Private Lawyers in Contemporary Society: Thailand

Viraphong Boonyobhas

Follow this and additional works at: http://scholarlycommons.law.case.edu/jil

Part of the International Law Commons

Recommended Citation
Available at: http://scholarlycommons.law.case.edu/jil/vol25/iss2/7

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons.
It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.
Private Lawyers in Contemporary Society: Thailand

Viraphong Boonyobhas*

It is important to examine legal education in Thailand before discussing the legal profession. Conventional legal education in Thailand dates back to 1897 when Prince Rabi of Rajburi, an Oxford graduate, son of King Chulalongkorn the Great, set up a law school attached to the Ministry of Justice. It provided legal training in custom law and Western jurisprudence to the future lawyers of Thailand. The law school was abolished in 1933 and the teaching of law became part of conventional university education when transferred to the Faculty of Law and Political Science of Chulalongkorn University. Only a year later, the Faculty handed over the teaching of law to a newly-established University of Moral and Political Science, renamed in 1952 as Thammasat University. Approximately a decade later, Chulalongkorn University resumed its law curriculum and the Faculty of Law was finally reestablished in 1972. The year 1971 marked a new era of Thailand legal education. An open admission university called Ramkhamhaeng University was created and ever since, legal education has existed on a massive scale. Another open university whose teaching method is conducted through the media was recently established under the name of Sukhothai Thammatiraj University. However, some private universities and colleges also have law schools such as Bangkok University, Durakitbundit University, Siam University, Sriphathum University, and Kaseamluendit University. These private universities are administered by the Ministry of University Affairs.

With the exception of Ramkhamhaeng, Sukhothai Thammatiraj, and the private universities, Thammasat and Chulalongkorn law faculties enroll only a limited number of students who have successfully passed the highly competitive national entrance examination which is held once a year. All state-operated law faculties offer a four-year program leading to an LL.B degree for full-time students. However, Thammasat University has recently added an experimental three-year evening course to its curriculum for those holding any bachelor degree wishing to pursue their first degree in law. Post graduate programs, normally requiring two to three years to complete, are also offered at both Thammasat and Chulalongkorn, leading to an LL.M. degree. Moreover, the Chulalongkorn University Law Faculty is planning to offer an LL.D

* LL.B, Barrister-at-Law, LL.M (Criminal Justice) New York University.
degree in the near future.

In addition to university legal education, the Thai Bar Association also runs an Institute of Legal Education offering a one-year training course for those holding LL.B degrees. The trainees must have successfully passed the examination to become Thai "Barristers-at-Law" and are eligible, if other requirements are met, for a judge trainee or public prosecutor trainee examination.

I. Judges

In Thailand, all judges are professional. Political considerations play no part in the appointment of judges. The method of judicial appointment is and always has been nomination. No one can be appointed judge in a Court of First Instance unless and until he has undertaken a minimum training of one year as a judge trainee. The method by which judge trainees are recruited is by an open competitive examination. This consists of written and oral tests.

Candidates for this examination must be at least twenty-five years of age with an LL.B degree and a degree of Barrister-at-Law, together with two years standing as a court registrar, deputy court registrar, official receiver, public prosecutor, practicing lawyer, or other government legal officer. A foreign law degree alone does not qualify any person for the examination. However, any person with a foreign law degree and a Thai degree of Barrister-at-Law, together with one year standing as a court registrar is exempt from the competitive examination. Candidates holding a Thai Master of Laws degree or a Thai Doctor of Laws degree, together with one year's standing as a court registrar are exempt as well. However, special written and oral tests must be taken. Aliens, insolvent persons, persons convicted of any criminal offense and sentenced to any term of imprisonment are not eligible for judgeships. Women are eligible for judgeships provided that they pass the competitive examinations. Women with no legal qualifications are also eligible for the competitive examinations for associate judgeships in juvenile courts.

The annual competitive examination for judge trainees is designed to fulfill a double purpose: to eliminate unsuitable candidates, and to provide guidance for setting up an order of seniority on their appointments. The examination is conducted by a board of examiners, usually consisting of a number of judges of the Supreme Court and Court of Appeal. (Judge trainees are required to take the one-year training course which aims at a balanced individual education and emphasizes both knowledge and wisdom). The training devotes practical attention to the bench. A good deal of time is also allotted to subjects such as penology, criminology, psychology, logic, current economics, and social prob-
lems. The aim is not to produce experts in these subjects, but to ensure that the members of the Judicial Service possess a good understanding of such matters in order to build sufficient knowledge for service.

The compulsory retiring age of judges, like that of civil servants, is sixty. A judge may be dismissed from the Service only for proven misconduct, incapacity, or infirmity. In a case of misconduct, the accused judge has full opportunity to defend himself against the charge at the board of discipline which consists of three judges. If on the report of the board, the Judicial Service Commission is satisfied, considering all the circumstances of the case, that the dismissal or retirement of that judge is desirable in the public interest, the decision is final. The King will then be advised to dismiss or retire the judge. In a case of incapacity or infirmity, the retirement of the judge concerned must also be approved by the Judicial Service Commission.

II. PUBLIC PROSECUTORS

Like judges, all public prosecutors in Thailand are professional. Qualifications to hold the office of public prosecutor are nearly identical to those of judges. However, the eligible age is lower (twenty-three years). Those wishing to become public prosecutors must sit for an examination arranged periodically by the Office of Attorney General, Prime Minister Office. If successful, they will be appointed as public prosecutor-trainees and, after one year of training, prosecutors. All matters concerning appointments, promotions, or disciplinary measures of public prosecutors fall under the control of the Public Prosecution Service Commission of which the Prime Minister is chairman. The main function of the public prosecutor is to conduct criminal cases against offenders.

