

 COLUMBIA LAW SCHOOL

HUMAN RIGHTS INSTITUTE



**Public Prosecutor v.
Mr. Rattaphon Supasophon
and Twelve Others**

March 2026

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

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

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

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EXECUTIVE SUMMARY



Andrew Khoo assigned this trial a grade of C.

The criminal proceedings in *Public Prosecutor v. Rattaphon Supasophon and Others* were marred from the outset by profound departures from international fair-trial standards. The extraordinary seven-year delay before charges were formally advanced, offered without justification, created a presumption of mala fides and gravely compromised the Defendants' ability to mount a fair defence. This prolonged uncertainty violated the right to be tried without undue delay. These defects were then exacerbated by the prosecution's inability to present credible, specific, or individualized evidence: the indictment failed even to identify which Defendant allegedly made the impugned statements, and none of the ten witnesses could recall or substantiate the content of any speech.

Compounding these failures, the prosecution relied on Section 116 of the Thai Criminal Code, a sedition provision so vague that it falls short of the principle of legality under international law, without producing any evidence of incitement to violence or public-order necessity. The case thus reflected a broader pattern of politically motivated prosecutions aimed at suppressing dissent rather than safeguarding society. Although the court ultimately dismissed the charges, the prolonged delay, the absence of evidence, and the use of an overbroad legal provision collectively reveal a troubling misuse of judicial processes. They underscore the imperative for courts to scrutinize ambiguous charges at the outset and to dismiss cases that fail the tests of legality, necessity, and proportionality, so as to prevent the criminal justice system from becoming an instrument of punishment in itself. What cannot be upheld should never be prolonged.

BACKGROUND INFORMATION



A. POLITICAL & LEGAL CONTEXT

Thailand is a constitutional monarchy that has alternated between military rule and unstable civilian governments since the Siamese Revolution overthrew the absolute monarchy in 1932.² During this period, Thailand has experienced numerous military-led *coups d'état*, most recently in 2014 when a military junta, known as the National Council for Peace and Order (NCPO), came into power.

From 2014 to 2019, Thailand was under the NCPO's military rule.³ During this time, the NCPO suspended the majority of the constitution, detained many political leaders, and censored the media.⁴ In 2017, the government ratified a new military-backed constitution, which increased the King's powers.⁵

Although the NCPO was formally dissolved in July 2019 following the country's first semi-democratic⁶ elections post-coup,⁷ the officially civilian but military-led government left 140 NCPO directives in place,⁸ including restrictions on freedom of expression and assembly.⁹ This new government was led by the Palang Pracharat party along with a

² Jompon Pitaksantayothing and Bongchul Kim. (2023). Sedition Law and Expression on the Internet in Thailand: A Critical Analysis. *Journal of Global and Area Studies* 7, no. 2, 79-95. <https://www.kci.go.kr/kciportal/ci/sereArticleSearch/ciSereArtiOrteView.kci?sereArticleSearchBean.artid=ART002970631>.

³ "Thailand's Government and Political System. Expatica, www.expatica.com/th/civil/government/thailand-government-2172876/.

⁴ Kocha Olarn, and Jethro Mullen. "Thailand's Military Declares Martial Law, Denies Coup." CNN, 22 May 2014, edition.cnn.com/2014/05/22/world/asia/thailand-martial-law/.

⁵ "Timeline: Thailand's Turbulent Politics since 2014 Military Coup." Reuters, Thomson Reuters, 12 August 2020, www.reuters.com/article/world/timeline-thailands-turbulent-politics-since-2014-military-coup-idUSKCN2520CA/.

⁶ Freedom House. "Thailand: Freedom on the Net 2023 Country Report." Freedom House, 2023, freedomhouse.org/country/thailand/freedom-net/2023.

⁷ Panu Wongcha-um and Jiraporn Kuhakan. "Thai Prime Minister Declares End of Military Rule." Reuters, Thomson Reuters, 15 July 2019, www.reuters.com/article/us-thailand-politics/thai-prime-minister-declares-end-of-military-rule-idUSKCN1UA1D4.

⁸ Freedom House. "Thailand: Freedom on the Net 2023 Country Report." Freedom House, 2023, freedomhouse.org/country/thailand/freedom-net/2023.

⁹ Human Rights Watch. "To Speak Out Is Dangerous: Criminalization of Peaceful Expression in Thailand." Human Rights Watch, 24 October 2019, www.hrw.org/report/2019/10/24/speak-out

coalition of senators and MPs from other parties. The Prime Minister, Prayuth Chan-ocha, was a former NCPO military official.

In May 2023, a general election was held, where pro-democracy parties such as the Move Forward Party campaigned on proposals to amend Thailand's sedition and lèse-majesté law and move towards a more representative government.¹⁰ The Move Forward Party was supported by student movements, securing the most seats in the 500-seat House of Representatives with over 14 million votes.¹¹

However, Thailand's bicameral parliament includes a 250-seat Senate, which at the time was appointed by the military and held significant power despite being unelected. Due to the then-Senate's pro-monarchy stance, the Move Forward party's leader was blocked from becoming prime minister.¹² This led to a separate coalition, excluding Move Forward, forming and establishing a majority government.¹³ On August 7, 2024, the Constitutional Court ordered the dissolution of the Move Forward Party, accusing it of violating the

dangerous/criminalization-peaceful-expression-thailand. iLaw. "Arrests and Imprisonment: The Fate of Political Dissidents in Thailand." iLaw, 23 July 2019, freedom.ilaw.or.th/en/node/708. Reporters Without Borders. "Less Media Freedom than Ever in Thailand Three Years after Coup." Reporters Without Borders, 23 August 2019, rsf.org/en/news/less-media-freedom-ever-thailand-three-years-after-coup. Fortify Rights. "Follow-Up Submission to the U.N. Human Rights Committee on Thailand's Compliance with the International Covenant on Civil and Political Rights (ICCPR)." Fortify Rights, July 2018, www.fortifyrights.org/downloads/Follow-up_Submission_to_the_UN_Human_Rights_Committee_on_Thailands_Compliance_with_the_ICCPR_July_2018.pdf. International Commission of Jurists, and Thai Lawyers for Human Rights. "Joint Submission of the International Commission of Jurists and Thai Lawyers for Human Rights in Advance of the Examination of the Kingdom of Thailand's Second Periodic Report Under Article 40 of the International Covenant on Civil and Political Rights." OHCHR, February 2017, tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_CSS_THA_26602_E.pdf.

¹⁰ Freedom House. "Thailand: Freedom on the Net 2023 Country Report." Freedom House, 2023, freedomhouse.org/country/thailand/freedom-net/2023.

¹¹ Al Jazeera. "Thailand's Opposition Move Forward Party Names New Leader." Al Jazeera, 23 September 2023, www.aljazeera.com/news/2023/9/23/thailands-opposition-move-forward-party-names-new-leader.

¹² Id.

¹³ Jintamas Saksornchai. "Thailand's opposition Move Forward party to pick new leader as its embattled chief steps down." The Associated Press, 15 September 2023, <https://apnews.com/article/pita-move-forward-opposition-parliament-b9336d02dedf005529c4b6ad1ebbf95>.

Constitution due to its push for lèse-majesté reform, while key members, including leader Pita Limjaroenrat, were banned from politics for 10 years.¹⁴

Since then, political instability has resulted in the fall of multiple prime ministers. Paetongtarn Shinawatra became the fifth prime minister to be removed by the Constitutional Court in 17 years on August 29, 2025, for breaking "ethical standards" in connection with a contentious phone call that was leaked.¹⁵ Her dismissal resulted in the Bhumjaithai Party, backed by the People's Party (which was formed from the disbanded Move Forward Party), creating a temporary government. In September 2025, Anutin Charnvirakul of Bhumjaithai became prime minister on the condition that a general election would be called within four months and constitutional reforms would be initiated. Most recently, the February 2026 snap election saw Anutin's Bhumjaithai Party secure the largest share of seats in the House of Representatives, consolidating his position at the head of a new conservative-led coalition government.¹⁶

Student Activism

Students have historically played a significant role in Thailand's politics. Between the late 1960s and 1970s, they became a significant political force and on October 14, 1973, a democracy movement led by students succeeded in toppling the long-standing military regime that had governed Thailand since the end of World War II,¹⁷ with the Thammasat Bangkok University campus as the main protest site.¹⁸ In May 1992, students again

¹⁴ Hannah Beech. "Thailand's Royalists Are Losing Their Grip on Democracy." *The New York Times*, 14 August 2024, <https://www.nytimes.com/2024/08/14/opinion/thailand-royalists-king-democracy.html>.

¹⁵ Purawich Watanasukh. "Thailand's Political Turmoil Deepens as Another Prime Minister Falls". Asia Media Centre, 5 September 2025, <https://www.asiamediacentre.org.nz/thailand-s-political-turmoil-deepens-as-another-prime-minister-falls>.

¹⁶ Channel News Asia. "Thailand Election Body Confirms Win by PM Anutin's Party." Channel News Asia, 24 February 2026, <https://www.channelnewsasia.com/asia/thailand-election-commission-confirm-anutin-victory-5952656>.

¹⁷ Meredith L. Weiss and Edward Aspinall. (2012). *Students Activism in Asia, between Protest and Powerlessness*. *University of Minnesota Press*, https://books.google.com/books?hl=en&lr=&id=FAL4saWk27QC&oi=fnd&pg=PA229&dq=1973+Thai+popular+uprising&ots=JB_0xKPt3K&sig=AW_HLI7LO2D4WVxU4IMB_EG9ykw#v=onepage&q&f=true ; <https://www.bbc.com/news/world-asia-15641745>.

¹⁸ Young, D. (2023). Political Communication Apprehension in an Era of Activism: A survey of Thai Undergraduates. *LEARN Journal: Language Education and Acquisition Research Network*, 16(1), 408-428, 418.

played a crucial role, this time in protesting violent crackdowns by the military.¹⁹ Throughout the 2010s, student activism grew again²⁰ and over the past decade, student-led activism and campaigning, generally in the form of peaceful protests, has become commonplace.²¹ Since 2014, the Thai authorities have cracked down on these social movements.²²

Since 2014, students have also often adopted creative and symbolic forms of protest, using iconoclastic references from pop-culture such as to the Hunger Games, Harry Potter, and Japanese anime.²³ The response has been harsh. In 2015, at least 751 individuals were summoned for questioning based on accusations of anti-coup activities or defaming the monarchy.²⁴ The NCPO also issued arrest warrants and revoked passports for at least 10 exiled opposition figures who failed to comply with the request.²⁵ Martial law and Section 44 of the interim constitution granted the military broad powers, leading to secret detentions of student protesters without charge or trial and an increase in cases tried in military courts, which lacked independence and failed to meet

¹⁹ Panarat Anamwathana & Sawaros Thanapornsanguth. (2023). Youth Political Participation in Thailand: A Social and Historical Overview. *International Journal of Sociology*. 53. 1-12. 10.1080/00207659.2023.2167381. p.5.

²⁰ Id.

