

PUBLIC PROSECUTORS IN THE CHANGING SOCIETY

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I. INTRODUCTION

We are in a changing world, with the advent of the 21st century only a year ahead. The new era will witness many substantial changes which have already been experienced by the passing decade. Apart from some scientific and technological complexities, such as the problems of Y2K and environmental protection, to cope effectively with the rising rate of modern crime is another challenge to be addressed by the changing society. The advance of technology and communications between countries during the 20th century not only introduced development in terms of expanding commerce, cultural exchange, and other cooperation, but also brought with it some negative results such as the rising of crime, which has become more complex both in the form and mode of commission.

Under the free trade liberalization of the current society, competition seems to be unmerciful and inevitable. For the loser of this contest, it means no employment, which in turn gives rise to an increase of property crime, as well as other related criminality. The economic crisis recently undergone by several countries in the Asian region, is more than an illustration in this regard. In Thailand alone, the rate of crime has been shockingly rising during this decade.

Technological advances, while bringing much progress to the world, have become an advantage for criminals in committing certain complex or innovative crimes. These are very difficult to prevent or

suppress, due to legal loopholes or inferior technology on the part of the law enforcement officials. Computer crime, economic crime, and crime related to financial institutions are included in this context.

Convenience in travelling abroad, perhaps by the expansion of the tourist industry and international business investment, not only provides more potential for transnational organized crime to be committed, but also allows the offender to flee conveniently from one jurisdiction to another. This, of course, directly affects domestic justice administration and calls for the strengthening of international cooperation.

Another phenomenon prevalent in the changing society of today is the worldwide recognition of human rights promotion and protection, which has also generated new concept towards the rights and obligations of people, and thereby gives rise to review and restructure of criminal justice in many countries.

Amidst the various changes of this transitional period, criminal justice will certainly be even more influenced in the future, since it is correlated to all factors of alteration. Many problems regarding criminal justice already exist under globalisation, either in the field of technical questions (such as legal loopholes in dealing with the complexity of the newly emerged crime) or in the administrative area (such as the determination of the new roles and direction of law enforcement officials). These are believed to continue at least into the early stages of the next century.

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As one component of law enforcement and criminal justice, the public prosecutor plays a crucial and active role in controlling and suppressing crime, both at the domestic and international level. Prosecution services, like other things, can not ignore the trend of the changing society. To encounter the phenomenon of challenges under the new dimension of crime and its steering, the public prosecutors have to reappraise and adjust their roles and direction to cope with the forthcoming situation. To this end, many changes in the prosecutorial service have already occurred in some countries, while in other countries the tendency of adjustment is becoming more and more apparent.

The public prosecution service in Thailand has been developed for more than a half millennium. The first restructuring of the Thai public prosecutor institution took place around a hundred years ago, and the most recent one occurred in 1993. Like its counterparts in many countries, Thai public prosecution has experienced many changes to date. Development of its role, function, and attitude regarding criminal justice and crime control usually responds to the dynamic changes of Thai society.

II. GENERAL OBSERVATIONS ON THE PUBLIC PROSECUTOR

A. Traditional Characteristics of the Public Prosecutor

Perhaps the most striking description of the public prosecutor is as Prince Sakolwannakorn Worawan, a famous Thai scholar, defined long ago in his lecture at Thammasart University:

“If the criminal proceeding is a play, then the public prosecutor is the hero because the accomplice of the case is completed by his part. In some countries, the public prosecutor takes an even more crucial role than the

judge. He is the one required by the law to shoulder the exercising of discretion as to proceed with the criminal case or to halt it. Prosecutorial function should, therefore, be discharged with a high spirit and great pride. Responsibility and prestige of the public prosecutor should be respected as no less crucial than that of the judge in terms of remuneration, dignity, and trust of integrity. Particularly in the jury system, whether the defendant will be guilty or not is up to the performance of the public prosecutor rather than the judiciary. Integrity of the public prosecutor is, therefore, more crucial than other elements.”

To view the public prosecutor as the hero of criminal proceeding is not an overestimation. The public prosecutor is a unique figure in criminal justice upon whom is the important task of acting as the principal representative of the State in criminal litigation. They are answerable to the success or failure of the case, from the outset until finalisation. In some countries, such as Korea, the public prosecutor is viewed as a quasi-judicial official¹, while in France s/he is even deemed as a judicial member (*magistrat de bout*)². The public prosecutor is the one who exercises quasi-judicial power at the initial stage to prosecute or release the suspect, and eventually to check the court's decision and appeal or uphold it. Discretion of the public prosecutor as to instituting or dropping criminal cases is recognized everywhere, and in any legal system, as exclusive and independent.