Criminal proceedings in Thailand differ from those of some other countries. Thai criminal prosecution may be instituted either by the public prosecutor or by the injured person himself. When the injured person prosecutes the offender, the matter is not treated through the usual Thai process (i.e. through administrative official, police officer, or public prosecutor).

Apart from conducting criminal cases against offenders, the public prosecutor has many more functions in criminal and civil cases as well as in others. For example, when an official has been prosecuted for an act performed in the course of duty, or when a private person has been prosecuted for an act done under a lawful order of an official or has helped an official carry out his duty, a public prosecutor may be requested to defend them. The public prosecutor may do so if he believes the person is not guilty of the offense charged. Furthermore, a public prosecutor may represent the government in all civil cases, whether the
government is the plaintiff or the defendant. Whenever a government organization brings an action against anyone or an action is brought against it, the organization may request the public prosecutor to represent it. The civil and commercial codes also provide many instances where a public prosecutor may make an application to the court in various matters (e.g. to adjudge incompetent a person of unsound mind; to appoint a temporary manager to a juristic position when a vacancy occurs and damage may ensue from the delay; to dismiss the manager of a foundation; to cancel any resolution of an association which has been passed contrary to association regulations or contrary to law; to appoint a guardian, etc.).

A public prosecutor has several other duties to perform under various acts, which cannot be completely listed here. For example, the Office of Attorney General must advise government organizations and municipalities. Public prosecutors in the provinces are also legal advisors to province commissioners.

III. PRACTICING LAWYERS

Unlike some other countries, there are no legal requirements for a Thai practicing lawyer to first serve as an articled clerk or complete a pupillage in a lawyer's office. However, law graduates who wish to become practicing lawyers usually attach themselves to some established practicing lawyers to gain experience in advocacy as well as drafting legal papers.

Practicing lawyers in Thailand [prior to the Attorney Act of 1985] were divided into two classes; first-class lawyers and second-class lawyers. First-class lawyers are law graduates. Second-class lawyers have obtained a diploma in law from Thai universities or have passed a law examination for second-class lawyers held by the Bar Association. No difference exists in the kind of work to be undertaken by first-class lawyers and second-class lawyers; however, only first-class lawyers have the right of audience in all courts throughout the country and may wear the authorized gown of the Bar Association, while second-class lawyers can practice in only ten provinces specified in their licenses and have no right to wear such gown. The underlying reason for allowing second-class lawyers to practice is that too few qualified lawyers practice in some parts of the country. Hence, second-class lawyers act in addition to those fully qualified. A person wishing to become a practicing lawyer must be, inter alia, a Thai citizen, and sui juris. Admission applications for practicing lawyer must be made to the Bar Association. Once satisfied that the applicant is qualified to be admitted, the Bar Association issues a license to practice. The license must be renewed annually.

By statute, the Bar Association regulates the professional conduct of
PRIVATE LAWYERS IN CONTEMPORARY SOCIETY

lawyers. Breach constitutes professional misconduct. Where a complaint of professional misconduct is filed against a particular practicing lawyer, the Bar Association appoints a committee consisting of three members to investigate the complaint and, if a prima facie case exists, pursues it before the Disciplinary Committee which consists of not less than nine members. The Disciplinary Committee must consider whether the facts established constitute misconduct. If so, the Disciplinary Committee reports the case to the Bar Association for further consideration by the Benchers. If the Benchers of the Bar Association also find the lawyer in question guilty of professional misconduct, the Bar Association may issue an order, according to the gravity of the offense, (namely, to admonish him, to suspend him from practice for a period not exceeding three years, or in extreme cases, to strike his name from the Roll).

Since the Attorney Act of 1985, no distinction exists between first and second-class lawyers. Those registered as attorney after this act was promulgated have the right of audience in all courts throughout the country. The required qualifications of a candidate to register as an attorney remain generally unchanged. However, those who have not practiced law in any capacity are required to pass the attorney training program organized by the Thai Attorney Council.

This act transferred power to control professional practice and attorney conduct from the Thai Bar Association to the Thai Attorney Council, an independent entity. The Council consists of registered attorneys. The Governing board of the Attorney Council seats a representative from the Ministry of Justice, the Thai Bar Association, the president of the Thai Attorney Council, and twenty-three other members elected by registered attorneys throughout country.

The Council has the following scope of authority: registering and issuing attorney licenses, regulating professional practice and conduct, promotion, educating attorneys, providing social welfare for members, disseminating legal information, and providing legal aids.

IV. LAW TEACHER

Generally, Thai law teachers serve no formal apprenticeship before their appointment. The most common titles are Assistant Professor, Associate Professor, and Professor. Graduate study for a period is normally required for a teaching career in law. Most law teachers in Thailand at both state and private universities have earned an LL.B, Barrister-at-Law, and LL.M. One-third of the law faculty have earned doctorate degrees. In spite of the practical background of many law teachers, most law schools require that members of their faculties devote time to teaching and research. Thai law teachers tend to be introspective and attention to the education process itself is probably unsurpassed in any
other country. One of the striking characteristics of the Thai law faculty is independence. Each person teaches his own courses and prepares and grades his own examinations. None are under supervision, and academic freedom is jealously guarded.