

5. COMMENTARY ON ADMINISTRATIVE LAW: DURING THE CURRENT REIGN (1931)

[N.B. This is part of a series first published in the law journal. Cross-references are to other articles in the series by other authors.]

In the current reign, there are three councils for affairs of the realm, namely

1. the Supreme Council of State (*aphiratthamontri sapha*)
2. the Council of Ministers (*senabodi sapha*)
3. the Committee of the Privy Council (*sapha kammakan ongkhamontri*)

CHAPTER 1: THE SUPREME COUNCIL OF STATE

This council was established on 28 November 1925 (see the royal decree to establish the Supreme Council of State in the Royal Gazette, volume 42, p. 2168).

1. Duties of the council. The decree states “for the king to take counsel on all matters of state regularly in order to contribute to decisions on all state matters”.

2. Members.

i. Total members of this council number five.

ii. Qualifications of supreme councillors. Those receiving royal appointment as supreme councillors must have qualifications as laid down in the royal decree as follows: “those fitting to be members must have considerable prior experience and expertise of government affairs, and must have the reputation as well as ability worthy of the trust of the king and of the people as a whole”.

3. Chairman of meetings. For meetings of this council, the king himself acts as chairman or deposes to a regent in his stead (see the duties of the regent examined above).

CHAPTER 2: THE COUNCIL OF MINISTERS

The Council of Ministers has existed since the Fifth Reign. Ministers have duties not only of executing laws and carrying out administration, but also of offering advice to the king on matters concerning the administration of the realm.

This chapter deals with the Council of Ministers as a council of the realm. As for the ministers in their capacity of executing laws, this will be considered below.

1. Duties of the Council of Ministers as a council of the realm.

i. General duties. It appears in the decree on the appointment of the Supreme Council that: "the Council of Ministers who oversee the work of various ministries totalling less than twenty, offer advice to the king on official matters which are specified as the duty of those ministries". By this it is understood that although any official matter is the duty of a specific ministry, it may be considered in the Council of Ministers if the king wishes.

ii. Special duties on certain matters. By the royal household law on the succession, the ministers have certain duties, for instance to invite the successor to ascend the throne in accordance with the order of succession, which has been examined already. Or to invite senior royal family members (*chao nai*) to serve as regent in the case of a royal minority, as has been examined already in section 3. In this respect there is a problem: does "ministers" here mean the Council of Ministers or not?

2. Membership. The members of the Council of Ministers are ministers, supreme councillors, and royal secretaries with position equal to ministers.

3. Chairman of meetings. The king or regent acts as chairman of meetings.

CHAPTER 3. THE COMMITTEE OF THE PRIVY COUNCIL

This Committee is descended from the Privy Council (*priwi khaonsiw*) which was established in the Fifth Reign and later renamed as *sapha ongkhamontri*.

The number of privy councillors is not limited, and is expanding all the time. When the present king ascended the throne, he reappointed the privy councillors who had been appointed by Rama VI.

In 1927, the king had the Royal Secretariat issue a statement that the king wished to hear opinions of the Privy Council on the national flag. In the

Sixth Reign, the elephant flag had been changed into the tricolour. In the present reign, the king asked five cases to be considered:

1. use the elephant flag in place of the tricolour; or
2. use the elephant flag as the royal standard and the tricolour as the national flag; or
3. use the elephant flag as both the royal standard and national flag, with the tricolour as the national colours used for decorating locations on festive days; or
4. use the tricolour and red elephant combined into a single flag; or
5. continue as at present.

The privy councillors offered the king varying advice. Later on 25 May of that year, a royal decision was issued on the national flag as follows: "the advice offered by the privy councillors on the national flag varies a great deal. There is no clear weight on any one side. Thus the decision is to remain as before." (Royal Gazette, volume 44, p. 607)

The king was unable to take advice from the Privy Council on this matter. It may be that some of the privy councillors agreed with King Rama VI that the elephant flag is difficult to make, and is not made in many places. Countries which make it do not know the elephant, and make the shape unattractive, such that if those using the flag are not careful they may fly it upside down which is awful and embarrassing. Others may have had very different opinions, to the point where the opinions had no clear weight on any side. Since there were five possible options, there may well have been five different opinions offered.

THE PRIVY COUNCIL ACT OF 1927

Subsequently in September 1927, the king had a new act drafted on the Privy Council, superceding the act of 1874.

1. Concerning privy councillors. Under the provisions of the new act, it should be observed, the existing privy councillors remained as privy councillors, but had no right to sit on the Committee of the Privy Council. Those with such a right had to be "Members of the Committee of the Privy Council" who were appointed from among the privy councillors. Hence the status of the privy councillors changed somewhat.

- i. Qualifications: those considered by the king to have the qualifications, recognized ability, and moral integrity suitable for royal trust should be appointed as privy councillors (clause 4).

ii. Appointment is by issue of a royal command (*sanyabat*), supplemented by drinking the water of allegiance (clause 5).

iii. Expressing opinions: may offer any opinion directly to the king (clause 6).

iv. By clause 7, anyone who has served as privy councillor for ten years and receives salary (*biawat*) and pension of not more than 1,600 baht a year, the king will provide financial support for the whole time he is a privy councillor including living allowance and other money of not less than 1,600 baht a year, rising to 2,400 baht if that person has been a member of the Committee of the Privy Council under clause 12.

v. Relinquishing the position. At the end of the reign. Under clause 8, anyone who has been a privy councillor shall remain in the position until the end of the reign and may be retained for six months beyond. If the successor wishes that person to remain as privy councillor, he must reappoint.

By removal (see clause 9). Besides this, relinquishment may come about through death. There is a problem that when a privy councillor loses ability or appears to lose ability, must he relinquish the position or not?

