

DRAFT-NOTE
CONCERNING THE GRATUITIES AND PENSIONS OF THE OFFICIALS
SERVING UNDER THE MINISTRY OR ROYAL HOUSEHOLD.

The Ministry of Finance has submitted to the Krisdika that a question arises as to the calculation of the gratuities and pensions of the officials of the former Ministry of the Royal Household. The difficulty is to know which salary should be taken as a basis for the calculation of the pension, due consideration being given to the new Act and Royal Decrees fixing scales of salaries but also to the former position of the officials under the rules and conditions which have been in force before the promulgation of the said new Act and Royal Decree (especially the rules and conditions laid down by the People's Executive Committee in the year B. E. 2475).

The Krisdika (Sub-Committee No.I) beg to give their opinion as follows.

I.

In order to determine which is the salary to be taken as basis for the gratuities and pensions, it must be reminded that two different salaries are likely to be taken in consideration, namely:

either the salary which has been fixed by the People's Executive Committee in the year B. E. 2475, pending general enactments in matter of salaries for officials, and which has been resorted to by the State Councillor for Finance in his notification issued on 24th. September B. E. 2475, or

the salary which has been fixed by the Act on Civil Service and Royal Decree issued thereunder.

This Committee remind that the leading principle of law in matter of pensions is that the pension is calculated by taking as basis the salary of the official at the time when he retires: unless however there is a formal and legal provision to the contrary.

When referring to the Siamese legislation, we find that there is a formal and legal provision to the contrary, included in the Notification of the State Councillor for Finance 24th. September B. E. 2475 which disposes (No.3) that the officials who have had their salary reduced under the decisions of the People's Executive Committee, and will not be promoted to their former salary before retirement, shall have their pension calculated after their former salary. With that limitation that the Notification applies only to high officials, because the high officials only were affected by reduction when the Notification was issued. The Notification 24th. September B. E. 2475 is a perfectly legal enactment, which did embody the scale of salaries then adopted by the People's Executive Committee and having the Royal Sanction in the conditions prescribed by the Provisional Constitution. That Notification has never been repealed and is still in force. The Krisdika has already called attention upon it when consulted as to the case of Mon Chao Damras, and it is a matter of course that the ruling proposed by the Krisdika in that case has a general value and applies to all officials of all Ministries or Departments as well.

Consequently, the officials of the Royal Household, as far as the salary to be taken as a basis for calculation of their pension is considered, may be divided in two categories:

a) the high officials who come under the Notification B.E. 2475, and will have their pension calculated after the former salary;

b) the other officials-especially minor officials not governed in the Notification B. E. 2475-who did not benefit by the rules of the Notification; as to these officials, the general principle is that the salary at the time of retirement is to be taken as basis of the pension; this has been the decision of the Ministry of Finance also, and that decision is unobjectionable.

II.

When the above principles are admitted, a further question arises in the special case of the officials of the Royal Household: namely that the reduction of salaries of those officials, as a fact, has not been operated exactly in conformity with the rules given by the People's Executive Committee. The fact is admitted by the Ministry of Finance (see letter 26th. July B. E. 2478 where it is said that "only the salary of the State Councillor in charge of the Ministry of the Royal Household was reduced in conformity with the resolution of the People's Executive Committee", whilst in the case of the other officials reductions were made without complying exactly with that resolution).

This Committee take it as highly regrettable that the reductions for the officials of the Royal Household were made without complying with the resolution of the People's Committee. When the pension is to be calculated, this non-compliance does not prejudice at all the high officials whose position has been fixed by the Notification 24th. September B. E. 2475, since their salary to be taken as a basis has been fixed once for all as the former salary. But this non-compliance may affect the other officials, whose pension is to be calculated after the salary they actually draw at the time of their retirement, if that salary is different from the one decided by the People's Executive Committee.

However, this Committee do not think that the officials of that latter category may have a claim against the Government. The reason is that, under the old regime, the salary of officials, as it happened everywhere in absolute monarchy, were not fixed by some general enactment being really a Statute of officials (as are now the Civil Service Act and the Royal Decrees issued thereunder). The salary, from the legal point of view, did result at that time from a contract between the King and the official, valid upon the reciprocal agreement of the parties.

This Committee are of opinion that that legal situation has not been modified as long as the Civil Service Act and the Royal Decrees were not in force. The consequence is that, when the officials of the Royal Household have not objected to the reductions of salary made they must be deemed to have accepted such reductions, so that their contract did remain in force but with the reduction of salary so accepted. But this is the only reason why the non-compliance hereabove mentioned does not engage the responsibility of the authorities concerned.

This Committee admit however that it was exceedingly difficult for the said officials to realize exactly their legal position, and perhaps to discuss the reduction proposed. They call attention also upon the fact that the reduction has not been within the limits having the preferences of the People's Executive Committee. All this would make it very desirable that, exceptionally and owing to consideration due to a transitory period where all positions have been uncertain, the Government should in each case take which decision is the most favourable to the officials, not as a matter of right, but as a matter of benevolence and equity.

Thai benevolence is so much the more commendable if we refer to the letter sent by the Under-Secretary of the Ministry of Royal Household to the Comptroller General of Finance (No.38-3289) dated 26th. March B. E. 2477. In that letter, which is in the file and is well known by the interested officials, it has been said officially that “The Ministry of Royal Household has submitted to H. M. For Royal Sanction that the officials whose appointments and salaries were degraded and reduced at that time should, in case they were to be retired for gratuity or pension in the future without having been promoted to the higher appointment or received the salaries higher than the amount received by them before reduction, be entitled to gratuity or pension under their former salaries received before the reduction in order to recompense them of such reduction of their salaries. His Majesty the King has been pleased to command that He agrees to it in all respects”. This is, in fact, an official promise which cannot be ignored. If it is true-as said herebefore-that, under the old system, the salary did result from a more contract between the Government and the officials, this cannot be taken only as beneficial to the Government alone, but should also be beneficial to the interested officials when something appears which shows clearly the moral intention of the Government to fairly execute such contract.

III.

This Committee think that the above legal interpretation of the question submitted contains by itself clear rulings to be applied to all the officials of the Royal Household, each case having to be examined separately and the decision thereupon governed by the above rules. This applies specially to the cases of the three officials cited in the letter of the Ministry of Finance.

Secretary-General.

Juridical Council,
25th. March 2478.