THE ROLE AND FUNCTION OF PUBLIC PROSECUTORS IN THAILAND

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I. INTRODUCTION

In this report, I will address general information about the responsibilities and administration of the Office of the Attorney General of Thailand. Emphasis will be put on its role in the national criminal justice system, i.e., the role in investigation, prosecution function, scope of discretion, the role in trial, and sentencing as well as controls on prosecution authority. Finally, the problems facing the public prosecutors in Thailand and their tentative recommendations for solution will be presented for your information in the comparative study of the role and functions of the public prosecutors.

II. HISTORICAL BACKGROUND

From 1887, in the reign of King Chulalongkorn, Thailand modernized her legal system to avoid from being the victim of extraterritoriality from the then powerful western countries. The Ministry of Justice was founded in 1892. From 1893, the courts have since been within the administration of the Ministry of Justice, but guaranteed independence in judicial affairs. In 1893, the Office of the Attorney General was established to be in charge of public prosecution. The first Thai penal code was introduced in 1908 before being reformed and reintroduced in 1956. As to the Thai criminal procedural code, it has been in effect since 1935. In that era, Thailand adopted the civil law system. However, the common law influence still existed in some areas of law including the procedure laws of Thailand. Private prosecution and adversary proceedings in criminal trial are some examples in that regard.

The Office of the Attorney General was an agency of the Ministry of Justice at the time of its establishment. From 1922 to 1991, it was part of the Ministry of Interior. Since 1991, the Office has become an independent agency under the direct supervision of the Prime Minister to ensure more independence and impartiality of the public prosecutors. Accordingly, the Prime Minister has no authority to interfere with the criminal justice functions of the public prosecutors. His role is limited only to administrative functions of the Office of the Attorney General.

III. FUNCTIONS AND INDEPENDENCE

As Thailand is a single state, the Office of the Attorney of Thailand is the sole office that has the primary functions of prosecuting and litigating criminal cases throughout the country. The office is also assigned to defend government officials charged with offenses related to the lawful performance of their duty. Moreover, regarding international mutual legal assistance in criminal matters, the Office serves as the Central Authority. In addition, the Office is entrusted with the duty to protect the state interest by rendering legal opinions to government agencies, reviewing draft government contracts, and handling civil cases whereby public agencies are parties. The Office also acts as the center of civil rights protection

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as well as renders national legal aid to the poor and needy.

The powers and functions of the public prosecutors in the Thai criminal justice system are not addressed in the current national constitution as those of judges. However, they are clearly stated in a number of legislation ranging from the Criminal Procedure Code of 1934, the Criminal Procedure in Summary Court of 1979, and the Establishment of the Juvenile and Family Court and its procedures. There are also some provisions in the Penal Code authorizing public prosecutors to propose to the court some safety measures, i.e., relegation, prohibition to enter a specified area, to execute a bond with security for keeping the peace, to be kept under a restraint in a hospital, prohibition to carry on a certain kind of occupation, to be imposed to some dangerous convicted persons.[1] Moreover, public prosecutors are subject to the Public Prosecutors Act of 1955 and have to comply with internal regulation and subsequent amendments providing for the standard to be followed in their performing of functions related to criminal justice.

The public prosecutors under the Office are career professionals like in most counties. The system does not allow the government to appoint any other legal professional to serve temporarily as a public prosecutor in any type of case as seen in some countries. The qualifications to become a public prosecutor and screening procedures are the same as those for judges, i.e., being a Thai citizen by birth, not less than 25 years old, graduated from an accredited law school and the Thai Bar Association, having practiced law at least two years, and (more importantly) having no criminal or disciplinary sanction record. Moreover, the applicants have to survive the very competitive recruiting examinations occasionally held. The successful candidates have to undergo practical training for one year in the position as assistant prosecutors before being royally appointed as public prosecutors. The retirement age of all public prosecutors is 60 years.

To ensure their independence and equal status with the judiciary, there exists the Public Prosecutors Commission separate from the ordinary Civil Service Commission to be exclusively responsible for the personnel management affairs of prosecutors, namely, recruitment, placement, appointment, promotion and transfer. The Commission consists of 15 members, chaired by a retried high-ranking public prosecutor elected by prosecutors from all over the country. The Attorney General, four Deputy Attorney Generals, the Director General of Criminal Litigation Department, the Director General of Legal Counsel Department, and the Director General of Planning and Development Department are members ex officio of the Commission. It also includes three elected executive public prosecutors and three elected retired executive public prosecutors. It should be noted that the Commission has absolute power to nominate the Attorney General of Thailand prior to the official appointment by His Majesty the King. There are now about 1965 public prosecutors working throughout the country.[2]

IV. THE ROLE IN CRIMINAL INVESTIGATION

Unlike the public prosecutors in the U.S., Japan, the Republic of Korea,

[1] See Appendix F for statistics on safety measures in 1996.

[2] See Appendixes A-1 and A-3 for the organization of the Office of the Attorney General and for statistics on number of the public prosecutors in Thailand, ranged by positions.

Indonesia or Germany[3], the Thai public prosecutors make prosecution decisions only based on the evidence presented by the police in investigation files as they have no power at all in the investigation process by initiating, neither by taking control nor by supervising the investigation. By law, there is almost complete separation between the investigation and prosecution as the investigation is under the sole authority of the police.[4] Accordingly, the police has absolute power in the issuance and execution of arrest warrant or any other type of warrants or in granting bail to alleged offenders during an investigation stage, without screening procedures by either the courts or public prosecutors.[5] Senior police officials from the rank of Sub-lieutenant as the head of sub police station and upwards can issue arrest or search warrants by themselves. Moreover, warrantless arrests and searches are allowed by the police in some circumstances.[6]

[3] Kittipong Kittayarak and David Johnson, "Prosecution System in Seven Countries: A Comparative Analysis", a research paper written in February 1995 for UNAFEI, Tokyo Japan, published in ACPF TODAY by Asia Crime Prevention Foundation, pp. 86-96 (June 1994).

[4] Thailand Criminal Procedures Code (CPC), sections 120 and 121.

Section 120, "The public prosecutor shall not enter a charge in Court without an investigation having previously done related to the offense in respect of which the charge is entered."

Section 121, "The investigative official has the power to investigation in reference to all criminal cases. But in case of compoundable offense, investigation shall not be held unless a complaint has been made."

[5] The police has the power to detain the arrested for up to three days from the time of arrest to their presence before the court. Thereafter, the police has to request an extension of detention from the court for the purpose of completing the investigation. The court has the power to grant one or several successive remands not exceeding 12 days each, but the total period depends on the seriousness and gravity of the charges, but the maximum is 84 days. (CPC section 87 as amended in 1996.) However, for minor offenses triable in Magistrate Courts, after the arrest, the police are required to send the suspect together with the investigation file to the public prosecutors so that he is charged to the courts within 48 hours from the time of his arrest. (Law on the Establishment of Magistrate Courts and procedures of 1956, section 7 as amended in 1996)

[6] According to CPC section 78, a warrantless arrest could be executed in the following cases:

(1) when such person has committed a flagrant offense as defined in section 80.
(2) when such person is found attempting to commit an offense, or is found under suspicious circumstances indicating his intention to commit an offense by having in his possession implement, arms or other articles likely to be used for the commission of an offense;
(3) when there are reasonable grounds to suspect that such person has committed an offense and is about to abscond; and
(4) when another person has requested the arrest of such person charging him with the commission of an offense and stating that a regular complaint has been made.

