

Legal Problems Regarding the Protecting Rights of Defendants in Criminal Cases Under the Constitution of the Kingdom of Thailand 2017: A Study of the Performance of Court-Appointed Lawyer in Phra Nakhon Si Ayutthaya Province

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ABSTRACT

The objective of this academic article is to study legal issues related to the appointment of defense lawyers for the accused in criminal cases in the Provincial Court of Phra Nakhon Si Ayutthaya, in accordance with the Criminal Procedure Code, Article 173, and to compare it with the appointment of legal consultants for juvenile and family courts in Phra Nakhon Si Ayutthaya Province, by the Juvenile and Family Court Act and the Procedure for Juvenile and Family Cases of 2010, Articles 121-125. The study reveals that Article 173 lacks clarity in the criteria for selecting defense lawyers for the accused in criminal cases, leading to differences in the selection and appointment of defense lawyers compared to the legal consultants appointed by juvenile and family courts. This discrepancy results in issues related to the efficiency of duty performance, suitability, specialized knowledge in specific cases, case preparation, and the lack of an organization to review and evaluate the performance of appointed defense lawyers. Consequently, it may adversely affect the protection of the rights of the accused in criminal cases, denying them the fair treatment guaranteed by the Constitution of the Kingdom of Thailand, B.E 2017

Keywords: *Court-Appointed Lawyers; Protection of the rights of defendants in criminal cases.*

INTRODUCTION

Every accused person of the defendant has the right to receive necessary and appropriate protection and assistance from the state according to the provisions of the Constitution of the Kingdom of Thailand, B.E.2017, Section 68, paragraph three, provides: "The state should provide necessary and appropriate legal assistance the poor or underprivileged in accessing the justice process. Including providing a lawyer." Access to the criminal justice process for accused defendants is a fundamental right according to the Universal Declaration of Human Rights, which requires states to provide lawyers to defendants in criminal cases. Thailand has adhered to the 1948 Universal Declaration of Human Rights as a guideline for protecting the accused or defendant by having a lawyer to assist. Although the 1948 Universal Declaration of Human Rights is not law, when Thailand has ratified it, it must create or amend its internal law to be in line with the rules. Wisanu Krea-ngam (2522) Otherwise, it can be considered a violation of human rights as well. The Constitution of the Kingdom of Thailand, B.E. 2017, provides for the protection of accused persons or defendants. They have the right to receive basic protection in defending legal cases. The state must provide lawyers for defendants in criminal cases. and there is a sequence of laws including the Criminal Procedure Code The law guaranteeing such rights in section 173 requires the court to question defendants in cases with the death penalty or cases in which the defendant is not more than eighteen years of age on the date of the arraignment, before starting the trial, the court must ask the defendant whether he has a lawyer or not. If do not have the court appoint a lawyer. In the case of a prison sentence, when the court inquires with the defendant, if the defendant needs a lawyer, the court must appoint a lawyer. Section 173, paragraph two.

