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Commentary

Environmental Cases at the Supreme Administrative Court 2021–24

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Abstract

This commentary examines selected environmental cases decided by Thailand's Supreme Administrative Court between 2021 and 2024. It discusses noteworthy decisions related to admissibility requirements, in particular the issues of standing and filing deadlines, as well as relevant issues related to the merits of cases, such as environmental impact assessments (EIAs), proportionality between public interests and individual rights, the protection of legitimate expectations, and the continued relevance of post-coup laws. The commentary also contains a brief discussion of selected evidentiary matters.

Keywords: Administrative law — Environmental justice — Standing — Proportionality — Legitimate expectations

I. INTRODUCTION

Administrative litigation in Thailand has constantly grown since the inauguration of the first administrative courts in the year 2001. Over the past five years alone, the annual number of cases filed at the administrative courts of first instance increased by

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roughly one third from 6,827 cases in 2020 to 9,127 cases in 2024.[1] The establishment of an electronic litigation portal[2] in 2019 accelerated the courts' rising popularity. Environmental disputes constitute the third largest category of cases across all first instance courts and the Supreme Administrative Court, surpassed only by cases involving general administrative matters and personnel management cases.[3]

In this commentary, we engage with environmental cases decided by the Supreme Administrative Court between 2021 and 2024.[4] Our focus on environmental litigation reflects the subject's rising prominence in both domestic and global discourses. While the delicate balance between environmental protection and the politics of (uneven) economic development has long been a contentious issue in Thailand,[5] a renewed sense of urgency is emerging as people here and elsewhere are beginning to see and experience the effects of climate change.[6] At the same time, reports and research continuously point to the immediate and long-term impacts of air and water pollution on human health and the economy.[7] It is against this background that people in Chiang Mai, for instance, seized the administrative court which, in early 2024, ordered the Prime Minister and the National Environment Board (NEB) to speed up the development of measures to prevent and mitigate air pollution.[8]

The decisions analysed for this commentary illustrate, on the one hand, the broad scope of day-to-day environmental litigation. Thus, there are cases that deal with the prohibited use of land or waterways for business purposes, such as for the operation of plantations, hotels or homestays; cases that involve industrial pollution

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[1] See the official statistics on the website of the administrative courts <https://www.admincourt.go.th/admincourt/site/03casedata.html>.

[2] Administrative courts, E-Litigation Portal <https://elitigation.admincourt.go.th>.

[3] As of 31 December 2024, the administrative courts received 222,897 cases altogether since inauguration, 185,990 of which were classified as general administrative cases (คดีปกครองทั่วไป), 21,119 personnel management cases (คดีบริหารงานบุคคล), 7,667 environmental cases (คดีสิ่งแวดล้อม), 4,465 tort and other liability cases (คดีละเมิดและความรับผิดอย่างอื่น), 3,547 administration cases (คดีบริหารราชการแผ่นดิน), and 109 fiscal discipline and budgeting cases (แผนกคดีวินัยการคลังและการงบประมาณ).

[4] The decisions selected for this commentary are 29 judgments [คำพิพากษา] and 7 orders [คำสั่ง] from B.E. 2564 (2021) to B.E. 2567 (2024) that were marked as "Interesting Cases" (คดีที่น่าสนใจ) in the courts' database <https://www.admincourt.go.th/admincourt/site/05SearchSuit.html>.

[5] Richard F. Doner, *The Politics of Uneven Development: Thailand's Economic Growth in Comparative Perspective* (Cambridge University Press 2009) <https://doi.org/10.1017/CBO9780511819186>.

[6] Nongluck Ajanapanya, "Bank of Thailand Calls for Urgent Increase in Climate Finance" *The Nation* (4 December 2024) <https://www.nationthailand.com/business/economy/40043850>.

[7] Thaweeporn A. Kummetha, "The Cost of Clean Air in Thailand" *World Health Organization* (8 June 2022) <https://www.who.int/thailand/news/detail/08-06-2022-the-cost-of-clean-air-in-thailand>; Titaporn Supasri, Shabbir H. Gheewala, Ronald Macatangay, Anurak Chakpor, and Surat Sedpho, "Association Between Ambient Air Particulate Matter and Human Health Impacts in Northern Thailand" (2023) 13 Scientific Reports 12753 <https://doi.org/10.1038/s41598-023-39930-9>; Wassayos Ngamkham, "A Waterway of Life Is Turning Deadly" *Bangkok Post* (18 June 2025) <https://www.bangkokpost.com/thailand/special-reports/3052061/a-waterway-of-life-is-turning-deadly>.

[8] "Chiang Mai Residents Win Air Pollution Lawsuit" *Prachatai* (22 January 2024) <https://prachataienglish.com/node/10784>.

(dust, fumes, noise, etc.) as well as adverse impacts from condominium construction, including legal issues related to the proper conduction of environmental impact assessments (EIAs); cases related to the right to manage natural resources (mining); and disputes about the lawful issuance of land title deeds. A series of decisions related to the Bangkok flood of 2011, on the other hand, provide a glimpse of the legal repercussions of major natural disasters which, according to experts, are likely to occur more frequently as climate change progresses.[9]

For the purposes of this commentary, however, we decided to discuss the case material along a selection of administrative law matters that arise during different steps in administrative court proceedings. We begin with a selection of noteworthy decisions related to admissibility requirements (II.), where we focus on the issues of standing and the deadlines to file cases. This part is followed by a slightly more voluminous discussion of noteworthy matters related to the merits of cases (III.). These include environmental impact assessments (EIAs), proportionality review, the protection of legitimate expectations, and the continued relevance of post-coup laws. A brief discussion of selected evidentiary matters (IV.) is then followed by the conclusion (V.).

II. NOTEWORTHY DECISIONS ON ADMISSIBILITY REQUIREMENTS

Before administrative courts receive a case for consideration, certain formalities must be fulfilled. Sec. 45 para. 1 of the Act on the Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999) (hereinafter referred to as the Act on Administrative Courts) requires that a plaint contains the name and address of the plaintiff, the defendant administrative agency or state official, all relevant acts, facts and circumstances, the relief sought by the plaintiff and, finally, the plaintiff's or representative's signature. While such elements are important, any mistakes at this stage can usually be corrected as the Office of the Administrative Courts must advise plaintiffs to correct or amend any incomplete or ambiguous parts (Sec. 45 para. 2 of the Act on Administrative Courts).

Many cases analysed for this commentary nonetheless illustrate that litigants are often in doubt about who the correct defendant is due to highly dispersed administrative powers in environmental matters. For instance, in judgment Aor.Sor. 81/2566, villagers near a rubber factory in Buriram alleged that the factory had released wastewater, causing odour and sickness. The plaintiffs complained to the Governor of Buriram and the Bueng Charoen District, without avail. The Industry of Buriram Province (อุตสาหรรมจังหวัด) did not step in, either. Thus, as authorities were

[9] Sonia I. Seneviratne et al., "Weather and Climate Extreme Events in a Changing Climate," in Valerie Masson-Delmotte et al. (eds) *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2023) 1513–1766 <https://doi.org/10.1017/9781009157896.013>.

pointing at each other, the plaintiffs decided to file a court case against all possibly relevant defendants, i.e., the Bueng Charoen District, the Industrial Office of Buriram Province, the Department of Industrial Factories, the Secretary of the Ministry of Industry, the Buriram Natural Resource and Environmental Office, the Mayor of Bueng Charoen District, the Industry of Buriram Province, and the Office of the Secretary of the Ministry of Industry, arguing that they had, either on their own or jointly, neglected their respective duties under the Factory Act B.E. 2535 (1992) and the Public Health Act B.E. 2543 (2000).

In a similar fashion, Cha-am villagers in judgment Aor.Sor. 162/2566 claimed that six defendants, i.e., the land department, the land officer of Petchburi province's Cha-am branch, the Cha-am municipality, the Cha-am district mayor, the Marine Department, and a temple had unlawfully issued title deeds to a seventh defendant, the Cha-am Development Corporation Co Ltd., regarding an accumulation of new soil from a river. Again, the plaintiffs seemed entangled in a web of authorities and competences under the Land Code B.E. 2497 (1954), the Navigation in Thai Waters Act B.E. 2456 (1913), the Civil and Commercial Code, and even the Sangha Act B.E. 2505 (1962). The plaintiffs effectively asked the court to disentangle it.

In any event, once all formalities are complete, the court verifies whether the case is admissible. Admissibility requirements function as a filter before the court can move to consider whether the case is well-founded. These requirements ensure that the court only deals with cases within its jurisdiction (Sec. 9 of the Act on Administrative Courts), that the court can legally grant the remedy sought by the plaintiff (Sec. 72), that any other available remedies have been exhausted prior to filing the case (Sec. 42 para. 2), that the plaintiff has standing as an individually concerned person (Sec. 42 para. 1), and that the case was filed within the applicable deadline (Secs. 49 to 52).

The decisions reviewed for this commentary contained particularly noteworthy jurisprudence regarding the issues of standing (A.) and filing deadlines (B.).

A. Standing

According to Sec. 42 para. 1 of the Act on Administrative Courts, any person who is aggrieved or injured or who may be inevitably aggrieved or injured in consequence of an act or omission by an administrative agency or a state official, or who has a dispute in connection with an administrative contract, or any other case falling within the jurisdiction of the administrative courts, can file a case to the competent administrative court. As we pointed out in our previous commentary,[10] the Supreme Administrative Court frequently gets to decide on legal standing, resulting in a rich

[10] Lasse Schuldt and Supakorn Wilartratsami, "The Jurisprudence of the Supreme Administrative Court 2021" (2022) 2(1) Thai Legal Studies 138, 147–49 <https://doi.org/10.54157/tls.260428>.

body of jurisprudence.[11] The existence of direct individual concern is, of course, a matter of high practical relevance in environmental cases as well.