According to CPC section 92, a warrantless search could be executed in a private place in the following cases:

(1) where there is a cry for help emanating from the private place
(2) where a flagrant offense is evidently being committed in the private place
(3) where a person having committed a flagrant offense, while being perused, taken refuge; or there are serious grounds for suspecting that such person is concealing, in private place;
(4) where there are reasonable grounds for suspecting that an article obtained through an offense is concealed or to be found inside and there are reasonable grounds to believe that by reason of delay in obtaining a warrant of search the article is likely to be removed;
(5) where the person to be arrested is the head of the household of such private place and there is a warrant for his arrest, or the arrest is to be made under section 78...."

Thai public prosecutors cannot give any direction to the police officer of a criminal investigation from the outset of the report of the crime, thus making them different from their counterparts in other civil law countries. The role of public prosecutors only begins in all types of cases, no matter how serious or sensational the cases are, after the completion of the investigation and the police sends the investigation file to them for consideration to prosecute or not prosecute. The public prosecutors may send a request to the police for further investigation or send them any witnesses for their own inquiry but have no chance to examine the alleged offenders themselves. However, by reviewing the evidence as only chosen to be presented by the police, they have certainly no chance to verify the truth of the case. Even when the police fabricate or bring in misleading evidence as a result of bribery or prejudice against the offenders or victims, the public prosecutors have no way to perceive such facts. Such practice has led to excessive power and abuse of power by the police due to the lack of checking mechanisms to ensure the legality and truthfulness of the investigation.

Seeing this situation as a serious obstacle to ensuring justice to all parties in criminal procedure, the Office of the Attorney General has struggled for some role in the investigation stage for years. Actually, we do not need to take over the investigation from the police in all cases but for some high profile or complicated cases or special offenses in a position as a supervisor. However, we have never achieved such goals due to politically strong and powerful opposition by the police. This also reflects an erroneous perspective and inadequate cooperation among agencies in the criminal justice system. Our striving for some role in the investigation was distorted as a fight for power rather than a sincere effort for more justice and efficiency in the criminal process.

V. FUNCTION OF PROSECUTION

As in most countries, one of significant function of public prosecutors is to make prosecution orders against alleged offenders or non-prosecution orders. In Thailand, public prosecutors are not allowed to institute a charge in court without previous investigation with regard to that charge.[7] As above-mentioned, Thai public prosecutors have no role in the investigation stage, thereby, making their decisions only based on the evidence found in the initial investigation file or in a supplementary file presented by the police as a result of further investigation according to a public prosecutor's order. Their prosecution orders are usually based on the sufficiency of evidence presented to prove the offenders guilt to the court. They have no chance to interview the suspect before the prosecution or give instruction to conduct further investigation. Under the law, the prosecution order is final. The courts usually accept the case to trial without preliminary hearing in all types of cases, even though the law allows them to do so if they think fit, due to their trust in the screening of cases by the public prosecutors. Nonetheless, due to the lack of opportunity to deal with the evidence from the beginning, sometimes we cannot save the innocent offender from being prosecuted. There is no written law defining the evidentiary standard for the charge in Thailand. In practice, the standard in prosecution is usually based on probable cause. In other words, Thai public prosecutors will normally issue a prosecution order if the case is likely to gain conviction against the accused.

It should be noted that Thai public prosecutors have no power to accept a plea of guilty to a lesser crime than originally charged or plea bargaining as is done in the United States. Additionally, in cases of theft, snatching, robbery, gang-robbery,

[7] CPC section 120.

piracy, extortion, cheating and fraud, criminal misappropriation and receiving stolen property, public prosecutors also have the responsibility to request for a court order granting the restitution of the assets by the defendant to the victim of the crime or indemnity thereof.[8]

In case of insufficiency of evidence, the prosecutor will normally issue a non-prosecution order. However, this type of order, if not issued by the Attorney General himself, is not final unless concurred by the Director-General of Police Department for cases occurring in Bangkok, or by the Provincial Governor for cases occurring outside Bangkok. If they disagree with the order, the case will finally be reviewed by the Attorney General and, therefore, his order, whether or not to prosecute, will be final.[9] The final non-prosecution order usually prevents further investigation against the offender on account of the same offense unless there is fresh evidence material to case that would likely lead to the conviction of the alleged offender.[10] The power of the Attorney General in issuing non-prosecution order has been strongly criticized recently because it is argued that it is irrevocable and not subject to be examined by any agency in the criminal justice.

On the other hand, like in England and Wales[11] and some other common law countries, the CPC also allows private prosecution or prosecution by the victim or injured party[12] in most types of cases except

8 CPC section 43, "In cases of theft, snatching, robbery, gang robbery, piracy, extortion, cheating and fraud, criminal misappropriation and receiving stolen property, where the injured person has the right to claim the restitution of the property he has been deprived of through the offense, or the value thereof, the public prosecutor, when insituting the criminal prosecution, shall, on behalf of the injured person, apply for restitution of the property or the value thereof."

9 CPC section 145, "In the case where there is an issue of a non-prosecution order other than that of the Attorney General, if it is in Bangkok, the investigation file together with the order shall forthwith be submitted to the Director-General, Deputy Director-General or Assistant Director-General of the Police Department, the file of investigation together with conflicting opinions shall be sent to Attorney General for decision. If it is in provincial area, the file of investigation together with the order shall forthwith be submitted to the Governor of such province...
In the case where the Director-General, Deputy Director-General or Assistant Director-General of the Police Department, or the Governor of the other province disagrees with the order of the public prosecutor, the file together with conflicting opinions shall be sent to the Attorney General for decision...." See also Appendix B for statistics on the decisions of the Attorney General during 1991-1996.

10 CPC section 147 "After a final non-prosecution order has been issued, no investigation can be made again relating to the same person on account of the same offense, unless there is fresh evidence material to the case that would likely lead to the conviction of the alleged offender."

11 Kittipong Kittayarak and David Johnson, "Prosecution System in Seven Countries: A Comparative Analysis", supra note 3.

12 According to CPC Articles 1(4), 5 and 6, "injured person" means a person who has received injury through the commission of any offense including:
(1) the legal representative or custodian in respect only of offenses committed against the minor or incompetent person under his charge;
(2) the ascendant for descendant, the husband or wife, in respect only of criminal offenses in which the injured person is so injured that he died or is unable to act by himself;
(3) the manager or other representatives of a legal person in respect of any offense committed against such legal person; and
(4) in a criminal case where the injured person is a minor having no legal representative, or is a person of unsound mind or an incompetent person having no custodian, or where the legal representative or custodian is unable to discharge his duty for any reason including conflict of interests with the minor or incompetent person, a relative of such person or an interested person may apply to the court to appoint him as a representative ad litem."

the cases where the state is the sole injured party such as offenses against the state security or against the Monarchy, etc. Therefore, the final non-prosecution orders usually will not bar private prosecution against the same offender.[13] Nevertheless, in practice, the public prosecutors dominate the prosecution because there is so limited private prosecution brought to trial in this case as a result of the public's trust in the professional competence of public prosecutors. Moreover, private prosecution is subject to a screening by the court through preliminary hearing.[14] During the preliminary hearing, the defendant is not allowed to present his own witnesses but allowed to appoint a lawyer to defend him and entitled to cross-examine the plaintiff's witness. The order of the court to accept the case to trial is final.[15]

In juvenile delinquency cases, the injured party cannot bring the case to court without the approval of the Director of the Juvenile Observation and Protection Center in order to protect the children from improper humiliation.[16] In case of his consideration of non-prosecution, the injured person may apply by motion to the court for permission to bring the criminal case to court. Such order of the court will be final.

