

“Fake News” Legislation in Thailand: The Good, the Bad and the Ugly¹

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Thailand, as with some of its ASEAN partners, is using cybercrime legislation to prosecute those spreading “fake news”. Thailand took legislative action by amending the 2007 Computer Crime Act in 2017. The new Act makes it an offence to use a computer system in a way likely to “cause damage to the maintenance of national security, public safety, national economic security, or infrastructure for the common good of the Nation, or to cause panic amongst the public”. The amended legislation also created a computer data screening panel, which monitors the internet for “fake news”. Probably a greater threat to personal freedom is individuals and organisations that surf the internet looking for posts that conflict with their point of view and then take legal action so that the supposed perpetrators are prosecuted and probably persecuted as well. Truth is not necessarily a defence. The lèse-majesté legislation, as set out in the Constitution and the Criminal Code, makes it an offence to criticise the Crown. This is supported by the anti-defamation law which allows for civil and criminal remedies. This paper dissects the legislation and shows how it can be misused to persecute those critical of the government or private enterprises.¹

Keywords: Fake news; Computer crimes; Victimisation; lèse-majesté; Defamation.

Introduction

Whilst most will associate *fake news* with President of the United States Donald Trump,² in fact it can be traced back to antiquity. The Greek storyteller, Aesop (ca. 620 and 560 BCE)³ told the tale of “The Boy who Cried Wolf”.⁴ Briefly, the boy in the fable was tending sheep and on two occasions ran into his village crying out “Wolf! Wolf !” On each occasion the villagers ran to his assistance only to find out it was a hoax. On the third occasion there was in reality a wolf, but the villagers decided they would not be fooled again so did not come to help and many of the sheep were killed.

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²E.g. Farhall et al (2019) at 4354.

³Aesop's Fables Interactive Book (adapted from the book "The Aesop for Children: with Pictures by Milo Winter", published by Rand, McNally & Co in 1919). (Library of Congress). Introduction.

⁴Aesop, "The Shepherd Boy & the Wolf.

These two examples show two different types of *fake news*. In the case of the President of the United States it appears that any comment which does not put him in a favourable light, or simply disagrees with, especially in the media, is *fake news*. In the case of the boy who cried wolf, the news was untrue and it was used to elicit a response from the receivers of the message on each occasion. Unfortunately, the third time he asked for help the news was true but because of the boy's previous behaviour was considered by the recipients to be fake. These concepts will be discussed later in this paper.

Both types of *fake news* are the subject of legislation in many of the member countries of the Association of Southeast Asian Nations (ASEAN)⁵. The focus of this paper is the legislation used in Thailand to prosecute, and often persecute, those considered to be spreading what the authorities, in light of there being no definition in the Thai laws, view as *fake news* no matter how trivial.

The literature review sets the scene in the context of responses to *fake news* amongst the ASEAN member states.

As will be seen, Thailand has three legal instruments available to prosecute those suspected of spreading *fake news*: *Computer Crime Act* (as amended),⁶ *lèse-majesté*, as defined in the *Constitution*⁷ and the *Criminal Code*,⁸ and finally defamation, also defined in the *Criminal Code*⁹ to prosecute what is perceived as *fake news*.

Finally, the paper will discuss the application of the law including examples of good, bad and ugly uses of law with particular emphasis on the Thai response to *fake news* associated with the spread of the COVID-19 virus in Thailand. Such an analysis is important as this will indicate whether or not the laws are being prosecuted in an overzealous manner as has been claimed by some commentators.¹⁰

Literature Review

Hacıyakupoglu et al reported that *fake news* in the digital age covers a wide spectrum with overlapping motivations that can be political, subversive, financial, and entertainment.¹¹ Its impact is amplified through several mechanisms: low cost internet platforms; social media, where participants interact as they consume, produce and circulate content; and artificial intelligence, which can automate the whole process. They also noted that even the use of the term *fake news* "is also used by parties to denigrate content or points of view that are at odds with their own beliefs".¹² It becomes a social security issue when it undermines the

⁵The members of ASEAN are Brunei Darussalam, Cambodia, Indonesia, LaoPDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

⁶*Computer Crime Act (No 2) B.E. 2560 (2017)*.

⁷*Constitution of the Kingdom of Thailand (B.E. 2560 (2017))*.

⁸*The Criminal Code updated to 2009*.

⁹*Ibid.*

¹⁰E.g. Hunt (2020).

¹¹Hacıyakupoglu et al. (2018) at 3.

