

THE CRIMINAL CASE RETRIAL ACT B.E. 2526

BHUMIBOL ADULYADEJ, REX.

Given on the 3rd Day of April B.E. 2526
Being the 38th Year of the Present Reign

His Majesty King Bhumibol Adulyadej has the Royal Proclamation to announce that:

Whereas it is expedient to have a law governing criminal case retrial.

Therefore, His Majesty the King Bhumibol Adulyadej has graciously been pleased to enact this Act, with the advice and consent of the Parliament, as follows:

Section 1 This Act shall be called the “Criminal Case Retrial Act B.E. 2526”.

Section 2¹ This Act shall come into force as from the date following the date of its publication in the Government Gazette onwards.

Section 3 All provisions of laws, rules and other regulations which are contrary to or inconsistent with this Act shall be superseded by this Act.

Section 4 In this Act:

“Cases” means criminal cases.

“Petition” means a petition for retrial of a criminal case which already had final judgment and punishment.

“Court” means the court under the law governing the charter of the courts of justice, the court under the law governing the establishment of the Juvenile Court, or the court under the law governing the military court, as the case may be.

“Court of First Instance” means the Court of First Instance under the law governing the charter of the courts of justice, the court under the law governing the establishment of the Juvenile Court, or the first-instance military court under the law governing the military court, as the case may be.

¹ The Government Gazette, Volume 100 Section 55 Special Edition, p.1 (1983, April 7)

“The Court of Appeal” means the Court of Appeal under the law governing the charter of the courts of justice or the central military court under the law governing the military court, as the case may be.

“The Supreme Court” means the Supreme Court under the law governing the charter of the courts of justice or the military supreme court under the law governing the military court, as the case may be.

“Public Prosecutor” means the Public Prosecutor under the law governing public prosecutor or military prosecutor under the law governing the military court, as the case may be.

Section 5 Regarding any case which already had final judgment that any person shall undergo criminal punishment thereunder, a request for retrial of such case may be submitted, in case, it appeared that:

(1) Witness to whom the Court has primarily referred in the trial of a final case with subsequent final judgment indicating that such witness statement was false or incorrect.

(2) Other evidences in addition to witness under (1) to which the Court has primarily referred in the trial of a final case with subsequent final judgment indicating that such evidences were fake, false or incorrect; or

(3) There was new explicit evidence which was important to the case, if adduced in such final case shall indicate that the person who has undergone the criminal punishment under the final judgment did not commit an offence.

Section 6 The following people shall have their rights to file a petition:

(1) Person who shall undergo the criminal punishment under the final judgment.

(2) Legal representative or custodian, in the event that the person who shall undergo the criminal punishment under the final judgment was a minor or an incompetent person.

(3) Manager or other representatives of the juristic person, in the event that such juristic person shall undergo the criminal punishment under the final judgment.

(4) Ascendant, descendant, husband or wife of the person who shall undergo the criminal punishment under the final judgment who died before the date of filing of petition; or

(5) Public prosecutor in the event that the public prosecutor was not the prosecutor under the original case.

Section 7 Subject to Section 6(5), the public prosecutor shall file a petition when it is deemed expedient, or upon request of the person as specified in Section 6(1)(2)(3) or (4), and for the purpose of collection of evidences, the public prosecutor shall have powers similar to the Inquiry Official under the Criminal Procedure Code.

Section 8 A petition shall be submitted to the Court of First Instance that has adjudicated such case, or to other courts which have jurisdiction in lieu of such court, except for:

(1) Cases of the Martial Court or the Court of Military Units shall be submitted to the Bangkok Military Court.

(2) Regarding cases of the Court under the law governing the charter of the courts of justice which has been prescribed by law as the military court, and such court has no longer been the military court for such cases, such cases shall be submitted to the Court under the law governing the charter of the courts of justice which used to be the military court or other courts which have jurisdiction in lieu of such court.

In such petition under Paragraph 1, events as specified in Section 5 shall be cited elaborately and expressly; and in case, the petitioner intended to request for compensation for the fact that any person had to undergo the criminal punishment under the final judgment, or for recovery of rights of such person has lost directly resulting from such judgment, the petitioner shall specify, in such petition, the request for compensation or recovery of rights, and such application for compensation or recovery of rights shall not be imposed with the Court fees.

Such rights in the Preceding Paragraph shall not include rights in property.