1. “Criminal Prosecution System in Korea”, Supreme Public Prosecutor's Office, p.32, printed in 1997.

2. David & de Vries, “The French Legal System (1938)”, p.21, as cited by Jitti Tingsabhat in “The Legal Profession”, Thammasart University, 1986, p.155.

In Thailand, the public prosecutor is a career-oriented official belonging to the Office of the Attorney General. After the restructuring of the former Public Prosecution Department into an independent public body known as the Office of the Attorney General in 1993, the public prosecutor is also called the State Attorney. According to the Public Prosecutor Act B.E. 2498(1955), the Criminal Procedure Code, and various legislation concerned, the Thai public prosecutor is regarded as the State Counsel or the Public Lawyer who represents the State in criminal proceeding to regulate criminality and give effect to its sanctions.¹

Significance of the public prosecutor is derived from their function and responsibility, which may take many forms. In addition to criminal justice steering, the public prosecutors in many countries are entrusted with keeping the public interest in civil matters, namely; to represent the State in civil and commercial litigation, as well as to give legal advice.

In the United States, the prosecuting attorney is also charged with some other functions, as Joan E. Jacoby pointed out:

“Although the general focus of the prosecuting attorney is on criminal case processings, he is not simply a criminal litigator. More and more the prosecutor has been assigned other duties by the legislature. Three out of four prosecutors have civil responsibility for representation of the county Board of Commissioners or for the local governing agency. The prosecutor’s

duties have been extended to include involvement in juvenile matters, in family and domestic relations court, in answering or responding to citizen complaints, in conducting non-support programs, in handling traffic, consumer, or environmental protection projects, and in pursuing appeals. Their interests and jurisdiction have been extended to cover a wider avenue of community problems.”²

In Thailand, the public prosecutor is also designated to review draft commercial contracts of the government agencies, as well as to revise or propose some new laws. The tendency of the Thai public prosecutor to participate more actively and directly than before, in other fields such as the protection and promotion of human rights, is also on the rise. Yet, as the chief legal official, the public prosecutor is normally regarded as the legal figure to fight against crime, to maintain peace and order, and to secure social justice and fairness.

In the technologically advanced and globalisation age of today, where international cooperation to combat transnational organized crime is urgently called for, it seems unavoidable for the public prosecutors to internationalize their roles and functions in all respects beyond that once traditionally practiced at the domestic level. This is also apparent with prosecutors in Thailand.

From general survey, it may be said that the traditional characterising of the public prosecutor is as a government official who is entrusted to institute prosecution in criminal cases. However, under dynamic changes in society, the public prosecutor may have been or will be designated to discharge other functions as well. This may set the public prosecutor on a new path of wider responsibility in the future.

1. “Thai State Attorney”, introductory document of the Thai State Attorney Museum, 1998, Office of the Attorney General.

2. “The American Prosecutor : A Search for Identity”, Lexington Books, 1980, p.xx.

B. Functions of the Public Prosecutor

Taking the model of Thailand as an example, the traditional functions of the public prosecutor are threefold. These functions are: (1) to provide criminal justice; (2) to protect public interest; and (3) to protect civil rights and provide legal aid.

1. To Provide Criminal Justice

The main objective of crime prevention and suppression is to bring the offender to justice. Bringing the offender to justice, in the broad sense, means to put them under investigation, prosecution, adjudication, punishment, correction, or rehabilitation. In other words, the suspect must be tested of their guilt or innocence by the process of criminal justice administration or the case proceeding. Once a person has been prosecuted, it means their freedom is limited. Prosecution is, therefore, a difficult task requiring high responsibility. The law and public entrust the public prosecutor to assume this function.

The prosecutorial function includes all processes related to the criminal proceeding, such as;

- (i) to review the evidence derived from investigation;
- (ii) to exercise discretion regarding the admissibility and adequacy of the evidence, as well as other reasons and appropriateness so as to institute prosecution or not to prosecute the suspect;
- (iii) to pursue the trial in the court;
- (iv) to adduce evidence and question witnesses; and
- (v) to review judgment of the court and appeal or drop the case.

