

THE THAI PROSECUTORS AND INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CRIME

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I. INTRODUCTION

For this issue, I will lecture on the prosecutors' role in providing the mutual legal assistance and then would move on further to the extradition and the restraint and forfeiture of proceeds of crime.

II. MUTUAL ASSISTANCE IN LEGAL MATTERS

According to the Thailand-U.S. Treaty of 1986, which is the first of its kind in Thailand, Central Authorities are established to have direct responsibility in providing and requesting assistance in criminal matters in the two countries without having to go through a diplomatic channel. For Thailand, the Central Authority in accordance with the Mutual Assistance Act implementing the treaty is the Attorney General through the Office of International Affairs. The treaties on Mutual Assistance in Criminal Matters between Thailand and Canada, and between Thailand and Great Britain and Northern Ireland also contain similar provisions. One main function of the Attorney General on behalf of the Central Authority is to be the coordinator in providing assistance to a foreign state or seeking assistance from a foreign state. All diplomatic formalities are deliberately set aside so as to facilitate and expedite the process of request consideration and also to lessen excessive bureaucracy.

The reason why the Attorney General as a representative of the Prosecution Service of Thailand is nominated as the Central

Authority, rather than other heads of criminal justice agencies (namely either the Minister of Interior or the Director-General of the Police Department, or the Supreme Court President) is that the scope of the types of assistance as stipulated in the Treaties and the Mutual Assistance Act corresponds with the current responsibilities of the prosecutors under the supervision of the Attorney General. Such types of assistance include but are not limited to the following:

- (1) taking the testimony and statements of persons;
- (2) providing documents, records and evidence;
- (3) serving documents;
- (4) executing request for searches and seizures;
- (5) transferring persons in custody for testimonial purposes;
- (6) locating persons;
- (7) initiating proceedings upon request; and
- (8) initiating forfeiture proceedings.

To compare with the other duties of prosecutors, even though prosecutors can neither initiate a criminal charge nor investigate a case, if they receive the file of inquiry submitted to them by the police and find it incomplete, they still can direct the police to conduct additional investigation. After acquiring the complete dossier, the prosecutors will then make a decision as to whether to initiate the court proceedings. Structurally viewed, prosecutors practically act as middlemen between the factions of the police and of the court, defense counsel and corrections. With its quasi-judicial nature of responsibility plus such a unique role, the

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Office of the Attorney General therefore gains a superior position in coordinating with all criminal justice agencies as well as other bodies involved. As a result, the Attorney General is deemed most well-suited to perform as the Central Authority.

By virtue of the Mutual Assistance Act, the Central Authority has the following authority and functions:

- (1) to receive the request for assistance from the requesting State and transmit it to the Competent Authorities;
- (2) to receive the request seeking for assistance presented by the agency of the Thai government and deliver it to the requested State;
- (3) to consider and determine whether to provide or seek assistance;
- (4) to follow and expedite the performance of the Competent Authorities in providing assistance to a foreign State for the purpose of expeditious conclusion;
- (5) to issue regulations and announcement for the implementation of the Mutual Assistance Act; and
- (6) to carry out other acts necessary for the success of providing or seeking assistance under the Act.

Upon receipt of a request for assistance from a foreign State, the Central Authority will take into account and determine whether such request is eligible for the providing of assistance under the Mutual Assistance Act and has followed the process correctly as well as accompanied by all appropriate supporting documents. If so, the Central Authority will submit the said request to the Competent Authorities for further execution. However, if not, the Central Authority will refuse to provide assistance and notify the requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility to execute the request. If the

Central Authority is of the opinion that the execution of the request may interfere with the investigation, inquiry, prosecution or other criminal proceedings pending its handling in Thailand, he may postpone the execution or may execute it under certain conditions set by him and notify the requesting State about that. A determination of the Central Authority with regard to the providing of assistance will be final, unless otherwise altered by the Prime Minister.

The providing of assistance will be subject to the following conditions:

- (1) assistance may be provided even though there exists no mutual assistance treaty between Thailand and the requesting State, provided that such State commits to assist Thailand under the similar manner when requested;
- (2) the conduct which is the basis for the assistance requested must be punishable under Thai law unless Thailand and the requesting country have a mutual assistance treaty and the treaty provides otherwise;
- (3) the request may be rejected if it will affect national sovereignty, security or other crucial public interests of Thailand, or relate to a political offense; and
- (4) the providing of assistance will not be concerned with a military offense.

The Central Authority will transmit the request from a foreign State to the following Competent Authorities for execution:

- (1) requests for taking statement of persons, or providing documents, articles and evidence out of court, or serving documents, or searching, or seizing documents and articles, or locating persons will be forwarded to the Director General of the Police Department;

- (2) requests for taking testimony of persons and witnesses, or adducing documents and evidence in court will be dispatched to the court;
- (3) requests for transferring persons in custody for testimonial purposes will be transmitted to the Director General of the Correctional Department; and
- (4) requests for initiating criminal proceedings will be conveyed to the Director General of the Police Department and the Chief Public Prosecutor for Litigation.

