

Abstract

Principle of criminal prosecution proceedings in Thailand is conducted based on “Criminal Prosecution Proceeding by State”. The state is responsible for peace and good social orders. When crime takes place, it negatively affects the state. The state is damaged. Government offices concerning criminal prosecution proceedings which include police officer, public prosecutor and court; therefore, are responsible for maintaining justice. They must cooperate in the investigation and the research for reliable information of the case. They must impose penalty on the criminals to uphold good social orders. However, while the criminal prosecution is brought before the court of law, the case may be considered to discontinue. The criminal procedure code allows the case to be halted by withdrawal of a criminal charge.

Government agencies concerning the withdrawal of a criminal charge compromise public prosecutor and court. Public prosecutor will submit reasons for the withdrawal of a criminal charge to court. Court will ponder whether the case should be withdrawn or not. This practice encourages verification and balance of powers between offices concerned. Merely one office will not have absolute authority to withdraw a criminal charge as criminal prosecution is under the responsibility of all parties. After the criminal charge is withdrawn, the case will not be verified. The consequence of the dismissal of the case and that of the withdrawal of a criminal charge is dissimilar. The consequence of the dismissal of the case by court allows the defendant to prove that the defendant is innocent. The defendant is not found guilty and can return to daily life. The defendant will not get any trouble again from the same case due to the final judgment. The consequence is different from the withdrawal of a criminal charge. Although the person, who withdraws the case, can not bring the case back to court again, there is an exception that the same case can be re-entered.

The criminal prosecution proceedings of the public prosecutor is conducted in line with “Principle of Criminal Prosecution Proceedings with Discretion” The public prosecutor can withdraw the criminal charge with discretion. The criminal procedure code does not stipulate rules of withdrawal to support the public prosecutor’s discretion: therefore, measure must be imposed to monitor the discretion of the public prosecutor.

Apart from an internal verification performed by supervisors in various levels, law has stipulated that the discretion verification mechanism is carried out by external organizations as stated in the criminal procedure code, section 35. "Court" which is an independently external mechanism will consider an application for withdrawal of a criminal charge of the public prosecutor. It depends on the court's discretion whether court will allow the withdrawal of the case or not. Court will balance the benefit between the final judgment and the discontinuation of the case by withdrawal of a criminal charge to weigh which will render the most benefits to the society as a whole as the prosecution of criminal cases is for verification of valid information. In principle the government offices concerning criminal prosecution proceedings must verify and search for the truth of the case. By this reason, the withdrawal of a criminal charge must be executed with sound reasons. It should not be completed by someone's satisfaction, so that justice can genuinely take place after the withdrawal of a criminal charge.