

 COLUMBIA LAW SCHOOL  

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HUMAN RIGHTS INSTITUTE



**Thailand v. Katanyu  
Muenkhamruang “Pan”**

June 2025

**TRIALWATCH FAIRNESS REPORT**  
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

## A. ABOUT THE AUTHORS

**The Human Rights Institute at Columbia Law School (HRI)**<sup>1</sup> is dedicated to advancing human rights worldwide and cultivating strategic advocates for social justice. Through partnerships with civil society organizations and communities, HRI focuses on human rights investigations, legal analysis, and advocacy to address critical global challenges and promote justice. HRI is a TrialWatch partner.

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This report was prepared under the supervision of **Tejal Jesrani**, Director of the TrialWatch Project at HRI. Invaluable research assistance was provided by **Justina Bruera**, an LL.M student at CLS, and **Marian Da Silva**, the TrialWatch Legal Fellow at HRI.

## B. ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

**TrialWatch** is an initiative of the **Clooney Foundation for Justice** that provides free legal aid in defense of free speech. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world.

The legal assessment and conclusions expressed in this report are those of the authors and not necessarily those of the Clooney Foundation for Justice. Additionally, the Clooney Foundation for Justice assumes and accepts no responsibility for and gives no guarantees or warranties for the legal assessment, analysis, and opinion expressed herein. The views expressed are not necessarily those of CFJ, its Board of Directors, or its leadership.

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<sup>1</sup> The views represented here are of the HRI and not Columbia Law School or University.



## **Andrew Khoo assigned this trial a grade of “D”:**

The criminal proceedings against Ms. Katanyu Muenkhamruang (“Pan”), a 27-year-old Thai student and pro-democracy activist, violated international fair trial standards and Thailand’s human rights obligations under the International Covenant on Civil and Political Rights (ICCPR). Pan was convicted under Thailand’s sedition law and the Computer-Related Crimes Act for Facebook posts promoting peaceful anti-government protests in 2021. The trial revealed numerous due process violations, including violation of the presumption of innocence, reliance on unsubstantiated claims, and a lack of reasoned judgment. Despite the absence of direct evidence linking Pan to the alleged posts, the court inferred guilt, and arbitrarily disregarded exculpatory evidence. Pan’s conviction also infringed on her rights to freedom of expression and peaceful assembly, as her alleged actions fell squarely within speech protected under international human rights law. The politically motivated two-year prison sentence sets a dangerous precedent for suppressing democratic expression in Thailand and highlights the urgent need to reform the country’s sedition and cybercrime laws. Overturning this conviction on appeal would reaffirm fundamental rights and restore justice.

Thailand’s political climate has been characterized by the systematic suppression of dissent through laws like Section 116 of the Criminal Code (Sedition) and Section 14(3) of the Computer-Related Crimes Act. These laws are drafted with vague and overbroad language, allowing authorities to target speech and actions perceived as critical of the government. Human rights defenders, journalists, and opposition figures are frequently prosecuted under these provisions, curbing fundamental freedoms.

The misuse of these laws, as in Pan’s case, reflects a broader pattern of stifling political opposition and intimidating citizens. This is compounded where, as here, the court accepts questionable evidence and disregards exculpatory material. This creates a chilling effect on free expression and undermines trust in Thailand’s legal system.

# BACKGROUND INFORMATION

## A. POLITICAL & LEGAL CONTEXT

Thailand is a constitutional monarchy with a history of political instability characterized by cycles of military rule and short-lived civilian governments.<sup>2</sup> This pattern has been punctuated by numerous military coups d'état, the most recent occurring in 2014 with the assumption of power by the National Committee for Peace and Order (NCPO) junta. Once in power, the NCPO proceeded to enforce oppressive measures against protestors and critics: between 2014 and 2019, numerous human rights organizations documented a troubling decline in Thailand's record on freedom of expression and freedom of association.<sup>3</sup>

While constitutionally limited, the monarchy exerts significant political and military influence. Growing public discontent with the monarchy's role in governance culminated in widespread pro-democracy protests in 2020 and 2021.<sup>4</sup> These protests were notably led by youth<sup>5</sup> and heavily utilized social media platforms for organizing and

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<sup>2</sup> Jintana Pitaksantayothing & Byungkwan Kim, Seditious Law and Expression on the Internet in Thailand: A Critical Analysis, 7 J. Glob. & Area Stud. 79 (2023).

<sup>3</sup> Human Rights Watch, To Speak Out Is Dangerous: Criminalization of Peaceful Expression In Thailand, (Oct. 24, 2019), <https://www.hrw.org/report/2019/10/24/speak-out-dangerous/criminalizationpeaceful-expression-thailand>. See also Amnesty International, Letter to Secretary Pompeo on Human Rights Concerns in Thailand, (Jul. 30, 2019), <https://www.amnestyusa.org/blog/letter-to-sec-pompeo-on-human-rights-concerns-in-thailand-7-30-19/>; Reporters Without Borders, Thailand World Press Freedom Index, (2023), <https://rsf.org/en/country/thailand>; International Federation for Human Rights (FIDH), Thailand: Lèse-majesté Must Not Be Used to Criminalize Pro-Democracy Protest Leaders and Participants, (Nov. 25, 2020), <https://www.fidh.org/en/region/asia/thailand/lese-majeste-must-not-be-used-to-criminalize-pro-democracy-protest>

<sup>4</sup> Pavin Chachavalpongpun, Thailand Protests Increasingly Challenge the Monarchy, Council on Foreign Relations, (Aug. 18, 2020), <https://www.cfr.org/blog/thailand-protests-increasingly-challenge-monarchy>. Janjira Sombatpoonsiri, From Repression to Revolt: Thailand's 2020 Protests and the Regional Implications, GIGA Focus Asia, No. 1, at 4–5, (Feb. 2021), [https://www.ssoar.info/ssoar/bitstream/handle/document/71730/ssoar-2021-sombatpoonsiri-From\\_Repression\\_to\\_Revolt\\_Thailands.pdf](https://www.ssoar.info/ssoar/bitstream/handle/document/71730/ssoar-2021-sombatpoonsiri-From_Repression_to_Revolt_Thailands.pdf); Jintana Pitaksantayothing & Byungkwan Kim, Seditious Law and Expression on the Internet in Thailand: A Critical Analysis, 7 J. Global & Area Stud. 2023.

<sup>5</sup> Amnesty International, #WhatsHappeningInThailand: 10 Things You Need To Know, (Nov. 6, 2020), <https://www.amnesty.org/en/latest/press-release/2020/11/whats-happening-thailand-10-things/>. See also Rojanaphruk, P., Understanding the Various Thai Protest Groups, (Sep. 21, 2021), <https://www.khaosodenglish.com/opinion/2021/09/25/understanding-the-various-thai-protest-groups/>. The involvement of student groups in protests in Thailand has a long history. During the late 1960s and 1970s, for instance, students emerged as a powerful force for change. Culminating on October 14, 1973, the student-led democracy movement successfully toppled the long-standing military regime then in power.

communication. Indeed, in recent years, social media has emerged as a prominent platform for Thai citizens to express their political views.<sup>6</sup> This trend is largely due to the government's control over the country's telecommunications infrastructure,<sup>7</sup> which has forced Thai citizens to rely on social media to disseminate and share information. According to Datareportal, as of January 2024, there were 49.1 million Thai social media users, accounting for a little over 68% of the total population, with Facebook being the most popular social network.<sup>8</sup> Social media has thus become the primary platform for political expression, but also a prime target for government surveillance.<sup>9</sup>

In response to the COVID-19 pandemic, the authorities restricted public assemblies, including through an Emergency Decree on Public Administration in Emergency Situation that has also been used extensively to criminalize protesters. According to Thai Lawyers for Human Rights, at least 1,466 individuals have been prosecuted under the Decree since its adoption, with the majority of prosecutions for participation in pro-democracy protests.<sup>10</sup> At the same time, numerous leaders of the pro-democracy movement have

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Weiss, M. L., & Aspinall, E., *Student Activism in Asia: Between Protest and Powerlessness* (University of Minnesota Press, 1973).

<sup>6</sup> Arissara P. Srisai, The Role of Social Media in Political Mobilization Among Youth in Thailand: Case Study of the 2020 Thai Protests, 4 *J. Res. Soc. Sci. & Human.* 34 (2025), <https://www.pioneerpublisher.com/jrssh/article/view/1173>; Khanittha Jitsaeng, The Use of Social Media Among Thai Youths for Political Communication, 10 *J. Commun. & Soc. Human.* 215 (2023), <https://jcsh.rsu.ac.th/volume/10/number/1/article/215>; Jintana Pitaksantayothing & Byungkwan Kim, Sedition Law and Expression on the Internet in Thailand: A Critical Analysis, 7 *J. Global & Area Stud.* 79-91(2023).

<sup>7</sup>Thailand Cracks Down on Social Media after King's Birthday Criticism, BBC News, (May 26, 2023), <https://www.bbc.com/news/world-asia-15639421>.

<sup>8</sup> Datareportal, Digital 2024: Thailand, (Feb 24, 2024), <https://datareportal.com/reports/digital-2024-thailand>.