As for the investigation, in Korea, Japan, and the United States, the public prosecutor is entitled to conduct

investigation either in cooperation with the police or on their own initiative. In Thailand, this is not currently practiced. According to the Criminal Procedure Code, the investigation is conducted by the investigation officials; commonly, senior police and some high-ranking administrative officials. The only public prosecutor vested with the investigation powers in regard to criminal cases which have been committed outside the territory of Thailand is the Attorney General or the Acting Attorney General. However, the separation of the prosecution process from the initial stage of fact finding or investigation has become an impediment to the effective proceeding of some complicated cases. In particular, with new dimensions of criminality, alteration in investigation process is now apparent. Participation of the public prosecutor at the initial stage of investigation has been mentioned during the drafting of the new Criminal Procedure Code, which is now under consideration of the drafting committee.

Apart from conducting prosecution on behalf of the State, the public prosecutor may also take charge as the defending attorney for an official who has been prosecuted by a private individual in connection with the performance of their duty. This Thai public prosecutor is required by the Public Prosecutor Act B.E.2498 to defend the government official in criminal cases instituted by private individuals, however, it is the sole discretion of the public prosecutor to take action or not.

2. To Keep the Public Interest

In many countries, the idea of using public prosecutors for purposes beyond the scope of criminal proceedings may be uncommon. Yet in some countries, like the United States and Thailand, the public prosecutor is also entrusted to assume

responsibility of protecting the interests of society. As regards this function, the public prosecutor performs their work in three ways:

- (i) By representing the government agencies, state enterprises and some specific public entities in civil and commercial litigation of all kinds, as the state lawyer;
- (ii) By reviewing draft contracts to be entered between government agencies, state enterprises or some specific public entities on the one hand and the private sector on the other;
- (iii) By giving legal views, rendering advice and performing other duties as the legal consultant for the government, state enterprises and some other public entities in accordance with the law.

3. To Protect Civil Rights and Provide Legal Aid

Generally speaking, the public prosecutor in any system has responsibility to protect the public in terms of crime control and criminal proceedings. Under the changing society of today, he or she may be warranted to go far beyond this responsibility. In Thailand, for instance, the public prosecutor also directly participates in the protection of civil rights and providing legal aid. This function was initiated around 16 years ago. At that time, there was a dramatically high rate of litigation where poor people, in particular the farmers, had fallen victim to fraud by some more powerful merchants (who snatched the opportunity of legal illiteracy and incapability to afford lawyers on the part of the poor, to cheat them). Realizing its responsibility to keep social peace and fairness, the then Public Prosecution Department launched a project to rectify the situation. Three categories of services were rendered, namely:

- (i) Dissemination of legal knowledge to the public in order to make them aware of their rights and duties, and to decrease

the possibility of disadvantage due to legal blindness;

- (ii) Giving legal advice to the poor free of charge;
- (iii) Providing legal aid to the poor and needy people who have no capacity to afford their own lawyers in litigation, free of charge.

III. PHENOMENON OF THE CHANGING SOCIETY

Change in society is not a new phenomenon. In fact, it occurs and develops at all times. Since criminal justice, in particular the role of the public prosecutor, is influenced by the changing society, it is appropriate to overview this phenomenon as a general background to better understand developments in the public prosecution service. Perhaps an incident that took place in Thailand some time ago might be a good illustration in this regard.

Thailand was influenced by Western culture, which brought in many rudimentary changes in the society for the first time, during the colonization age. Although saved from being colonized, Thailand had to give away many parts of her territory as well as to conclude unfair agreements with various European countries to establish "Extra Territoriality"; the practice whereby the Thai court had no power to try the subjects of foreign countries who committed crimes within the territory of Thailand. Consequently, many aspects of Thai tradition, in particular justice administration, were reformed and modernized to cope with the western requirements in order to prevent accusations of "unsatisfied standard" by the western nations. In this regard, the former practice of the public prosecution service in Thailand was restructured and systematized to establish the Public Prosecution Department for the first time

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during the reign of King Chulalongkorn in 1893.

During these decades, drastic changes in society again occurred. With the arrival of globalisation, the transfer of technology, movement of information, and communications between people, new influences were brought from abroad. This is, of course, the main factor that forces nations to adjust themselves in compliance with the global situation. For those who can keep pace with the sweep of changes, it means development and more benefit; yet for those who can not, it means being left behind and getting hurt. Keeping pace with change may be accessed by different avenues and styles, depending on national assessment and the decision of particular countries; the outcome of which may be the pros and cons. However, the undeniable truth in this regard is that countries can no longer ignore the phenomenon of the changing world and society.

