

ABSTRACT

Thesis Title : Inception and Power and Duty of The National
Human Rights Commission According to Provisions
of The Constitution and The National Human
Rights Act B.E. 2542

Student's Name : Mr. Pairoje Pothisai

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Advisory Committee :

1. Assoc. Prof. Sumalee Wongwittit Chaiperson
2. Mr. Sompol vanigbandhu

Human rights has been developed since Greek and Roman era and have been used as the model by many countries including Thailand. Although Thai people have been familiar with human rights for a long time and have recognized these rights in most of Thai Constitutions, these rights have been rarely performed seriously but tended to be more violated. Until the new Constitution was established as the basis of political reform, "the independent agencies" occurred and acted as the machinery to seriously supervise and control the implementation of the Constitution.

According to the present Constitution, "the National Human Rights Commission" is one of the independent agencies being free from the authority of any person or any organization. However, the National Human Rights Commission could be checked and removed by the Senate and other independent agencies. This commission is responsible for the examination and report of the human rights violation. The present Constitution also provided that the National Human rights Commission Act

must be finished within 2 years as from the date of the enactment of the Constitution (B.E. 2540). However, until now (November 2001) the National Human Rights Commission is unable to function properly. The cause may come from the provision of the National Human Rights Commission Act which legislated thereafter.

Therefore, the study of the provision of the National Human Rights Commission Act, B.E. 2542 and related laws is necessary for the finding of the problems, the obstacles and the ways to solve the problems.

The study indicates that the provision of the laws are not clear and not in accordance with the intention of the Constitution in the following aspects ;

1. The law does not determine the necessary details of the term of the Selective Committee and the cause of its termination from the office.
2. The law does not determine the amount of persons elected by the Selective Committee and then proposed to the Senate for the re-election. (In case that the Senate elects the National Human Rights Commission in the second time but does not obtain all eleven members)
3. The details of the law are irrelevant. As in the section 7, it provided that the elected person will be in charge after his or her resignation from other positions within 15 day as from the date of the selection made by the Senate. This section is not in accordance with the procedure of the Selective Committee. In section 8, the procedure of the selection takes too much time to get all members. Thus, it gives trouble to elected persons whom still have not been appointed by the King. They have to resign from other positions and do not receive any payment because the Senate have not been finished the selection of all members.
4. The provision of the act is not in accordance with the intention of the Constitution. The law does not provide the National Human Rights Commission with the independence in the aspect of budget. But it has to depend on the Council of

ministers for the appropriation of the budget. Moreover, when the Commission receives the budget, it is unable to set any rules or regulations for flexible and dynamic administration of its own budget.

Suggestion

The aforesaid problems are caused by the law which is unclear and not covered all necessary details, as well as its lack of agreement with the intention of the Constitution. This study suggests to amend the provision of the law to be more clear, to cover all necessary details and to be in accordance with the Constitution in the following aspects ;

1. To amend the section 8 of the act for faster and continuous selective process, in spite of the termination from the office of the Selective Committee, for allowing the first Selective Committee to pursue their duties (in case of the incomplete amount of eleven members) and for determining the amount of persons being elected by the Selective Committee and then sent to the Senate for being re-elected.

2. To stipulate more details in the act in the aspect of the termination from the office of the Selective Committee and the process of re-election for the vacancy. (in case of the termination from the office of the Selective Committee)

3. To amend the act in order to be in accordance with each other by providing that the elected person must resign from his/her positions (as provided in the act) within 15 days as from the date of the complete selective process made by the Senate (section 7) in order to be in accordance with the procedure of the selection of the National Human Rights Commission (section 8). Otherwise, the process of the selection to get all members of the commission will consume too much time.

4. To amend section 21 in order to allow the National Human Rights Commission to receive the appropriation of annual budget in form of “supportive money”. This will lead to the increase of the agility and independence in the budgetary aspect.