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Criminal cases with the death penalty occurring in Phra Nakhon Si Ayutthaya Province are under the jurisdiction of the Phra Nakhon Si Ayutthaya Province court according to the Judiciary Statute. In appointing a lawyer to provide legal assistance to the defendant to receive equal protection of rights without having to pay attorney's fees. It is called "Court-Appointed lawyers" However, the selection system for entering the process of being a lawyer in the Phra Nakhon Si Ayutthaya Province court complies with the regulations of the Judiciary Executive Committee regarding the payment of rewards and expenses for lawyers appointed by the court for accused of defendant according to the Criminal Procedure Act, Section 173 of 2005 and No.2 of 2012. It specifies general criteria for preparing a list of names and appointing lawyers, consisting of: 1) the court has jurisdiction to consider criminal cases. The Juvenile and Family Court Issue a notice to lawyers who wish to be lawyers under Section 173 to apply according to the application form to the court in which they wish to act for the benefit of preparing a list of names of each court. 2) Preparing a list of lawyers into two lists as follows: List 1: Lawyers with experience of 5 years or more, and List 2: Lawyers with less than 5 years of experience, in cases with a high prison sentence of at least ten years. Up only lawyers according to List 1 should be appointed unless lawyers according to List 1 are insufficient or have other necessary reasons. 3) The appointment of a lawyer for the accused or defendant should be in the order of registration. 4) Requesting the court to appoint a lawyer provided by the state in the investigation stage to be the next lawyer in the court case. The accused or defendant must request before or at the time the court inquires about a lawyer under Section 173. The lawyer must be a person whose name is on the list of the court hearing the case. The appointment of a lawyer under the paragraph on is at the discretion of the court in case cannot be established according to the wishes of the accused or defendant. In the case that a lawyer has many cases of has other necessary circumstances. Must be re-executed according to the methods specified in (2) and (3). The criteria for selecting lawyers is to protect the rights of defendants in such criminal cases. It is different from the Juvenile and Family Court and Juvenile and Family Court Procedure Act B.E.2010, which is that the selection of legal advisors for the Juvenile and Family Court has the following criteria: 1) those who will act as advisors must be trained in Juvenile and Family Court procedures. Know about psychology social work and other related knowledge as specified in the regulations of the President of the Supreme Court (Section 121) 2) Stipulate that every Juvenile and Family Court may accept notification of those wishing to be court-appointed legal advisors in the Juvenile and Family Court. Notification according to paragraph one and the deletion of names from the list shall be by the rules and procedures specified in the regulations of the President of the Supreme Court (Section 122) 3) The President of the Supreme Court has the power to set regulation for legal counsel in the court that has jurisdiction over Juvenile and Family cases, and 4) The court has the power to order the removal of those who will be able to act as counsel to defendants if they appear to the court, that the legal advisor appointed by the defendant or the court is not suitable to assist the defendant or the court is not suitable to assist the defendant in any case (Section 125)

In such case, the appointment of a lawyer requires strength to protect the rights of defendants in criminal cases appointed by the court under Section 173 of the Criminal Procedure Code, which requires the court to select only according to the list of names prepared by the Criminal Procedure Code. That requires the court to select only according to the list of names prepared by the court by the said regulations without considering other qualifications such as Selected from people who know expertise in specific areas, including drug cases. In the area of technological crimes, etc., it causes legal problems.

When such legal provisions there are differences in selection between appointing a lawyer to request strength to act in a criminal case with the appointment of legal advisors in the juvenile court this raises questions in many ways: Is the government's system for recruiting lawyers to protect the rights of defendants in criminal cases effective? Do those who act as lawyers have the knowledge and ability or will they fully intend to perform their duties? And are they motivated to perform their duties or not? Because the lawyer asks for the strength that the court has set, he cannot demand compensation like in general cases and if performing duties improperly, the court in a criminal case the court does not have the power to order revocation like in the Juvenile and Family Court. In addition, there is no organization to control and inspect the behavior of the attorneys and there is no evaluation of the results of their duties as attorneys appointed by the court. If performing duties improperly, the court in a criminal case the court does not have the power to order revocation like in the Juvenile and Family Court. In addition, there is no organization to control and inspect the behavior of the attorney and there is no evaluation of the results of their duties as attorneys appointed by the court.

For this reason, the author therefore studied and analyzed the legal problems regarding the appointment of court-appointed lawyers under Section 173, paragraph one, of the Criminal Procedure Code. By studying only cases within the jurisdiction of the Phra Nakhon si Ayutthaya Provincial Court. Compare this with the appointment of legal advisors according to the Juvenile and Family Court and Juvenile and Family Court Procedure Act B.E.2010 of the Juvenile and Family Court of Phra Nakhon si Ayutthaya Province.