However, in most cases, private prosecution in practice is practically restricted to compoundable offenses such as offenses against bad checks or defamation offenses. Additionally, in case of prosecution by public prosecutors, the injured party may apply by motion to the trial court to be a joint plaintiff in the case.[17] However, they are prevented from doing or omitting to do any act causing detriment to the case of the public prosecutor or else the public prosecutor may request the court to order the injured party to do or not to do such acts. On the other hand, in a criminal prosecution of a non-compoundable offense instituted by the injured person, the public

[13] CPC section 34, "A non-prosecution order does not bar the right of the injured person himself to institute a prosecution."

[14] CPC section 162 (1)

CPC section 162 "Where the charge is found to be conform with the law, the Court shall act as follows:

(1) in the case where a private prosecution is the prosecutor, the Court shall make a preliminary examination, but, if the public prosecutor has also instituted a criminal prosecution with the same charge, sub section (2) will apply;

(2) in the case entered by the public prosecutor, the Court need not to hold a preliminary examination, but may do so if it thinks fit.

In the case where there is a preliminary examination as aforesaid, if the accused pleads guilty, the Court shall accept the charge for trial."

[15] CPC sections 165 and 170.

Section 165, "In the case where the charge is entered by a private prosecutor, the Court has the power to hold the preliminary examination in the absence of the accused; the Court shall serve on each accused a copy of the charge and notify him of the date fixed for the preliminary examination. The accused may attend the examination with or without a defense counsel to cross-examine the witness or the prosecution. If he will not attend, he may appoint a counsel to cross-examine the witnesses for the prosecution. The accused shall not be asked by the Court to make a statement, and, before acceptance of the charge, the accused shall not be treated as such".

Section 170, "The order of the Court to the effect that there is a prima facie case is final, but the order to the effect that there is no prima facie case may be appealed against by the prosecutor in accordance with the provisions of this Code governing appeal."

[16] There are 11 Juvenile and Family Courts and 19 Juvenile and Family sections of Provincial Courts scattered throughout Thailand.

[17] CPC section 30, "In a criminal prosecution instituted by the public prosecutor, the injured person may apply by motion to associate himself as prosecutor at any stage of the proceedings before the pronouncement of judgment by the Court of First Instance."

prosecutors may apply by motion to associate themselves as prosecutor at any time before the conclusion of the case.[18]

In addition to insufficiency of evidence, in all cases according the CPC, the right to prosecute by the public prosecutors is also repealed by the following reasons:[19]

(1) the death of the offender;
(2) in case of a compoundble offense, the withdrawal of the compliant or of the prosecution or by lawful compromise;
(3) the settlement of the offense in petty cases according to the CPC requirement[20];
(4) a final judgment in reference to the offense for which the prosecution has been instituted;
(5) the coming into force of a law subsequent to the commission of the offense, abolishing such offense;
(6) prescription; and
(7) amnesty.

VI. PROSECUTORIAL DISCRETION

The CPC does not clearly prohibit the public prosecutors from using discretion in not to prosecute any offender even if there exists sufficient evidence to prove his guilt in court. Even if there is sufficient evidence, public prosecutors should consider whether the public interest requires prosecution. However, the public prosecutors have exercised this discretion for public interest in only a few cases. One of the historic cases was that the Attorney General had used this discretion in deciding not to prosecute a briber in order to save him as a key state witness against a corrupt minster because he thought that the public interest in punishing the corrupt official outweighed the briber's misconduct. According to the internal regulation on the handling of criminal cases by public prosecutors, it clearly states that if a public prosecutor is of opinion that the prosecution may not accord the public interest or be against the public moral or order or affect the national security or important national interest, he must refer the case to the Attorney General for further consideration.

The Office of the Attorney General is cautious in exercising the discretion by requiring approval of the Attorney General. Nonetheless, only a few cases have been forwarded to the Attorney General for consideration.

Moreover, in juvenile delinquency cases, the Law on the Establishment of Juvenile and Family Courts and Their Procedures, clearly states that public prosecutors are entrusted with prosecutorial discretion in dropping a case if proposed by the Director of the Juvenile Observation Center that

[18] CPC section 31, "in a criminal prosecution of a non-compoundable offence instituted by the injured person, the public prosecutor may apply by monitor to associate himself, as prosecutor any time before the case becomes final."

[19] CPC section 39.

[20] According to CPC section 37, for trivial offenses punishable with only with a fine, the cases can be settled by the payment of maximum fine by the offenders to the police officers. Likewise, for offenses punishable with maximum of one-month imprisonment or a fine not exceeding 1000 baht (US$40), or other offenses as having punishable only with fine of the maximum not exceeding ten thousand baht (US$400), or tax offenses with the maximum of fine not exceeding 10000 baht (US$400), the police officers investigating the cases can impose an administrative fine on the offenders. If the offenders voluntarily pay the amount of fine fixed by the investigator, the cases can be dropped from prosecution.

After the case has been settled by the investigating officer by such means, the investigation file and together with the notes of settlement must be sent to the public prosecutor. If the public prosecutor is of the opinion that the settlement is not proper, he may make a prosecution order and request the alleged offender for prosecution.

such delinquents can improve their behavior and easily go back to normal life. Their orders are final and not subject to any review. Nonetheless, so far, no case has been forwarded to public prosecutors for a non-prosecution order according to this section.

In the past, we attempted to introduce the system of suspended prosecution by law as a means of expansion of discretionary power in order to reduce to caseloads in courts and population in jail. More importantly, we realized that in many cases, criminal penalization might not be appropriate for some offenders in some types of cases. We proposed to use the suspension of prosecution scheme for crimes of negligence or minor offenses with a maximum imprisonment of not more than three years and conditional upon the confession of the offenders and their willingness to comply with the conditions of probation or supervision to be imposed by the public prosecutors. If such offenders commit no crime during that period, the prosecution will be permanently dropped. If they commit other crime or fail to accord to any imposed condition, the suspension of prosecution will be withdrawn and they will be prosecuted for both crimes. However, we failed to achieve this for lack of correct understanding of the role of public prosecutors among our criminal agencies concerned. It was misinterpreted as interference with the power of the judiciary. As a result, presently, there exist case overloads in courts and prisons are overcrowded. Surely, this situation will be worse in the future.

VII. ROLE IN CRIMINAL TRIAL

As in most countries, a defendant is guaranteed under the constitution to be presumed innocent until proven guilty. Before the trial, public prosecutors will institute criminal prosecution by entry of a charge in the courts.[21] A charge has to indicate sufficient facts as to the time and place of such act and the persons or articles concerned which are reasonably sufficient to give the accursed a clear understanding of the charge.