Therefore, under the contemporary period, all states have no other option but learn how to adjust their national policy and practice to conform to the influx of changes as best as possible. Experiences from the past may be understood as good lessons, however this is not totally true, even there might be some truthfulness behind this presumption. The policy to promote a more open and freer society, although appearing to deteriorate the vitality of the economic and financial systems of many developing countries, has somehow encouraged the public to be aware of their rights and positive values, such as the maintenance of democracy and the significance of international cooperation. Despite the recent economic retreat, the promising tendency towards political reform is still bright. In Thailand, for instance, the passage of the new Constitution in October 1998 has induced many developments regarding the

administration of justice, which in turn related to the prosecution service. Beside indirectly setting the grounds for public prosecutors to reassess their roles, the Constitution also imposes upon them more responsibility to guarantee the rights and freedom of the people and to take part in the process of review of the integrity of politicians and high-ranking officials.

With regard to the role and function of the public prosecutor in the context of the changing society, there are many topics of particular interest. However, this paper will limit its scope to the following:

- (i) Public prosecutors and their increasing role in the protection of human rights;
- (ii) Public prosecutors and a new role regarding suppression of corruption;
- (iii) Public prosecutors and international cooperation.

IV. PUBLIC PROSECUTORS AND THEIR INCREASING ROLE IN THE PROTECTION OF HUMAN RIGHTS

It is no doubt that in the daily handling of criminal cases, the public prosecutor is required by the law, as well as their inherent realization, to regard the fundamental rights of every party concerned. The requirement for the public prosecutor to protect human rights is either clearly enshrined or indirectly implied in various provisions of the Criminal Procedure Law and other related legislation. In most countries, the fundamental human rights of the suspect and the accused is recognized by their constitutions. Under the changing society of today, the current constitutions of various countries not only confirm such recognition, but also stresses it as the cornerstone for the development of criminal justice. In Thailand, provisions regarding the recognition of human dignity, equality under the law, prohibition of discrimination, protection of life, body,

liberty and encouragement of freedom, are clearly spelled out in Chapter 3 of the present Thai constitution. Essentially, the Human Rights Commission is required by the Constitution to be established within two years. The necessity and profitability of having the public prosecutor in the protection and promotion of human rights has been increasingly recognized. The changing trend that places the public prosecutor in closer and greater involvement in this regard may be illustrated from the recent phenomena in Thailand.

A. Protection of Civil Rights

With regard to the protection of the civil rights of an individual in general, and the victims of the crime in particular, the provisions concerned are as follows:

- (i) Section 31 of the current constitution clearly provides in the first paragraph that:

“A person shall have the right and liberty in his or her life and person...A torture, brutal act, or punishment by cruel or inhumane means shall not be permitted; provided, however, that punishment by death penalty as provided by law shall not be deemed punishment by cruel or inhumane means under this paragraph. No arrest, detention or search of person or any acts affecting the right and liberty under paragraph one shall be made except by virtue of the law.”

- (ii) Section 34 provides that:

“A person’s family rights, dignity, reputation or the right of privacy shall be protected. The assertion or circulation of a statement or picture, in any manner whatsoever to the public, which violates or affects a person’s family rights, dignity, reputation or the right of privacy, shall not be made except for the case which

is beneficial to the public.”

- (iii) Section 35 provides that:

“A person shall enjoy the liberty of dwelling. A person is protected for his or her peaceful habitation and for possession of his or her dwelling place. The entry into a dwelling place without consent of its possessor or the search thereof shall not be made except for the case which is beneficial to the public.”

These provisions have been operated by the Penal Code, which embraces in its content similar provisions, but together with the imposition of penalty for those who violate them. Upon these provisions, whenever the right of any person is violated in one way or another, an offence is said to have been committed, and to institute a criminal case against the offender by the public prosecutor is somehow considered as the discharge of the function to protect the human rights of the victim.