²¹ David Young. (2023). Political Communication Apprehension in an Era of Activism: A Survey of Thai Undergraduates. *LEARN Journal: Language Education and Acquisition Research Network*, 16(1), 408-428, 409

²² Human Rights Watch. "Thailand. Events of 2022." Human Rights Watch, 2023, <https://www.hrw.org/world-report/2023/country-chapters/thailand>.

²³ Panarat Anamwathana & Sawaros Thanapornsanguth. (2023). Youth Political Participation in Thailand: A Social and Historical Overview. *International Journal of Sociology*. 53. 1-12. 10.1080/00207659.2023.2167381.

²⁴ Amnesty International. "Thailand: Arrests on Coup Anniversary are a Stark Reminder of Ongoing Repression." Amnesty International, 22 May 2015. <https://www.amnesty.org/en/latest/news/2015/05/thailand-arrests-on-coup-anniversary-stark-reminder-of-repression/>. "Thailand Military Detains Former PM Yingluck Shinawatra." BBC News, 23 May 2014, <https://www.bbc.com/news/world-asia-27544972>.

²⁵ "Thailand." Human Rights Watch World Report 2016, Human Rights Watch, 2016, www.hrw.org/world-report/2016/country-chapters/thailand#5ce054.

international fair trial standards, according to Human Rights Watch²⁶ and Amnesty International.²⁷

More recently, in 2020, nearly 10,000 pro-democracy students called for the dissolution of the Thai parliament²⁸ and many student-led pro-democracy groups were established.²⁹ Since then, student groups have been instrumental in campaigns to amend the Thai Constitution,³⁰ and to end prosecutions for political opposition across the country.³¹

The crackdown against social movements escalated in response to the 2020 protests, where there was a heavy use of force against protesters and students. All in all, there were a reported 173 incidents of judicial harassment against students across the country, with several students charged with illegal assembly.³² When student protests in October of that year continued despite the declaration of a state of emergency in Bangkok,³³ water

²⁶ Id.

²⁷ Amnesty International. "Civil Society Under Attack: The Targeted Use of Criminal Law to Silence Activists, Human Rights Defenders, and Others in Thailand.", Amnesty International, 2017, https://www.amnesty.be/IMG/pdf/thailand_civil_society_under_attack_report.pdf.

²⁸ "Thousands Call for Reforms to Monarchy in Bangkok Protests." The Guardian, 16 August 2020, www.theguardian.com/world/2020/aug/16/thousands-call-for-reforms-to-monarchy-in-bangkok-protests.

²⁹ Panarat Anamwathana. "Thai University Students' Civic Engagement on Campuses." FULCRUM, 18 August 2024, fulcrum.sg/thai-university-students-civic-engagement-on-campuses/.

³⁰ iLaw. "Bangkok Military Court Rejects 7th Temporary Release Request for 'Penguin-Mike', Lawyers Prepare to Appeal." 2024, https://www-ilaw-or-th.translate.google/articles/16786?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp. Translated by Google.

³¹ Panarat Anamwathana. "Thai University Students' Civic Engagement on Campuses." FULCRUM, 18 August 2024, fulcrum.sg/thai-university-students-civic-engagement-on-campuses/.

³² "Authorities Escalate Crackdown on the Youth-led Protest Movement in Thailand." CIVICUS, 30 October 2020, monitor.civicus.org/explore/authorities-escalate-crackdown-youth-led-protest-movement-thailand/.

Human Rights Watch. "Thailand: Rights Crisis Rapidly Worsens." Human Rights Watch, 13 January 2021, <https://www.hrw.org/news/2021/01/13/thailand-rights-crisis-rapidly-worsens>.

³³ Editorial Board. "Opinion | A Student Movement Offers a Ray of Hope for Democracy in Thailand." Washington Post, 19 October 2020, https://www.washingtonpost.com/opinions/global-opinions/a-student-movement-offers-a-ray-of-hope-for-democracy-in-thailand/2020/10/19/f16e5844-1231-11eb-bc10-40b25382f1be_story.html.

cannons were used by police and there was a series of warrants issued and arrests made against student leaders.³⁴

The COVID-19 pandemic led to further restrictions being put in place and in March 2020, the Government implemented the Emergency Decree on Public Administration in Emergency Situation to combat the virus.³⁵ Many students³⁶ and human rights defenders already facing criminal trials under sedition, lèse-majesté and anti-coup charges, experienced significant delays in their proceedings as this new layer of restrictions further prolonged the judicial processes.³⁷

B. CASE HISTORY

The New Democracy Movement (NDM) is a student group, established in 2015, with the objective of campaigning for a transition to democratic civilian rule.³⁸ The group includes more than 20 community-based organizations.³⁹ NDM adheres to five key principles: democracy, human rights, justice, public participation, and nonviolence.⁴⁰ NDM were active campaigners against the NCPO,⁴¹ and advocated for the restoration of democracy

³⁴ Panarat Anamwathana & Sawaros Thanapornsanguth. (2023). Youth Political Participation in Thailand: A Social and Historical Overview. *International Journal of Sociology*. 53. 1-12. 10.1080/00207659.2023.2167381. p.7; citing Neuman, S. (2020, October 16). Daily News. "ศาลทหารกรุงเทพฯ ไม่อนุญาตให้ประกันตัว 'เพนกวิน-ไมค์' ครั้งที่ 7." Daily News, <https://www.dailynews.co.th/crime/790053>.

³⁵ Freedom House. "Thailand: Freedom in the World 2023 Country Report." Freedom House, 2023. <https://freedomhouse.org/country/thailand/freedom-world/2023>.

³⁶ Scholars at Risk. "Free to Think 2021: Thailand." December 2021, <https://www.scholarsatrisk.org/wp-content/uploads/2021/12/Free-to-Think-2021-Thailand.pdf>.

³⁷ Nishimura & Asahi. "Thailand : Court Proceedings During the COVID-19 Outbreak." Nishimura & Asahi, April 2020, www.nishimura.com/sites/default/files/images/71377.pdf.

³⁸ Thai Human Rights Commission. "Rights Lawyer Sirikan Charoensiri." Thai Human Rights Commission UK, September 2016. <http://www.thaihrc.org.uk/2016/09/rights-lawyer-sirikan-charoensiri.html>.

³⁹ Thai Lawyers for Human Rights. "Thailand: New Democracy Movement - Review of Situations 24-27 June 2015." Thai Lawyers for Human Rights, 1 July 2015, <https://tlhr2014.wordpress.com/2015/07/01/thailand-new-democracy-movement-review-of-situations-24-27-june-2015/>.

⁴⁰ Thongchai Winichakul. "The New Democracy Movement in Thailand." Dissent Magazine, 3 July 2015, <https://www.dissentmagazine.org/blog/new-democracy-movement-thailand/>.

⁴¹ Global Freedom of Expression. "Freedom of Expression in Thailand During 2016." Columbia University, March 2017, <https://globalfreedomofexpression.columbia.edu/updates/2017/03/freedom-expression-thailand-2016/>. The Guardian. "Thailand Jails Activists for Campaigning to Reject Constitution in

in Thailand, for the end of trials against civilians exercising their freedom of expression, civilians tried in military courts, and for the protection of human rights.⁴²

The authorities have previously brought or threatened charges against numerous individuals affiliated with NDM.⁴³ For instance, a lawyer representing NDM, Ms. Sirikan 'June' Charoensiri, was subject to charges of sedition and unlawful assembly for her alleged participation in a public demonstration with NDM student activists and monitoring the protests against military rule in June 2015 in Bangkok,⁴⁴ charges that UN Special Procedures recognized "may be directly linked to her legitimate activities related to the protection of human rights..."⁴⁵ NDM members have also been subject to "alleged arbitrary detention, prosecution, and trial before a military court" involving charges of sedition and breaching the NCPO Order No. 3/2015, prohibiting gatherings of more than five people.⁴⁶

The Defendants in this case all reportedly belonged to NDM at the relevant time⁴⁷ and are as follows:

1. Mr. Rattaphon Supasophon

Referendum." The Guardian, 25 June 2016, <https://www.theguardian.com/world/2016/jun/25/thailand-jails-activists-for-campaigning-to-reject-constitution-in-referendum>.

⁴² FIDH. "Thailand: Ongoing Judicial Harassment against Four Pro-Democracy Activists and a Journalist." International Federation for Human Rights, 23 September 2016, <https://www.fidh.org/en/issues/human-rights-defenders/thailand-ongoing-judicial-harassment-against-four-pro-democracy>.

⁴³ Id. 48, 50. World Organisation Against Torture (OMCT). "Release of Six of the Seven Neo Democracy Movement Activists." OMCT, 7 July 2016, <https://www.omct.org/en/resources/urgent-interventions/release-of-six-of-the-seven-neo-democracy-movement-activists#:~:text=According%20to%20the%20information%20received,activists%20for%20another%2012%20days>.

⁴⁴ FIDH & OMCT. "Thailand: Charges of Sedition and Violating the Ban on Political Gatherings Against Sirikan "June" Charoensiri, a Human Rights Lawyer with TLHR. The Observatory for the Protection of Human Rights Defenders." 27 October 2016, <https://www.fidh.org/en/issues/human-rights-defenders/thailand-charges-of-sedition-and-violating-the-ban-on-politica>.

⁴⁵ OHCHR. Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the independence of judges and lawyers. OHCHR, ALTHA 2/2017, 11 April 2017. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23032>.

⁴⁶ Mandate of the Special Rapporteurs, UA THA 7/2015, 16 July 2015.

⁴⁷ Defendant's witness no.7.

2. Mr. Abhisit Sapanaphaphan,
3. Mr. Pakorn Areekul,
4. Mr. Songtham Kaewpanphruek
5. Mr. Apiwat Suntrarak,
6. Mr. PaYu Bunsophon,
7. Mr. Panupong Srithananuwat,
8. Mr. Supachai Phukrongploy,
9. Mr. Wasan Sedsit,
10. Mr. Suhaimi Dulasa,
11. Ms. Chonthicha Jangrew,⁴⁸
12. Mr. Pornchai Yuanyee, and
13. Mr. Suwittha Pithangkorn.

On the one-year anniversary of the *coup d'état* by Thailand's military and the NCPO's assumption of power,⁴⁹ on May 22, 2015, the Defendants, along with other protestors, participated in peaceful rallies to protest the *coup d'état* and the forced evictions of rural communities in north-eastern Thailand. Some of the Defendants attended a rally in Bangkok, while others participated in a rally in Khon Kaen. According to witnesses present on the day, police became violent at both locations in their attempts to arrest the protestors and several protestors had to be hospitalized, including one of the Defendants, Mr. Songtham Kaewpanphruek.⁵⁰ Seven activists in Khon Kaen were arrested, while 38 were arrested in Bangkok.⁵¹ All the students who were arrested by the police were released and some were asked to reappear at Pathumwan (for the Bangkok rally) and

⁴⁸ Elected member of the House of Representatives under the Move Forward Party.