¹²*Ibid.*

foundations of the nation state, e.g. social cohesion, public institutions, peace and order. They identified a number of issues in legislating against *fake news*, namely: issues with the definition of *fake news*; the extraterritorial reach of cyberspace; challenges in identifying the perpetrator; and the sophistication of disinformation campaigns.¹³ Naturally, content related regulations would also face many challenges in cyberspace.¹⁴

The Asia Centre, based in Bangkok, has criticised the generally vague definition of *fake news* particularly in the countries of Southeast Asia.¹⁵ It sees three main consequences of such imprecise definitions: they allow for complaints to be easily filed by any opponents; they give government agencies a mechanism to file complaints, thus potentially making criticisms or voicing opinions against public office holders or public institutions a criminal offence; also, the laws may criminalise the service providers. The Centre noted that:

“In Southeast Asia, government officials tend to shield themselves and their institutions from criticisms by framing censures for their actions as fake news. Add to this governments’ efforts to eradicate ‘fake news’ through vague laws, it then further dilutes the already worn out trust.”¹⁶

In January 2018 the European Commission appointed a high-level group of experts (HLEG) to advise it on countering the spread disinformation online.¹⁷ The Committee preferred the word “disinformation” over “fake news” and “includes all forms of false, inaccurate, or misleading information designed, presented and promoted to intentionally cause public harm or for profit”.¹⁸ Rather than recommending a legislative response they recommended responses based on five pillars: enhance transparency of online news; promote media and information literacy; develop tools for empowering users and journalists; safeguard the diversity and sustainability of the European news media ecosystem; and, promote continued research on the impact of disinformation.¹⁹

On 10 May 2018 the Ministers Responsible for Information of the ASEAN Member States adopted a framework to minimise the harmful effects of fake news.²⁰ The framework included the following elements:²¹

- a) Cooperation in the fields of information and media, and support development of socially responsible media in ASEAN;
- b) Capitalise on the potential of online and social media and ensure that the internet remains a safe space;
- c) Raise awareness on the potential problems posed by fake news;

¹³*Ibid* at 20.

¹⁴*Ibid*.

¹⁵Gomez (2019).

¹⁶*Ibid*.

¹⁷European Commission (2018) p 2.

¹⁸*Ibid*.

¹⁹European Commission (2018) p 5.

²⁰'Framework and Joint Declaration to Minimise the Harmful Effects of Fake News'.

²¹*Ibid*.

- d) Improve digital literacy;
- e) Strengthen national capacity to detect and respond to fake news;
- f) Encourage stakeholders to build on industry norms and guidelines against fake news;
- g) Share best practices and experiences on responses to the challenge of fake news; and
- h) Encourage all ASEAN partners and relevant stakeholders to cooperate and join hands in the implementation of this Framework.

The framework did not, however, define fake news.

It is claimed that *fake news* has been a key political weapon in Thailand particularly since the 2014 military coup.²² The best funded anti-false information group is the Cyber Scouts founded in 2010 and funded under the Ministry of Digital Economy and Society and offering training workshops for high school and university students across Thailand. As of 2016 more than 120,000 students had been recruited. "In addition to monitoring, well-intended citizens and vigilante groups take part in 'cyber trolling' of critical media, activists, and dissidents".²³ Sombatpoonsiri also claims that the then "junta's classification of truthfulness and falsehood has enabled it to claim to be the sole arbiter of truth, while those who challenge their edicts are said to spread 'lies'."²⁴ Hunt points out that Thailand's emergency proclamation under COVID-19 will enable the government to censor and even shut down the media.²⁵

Methodology

This research is based on the documentary research concept as it provides an analysis of the Thai Constitution, Criminal Code and legislation as it applies to the prosecution of persons spreading *fake news*. The authors were faced with two major difficulties when preparing this paper, as follows.

Firstly, It must be borne in mind at the outset that there are complications when translating laws from one language to another as many of our language constructs are tied to our culture and understanding. This means that the translation may be imperfect.²⁶ This commentary is based on the "unofficial" English version of legislation. The version of Thai Constitution²⁷ as used in this paper is that issued by the Thai Government, whilst that of the Thai Criminal Code²⁸ was translated and published by a private law firm. Similarly, the version the Computer Crime Act²⁹ was obtained from Wikisource. All English translations are "unofficial", of course, as they are not in Thai.

²²Sombatpoonsiri (2019).

²³*Ibid.*

²⁴*Ibid.*

²⁵Hunt (2020).

²⁶Smith (2019).

²⁷*Thai Constitution.*

²⁸*The Criminal Code.*

²⁹*Computer Crime Act (No. 2).*

Secondly, in Thailand “[Court] decisions are often brief and there is no guarantee they will be publicly available. Courts maintain basic records of previous cases on file at the courthouse”.³⁰ The authors have had to rely on English language secondary sources such as news services and newspapers and their reporting of government press conferences, police press conferences and court decisions.

As reporting of the arrest and prosecution of purveyors of *fake news* is an almost daily occurrence in Thailand there is an extensive amount of available material.

Thai Legislation

Introduction

“Fake news” is not defined in any Thai legislation. The legislation used to prosecute distributors of “fake news” is the *Computer Crime Act* (as amended).³¹ As will be seen, authorities also use *lèse-majesté* and defamation to prosecute what is perceived as “fake news”.