<sup>9</sup> Jintana Pitaksantayothing & Byungkwan Kim, Sedition Law and Expression on the Internet in Thailand: A Critical Analysis, 7 *J. Global & Area Stud.* 79-95. (2023);

Freedom House, Thailand: Freedom on the Net 2019 Country Report, (2019), <https://freedomhouse.org/country/thailand/freedom-net/2019>;

Reuters Institute for the Study of Journalism, Digital News Report 2022: Thailand, (Jun. 15, 2022), <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022/thailand>;

Article 19, Thailand: Computer Crime Act, (Jan. 2017), <https://www.article19.org/data/files/medialibrary/38615/Analysis-Thailand-Computer-Crime-Act-31-Jan-17.pdf>;

Manushya Foundation, Joint News Release: Internet Freedom Remained Under Threat in Thailand 2023, (Oct. 12, 2023), <https://www.manushyafoundation.org/2023fotn>

<sup>10</sup> Thai Lawyers for Human Rights, March 2025: More 112-116 Cases in the South; Ten-Year-Imprisonment for Messages Posted in 2014 and Bail Denial; Supreme Administrative Court of Thailand Revoked Outdated Regulations on Student Hairstyles, Thai Lawyers for Human Rights (Mar. 2025), <https://tlhr2014.com/en/archives/74860>.

faced prosecution under Thailand's strict *lèse-majesté* law (Article 112 of the Criminal Code), which criminalizes criticism of the royal family. UN experts have raised concerns about the increasingly severe application of this law, with some individuals receiving sentences of over 40 years.<sup>11</sup> In January 2025, they explicitly urged Thailand to repeal or substantially amend Article 112 of the Criminal Code, criticizing it as "harsh and vague" and highlighting its use to prosecute over 270 people since 2020.<sup>12</sup>

The ruling NCPO organized "civilian" elections in 2019, marking the first general election since the military coup. However, the elections resulted in the victory of a party led by Prayuth Chan-ocha, the general who had previously headed the NCPO, subsequently allowing him to assume the role of Prime Minister.<sup>13</sup> This raised concerns about the true extent of free and fair elections in Thailand, as many viewed the outcome as a means for the military to maintain its hold on power despite a promise to return to formal democratic processes.<sup>14</sup>

In May 2023, Thailand held its second elections following the 2014 military coup—like the one in 2019, for the 500-seat House of Representatives.<sup>15</sup> The opposition Move Forward

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<sup>11</sup> United Nations Office of the High Commissioner for Human Rights, Thailand: UN Experts Alarmed by Rise in Use of *Lèse-Majesté* Laws, (Feb. 8, 2021), <https://www.ohchr.org/en/press-releases/2021/02/thailand-un-experts-alarmed-rise-use-lese-majeste-laws>; International Federation for Human Rights (FIDH), Thailand: *Lèse-majesté* Must Not Be Used to Criminalize Pro-Democracy Protest Leaders and Participants, (Nov. 25, 2021), <https://www.fidh.org/en/region/asia/thailand/lese-majeste-must-not-be-used-to-criminalize-pro-democracy-protest>.

<sup>12</sup> United Nations Human Rights Office of the High Commissioner, Thailand Must Immediately Repeal *Lèse-Majesté* Laws, Say UN Experts, (Jan. 30, 2025), <https://www.ohchr.org/en/press-releases/2025/01/thailand-must-immediately-repeal-lese-majeste-laws-say-un-experts>.

<sup>13</sup> McCargo, Duncan and Saowanee T. Alexander, Thailand's 2019 Elections: A State of Democratic Dictatorship?, *Asia Policy*, (Oct. 30, 2019), <https://www.nbr.org/publication/thailands-2019-elections-a-state-of-democratic-dictatorship/>.

<sup>14</sup> Asian Network for Free Elections, The 2019 Thai General Election: A Missed Opportunity for Democracy, (2019), <https://anfrel.org/wp-content/uploads/2019/06/Thai-Report-2nd-edition.pdf>; Human Rights Watch, Thailand: Structural Flaws Subvert Election. Human Rights Watch, (Mar. 19, 2019), <https://www.hrw.org/news/2019/03/19/thailand-structural-flaws-subvert-election>; Sawasdee, Siripan Nogsuan, Electoral Integrity and the Repercussions of Institutional Manipulations: The 2019 General Election in Thailand, *Asian Journal of Comparative Politics* 5, no. 1, (Dec. 12, 2019), 52-68, <https://doi.org/10.1177/2057891119892321>;

Olarn, Kocha, Helen Regan, and Angie Puranasamriddhi, Thailand's Election Was 'Partly Free, and Not Fair,' Say Independent Observers, CNN, (Mar. 26, 2019), <https://edition.cnn.com/2019/03/26/asia/thailand-election-free-and-fair-intl/index.html>.

<sup>15</sup> Human Rights Watch, World Report 2023: Thailand, (2023), <https://www.hrw.org/world-report/2023/country-chapters/thailand>.

Party, a progressive party advocating for monarchy reform, reducing military power, and amending the *lèse-majesté* law, won the most seats.<sup>16</sup> However, this party was unable to select the prime minister because its leader could not secure enough votes in the 250-seat Senate,<sup>17</sup> whose members had been appointed by the military in 2019 and remained more pro-monarchy.<sup>18</sup> (At that time, pursuant to Section 272 of the 2017 Constitution, the Senate retained the authority to participate in the selection of the prime minister through a joint vote with the House of Representatives. Following the expiration of this transitional provision in 2024, the Election Commission certified 200 new senators under a revised selection system, and the Senate no longer exercises a role in the prime ministerial selection process.<sup>19</sup> While still conservative, the new Senate has been described as “less powerful and less predictable” than its predecessor.)<sup>20</sup>

Despite the Move Forward party’s inability to secure government leadership and start to implement its platform, in August 2024, it was dissolved by Thailand’s Constitutional Court on the grounds of violating the constitution by advocating for the amendment of the *lèse-majesté* law.<sup>21</sup> This recent decision has been criticized by some experts as the continuation of a never-ending cycle of political instability and blocking of popular democratic reforms.<sup>22</sup>

While the Emergency Decree and the *lèse-majesté* law have attracted significant attention for their use against pro-democracy protesters, the authorities have also

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<sup>16</sup> Al Jazeera, Thailand Election Results: Opposition Trounces Military Parties, (May 14, 2023), <https://www.aljazeera.com/news/2023/5/14/thailand-election-results-what-we-know-so-far>.

<sup>17</sup> Explainer: Why Was the Winner of Thailand’s Election Blocked from Becoming Prime Minister?, The Conversation (Jul. 19, 2023), <https://theconversation.com/explainer-why-was-the-winner-of-thailands-election-blocked-from-becoming-prime-minister-209730>. Under the rules then in effect, the Prime Minister candidate had to secure a majority of the total of 750 seats in the House of Representatives and Senate combined.

<sup>18</sup> Associated Press, Thai Parliament Blocks Renomination of Pro-Reform Candidate as Prime Minister, (Jul. 19, 2023), <https://apnews.com/article/thailand-parliament-opposition-pita-prime-minister-582cd3c53a524b3eb1778e3306ec9fde>.

<sup>19</sup> BenarNews, Thai EC Announces Senators to Replace Junta-Appointed members, (Jul. 10, 2024), <https://www.benarnews.org/english/news/thai/new-senate-07102024150651.html>.

<sup>20</sup> Lohatepanont, Mathis, The New Thai Senate: Less powerful and Less Predictable, 9DASHLINE, (Jul. 25, 2024), <https://www.9dashline.com/article/the-new-thai-senate-less-powerful-and-less-predictable>.

<sup>21</sup> Al Jazeera, Thai Constitutional Court Dissolves Election-Winning Move Forward Party, (Aug. 7, 2024), <https://www.aljazeera.com/news/2024/8/7/thai-constitutional-court-dissolves-progressive-move-forward-party>.

<sup>22</sup> New York Times, Thailand’s Royal Spell Has Been Broken, (Aug. 14, 2024), <https://www.nytimes.com/2024/08/14/opinion/thailand-royalists-king-democracy.html>.

instrumentalized Thailand's Sedition Law to criminalize protected speech and peaceful assembly and target pro-democracy activists. In fact, Thai Lawyers for Human Rights has documented at least 156 individuals facing sedition charges since July 18, 2020.<sup>23</sup> Numerous U.N. special procedures have expressed serious concerns about these prosecutions, highlighting their connection to the suppression of fundamental rights, such as freedom of expression, peaceful assembly, and association.<sup>24</sup>

It is within this context of political instability, governmental restrictions on freedom of expression, including through an archaic Sedition Law, and a robust youth-led and online activist movement that the case against Pan took place.

## **B. CASE HISTORY**

### **The Case Against Pan**

Between August 10 and 13, 2021, a series of anti-government rallies took place as thousands of protesters marched towards Prime Minister Prayuth Chan-ocha's office demanding his resignation, frustrated by the government's handling of the COVID-19 outbreak and an economic downturn.<sup>25</sup> Although activists from the Thalu Fah group, a youth-led pro-democracy movement,<sup>26</sup> had vowed to protest peacefully, matters escalated quickly when police attempted to halt the march toward the Prime Minister's office with water cannons, tear gas and rubber bullets.<sup>27</sup>

Following these rallies, on October 18, 2021, prosecutors filed charges against Ms. Katanyu Muenkhamruang ("Pan"), a 27-year-old Thai female student. At the time of the charges, Pan was pursuing her studies.

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<sup>23</sup> Thai Lawyers for Human Rights, March 2025: More 112-116 Cases in the South; Ten-Year-Imprisonment for Messages Posted in 2014 and Bail Denial; Supreme Administrative Court of Thailand Revoked Outdated Regulations on Student Hairstyles, <https://tlhr2014.com/en/archives/74860>.

<sup>24</sup> UA THA 7/2015, THA 4/2018, THA 7/2020, AL THA 11/2020 and AL THA 6/2021.

<sup>25</sup> The Guardian, Thailand Protesters Clash with Riot Police over Handling of Covid, (Aug 7, 2021), <https://www.theguardian.com/world/2021/aug/07/thailand-bangkok-protestors-clash-with-police-over-covid-management>.

