



Miscarriages of Justice in Thailand

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Abstract

This article reflects the situation of miscarriages in the Thai justice system, antecedents of scapegoat, impact on the scapegoat, human rights, reviving the scapegoat cases, compensation for scapegoats, and to provide policy recommendation for policy makers. The author found that the problem of “scapegoats” in the Thai justice system has been deeply rooted in Thai society for a long time. The antecedents of this problem are associated with the police, the prosecutors, and the courts. This problem has a severe impact on the mental, physical, economic, and social conditions of the “scapegoats”. Although the law provides basic principles for protecting the rights of the accused but in practice there are still problems causing the accused or “scapegoats” to not be treated and protected by the government with equality, fairly, accurately, and speed in accordance with the established principles. Even though the Resurrect Criminal Case for Reconsideration Act B.E. 2526 allows the “scapegoats” to request for a resurrect but the scapegoats must confront several practical problems. In addition, the compensation provided by the government in accordance with the law is quite small. Therefore, government agencies should turn their attention to this problem urgently and the people who are involved in driving the policy, should pay more attention to this problem and put this as an urgent agenda for reform of the Thai justice system.

Introduction

Miscarriages of justice have always appeared in Thai society. The innocent, who is not the real culprit as alleged, is known as a “scapegoat” in the criminal justice. The scapegoat or innocent person was punished because of the shortcoming of the justice process regardless of whether the defect in the work of a police officer, prosecutor, or court. Thaweesak (2017) defined miscarriage in justice as an arrest and conviction of people who have not actually committed the crime. He also stated that miscarriages of justice in Thailand have

dramatically increased. This results in a social problem that people in society and related parties must come together to deal with the said issue. According to Nobles & Schiff (2017), the arrest of innocent people is basic information in evaluating criminal investigations, evidence search, the process of justice, conviction, and appeal which are reflections of morality and ethics in the judicial process.

The above problems have a profound effect on the Thai family because most people who are “scapegoat” is a group of people who lack the bargaining power, lack

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of ability and potential for access to justice. Moreover, their social and economic status is an important factor leading to being exploited by others who have more bargaining power, including being exploited by officials who aim to find benefits for themselves. The government agencies also give little importance to solve the problem for the disadvantaged social groups. Hence, the innocents have lost their freedom. They experience mental trauma and became the target of attack in the society, face economic losses due to expenditures arising from the fight in the judicial process, suffer from imprisonment in correctional facilities, have limited opportunities to take care of the family, and confronted with problems of separation and relationships between family members. Their families can not deal with the financial problems due to lack of family leaders causing some families to live in poor conditions, experience quality of life that is substandard. The child is not educated, and family members who are sick cannot access good standardized medical services. Miscarriages of justice is, therefore, an issue that reflects the failure of the Thai justice process (Kecharoen & Phumpetch, 2017).

The said problems are caused by various factors. The root cause of the miscarriages of justice is partly a result of discrimination by officials in government agencies. The power of “money” gives some groups more privileges than others in the society as we can see from the social issues that appear through the mainstream media and social media. This reflects discrimination against people of different socioeconomic status. The offense of the same charge, each suspect is treated differently from government officials including receiving different penalties. These incidents reflect the inequality treatment of people which is considered a violation of the fundamental human rights, and clearly against the principles of human rights. How should the government or related sectors share responsibility, and how to compensate those people are issues that must be considered in detail. Although there is a Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544 but there are still many practical problems that cause delayed compensation to victims of “scapegoats”. Furthermore, these people were compensated in term of monetary compensation only (Cross Cultural Foundation, 2015).

The “scapegoat” in the judicial process is therefore a problem that reflects the efficiency and accuracy of the justice process. This may be caused by many factors such as transparency, dark influence,

including lack of prudence in screening the case (Thaweesak, 2017). These causes the court to make judgments based on the evidence appearing in the case file leading to the punishment of innocent people. This article therefore would like to reflect on the situation of miscarriages in the Thai justice. In this article, the term “scapegoat in the judicial process” is used to make it easier to communicate meaning and understanding of miscarriages. In addition, the author will analyze the root causes of becoming scapegoats, the impacts on the scapegoat, human rights issues and abuse of scapegoats, remedies and solutions to problems as well as providing policy suggestions to those involved, including those who have a role in determining the country's justice administration policy.

