

THESIS TITLE	PROBLEM OF THE APPEAL OF ADMINISTRATIVE ORDER OF THE PRESIDENT OF PARLIAMENT UNDER THE ADMINISTRATIVE PROCEDURE LAW
KEYWORDS	ADMINISTRATIVE ACT/INTERNAL APPEAL IN ADMINISTRATION/COMPULSORY APPEAL SYSTEM/ COMMANDER OF ADMINISTRATION
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ABSTRACT

The thesis aims to study and analyze legal problems regarding the appeal of administrative order of the President of Parliament as acting according to the Parliamentary Regulations on Procurement B.E. 2555 (2012) which is the administrative act by the highest authority according to the law governing which the Administrative Procedure Act B.E. 2539 (1996), Section 44 provides except only the administrative order issued by committees and administrative order issued by the Minister that is not in force to appeal through internal appeal in administration. The problem arises from the administrative order of the President of the Parliament, the highest commander of the parliamentary agency. Therefore, there is no any other higher commander in this administration to consider the appeal which results in a receiver of the administrative order having a practical problem whether to appeal the administrative order issued by the President of the Parliament before filing a lawsuit to the Administrative Court. The researcher studies related comparative concepts and important principles in the international legal system and the Thai legal system.

From the study and analysis, there were found that Section 44 of the Administrative Procedure Act, B.E. 2539 (1996) legislates the Compulsory appeal system which there are important concepts and principles regarding the internal appeal in administration brought from the German legal system aimed at preventing the administrative act unlawfully affected the rights and status of person. The

German legal system provides the compulsory appeal system in general by enacting Administrative Procedure Code in the Administrative Court 1960 (Verwaltungsgerichtsordnung or abbreviated as VwGO) and Administrative Procedure Law 1976 (Verwaltungsverfahrensgesetz or abbreviated as VwVfG). If there is no specific law providing different appeals, the appeal must be complied with the said law. However, the law prescribes an exception by not appeal for the case of the administrative order (Verwaltungsakt) issued by the highest administrative authorities of the Federation (oberste Bundesbehörde) or of the State. The highest administrative authorities of the Federation are the President, Prime Minister and Minister. For the highest administrative authorities of the State determined in the law on Administrative Management of the State (Landesverwaltungsgesetzen). Section 44 of Administrative Procedure Act, B.E. 2539 (1996) legislates an exception in the case of not compulsory appeal for only the administrative order issued by committees and Minister which does not cover the administrative order of the President of Parliament, as the highest commander of the parliamentary agency. In practice, the administrative authorities and the Supreme Administrative Court may interpret the provisions of such laws differently which is not in accordance with intention (general will) of Administrative Procedure Act, B.E. 2539 (1996). This may cause lacking the unity of law enforcement and leading to a gap of law, including may contrary to the objectives of appeal aimed to receiver of the administrative order having the opportunity to firstly offer remedies to the administration which will be healed faster than filing the case to the Administrative Court and made the internal appeal in administration relieving the burden of judicial proceedings.

The researcher has an opinion that the administrative order issued by the highest commander of the State agency cannot be considered for 2-level appeals according to the intention of Administrative Procedure Act, B.E. 2539 (1996) as a guideline of solving such problems.

The researcher thus has a suggestion received from analysis study that there should amend Administrative Procedure Act B.E. 2539 (1996), Section 5 by adding the definition of “the highest commander” and Section 44 by amending the administrative order issued by the highest commander to not be forced to appeal as the administrative order issued by committees and Minister.

The amendment as above-mentioned suggestion will be beneficial to the administrative affairs which causes clarity in prosecuting the administrative order of the President of the Parliament and results in affected person by the order of the President of the Parliament being remedied from administration.