Computer Crime Act

Thailand first enacted a *Computer Crime Act* in 2007.³² This was subsequently amended by the *Computer Crime Act (No 2)* in 2017.³³ The analysis which follows is based on the consolidated Act.

“Fake News” is covered by Section 14. The original Act³⁴ specified the following computer related offences that could be:

- a) inputting forged computer data “in whole or in part or false computer data in a manner likely to cause injury to another person or the public”;³⁵
- b) inputting false computer data “in a manner likely to cause injury security or public panic”;³⁶ and
- c) publish and forward computer data with the knowledge of the offence.³⁷

Section 14 was completely replaced in the amendments of the *Computer Crime Act (No 2)*³⁸ and the amendments are included verbatim as follows:

³⁰Indananda, Taweepon & Wheatley (2017).

³¹*Computer Crime Act (No. 2)*.

³²*Computer Crime Act*.

³³*Computer Crime Act (No. 2)*.

³⁴*Computer Crime Act*.

³⁵*Ibid* s 14(1).

³⁶*Ibid* s 14(2).

³⁷*Ibid* s 14(5).

³⁸*Computer Crime Act (No. 2)*.

1. Any person who commits any of the following crimes shall be liable to imprisonment for not more than five years, or a fine of not exceeding one hundred thousand baht, or both:
 - (1) dishonestly or deceitfully bringing into a computer system computer data which is distorted or forged, either in whole or in part, or computer data which is false, in such a manner likely to cause injury to the public but not constituting a crime of defamation under the Penal Code;
 - (2) bringing into a computer system computer data which is false, in such a manner likely to cause damage to the maintenance of national security, public safety, national economic security, or infrastructure for the common good of the Nation, or to cause panic amongst the public;
 - (3) [.....]
 - (4) [.....]
 - (5) publishing or forwarding computer data, with the knowledge that it is the computer data under (1), (2), (3), or (4).
2. If the crime under paragraph 1 (1) is not committed against the public but it is committed against any particular person, the criminal or the person who publishes or forwards the computer data as said shall be liable to imprisonment for not more than three years, or a fine of not exceeding sixty thousand baht, or both, and the crime shall be compoundable.

Section 20 mandates that the Minister appoint one or more computer screening panels.³⁹ Each panel consists of nine members, three of whom are from the field of human rights, mass communication, information technology or other relevant fields.⁴⁰ If computer data are circulating contrary "to peace and order or good morals" the Minister may, with the approval of a computer screening panel, authorise legal action to terminate circulation of the data or delete the data from computer systems.⁴¹ Court activities⁴² are undertaken in accordance with the Criminal Procedures Code.⁴³

The amended law was followed by five regulations which unfortunately are unavailable in English. Only one of the regulations is relevant, namely: *Ministerial Notification on the Appointment of the Computer Data Screening Panel under the Computer Crime Act*.⁴⁴

*"For determining if a computer data is contrary to the public order and good morals of the Thai people or not, the Computer Data Screening [Panel] must take into account precedent established by prior Supreme Court judgments and the Thai social context."*⁴⁵

³⁹Computer Crime Act (No. 2) s 20(3).

⁴⁰*Ibid.*

⁴¹*Ibid* s 20(2).

⁴²*Ibid* s 20(4).

⁴³*The Criminal Procedure Code (tr Yongyuth V's Yuthankun) (update 2009) (Thailand).*

⁴⁴Somwaiya (2017).

⁴⁵*Ibid.*

Lèse-Majesté

Section 6 of the *Thai Constitution* states that “[T]he King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action”.⁴⁶

The coverage is further extended in the *Criminal Code*;⁴⁷ “Whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years”.⁴⁸

Defamation

To fully understand the implications of the Thai deformation law it is necessary to quote verbatim s 326 of the *Thai Criminal Code*.

*“Whoever, imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit deformation and shall be punished with imprisonment not exceeding one year or fined not exceeding twenty thousand Baht, or both.”*⁴⁹

A person is not guilty of defamation if they act in good faith and expresses an opinion or statement: of self-justification or for protection of a legitimate interest;⁵⁰ or is an official exercising their official function;⁵¹ or gives fair comment on any person or thing being publicly criticised;⁵² or provides a fair report of any open court proceedings or meeting.⁵³ Truth is a defines except if “such imputation [that led to the defamation action] concerns personal matters, and such proof is not be of benefit to the public.”⁵⁴

Accusations of Promotion of Fake News by the Military

During a no-confidence debate in the Thai parliament in February an opposition member of parliament claimed that the army was behind cyber-attacks on critics by spreading fake news and damaging materials.⁵⁵ During the debate “he read from what he said were two leaked military memos that ordered army personnel to create fake social media accounts to ‘offer counter narrative, for

⁴⁶*Thai Constitution* art 6.

