

Abstract

Independent organs according to the constitution of the Kingdom of Thailand 2550 B.E., such as the election commission, ombudsman, the national counter corruption commission and the auditor general commission, were established following the constitution of the Kingdom of Thailand 2540 B.E. Their establishment derived from American independent regulatory agencies. Such organs are called “quasi government” in England and “*autorités administratives indépendantes*” in France. In these three countries, they are mere independent administrative agencies of which regulation power is distributed to institute rules and control some important government activities. Thus, such agencies are viewed as a part of government mission and are controlled and checked by the Court, whether the court of justice or administrative court depends on the court system of each country. However, because of the lack of independent agency establishment system, the lack of theoretical basis in independent organ design and the lack of correct understanding in independent regulatory agency, stipulating such organs in the constitution thus created the problems about legal status, power usage and power usage check, which leads to the confusion in implementation and interpretation. For example, an interpretation views these organs as constitutional organs without considering their essence. Moreover, these organs are viewed to have all the three kinds of power and are not under the court control, which differs from the foreign concepts and is against the power distribution principle, as can be seen from the judicial decisions of the constitution court when the constitution of the Kingdom of Thailand 2540 B.E. took effect.

Considering the principle of laws, the a organs referred in the constitution are not always constitutional organs. It is necessary to consider their power, status and control because the constitution may stipulate only the general principle of independent regulatory agency, in other words, only the essence is provided, or it may determine which organs are independent regulatory agencies, or it may not provide any principle at all. Comparing the essence of the constitutional organs and of the independent

regulatory agencies, it was found that the independent organs according to the constitution of the Kingdom of Thailand 2550 B.E. have all the elements to be independent regulatory agencies, but do not have any characteristics to be constitutional organs. Therefore, the election commission, ombudsman, the national counter corruption commission and the auditor general commission are only independent regulatory agencies. The actions of these organs, such as legislation and adjudication, are generally administrative actions under the jurisdiction of the court of justice. They are also subject to the Act of Administrative Procedure 2539 B.E., and other laws issued by the legislative branch. Constitutional independent organ can not raise its independence as the reason to avoid following the laws of administrative procedure.

The author is of the opinion that the constitution of the Kingdom of Thailand 2550 B.E. should be amended. The recognition of the election commission, ombudsman, the national counter corruption commission and the auditor general commission as institutes should be stipulated in the constitution, while the details of recruitment, power etc. should be stipulated in a collateral act or an act. These organs will become independent regulatory agencies, which is in accord with its essence and solve the problem about their status. It can also solve the interpretation problem whether their actions are constitutional or administrative actions because if they are not constitutional organs, generally, they can not have constitutional action. However, any important actions that need to be checked by the constitution court can be stipulated as exceptions, which is in accordance with the specific power principle of the constitution court. This also creates the legal system involving independent organs in Thailand that is in accordance with the idea and legal theoretical basis of this subject.