

CURRENT ISSUES ON INVESTIGATION AND PROSECUTION IN THAILAND

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I. INTRODUCTION

Corruption is a huge problem that is occurring in many countries across the world, and many countries have already taken the lead to end corruption, once and for all. Every country is looking to end corruption, taking into account that there is a possibility that corruption may affect the international development and the national security. The countries of the ASEAN community have different processes and different success rates of combating corruption. According to the Corruption Perceptions Index made by Transparency International, Denmark and Switzerland were ranked first and had the lowest corruption in 2013. One can also see that North Korea and Afghanistan were the two countries with the highest corruption rates, tied at number 187, in 2013.¹

In the ASEAN community, Singapore is listed as number one in the region, and it is placed as number five in the Corruption Perceptions Index (CPI). Cambodia is placed last and in the CPI as number 160. Thailand is placed at number 102 overall and number 5 in the region. Thailand was placed at number 80 in the CPI in 2010²; moreover, this proves that Thailand has not been able to achieve the goal of preventing corruption. Instead it is doing the opposite—corruption has actually increased. However, there have been attempts by the Thai government to end corruption in the past, but evidently they have failed.

The increasing corruption problems in Thailand have come into existence because of many different reasons, but one of the most important causes is that people committing crime are not caught. If they can be deterred and suppressed, legal enforcement will be more effective.

In Thailand, the organizations possessing the specific role in investigation of public-sector corruption cases are the National Anti - Corruption Commission (NACC)³ and the Public Sector Anti Corruption Commission (PACC), while the organization that has been proceeding to the court is the office of the Attorney General. The NACC may also institute legal proceedings in the court as stipulated by the law. This shows that the prosecution and its proceeding in the corruption cases are divided into an investigation agency and a prosecution agency, which can cause inefficiency, for not coordinating with each other from the beginning of the investigation. Although, there is a legal principle stipulating that, if the state prosecutor does not approve the investigation of NACC, the NACC is empowered to prosecute or grant power to a notary to prosecute on behalf of the NACC. But in the past, it showed that it did not reach the goal.

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¹ Transparency International: Corruption Perceptions Index 2013.

² Transparency International: Corruption Perceptions Index 2010.

³ Organic Act on Counter Corruption B.E. 2542 (1999) Section 19.

II. INVESTIGATION AND PROSECUTION OF CORRUPTION CASES IN THAILAND

The NACC and the PACC are both authorized to investigate and prosecute corruption cases in Thailand, but only the NACC is empowered to investigate a person holding a political or other high-ranking position who is alleged to be unusually wealthy and to have committed an offence of corruption, malfeasance in office or malfeasance in judicial office. The PACC is empowered to investigate merely cases where a state officer of lower rank is alleged to have committed an offence of corruption or malfeasance in office. The investigative procedure begins with an allegation against an official. An investigation may also begin when the NACC finds reasonable cause to suspect that a person holding the position of Prime Minister, member of the house of representatives, senator or any political official has become unusually wealthy, has committed an offence of malfeasance in office, has committed a corruption offence under the Penal Code or has committed malfeasance in office or corruption under another law. The NACC shall promptly initiate an inquiry or may entrust an inquiry official to conduct the fact inquiry. The NACC may also entrust an inquiry official, including police officers, under the Penal Code. In the case of corruption in the private sector, the agencies empowered to investigate are the police and the Department of Special Investigation, or DSI. They are empowered to investigate under the Criminal Procedure Code, but when the offence is committed outside the Kingdom, the Attorney General will have the authority to investigate and prosecute the case.⁴

During the investigation, the NACC or the entrusted official will initiate the fact inquiry and gather evidence related to the allegation, and the investigator is deemed to be empowered as the inquiry official under the Criminal Procedure Code. When finished collecting evidence, a report is submitted to the NACC for consideration and for a decision. If the NACC determines that a prima facie case has been established, the President shall refer the report, existing documents and the opinion to the Attorney General for the purpose of instituting a prosecution in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

When the case has been referred to the Attorney General, it will be reported further to the Special Public Prosecutor's Office, Special Litigation, Divisions 2 and 5 to be considered. But in the future the Office of the Attorney General will be establishing the Specific Litigation Office of the Department of Counter Corruption Litigation. After the prosecutor's office has received the report, the next step is to examine the alleged action. The offence, the allegation and the evidence are examined, and if the Attorney General considers that the report, documents and opinion furnished by the NACC are incomplete and do not justify the institution of prosecution, the Attorney General shall inform the NACC thereof and request further investigation. In this instance the missing items shall be fully specified at the same time.