According to the CPC, the criminal trial is required to be done in open court and in the presence of the defendant. When the public prosecutor and the defendant are before the court, and after the court has been satisfied as to the identity of the defendant, the charge will be read out and explained to the accused and then he will be asked whether or not he has committed the crime and what will be his defense. The statement made by the accused will be written down. The defendants are guaranteed, according to CPC, the right to a defense lawyer in cases of capital punishment. Additionally, in cases where the defendant is a juvenile of no more than 17 years of age or where the imprisonment

[21] The courts in Thailand are divided into three levels, namely, the Courts of First Instance, the Court of Appeal and the Supreme Court. Crimes occurring in Bangkok may be prosecuted in the Criminal Court, and the the Southern Bangkok Court, and the Thonburi Criminal Court, depending on the territorial jurisdiction of those courts. However, for the offense having an imprisonment term not exceeding three years or a fine not over 60,000 baht, the case must be prosecuted in the Magistrate Court having jurisdiction over the case. Moreover, juvenile delinquents committing crimes in Bangkok shall be prosecuted in the Central Juvenile and Family Court. In the provinces, the criminal charge must be filed in the Provincial Court, the Magistrate Court or the Provincial Juvenile and Family Courts as the case may be. Judges of the Magistrate Court sit singlely as opposed to other courts of first instance where two judges are required for the forum. The quorum of the Juvenile Court consists of two career judges and two associate judges, one of which must be a woman. See Appendix A-3 for the organization of the courts of justice in Thailand.

penalty is defined, the lawyers will be provided if needed by the defendant.[22]

The Thai judiciary has been entrusted with exclusive power to determine both questions of fact and of law in criminal cases, as there is no jury system in Thailand. It is noteworthy that there is no practice of pre-trial meeting to facilitate or expedite the trial process among the judge, public prosecutor and defense lawyer as seen in some countries. Before the trial, public prosecutors need not to disclose their evidence to the defense. They have to provide only a list of witness and documents to the court and the defense.

Unlike in Japan, in case that the defendant pleads guilty, the court will convict and sentence him according to the law without any further hearing except in a case of serious offence where a minimum penalty is more than five years imprisonment. In such cases, the court has to hear the public prosecutors' evidence to be sure that the defendant is the real offender. Normally, this trial is in brief. The public prosecutors will present to the court all relevant documents and bring key witnesses or the victim to testify before the court so as to prove that there was crime committed by such a defendant. The courts usually reduce the penalty to be imposed by half in case that the defendants plead guilty.

In contested cases, the public prosecutors have to prove beyond reasonable doubt that the defendant is guilty as charged. Public prosecutors usually have the burden in search of the truth and present evidence to the court. In criminal trials, the courts have broad discretion in accepting evidence. CPC section 226 provides that any material, documentary or oral evidence likely to prove the guilt or the innocence of the accused is admissible, provided that it is not obtained through any inducement, promise, threat, deception or other unlawful means. As to hearsay evidence, it seems that there is no provision of law prohibiting hearsay evidence. All evidence will be admissible if relevant to the case and legally acquired. It has been consistently held that the witnesses' deposition and the accused's confession made to the police at the investigation stage could not be admitted to court if they were executed by threat, deception, promise or other wrongful means.[23] However, the real question is the value of such evidence when the defendant denies his voluntariness of such statement.

The Thai courts have long adopted the adversary manner procedures whereby the courts are impartially passive throughout the trial. Their role in the trial is to take note of the witness testimony as examined and cross-examined by the parties, bring related documents into the file, and decide upon verbal arguments raised during that session. Such practices have induced strong criticism by some scholars that justice may not be best done unless the courts also play an active role in the

[22] CPC section 173, as amended in 1996, "In the case of offenses punishable with death and before commencing trial, the Courts shall ask the accused as to having a defense counsel or not. If he has none, the Court shall appoint one for him.

In the cases of offenses punishable with imprisonment and in cases of offenses committed by the accused not yet exceeding 18 years of age on the day of charge, the Court before commencing the trial, shall ask the accused whether he has a counsel or not. If he has none and requires one, the Court shall appoint one for them.

The Court shall pay a reward, as specified by the Regulation of the Ministry of Justice, to the counsel appointed according to this section."

[23] CPC section 135, "No investigating officer shall make or cause to be made, any deception, threat or promise to any alleged offender inducing such person to make any particular statement concering the charge against him."

courtroom. As a consequence, this has led to a very difficult task for public prosecutors in Thailand because they have no chance to become familiarized with the evidence and are not in a position to observe the effectiveness and legality of the investigation from the beginning. Even when the witnesses reverse their testimony, public prosecutors have no way to determine which testimony is true. Principally, public prosecutors are presumed impartial throughout the criminal trial. The true aim of the prosecution should be to seek the truth rather than merely seek a conviction. Practically, this is highly possible in exercising a prosecution function stage. However, during trial, it is very hard for the public prosecutors to be impartial because they have to fight strongly against defense lawyers without the help from the court in seeking justice in the case.[24]

The trial session is usually not conducted in a consecutive period. The courts always set a trial session by appointment as agreed by all parties, usually once or twice a month. Some cases take one or two years or more to complete. As a result, for some innocent defendants, if unable to be granted bail, such long period of trial aggravates their suffering and tragedy. Therefore, the Ministry of Justice is now proposing a bill to provide a compensation scheme for those innocent defendants as a result of the miscarriage of justice. The bill is now under consideration of the government.

It should be noted that public prosecutors could exercise discretion to withdraw the cases from trial in the Court of First Instance.[25] However, the law does not establish clear-cut guidelines for the withdrawal of cases. Public prosecutors should do this with caution to the interest of justice. The withdrawal of a case by public prosecutors does not deter the injured person from re-instituting prosecution.[26] In practice, the public prosecutors used to exercise this discretion in politically-related cases so as to preserve national unity or avoid more turbulence in the nation.

VIII. ROLE IN SENTENCING

The court has absolute power in sentencing if the defendant is found guilty. Unlike the U.S. justice system, there is no sentencing hearing separated from the trial process in Thailand. Practically, public

[24] See Appendixes G to I for statistics on judgments of the Courts of First Instance. Please note that the conviction rate is very high but it includes so many trivial cases or some serious cases where defendants plead guilty.

[25] CPC section 35, "A motion for leave to withdraw a criminal prosecution may be filed at any time before judgment by the Court of First Instance. The Court may issue an order granting or refusing such leave as it thinks fit. If the motion is filed after the accused has submitted his defense, he shall be asked if he has any objections, and the Court shall dismiss the motion."

[26] CPC section 36, "A criminal prosecution which has been withdrawn from a Court cannot be reinstitued unless it falls under the following exceptions:

(1) if the public prosecutor institutes a criminal prosecution related to a non-compoundable offence and then withdraws the prosecution, such withdrawal shall not debar the injured person from re-instituting prosecution.

(2) if the public prosecutor withdraws a criminal prosecution relating to a compoundable offense without the consent in writing of the injured person, such withdrawal shall not debar the latter from re-instituting prosecution.

(3) if the injured person institutes a criminal prosecution and then withdraws the prosecution, such withdrawal shall not debar the public prosecutor form re-instituting prosecution, except in case of a compoundable offense."

prosecutors have no direct role in proposing the appropriate sentences to court. The sentencing procedure has long been perceived as the exclusive matter of courts. However, in presenting aggravating or mitigating circumstances to the court during trial proceedings, public prosecutors have some role in contributing to a proper punishment. However, in minor cases where the imprisonment term does not exceed two years, the courts may adjourn the convicts' sentences to allow court probation officials to seek the truth about their life, occupation behavior, their manner in committing crime, the effects thereof or any other related information. The courts may suspend the imprisonment punishment for them for up to five years. During such period, if there exists no other crime committed by them, their penalty will eventually be dropped.[27] In the case of violation of conditions, or the commission of further crime, the court may modify the previous conditions or revoke probation and then remand the probationer to the institution according to original disposition.