LITERATURE REVIEW**1. Concepts, basic principles, and laws related to protection of human rights in assisting defendants in criminal cases.****a. Basic principles according to the Universal Declaration of Human Rights, 1948**

Basic concepts according to the principles of the Universal Declaration of Human Rights. Human rights protection is a basic international principle of the United Nations that is set as an international instrument to set international standards for various rights for member countries to use as guidelines for rights protection. Especially the availability of lawyers for accused persons and defendants in criminal cases from the state. Article 11 (1) lays down the important principle that “Everyone accused of a criminal offense Have the right to be presumed innocent until proven guilty according to law. In an open trial in which he has received all necessary security for his defense.” Therefore, having a lawyer to assist those accused of committing a criminal offense is one of the necessary guarantees for fighting a criminal case. Panat Tasaneeyano (1983)

b. The concept of rights protection according to the provisions of the Constitution of the Kingdom of Thailand, B.E. 2017

The Constitution of the Kingdom of Thailand, B.E. 2017, provides for the protection of the right to have a lawyer for accused persons and defendants in criminal cases. To be consistent with the basic principles of the 1948 Universal Declaration of Human Rights.

Thailand signed on December 16, 1946, stipulating the duty of the state to assist suspects or defendants in criminal cases by providing lawyers promptly. As appears in Section 68 it is stated that “The state should organize the administration system in all aspects of the justice process to be efficient, fair and non-discriminatory. And allow the people to have access to the justice process conveniently, quickly, and without unreasonably high costs” in the third paragraph “The state should provide necessary and appropriate legal assistance to the poor or underprivileged in accessing the justice process. Including the provision of lawyers.” Thailand has established a law guaranteeing the right to provide lawyers for defendants in criminal cases under the agreement that member countries have with the 1948 Universal Declaration of Human Rights.

c. Relevant laws

Laws related to the appointment of lawyers in courts of competent jurisdiction include the Criminal Procedure Code, Juvenile and Family Court and Juvenile and Family Court Procedure Act B.E.2010 that, important law and necessary for the justice process. Nattharat Chommanee (2015) and is also considered a basic guarantee according to human rights principles’ the details are as follows:

i. Criminal Procedure Code It is a secondary law that emphasizes the

Importance of helping provide lawyers for suspects and defendants at various stages in the criminal justice process. Starting from the investigation stage of the accused (Section 134/1), the preliminary investigation stage (Section 165/1), and the court consideration stage (Section 173). In this academic article, we will present only the appointment of a lawyer to request strength in the specified court consideration stage. In Section 173, paragraph one, which is a case with a death penalty rate. Which is in the trial court of Phra Nakhon si Ayutthaya Provincial Court.

ii. Juvenile and Family Court and Juvenile and Family Court Procedure Act

B.E.2010 This Act It is a provision giving jurisdiction to all juvenile and family courts. Has the power to appoint a lawyer as a legal advisor according to Section 121, Section 122, Section 123, Section 124, and Section 125 of the Juvenile and Family Court and Juvenile and Family Court Procedure Act B.E.2010

2. Concepts, theories, and state use of power**a. The Rule of Law**

The Concept under the rule of law is the concept of parents being subject to the law and governing the country with morality through the methods of the law in a democratic system. Thawinwadee Bruikul (2003) important principles of the rule of law. In the section related to the performance of duties of a lawyer, such as

i. The principle of separation of powers is a basic principle of the rule of law. That Shows the separation of the use of power by the administrative branch in balancing and checking the use of power from each other.**ii. Principle of protecting people’s rights and freedoms It is a guarantee of the rights and freedoms of the people. The use of power by the administrative branch in order not to affect**

- the rights and freedoms of the people make people equal and have equal rights and freedoms according to the law.
- iii. The principle of supremacy of the Constitution. It is a universal principle of all Free and democratic countries that adhere to the constitution as the highest law in governing the country. Therefore, laws in force in the state cannot conflict with or contradict the Constitution
- b. Good Governance
- It is a concept of the modern state that is used as a guideline for using the power of Government agencies in administration. Business in the public or private sector, with 6 important elements, Nation Research Council of Thailand (2016)
- i. Rule of Law means having rules that are fair to all parties. It is enforced equally. There is no double standard discrimination. There is compliance with the rules and regulations and no illegal exploitation. Respect rights and freedoms according to the law.
 - ii. Virtue means adhering to correctness and goodness in performing one's duties. Jing in building Thai society into a society of honesty and integrity. Be disciplined, have patience, and work together to prevent corruption in the organization.
 - iii. Principles of transparency refer to management that can be inspected, such as open work. Clear work organization there is a process that can be inspected at every step. And information that is beneficial to the public is disclosed, correctly, and transparently.
 - a) Principles of participation means decentralizing authority in management, Administration and Listening to the opinions of personnel. Consulting joint work planning and joint operations.
 - b) Principles of responsibility for performance of duties (Accountability) means Awareness of responsibilities. A sense of responsibility, empathy, enthusiasm in solving problems, being open to opportunities, and being ready to inspect and evaluate results that reflect responsibility and acceptance of the results that arise from performing duties and operations.
 - c) The principle of efficiency and effectiveness refers to efficient and effective Management uses resources efficiently for benefits highest for the public.

