

Regulating Online Defamatory and Insulting Speech under Thai Law

The Suitability of the Thai laws of Defamation and Insult to Regulate Speech Online

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“ The Internet allows us to freely express ideas more than other types of communication. Some online speech may impact a personality right. Law should strike a fair balance between preserving the freedom of speech and providing the protection to a personality right. Thai law protects personality rights by the laws which were enacted before the Internet period; thus, it is unclear whether these laws are suitable for regulating online speech.”

Background

On the Internet, it is easy for online users to use speech to harm the personality rights of others. In Thailand, the laws of defamation and insult are the main regulations providing protection to these rights. However, these laws were enacted before the Internet became popular in Thailand. This research aims to analyse the suitability of these laws which regulate online speech affecting personality rights. Since these laws were enacted before the internet period, some of their aspects may not be suitable for regulating online speech. For example, the criminal defamation law has an imprisonment penalty and allows any person who believes their reputation is harmed to file their complaint to the police for prosecuting their defamer. These features may be seen as disproportionately infringing online users' freedom of expression which is important freedom protected under the Constitution of Thailand. Although the applications of these laws have been discussed by previous studies, most of which only focus on some issues but do not discuss in the online context, such as the impact of Thai defamation law on freedom of expression principle (see ARTICLE19, 2009). Some studies only focus on a particular issue such as liability of internet intermediaries for defamatory content (see Srisanit, 2000; Chanhom, 2016). Those studies do not clearly discuss the applicability of the laws of defamation and insult to regulate speech online, nor do they analyse whether these laws sufficiently protect the personality rights without disproportionately infringing the freedom of expression.

Method

To discuss the applicability of Thai laws of defamation and insult to regulate speech online, this research uses the doctrinal legal research method by reviewing: (i) the Supreme Court of Thailand's Decisions relating to the laws of defamation and insult published on the Supreme Court Website (<http://deka.supremecourt.or.th/>); and (ii) literature relating to those laws. This research also uses the comparative legal research method by reviewing literature relating to those laws of other countries to compare with Thai law. The comparisons are used to analyse whether the current Thai regulations are suitable for online speech.

Result

This research found that the Thai defamation law has clear rules to protect personal reputation but the rules under the Thai law of insult which aims to protect personality right is unclear. This research found many Supreme Court Decisions which protect the freedom of expression of the defendant. By comparing the procedures to protect freedom of expression under the German law, the Thai procedure to protect this freedom is unclear. Moreover, Thai law does not have a clear procedure for identifying online users who anonymously defame or insult others.

Table: The summary of 16 Thai Supreme Court Decisions ('Dika') published in (<http://deka.supremecourt.or.th/>) in the last five years (2557-2562) where the Court decided the criminal liability under the offence of defamation of the defendants.

The reputation of the injured parties is protected under these circumstances:	Freedom of expression of the defendant is protected under these circumstances:
(1) The individual imputed the injured party as a fraud. [<i>Dika no: 10839/2557</i>]; the individual made the public degrade the personal value of the injured party [<i>Dika no 5172/2557</i>] (2) The newspapers who published untrue news which made the injured parties look bad to the public [<i>Dikas no: 4998/2558, 2137/2557; 319/2560</i>]. This includes the newspaper who published the news without carefully check its source. [<i>Dika: 14169/2557</i>]	(1) The conducts of the defendant were not considered as committing the offence of defamation [<i>Dikas no: 19384/2557, 10840/57 6494/2561, 1199/2557</i>] (2) Although the conducts of the defendants were commissions of the offence of defamation, these defendants were not guilty: (2.1) Those who expressed their opinion or statement to protect their legitimate interests [<i>Dikas no: 375/2562, 11118/2558, 1119/2558</i>]; (2.1) (2.2) Those who published news regarding public interest. [<i>Dikas no: 3546/2558, 2813/2559, 6747/2560</i>]. This includes the defendant who carefully published news regarding public interest but that news was untrue. [<i>Dikas no: 16275/2557</i>]

Discussion and conclusion

Although the procedure for identifying anonymous users is unclear, this research found that these laws are 'injured party-friendly' because it is easy for the injured parties to protect their personality rights i.e. by filing a complaint to the police. This process may limit the online users' freedom of expression which is important freedom under the Thai Constitution. Therefore, Thailand should develop a clear legal framework to guarantee that this freedom is not disproportionately violated.

About the author

Mr Mallikamarl is a PhD student at the University of Strathclyde, Glasgow, the United Kingdom. This work was done under the supervision of Dr Lorna Gilles and Prof Kenneth Norrie.

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