

Expat Counsel

By James Finch and Nilobon Tangprasit

# CRIMINAL LAW IN THAILAND

## Part XL: Judges and prosecutors

If you are a criminal defendant, your case will be tried by judges, both in connection with the law and the facts of the case. In so-called common law countries, such as the UK and the US, there is a jury to decide on factual matters in a criminal trial. Thailand follows the civil law concept, originally from France, in which the judge in a trial decides on both factual and legal issues.

Generally, if you are tried in the criminal or provincial courts, you will be tried by at least two judges. A single judge may, in these courts, preside over the preliminary examination, petitions and applications and orders with respect to safety.

As discussed earlier, lesser crimes are tried in the district courts, and these may be tried by a single judge. If the judge in the district court passes a sentence exceeding six months imprisonment or 10 thousand baht in fines, the head judge or the judge-in-charge of the court must also sign the judgment order.

In theory, all judges who try a case must be present at the trial. In practice, a single judge will preside.

If there is more than one judge trying a case, they make their decisions by vote. If there is no majority vote against the defendant, for example if one judge votes in favour of guilt and the other in favour of innocence, the verdict is in favour of the defendant.

The Law for the Organisation of Courts of Justice provides that judges in criminal cases are appointed for particular cases by

the head judge in the court system or division in which the judges sit. In Bangkok, many judges preside over criminal matters only, because there are courts that are devoted strictly to criminal matters. Outside of Bangkok, judges generally handle both criminal and civil matters.

As a general rule, within a court system such as a province's courts, judges are appointed to cases on a rotational basis so that their case loads will be approximately equal. This is done, however, at the discretion of the head judge or the judge-in-charge of each court.

Despite the rotational aspect of case distribution, cases can also be distributed to judges based on expertise and appropriateness. Thus if your case involves, say, an arcane interpretation of the Foreign Business Act, the case may be given to a judge with special experience in the field.

Your lawyer may challenge the impartiality of a judge on several grounds, including that he or she:

- Has some interest in the case.
- Is related to the defendant or a witness.
- Has previously given testimony about the case, such as an expert witness.
- Has, as a lawyer, represented a defendant or witness in the case in the past.

- Has sat as judge in another court on the same case.
- Has a separate legal matter pending against the accused.
- Is a debtor or employer of a defendant or witness.
- Has some other issue that is so serious as to prejudice the impartiality of the trial or judgment.

Upon application by the defendant's lawyer on the grounds of impartiality, the judge may voluntarily withdraw from the case. If he or she does not, the defendant's lawyer may make an application to have the judge removed. If the judge is sitting on the case alone, this application would be to the court immediately superior in grade.

Where there is more than one judge presiding and the judges other than the one complained of are enough to hear the case without the presence of the judge complained of, these other judges make the decision as to whether to remove the judge from the case. If there are not enough judges to do so or where the defendant is requesting that all the sitting judges be removed, the application is to the court immediately superior in grade.

As with judges, prosecutors are generally assigned to cases on a rotational basis by

their superiors. In Bangkok there are general public prosecutors who supervise all prosecutors for their offices. For example, there is a General Public Prosecutor's office for Southern Bangkok. Each such office is divided into divisions. Generally it is the division heads who assign cases to individual public prosecutors.

In the provinces, the provincial public prosecutors, the head prosecutors for each province, assign cases to individual public prosecutors.

What if you are a defendant and wish to have a prosecutor removed because he or she is somehow already involved in the case, such as in the bullet points above? There is no legal provision by which a defendant can get a prosecutor removed. But in practice the defendant's lawyer submits a letter in Bangkok to the applicable general public prosecutor or division head, and to the provincial public prosecutor in the provinces. The letter should explain the reasons the defendant contends the prosecutor should be replaced. Cases in which such a letter has been sent are often reassigned to other public prosecutors. ■

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