

No. 52101/ 15



PERMANENT MISSION OF THAILAND  
GENEVA

10 January B.E. 2567 (2024)

Dear Madams,

With reference to the joint communication Ref. AL THA 5/2023 dated 24 August 2023 seeking information concerning the alleged disbarment proceedings against Mr. Anon Nampa and our Note Ref. 52101/225 dated 4 September 2023 acknowledging receipt of the joint communication, I have the honour to transmit herewith the response concerning the said case, as received from the Right and Liberties Protection Department under the Ministry of Justice, the Lawyers Council of Thailand, plus information accessed from other sources, which was compiled by the Ministry of Foreign Affairs. I hope that the response will provide you with more information and clarification of the alleged case.

In reassuring you of Thailand's continued commitment to cooperating with all Special Procedures under the Human Rights Council to promote and protect the human rights of all people, I remain,

Yours sincerely,



(Rongvudhi Virabutr)

Ambassador and Deputy Permanent Representative  
Chargé d'affaires a.i.

Ms. Margaret Satterthwaite,  
Special Rapporteur on the independence of judges and lawyers;  
Ms. Mary Lawlor,  
Special Rapporteur on the situation of human rights defenders,  
GENEVA.

**Thailand's response  
to the joint communication ref. AL THA 5/2023 dated 24 August 2023**

**1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.**

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**2. Please provide detailed information on the facts that led to the disbarment proceedings brought against Mr. Nampa and explain how their disbarment may be regarded as compatible with Thailand's obligations under the International Covenant on Civil and Political Rights**

- According to the information received from the Lawyers Council of Thailand (LCT), the complaint motion was filed on 7 August 2020 by [REDACTED] accusing Mr. Nampa of violating the professional conduct of lawyers, as a result of Mr. Nampa's organizing the protest which allegedly defamed and showed contempt for the Monarch. The status of the case **is currently under consideration** by an investigative committee in accordance with the 1985 Lawyer Act and the 2003 LCT Regulations on Professional Conduct of Lawyers.
- Since the case is still under consideration, in accordance with the law, it is important not to prejudge its outcome.

**3. Please provide detailed information on the composition and functioning of the LCT, explain its relationship to the Government of Thailand and explain to what extent they can be regarded as independent disciplinary bodies established by the legal profession.**

- LCT is a juristic person, whose members are all licensed lawyers nationwide. It has **autonomy and independence to govern itself** and is considered to be **"of lawyers, for lawyers and by lawyers"**.
- The composition and functioning of the LCT, as well as professional conduct of lawyers are governed by the *Lawyers Act B.E. 2528 (1985)*.

Composition

*Members of the Lawyers Council* are Lawyers under this Act, i.e. persons whose registration have been accepted and have been issued lawyer license. *The Committee of the Lawyers Council*, which is established by the Act, is composed of a representative of the Ministry of Justice and a representative of

the Thai Bar as Committee Members and the President and other Committee Members not more than twenty three elected by Members of the Lawyers Council nationwide.

### Objective and mandates

According to the Act, the Lawyers Council has the following objectives<sup>1</sup>:

- (1) to promote education and practice of the profession as a lawyers;
- (2) to control the professional conduct of a lawyer;
- (3) to promote the unity and maintain the honour of the Member of the Lawyers Council;
- (4) to promote and arrange welfares for the Member of the Lawyers Council; and
- (5) to promote, assist, advise, disseminate and provide education relating to law to the people.

The Act further stipulates that Lawyer Council has the following authorities/mandate<sup>2</sup>:

- (1) to register and issue licence under the Act; and
- (2) to take action for the implementation of the objectives of the Lawyers Council and of the authorities of the Lawyers Council as provided in the Act.

### Professional conduct of lawyers

The Lawyers Act also governs professional conduct of lawyers. In this regard, *a professional conduct committee*, consisting of the chairperson, the vice chairperson and at least other seven members, was established. Members of such committee are appointed by the Committee of the Lawyers Council for a term of three years and may be reappointed once<sup>3</sup>. The Lawyers Act also stipulates how accusation of breach of professional conduct is made, considered and deliberated by the committee.<sup>4</sup> There is also procedure for appeal.<sup>5</sup> Penalties for a breach of professional conduct include probation, prohibition of practice as a lawyer for a period of not exceeding three years and removal of names from the lawyers' register.<sup>6</sup> A person whose name is removed from the lawyers' register is unable to apply for registration and

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<sup>1</sup> Section 6

<sup>2</sup> Section 7

<sup>3</sup> Sections 54-56

<sup>4</sup> Chapter VII (Sections 54-72)

<sup>5</sup> Section 68

<sup>6</sup> Chapter VI (Sections 51-53)

receipt of a licence except a period of not less than five years have lapsed since the date in which the name is removed.<sup>7</sup>

The composition, election of members of the Committee of the Lawyers Council and appointment process of members of the professional conduct committee, as well as step-by-step procedures in deliberating the cases/accusations on breach of professional conduct provided by the Lawyers Act, reflect the nature of LCT as an independent disciplinary body established and run by the legal profession.

