

Abstract

The purpose of the study on the Judicial Process and the Protection of the Rights and Liberties of the People violated by the Act of Law: The Study from section 264 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2540 (1997) in accordance with the court by itself is of the Opinion that. is to study the roles of judiciary and the judicial processes in protecting the rights and liberties of the people.

The study examined the patterns of the protection of the rights and liberties of the people in 4 foreign countries-France, German, United States and Japan, the protecting capability, and the processes of protecting the rights and liberties of the people in Thailand. For Thailand, the study comprised the examining of the roles of the constitution court, the law courts, the administrative court and the military court; the judicial processes; the judgments they made in the past; and how the processes and the judgments protect the rights and liberties of the people. The study also considered the views of the law courts, administrative court and military court on whether and how their roles and the judgments they made in certain cases conflicted with the charter, as the means of improving the conduction for protecting the rights and liberties of the people in accordance with the spirit of each charter. The finding is as follows.

The Constitution of the Kingdom of Thailand (Interim) B.E. 2540 (1997) immensely grants the rights and liberty of the people by endorsing them in 40 articles - from article 26 to article 65. The charter allowed the establishment of new public bodies e.g. the constitution court and the administrative court to protect those rights and liberties. In the past, there were only the law courts and military court that conducted the judicial process. The military court considers only the cases involve with military officials, and on hierarchical basis, so it is unlikely said that this court is truly capable to protect the rights and liberties of the people . While only the law courts play the protection role, they focus more on civil suits and criminal cases. With the establishment of the administrative court, it is likely that the loopholes are closed and there is an opportunity for the people who have a dispute, which is not relevant to a civil suit or a criminal case, with a state agency to take a legal action through this channel. From this perspective, it

seems that the overall setting of the judiciary is able to fully protect the rights and liberties of the people. However, there are problems in the judicial processes. They are the judges, who literally interpret the law without recognizing the spirit of the charter, which aimed at endorsing and protecting the rights and liberties of the people; and the judicial practitioners e.g. the police, attorneys/prosecutors, lawyers and litigants who are still confused and have no confidence in the new of the law related to the right and liberty protection. Moreover, the comprehensive enforcement, like the civil and criminal enforcements, was not available when the articles were endorsed makes them airy writing and discourages judicial practitioners to interpret them. Thus, it is almost impossible for the courts to consider the law suit.

This thesis discloses the problems through the interviews with judicial practitioners and academics, and by analyzing the data gathered from the interviews. The suggestions in respond to the finding are in the areas of judicial practitioner's attitude toward the protection of the rights and liberties of the people; the direct and indirect channels of submitting a litigant's suit to the constitution court; and an agency or a body for reviewing the rights and liberties of the people to lift up confidence to a certain level. The conductions undertaken in accordance with the suggestions are believed to enable judicial processes in Thailand to truly protect the rights and liberties of the people. Consequently, the judicial processes will meet the spirit of the charter and universal standard like several countries that recognize the human's integrity and equality.