

Translation

RETRIAL OF CRIMINAL CASES ACT,  
B.E. 2526 (1983) <sup>1</sup>

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BHUMIBOL ADULYADEJ, REX;  
Given on the 3<sup>rd</sup> Day of April B.E. 2526;  
Being the 38<sup>th</sup> Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:  
Whereas it is deemed expedient to have the law on retrial of criminal cases;  
Be it, therefore, enacted by the King, by and with the advice and consent of  
the National Legislative Assembly, as follows:

**Section 1.** This Act is called the “Retrial of Criminal Cases Act, B.E. 2526 (1983)”.

**Section 2.** This Act shall come into force as from the date of its publication in the Government Gazette.

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

**Section 4.** In this Act:

“Case” means a criminal case.

“Motion” means a motion requesting for a retrial of a criminal case that imposes a punishment in a final judgment to try and adjudicate again.

“Court” means the court under the law for the organization of the court of justice, the court under the law of establishment of the child and juvenile case court, or the court under the law for the organization of military court, as the case may be.

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<sup>1</sup>Published in the Government Gazette, Vol. 100, Part 55, Special Edition Page1/ dated 7<sup>th</sup> April, B.E. 2526 (1983).

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“Court of first instance” means the court of first instance under the law for the organization of the court of justice, the court under the law of establishment of the child and juvenile case court, or the military court of first instance under the law for the organization of military court, as the case may be.

“Appellate court” means the appellate court under the law for the organization of the court of justice, or the central military court under the law for the organization of military court, as the case may be.

“Supreme court” means the supreme court under the law for the organization of the court of justice, or the supreme military court under the law for the organization of military court, as the case may be.

“Public prosecutor” means the public prosecutor under the law of public prosecutor or military prosecutor under the law for the organization of military court, as the case may be.

**Section 5** In case where a final judgment imposing a criminal punishment on a person is rendered, a motion requesting for a case retrial to be tried and adjudicated again may be submitted when it appears that:

(1) a witness whom the court mainly relied on in rendering a final judgment is later pronounced by the final judgment that the testimony given by the witness was false or not true according to the truth;

(2) evidence apart from the witness specified in (1) of which the court mainly relied on in rendering a final judgment is later pronounced by the final judgment that the evidence was forged, false, or not true according to the truth or;

(3) there appears to be a new concrete evidence material to the case indicating that a person imposed with a criminal punishment by the final judgement did not commit an offence if presented in the case which was final.

**Section 6** The following persons are entitled to submit a motion:

(1) a person imposed with a criminal punishment by a final judgment;

(2) a legal representative or a custodian in case where the person imposed with a criminal punishment by the final judgment is a minor or an incompetent person;

(3) a manager or other representative of a juristic person in case where such juristic person is imposed with a criminal punishment by a final judgment;

(4) an ascendant, a descendant, a husband or a wife of a person imposed with criminal punishment by a final judgment who dies prior to submitting a motion or;

(5) a public prosecutor in case where the public prosecutor is not a plaintiff in the previous case.

**Section 7** Subject to Section 6 (5), a public prosecutor may submit a motion when it is deemed appropriate or the persons specified in Section 6 (1) (2) (3) or (4) make a request thereof. For the benefit of gathering evidence, the public prosecutor shall be vested with the power similar to an inquiry official under the Criminal Procedure Code.

**Section 8** A motion shall be submitted to the court of first instance rendering the judgment of the case or other court having jurisdiction instead of such court except:

(1) a case of the War Crime Court or Military Unit Court, shall be submitted to the Bangkok Military Court;

(2) a case of the court under the law for the organization of the court of justice which the law prescribes as the military court and such court is no longer the military court for such case, shall be submitted to the court under the law for the organization of the court of justice which was once the military court or other court having jurisdiction instead of such court.

