

INTEGRITY AND INDEPENDENCE OF THAI PUBLIC PROSECUTORS AND THEIR ROLES IN PROSECUTING CORRUPTION CASES

*Sutthi Sookying**

I. INTRODUCTION

Thai public prosecutors have gone through a long history of struggle to improve their role in protecting society and the people by performing their duties professionally, with dignity and with pride under the safeguard of the laws. In the old days, they faced difficulties due to the lack of laws and organs to protect them. At the beginning, the role of Thai public prosecutors was unclear; it depended on the directives issued by those who were in power (the rulers). Later, during the time of reform, when the country adopted the Western model about one hundred years ago,¹ the “Public Prosecution Department” was established. Yet, the office was transferred under the supervision of the Minister of Justice, then the Minister of Interior and the Prime Minister. Until recent years, starting in 2007, the Office of the Attorney General of Thailand has been an independent agency with autonomy in personnel administration, budget and other activities, of which the superintendent is the Attorney General. However, on certain matters, it must report to the Cabinet, the Senate or the parliament, depending on the issue.

This paper will explain the background of Thai public prosecutors, their organizational structure, authorities and functions, including the related laws that promote integrity by providing Thai public prosecutors with independent status. Also, this paper will touch upon the roles of Thai public prosecutors in prosecuting corruption cases by describing the process of prosecuting corrupt politicians and state officials.

II. BACKGROUND OF THAI PUBLIC PROSECUTORS

A. History

1. Ancient Times

The history of the Office of the Attorney General of Thailand (the Thai OAG) can be traced back to the 14th century when Ayutthaya was the capital of Siam (the former name of Thailand). This is evident from the Royal Family Law enacted in A.D. 1358 during the reign of King Boromtriloknat, the eighth king of Ayutthaya. At that time, the official who had a similar function and authority as present-day public prosecutors was called “Yok-Kra-Bat”. The most important role of “Yok-Kra-Bat” was to protect or guard the laws. According to the writing of M. De Laluber, the French Ambassador to Siam under the mission of King Louis XIV who came to Ayutthaya in the reign of King Narai (A.D. 1656

* Senior Expert Public Prosecutor, International Affairs Department, Office of the Attorney General of Thailand.

¹ The legal reform in Thailand was initiated in the reign of King Rama V (1853 – 1910), which was the same period of Emperor Meiji of Japan. The Office of the Attorney General of Thailand (at that time called “Public Prosecution Department”) was established in 1893 as part of the results of the reform.

– 1688), the title of “Yok-Kra-Bat” was more or less equal to that of “Procureur General” in France.²

2. Modern History

The modern history of the Thai OAG began on 1 April 1893, during the reign of King Chulalongkorn (Rama V), an office under the name “Public Prosecution Department” was established. Later, on 1 April 1916, the title of “Yok-Kra-Bat” was changed to “Ai-Ya-Karn” by the Royal Decree of King Wachirawut (Rama VI). One of the meanings of “Ai-Ya-Karn” is the “Guardian of the Law.”

In the early days, the office was an agency within the Ministry of Justice. Later on, in 1922, it was transferred to be part of the Ministry of Interior and remained there until 1991. Then, the office underwent a major structural and organizational change when the office was separated from the Ministry of Interior and assumed independent status as an autonomous agency under the direct supervision of the Prime Minister. In addition, its name was changed from the “Public Prosecution Department” to the “Office of the Attorney General”.

In October 2002, the government reformed its organization by passing a law on bureaucratic reform. The Office was then again transferred to be under the supervision of the Minister of Justice.

Later, the 2007 Constitution of Thailand³ came into effect. The Constitution defines the new status of the Office of the Attorney General as an “Other Organization” under the Constitution. Public prosecutors have powers and duties as provided in the Constitution and the law on powers and duties of public prosecutors and other laws. Public prosecutors exercise independence in their consideration and disposition of cases, as well as in performing their duties fairly. The Office of the Attorney General has a secretariat with autonomy in personnel administration, budget and other activities, of which the superintendent is the Attorney General.

Even though, the Constitution of Thailand was amended in 2010 and 2017, the Office of the Attorney General and the public prosecution officials have retained their independent status.