B. Protection of the Rights of Suspects and the Accused

As for the suspect and the accused, various rights are recognized by the provisions of the constitution, as follows:

- (i) The right not to be arrested without judicial warrant in accordance with Section 237, which provides that “In a criminal case, no arrest and detention of a person may be made except where an order or a warrant of the Court is obtained, or where such person commits a flagrant offence, or where there is such other necessity for an arrest without warrant as provided by law. The arrested person shall, without delay, be notified of the charge and details of such arrest, and shall be given an opportunity to inform, at the earliest convenience, his or her relative, or the person of his or her confidence, of the arrest. The arrested person

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being kept in custody shall be sent to the court within forty eight hours from the time of his or her arrival at the office of the inquiry official, in order for the court to consider whether there is a reasonable ground under the law for the detention of the arrested person or not, except for the case of *force majeure* or any other unavoidable necessity as provided by law.”;

- (ii) The right to be released on bail in accordance with Section 239 which provides that “An application for bail of the alleged offender or the accused in a criminal case must be accepted for consideration without delay, and an excessive bail shall not be demanded. The refusal of bail must be based upon the grounds specifically provided by law, and the alleged offender or the accused must be informed of such grounds without delay... The right to appeal against the refusal of bail is protected as provided by law... A person being kept in custody, detained or imprisoned has the right to see and consult his or her advocate in private and receive a visit as may be appropriate.”;
- (iii) The right not to be subjected to arbitrary detention in accordance with Section 240 which provides that “In the case of the detention of a person in a criminal case or any other case, the detainee, the public prosecutor or other person acting in the interest of the detainee has the right to lodge with the court having criminal jurisdiction a complaint that the detention is unlawful. Upon receipt of such complaint, the court shall conduct forthwith an *ex parte* examination. If, in the opinion of the court, the complaint presents a

prima facie case, the court shall have the power to order the person responsible for the detention to produce the detainee promptly before the court, and if the person responsible for the detention can not satisfy the court that the detention is lawful, the court shall order an immediate release of the detainee.”;

- (iv) The right to speedy investigation and trial under Section 241 which provides that “In criminal cases, an alleged offender or an accused has the right to a speedy, continuous and fair inquiry or trial... At the inquiry stage, an alleged offender has the right to have his or her advocate or person of his or her confidence attend and listen to interrogations against such person... An injured person or an accused in a criminal case has the right to inspect or require a copy of his statements made during the inquiry, or documents pertaining thereto when the public prosecutor issues a final non-prosecution order, an injured person, an accused or an interested person has the right to know a summary of the evidence, together with the opinion of the inquiry official and the public prosecutor, with respect to the making of the order for the case, as provided by law.”;
- (v) The right to access to legal aid under Section 242 which provides that “In a criminal case, an alleged offender or an accused has the right to receive aid from the State by providing an advocate without delay. In a civil case, a person has the right to receive a legal aid from the State, as provided by law.”;
- (vi) The right not to give statements or testify against themselves under

Section 243 which provides that “A person has the right not to make a statement incriminating himself or herself which may result in criminal prosecution being taken against him or her. Any statement of a person obtained from inducement, a promise, threat, deceit, torture, physical force, or any other unlawful act shall be inadmissible in evidence.”;

- (vii) The right to be presumed innocent according to Section 33 which provides that “An alleged offender or an accused in a criminal case shall be presumed innocent... Before the passing of a final judgment convicting a person of having committed an offence, such persons shall not be treated as convicts.”
- (viii) The right to apply for review of the case after conviction and to be compensated in the case of misleading adjudication pursuant to Section 247 which provides that “In the case where any person was inflicted with a criminal punishment by final judgment, such person, an interested person, or the public prosecutor may submit a motion for review of the case. If it appears in the judgment of the court reviewing the case that he or she did not commit the offence, such persons or their heir shall be entitled to appropriate compensation, expenses and the recovery of any right lost by virtue of the judgement, upon the conditions and in the manner provided by law.”

Upon recognition of those rights of the suspect and the accused, various provisions of the Criminal Procedure Code are grounded in correspondance to the Constitution. It is remarked also that the

new Constitution has emphasized even more strongly the rights and liberty of the suspect who might have been abusively arrested and detained by the police. The Constitution puts an end to the authority of the senior administrative or police officer in arresting any suspect without a judicial arrest warrant formerly permitted by the Criminal Procedure Code. It requires future arrests to be conducted under the warrant of the court, which is issued upon the application of the public prosecutor. This means that the public prosecutor, from now on, will take part more directly in checking the reasonableness of the grounds to apply for the judicial warrant.