<sup>26</sup> Anusorn Unno, Thalu Gas: The Other Version of the "Thai Youth Movement," ISEAS Perspective, No. 146, (Nov. 11, 2021), <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2021-146-thalu-gas-the-other-version-of-the-thai-youth-movement-by-anusorn-unno/>.

<sup>27</sup> Reuters, Thai Police Clash with Protesters as Thousands Hold Anti-Government Rally, (Aug. 10, 2021), <https://www.reuters.com/world/asia-pacific/thai-protest-leaders-detained-ahead-planned-car-mob-rally-2021-08-10/>.

The prosecutors alleged that two separate Facebook posts they attributed to Pan had violated the Sedition Law (Section 116 of the Criminal Code) and the Computer-Related Crimes Act (“CCA”). Specifically, the alleged punishable acts were:

- I. Posting the following text and an accompanying image on a public Facebook page identified as belonging to the Thalu Fah group on August 10, 2021: “11 August Mob to Oust the Tyrant. Starting at 15:00. Meet at the Victory Monument, Phaya Thai side. We will march to Prayut’s house. #Thalufah #11AugustMob #OustPrayut #PeopleRevolution.” The accompanying image showed individuals with their arms linked together.<sup>28</sup>
- II. Posting the following text and an accompanying image to the same Facebook page on August 12, 2021: “Assemble! Friday the 13th. Oust the Tyrant. #13AugustMob. Victory Monument, Phaya Thai side. Starting at 15:00. We will link our arms together and march to Prayut’s house. [You will] see every form of fighting by the people, although we did not have a lot of people at our last fight. We, Thalu Fah, were stuck at the starting point because the crowd-control police brutally, like human monsters, broke up the rally to protect the tyrants. Brothers and sisters, please come out so we have more people to fight together in peace and in a non-violent way to confront those tyrants and bring back democracy! #Thalufah #OustPrayut #PeopleRevolution.” The accompanying image primarily showed a gathering of people, likely protesters, at a monument. There are also police officers present, indicated by the word “Police” in the image.<sup>29</sup>

The judgment states that these actions “made an appearance to the public by words, writings or any other means, which was not an act within the purpose of the Constitution or for expressing an honest opinion or criticism in order to cause the people to transgress the laws of the country. This was an offense against the security of the Kingdom or a terrorist act under the Criminal Code [the latter is a reference to one of the provisions of

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<sup>28</sup> Thalu Fah, Facebook, (Aug. 10, 2021), <https://www.facebook.com/Thalufah/photos/133585668960374>.

<sup>29</sup> Thalu Fah, Facebook, (Aug. 10, 2021), <https://www.facebook.com/Thalufah/photos/134166438902297>.

the CCA, which criminalizes the use of computer systems to commit an offense against the security of the Kingdom or a terrorist act].”<sup>30</sup>

Pan surrendered to the police on January 12, 2022, and was released on bail pending investigation and trial. The trial began on September 5, 2023, approximately two years after the protests at issue had taken place. On November 22, 2023, the trial court found Pan guilty of the charges and sentenced her to two years in prison.

Pan has appealed her conviction, and is on bail pending an appellate decision, which is expected in 2025.

### **Criminal Charges Against Pan**

Pan was convicted under sub-sections (2) and (3) of the Sedition Law and Section 14 (3) of the CCA.

### **Section 116 of the Thai Criminal Code (the Sedition Law)**

Section 116 of the Thai Criminal Code criminalizes: “Any person who manifests to the people, by verbal, written or any other means which is not an act within the purpose of the Constitution or which is not for the purpose of expression of an honest [good-faith] opinion or criticism: (1) to bring about a change in the laws of the country or the government by the use of force or violence; (2) to raise unrest and disaffection among the people in a manner likely to cause disturbances in the country; or (3) to cause the people to breach the laws of the country.”<sup>31</sup>

The *actus reus* of this crime is public comment that is not constitutionally protected speech, nor good faith opinion or criticism. The expression can be made public through any means, indicating that the law applies to all forms of communication, including digital communications.<sup>32</sup>

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<sup>30</sup> Thai Criminal Court, *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p. 4.

<sup>31</sup> Section 116, Council of State Translation of Act Promulgating The Penal Code, B.E. 2499 (1956). While many translations use the term ‘honest opinion or criticism,’ the authors understand that this is tantamount to the concept of ‘good faith.’

<sup>32</sup> Jintana Pitaksantayothing & Byungkwan Kim, *Sedition Law and Expression on the Internet in Thailand: A Critical Analysis*, 7 J. Global & Area Stud. 87, (2023).

The *mens rea* for this offense requires one of the following intentions: 1) to convince others to use force or coercion to change the law or the government; 2) to incite “unrest” or “disaffection” where it is likely that “disturbances” will result; or 3) to encourage people to violate the law.<sup>33</sup>

### **Computer-Related Crimes Act**

Section 14(3) of the Computer-Related Crimes Act states: “Whoever commits the following offences, shall be punished with imprisonment not exceeding five years and fine not exceeding one hundred thousand baht or both: . . . (3) Entering into a computer system, any computer data which is an offence related to national security of the Kingdom of Thailand or related to terrorism under the Criminal Code.”<sup>34</sup>

### **Trial Proceedings**

The trial began on September 5, 2023, in Bangkok, Thailand. Hearings were held on September 5, 6, 7 and 8, 2023, and the court delivered its judgment on November 22, 2023.

On September 5, the court heard opening statements. The court informed the defendant of the charges against her and asked her how she would plead. She pleaded not guilty and defense counsel further challenged the validity of the charges against her, stating that Pan “is not an administrator of the Facebook page or the person who made the posts in question, and did not violate the laws as alleged.”

The Prosecutor, by contrast, asserted that Pan had made the posts, based on two main interrelated theories. First, the prosecution argued that Pan was one of the 15 administrators of the Thalu Fah Facebook page and thus may have been responsible for the posts. Second, they claimed she was the host of an August 13, 2021 livestream from the protest that day, which was displayed on the Thalu Fah Facebook page, and thus was presumably present at and/or involved in that protest.

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<sup>33</sup> Jintana Pitaksantayothing & Byungkwan Kim, Seditious Law and Expression on the Internet in Thailand: A Critical Analysis, 7 J. Global & Area Stud. 87, (2023).

<sup>34</sup> Thailand, Computer-related Crimes Act, BE 2550 (2007) (unofficial translation), <https://www.mdes.go.th/law/detail/3618-COMPUTER-RELATED-CRIME-ACT-B-E--2550--2007->.

Building on these theories, the Prosecutor further emphasized that at the time of the posts, the country was under a state of emergency due to the COVID-19 pandemic, which prohibited public gatherings to prevent the spread of the virus. The Prosecutor argued that, despite the restrictions, the defendant live-streamed a rally on Facebook from the profile ‘ทะลุฟ้า-thalufah.’

The prosecution contended that the posts were not expressions of “good faith opinion or criticism” protected by the Constitution, but deliberate attempts to incite the public to violate the law. These actions, according to the Prosecutor met the criteria for a violation of the Computer-Related Crimes Act, which requires an offense against the security of the Kingdom or a terrorist act under the Criminal Code.<sup>35</sup>

Thirteen individuals testified at the trial. The majority were police officers, but the group also included investigators and individuals who either witnessed the protests or saw the online posts at issue.

The prosecution called a number of witnesses to testify regarding the identity of the administrator(s) of the Facebook page. At the September 5 hearing, a civil servant who was assigned the task of handling cases that relate to national security described a phishing technique he had used in this case that involved pasting a weblink into a Facebook Messenger message that when clicked upon, reveals the IP address of the respondent. The IP address is then tracked in order to establish the identity of the respondent. He said that he had tried to use this tactic by sending such a message to the Thalu Fah page. However, the investigator admitted that this technique had failed to establish that Pan was one of the administrators of the Thalu Fah page; instead, the IP addresses of those who responded to the message were tracked to two other individuals who were not charged in the case.<sup>36</sup> The witness confirmed, “[f]rom this investigation, these two people are found to be administrators of the page because they can both use

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<sup>35</sup> Thai Criminal Court, *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p. 5-6.

<sup>36</sup> In the judgment, the court acknowledged that the prosecution had accused the defendant and other accomplices who had not yet faced prosecution. Thai Criminal Court (2022), *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), p. 1.

the page's messenger application." When asked "you did not find anything that points to the defendant being an administrator?" he answered "yes."<sup>37</sup>

Another police officer provided additional information about the Facebook Messenger phishing tactic: "He [the investigator] had checked the Facebook page already by sending a link to let the admin page click on it. By clicking, it will show the IP address of the admin page." Defendant's counsel then responded, "[t]he act in such a manner is called phishing. It was deceiving to get information from people. In this case, you want the information from the defendant so that you could issue an arrest warrant. [Normally], you need to go to the court to ask them to issue a search warrant to confiscate the electronics for an investigation."<sup>38</sup> The witness then responded, "That is correct, but the defendant didn't agree [to a search of her electronics]".<sup>39</sup>

Another police officer witness who testified at the September 6 hearing acknowledged that he was unable to ascertain the identity of the account holders who were administrators of the Thalu Fah Facebook page.<sup>40</sup> The witness testified that, "[i]n order to identify the administrators of a page, one has to look at the account details of the Facebook page. Because we are not an admin of the page, we were unable to look into that. We could only observe the posts and comments."<sup>41</sup>

Despite this inability to establish that Pan was an administrator of the Thalu Fah Facebook page through technical means, the police officer who testified on September 6 asserted that Pan was "likely" an administrator of the page because she allegedly hosted a livestream on the Thalu Fah page on August 13.<sup>42</sup> However, there was no direct evidence as to who had filmed or posted the livestream – it simply appeared under the Thalu Fah

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<sup>37</sup> Monitor's notes, September 5, 2023.