The motion prescribed under paragraph one shall contain the reason specified in Section 5 thoroughly and clearly. If intended to request for a compensation incurring from being imposed a person with a criminal punishment by a final judgment or to request for a restoration of right of which a person lost resulting directly from the judgment, the request for a compensation and restoration of right shall be specified in such motion. The request for compensation or restoration of right shall be exempt from the court fees.

Such right under the previous paragraph shall not include the right in property.

In case where the motion be submitted to the military court, the persons specified in Section 6 (1) (2) (3) and (4) shall be entitled to act under the law for the organization of military court and shall be entitled to appoint an attorney on his/her behalf.

For the benefit of the hearing under Section 9, and the trial and adjudication under Section 13, or other proceeding under this Act, the Court under (2) shall be deemed as the military court.

**Section 9** The Court receiving the motion shall conduct a hearing of such motion whether a prima facie case is sufficiently established for a retrial in order that the case be tried and adjudicated again. Except where a public prosecutor is a petitioner, the court may or may not hear the motion. If it is deemed unnecessary to hear the motion, the court shall order that the motion be accepted and further proceed with a case retrial. The court's order in this case is final.

During the hearing of the motion under paragraph one, the court shall send a copy of the motion and notify the hearing date to the plaintiff in the previous case. In case where the plaintiff in the previous case is not a public prosecutor, the court shall send a copy of the motion and notify the hearing date to the public prosecutor as well. The public prosecutor and the plaintiff in the previous case may or may not attend the hearing and cross-examine a witness of the petitioner. The petitioner and the plaintiff in the previous case shall be entitled to appoint an attorney on his/her behalf.

When the motion is heard, the court which conduct the hearing shall send the case file of the hearing together with an opinion to the appellate court without delay.

A judge, a judge of the court under the law for the organization of the court of justice of which the law prescribed as the military court, or a judge-advocate shall be solely vested with a power to hear a motion and render an opinion.

**Section 10** When the appellate court receives the case file of the hearing and the opinion, if the appellate court is of the view that a prima facie case is sufficiently established in the motion for a retrial in order that the case be tried and adjudicated again, the appellate court shall order that the motion be accepted and order the court of first instance which accept the motion to further proceed with a case retrial. However, if the appellate court is of the view that no prima facie case is established in the motion, the appellate court shall dismiss such motion.

The order of the appellant court under the first paragraph shall be final.

**Section 11** When the court orders that the motion be accepted, the court shall notify the date of petitioner's witness hearing to the public prosecutor and the plaintiff in the previous case. In case where the public prosecutor or the plaintiff in the previous case has not received the copy of the motion, the copy of the motion shall be sent herewith. The public prosecutor and the plaintiff in the previous case shall be entitled to file an objection prior to the date of the witness hearing.

When the hearing of petitioner's witness is completed, the public prosecutor and the plaintiff in the previous case shall be entitled to bring his/her witness for examination.

When the court deems it appropriate for the benefit of justice, the court may call the same witness for further examination or call other witnesses for examination.

**Section 12** During a proceeding of case retrial, if a person imposed with a criminal punishment by the final judgement is still being imposed with the punishment, the court of first instance accepting the motion may order that a provisional release be granted to such person, either with guarantee or with guarantee and security.

**Section 13** For a case retrial, the court shall be vested with a power:

(1) In case where a final judgment in a previous case is the judgment rendered by the court of first instance or the War Crime Court, the court of first instance accepting the motion shall further proceed to try and adjudicate. If it is of the view that a person imposed with criminal punishment by the final judgment in the previous case committed an offence, the motion shall be dismissed. However, if it is of the view that a person imposed with criminal punishment by the final judgment in the previous case did not commit an offence, the previous judgment shall be dismissed and a judgment stating that such person did not commit an offence shall be rendered.

(2) In case where the final judgment in the previous case is the judgment rendered by the appellate court or the supreme court, the court of first instance accepting

the motion shall try, form an opinion, and send the case file to the appellate court or the supreme court, as the case may be, to try in order to dismiss the motion, or dismiss the previous judgment and render a judgment stating that such person did not commit an offence.

In case where the compensation or the restoration of right is requested under Section 8 paragraph two, the court shall determine the compensation or issue an order of right restoration provided that the court under (1) and (2) render the judgment that such person did not commit an offence.

**Section 14** The determination of compensation shall not exceed the amount stipulated in the motion under Section 8 and the following criterion:

(1) If a punishment imposed is a forfeiture of property, the forfeited property shall be returned except that such property is a property subject to be forfeited by law irrespective of whether it belongs to the offender and there be a person imposed with punishment according to the judgment or not. If the forfeited property cannot be returned, the compensation shall be paid based on a value of the forfeited property at the time when a court render a judgment in a retrial case. If the property forfeited is money, such amount of money shall be returned. The court may grant an interest calculating at the rate of fifteen percent per annum from such amount of money from the date of forfeiture to the date as the court deems appropriate to determine;

(2) If a punishment imposed is a fine and the fine has been paid to the court, the fine shall be returned. The court may grant an interest calculating at the rate of fifteen percent per annum from an amount of fine from the date the fine was paid to the date as the court deems appropriate to determine;

(3) If a punishment imposed is confinement, confinement in lieu of fine, or imprisonment, the compensation in a form of money shall be given calculating from the date of confinement or imprisonment at the rate prescribed for confinement in lieu of fine under the Criminal Code;

(4) If a punishment imposed is death and death has been executed, the compensation shall be determined for an amount not exceeding two hundred thousand baht;

(5) If a measure for children and juveniles is imposed in lieu of criminal punishment, the court shall determine the compensation as deemed appropriate.

In granting the right restoration order per the request stipulated in the motion under Section 8, if either one of such rights cannot be restored, the court shall determine the compensation for such right as deemed appropriate.

**Section 15** When a court has rendered either one of the judgments under Section 13, a public prosecutor, as a petitioner, or the plaintiff in a previous case who is a party shall be entitled to appeal to the appellate court or the supreme court as follows:

(1) If such judgment was a judgement of the court of first instance, the right to appeal such judgment to the appellate court shall be established. The judgment of the appellate court in such case shall be final;

(2) If such judgment was a judgment of the appellate court, the right to appeal such judgment to the supreme court shall be established.

**Section 16** The provisions of the law governing the organization of the court of justice, the law governing criminal procedure, the law governing criminal procedure in municipal court, the law governing children and juvenile case procedure, and the law governing the organization of the military court shall apply to the trial and adjudication under this act *mutatis mutandis*.

**Section 17** In case where the final judgment pronounces that the person imposed with criminal punishment by the final judgment in a previous case did not commit an offence and the court has already determined the compensation under Section 14, the Ministry of Finance shall pay the compensation for an amount identify in such judgment. If a person entitled to the compensation die prior to receiving the compensation, the Ministry of Finance shall pay the compensation to an heir.

**Section 18** A motion concerning one person imposed with criminal punishment in one case shall be submitted only once.

**Section 19** When a person imposed with criminal punishment by the final judgment has submitted a motion and die afterwards, the ascendant, descendant, husband or wife of a person imposed with criminal punishment by final judgment may proceed with the case instead of the deceased.

In case where the ascendant, descendant, husband or wife of a person imposed with criminal punishment by the final judgement is a person filing a motion under Section 6 (4), when such person filing a motion dies, the surviving ascendant, descendant, husband or wife of a person imposed with criminal punishment by the final judgement may proceed with the case instead of the deceased.

**Section 20** The motion shall be submitted within one year from the date of which the fact prescribed under Section 5 appears, or within ten years from the date of which the judgment in the previous case became final. However, if there exists a special circumstance, the court may accept the motion submitted after the time limit previously mentioned for trial.

**Section 21** The Minister of Justice, the Minister of Defense, the Minister of Interior, and the Minister of Finance shall have charge and control of the execution of this Act.

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Countersigned by  
General P. Tinsulanonda  
Prime Minister