



# Impact of Defamation Law on Freedom of Expression in Thailand

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### Acknowledgements

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**ARTICLE 19** is an international, non-governmental organisation based in London with a specific mandate to promote the rights of freedom of expression and to information. It has been working in Thailand since 2002, among other things publishing a baseline study on freedom of expression in the country in 2005, available at: <http://www.article19.org/pdfs/publications/thailand-baseline-study.pdf>.

**The National Press Council of Thailand** is a national self-regulatory body among major newspapers in Thailand with a mandate to promote press freedom and professional ethics among Thai journalists.

## **1. Preamble**

1.1 Although the right to freedom of expression is guaranteed in the Constitution of Thailand, the exercise of this right for both individuals and the media is restricted by both long-established and newly-enacted legislation. The existence of these laws, and long history of government ownership of and control over the broadcast media, have limited this right in practice.

1.2 Defamation, in both its criminal and civil aspects, is a key part of the legal framework that restricts speech critical of the government, businesses and prominent individuals.

1.3 In Thailand, defamation is a criminal offence under the Penal Code which has been enforced since 1957, and the substantive provisions have not been subjected to any major changes in recent years. In 1992, however, the maximum penalty was increased to its current level of two years' imprisonment and a fine of 200,000 baht (approximately US\$5,700). The jail term is equivalent to that imposed for causing physical injury, but the maximum fine is much higher than the fine for a physical injury offence under the Penal Code.

1.4 It is well-known that the 1992 amendment targets news media, since the maximum penalty would only be applied to a defamatory statement which was published or broadcast to wider audiences, i.e. through the media. Under the Penal Code, a defamatory statement communicated only to an individual is subject to a maximum imprisonment of one year or a fine of 20,000 baht (approximately US\$570), or both.

1.5 In the Civil and Commercial Code, defamation is included in the provisions addressing wrongful acts, or tort, as act which injures the reputation, credit, earnings or prosperity of another person, and which gives an injured party the right to seek compensation from the offender. The Civil and Commercial Code sets no minimum or maximum compensation for an injured party, leaving this matter entirely to the discretion of the court.

## **2. News Media in Thailand**

2.1 Thailand's newspapers are the primary privately owned source of current news for most Thais. Mainstream terrestrial radio and television are either owned by or owned and operated by the State, and are, therefore, subject to government influence. As a result, Thai newspapers are the primary source of news that is critical of the government, and also the type of media that is most threatened by defamation cases.

2.2 Thailand's Internet penetration is still limited and confined mainly to urban areas, so that online news is not a key source of information, particularly for people living in rural areas, still a majority of the population. Most major Thai newspapers publish online news web pages, and some update news during the day.

2.3 In recent years, with the growth in Internet penetration, particularly in Bangkok, some alternative news web pages, mainly in the Thai language, have emerged, some catering to certain specific audiences and interests. The better known ones include [www.prachatai.com](http://www.prachatai.com), [www.sameskybooks.org](http://www.sameskybooks.org), [www.midnightuniv.org](http://www.midnightuniv.org) and [www.isranews.org](http://www.isranews.org). Irsa News, which operates under the Thai Press Development Foundation, focuses on the continuing unrest in the southern part of Thailand.

2.4 Highly sensational newspapers form an important part of the Thai newspaper market. These newspapers are issued under big banners, and depend on day-to-day newsstand sales rather than longer-term (monthly or yearly) subscriptions. They thus depend on generating big eye-catching headlines to draw attention. More often than not, these headlines are exaggerated and do not reflect the actual content of the story they announce.

2.5 Recently, Thai journalism has seen a mushrooming of star-gossip newspapers, some of them published daily, which contain sexually-oriented stories and pictures of stars and celebrities. These newspapers could attract defamation suits lodged by the subjects of their stories.

2.6 This sensationalism has caused various parties to argue against the total decriminalisation of defamation. These sceptics said without the threat of a jail term, individuals' reputations would lack adequate protection.