<sup>38</sup> Monitor's notes, September 8, 2023.

<sup>39</sup> Monitor's notes, September 8, 2023. The police did not confiscate the defendant's phone. Case Fight Record of "Pan" under Section 116 for Allegedly Administering "Thalufah" Page and Posting Protest Invitations in 2021, TLHR, (Nov. 22, 2023), <https://tlhr2014.com/archives/61729>

<sup>40</sup> Monitor's notes, September 6, 2023.

<sup>41</sup> Monitor's Notes, September 6, 2023.

<sup>42</sup> In fact, this is inconsistent with information from the Meta Business Help Center, which states that when you go live from a mobile device, you can invite guests to go live with you or let people in the audience request to join your Live broadcast. This effectively means that anyone present at the protests on August 11 and 13 could have been invited or requested permission to broadcast the live stream onto the Thalu Fah Facebook page. Facebook, How Do I Appeal Facebook's Content Decisions?, <https://www.facebook.com/business/help/666754637470968> (last visited Apr. 25, 2025)

profile. In order to establish the identity of the live stream host, the officer stated that they had “compare[d] screenshots of the livestream with pictures of the protest leaders.” The pictures in question were of someone who the authorities alleged resembled the defendant at a public protest holding a phone.

Due to the limitations of the evidence presented, the defendant’s counsel argued at trial that it was impossible to definitively claim the person hosting the livestream was Pan. The pictures offered as evidence were unclear and lacked key details. One image, supposedly of the defendant circled in red, is simply a distant shot where only the outline and shape of a person are visible, offering no clear facial recognition. Similarly, another photo shows just a side profile of someone wearing a mask, revealing only a wrist and nothing else to identify the individual. Furthermore, the livestream itself does not capture any faces at all, as the camera was pointed outwards. This lack of definitive evidence was acknowledged by a police officer at the hearing on September 8. Defendant’s counsel said: “in the live clip, there was no evidence that Pan was in the video,” to which the witness admitted “That’s correct, we only have photo evidence.” The defendant’s counsel further questioned “However, it didn’t show on Facebook live that it was Pan and the investigator didn’t report any voice recording right?”, and the officer answered “That is correct.” Defense counsel therefore argued that with such unclear evidence, a positive identification could not be made.

In addition, the prosecution presented evidence that the protests of August 2021 at some point included violence. A motorcycle taxi driver who witnessed the events of August 11 testified: “There were fireworks and ping pong bombs. People were throwing oil cans. It was disturbing and terrifying at the same time. I [was] scared that I might get caught in a crossfire.”<sup>43</sup> During the afternoon hearing on September 6, a police officer testified that because of the protest on August 11 “Three lawsuits were filed on the basis of injuring an official on duty and violating the emergency decree on disease control.”<sup>44</sup>

After five hearings at which these various testimonies were heard, the court decided to cancel the hearings scheduled for October 11 and 18, 2023 and set the date for the verdict as November 22, 2023 at 9:00 a.m.

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<sup>43</sup> Monitor’s Notes, September 7, 2023.

<sup>44</sup> Monitor’s Notes, September 6, 2023.

## The Verdict

On November 22, 2023, the court convicted Pan under Section 14 (3) of the Computer-Related Crimes Act and Sections 116 (2) and (3) of the Criminal Code, sentencing her to two years in prison: a one-year sentence for each of the offenses for which she was found guilty. She was granted bail without any conditions pending her appeal and is not detained as of the writing of this report.

After reviewing the parties' positions and some relevant testimony, the court judgment described the Facebook posts as publicly-circulated messages outlining details, procedures, and the motive behind the rally organized by the Thalu Fah group, which aimed to march to then-Prime Minister Prayut's residence. The court found that these messages were "a tactic designed by the protesters to pressure General Prayut Chan-ocha, who was Prime Minister at the time, to resign."<sup>45</sup> The court further noted the potential for violence associated with such rallies: "During the march, protesters threw rocks at a traffic police's booth and caused damage to a police motorcycle."<sup>46</sup> Furthermore, it highlighted that the defendant had a "history of committing offences related to organizing activities related to demonstrations."<sup>47</sup>

The court also found that the Facebook messages announcing the protests were neither protected speech nor a good faith opinion, pointing out the Emergency Decree<sup>48</sup> that had been in place during the time of the alleged offenses prohibiting gatherings of five or more people due to the ongoing COVID-19 pandemic, and asserting on this basis that "[t]he action of the Defendant and accomplices, therefore, made an appearance to the public which was not an act within the purpose of the Constitution or for expressing an honest

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<sup>45</sup> Thai Criminal Court. *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p. 14-15.

<sup>46</sup> Thai Criminal Court. *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p.10.

<sup>47</sup> Thai Criminal Court. *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p.7-8.

<sup>48</sup> According to the court, this Regulation was issued by virtue of Section 9 of the Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2015) (NO. 30). Thai Criminal Court. *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p.15.

opinion. They engaged in these activities during the Coronavirus 2019 or COVID-19 pandemic while the country was under a Declaration of an Emergency Situation.”<sup>49</sup>

Citing the potential disruption to public health, order and security, the court interpreted efforts to encourage rally participation and mobilize individuals to various locations as demonstrating intentional conduct. In the court's view, “[t]heir objective was to orchestrate large gatherings, which is in violation of the Emergency Decree, creating discontent among the people.”<sup>50</sup>

The court held Pan liable for these acts, along with other accomplices who were not charged in this proceeding. The court found based on the evidence presented that the Defendant was present at the August 13, 2021 protest and streamed it live on Facebook. From this, the judges inferred that “[a]lthough the Defendant may not personally post these messages, she must be aware of the messages on Facebook.”<sup>51</sup> The court also considered that “[t]he Defendant had a history of offense relating to several rally organizations, as shown in the suspect’s criminal record.”<sup>52</sup>

In summary, Pan's conviction hinges on her alleged presence and live-streaming of a protest, and related liability for two Facebook messages, both of which called for peaceful and non-violent protest. Although it was not proven that she directly created the Facebook posts in question, the court inferred Pan's awareness of their content and interpreted these posts as evidence of intentional disruption of public order.

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<sup>49</sup> Thai Criminal Court. *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p.16.

<sup>50</sup> Thai Criminal Court. *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p.17.

<sup>51</sup> Thai Criminal Court. *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p.13.

<sup>52</sup> Thai Criminal Court. *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p.7-8.

# METHODOLOGY



## A. THE MONITORING PHASE

TrialWatch monitors observed the proceedings from the courtroom for all of the trial hearings. The monitors, unhindered in their access to the courtroom and native in the local language, meticulously transcribed the spoken words, providing a valuable primary source for understanding the trial's dynamics.

## B. THE ASSESSMENT PHASE

To evaluate the trial's fairness and arrive at a grade, TrialWatch Expert Andrew Khoo reviewed court documents, the trial observation notes, and the written judgment of the court (in translation).

Mr. Khoo concluded that the criminal proceedings against Pan demonstrated a serious disregard for international fair trial standards, as well as for the rights to freedom of expression, peaceful assembly, and due process. The charges were based on an emergency proclamation issued by the government in response to the COVID-19 pandemic, which was used as a pretext to prohibit anti-government demonstrations and curtail dissent. The trial record indicates that the government repeatedly emphasized the necessity of COVID-19 restrictions, framing Pan's actions as reckless and socially irresponsible, while downplaying her right to peaceful assembly and expression.

The conduct of Pan's trial further undermined her right to a fair trial. The prosecution asserted that because she had allegedly hosted a livestream on a website, she must have been its owner or an authorized user, yet no direct evidence was presented to establish this connection. The judgment extensively repeated the charges but failed to address the glaring lack of proof tying Pan to the authorship or control of the website in question. The prosecution's witnesses also failed to substantiate this link, yet the court nonetheless treated this presumption as fact. The failure to resolve this evidentiary gap in favor of the accused violated the fundamental principle of the presumption of innocence.

Additionally, the written judgment made reference to Pan's alleged prior conduct,<sup>53</sup> despite no evidence being introduced during the trial to support this claim. The court's reliance on unproven assertions further undermined the credibility of the verdict. Compounding these concerns, the trial was abruptly truncated by two days without explanation, preventing both the prosecution and the defense from presenting closing arguments. It remains unclear whether the defense was given an opportunity to submit that there was no case to answer or to fully present Pan's case. The rushed nature of the proceedings raises serious concerns about whether the outcome of the case was predetermined.

The foregoing actions strongly suggest that the charges against Pan were politically motivated, aimed at punishing and deterring opposition. The trial proceedings failed to meet international fair trial standards, denying Pan the right to a full and fair defense.

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<sup>53</sup> Thai Criminal Court. *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p. 7-8. "The defendant has a history of committing offences related to organizing activities related to demonstrations in many cases according to the history of the accused in a criminal case."

# ANALYSIS



## A. APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (“ICCPR”), a multilateral treaty adopted by the U.N. General Assembly in 1966, which is part of the International Bill of Human Rights. The ICCPR safeguards the rights to a fair trial (Article 14), freedom of expression (Article 19), and freedom of peaceful assembly (Article 21). Thailand acceded to the ICCPR in 1996.<sup>54</sup>

Domestically, the country has also enshrined some of these rights in its legal framework. The Thai Criminal Procedure Code (“TCPC”) recognizes the right to a fair trial in Section 8, while the Constitution of Thailand protects the rights to freedom of expression (Section 34) and peaceful assembly (Section 54).

The report also relies on jurisprudence from the U.N. Human Rights Committee (HRC), tasked with monitoring implementation and enforcement of the ICCPR.<sup>55</sup> It also cites comparative jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights, which the U.N. Human Rights Committee has previously said may be relevant to interpreting the ICCPR.