In case, a petition shall be filed to the Military Court, the person under Section 6(1) (2) (3) and (4) shall be entitled to enter legal actions under the law governing the military court and to appoint an attorney-at-law to represent himself or herself.

For the benefit of inquest under Section 9 and the trial under Section 13 or other operations under this Act, the Court under (2) shall be regarded as the Military Court.

Section 9 The Court having received the petition shall conduct the inquest of such petition whether it was well-grounded enough to conduct the retrial of such criminal case or not, except in the event that the public prosecutor is the petitioner, the Court may or may not conduct the inquest of such petition. In case, it is agreed that it is unnecessary to conduct the inquest of petition, then, the Court shall issue an order to accept the petition and to conduct the retrial of such criminal case, and in such a case, the Court's order shall be final.

Regarding the inquest of petition under Paragraph 1, the Court shall send a copy of the petition and shall notify the date of appointment for the inquest to the prosecutor under the original case. In the event that the prosecutor under the original case is not the public prosecutor, then, the Court shall send a copy of the petition and shall also notify the date of appointment for the inquest to the public prosecutor. The public prosecutor and the prosecutor under the original case may or may not appear in the Court for the inquest and the cross examination of the petitioner, and the petitioner and the prosecutor under the original case shall be entitled to appoint an attorney-at-law to represent himself or herself.

When the inquest of the petition has been conducted, the Court having conducted the inquest of the petition shall send a copy of the inquest, together with opinions, to the Court of Appeal without delay.

The judge, the judicial officer of the court under the law governing the charter of the courts of justice which was prescribed by law as the Military Court, or the sole judge advocate shall have powers to conduct the inquest of petition and to give comments thereon.

Section 10 When the Court of Appeal has received the case files of the inquest and comments, in case, the Court of Appeal has considered that such petition was well-grounded enough to conduct the retrial of such criminal case, the Court of Appeal shall issue an order to accept the petition, and shall order the Court of First Instance to accept the petition for retrial of the criminal case; however, in case, the Court of Appeal has considered that such petition was not well-grounded, the Court of Appeal shall issue an order to dismiss such petition.

The order of the Court of Appeal under Paragraph 1 shall be final.

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Section 11 When the Court has issued an order to accept the petition, the Court shall notify the date of questioning of witness for the petitioner to the public prosecutor and the prosecutor under the original case. In the event that the public prosecutor or the prosecutor under the original case has not yet received a copy of the petition, then, a copy of the petition shall also be sent. The public prosecutor or the prosecutor under the original case shall be entitled to file an objection prior to the date of taking of evidences.

Upon the complete taking of evidences of the petitioner, the public prosecutor and the prosecutor under the original case shall be entitled to introduce witnesses for the prosecution to take evidences.

When the Court has deemed it expedient for the purpose of justice, the Court may recall witnesses for re-examination or may call other witnesses to take evidences.

Section 12 During the retrial of a criminal case, in the event that such person is undergoing the criminal punishment under the final judgment, the Court of First Instance having accepted the petition shall issue an order of temporary release from custody of such person with or without bail and security.

Section 13 Regarding the retrial of a criminal case, the Court shall have powers:

(1) In the event that the final judgment under the original case was the judgment of the Court of First Instance or the Martial Court, then the Court of First Instance having accepted the petition shall continue the trial, and in case, it is agreed that the person who shall undergo the criminal punishment under the final judgment in the original case, has committed the offence, then, the Court shall adjudge to dismiss such petition. However, in case, it is agreed that the person who shall undergo the criminal punishment under the final judgment in the original case, has not committed the offence, then, the Court shall adjudge to dismiss the original judgment and to adjudge that such person has not committed the offence.

(2) In the event that the final judgment under the original case was the judgment of the Court of Appeal or the Supreme Court, then, the Court of First Instance having accepted the petition shall conduct the trial and shall give comments thereon and shall send the case files to the Court of Appeal or the Supreme Court, as the case may be, to adjudge and dismiss the petition or to dismiss the original judgment, and to adjudge that such person has not committed the offence.

In the event that there was an application for compensation or recovery of rights under Section 8 Paragraph 2, when the Court under (1) or (2) has adjudged that such person has not committed the offence, then, the Court shall determine the amount of compensation or shall issue an order relating to the recovery of rights.

Section 14 The amount of compensation shall be fixed for not exceeding the amount as per the application specified in the petition under Section 8 and as per the criteria, as follows:

(1) In case, such person shall undergo the punishment of confiscation of property, then, the confiscated property shall be returned to such person, except that such property was the property which was prescribed by law to be confiscated no matter whether it belonged to the offender or not and no matter whether there was a person being punished under the judgment or not.