2.7 Most Thai newspapers do not take precautionary measures to protect themselves from being sued for defamation. Most newspapers, even the more established ones which employ full-time in-house lawyers, do not consult their lawyers before publishing stories that could be seen as defamatory. Editors argue that time pressure prevents them submitting their stories to be read by their lawyers before publication. Many newspapers only employ lawyers once they have been sued.

### ***3. Key Restriction On Freedom Of Expression***

3.1 As noted, the right to freedom of expression for individuals and media outlets is guaranteed in the Thai constitution. The current 2007 Constitution only permits restrictions on rights through the enactment of specific legislation for the purpose of safeguarding the rights and liberty of other persons, or for maintaining national security, public order or good morals. The Constitution also specifically bars the closure of any newspaper, or radio or television station.

3.2 The recent Press Registration Act, which came into force on 19 December 2007 and replaced the previous draconian Press Act A.D. 1941, does not allow the authorities to censor or close down any newspaper, in accordance with the Constitution (see paragraph 10.1 for more details on the Act).

3.3 As a result, in terms of the bigger picture, Thai newspapers enjoy more liberty under the law than broadcasters. But defamation law, and particularly criminal defamation law, which allows the court to send offenders to jail,

represents a direct threat to freedom of the press and, indeed, anyone who wishes to criticise the government or those in power. As a result of this threat, newspaper readers tend not to receive news and information that exposes government wrongdoing unless the newspapers have access to solid and substantial evidence to prove their allegations before a court.

3.4 Newspaper editors, both in Bangkok and provinces, have openly said that they feel threatened by the risk of imprisonment for criminal defamation, as well as the recent trend of exorbitant damage claims by injured parties. They note that, in some cases, they avoid publishing news reports exposing those in power, for example if they feel they might lose in court if challenged.

3.5 It appears that the larger the newspaper, the more susceptible it becomes to being sued for defamation. As of early 2007, the Thai-language Matichon newspaper group, which attracts readers from among educated urban Thais, was facing 48 criminal and civil defamation cases in court, some of which included record-high damage claims. Boonlert Khachayuthadej, a senior editor at the Matichon group, said: "Criminal defamation has been a thorn in the side of newspapers editors."

3.6 Associate Professor Malee Malee Boonsiripunth, who teaches journalism at the University of the Thai Chamber of Commerce, in Bangkok, said: "Defamation law has been used as a tool to prevent the media from doing their work." She recommended that defamation be decriminalised and become exclusively a civil offence.

#### **4. Defamation: A Criminal Offence**

4.1 As noted, defamation is a criminal offence in the Penal Code. The Code stipulates that any person making a statement "in good faith by way of fair comment on any person or thing subjected to public criticism" shall not be guilty of defamation. And if a defendant can prove to the court that a statement is true, he or she will not be subject to punishment for that statement. Thai defamation law does, as a result, comply with certain aspects of international standards regarding justifiable restrictions of freedom of expression, for example by allowing fair and true comments on matters of public interest. However, the court will not allow proof of truth if the statement is personal in nature and such proof will not benefit the public.

4.2 In a failure to respect international standards, Thai law does not prohibit public bodies either in the legislative, executive or judicial branches from initiating defamation cases. Thai law also does not require public figures to be more tolerant of criticism than ordinary citizens (as demonstrated by the case elaborated upon in paragraph 9.2).

4.3 A person claiming to be defamed can either file a criminal case and seek monetary damages at the same time, or file a separate civil case to seek such damages. He or she can also choose to file only a civil case seeking redress. One motivation for filing a separate civil case is that a plaintiff has one year to bring the case, while for criminal defamation, a case must be lodged within three months. Filing a civil case gives the claimant more time to

decide how much damages to claim. The civil court will usually wait for the judgment of the criminal court before making any decision of its own on the monetary award.

4.4 Imprisonment is far more threatening to freedom of expression than monetary damages, as defendants can usually get the money from their employers or borrow from other sources to pay the plaintiff. But if the court sentences someone to jail, he or she has to go to jail personally. Furthermore, being convicted of a criminal offence also means that the convict will have a criminal record for the rest of his or her life.