In this case, the NACC and the Attorney General shall appoint a working committee consisting of representatives of each side in an equal number for the purpose of collecting full evidence and furnishing it to the Attorney General for the prosecuting institution. The NACC has the power to initiate the prosecution on its own or to appoint an attorney to institute the prosecution on its behalf.⁵ As the NACC is empowered to initiate prosecution, when the working

⁴ Criminal Procedure Code B.E. 2477 Section 20.

⁵ Organic Act on Counter Corruption B.E. 2542 (1999) section 97.

committee fails to arrive at a conclusion as to the prosecution and collecting of the facts, it causes problems at trial, as will be discussed further below.

III. ACTUAL CORRUPTION CASE STUDY

A. The Corruption Case of the Auditor-General

The former Auditor-General, Mrs. J., was accused of having misused state funds for a bogus seminar for her staff. The investigation by the NACC found that Mrs. J. had approved a budget of Bt 480,000 for holding a seminar in October 2003, but the event did not take place: there was no seminar, no discussion or brainstorming of any kind. The officials from the Auditor General's Office instead ended up with an excursion for a *kathin* ceremony – offering new robes to monks in Nan Province in northern Thailand. The NACC believed that Mrs. J and two of the auditors were guilty on malfeasance. After that the NACC submitted a report to the office of the Attorney General for the purpose of prosecuting Mrs. J. before the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions, but the Attorney General considered that the report, documents and options furnished by the NACC were insufficient to justify the institution of prosecution. So that the Attorney-General informed the NACC of the establishment of a joint working committee for the purpose of collecting full evidence and furnishing a revised report to the Attorney-General. After that on 4 September 2014 the Attorney-General issued an order to prosecute Mrs J. and her officers. The case is one of the instances in which the Attorney-General and the NACC arrived at a conclusion to prosecute because the facts and evidence were clear and enough to prove what was alleged.

1. Bangkok Metropolitan Administration's Corruption in Purchase of Fire Trucks and Boats.

In 2004, Bhokin, the interior minister at that time, and the Austrian ambassador to Thailand signed a contract for the purchase of new fire vehicles for the Bangkok Fire and Rescue Department, which is a part of the Bangkok Metropolitan Administration (BMA). The NACC accused Bhokin, Pracha, Wattana, Atilak and the Austrian supplier of corruptly arranging the multi-billion-baht deal. Apirak has been accused of negligence for his decision to sign a Letter of Credit for the deal despite knowing that the project was mired with irregularities. The signing of the Letter of Credit is widely blamed for giving the purchase contract full effect and committing Thailand to pay the supplier, which was later found to have sold the fire trucks and fireboats to the BMA at highly inflated prices.

However, the Office of the Attorney-General (OAG) had a different opinion from that of the NACC. So a joint committee of the NACC and the Office of the Attorney-General was established to collect full evidence and to resubmit the report to the Attorney-General. But the Attorney-General refused to prosecute all of the alleged culprits; only some of them were prosecuted. The Attorney-General did not think that Wattana, Apirak and Bhokin should be held responsible for the damage done. The Attorney-General pointed out that at the time of the signing the contract, Bhokin was not shown documents that were annexed to the deal later, Wattana by that time was not served as the Deputy Commerce Minister, and Apirak was legally obliged to open the Letter of Credit. Former Bangkok Governor Samak Sundaravej – not Apirak – signed the purchase contract for the deal

The NACC did not agree with the Attorney-General's opinion. It assigned its own lawyers to handle the case and indicted all of the alleged culprits before the Supreme Court's Criminal Division for Holders of Political Positions. The court ruled that Pracha, the former Deputy Interior Minister, and Athilak, the former head of the BMA's Disaster Prevention and Relief Department, were guilty on purchasing fire-fighting boats, trucks and equipment, worth 6.686 billion Thb for BMA and acquitted the three other defendants including Bhokin, former Interior Minister, Wattana, the former Deputy Commerce Minister, and Apirak, the former BMA governor.

The Lawsuit against the Austrian Supplier Steyr-Daimler-Puch Spezialfahrzeug AG Was Temporarily Deferred by the Court

This case is an instance of the result of prosecution when there were different opinions about the evidence and who should be prosecuted between the NACC and the Attorney-General

IV. CONCLUSION

The NACC has all the power in investigating corruption cases in Thailand and may also initiate the prosecution on its own or appoint an attorney to institute the prosecution on its behalf when there are opinion differences over whether or not to prosecute. The case with the Attorney-General demonstrates the difficulties encountered in dealing with corruption.

If there are differences of opinion over the corruption case that is under investigation by the NACC with the guidance of the Attorney-General, it is a great benefit to conduct the prosecution with the Attorney-General. Even in corrupt countries, prosecutors generally have acceptable degrees of experience and skills. Working with these prosecutors could help the NACC to improve its performance in enforcing the laws against corruption. It would be better for the NACC and the OAG to work together on corruption cases from the beginning of the investigation rather than dividing the investigation and prosecution into two parts.