



Presenting a suspect person to media in Thailand: Legal issue

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Abstract

Human rights in Thailand are protected under the Thai Constitution of B.E.2560 (2017). The Criminal Procedure Code seeks to protect personal human rights under section 66. Thailand became a signatory to the Universal Declaration of Human Rights in 1948. Contrary to these protections, the National Police Agency Regulations allow police to present a suspect person before the media. Presenting a suspect person before the media brings dishonour to such person and their family as the suspect person can be assumed to be a lawbreaker in the public view, even as the legal procedure is just beginning. The impact is exacerbated by the ready access of the public to media such as TV Channels, newspapers, Line, YouTube and Facebook. Moreover, if the case is likely to be of particular interest to the public, the highest-ranking police officers will conduct the media conference. The conference often includes an outline of the case and the presenting of the suspect. Often the highest-ranking officers conduct the conference by themselves even though they have very little input into the early investigation. It appears that presenting a suspect person to the media is undertaken essentially to obtain positive press coverage. This regulation is considered to be contrary to the principles and will of the Constitution, the Criminal Procedure Code and the Universal Declaration on Human Rights. This article provides a series of recommendations so that all parties, especially law enforcement officials and the press, protect the human rights of both the accused and the victim.

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Introduction

Thailand is a party to most of the United Nations human rights treaties (Office of the High Commission for Human Rights [OHCHR], 2020), namely: Convention

against Torture (CAT) (1984); International Convention on Civil and Political Rights (CCPR) (1966); Convention for the Protection of All Persons from Enforced Disappearance (CED) (2006); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979); International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965); International Covenant on Economic, Social and Cultural Rights (CESCR) (1966); Convention

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on the Rights of the Child (CRC) (1989) and its Optional Protocol on the Involvement of Children in Armed Conflict (CRC-OP-AC) (1989); and its Protocol on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC) (1989); and the Convention on the Rights of Persons with Disabilities (CRPD) (2006).

As a state party to the treaties on human rights, Thailand is, no doubt, signalling to the international community that it values human rights like a “civilised” nation. This article points out some legal issues, principles, and procedures in Thailand, and analyses whether they conform to Thailand’s international obligations and international best legal practice. Personal rights are also guaranteed under Article 25 of the Thai Constitution B.E. 2560 (2017).

The objective of the research was to investigate whether practices such as those detailed in Police Order No. 419/2013: Practice to empower a police officer to issue a press release, allow a suspect to be interviewed by the press, dissemination of images of the suspect to the mass media and creating public relations media concerning a suspect person (Thai Police, 2013) conforms to the law, the spirit of the Constitution (2017), Criminal Procedure Code and the universal principle of human rights. It also assesses whether other stakeholders are potential actors in violating the rights of the accused.

Literature Review

Section 66 of the Criminal Procedure Code (2009) is quite clear in that an arrest warrant is to be issued only under certain circumstances:

1. Where police have evidence that the person has committed a criminal offence that is subject to a term of imprisonment of at least three years; or
2. When there is a reason to believe that a person is likely to evade arrest, meddle with the evidence, or cause other danger.

According to the Code, the term “alleged offender” means a person accused of committing an offence but who has not been charged in court (Section 2(2)). Under this principle, the law has guaranteed the right of individuals because the legal process is incomplete. In other words, the suspect person remains innocent until a final decision is delivered. The law protects the rights of people as is required under Thailand’s obligations under its international treaty obligations. The laws are only effective, however, if the law enforcement authorities honour them.

According to the police regulations, police officers are allowed to have a suspect interviewed by the media and disseminate images to the media. Such actions have the potential to cause psychological damage not only to a suspect but also to family and friends. As an example, a 32-year-old male was arrested on 27 September 2014 for rape (“No Apology, Broken Life”, 2017). He denied the allegations with the support of his wife, but he was held in prison for 20 days without bail. The police provided his name and photograph to the press. Subsequently, the police arrested the actual offender. The original suspect was released and sought an apology. He, and even his relatives, with the same last name, were stigmatised by the public. For at least three years after his release, he remained jobless.