Upon obtaining the said request, the Competent Authorities will execute it and, after completion, submit a report together with all documents and articles concerned to the Central Authority, who will then notify the result thereof as well as deliver such documents and articles to the requesting State.

It should be noted that with regard to assistance in forfeiting the fruits and instrumentalities of crime located in Thailand, after the court having jurisdiction over the property is conveyed the request, it is empowered to confiscate the property if the final judgment from a foreign court allows such action and the property is forfeitable under Thai law. In order to solve the problem concerning jurisdiction and competence of the court, the forfeiture is deemed effective, even though the cause of such forfeiture may not happen in Thailand. A request for legal assistance will normally be executed in accordance with Thai law. Nonetheless, the Thai government, with the spirit of cooperation, aspires to follow the method of execution specified in the request insofar as it is not incompatible with domestic laws.

III. EXTRADITION

The issue of prosecutors' role in providing extradition is another aspect of international cooperation in criminal matters.

As stated earlier, the Extradition Act is only a general rule of extradition, and it will be applicable unless the treaty to which Thailand is a party provides otherwise. The Act requires that the crime committed be illegal and punishable under Thai law (double criminality rule); not be a political offense; and the penalty for the offense must be at least one year's imprisonment. The request for extradition must be accompanied by:

- (1) in the case of a person having been convicted of a crime, a duly authenticated copy of the judgment of the court which tried him; and
- (2) in case of a person charged with a crime, a warrant of arrest issued by the Competent Authorities of the requesting country, or a duly authenticated copy thereof.

Regarding the process of providing extradition, the request thereof, as opposed to the request for mutual legal assistance, must be submitted through the diplomatic channel. After that, unless the Thai government decides otherwise, the request together with the accompanying documents will be transmitted to the Ministry of Interior, which may order the accused to be arrested or may apply to the court for a warrant of arrest. Further, the request and the accompanying documents will be conveyed to the Office of the Attorney General which, under the extradition scheme, will be responsible for the execution of the request by working with the police and the court. The prosecutors in the Office of International Affairs will then demand of the court of competent jurisdiction the warrant of arrest. In the case that the accused has been arrested, the prosecutors without

unnecessary delay will bring the case before such court and a preliminary investigation will be made in accordance as far as possible with the Thai criminal procedure law.

The court may order a remand from time to time on the request of either party and for good and sufficient reasons, but the court should not allow bail in these cases. It is worth stressing that the prosecutors, and representatives of the requested Thai government, associate with the court hearings merely to establish, by means of witness testimony or depositions, that:

- (1) the identity of the accused matches with the person wanted;
- (2) there is sufficient evidence against him to commit him for trial, if the offense had been committed in Thailand; and
- (3) the offense is extraditable and is not one of a political character.

Under the general extradition rule, the prosecutors are not required to prove up to the extent that the accused ever committed the offense as stated in the request. In reverse, the accused is not permitted to rebut the prosecutors' affirmations except upon the following points:

- (1) that he is not the person wanted;
- (2) that the offense is not extraditable or is of a political character;
- (3) that his extradition is in fact being asked for with a view to punishing him for an offense of a political character; and
- (4) his nationality.

If the court is satisfied with the establishments, it will make an order authorizing the accused to be detained with a view to being surrendered. The accused will not be sent out of Thailand for fifteen days and within that period, he is granted a right to appeal to the Court of Appeals, whose decision upon all questions both of fact and of law will be final. Notwithstanding, if the court is not

satisfied with the evidence presented, it will order the accused to be discharged at the end of forty-eight hours after reading its decision unless within that period the prosecutors notify the court of an intention to appeal. The prosecutors likewise are entitled to file an appeal within fifteen days and the court will order the accused to be detained pending the hearing of such appeal. If the accused has not been surrendered within three months from the date when the order of the court becomes final or within such further time as the court for sufficient reason direct, the accused will be set at liberty.

As the Extradition Act is only a general rule of extradition, it will be applicable unless the treaty to which Thailand is a party provides otherwise. For this reason, the practice on extradition in Thailand may vary from one country to the others. For instance, while the Extradition Act allows the extradition of nationals, the treaties with the United States, the Great Britain, Indonesia, and the Philippines subject the extradition thereof to the discretion of executive branch, the treaty with Belgium explicitly prohibits it. Such phenomenon will inevitably make extradition procedure too complicated and difficult for practitioners, including prosecutors.

