THAILAND

Background

The Kingdom of Thailand is a constitutional monarchy and a unitary state run by a highly centralized government. While all powers are exercised in the name of the King, it is the executive branch which dominates the government of the country, and the executive is controlled by a small élite group. The judicial branch is relatively independent in the trial and adjudication of cases. It should be noted that in time of emergency or of martial law, the Military Courts and the Judge Advocate General Department of the Ministry of Defense have jurisdiction over certain types of offenses, such as those against relationships with other countries, and against the security of the state.

Constitutional guarantees

The Interim Constitution of 1959 contains no guarantees of rights and liberties. Its Article 20 states that in cases where none of its specific provisions are applicable, decisions should be based on Thai constitutional practice. The 1952 Constitution is generally considered to represent Thai constitutional practice, and its Section 27 laid down that every person shall enjoy full liberty of the person, and that no arrest, personal restraint or personal search under any circumstances whatsoever may be made except by virtue of the power provided by law.

Arrest

The full liberty of the person guaranteed by the Thai Constitution of 1952, and thus to be taken as representing Thai constitutional practice, would be infringed by the physical restraint of a suspect or an accused person should this not be essential for investigating the crime or for conducting the trial. The Thai Criminal Procedure Code of B. E. 2477 (1934) as amended in 1944, 1947, 1950, 1956, and 1958, contains numerous provisions relating to physical restraint of such a person.

Under the provisions of the Code, arrest has to be made by an administrative or police official with a warrant of arrest, except in the cases described in Sections 78 to 81, such as when a person is found attempting to commit an offense. Section 84 specifies that the person arrested is to be taken to the office of the administrative or police official, who may keep him in custody or grant him conditional release.

Pre-trial Release

Release before trial is allowed, but at the discretion of the official or the court concerned, and availability of bail is not in Thailand a matter of right. Section 106 of the Criminal Procedure Code provides that an application for provisional release, with or without bail or security, of an alleged offender (i.e., a suspect not yet charged in court with the commission of an offense) or accused (i.e., a person who has been so charged) may be filed by himself or any interested person, whether he is being kept in

custody (i.e., while the inquiry is being conducted) or being detained under a warrant of detention (necessary for periods longer than those specified for the purpose of completing the inquiry). The section further provides that where the alleged offender is kept in custody and has not yet been charged in court, the application shall be filed with the inquiry official or the Public Prosecutor, as the case may be. Where the alleged offender is detained under a warrant of detention of a court but has not yet been charged, the application shall be filed with such court. Where the alleged offender has been charged, the application is to be filed with the Court of First Instance which tries the case. During appeal or dika appeal, the application may be filed with the Court of First Instance, with the Appeal Court, or with the Dika Court (Supreme Court).

Thus provisional release is obtainable at various stages of the proceedings, and is not restricted, as in some countries, to the period after investigation and before sentence.

Under Section 107, such an application for provisional release must be acted upon without delay and an order made in conformity with the rules of the next six sections. Section 108 lists the points to be taken into consideration in deciding on the application: the gravity of the charge; the evidence adduced in the case; the circumstances of the case; the reliability of the applicant or the securities offered; the likelihood of the alleged offender or accused absconding; the danger or injury that might ensue from the provisional release; in the case where the detention is by court

warrant, any possible objections on the part of the inquiry official, or the prosecutor, public or private. This section could therefore form the basis for disallowing provisional release to persons who might, if released, constitute a danger to the community.

Section 109 governs offenses punishable with imprisonment over ten years in duration, whereby, if application for provisional release is made, the court may ask the inquiry official, the Public Prosecutor or private prosecutor whether he has any objection thereto.

Under the provisions of Section 110, in cases relating to offenses punishable with a maximum imprisonment of one year or over, the person to be granted provisional release must furnish bail, although security is optional. In other cases, provisional release may be allowed with or without bail, and with or without security. When provisional release is without bail, under Section 111 the person must promise under oath or affirmation to appear when summoned to do so. Also, when provisional release is granted with bail, with or without security, under Section 112 the applicant or the surety must sign the bail bond before release can take place. The bail bond must stipulate that the person granted release or the bailor shall comply with the appointment or the summons of the official or court granting the release, and must specify a sum of money to be paid in case of a breach of the bail bond. Section 113 stipulates that when provisional release is granted, the bail bond shall be effective only during the inquiry, or up to the time of the detention during inquiry or until the court accepts the charge.