B. Authorities and Functions⁴

The Thai OAG has several main authorities and functions, namely: to administer criminal justice, to safeguard the national interest, to protect civil rights and provide legal aid, and to enhance international cooperation.

² <<http://www.ago.go.th/agoen/history.php>>.

³ <http://web.krisdika.go.th/data/outsitedata/outside21/file/Constitution_of_the_Kingdom_of_Thailand.pdf>.

⁴ According to the Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010) and the Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010) also the Criminal Procedural Code and other specific laws.

1. Criminal Justice Administration

(a) Investigation

Inquiry officials of the Royal Thai Police play the principal role in investigation in general. However, public prosecutors have the authority to conduct investigations in certain situations, including, special case investigation, extraterritorial investigation, certain juvenile cases and post-mortem inquiry.

In the investigation of serious transnational crime or organized crime, the Special Case Investigation Act B.E. 2547 requires that public prosecutors shall jointly investigate the case with inquiry officials of the Department of Special Investigation (DSI) of the Ministry of Justice.

In cases where an offence punishable under the Thai law is committed outside the Kingdom of Thailand, the Attorney General shall be the responsible inquiry official and may delegate duties to any public prosecutor or inquiry official to conduct the inquiry on his behalf. The public prosecutor assigned to conduct a joint investigation may provide guidance on the process of collection of evidence to the inquiry official.

In certain juvenile cases where the witness, the injured person or the offender is not over 18 years of age, the Criminal Procedure Code stipulates that a public prosecutor, together with a psychologist or a social welfare worker and any person requested by the child or adolescent, shall participate in the investigation.

In a post-mortem inquest of an extrajudicial killing, a public prosecutor shall participate in conducting the inquiry with the inquiry official.

(b) Prosecution and trial

The Thai OAG is the principal prosecuting authority in Thailand. Upon receipt of an inquiry file from responsible inquiry officials, a public prosecutor will examine the file, which contains all the evidence of the case, and will consider if the case should be prosecuted or not. However, if the inquiry file is considered incomplete, the public prosecutor may request further investigations to be conducted by the inquiry official or to bring forth any witnesses to be examined before the public prosecutor prior to issuing a prosecution or non-prosecution order. When the prosecution order is made, the public prosecutor will file an indictment against the alleged offender with the court. Thereafter, the case will be presented before the court where public prosecutor adduces all relevant evidence to support the prosecution. Once the court renders its judgment, if the public prosecutor does not agree with the court's judgment, the public prosecutor can appeal the judgment to a higher court.

2. National Interest Safeguard⁵

In order to safeguard the national interest, the Thai OAG assigns the Department of Legal Counsel to act as a legal counsellor to government agencies and state enterprises upon negotiating government-related contracts with their counterparts. In doing so, the public prosecutor will offer legal advice and review the draft contracts purported to be signed by all the parties concerned. In addition, when a government agency is one of the

⁵ The Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010), section 23 (2), (3), (4).

parties in a lawsuit, the public prosecutor in related offices will represent such an agency on its behalf.

3. Civil Rights Protection and Provision of Legal Aid⁶

The public prosecutor at the Department of Civil Rights Protection and Legal Aid provides legal aid and advice to people and also represents any person seeking a court order to endorse his/her rights, such as the right of an heir to manage their late relative's property, seeking the court permission for child adoption or seeking the court appointment of a legal guardian for an orphaned child. In a case where a person is barred by the law from bringing an action against his or her parents, a public prosecutor may pursue the case on behalf of such person.

The Thai OAG focuses its attention on the civil rights and legal aid provision for underprivileged Thais living both in the country and abroad. The Office of International People's Rights Protection has been designated to provide legal services and assistance to them, as well as to foreigners residing in Thailand.

4. International Cooperation⁷

The Thai OAG plays a significant role in international cooperation concerning the prevention and suppression of transnational organized crime that pervades many areas of criminality, including drug trafficking, money laundering, human trafficking and cybercrime. In fulfilling this role, the Thai OAG acts as the Central Authority for cooperation with foreign counterparts in the matters of mutual assistance in criminal matters and extradition. Moreover, the Thai OAG is designated as the Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction.

