



Current Judicial Reforms in Thailand: Lessons and Experience

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Judicial reform plays a central role in promoting justice, improving judicial efficiency and guaranteeing the respect of law and the stability of the whole society. It has become an increasingly important focus for national governments. In Thailand, the necessity of improving the judicial system hardly needs any argument. In recent years, emphasis has been placed by relevant authorities on reforming the judicial system and various judicial reforms occurred. The overall objective of the judicial reforms in Thailand is to contribute to the improvement of a more impartial, accessible, independent, accountable and effective judiciary. The scope of judicial reforms undertaken covers a wide range of issues. This article will represent lessons and experience of current judicial reforms in Thailand in five areas, primarily through the perspective of the Court of Justice.

- I. Ensuring judicial independence
- II. Strengthening the Effectiveness of the Courts
- III. Reinforcing the Protection of Individual Fundamental Rights
- IV. Enhancing Access to Justice for All
- V. Fostering Judicial Cooperation

Ensuring Judicial Independence

The independence of the judiciary is at the heart of every judicial system. It is the preliminary condition for the law enforcement and is critical to upholding a system of fair and impartial judiciary. In other words, it is essential that the courts are not subject to interference by political parties, legislative power, the government and private or partisan interests on the impartiality of the judiciary.

The targets of judicial reforms in Thailand include promoting judicial independence. One of the fundamental means of achieving an independent and impartial judiciary is the

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separation of the central administration of the judicial system from the other arms of the state, in particular the executive branch. Previously, the judiciary is administered by the Ministry of Justice under the government– especially regarding judges' career and budgets of the courts. It cannot be doubted that this can inevitably lead to political interference on the functioning of the courts. Accordingly, the issue of judicial independence arose not only among the legal profession, but also throughout the society itself.

Establishing an independent body administering the judiciary is therefore one of the priorities of the judicial reform process in Thailand. This issue has been addressed in the Constitution of the Kingdom of Thailand B.E. 2540 (1997) in which the doctrine of judicial independence is notably enshrined. It requires the judiciary and the executive to be separate. According to the 1997 Constitution, the judiciary was completely separate from the Ministry of Justice in the year 2000. The President of the Supreme Court acts as head of the judiciary. The courts have an independent central administrative body namely *the Office of the Judiciary* which has powers and duties to support judicial proceedings in the aspects of administrative works, judicial affairs and judicial technical affairs, including cooperation with other governmental agencies. It also has autonomy in personnel and finance administration and other activities as provided by the law. This relatively enables the courts to exercise their functions independently from any improper political interference. However, complete independence from the government would be difficult since there will be a degree of interrelationship between the judiciary and the executive branch.

In addition, judicial independence means judges are free to decide cases fairly and impartially. It is therefore critical to protect judges from outside pressures or influences from any other sources. To enable this goal to be achieved, tenure of judges is secured by the rule of law. A judge can only be removed through death, disability, resignation, retirement and deprivation as a result of malpractices. Furthermore, judges are very well paid, when compared to salary levels of other civil servants and other legal profession, in order to ensure that trial and adjudication are made without any economic pressure.

Judicial independence will also involve the appointment, promotion and discipline of judges. In securing judicial independence, an independent body namely *the Judicial Commission* has been created to oversee the appointment, promotion and discipline of judges. The Judicial Commission is chaired by the President of the Supreme Court and consists of twelve judges who are elected by every type of judges and two commissioners



from the Senate. This is designed to guarantee that judges' career is free from both inside and outside influences.

Strengthening the Effectiveness of the Courts

Improving the effectiveness of the judiciary is also a goal of judicial reforms in Thailand. It is clear that the effectiveness of the courts can be achieved with well-equipped personnel. Supporting the training of judicial personnel is thus regarded as a priority in the reform policy. The judicial training institute, *Judicial Training Institute (JTI)*, has been founded with the aim of dealing with judicial training of judges, court staff as well as other actors in the judicial system. The JTI has oversight over all training as well as operates conferences, seminars and symposiums for judges and court officers in order to facilitate the works of the courts. In addition, recognizing the importance of the globalization, in recent years the Court of Justice has begun pursuing of training programs in overseas countries for its personnel with the aim of promoting a better understanding of international perspectives and instruments. These training programs, for instance, have been arranged during 2008 – 2009:

- training program on “Human Rights Law” at the University of Nottingham, UK
- training program on “International Criminal Law” at Leiden University, the Netherlands
- training program on “Judicial Administration” at University of New South Wales Australia, Kansai University, Japan and University of Canterbury, New Zealand
- training program on “International Business Transactions and Taxation” at Duke University, USA
- training program on “Consumer Protection Law” at University of California, Berkeley, USA
- training program on “E-Commerce Law” at Queen Mary University of London, UK.
- training program on “Mediation” at Pepperdine University, USA.

