

## Chapter 4: Personnel in the Machinery of Justice

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## **Chapter 4**

### **Personnel in the Machinery of Justice**

#### **1. Judge**

In this part, the types of judges will be illustrated in details and followed by the performance of duties, securities of judge and the Judicial Service Commission.

##### **1.1 Types of Judge**

There are four types of judge in the current system, namely, a career judge, senior judge, associate judge, and Datoh Justice.

###### **1.1.1 Career Judge**

The general qualifications of persons eligible for Judge-trainee are as follows:

1. being of Thai nationality;
2. being not lower than twenty five years of age;
3. upholding the democratic regime according to the constitution with good faith;
4. being the ordinary member of Thai Bar Association;
5. not having ignominious or immoral conduct;
6. not being insolvent;
7. not being in the period of suspension of official service or temporary resignation;
8. not having been expelled, dismissed or removed from the official service, state agency or state enterprise;
9. not being imprisoned by a final judgement except for an offence committed through negligence or a petty offence;

10. not being incompetent or quasi-incompetent person or a person of unsound mind or mental disorder or having body or mental which is inappropriate to be a judge or having disease prescribed by the regulation of the Judicial Service Commission;
11. passing the physical and mental examination by the committee of doctor, consisting not less than three doctors, and the report of such committee approved by the Judicial Service Commission.

There are three methods to choose a judge-trainee. Each method requires the different qualifications of candidate.

The first method is an open examination, and the candidate will have the following qualifications:

1. having LL.B., or having law degree or certificate from foreign country, not lower than Bachelor's degree;
2. passing the examination of the institute of Thai Bar Association;
3. having not less than two years experience in legal professions, namely, registrar, deputy registrar, official receiver, executing officer, probation officer, public prosecutor, officer of the Judge Advocate General Department, attorney.

The second method is called a knowledge test, the candidate will have the following qualifications:

1. passing the examination of the institute of Thai Bar Association;
2. having one of following qualifications:
  - 2.1 having law degree or certificate from foreign country, with a curriculum being not less than three years, not lower than Bachelor's degree, or having Ph.D. in the field of laws from Thai university;
  - 2.2 having law degree or certificate from foreign country , with a curriculum being not less than two years or combined curricula being not less than two years, not lower than Bachelor's degree, and having not less than one year experience in legal professions;
  - 2.3 having LL.M. from Thai university and having not less than one year experience in legal professions;
  - 2.4 having LL.B. with honors and being a lecturer in law in the

public university for not less than five years;

2.5 having LL.B., being the official of the office of the Courts of Justice in the field of laws not less than six years and having a good conduct approved by the Secretary-General of the Office of the Courts of Justice;

2.6 having master degree or Ph.D. in the field prescribed by the Judicial Service Commission, having LL.B., and having not less than three years experience in legal professions or professions prescribed by the Judicial Service Commission;

2.7 having bachelor degree or its equivalent in the field prescribed by the Judicial Service Commission, having not less than ten year experience until being expert in such professions prescribed by the Judicial Service Commission, and having LL.B.

The third method is a newly special selection, the candidate will have the following qualifications

1. having one of following qualifications
  - 1.1 being or having, in the past, been Professor or Deputy Professor in the public university;
  - 1.2 being or having, in the past, been a lecturer in law in the public university for not less than five years;
  - 1.3 being or having, in the past, been government official not lower than director or its equivalent;
  - 1.4 being or having, in the past, been attorney for not less than ten years.
2. passing the examination of the institute of Thai Bar Association;
3. having excellent knowledge and experience in the field of law prescribed by the Judicial Service Commission;
4. being honest, and having appropriate personality, conduct and opinion for performing duties as the judicial official.

Once the candidates are recruited, they have to be trained as judge-trainees at least one year. After completion of training, and results of training are satisfied, the judge-trainees will be approved by the Judicial Service Commission and tendered to the

King for royal appointment to be a judge attach to the court. Furthermore, the trial and adjudication of cases are performances in the name of the King; thus, before taking office as a judge, they have to make a solemn declaration before the King.

In the current system, there are five levels of position of justice, excluding judge-trainee, it is ranged from the judge attached to the court, the first level, to the President of the Supreme Court, the fifth level. The promotion to upper position is provided by law and under the consideration of the Judicial Service Commission.

In regarding to a removal of Judge, the following matters make a judge vacated from the office:

1. death;
2. resignation;
3. vacation from the office under the law on government pension fund;
4. transfer to serve in a position of government official, not judicial position;
5. resignation for being in military service;
6. being instructed to resign
7. being expelled, dismissed, or removed from the office;
8. the Senate passing a resolution for the removal from office.