In the area of mutual legal assistance in criminal matters, Thailand concluded bilateral and multi-lateral treaties with following countries, namely: ASEAN countries, Australia, Belgium, Canada, China, France, India, the Republic of Korea, Norway, Peru, Poland, Sri Lanka, Ukraine, the United Kingdom and the United States of America. As for extradition, Thailand concluded extradition treaties with the following countries: Bangladesh, Belgium, Cambodia, China, Indonesia, the Republic of Korea, the Lao PDR, the Philippines, the United Kingdom and the United States of America.

C. The Organizational Structure

The organizational structure of the Thai OAG can be divided into two main areas: central offices in Bangkok and regional offices in provinces.⁸

1. Central Offices

The central offices are the Head Office of the Attorney General of Thailand and other offices which are located in Bangkok and have jurisdiction over cases that occurred in Bangkok. These include the specific departments such as the Department of Legal Counsel, International Affairs Department, Department of Technical Affairs, the Training Centre, etc.

⁶ Ibid., section 23 (1).

⁷ The Extradition Act B.E. 2551 (A.D. 2008) and Mutual Assistance in Criminal Matters Act, B.E. 2535 (A.D. 1992).

⁸ <<http://www.ago.go.th/agoen/office.php>>.

2. Regional Offices

The regional offices outside Bangkok are grouped into 9 regions. The Departments of the Regional Public Prosecutor, (Regions 1-9) cover and oversee the work of all provincial offices in their jurisdictions. There are 111 Provincial Public Prosecutor Offices established in 76 provinces, excluding Bangkok. The large provinces, such as Chiangmai, Nakorn Ratchasima, Ubon Ratchatani, and Nakorn Si Thammarat, have more than one office. There are also the Offices of Provincial Juvenile and Family Litigation to take care of juvenile offenders and family matters and Offices of Provincial Civil Rights Protection and legal aid to ensure that rights of Thai people are protected.

D. Qualifications of Applicants for the Public Prosecutor Test⁹

The applicants for the public prosecutor test must have qualifications and have no forbidden characteristics as described by the Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010). After passing the test, the applicants will be trained for one year and appointed to be assistant public prosecutors. After finishing the one-year training, the Public Prosecutor Commission will evaluate and appoint them to be public prosecutors at the offices throughout the country.

E. The Titles or Positions and Ranks of Thai Public Prosecutors

The officials of the Thai OAG are divided into two types:

- the Public Prosecutor under the Public Prosecution Organization and Public Prosecutors law;
- and the General Administrative Officer under the Public Prosecution Official Regulation law.¹⁰

The Thai Public Prosecutors have 17 titles or positions and are divided into 8 ranks or levels as follows:

- (1) Public Prosecutor level 8: Attorney General
- (2) Public Prosecutor level 7: Deputy Attorney General and Inspector General
- (3) Public Prosecutor Level 6: Director General, Deputy Director General, Executive Director and Senior Expert Public Prosecutor
- (4) Public Prosecutor level 5: Expert Public Prosecutor
- (5) Public Prosecutor level 4: Provincial Chief Public Prosecutor and Provincial Public Prosecutor attached to the Office of the Attorney General
- (6) Public Prosecutor level 3: Public Prosecutor attached to the Office of the Attorney General and Deputy Provincial Chief Public Prosecutor
- (7) Public Prosecutor level 2: Divisional Public Prosecutor and Assistant Provincial Public Prosecutor
- (8) Public Prosecutor level 1: Assistant Public Prosecutor.

There is also a position of Senior Public Prosecutor who is 65 – 70 years old with no executive power but handling cases or work as assigned by the head of the office.

⁹ The Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010).

¹⁰ The Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010) and the Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010).

III. RELATED LAWS TO ENSURE INTEGRITY AND INDEPENDENCE OF THAI PROSECUTORS

A. The Constitution: Guaranteeing the Independence of the Prosecutors

The 2017 Constitution,¹¹ Section 248 provides that:

“The State Attorney Organ has the duties and powers as provided in the Constitution and laws.