The effectiveness of the courts is also enhanced by the adoption of the *Judicial Administration Standardization for Organization (JSO)* scheme. JSO is a set of standards relating to judicial administration. The JSO initiative has been implemented nationwide with the aim of standardizing judicial administration and procedures for improved quality of services. The JSO scheme attempts to set a wide variety of standards for different types of court administrative works, ranking from public relations and services to the issuance of



judgments. Courts that are able to meet the standards will be granted a JSO certification which people can be assured that they will receive efficient and speedy services from the courts. Result of surveys demonstrates that, given the JSO program, courts are willing to take a more active role in promoting their effectiveness.

Finally, in order to improve services and accessibility, technology has been increasingly introduced in the courts both in courtrooms and court administration. Thai courts are equipped with modern technology facilities to assist judges, staff and the general public. The Court of Justice has adopted videoconferencing in the court proceedings to improve coordination between jurisdictions and facilitate either parties or witnesses, particularly where compelling geographic and logistical conditions exist. It was first introduced in the Central Intellectual Property and International Trade Court. After being successfully implemented, videoconferencing has been widely used to facilitate bail application and then hearings in courtrooms. Moreover, the lodging of some types of court documents over the internet is now acceptable to ensure services are carried out speedily and efficiently. The courts also make information about court services available online which case details and decisions can be searched electronically. Courts are also in the process of developing new computer program to assist the case management work. It is clear from reports and surveys that the use of technology is a strategic way to increase effectiveness of Thai courts in providing services.

Reinforcing the Protection of Individual Fundamental Rights

Recent years saw a substantial reform in the role of the judiciary. The Court of Justice has been granted more powers and duties by the rule of law to protect individual fundamental rights. The current constitution of Thailand, Constitution of the Kingdom of Thailand B.E. 2550, section 219 gives power to the Supreme Court of Justice to try and adjudicate the election related cases and the suspension of the right to vote at an election of members of the House of Representatives and acquisition of senators, and give power to the court of appeal to try and adjudicate the election related cases and the suspension of the right to vote at an election of members of a local assembly or local administrators. According to section 219, the Supreme Court of Justice is, furthermore, granted powers to try and adjudicate criminal cases of persons who hold political position. It is obvious that the Constitution aims to protect civil and political rights of the general public through moving the judiciary to check the executive branch. Section 219, in addition, involves appeal by leave and appeal by right.



In addition to civil and political rights, the Court of Justice plays an outstanding role in the protection of consumer rights of the general public. The enactment of the Consumer Protection Procedure Act B.E. 2551 (2008), which was proposed by the Court of Justice, has led to a major change in the protection of consumer rights in Thailand. Previously, the litigation of consumer rights related cases was based on the Civil and Commercial Procedure which proved to have some disadvantages for consumers, especially when burden of proof falls on consumers as it is difficult for them to access to information. The Consumer Protection Procedure focuses on the litigation of product liability disputes. It is designed to ensure fair, speedy, convenient, more accessible and affordable trial for all, which encourages consumers to be more aware of protecting their rights regarding product liability. In protecting consumer rights, the new procedure act also emphasizes on informal proceeding, punitive damage and an extension of prescription right.

After the enforcement of the Consumer Protection Procedure Act, there are a growing number of consumer rights related cases that have been brought to the courts claiming compensation for goods and services liability and there are many of them that the compensation were awarded to customers for damages.

Enhancing Access to Justice for All

Making justice more accessible and affordable for ordinary citizens, in particular the socially excluded groups, is a core element of the judicial reform initiatives in Thailand. Alternative Dispute Resolution (ADR) is a mechanism adopted by the Court of Justice to address this issue. It has become clear that litigation can be complicated and frightfully expensive which can probably prevent citizens from access to justice. The Office of Alternative Dispute Resolution under the Office of the Judiciary was created with the power and duties to develop simple, quick and inexpensive dispute resolution process. Mediation, conciliation, arbitration, community justice and other informal justice are increasingly used in the courts as alternative paths to settle disputes. Recent years witnessed a widespread acceptance of ADR among both legal profession and the general public. In certain types of case, courts encourage parties to use ADR before permitting the parties' case to be tried as ADR considerably imposes less cost than litigation.

