



Expatriate Counsel

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CRIMINAL LAW IN THAILAND

Part XII: Remedies if the arrest is not proper

This week we'll begin to examine how your rights are protected if something goes wrong with your arrest. We're going to do this initially by looking at some fictitious examples.

The first is where the police come to your door. They have a warrant to arrest someone at a nearby address and they simply make a mistake. They tell you you must come with them, and you do. On the way you call a Thai friend who meets you at the police station. The friend is told your identity must be verified and your passport is taken.

You are then kept waiting for six hours. After this, with no explanation, your passport is returned and you are released. This is a borderline case. If you lodged a complaint, as discussed below, and the official in charge decided that the police officers involved acted in good faith, without serious negligence, you can't do much about it, despite the inconvenience to you.

But read on. The second fictitious example sees you in a restaurant with some friends. One of them has a running feud with a local police officer, who happens also to be in the restaurant. The officer approaches your table and speaks to your friend. They are both Thai and you don't understand what is said, and then the officer arrests everyone at the table.

Outside the restaurant the officer pulls out a baton, swings it at your friend, but hits you, breaking your arm. In a few minutes a uniformed police sergeant appears and sees what has occurred. He berates the police officer, who disappears. He then apologises and releases everyone. From earlier columns you know the arrest was improper, because it required a warrant. You have a number of options:

- Police officers wrongfully or dishonestly discharging their duties are subject to criminal penalties of up to 10 years in jail and a fine. You could, therefore, go to the Public Prosecutor, complain of the policeman's behaviour, and ask that he be prosecuted;
- Under the Act on Liability for Wrongful Acts of Officials, you could claim compensation for your broken arm from the Royal Thai Police Office;
- The police have internal rules that protect the rights of individuals and punish officers violating these rules. You could initiate an investigation against the offending officer, by lodging a complaint with the Office of the Inspector-General of the Royal Thai Police.

What if the officer in this case had been off duty when the incident occurred? Unlike the above case, the police officer would not be considered discharging the duties of a police officer. He would thus not be exposed to the criminal penalties mentioned above. Also, since he was not



acting in an official capacity, you could not make a claim for your injuries against the Royal Thai Police Office.

Here is what you could do. The Criminal Code of Thailand provides that anyone, police officer or otherwise, who commits grievous bodily harm to another, is subject to a criminal penalty of up to 10 years' imprisonment and, in effect, to pay damages to the person injured. You could, therefore,

complain to the Public Prosecutor, who could prosecute the police officer.

Even though the officer was off duty, moreover, he did arrest someone as though he had been on duty and can be disciplined if the arrest was improper. So you could lodge a complaint against him with the Office of the Inspector-General of the Royal Thai Police for arresting you without a warrant. ■

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