⁴⁹ Human Rights Watch. "Thailand: Deepening Repression One Year After Coup." Human Rights Watch, 22 May 2015, <https://www.hrw.org/news/2015/05/22/thailand-deepening-repression-one-year-after-coup>.

⁵⁰ Thai Lawyers for Human Rights. "THAILAND: New Democracy Movement Review of Situations 24-27 June 2015." Thai Lawyers for Human Rights, 1 July 2015. https://tlhr2014.files.wordpress.com/2015/08/20150701_tlhr-review-of-ndm-situations-24-27-june-2015.pdf.

⁵¹ Id.

Khon Kaen police stations on June 8, 2015 (coincidentally the same date for both groups). All seven of those arrested in Khon Kaen, but only nine protestors from the Bangkok protest, were summoned to the police stations.⁵²

Worried that they might be subject to violence when they surrendered, the protestors, including the Defendants, who were ordered to appear on June 8 decided to refuse to accept the arrest warrants.⁵³ Instead, they offered to surrender on June 24, 2015, just over two weeks later, which was the anniversary of the transition of Thai governance from absolute monarchy to constitutional monarchy in 1932.⁵⁴ The protestors were also concerned about the power provided to the police by the NCPO and sought a delayed surrender as a form of protest against this power.⁵⁵

Police General Putthapiyarak did not accept the request to delay the date of surrender, and so requested the military court to issue arrest warrants against some of the Defendants, as well as other protestors. Those on the arrest warrant were:

1. Rangsiman Rome (not a Defendant in this case);
2. Rattaphon Supasophon (Defendant No.1);
3. Apisit Sarnaphaphan (Defendant No. 2);
4. Pakorn Areekul (Defendant No.3);
5. Songtham Kaewpanphruek (Defendant No. 4);
6. Chonthicha Jangrew (Defendant No. 11); and
7. Pornchai Yuanyee (Defendant No.12);

On June 24, 2015, the Defendants joined a protest in Bangkok at Samyan Market, roughly 1km from Pathumwan Police Station, to oppose the arrest warrants from the Military Court arising from the May 22 demonstrations. The protestors also sought to submit a complaint against the police for the police's use of force during the May 22 protests. The Defendants and others were involved in this protest, alongside roughly 200 police and military who installed barriers in front of the police station to prevent the public from entering the station without permission. No one, including those seeking to make the complaint about police

⁵² Id.

⁵³ Defendant's witness no.7.

⁵⁴ Defendant's witness no.6.

⁵⁵ Defendant's witness no.7.

use of force, was allowed to enter the police station. During the protests, which continued throughout the afternoon and into the evening, there was singing, giving flowers, reading poetry, as well as speeches.

There were concerns that, should the protestors, including the Defendants, enter the police station to submit their complaint, they would have to be arrested. Police were concerned that this would cause unrest amongst the protestors in front of the police station.⁵⁶ Negotiations took place between the police authorities and a representative from the National Human Rights Committee, who agreed that the protestors' lawyers could enter the police station to submit the complaint.⁵⁷ However, it became clear that it was not possible for a third party to report a case on their behalf, so the group that wanted to submit a complaint demanded that the police come outside of the station to receive the complaint. Further negotiations took place and it was agreed that those seeking to make a complaint could enter the police station without being arrested.

Speakers at the protest used a small megaphone to make speeches. The Prosecution alleged that some of the Defendants spoke from a temporary stage set up. As described in greater detail below, neither in the indictment, nor at trial, did the prosecution describe the content of the speeches the Defendants allegedly made in any detail. It was stated in the indictment that, in their speeches, the Defendants attacked the government and announced that they would not comply with the arrest warrants issued by the Military Court, and criticized the NCPO for human rights violations and the impact the NCPO was having on freedom of expression. From other reporting, it appears that speeches at the protests covered the use of force on May 22, the use of military courts to arrest and try civilians and demands for democracy.⁵⁸

Some video clips were recorded by the media, but these video clips did not capture any speeches by the Defendants.⁵⁹ Other video clips were collected from available media by Thai Intelligence authorities, but these videos also did not contain the speeches.⁶⁰ Despite

⁵⁶ Defendant's witness Maj. Gen. Burin Thongraphai.

⁵⁷ Defendant's witness Sunai Phasuk.

⁵⁸ Defendant's witness Sunai Phasuk.

⁵⁹ Defendant's witness Maj. Gen. Burin Thongraphai.

⁶⁰ Defendant's witness Maj. Gen. Burin Thongraphai.

the allegations of rough treatment by the police at the May 22 protests, the June 24 protest ended peacefully, as the prosecution itself conceded.⁶¹

Concurrent to the events in this matter, a separate criminal investigation was ongoing in relation to allegations that individuals (not Defendants in this case) had aided persons to escape from custody. The allegations concerned supporters assisting Rangsiman Rome to escape from the police following the May 22 protests.⁶² At least one of the Prosecution Witness was involved in the investigation of both this case and the present case.⁶³

Pre-Trial Proceedings

This case lay mostly fallow for many years following the events in question. Then, on 22 May 2019, four years after the relevant incident, the majority of the Defendants were notified of charges against them,⁶⁴ and reportedly travelled to the Pathumwan Police Station to respond to, and deny, the charges against them.⁶⁵ One Defendant was later informed on June 15, 2019.⁶⁶

Subsequently, on 4 August 2022, the Defendants were indicted for allegedly violating Section 116 of the Thai Criminal Code. At that point, over seven years had passed since the relevant events.

Section 116 of the Criminal Code prohibits sedition:

“Section 116. Instigator to violate Constitution

Whoever makes an appearance to the public by words, writings or any other means which is not an act within the purpose of the Constitution or for expressing an honest opinion or criticism in order:

⁶¹ According to TrialWatch monitoring, four prosecution witnesses all stated that the activities on 22 May and 25 June 2015 were peaceful. Most importantly, the prosecution witness who raised the original complaint that is the basis for this case also testified that the protest ended peacefully.

⁶² Defendant’s witness no.1.

⁶³ See, e.g., Defendant’s witness no.9.

⁶⁴ Thai Lawyers for Human Rights. “Statistics of Those Prosecuted for Political Gatherings between November 2020 - May 31, 2024.” Thai Lawyers for Human Rights, 5 June 2024, <https://tlhr2014.com/archives/62386>.

⁶⁵ Id.

⁶⁶ Indictment Mr. Rattapon Supsophon and Joint Defendants (total of 10).

(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 amongst the people in a manner likely to cause disturbance in the country; or

(3) to cause the people to transgress the laws of the Country.”⁶⁷

The indictment does not allege a violation of the first prong of the sedition law (i.e. advocating the use of force or violence), but only the second and third prongs. It alleged that all thirteen Defendants gave speeches on June 24, 2015 that “induced sedition and challenged the military” and invited the public to resist the government.⁶⁸ The indictment goes on to explain that law enforcement officers present at the protest became concerned that forcibly arresting the seven individuals⁶⁹ from the May 22 protests and subject to the outstanding military court arrest order might cause a riot.

The indictment specifies that the Defendants' speeches were intended to create unrest, stating that they:

“Conspire[d] to make it appear to the public by words, writings or any other means which is not an act within the purpose of the Constitution or for expressing an honest opinion or criticism, with an intent to cause unrest and disaffection amongst the people in manner likely to cause disorder in the country, and to cause people to transgress the laws of the country.”

The indictment specifically alleges the 13 Defendants were charged with sedition because through their speeches, the Defendants allegedly “encouraged the public to resist and refuse acceptance of the National Council for Peace and Order’s authority,” effectively challenging both military and police enforcement. Thus, their statements were not viewed as “protected under constitutional freedom of speech” but as a direct threat to public order, as they invited “resistance from the public” and posed a significant “risk of sedition by motivating people to oppose laws and policies” established by the government.

The indictment does not, however, specify the exact words that were allegedly seditious or were likely to cause ‘disaffection’ resulting in disorder, or to cause individuals to transgress the laws; nor does it specify who made the speeches. Instead, it simply notes that the Defendants “and their accomplices” said in their speeches that they would not comply with the arrest warrants issued by the military court, would not accept the current

⁶⁷ Thailand Criminal Code, Section 116. Instigator to violate Constitution (Sedition).

⁶⁸ Indictment Mr. Rattapon Supsophon and Joint Defendants (total of 10).

⁶⁹ Including Defendants: 1,2,3,4,11,12.

administration as it was formed by a *coup d'état*, and criticized the administration for its impact on human rights and freedom of expression.

The Trial Proceedings

On August 22, 2023, the trial commenced, eight years after the events that were the basis for the charges. The trial was held in the Bangkok South Criminal Court and the Defendants were not present (as previously agreed with the Court and the parties). Each Defendant was represented.

Hearings were conducted from August 22 to August 30, 2023. TrialWatch monitored the case from the courtroom.

The Prosecution called ten witnesses, as follows:

August 22, 2023

1. Major General Burin Thongpraphai. His role at the time of events was to maintain order in the Phatumwan district.

August 23, 2023

2. Sergeant Major First Class, Sitthichai Jirang. At the time of the events, the witness was assigned to follow and observe Mr. Pornchai Yuanyee (Defendant No. 12) whilst in plain clothes.
3. Sergeant Major First Class, Thongsa Soonthorn. The witness was instructed to observe Mr. Pornchai Yuanyee (Defendant No.12) during the protest on June 24, and testified that he was instructed to do because Mr. Pornchai Yuanyee was under arrest warrant from the Military Court. The witness was in plain clothes during his observations.
4. Sergeant Major First Class, Direk Phomma. He confirmed that he was assigned to monitor and observe the protest on June 24, 2015. Prior to the events of the day, the witness was informed that protestors would be gathering in front of the police station but no details were provided as to what the protest was about.

August 24, 2023

5. Police Lieutenant General Thawee Jinreangseang. He gathered and analyzed intelligence relating to unrest and related incidents.
6. Police Lieutenant General Yoofthana Jarupat. He was employed in the investigation bureau on public security in the relevant areas and prepared an investigative report on the Defendants' activities from May 22, 2015 to 2019.

August 25, 2023

7. Phanudej Wattanalerdkrai. At the time, he worked as Deputy Superintendent at the Special Branch Bureau, a division of the police typically focused on intelligence, surveillance, and national security matters. In this role, he was responsible for overseeing and personally conducting police operations targeting protesters in Bangkok. He prepared an investigation report regarding the Defendants and was present at the protests on May 22, 2015.
8. Sirisak Lerdchai. He was at the time an automobile mechanic as part of the Thai military. He was assigned to observe the situation in the Phatumwan area, but had not been aware of what was expected, nor did he know of the Defendants in the case.
9. Police General Rungroj Putthapiyarak. At the time, he was Deputy Superintendent at the Phatumwan Police Station and, following receipt of the complaint from Thongphaphai (Witness No.1) regarding the Defendants' alleged actions, he authorized the investigative team in the station to take further action.