⁴⁷*The Criminal Code updated to 2009* (tr Y. V. Yuthankun).

⁴⁸*Ibid* s 112.

⁴⁹*The Criminal Code* s 326.

⁵⁰*Ibid* s 329(1).

⁵¹*Ibid* s 329(2).

⁵²*Ibid* s 329(3).

⁵³*Ibid* s 329(4).

⁵⁴*Ibid* s 330.

⁵⁵‘Opposition alleges army behind cyber attacks on critics, holds PM responsible’ (2020).

criticism of the government".⁵⁶ This was denied by the Prime Minister and the military.⁵⁷ The incriminating documents appeared on Facebook soon after.⁵⁸

Prosecutions for Posting *Fake News* in Thailand

Lèse-Majesté and Fake News

Dr Puangthorn Pawakapan from Chulalongkorn University noted that Thai authorities "tend to drop the lèse-majesté charge and use the Computer Crime Act only in order not to draw attention to the monarchy".⁵⁹ He claimed that the network was targeting the websites and social media platforms and of the rights activists in the violence-hit provinces in the far south of Thailand. He further claimed that it was part of an information operation waged by the Internal Security Operation Command (ISOC).⁶⁰

A notorious case is that of Ampon Tangnoppakul ("Uncle SMS") who was imprisoned for 20 years for a crime he apparently did not commit.⁶¹ He was accused of sending three SMS messages critical of the king. He claimed that he did not know how to make or send an SMS as he was barely competent with a mobile phone. He further claimed that he did not know the recipient of the messages nor his mobile number. His denials apparently could not be proven and were deemed irrelevant.⁶²

In a University Seminar in 2014 a Thai academic questioned whether an elephant battle actually occurred between King Naresuan the Great and a Burmese prince in the early 17th Century.⁶³ He was charged with lèse-majesté but had the charges dropped in January 2018 due, he said, to the intervention of the king.⁶⁴ The Court said that it was due to lack of evidence.⁶⁵

A selection of cases from 2018 is provided in **Table 1** to show the variety of cases for which details are known.

⁵⁶Thai PM (2020).

⁵⁷*Ibid.*

⁵⁸IO Documents No Longer Secret (2020).

⁵⁹Cited in Quinley (2019).

⁶⁰Opposition alleges army behind cyber attacks on critics (2020)..

⁶¹Hunt (2012).

⁶²*Ibid.*

⁶³Wongcha-um (2018).

⁶⁴*Ibid.*

⁶⁵*Ibid.*

Table 1. *Some Reported Lèse-Majesté Cases under Section 112 of the Thai Criminal Code from 2018 onwards*

Case ⁶⁶	Brief Description ⁶⁷	Reported Action ⁶⁸
Thanat aka “Tom Dundee”	Public speech in 2011 to which the defendant pleaded guilty	On 29 March 2018 he was not convicted as it was not clear to the court that plaintiff had committed the alleged acts of royal defamation
Thanat aka “Tom Dundee”	Public speech in 2011 to which the defendant pleaded guilty	On 29 June 2018 he was not convicted as it was not clear to the court that plaintiff had committed the alleged acts of defamation, insult or threat.
Sakan (last name withheld)	Talk given whilst in Bangkok Remand Prison to which the prisoner pleaded guilty.	On 14 November 2018 he was not convicted as it was not possible for the court to ascertain that the alleged statement was defamatory to the King or Queen.
Human rights lawyer Prawet Prapanukul	Indicted with posting ten Facebook messages deemed in violation of s 112 and another three deemed in violation of s 116 (Sedition).	On 27 June 2018 he was sentenced for the three counts under s 116. “The Court, however, mentioned nothing about the lèse majesté charges against him, and the ten incriminating messages.” ⁶⁹
A visually impaired woman (Ms. Nurahayadi Masao)	Used an application for the visually impaired to post a comment and share an article on her personal Facebook page in the wake of the passing of King Rama IX.	On 4 January 2018 she was convicted and sentenced to 18 months imprisonment. She was mysteriously discharged from prison on 23 January – no one knew who paid for her discharge or how much. On appeal on 12 February 2018 the court dismissed the case on the basis that as the defendant had a visual impairment in both eyes it was not possible that she could copy and paste the article whilst knowing that the article was deemed offensive to the late king. On 5 March 2018 she was arrested and on 6 March 2018 was found guilty of violating the Computer Crime Act in October 2016 for sharing an audio clip of a radio program

⁶⁶Given by the authors to distinguish cases.

⁶⁷Details are usually quite sketchy as it is an offence to republish the details of the original offence.

⁶⁸All offences are under s112 of the Thai Criminal Code unless otherwise indicated. As noted in the methodology, information is difficult to obtain and the status is that at the time of the published report in the local media.

