

Drug Case Procedure Act, B.E. 2550 (2007)**Translation**

Bhumibol Adulyadej, Rex.

Given under our Hand this 31st Day of December, B.E. 2550 (2007);

Being the 62nd Year of our Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is desirable to bring into existence a law on drug case procedure;

And whereas this Act contains certain provisions as to the restriction on personal rights and liberties, in respect of which Section 29 incorporating Section 33, Section 3 and Section 41 of the Constitution of the Kingdom of Thailand so permit by virtue of the legal provisions;

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the National Legislative Assembly, as follows:

Section 1

This Act shall be cited as the "Drug Case Procedure Act, B.E. 2550 (2007)".

Section 2

This Act shall come into force upon the elapse of one hundred and eighty days from the date of its publication in the Government Gazette.

Section 3

Where no provision or procedure is specifically provided in this Act, that of the Code of Criminal Procedure, the law on establishment of juvenile and family courts and juvenile and family case procedure, the law on establishment of municipal courts and municipal court procedure or the law on military court statute shall apply to the extent not contrary to or inconsistent with this Act.

Section 4

The provisions under Chapter 3: Court Proceedings in First Instance, and Chapter 4: Appeal to Court of Second Instance and Final Appeal, of this Act shall not apply to the juvenile and family cases set forth in the law on establishment of juvenile and family courts and juvenile and family case procedure.

Section 5

In this Act, save where otherwise indicated:

"Public prosecutor" includes a judge advocate under the law on military court statute;

"Drug" means a drug under the law on counter drugs;

"Drug-related law" means the law on prohibition of use of volatile organic compounds, the law on counter drugs, the law on suppressive measures against drug offenders, the law on harmful drugs and the law on psychoactive substances;

"Drug-related offence" means an offence proscribed by the drug-related law;

"Authority" means an authority under the law on counter drugs and an administrative or police officer under the Code of Criminal Procedure;

"Court of second instance" means a court of second instance which is not a Regional Court of Appeal.

Section 6

The President of the Supreme Court of Justice, the Prime Minister, the Minister of Defense and the Minister of Justice shall be in charge of this Act. For the purpose of enforcing this Act and in virtue of their respective authority, the President of the Supreme Court of Justice shall be invested with the power to lay down the rules of the Plenary Session of the Supreme Court of Justice, and the Prime Minister, the Minister of Defense and the Minister of Justice shall be given the power to issue the ministerial regulations.

Such rules or ministerial regulations shall take effect following their publication in the Government Gazette.

Chapter 1

Investigation

Section 7

In case of necessity and for the purpose of enforcing this Act, an authority having obtained written permission of the National Police Commander, Secretary General of the Counter Drugs Commission or person entrusted by him, as the case may be, may conduct a sting operation in order to investigate any offence under the drug-related law.

A sting operation means any action the status or objectives of which are kept confidential and which is carried out in the manner deviating the understanding of another or concealing the truth about the performance of public duty of the authority.

In case of an urgent need on the reasonable basis, an authority may render a sting operation for the sake of investigating any offence under the drug-related law and later, but without delay, refer the matter to the person empowered to grant permission pursuant to paragraph 1.

Permission and the sting operation referred to in paragraph 1, as well as the action set forth in paragraph 3, shall be subject to the criteria, procedure and conditions determined in the ministerial regulations which must, at least, provide the measures for controlling and scrutinizing the exercise of power.

The facts ascertained and the evidence obtained by the authorities through their sting operations under this Section shall be admissible.

Section 8

In case of necessity and for the purpose of enforcing this Act, an authority having obtained written permission of the National Police Commander, Secretary General of the Counter Drugs Commission or person entrusted by him, as the case may be, may, either inside or outside the Kingdom, restrictively possess any drug or allow any person to so possess in order to investigate any offence under the drug-related law.

The person entrusted pursuant to paragraph 1 must be an office holder whose duty is to be responsible for the matter concerned. In so entrusting, regards must be paid to that person's degree of responsibility also.