The last is resulted from the constitution which provides that member of the House of Representatives of not less than one fourth of the total member of the existing members of the House, or voter of not less than fifty thousand in number has right to request the senate to pass a resolution removing judge from office. The ground of removing is that judge is under the circumstance of unusual wealthiness or under circumstance indicative of the commission of corruption, malfeasance in judicial office or an intentional exercise of power contrary to the provision of the constitution or law.

### **1.1.2 Senior Judge**

According to the Rules of appointing and holding senior judge position Act, B.E. 2542 (1999), where judges are of sixty years of age, they remain in office to perform duties, but merely, in the Courts of First Instance, provided that they are approved by the Judicial Service Commission and they are tendered to the King for royal appointment. When they become sixty five years old, and pass the assessment of performance fitness, they are able to be senior judges until they will be seventy years of age.

A senior Judge cannot be appointed to hold an administrative position; namely, a Chief Justice, or even to perform duties in place of such person. Furthermore, the senior judge is prohibited not only from being elected to be a member of the Judicial Service Commission, but also to vote for a member of such commission.

### **1.1.3 Associate Judge**

Associate Judges are layman and selected by the Judicial Service Commission to perform in the Juvenile and Family Courts, the Central Labour Court and the Central Intellectual Property and International Trade Court. However, the aim of having associate judges in each court depends upon the works of the court.

In the case of the Juvenile and Family Courts, the associate Judges are experienced person in family or in the welfare of children and young person. The qualification of the associate judge of the Juvenile and Family Courts are as follows:

1. not being under 30 years of age;
2. has or, having had, in the past, child, or having worked relating to the assistance or the guidance to the children or young person at least two years;
3. having appropriate disposition and behavior to try a juvenile and family case.

In the case of the Labour Courts, it is involved, for the purpose of fairness and the balance of power, tri-parties; i.e. the court, the employer and the employee. The associate judge are elected, prescribed by law, by the employer association and the trade union.

In the case of the Intellectual Property and International Trade Court, the associate judges are experts in intellectual property or international trade matters and assist career judges to decide the case.

### **1.1.4 Datoh Justice**

According to the Act on the Application of Islamic Law in the Territorial Jurisdictions of Pattani, Narathiwat, Yala and Satun Province, B.E. 2489, the Islamic Law on Family and Succession except the provisions on prescription in respect of succession shall apply in place of the Civil and Commercial Code in giving decision in civil cases concerning family and succession of Islamites. Where cases have arisen in

the area of those four provinces, and both plaintiff and defendant, or the person filing request in non-contentious case are Islamites, there are Career Judges with Datoh Justice who is expert in Islam try and decide the case in order to comply with the principle of Islam. Datoh Justice has to be not less than thirty years of age, know Thai language at the prescribed level, and has knowledge in Islam in order to be able to decide the Islam laws relating to family and succession.

## **1.2 The performance of duties and securities**

Because of the shortage of judges, in practice, a case is tried by a judge alone. Nevertheless, such practice will be ceased in 2002 by the result of the provision of the constitution. The constitution provides that the hearing of a case requires a full quorum of judges. Any judge not sitting at the hearing of a case will not give judgment or decision of such case.

The other duty, involving human right protection, is added by the constitution is issuance of a warrant of arrest of a person who committed a criminal offence. The principle is that no arrest will be made without such warrant. The court, in 2002, will have to consider a reasonable evidence before a warrant of arrest is issued.

To comply with the above provisions, the increasing numbers of judge is an urgent task for the Courts of Justice.

As regards the securities, the following securities ensure the independence of judge.

### **(1) Salary**

An appropriate salary is a part of securities of judges. Initially, the system of salary – scale of judges is connected to the system of civil servants; hence, it is difficult to increase salaries of judge without any effect to the civil servants. The constitution provides that the system of salary – scale or emoluments applicable to the civil servants is not applied which means that the increment of salaries of judges to the suitable rates will be made easier than earlier time.

### **(2) The supervision**

Although the position of the Chief Justice of courts is higher than judges, the Chief Justice is unable to interfere the works of judges. The constitution provides that the trial and adjudication are not subject to hierarchical supervision, and the distribution of case files to judge will be in accordance with the rules prescribed by law, not depending upon the discretion of the Chief Justice. In addition, the recall or transfer of

case files is not permitted in the case where the justice in trial and adjudication of the case is otherwise affected.

(3) The transfer

Apart from that the Judicial Service Commission ensures the protection for judge carrying out his or her duties, the constitution provides that the transfer of a judge without his or her prior consent is not permitted, except in the case of transfer in term as provided by law, promotion to a higher position, being under a disciplinary action or becoming a defendant in a criminal case.