Scapegoats: A chronic problem in the criminal justice

The problem of miscarriages in the Thai justice system that results in the innocent becoming a scapegoat and being punished on behalf of the actual offender is a problem that has created a crisis of faith in the Thai criminal justice system for a long time. It can be said that the most well-known and affecting cases of Thai justice system is the murder of Cherry Anne Duncan in 1986. Cherry Anne Duncan, a high school student, disappeared after school and was found dead later. The police arrested four suspects in just one month consisting of Rungchalerms Kanokchawalachai, Phithakkha Khakai, Krasae Ploiklum, and Thawatchai Kitprayoon. The inquiry official sent the file to the prosecutor and the prosecutor ordered the prosecution according to the evidence created by the investigating officer. The Civil Court sentenced to death the accused. However, the Appeal Court dismissed all the suspects but all four were still in prison while awaiting the result of the Supreme Court's decision. In the meantime, Rungchalerms died in prison from a heart attack prior to the decision of the Supreme Court ruling that all four were innocent in the year 1993. All three “scapegoats” that are alive were released. Even though they were given freedom, Phithak and Pichai later died from a disease from being infected in the prison as well as Krasae who became disabled due to a fractured spine. Subsequently, the court ordered the Royal Thai Police to compensate for over 38 million Baht in damages. However, is such compensation worth the loss of individual freedom? It is a matter that society has criticized in many different perspectives.

The case of Cherry Anne Duncan lapsed for 8 years before the police arrested the real suspect in 1995

after the Court of Appeals ruled that all four “scapegoats” are innocent. The real suspects included Suwibun Phatpanit, Somchai Bunyarit, Sompong Bunyarit, Samak Thubbuchacharn and Peera Wongwaiwut. They murdered Cherry Anne Duncan due to the jealousy of Suwibun. On 6 August 1997, the Civil Court ordered the death penalty for Suwibun, the principle, including Sompong and Samak. The Court of Appeal has considered the death penalty which was consistent with the Civil Court. Surprisingly, the Supreme Court ordered the release of Suwibun due to insufficient evidence and there was no testimony of being the principle. Sompong and Samak were sentenced to life imprisonment because they pleaded guilty to the police in the investigation and arrest process while Somjai died before the case was brought to the Supreme Court's decision (Isranews Agency, 2012).

When considering statistics of financial assistance for the scapegoats provided by the Rights and Liberties Protection Department, Ministry of Justice, there were 97 financial assistance to the scapegoats, amounting to 17.94 million Baht in the fiscal year 2015. In the fiscal year 2016, there were 91 aid payments, totaling 17.48 million Baht. The number of scapegoats applying for help each year is large. In 2015, 679 cases of scapegoats have been filed and increased to 702 in 2016, representing an increase of 6% (Liberties Protection Department, Ministry of Justice, 2017a). The above information can reflect that the “scapegoat” problem in the Thai judicial process is still a problem that affects the rights and freedoms of many innocent people and is an urgent matter that the government must hurry to solve.

Antecedents of “scapegoats”

The problem of “scapegoat” occurring in the judicial process is mainly related to the judicial process of the police, prosecutors, and courts. The author will explain the root causes of problems occurring in each level of the justice process as follows:

Police

Police is considered as the first part of the judicial process to find out the truth in a criminal case since the police officers are the persons responsible for arresting the suspects, searching for evidence, and investigating whether the suspect was actually guilty or not. Therefore, the work process of the police officers must have careful and fair operation. In practice, the investigation officers have a lot of cases in hand coupled with being pressured by the supervisor in the performance resulting in the need to rush to close the case. Otherwise, they will be labeled

as “incompetent” and may face disciplinary action. Therefore, they quickly close the case by finding a “scapegoat” to receive the sin for the true culprit. This is consistent with the opinion of Kotruang (2001) who said that the “scapegoat” problem in the police level is caused by many factors. Factors include, pressure from the supervisor, the need to create an image of how to work effectively and can quickly arrest the suspect, lack of prudence, carelessness, lack of consciousness including pressure from society and various forms of mass media. The most obvious example of an innocent arrest by a police officer were the security cases in the 3 southern provinces of Thailand. During 2004-2014, there were a total of 2,184 cases. The court had a judgment of only 685 cases while 421 cases were dismissed amounting for 70% of the cases. There were only 264 cases that the court found guilty (Cross Cultural Foundation, 2015). These indicated that the police carried out the arrest without carefulness and prudence. It is also suspected that the cases that the court has found guilty may include “scapegoats” mixed up or not.