4.5 Criminal defamation is, as a result, the main threat used by politicians and those holding public offices to silence their critics, and they tend to seek imprisonment rather than monetary compensation to punish their offenders. Indeed, Thai defence lawyers note that politicians from both the government and opposition, as well as high-ranking government officials, have constituted the majority of defamation plaintiffs against their individual critics and Thai newspapers in the past. A good example of this, detailed in the case described in paragraph 9.2, was that politician Chuan Leekpai did not seek any extra monetary damages, apart from what was provided for in the Penal Code, when bringing defamation charges against his critics. However, more recently, there has been an increase in businesspeople and their companies suing for defamation, and they have often sought high damages awards from journalists, their information sources, and editors and publishers.

4.6 The criminal defamation law has also been used to prosecute freedom of expression activists. In October 2003, Shin Corporation, then owned by the family of former prime minister Thaksin Shinawatra, sued Supinya Klangnarong for comments she made that were published in a Thai-language daily, Thai Post, about mutually beneficial relations between the company and the then Thaksin government, bringing criminal defamation charges and also seeking 400 million baht (approximately US\$11.44 million) in civil damages. At the time, Supinya was the Secretary General of the Campaign for Popular Media Reform (CPMR), which was spearheading a media liberalisation campaign. The criminal court dismissed Shin Corp's case in a verdict delivered on 15 March 2006.

4.7 Internationally, there has been strong condemnation of criminal defamation laws as a result of the very negative impact they have on freedom of expression. A growing number of countries around the world have decriminalised defamation, while international human rights bodies and authorities, such as the UN Special Rapporteur on Freedom of Opinion and Expression, have been increasingly vocal about the dangers of criminal defamation law.

## ***5. Recent Trend of Exorbitant Damage Claims***

5.1 In 2005, Picnic Corporation, a company listed in the Thai stock market which sells cooking gas, sued the Matichon newspapers group for criminal defamation, seeking 10 billion baht (approximately US\$286 million) in

damages, the highest ever claimed by a plaintiff in a defamation case in Thailand. The company also separately sued Prachachat Turakij, a business newspaper in the Matichon group, for criminal defamation, and sought another five billion baht (approximately US\$143 million) in damages. The court of first instance dismissed the two cases in 2006. Picnic appealed the decision, but later decided to withdraw the case.

5.2 Sit Sunansataporn, in-house lawyer of the Matichon group since 2000, said politicians often asked newspapers to retract what they had written about them when suing for defamation, instead of demanding high monetary awards. "So during the trial, they hope that we become softer in our reporting on the scandal. And if we lose the case, we will have to write what they want us to," Sit said. He added that business people, on the other hand, want newspapers to pay compensation.

5.3 Giant retailer Tesco Lotus, the local branch of the multinational U.K.-based company Tesco, brought a criminal defamation case in November 2007 against a senior official of the Thai Chamber of Commerce for comments he made which were published in the Thai-language daily ASTVManager, seeking one billion baht (approximately US\$28.6 million) in damages from him. In February and again in March 2008, it sued a columnist and another journalist from the Thai-language daily Krungthep Turakij in two separate civil defamation cases, claiming 100 million baht (approximately US\$2.86 million) from each of them.

5.4 These exorbitant damage claims, if actually awarded by courts, would have bankrupted the defendants. However, the level of awards courts actually grant are not as large as those claimed. The highest amount of monetary damages ever awarded by the Dika Court in Thailand (the equivalent of a supreme court) in a defamation case was five million baht (approximately US\$143,000) (see the case of Narong Wongwan v. Naew Na Newspaper in paragraph 9.1 for details). A court of first instance granted 10 million baht (approximately US\$286,000) to a plaintiff in a defamation case which is now pending appeal. This is a record award for a court of first instance.

5.5 The facts suggest that at least in some cases, the huge damages claimed by plaintiffs are designed mainly to frighten defendants into settling the disputes through court-appointed mediation or out-of-court negotiations. Chakkrish Permpool, the publisher of Krungthep Turakij, said: "Lately, I never saw a damage claim of less than 100 million baht. Defendants who don't understand the trick will be easily frightened and will not want to fight the court case. They will tend to settle the disputes through negotiations."

5.6 Sit, of the Matichon group, said about half of the group's cases are settled before the court makes any ruling, while the other half proceed through to a final court verdict.

