

Human Rights Situation Update

SLAPP suit against a Thai academic for 100m Baht in damages for criticizing an energy company in a Facebook post

8 June 2023

Thai Lawyers for Human Rights (TLHR) calls your attention to the two defamation suits — one civil¹ and one criminal² — against Ms. Sarinee Achavanuntakul, an independent Thai academic and an expert on issues relating to corporate governance and finance,³ by Gulf Energy Development Plc. (“Gulf Energy Development”), a Thai energy company, which is demanding compensation of 100 million Baht in damages.

Background

These defamation suits stemmed from Ms. Sarinee’s Facebook post on 20 April 2023 about the irregularities and legal dispute surrounding a 2012 energy bid in Thailand in which Gulf Energy Development emerged the sole winner, and the role of the National Council for Peace and Order (NCPO) after the 2014 coup.

In that Facebook post, Ms. Sarinee began by stating that she wrote this post to correct the misunderstanding of some people that “electricity prices are high because the junta tried to fight a legal dispute surrounding a 5,000 megawatt energy bid, but lost the lawsuit and the court ordered the government never to amend or cancel the Power Purchase Agreements (PPAs) forever.” She criticizes the non-transparent and unfair Independent Power Producer (IPP) bid in 2012 in which Gulf Energy Development emerged as the sole winner of a total of 5,000 megawatt Power Purchase Agreement.

Prior to the filing of the complaint and the launching of the investigation, Ms. Sarinee notes that the NCPO established an ad-hoc “military-dominant” State Sector Budget Expenditure Monitoring and Audit Committee⁴ and took control of the country’s energy regime, for example, by appointing General Prayut Chan-o-cha as the chairperson of the National Energy Policy Council⁵ and appointing a new set of Energy Regulatory Commissioners.⁶

After the ad-hoc committee was set up, Ms. Sarinee explains, the Labour Union of the Electricity Generating Authority of Thailand (EGAT) filed a complaint with the State Sector Budget Expenditure Monitoring and Audit Committee, alleging that the IPP bid in 2012 was non-transparent and unfair towards other bidders. An investigation was set to follow.

Ms. Sarinee explains that the investigation into the IPP bid in 2012 was never completed because, in 2016, General Prayut Chan-o-cha abolished the State Sector Budget

¹ See Civil and Commercial Code, Section 423.

² See Criminal Code, Sections 326 and 328.

³ It should be noted that Ms. Sarinee also sits on the board of the Rights for Justice Foundation under which TLHR operates.

⁴ See NCPO Announcement Nos. 45/2557 (2014) and 122/2557 (2014).

⁵ NCPO Order No. 54/2557 (2014).

⁶ NCPO Announcement No. 95/2557 (2014).

Expenditure Monitoring and Audit Committee, leaving no other body to continue the investigation.⁷ She also cited some details of the above incidents from MP Bencha Saengchantra's censure debate speech in 2021.

Ms. Sarinee then made an observation that the Supreme Administrative Court, in its ruling in favor of the Plaintiff in 2021, did not forbid the government from ever amending or canceling the Power Purchase Agreements. The Facebook post concluded that it would be a mistake to believe that the high electricity price today is solely a result of events that took place 10 years ago.

The Plaintiff's complaint refers to Ms. Sarinee's said Facebook post, comments, and links as being intended to defame the Plaintiff. The Plaintiff also expresses concern over the large reach these posts will have due to Ms. Sarinee's following and Facebook's algorithm, alleges that Ms. Sarinee shows the intent to defame by posting a link to MP Bencha's censure debate speech, even though she allegedly knows that MP Bencha has been sued earlier by the Plaintiff.

The first preliminary hearing for the civil defamation case is scheduled to take place on 24 July 2023. As for the criminal defamation case, the first preliminary hearing is scheduled to take place on 21 August 2023.

Other defamation suits by Gulf Energy Development

The defamation lawsuits against Ms. Sarinee is but one of the SLAPP⁸ cases Gulf Energy Development has launched against other critics. Other SLAPP cases include:⁹

- 1) Move Forward Party and MP Rangsiman Rome (censure debate speech about a satellite concession to Gulf Energy Development — lawsuit brought in November 2021);¹⁰
- 2) Move Forward MP Bencha Saengchantra (censure debate speech about how Gulf Energy Development won the 5,000 megawatt energy contract — lawsuit brought in December 2022);
- 3) Mr. Thanapol Eawsakul, editor and co-founder of Same Sky Books (sharing MP Rangisiman Rome's Facebook post about being sued by Gulf Energy Development — lawsuit brought in December 2021);¹¹
- 4) Mr. Warong Dechgitvigrom, leader of Thai Pakdee Party (Facebook live broadcast alleging that Gulf Energy Development is trying to gain a monopoly in the

⁷ Order of the Head of NCPO No. 70/2559 (2016).

⁸ Strategic Litigation Against Public Participation.

⁹ *Gulf Energy sues academic for defamation*, Prachatai English (29 May 2023), <https://prachataienglish.com/node/10391>.

¹⁰ Rangsiman Rome - รังสิมันต์ โรม, Facebook (7 November 2021), <https://www.facebook.com/rangsimanrome/photos/a.212055616217760/817672682322714/>.

¹¹ *Same Sky magazine co-founder sued for defamation by a major energy company*, Prachatai English (22 December 2021), <https://prachataienglish.com/node/9617>.

telecommunications and internet business — lawsuit brought in November 2021);¹²
and

- 5) Thai Sang Thai Party and two of its officials (joined in a press announcement regarding high electricity prices — lawsuit brought in June 2023).¹³

Move Forward Party and Mr. Rangsiman, Ms. Bencha, Mr. Warong, and Thai Sang Thai Party and its officials are being sued for 100 million Baht in damages. Mr. Thanapol is being sued for 50 million Baht in damages.

Recommendations

- 1) The Parliament and the government should act to formulate anti-SLAPP legislation and policies, as well as review and strengthen the current protective framework against SLAPP lawsuits, in order to protect, respect, and fulfill the right to freedom of expression under Article 19 of International Covenant on Civil and Political Rights.
- 2) The Parliament and the government should act to substantially restrict the causes of action that presently form the basis of SLAPPs.
- 3) The parties should be provided with alternatives in resolving disputes without recourse to traditional litigation, such as arbitration, conciliation, and mediation, either in- or out-of-court.

¹² วรงค์ เดชกิจวิกรม - Warong Dechgitvigrom, Facebook (20 November 2021), <https://www.facebook.com/therealwarong/posts/3051214075149623>.

¹³ ตรีรัตน์ ศิริจันทโรภาส - Treerat Sirichantaropas, Facebook (7 June 2023), <https://www.facebook.com/pune.treerat/posts/pfbid02r8g3Jc9aC7cTgqPpHTNUDH2T72ne4MqPFFzPhrqBPBi9MgH61d89HuUMMb9J7CEcl>.