

Topic : Evolution of Ombudsmanship

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This presentation will explain mainly how Ombudsmanship has evolved in the Kingdom of Thailand by illustrating a variety of topics: the philosophy of Ombudsman, the emergence and development of Thai Ombudsman during the long journey, its power and duties provided by several constitutions, how Ombudsman benefits society in form of hybrid ombudsman, as well as how to tackle the whole of challenges in the scope of functions and duties provided by the constitutions. Now, let me first focus on the conference topic.

The most widely accepted ombudsmanship is the classical model of an ombudsman introduced for the first time in Sweden in the early 19th century. The idea of ombudsman institutions spread rapidly throughout Europe and almost all regions in the world. Principally, the function of the ombudsman is to exercise control over the activities of executive and other bodies of state authority by considering citizens' complaints against the unfair actions of state authority. Although the specific role may vary, the holder of this office is legitimized by parliament either through direct elections or through appointment by the head of state or government after the endorsement of parliament.

In the context of Thai ombudsman institution, dating back to 1181-1474, people could petition directly to the King by ringing a bell near the King's town hall to announce that they were in trouble with the officials, and demanded adjudication. When the ringing bell was heard, the King came out and discussed the problems with the complainants. Later, because of the increasingly complicated relationship between the ruler and the people, a special legislative institute was introduced to administer complaints of people's grievances and complaints.

Subsequently, the Ombudsman was established as an independent constitutional organisation under the provisions of the 1997 Constitution of Kingdom of Thailand. On the basis of check and balance system, classical Ombudsman emerged in our country at that time. The primary role of the Thai Ombudsman, as reflected the fundamental model of parliamentary Ombudsman 200 years ago, is to render justice and promote a fair public administration by conducting a comprehensive investigation into complaints on the conduct or decision of government officials that may cause trouble and unfairness to the people. The Ombudsman may propose recommendations and solutions to remedy injustice caused by maladministration. The Ombudsman's investigation also covers maladministration, unlawful performance as well as unfair practices whether or not it is lawful of the public authorities. Upon the enforcement of this constitution, the first Organic Law on Ombudsman was promulgated in 1999 although the whole process of development and establishment of the Ombudsman institution took 25 years. The first Chief Ombudsman, Mr. Pichet Soontornpipit, was appointed in the year 2000.

Following political changes in Thailand which led to a proclamation of the new Constitution in 2007, the Ombudsman has been extended powers that define our function as "Hybrid Ombudsman". The extended powers are as follows:

- to investigate any omission to perform duties or unlawful performance of duties of the constitutional organisations or agencies in the administration of justice, except the trial and adjudication of the Courts;
- to oversee the ethical practice of politicians, government officials or state officials; to establish a Code of Ethics to be followed by all agencies;
- to monitor, evaluate and prepare recommendations on the compliance with the Constitution including considerations for amendment of the Constitution as deemed necessary;

- to operate an own motion by considering and conducting an investigation irrespective of a complaint when it is necessary to protect public interests;
- to submit a case together with its opinions to the Constitutional Court for consideration if the provisions of any law beg the question of unconstitutionality; or to the Administrative Court for consideration if any rule, order or action of all level State agencies and their officials begs the question of unconstitutionality.

It is obvious that the 2007 Constitution places major additional functions of the Thai Ombudsman. Since then, the Thai Ombudsman has been functioned as “Hybrid Ombudsman” by adhering to the principle and the basis provided by this constitution.

Indeed, the hybrid ombudsmanship in our country can also be illustrated by the Ombudsman’s role in proposing the amendment of outdated laws or regulations as well as considering and investigating complaints about violation of the code of conducts.

Immediately, since the 2014 coup d’état was announced, the National Council for Peace and Order Maintaining (or NCPO) has ruled the country to stop escalating political conflict, restore order to Thailand and to enact political reforms. Thus, the Constitution 2007 has been abolished and the Constitution 2014 was ratified by the King. However, the enforced Constitution (interim) 2014 (Section 47) together with the Announcement of the NCPO No. 11 / 2014 and the NCPO’s announcement No. 24 / 2014 provides that all independent agencies and other organisations established by the 2007 Constitution shall continue to function. As a result of these provisions, the functions and duties of the Ombudsman remain valid.