From the author's point of view, “discretion” is a major problem in the defect and wrongful law enforcement. Police task in Thailand requires quite high discretion because Thai police officers have the power and duty to enforce the law widely. Each case is quite different in details and it is the duty of the police to bring the facts that occur in each case to adapt to the law. In addition, there are many laws issued by the legislature resulting in the police officers unable to study and monitor the changes thoroughly. This leads to mistakes in law enforcement. Finally, police officers need to use discretion when enforcing the law whereas the working environment is dangerous to the life and property of the police themselves including the impact on the persons involved, whether the suspects or victims (Sukhothai Thammathirath Open University, 2013). The pressure from their superiors or other “dark powers” leads to discretion that does not follow the rule of law. According to the rule of law, police officers must enforce the law equally and fairly to all parties involved. The issue of discretion influenced by the said factors results in the police discretion in enforcing the law that is inclined to the party with high bargaining power, especially powerful groups with a superior economic status. They use such discretion in order to survive and be able to continue their duties without being punished or transferred to an unwanted police station. When looking at different perspectives, police officers have to manipulate things

in order to survive the pressure of commanders and various forms of influence due to lack of protection mechanisms both in the matter of regulations and to satisfy the supervisors. They also lack protection from society. These factors, therefore, has led to the prevalence of a “scapegoat” in the Thai justice system.

Another root cause of the problem is the collection of evidence to prove the guilty of the suspects. This is a breach of the justice process in the police level. According to this system, other evidence indicating that the suspects had not committed the offense will not be brought into the investigation report. In addition, witnesses who provide information conflicting with witnesses indicating that the suspect committed the crime will not be included in the investigation. This shows that investigation of a witness that provides abenefit to the accuse has been neglected. If there is an investigation, it is often conducted in preparation to refute the testimony of the said witness. This cause the accused to lack the opportunity to present the facts leading to the prosecution and wrong decision. When considering the authority of the investigating officers as stated in Section 131 of the Criminal Code, it clearly states that the inquirer must gather all kinds of evidence that can be obtained in order to find the facts and circumstances relating to the case as well as to find the true culprit. The law does not specify that evidence is to be collected specifically disadvantage parts for the accused (Sukhothai Thammathirat Open University, 2013). This indicates that the investigating officers do not use their own authorities to perform their duties correctly and completely. Therefore, there is a loophole that leads to the occurrence of “scapegoats” in the judicial process. Purikupt & Ketthes (2015) state that the inquirer must also gather evidence in order to prove the innocence of the accused because it will enable the true offender to be punished according to the law. If the police are able to proceed with the said steps with fairness, justice, and comprehensive evidence, it would help reduce the amounts of “scapegoats” in the Thai judicial process.

Finally, it is a problem that is not directly related to the duties of the police, but of the situation that occurs during the police investigation. It relates to the attitudes and views of lawyers who advise the accused not to testify during the investigation because he is afraid that he will lose the case. Such behavior will give the accused no opportunity to explain in order to protect himself resulting in the investigation report leaning in a direction that is harmful to the accused (Bunlue, 2017).

Hence, modification of the attitudes of lawyers in these cases should be done urgently for the benefit of the accused directly.

Prosecutors

The prosecutors will scrutinize the investigation report submitted by the investigating officers by checking the completeness, quality, and accuracy of the report before considering filing a lawsuit or not. The problem is associated with the enormous amount of investigation reports to be considered by the prosecutors. This leads to careless and completely ignorance of the investigation reports. Most prosecutors tend to consider the reports sent by the investigating officer and do not search for additional evidence by themselves (Kotruang, 2001). Therefore, there is a miscarriage which led to the prosecution of the “scapegoat” accused in the case. The prosecutor's system provides opportunities for all parties, whether the victims or the accused can request justice to the prosecutor's office if there are problems in the process of justice or if there is an injustice occurring. This will be a warning sign to prosecutors to realize that the case is not a simple case but seems to be a complex case that requires careful consideration.

The main problem in the prosecutor level is the lack of legal authority to participate in the collection of evidence. This authority belongs to the inquirer or investigating officer while the prosecutor only serves to receive the inquiry file from the inquiry official after the investigation has been completed as appears in Article 140 of the Criminal Code. Therefore, if there is a defect of the inquiry official, the person accused in that case will immediately become a “scapegoat” in the judicial process because the prosecutor considers the order of prosecution or non-prosecution according to the evidence collected by the inquiry official (Purikupt & Ketthes, 2015).

Another important issue at the prosecutor's level is a principle of prosecution. It can be said that the principle of international criminal prosecution consists of two principles which are (1) Lawsuit principle; when the prosecutor has read and considered the evidence obtained from the collection of the investigating officers and then there are reasonable grounds to believe that the accused has committed an offense, the prosecutor will be responsible for filing lawsuit to the court in all cases. Once the order has been filed, it cannot be withdrawn (2) The principle of discretion; when the prosecutor has read and considered the evidence obtained from the collection of the investigating officers and then there are reasonable

grounds to believe that the accused has committed an offense, the prosecutors has the power to exercise discretion whether or not to sue the accused. In the case where the order has been filed and there are reasonable grounds, the prosecutors may withdraw the case, but it must be done before the judgment of the Civil Court (Sukhothai Thammathirat Open University, 2013). For Thailand, prosecutors will use the principle of prosecution at their discretion which may lead to a lawsuit against “scapegoat” in criminal justice process. Because the prosecutor does not consider the case carefully, it inevitably leads to the lack of important information or evidence to prove that the “scapegoat” is innocent.