August 29, 2023

10. Police Lieutenant Colonel Charoensit. He was stationed at the Pathumwan Police Station on June 24, 2015.

Summary of Evidence

Lack of Witness Testimony Concerning the Identities of the Speakers

Even if in attendance at the event, none of the witnesses who testified for the Prosecution in court were able to confirm the identities of those who made the speeches. This includes witnesses who were specifically instructed to follow some of the Defendants and track their activities on June 24. For example, Witness No.1 was unable to recall who actually delivered the speeches at the protest—and specifically could not confirm that Defendant No. 10 spoke—but confirmed that Defendant No.9 did not make a speech. Witness No.4 was only able to remember one individual who gave a speech, but this individual was not a defendant in this case. Witness No.9, despite testifying about motivations behind the protests, in cross-examination, confirmed that he was largely involved in investigating the separate case concerning individuals allegedly aiding detainees to escape custody (i.a. Rangsiman Rome) in relation to the events on May 22. He was not able to identify Defendant No. 8 as having participated in the protests on June 24.

Witness No.7 could not recall specific details of the incident but stated that the Defendants' activities included: gathering and refusing to accept the arrest warrant; refusing to accept the NCPO; and stating that they were against the use of power by

police authorities. He was only able to recognize Chatupat Boonyapatraska, who was not a defendant in this case.

Witness No.2 was assigned to follow and observe Mr. Pornchai Yuanyee (Defendant No. 12) on June 24 whilst in civilian clothes. He identified Defendant No. 12 and testified about his activities, confirming that he arrived at Phatumwan Police Station on June 24, 2015, per the arrest warrant, and was with supporters. While he confirmed that some individuals delivered speeches that day, he could not, however, recall whether Defendant No.12 gave a speech.

Witness No.3 was also instructed to observe Mr. Pornchai Yuanyee (Defendant No.12) on June 24, and testified that he was instructed to do so as Defendant No.12 was under an arrest warrant of the Military Court. The witness was also disguised as a civilian when observing the Defendant's activities. He also could not recall whether Defendant No.12 gave a speech during the demonstration.

Although the Prosecution alleged that the Defendants spoke at the protest, at trial, the Prosecution was unable (through the witnesses they called) to bring evidence to bear regarding the Defendants' roles during the speeches. The Defendants also chose not to testify. Instead, the Defendants' legal team called a witness from Human Rights Watch to provide an overall picture of the incident.

Despite the fact that testimony at trial could not verify the Defendants' identities, the judgement relied on pre-trial investigative materials contained in the case file, particularly alleged photographic identification documents as well as testimony from additional prosecution witnesses (police and military officers) to confirm the Defendants' identities and their alleged participation in the protests..⁷⁰

⁷⁰ Judgement Mr. Rattapon Supsophon and Joint Defendants (total of 10). Police Colonel Surasak, a prosecution witness, testified that Defendants no. 1 to no. 9, and Defendants no. 11 and no. 13 had appearances that matched the photographs taken the day of the incident compiled in the investigation report (Document No. Jo. 6) and the accompanying individual identification report (Document No. Jo. 7), which identified persons alleged to be the leaders of the protest or who gave speeches at the scene of the incident. As for Defendant no.12, Sergeant Major First Class Phichai Suiram, and Sergeant Major First Class Thongsa Lumthong, who were soldiers who were ordered to follow the target group on the day of the incident and at the place of the incident, testified as prosecution witnesses, and confirmed that Defendant no. 12 was one of the persons who gave speeches in front of the Pathum Wan Metropolitan Police Station, even though there is no photo of them in such pre-trial investigative documents. As for Defendant no. 10, Police Lieutenant Colonel Thawee, a witness for the prosecution, testified confirming that Defendant no. 10, as the president of the PERMAS Group, gave a speech on the stage calling for democracy on the day of the incident.

On the final day of the trials, August 30, 2023, Sunai Phasuk, a Senior Researcher at Human Rights Watch, testified. He had been present for the events of May 22 and June 24, 2015 and provided detailed accounts of what happened on each day. He confirmed that force was used to end the protest on May 22, which resulted in several injuries, and all of those arrested were released later that day. He also confirmed his key observation that on June 24 barriers were placed in front of the police station to prevent anyone accessing the building and there was no violence nor use of force by either side. He confirmed that the “core activists and public figures” gave speeches concerning: (i) the use of force by police authorities on 22 May; (ii) the use of military courts against civilians; and (iii) the demand for democracy. He did not name or identify any individuals who made speeches. On cross-examination, the witness explained that he knew three of the Defendants (Nos 1, 11, and 12) but couldn’t recall the names of the other Defendants. He took photos of the general atmosphere of the events but did not take recordings.

Lack of Evidence on the Contents of the Speeches

Seven of the ten witnesses were unable to recall any specific details regarding the allegedly seditious statements, and none could remember the precise language used in the speeches delivered on June 24, 2015. In particular, five witnesses could not remember the speech contents or the precise words used. For instance, Witness No.1 could only describe the speeches as aimed at mobilizing the public. Witness No.2, upon cross-examination, confirmed that he did not hear the speech contents. Witness No.4, despite being assigned to monitor the protest, could not remember what was said in the speeches but recalled that the songs performed were not intended to provoke unrest. Witness No.6 confirmed his presence at the protest but could not recall any details, and Witness No.8, although testifying that speeches were given, could not remember the exact language or whether the Defendants’ words incited unrest. Only two witnesses, No.9 and No.10, recalled general themes rather than specific details. Witness No.9 noted that the protest was aimed at opposing the NCPO and the issuance of arrest warrants by the military court. Witness No.10 remembered that the “leader of the Defendant group ... preach[ed] democracy” during the speech. The remaining witness did not provide relevant information on the speeches or their content.

The Prosecution argued that the Defendants violated the third prong of the sedition law, namely that the Defendants’ alleged speeches caused those at the protest to transgress the laws of the country by “interfering” with the arrest of Rangsiman Rome and Rattaphon Supasophon (Defendant 1), Apisit Saphaphan (Defendant 2), Pakorn Areekul (Defendant 3), Songtham Kaewpanphruet (Defendant 4), Chonthicha Jangrew (Defendant 11), and Pornchai Yuanyee (Defendant 12).⁷¹ Rome was one of the seven individuals against whom an arrest warrant had been issued as a result of the May 22

⁷¹ Indictment Mr. Rattapon Supsophon and Joint Defendants (total of 10).

protests but was not a defendant in this case. The prosecution then used the second prong to support that interference theory, claiming that the Defendants "invited the general public to resist the government and encouraged the public to refuse the NCPO's power" and that any attempt to disperse the assembly or arrest all seven suspects could cause "public disorder and mass resistance ... possibly causing a riot" because the accused were speaking "in the middle of a large crowd."⁷² However, two officers who testified regarding the application of the third prong of the sedition law contradicted each other and neither identified any of the Defendants in the current case as allegedly being involved in interfering with Rome's arrest. Moreover, no concrete testimony linked the Defendants' speech to any actual act or threat of violence sufficient to sustain the second-prong claim.

Lack of Documentary Evidence of the Alleged Incidents

In addition to the issues with the testimony from the ten witnesses, there was a lack of documentary evidence adduced concerning the incident and the contents of the speeches. Many of the witnesses noted that the contents of the speeches, i.e. the basis of the charges, were not documented or recorded. Most of the witnesses were present at the protest, but did not take videos, audio record or transcribe the speeches. Witness No.1 confirmed that the speeches were not recorded but explained that video clips of the June 24 event were collected by intelligence services. Despite having the power to do so, Witness No.1 was unable to confirm whether he had authorized his team to transcribe the content of the videos. Witness No.1 confirmed that the video materials used in the case recorded "the incident in front of Phatumwan Police Station" and were not produced by police and military authorities, but collected from the "intelligence unit and available media."

Various witnesses testified as to their documentation of the events, yet this documentation did not provide any evidence to support the charges. Witness No.2 took photos at the scene, which were submitted to his superiors, but not presented in court. Witness No.3 reported back to his superiors orally about the day's events and the movements of Defendant No.12 but did not provide a written report. He did not testify as to the contents of this information. Witness No.4 confirmed that he did not take photos at the event, despite being assigned and responsible for monitoring and observing the protest on June 24. Witness No.8 took some general photos of the events but these weren't shared with his superiors. Witness No.9 confirmed that videos were recorded on June 24, but these were focused on those involved in the separate matter concerning allegedly aiding individuals from escaping custody. Witness No. 10 confirmed that there was a video clip and pictures from the protest.

⁷² Indictment Mr. Rattapon Supsophon and Joint Defendants (total of 10).

Lack of Credible Witnesses

Several of the witnesses provided inconsistent testimony. In one instance, the Court took the step to raise concerns at the end of the Witness No.4's testimony as to their credibility, stating that the witness was highly inconsistent throughout and was deemed "problematic" by the judge as: his testimony "may affect the results of the hearings from plaintiff side."⁷³ Another instance of concern involved Witness No.5, who confirmed that Defendant 10 delivered a speech on June 24, but was not certain of the contents of their speech (or other speeches that day). However, on cross-examination, it became clear that the witness didn't attend the events of June 24.

The Verdict

On Dec 18, 2023, the Court acquitted all 13 Defendants. The Court found that "the gathering was peaceful and orderly," "no weapons or violence were used" and "there was no use of force to attack officials or other people or destroy property" with people voluntarily dispersing after the gathering without any violence. Regarding the content of the speeches, the Court held that "the speeches given on stage ... demanded that the NCPO government hold an election as soon as possible. People were invited to join in the gathering opposing the work of the NCPO government" and "it was not to the extent to cause unrest in the Kingdom, nor did it appear that it was an act outside of the purpose of the Constitution"; on the contrary, "it was an exercise of rights and within the purpose of the Constitution, even though some of the said speeches may contain impolite, inappropriate, or offensive words."⁷⁴ Based on this analysis, the Court decided that the evidence put forward by the prosecution did not have sufficient weight to merit a conviction and dismissed the case.

⁷³ Trial transcript from August 25, 2023.

⁷⁴ Judgement Mr. Rattapon Supsophon and Joint Defendants (total of 10).

METHODOLOGY



A. THE MONITORING PHASE

The case was monitored by a trial monitor, fluent in Thai and English. In advance of the monitoring mission, TrialWatch informed the Court of its intention to monitor the case and the trial monitor did not experience any issues with accessing the courtroom. The trial monitor observed the hearings from 22 August to 30 August 2023 in person in Bangkok. The trial monitor transcribed the hearings and took detailed notes within a standard TrialWatch format for recording and monitoring trials.

B. THE ASSESSMENT PHASE

The TrialWatch Expert responsible for evaluating the fairness of the trial reviewed materials provided and prepared by researchers at Columbia Law School's Human Rights Institute. This included a document summarizing the notes taken during the proceedings, court documents related to the case, as well as general background information on the case. The researchers also undertook desk-based research on the case and events at question, for additional background material for the Expert. Based on this review, researchers at Columbia Law School's Human Rights Institute prepared a draft of this report.

