

Summary

Chapter 1 Introduction

The trend of free trade which has been expanded since the late of nineteenth century, the economic and social needs and world trade rules after establishment of the World Trade Organization (WTO) as well as the World Bank lead to the trend of civil justice reform around the world called the international paradigm of the civil justice system or the civil procedural system. It is a fundamental principle to improve access to justice. Access to justice, which derives from social policies and the trend towards human rights, emerges not only within domestic laws, such as provisions of the constitution and civil procedure law in many countries, but also within international laws i.e. the Universal Declaration of Human Rights (UDHR) and European Convention on Human Rights (EUCHR).

The objective of this research is to study and analyze the similarities, the differences, pros, cons and problems between Thai civil justice reform and foreign civil justice reform. And the research will find whether Thai civil justice reform is consistent with the international paradigm of the civil justice system or not by using a methodology of documentary research studying in the contexts of legal history, legal sociology and comparative law, and using the Civil Procedure Code as the core of civil justice management. The research also proposes solutions to the problems of Thai civil justice system reform towards the international paradigm.

Chapter 2 The Civil Procedural System

Civil procedure is formed by two major legal systems, which are: the Civil Law system and the Common Law system. Since the late nineteenth century, the concept of civil procedure has diverted from individualism to the welfare state. General principles of the civil procedural system influence provisions of the civil procedure law by causing the legislation to be consistent with those general principles. The study of various principles of the civil procedural system not only helps to understand civil procedure law but, in practice, also guarantees that procedures in each case can be uniform without depending on the mere discretion of the court, which is an essential characteristic of the movement towards the legal state.

General principles of the civil procedural system comprise of: the roles of judges in fact finding, which they play the active and the passive roles in the proceedings; principle of judicial independence and impartiality; principle of judicial accountability; principle of party disposition; principle of inter partes; principle of trial in open court; and principle of no variation of the case.

Chapter 3 The international paradigm of the civil justice system

Traditional legal theories, which are not suitable for modern society, the need of protection for human rights after World War II and the emergence of the welfare state, have caused three major developments with the aim of preventing human rights violations by the state power organizations, namely: the trend of internationalization, which turns towards adoption of international ethical norms, by mutually drafting treaties and declarations such as the Universal Declaration of Human Rights (UDHR) and European Convention on Human

Rights (EUCHR); the trend of constitutionalization by amending basic laws relating to human rights as well as the checking on the court's exercise of power, including the improvement of society, laws and the legal system; and the trend of access to justice, which is an attempt to enable laws and the justice system to be accessed equally by all people and ensure that the rights are guaranteed under the trend of constitutionalization and the trend of internationalization, and that realization of philosophy and theory of the welfare state can be attained.

The international paradigm of the civil justice system can be divided into three dimensions: fairness in the fact finding dimension; the reasonable time in the proceedings dimension; and the reasonable cost of access to justice dimension. Each dimension has the following considerations.

1. Fairness in the fact finding dimension has the considerations of the legal system in the fact finding, the practices of the court in the proceedings and the characteristics of the civil procedural system.

2. The reasonable time in the proceedings dimension has the considerations of the time for court in trying and adjudicating cases and the time in executing judgments or injunctions of court.

3. The reasonable cost of access to justice dimension has the considerations of the cost of litigation and legal aids.

Chapter 4 Thai Civil Justice System Reform

Thai civil justice system reform prior to enactment of the Civil Procedure Code during the period of Sukhothai Kingdom, the judicial system and civil justice system reform did not exist. In the period of Ayutthaya Kingdom, there was the judicial system, and

the civil justice system began to be by adapting Jurisprudence, which was the basic law for trial and adjudication of cases in the period of Sukhothai Kingdom. In early Rattanakosin before deriving the Western influence, there was the judicial system similar to that in the period of Ayutthaya Kingdom, and each court was separately established under a ministry or department. Several organizations are required to cooperate in trial and adjudication of cases, and the civil justice reform was not conducted further from that in the period of Ayutthaya Kingdom, but there were mere collection of and amendments to laws of Ayutthaya Kingdom as to be as they were in the period of Ayutthaya Kingdom. In the reform during the reign of King Rama V, a major reform of the legal system and the court was carried out, which was the change from the traditional Thai legal system to the modern Western legal system, studying the pattern of Japanese legal system and court reform. Regarding the justice system reform during the reign of King Rama V, Court of Justice and Ministry of Justice were established, and Temporary Civil Procedure Law was enacted.

With respect to Thai civil justice system reform in the period of Civil Procedure Code enactment and amendment until the present, there was a significant civil justice system reform in Thailand continuing from the major reform of the legal system and the court during the reign of King Rama V, which adopted the concept of the West modern law in enactment of the Civil Procedure Code B.E.2477 - the basic law for trial and adjudication of cases in the court. Concerning about Thai civil justice system reform during the period of the Civil Procedure Code amendment until the present, after the Revolution in B.E.2475 (A.D. 1932), the Cabinet resolved to appoint the Committee on Amendment to the Civil Procedure Code, and there were 24 times of amendments to the Civil Procedure Code in total, but they were mostly just revisions of the provisions to comply with the court practices or to clarify the wording. The new laws involving civil procedure were enacted to divide the civil case into many types, being the specialized cases, the special case and

the consumer case. Moreover, there were the enactments of the constitutions and the amendments to Law on Court Organization, which resulted in the change from the right to appeal system to the permission to appeal system by the Supreme Court.

Chapter 5 Civil Justice System Reform in Foreign Countries

Reforms of the civil justice system or the civil procedural system in foreign countries, in both Common Law countries and Civil Law countries at the domestic level such as England, Germany, France and Japan, and at the international level e.g. Council of Europe, the European Union (EU) as well as the American Law Institute and the International Institute for the Unification of Private Law (ALI-Unidroit) attempt to enable the civil justice system to be really accessed and efficient under the basic principle of the international paradigm of the civil justice system or the civil procedural system in the three dimensions.

Regarding civil justice system reform at the domestic level, in England, the significant civil justice system reform was carried out in 1994 by Lord Woolf's Report, which was named "Access to Justice". In Germany, there was civil justice system reform, which was considered to be an overhaul of the Civil Procedure Code, in 2001. In France, civil justice system reform in 1995 was done by the recommendation to reform the civil justice system, called *Réflexions et Propositions sur la Procédure Civile* (Report to the Ministry of Justice, La Documentation Française, 1997 or Coulon Report). Additionally, in Japan, an overhaul of civil procedure was adopted by finishing the draft of Civil Procedure Code Amendment in 1996.

As to civil justice system reform at the international level, in 1984, Committee of Ministers of the Council of Europe approved the Recommendation on Principles of Civil Procedure Designed to Improve the Functioning of Justice, which was prepared by the Committee of Experts on the Working of the Judicial System. In the European Union (EU), the European Council appointed the Committee on the European Code of Court and Civil Procedure chaired by Professor Marcel Storme. This Committee proposed the report called Marcel Storme's Report in 1993. Furthermore, the American Law Institute and the International Institute for the Unification of Private Law (ALI-Unidroit) launched the project on Principles of Transnational Civil Procedure. The working group, which was responsible for analyzing and developing the project, held seminars in order to get comments on the given Principles in 2000 and 2003.

Chapter 6 Thai Civil Justice System Reform towards the International Paradigm

The Thai civil justice system or civil procedural system is still not consistent with the international paradigm of the civil justice system and the changing economic and social situations, and there are problems to deal with as follows: confusion in the legal system in the fact finding; the practices of courts and parties which do not comply with the legal system in the fact finding; the civil procedural system which has too many types of the civil case and enactment of laws relating to civil procedure without using the Civil Procedure Code as the core of the civil procedural system; delays in trial and adjudication of cases resulting from the appeal system; delays in trial and adjudication of cases resulting from backlog of cases; delays in execution resulting from the interpretation of law; delays in execution resulting from provisions of law, small claims procedure has high cost; and

a person who can not afford court fees may not ask the court to appoint a lawyer so as to file and litigate the case.

