

Fact Sheet: Case Study Series: Phel Phearun accused of defamation over a Facebook post



Timeline: January 2013 to present

Snapshot: A teacher whose new motorbike was impounded by the Phnom Penh police has been asked to explain a case of defamation against the police after he posted the details of the event on his Facebook account. This is the first case of its kind in the Kingdom of Cambodia (“Cambodia”).

Introduction

This fact sheet outlines the accusation made against Phel Phearun by the Phnom Penh municipal police, who allege that a Facebook post made public by Phel Phearun on 24 January 2013 constitutes defamation. The post in question detailed the confiscation of Phel Phearun’s motorbike earlier that day. This fact sheet is written by the Cambodian Center for Human Rights (“CCHR”), a leading, non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

Case background

On 24 January 2013, teacher Phel Phearun was driving his new motorbike to have the body covered in clear tape - a common method of preventing scratches – when he was stopped by two police officers near Moha Montrey pagoda in central Phnom Penh. The two police officers asked him why his motorbike had no license plate; he explained that the motorbike was new so he had not had a chance to purchase one. The police officers then asked Phel Phearun to prove that he legally owned the bike; he did not have the ownership documents on his person but he told the police that he could have a friend take the necessary documentation to Moha Montrey. The police refused, and demanded that he drive with them to Chamkamorn police station.

Phel Phearun had his younger brother take the correct documents to the police station, where the police conceded that the bike was legally owned by Phel Phearun. However, an officer then instructed Phel Phearun to return at 9am the following day to collect his bike. Phel Phearun requested that his bike be returned immediately, but the police refused, saying: “This motorbike will be returned, you just wait until tomorrow”. Reluctantly, Phel Phearun agreed to return the next day, but insisted on being provided a confirmation letter as evidence that his bike had been impounded.

When he returned home, Phel Phearun posted a description of these events on his Facebook account, expressing concern about his treatment. The Facebook post asked readers whether they thought police procedures could be improved in such cases, in order to make the situation simpler for law-abiding citizens such as Phel Phearun. He also posted a scanned image of the confirmation letter.

On 26 January, news website *Sabay* published an article about Phel Phearun’s case, including the Facebook post. The article included a statement from Chief Traffic Police Officer Chev Hak, who stated that the police had merely been enforcing the law, which prohibits motorbikes with no license plates being driven on public roads.

Almost a month later, on 23 February 2013, Phel Phearun received a letter from the police requesting that he attend the police station at 8am on 25 February 2013 to answer questions in relation to a defamation case. Phel Phearun posted this news on Facebook, claiming that he believed

the defamation case in question was related to the motorbike incident in January and his subsequent Facebook posts. Seeing as 25 February 2013 is a public holiday, and considering Phel Phearun's work commitments, Phel Phearun and the police came to the agreement that he would appear at the station on 18 March 2013 instead.

Defamation vs. the Right to Freedom of Expression

Article 305 of the Cambodian Penal Code 2009 defines defamation vaguely as *“any allegation or charge made in bad faith which tends to injure the honor or reputation of a person or an institution”*. Defamation can be verbal, written or audio-visual and is punishable by a fine from one hundred thousand to ten million Riels (between 25 and 2,500 USD). The actions of Phel Phearun in posting the information outlined above on Facebook cannot be considered defamatory as it was not carried out *“in bad faith”* – in other words Phel Phearun did not knowingly publish false information, but merely recounted his encounter with the police. He did not set out to injure the reputation of the police but merely exercised his right to freedom of expression in order to share his experience and to generate legitimate awareness and debate.

The right to freedom of expression is protected by both Cambodian domestic and international law. Article 41 of the Constitution of the Kingdom of Cambodia (the “Constitution”) specifically guarantees *“freedom of expression, press, publication and assembly”*. Article 19 of the International Covenant on Civil and Political Rights (the “ICCPR”) and Article 19 the Universal Declaration on Human Rights (the “UDHR”) both provide for the right to freedom of expression. Article 31 of the Constitution and a Constitutional Council decision from 2007 affirm that both the ICCPR and UDHR are incorporated into Cambodian domestic law. The protection of free speech also extends to online expression - in July 2012, the United Nations Human Rights Council adopted a resolution affirming that *“the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice”*.

In posting the above information about his encounter with the police, Phel Phearun was therefore exercising his right to freedom of expression on the internet. The right to freedom of expression is subject to several restrictions, including a restriction for the respect of the reputations of others. However, General Comment 34 of the Human Rights Committee (the body overseeing the ICCPR), which explains states’ obligations under Article 19, specifies that states parties to the ICCPR *“should not prohibit criticism of institutions”*. It also notes that, *“in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high”*. Phel Phearun did not criticize the police, a public institution, via Facebook; however even if he had, he would have been acting completely within his rights.

The vague charge of defamation, which has been used regularly in Cambodia to silence dissent, is incompatible with Cambodia’s obligations both under the Constitution and under the ICCPR. In response to pressure from the international community, in May 2006, Prime Minister Hun Sen made a promise that he would decriminalize defamation; almost seven years on and defamation remains a criminal offense. It should be noted that, although defamation does not carry a custodial sentence, non-payment of a fine is still an offence punishable by imprisonment.

The case of Phel Phearun is the first in which a Cambodian citizen could potentially face defamation charges as a result of exercising his free expression via a Facebook post referring to the authorities.

Conclusions/Recommendations

Phel Phearun has the right to express himself freely online and his actions in doing so cannot be considered defamatory. In the absence of a compelling public interest served by restricting the right to free expression online, any attempt by the police to intimidate or punish Phel Phearun for doing so constitutes a clear violation of Phel Phearun’s fundamental freedoms.

The Phnom Penh municipal police should immediately cease their attempts to intimidate Phel Phearun and make no further attempts to restrict his right to freedom of expression through false claims of defamation. In addition, the Royal Government of Cambodia should make immediate efforts to ensure that all Cambodian police officers and departments understand the nature and scope of citizens’ rights, in order that such incidents of intimidation do not occur in the future.

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