These materials and draft report provided the expert with a factual and legal record to review in order to evaluate the trial's fairness under international human rights law. The expert specifically evaluated the following components of the right to a fair trial: the right to be tried by an independent court established by law; the right to a public trial; the right to be presumed innocent; the right to be informed of charges; the right to prepare a defense; the right to counsel; the right to a trial without undue delay; the right to be tried in one's presence; the right to call witnesses; the right to interpretation; the right against self-incrimination; the right to a public judgment; the right to appeal; and the right against double jeopardy. The expert also considered whether the proceedings were consistent with other rights and principles, such as the right to freedom of expression and the principle of legality.

A grade was then assigned using TrialWatch's methodology.

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.⁷⁵ Thailand acceded to the ICCPR in 1996. Article 14 of the ICCPR protects the right to a fair trial; Article 19 of the ICCPR protects freedom of expression. Article 15 of the ICCPR reflects the principle of legality, which is also known as the maxim “*nullum crimen nulla poena sine lege*.” This principle, as explored in more detail below, requires *inter alia* that criminal law be clearly defined.

The Constitution of Thailand⁷⁶ and the Thai Criminal Procedure Code (“TCPC”) also provide for the right to a fair trial.⁷⁷ The Thai Criminal Code and Thai Constitution reflect the principle of legality.⁷⁸ The Thai Constitution also protects freedom of expression.⁷⁹

The report’s analysis references jurisprudence from the Human Rights Committee (“HRC”), which is tasked with interpreting and monitoring the implementation of the

⁷⁵ International Covenant on Civil and Political Rights Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter “ICCPR”]

⁷⁶ Section 188 of the Constitution provides that cases should be tried according to law and “in a swift and fair manner, and without any partiality.” Constitution of the Kingdom of Thailand 2017, Available in English here: https://www.constituteproject.org/constitution/Thailand_2017.

⁷⁷ See, e.g., Sections 7 and 8: Section 7 protects the rights of the arrested person to meet and talk with a lawyer, the right to request that the arresting officer inform his or her relatives, the embassy, or a trusted person that he or she is under arrest and the place of detention, the right to be nursed without delay when ill, and the right to hear by the authorities his/her rights upon being arrested. Section 8 protects the rights of the person when a charge is formally registered: The right to an expeditious, continuous, and fair trial; the right to hire a lawyer to represent him/her in a court hearing or trial; the right to have private meetings with his/her lawyer; the right to have access to the file to the entire evidence and make copies upon payment of the fees; and the right to examine and make a copy of his/her plea after the inquiry.

⁷⁸ See Thai Criminal Code, Chapter Two, Section 2 (“An act may only be punished if criminal liability had been established and penalty had been determined by the law which is in force at the time of the act. The penalty to be inflicted must be that which had been prescribed by such law”).

⁷⁹ See Constitution of Thailand, 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. Academic freedom shall be protected. However, the exercise of such freedom shall not be contrary to the duties of the Thai people or good morals, and shall respect and not obstruct the different views of another person.”)

ICCPR. This report also draws upon jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights, which the HRC has deemed relevant for interpreting the provisions of the ICCPR.⁸⁰

Per its Constitution, the Law of Thailand is based on the Westminster system with the separation of the executive, legislative and judicial branches.⁸¹ Its legal system could be fairly categorized as a hybrid system, largely based on a civil code but with some influence of the common law.⁸²

B. INVESTIGATION AND PRETRIAL STAGE

Right to be Informed of the Charges

Article 14(3) of the ICCPR entitles criminal Defendants to be informed promptly of the charges against them.⁸³ The information must include the “nature” and the “cause” of criminal charges, as enshrined in paragraph 3(a) of Article 14 of the ICCPR.⁸⁴ The “nature” refers to the legal characterization of the charges, and the “cause” refers to the

⁸⁰ For example, when interpreting the provisions of the ICCPR through its General Comments, the U.N. HRC has relied on decisions made by the ECtHR. See, e.g., UN Human Rights Committee, General Comment No. 37, CCPR/C/GC/37, July 23, 2020, fns. 15, 18, 28, 52, 61, 65, 73-75, 99, 118, 122, 132; UN Human Rights Committee, General Comment No. 36, U.N. Doc. CCPR/C/GC/36, September 3, 2019, fns. 5, 6, 32, 64, 86, 88, 92, 104, 126-129, 136, 164, 215, 217.

⁸¹ University of Melbourne. "Southeast Asian Region Countries Law: Thailand." Library Guides, <https://unimelb.libguides.com/c.php?g=930183&p=6722017>.

⁸² *Id.*

⁸³ ICCPR, Article 14(3)(a). This right has also been recognized in the statutes of international criminal tribunals, e.g., ICTY Statute, Article 21(4)(a); ICTR Statute, Article 20(4)(a); STL Statute, Article 16(4)(a); ICC Statute, Article 60(1).

⁸⁴ United Nations. (1966). International Covenant on Civil and Political Rights (ICCPR). <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

facts on which the charge is based.⁸⁵ A sufficient level of information is required in all criminal cases, “including those of persons not in detention.”⁸⁶

Under Article 9(2) an arrested person is entitled to be informed at the time of arrest of “the reasons for his arrest and shall be promptly informed of any charges against him.”⁸⁷ This right is separate from the right under Article 14, which does not always apply “to criminal investigations preceding the laying of charges,”⁸⁸ but can be triggered when an individual is named as a defendant.⁸⁹

What qualifies as ‘prompt’ under Article 14 will depend on the facts of the case, including whether there are reasonable justifications for any delay, the amount of time between receipt of the information on the charges and the trial, as well as the amount of time between being charged and being informed of the charges.⁹⁰ The right to a fair trial has been held to have been violated when there have been delays of between four days and 14 months between the arrest or investigative procedure and formal charging, emphasizing the relevance of the circumstances in the case.⁹¹ The UN Human Rights Committee has noted that this information must “be given as soon as the person concerned is formally charged with a criminal offence under domestic law.”⁹² This can be done orally (if later confirmed in writing) or in writing “provided that the information indicates both the law and the alleged general facts on which the charge is based.”⁹³

⁸⁵ U.N. Human Rights Committee, General Comment No.32 (2007), para.31. The European Human Rights System has provided additional commentary confirming the same. See, e.g., European Court of Human Rights *Mattoccia v. Italy*, Application No. 23969/94, 25 July 2000, para.59; European Court of Human Rights, *Pélissier v. France*, Application No. 25444.94, 25 March 1999, para.51.

⁸⁶ U.N. Human Rights Committee, General Comment No.32 (2007). Article 14, Right to equality before courts and tribunals and to fair trial; CCPR/C/GC/32, para.31.
<https://www.refworld.org/docid/478b2b2f2.html>.

⁸⁷ ICCPR art. 9(2).

⁸⁸ U.N. Human Rights Committee, General Comment No.32 (2007) para.31.

⁸⁹ *Id.*

⁹⁰ Philippa Webb and Amal Clooney. (2021). *The Right to a Fair Trial in International Law*. Oxford University Press. p.265.

⁹¹ *Id.*

⁹² U.N. Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, 23 August 2007, para. 31.

⁹³ U.N. Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, para. 31.

The information as to the charges must also be sufficiently detailed so the defendant is able to “understand fully” the charges against them and adequately prepare a defense,⁹⁴ and hence must include information about the alleged acts or omissions of the defendant.⁹⁵ This is because a defendant is otherwise incapable of defending themselves against charges they do not understand or of which they may be unaware.⁹⁶

In this case, although the Defendants were notified of the charges between May and June 2019 the State failed to inform them “in detail of the nature and cause” of those charges. They were formally indicted over three years later, on 4 August 2022, in a short generic form, that also failed to provide the specific content of the alleged seditious speeches, and (despite the number of Defendants) does not differentiate between the Defendants as to their charges and alleged acts or omissions. Whilst the Defendants can understand the legal ‘nature’ of the charges from the indictment, there is no detail or substance to the ‘cause’ of the charges, impacting on the Defendants’ ability to properly prepare a defense.⁹⁷

The delay in the receipt of the indictment, combined with the lack of detail in the indictment and lack of reasonable cause for the delay, indicates a clear violation of the Defendants’ right to be informed of their charges.

Rights to Fair Trial Affected due to Delay in the Case

Article 14(3) also provides that an individual shall be tried without undue delay. The UN Human Rights Committee has noted the importance of expeditiousness to a trial’s

⁹⁴ U.N. Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, para. 31. Human Rights Committee, *Giménez v. Paraguay*, CCPR/C/123/D/2372/2014, 25 July 2018, para. 7.10; European Court of Human Rights, *Mattochia v. Italy*, Application no. 23969/94), Judgment, 25 July 2000.

⁹⁵ ICCPR, Article 14(3)(b); Philippa Webb and Amal Clooney. (2021). *The Right to a Fair Trial in International Law*. Oxford University Press. p.266.

⁹⁶ European Court of Human Rights, *Pélissier and Sassi v. France*, App. No. 25444/94, Judgment, 25 March 1999, para.54.

⁹⁷The indictment was notably quite short alleging that the speeches incited unrest and were beyond the scope of expression guaranteed by the Constitution. However, the indictment did not specify which words were seditious. For instance, the indictment alleges, in broad terms, that the defendants “took turn to give speeches” in a public rally and that the speeches “attacked the government” by announcing that the speakers “would not comply with the arrest warrant issued by the Military Court” and “would not accept the current administration and its formation rooted from coup d’état.” It further alleges that they “invited the general public to resist the government” and “encouraged the public to refuse the National Council for Peace and Order’s power” without noting which words are allegedly seditious.

fairness,⁹⁸ as any delay lengthens the time a defendant is in “legal jeopardy” and increases the risk that witnesses will forget relevant information pertaining to a case.⁹⁹ Defendants should not be left “too long in a state of uncertainty about their fate.”¹⁰⁰

All stages of the criminal process must happen “without delay.”¹⁰¹ The length of time judged reasonable will depend on the circumstances of each case, mainly the complexity of the case, conduct of the accused, and the manner in which it was dealt with by authorities.¹⁰² It is generally considered that the clock starts ticking from when the “defendant becomes aware that authorities are taking specific steps to prosecute [them].”¹⁰³ However, the Human Rights Committee has been inconsistent on this point.¹⁰⁴

Considering the length of proceedings, and without directly applicable Human Rights Committee jurisprudence on the subject, a helpful comparator are the decisions of the European Court of Human Rights, which have generally found that, in the majority of

⁹⁸ U.N. Human Rights Committee, General Comment No.32, Article 14, Right to Equality Before Courts and Tribunals and to Fair Trial; CCPR/C/GC/32, para.27, <https://www.refworld.org/docid/478b2b2f2.html>.

⁹⁹ Philippa Webb and Amal Clooney. (2021). *The Right to a Fair Trial in International Law*. Oxford University Press.p.390.

¹⁰⁰ Id. U.N. Human Rights Committee, General Comment No.32, Article 14, Right to Equality Before Courts and Tribunals and to Fair Trial; CCPR/C/GC/32, para.27, <https://www.refworld.org/docid/478b2b2f2.html>.