In June 2017 the Prime Minister instructed that suspects were not to be presented nor allowed to speak at press conferences (“Prayut Rules Suspects”, 2017). He considered that “photos (of them) were enough”. In the same report, it was stated that the Prime Minister had recommended the previous year that parading suspects in press conferences should cease as it violates basic human rights. At the time of writing, in November 2020, it was quite clear from television reports and the perusal of printed and online media that police were still parading suspects in front of the media. The same day that this paper was submitted, an article appeared in The Phuket News showing the name and photograph of a handcuffed man in the street (“Police Arrest Suspect”, 2020). Such a news article is clearly a violation of the suspect’s human rights both by the police and the media.

From a legal perspective, the actions of the Royal Thai Police must conform to Thailand’s obligations under international treaties, the Constitution and Thai law. The broader population and their elected representatives must be made aware of their legal rights and obligations.

Methodology

This research was based on the documentary research concept as it provides an analysis of Thailand’s international treaty obligations, Constitution (2007), Criminal Code (2009), Criminal Procedure Code (2009) and other legislation as they apply to presenting a suspect person to media. It also looked at legal literature as well as secondary sources such as newspapers.

Results

Legal Principles

As noted in the Introduction, Thailand is a party to most of the United Nations human rights treaties. The two treaties most significant for this study are: International Covenant on Civil and Political Rights (ICCPR) (1966) and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) (1984). Interestingly, Thailand is not a party to the International Convention for the Protection of all Persons from Enforced Disappearances (CED) (1990) or the Convention on the Protection of the Rights of Migrant Workers and Member of their Families (CMW) (1990). In June 2020, the Thai Cabinet approved a draft bill on punishment and compensation for torture to meet Thailand's obligations when it ratified *CAT* (Sivasomboon, 2020). At the same time, it approved a draft law on disappearances, to allow it to accede to the CED, which it had already signed.

The principles of the ICCPR, that Thailand joined on 29 October 1996 and which entered into force in Thailand on 29 January 1997, is clear in its preamble that “the inherent dignity and . . . the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” Part III of Covenant states:

1. “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Article 7);
2. “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention” (Article 9(1));
3. “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person” (Article 10(1)); and
4. “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law” (Article 14(2)).

Parading an accused person in public is contrary to the Covenant. It is degrading treatment in violation of Article 7; it is not treating the accused with dignity and respect in violation of Article 10(1) and is violating the right of the charged person to be presumed innocent in violation of Article 14(2). The action is often in violation of Article 9(1) as the person is being arbitrarily detained if the severity of the supposed offence is minor.

Thailand joined CAT on 2 October 2007, and it entered into force in Thailand on 1 November 2007. At

the time of its accession, Thailand provided an interpretative declaration concerning the term *torture* (United Nations Treaty Collection, 2020). The declaration noted that the Thai Criminal Code does not have the specific term *torture* nor an offence of *torture*, but it does have comparable provisions under the Criminal Code. As a result, the term *torture* (Article 1 of the Convention) and offences of *torture*, attempt to commit *torture* and complicity or participation in *torture* (Article 4) “shall be established in accordance with the Thai [Criminal] Code”. A similar provision applies to the jurisdiction over such offences as required by Article 5 of the Convention. In each case, Thailand undertook to revise its domestic law to be more consistent with the relevant article of the Convention “at the earliest opportunity.”

Article 30(1) of the Convention provides that disputes between State Parties concerning the interpretation or application of the Convention that cannot be resolved by negotiation can be submitted to arbitration. Thailand exercised its right under Article 30(2) not considered to be bound by this provision.

A Constitution is the supreme law in governing the country. Other laws cannot be contrary to or inconsistent with the Constitution. The Constitution guarantees the rights and liberties of the Thai people. Article 25 states that “[A]s regards the rights and liberties of the Thai people, in addition to the rights and liberties as guaranteed specifically by the provisions of the Constitution, a person shall enjoy the rights and liberties to perform any act which is not prohibited or restricted by the Constitution or other laws, and shall be protected by the Constitution, insofar as the exercise of such rights or liberties does not affect or endanger the security of the State or public order or good morals, and does not violate the rights or liberties of other persons”.

Section 27 of the Constitution (2017) states that “People are equal in the eyes of the law, and shall have rights and liberties and be equally protected under the law.” Section 29, Paragraph 2, presumed that the accused (no lawsuit has been brought before the court) or the defendant (when the case has been brought before the court) is not guilty and before any judgment is unable to treat that person as an offender. These sections of the Constitution are legislative acts consistent with the same guidelines for the protection of human rights. This protection reflects the definition of “the accused” under the Criminal Procedure Code (2009), Section 2(2) which was in force several years before the proclamation of the Constitution of 2017.