⁶⁹TLHR, 'Changes in Thailand's lèse majesté prosecutions in 2018' (2019a).

Case ⁶⁶	Brief Description ⁶⁷	Reported Action ⁶⁸
'Kay' (pseudonym)	Posted an advertisement on Facebook to sell his collectable coins. He became involved in a heated exchange with one Facebook user who screen-captured the conversation and subsequently reported him to authorities.	On 5 July 2018 the Court dismissed the s112 charges but found him guilty of spreading false information online in violation of s14(1) of the Computer Crime Act. He was sentenced to 8 months in prison. The latter verdict was appealed.
Royal Arch Arson Case	11 defendants were accused of setting fire to decorative arches to honour the King in Khon Kaen in early May 2017.	The charges included that of lèse-majesté. They all pleaded guilty to all of the charges and sentenced. Six appealed and on 18 September the six were acquitted of the lèse-majesté charges as the court found that whilst they intended to commit an act of mischief by damaging the decorative arches, they had no intention to violate s112. They were sentenced to imprisonment on the other charges.
Mr Anant	It was alleged the defendant verbally insulted two Thai princesses in a conversation with a security guard in 2012. He was charged with lèse-majesté and criminal deformation.	He was found guilty of criminal deformation (s326) but not of lèse-majesté as the court considered the princesses were not covered under s112 as there was only one heir apparent and that was the Crown Prince.
Chanoknan Ruamsap aka "Cartoon"	In January 2018 the activist was summonsed to answer a charge for sharing a BBC Thai news link regarding the profile of King Rama X. According to the Bangkok Post she also wrote "If you dare write. I dare share." ⁷⁰	She fled to South Korea before the case was heard and was subsequently granted political refugee status. ⁷¹

Source: Thai Lawyers for Human Rights⁷²

According to the Thai Lawyers for Civil Rights those tried for lèse-majesté in military courts following the 2014 coup were subject of "sentencing guidelines" of seven to ten years per posting.⁷³ As the sentences are cumulative the terms of imprisonment were extreme with one person being sentenced to 70 years for ten message posts with the prison term automatically reduced to 35 years due to his guilty plea.⁷⁴

⁷⁰Thai activist gets political refugee tag (2018).

⁷¹*Ibid.*

⁷²TLHR (2019a).

⁷³TLHR (2019b).

⁷⁴*Ibid.*

A complaint, alleging a violation of the Computer Crime Act, was lodged in March 2018 against a Thai magazine for posting images of an art student's drawing of three ancient Thai kings wearing face masks to call attention to the seasonal air pollution in Chiang Mai.⁷⁵ It was claimed that the drawings "negatively affected the image of Thailand's ancient kings".⁷⁶ It took six months for the case to be dropped.⁷⁷ The question could be asked: why were the charges not *lèse-majesté*?

Apparently, no member of the royal family has ever filed a charge of *lèse-majesté*!⁷⁸

Defamation Law and Fake News

In a 2018 editorial the *Bangkok Post* commented that "the price of telling the truth to the powerful can be high and devastating for ordinary people in Thailand, where the criminal defamation law is more popular than the civil libel law".⁷⁹ The powerful use this process because they know that prospect of jail is more of a threat than paying financial redress.⁸⁰ It further argues that police and public persecutors give little consideration to whether the damage caused is significant enough to be considered criminal.⁸¹ They cited two recent Thai cases where, as in the case of deformation proceedings the only test was whether or not the act of speaking out count hurt the reputation of the plaintiffs.

It should be noted that Thai law allows the plaintiff to use the resources of the police and state prosecutors to pursue defamation cases in court.⁸² *Article 19* claims that this is tantamount to using the resources of the State to redeem a personal interest.⁸³

A human right defender, Andy Hall, has been found guilty in a number of criminal and civil prosecutions.⁸⁴ He was involved in at least three cases of investigations into labour disputes. In one case he was sentenced to prison, in the second he was ordered to pay damages. The third case he was involved with is reported below. By this time, he considered he was the subject of unbearable judicial harassment and left the country before the case was heard.⁸⁵

In 2016 a group of migrant workers from Myanmar complained to the National Human Rights of Thailand about their poor conditions at a poultry farm.⁸⁶ The owner sued the workers for defamation and lost. This was followed by the upholding of the award of compensation to the workers in January 2019.

⁷⁵United States Department of State (2018) p 18.

⁷⁶*Ibid.*

⁷⁷*Ibid.*

⁷⁸Hunt (2012).

⁷⁹'Weaponised defamation' (2018).

⁸⁰*Ibid.*

⁸¹*Ibid.*

⁸²Article 19 and The National Press Council of Thailand, (2009) para 6.1.1.

⁸³*Ibid.*

⁸⁴Office of the High Commissioner for Human Rights.

⁸⁵*Ibid.*

⁸⁶Editorial Board (2020).