[27] Section 56 of the Thai Penal Code "Whenever any person commits an offense punishable with imprisonment and in such case the Court shall punish with imprisonment not exceed two years, if it does not appear that such person has received the punishment of imprisonment previously, or it appears that such person has received the punishment previously, but it is the punishment for an offense committed by negligence or a petty offense, the Court may, when taking into consideration the age, past record, behavior, intelligence, education and training, health, condition of the mind, habit, occupation and environment of such person or the nature of the offense, or other extenuating circumstances, pass judgment, if it thinks fit, that such person is guilty, but the determination of the punishment is to be suspended, or the punishment is determined, but the infliction of the punishment is to be suspended, and then release such person with or without conditions for controlling his behavior, so as to give such person an opportunity to reform himself within a period to time to be determined by the Court, but it shall not exceed five years as from the day on which the Court passes judgment...."

IX. ROLE IN INTERNATIONAL COOPERATION IN CRIMINAL JUSTICE

As earlier mentioned, the Attorney General is designated to act as the Central Authority according to the Act on Mutual Legal Assistance in Criminal Matters of 1992. Upon receipt of a request for assistance from a foreign State, the Attorney General is empowered to make a decision to grant or request assistance based on the criteria provided by the law. The services to be given include assistance in investigation, adducing evidence, providing information and document, service of document, search and seizure, transfer of a person in custody to testify as a witness in the requesting State and initiating a criminal case in court. The Act has certainly proved our strong intent to cooperate with foreign authorities in suppressing transnational crimes. The requesting countries could be contracting parties or non-contracting parties if assured reciprocity. The law has definitely recognized the role of public prosecutors as the center in criminal justice administration.

The Office of the Attorney General has assigned the International Affairs Department to work particularly in this area including extradition matters. Presently, our office annually renders service to several tens of requests from foreign governments. Our greater role in this area surely has a meaningful contribution to international law enforcement as a whole.

X. ROLE IN THE PROTECTION OF CHILD'S RIGHTS

The Child's Rights Protection Office was founded in the Office of the Attorney General in 1995. Its responsibilities are to protect a child's rights by safeguarding its rights according to international standards, by assisting in criminal matters specially where children are victims of crime and to conducting liaison between the governmental and non-governmental agencies in combating and overcoming child abuse and child exploitation problems. From our experiences as public prosecutors, we have learned that the criminal procedures do aggravate the suffering of child victims in many ways. We are now assisting several NGOs and other governmental agencies in the improvement of criminal procedures related to child victims to ensure the best interest of justice and at the same time protecting child's rights. We are correspondingly working with the Criminal Law Reform Institute of Canada by seeking to launch a pilot project in Chonburi, which is notorious for the child sexual abuses business.

XI. CONTROLS OVER PUBLIC PROSECUTORS

The performance of each public prosecutor is controlled by their superior and certainly subject to internal review. As for the prosecution function, unlike in Germany, the Republic of Korea or Japan[28], in Thailand, no matter the case, the court is not allowed to review the exercising of discretion by public prosecutors. As for the role of the media, even though the Office of the Attorney General is accessible to the public, it is only limited to high-profile cases. Under the law, as earlier mentioned, the non-prosecution order, if not that of the Attorney General, is not final unless concurred by the Provincial Governor for cases in the provincial jurisdiction or by the Director General of Police Department for cases in Bangkok jurisdiction. This is the mechanism under the law to balance the prosecutorial power. Recently, a new mechanism has been created in the Office of the Attorney General to allow any party dissatisfied with the role of the police or the public prosecutors in the handling of a case to submit a petition directly to the Attorney General for review. More importantly, as also earlier stated, private prosecution is also allowed under the CPC, thereby, the injured party if not satisfied with the prosecutor's order can bring the case to court against such offenders. However, it happens infrequently due to for their trust in public prosecutors. Besides, the rule of working in a more transparent and accountable manner has recently been adopted in the Office of the Attorney General in that any interested party can examine the investigation file along with the detailed reasoning of the public prosecutor responsible for a case. As for the order of the Attorney General, his final decision on whether to prosecute or not prosecute will be published with detailed reasoning. If there is any irregularity in a case, it can easily be found. In case there are reasonable grounds to believe a there must have been something like bribery as an actual reason behind the order of the public prosecutors, the interested party can institute criminal proceeding on bribery charges or call for disciplinary action against such public prosecutors.

[28] Kittipong Kittayarak and David Johnson, Prosecution System in Seven Countries: A Comparative Analysis, *supra note* 3.

XII. CURRENT PROBLEMS FACING PUBLIC PROSECUTORS IN THAILAND AND TENTATIVE RECOMMENDATIONS FOR THEIR SOLUTION

A. Nature of Problems

1. Problems Related to the Role in Investigation and Prosecution

As previously stated, the criminal justice system in Thailand almost separates the pre-trial stage functions between investigation and prosecution. Public prosecutors lack the opportunity to become familiar with all evidence to be presented to the court from the beginning. As such, public prosecutors are in no position to observe the correctness and legality of work exclusively done by the police or to serve as a balancing mechanism in the investigation process. As a result, the public prosecutors sometimes can not save innocent defendants from being prosecuted and can not ensure the injured party the efficiency of criminal justice enforcement.

2. Problems Related to the Role in Diversion

Diversion has been recognized as a meaningful tool in criminal justice administration to help reduce the number of cases, which are tried in court. As a consequence, the court can concentrate on serious crimes and at the same time such means could better rehabilitate offenders in some cases, such as offenses of negligence, domestic violence or juvenile delinquency. Our proposal to introduce the suspension of prosecution system to this means in the past was not acceptable. However, it can be argued that for the lack of our role in investigation and the lack of an opportunity to know in-depth about the case, suspension of prosecution may not function effectively.

3. Lack of Adequate Cooperation among Criminal Justice Agencies

In Thailand, criminal justice agencies are not united in the same ministry. The Office of the Attorney General is an independent organ under the supervision of the Prime Minister, while the Police Department and the Corrections Department are under the control of the Ministry of Interior. In contrast to international practices, the Ministry of Justice has the primary function of serving judicial affairs rather than emphasising on the administration of justice as seen in most countries. Moreover, their training or development of human resources is not united because they have separated training. Thus, it is subject to the policy of each agency rather than in the interest of the criminal justice system as a whole. This non-organization has resulted in inadequate coordination and cooperation among those agencies due to their different policies and practices. It has had significant impact on the efficiency of law enforcement.

B. Tentative Recommendations

1. The investigation and prosecution function should not be completely separated as in the current system. The police should not be the sole organ to initiate criminal proceedings. The role of public prosecutors in the criminal justice system should be increased for the greater efficiency of law enforcement. Public prosecutors should be essentially supported to do the function in initiating the criminal process and have some role of the investigation of serious cases and, more importantly, to do justice to both the victim of crime and to the offender.