¹⁰¹ U.N. Human Rights Committee. General Comment No.32, para.35. U.N.Human Rights Committee, *Rouse v. Philippines*, CCPR/C/84/D/1089/2002, para. 7.4. U.N. Human Rights Committee (1996), *Arredondo v. Peru*, CCPR/C/69/D/688/1996, para. 10.6. U.N. Human Rights Committee (1991). *Shalto v. Trinidad and Tobago*, CCPR/C/53/D/447/1991, para. 7.2.

¹⁰² U.N. Human Rights Committee, General Comment No.32, Article 14, Right to Equality Before Courts and Tribunals and to Fair Trial; CCPR/C/GC/32, para.27, <https://www.refworld.org/docid/478b2b2f2.html>. Inter-American Court of Human Rights. *Valle Jaramillo et al. v. Colombia*, Judgment, para. 155.

¹⁰³ Philippa Webb and Amal Clooney. (2021). *The Right to a Fair Trial in International Law*. Oxford University Press. p.394.

¹⁰⁴ Philippa Webb and Amal Clooney. (2021). *The Right to a Fair Trial in International Law*. Oxford University Press. p.394. “The Human Rights Committee usually considers the starting point to be either the moment of arrest or the day of ‘formal charging’ of the Defendant. But the case law of the Committee has not always been consistent on this point. In one case it considered that the starting point was the date on which the criminal proceedings against the Defendant were initiated, even though the Defendant only learned of the opening of proceedings on and a half years later.” Specifically, the HRC has considered the starting point “from the moment the authors were charged” U.N. Human Rights Committee. (2008). *Lumanog and Santos v. Philippines*, Communication No. 1466/2006, CCPR/C/92/D/1466/2006, para. 8.3.

cases, a trial length of over seven years is unreasonable.¹⁰⁵ Whether a delay is ‘undue’ depends on four factors: (i) the complexity of the case; (ii) the conduct of the Defendant; (iii) the conduct of the authorities; and (iv) the level of prejudice to the Defendant as a result of the delay.¹⁰⁶ There is debate as to the significance of the fourth factor, but what remains of relevance is the idea that the passage of time can result in prejudice due to the impact on the situation of the defendant.

The trial in this matter took place over eight years after the relevant events and over four years after the notification of charges. In circumstances where the trial evidence was minimal and uncomplicated, and there appears to have been no issues as to the conduct of the Defendants, the prolonged delay raises serious concerns about the reasons and legitimacy behind such extended proceedings. There equally does not appear to be any potential reason for a delay on the part of the authorities, particularly in light of the amount of evidence adduced by the prosecution. Therefore, this unreasonable delay violated the Defendants' fundamental right to a fair trial, as it denied them the essential guarantee of timely justice.

We do not have clear evidence as to the impact of the delay on the Defendants; it is, however, highly likely that there would have been a negative impact, whether this impacted upon their reputation, their ability to work, or their mental health. Research on similar cases shows that 96.7% of wrongfully accused individuals report severe damage to their reputations and stigmatization, while 93.3% face significant financial difficulties, including job loss and barriers to future employment. Additionally, 76.7% experience depression, 60% suffer from anxiety or panic attacks, and 56.7% show signs of PTSD, with many reporting lasting changes in personality.¹⁰⁷

In the circumstances of the case, it is impossible to conclude that the delay was proportionate to the complexity of the case, indicating a significant violation of the Defendants' right to a speedy trial.

¹⁰⁵ M. Henzelin & H Rordorf. (2014). When Does the Length of Criminal Proceedings Become Unreasonable According to the European Court of Human Rights?. *New Journal of European Criminal Law* 78, 96.

¹⁰⁶ Philippa Webb and Amal Clooney. (2021). *The Right to a Fair Trial in International Law*. Oxford University Press. p.400.

¹⁰⁷ Samantha Brooks and Neil Greenberg. Psychological Impact of Being Wrongfully Accused of Criminal Offences: A Systematic Literature Review. *Journal of Police and Criminal Psychology*, vol. 37, no. 1, March 2022, pp. 1-15, www.ncbi.nlm.nih.gov/pmc/articles/PMC7838333/.

C. VIOLATIONS AT TRIAL

Right to the Presumption of Innocence and Breaching Basic Principles of Prosecution

Article 14(2) provides that everyone shall “have the right to be presumed innocent until proved guilty according to law,”¹⁰⁸ and this right “imposes on the prosecution the burden of proving the charge, [and] guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt...”¹⁰⁹ The right to the presumption of innocence is also compromised if the responsibility to prove innocence falls improperly onto the defense.¹¹⁰

Moreover, a violation of the right to a fair trial may occur where “the facts do not disclose a reasonable basis for believing that [the accused] has committed or intended to commit the offence charged.”¹¹¹ The International Association of Prosecutors’ Standards of Professional Responsibility (the IAP Standards) provide guidance on the role of the prosecutor in the fair prosecution of criminal offences, noting the importance of independence (Art.2), the respect of human rights (Art.1.8), and the importance of proceeding in criminal proceedings “only when a case is well-founded upon evidence reasonably believed to be reliable and admissible” (Art.4.2 (d)).¹¹²

The Human Rights Committee has “pointed out on several occasions that it is not a ‘fourth instance’ competent to re-evaluate findings of fact or evidence, or to review the interpretation and application of domestic legislation by national courts.”¹¹³ However, it

¹⁰⁸ ICCPR, Article 14(2).

¹⁰⁹ U.N. Human Rights Committee, General Comment 32, CCPR/C/GC/32, 23 August 2007, para. 30

¹¹⁰ U.N. Human Rights Committee (2007), *Ashurov v. Tajikistan*, Communication No. 1348/2005, CCPR/C/89/D/1348/2005, para. 6.7.

¹¹¹ Philippa Webb and Amal Clooney. (2021). *The Right to a Fair Trial in International Law*. Oxford University Press. p.740.

¹¹² International Association of Prosecutors. "Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors." 23 April 1999, [https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-\(1\)/IAP_Standards_Oktober-2018_FINAL_20180210.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-(1)/IAP_Standards_Oktober-2018_FINAL_20180210.pdf.aspx).

¹¹³ U.N. Human Rights Committee (1984), Communication No. 174/1984, *J.K. v. Canada*, CCPR/C/OP/2, para. 7.2. U.N. Human Rights Committee (1993), Communication No. 485/1991, *V.B. v. Trinidad and Tobago*, CCPR/C/49/D/485/1991, para. 5.2.

may assess whether such proceedings adhered to due process guarantees.¹¹⁴ Relying solely on a due process assessment restricts human rights bodies to a formal assessment for violations, without regard to “convictions that are absurd or constitute manifest miscarriages of justice due to insufficient evidence.”¹¹⁵ Hence in some circumstances, human rights bodies and courts have found it appropriate to review a domestic court’s assessment of evidence in light of fair trial guarantees.¹¹⁶ The Human Rights Committee for example has stated that it will step in to comment on the evaluation of evidence if “it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.”¹¹⁷ Moreover, prosecutors have a number of responsibilities, including helping the court reach the truth, using evidence that is “reasonably believed to be reliable,” and refusing to prosecute a case “beyond what is indicated by the evidence.”¹¹⁸

In this matter, none of the Prosecution’s witnesses were able to remember what was said at the protest and the specific allegations were not detailed within the indictment itself. There was no evidence adduced as to the contents of the speeches, whether oral testimony, contemporaneous videos, photos, or written notes. Further, the adequacy of the evidence appears to have been seriously affected by the delay in the case, for example where witnesses were unable to recognize Defendants from a photograph.¹¹⁹ In combination, this resulted in a serious lack of evidence concerning the heart of the Prosecution’s case against the Defendants. The Prosecution’s decision to pursue this case despite the lack of evidence shows a serious breach of the best practices on the

¹¹⁴ Philippa Webb and Amal Clooney. (2021). *The Right to a Fair Trial in International Law*. Oxford University Press. p.235.

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ U.N. Human Rights Committee (2007), *Ashurov v. Tajikistan*, CCPR/C/89/D/1348/2005, para. 6.7.

¹¹⁸ International Association of Prosecutors. (1999). *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (Principles 3.6, 4.2). [https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-\(1\)/IAP_Standards_Oktober-2018_FINAL_20180210.pdf](https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-(1)/IAP_Standards_Oktober-2018_FINAL_20180210.pdf). Council of Europe. (2005). *European Guidelines on Ethics and Conduct for Public Prosecutors* (Section III). <https://rm.coe.int/conference-of-prosecutors-general-of-europe-6th-session-organised-by-t/16807204b5>. Clooney Foundation for Justice and American Bar Association. “Fairness Report: Belarus vs. Marina Zolotova.” July 2019, https://www.americanbar.org/content/dam/aba/administrative/human_rights/trialwatch/fair-trial-report-belarus-marina-zolotova.pdf.

¹¹⁹ Prosecution Witness no.7.

role of Prosecutors and undermined the Defendants' right to the presumption of innocence.

D. OTHER FAIRNESS CONCERNS

Principle of Legality

The principle of legality is a crucial substantive tenet of criminal law insofar as it, *inter alia*, requires certainty and predictability in the law. Overly broad laws will not comply with the principle of legality as they permit wide interpretation, and do not allow individuals effectively to 'regulate their conduct' to conform to the law. In interpreting the ICCPR, the Human Rights Committee has outlined that criminal laws must be "limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place..."¹²⁰ Whilst absolute certainty is not required, there must be clarity and precision to criminal law insofar as it permits an "individual to know ... whether his acts are lawful or liable to punishment."¹²¹

Regional courts also provide useful guidance on this principle. The European Court of Human Rights, for instance, has interpreted the principle to mean that a person must be able "to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."¹²² The Inter-American Court has also interpreted the principle of legality when considering the vagueness of an Argentinian criminal law that curtailed freedom of expression (*calumnia*). The Inter-American Court found that a vague law violated the American Convention.¹²³ The ECOWAS Court, when commenting on The Gambia's colonial sedition law, noted it "espouses expressions of inexactitude" and found that it violated the principle of legality on this basis.¹²⁴

As drafted, Section 116 is overly broad and not in line with international standards, as it uses vague terms.¹²⁵ For example, under the second prong, it would be a violation of

¹²⁰ U.N. Human Rights Committee, General Comment No. 29: States of Emergency (Article 4), 31 August 2001, CCPR/C/21/Rev.1/Add.11, pp. 7.

¹²¹ Consistency of Certain Danzig Legislative Decrees with the Constitution of the Free City, Advisory Opinion, 1935 PCIJ (ser. A/B) No.65, p. 56-57.

¹²² European Court of Human Rights, *Akçam v. Turkey*, Application no. 27520/07, 25 October 2011, p. 87.

¹²³ Inter-American Court of Human Rights, *Kimel v. Argentina*, 2 May 2008, pp. 63, 128.

¹²⁴ East African Court of Justice, *Federation of African Journalists and Ors. v. The Gambia*, ECW/CCJ/JUD/04/18, 13 March 2018, p. 40.