State attorneys are independent in considering and making orders in cases and in performing duties expeditiously and justly and without any prejudice, and such act shall not be deemed an administrative order.

The personnel management, budgetary affairs and other acts of the State Attorney Organ shall be independent, with a specific system of salary and remuneration as may be appropriate. The personnel management in relation with State attorneys shall be carried out by the State Attorney Committee, which shall at least consist of the Chairperson who is not a State attorney and qualified members selected by State attorneys; at least two of such qualified members shall not be or have been State attorneys, as provided by law.

The law under paragraph three shall contain measures to prevent State attorneys from carrying out any act or holding any position which may cause the making of orders in cases or the performance of duties to be not in accordance with paragraph two, or may cause conflict of interest. In this regard, such measures shall be prescribed explicitly and be of general application without any delegation of power to consider the matters on case by-case basis.”

B. The Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010): The Mechanisms to Establish Integrity, Independence and the Quasi-judicial Nature of Prosecutors

The Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010) provides the mechanisms to establish integrity, independence and quasi-judicial nature of the prosecutors in many sections such as:

Section 7 The Public Prosecution Organization consists of the Public Prosecutor Commission (the PPC), the Attorney General, and other public prosecutors whereby the Office of the Attorney General serves as its secretariat.

The Office of the Attorney General is a government agency having autonomy in its personnel administration, budget and other activities, and is a juristic person with the Attorney General as its superintendent and representative, etc.

¹¹ <http://web.krisdika.go.th/data/outsitedata/outside21/file/Constitution_of_the_Kingdom_of_Thailand.pdf>.

Section 10 The appointment and removal of the Attorney General shall be in accordance with the resolution of the PPC together with approval of the Senate. The President of the Senate shall countersign the Royal Command appointing the Attorney General. The appointment and removal of other public prosecutors shall be in accordance with the Law on Public Prosecution Official Regulation.

Section 21 Public prosecutors are independent in considering and directing cases and the performance of their duties with good faith and fairness in accordance with the Constitution and laws.

Section 22 The justified discretion of public prosecutors for the case decisions and performance of duties in accordance with Section 21 shall be immune

C. The Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010): The Mechanism to Maintain Integrity, Discipline, Codes of Conduct, and Abilities of Thai Public Prosecutors

The Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010) provides the mechanisms to maintain integrity, disciplines, codes of conduct, and abilities of Thai public prosecutors in many sections such as:

Section 7 Payroll and Position Allowance System of Judicial Service Officer shall be applied to Public Prosecutor *mutatis mutandis*. Rate of salary and position allowance of Public Prosecutor shall be complied with the payroll attached to this Act.

Section 14 Code of Ethics of Public Prosecutor shall be complied with the determination of Office of Attorney General which is approved by PPC.

Office of Attorney General by the approval of PPC, shall prepare Morals Code of Public Prosecutor.

Code of Ethics as specified in paragraph one and Code of Morals specified in paragraph two, shall come into force upon their publication in Government Gazette.

Section 83: Public Prosecutor shall abide and comply with Code of Ethics and Morality.

Any defiance or non-compliance with Codes of Ethics shall be deemed as violation of discipline.

If there is any defiance or non-compliance with Code of Morality, Superior shall report to PPC which shall be used accompanying the consideration in appointment by PPC.

IV. THE ROLES OF THAI PUBLIC PROSECTORS IN PROSECTING CORUPTION CASES

A. Investigation Stage: The Powers of the NACC¹²

According to the Organic Act on Anti-Corruption B.E. 2561 (2018), the National Anti-Corruption Commission (NACC) has the powers to conduct an inquiry and prepare opinion in a case there is an allegation that a person holding a political position, a person holding a position in an independent agency or a state official is involved in circumstances of unusual wealth, corruption, or deliberate performance of duties or exercise of powers in contrary to the laws, or such person has committed an offence of malfeasance in public office or in judicial office, or seriously violated or failed to comply with the ethical standards.