In the case of abusive detention, where the Constitution has slightly changed the principle under Section 90 of the Criminal Procedure Code, the public prosecutor is required by law to inspect and apply to the court for the release of the victim of the abuse. Far beyond the provisions of the Criminal Procedure Code, the Constitution guarantees non-conviction for the innocent through review of the case after a final judgment inflicting penalty upon the accused, and to compensate the injured if there is such misleading judgment. In this regard, the public prosecutor is designated by the Constitution to be the public authority to initiate the process by submitting a motion to the court. This, of course, is a new dimension to the role of the public prosecutors, to cope with the rising trend of stressing fundamental human rights protection.

C. Participation in the Drafting of Human Rights Protection Laws

Apart from developments in daily practice regarding the fundamental rights of individuals, as well as those directly concerned in criminal case proceedings, the recent Government’s designation of the Attorney General to chair the Drafting Committee for the “Act on the Promotion

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and Protection of Human Rights”, and the Office of the Attorney General to facilitate the drafting process, is another example of the increasing role of the public prosecutor regarding human rights in modern society.

**V. PUBLIC PROSECUTORS AND
THE SUPPRESSION OF
CORRUPTION**

Experience from the past always tell us about the tragedy of developing countries as regards the adjustment of their economic settings to cope with the contemporary world. Disintegration of the social structures of these countries, mostly from agricultural to industrial or commercial, usually results in the unfair distribution of wealth and eventually encourages an extreme materialism preference, instead of ethnic or religious. Consequently, the practice of corruption, in particular by politicians and high-ranking officials, has become fashion and has undoubtedly undermined the stability and progress of the community. In this globalisation age, the problem of corruption has spread all over the world and become an issue of common concern in the international community. Yet, the question still awaiting answer is in what way and how the public prosecutor can contribute in tackling this social disease. In this context, again, perhaps the recent efforts of Thailand in the campaign against corruption may be a good example.

Like other developing countries, Thailand has for long been weakened by the practice of corruption among politicians and some high-ranking officials. For each year, the national interests have been cheated far beyond estimation. It is very difficult to detect the crime or trace misappropriated property because corrupt

criminals are very shrewd and never leave any clues. Just recently, research on “Corruption and Democracy in Thailand”, conducted by the Faculty of Economic Study of Chulalongkorn University³, revealed that corruption in the Thai bureaucracy includes four aspects, namely: (1)Syndicate corruption; (2)Procurement kickbacks; (3)Bribery for monopoly transactions; (4)Corruption related to bidding. The key factor of corruption, according to the research, is the lack of “good governance” and integrity upon which the line between the personal and public interest is drawn. One suggestion made by the research is to install effective “integrity tests” for politicians and high-ranking bureaucrats.

In this regard, the former Counter Corruption Board, a body set up under the Prime Minister Office to examine and forfeit unclearly obtained assets of high-ranking officials alleged of being unusually rich, can do little of its job due to its limited authority and independence. With the rising awareness of the public regard to their rights, the need to check and review the integrity of politicians and high-ranking officials has been responded to by the new Constitution. The Counter Corruption Board has been restructured and changed to the National Counter Corruption Commission, an autonomous public body with more power and independence by virtue of Section 297, Section 301, and Section 302. In addition, a specific means to control the integrity and ethics of politicians has been established by virtue of Section 308 which provides that:

“In the case where the Prime Minister, a minister, member of the House of Representatives, senator or other political official has been accused of becoming unusually wealthy, or of the commission of malfeasance in office according to the Penal

3. Pasuk Ponpaichit, “Resolution of Corruption in the Thai Bureaucracy”, Thai Post newspaper, 15 December, 1998.

Code, or malfeasance in duties, or corruption according to other laws, the Supreme Court's Criminal Division for Persons Holding Political Positions shall have the competent jurisdiction to try and adjudicate the case... The provision of paragraph one shall apply to the case where the said person or other person is a principal, an instigator or a supporter.”

