of power according to paragraph 2 of Section 223; as a result, they are not under the jurisdiction of the Administrative Court. The said exercise of power, additionally, is the exercise of power which impacts on individuals. In other words, the exercise of power of the independent organization under the Constitution has a character of the administrative order. This thesis further considers the criteria for the public disputes of the German legal system. In case of public disputes which are not

constitutional disputes, if the said public disputes have effects on individuals, such individual can, in every case, bring the case to the Administrative Court. However, the dispute under paragraph 2 of Section 223 is neither the constitutional dispute nor the administrative dispute. The exclusion of jurisdiction of the Administrative Court under paragraph 2 of Section 223 makes such exercise of power not fall into the jurisdiction of the Administrative Court as well as any other court. Hence, this is not in line with the German principle which grants protection to individuals better than the Thai legal system does.

This author, accordingly, proposes that the exercise of power under paragraph 2 of Section 223, which is not in the jurisdiction of the Administrative Court, should be under the jurisdiction of the Court of Justice because the Court of Justice possesses the general powers in the consideration of case which is not in other courts' jurisdiction. This will be in compliance with the Legal State (Rechtsstaat) principle and the right to petition under Section 28 of the Constitution of the Kingdom of Thailand. Furthermore, if there is an amendment in paragraph 2 of Section 223 to define a clear scope of jurisdiction, it will lead to the actual protection to individuals