

THEMATIC TITLE	PERIOD OF TIME FOR FILING A LAWSUIT OF ADMINISTRATIVE CASE IN THAILAND: CASE STUDY ON PROBLEM OF ACCEPTING THE PLAINT RELATING TO CASE OF CONTINUOUS WRONGFUL ACT
KEYWORDS	FILING A LAWSUIT OF ADMINISTRATIVE CASE/PERIOD OF TIME FOR FILING A LAWSUIT OF ADMINISTRATIVE CASE/CONTINUOUS WRONGFUL ACT/ADMINISTRATIVE WRONGFUL ACT/LIABILITY FOR A WRONGFUL ACT OF THE STATE OFFICIALS
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ABSTRACT

This thematic paper has the purpose to study and analyze the application of law, decision and judgments of the Administrative Court and the Court of Justice with regard to the cases involving a continuous wrongful act. The study shall be carried out by analyzing and comparing the legal principles from foreign countries: France and Germany laws. It includes the study of legal impact on the condition of admission of the plaint in the administrative case in the case where such plaint concerning a continuous wrongful act has been submitted outside the time period for filing the case. It also involves the study of legal problems and judgments of the Courts with regard to the time period for filing the case as provided by the Act on Establishment of

Administrative Court and Administrative Court procedure B.E. 2542 (1999), the act of Liability for a Wrongful Act of the Officials B.E. 2539 (1996) and the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000) in order to analyze its definition and criteria to consider whether such wrongful act is a continuous act that the Administrative Court may accept the case for trial even if the plaintiff involving such act is submitted after the time period for filing the case. This study shall compare concerning concepts, theories, the Courts' jurisprudence, and any rules regarding such matter which existing in Thailand and overseas.

The study found that legal norms both in Thailand and overseas do not provide any legal provision giving definition and criteria to considering whether a wrongful act is a continuous wrongful act. Nevertheless, the Administrative Court and the Court of Justice accept the concept of continuous wrongful act and admit the case involving thereto for trial if it appears that such act is a continuous wrongful act. However, the jurisprudence of the Administrative Court provides many different interpretations of the continuous wrongful act. In some cases, the Administrative Court rejects the plaintiff involving a continuous wrongful act that has been submitted after the time period for filing the case, for example, the Supreme Administrative Court's order No. 354/2560 decided that the plaintiff demanding the Court to issue an order to demolish the sidewalk that has been built over the parking and to repair and adjust the parking to be an appropriate level for the parking, all of six plaintiffs have acknowledged or should have acknowledged the cause of the plaintiff since such time. In this respect, when the plaintiff had been submitted to the Court on July 12, 2016, such plaintiff is rejected due to the submission after the time period for filing the case. But the Supreme Administrative Court rendered in a different position. For example, in the Supreme Administrative Court's order No. 419/2560 and No. 609/2560, the Supreme Administrative Court decided that the plaintiff requesting the Court to issue an order for removal of the electricity pole and electric wires from the terrain and the payment of compensation by the defendant, as long as such removal does not been carried out, it shall be deemed that such wrongful act always exists continuingly. In both cases, the cause of the filing the case is similar and the plaintiffs are aggrieved from the similar cause ; the plaintiff requesting the Court to order the removal or demolition any object or construction out of the terrain of the plaintiffs. However, the Supreme Administrative Court has rendered different outcomes.

According to the analysis of the meaning, element and the jurisprudence of the court in Thailand and in foreign countries, the author has the opinion that if the courts reject the plaint concerning the continuous wrongful act, it shall deprive the right of the injured person to seek for the remedy by bringing the case before the court. In order to provide the solution to such problem, there should be the amendment to the Act on Establishment of Administrative Court and Administrative Court procedure B.E. 2542 (1999) and the act of Liability for a Wrongful Act of the Officials B.E. 2539 (1996) providing provision with regard to definition and time period of the filing of the case involving the continuous wrongful act. Such amendment shall allow the clarification in definition, deciding, and the admission of the case for trial for the plaint involving the continuous wrongful act. In addition, it should be stipulated that the provision of Section 51 of the Act on Establishment of Administrative Court and Administrative Court procedure B.E. 2542 shall not apply to the case of the continuous wrongful act. This shall allow the person the right to file the case to the Administrative Court in order to seek the remedy or relieve for the damage caused by the wrongful act. It shall also result in better comprehension of the public and the public's cooperation in providing the public service by administrative agencies or state officials.