To restrictively possess any drug means to provisionally possess any drug in order to deliver it to a suspect who is under control or command of, or is being tracked or pursued, by an authority. Such delivery shall include an act of bringing into or out of the Kingdom for the sake of delivery.

An application for permission, the granting of permission, the possession, a time limit for the possession or the allowance of restrictive possession of any drug shall be subject to the criteria, procedure and conditions determined in the ministerial regulations which must, at least, provide the measures for controlling and scrutinizing the exercise of power.

The facts ascertained and the evidence obtained by the authorities through their sting operations under this Section shall be admissible.

Section 9

Where an assistance of any person who is of specialized knowledge or proficiency as to any field concerned is requested by an authority in the interest of enforcing this Act, such person shall personally incur no civil liability arising from any injury, save where the injury is caused by his intention or through his gross negligence. This does, however, not debar the victim from claiming compensation from the State.

Section 10

In case of necessity and for the purpose of enforcing this Act, an authority may request a competent authority under the law on computer-related offences to extract any computer data to be used as evidence in establishing the guilt and instituting a prosecution on the basis of any drug-related offence.

Upon receipt of the said request, the competent authority under the law on computer-related offences shall be empowered to, subject to such law, proceed with any action as requested.

Any authority who discloses or delivers to another the computer data acquired pursuant to paragraph 1 in the manner not in favor of the institution of a prosecution against the offender under this Act, or, through his negligence, allows another to obtain the knowledge as to such computer data, shall undergo the same penalties as those of the competent authorities under the law on computer-related offences.

Chapter 2

Inquiry

Section 11

In any of the drug-related cases determined in the ministerial regulations, a judicial police officer who, in virtue of his legal authority, seizes any article alleged to be a drug shall, within three working days from his receipt of such article to further be exhibited, deliver the article to an expert who shall then examine it and give an opinion in writing to be placed in the inquiry file, save where the delivery within the said time limit is debarred by any force majeure or other necessity; prescribed, however, that such force majeure or necessity shall be recorded into the inquiry file.

Chapter 3

Court Proceedings in First Instance

Section 12

With regard to a drug-related case in which the defendants are represented by the counsels, if it appears that any of them willfully fails to attend court or absconds, and there exists a necessity to preserve evidence or a fear that the subsequent taking of evidence would be difficult, the court, finding expedient, may take such evidence in absence of the defendant in question, but the court must allow his counsel to cross-examine the witnesses and adduce the rebuttal evidence.

Section 13

In cases the defendant admits his guilt according to the charge in the course of a trial, the court may render a judgment without taking evidence any further. However, if there is a reasonable doubt that the defendant is guiltless or if the offence admitted by the defendant is liable to the minimum penalty of imprisonment for life or a more serious one, the court must hear the prosecution evidence until it is satisfied that the guilt of the defendant does exist in reality.

Chapter 4

Appeal to Court of Second Instance and Final Appeal

Section 14

There shall be established in a court of second instance a drug cases division competent to deal with the drug-related cases in which the judgments or rulings in the first instance are appealed and with any other matters prescribed in this Act.

Section 15

Subject to Section 16, a court of first instance's judgment or ruling as to a drug-related offence shall be appealed to a court of second instance by way of submitting the appeal to the court of first instance within a period of one month from the day the said judgment or ruling is pronounced or deemed to have been pronounced to the appellant.

When the court of first instance accepts the appeal or when the court of first instance's ruling of appeal denial is appealed, the court of first instance shall forthwith forward such appeal and the file to a court of second instance for a further judgment or ruling.

Section 16

As regards a case in which a court of first instance renders a judgment of death or imprisonment for life, if the judgment is not appealed, the court of first instance shall forward the file and the judgment to a court of second instance in compliance with Section 245 of the Code of Criminal Procedure.

Section 17

In cases the prosecutor prefers a charge that the defendant has committed several acts violating several laws and one of these acts violates the drug-related law, if the judgment or ruling is appealed on the basis of the drug-related offence together with other offences, such appeal shall be filed to a court of second instance, and the court of second instance shall also be competent to try and adjudicate all other offences not being the drug-related one.