¹²⁵ Section 116(2), TCC.

section 116 for an individual to “raise unrest and disaffection ... likely to *cause disturbance* in the country” (emphasis added). The criminal provision provides no clarity as to what activities may satisfy the requirement that it ‘causes disturbance,’ nor what is understood as ‘disaffection.’ Moreover, the chapeau to Section 116 includes exclusions for speech “within the purpose of the Constitution” and for “honest opinion or criticism,” which are likewise vague terms and hence unable to provide any real protection, exacerbating the issue.

In recent years, a number of courts (including the ECOWAS Court¹²⁶, the East African Court of Justice¹²⁷, and national courts in Uganda¹²⁸ and Pakistan¹²⁹) have struck down laws resembling Section 116 on the grounds of vagueness as they violate the fundamental requirements of the legality principle. Due to similar concerns, international human rights bodies have called for the sedition law to be repealed in Thailand.¹³⁰ In particular, the UN Human Rights Committee, in its Concluding Observations on Thailand's report regarding compliance with the ICCPR, criticized Thailand for using laws such as Article 116 of the Criminal Code (sedition), the 2007 Computer Crimes Act, and NCPO Order 3/2015 to impose arbitrary restrictions on freedom of expression. The Committee highlighted the misuse of these laws to prosecute protesters, journalists, and human rights defenders and recommended that Thailand “refrain from using its criminal provisions, including the Computer Crimes Act and Article 116 of the Criminal Code ('sedition') to suppress the expression of critical and dissenting opinions.”¹³¹

A former UN Special Rapporteur on the situation of human rights defenders noted his concerns about Thailand's use of *inter alia* the sedition law to punish HRDs and activists post-*coup*: he feared “... the potential chilling effect arising from the criminalization of their

¹²⁶ East African Court of Justice. *Federation of African Journalists and Ors. v. The Gambia*. ECW/CCJ/JUD/04/18, 13 March 2018.

¹²⁷ East African Court of Justice. *Media Council of Tanzania v. The Attorney General of the United Republic of Tanzania*. EACJ Reference No. 2 of 2017, 28 March. 2019.

¹²⁸ Constitutional Court of Uganda. *Mwenda, Andrew, et al. v. Attorney General*. UGCC 5, 25 August 2010.

¹²⁹ Lahore High Court. *Haroon Farooq v. Federation of Pakistan & others*. W.P No.59599 of 2022, 30 March 2023.

¹³⁰ Human Rights Watch. "To Speak Out Is Dangerous: Criminalization of Peaceful Expression in Thailand." Human Rights Watch, 25 October 2019. <https://www.hrw.org/report/2019/10/25/speak-out-dangerous/criminalization-peaceful-expression-thailand>.

¹³¹ UN Human Rights Committee. “Concluding Observations on the Second Periodic Report of Thailand. UN Doc.” CCPR/C/THA/CO/2, 25 April 2017, www.ohchr.org/en/documents/concluding-observations/ccprcthaco2-concluding-observations-second-periodic-report.

activities, which may dissuade the population, including human rights defenders, from exercising their right to freedom of opinion and expression, and voicing dissenting views within the State.”¹³²

The law’s breadth and vagueness has permitted a dramatic increase in its use. The frequency of cases prosecuted under section 116 has increased significantly since 2014,¹³³ with at least 156 individuals charged under this provision since July 18, 2020.¹³⁴ This has included charges for attending rallies, organizing protests, giving lectures, posting a letter requesting to inspect the budget of the monarchy, giving speeches at rallies, and holding up a piece of paper with a political message in front of the Supreme Court.¹³⁵ Following the 2020 protests, the current UN Special Rapporteur on the situation of human rights defenders Mary Lawlor raised concerns about the “draconian criminal charges” used against HRDs “exercising their rights to... express their views.”¹³⁶ Ravina Shamdasani, Spokesperson for the UN High Commission for Human Rights, has also specifically raised concern about Thailand’s use of sedition laws and their impact on freedom of expression when “used against protestors engaged in peaceful protests.”¹³⁷

Violations of the Right to Freedom of Expression

Thailand’s sedition law is not compatible with international standards on freedom of expression as it captures far more than incitement to violence.¹³⁸ Article 19 of the ICCPR

¹³² United Nations Human Rights Council. "Report of the Special Rapporteur on the Situation of Human Rights Defenders on His Mission to Thailand." A/HRC/31/55/Add.1, 17 February 2016, <https://documents.un.org/doc/undoc/gen/g16/033/70/pdf/g1603370.pdf>.

¹³³ Thaweepon Kerdpoka. "iLaw Says the Number of Sedition Cases Is on the Rise After the 2014 Coup and 20 Cases Show the Law Being Used to Silence Citizens." Prachatai, 18 August 2017. <https://prachatai.com/journal/2017/08/72996>.

¹³⁴ Thai Lawyers for Human Rights. "สถิติผู้ถูกดำเนินคดีการชุมนุมทางการเมืองระหว่างพฤศจิกายน 2563 - 31 พฤษภาคม 2567." Thai Lawyers for Human Rights, 5 June 2024. <https://tlhr2014.com/archives/57512>.

¹³⁵ Thai Lawyers for Human Rights. "Statistics of Those Prosecuted for Political Gatherings between November 2020 - May 31, 2024." Thai Lawyers for Human Rights, June 5, 2024, https://tlhr2014-com.translate.google/archives/57512?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp. Translated by Google.

¹³⁶ Mary Lawlor (@MaryLawlorhrds). Twitter, October 18, 2020. <https://twitter.com/MaryLawlorhrds/status/1317718943495344128>.

¹³⁷ OHCHR, Press briefing notes on Thailand, December 18, 2020.

¹³⁸ See *Attorney General of Trinidad and Tobago v. Vijay Maharaj*, Privy Council Appeal No 0099 of 2021, 2023 UKPC 36, 12 October 2023, para. 38. The Privy Council backed the idea that sedition, even in its

covers “all forms of expression and the means of their dissemination.”¹³⁹ Article 19(3) of the ICCPR provides that restrictions on freedom of expression must be provided by law (i.e. comply with the principle of legality) and must be for one of the enumerated permissible purposes, i.e., (a) the protection of the rights or reputations of others; or (b) the protection of national security or of public order or of public health or morals. Any limitation that satisfies the above must equally satisfy the test of necessity, i.e. the restriction must be *necessary* for a legitimate purpose and not able to be achieved in other ways,¹⁴⁰ and the test of proportionality, i.e. the restriction must not be overbroad.¹⁴¹ This requires authorities to adopt the least restrictive approach possible, choosing less restrictive measures that minimally impact rights while addressing the intended purpose effectively.¹⁴² At the same time, Article 20(2) of the ICCPR imposes a duty concerning restrictions on freedom of expression, requiring that: “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”¹⁴³

Section 116, in its overbreadth and over-application, and the delay in the Defendants’ trial, may amount to a breach of substantive freedom of expression protections due to it having a chilling effect¹⁴⁴ on those who have been charged under it, as well as leaving its execution subject to authorities’ interpretation.¹⁴⁵ This chilling effect not only discourages dissent but also burdens overstretched organizations by draining their financial and human resources, making it difficult—if not impossible—for them to continue their essential work. Such issues highlight significant concerns with the fairness of Section 116

statutory form, should be read to entail “an intention to create public disorder or a tendency to cause violence,” citing the Kedar Nath ruling from the Indian Supreme Court.

¹³⁹ U.N. Human Rights Committee. General Comment No. 34, para. 12, CCPR/C/GC/34.

¹⁴⁰ U.N. Human Rights Committee. General Comment No. 34, para. 33, CCPR/C/GC/34, citing communication No. 359, 385/89, *Ballantyne, Davidson and McIntyre v. Canada*.

¹⁴¹ U.N. Human Rights Committee. General Comment No. 34, para. 34, CCPR/C/GC/34; and Paragraph 22 citing communication No. 1022/2001, *Velichkin v. Belarus*.

¹⁴² U.N. Human Rights Committee. General Comment No. 34, para. 34, CCPR/C/GC/34 citing communication No. 1180/2003, *Bodrozic v. Serbia and Montenegro*.

¹⁴³ ICCPR, Article 20(2).

¹⁴⁴ U.N. Human Rights Committee, General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial; CCPR/C/GC/32, para. 63, <https://www.refworld.org/docid/478b2b2f2.html>.

¹⁴⁵ Human Rights Watch. “To Speak Out is Dangerous: Criminalization of Peaceful Expression in Thailand.” Human Rights Watch, 25 October 2019, <https://www.hrw.org/report/2019/10/25/speak-out-dangerous/criminalization-peaceful-expression-thailand>.

itself, suggesting that its ambiguity and overreach inherently undermine substantive rights protection.

Section 116's broad language and lack of clarity fails to provide a necessary and least restrictive means of addressing any legitimate concerns. In this particular case, even if the Prosecution were correct that the Defendants had given speeches that criticized the Thai Government and military, this type of speech would be protected by Article 19. There is no indication that the restriction upon the Defendants' purported speech was necessary or proportionate to protect public order, nor is there any evidence that the purported speech incited violence. In fact, it can be considered "honest opinion" or criticism. In choosing to prosecute, the authorities are not addressing a legitimate public interest concern but are instead penalizing lawful expression.

Abuse of Process

The Human Rights Committee has held that the ICCPR prohibits prosecutions that are improperly motivated.¹⁴⁶ The ICCPR also prohibits the abuse of judicial proceedings to intimidate, discriminate against, or punish individuals for the exercise of their rights. The use of "malicious prosecutions" are likely to impact on an individual's rights under Article 17 of the ICCPR,¹⁴⁷ as well as Article 26, which prohibits discrimination on the basis of, *inter alia*, "political or other opinion."¹⁴⁸ Even where violations of a defendant's fair trial rights are not egregious, the very prosecution may indicate an infringement of fair trial rights where it is being used as part of a political or targeted attack, or in other words where the Defendants have faced discrimination on the basis of their political opinion.

Article 18 of the European Convention on Human Rights equally limits the use of restrictions on rights, prohibiting the misuse of power.¹⁴⁹ This Article is applied together

¹⁴⁶ U.N. Human Rights Committee (2018), *Khadzhiyev and Muradova v. Turkmenistan*, CCPR/C/122/D/2252/2013, para. 7.7. See, also, U.N. Human Rights Committee (2017), *Melnikov v. Belarus*, CCPR/C/120/D/2147/2012, para. 8.8; U.N. Human Rights Committee (2018), *Nasheed v. Maldives*, CCPR/C/122/D/2851/2016, para. 2.19, 8.7.

¹⁴⁷ Article 17 provides that "[n]o one shall be subjected to... unlawful attacks on his honour and reputation". See Philippa Webb and Amal Clooney. (2021). *The Right to a Fair Trial in International Law*. Oxford University Press. p.741.

¹⁴⁸ Philippa Webb and Amal Clooney. (2021). *The Right to a Fair Trial in International Law*. Oxford University Press. p.741.