Courts

The court is the last part of the judicial process causing “scapegoats”. According to the law, the court has the power to demand additional relevant evidence. However, the amount of cases that come to court each year is enormous causing the court to not favor the use of its power but will mainly consider the evidence of the plaintiff and the defendant. This may result in the lack of determination to find out the truth. In practice, they perform the duty according to the law even though the issue of the case may not be true. Kotruang (2001) states that miscarriages occurring in the court are caused by the judicial discretion to judge offenses based on evidence collected by the police and have been scrutinized by the prosecutor.

The court has an important role in judging the case or to decide whether the defendant is guilty or not guilty. If considered that the defendant is actually guilty, the court will impose the penalty to the defendant. Therefore, the judgment of the case consists of two main points which are (1) Adjudication refers to judgment of whether the defendant is guilty or not and (2) Imposition; the court may use its discretion to determine six types of punishments which are capital punishment, imprisonment, confinement, fine, forfeiture of property, awaiting punishment or awaiting imprisonment (Sukhothai Thammathirat Open University, 2013). In practice, the court will consider evidence collected from the police. In the case of “scapegoats”, most of the scapegoats denied wrongdoing if they are not intimidated and forced to confess to the police. Therefore, hearing witness of both parties is necessary. Although according to the law, the accused or defendant will benefit from the legal presumption “in a criminal case, it must be presumed that the accused or defendant is not

guilty,” but in reality it could have a mistake in the judgment because of creating evidence by the police and the screening of the prosecutor might lack of purity and justice from the beginning.

There are many criminal cases going to court each year causing the trial to be conducted in a hurry and lack of thorough consideration in the content of the case. According to the annual case statistics report 2016 (The Office of the Courts of Justice, 2017), there were 647,664 cases (new and pending cases) in the civil court in 2015. The number of cases slightly decreased in 2016 accounting for 634,796 cases. Although each year the Civil Court is able to proceed with the verdict of more than 93% but focusing too much on the target numbers may lead to neglect of the quality of the trial. As for the criminal cases in the Court of Appeal found that there were up to 39,113 and 36,821 cases in 2015 and 2016 while the capacity to judge the cases exceeds 88%. According to the criminal cases in the Supreme Court, the number of cases in 2015 was 6,784, while in 2016 it was reduced to 6,313 in which the Supreme Court is able to complete the verdict by 75.75%. The situation illustrates the work burden the court must take which may affect the efficiency of the judgment of the case correctly and fairly. Hence, there is a chance that the “scapegoat” will be convicted of a crime since there is a lack of good monitoring due to time constraints and the amount of work.

Impacts on the “scapegoats”

The fact that a person is a “scapegoat” even though he has not committed a criminal offense but has to be punished on behalf of the real culprit affects the lifestyle of the “scapegoats” very much. The author summarizes several aspects of the impact as follows:

First, loss of freedom. Being a “scapegoat” causes a person to lose freedom in carrying out their daily activities because he is imprisoned in the correctional facilities. The opportunity to interact with people in society especially the family is greatly reduced. Pisit Suwanpim's words reflect the pain of losing freedom. He gave an interview to the media after having been proven innocent in a case of stealing diamonds worth over 15 million Baht and was held in prison for up to 7 months. He said it was ..“like death and being reborn, throughout the period of 7 months and 10 days in prison, I believed that I had not committed a crime and must be judged with justice, I was in the prison with other criminals so it took more than 2 months to accept it” (Workpointnews, 2017).

Second, loss of reputation. Thai society is a society that is quick to judge other people without careful consideration. Although the various cases have not yet been finalized, a person who is accused or is a scapegoat has no opportunity to protect his dignity and reputation. This results in loss of his reputation which will ultimately lead to problems in daily life. For example, Bunleng Huatcharoen, the scapegoat in the case of the rape of a Danish tourist in Chonburi. He was imprisoned for up to 19 days. The police or government agencies did not disclose that he was not an offender. Then, the society labeled him as a bad person causing him to be unable to find work or to make a living. He said in an interview with the media that “on the day I was released, no one corrected the truth for me but the day they arrested me, they made a big statement. I am the victim of the media. When walking to the market, people always ask how I got out of jail? Have you escaped? Today I have been faced with a very difficult life without work, and no money to raise children. When applying to a job, no one accepts my applications because I was condemned as bad person. The most important thing is I would like a press release telling the truth to the society” (PPTV News, 2017).