5.7 Major businesses, such as Tesco Lotus, when bringing defamation cases, can exercise their advertising power to pressure newspapers to settle the case. Most newspapers rely on advertising revenue as their major source of income and would rather avoid losing major advertisers. Tesco Lotus was

known to meet privately with editors of Krungthep Turakij several times to negotiate. Nongnat Hanwilai, a reporter from that newspaper who was sued by Tesco Lotus, published an apology in her daily for three days from 19-21 January 2009. Tesco Lotus formally withdrew the case against her on 28 January 2009.

## **6. Case Filing & Procedural Impact**

### **6.1 Using State Resources In Prosecution**

6.1.1 Thai law allows those who claim to be defamed to make use of the police and State prosecutors in pursuing defamation cases in court, which is tantamount to using State resources to redeem a personal interest. In Thailand, when an injured person files charges with the police, the latter investigate the case and gather relevant evidence. The Office of the Attorney General then decides whether the case is substantial enough to be prosecuted in court and, if so, it appoints a State prosecutor as plaintiff. As a result, the claimant is relieved of the burden of spending its own financial resources to pursue the case. In many other countries, injured parties have to appoint their own lawyers and spend their own resources to prosecute criminal defamation cases (as is the case with civil cases).

6.1.2 Manich Sooksomchitra, currently president of the Thai Press Development Foundation and former president of the National Press Council of Thailand, said State resources should not be allowed to be used in defamation cases, as these involve personal, not State, interests. He said those who want to pursue defamation cases should use their own personal resources while State resources shall be spared for more serious crimes.

6.1.3 Some officials claim that it is necessary to make State officials available to assist in filing defamation cases, since some people cannot afford to hire their own lawyers. There are not many lawyers working on pro bono basis in the country. It is not clear how often poor people bring defamation cases in Thailand.

### **6.2 Filing Cases At Different Jurisdictions**

6.2.1 Defamation cases against newspapers raise a peculiar issue in Thailand. In ordinary criminal cases, the injured party has to file the case with the police or a complaint with a court in the locality where the crime occurs or where the defendant lives. Since newspapers are sold across the country, injured parties are allowed to file his charges or complaints at different localities where the impugned statements have been published.

6.2.2 In February 1990, after lobbying efforts by press associations, the national police office issued a regulation aimed at coordinating police work in defamation cases. The regulation, which has been reasonably effective since it was first adopted, establishes that the police station where the injured party first files a defamation case has a primary mandate to handle the case, and

any other localities where the case is filed shall coordinate with it. Since then, police officers have largely complied with the new rules. However, as the regulation is not a law, compliance cannot be strictly enforced.

### **6.3 Preliminary Hearing By Court**

6.3.1 Usually when an injured party asks State prosecutors to file a defamation case on his or her behalf, the court does not hold a preliminary hearing, as the evidence has already been screened by the State prosecutors. However, if the injured party files a case directly, the court does hold a preliminary hearing to decide whether or not the case is substantial enough to proceed to trial.

6.3.2 Lawyers for newspapers claim State prosecutors now appear to decide to file defamation cases with courts more often than not, probably to avoid being accused of favouring the press. As a result, the courts now have a heavy load of pending defamation cases. These lawyers claim that the court should hold preliminary hearings for all defamation cases, even those filed by State prosecutors, as this would better screen out groundless cases before the plaintiff and defendant are drawn into the long formal court hearing procedures.

## **7. Mediation**

7.1 For any non-serious crime, such as defamation, the court, before starting the trial, appoints a mediator to try to mediate the dispute between the opposing parties. This helps the court to cut its caseload, as some parties reach agreement during the mediation process.

7.2 However, Thai newspapers have also chosen to settle their defamation disputes with the injured persons through private negotiations, particularly when the cases are not major ones.

## **8. New Court Fee Regulations**

8.1 The fact that court fees are relatively low makes it easy for plaintiffs to request extraordinarily high damages in defamation cases. The fee for filing a case in court had been capped at 200,000 baht (approximately US\$5,700).