After finishing the investigation and having the resolution of the case, the NACC will send a report, inquiry file, document, evidence and opinion, including their electronic copies, to the Attorney-General (AG) to review and file a case against such person to the competent Court.¹³

B. The Joint Committee between the NACC and the AG

In case the Attorney General (AG) finds that the inquiry file is incomplete for justification of initiation of a prosecution, the AG shall inform the NACC of the matter along with specification of all the incomplete issues. In this case, the AG and the NACC shall appoint a joint committee consisting of representatives of each side of an equal number, with no more than five representatives on either side.¹⁴

The joint committee shall collect evidence to completion as well as perform any undertaking in order to complete the inquiry file for further prosecution. In case the joint committee fails to reach a mutual agreement on the matter, the NACC shall further proceed by initiating the prosecution by itself.

C. Prosecution and Trial

In case the AG (or the public prosecutor designated by the AG) finds that the inquiry file is complete for justification of initiation of a prosecution, the AG (or the public prosecutor designated by the AG) will initiate the case in the competent court.¹⁵

If the alleged culprit is a person holding a political position, the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions will have jurisdiction over the case. If the alleged culprit is a state official, the Criminal Court for Corruption and Misconduct Case will have jurisdiction over the case.

D. When the AG is the Alleged Culprit

If the alleged culprit is in the position of Attorney General during the commission of an offence or during the allegation, the President of the NACC has the power to initiate the case or submit the complaint to the Criminal Court for Corruption and Misconduct Cases.

¹² The Organic Act on Anti-Corruption B.E. 2561 (2018) sections 46 - 75.

¹³ Ibid., sections 76, 77, 91, 93.

¹⁴ Ibid., sections 77, 93.

¹⁵ Ibid., sections 77, 93.

E. Confiscation of Property¹⁶

In filing a case in the competent court, if the alleged culprit or the person participating in the commission of the offence has used or acquired property in an unlawful manner as a result of the commission of corruption, or deliberately performed duties or exercised powers contrary to the provisions of the Constitution or laws, the AG or the NACC, as the case may be, may file a motion with the court for the confiscation of the following properties, unless it is the property of another person who has no connivance with the commission of the offence:

- (1) Property which any person used or had in his or her possession for use in the commission of the offence;
- (2) Property or interest that can be calculated into monetary value, which has been given, requested to give or pledged to give to the alleged culprit by any person in an unlawful manner
- (3) Property or interest that can be calculated into monetary value which a person has obtained from the commission of or from his involvement as an instigator, an aider and abettor or a publisher or announcer in order for another person to commit the offence;
- (4) Property or interest that can be calculated into monetary value which a person has obtained from a disposal, distribution or transfer in any manner of the property or interest under (1) or (3).
- (5) Fruits or any other interests occurring from the property or interest under (1), (3) or (5).

V. CONCLUSION

In 2007, the Thai Constitution established the new status of the Thai OAG with autonomy in personnel administration, budget and other activities. This status remains the same even though the Constitution of Thailand has been amended in 2010 and 2017. The Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010) and the Public Prosecution Official Regulation Act, B.E. 2553 (A.D. 2010) are the mechanisms to maintain integrity, discipline, codes of conduct, and the abilities of Thai public prosecutors. By those laws, as well as the welfare and the status received from the government and the public, the Thai public prosecutors remain independent in their consideration and disposition of cases as well as in performing their duties fairly.

However, a public prosecutor is a human being not a robot or a machine; therefore, he or she as an individual, might have engaged in wrongdoing. In fact, in these recent two or three years, there are 2 - 3 cases in which the Criminal Court for Corruption and Misconduct Cases has convicted public prosecutors who were involved in corruption or exercised powers contrary to the laws.¹⁷ There are also 2 - 3 cases involving corruption that are under the investigation of the NACC.¹⁸ The number of public prosecutors who engaged in wrongdoing may be considered as only a few cases when compared to the total number of 4,167 public prosecutors who work throughout the country.¹⁹

¹⁶ Ibid., sections 83, 93.

¹⁷ <www.isaranews.org>.

¹⁸ <www.thaipublica.org>.

¹⁹ The statistics at the end of the year 2020.

Therefore, other measures to prevent corruption are still needed, such as asset declaration or financial disclosure. Public awareness and public participation are also very important tools to prevent corruption in the justice system.