Section 18

A court of second instance shall render its judgment or ruling without delay. And subject to Section 16 and Section 19, a court of second instance's judgment or ruling shall, only in the part dealing with the drug-related offence, be final.

Subject to the provisions of the Code of Criminal Procedure governing final appeal, a final appeal may be lodged against a court of second instance's judgment or ruling as to any other act not violating the drug-related offence.

Section 19

In the event that a court of second instance's judgment or ruling dealing with a drug-related offence is rendered according to Section 18, paragraph 1, any party may, in the form of a petition submitted together with an appeal against the said judgment or ruling, and within a period of one month from the day such judgment or ruling is pronounced or deemed to have been pronounced to him, apply to the Supreme Court of Justice for accepting his appeal for consideration.

Upon the petition mentioned in paragraph 1, if the Supreme Court of Justice finds that any of the questions raised through the appeal is material to the extent it ought to be taken under the Court's advisement, the Supreme Court of Justice may then agree to rule on such question.

A case in which an appeal is denied by the Supreme Court of Justice shall be regarded final on and from the date the court of second instance's judgment or ruling is pronounced or deemed to have been pronounced.

The criteria and procedure for making, considering, granting or denying an application shall be set forth in the rules of the Plenary Session of the Supreme Court of Justice which must, at least, contain the time clauses governing the denial to the extent not contrary to or inconsistent with the enforcement of Section 262 of the Code of Criminal Procedure.

The rules under paragraph 4 shall be effective upon having been published in the Government Gazette.

Section 20

Appeal to a military court of second instance or last resort shall be governed by the law on military court statute.

Chapter 5 Enforcement of Fines

Section 21

Where a fine is imposed, the public prosecutor may request the court to issue a warrant of enforcement in order that an enforcement officer attached to the Legal Enforcement Department would be appointed to take charge of the seizure or attachment of the offender's property to cover the fine.

The Code of Civil Procedure shall apply to the enforcement under paragraph 1 mutatis mutandis. In this respect, the Office of the Counter Drugs Commission shall be empowered to scrutinize the property and regarded as a judgment creditor.

This Section does not debar the court from ordering detention of the offender in lieu of fine pursuant to the Criminal Code.

Chapter 6 Limitation

Section 22

Limitation shall take effect in a case of a drug-related offence liable to death penalty or imprisonment for life, when a prosecution is not instituted and the offender is not brought before the court within a period of thirty years from the day the offence is committed.

Limitation shall also take effect, if the prosecution is instituted and the offender is also brought before the court, but the trial is stayed due to the offender's unfitness to plead or the offender does abscond for a period longer than that mentioned in paragraph 1 from the day of the stay or abscondment, whichever applies.

Section 23

In regard to a drug-related case in which any person is sentenced to death penalty or imprisonment for life and absconds without having experienced any penalty at all or after having partially served it, if the person is not brought to the penalty within a period of thirty years from the day of the final judgment or of his abscondment, as the case may be, his penalty is said to have lapsed and is unenforceable any further.

Transitory Provisions

Section 24

In respect of all drug-related cases pending before any court prior to the date of coming into force of this Act, such court shall be competent to further deal with those cases and

the laws in force prior to the date of coming into force of this Act shall apply to them until their finality.

Countersigned by:

Mr.Khosit PANPIAMRAT,
Deputy Prime Minister.

Remarks:

The grounds for promulgation of this Act are as follows:

The drug-related offences now become more organized and distinctive, as the offenders draw advantages from the developed technology and a restrictive condition that the laws do not facilitate the suppressive actions against them. Also, the courts are now loaded with a great number of the drug-related offences the characteristics and the intricacy of which differ from the ordinary criminal cases. It is expedient to bring into existence a specific law on the drug case procedure, containing the criteria as to the investigation and inquiry by special means, as well as the provisions as to the court proceedings in the first instance, second instance and last resort, limitation and the enforcement of the fines according to the judgments, so that the courts would be invested with a more effective vigor in handling the drug cases. It is, therefore, necessary to enact this Act.

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