



Expat Counsel

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CRIMINAL LAW IN THAILAND

Part XXXIX: Plea bargaining — is it constitutional?

Nobody can be around the legal system in Thailand for long before discovering that many criminal matters never go to trial — even if the defendant is guilty of something. The legal system is simply not set up to accommodate a full-blown trial for every offence that gets committed. And there are two sides to every story. There are simply not enough prosecutors, judges

and tax money allocated to the justice system to go to trial in every little case. Both sides have to pay the lawyers and tax money has to pay for the court and all of the government officials who are needed to run the court system. Also, if every case had a full trial, the delays would be into the next century. So what happens? Plea bargaining.

Black's Law Dictionary, a standard ref-

erence in the US, defines plea bargaining as “the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant’s pleading guilty to a lesser offence or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge.”

The idea of plea bargaining is that a criminal case is concluded without a trial. The defendant typically agrees to plead guilty without a trial and the prosecutor in turn dismisses certain charges or makes favourable sentence recommendations to the judge. Such a deal has, of course, to be acceptable to the judge.

In some legal systems, for example in the US, 95% of all criminal cases are plea bargained. In Thailand, however, despite the reality, there is a division of legal authority as to whether plea bargaining is constitutional.

Section 39 of the constitution of the Kingdom of Thailand, BE 2550 (2007) provides that “the suspect or the accused in a criminal case shall be presumed innocent. Before the passing of a final judgment convicting a person of having committed an offence, such person shall not be treated as a convict.”

In short, some legal scholars believe that the above provision of the constitution means that the system cannot assume guilt without a trial, and, since plea bargaining. There are also provisions of the Criminal Procedure Code (sections 135 and 226, for example) that arguably prohibit government officials such as the prosecutor or the judge from promising leniency in exchange for guilty pleas.

Despite the theoretical controversy, if you are accused of a crime, there will be some discussion of whether you should plead guilty in exchange for perhaps probation and a fine, when the sentence on the books might even involve jail time. Our advice is this: Don't make any decision like this on the spur of the moment. Talk to as many people as you can about the offer. And don't worry. If it takes you a couple of days to listen to experts and friends, the offer won't go away.

Who would you talk to about such an offer? The answer is as broad as your list of friends and acquaintances. One thing is certain. Listen to your lawyer, but there's no harm in getting a second or third opinion. Maybe a friend's lawyer, whom you just called to talk about the matter, can suggest an alternative, such as a lesser counter offer to the prosecutor, and will call your lawyer to discuss it. Or maybe he or she knows this particular prosecutor and is willing to try to make an offer more favourable to you.

If you are in this process, we know the stress you are under. Please remember, that no matter what happens, things will seem better once they are resolved. ■

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