



ศูนย์ทนายความเพื่อสิทธิมนุษยชน Thai Lawyers for Human Rights

109 ซอยสิทธิชน ถนนสุทธิสารวินิจฉัย แขวงสามเสนนอก เขตห้วยขวาง กรุงเทพมหานคร 10310

109 SoiSithichonSuthisarnwinichai Rd. SamsennokHuaykwang Bangkok 10310

Thailand/โทร(Tel): 096-7893172 หรือ 096-7893173 e-mail: tlhr2014@gmail.com

Website:<https://tlhr2014.wordpress.com/>

17 July 2015

Report on online freedom of expression after 22 May 2015

Statistics and circumstance of 14 cases	
Circumstance	No. of person
1. Posting opinions on social media (Youtube, Facebook, Prachatai)	9
2. Sharing information via social media (E-mail, Facebook, 4Share, personal website)	9
3. Others, i.e., fake facebook account created in one's own name and used for posting messages deemed insulting to the monarchy, subscribing to a facebook group	6

***Note: In certain cases, the accused have been alleged to have committed the crime collectively along with a network of individuals. Thus, their case circumstances might vary.

Situation of online freedom of expression

Since the 22 May 2014 coup, the Thai Lawyers for Human Rights (TLHR) has been giving help to alleged offenders in fourteen cases concerning online freedom of expression including 24 alleged offenders/defendants. Among them, four have been charged after being summoned by the National Council for Peace and Order (NCPO), although a number of them had not been summoned, or had not been involved with political activity, or had shown no interest in politics. Circumstances of the cases varied including facebook posting, video clip sharing, video clip uploading on website or fake facebook account created in one's own name. In some cases, the alleged offenders were remanded in custody to its full possible length or 84 days and were then let go since the public prosecutor failed to indict them before the deadline. Of these cases, eight are being tried in the Military Court according to the National Council for Peace and Order (NCPO) Order no. 37/2014, four in the Court of Justice and two cases are at the police investigation.

Overall, it was found that some alleged offenders or defendants had been arrested and held in custody seven days invoking Martial Law during which time the officers would ask for passwords to gain access to their facebook or email accounts. The search of residences to seize computers and mobile devices also took place during the time. Then, the officers would log in and disguise themselves as the suspects and then set up an appointment with other individuals to lure them for arrest. Then, the other individuals shall be arrested and charged on lese majeste.

In addition, in one case, the arrest of the defendant took place as the officer had made unlawful access to the defendant's email messages. In this case, the officer had accessed personal email correspondence between the defendant and another recipient and used it as implicating evidence to charge the defendant for violating Article 112 since the content of the emails contain a link to material deemed insulting to the monarchy. The defendant is even charged for violating Article 116 of the Penal Code for inciting violence and public disorder citing the topic of the email. Though access to the information could be done under the Thai law including by invoking the 2004 Act of Special Investigation, but in this case, it turned out that in the plaint prepared by the public prosecutor, there is no mention about the application to have access to such information.

As for online surveillance, the authorities keep monitoring how people use facebook. For example, the military officer has reported a case against Mr. Anond Nampha, a human right lawyer, citing his five facebook postings. Mr. Pansak Srithep was also charged for violating Article 116 citing his facebook postings. One major change is before the social media postings had often been used for supporting the charge relating to the violation of Article 112 of the Penal Code, but lately, they are being used for charging individuals on violating Article 116 instead including postings about rumor about another coup, or the accusation that Gen. Prayut Chan-o-cha has transferred a large sum of money abroad. The posters simply shared the information received from someone else.

As to the search and seizure of communication devices, in the seizure of mobile phones belonging to members of the New Democracy Movement (NDM), it was found that the officers refused to let their attorneys be present during the copying of the data from the devices claiming it was an internal matter of the police. They simply showed the copying machine to the lawyers and claimed that two copies were made, one kept at the Office of Forensic Science, the Royal Thai Police, and another for the investigation team.

After the pressing of charges, among cases handled by the Thai Lawyers for Human Rights (TLHR), only three alleged offenders in Article 112 cases were not held in custody in prison. Most of the alleged offenders or defendants had been subject to remand in custody. And during the hearings, most of the defendants chose to plead guilty and the Military Court had sentenced them to ten years per count. The record sentencing was in the case against Mr. Thor who was condemned to 50 years in jail for posting five messages on facebook and it was reduced by a half to 25 years as he had pleaded guilty. But for those charged for violating Article 116, they have mostly been released on bail. The Court has yet to deliver a verdict in any of such cases.

In conclusion, it was found that after the coup, the online freedom of expression has been subject to severe restrictions. Facebook or personal email messages have been cited as evidence to prosecute several individual internet users. If charged for violating Article 112, the accused are mostly denied bail and the Court now opts to sentence a guilty person on this charge to ten years per count. As for those accused of violating Article 116, they are mostly granted bail and the Court has yet to deliver a verdict in any of such cases.