

Abstract

In Thailand, criminal prosecution is mainly based on an adversary system. When criminal offences arise, public administration officials or inquiry officials will investigate and gather evidences to prove whether the accused has committed criminal offences according to allegation. After finalizing the result of the inquiry, such officials will submit an opinion whether a prosecution or non-prosecution order should be made together with the file to the public prosecutor. Discretion of public prosecutor in making a prosecution or non-prosecution order is considered quasi-judicial power. Such order affects right and freedom of the accused, the injured person and any concerning person. Therefore, discretion of public prosecutor in making order must be independent, just and free from any intervention. However, such discretion must be under control and supervision of the Office of the Attorney General; comply with rules of the Office of the Attorney General in dealing with criminal prosecution B.E. 2547. Moreover, such discretion must be under control and supervision of other organizations; comply with rules provided by Constitution of Kingdom of Thailand, criminal procedure code, law relevant to the Office of the Attorney General and other relevant laws.

Currently, perceptions relating to facts in cases of public prosecutor are restricted. All facts in cases come from investigation of inquiry officials. If certain facts are flawed or distorted from truth, public prosecutor might mistakenly make an order.

As a result, the thesis will first examine and compare criminal prosecution, control and supervision of criminal prosecution of public prosecutors in civil law countries; France and Japan, and in common law countries; England and the United States of America in order to improve Thailand's criminal law system to be up to date and to enhance efficiency in criminal prosecution.

Then, it will study most interesting criminal cases; Cherry Ann Duncan case, Scandal in representative election in Buriram province and Sangchai Sunthornwath case. Finally, this thesis will synthesize current procedures in making orders of public prosecutors in order to develop procedures and measures to review discretion in making orders of public prosecutors in the future.