Unfortunately for her, a Thai journalist in 2016 tweeted on the complaint and used the words "Slave Labour". She was charged with defamation and on 24 December 2019 she was found guilty of defamation and sentenced to two years imprisonment. As per news reports the court found "she had not weighed the potential reputational damage to the farm, had not checked on the accuracy of the tweet and therefore had acted in bad faith". The case was under appeal and the journalist on bail at the time of writing.⁸⁷

The decision of the Supreme Court in the case of Mr Anant mentioned in **Table 1** raised some unusual legal arguments. In this case the defendant was found guilty of criminal deformation even though the injured parties had not lodged a complaint.⁸⁸ The Thai Lawyers for Human Rights argue that this is contrary to the normal course of law as without a complaint an investigation cannot commence.⁸⁹ If an investigation were undertaken without a complaint the public prosecutor could not take up the case as the prior investigation would be considered to be invalid. They also note that the Court invoked the 2017 Constitution to justify the investigation even though the offence was committed prior to the promulgation of the Constitution.⁹⁰ Finally, they concluded that "the Court invoked law retrospectively to convict the defendant."⁹¹

Computer Crimes and Fake News

General Offences

A selection of cases reported in Thailand's English language press is provided in Table 2.

Table 2. Miscellaneous Cases

Case	Brief Description	Reported Action⁹²
'Abandoned Phuket Zoo' post ⁹³	A video was posted on Facebook claiming that Phuket Zoo had abandoned its animals and requested donations to the posters account.	Four persons "charged with entering false information to a computer system which negatively affected others". ⁹⁴
Viral sex toy video ⁹⁵	A video was posted on Facebook showing a woman playing with a sex toy in public (it amassed over 7 million views).	Police investigating and when suspects are apprehended, they will be charged with creating and distributing pornographic or indecent material online. Those who share the video

⁸⁷*Ibid.*

⁸⁸TLHR (2018a).

⁸⁹*Ibid.*

⁹⁰*Ibid.*

⁹¹*Ibid.*

⁹²As noted in the methodology information is difficult to obtain and the status is that at the time of the published report in the local media.

⁹³Thongtub (2020a).

⁹⁴*Ibid.*

⁹⁵Thai police hunt couple behind viral sex toy video (2020).

Case	Brief Description	Reported Action ⁹²
		could also face prosecution.
The former soldier under the influence of alcohol	The accused posted of Facebook that he intended to commit a mass shooting in a Department store.	Faced charges under the Computer Crime Act and wearing an army uniform without permission. ⁹⁶
House dissolution to avoid censure debate	Rumours were spreading that there would be a dissolution of the House of Representatives to avoid a planned censure debate.	Deputy Prime Minister said such news was fake and “legal action would be taken against those who may have circulated it to scare the people and adversely affect the economy”. ⁹⁷
Religion of Prime Minister’s wife	Fake news claimed his wife was a Muslim when in fact she was a Buddhist	Prime Minister stated that if false reports cause damage legal action will be taken. ⁹⁸
Tax on feminine hygiene products	Opposition party spokeswoman reposted a story from a web-site that there would be a tax increase on such products. She stated that she posted it in good faith.	Legal action was being prepared under the Computer Crime Act. ⁹⁹
Distortion of Prime Minister’s motto for National Children’s Day	The official motto was: “Thai Children must uphold unity and be responsible Thai citizens.” An opposition party spokesman woman used as her motto “Thai Children must go to the Skywalk” “presumably in reference to the recent rally by her party’s supporters at a similarly named venue in Bangkok.” ¹⁰⁰	Although she denied she was responsible for twisting the motto legal action was being prepared under the Computer Crime Act. ¹⁰¹
“Found” wallet story	A Thai woman claimed on Facebook that a mysterious “good citizen had returned her expensive wallet.	Police stated the case was about inputting false information into a computer system “to cause doubt and confusion and may be done for a hidden agenda.” ¹⁰² Prosecution was proceeding.
The Chinese and the sea urchins	Four Chinese were wrongly accused of beating sea urchins.	After investigation the police ascertained that they were, in fact, moving the sea urchins to

⁹⁶Ex-soldier arrested for posting alarming message on Facebook (2020).

⁹⁷Government dismisses rumors of House dissolution to avert censure debate (2020).

⁹⁸PM complains of fake news about his wife’s religion (2019).

⁹⁹*Ibid.*

¹⁰⁰*Ibid.*

¹⁰¹*Ibid.*

¹⁰²Woman may face Computer Act charges over 'found' wallet story' (2019).

Case	Brief Description	Reported Action ⁹²
		the beach where they could be reached by sea water. Police were planning to locate and prosecute the online poster for putting false information into a Computer system ¹⁰³
The Baht 12,000 cups of coffee	A deputy party leader shared a post claiming that the Deputy Prime Minister was buying cups of copy for Bt12,000 Three minutes later he was warned by somebody it may be a fake; deleted it and issued an apology.	Within the three minutes between posting and deleting somebody had captured the message and reported it to police. ¹⁰⁴

Source: Details as shown in footnotes.