¹⁴⁹ European Court of Human Rights. "Guide on Article 18 of the European Convention on Human Rights: Limitation on Use of Restrictions on Rights." Updated February 29, 2024. https://ks.echr.coe.int/documents/d/echr-ks/guide_art_18_eng. Citing *Merabishvili v. Georgia* [GC], 2017, paras. 303 and 306; *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], 2019, para. 189; *Kavala v. Türkiye* (infringement proceedings) [GC], 2022, para. 144.

with other provisions of the Convention, most frequently Article 5 (right to liberty), but also Article 6 (right to a fair trial)¹⁵⁰ and Article 10 (freedom of expression), and where the ulterior motive has been the suppression of dissent.¹⁵¹ There can be a violation of Article 18, even without finding a violation of the associated right or freedom.¹⁵²

The European Court has considered several factors when determining that a legal proceeding was motivated by improper motives under Article 18, including ulterior motives of intimidation and putting pressure on the individual to obtain information;¹⁵³ punishing

¹⁵⁰ European Court of Human Rights, *Sytnyk v. Ukraine*, Application no. 16497/20, 24 April 2025, paras. 146, 156–157, 159.

¹⁵¹ European Court of Human Rights, *Gusinskiy v. Russia*, Application No. 70276/01, 19 May 2004, para. 73, 76-78; European Court of Human Rights, *Cebotari v. Moldova*, Application No. 35615/06, 13 November 2007, para. 53; European Court of Human Rights, *Merabishvili v. Georgia*, Application No. 72508/13, 28 November 2017, para. 353; European Court of Human Rights, *Lutsenko v. Ukraine*, Application No. 6492/11, 1 August 2012, para. 109; European Court of Human Rights, *Tymoshenko v. Ukraine*, Application No. 49872/11 30 July 2013, para. 299; European Court of Human Rights, *Mammadov v. Azerbaijan*, Application No. 15172/13, 22 May 2014, para. 143; European Court of Human Rights, *Mammadli v. Azerbaijan*, Application No. 47145/14 19 April 2018, paras. 104-105; European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, Application No.29580/12, 15 November 2018, paras. 175-176.

¹⁵² European Court of Human Rights. "Guide on Article 18 of the European Convention on Human Rights: Limitation on Use of Restrictions on Rights." Updated February 29, 2024. https://ks.echr.coe.int/documents/d/echr-ks/guide_art_18_eng. Citing *Merabishvili v. Georgia* [GC], 2017, para. 288; see also *Kamma v. the Netherlands*, Commission's report, 1974, p. 9; *Gusinskiy v. Russia*, 2004, 73; *Cebotari v. Moldova*, 2007, para. 49; *Aliyev v. Azerbaijan*, 2018, para.198; *Navalnyy v. Russia* [GC], 2018, § 164; *Selahattin Demirtaş v. Turkey* (no. 2) [GC], 2020, para. 421; *Miroslava Todorova v. Bulgaria*, 2021, para. 192; *Juszczyszyn v. Poland*, 2022, para. 307.

¹⁵³ European Court of Human Rights, Guide on Article 18 of the Convention – Limitation on use of restrictions on rights (2024), citing *Gusinskiy v. Russia*, 2004, para. 76; *Cebotari v. Moldova*, 2007, 53; *Merabishvili v. Georgia* [GC], 2017, 353; *Dochnal v. Poland*, 2012, para. 116.

and silencing the individual;¹⁵⁴ political and/or economic motivation;¹⁵⁵ and suppression of political pluralism and limiting the freedom of political debate.¹⁵⁶ For this purpose, the Court takes into account the larger picture, such as whether the prosecution is in reaction to the exercise of rights that are protected. For instance, in *Mammadov v. Azerbaijan* the Court determined that the purpose of an arrest "was to silence or punish the applicant for criticising the Government and attempting to disseminate what he believed to be the true information that the Government was trying to hide."¹⁵⁷ As the ECtHR found in *Kavala v. Turkey*, allegations that rights were restricted "to dissuade others from taking part in such activities and to paralyse . . . civil society" can give rise to Article 18 violations.¹⁵⁸

In the context of the trial's delay and poor evidence, as well as the political backgrounds of each of the Defendants in this case, the basis for the prosecution does not appear to be linked to the "strength of the evidence or egregiousness of the conduct" of the Defendants,¹⁵⁹ indicating a lack of independence on the part of the prosecution, or otherwise some ulterior motive behind the indictments and prosecution. Instead, the primary motivation of the charges and proceedings over seven years *ex post facto*,

¹⁵⁴ Id. citing *Ramishvili and Kokhreidze v. Georgia*, 2007; *Lutsenko v. Ukraine*, 2012, para. 109; *Tymoshenko v. Ukraine*, 2013, para. 299; *Ilgar Mammadov v. Azerbaijan*, 2014, para. 143; *Rasul Jafarov v. Azerbaijan*, 2016, para. 162; *Mammadli v. Azerbaijan*, 2018, para. 104; *Rashad Hasanov and Others v. Azerbaijan*, 2018, para. 125; *Aliyev v. Azerbaijan*, 2018, para. 215; *Natig Jafarov v. Azerbaijan*, 2019, para. 70; *Kavala v. Turkey*, 2019, para. 232; *Ibrahimov and Mammadov v. Azerbaijan*, 2020, para. 157; *Khadija Ismayilova v. Azerbaijan* (no. 2), 2020, para. 119; *Yunusova and Yunusov v. Azerbaijan* (no. 2), 2020, para. 194; *Sabuncu and Others v. Turkey*, 2020, para. 249; *Mirgadirov v. Azerbaijan and Turkey*, 2020, para. 133; *Azizov and Novruzlu v. Azerbaijan*, 2021, para. 79; *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021, para. 110; *Miroslava Todorova v. Bulgaria*, 2021, para. 213; *Kutayev v. Russia*, 2023, para. 141; *Juszczyszyn v. Poland*, 2022, para.337; *Kogan and Others v. Russia*, 2023, para. 77.

¹⁵⁵ Id. citing *Khodorkovskiy v. Russia*, 2011, para. 254; *OAO Neftyanaya Kompaniya Yukos v. Russia*, 2011, para. 665; *Khodorkovskiy and Lebedev v. Russia*, 2013, para. 889; *Nastase v. Romania* (dec.), 2014, para. 109; *Tchankotadze v. Georgia*, 2016, para. 114; *Merabishvili v. Georgia* [GC], 2017, para. 332; *Batiashvili v. Georgia*, 2019, paras. 101-103; *Korban v. Ukraine*, 2019, para. 203; *Ovcharenko and Kolos v. Ukraine*, 2023, para.130; *Ugulava v. Georgia*, 2023, 123; *Melia v. Georgia*, 2023, para.137.

¹⁵⁶ Id. citing *Navalnyy v. Russia* [GC], 2018, 175; *Navalnyy v. Russia* (no. 2), 2019, para. 98; *Selahattin Demirtas v. Turkey* (no. 2) [GC], 2020, para. 437; *Yuksekdag Senoglu and Others v. Turkiye*, para.639.

¹⁵⁷ European Court of Human Rights, *Mammadov v. Azerbaijan* (Grand Chamber), Application No. 15172/13, 29 May 2019, paras. 187-89.

¹⁵⁸ European Court of Human Rights, *Kavala v. Türkiye*, Application no. 28749/18, 10 December 2019, para. 216.

¹⁵⁹ Philippa Webb and Amal Clooney. (2021). *The Right to a Fair Trial in International Law*. Oxford University Press. p.742.

appears to be the intimidation of the Defendants to silence and suppress their speech critical of the Government and NCPO and to create a chilling effect on others who might engage in similar expression.

CONCLUSION AND GRADE



The criminal proceedings against the Defendants in *Public Prosecutor v. Mr. Rattaphon Supasophon and Twelve Others* were marked by serious violations of international fair trial standards and fundamental rights.

First and foremost, the court in this case should have decided at the outset that the prosecution was *mala fide*, i.e. in bad faith. The prosecution's failure to proceed with presenting the charges in a prompt fashion as soon as possible after the events should have given rise to a strong indication that the prosecution was flawed. The court should have considered the serious jeopardy and unfairness to the accused persons of having to respond to charges in respect of an alleged incident that occurred more than eight years earlier, and how the accused persons' fair trial rights would have been materially compromised as a result of this undue delay. No justification was ever offered for this delay on the part of the prosecution.

We should not forget the unfairness inflicted on the accused, who lived for an unreasonably long period under the shadow of potential charges, enduring the psychological torment and emotional suffering that such uncertainty brings. This was even greater since it was suffered prior to any proof of guilt. Under both Article 14 of the ICCPR and comparative jurisprudence, such a delay violates the right to be tried without undue delay and imposes significant psychological, reputational, and professional harm on the Defendants. That in and of itself should have led the court to dismiss the charges immediately.

The unfairness of the prosecution and the psychological torment experienced by the accused persons were then compounded by the utter failure of the prosecution to present any credible evidence to support the charges made against them. While the court is to be credited for ultimately dismissing the charges against the accused persons, the prosecution's failure to present credible, specific, or individualized evidence was a further glaring deficiency in this case. The indictment did not specify which of the thirteen Defendants had made the allegedly seditious statements or what those statements were. During the trial, none of the prosecution's ten witnesses could produce any evidence or recall the actual contents of the speeches.

A fair trial presupposes a legitimate law. The prosecution charged the Defendants with violating Section 116 of the Thai Criminal Code, a sedition provision so vaguely worded that it fails to meet the principle of legality measured against international standards. The prosecution's reliance on this law—without any evidence of incitement to violence or other legitimate public order concerns—illustrates its use as a tool to suppress dissent rather than to protect public safety. Further, even assuming the Defendants had made speeches along the lines alleged, their prosecution was neither necessary nor proportionate, indicating a violation of their right to freedom of expression. If the argument for the

prosecution was that a delay of more than eight years between the events in question and the start of trial was due to the case's complexity, which in any event is disputed, the fact that they could not synchronize and support the charges with the necessary evidence even after all that time further casts serious doubt on the integrity of the prosecution process and the credibility of the case made against the accused persons.

The prosecution's persistence despite such a weak evidentiary foundation reveals a misuse of judicial processes that undermines both the rule of law and public confidence in the justice system. Taken together, the vague charges, the profound evidentiary failures, the excessive delay, and the clear pattern of politically motivated prosecutions against student protesters strongly suggest that the prosecution was not conducted in accordance with international standards.

The court's final acquittal is a welcome confirmation of the rule of law and a reminder that, in the absence of specific, individualized evidence, peaceful political expression must not and cannot be criminalized. However, in order to ensure that justice is served early and that the criminal justice system is not used as a form of persecution and punishment, this trial should serve as a lesson that judges need to closely examine ambiguous charges at the outset and promptly dismiss cases that fail the tests of legality, necessity, and proportionality. The grade given reflects the court's failure to do this and to avoid unnecessary and extended pain and suffering on the part of the Defendants, and a clear violation of the principle that a person is presumed innocent until proven guilty in a fair and just trial, and that an efficient and expeditious legal process is a *sine qua non* of that presumption. What cannot be upheld should never be prolonged.

GRADE:

