



Expat Counsel

By James Finch and Nilobon Tangprasit

A criminal trial against any individual in Thailand may be started in two ways — by the public prosecutor or by the injured party. This time we will discuss criminal trials brought by the public prosecutor because it goes to the heart of the justice system in Thailand.

If the trial is to be conducted by the public prosecutor, there must first be an

inquiry by another official, usually a police officer. The inquiry is conducted by the official in charge of the case using available resources such as getting statements from the parties taking witness statements and visiting the scene. The inquiry official then recommends whether to pursue prosecution. In either case, the recommendation is sent to the public prosecutor.

If the recommendation is in favour of prosecution, the inquiry official also brings the defendants to appear before the prosecutor at the time the documents are presented.

The public prosecutor can send the case back to the inquiry official for more information but is ultimately responsible for deciding whether to prosecute. If the public

prosecutor decides not to prosecute, he or she issues a non-prosecution order.

If the decision is to prosecute, a prosecution order is issued and a charge is later filed against the accused in court.

If the defendant has not previously been sent to the public prosecutor because the inquiry official recommended against prosecution, the public prosecutor will also order that the accused be brought to him or her.

If a public prosecutor has issued a prosecution order, it is up to the prosecutor's discretion to determine what to do with the defendant pending trial. The defendant can be kept in custody, jailed or granted provisional release as discussed in earlier columns. If the prosecutor orders that the accused be jailed before being charged in court, the accused may apply to the court for provisional release.

After the defendant is charged, it is up to the discretion of the court to determine whether to detain a defendant or grant a provisional release.

If the decision to prosecute has been made by the public prosecutor, charges will be made against the accused in court.

Before the trial, the judge may decide to hold a preliminary hearing, though this is up to the justice's discretion. At that hearing, the accused is identified and the charges are explained to him or her. The accused is asked whether he or she committed the offence and to make a statement, which is recorded. If the accused refuses to make a statement, that fact is recorded, and there is a preliminary examination of the facts.

If the accused pleads guilty at the preliminary hearing, the judge will accept the charge for trial.

What happens if the accused pleads not guilty? The judge will conduct a preliminary examination of the case. If the public prosecutor can successfully argue that the basic elements of the crime exist, the court will accept the charge for trial. If the public prosecutor is unable to show the judge these basic elements, the judge may dismiss the case then and there.

The state does not have the obligation at the preliminary hearing to provide the accused with a lawyer at state expense, though the accused may bring his or her own lawyer.

If the judge decides not to have a hearing, or if after the hearing the judge decides to proceed with trial, the trial date will be determined by agreement between the judge, the public prosecutor and the defendant's lawyer. As with the earlier stages, the judge has discretion as to whether to jail the defendant or grant provisional release pending the trial. ■

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CRIMINAL LAW IN THAILAND

Part LXII: How the prosecutor gets involved