ANALYZE THE PROBLEM

Academic article on Legal problems regarding the protection of the rights of defendants in criminal cases under the Constitution of the Kingdom of Thailand, B.E. 2017, in the case of perfuming duties as a lawyer requesting the court-appointed strength in the area of Phra Nakhon Si Ayutthaya Province, are as follows:

1. Problem of unclearness of the law.

From the provisions of the 2017 Constitution of the Kingdom of Thailand, which stipulates that the state has to provide lawyers for defendants in criminal cases to comply with the 1948 Universal Declaration of Human Rights, with secondary laws specifying the details. Details regarding the appointment of a lawyer for the defendant include the Criminal Procedure Code, Section 173. By requiring the court to appoint lawyers for defendants in cases that carry the death penalty. Or cases in which the defendant is not more than eighteen years of age. Before starting the hearing, the court will ask the defendant whether he has a lawyer or not. If there isn't one, let the court appoint one.

The system for appointing strong lawyers is at the discretion of each court. By relying on the regulations of the Judiciary Administration Committee on the payment of rewards and expenses to lawyers appointed by the court for accused or defendants, B.E. 2005, on the matter of preparing a list of names of lawyers seeking compensation. The court will issue regulations. Prepare a list of names of lawyers. When having to appoint a lawyer for the defendant. The court will summon the lawyer in order of the strength listed in List 1 or 2. As the case may be, without considering other qualifications such as expertise according to the type of case. Or must undergo training to have specific knowledge of the criteria for selection of a lawyer in the provincial court it is different from appointing a lawyer as legal advisor to the juvenile and Family Court. According to the Juvenile and Family Court and Juvenile and Family Court Procedure Act B.E. 2010 in sections 121-125. This makes the two laws different in the performance of lawyers in court. This causes legal problems that must be considered as follows.

a) Efficiency in performing duties of lawyers.

Selection of lawyers for the Phra Nakhon si Ayutthaya Provincial Court according to Section 173 requires that the court appoints only according to the list of names registered in each court under List 1 or 2. Without considering other qualifications, such as having expertise in specific cases, such as drug cases and Technology cases Makes selecting a lawyer difficult. It is different from the Juvenile and Family Court and Juvenile and Family Court Procedure Act, B.E.2010, Section 121. Requires that lawyers who will become legal advisors must pass training. Regarding the procedure for considering cases of youth and their families Knowledge about psychology social work and other related knowledge according to the regulations of the president of the Supreme Court and Section 125 gives the court the power to order the dismissal of the legal advisor if the court believes that the legal advisor appointed by the court is not suitable to assist the defendant in that case. It can be seen that the system for selecting lawyers is tough in criminal cases. You may get a lawyer to ask for strength that is not appropriate. It may hurt the defendant who may not receive the justice that the defendant deserves. Suwipha Kunkiit (2016) Therefore, to provide clarity in protecting the rights of defendants in criminal cases, they must obtain qualified lawyers in line with the United Nations guidelines on protecting the rights of defendants in criminal cases, as well as The United States, England, and Canada should improve the criminal procedure code to be a guideline for selecting lawyers to be truly effective. Pridchanon Chulao. (2014) For example, the qualifications for those who register as lawyers under Section 173 should be additionally specified for lawyers who will apply for registration once they have passed the preliminary selection qualifications. Must be selected through a written examination and/or interview. To be in line with the system theory which has the principle the selection must go through a process according to various steps to make the results usable, that is, get more qualified lawyers. Uthit Supha. (2023).

b) Inspection organization in performing duties as a lawyer.