2. Public prosecutors should be encouraged to exercise prosecutorial discretion. However, more guidelines as well as measures for internal and external control, should be adopted to effectively control public prosecutors in the exercise of discretion and to prevent the abuse of control. Moreover, public prosecutors should be directly accessible to the injured party, the media and the public to ensure accountability and transparency in their work.

3. Cooperation and coordination among criminal justice agencies are essential in the effectiveness of law enforcement. Improvements in all organs should be harmonized and moved toward the same direction to efficiently ensure safety in society and protect all parties concerned. The courts and public prosecutors in particular should avoid their competitive perspective. In this present situation where each agency works independently, one recent recommendation is that there should be a coordinating committee established to be a forum for harmonization of criminal justice policy among them.

XIII. CONCLUSION

My paper has presented the view and experience of a civil law country. As you may have realized, Thailand has her own unique criminal justice system and has some practices different from other civil law countries. However, there has been long been a struggle to change some defects in the system. I hope that improvement will be gradually realized in the future.

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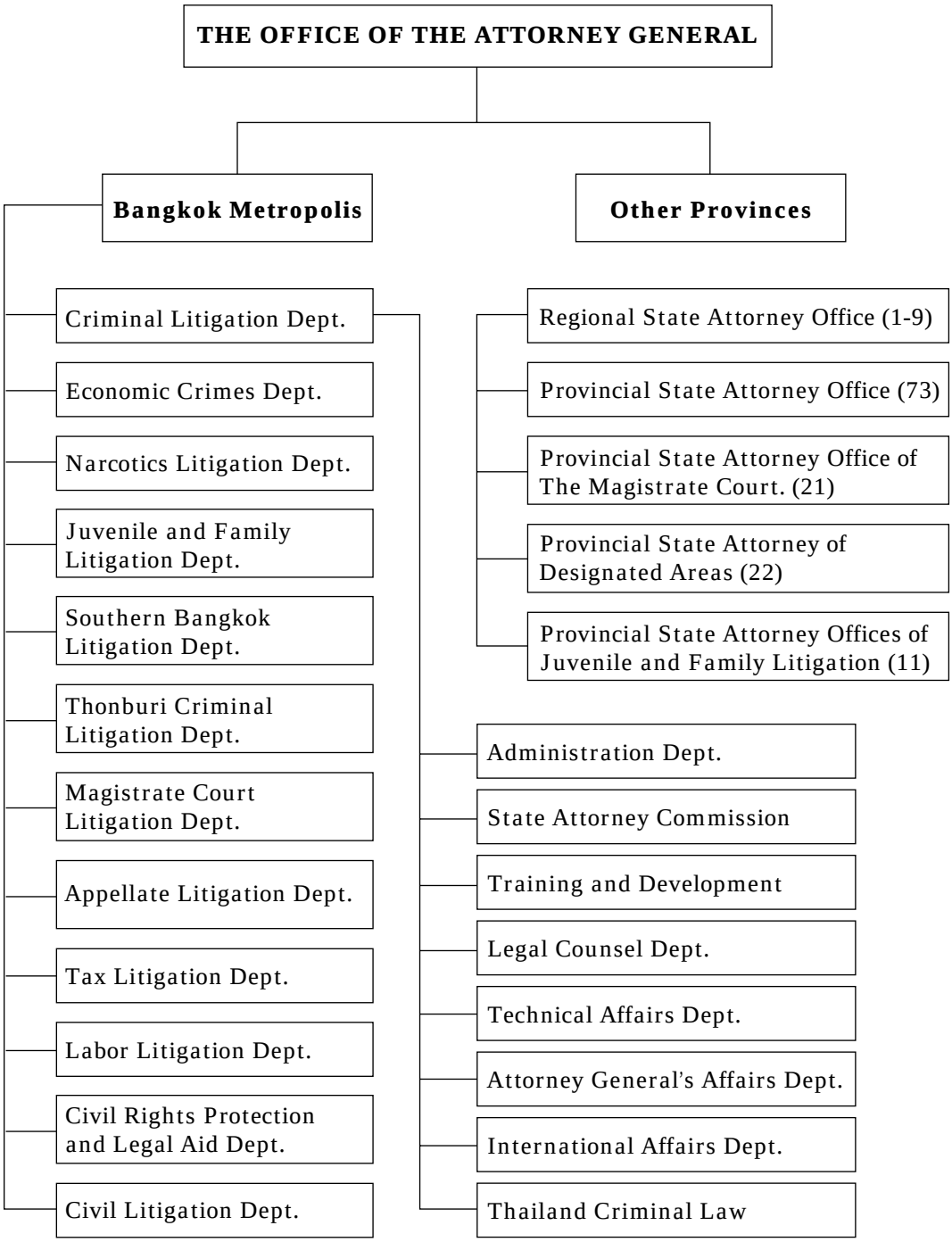
APPENDIX A-1

ORGANIZATION OF THE OFFICE OF THE ATTORNEY GENERAL, THAILAND



APPENDIX A-2

PROSECUTION AND NON-PROSECUTION CASES OF ALLEGED OFFENDERS SENT TO THE STATE ATTORNEYS DURING 1991-1996

Year	Total	Percentage	Prosecution	Percentage	Non-prosecution	Percentage	Others	Percentage
(1991)	383,272	100	374,137	97.62	8,051	2.10	1,084	0.28
(1992)	382,649	100	373,321	97.56	8,123	2.12	1,205	0.32
(1993)	400,710	100	391,286	97.65	8,278	2.07	1,146	0.28
(1994)	450,203	94	438,947	91.62	9,843	2.05	1,413	0.29
(1995)	479,077	100	468,492	97.79	8,897	1.86	1,688	0.35
(1996)	504,156	100	495,581	98.30	7,046	1.40	1,529	0.30

Note: The word "Others" means, for example, cases are sent back to inquiry officers or cases are not permitted to be prosecuted by the Attorney General.
Source: Office of the Attorney General.