In December 2019 the Minister claimed that people aged 60 and over were the greatest purveyors of inaccurate information online out concern for those close to them.¹⁰⁵

COVID-19 Related Offences

State of Emergency

A State of Emergency came into force on 26 March 2020 under the *Emergency Decree on Public Administration in Emergency Situation*.¹⁰⁶ The prohibitions included:

“Reporting or spreading of information regarding COVID-19 which is untrue and may cause public fear, as well as deliberate distortion of information which causes misunderstanding and hence affects peace and order, or good morale of people, are prohibited. In that case, officials will suspend or edit such piece of news. If the case leads to severe impacts, the Computer-Related Crime Act or Emergency Decree on Public Administration in Emergency Situation will be enforced for prosecution.”¹⁰⁷

This prohibition complies with s 9(3) of the Emergency Decree¹⁰⁸ with the addition of the last sentence which specifies under which provisions prosecution will occur. Human Rights Watch considered that “the government was given a free hand to censor free speech” under the Emergency Decree.¹⁰⁹

¹⁰³Chinese wrongly accused of beating sea urchins' (2019).

¹⁰⁴Future Forward deputy meets with police over 3-minute fake post' (2019).

¹⁰⁵Khidhir (2019).

¹⁰⁶*Emergency Decree on Public Administration in Emergency Situation, B.E. 2548.*

¹⁰⁷Quoted verbatim in: 'Thailand: COVID-19 Clampdown on Free Speech (2020).h 2020).

¹⁰⁸*Emergency Decree on Public Administration.*

¹⁰⁹'Thailand: COVID-19 Clampdown on Free Speech (2020).'

The Good

In January 2020 a woman observed a patient being transported on a stretcher from Phuket airport and assumed it to be a deceased person.¹¹⁰ She posted a photograph on her Facebook page with the caption in Thai “One death at Phuket International Airport #Chinese”. In fact, a person had suffered a mini stroke on arrival and was discharged from hospital the next day. The airport lodged a formal complaint with police to press charges under s14(1) of the of the *Computer Crime Act*.

Later in month two persons were arrested and charged with separate offences of posting false information on the internet.¹¹¹ In one case the suspect posted a video of a person collapsing in an unrelated incident and claimed it to be connected to coronavirus. In the other case the suspect claimed that a patient had died in hospital in a Pattaya and asked why it was being suppressed.¹¹² The information concerning the death was all false.

Not all offenders are prosecuted. Of six cases referred to by the Minister on 30 January four resulted in no prosecutions as the investigators found that they did not have any intention to cause harm so were released with a warning.¹¹³

On 5 February the Minister for Digital Economy and Society announced that, at that stage, police had arrested six persons from various locations for violation of s14(2) of the *Computer Crime Act*.¹¹⁴ The minister

“explained that releasing and sharing fake news would only cause panic among the public, which will ultimately lead to wrong practices in virus prevention as well as discrimination against people who only have the common flu. ‘In the long term, this could affect Thailand’s image as incapable of containing the virus and educating the public, which may affect the confidence of foreign investors and tourists in the future,’ he added.”¹¹⁵

Four people were arrested in February for spreading fake news about the spread of the COVID-19 virus.¹¹⁶ One of the posts claimed that a new coronavirus from Wuhan was spreading in Chiang Mai. An official claimed the fake news caused panic in Chiang Mai.

In March 2020 a woman was arrested for falsely posting on her Twitter account that 40 people in her neighbourhood were infected with COVID-19; whereas a check by the Ministry of Health determined that there were none.¹¹⁷ “She said she just wanted to warn people who were involved with her business to be careful.”¹¹⁸

¹¹⁰Phuket virus death fake news poster acknowledges Computer Crimes Act charge' (2020).

¹¹¹Boonbandit (2020).

¹¹²Fake News! Thai woman arrested for saying someone died in Pattaya from coronavirus' (2020).

¹¹³Two charged for spreading fake coronavirus news' (2020).

¹¹⁴Govt to crack down on dissemination of fake news about coronavirus' (2020).

¹¹⁵*Ibid.*

¹¹⁶Four people in custody accused of spreading fake news about coronavirus' (2020).

¹¹⁷Minister pushes for prosecution of woman who put out 'false message' on Covid-19' (2020).

¹¹⁸*Ibid.*

On 26 March police arrested two persons for posting a report on Facebook that police had set up a checkpoint in Bangkok and were fining drivers for not wearing face masks.¹¹⁹ They were charged with importing forged data into a computer system or false computer data "in a manner likely to cause damage to that third party or the public."¹²⁰

As at 31 March, Thai police were investigating 44 fake COVID-19 websites which were similar to the official government site to ascertain whether what fraud, if any, was being committed.¹²¹ The ruses included using the correct domain name but changing the extension, misspelling the Thai domain name by using different tone marks¹²² or both.