Despite the said constitutional changes, the Thai Ombudsman adheres to operate the functions for the public’s benefit. Those who are unfairly treated by civil servants are served with our complaint handling system using IT so called the Case Tracking System (CTS) and optional practical channels to facilitate complaint lodging service. For example, they can use walk-in complaint by coming to file their complaint in person with our investigator or submit an on-line

complaint through the internet, telephone to our call centre by dialing 1676 toll-free number nationwide, or send a complaint through facsimile. Also, we have initiated an outreach program and mobile unit to remote areas to ensure that people will have equal access to the Ombudsman’s service (so called nationwide Intake Clinic).

In relation to the complaint handling system, effectiveness is an undeniable condition. Effectiveness may refer to a faster and more convenient service and a prompt redress of people’s grievance. When people complain, they need a clear answer or clear explanation. In response to the demand for better public services, the Ombudsman investigation system puts emphasis on building standardized practice in our investigation work, public relations, and systemic investigation.

As a result, during the past 16 years, the Thai Ombudsman has completed complaints against every level of government. Since the year of our establishment, the number of complaints submitted tends to increase steadily. The total number of complaints received and handled is equally impressive. According to the complaint statistic submitted to the Ombudsman in the fiscal year 2016, we have, as of 30th September 2016, received totally 6,125 complaints including 2,509 cases from the previous fiscal year. We have completed 3,414 cases or 55.74% meanwhile 2,711 cases or 44.26% are still under investigation. We find that the most submitted cases concern behavior of police, local government officials and issuing of land titles, and services of government utilities, etc.

The Ombudsman’s success through the long periods of evolution can be illustrated by a number of significant works done by the Thai Ombudsman in dealing efficiently with the daily complaints coming to our office. We realize that complaint handling in a case by case basis is important to cope with the daily grievance of the people. It is however a matter of fact that similar problems can occurs in different parts of the country. If we tackle the issue in a systemic manner, we will be able not only to solve the problem for the people, but also prevent the same problems from occurring again.

Now allow me to share you with a sample of complaint handled in an efficient and systemic manner. A few years ago, a complainant encountered a problem of odor pollution from Phraek Sa Mai garbage pit and lodged complaint to Phraek Sa Mai Subdistrict Administrative Organisation (SAO). As the complainant did not receive any response from the SAO, the complainant decided to lodge complaints to the Office of the Ombudsman for fact-finding into the negligence of duty of this authority. After receiving the complaint, we continuously coordinated with the organisation and conducted field investigations to seek clarification regarding this matter.

However, as the project of local waste elimination is time-consuming, the SAO in cooperation with the private sector deploy other relief measures to mitigate the pollution such as spraying 200,000 liters of Effective Microorganisms (EM) liquid on the garbage pile every day; covering the garbage pile by soil; installing a ventilation system around the garbage pile to collect methane gas and send it to a gas furnace to reduce odor; or even creating a buffer zone to prevent the odor leakage by planting pine trees around the landfill site.

Apart from the said operation, the Office of the Ombudsman regularly informed the complainant of the odor management progress. Such constant communication provided a complainant with a relief as he realized that the local public organisations did not neglect the problem. Later, a public hearing was conducted based on the principle of law. All vexed residents expected a prompt implementation of such project but they are all aware that solving the garbage pit pollution is a time-consuming endeavor. After the public hearing, our organisation has continuously followed up on the project and informed the complainant of its progress. As the project is important to the livelihood of the community and environment in general, in my capacity, I propose to hold a meeting to follow up on the progress of the project, collect more relevant information, and to explore the possibility to solve the local people's difficulty while the construction of the local waste elimination project is in progress. Thus, as the said authority did not malperform duties which unjustly causes injuries to the complainant or the public, the consideration of the complaints was ceased.