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In case, such confiscated property may not be returned, such person shall be indemnified as per the value of such confiscated property at the time when the Court has adjudged the retried case, and in case, the confiscated property was money, then, such person shall be refunded with such amount of money; whereas, the Court shall impose 15% p.a. interest on such amount of money as from the date of confiscation thereof until the date to be fixed as the Court may deem fit.

(2) In case, such person shall undergo the punishment of fines and has already paid such fines to the Court; whereas, the Court shall impose 15% p.a. interest on such amount of fines as from the date of payment of fines until the date to be fixed as the Court may deem expedient.

(3) In case, such person shall undergo the punishment of confinement or confinement in lieu of fines, then, such person shall receive monetary compensation calculated as from the date of confinement or imprisonment at the rate fixed for confinement of fines under the Criminal Code.

(4) In case, such person shall undergo the capital punishment and was executed, then, the compensation shall be fixed at an amount of not exceeding 200,000 Baht.

(5) In case, the procedures for juvenile have been applied in lieu of the criminal punishment, then, the Court shall determine an amount of compensation as it may deem expedient.

Regarding the Court's order for recovery of rights as per the petition under Section 8, in case, any of such rights may not be recovered, then, the Court shall determine an amount of compensation for such rights as it may deem expedient.

Section 15 When the Court has adjudged under Section 13, the public prosecutor, the petitioner or the prosecutor under the original case which was a party to the case, shall be entitled to lodge an appeal or Supreme Court appeal, as follows:

(1) In case, such judgment was the judgment of the Court of First Instance, then, the public prosecutor, the petitioner or the prosecutor under the original case shall be entitled to lodge an appeal against such judgment to the Court of Appeal, and, in such a case, the judgment of the Court of Appeal shall be final.

(2) In case, such judgment was the judgment of the Court of Appeal, then, the public prosecutor, the petitioner or the prosecutor under the original case shall be entitled to lodge a Supreme Court appeal against such judgment to the Supreme Court.

Section 16 The provisions under the law governing the charter of the courts of justice, the law governing the criminal procedures, the law governing the juvenile procedures and the law governing the military court shall apply, *mutatis mutandis*, to the trial under this Act.

Section 17 In the event that the final judgment has been issued that the person who shall undergo the criminal punishment under the final judgment in the original case, has not committed the offence, and the Court has fixed the amount of compensation under Section 14, then, the Ministry of Finance shall pay the compensation as per the amount specified in such judgment. In case, the person who shall be entitled to receive compensation died before receiving such compensation, then, the Ministry of Finance shall pay such compensation to the successor of such person.

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Section 18 Petition relating to any person who shall undergo the criminal punishment in any criminal case shall be submitted in one time only.

Section 19 When the person who shall undergo the criminal punishment under the final judgment had lodged a petition and died, then, ascendant, descendant, husband or wife of such petitioner may continue taking actions separately from the Deceased.

In the event that ascendant, descendant, husband or wife of the person who shall undergo the criminal punishment under the final judgment was the petitioner under Section 6(4), when such petitioner died, the surviving ascendant, descendant, husband or wife of the person who shall undergo the criminal punishment under the final judgment may continue taking actions separately from the Deceased.

Section 20 A petition may be filed within 1 year as from the date of appearing of matter of facts under Section 5 or within 10 years as from the date when the judgment under the original case has become final; however, when there is special circumstance, the Court may, for consideration, accept a petition which has been filed after the above-mentioned time limit has been elapsed.

Section 21 The Minister of Justice, the Minister of Defence, the Minister of Interior and the Minister of Finance shall be in charge under this Act.

Counter-Signature:
General Prem Tinsulanonda
Prime Minister

Note:- Reason for promulgation of this Act: Whereas, it is expedient to prescribe that the person who shall undergo the criminal punishment under the final judgment shall be entitled to apply for retrial of a criminal case after there was new evidence that such person has not committed the offence, and such person shall be entitled to receive compensation and to receive the recovery of all rights lost directly resulting from such judgment, in case, it appeared as per the judgment of the Court which has retried the case that such person has not committed the offence, therefore, it is necessary to enact this Act.

Amended by: Pattama
Checked by: Wasin
11th February 2010

Revised by: Prinsinee
Checked by: Chan
7th November 2013