Third, family relationship problems. The innocent has been accused and imprisoned resulting in problems of separation or relationships of family members that are worse until leading to dissociation in the family. For example, the case of Sombat Khunarsa, a 41 years old taxi driver, who was accused of jointly robbing a motorcycle in Pak Kret district Nonthaburi province. According to the actual situation, he himself was threatened and robbed by the real perpetrator on that day. Later, the Civil Court sentenced him to 15 years in prison and to indemnify for 42,000 baht. He was imprisoned to 2 years 3 months and 20 days while appealing the case. On 31 August 2010, the Court of Appeals therefore considered and dismissed the case. The prosecutor filed an appeal with the supreme court. Therefore, he had to fight the case again. Until February 21, 2012, the Supreme Court ruled in favor of the Court of Appeal. The case of Sombat Khunarsa resulted in a separation of his intimate relationship. He said to the media that “I have been in jail for more than 2 years without doing anything wrong. In the same period, I was also robbed by the robbers. However, I have gone through a bad time. Today, I have been working as a taxi driver with the hope that one day I will receive justice, fairness, and compensation from related government agencies.

Previously, I haven’t received any Baht to compensate what happened to me. I was imprisoned, separated, and my daughter had to move to a new school (Manager Online, 2014).” According to a study in Canada, miscarriages in justice process resulted in deteriorating family relationships (Campbell & Denov, 2004). This was also consistent with the study of Westervelt & Cook (2008) who found poor relationship among family members.

Fourth, economic problem. Becoming a “scapegoat” results in disrespect and is labeled as a bad person in the society. This causes many “scapegoats” victims to have a great economic impact. For instances, the cost of fighting to prove their innocence, travel expenses related to the case, including the lack of work opportunities to earn income to look after the family. Bunleng Huatcharoen’s case has clearly reflected that the loss of freedom and being labelled bad by society obstructs an opportunity to get a job because the innocent victims of the judicial process have already been judged by society. Research on “scapegoats” in the United States also reflects the problem because after the “scapegoat” is released from prison, he will face problems in finding accommodation and job (Westervelt & Cook, 2010).

Fifth, safety issues of family members. In the case that a family leader has become a “scapegoat” in the judicial process, the family members lack strong leaders to protect themselves from social disorder, especially in the urban society. The Cherry Anne Duncan case is also a reflection of this problem. Krasae Ployklum, a scapegoat in this case, lost his wife while the daughter was raped and murdered. In addition, his son disappeared. This shows that the loss of freedom of Krasae caused him to be unable to fully protect his wife. He had no opportunity to protect his daughter from rape and was unable to look after his son to live happily in the society. The disappearance of Krasae’s son may be related to the safety of life and property which Krasae didn’t even have the opportunity to look after and protect him since he was imprisoned.

Sixth, physical health problems. The incarceration in a correctional facility where there is over-crowding, lack of basic utilities, unclean water, and poor air flow have a direct impact on the health of the inmates. In addition, the prisoners are unable to receive the basic rights that humans should receive. At the same time, the government budget shortage results in sick prisoners or scapegoats receiving insufficient care (Archavanitkul & Vajanasara, 2017). For example, the group of

“scapegoats” in the murder of Cherry Anne Duncan faced health problems. Chalerm died in prison due to a heart attack. Pitak and Phichai died of a deadly disease caught in prison while Krasae became disabled due to a fractured spine. These physical health problems were partly caused by the police investigation since the defendant or “scapegoat” was abused by the police to confess including being fettered for 24 hours (Isranews Agency, 2012). The case of Viroj Suwanee is another case of the “scapegoat” that was coerced by police officers to confess to the murder of the Chief Executive of Bang Rin Subdistrict Administrative Organization, Ranong Province. He was tortured with electric shock batons resulting in being unable to walk and having poor health (AmarinTV, 2017).

Finally, mental health problems. According to the case of Krasae, how he can live lonely in the society since he lost his wife, daughter, and son. How he can adapt himself to the changing social conditions. These are problems related to the mental condition of “scapegoats” that are severely affected and may cause some “scapegoats” unable to live life in society happily. A research in England on the impact of miscarriages in justice process toward “scapegoats” found that people who are “scapegoats” are affected with mental disorders. Staying in the prison for a long time causes the scapegoat to become familiar with the environment in the prison. When proven to be innocent and released back into society, these people will experience posttraumatic stress disorder (“PTSD”). They also had personality changes, depression, worry, antisocial, and using liquor or alcohol (Tan, 2011).