### **1.3 The Judicial Service Commission**

The former Judicial Service Commission is composed of twelve members: Four are ex-officio members, namely, the President of the Supreme Court, the Chief Justice of the Court of Appeal, the First Vice President of the Supreme Court, the Permanent Secretary of the Ministry of Justice; four qualified members are elected from among other Vice President of Supreme Court, the other Chief Justice of the Courts of Appeal, senior justices of the Supreme Court, Deputies Chief Justice of the Courts of Appeal, Chief Justices of the courts of First Instance; and other four are elected from retired judges.

The loss of the retired judges in the composition and the combination of the persons elected by the senate, for the purpose of the connection between the judiciary and people, in a new composition are resulted from the constitution.

The Judicial Service Commission consists of the following persons:

1. the President of the Supreme Court, as chairman;
2. twelve qualified members of all levels of Courts, four persons from each level, who are judicial officials of each level of Courts and elected by judicial officials of all levels of Courts;
- 3 two qualified members who are not or were not judicial officials and who are elected by the Senate.

The appointment, and the removal from office of judges must be approved by the Judicial Service Commission before tendering to the King. In addition, the promotion, the increase of salaries, and the punishment of judges must also be approved by the commission, and this commission will appoint a sub-committee in each level of Courts for preparing and presenting its opinion on such matter for consideration. The

sub-committee consists of the seven judicial officials of each level of Courts.

## **2. Public Prosecutor**

A Public Prosecutor is an official under the Office of the Attorney-General. The main work is to prosecute criminal cases. The head of this office is the Attorney-General.

### **2.1 Organization**

Formerly the office of the Attorney-General is called the Public Prosecutor Department, presided over by the Director, and such department is a part of the Ministry of Interior. In 1991, this office was separated from the Ministry of Interior, and became a state agency under the direct supervision of the Prime Minister.

The appointment, the promotion, the increase of salaries, the transfer, the removal and punishment of a public prosecutor must be approved by the Public Prosecutor Commission. This commission consists of the following persons:

1. a president selected from a retired official, who has, in the past, served in a position not lower than Deputy Attorney-General, or Attorney-General, or a qualified person in a field of laws, who is a retired official and has served, in the past, in a position not lower than Director or its equivalent. Those have not been either a member or an official of a political party in the past 10 years, or political official, a member of the House of Representative, a senate, or an attorney;
2. the Attorney-General, as a Vice-President;
3. a Deputy Attorney-General, a Special Prosecutor in advisory division, a Special Prosecutor in litigious division, a Special Prosecutor in legal affairs division, as ex-officio member;
4. six qualified members elected by the public prosecutor being the official at the second level or more.

Three qualified members are from the Public Prosecutor at the fourth level who are not the ex-officio member. The other three qualified members are from the retired public prosecution who are not a political official, a member of the House of Representative, a senate, a director of a political party, an official of a political party, or an attorney.

It should be noted that in the current system of the public prosecutor, there are eight levels of position, ranging from a public prosecutor- trainee to the Attorney-General.

The qualifications of persons eligible for a public prosecutor – trainee are as follows:

1. having LL.B., or having law degree or certificate from foreign country, not lower than Bachelor's degree;
2. passing the examination of the institute of Thai Bar Association;
3. having not less than two years experience in legal professions, namely, judicial official, registrar, deputy registrar, official receiver, executing officer, probation officer, officer of the Judge Advocate General Department, attorney or other legal profession prescribed by the Public Prosecutor Commission;
4. being of Thai nationality;
5. being not lower than twenty five years of age;
6. upholding the democratic regime according to the constitution in good faith;
7. being the ordinary member of Thai Bar Association;
8. not having ignominious or immoral conduct;
9. not being insolvent;
10. not being in the period of suspension of official service or temporary resignation;
11. not having been expelled, dismissed or removed from the official service, state agency or state enterprise;
12. not being imprisoned by a final judgement except for an offence committed through negligence or a petty offence;
13. not being incompetent or quasi- incompetent person or a person of unsound mind or mental disorder or having body or mental which is inappropriate to be a judge or having disease prescribed by the regulation of the Public Prosecutor Commission;
14. passing the physical and mental examination by the committee of doctor, consisting not less than three doctors, and the report of such committee approved by the Public Prosecutor Commission.

A public prosecutor will be vacated from the office on the ground of the following matters:

1. death;
2. vacation from the office under the law on government pension fund;
3. resignation;
4. transfer to serve in a position of government official;
5. resignation for being in military service;
6. being instructed to resign;
7. being expelled, dismissed, or removed from the office;
8. the Senate passing a resolution for the removal from office.