Additionally, the Act is now obsolete in that it lacks simplified extradition in cases where the accused agrees to be extradited without the extradition proceedings. Also, handling requests through the diplomatic channel is very time-consuming and a strict obedience to the principle of double criminality is rather impractical for Thailand, which still lacks a number of legislation to combat transnational crime, for example an anti-money laundering law. Thus, it is very likely that there will be more extradition treaties in the future because procedures adopted by negotiating parties will normally be better and provide more benefit to the parties than those found in the Extradition Act. Realizing that, the

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Thai government has, in March 1997, set up the committee for the reform of the extradition law.

IV. ASSET FORFEITURE

According to the 1991 Act on Measures for the Suppression of Narcotics Offense, the Properties Examination Committee has been established for the administration of asset forfeiture procedure. The Committee consists of high-ranking government officials involved in the process, including the Attorney General. The Committee has the power to issue an order for examination of the alleged offender's property where there are reasonable grounds for suspicion that it is the proceeds of a drug offense. In addition, the Committee in such a situation also has the power to make a seizure or restraining order thereof. In carrying out the execution of the law, the Committee has appointed a sub-committee called the Sub-Committee Attached to the Properties Examination Committee to take into consideration all information and evidence in connection with the property, to give opinion to the Committee, and to supervise and control the competent officials to carry out the designated task. Prosecutors are also installed in this sub-committee.

I will give a brief overview on the forfeiture procedure under the Act. When a significant drug trafficker is charged with a drug offense and becomes the alleged offender, the Secretary of the Narcotics Control Board (NCB), as a member and a secretary of the Committee, will take into consideration whether there are reasonable grounds for suspicion that any property of the alleged offender is the proceeds of a drug offense. If yes, the Secretary-General will propose examination by the Sub-Committee which, if it agrees, will give its opinion to the Committee for consideration. The Committee will then make an order for examination of property. In addition, if

there are reasonable grounds to believe that the property of the alleged offender is likely to be transferred, removed or concealed, the Committee will give a provisional order for seizure or restraint of property.

The Committee will contemplate all information, evidence and documents in connect with the property from the competent officials and the owner of property, if any, before making a decision concerning the property. If the Committee decides that such property is the proceeds of a drug offense, the seizure and restraining order will be issued. Its decision together with documents and evidence concerned will be submitted to the prosecutors. However if the Committee decides otherwise, the property seized or restrained temporarily will be returned to the owner. When prosecution has been instituted against the alleged offender, the prosecutors will, after agreeing with the Committee that the property of the alleged offender is believed to be the proceeds of a drug offense, make an application with the court for a confiscation order. If there are circumstances that the defendant or the examinee has carried on the commission of an offense, it shall be presumed that the property possessed or derived by him beyond the living status or his capability for occupation is the proceeds of a drug offense. In cases where there is a final non-prosecution order or where there is a final judgment dismissing the charge against the alleged offender or the accused, the property seized or restrained by the Committee will be returned to the defendant or the owner of property.

Since its first enforcement in April 1992 to the end of July 1997, there have been a total of 365 alleged offenders whose property has been examined by order of the Committee, and the total value of property temporarily seized or restrained is approximately US\$19.8 million. Out of these, there is property worth around

US\$18.5 million of 236 alleged offenders that the Committee considered to be the proceeds of drug offenses. Up to now, the court has passed judgment for the confiscation of 13 cases, the total value of which is around US\$260,000.

Even though the asset forfeiture measure is one of the most powerful tools for fighting organized crime, its application in Thailand is still far from satisfactory. First, the measure is only available in drug offenses. Moreover, unlike the civil forfeiture procedure of the United States, the confiscation of property under the law is conviction-based. This means that the government needs to prove that the alleged offender is guilty before the court will hand down the confiscation order. If the court acquits the defendant, then the seizure or restraint of property will terminate. In addition, the lack of understanding of this new concept of law among judicial officers is also another important reason why such measure has not been effectively utilized. Lastly, Thailand still lacks an anti-money laundering law to penalize those who assist in the transfer or concealment of the proceeds of drug offenses. This has made it more difficult for the government to track down the proceeds of crime that have been transferred or concealed to avoid detection.

justice officials, like this UNAFEI International Training Course, should be encouraged so that those who are in the same career network will have an opportunity to share experiences and to get acquainted with each other and with the legal system of other countries. This will not only enhance smooth cooperation, but will also improve the standard of criminal justice and the efficiency in law enforcement in the respective countries.

V. CONCLUSION

As international criminals, unlike law enforcement officials, are not subject to any limitations in their cross-border operations, it is, therefore, vital that we join hands in an attempt to increase cooperation and coordination. As there is a rapid increase in transnational organized crime, there is a great need for a collective response by the international community and greater cooperation and coordination among responsible officials in order to fight more effectively. From my point of view, I am of the opinion that more international training and conference among criminal