The year 2016 places an importance on the Thai Ombudsman institution's timeline. Another significant change for came in August 2016 when the Draft Constitution was recently approved by a majority of Thai voters through a constitutional referendum. When the 2016 Constitution comes into force, the Ombudsman will have to adhere to a new mandate: duties and functions. Certainly, there will be various challenges facing us. Some functions remain valid, but the others are to be amended.

Similar to the previous constitution, the Ombudsman is an independent organisation empowered to consider and inquire into public complaints about mal-administration within the public organisations in cases relating to the failure to perform in compliance with the law or performance beyond powers and duties, the performance of or omission to perform duties of different types of public officers. Likewise, the Ombudsman may refer to the Constitutional Court or the Administrative Court a case relating to the constitutionality of provisions of any law and the constitutionality or the legitimacy of any rule, order or other act of a State agency or State official.

On the contrary, I would like to note that two scopes of the Ombudsman's power broaden by the 2007 Constitution will be removed. According to the Draft Constitution 2016, the Ombudsman shall no longer have the role in establishing and supervising the Code of the Ethics adhered by public agencies; monitoring the regulations whether they comply with the Constitution and providing recommendations when needed.

Most substantially, in accordance with the provisions of Section 230, the Ombudsman's duties and powers are extended. The new stipulated functions are as follows:

- to advise relevant State agencies to revise any law, rule, regulation, order or procedure which causes trouble or unfairness for people or unnecessary or unreasonable burdens on people;

- to inquire into the facts upon the awareness of any person who is in trouble or not fairly treated as a result of the failure to comply with the law or the performance of excessive duties and powers of a State agency or State official, with a view to advising the concerned agency to eliminate or restrain such trouble or unfairness.

In addition, the Ombudsman is empowered to inform the Council of the Ministers to further consider ordering the proceeding under these provisions as deemed appropriate, in the event that the relevant State agencies fail to act in compliance with the advice of the Ombudsman without a reasonable cause. Specifically, in case where the matter is related to the violation of human rights, the Ombudsman will refer it to the National Human Rights Commission for further proceeding.

Most importantly, it becomes more challenging when the Ombudsman is empowered by this Constitution to inform the Council of Ministers when State agencies have not fully and properly complied with the duties of the State. As a result, there shall be a guarantee that the State agencies must ensure the availability of various necessities for all citizens. By virtue of the new constitution, the ensured necessities include enforcement of laws, education of good quality and with no charge for a twelve-year period, provision of basic public utilities, conservation and protection of natural resources, promotion and conservation of local wisdom, art, culture, tradition and custom of good value, and management of undertaking of a study and evaluation of impact on environmental quality and health of the people or community.

To conclude, no matter how long our institution has evolved, we perceive that if we have a proper mechanism for promoting and enforcing good and ethical governance, the governing bodies and their officials will work more effectively. This eventually extends a positive impact to the public in which daily problems can be solved in a systemic manner. At the same time, if the citizens are well aware and informed of their rights through various mechanisms, the rights of the citizens of the country will be ensured and well protected under the Constitution. Undeniably, the Ombudsman is legitimately involved in this mechanism.

For almost two decades since the establishment of Ombudsman institution in Thailand, we have aimed at achieving professionalism in all aspects of Ombudsman work to ascertain that the expectations of people are met in every possible way. Certainly, the Thai ombudsman work has been in line with the global ombudsmanship concept: a number of complaints must be solved through systemic investigation, the changing roles shall be in response to the changing society; especially ethics and virtues shall be promoted in the Thai society, the Ombudsman must function to serve people and be the mechanism for fairness.

As explained above, our institution may look like a small step but we left so many footprints for others to follow. Since time is very short, I cannot share with you more about our experiences having been pursued so far. Let me conclude my presentation today by emphasizing that in response to the changing society, being an Ombudsman has been very challenging as challenging tasks need to be tackled to equally and fairly serve people, based on 3 principles: **INTEGRITY, HONESTY** and **FAIRNESS**.