The last is resulted from the constitution which provides that member of the House of Representatives of not less than one - fourth of the total member of the existing members of the House, or voter of not less than fifty - thousand in number has right to request the senate to pass a resolution removing a public prosecutor from office. The ground of removing is that public prosecutor is under the circumstance of unusual wealthiness or under circumstance indicative of the commission of corruption, malfeasance in judicial office or an intentional exercise of power contrary to the provision of the constitution or law.

As shown above, The system of the public prosecutor; for example, the Public Prosecutor Commission, the appointment of public prosecutor – trainee and the removal from the office is close to the system of the Courts of Justice.

## **2.2 The performance of duties**

The duties of the public prosecutor are divided into 4 parts; duties in criminal matters, duties in civil matters, legal aids, and other duties.

### **1. Duties in Criminal matters**

Where the police decide, after detection and investigation, that the offender should be prosecuted, the case is handed over to the public prosecutor. The public prosecutor is able to make the decision to continue or drop the case, and the public prosecutor may order the police for additional investigation before making decision. A public prosecutor takes a responsibility to bring the criminal case to the court and

continue the criminal proceedings.

Moreover, in the case that a criminal action is brought against the government official who perform his or her duties, the public prosecutor will be an advocate for such official.

The Office of the Attorney-General has made an attempt to be a central organization for international cooperation in criminal matters.

#### 2. Duties in civil matters

The Office of the Attorney-General is able to provide the government agencies, state enterprise, provincial authorities, or municipalities the legal advice. It, also, provides a counsel for the government in the civil case. In addition, it is able to review a draft of contract between a private entity and a government agency or state enterprise.

#### 3. Legal Aid

The Office of the Attorney-General provides legal aid for persons of very limited means. The assistance covers various kinds, i.e. advice, legal aid for court proceedings, or conciliation process.

#### 4. Other duties

The other duties of the public prosecutor are prescribe by laws, such as where the Attorney-General institutes prosecution in the Criminal Division for Persons Holding Political Positions in the Supreme Court after receiving the report from the National Counter Corruption Commission.

### **3. Attorney**

To perform as an attorney; for instance, drafting a file or an appeal, or proceeding before a court, a person is required to register and receive a license from the Law Society, The example of the qualifications of the person eligible for applicant are as follows:

1. being of Thai nationality;
2. being not less than 20 years of age on the day of applying for registration and receiving the license;
3. having graduated with LL.B., or sub – bachelor' s degree, or certificate in the field of law, or its equivalent, and being a member of Thai Bar;
4. not being official or local official who has salary and permanent position, except political official

The applicant must attend in the training course set up by the Law Society, except he has been a attorney, a judge, public prosecutor, legal professions in military court, or has been practiced in the law office at least 1 year.

### **3.1 Organization**

The attorney have their own assembly called the Law Society of Thailand, which is set up by the Attorney Act B.E. 2528 (1985). The objectives of this society are as follows:

1. promotion of the education and the attorney as a profession;
2. control of the etiquette of attorney;
3. promotion of the unity and dignity of the member;
4. promotion and provision of welfare of the member;
5. promotion, assistance, advice, dissemination and provision of education concerning laws to the people.

The main duties of the society is to perform a registration and issue the license to the applicant. This society, also, has a committee dealing with the etiquette matters of the attorney. In addition, the legal aid is the service of the society for persons of very limited means.

The society is administered by the committee of the society, which consists of a representative of the Ministry of Justice, a representative of the Thai Bar, the President of the society and other members not more than 23 person elected by the member of the society, at least 9 member must have the offices attached to the Regional 1 – 9.

### **3.2 Works**

The attorney in Thailand do not divided to barrister and solicitor, the works of attorney, therefore, include advising a client on legal, financial, or tax matters, drafting an agreement, giving an opinion on legal problems, and proceeding in court. In the performance of duties, the attorney need to comply with the etiquette of the attorney. Such etiquette, ruled by the committee of the Law Society, covers the following matters:

1. an etiquette to the court, and the practice in court.;
2. an etiquette to the client;
3. an etiquette to other attorney;
4. an etiquette of general litigants;

5. the dress of the attorney;
6. the compliance with the order of the etiquette committee, the committee of the Law Society.

It should be noted that the attorney from foreign countries do not be permitted to work in Thailand. However, it is likely that such law will be effected by the free trade market policy. Therefore, the improvement of standard of attorney in Thailand to cope with the international standard is interesting topic from now.