In addition to ADR, the Court of Justice runs a legal aid scheme in courts all across the country. Legal services are available for low income individuals and disadvantaged communities. Every court has public relations and services section which provides legal aid for the general public free of charge. There are legal officers who give advices about legal problems, help fill legal forms as well as file lawsuit in petty cases for people who



cannot afford hiring lawyers. The Court of Justice also works in partnership with lawyers and non-profit organizations in providing volunteer lawyer service for poor litigants in need of legal assistance. These volunteer counsellors are well-qualified lawyers who have registered with the Court of Justice and/or the Lawyer Council of Thailand. This is to guarantee that low-income litigants will also receive equal access to justice as others.

Besides, in order to make justice more accessible for minorities groups in Thailand, a interpretation service is available in courts free of charge when litigants, defendants or witnesses cannot understand Thai. In Thailand, people lives in different regions of the countries speak different dialects. There are also various minority groups such as tribal people in the north and Muslims in the south. In addition, as one of the leading tourist countries, there are always cases that involve foreigners. Therefore, to ensure that everyone has equal access to justice, interpretation service provided by the Court of Justice includes both dialects and foreign languages interpretation. The courts also provide sign language interpretation upon request.

Fostering Judicial Cooperation

The judicial cooperation is one of the issues of particular importance to the judicial reform process in Thailand. The clear intension of promoting and upgrading relations between Thai judiciary and international courts follows the recognition of the value of strategic judicial cooperation in meeting challenges of the new era of a borderless world. Once the world has become integrated, judicial cooperation is vital in eliminating any obstacles arising from incompatibilities between various legal and administrative systems in different judiciaries.

Nowadays countries all over the world face common judicial issues resulting from globalization to do with international business and the growing treat of transnational crime and terrorism. In order to combat these challenges, it is therefore critical to initiate judicial cooperation at regional and international levels. In recent years, the development of agreements in judicial cooperation in both criminal and civil matters has been achieved. In terms of criminal matters, the agreements have emphasized on ensuring the effectiveness of measures to prevent, detect, punish and eradicate transnational crime, international organized crime and terrorism. An extradition, for instance, has been considered as an essential part of the agreements. In terms of civil matters, the agreements have placed focus on delivering fair and speedy settlement for international trade disputes. This is due to the fact that an effective judicial process is vital in providing an investor-friendly environment.



There are a number of agreements on judicial cooperation have been done recently between Thailand and countries in both regional and international levels:

- Agreement on judicial assistance in civil and commercial matters and co-operation in arbitration between the Kingdom of Thailand and the People's Republic of China
- Agreement on judicial assistance in civil and commercial matters and co-operation in Arbitration between the Kingdom of Thailand and Australia
- Agreement on judicial assistance in civil and commercial matters and co-operation in arbitration between the Kingdom of Thailand and the Kingdom of Spain
- Agreement on judicial cooperation between The Kingdom of Thailand and the Republic of Indonesia
- Memorandum of understanding on exchange of legal and judicial materials between The Ministry of justice of the Kingdom of Thailand and The ministry of justice of The republic of Korea
- Memorandum of understanding on legal, judicial and arbitration cooperation between The ministry of law of The republic of Singapore and The ministry of justice of the Kingdom of Thailand
- Agreement on legal and judicial cooperation between The government of The Kingdom of Thailand and The government of The Socialist Republic of Vietnam
- Agreement between The supreme court of The Kingdom of Thailand and The supreme court of The Russian federation on judicial cooperation
- Memorandum of understanding on judicial cooperation between the Office of the Judiciary of Thailand and the Supreme People's Court of Laos

The exchange of knowledge and information among nations can considerably help foster the improvement of judicial systems. The most useful knowledge comes from lessons learned through experience and sharing knowledge is very valuable for not only practitioners but also policy-makers in dealing with challenges of the modernized world. The Court of Justice has encouraged the exchange of information and ideas through various programs:

- regional and international conference and workshops in specific judicial issues;
- visiting scholar programs in judicial organization;



- study visits
- multilateral professional training programs

Conclusion

A smooth functioning judicial system is crucial to development and social order of the country. It also constitutes an important part of a good governance and anti-corruption policy. It is, furthermore, essential to address the core challenges underlying the modernization. Therefore, the judicial reform promoting justice and efficiency should continue. The reform, nevertheless, require continuous attention as well as a considerable number of resources if it is to be successful. Hence, state should provide the necessary resources to implement the reforms of the judicial bodies for greater independence and higher efficiency and effectiveness.