APPENDIX A-3

NUMBER AND POSITIONS OF PUBLIC PROSECUTORS

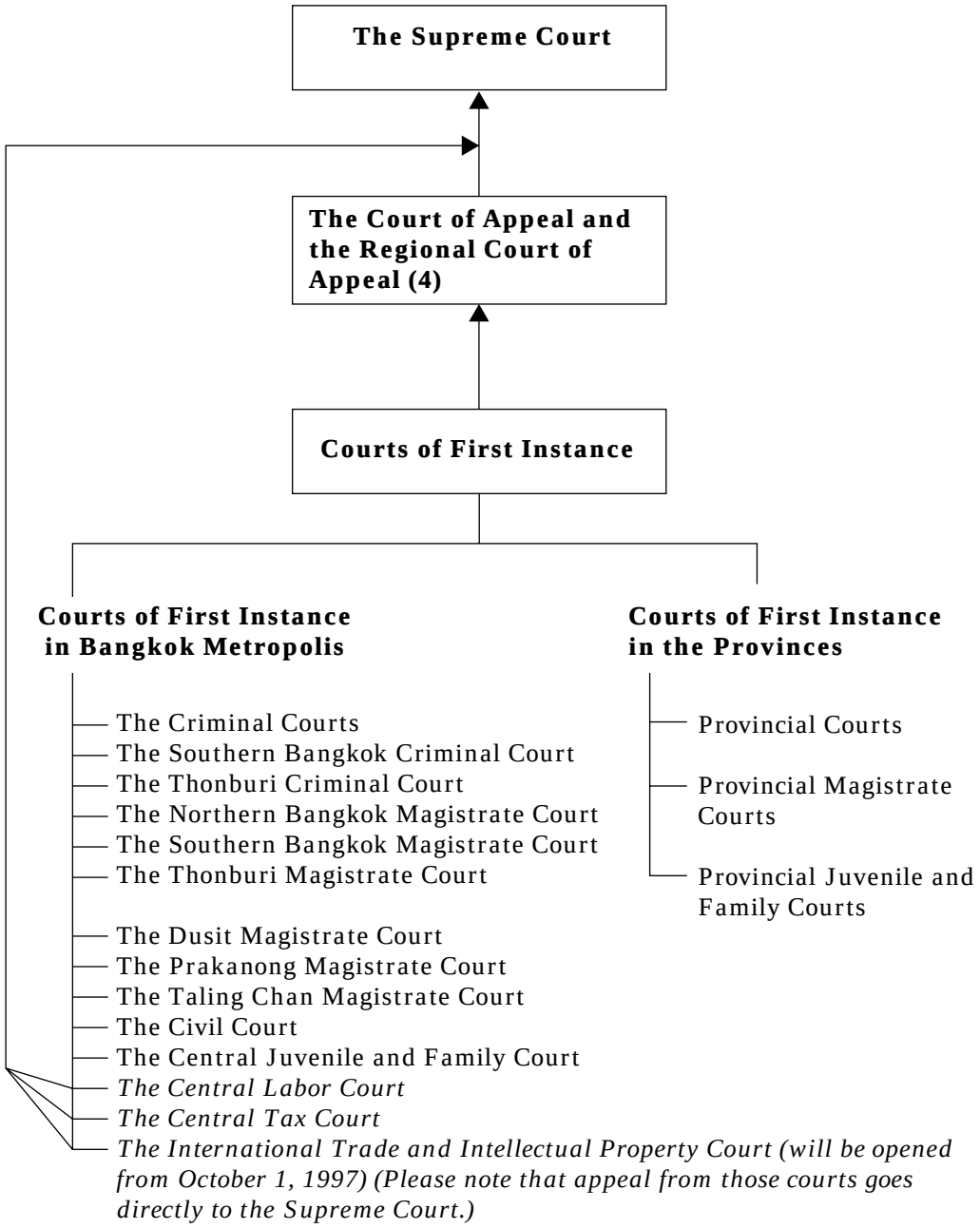
Grade	Position	Number of Prosecutors
8	Attorney General	1
7	Deputy Attorney General	4
6	– Chief Executive Public Prosecutors – Regional Chief Public Prosecutors	220
5	Senior Executive Public Prosecutors	302
4	– Provincial Chief public Prosecutor – Provincial Chief Public Prosecutor (attached to the Office)	472
3	Senior State Attorney	527
2	– Public Prosecutors – Assistant Provincial Chief Public Prosecutors	93
1	Assistant Public Prosecutors	79
	Total	1968

Male: 1800
Female: 168

Source: Office of the Attorney General, as of July 1997.

APPENDIX A-4

THE COURTS OF JUSTICE IN THAILAND



APPENDIX B

DECISIONS OF THE ATTORNEY GENERAL DURING 1991-1996

Year	Cases	Prosecution	Non-prosecution	Others
1991	80	53	25	2
1992	46	24	22	—
1993	43	19	23	1
1994	49	28	18	3
1995	45	24	20	1
1996	96	70	22	4

Source: Office of the Attorney General.

APPENDIX C

MAIN OFFENCES FOR WHICH ALLEGED OFFENDERS WERE PROSECUTED IN 1996

Types of Cases	Cases	Percentage
1. Narcotics Act	85,883	17.33
2. Gambling Act (Other Gamblings)	73,106	14.75
3. Immigration Act	72,727	14.68
4. Psychotropic Substances Act	45,513	9.18
5. Gambling Act (Illegal Lottery)	34,191	6.90
6. Offences of Theft	25,105	5.07
7. Offences Against Bodily Harm	14,794	2.99
8. Controlling Firearms Act (Licensable Firearms)	13,712	2.77
9. Miltary Service Act	7,540	1.52
10. Forestry Act, National Reservation Forest Act, National Park Act	6,084	1.23
11. Others	116,926	23.59
Total	**495,581**	**100**

Source: Office of the Attorney General.

APPENDIX D

COMPARISON OF CASE LOADS DURING 1991-1996

Type of Cases	1991	1992	1993	1994	1995	1996
1. Alleged Offenders Sent for Prosecution	383,110	382,797	401,153	451,233	478,993	504,620
2. Alleged Offenders Not Sent for Prosecution (Excluding Settlement Cases)	57,572	60,570	61,878	68,429	74,037	91,094
3. Alleged Offenders Not Sent for Prosecution (Settlement Cases Only)	1,513,043	2,055,799	1,724,844	1,832,604	1,837,919	2,187,198
4. Unknown Offenders	31,093	30,772	32,233	31,425	34,391	35,541
5. Post-mortem Inquest	316	323	308	383	368	381
6. Representing as Counsels in Criminal Cases	266	215	252	262	189	218
7. Representing as Counsels in Civil Cases	5,474	5,520	4,923	5,316	6,565	7,725
8. Criminal Cases Submitted to the Court of Appeal	10,125	7,606	10,588	6,501	6,637	13,147
9. Criminal Cases Submitted to the Supreme Court	1,678	1,375	1,827	986	924	2,777
Total	**2,002,677**	**2,544,977**	**2,238,006**	**2,397,139**	**2,440,023**	**2,842,701**

Source: Office of the Attorney General.

APPENDIX E

NARCOTIC CASES PROSECUTED DURING 1991-1996

Year	Total		Conviction		Acquittal	
	Case	Persons	Case	Persons	Case	Persons
1991	74,443	81,388	73,533	80,281	230	302
1992	82,861	87,794	81,905	86,686	181	213
1993	92,245	97,890	90,877	96,267	305	377
1994	109,464	116,773	107,843	114,763	305	389
1994	119,605	127,115	116,709	123,809	476	575
1994	131,396	140,589	127,197	135,325	563	730

Source: Office of the Attorney General.

APPENDIX F

SAFETY MEASURE CASES IN 1996

Type of Safety Measure	Last Pending		New Cases		Total		In-Court Proceedings: Safety Measures Applied		In-Court Proceedings: Safety Measures Dismissed		Total Disposal		Pending	
	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
1.Relegation	—	—	5	5	5	5	—	—	5	5	5	5	—	—
2.Prohibition to Enter a Specified Area	2	2	1	1	3	3	2	2	1	1	3	3	—	—
3.Execution of a Bond With Security	—	—	117	152	117	152	51	68	66	84	117	152	—	—
4.Restraint in an Institution for Treatment	—	—	324	329	324	329	224	222	100	107	324	329	—	—
5.Prohibition from Taking Alcohol or Narcotic Drugs	115	120	1,487	1,517	1,602	1,637	636	653	892	907	1,528	1,560	74	77
6.Prohibition to Exercise Certain Occupations	5	5	59	59	64	64	59	59	—	—	59	59	5	5
Total	**122**	**127**	**1,993**	**2,063**	**2,115**	**2,190**	**972**	**1004**	**1,064**	**1,104**	**2,036**	**2,108**	**79**	**82**

Note: Statistics collected during fiscal year (October-September).
Source: Office of the Attorney General.