## B. VIOLATIONS AT TRIAL

### Right to the Presumption of Innocence

The presumption of innocence is an integral component of the right to a fair trial.<sup>56</sup> It is a non-derogable principle<sup>57</sup> that places the burden on the prosecution to present evidence

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<sup>54</sup> United Nations Office of the High Commissioner for Human Rights. UN Treaty Body Database: Ratification Status for Thailand, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN).

<sup>55</sup> Part IV of the International Covenant on Civil and Political Rights.

<sup>56</sup> Clooney, A. & Webb P, *The Right to a Fair Trial in International Law*, (Oxford, 2020), p. 199.

<sup>57</sup> This means that it cannot be restricted even in times of emergency or armed conflict. Human Rights Committee, General Comment No. 29: States of Emergency, Article 4, (2001), para. 11.

of guilt to the legal standard of proof.<sup>58</sup> The rationale for this right is that it is better to let the crime of a guilty person go unpunished than to condemn an innocent.<sup>59</sup>

Article 14(2) of the ICCPR states that “everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.” Similarly, Section 29 of the Thai Constitution establishes that an accused person in a criminal case shall be presumed innocent and shall not be treated as a convicted person until a final judgment has been rendered convicting them of having committed a crime.

The right to be presumed innocent may be violated if there is any indication that the court considers the accused guilty prior to their having been proved guilty.<sup>60</sup> According to the UN Human Rights Committee,<sup>61</sup> the ECtHR,<sup>62</sup> and the IACtHR,<sup>63</sup> the presumption of innocence will also be infringed when the burden of proof is shifted from the prosecution to the defense.<sup>64</sup>

Moreover, international legal standards mandate that courts must fairly evaluate all evidence presented.<sup>65</sup> The UN Human Rights Committee has held that while it is “generally for the relevant domestic courts to evaluate facts and evidence in a particular case,” if the “evaluation was clearly arbitrary or amounted to a denial of justice”<sup>66</sup> the

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<sup>58</sup> U.N. Human Rights Committee, General Comment No. 32, Right to Equality Before Courts and Tribunals and to a Fair Trial, Article 14, U.N. Doc. CCPR/C/GC/32, (2007), para. 30 (“The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt.”)

<sup>59</sup> U.S. Supreme Court, *In re Winship*, 397 U.S. 358, (1970), 372 (Harlan J., concurring).

<sup>60</sup> U.N. Human Rights Committee, *Campbell v. Jamaica*, U.N. Doc. CCPR/C/44/D/248/1987, (1992); European Court of Human Rights, *Minelli v. Switzerland*, App. No. 8660/79, (1983).

<sup>61</sup> Human Rights Committee, *Ashurov v. Tajikistan*, CCPR/C/89/D/1348/2005, (2007), para. 6.7.

<sup>62</sup> European Court of Human Rights, *Barberà, Messegué and Jabardo v. Spain*, App. No.10590/83, (1988); European Court of Human Rights, *Telfner v. Austria*, App. No. 33501/96, (2001).

<sup>63</sup> Inter-American Court of Human Rights, *Zegarra Marín v. Peru*, (2017); Inter-American Court of Human Rights, *Ricardo Canese v. Paraguay*, (2004); Inter-American Court of Human Rights, *Ruano Torres et al. v. El Salvador*, (2015).

<sup>64</sup> European Court of Human Rights, *Telfner v. Austria*, App. No. 33501/96, (2001).

<sup>65</sup> U.N. Human Rights Committee, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, CCPR/C/GC/32, (2007), para. 26; European Court of Human Rights, *Al-Khawaja and Tahery v. The United Kingdom*, App. Nos. 26766/05 and 22228/06, (2011), para. 118; U.N. Human Rights Committee, *Riedl-Riedenstein et al. v. Germany*, CCPR/C/82/D/1188/2003, (2004), para. 7.3;

U.N. Human Rights Committee *Bondarenko v. Belarus*, CCPR/C/77/D/886/1999, (2003), para. 9.3;

U.N. Human Rights Committee, *Arenz et al. v. Germany*, CCPR/C/80/D/1138/2002, (2004), para. 8.6.

<sup>66</sup> U.N. Human Rights Committee, *Pustovoit v. Ukraine*, CCPR/C/110/D/1405/2005, (2014).

presumption of innocence is likewise violated.<sup>67</sup> In particular, the ECtHR has stressed the necessity of judicial scrutiny, highlighting that while expert assessments can inform judicial decision-making, courts must critically evaluate the reliability and quality of all evidence.<sup>68</sup>

The proceedings against Pan violated the presumption of innocence by failing to require the prosecution to bear the burden of proof on two different points: Whether Pan was responsible for the posts in question; and whether the posts in question had any nexus to any unrest or disaffection, as required by Thailand's Sedition Law. The court's assessment of these questions was also sufficiently arbitrary to amount to a denial of justice.

As to the first point, the Court acknowledged that while the prosecution had not proven the defendant personally posted the messages on the Thalu Fah Facebook profile, "she must be aware of the messages on Facebook."<sup>69</sup> The Court then concluded that her mere awareness of the messages, along with presumed agreement, was sufficient grounds for a conviction. This effectively shifted the burden of proof, as the court required the defendant to demonstrate her lack of involvement, rather than compelling the prosecution to establish her guilt beyond a reasonable doubt. Pan had the right, not the obligation, to present counter evidence to raise doubt regarding the prosecution's version of events.<sup>70</sup>

Moreover, the presumption of innocence demands that guilt be proven through compelling evidence, rather than only being inferred from indirect factors such as mere awareness or association with the alleged criminal acts.<sup>71</sup> While certain inferences may

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<sup>67</sup> U.N. Human Rights Committee, *Ashurov v. Tajikistan*, CCPR/C/89/D/1348/2005, (2007); U.N. Human Rights Committee, *Larranaga v. Phillipines*, CCPR/C/87/D/1421/2005, (2006); U.N. Human Rights Committee, *Iskandarov v. Tajikistan*, CCPR/C/101/D/1499/2006, (2011); U.N. Human Rights Committee, *Khostikoev v. Tajikistan*, U.N. Doc. CCPR/C/97/D/1519/2006, (2009).

<sup>68</sup> European Court of Human Rights, *A.M. and Others v. Russia*, App No. 47220/19, (2021).

<sup>69</sup> Thai Criminal Court, *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p. 13.

<sup>70</sup> Inter-American Court of Human Rights, *Zegarra Marín v. Peru*, (2017).

<sup>71</sup> Inter-American Court of Human Rights, *Cantoral Benavides v. Peru*, (2000) paras. 47, 120. ("In addition to direct evidence (...) domestic courts, can base their judgments on circumstantial evidence provided same lead to sound conclusions regarding the facts (...) The principle of presumption of innocence demands that a person cannot be convicted unless there is clear evidence of his criminal liability. If the evidence presented is incomplete or insufficient, he must be acquitted, not convicted"); U.N. Human Rights Committee, *Ashurov v. Tajikistan*, CCPR/C/89/D/1348/2005, (2007), para. 6.7 ("The Committee also recalls its General Comment No.13, which reiterates that by reason of the principle of

be permissible under law, the ECtHR has held in *Salabiaku v. France* that such presumptions must be confined within reasonable limits, particularly when fundamental rights are at stake, and must preserve the rights of the defense.<sup>72</sup> Any doubt must be resolved in favor of the accused.<sup>73</sup> In this case, the Court failed to justify its assumption that Pan's presence at the August 13 protest, even if proven, was enough to attribute authorship of the posts to her. By concluding that her awareness of these messages established guilt, the Court overstepped reasonable limits on inference, neglecting evidentiary requirements and undermining Pan's right to a fair trial.

Further, in its judgment, the court inexplicably dismissed critical exculpatory evidence provided by a computer expert, which demonstrated that the IP addresses of the Thalu Fah group Facebook page administrators did not correspond to Pan's. Instead, the court concluded that "even though the defendant was not the one who posted the message, the defendant was definitely aware of posting the message on Facebook under the account name 'Thalufah-thalufah'."<sup>74</sup> Ignoring material evidence constitutes a denial of justice, as it directly undermines the presumption of innocence by failing to consider credible proof that could substantiate the accused's innocence.

By relieving the prosecution of its burden of proof and by arbitrarily assessing the evidence, the Court's decision to find Pan guilty constituted a denial of justice, violating Pan's right to the presumption of innocence.

### **The Right to a Competent, Independent and Impartial Tribunal Established by Law**

Article 14(1) of the ICCPR states that "all persons shall be equal before the courts and tribunals" and "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

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presumption of innocence, the burden of proof for any criminal charge is on the prosecution, and the accused must have the benefit of the doubt. His guilt cannot be presumed until the charge has been proven beyond reasonable doubt").

<sup>72</sup> European Court of Human Rights, *Salabiaku v. France*, App. No. 10519/83, (1988), paras. 27-28.

<sup>73</sup> European Court of Human Rights, *Barberà, Messegué and Jabardo v. Spain*, App.No.10590/83, (1988); Inter-American Court of Human Rights, *Ruano Torres et al. v. El Salvador*, (2015).

<sup>74</sup> Thai Criminal Court, *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p. 13.