With regard to security, Section 114 names the three kinds of security which may be furnished when provisional release is to be granted with bail and security. These are: a deposit of cash, a deposit of other valuable securities, a declaration of valuable securities by a person standing as surety. Under Section 115 the required amount of bail or security may be increased if, on account of subsequent information or detection of fraud or mistake, it is found that the bond has been made too low. It can also be increased after provisional release has been granted and the case comes up to a higher court. Under Section 116, an application for a discharge of the bond or the security may be made by the person who made the bond or who furnished the security after delivering the alleged offender or accused to the official or court concerned. Under Section 117, he may request the arrest of, or himself arrest, the person if the latter has absconded or is about to abscond. By the terms of Section 119, in case of a breach of a bond, the court may order payment of the full amount of the bond or of any amount as it thinks fit.

Pre-trial Detention

With regard to pre-trial detention, Section 84 of the Code has been noted above as specifying that the administrative or police official to whom an arrested person has been brought may keep such person in custody or grant him provisional release. Section 87 states that no arrested person shall be kept in custody

longer than is necessary according to the circumstances of the case. In the case of petty offenses or of offenses having the same rates of penalty, the arrested person can be kept in custody only for as long as may be necessary to take his statement and to ascertain his identity and place of residence. The arrested person shall not be kept in custody for more than 48 hours from the time of his arrival at the office of the administrative or police official, but the time spent in bringing him to the Court shall not be included in this period of 48 hours. The period may be extended if it is necessary for the purpose of conducting the inquiry or any other necessity, for as long as such necessity persists, but in no case is it to be longer than seven days. If the necessity to keep the arrested person for more than the period specified above arises for the purpose of completing the inquiry, he has to be sent to the court, and the Public Prosecutor or the inquiry official has to apply by motion to the court for a warrant of detention of the alleged offender.

In a case where the offense committed is provided with a maximum punishment of not more than six months' imprisonment or 500 baht fine, the Court can grant only one remand for a period not exceeding seven days. In the case of criminal offenses punishable with a maximum imprisonment of between six months and ten years, or fine over 500 baht, the court can grant several successive remands not to exceed 12 days each, with the total period not exceeding 48 days. In the case of criminal offenses punishable with a maximum imprisonment of ten years or over, the court can grant successive

remands of up to 12 days each, the total period not to exceed 84 days.

Section 88 provides that after entry of a charge, the court may detain the accused further or grant him provisional release. Section 90 is the habeas corpus section of the Code, providing that when it is alleged that a person has been kept in custody or detained contrary to law, or imprisoned contrary to the judgment of the Court, the following persons may apply by motion to the Court for his release: the aggrieved person; his spouse, relative or any interested person; the Public Prosecutor; the governor of the gaol or chief gaoler.

The Act on the Detention of Persons Charged with Offenses Against the Anti-Communist Activities Law, passed in 1962, provided that Section 90 of the Criminal Procedure Code, described above, allowing application by motion to the court for release from detention, shall not be applicable to offenders against this Act. It does provide that petition may be made, in such cases, to the Minister of Interior. The Anti-Communist Activities Act of 1952 defines communist activities and communist organizations, and specifies penalties for those engaging in activities of this nature or belonging to organizations of this type, or committing certain related acts. Announcement No. 12 of the Revolutionary Party, dated October 22, 1958, said that, offenses under the above Act being "special offenses," the laws setting limits on detention for questioning would not apply to them and that such offenses would be tried by military courts. Announcement No. 21 of the Revolutionary Party, dated November 2, 1962, provides with

regard to certain criminal elements that if it is necessary to arrest and detain such persons for questioning, the questioning officers are empowered to hold them in custody not more than thirty days from the first day of detention. If it is necessary to detain them longer than thirty days, the accused has to be taken to court and application made for a detention writ in accordance with the Criminal Procedure Code.

Right to Speedy Trial

This right is not guaranteed by the 1952 Constitution or by the 1959 Interim Constitution. Several sections of the Criminal Procedure Code, however, are relevant thereto. Section 38 provides for summary treatment of certain specified offenses. Section 87 says that no arrested person shall be kept in custody longer than is necessary according to the circumstances of the case. The substance of this section has already been given above under the topic of pre-trial detention. Section 130 requires that any inquiry shall be commenced without delay. Section 179 allows the court to proceed with the trial without adjournment until the trial is over, subject to the provisions of this or other laws. although if there is reasonable ground for adjournment, it can adjourn the case as it thinks fit.

The Act on Settlement of Criminal Cases of 1937, as amended, empowers investigating officers to settle petty offenses under Section 38 of the Criminal Procedure Code, mentioned in the paragraph above, Thus, nowhere does one find fixed limits set for the time in which trials must begin or terminate, neither in the Constitution nor in the

statutes.

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September 1969

MSS:kah
9/29/69