**4. Please provide detailed information on the legislative and other measures adopted by Thailand to ensure that lawyers able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (principle 16(a) of the Basic Principles on the Role of Lawyers) and to prevent them from being subject to, or being threatened with, prosecution or administrative, economic or other sanctions as a result of discharging their functions (principle 18); and ensure that lawyers enjoy their rights to freedom of expression, belief, association and assembly (principle 23).**

- According to the Constitution of Thailand, all persons are **equal before the law**, and shall have rights and liberties and be protected equally under the law.
- In addition, the Constitution guarantees the **liberty of a person to engage in an occupation** and it provides that regulating the engagement of occupation can be done **only to the extent of necessity, or for other public interest**.
- In this connection, it is important to note that the case of Mr. Nampa, as well as complaint made in relation to professional conduct of lawyers, were initiated as a result of **his action in personal capacity** during the protest, and not as a result of the performance of his duty as a lawyer. As everyone is equal before the law, anyone accused of violating the law will be subject to the same justice process, regardless of occupations.
- As a party to the International Covenant on Civil and Political Rights (ICCPR), Thailand reiterates its commitment under its international obligations to protect human rights and assures that its citizens enjoy their rights to **freedom of expression, freedom of belief, freedom of association and freedom of peaceful assembly** so long as the exercise of such rights is within the bounds of the law. **Article 19(3) of the ICCPR** also states that **the right to freedom**

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<sup>7</sup> Section 71

**of expression carries with it duties and responsibilities** particularly in relation to the reputation of others and to the protection of public order and national security. In addition, in accordance with **Article 18(3), Article 21 and Article 22(2) of ICCPR, freedom to manifest one's belief, right of peaceful assembly and right to freedom of association are also not without limits.**

- Indeed, such freedoms are guaranteed by the Thai constitution and the exercise of such rights must be within the bounds of the law.

**5. Please explain what measures have been taken to ensure that all human rights defenders in Thailand, in particular those exercising freedom of opinion and expression, can carry out their peaceful and legitimate activities without fear of judicial harassment, retaliation, or other restrictions.**

- Thailand recognizes the **important role of human rights defenders** in the promotion and protection of human rights in the country.
- Human rights defenders have been highlighted as one of the priority groups under both the **5<sup>th</sup> National Human Rights Plan** as well as the **2<sup>nd</sup> National Action Plan on Business and Human Rights**. Both policy documents aim to develop protection and remedial mechanisms for human rights defenders, while promoting public awareness on the role of human rights defenders.
- The Government supports the role of human rights defenders through the on-going efforts to further create a safe and enabling work environment for them. These include:
  - (a) The **amendment of the Witness Protection Act** which came into force on 24 November 2022, broadening the definition of witness to include persons who provide information or testimony to the authorities regarding violations of criminal law and providing for various measures to protect them;
  - (b) The enforcement of **the Act on Prevention and Suppression of Torture and Enforced Disappearance**, effective since 22 February 2023, providing protection and remedial measures for the victims not only from acts of enforced disappearance and torture, but also from any cruel, inhuman or degrading treatment;
  - (c) The efforts to initiate **Anti-SLAPP Bill** aiming to help protect, from intimidation lawsuits, citizens who report cases of corruption or abuse of power. It was later on approved, in principle, by the Cabinet and sent to Office of the Council of State, who suggested to incorporate it into the draft Organic Act on Anti-Corruption;

- (d) The **Justice Fund/Legal assistance** which provides legal advice, mediation, protection, and legal assistance to all including human rights defenders with an aim to promote equal access to justice for all;
  - (e) **Awareness-raising activities** aiming to encourage general public to support and promote the role of human rights defenders and their important work;
  - (f) **A study** conducted by the Rights and Liberties Protection Department, in cooperation with UNDP on possible measures to further protect human rights defenders, including the development of Anti-SLAPP measures and laws;
  - (g) **Trial observation** conducted by Rights and Liberties Protection Department in a defamation case against human rights defenders.
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