According to the U.N. Human Rights Committee, impartiality has two essential components. First, judges must perform their duties free from personal bias or prejudice. Second, the tribunal must also appear impartial to a reasonable observer.<sup>75</sup> Additionally, a clear separation between the functions and powers of the judiciary and the executive is essential. When the independence of the judiciary is compromised by executive control or influence, the essence of an independent court is undermined.<sup>76</sup>

The UN Human Rights Committee has found violations of Article 14(1) where trial courts have disregarded key defense contentions and motions and unquestioningly credited prosecution evidence.<sup>77</sup> Similarly, the ECtHR has held that a lack of impartiality by a court-appointed expert can breach the principle of equality of arms, particularly when their conclusions play a "dominant or even totally overriding role" in the proceedings. The Court further emphasized that procedural safeguards, such as the acknowledgment of a party's expert findings, may not adequately counterbalance potential biases, thereby jeopardizing the fairness of the trial.<sup>78</sup>

To prioritize the testimony of the prosecution over that of defendants or their witnesses without justification would seriously compromise the fairness and impartiality of the judicial process.<sup>79</sup> Since police investigations may be biased and may contain errors or misinterpretations, it is important for the court to objectively evaluate the methods and conclusions of the investigation to ensure that they are legally valid.

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<sup>75</sup> U.N. Human Rights Committee, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, U.N. Doc. CCPR/C/GC/32, (2007).

<sup>76</sup> U.N. Human Rights Committee, *Oló Bahamonde v. Equatorial Guinea*, (1991), para. 9.4.

<sup>77</sup> U.N. Human Rights Committee, *Nataliya Litvin v. Ukraine*, CCPR/C/102/D/1535/2006, (2011), para. 10.5;

U.N. Human Rights Committee, *Riedl-Riedenstein et al. v. Germany*, CCPR/C/81/D/1188/2003, (2004), para. 7.3;

U.N. Human Rights Committee, *Bondarenko v. Belarus*, CCPR/C/77/D/886/1999, (2003), para. 9.3;

U.N. Human Rights Committee, *Arenz et al. v. Germany*, CCPR/C/80/D/1138/2002, (2004), para. 8.6;

U.N. Human Rights Committee, *Saidova v. Tajikistan*, CCPR/C/81/D/964/2001, (2004), para. 6.7;

U.N. Human Rights Committee, *Toshev v. Tajikistan*, CCPR/C/101/D/1499/2006, (2011), para. 6.6.

<sup>78</sup> European Court of Human Rights, *Placi v. Italy*, App. No. 48754/11, (2014), paras. 75-78.

<sup>79</sup> U.N. Human Rights Committee, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, U.N. Doc. CCPR/C/GC/32, (2007).

In this case, the court unquestioningly accepted the police theory that Pan could be identified as the live-streamer of the protest, without regard to the defense's argument. The following quotes from the judgment illustrate this point:

*Following the reception of a report, the collection of evidence, and interviews with witnesses, leading to the conclusion that the Defendant was the user behind the Thalu Fah Facebook account, the investigation team petitioned the court for an arrest warrant against the Defendant.*<sup>80</sup>

*Police Lieutenant Colonel Tana and Police Major Narongrit consistently testified as follows: After reviewing photographs from several camera angles from the rally on August 13, 2021, it was found that the live streamer of the event on Facebook through the profile named “ทะลุฟ้า ๑-thalufah” was the Defendant. The live stream started at approximately 2:59 p.m. and lasted 2 hours and 52 minutes, as shown in the photographs and the investigation report, Exhibit J. 11.*<sup>81</sup>

At the same time, the court ignored the defense's objections concerning the photos and video evidence, which were unclear, showed distant masked individuals, and failed to definitively identify anyone involved in the live stream. Likewise, the court judgment lacked any response to such objections regarding independent review of the photographs taken by the police during the protests and the screenshots of the livestream. By not independently assessing this evidence, the court effectively delegated its duty to the police, blurring the distinct and essential separation between the judiciary and the executive.

Further, as discussed above, the court inexplicably disregarded critical exculpatory evidence from a computer expert, which established that the IP addresses of the Thalu Fah group Facebook page administrators did not match Pan's. Taken together, the Court's uncritical acceptance of the results of the police investigation and apparent failure to take account of exculpatory evidence undermine the appearance of impartiality; that

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<sup>80</sup> Thai Criminal Court, *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p. 11-12.

<sup>81</sup> Thai Criminal Court, *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p. 11.

is, a reasonable observer<sup>82</sup> in this context might perceive the court as unduly favoring the police perspective over a fair and balanced assessment of all the evidence.

## The Right to a Reasoned Judgment

While the ICCPR does not expressly guarantee a right to a reasoned judgment, the U.N. Human Rights Committee has consistently interpreted Article 14(5), which provides “everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law,” to encompass this right.<sup>83</sup> The Committee has affirmed that the right to have one’s conviction reviewed can only be effectively exercised if the convicted person has access to a “duly reasoned, written judgment” of the trial court, and, in cases of appeal, also to other essential documents, such as trial transcripts, necessary for a meaningful appeal.<sup>84</sup> A reasoned judgment is crucial because, in order to file an effective appeal, a defendant must understand the legal and factual reasons behind their conviction. Without this explanation, the defendant is left without a clear understanding of why they were found guilty, making it difficult or even impossible to mount a well-founded appeal.

International human rights courts have established that the duty to provide reasoning is essential for the proper administration of justice, ensuring that individuals are judged based on legal grounds and reinforcing the credibility of judicial decisions in a democratic

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<sup>82</sup> U.N. Human Rights Committee, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, CCPR/C/GC/32, (2007), para. 21;

U.N. Human Rights Committee, *Zogo Andela v. Cameroon*, CCPR/C/138/D/3838/2020, (2023), para. 6.3; U.N. International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Appeal Judgement, (2000), paras. 55, 189.

<sup>83</sup> U.N. Human Rights Committee, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, CCPR/C/GC/32, (2007), para. 49. Similarly, the ECtHR has stressed that the court must sufficiently clarify the reasons for its decision (see *Moreira Ferreira v. Portugal*, App No. 19867/12, (2017), para. 84) so that the defendant can exercise any available appeal right (*Hadjianastassiou v. Greece*, App. No. 12945/87, (1992), para. 33). Moreover, the reasoning of the decision of the court should show that the essential issues of the case have been addressed. See *Lobzhanidze and Peradze v. Georgia*, App Nos. 21447/11 and 35839/11, (2020), para. 66.

<sup>84</sup> U.N. Human Rights Committee, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, U.N. Doc. CCPR/C/GC/32, (2007);

U.N. Human Rights Committee, *Van Hulst v. Netherlands*, CCPR/C/82/D/903/1999, (1999), para. 6.4;

U.N. Human Rights Committee, *Bailey v. Jamaica*, CCPR/C/66/D/709/1996, (1996), para. 7.2;

U.N. Human Rights Committee, *Morrison v. Jamaica*, CCPR/C/64/D/663/1995, (1998), para. 8.5.

society.<sup>85</sup> This duty, according to the IACtHR<sup>86</sup> and the ECtHR,<sup>87</sup> does not necessitate a detailed response to every argument raised by the parties but must demonstrate that the parties' arguments have been duly considered and that the evidence has been adequately evaluated, thus ensuring that the parties are aware their claims have been heard and appropriately addressed.<sup>88</sup>

In Pan's case, and as described above, the court did not explain how the evidence presented established her guilt beyond a reasonable doubt as required by Section 227 of the Thai Criminal Procedure Code for the alleged crimes; instead, the court uncritically accepted the police assessment and did not apparently consider exculpatory evidence in its decision. In particular, the court failed to adequately address expert testimony indicating that the IP addresses identified through the phishing technique corresponded to individuals other than the defendant.

The court also failed to clearly explain how Pan's actions met the legal requirements of the Thai Sedition Law, particularly in terms of the alleged intent. Sedition requires intent to either incite the use of force, cause unrest, or encourage law violations, yet the court did not articulate how the facts presented demonstrated any of these intentions. For example, there was no discussion of how Pan's alleged livestream of the protest, or the posts that were at issue for which the livestream was evidence of her responsibility, encouraged others to use force or incited disturbances. The court also failed to establish how the posts went beyond protected speech or good faith criticism, further weakening the judgment's legal foundation. Without addressing these key issues, the court's ruling lacked the necessary reasoning to justify a conviction for sedition.

## **C. OTHER FAIRNESS CONCERNS**

### **Freedom of Expression and Freedom of Assembly**

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<sup>85</sup> Inter-American Court of Human Rights, *Apitz Barbera et al. v. Venezuela*, (2008), para. 77; European Court of Human Rights, *Suominen v. Finland*, Judgment, App. No. 37801/97, (2003), para. 34.

<sup>86</sup> Inter-American Court of Human Rights, *Apitz Barbera et al. v. Venezuela*, (2008), para.90.

<sup>87</sup> European Court of Human Rights, *Hiro Balani v. Spain*, App. No. 18064/91, (1994), para. 27; European Court of Human Rights, *Ruiz Torija v. Spain*, App. No. 18390/91, (1994), para. 29; European Court of Human Rights, *Hirvisaari v. Finland*, App. No. 49684/99, (2001), para. 30.

<sup>88</sup> Inter-American Court of Human Rights, *Apitz Barbera et al. v. Venezuela*, (2008), para.90.

The rights to freedom of expression and freedom of assembly are protected by numerous international and regional human rights agreements.<sup>89</sup> In particular, Article 19 (1) and (2) of the ICCPR state that “everyone shall have the right to hold opinions without interference” and “shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Additionally, Article 21 of the ICCPR guarantees the right to freedom of peaceful assembly, affirming that “the right of peaceful assembly shall be recognized, and no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society.” The Thai Constitution also protects the right to freedom of expression in Section 34 and the right to peaceful assembly in Section 44.<sup>90</sup>

The U.N. Human Rights Committee has stressed that in “circumstances of public debate concerning public figures in the political domain and public institutions,” the “value placed by the Covenant upon uninhibited expression is particularly high.”<sup>91</sup> Mere insults towards public figures are not sufficient to justify penalties, as all public figures are legitimately subject to criticism and political opposition.<sup>92</sup> The Committee has further explained that criminal laws cannot be invoked to prosecute journalists, researchers, environmental

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<sup>89</sup> These instruments include the Universal Declaration of Human Rights (article 19) and International Covenant on Economic, Social and Cultural Rights, among others. Similarly, regional agreements like the American Convention on Human Rights (article 13) and the African Charter on Human and Peoples' Rights (article 9) reinforce the global commitment to protecting freedom of opinion and expression.