Some particularities, however, may be relevant in this type of litigation. Firstly, members of a community (ชุมชน) can file cases to defend rights and interests of the community. This was, for instance, confirmed by the Supreme Administrative Court in a recent environmental case related to the Map Ta Phut industrial estate.[12] And secondly, Secs. 7 and 8 para. 1(5) of the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992) permit non-governmental organizations (NGOs) that are registered with the Ministry of Natural Resources and the Environment to serve as legal representatives for victims in court litigation; they may also receive government support to exercise this function. Thus, in cases concerning alleged noise pollution by the Thep Sathit wind farm in Chaiyaphum province (judgment Aor.Sor. 27/2564 and order Kor.Sor. 14/2564), the natural-person plaintiffs were lawfully joined by a registered legal person, the Environmental Lawyer Association (สมาคมนักกฎหมายพิทักษ์สิ่งแวดล้อม), to defend their interests. Another example is the Ashton Asoke condominium case, discussed below, where the Stop Global Warming Association (สมาคมต่อต้านสภาวะโลกร้อน) was plaintiff No. 1, followed by the natural-person plaintiffs Nos. 2 to 16.

1. Individual concern.

Ashton Asoke (judgment Aor.Sor. 188/2566) is certainly one of the most prominent Supreme Administrative Court cases in the past five years. While not the first ruling to revoke the permission of a finished high-rise building,[13] it raised remarkable public attention[14] and involved tricky legal questions, including the admissibility requirement of legal standing. According to the facts of the case, the Stop Global Warming Association and 15 neighbours challenged the legality of building permissions (technically, notification receipts under Sec. 39*bis* of the Building Control Act B.E. 2522 (1979)) for the 50-floor Ashton Asoke condominium project in central Bangkok. Besides initial complaints about health and safety violations, the key legal issue that eventually led the court to revoke the permissions was related to the project entrance: The building site did not have a direct connection to nearby Asokemontri Road, which led the developers to rent parts of a land plot owned by the Mass Rapid Transport Authority (MRTA) in front of the site to be used as an entrance road.

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[11] ชูชาติ อัศวโรจน์, คำอธิบายกฎหมายสำคัญที่เจ้าหน้าที่ใช้ในการปฏิบัติงานและที่ศาลปกครองใช้ในการพิจารณาคดี (โรงพิมพ์เดือนตุลา 2562) [Chuchart Asawaroj, *Explanation of Important Laws for Administrative Practice and Administrative Court Proceedings* (Duan Tula Printing House 2019)] (Thai) 365 ff.

[12] Supreme Administrative Court judgment Aor. 884/2564 (2021). Curiously, this case was not classified as an environmental case (คดีสิ่งแวดล้อม), but as a general administrative case (คดีปกครองทั่วไป).

[13] See Supreme Administrative Court judgment Aor. 588/2557 (2014) on the Aetas Bangkok Hotel; Supoj Wancharoen, "Court Orders Demolition of Aetas Hotel" *Bangkok Post* (3 December 2014) <https://www.bangkokpost.com/thailand/general/446805/court-orders-demolition-of-aetas-hotel>.

[14] Supoj Wancharoen, "BMA Under Fire Over Ashton Asoke" *Bangkok Post* (29 July 2023) <https://www.bangkokpost.com/property/2619755/bma-under-fire-over-ashton-asoke>.

At the time of the decision on first instance in July 2021, the condominium was completed, and most units were sold. The Central Administrative Court nonetheless revoked the building permissions, holding that the MRTA was not permitted to conclude the land rental agreement.[15] The Supreme Administrative Court confirmed the revocation in July 2023 but reasoned, after a plenary meeting on the issue, that the relevant ministerial regulation required a permanent entrance owned by the developers, and that a rented entrance was not permanent.

We will revisit the substantive matters below. For the question of legal standing, however, it is instructive to list the plaintiffs' five requests to:

1. revoke MRTA announcements on land use permissions,
2. revoke the MRTA's contractual permission to use its land,
3. revoke the approval by the EIA committee, or order remedial measures,
4. revoke the building permissions (notification receipts), and
5. order defendants to restore unlawfully encroached land to public use.

Regarding request No. 1, the court held that the respective announcements did not concern the plaintiffs but only owners of land who may request to use MRTA land, i.e., here, the condominium developers. Regarding No. 2, the Central Administrative Court had found a lack of standing as the contractual permission (the rental agreement) did not affect the plaintiffs' rights and obligations, was therefore not an administrative act, and thus the plaintiffs lacked standing to demand its revocation. The Supreme Administrative Court approved this finding. Request No. 3 was left unaddressed both in the first instance and on appeal, as the judges on both levels did not deem it necessary to rule on the matter when other grounds of unlawfulness had been established.

Standing was found only for requests No. 4 and No. 5, but without further explanation. A few words would have been desirable regarding the request to revoke the building permissions (No. 4). While there is no doubt that noise and dust pollution may negatively affect the health of neighbours, impact on them is less obvious with respect to what eventually turned out to be the case's key legal issue: whether the project had a lawful entrance or not. At the first instance, the Central Administrative Court found the MRTA's land use permission unlawful because the authority acted beyond its powers. It is not immediately clear how the MRTA's violation of their own land use rules may give neighbours a ground to sue. On appeal, the Supreme Administrative Court substituted this reasoning with the argument that the rented entrance was not permanent. The judges supported their interpretation mainly with reference to the purpose of the applicable regulatory provision,[16] which they found was to ensure firefighters' access, and thus to protect the people and property *in the Ashton Asoke condominium*. Again, the neighbours' interests were left unmentioned. We may,

[15] Central Administrative Court, Red Number Case Sor. 19/2564.

[16] Ministerial Regulation No. 33, B.E. 2535 (1992), issued by virtue of the Building Control Act B.E. 2522 (1979) s 2(2).

of course, reasonably infer that an uncontrollable fire would eventually also affect nearby neighbours, giving them standing to sue. But the courts missed spelling out explicitly on which reasons the plaintiffs' standing for request No. 4 was grounded. Similar concerns may be raised regarding request No. 5.

2. Merging French and German concepts.

A second look at the plaintiff's lack of standing for request No. 2, mentioned above, reveals another particularity of Thai administrative law: the mix between French and German concepts.[17] Explanations of administrative court procedure law highlight that, when it comes to the admissibility requirement of individual concern, being "aggrieved" or "injured" refers to actual or inevitable (factual) impacts on plaintiffs' *interests*, not necessarily their *rights*.[18] The interest-based approach to standing is deemed of French origin, whereas a rights-based concept would be German. While both will often lead to the same conclusion on standing, the French approach is considered wider, i.e., more litigant-friendly. It also follows that Thai administrative courts rule in favour of plaintiffs if disputed administrative actions were (objectively) unlawful. The additional step to prove that such unlawfulness also violated the plaintiffs' rights, as German courts must do,[19] is not required under Thai law.

At the same time, however, Thai lawmakers of the 1990s inserted the German concept of the administrative act (คำสั่งทางปกครอง) into the law, namely in Sec. 5 of the Administrative Procedure Act B.E. 2539 (1996).[20] The legally binding nature of administrative acts is not connected to impact on *interests* but, following the German rights-based tradition, as "the exercise of power under the law by an official to establish juristic relations between persons to create, modify, transfer, preserve, extinguish or affect an individual's status of *rights or duties*" (emphasis added).

In German law, such rights-based definition of the administrative act links up with court procedure law, as the right to sue (*Klagebefugnis*) requires proof that the plaintiff's rights have possibly been affected by official action. In other words, within the German system, addressees of administrative acts automatically have standing to dispute the act's legality in court. Thai law, in contrast, separates standing and the existence of an administrative act into an interest-based component (for standing) and a rights-based component (for the administrative act).

At least, that is the theory. In practice, the Central Administrative Court's decision in *Ashton Asoke* illustrates how Thai courts often merge the two doctrines:

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[17] Schuldt and Supakorn, "Jurisprudence" (n 10) 139–40.

[18] ชาญชัย แสวงศักดิ์, คำอธิบาย กฎหมายจัดตั้งศาลปกครองและวิธีพิจารณาคดีปกครอง (พิมพ์ครั้งที่ 15 สำนักพิมพ์วิญญูชน 2567) [Chanchai Sawaengsak, *Explanation of the Law on the Establishment of Administrative Courts and Administrative Court Procedure* (15th edn 2024)] (Thai) 238–41.

[19] Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*) s 113 para 1.

[20] วรเจตน์ ภาคีรัตน์, กฎหมายปกครอง ภาคทั่วไป (นิติราษฎร์ 2554) [Worachet Pakeerut, *Administrative Law: General Part* (Nitirat 2011)] (Thai) 106ff; Peter Leyland, "The Origins of Thailand's Bureaucratic State and the Consolidation of Administrative Justice" in Andrew Harding and Munin Pongsapan (eds) *Thai Legal History* (Cambridge University Press 2021) 192.

The court holds that the land rental agreement did not affect the plaintiffs' *rights* and *obligations*, that it was therefore not an administrative act and, consequently, the plaintiffs lacked standing. Inserting the (German) question of violations of rights into the (French) test of admissibility could possibly narrow litigants' standing. In practice, however, there should not be much of a difference.