Human rights and the “scapegoats”

Under Article 3 of the Universal Declaration of Human Rights 1948 (UN, 2020), “everyone has the right to life, liberty and security of person.” Article 10 of this declaration also states that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” The International Covenant on Civil and Political Rights 1976 (UNHCR, 2020) also place importance on individual rights as follows:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Thailand is a country that adheres to the universal declaration and the international covenant mentioned above. Therefore, the laws relating to criminal cases in Thailand are clearly defined basic rights of the accused. Firstly, the right to be presumed not to be the offender until there is a final judgment showing that the said person has committed an offense. Therefore, during the process of being accused in a case, he or she cannot be treated like an offender. Secondly, fundamental rights in the consideration process which is based on an open, accurate, speedy, and fair trial. Finally, fundamental rights to obtain protection and assistance from the government such as provision of attorneys to assist in the case.

Although the law provides basic principles for protecting the rights of the accused but in practice there are still problems causing the accused or “scapegoat” to not be treated and protected by the government with equality, fairly, accurately, and speedy in accordance with the established principles (The Office of the Constitutional Court, 2014). The mentioned problems are as follows:

1. Discrimination: In the case that the accused or suspects are poor, lacking educational opportunities, and having little legal knowledge, they will be discriminated by government officials and society in an unequal manner. These people cannot fully access or rely on the judicial process because the criminal justice process is complex, formal, and high cost. People need to know the legal process and procedures very well. Persons with

limited social status and knowledge are discriminated and their human rights are easily violated. For example, detention, intimidation, torture to confess guilty.

2. The criminal case being used as a political tool in the form of making an example of someone, such as the case of Pai Dao Din, a young political activist who was imprisoned for two years and six months for lese majeste and computer crime. However, the others who also share a biography of the King posted by BBC Thai on their Facebook accounts were not convicted or brought into the criminal justice. Therefore, it is considered the use of “scapegoat” as a tool to create fear in society. This indicates dehumanization which is against the human rights principles that considers every human being is self-worthy and has dignity. Hence, no one should be the “scapegoat” used as a political tool (Thaweesak, 2017).

3. Lawyer assistance issues. Although the law requires the government to provide lawyers to assist the defendants or the accused but the lawyers that government organizations provide for the accused are often new lawyers who lack experience, knowledge, and skills. As the government organizations lack sufficient budget, the government cannot provide knowledgeable, high caliber, and experienced lawyer to help the accused. This is different from providing a lawyer for the accused in the United States that the lawyer does not act on behalf of the individual but is acting on behalf of a government organization. Also, the lawyer in the USA has status and profession which are not different from prosecutors. Therefore, lawyers are highly skilled and experienced. They work to retain true justice for the people (Thailand Institute of Justice, 2015).

4. Media. Presentation of mainstream media and online social media has a great influence on the attitudes and thoughts of the recipients resulting in an urgent conclusion that the accused was actually the offender and quickly condemning the accused through various media. In addition, the accused then was unfairly discriminated against. The accused or “scapegoat” in the said case almost never has the opportunity to prove his innocence. However, making crime headlines to get more readers' attention will make people focused on the crime news. In addition, journalists and police will have a closer and more complex relationship because journalist need to have a good relationship with the police in order to benefit from obtaining information for their job. On the other hand, police have to rely on journalists to publicize to the public that police have been working on the case seriously (Lim, 2016). Sometimes, some police

officers may use the media to distort the information of the case to benefit someone who have financial power.

The above problems reflect the fact that the accused or “scapegoats” in the judicial process were clearly violated of the fundamental human rights in the process of criminal justice. It is a problem that the government and related agencies of the judicial process must pay attention and take urgent action to solve the problem.

Reviving the “scapegoat” cases

The promulgation of the Resurrect Criminal Case for Reconsideration Act B.E. 2526 is considered a new phenomenon in the Thai judicial process. According to this law, the scapegoats will have the opportunity to prove their innocence. However, there are details and requirements to be followed (Liberties Protection Department, Ministry of Justice, 2017b):

Firstly, the case to be revived and reconsidered must be the case where the court has finally given the verdict to the “scapegoat” to receive criminal punishment. The punishment includes capital punishment, imprisonment, confinement, fine, or forfeiture of property. Hence, any cases under consideration of the judicial process cannot be brought to resurrect and reconsideration.

Secondly, the case that will be revived for reconsideration must meet one of the 3 conditions as follows:

1. The witnesses in the case to be resurrected were judged by a final judgment that the testimony of the witnesses was false or inaccurate. This means that the witness must be prosecuted for false or inaccurate testimony first which requires considerable time in the trial.