2. Concerning the Committee of the Privy Council.

i. Qualifications and appointment. The king appoints from among the privy councillors (see clause 12).

ii. Expressing opinions: (a) to discuss, debate and agree on matters which the king himself asks to be considered; (b) in addition, if no fewer than five members of the Committee of the Privy Council together write a petition to the head of the Council that there is an important issue concerning the welfare of the country and people, on which they should meet to discuss and offer an opinion to the king, the head of the council may request permission from the king to proceed with such a meeting.

iii. Prerogative in expressing opinions. Under clause 14, members of the Committee of the Privy Council need bear no liability for any words spoken or expressed as opinions, or for any vote made in its meetings. If anyone wishes to complain against, sue, or accuse a privy councillor for that reason, it is not permitted.

In addition, persons whom the Council invites to give explanation or opinion shall receive the same exemption.

iv. Living allowance. See clause 7 on the living allowance of the privy councillors above; that is, if a privy councillor becomes a member of the Committee of the Privy Council, then the rate is increased up to 2,400 baht.

v. Relinquishing the position. (a) End of term. Appointments to the

Committee are for three years renewable by royal appointment (see clause 15). By clause 16, if any member of the Committee of the Privy Council must quit the post for any reason other than end of the normal term, the king shall appoint another privy councillor in his place to complete the number, but this replacement shall hold the position only for the remainder of the term of the member who has quit. (b) By resignation (see clause 17). (c) By the Council petitioning the king for removal, Under clause 18, if the behaviour of any member of the Committee of the Privy Council is not appropriate for this position, the committee shall meet and submit advice for the king to remove that person from the post, but must give opportunity to that committee member to provide justification before the advice is forwarded to the king. (d) By relinquishment of privy councillorship, for instance at the end of the reign of the king who made the appointment, and for other reasons for relinquishment of term as privy councillor detailed above.

3. Meetings of the Committee of the Privy Council

i. Number of members. Forty persons. The Committee elects a president and vice-president who must be approved by the king before assuming office (see clause 12). To help them compile their advice, the committee may invite any person to offer explanations and opinions to their meetings (see clause 13, paragraph 3). Non-committee members invited to meetings have no right to vote.

ii. Duties of the Committee. To meet and discuss government issues which the king has forwarded for discussion (see clause 11). The king may forward such matters himself (see clause 13, paragraph 1), or five committee members may make a petition to the president that there is an issue concerning the welfare of the country and people on which there should be discussion and opinion. Such a matter can be discussed after the president of the Committee has requested and received the king's permission (see clause 13, paragraph 2).

iii. Officers of the committee: (a) president; (b) vice-president; both are elected by the committee members but must receive royal approval (see clauses 12, 19, 20); (c) secretary; an official from the royal secretariat shall be appointed by the king to serve as registrar and secretary of meetings (see clauses 10, 23, 27).

iv. Meetings: (a) the quorum is not less than fifteen members (see clause 25); (b) the president shall call meetings (see clause 22); (c) rules: any matter for consideration must be noted in the agenda (clause 23); meetings must proceed according to rules and agenda as laid down, unless the meeting agrees otherwise (clause 24).

v. Chairman of meetings: the president shall be chairman; if absent, the vice-chairman; if both absent, the members may elect a temporary chairman (see clause 21).

vi. Resolutions shall be by majority vote, with each member having one vote, and in the event of a tie, the chairman having an additional casting vote (see clause 26).

vii. Presenting advice to the king; the president has the duty to present the advice of the Committee of the Privy Council to the king at the king's wish (see clause 28).

viii. Reports of meetings: the secretary must take minutes, and propose them for approval at the following meeting (see clause 27).

ix. Sub-committees: by clause 29, the Committee of the Privy Council has the power to establish sub-committees for any purpose or for examining any issues to propose to the full meeting for further discussion and agreement; if the chairman of a sub-committee is not appointed by the Committee, the sub-committee members may select themselves.

Sub-committees have the power to invite heads of ministries, other officers, and outsiders as prescribed for the Committee in clause 13.

Sub-committees and those they invite to give explanations and opinions also have the benefit of clause 14.

By clause 30, the quorum for meetings of sub-committees is three persons, except in cases where the sub-committee has only three members, when the quorum shall be two.

[Translators' explanatory note: King Prajadhipok established the Supreme Council three days after ascending the throne in 1925, and filled the Council with five senior royal princes (Damrong, Narit, Boriphat, Phanurangsi, Chanthaburi). Prajadhipok's predecessor had tended to bypass the senior princes, hence this move was a deliberate attempt to signal a return to a stricter policy of royal seniority in official positions. The press heavily criticized this exclusivity. Thus in 1927, Prajadhipok considered reviving the moribund Privy Council as a public display of a marginally more open policy. The issue of the flag which Pridi describes ended any notion that this existing Privy Council could serve such a purpose. Hence the king consulted his close advisers about constituting a new body with fewer members (the Privy Council had ballooned to several hundred) but a slightly broader social base for discussing national issues. Several senior princes were horrified, but the balance was in favour of such a move. The king talked of including some commoners. However, eventually all the forty appointees to the new Committee of the Privy Council were either members

of the royal family or senior officials. The king noted that “if reforms are gradually introduced in this way, a democratic form of government could possibly be introduced without too much harm”. The Committee of the Privy Council was in existence for four years, dealt only with minor administrative affairs, and was abolished (along with the Supreme Council of State) after the 1932 revolution. See Benjamin A. Batson, *The End of the Absolute Monarchy in Siam* (Singapore: Oxford University Press, 1984), ch. 5.]