8.2 In May 2008, new regulations on court fee rates came into force. Now, for any damage claim of 50 million baht (approximately US\$1.43 million) or less, including in defamation case, the cost of filing the case is two percent of the damages requested, but the fee is capped at 200,000 baht. For damage claims above 50 million baht, an additional fee of 0.1 percent of the portion of the claim above that amount is charged.

8.3 Media lawyers have expressed the hope that with the higher court fees under the new regulations, plaintiffs might drop the practice of claiming excessively high damages.

## **9. Some Key Defamation Cases**

### **9.1 Narong Wongwan v. Naew Na Newspaper**

9.1.1 In 1992, an ex-politician, Narong Wongwan, then a candidate for the position of prime minister, sued several newspapers for reporting that he was alleged to have been involved in drug trafficking and had been denied an entry visa by the United States.

9.1.2 Narong filed both criminal and civil cases against the medium-sized Thai-language daily, Naew Na. In the civil case, he sought 100 million baht (approximately US\$2.86 million) in damages from the newspaper and Wanchai Wongmeechai, the publisher and co-defendant in the case. Narong also sought to have the defendants pay to have the court verdict and an apology statement published in all daily newspapers sold in Bangkok for 15 consecutive days, a demand that would have caused the defendants another fortune. Both parties fought the two cases up to the Dika Court.

9.1.3 In the criminal case, the Dika Court, in its verdict of 12 October 1995, sentenced Wanchai to 20 months' imprisonment, suspended for two years. It also fined him 15,000 baht (approximately US\$ 430) and required him to publish the verdict in four major Thai-language dailies for five consecutive days.

9.1.4 In its verdict in the civil case, delivered on 15 October 2002, seven years after the criminal verdict, the Dika Court referred to the final judgment in the criminal case and ordered Naew Na daily and Wanchai jointly to pay the plaintiff five million baht (approximately US\$143,000) in damages, as noted, the highest amount ever awarded by the Dika Court in a defamation case.

9.1.5 Wanchai, who is no longer the publisher of Naew Na but remains a senior editor at the newspaper, noted in an interview for this report that the five million baht damage award was a huge sum of money for a medium-sized newspaper like Naew Na, which was not able to cover the award.

9.1.6 As a result, the company went bankrupt and its assets were liquidated to pay the plaintiff and other creditors. The daily has kept the title Naew Na, but it is currently operated under a different company.

9.1.7 Wanchai indicted that during his two years as publisher, he was sued in over 20 defamation cases with most of the plaintiffs being politicians. However, they were able to settle most of the cases through private negotiations with the plaintiffs, as they were mostly minor in nature.

9.1.8 Wanchai said for small and medium newspapers, being sued meant getting into financial troubles: "Lawsuit expenses are a high cost for

newspapers". The amount of bailing out an editor alone can cost several hundreds of thousands of baht (approximately US\$10,000), and even millions of baht (approximately US\$50,000) in some cases.

9.1.9 He said after the Narong case, his newspaper has become more careful when writing politically sensitive stories: "Now we know how to write to avoid being sued. We also told our editors and reporters to better check their information sources and balance their stories". He added that currently Naew Na faces far fewer cases than before.

## **9.2 Chuan Leekpai v. Sathien Chantimathorn & Suchart Srisuwan**

9.2.1 In 2001, Chuan Leekpai, then the leader of the Democrat Party and opposition leader in the House of Representatives, filed a criminal defamation case against Sathien Chantimathorn, managing editor of the Thai-language weekly, *Matichon*, and Suchart Srisuwan, publisher of the daily version of the newspaper of the same name (*Matichon* weekly and *Matichon* daily are two different publications, although they are both published by the *Matichon* group), for an article in *Matichon* daily that alleged that Chuan did not pay adequate attention to the welfare of his wife and son and that his son would "feel the warmth only when Chaun Leekpai faced difficulties and scandals that he needed to build public image".

9.2.2 During the trial, Sathien and Suchart argued that Chuan, a former prime minister, should be a good social model in terms of family affairs.