Section 32 of the Constitution protects the rights and liberties of the Thai people. Its second paragraph states

that it is “an act of violation or effect to the rights of persons ... to use personal information in any way cannot be done except by virtue of the provisions of law enacted only to the extent of the necessity of public interest”. The combined meaning of this paragraph is that the Constitution provides for the protection of personal information. The Personal Data Protection Act (PDPA, 2019), builds on Section 32 of the Constitution and, makes it a criminal offence to disclose personal data unless it is required “in performance of duty; where it is for the benefit of an investigation, or trial in court; where it is a disclosure to . . . [a]n agency which has authority under the law . . .” (PDPA Section 80). Smith, Perry and Smith (2021) provide an analysis of the PDPA.

Guidelines for Bringing the Accused to Public and Answering Questions

Police Order No. 419/2013 empowers the police to present a suspect to the public (Thai Police, 2013). The *Procedure* states the authority in providing news, press releases and suspects interviews to the media must be a person with a rank of Police Major or higher (s 1.1.1). Often in cases of public interest, senior police officers will conduct the press conference themselves although they have not been involved previously in the case. The person assigned to conduct the press conference must restrict its scope and be careful not to abuse the rights of the suspects and victims by using neutral words so as not to humiliate or show contempt for others (s 1.2.1). There are several matters that cannot be discussed during a press conference, including:

1. Matters affecting international relations and security (s 1.2.2.1);
2. Matters that could damage the government (s 1.2.2.2);
3. Matters that relate to confidential information (s 1.2.2.3);
4. Matters that violate human rights, reputation damage such as sex offences, abortions, defamation or similar matters (s 1.2.2.4);
5. Information about cases that are under investigation or not yet completed so as not to disclose evidence, investigation techniques and the like (s 1.2.2.5); or
6. Information that could lead to copycat offences such as suicide, criminal acts and fraud (s 1.2.2.6).

More controversial is the provision that the victim, the accused and/or witnesses are able to speak to the media during the press conference (s 2.2.4). Before this, the police must ensure that such actions are beneficial to the case and are in the public interest. Also, the officer

conducting press conference must obtain approval in writing from the appropriate officer before presenting the victim, suspect or witness to the media. As described in the introduction, the Prime Minister has instructed that suspects are not to be presented, nor allowed to speak, at press conferences (“Prayut Rules Suspects”, 2017).

There is a notable exception to this regulation which prohibits the victim, accused or witness from being presented to the public if the victim, the witness or the accused are: under the age of 18, monks, novices, ascetics, priests or victims of sexual abuse (s 1.2.4 para 2).

Even with all of these regulations in place, there continues to be almost daily occurrences of violations. Even monks who are suspects are shown to the media even if it is not a formal media conference. Sometimes the faces are partially hidden; at other times they are not. Violations of the law and/or police regulations are sometimes the result of the actions of media themselves. Even if it the action of the media is not the result of a direct violation of the police, they have the power to restrict persons from entering the area of the offence or watch the interrogation in the police station and, generally, to control the situation.

Discussion

Regardless of the potential benefits of presenting a suspect to the media, the law is quite clear. Nevertheless, the Royal Thai Police are under pressure to present a person to the media. There would appear to be several reasons for police continuing to present a suspect to the media. Possibly the most significant reason is that senior police are trying to bring credit to themselves and their office. Secondly, the police are often under significant pressure from the media for a story. Often the actions of the police and media are altruistic in that they are seeking to educate the public about positive behaviour. Not only are police presenting suspects to the media, but the investigators also often allow the filming re-enactment of a crime by the suspect.

In 2015 a discussion of a broad range of stakeholders was arranged by the Journalists Association of Thailand and interesting thoughts were reported by Pholkrang (2015), namely:

1. There were two main issues raised by petitioners to the Thai National Human Rights Commission (NHRC) concerning presenting suspects to the media. Firstly, petitioners were concerned about the fact that the accused person is taken to point to the scene of the crime.