2. Evidence other than personal witnesses has been sentenced that it is a fake or inaccurate evidence. In this case, it is quite similar to the first case as that there must be a prosecution in the former case whether the abduction of evidence is false and the court has ruled that the evidence in the case is fake and not consistent with the fact.

3. There are new witness, evidence, or any other material evidence. However, the said evidence must not be referred to or be a witness examination of the same case. The new evidence must not be evidence that exists before. For example, relatives, siblings, and neighbors who have not come to the evidence examination of the same case. Most importantly, the new evidence must be

important enough to change the previous sentence.

Thirdly, the person who has the right to request a resurrection of a criminal case consists of:

1. Persons subject to criminal penalties by final judgment.
2. Legal representative in the case that the person who is subject to criminal penalties is a minor or an incompetent person.
3. Manager or other representatives of the legal entity.
4. Parents (parents, grandparents), descendants (children, grandchildren, great-grandchildren,), husband or wife that have a legal registration of marriage for cases where a person died before the petition is submitted.
5. The prosecutor who is not the plaintiff in the original case.

Finally, the period for requesting to renew the criminal case must be completed within 1 year from the date of facts appearing or within 10 years from the date of the final judgment of the original case. In the case of the lapse of 1 year and 10 years, it is up to the discretion of the court to accept the request and the request can be submitted only once. This is different from other foreign justice systems that the request can be submitted more than 1 time.

Thailand has the law that allows judges to file petitions to revive criminal cases but the complaint or request can be submitted only once as well as having quite a number of practical problems. For example, the rules for consideration of requests are strict, and the judge must rely on himself to find a lawyer and new evidence. Although government agencies will provide lawyers, the lawyers provided by the government are mostly lawyers who lack experience in litigation. In addition, the majority of the offenders or scapegoats are people with low incomes and poor status. Therefore, they lack understanding of the details of the law causing most of the court to dismiss the petition (Dittharoen & Amornsilsawat, 2017). After the said law came into effective in 1983, a total of 29 cases had been requested for resurrect and reconsideration. However, the court dismissed all petitions (Wichitwejakarn, 1984).

Another practical problem is related to article 6 (2) of the Resurrect Criminal Case for Reconsideration Act B.E. 2526. It clearly specifies protection for the minor and the incompetent and gives power to the representatives of the minor and the incompetent to file a petition to revive the criminal case. However, in the

case of a quasi-incompetent person, that person will have to file a complaint in person or may request the prosecutor to file the case instead. The person is not able to have his own representative to submit the request resulting in inconvenience to such person. Article 6(4) of the law also causes practical problems and is still inconsistent with the changing social and economic conditions of the country. The said section states that in the case that a sentenced person has passed away, the person who will be responsible for filing a petition to renew the criminal case must be parents, descendants, husbands or wives of the convicted person only. However, in the case of a single person whose parents have died, no person or representative can file a complaint. Hence, reviving the case cannot be proceeded to preserve the image or reputation of other people who are affected by the judgement of the court (Leunggrattanacharoen, 2005). The Bangkok Business Newspaper (2014) also stated that the Resurrect Criminal Case for Reconsideration Act B.E. 2526, enforced for more than 30 years, cannot actually be enforced.

In the author's perspective, the court dismissed all the petition filing to revive a criminal case for reconsideration results from conflict of thought between implementation of the justice process with purity, fairness, and equality and the court image. If many cases are resurrected and clearly proves that the verdict is truly innocent, these will have a severe impact on the credibility of the court and the justice system as a whole. Reviving the case to prove the innocence of the "scapegoat", therefore, is quite difficult under the laws and customs of the Thai justice process.

Compensation for the "scapegoats"

Compensation provided for the "scapegoats" which have been proven innocent in Thailand is considered as "less than it should be" as compared to general international standards. According to the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544, it specifies the compensation as follows:

1. General cases: For general cases, the financial compensation includes the payment of 200 or 500 baht per day that is calculated from the date of detention at the rate stipulated by law, medical expenses resulting from legal proceedings as actually paid but not more than 40,000 Baht, the cost of physical and mental rehabilitation as actually paid but not more than 50,000 Baht, the lack of benefit from the date of inability to

work will be paid by the minimum wage in the area where the defendant lives, the attorney fees actually paid depend on the type of case that the law requires, other expenses in litigation that are actually paid but not more than 30,000 Baht, and room and food expenses during the medical treatment which are not more than 1,000 Baht per day.

2. In case the defendant has died, the compensation includes financial compensation of 100,000 Baht, funeral expenses 20,000 Baht, maintenance expenses not more than 40,000 Baht including other damages, such as compensation for mental rehabilitation of descendants not more than 40,000 Baht.