<sup>90</sup> Section 34: A person shall enjoy the liberty to express opinions, make speeches, write, print, publicize and express by other means. The restriction of such liberty shall not be imposed, except by virtue of the provisions of law specifically enacted for the purpose of maintaining the security of the State, protecting the rights or liberties of other persons, maintaining public order or good morals, or protecting the health of the people.

Section 44. A person shall enjoy the liberty to assemble peacefully and without arms. The restriction of such liberty under paragraph one shall not be imposed except by virtue of a provision of law enacted for the purpose of maintaining security of the State, public safety, public order or good morals, or for protecting the rights or liberties of other persons.

<sup>91</sup> U.N. Human Rights Committee, General Comment No. 34, Freedoms of Opinion and Expression, Article 19, U.N. Doc. CCPR/C/GC/34 (2011).

<sup>92</sup> European Court of Human Rights (1992), *Castells v. Spain*, Application No. 11798/85, (1992), para. 46.

activists, human rights defenders, or others for having disseminated information of public interest.<sup>93</sup>

In fact, Article 19 and Article 22 of the ICCPR permit restrictions on speech and assembly for only a limited set of reasons: for the protection of the rights or reputations of others, or for the “protection of national security or of public order, or of public health or morals.” To ensure that the right to freedom of expression and freedom of assembly are protected, such restrictions must (i) be prescribed by law (the principle of legality), (ii) serve a legitimate objective, and (iii) be necessary to achieve and be proportionate to that objective.<sup>94</sup>

Moreover, criminal prosecution for speech is an extreme measure, reserved under international human rights standards for the most serious offenses, such as direct incitement to violence.<sup>95</sup> The Facebook posts attributed to Pan, however, explicitly called for non-violent assemblies, stating, “[You will] see every form of fighting by the people... in peace and in a non-violent way to confront those tyrants and bring back democracy!” The ECtHR has emphasized that criminalizing speech requires clear evidence that the statements in question were likely to incite violence: “It must be demonstrated that an applicant’s statements were ‘capable of leading’ or actually led to disorder.”<sup>96</sup> Similarly, the U.N. Human Rights Committee has stated that “isolated acts of violence by some participants [of an otherwise peaceful assembly] should not be attributed to others, to the organizers or to the assembly as such.”<sup>97</sup>

In Pan’s case, the prosecution and court did not even attempt to justify criminalizing Pan’s speech on the basis that it was capable of leading, or actually led to, violence. Even if the prosecution had been able to successfully prove that she wrote the Facebook post at

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<sup>93</sup> U.N. Human Rights Committee, General Comment No. 34, Freedoms of Opinion and Expression, Article 19, U.N. Doc. CCPR/C/GC/34 (2011).

<sup>94</sup> U.N. Human Rights Committee, General Comment No. 34, Freedoms of Opinion and Expression, Article 19, U.N. Doc. CCPR/C/GC/34 (2011), paras. 22-36;  
Human Rights Committee, General Comment No. 37: Article 21 (Right of Peaceful Assembly), U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020), paras. 43-47.

<sup>95</sup> United Nations General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, U.N. Doc. A/66/290, (Aug. 10, 2011), para. 18-19.

<sup>96</sup> European Court of Human Rights, *Atamanchuk v. Russia*, App. No. 4493/11, (2020).

<sup>97</sup> Human Rights Committee, General Comment No. 37, Right of Peaceful Assemble, Article 21, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020).

question in her case, the post specifically called for a peaceful protest. Rather, the prosecution tried to justify the restrictions on her freedom of expression and assembly as necessary for public health, citing the Emergency Decree on Public Administration in Emergency Situations, which prohibited gatherings of more than five people in high-control areas due to the COVID-19 outbreak.<sup>98</sup> UN experts have cautioned, however, that COVID-19 measures should not be used to suppress freedoms of expression and assembly. While public health restrictions may be justified when they are necessary and proportionate, concerns have been raised about governments enacting overly broad and vague laws, including emergency decrees, that disproportionately target opposition groups and vulnerable communities.<sup>99</sup>

### Principle of Legality

The legality principle, a core tenet of international human rights law enshrined in Article 15 of the ICCPR, mandates clear definitions of criminal offenses and prohibits their retroactive application. The U.N. Human Rights Committee has stressed that “the principle of legality in the field of criminal law” includes “the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty.”<sup>100</sup> The UN Working Group on Arbitrary Detention has explained that “[o]ne of the fundamental guarantees of due process is the principle of legality, including ... the principle of certainty.” Thus, “vaguely and broadly worded provisions, which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality.”<sup>101</sup> The European Court of Human Rights has likewise considered a provision of a Criminal Code vague when an individual could not discern

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<sup>98</sup> Thai Criminal Court, *Public Prosecutor v. Katanyu Muenkhamruang*, Final Judgment (Informal Translation), (2022), p. 15.

<sup>99</sup> United Nations Office of the High Commissioner for Human Rights, States Responses to Covid 19 Threat Should not Halt Freedoms of Assembly and Association - UN Expert on the Rights to Freedoms of Peaceful Assembly and of Association, Mr. Clément Voule, (Apr. 14, 2020), <https://www.ohchr.org/en/statements/2020/04/states-responses-covid-19-threat-should-not-halt-freedoms-assembly-and?LangID=E&NewsID=25788>.

<sup>100</sup> U.N. Human Rights Committee, General Comment No. 29: States of Emergency, Article 4, (2001), CCPR/C/21/Rev.1/Add.11.

<sup>101</sup> U.N. Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 52/2024 concerning Netiporn “Bung” Sanesangkhom (Thailand), U.N. Doc. A/HRC/WGAD/2024/52, (2024), para. 28.

from its wording which acts or omissions might result in criminal liability.<sup>102</sup> This principle finds further recognition within both the Thai Constitution<sup>103</sup> and the Thai Criminal Code.<sup>104</sup>

The principle of legality, applied together with Article 19 of the ICCPR on freedom of expression and Article 22 on freedom of association, requires that any restrictions placed on these fundamental freedoms “meet the requirement of legality”<sup>105</sup> and be formulated “with sufficient precision to enable an individual to regulate his or her conduct accordingly ... A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”<sup>106</sup>

In the case of Thailand, both the Sedition Law and the Computer-Related Crimes Act violate the principle of legality on account of their breadth and vagueness. Several human rights organizations<sup>107</sup> and the UN Human Rights Committee<sup>108</sup> have emphasized that the vague and overbroad nature of laws like Thailand’s Sedition Law poses significant risks, as they can be misused to suppress dissenting opinions and stifle legitimate expression under the guise of maintaining public order.

Regional courts and human rights experts have repeatedly expressed concern at the breadth and vagueness of laws similar to Section 116 of the Thai Criminal Code. For instance, the East African Court of Justice found inconsistent with international and

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<sup>102</sup> European Court of Human Rights, *Altuğ Taner Akçam v. TURKEY*, App. No. 27520/07, (2012).

<sup>103</sup> Section 29 of the Constitution of Thailand.

<sup>104</sup> Section 2 of the Thai Criminal Code.

<sup>105</sup> Human Rights Committee, General Comment No. 37, Right of Peaceful Assembly, Article 21, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020), para. 36.

<sup>106</sup> U.N. Human Rights Committee, General Comment No. 34, Freedoms of Opinion and Expression, Article 19, U.N. Doc. CCPR/C/GC/34, (2011).

<sup>107</sup> Amnesty International, *They Are Always Watching. Restricting Freedom of Expression Online in Thailand*, (Apr. 23, 2020), <https://www.amnesty.org/en/documents/asa39/2157/2020/en/>; Article 19, *Thailand: Computer Crime Act*, (Jan. 31, 2017), <https://www.article19.org/data/files/medialibrary/38615/Analysis-Thailand-Computer-Crime-Act-31-Jan-17.pdf>;

Human Rights Watch, *To Speak Out Is Dangerous: Criminalization of Peaceful Expression In Thailand*, (Oct. 24, 2019), <https://www.hrw.org/report/2019/10/25/speak-out-dangerous/criminalization-peaceful-expression-thailand>.

<sup>108</sup> U.N. Human Rights Committee, *Concluding Observations, Thailand*, CCPR/C/THA/CO/2, (Apr. 25, 2017), <https://documents.un.org/doc/undoc/gen/g17/099/90/pdf/g1709990.pdf?token=OSX1mVMx7Y985K7N2r&amp;fe=true>.

regional standards Tanzanian legislation that criminalized exciting disaffection, finding that this “hinged on the possible and potential subjective reactions of audiences.”<sup>109</sup> Similarly, Malaysia’s Sedition Act defines “seditious tendency” as, among others, “a tendency to excite disaffection,” terminology that the UN Special Rapporteur on Freedom of Expression David Kaye found was incompatible with international standards and “could result in disproportionate restrictions of freedom of expression.”<sup>110</sup> The term “disaffection” features both in Thailand’s law, and the laws of Tanzania and Malaysia.

