

Abstract

Rights and liberties protection by the judiciary organization is the relation that the judiciary organization has with the support and protection from the Constitution. The judiciary organization is related to rights and liberties in two forms: 1) There is an inspection whether the rights and liberties of the judiciary organization and an administrative organization interfere with rights and liberties; and 2) The judiciary organization must be related to rights and liberties without violating rights and liberties in case of using the public power to adjudicate cases.

Regarding the violation of rights and liberties by the judiciary organization, the court has two relations: 1) There is an inspection whether a particular case has violated rights and liberties; and 2) The court must not use or interpret the law in the way that violates rights and liberties. Therefore, the violation of rights and liberties of the judiciary organization may derive from: 1) the rights and liberties violation case that the court rules that there is no violation of rights and liberties; and 2) the case that the court uses or interprets laws in the way that interferes with rights and liberties.

Exercising rights through the court to protect rights and liberties under the Constitution B.E.2550 Section 28 Clause 2 and Clause 3 is the problem when an individual with rights and liberties is damaged and can receive protection from the judiciary organization. The protection of rights and liberties under the Constitution of the judiciary organization, which is an organization installed by the Constitution, includes protecting rights and liberties of such juristic person as the Judiciary Court, the Administrative Court and the Constitutional Court. As for the protection of other independent organizations such as the Ombudsman, the National Human Rights Commission, the criteria differ according to the Constitution and the Act-level laws.

Our studies found out that the state should secure and protect rights and liberties even though the above statement is not mentioned in the Constitution and is beyond expectations of the Congress, which does not enact details of the enactment that the Constitution allows to come into effect. Hence, there is not law specifying details of exercising rights through the court, which is charging power. In addition, the

Constitutional Court justifies according to the 62/2545 and 6/2546 verdicts and the verdicts of the Highest Administrative Court, the Black Case No. 1. 12/2546, the Red Case No. 51/2547, which adjudicate that when there is no law stating rights and liberties of individuals gathering as a local community, the current law, thus, does not interfere with the Constitution. The aforementioned point is adjudicated in reference to the enactment of laws affirming people's rights in a specific case, and justifying that the law being used does not interfere with the Constitution. The Constitutional Court should first set the lowest standard of rights and liberties guarantee in the fashion that does not violate rights and liberties for the benefits of the state's organizations until the Congress enacts laws regarding exercising rights through the court.

Regarding the fact that the court denies to adjudicate, which is the violation of the Code regarding the Civil Law 134 that prohibits the court to deny adjudication by saying that there is no law to help take the case into consideration. However, the Civil and Commercial Law Code 4 states that a law should be sought to enact although there is no law directly stating that. Therefore, the Constitutional Court must adjudicate by searching for basic laws or basing on the particular Constitutional Provision, which a basic law stating specific rights because that is considered a kind of protection by the Constitution.

Besides that, claiming the rights according to the Constitution to sue according to the Section 28 Clause 2 and Clause 3 must include the Constitutional Provision that confirms rights and liberties according to Clause 3 to exercise the rights through the court or raise a case to fight or compel the state as a tool to sue the Judiciary Court or the Administrative Court. However, suing the Constitutional Court with consideration is not clear because there is no Constitutional Act stating the case processing of the Constitutional Court or the Constitutional Provision regarding case processing and adjudication B.E.2550 Clause 2 of Court Power No. 17, which allows the Constitutional Court to adjudicate 19 types of cases. No. 17 (20), which roughly covers that, does not clearly state exercising of judicial rights according to the Constitution B.E.2550 Section 28 Clause 2 and Clause 3.

Regarding the ultimate inspection of the judgment of the court of whether it violates rights and liberties of individuals, it was found out that it was not an argument of the law provision that interferes with the Constitution, which could be the cause to sue the Constitutional Court. Therefore, there is no ultimate inspection of the judgment of the court that states whether the judgment processing violates rights and liberties of individuals. Process of exercising rights to argue the final judgment that violates rights and liberties that the Constitution guarantees should be clearly established in the future.