The Ashton Asoke case is not the only evidence of a mixed approach to standing. For example, Order Kor.Sor. 12/2564 addressed a plaintiff who had been permitted to dig up sand in a forest area. The forest protection unit, however, put up a vinyl poster stating that the area had been seized and that any act harming the forest was prohibited. The plaintiff alleged that this affected her rights. The court rejected standing under Sec. 42 para. 1 of the Act on Administrative Courts as the defendant's vinyl poster was not an administrative act in the sense of Sec. 5 of the Administrative Procedure Act B.E. 2539 (1996). It was, rather, a general announcement that prohibited anyone from abusing the forest area, without affecting the *rights* and *duties* of the plaintiff.

In a similar fashion, judgment Aor.Sor. 281/2566 connected the question of standing to the character of a decision as an administrative act. In this case, 23 condominium residents in Bangkok's Langsuan area requested the court to revoke the EIA committee's approval for an adjacent project (Mahadlek Residences).[21] The plaintiffs alleged that the project would be the largest building in an area already overcrowded with condominiums and high rises, it would not comply with rules on required footpaths under the Building Control Act B.E. 2522 (1979), block sunlight, not allow enough room for fire safety, and cause various nuisances during the construction. On the issue of standing, the court held that an EIA approval was an administrative act in its own right, separate from the construction permits. The EIA approval *itself,* therefore, already affects the plaintiffs in the area surrounding the disputed project. They were directly concerned and had standing according to Sec. 42 para. 1 of the Act on Administrative Courts to demand the revocation of the EIA approval. The EIA approval's independent character is noteworthy because Secs. 49 and 50 of the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992) describe such approval as a condition for the issuance of construction permits.

In order Kor.Sor. 2/2566, the plaintiff, who lived five kilometres from Bangpli City Market in Samut Prakan, argued that traffic and roadside parking along the market made it difficult for him to pass through on his daily commute to work. He alleged an unlawful market license and demanded that the court revoke it. In application of Sec. 42 para. 1 of the Act on Administrative Courts, the court found that the permission and operation of the market neither actually nor potentially injured the plaintiff in his health, environment, reasonable living conditions, or any other *right*. His home was simply too remote from the market, and the traffic around the market

[21] Onnucha Hutasingh, "Ratchadamri Condo Ruling Overturned" *Bangkok Post* (31 March 2024) <https://www.bangkokpost.com/thailand/general/2768034/ratchadamri-condo-ruling-overturned>.

was rather ordinary. Again, a rights-based approach was apparently substituted for the interest-based doctrine.

Finally, judgment For.Sor. 1–2/2566 concerned announcements of the Ministry of Natural Resources and Environment that designated land on Koh Som in Samui province, including the plaintiff's plot, as "Area 5" where no building could be constructed for several years, unless for the public interest or governmental purposes. Consequently, the plaintiff's application for a building permit was rejected. In the court proceedings, she alleged that the announcements unlawfully prevented her from using her land and requested the court to revoke them. The announcements did not address the plaintiff specifically, but the court nonetheless received the case as the land in question clearly fell into the announcements' scope, resulting in sufficient individual concern, albeit from a general rule.[22]

B. Filing Deadlines

Administrative court cases must be filed on time to be admissible.[23] The practically most relevant deadline is found in Sec. 49 of the Act on Administrative Courts. It stipulates 90 days as from the date on which the cause of action is known or should have been known, or 90 days as from the date on which the plaintiff made a request in writing to an administrative agency or state official but has not heard back, or the plaintiff considers the agency's answer unreasonable.

1. Beginning and end of deadlines.

Some cases analysed for this commentary raised the question of when the cause of action had occurred. For example, in the just-mentioned land designation case (judgment For.Sor. 1–2/2566), the Ministry issued a first announcement that stipulated the plaintiff's land on Koh Som as "Area 5" for five years. A second announcement extended its effect by two years, and a third added another two years. When the plaintiff first filed the case to the court, only two announcements (one extension) had been issued. Once the Ministry made the third announcement (second extension), the plaintiff filed another case requesting revocation also of the third announcement. The court joined the cases and held that the plaintiff's latest request was filed within the 90 days deadline as well. While identical in content to the first announcement, the subsequent announcements extended its effect and therefore created new legal relations affecting the plaintiff's rights for a new period. The 90 days filing deadline thus started counting from the date of the last (third) announcement.

In one of the wind farm cases (order Kor.Sor. 14/2564), 82 plaintiffs alleged that the Energy Regulatory Commission of Thailand had allowed a private company to build a wind farm in Watabag, Thep Sathit, Chaiyaphum province, without conducting

[22] On a more generous approach to standing in litigation against administrative rules, see Chanchai, *Explanation* (n 18) 240–41.

[23] Schuldt and Supakorn (n 10) 147–50.

a proper EIA including a public hearing. The wind farm caused noise nuisance. Since the evidence was inconclusive as to when the plaintiffs knew of the wind farm license—which the court held to be the cause of action—the court determined rather generously that the plaintiffs had not known about the license before the day when they first heard noise from the wind turbines. The court thus ruled that the 90 days filing deadline began on that day. The plaintiffs nonetheless failed to file the case on time, but, as we will see below, a public interest exception saved them, and the court received the case for consideration.

For tort liability cases, the filing deadline is one year from the date on which the cause of action is known or should have been known, but the case cannot be filed later than ten years (Sec. 51 of the Act on Administrative Courts). In several cases related to alleged air, noise and vibration pollution from Suvarnabhumi airport, this filing deadline became relevant. The plaintiffs in judgments Aor.Sor. 101/2565 and Aor.Sor. 17/2566 lived near Suvarnabhumi airport, which is managed by the state-owned Airports of Thailand Public Company Limited (AOT). They alleged that the EIA conducted during the airport's construction had not complied with the law, that there was no public participation, and that only insufficient measures were taken against pollution. Among several other requests, the plaintiffs demanded compensation from AOT for wrongful acts.

On admissibility, the court held that the claims were filed within the one-year deadline of Sec. 51. Although the airport had been in operation since 28 September 2006, and the plaintiffs filed their claims on 27 December 2013, the court viewed that the air, noise and vibration pollution was a continuous phenomenon until the day of filing. On the merits, however, the court rejected all allegations of wrongful acts and ruled against the compensation claims, thus reversing the first instance court's decision (see below III.B.2.).

With respect to cases involving *ongoing* violations, we therefore note that the 90 days filing deadline of Sec. 49 may be calculated, at the latest, from the first time an actual impact on the plaintiffs occurred. Challenges to the legality of official acts (Sec. 9 para. 1(1) of the Act on Administrative Courts), such as in the Thep Sathit wind farm case, are thus excluded if they are brought after that deadline. Claims for tort compensation (Sec. 9 para. 1(3), however, can effectively be filed any time as long as the impact persists,[24] such as in the Suvarnabhumi airport case.

2. Exemptions from deadlines.

An important exception from the filing deadlines is stipulated in Sec. 52 of the Act on Administrative Courts. This provision states that an administrative case concerning the protection of the public interest or a status of an individual person may be filed at any time (para. 1). In addition, where an administrative case is filed after a legal deadline has lapsed, the court can, whether at its own initiative or upon application by

[24] This is in accordance with previous jurisprudence, such as Supreme Administrative Court order 132/2550 (2007) regarding an ongoing encroachment on private land by a public authority.

a party, accept the case for trial if the court is of the opinion that it is of public benefit or that there is any other necessary cause (para. 2).

The practical relevance of this provision can be seen, for example, in the Watabag wind farm case (order Kor.Sor. 14/2564). As mentioned above, the court found that the plaintiffs had failed to file the case within the 90 days deadline. However, the judges considered that the wind farm would not only affect the 82 plaintiffs but also the general public. Thus, Sec. 52 para. 2 of the Act on Administrative Courts (in conjunction with Sec. 30 of the Rules of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure) permitted the court to accept the case, although the 90 days filing deadline had expired.

"Protection of the public interest" (การคุ้มครองประโยชน์สาธารณะ) and "public benefit" (ประโยชน์แก่ส่วนรวม)[25] under Sec. 52 paras. 1 and 2 of the Act on Administrative Courts are indeterminate terms that allow courts a remarkably wide margin to accept cases that would normally be inadmissible.[26] Neither French nor German law contains such significant exemptions that may certainly help litigants bring their cases to the courts. At the same time, however, it is the very nature of virtually every administrative case to adjudicate matters of public interest. In addition, filing deadlines are closely related to the protection of legitimate expectations (discussed below III.C.). Concerned parties often rely on the continued validity of administrative decisions once the relevant deadlines have been reached. From the perspective of legal certainty, therefore, only cases of utmost and overriding importance for the public interest should justify deadline exemptions.

This leads us back to the facts of the Ashton Asoke case (judgment Aor.Sor. 188/2566). On 23 February 2015, the competent authority (Director of the Public Works Bureau, acting on behalf of the Governor of Bangkok) approved an initial 7-floor condominium project. Just three days later, on 26 February 2015, 15 neighbours engaged the Stop Global Warming Association to help defend their rights. On 16 July 2015, the competent authority approved a revised 50-floor project. However, it was not until almost eleven months later, on 2 June 2016, that the plaintiffs filed their case with the Central Administrative Court.

The plaintiffs' main request was to revoke the allegedly unlawful approvals, so the case fell under the administrative courts' jurisdiction according to Sec. 9 para. 1(1) of the Acts on Administrative Courts. Consequently, the deadline of Sec. 49 applied; 90 days since actual or presumed knowledge of the cause of action. While the Central

[25] The term "public benefit" is defined in Sec. 3 of the Act on Administrative Courts as "public interest or interest arising from the provision of public services or the provision of public utilities or any other interest arising from any operation or action which has the character to promote or support the public at large or results in the public at large deriving benefits therefrom."