Secondly, they were concerned that the police take the suspect to re-enact the offence at the supposed scene of the crime. Often by the time the accused arrives at the scene, the press has already arrived, and as the scene has not been roped off, the evidence can often be destroyed. They were concerned that suspects, through the action of the police, even if unintentional, allows the media to present the accused as being “guilty” of the crime. The police action is particularly of concern when the suspect is in handcuffs, shackles, tethers or chains. They showed how this could affect the family of the suspects, particularly of the children of the suspect. They agreed with the suggestion that there should be a detailed police procedure manual on the matter.

2. The only reason the media have not been sued for violating the rights of the suspect is that the suspects are often powerless and lack capital. Besides, they do not know which agency to contact. There are so many laws, and often the public is of the opinion that law enforcement agencies do not always enforce the law. Not all of the compilations of the literally thousands of laws are in conformity with the Constitution. Because of these complexities, plaintiffs, in the end, do not prosecute.

3. The rules associated with the protection of the human rights of suspects are not widely known. Evidence of this lack of knowledge is clear from the violations that can be repeatedly seen on media. When new reporters commence their professions, they have very little guidance as to how they should behave. The formal accreditation system should include detailed induction training before a reporter or photographer is accredited. Training should include ethics, especially in how to interact with the police and the need to protect the human rights of victims, suspects and witnesses. The training should not only apply to those reporting the police round but also those reporting on politics.

Over the years, there has been a significant change in the method of delivery of media. It has moved from traditional sources to individuals becoming the media themselves. As a result, individuals often violate the suspect’s rights by making posts and also re-posting such reports. As a result, there needs to be a greater understanding of human rights protections and responsibilities in the wider community as well as monitoring of media to detect and remove violations.

In summary, the discussion showed that the violations are not just a matter to be blamed on the police and/or the media per se. Rather, they are an issue that needs to be addressed by the broader community so that everybody clearly understands their rights and responsibilities in protecting human rights.

An issue that has been addressed, particularly by the European Union, is the “right to be forgotten” (Rallo, 2018). Rallo wrote about his experiences during his term as the Director of the Spanish Data Protection Agency, and they have international implications. One of the issues that he repeatedly came across was applicants who were haunted by their past. This was especially the case where the person had been falsely accused and charged for a crime. Newspaper reports and government records are now readily available online through search engines. In the past, even public records such as newspapers were hard to locate. Now they can be located in seconds. Many official documents are placed online often to conform with recent laws. Several cases that came before him were people who wanted to have their past expunged, hence the title of his book: *The right to be forgotten on the internet: Google v Spain*. The upshot was that Google was required to change its algorithms so that the search engine would not locate the details of those who sought “to be forgotten”. Subsequently, the right to be forgotten was incorporated into Regulation (EU) 2016/679 (General Data Protection Regulation) of the European Union, which entered into force on 25 May 2018.

Conclusion and Recommendation

Although Thailand is a party to international treaties on the protection of human rights in various fields, in practice, there are some defects. In some cases it is intentional and in other cases only carelessness. The reporting officer may focus on other benefits rather than considering the violation of the rights of a suspect.

Thailand must abide by its international treaty obligations. At the same time, at the national level, Thailand has a legal code that confirms with the highest respect for human rights, namely the Constitution. Some of the regulations are contrary to state law. The regulations mentioned above must be revised to lead to correct practices. What is even more critical is the need for a change of culture within the various organisations responsible for law enforcement so that the protection of citizen’s rights is the highest priority. Privacy of both suspects as well as victims must be protected.

There must be a change in the apparently cosy relationship between the police and the media where the police want the exposure and the press want the story. Regulations will have to be prepared and enforced so that the privacy of the accused and victims is not violated. The responsibility, however, extends well beyond the police.

Media organisations must prepare clear guidelines to be used in induction training before accreditation of journalists and photographers. Such training should also be a compulsory component of professional development courses.

Individuals who post or forward information that violates a suspect's rights should be warned and the offending material removed. The prime objective must be to have the material removed rather than prosecuting the person publishing or forwarding the post. Such action will become more critical with the significant uptake in social media.

With the proliferation of search engines and social media, it is becoming increasingly easy to find and re-post information about persons suspected of committing a crime but who have been eventually acquitted. The stigma remains forever, especially those with a young family. It is strongly recommended that the consideration should be given to legislation incorporating the "right to be forgotten" along the lines of Regulation (EU) 2016/679 (General Data Protection Regulation) of the European Union.

Finally, this is not a unique Thai problem, and the recommendations have application to the broader international community.

Conflict of Interest

There is no conflict of interest.

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