Chapter 7 Conclusion and Recommendations

It was found that the current civil procedural system of Thailand is based on social surrounding, performance of government agencies and knowledge management and technologies in the late nineteenth century. At that time the liberal civil procedural system, which was a modern concept of foreign countries, was adapted to the Thai civil procedural system, which derived from Thai traditional law, so as to be appropriate for the transitional period and correspond to the change and demand in Thai society. Although the Thai civil justice system or civil procedural system has been adjusted continuously, it has been to solve the specific problems occurring during a specific period of time. Reform of the Thai civil justice system or civil procedural system has been mostly done without using the Civil Procedure Code as the core of the civil procedural system. The given reform has corresponded to the needs of Thai society in term of tool use rather than systematic or structural concepts as the reform in many foreign countries.

However, Thai civil justice reform is consistent with the problem solving process of lawyers or judges in Thailand. They often do not have a plan or the principles of the reform in advance. It is the solution to the internal and external factors, which seems to lack direction, but actually it does not lack one as it is the specific Thai style. Thai civil justice reform also has resulted in satisfactory performance when compare with foreign countries. The disadvantage, however, is that the reform in Thailand may not have

the motivation or incentive to solve the problems of the reform as a whole as the one in foreign countries, and there are still many difficulties and problems.

Therefore, the Thai civil justice system is still not consistent with the international paradigm of the civil justice system and the changing economic and social situations. The solutions to the problems of the Thai civil justice system are to reform the Thai civil justice system with systematic concepts, solve the problems basing on the principle and structural concepts instead of depending on problems depends on the specific problems and apply the Civil Procedure Code as the core of the civil procedural system in order to deal with the problems of the Thai civil justice system without using the separate concepts as the past. This can truly enable Thai civil justice system reform meets the international paradigm of civil justice system and the changing economic and social needs.

The solutions to the problems of the Thai civil justice system or civil procedural system in the three dimensions are: to enhance knowledge and understanding of judges, attorneys, lawyers, involved persons and the general public about roles of the judges and parties according to fundamental principle of the real Thai legal system in the fact finding for; to adjust attitudes and practices of judges in line with the real Thai legal system in the fact finding; to set up a system of case officers for assisting judges in normal civil cases as in the consumer cases; to make judges in all levels of the court be aware of the adverse effects of a passive role in the fact finding without modification or adaptation in line with the Thai legal system in the fact finding that has been changed; to amend the Code of Conduct in order to conform with the real Thai legal system in the fact finding according to the Civil Procedure Code; not to allow the trend, where the civil procedural system has a wide range of civil case types, and amendment to laws relating to the civil procedure without continuously using to Civil Procedure Code as the core of the civil procedural

system, whereas, in the Thai civil justice or civil procedural system reform, which must be periodically implemented, the Civil Procedure Code must be amended, the specific characteristics or the key principles of various types of civil cases must be integrated into the general principles of normal civil cases; to prescribe that appeal to the Court of Appeal and the Supreme Court is permitted by the Supreme Court in the same system; to establish the Specialized Appeal Court in order that the system of Appeal Court's structure shall be consistent with the permission to appeal by the Supreme Court system; to improve efficiency of case management in the case, which requests permission for appealing to the Supreme Court; to change the system of appeal to the Court of Appeal from certification to appeal by the Court of First Instance to the permission to appeal by the Court of Appeal; to strengthen the Court of First Instance in order that parties shall be confident and faithful in the judgments of the Court of First Instance, and shall not further appeal the case; to establish a system of increase in number of judges in high courts on an ad hoc basis in order to deal with backlog of cases; to apply a system of a single judge in the Appeal Court to some types of cases; to continuously and seriously increase efficiency of the case management system; to strengthen the Court of First Instance and to genuinely enhance knowledge and understanding judges in every levels of courts, attorneys and legal execution officers as well as involved persons about the legal execution system as a whole to; to require the judgment or injunction of the Court of First Instance in the execution procedures, which does not concern the subject matter of the case, to be final in the Court of First Instance whereas that, which concerns the subject matter of the case, to be final in the Appeal Court in order to accelerate the execution process and to provide for execution with other means instead of only by the seizure for sale by auction of properties; to provide rules and procedures for execution of case concerning intellectual property, to require judges to take an active role as to truly and efficiently assist the parties in

petty claims and simple cases; to provide that the losing party in a petty claim or simple case is not required to pay court fees, lawyer fees and expenses for the winning party; and provides that a person, who is not financially capable of paying court fees, or a person, who will unreasonably suffer if he or she is not exempted from court fees, may request the court to appoint a lawyer in order to file and litigate the case.