According to the compensation statistics during 2014-2016, there were over 200 payments for “scapegoat” remedies totaling over 40 million Baht. In 2014, 110 cases were paid (23.5 million Baht), 45 cases (7.7 million Baht) of 2015, and 60 cases of 2016 (10.3 million Baht). Even though the government has paid a certain level of compensation but what the defendant received in cash was considered very small and no one wanted to face this kind of situation since he was imprisoned, lacked independence to be with children and wife, lost income, lost reputation and image which finally may lead to the failure of that person's life (Sudsao, 2017).

Policy recommendations

The situation of the “scapegoat” problem in the justice process has resulted in a “crisis of faith” to the Thai justice system. Therefore, it is very important that the government, including relevant government agencies, to find ways to solve problems in order to maintain fairness for people in society equally and equitably. In this article, the author suggests several ways to solve the “scapegoat” problem in the Thai judicial process as follows:

First, the concept of alternative justice should be applied in the judicial process. This concept places importance on the role of communities to participate in the criminal justice system. Nowadays, the mainstream justice process has encountered many problems causing the people to lack confidence in the judicial process, and finally becomes a “faith crisis” against the criminal justice system. Asawanon (2012) said that applying these principles will help “scapegoats” in the judicial process to receive fairness. In addition, this will help in reducing the amounts of offenders in correctional facilities. It also

helps to reduce the “over-crowded prison” problem that Thailand is experiencing.

Second, the introduction of modern technology in the justice process. For example, using modern technology to record testimony that shows both images and sounds. Adopting audio-visual technology can help in solving problems of human errors which will directly benefit the accused. Normally, the police record the testimony by themselves so there may be a discrepancy in the message. Although the audio-visual technology has been employed in the Bankruptcy Court for over 10 years, but the technology has not been widely used in the Criminal Court. Using video in recording the testimony helps to reduce staff mistakes very well. Most importantly, the prosecutors and judges can see emotional images and listen to the voice of the accused which are more realistic compared to just reading the report.

Third, the structural reform of the Royal Thai Police which allows investigative officers to have an independent role from the interventions of political parties and high ranking supervisors who have a close relationship with the real offender. In addition, career development plans should be established for these investigative staff to have more opportunities for career advancement than they currently do. This will create job motivation among investigators and recover the dignity of those who really want to work for social justice. However, if unable to do so, establishing the Investigation Bureau as an independent department should be considered in order to have roles and duties which show professionalism. Furthermore, there should be capacity development of those investigative officers to be experts without transferring to other areas of work.

Fourth, modification of the lagging law to be more modern by providing the authority for prosecutors to participate in investigations in order to obtain accurate evidence. It will encourage the collaboration between the two agencies which will help prevent the creation of false evidence to condone “scapegoats.” It is like working together, but there is check and balance of each party's actions to not proceed in an unlawful manner.

Fifth, the use of forensic evidence to help prove the facts. The problem in the murder of Cherry Anne Duncan is a major turning point in the performance of the police since it results in prudence in the mapping of the incident, more systematic evidence collection at the scene, and the use of forensic evidence used to prove the wrongdoing of a person.

Sixth, changing the policy regarding “scapegoat” remedies without focusing on money but should focus on the mental rehabilitation of the “scapegoats” that are released into society. These people who have been in prisons for a long time may be socialized by the environmental conditions in the prison. This will shape their personality, thinking, as well as attitude towards society, government officials, including people in the community. In addition, professional skills should be promoted so that these people can have work to earn their own living to support their family members. At the same time, monetary compensation or remedy should be adjusted in line with current economic and social conditions.

Finally, there should be intense punishment for officials performing their duties with a lack of prudence, morals, and work ethics. This is to prevent these officials from performing their duties regardless of the impact on the lives of innocent people and to eliminate bad officials from Thai society. Hence, the image of the Thai judicial process can be restored.

Conclusion

The problem of “scapegoats” in the Thai justice system has been deeply rooted in Thai society for a long time. The Cherry Anne Duncan murder is a turning point in Thailand. The police, prosecutors, and the court nowadays have to focus on making investigation report, screening the report, and judging the case with prudence. However, there are still “dark influences” or other factors that cause the “scapegoat” problem to be seen in Thai society. This problem has a severe impact on the mental, physical, economic, and social conditions of the “scapegoats”. Therefore, government agencies should turn their attention to these problems urgently because it is a problem that affects the fundamental human rights of the people which Thailand is one of the countries that have to comply with the Universal Declaration and the relevant international agreements. People who are involved in driving the policy, should pay more attention to this problem and put this as an urgent agenda to reform the Thai justice system. Then, the credibility and image of the Thai justice system could be restored by treating all people equally, equitably and fairly.

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