The Bad

In February the government's "anti-fake news centre" posted that a report by *Khaosod Online* made a false claim about the COVID-19 contents on the Facebook page of the Thai Embassy in London.¹²³ When the publisher approached the centre for clarification it was told that the Facebook page was a fake. The Ministry of Foreign Affairs in Thailand when contacted by the publisher confirmed that the page was indeed run by its London mission.

On 23 March police arrested and charged a person with violating s 14(2) of the Computer Crime Act¹²⁴ for a post on his Facebook page that stated that when he landed at Bangkok's Suvarnabhumi Airport he did not encounter any COVID-19 screening. He was held without bail for 12 days. The airport operators alleged that the post was not factual and caused public panic and misled people to think that the airport screening was inadequate.¹²⁵

Five negative posts on the government's cash hand out scheme were investigated and were found to be by "those who had filled wrong information in the online form, or by those who had received the Bt5,000 and posted improper content or opinions on social media".¹²⁶ Police were preparing a brief for the prosecution.

Discussion

As has been shown, Thailand has a very aggressive approach to the prosecution of propagators of what Thai authorities consider to be *lèse-majesté*; criminal defamation; or *fake news*.

In *lèse-majesté* cases most of the neither the details nor the sentences are revealed, which appear to be draconian. As reported above, the sentences for

¹¹⁹Thongtub (2020b).

¹²⁰For example s14.1 as amended by Computer Crime Act (No. 2).

¹²¹Covid-19: Tech police go after dozens of fake websites' (2020).

¹²²For instance, using "เราไม่ทิ้งกัน", "เราไม่ทิ้งกัน" or "เราไม่ทิ้งกัน".

¹²³Charuvastra (2020).

¹²⁴Computer Crime Act (No. 2).

¹²⁵Thailand: COVID-19 Clampdown on Free Speech' (2020).

¹²⁶IT crime taskforce looking into negative social media posts on cash handout scheme' (2020).

posting a single Facebook message can be up to 10 years cumulative for each message. The prosecution of such cases may also take years.

Often the material prosecuted is probably a very small amount of what would be considered as “subversive” as overseas websites are used to host such materials. Access remains readily available. Those with a Virtual Private Network (VPN) could even circulate the material within Thailand. If, as reported, there has never been a case of *lèse-majesté* brought by one of the offended parties (i.e. the King, Queen, Crown Prince or Heir-Apparent) why is the offence still on the Statute books?

Criminal defamation also is used as a tool to silence critics. The sentences are particularly severe where there is economic damage whether or not a statement was apparently true. Many of the reported cases of fake news that are being prosecuted are trivial, and thus a waste of valuable police and legal resources. This is often because a government organisation or official has been criticised. It appears that the recent years of a more authoritarian administration have caused government departments and the internet trolls to prosecute rather than exhibiting the ‘mai pen rai’ (never mind) response of earlier years.

The Thai authorities have been fairly successful in identifying and slowing false news during the COVID-19 pandemic. What is disappointing is the laying of charges over what are really rather petty offences.

The aim of fake news legislation should be to stop the promulgation of fake news, have the information removed and a correction and apology issued. Only serious cases should be prosecuted. Publication of the charges in the press tends to spread the “fake news” rather than suppress it. This would also help to deny the internet trolls their hobby of reporting to police the posting of views that do not agree with their views or those of the monarchy or the government. The action of these trolls is tantamount to persecution. Furthermore, conducting misinformation campaigns by government authorities including the military should be explicitly prohibited.

Conclusions

The paper has shown that the Thai legislation results in prosecutions that lead to penalties that are draconian when compared to the nature of the offence.

A number of legislative and administrative actions should be undertaken to “make the penalty fit the crime”:

- a) ideally remove the crime of *lèse-majesté* from the *Thai Criminal Code*¹²⁷ or, as a minimum, amend it so that action can only proceed with the written approval of the Monarch or Regent;
- b) the only remedy for defamation should be civil action and not criminal action and the *Criminal Code* should be amended accordingly.¹²⁸ In

¹²⁷*The Criminal Code* s 112.

¹²⁸*Ibid* s 326.

addition an amendment is required so the action can only proceed with the written approval of the offended party:

- c) The Computer Crime Act¹²⁹ be amended to provide a clear definition of "fake news." For "fake news", civil penalties should be considered with the focus on removal of fake news from the internet, corrections and apologies rather than severe prison sentences: and
- d) Amend the Computer Crime Act to include a specific offence of spreading misinformation by a government personnel, including the military, whether in an official or unofficial capacity.

Such changes would lead to a more just system of combatting fake news in Thailand.

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