To put these provisions into effect, again, the public prosecutor is designated to take part. Section 305 clearly mentions this in paragraph 4 and paragraph 5 as follows:

“If the National Counter Corruption Commission passes a resolution that the accusation has a *prima facie* case, the holder of the position against whom the accusation has been made shall not, as from the date of such resolution, perform his or her duties until the Senate has passed its resolution. The President of the National Counter Corruption Commission shall submit the report, existing documents and its opinion to the Attorney General for instituting prosecution in the Supreme Court's Criminal Division for Persons Holding Political Positions. If the National Counter Corruption Commission is of the opinion that the accusation has no *prima facie* case, such accusation shall lapse... In the case where the Attorney General is of the opinion that the report, documents and opinion submitted by the National Counter Corruption Commission, under paragraph 4, are not so complete as to institute prosecution, the Attorney General shall notify the National Counter Corruption Commission for further proceedings and, for this purpose, the incomplete items shall be specified on the same occasion. In such case, the National Counter Corruption Commission and the Attorney General shall appoint a working committee, consisting of their representatives in an equal number, for collecting complete evidence and submit it to the Attorney

General for further prosecution. In the case where the working committee is unable to reach a decision as to prosecution, the National Counter Corruption Commission shall have power to prosecute by itself or appoint a lawyer to prosecute on its behalf.”

To institute prosecution of a criminal case and to handle it may be considered as the traditional function of the public prosecutor. However, to institute a criminal case against a corrupt politician under an exclusive machinery and process is somehow viewed as recent. The role and responsibility of the Thai public prosecutor has extended to cover functions as a public body to participate in the checking and review of politician's ethics and integrity.

VI. PUBLIC PROSECUTORS AND INTERNATIONAL COOPERATION

The necessity of states to render assistance to foreign nations in the prevention and suppression of crime was attested long ago. Today, when crime has become an excessively complicated transaction, committed by transnational criminal organizations, international cooperation between and among countries to regulate world peace and order seems to be even more significant.

In a broad sense, international cooperation means all assistance regarding the criminal proceedings one state provides to an other state upon request. Assistance may take many forms, such as collecting evidence, providing documents, taking statements of persons, testimony of witnesses, initiating criminal cases, and forfeiting properties, etc. It also includes extraditing a fugitive to a foreign country for prosecution, trial, conviction, or to serve punishment. International cooperation has been viewed as conforming to the era of change, as it includes technical cooperation between or among states either on the

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bilateral or multilateral basis. At the level of the United Nations, the effort to encourage international cooperation has culminated in the form of various international instruments such as the UN Model Treaty on Extradition, UN Model Treaty on Mutual Assistance in Criminal Matters, UN Model Treaty on the Transfer of Proceedings in Criminal Matters, etc. In spite of the non-mandatory character at present, all international guidelines form a good basis for member states of the United Nations to make their laws conform to the model. This may give clear light on the changing norms and standards in domestic practice regarding international cooperation in the future.

In Thailand, international cooperation is conducted in two directions; one through mutual assistance in criminal matters, the other through extradition. In both directions, the public prosecutor takes very broad roles and responsibility. Of course, the role played by the Thai public prosecutor is more or less similar to that of their counterparts in many countries. Observation of the development in function and responsibility of the Thai public prosecutor in the area of international cooperation is, therefore, deemed a good illustration in this regard.

A. Mutual Assistance in Criminal Matters

The main legislation concerning mutual assistance in criminal matters in Thailand is the Act on Mutual Assistance in Criminal Matters B.E.2535(1992). Those parts not covered by the Act are governed by the Criminal Procedure Code. According to Section 6 of the Act, the Attorney General or the person designated by him is the "Central Authority" who, by virtue of Section 7, is charged with the following functions:

- (i) To receive the request for assistance from the requesting state and transmit it to the Competent Authorities;
- (ii) To receive the request seeking assistance presented by the agency of the Royal Thai Government and deliver it to the requested state;
- (iii) To consider and determine whether to provide or seek assistance;
- (iv) To follow and expedite the performance of the Competent Authorities in providing assistance to a foreign state for the purpose of expeditious conclusion;
- (v) To issue regulations or announcement for the implementation of this Act;
- (vi) To carry out other acts necessary for the success of providing or seeking assistance under the Act.

The request for assistance from the country having a mutual assistance treaty with Thailand shall be submitted directly to the Central Authority, while the request from those who have no treaty shall be submitted through diplomatic channels. Affirmation of reciprocity is the prerequisite for execution of the request from non-treaty requesting states. All requests are reviewed and executed by the Central Authority, empowered to exercise discretion to refuse execution of requests which are ineligible.