9.2.3 The two parties fought the case up to the Dika Court, which ruled on 15 December 2005 that, "though the plaintiff is a politician and used to hold key political offices, and hence, the plaintiff can be regarded as a public figure, such statements are of the plaintiff's family affairs. It does not have anything to do with his duty as a politician and not benefit the public."

9.2.4 The Dika Court found both Sathien and Suchart guilty of criminal defamation and sentenced each to three months' imprisonment, suspended for three years, and a fine of 20,000 baht (approximately US\$570). The court also ordered the defendants to publish its verdict in the dailies *Matichon* and *Khao Sod*, another Thai-language daily in the *Matichon* group, for three consecutive days.

9.2.5 The ruling clearly shows that even if the subject of a report is a public figure, what has been written about him or her might not be seen as a matter of public interest. Thai courts tend to see statements criticising personal matters as defamatory. The defamation provisions in the Penal Code do not allow the defendant to prove that the defamatory statement is true if the statement relates to a personal matter and proof of truth does not benefit the public.

9.2.6 Another interesting issue in this case is that the court penalised Sathien, even though he was neither the editor nor the publisher of *Matichon* daily, which published the defamatory statement, and it had not been proven that he was the author of the defamatory article.

9.2.7 During the trial, Sathien claimed that he did not write the defamatory article and although he did help select articles for publication in Matichon daily, he held no official position in the newspaper (although he was the managing editor of Matichon weekly, a different publication).

9.2.8 Sathien and Suchart did not disclose to the court who the author of the article was. The plaintiff could not produce any eyewitness to prove that Sathien was the author. However, the Dika Court ruled that the two defendants should know who wrote the article and should disclose this for purposes of defending Sathien. The fact that the two defendants did not disclose this fact rendered the evidence of the two defendants “very suspicious”. Therefore, the Dika Court admitted the evidence produced by the plaintiff that Sathien was the author of the article, and penalised him as it did Suchart.

## **10. Some Other Laws Affecting Freedom Of Expression**

### **10.1 Press Registration Act A.D. 2007**

10.1.1 The Press Registration Act, which came into force on 19 December 2007 and replaced the 1941 Press Act, makes it easier to start a new newspaper. Now, Thai nationals who want to start a newspaper can simply “notify” the authorities rather than having to get a permit. Thai authorities can no longer censor or close any newspaper under any circumstances.

10.1.2 However, the new Act still allows the country’s police chief to bar importation into the country of any publication deemed to be lèse majesté or contrary to public order or good morals. For instance, the police chief has prohibited the importation into Thailand of the book, *The King Never Smiles*.

10.1.3 The new law relieves newspaper editors and publishers from liability for the offence of defamation, leaving the author to bear responsibility. Under the 1941 Act, the editor and the author of a defamatory article both had to share liability, and if the author could not be located, the publisher had to accept liability in his or her stead. Now only reporters or columnists can be sued for defamatory statements in newspapers.

10.1.4 This appears to serve the interests of many newspaper editors and owners, who do not wish to be liable for a defamatory article that they did not write. Before the enactment of the 2007 Act, some editors and publishers had called publicly for such relief from liability.

10.1.5 Three defamation cases filed recently in Thailand by Tesco Lotus – the first in November 2007, the second in February 2008 and the last in March 2008 – are cases in point. The cases involved three articles published in Thai-language daily newspapers. Tesco Lotus sued only the interviewee in one case and only the authors of the articles in two other cases. No editor or publisher was sued in any of the three cases.

10.1.6 This has led to fears that small journalists and columnists could now be left in the cold to fight defamation charges alone without the support of their newspapers, a particular threat for freelance writers. This could further discourage journalists from writing stories or articles that are critical of government officials or major corporations.

## **10.2 Lèse Majesté Law**

10.2.1 Lèse majesté is classified under Offences Relating to the Security of the Kingdom in Thailand's Penal Code. It has been part of the Code since its promulgation in 1957, and has rarely been subject to change. Thai authorities, therefore, treat lèse majesté as a matter of national security.

10.2.2 Section 112 of the Penal Code states: "Whoever defames, insults or threatens the king, the queen, the heir-apparent or the regent shall be punished with imprisonment of three to fifteen years."