When the court appoints a lawyer to protect the rights of defendants in criminal cases Under Section 173, the lawyer will receive compensation in money according to the regulations. A minimum of 8,000 baht per case, a maximum of 50,000 baht per matter in cases with a death penalty. And a minimum of 6,000 baht per case of cases with a high prison sentence of ten years or more but not death. In other cases, the minimum is 6,000 baht per case and the maximum is 30,000 baht, which is a lump sum payment. Without considering the complexity of the case, Therefore, the determination of compensation for each court is different. It affects the motivation to attract lawyers with knowledge and ability, or have experience entering the law system, asking for strength In addition, the compensation or income is not appropriate, Kanchanitha Harirak (2017). There may be a problem with claiming additional compensation from the principal even though the court has already paid compensation or lack of care not punctual in giving a speech or abandoning the case in the middle without completing the case. Suwat Sukitiakorn. (2013) makes the performance of the lawyer's duties ineffective in the justice process. Adedira. (2020).

However, the profession of a lawyer is important to the justice system. Lawyers must conduct themselves within the framework of ethics, morality, and professional code of conduct correctly, honestly, and with righteousness. Sawaeng Boonchalermwipas. (2007).

From such problems in addition to affecting the efficiency of performing the duties of lawyers, requesting the strength that the court has appointed, there is still no agency or organization in charge of controlling, inspecting, or evaluating the performance of lawyers in any way. Although at present there in the Lawyers Act B.E. 2528, the regulations regarding lawyer conduct have been established to take care of ethics and code of conduct, in the past, it does not appear that have been any lawyers asking of force for misbehavior and violating the said lawyer etiquette. Suwat Sukitiakorn (2013) In addition, it does not appear that there is any agency or organization to evaluate the performance of the lawyer's duties, such as preparing the lawyer's case. Preparing information for questioning witnesses or cross-examination of witnesses to destroy the weight of the prosecution's witnesses. This makes it impossible to know the effectiveness of the lawyer's duties so that defendants in criminal cases can have their rights protected and receive effective assistance. There should be an agency or organization that performs inspections or evaluates the performance of these solicitors. Under the rule of law everyone should be treated equally under the principle of transparency, principles of responsibility for the performance of duties (Accountability), and the principles of efficiency and effectiveness (Efficiency and Effectiveness) which are under the principles of good governance. However, relevant agencies should be allowed, such as The Lawyers Council or the Court of Justice, and the accused or defendant who has a lawyer to request the strength appointed by the

court to assist in criminal cases. Making and assessment of the performance of the lawyer's duties by enacting the law or regulations for the performance of duties of lawyers, both before and after the trial during the trial and after the trial has been clearly stated. There are also mandatory conditions, for example, in the case where the assessment goes beyond criteria, there will be measures to remove names from the list of lawyers who can request strength. For lawyers to ask for strength to improve their roles and responsibilities. Uthit Suphap (2023).

CONCLUSION AND RECOMMENDATIONS

The provisions of the law in the selection of attorneys for defense according to The Criminal Procedure Code, Section 173, lacks Clarity in determining the qualifications of attorneys appointed by the court to effectively protect the rights of defendants in criminal cases. Therefore, when considering the appointment of a lawyer to protect the rights of defendants in criminal cases, In addition to considering the list of names of lawyers registered with the court. The court should specify other qualifications for consideration of lawyers, such as knowledge and expertise in specific cases. For the appointment of a lawyer, please be strong as well.

At present, in addition to the Lawyers Council which is responsible for regulating The ethics of lawyers, there is still a lack of agency or organization to inspect the quality, efficiency, and evaluation of the performance of duties of court-appointed lawyers. Therefore, the preliminary examination of the efficiency of performing duties as a lawyer the court should have the power to take measures to consider revoking the lawyer if it appears to the court that the defendant's lawyer is not suitable to help protect the rights of the defendant in the case. Similar to Section 125 of the Juvenile and Family Court and Juvenile and Family Court Procedure Act B.E. 2010.

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