[26] Previous jurisprudence on the "public interest" exception includes Supreme Administrative Court order 18/2546 (2003), in which the court considered it in the public interest that authorities intervene with the illegal possession of land. On the "public benefit" exception, the court ruled, for instance, that an action to request the court to revoke a ministerial regulation prohibiting the issuance of land title deeds that affected numerous individuals was for the public benefit, see Supreme Administrative Court judgment For. 12/2549.

Administrative Court did not problematise the deadline, the issue was raised on appeal. The Supreme Administrative Court entertained it as a matter of public order.

The judges cite both Sec. 49, which stipulates the 90 days deadline, and Sec. 52(1), containing the possibility of a public interest exemption. Eventually, however, the avenue of Sec. 49 is not pursued any further. Rather, the court quickly turns to Sec. 52(1), interpreting that a public interest is an interest of the general public, not only of specific individuals or a particular group. Applying this definition, the judges find the case to be in the interest of neighbours, persons travelling through the area, as well as persons using the area. Moreover, they hold it to involve the environment and public health. Therefore, the public interest exception applied, allowing for an exemption from the filing deadline.

It is worth highlighting again that both the decision at first instance (in 2021) as well as on appeal (in 2023) were issued *after* the Ashton Asoke condominium had been fully constructed, units had been sold, and tenants had moved in (since 2018). The courts' decisions to revoke the building permissions thus threatened to demolish the finished project. Despite such possibly grave consequences for the developers, landlords and tenants, the court valued the supposedly public interest higher and allowed the case to proceed.

On the other hand, however, only a few concrete floors had been constructed on the date when the plaintiffs filed the case, which was on 2 June 2016. Viewing the revocation from such a retroactive perspective, its impact on developers, landlords and tenants could be estimated as significantly lower. But it is debatable whether that would be a valid perspective, in particular because the Central Administrative Court rejected (in April 2018) a motion for temporary measures that the plaintiffs had filed in October 2017. A court order to suspend construction would have preserved the status quo until the court's decision. As the condominium was being finished, however, the costs of revoking the building permission rose substantially.

We will revisit this question when we address the issue of legitimate expectations in more detail (below III.C.). In any event, the Ashton Asoke case demonstrates the drastic, and sometimes problematic character of Sec. 52.

III. NOTEWORTHY DECISIONS ON THE MERITS

For issues related to the merits of cases, we decided to cover both procedural and material matters. Alleged violations of EIA procedural requirements (A.) are extremely relevant in environmental cases. Material matters include the application of the principle of proportionality (B.), the protection of legitimate expectations (C.), and the legal effects of post-coup laws (D.).

A. Environmental Impact Assessments

While the legality of environmental impact assessments (EIA) is a unique procedural issue for administrative courts' decisions on environmental law, out of all the judgments in our sample, only two were decided on the legality of the EIA process. Comprehensively summarised by Elizabeth Fisher as "a systematic and formalized legal process that obligates a decision-maker to make a decision about whether a project or activity should proceed—and on what basis—after considering, first, information about the potential environmental impacts of a project and, second, wider public consultation in light of that information," EIA is a staple of environmental law worldwide.[27]

Mandated by Secs. 57 and 58 of the 2017 Constitution, the main law governing EIAs in Thailand is the Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992), which has been further supplemented by an amendment in 2018.[28] However, in practice, secondary legislation derived from this Act and other context-specific laws provide detailed regulations for EIA processes of particular types of projects, as was the case with both judgments on this issue.

In the first case, judgment Aor.Sor. 2/2566, the plaintiffs, consisting of local farmers, disputed the license granted to a limestone quarry in Gao Gloy and Na Glang Forest in Nong Bua Lamphu province, as well as its ten-year extension. The plaintiffs argued that the administrative acts violated their community's constitutional right to the environment (under the 2007 Constitution), that there had been no public consultation, and that the quarry might cause damage to a prehistoric mural at a nearby cave. Notably, the plaintiffs also alleged that license and meeting transcripts from the subdistrict administrative organization, on which the license was based, had been forged.

The main legal issue considered by the court was whether the grant of the license complied with requirements under the Regulation of the Department of Forestry issued under Sec. 16 of the National Reserved Forest Act B.E. 2507 (1963). Relevant to this case are two requirements that both involve the court in considering the issue of forgery. The first requirement is that the license must not be contested by citizens. Adopting a literal interpretation, the court found this requirement unsatisfied as the plaintiffs had been disputing the authenticity and validity of the license. The second requirement provides that the license must be issued with the assent of the subdistrict assembly. With reference to the mismatch between meeting transcripts and oral testimonies, the court likewise found this requirement unsatisfied as it was "unbelievable from the fact" that the meeting transcripts had been assented to.

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[27] Elizabeth Fisher, "Environmental Impact Assessment: 'Setting the Law Ablaze'" in Douglas Fisher, Carlos M. Correa, and Peter Drahos (eds), *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar 2016) <https://doi.org/10.4337/9781784714659>.

[28] See the Enhancement and Conservation of National Environmental Quality Act (No. 2) B.E. 2561 (2018) which contains additional rules on EIAs.

After having found the original license unlawful, the court considered the ten-year extension of the license. According to the court, the unlawfulness of the original license meant that the request for extension was made by a person who had not received a license (void *ab initio*), resulting in the extension being unlawful *a fortiori*. Although this would have been sufficient for the Court to adjudicate in favour of the plaintiffs, the court also found the extension unlawful on another ground.

This other ground arose from the deficiency in the administrative authorities' exercise of discretion when approving the submitted EIA. According to the facts, while the application for the extension was made in 2010, the EIA submitted for this process was conducted in the year 2000. In 2005, however, the Department of Fine Arts designated the prehistoric mural near the quarry an archaeological site. After the EIA had been approved by the authorities in 2010, the National Health Committee conducted a rapid health impact assessment in the area and subsequently requested the reconsideration of the approved EIA. The two external developments (designation of the mural and a new health report) were found by the court not to have been considered by the authorities in the process of their EIA approval (or in a stricter sense, reapproval), impacting the exercise of administrative discretion.

EIAs also had a prominent role in the second case, judgment Aor.Sor. 281/2566, concerning the Langsuan condominium discussed earlier. The main substantive issue of the case was the EIA approval, involving the interpretation of a ministerial regulation under the Building Control Act B.E. 2522 (1979),[29] which provides minimum dimensions for the land on which a "Particularly Large Building" (อาคารขนาดใหญ่พิเศษ) is situated. While Mahadlek Residence clearly met the definition of "Particularly Large Building," the court's main focus was on what constituted the "land on which the building is situated" (พื้นที่ดินที่ใช้เป็นที่ตั้งอาคาร). Disappointingly for the plaintiffs, the court found that, although the owner of the land (the Crown Property Bureau) had split the area under the title deed into smaller areas and distributed them to different entities to build on, the split had not been done officially in accordance with Sec. 79 of the Land Code. This meant that the whole land under the title deed where Mahadlek Residence is situated was the reference point (around 67 rai), instead of the area specifically designated as the project site (around 1 rai) by the Crown Property Bureau.

With the significantly larger frame of reference, the land surrounding Mahadlek Residence easily had the required dimension under the ministerial regulation. Although this was a possible interpretation, one might ask whether choosing the *de facto* frame of reference for the land size (1 rai) instead of the *de jure* frame (67 rai) might have better suited the purpose of the relevant ministerial regulation to provide free space for public safety, such as in the case of a fire emergency.

[29] Ministerial Regulation No. 3, B.E. 2535 (1992), issued by virtue of the Building Control Act B.E. 2522 (1979), amended by Ministerial Regulation No. 50, B.E. 2540 (1997).

B. Proportionality Review

Proportionality is a fundamental principle of public law.[30] In constitutional law, the principle of proportionality is embedded in Section 26 of the 2017 Constitution: Thai laws must never disproportionately restrict constitutional rights and freedoms. In administrative law, proportionality is the constraint on the exercise of discretion by administrative authorities. In other words, administrative discretion must be exercised proportionately, and the judiciary (the administrative courts) can utilise this principle to supervise such discretion. When performing this supervisory role, the Thai courts, similar to other public law courts globally, have adopted a tripartite test to assess the proportionality of administrative discretion:[31]

1. The exercise of discretion must be suitable. It is suitable only if the restriction of rights or freedoms reasonably contributes to the outcome that is expected or provided by law.
2. The exercise of discretion must be necessary. It is necessary only if discretion could not have been exercised otherwise, i.e., in a less right-restrictive way.
3. The exercise of discretion must be proportionate in the strict sense (proportionality *stricto sensu*). It is proportionate in the strict sense only if, after the balance between the benefits for the public interest and the burden on private rights, the former outweighs the latter.

However, administrative courts cannot adjudicate cases simply based on proportionality. Proportionality assessment needs to attach itself to a matter in which an administrative court has the competence to adjudicate under Sec. 9 of the Act on Administrative Courts. While there is one case in our sample in which the proportionality of an administrative rule is assessed, in most cases the court used proportionality review to establish the liability of administrative authorities.