10.2.3 Thai newspapers, and radio and television stations have rarely been charged with the offence of lèse majesté as these mainstream media usually follow the rules in covering news of the royal family, avoiding any reporting of sensitive matters.

10.2.4 Previously, statements which could be viewed as hostile to the monarchy were made mostly by individuals who were seen as anti-royalist. However, since the promulgation of the Offences Relating to Computers Act A.D. 2007, which came into force in July 2007 (see paragraph 10.3), Thai authorities have made websites and bloggers a major target under the offence.

10.2.5 The Ministry of Information and Communication Technology indicated that it has shut down more than 2,000 websites alleged to have contained lèse majesté material. The Minister has made the crackdown a policy priority.

10.2.6 On 23 January 2009, the Senate set up a committee tasked with addressing the issue on online lèse majesté material, warning that over 10,000 websites could be targeted in the campaign.

10.2.7 Since 2007, there has been an increase in the number of individuals charged and prosecuted for defaming the King or his family members. Many lèse majesté suspects have been denied bail during the police investigation and court trial, being detained in prison from the moment they were arrested.

## **10.3 The Offences Relating to Computers Act**

10.3.1 The Offences Relating to Computers Act, adopted in 2007, was the first piece of legislation affecting freedom of expression that was passed by the National Legislative Assembly installed by the military after the September 2006 coup that toppled the Thaksin government. Before the enactment of this Act, the Thai authorities did not have any specific legal tool to address the

problems of hackers, pornographic and other harmful websites, or to prosecute Internet service providers (ISPs).

10.3.2 Lèse majesté is not specifically mentioned in the Act, but as noted in paragraphs 10.2.1 - 10.2.2, it is generally regarded as an offence relating to national security. Section 14 of the Act states, in part, that anyone who enters any information into a computer system that constitutes an offence relating to national security shall be punished with a maximum imprisonment of five years or a maximum fine of 100,000 baht (approximately US\$2,850) or both. The penalty is also applicable to any person who passes such information on to others.

10.3.3 Section 15 of the Act states that any service provider who intentionally assists in or consents to offences under Section 14 shall be subject to the same punishment.

10.3.4 The Act also states in Section 20 that where the offence of distributing information via a computer that could affect national security, as protected in the Penal Code, or deemed to be contrary to public order or good morals, is being committed, the authorities can seek a warrant from a court to stop such distribution. This is the key provision permitting the authorities to block websites or messages suspected of insulting the monarchy and pornographic websites.

10.3.5 Because of the heavy penalty stipulated by the Act, Internet service providers in Thailand are known to cooperate with the authorities by providing information and blocking websites as requested by the authorities.

10.3.6 A number of individuals have been charged with committing offences under the Act, but no case has reached final court verdict yet.

## ***11. Recommendations***

The recommendations below are being made by ARTICLE 19 and the National Press Council of Thailand. These recommendations are based on wide consultations we have conducted in Thailand with people who have an interest in defamation law. Among other things, from November 2008 to January 2009 we hosted a number of discussions with various groups of professionals affected by or otherwise involved with defamation law. Those consulted included newspaper editors and publishers, lawyers who have defended the media, university lecturers in the fields of journalism and law, and human right activists.

### **Recommendations:**

- ❖ Ideally, defamation should be fully decriminalised. Otherwise, imprisonment for defamation should be done away with.
- ❖ Consideration should be given to revising the rules so as to provide for more robust defences against defamation claims.
- ❖ The law should clearly define public figures and matters of public interest, and require these people and matters to tolerate more scrutiny by news media than ordinary citizen and private matters.

- ❖ Consideration should be given to imposing a limit on the damage awards that may be claimed by plaintiffs in civil defamation cases.
- ❖ Preliminary court hearings should be held in all defamation cases, including those filed by State prosecutors, with a view to screening out groundless cases before the start of formal trial procedures, which are costly and time-consuming.
- ❖ Defamation claimants should not be allowed to take advantage of filing cases with the police and should, instead, be required to employ their own lawyers when filing defamation cases.
- ❖ The other laws detailed in this Report should be reviewed to ensure that they are in line with constitutional guarantees of freedom of expression.