In practice, the public prosecutors of the International Affairs Department, Office of the Attorney General, are the task force for the Central Authority in this regard. The increase in number of the requests from abroad, as well as the complexity of legal issues, is a time consuming factor which renders problems to the whole process in general, and to the public prosecutor (as the practitioner) in particular. This is related, of course, to the question of manpower and technical arrangements the public prosecutor has to cope with.

B. Extradition

Extradition in Thailand is conducted on a dual basis, that is to comply with the Extradition Act B.E. 2472, as well as the provisions of the treaty. Unlike those treaty prerequisite countries, Thailand has no difficulty in surrenderring the fugitive upon request from the requesting state which has no treaty with Thailand. However, in the case of no treaty, an official confirmation of reciprocity is required. Execution of extradition requests from foreign countries are also subject to general requirements such as non-contradiction of the principle of “dual criminality”, “*non bis in idem* (double jeopardy)”, “rules of speciality”, and so forth.

The role and function of the public prosecutor in extradition is clearly envisaged. According to Section 141 of the Criminal Procedure Code, the public prosecutor is charged with the duty to request extradition from a foreign country where the offender fled abroad. As regards extradition requests from foreign countries, the Extradition Act B.E. 2472 provides it is the responsibility of the public prosecutor to litigate extradition cases in the court. Although the final decision whether to extradite the fugitive or not belongs to the government, which in practice means the Cabinet, the public prosecutor exercises discretionary power on behalf of the State, including the government, for technical matters, while the Ministry of Foreign Affairs deals with foreign relations policy.

Various problems connected to extradition have emerged. Awareness of the necessity to cooperate with each other in the suppression of the fast-growing transnational organized crime has induced states to endeavor to eradicate all barriers in extradition between countries, in particular those arising from discrepancy between legal systems, a serious problem until now. To harmonize diversity,

attempts have been made on several occasions either at the global or regional level by international organizations, associations and NGOs. The adoption of the United Nations Model Treaty on Extradition in 1990, as the uniform guidelines to facilitate conclusion of extradition treaties between states, is an explicit illustration of these efforts. It is expected therefore that in the future, extradition, in responding to the changing society, will be more convenient than now.

In Thailand, perhaps the most conspicuous response in regard to extradition is the overhaul of the Extradition Act B.E. 2472. The Act has been in use for nearly 70 years since its passage in 1929, thus it could not cope with modern concepts and new forms of problems, and eventually required revision. So far, the new Act is under drafting by the Drafting Commission appointed by the Cabinet and chaired by the Attorney General. The new extradition law is expected to be capable of answering various questions arising from uncertainty in practice among the authorities concerned, such as those related to political offences, extradition of Thai nationals, capital punishment, *prima facie* cases, simplified procedure, etc.

One of the new concepts which directly involves the role of the public prosecutor is the trend to establish a “Central Authority for Extradition”. Presently, extradition in Thailand is commonly handled by various authorities, namely, the Ministry of Foreign Affairs, the Ministry of Interior, the Office of National Police, the Office of the Attorney General, and the court. This often brings some difficulty in terms of delay, inconvenience, disharmony of interpretation and different practices among the authorities concerned. The introduction of a “Central Authority” is therefore, based on the need to settle these

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problems. According to the new draft of the "Extradition Act", the Attorney General is proposed to be the "Central Authority", which means that the role and function of the public prosecutor in extradition will be more concentrated in the future.

ignoring the tendency of change. Adjustment of the prosecution service for the effective control of crime is expected to be established and continued in the forthcoming century.

VII. CONCLUSION

Upon general survey of the current situation, it is undeniable that the world is undergoing a great change in all aspects. Globalisation has brought with it positive and negative results in terms of development. For many countries, the influx of modern concepts and new forms of economic settings has become the cause of an increasing rate of both traditional and innovative crimes. Advancement of technology has been exploited often by criminals to commit complex or high-tech crime. The effect of these crimes is even more serious when committed across borders, becoming transnational in character.

To cope with these circumstances, criminal justice administration must be reviewed and adjusted to conform to the trend of change in society nowadays. This, of course, includes the role and function of the public prosecutor.

Traditionally, the public prosecutor is deemed as a state official who renders prosecutorial functions, i.e, to prosecute the offender or to drop the criminal case. The future public prosecutor may be set on a new direction, i.e more responsible for a wider scope of function such as checking and investigating the integrity of politicians and high-ranking officials (against corruption), protecting human rights, and encouraging international cooperation, etc.

One thing for sure is that under the changing society of today, no public prosecutor of any country can stand alone