State liability is itself a significant topic in administrative law scholarship. In Thai law, this liability is classified into liability arising from tortious conduct through unlawful actions by authorities, and strict liability, which is liability arising without fault of the authorities.[32] As will become evident below, one and the same case may

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[30] วรเจตน์ ภาคีรัตน์, คำสอนว่าด้วยรัฐและหลักกฎหมายมหาชน (พิมพ์ครั้งที่ 3 สำนักพิมพ์ อ่านกฎหมาย 2564) [Worachet Pakeerut, Lectures on the State and Principles of Public Law (3rd edn, Read Law Publishing 2021)] (Thai) 294–300, noting the principle of proportionality as an element of the state under the rule of law (นิติรัฐ; Nitirath).

[31] วุฒิชัย จิตตานุ, "การบังคับใช้หลักการสัดส่วน (Principle of Proportionality) ในการคุ้มครองสิทธิปัจเจกบุคคล" (2549) 8(22) วารสารศาลรัฐธรรมนูญ 41 [Wuttichai Jittanu, "The Enforcement of the Principle of Proportionality in the Protection of Individual Rights" (2006) 8(22) Constitutional Court Journal 41] (Thai).

[32] วิษณุ วรัญญู, ตำรากฎหมายปกครอง ว่าด้วยกฎหมายปกครองทั่วไป (โรงพิมพ์ดอกเบี้ย 2551) [Wissanu Waranyu, Textbook on Administrative Law: General Administrative Law (Dokbia Printing House 2008)] (Thai) 71; วรเจตน์ ภาคีรัตน์, กฎหมายปกครองเปรียบเปรียบเทียบ ความผิดของรัฐในระบบกฎหมายเยอรมัน ฝรั่งเศส และอังกฤษ (สำนักพิมพ์มหาวิทยาลัยธรรมศาสตร์ 2555) [Worachet Pakeerut, Comparative Administrative Law: State

require determination of both types. Proportionality review is particularly relevant for tortious liability.

A key law related to the liability of administrative authorities is the Act on Tortious Liability of Public Officials B.E. 2539 (1996). The main purpose of the Act is to govern how acts of public officials are attributable to their agencies. However, since the issue of attribution did not arise in any of the cases in our sample, the court in these cases never mentioned the main substantive provisions of this Act. Instead, the court only referred to the general provision on tort, i.e., Sec. 420 of the Civil and Commercial Code.

1. Proportionality in flood cases.

The linkage between proportionality analysis and tortious liability of administrative authorities was well-represented in cases concerning the 2011 Bangkok flood (judgments Aor.Sor. 11/2565, Aor.Sor. 51/2566; Aor.Sor. 52/2566, Aor.Sor. 61/2566, Aor.Sor. 62/2566, and order Aor.Sor. 59/2566). They involved individual citizens claiming compensation for damage to their property arising out of the severe flood. Among the defendants were the prime minister and various national agencies, in some cases also the governors of Bangkok and Nonthaburi. We considered a similar case in our previous commentary.[33]

In these cases, the court came always to the same conclusion, that the respective administrative authorities had exercised discretion lawfully and thus not committed a tort against the plaintiffs. Yet, the court still found strict liability, to be satisfied by compensation payments under a dedicated governmental scheme established by a cabinet resolution.

To come to such conclusions, the court in each case adopted mostly the same lines of arguments, albeit the order and exact wording within the decisions varied. However, there was one issue for which the court had three divergent strands of reasoning. To quote our previous commentary regarding judgment Aor.Sor. 3/2564:

> Regarding the construction of dikes and the placement of mega-sized sandbags to protect inner Bangkok by diverting water to surrounding areas, the Court found that the defendants were not liable as they had acted reasonably and without gross negligence (Section 43 para. 1 of Disaster Prevention and Mitigation Act B.E. 2550 (2007)). The Court held that the flood was an unforeseeable event and that the authorities' measures were suitable, necessary, and proportionate due to Bangkok's central economic importance and the merely temporary nature of the flooding of other areas. (emphasis added)

A proportionality assessment thus served as a justification for the government's decision to divert water away from Bangkok. Proportionality analysis was similarly

Liability in the Legal Systems of Germany, France and the United Kingdom (Thammasat University Press 2012)] (Thai) 8–9.

[33] Schuldt and Supakorn, "Jurisprudence" (n 10) 154, with reference to judgment Aor.Sor. 3/2564.

adopted in judgments Aor.Sor. 61/2566, Aor.Sor. 195/2566, and order Aor.Sor. 59/2566 to establish that the administrative authorities were not grossly negligent. Not being grossly negligent meant that the administrative authorities benefited from the protection of Sec. 43 para. 1 of the Disaster Prevention and Mitigation Act B.E. 2550 (2007).

However, the court in judgments AorSor. 11/2565 and AorSor. 51/2566 adopted a different approach. Instead of conducting proportionality analyses, the judges in these later cases chose to find that the damage to the plaintiffs' property was not a direct effect of water diversion. This meant that the element of tortious conduct was not fulfilled, and the defendants were thus absolved of liability without reference to Sec. 43 para. 1 of the Disaster Prevention and Mitigation Act B.E. 2550 (2007).

In a third strand of reasoning (judgments Aor.Sor. 52/2566 and Aor.Sor. 62/2566), the court combined the two approaches. The court affirmed proportionality before stating that the water diversion also did not directly cause damage to the plaintiffs' property. In judgment Aor.Sor. 52/2566, the court provided an in-depth analysis (with reference to Sec. 43 para. 1 of the Disaster Prevention and Mitigation Act B.E. 2550 (2007)), while judgment Aor.Sor. 62/2566 is much briefer and without references to any legal provision or principles of tort law. The assessments thus vary quite remarkably. A more unified approach might be desirable in the interest of legal certainty.

2. Proportionality in airport noise pollution cases.

Some slight application of proportionality can also be found in cases related to Suvarnabhumi airport (judgments Aor.Sor. 101/2565 and Aor.Sor. 17/2566) where the plaintiffs argued that Airports of Thailand (AOT) had committed a tort against them through noise pollution. Initially, however, the judges dismissed the plaintiffs' claims by invoking an argument based on acquiescence (or estoppel). Although the court did not explicitly refer to the acquiescence principle, it found that the plaintiffs had built their houses after the area surrounding the airport had been lawfully designated as an Air Navigation Safety Zone. This, according to the court, precluded the plaintiffs from the right to claim compensation from the government. Moreover, the court also found that the AOT had not violated any law nor neglected any of their duties, and thus rejected a tort claim based on Sec. 420 of the Civil and Commercial Code.

Apart from tort liability, the plaintiffs also tried to claim damages based on strict liability. The possible source of strict liability was a Cabinet Resolution of 18 October B.E. 2556 (2013) that permitted, in principle, among other matters, AOT to exercise discretion to compensate persons suffering from noise damage according to the criteria provided by another Cabinet Resolution of 19 May B.E. 2550 (2007). In this respect, the court found that the criteria of the latter Cabinet Resolution of 19 May B.E. 2550 (2007) did not mandate AOT to compensate the plaintiffs, so that AOT's exercise of discretion had not deviated from the Cabinet Resolution of 18 October B.E. 2556 (2013). This led the court to conclude that the discretion exercised on the issue

of strict liability was "lawful, reasonable, and fair." AOT was absolved from any liability due to the broad scope of discretion, which is a noteworthy parallel to the Bangkok flood cases.

3. Proportionality in energy and industrial cases.

Often, the court must incorporate technical and scientific standards into its proportionality analysis. This was most explicit in judgment Aor.Sor. 175/2566. The plaintiffs were villagers in Mae Moh, Lampang. They were concerned that a mine-powerplant complex in Mae Moh, owned by the Electricity Generating Authority of Thailand (EGAT, one of the defendants) used explosives to harvest limestone from the mine. Although the harvested limestone was used to absorb sulphur dioxide produced from the powerplant's electricity generation, the plaintiffs argued that it came at the cost of the surrounding environment (Doi Pa Toob), which they argued was integral to the history of the local community.

The main issue for the court to decide was whether EGAT had committed a tort against the plaintiffs by mining limestone with explosives. In its consideration, the court started by acknowledging that the use of explosives to mine limestone was within EGAT's scope of authority. The court then found that EGAT had followed all procedures under relevant secondary legislation, and proceeded to the proportionality review, without however explicitly calling it that.

The court begins by providing the scientific background on sulphur dioxide's harmful health impact. After that, it points out that EGAT had been advised by a consultancy firm to use limestone to absorb sulphur dioxide produced from the power plant. This is followed by the court holding that limestone was the safest material in this context, both scientifically and logistically. The court's discussion of the least impactful method might constitute a "necessity" assessment.

Moving to proportionality *stricto sensu*, the court balances the need to reduce emissions and the importance of the Mae Moh powerplant's electricity production against the damage caused by the explosions to the surrounding area. As part of this assessment, the court discounts the fact that the area surrounding the mine-powerplant complex is, in fact, in an almost perfect state. The judges refer to official documents according to which the area, however, did not qualify as an "area of beauty worth preserving, nor a habitat of wildlife, nor [as] an economic forest" under the relevant Forestry Department regulation. This led the court to conclude that the harm to the surrounding environment was of lesser relevance than the public benefits from the project.

Finally, while most judgments concern tort allegations against administrative authorities because of their actions, judgment Aor.Sor. 81/2566 dealt with tort liability of administrative authorities for failure to regulate environmentally private parties' harmful actions. The 106 plaintiffs were villagers who lived near a rubber factory in Bueng Charoen, Buriram province. They claimed that they had been suffering from toxic odour released by wastewater from the factory. As the plaintiffs, for more than

five years, unsuccessfully requested the defendant administrative authorities to act, they eventually brought the case to the administrative court and requested the revocation of the factory license as well as compensation.

At the Supreme Administrative Court, the judges refused to consider the plaintiffs' revocation request on procedural grounds.[34] Thus, the main issue was whether and to what extent the plaintiffs were entitled to compensation. The court reaffirmed the first instance decision according to which the authorities had performed their regulatory duties negligently. It also held that, even after the plaintiffs had succeeded in the first instance decision, the authorities failed to exercise their statutory powers to raise the level of regulatory measures.

The plaintiffs nonetheless appealed the amount that each of them was entitled to. The first instance decision had only granted each of them 6,000 baht with interest. In determining this issue, the court applied Sec. 438 of the Civil and Commercial Code, which gives courts discretion to determine the amount of tort compensation in proportion to the injury. But the court found that the plaintiffs failed to submit additional evidence to support claims for a higher amount, effectively confirming that the amount granted in the first instance was proportionate to the damage caused.

The case illustrates the factual limitations of proportionality. While courts may generally ensure accountability where authorities are negligent, they are limited by the evidence available. Despite the inquisitorial system prescribed for administrative courts (Sec. 55 para. 3 of the Act on Administrative Courts), judges may not often seek additional evidence to support plaintiffs' claims. It also seems that administrative courts might not always be the most suitable venue for compensation claims against negligent regulators if a tort case can be brought against the environment-harming private entity in the Courts of Justice. In the Bueng Charoen rubber factory case, the factory eventually agreed to pay for some of the plaintiffs' damage after mediation by the mayor, who was incidentally also one of the defendants, but the highest amount paid was 36,000 baht.

4. Proportionality of rules.

The final part on proportionality revisits judgment For.Sor. 1–2/2566, the land designation case on Koh Som. This case involved the proportionality of an administrative rule. Alongside a well-written proportionality assessment, the decision is also notable for its reference to relevant constitutional provisions.

When assessing the lawfulness of the relevant ministerial announcement, which is an administrative rule (กฎ), the court examined the drafting history and found that "the prior existence of entitlement documents or prior possession of the land" was supposed to be the determinative criterion to differentiate between "Area 4" (fewer restrictions) and "Area 5" (more restrictions). The court ruled that the defendant ministry could not deviate from its own criteria unless there was a reasonable ground.

[34] In short, the plaintiffs failed to raise the issue at the first instance.

The court thus rejected the ministry's argument that it had used the island's size as a criterion to place Koh Som in "Area 5" as size was not a criterion used by the announcement drafting committee. As the plaintiff also had an entitlement document regarding her land on Koh Som, the court found that her land should have been designated as "Area 4." Thus, the part of the announcement designating Koh Som as "Area 5" was unlawful.

Apart from deviating from the drafting committee's criteria, the designation of Koh Som as "Area 5" was also unlawful on the grounds of proportionality. According to the court, the prohibition of all private construction in "Area 5" was a serious restriction of rights, in contrast to restrictions in "Area 4," which allowed private owners to enjoy some benefits of their property. The court looked again at the announcement's drafting history and determined that its purpose was to protect the environment on a "sufficient basis" (อยู่บนพื้นฐานของความพอดี). The designation of Koh Som as "Area 5," however, did not fulfil this purpose (suitability), and it was unnecessary to impose "Area 5" restrictions instead of "Area 4's" lower restrictions to protect the environment (necessity). The benefits for the public interest also did not justify the restriction of individual rights (proportionality *stricto sensu*). The announcement thus unreasonably affected property rights in contravention of Sec. 41 para. 1 of the 2007 Constitution and constituted a disproportionate exercise of administrative authority in contravention of Sec. 29 paras. 1 and 3 of the 2007 Constitution.

C. Protection of Legitimate Expectations

Where plaintiffs want courts to revoke administrative decisions, legal problems may arise from reliance interests of third parties. For instance, real estate developers usually rely on building permits granted by public authorities. If the developers are in good faith, then revoking the permit impacts them quite unexpectedly, and it may cause significant financial consequences. Thus, while revocation may be in the interest of the plaintiffs, the opposite may be true for third-party beneficiaries.

Third parties' interests are, however, apparently not more than a theoretical consideration for Thai courts. According to Sec. 72 para. 1(1) of the Act on Administrative Courts, administrative courts have the power to revoke unlawful administrative acts. To "have the power" means that courts are not obliged to revoke each and every unlawful act. The law therefore allows for overriding reasons not to revoke. In practice, however, it appears that judges strongly focus on the question of whether an act is unlawful and, if yes, they revoke it. Legal certainty and third parties' interests do not seem to be relevant factors in practice.

What may explain the courts' hesitation to incorporate legitimate expectations of third parties into their considerations is the attachment of Thai administrative court

procedure to French legal concepts.[35] Traditionally, French administrative justice was primarily concerned with the general interest (*intérêt général*) and objective legality rather than the protection of subjective rights and individual legal certainty.[36] French administrative courts, led by the Conseil d'Etat, would review authorities' decisions mainly with regard to whether they lacked competence, breached formal or material rules, or were an abuse of power. Illegality would usually lead the court to quash the decisions. With rising European influence, French administrative law increasingly recognized the importance of subjective rights as well as proportionality.[37] The concept of legitimate expectations, however, has been consistently rejected.[38]

In Thailand, on the other hand, the enactment of the Administrative Procedure Act B.E. 2539 (1996, APA) introduced several German law-inspired elements, including the protection of legitimate expectations (*Vertrauensschutz*) for cases where administrative authorities have the power to revoke administrative acts. Sections 49 to 53 of the APA indeed adopted a legal regime from Germany that protects good faith reliance on the continued existence of beneficial administrative acts: Where a party received an advantage from an administrative act and does not have any reason to doubt its legality, the authority needs to take the party's legitimate expectation to keep the advantage into consideration and, where required, compensate any damage that the party suffers from the revocation. According to Worachet Pakeerut, the concept of legitimate expectations has even become a general principle of Thai administrative law.[39] The Supreme Administrative Court's decision in *Ashton Asoke* (judgment Aor.Sor. 188/2566), however, demonstrates that this may not (yet) be the case.[40]

After finding that the project did not have any permanent entrance, the court concluded that the relevant building permissions (notification receipts) were unlawful and thus had to be revoked with retroactive effect. As an unlawfully constructed condominium, Ashton Asoke would need to be demolished if the developers, whom the court joined to the proceedings as interpleaders, were unable to find a solution.[41] The judgment neither cited any evidence that the developers had been aware of the building permissions' *ab initio* unlawfulness, nor any other fact that would have

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[35] Peter Leyland, "*Droit Administratif* Thai Style: A Comparative Analysis of the Administrative Courts in Thailand" (2006) 8(2) Australian Journal of Asian Law 121.

[36] Emilie Chevalier, "The Case of Legal Certainty, an Uncertain Transplant Process in France" (2021) 14(1) Review of European Administrative Law 95, 98; John Bell and François Lichère, *Contemporary French Administrative Law* (Cambridge University Press 2022) 228, 235–36.

[37] Chevalier, "Case of Legal Certainty" (n 36) 105–7.

[38] ibid 115; Bell and Lichère, *Contemporary French Administrative Law* (n 36) 229.

[39] Worachet, *Administrative Law* (n 20) 35–36.

[40] See also Arada Vanapruk, "The Balancing of Scales: Legality Versus Legitimate Expectations" (2024) 41(1) Singapore Law Review 91; other cases are mentioned in Paiboon Chuwatthanakij, "The Principle of the Protection of Legitimate Expectation: Analysis the Adjudications of Thailand Court" (2015) 9(3) International Journal of Law and Political Sciences 810.

[41] It appears likely that the project can be "legalised" retroactively by aligning the land use agreement between the developers and the MRTA with the respective legal requirements. See "Ministry of Transport: Ashton Asoke Must Fix Entrance/Exit Issues by 2024" *The Nation* (4 July 2024) <https://www.nationthailand.com/blogs/business/property/40039400>.

questioned their good faith. If we can therefore only assume that the developers had "clean hands," the court's revoking of the building permissions must have come as a bad surprise. The permissions had, after all, been issued by public authorities several years ago. They were the legal foundation of a 50-floor condominium, the units of which had largely been sold to new landlords. The court's 176-pages decision, which also includes two dissenting opinions, neither mentions the concepts of *bona fide* reliance and legitimate expectations, nor does it address the possibly grave impact that its decision may have on landlords and developers.[42] The judges did obviously not view the protection of legitimate expectations as a general principle of Thai administrative law.

Why this is also unlikely to change becomes clear when we consider, from a comparative perspective, the concept of legitimate expectations together with the unique deadline exemptions under the Act on Administrative Courts (see above II.B.). From a German perspective, *bona fide* reliance and connected expectations are particularly well-founded—and thus legitimate—where the respective administrative decision is final and incontestable, i.e., after the deadline to file a court case has expired.[43] After that, only the authority itself can revoke its decision under the applicable APA regime and court procedure. Third parties are barred from attacking the administrative act, which means that the beneficiary can be rather sure to keep the benefit. Thai law, however, permits indefinite deadline exemptions in the public interest. Under Sec. 52 of the Act on Administrative Courts, cases can be filed at any time, without limitations, if the court sees a public benefit in receiving them. Within the Thai system, a legitimate expectation to keep a benefit can therefore never fully arise. There is always a chance that the court may exceptionally receive a case brought well past the deadline, such as in *Ashton Asoke* where the court accepted the case based on Sec. 52. The acceptance on this ground paved the way to revoking the building permission for this fully finished skyscraper in the centre of Bangkok. It is indeed to prevent this type of situation from occurring why German (and French) law does not allow public interest exceptions to filing deadlines.