APPENDIX G

JUDGMENTS OF COURTS OF FIRST INSTANCE DURING 1991-1996

Year	Conviction	Percentage	Acquittal	Percentage	Withdrawal	Percentage	Others	Percentage	Total	Percentage
1991	364,467	97.87	3,678	0.99	—	—	4,269	1.14	372,415	100
1992	363,736	98.10	2,947	0.80	—	—	4,088	1.10	370,771	100
1993	381,901	98.24	3,306	0.85	—	—	3,552	0.91	388,759	100
1994	428,667	98.41	3,076	0.71	13	0.003	3,836	0.88	435,592	100
1995	457,535	98.27	3,479	0.75	114	0.02	4,460	0.96	465,588	100
1996	479,257	98.40	3,398	0.70	75	0.02	4,322	0.89	487,052	100

Source: Office of the Attorney General.

APPENDIX H

OFFENDERS CONVICTED IN 1996

Convicted	Persons	Percentage
Sentence to Death	43	0.01
Life Imprisonment	235	0.03
Imprisonment Exceeding 10 years	1,933	0.26
Imprisonment Not Exceeding 10 years	7,359	1.00
Imprisonment Not Exceeding 3 years	31,831	4.30
Imprisonment Not Exceeding 6 months	50,602	6.84
Punishment Suspended	273,544	36.99
Fine Only	347,947	47.06
Other Punishment	25,926	3.51
Total	**739,420**	**100**

Source: Office of the Attorney General.

APPENDIX I

OFFENDERS CONVICTED BY COURTS OF FIRST INSTANCE, CLASSIFIED BY AGE, DURING 1994-1995

Age	1994	1995
Over 7-14 Years	6,524	9,493
Over 14-Under 18 Years	41,386	45,765
18-20 Years	110,026	111,488
Over 20-35 Years	301,717	318,534
Over 35-55 Years	189,463	194,621
Over 55 Years	56,042	54,120
Total	**705,158**	**734,021**

Source: Office of the Attorney General.

APPENDIX J-1

LIST OF CRIMINAL CASES SUBMITTED TO THE COURT OF APPEAL

Appellants	Last Pending Cases	New Cases Cases	Total Cases	Accomplishment				Total Disposal Cases	Pending Cases
				Convicted Cases	Acquitted Cases	Withdrawn Cases	Others Cases		
Public Prosecutors	73,292	6,742	80,034	2,721	2,957	10	158	5,846	74,188
Defendants and Others	70,315	6,405	76,720	3,091	1,527	62	155	4,835	71,885
Total	**143,607**	**13,147**	**156,754**	**5,812**	**4,484**	**72**	**313**	**10,681**	**146,073**

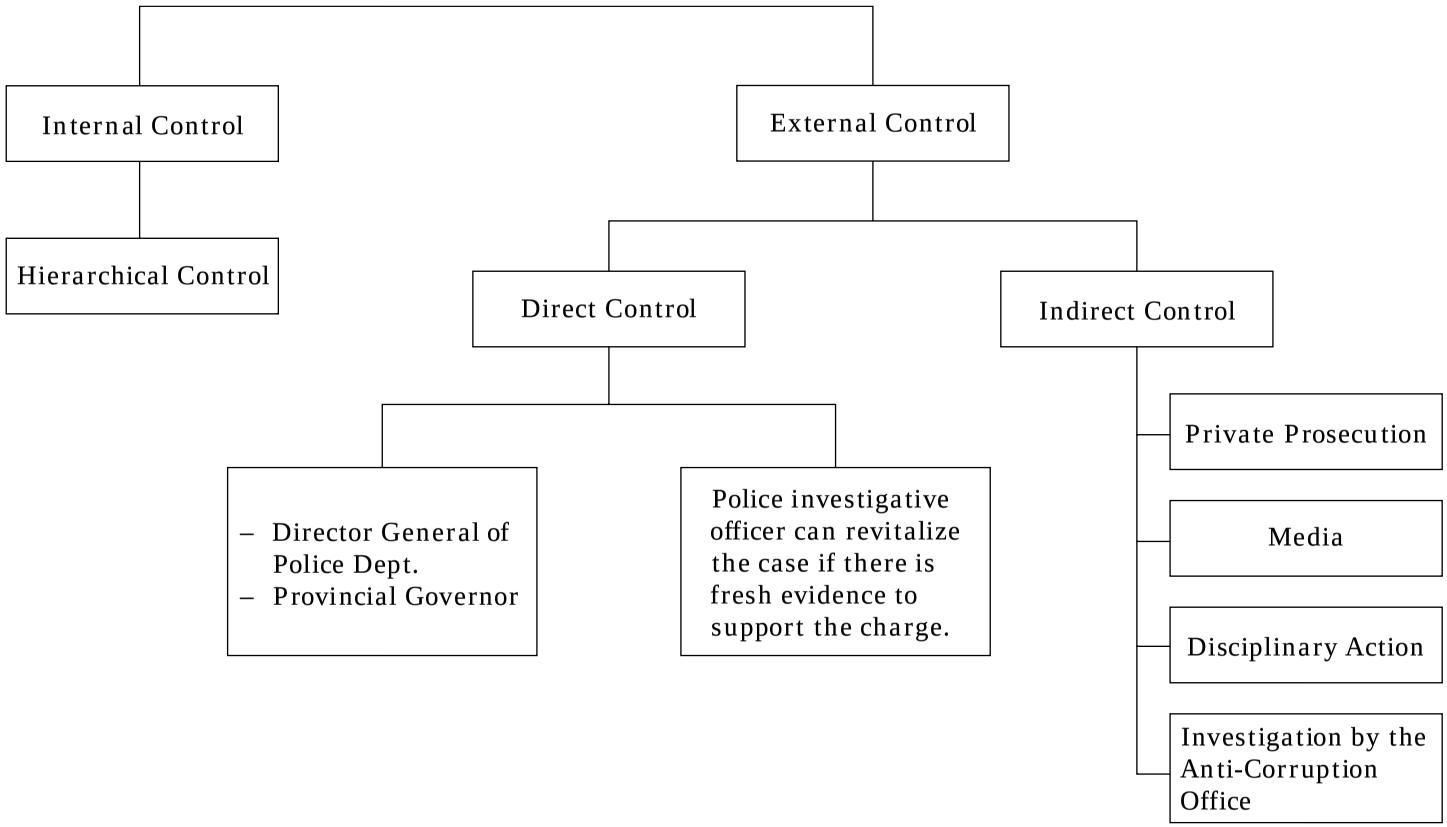
APPENDIX J-2

LIST OF CRIMINAL CASES SUBMITTED TO THE SUPREME COURT

Appellants	Last Pending Cases	New Cases Cases	Total Cases	Accomplishment				Total Disposal Cases	Pending Cases
				Convicted Cases	Acquitted Cases	Withdrawn Cases	Others Cases		
Public Prosecutors	19,203	1,426	2,490	557	578	13	22	1,170	19,459
Defendants and Others	17,642	1,351	2,701	608	398	42	62	1,110	17,883
Total	**36,845**	**2,777**	**5,191**	**1,165**	**976**	**55**	**84**	**2,280**	**37,342**

APPENDIX K

CONTROLS OVER PUBLIC PROSECUTORS



APPENDIX L

DISPOSITION OF CASES