But the vagueness of Thailand’s Sedition Law is not limited to the use of the term ‘disaffection’: The law also refers to “unrest” and “disturbances,” without defining the terms themselves or the level of “unrest” or “disturbance” necessary to trigger legal consequences. In addition, the concept of “an act within the purpose of the constitution” is open to broad interpretation as well as the phrases “good faith opinion” and “expressing criticism.” This ambiguity creates significant uncertainty for individuals, leaving them unsure of what conduct might constitute a criminal offense.

Similarly, Section 14(3) of the Computer-Related Crimes Act compounds the vagueness of Section 116 by incorporating a reference to “offenses against the Kingdom’s security” without further definition. The Working Group on Arbitrary Detention (WGAD) has expressed serious concerns about this vagueness and overbreadth, which empowers authorities to interpret the scope of the CCA with wide discretion. The WGAD specifically noted that “Article 14 of the Computer-Related Crimes Act, as amended in 2017, does not define what conduct constitutes a crime concerning the security of the Kingdom.” This lack of clarity, according to the WGAD, violates the principle of legality.<sup>111</sup> As a result, the WGAD has urged the Thai government to repeal or amend this provision.<sup>112</sup>

Pan’s conviction under Sections 116 of the Thai Criminal Code and 14(3) of the Computer-Related Crimes Act thus violate the principle of legality, including as read

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<sup>109</sup> East African Court of Justice. *Media Council of Tanzania v. The Attorney General of the United Republic of Tanzania*. EACJ, (2019).

<sup>110</sup> U.N. Office of the High Commissioner for Human Rights. *Malaysia Sedition Act Threatens Freedom of Expression by Criminalising Dissent*, (Oct. 8, 2014), <https://www.ohchr.org/en/press-releases/2014/10/malaysia-sedition-act-threatens-freedom-expression-criminalising-dissent>

<sup>111</sup> U.N. Human Rights Council Working Group on Arbitrary Detention, Opinion No. 4/2019 concerning Siraphop Kornaroot (Thailand), A/HRC/WGAD/2019/4, (2019).

<sup>112</sup> U.N. Human Rights Council Working Group on Arbitrary Detention, Opinion No. 4/2019 concerning Siraphop Kornaroot (Thailand), A/HRC/WGAD/2019/4, (2019).

together with her right to freedom of expression, as the vagueness of these provisions inherently fails the requirement that the restriction—i.e., her prosecution—be ‘provided by law.’

### **Necessity and Proportionality**

As discussed above, the UN Human Rights Committee has clarified that any restrictions on freedom of expression<sup>113</sup> and freedom of assembly<sup>114</sup> must strictly adhere to the principles of necessity and proportionality. Such measures should be appropriate to the objective being pursued,<sup>115</sup> and be "the least intrusive instrument" available, meaning that authorities should choose the option that limits rights as little as possible while still addressing the concern.<sup>116</sup>

That is, even assuming that Pan’s prosecution pursued a legitimate objective, such as the protection of public order or public health, the authorities must still demonstrate that the measures imposed were strictly necessary and proportionate to achieving that objective. Here, the authorities’ enforcement of the Emergency Decree raises significant concerns about its application, particularly its disproportionate targeting of protesters rather than adherence to its stated public health or public order objectives. While the decree was introduced to address the COVID-19 pandemic, its use against peaceful assemblies and freedom of expression suggests selective enforcement aimed at suppressing dissent rather than mitigating health risks.

The Special Rapporteur on Freedom of Opinion and Expression has emphasized the need to differentiate between categories of expression that have varying legal implications. Certain forms of expression, such as direct incitement to violence, can be

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<sup>113</sup> U.N. Human Rights Committee, General Comment No. 34, Freedoms of Opinion and Expression, Article 19, U.N. Doc. CCPR/C/GC/34 (2011), para.34.

<sup>114</sup> U.N. Human Rights Committee, General Comment No. 34, Freedoms of Opinion and Expression, Article 19, U.N. Doc. CCPR/C/GC/34 (2011), para 36.

<sup>115</sup> U.N. Human Rights Committee, General Comment No. 34, Freedoms of Opinion and Expression, Article 19, U.N. Doc. CCPR/C/GC/34 (2011), para 34.

<sup>116</sup> U.N Human Rights Committee, General Comment No. 27, Freedom of Movement, Article 12, CCPR/C/21/Rev.1/Add.9, (1999), para. 14;  
Human Rights Committee, General Comment No. 37, Right of Peaceful Assembly, Article 21, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020), para. 37;  
U.N Human Rights Committee, *Marques v. Angola*, CCPR/C/83/D/1128/2002, (2005);  
U.N Human Rights Committee, *Coleman v. Australia*, CCPR/C/87/D/1157/2003, (2006).

subject to criminal prosecution.<sup>117</sup> However, given the crucial role that freedom of expression and the free flow of information play as the foundation of a democratic society, other forms of expression should not be criminalized as it has a counterproductive and chilling effect that stifles lawful public discourse and undermines the right to free expression.<sup>118</sup> As noted above, the prosecution and court failed to provide evidence linking Pan directly to incitement of violence or an immediate, specific, or serious threat to public health or public order. It is not known whether she attended the assembly in question or was responsible for the posts calling for peaceful protests, leaving the justification for the restrictions speculative and unsubstantiated.

Moreover, the principle of proportionality requires that the state's response to an offense be balanced and appropriate, ensuring that any punishment or measure corresponds to the nature and seriousness of the act and the rights affected. This principle also necessitates considering the form of expression and the means of its dissemination, as the nature of the speech and how it is communicated—whether through media, public debate, or other platforms—should influence the level of restriction imposed.<sup>119</sup> Failure to account for these factors has led to breaches of proportionality, as seen in cases where penalties, such as criminal sanctions, have unduly restricted individuals' ability to share opinions, ideas, and information, particularly through social media, unjustifiably limiting freedom of thought and expression and creating an excessive restriction on fundamental rights.<sup>120</sup> Criminalizing—and not only that, but imposing a prison sentence on—Pan's alleged speech under the Sedition Law and the Computer-Related Crimes Act fails this test.<sup>121</sup> Indeed, the broad and severe restriction imposed, in the form of a two-year prison sentence for allegedly inviting others to a peaceful protest, directly contradicts the principle of proportionality as outlined by international standards on freedom of

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<sup>117</sup> United Nations General Assembly (2011), Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/66/290, (Aug. 10, 2011), para. 18-19.

<sup>118</sup> United Nations General Assembly (2011), Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/66/290, (Aug. 10, 2011), para. 40.

<sup>119</sup> Inter-American Court of Human Rights, *Vargas Areco v. Paraguay*, (2006), para. 108; Inter-American Court of Human Rights, *La Rochela Massacre v. Colombia*, (2007), para. 196.

<sup>120</sup> Inter-American Court of Human Rights, *Norín Catrimán et al. v. Chile*, Merits, (2014), para. 375.

<sup>121</sup> United Nations General Assembly, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/66/290, (Aug. 10, 2011), para. 18-19.

expression and association. Less intrusive measures could have been employed if there was any genuine concern about public health or safety.

## CONCLUSION AND GRADE



This case starkly illustrates the urgent need for reform of Thailand's Sedition Law and Computer-Related Crimes Act. The Sedition Law, with its vague and overly broad language, criminalizes protected speech and directly conflicts with international human rights standards, particularly the right to freedom of expression. In a climate of political instability and government restrictions on opposing views, the application of this law cannot but have a chilling effect on free speech and dissent. Similarly, the Computer-Related Crimes Act has been weaponized to prosecute individuals for their online activities, further undermining the ability to express dissenting opinions without fear of reprisal. The use of these laws to silence political opposition represents a significant threat to democratic values and the rule of law in Thailand.

Beyond the problematic nature of the laws themselves, this trial fell far short of internationally recognized fair trial standards. The defendant's fundamental rights were demonstrably violated, including the right to the presumption of innocence, the right to an independent tribunal, and the right to a reasoned judgment. The lack of sufficient evidence to prove the charges beyond a reasonable doubt, coupled with the court's reliance on unproven allegations of prior conduct, reflects a broader pattern of politically motivated prosecutions. Moreover, the abrupt truncation of the trial proceedings—without an opportunity for full legal arguments—further raises concerns about due process violations.

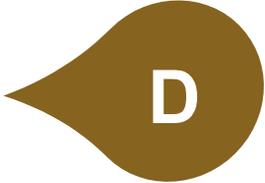
The disproportionate punishment imposed on Pan only exacerbates the severity of these violations. The sentence handed down was not only excessive but appeared to be intended as a deterrent against future political activism. This is part of a troubling pattern in which the judicial system is used as a tool of repression rather than justice. The combination of vague laws, prosecutorial overreach, and a judiciary that fails to act as an independent check on executive power creates an environment where individuals can be arbitrarily prosecuted and convicted for legitimate political expression.

Based on the TrialWatch grading methodology, Pan's trial exhibited significant violations of both the right to fairness and due process, including an improper prosecutorial motive, a lack of credible evidence, violations of the presumption of innocence, and the denial of key fair trial rights such as the ability to present a full defense. The selective enforcement

of emergency laws to suppress dissent further undermined the legitimacy of the proceedings. These violations warrant a "D" grade, reflecting a serious breach of fair trial standards.

The conviction should be overturned on appeal to rectify this miscarriage of justice and prevent the suppression of political opposition. By overturning this conviction, the Court of Appeals would send a powerful message that Thailand values and upholds the fundamental right to freedom of expression. It would demonstrate that peaceful expression and legitimate criticism will not be met with disproportionate punishment, reinforcing the right to freedom of expression, and the principles of justice and democracy.

**GRADE:**



**D**

# ANNEXES

The link and image of the first post is the following:

- <https://www.facebook.com/Thalufah/photos/133585668960374>



The link and image of the second post is the following:

- <https://www.facebook.com/Thalufah/photos/134166438902297>