D. Continued Relevance of Post-Coup Laws

A set of cases we had not expected when planning this commentary were cases on the legal effects of orders issued by military governments ("juntas"), with one case concerning an order from a past junta issued in 1971, and six cases concerning orders

[42] However, the Central Administrative Court, in a parallel Ashton Asoke case brought by the Siam Society under Royal Patronage, mentioned the impact on the condominium owners who were in "good faith" and who, if the building would need to be demolished, would "face consequences caused by public authorities' unlawful decisions." Central Administrative Court, Red Case No. 2413/2565.

[43] Sec. 50 of the German Act on Administrative Procedure (*Verwaltungsverfahrensgesetz, VwVfG*) expressly stipulates that the provisions related to the protection of legitimate expectations shall not apply if a beneficial administrative act *which has been contested by a third party* is revoked during preliminary proceedings by the authority or during administrative court proceedings, insofar as such revocation remedies the third party's objection or action (emphasis added).

from the most recent National Council for Peace and Order (NCPO). Coming to power through a coup d'etat in 2014, the NCPO immediately replaced the 2007 Constitution with the 2014 Interim Constitution. Its notorious "Section 44" made legal any order issued by the NCPO. This power was not used sparingly,[44] and the NCPO ruled the country from 2014 to 2019 also on this legal basis.[45] Although Thailand eventually transitioned into a supposedly democratic government after the 2019 election,[46] the NCPO period left legal legacies in disputes adjudicated by the Thai judiciary, resulting in seven cases of our sample that were directly influenced by NCPO orders.[47]

The legality of military junta's orders is settled jurisprudence in Thailand. The Supreme Court (of Justice) first confirmed the procedural validity of a junta-issued law as early as 1953,[48] and thus the trend was set for a rather positivistic approach. Incidentally, the 1953 case also set the tone for mainstream scholarly tolerance, if not deference. Yut Saeng-uthai, one of the most influential Thai legal scholars, cited a German case in support of legal positivism in a post-commentary.[49] Subsequent judicial decisions followed this jurisprudence,[50] to the point that Prinya Thaewanarumitkul observed that the saying "a coup d'etat is considered legal if it is successful" was an unwritten part of the Thai constitution.[51] The silver lining for progressive critics of this jurisprudence[52] is that junta-issued orders are deemed only procedurally valid, but remain subject to substantive constitutional tests.[53]

In line with broader Thai jurisprudence, the seven cases in our sample all accepted such orders as law without even mentioning their special status. The orders

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[44] "'มาตรา 44' ครบ 200 ฉบับ ใช้ทุกประเด็นปัญหาแบบตามใจชอบ" ["'Section 44' Invoked 200 Times, Used on Every Issue Arbitrarily" *ilaw* (27 November 2018)] (Thai) <https://www.ilaw.or.th/articles/3090>.

[45] Although the 2014 Interim Constitution was eventually replaced by the 2017 Constitution, the latter's transitory Sec. 265 maintained the effect of the former until the election.

[46] The 2019 election resulted in the coup d'etat leader Prayuth Prayut Chan-o-cha remaining as prime minister. For an academic critique, see Duncan McCargo and Saowanee T. Alexander, "Thailand's 2019 Elections: A State of Democratic Dictatorship?" (2019) 26 Asia Policy 89.

[47] Not only Thai Courts were dealing with NCPO orders. One order gave rise to an international arbitration case: *Kingsgate Consolidated Ltd v The Kingdom of Thailand* (PCA Case No. 2017-36).

[48] Supreme Court, Red Case No. 45/2496.

[49] วัชลาวลี คำบุญเรือง, "พหุลักษณ์ ของ หยุด แสงอุทัย" (2561) 11(2) วารสารนิติสังคมศาสตร์ มหาวิทยาลัยเชียงใหม่ 55 [Watchalawalee Kumboonreung, "The Plural Identity of Yoot Saeng-Uthai" (2018) 11(2) Chiang Mai University Journal of Law and Social Sciences 55] (Thai).

[50] For example, Supreme Court, Red Case No. 1662/2505, Red Case No. 371/2518, Red Case No. 1234/2525; Constitutional Tribunal Case No. 3–5/2550; Constitutional Court decision No. 30/2563.

[51] ปริญญา เทวนฤมิตรกุล, "การทำให้รัฐประหารหมดไปด้วยมาตรการทางกฎหมายและการเปลี่ยนบรรทัดฐานของศาลไทย" (2567) 53(2) วารสารนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ 359 [Prinya Thaewanarumitkul, "Ending the Coup D'Etat Through Legal Means and Reforming the Norms of the Thai Court" (2024) 53(2) Thammasat Law Journal 359] (Thai).

[52] สมชาย ปรีชาศิลปกุล, ปัญหาทางกฎหมายบางประการเกี่ยวกับการปฏิวัติ (วิทยานิพนธ์ มหาบัณฑิต มหาวิทยาลัยธรรมศาสตร์ 2539) [Somchai Preechasilpakul, *Some Legal Issues Related to Revolutions* (Master Thesis Thammasat University 1996)] (Thai); ปิยบุตร แสงกนกกุล, "รัฐประหารในระบบกฎหมายไทย" เครือข่ายกฎหมายมหาชนไทย (28 ตุลาคม 2549) [Piyabutr Saengkanokkul, "Coup d'Etat in the Thai Legal System" *Public Law Net* (28 October 2006)] (Thai) <http://www.public-law.net/publaw/view.aspx?id=1001>; Prinya, "Ending the Coup D'Etat" (n 51).

[53] Constitutional Court decision No. 30/2563, especially the separate opinion of Panya Udchachon.

were discussed as if they were ordinary legislation, overriding prior democratically issued laws in line with the *lex posterior derogat legi priori* principle.

This was the case in the already mentioned judgment Aor.Sor. 27/2564 concerning the Thep Sathit wind farm construction, in which the purpose of an administrative act under prior legislation (grant of land use) was overridden by a new purpose under an NCPO order. In this judgment, the first instance decision went in the plaintiffs' favour. However, an NCPO order was issued after the first instance's decision and before the Supreme Administrative Court's consideration. The intervening NCPO order changed the outcome of the case in favour of the wind farm. Remarkably, the court explicitly acknowledged that, had it not been for the NCPO order, the case would have been decided otherwise.

The court begins its reasoning by stating that a wind farm in the designated agricultural land[54] was contrary to the purpose of the Agricultural Land Reform Act B.E. 2518 (1975) and that any exceptional authorisation by the Minister of Agriculture and Cooperatives still had to comply with the purpose of the aforementioned Act. This would make the lease to the wind farm unlawful. It then raises NCPO order No. 31/2560, which allowed the wind farm to request a special permission to use agricultural land. Consequently, the court finds that deciding against the wind farm's lease would be contrary to the purpose of the NCPO order to "allow private parties to use land in the land reform area for energy purposes and the full utilisation of natural resources for farmers and the country's national benefit." Thus, the court found in favour of the wind farm.

The Court also analysed NCPO exemptions in a series of cases brought by homestay entrepreneurs in Koh Yor district in Songkhla (judgments Aor.Sor. 191/2566, 193/2566, 198/2566, 199/2566, and 69/2567). The plaintiffs, who had once been local fish farmers, had decided, after severe flooding, to switch their business model to homestays. However, the homestays did not receive the required authorisation from the regional Marine Office under Sec. 117 of the Navigation in Thai Waters Act B.E. 2560 (2017) and were thus considered intruding into the waterway. The Marine Office ordered the homestays to be demolished.

The plaintiffs raised a ministerial announcement issued under NCPO order No. 32/2560, which allowed owners of certain types of buildings, constructed during a certain period, to request exemptions from Sec. 117 of the Navigation in Thai Waters Act. Unfortunately for the plaintiffs, they had built their homestays *after* the permitted period. Furthermore, their homestays did not fall under any exemption, as the homestays were neither "fish cases" (กระชังเพาะเลี้ยงสัตว์น้ำ) nor "buildings for the community's traditional way of life, agricultural occupation, and religious buildings."[55] In contrast to the aforementioned judgment Aor.Sor. 27/2564 (Thep Sathit wind farm), the homestay operators were not within the scope of the NCPO order.

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[54] Agricultural Law Reform Office Land, ARLO Land (ที่ดินสำนักงานปฏิรูปที่ดินเพื่อเกษตรกรรม, ที่ดิน ส.ป.ก).

[55] By finding that homestays were not a part of Koh Yor's traditional way of life, the court apparently implied that tourism business is not considered a traditional community way of life—a finding that merits further inquiry.

Vice versa again, the plaintiff in judgment Aor.Sor. 4/2564 benefited from an NCPO order. He had bought the Captain Hook Resort in Trad from the prior owner who had, however, previously lost a criminal case for waterway intrusion against the Marine Department represented by the Trad Marine Office. The Trad Marine Office had ordered the plaintiff to demolish the resort, against which the plaintiff disputed in court. Pending the court's consideration, however, the plaintiff received an exceptional permission based on NCPO order No. 32/2560 that overrode the provisions of the Navigation in Thai Waters Act. This led the Trad Marine Office to revoke the order against the plaintiff, thereby mooting the case.

