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## Changes to appeal system affect absentee convicted criminals

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Recent amendments to Thailand's criminal law make it harder for convicted criminals who do not appear for sentencing to appeal their cases. Under the current law, defendants who are on the run are able to file higher court appeals through a lawyer. The National Legislative Assembly (NLA) has now closed this loophole, and the amendments are awaiting final signature to become effective.

Under the Criminal Procedure Code (CPC), a defendant is required to appear before the court to hear judgement. If the defendant fails to be present in court through no fault of his or her own (e.g., they, in good faith, were unaware of the court date), issuance of the judgement is suspended until the defendant actually appears.

However, if the court has any suspicion that the defendant purposely avoided the judgement hearing, an arrest warrant will be issued. If the defendant is not arrested within one month from when the warrant was issued, the court can issue the judgement without the defendant being present.

Importantly, if the court convicts the non-appearing defendant, that defendant still has the right to appeal the judgement to the Appellate Court or the Supreme Court. In other words, even a fugitive has the legal right to appeal his or her conviction, under the current process.

Substantive efforts to change this law began in March 2016. NLA members submitted a proposal to the President of the NLA to amend the CPC. They argued that allowing absconding defendants to appeal was against public policy and principles of fair justice. The proposed amendments stated that if a defendant wanted to appeal a Criminal Court judgement, the defendant should be required to physically appear before court officials.

NLA members also commented that under the amendment, absent defendants would lose their right to appeal to higher courts and should be barred from designating lawyers to act on their behalf before appellate courts. In addition, NLA members proposed that absent defendants should lose the right to file separate legal claims against plaintiffs or authorities.

In September 2016, the NLA approved a revised version of the proposed amendment. An extraordinary committee appointed by the NLA recommended that the amendment should only apply to absent defendants whose judgement relates to imprisonment or any other higher punishment. As such, defendants sentenced to lesser punishments, such as fines and suspended prison sentences, are exempt from the appeal restriction.

Accordingly, a defendant in these circumstances is entitled to apply for a time extension to appear before court officials, which would give him or her a fair chance to file an appeal with the courts. The NLA also ultimately rejected the proposal to restrict absent defendants from filing separate legal claims.

In addition, the extraordinary committee recognised the importance of Thailand's obligations to the International Covenant on Civil and Political Rights (ICCPR), an international treaty. The ICCPR provides that anyone convicted of a crime has the right to appeal and have the sentence reviewed by a higher tribunal. The extraordinary committee considered the ICCPR and concluded that the amendment is in accordance with Thailand's international legal obligations.

The extraordinary committee reasoned that if the convicted person cannot physically appear before the court based on reasonable grounds, he or she would still be able to extend the deadline to file the appeal according to the law. In other words, if the convicted person legitimately cannot appear before the court (i.e., he or she does not run away to become a fugitive), their right to appeal will not be prejudiced.

This amendment will have implications for convicted defendants who decide to fight their case while in hiding or from abroad. Of course, this includes businesspeople who may find themselves facing court proceedings for white-collar crimes. Such defendants must now reconsider absconding before judgement is passed.

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