A final case involving a (much older) junta order was judgment Aor.Sor. 192/2566. It involved citizens near a school who alleged that a nearby LPG gas station did not have the required safety distance from other infrastructure. At the Supreme Administrative Court, the plaintiffs did not appeal on any violation of the Building Control Act B.E. 2522, but instead mainly argued that the license for the LPG station did not comply with a ministerial regulation issued under junta order No. 28/2514 of 29 December 1971 during the regime of Thanom Kittikachorn. Without addressing any question of validity, the court directly assessed the actual distance against the safety distance required under the ministerial regulation.[56] It found that the owner had already adjusted the LPG station in compliance with the legal requirements. While this was a rather straightforward application of the law, the case illustrates again the enduring legacy of post-coup orders and related ministerial regulations even decades after the original junta order.

IV. EVIDENTIARY MATTERS

Lastly, we want to draw attention to how the court deals with evidentiary issues in an inquisitorial system.[57] Thai administrative courts are allowed to consider personal, documentary, and expert evidence, along with any other evidence not brought by the parties, as they reasonably see fit. While the adoption of the inquisitorial system may in practice not have led to many judicial inquiries, our case sample sheds light on how the court justifies or disregards particular pieces of evidence.

The weighing of evidence is not unique to administrative law, but it provides insights into the nature of law based on the functioning of an administrative court. According to Bruno Latour, the French Conseil d'Etat's quest to establish objectivity has led it to transform conflicting sets of realities—as submitted by different parties—into documents that establish legal truths.[58]

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[56] E.g., no less than 50 metres from other gas stations, no less than 60 metres between the storage tank and school; it must be adjacent to a public road or highway with a width of not less than 10 metres.

[57] Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure B.E. 2543 (2000) s 5.

[58] Bruno Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (Polity 2009).

Similarly, the professional and impersonal style of the Thai Supreme Administrative Court's judgments may obscure the different spheres of reality from which the summaries of parties' arguments derive.[59] The seemingly smooth functioning of the law, where every fact is put forward in a way which makes the court's conclusions seem self-evident, is equally striking. Yet, despite the frictionless façade, there were instances when the court justified its decision to adopt or disregard particular evidence. Incidentally, the cases in which evidentiary issues were decisive were all cases involving the interpretation of aerial photography.

In the initially mentioned judgment Aor.Sor. 162/2566, the plaintiffs, villagers in the Cha-am beach area, disputed the issuance of title deeds granted to a company over a recent accumulation of soil (alluvion). The law on this issue is straightforward: the alluvion belongs to the owner of the original land,[60] but the original land must not have been used by the public. Otherwise, the alluvion constitutes *domaine public*.[61] The judgment relied on a photograph to determine that the land was not in public use. According to the court, the aerial photograph was "a governmental document created in accordance with academic principles by an officer specifically responsible for this task who was deemed to have the knowledge and experience, and there were no severe reasons to result in partiality."[62]

Along with establishing the reliability of the aerial photograph, the court also reaffirmed the legitimacy of the administrative act granting the deed on various grounds, such as that there was no procedural irregularity[63] and that the chief abbot who approved the land demarcation on the temple's behalf had been appointed lawfully.[64] The establishment of the legal truth led to the conclusion that the alluvion rightfully belonged to the company. Thus, fact-finding through the evaluation of different kinds of evidence was important in this otherwise straightforward case.

Technocratic evidence was similarly decisive in judgment Aor.Sor. 153/2566. In this case, the head of Koh Chang National Park had found that the "Rocksand Resort" owned by the plaintiff encroached on national park land and had thus ordered its demolition. After an unsuccessful administrative appeal, the plaintiff brought the dispute to the administrative court. Despite the case's clear relation to property law,[65] the judgment mainly concerns the court's evaluation of evidence to establish whether the plaintiff's land fell under the zone demarcated as a national park by the Royal Thai Navy. The Court relied on "up-to-standard" GPS designation and aerial photographs, which is a "widely-used and widely-accepted scientific evidence capable of clearly showing the condition of the land," and eventually dismissed the plaintiff's allegation that he had possessed the land. Apart from the evaluation of aerial photography, the

[59] ibid 75–83.

[60] Civil and Commercial Code, s 1308 in conjunction with s 144.

[61] Civil and Commercial Code, s 1304.

[62] Judgment Aor.Sor. 162/2566, 58.

[63] ibid 64.

[64] ibid 68.

[65] The plaintiff asserted that he had verbally acquired the land from the original owner, and that the land had originally belonged to Wat Khlong Son temple according to a SorKor. 1 possession document.

judgment provides a parallel to judgment Aor.Sor. 162/2566 in that it involves the analysis of actions on behalf of temples: the court confirms that the chief abbot could assign others to demarcate land on behalf of temples.

In both cases, scientific evidence was relied upon to establish an objectivity that led to legal outcomes. At the same time, however, the legal significance of technology co-existed with the court's recognition of monastic governance, which, despite being incorporated in the Sangha Act B.E. 2505 (1962), concerns issues of ancient Vinaya. Thai administrative law can thus accommodate the modern and the ancient within its singular, timeless language.

The decision in judgment Aor.Sor. 110/2566, however, illustrates the court's role in mending more fractured narratives. The plaintiff owned a rubber and orchard farm in Phang Nga, but was ordered by the administrative authorities to vacate the area on the charge of encroaching on the Lam Pi-Tai Mueng beach area. The plaintiff argued that he had acquired the land from a previous owner, and that the previous owner had used the land even before B.E. 2490 (1947), which was before the promulgation of the Land Code in B.E. 2497 (1954).

Unfortunately for the plaintiff, the court decided that a document issued under the Local Tax Act B.E. 2508 (1965) could not prove the plaintiff's property right, and that the plaintiff had failed to notify the authority of his possession under Sec. 5 of the Land Code B.E. 2497 (1954). The court then assessed aerial photographs submitted by the plaintiff and by a governmental committee. It held that the plaintiff's photograph was made by a party-nominated expert witness in another case considered by the Court of Justice, a fact that cast doubt on the neutrality of the plaintiff's expert relative to the credibility of the expert witness appointed by the governmental committee. The court also pointed out that the aerial photograph submitted by the plaintiff had been taken 20 years after the fact that the plaintiff sought to establish (the photograph was taken in B.E. 2510 (1967)).

Finally, the court also disregarded personal testimony of elders who had lived in the area before 1947—evidence that had, in fact, been previously accepted by a specialised government committee. After having dismissed all evidence that could support the fact that the previous owner had had possession of the land in 1947, the court applied the *nemo dat quod non habet* principle and found that the plaintiff had no right to possess the land.

V. CONCLUSION

Over the span of almost 25 years, Thailand's administrative courts have become the most significant avenue to justice in disputes involving state authorities.[66] The courts' remarkable caseload is further increasing, indicating both people's awareness and the

[66] See also Frank W. Munger, Peerawich Thoviriyavej, and Vorapitchaya Rabiablok, "An Alternative Path to Rule of Law? Thailand's Twenty-First Century Administrative Courts" (2019) 26(1) Indiana Journal of Global Legal Studies 133.

courts' sufficient accessibility. The trend is also reflected in environmental litigation, which was the focus of this commentary. Our discussion of selected cases at the Supreme Administrative Court from 2021 to 2024 has not only shown numerous types of disputes between private and official parties. It also reflected the variety of legal matters the court is asked to resolve. In this respect, we noted some issues of concern, both doctrinally as well as in practical terms.

The issue possessing perhaps only limited practical relevance is the doctrinal mix-up regarding legal standing. The French interest-based and the German rights-based approaches will largely lead to similar conclusions as to the question of individual concern. From our perspective as present and future legal educators, however, clear doctrinal distinctions would be desirable.

The public interest exception from filing deadlines carries much more practical weight. We noted not only considerable uncertainty about its scope, but also highlighted its direct relevance for the concept of legitimate expectations. Current Thai administrative law does not seem to recognize good faith reliance beyond APA provisions on the withdrawal of administrative acts. This became drastically clear in the case of the Ashton Asoke condominium. But legal developments are still in flux, and the Thai merger of French and German legal concepts is likely to continue.

We also examined how the principle of proportionality has been applied in environmental cases. The principle is of high practical importance whenever public and private interests must be balanced. Our overall impression has been that proportionality was used rather sparingly, sometimes tacitly, without clearly setting out the individual steps of its assessment. A more systematic application across all courts and panels of judges might enhance the quality of legal reasoning and thereby increase legal certainty. In addition, general principles of environmental law can guide proportionality assessments. These principles are enshrined in various provisions of the 2017 Constitution (Art. 43 para. 1(2), Arts. 50(8), 57, 58, 258(f)(4), 258(g)(1) and 258(g)(3)), and they include the precautionary principle, the prevention principle, the "polluter pays" principle, sustainability and fairness, as well as public participation and policy integration. It is indeed noteworthy that these general principles have largely been absent from the court's decisions.

An unexpected element of several cases was the continued relevance of post-coup laws. It is the consequence of numerous military interventions in Thai politics, and would certainly be an unusual component in any truly democratic country. However, we noted that junta-made laws could either be beneficial or detrimental to plaintiffs' interests, depending on the specifics of each case.

Finally, some cases allowed a glimpse at how the court evaluates evidentiary matters. It appeared that evidence from official parties carried heavier weight than evidence from private plaintiffs. Reliable findings may, however, necessitate further studies. In any event, the law gives administrative courts the power to engage in inquisitorial fact-finding. But judges may understandably refrain from wide-reaching investigations due to limitations in time and resources. It is nonetheless worth recalling that any environmental claim can only be as strong as the evidence to support

it. The structural inequality between private plaintiffs and state authorities may therefore justify a relatively stronger role of the courts in establishing the factual basis of their rulings.

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