

Censorship of the Film “Shakespeare Must Die”
Violated the Freedom of Expression of Filmmakers *

Supreme Administrative Court Judgment No. A.PA. 7/2567, dated 23 January B.E. 2567 (2024)

Mr. M (P1)

Ms. S (P2)

v.

National Film and Video Committee (D1)

Film and Video Censorship Committee No.3 (D2)

Department of Cultural Promotion (D3)

The film “Shakespeare Must Die” contained certain scenes that depicted Thai society, and a violent scene at the ending of the film resembled the violent incident on 6 October 1976. However, the film was unlikely to cause disunity among people in the nation. If the Defendant No. 2 considered that the film contained violent content that would cause misunderstanding or undue psychological distress among persons having insufficient judgment, it could have exercised its discretion to classify the film as a film that any person under twenty years of age is prohibited from watching pursuant to Section 26 paragraph one (6) of the Film and Video Act, B.E. 2551 (2008). Therefore, the order of the Defendant No. 2 prohibiting the Plaintiffs from distributing the film in Thailand constituted a violation of freedom of expression. The film censorship was not for the purposes of maintaining the security of the State; protecting the rights, liberties, dignity, reputation, family, or privacy rights of other persons; maintaining public order or good morals; or preventing or suppressing the deterioration of the mind and health of the public under the Constitution of the Kingdom of Thailand. Accordingly, the order issued by the Defendant No. 2 was unlawful, and the decision to dismiss the appeal of the film banning issued by the Defendant No. 1 was likewise unlawful.

*Summarized by Kitiwan Khantitirat, Master of Laws (LL.M.), Georgetown University, United States of America, Master of Public Administration (M.P.A.), Seoul National University, Republic of Korea, Administrative Case Official, Professional Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of the Administrative Courts.

Legal Principles: *Unlawful Order, Rights and Liberties, Freedom of Expression, Wrongful Act of Officials*

Administrative Court Procedure: *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999): Section 9 paragraph one (1) and (3)*

Legal Provisions: *Constitution of Thailand, B.E. 2550 (2007): Section 45*

Civil and Commercial Code: Section 420

Act on Liability for Wrongful Act of Officials, B.E. 2539 (1996): Section 5

Film and Video Act, B.E. 2551 (2008): Section 26 paragraph one (6) and (7)

Ministerial Regulation on Classification of Films, B.E. 2552 (2008): Clause 7 (3)

Judgment (Summary)

The Plaintiffs received funding for the production of the film “Shakespeare Must Die” from the Office of Contemporary Art and Culture, Ministry of Culture. The Plaintiff No. 1 was a producer, and the Plaintiff No. 2 was a co-producer and director of the film. After the film production had completed, the Plaintiffs submitted an application for film review to the Defendant No. 2. Upon examination, the Defendant No. 2 concluded that “Shakespeare Must Die” contained content that caused disunity among the people of the nation. Therefore, it was classified as a film prohibited from distribution in Thailand pursuant to Clause 7 (3) of the Ministerial Regulation on Classification of Films, B.E. 2552 (2009). Accordingly, the Defendant No. 2 had a resolution to disapprove the distribution of the film in accordance with Section 26 paragraph one (7) of the Film and Video Act, B.E. 2551 (2008). The Plaintiffs thereafter filed an appeal to review the Defendant No. 2’s order to the Prime Minister and the Chairperson of the Defendant No. 1. The Defendant No. 1 reviewed the order of the Defendant No. 2 and found that although the film was adapted to be set in a fictional country, it would lead to believe that the fictional country was Thai society. Furthermore, certain scenes contained content that was against public order or good morals or might disrupt the security of the State and dignity of the country. When the Defendant No. 2 notified the Plaintiffs to make changes on certain content that was considered as a cause of disunity among people in the nation, the Plaintiffs refused to do so. They argued that the content presented the true incident occurred on 6 October 1976. Consequently, the Defendant No. 1 decided to dismiss the appeal of the Plaintiffs. The Plaintiffs claimed that the order of the Defendant No. 2 prohibiting the Plaintiffs to exhibit, rent, exchange, or distribute the film, which classified as banned from dissemination in Thailand, and the order

of the Defendant No. 1 to dismiss an appeal were unlawful. The orders issued by the Defendants No. 1 and No. 2 caused aggrievement to the Plaintiffs; thus, they filed a case with the Administrative Court of First Instance. The Court dismissed the case. The Defendants disagreed with the decision and subsequently filed an appeal with the Supreme Administrative Court.

The Supreme Administrative Court held that the film contained certain scenes that depicted Thai society, and a violent scene at the ending of the film resembled the violent incident on 6 October 1976. However, the whole film presented the story or intended to communicate to viewers about evil within the human mind. It told the story of a superstition, overly ambitious, and megalomaniacal leader of the country who abused his power—as depicted in the William Shakespeare’s play. The screenplay had no purpose to convey or express any opinion to criticize the unrest that occurred in Thailand on 6 October 1976. In the final scene, a group of people who were obsessed with the leader (in the ‘outside world’) were enraged at a play satirizing their leader and attacked actors and audience who were watching the play. They also attacked a director who dressed like Shakespeare, dragged him to the front of the theater, hanged him, and then beat him with a metal folding chair amid cheering crowds. Although it could be believed that the scene imitated the incident on 6 October 1976, it lasted only one to two minutes. It would not cause viewers to believe that the scene portrayed a story of the incident on 6 October 1976. Even if the viewers knew that the scene imitated the incident, the unrest had long been over more than 30 years by the time the Plaintiffs requested for an approval for film exhibition in Thailand. Moreover, the event commemorating the incident on 6 October 1976 was held annually, and the photos of the incident were disseminated through media to educate younger generations to learn from the past mistakes. Accordingly, the film was unlikely to cause disunity among people in the nation. If the Defendant No. 2 considered that the film contained violent content that would cause misunderstanding or undue psychological distress among persons having insufficient judgment, it could have exercised its discretion to classify the film as a film that any person under twenty years of age is prohibited from watching pursuant to Section 26 paragraph one (6) of the Film and Video Act, B.E. 2551 (2008). Therefore, the order of the Defendant No. 2 prohibiting the Plaintiffs from distributing the film in Thailand constituted a violation of freedom of expression. The film censorship was not for the purposes of maintaining the security of the State; protecting the rights, liberties, dignity, reputation, family, or privacy rights of other persons; maintaining public order or good morals; or preventing or suppressing the deterioration of the mind and health of the public, under the Constitution of the Kingdom of Thailand. Accordingly, the order issued by the Defendant No. 2 was unlawful, and the decision to dismiss the appeal of the film banning issued by the Defendant No. 1 was likewise unlawful.

Since the order of the Defendant No. 2 and the decision for appeal of the Defendant No. 1 were unlawful, the acts of the Defendants No. 1 and No. 2 constituted wrongful acts against the Plaintiffs under Section 420 of the Civil and Commercial Code. Upon revocation of the orders, the Plaintiffs were entitled to distribute the film in Thailand. After the film was distributed, the amount of income would depend on the number of viewers. The production cost was not considered as direct damage resulting from the wrongful acts; consequently, the compensation for the production cost was not awarded. Moreover, the Plaintiffs' freedom of expression guaranteed by Section 45 of the Constitution of Thailand, B.E. 2550 (2007), was restricted. The Plaintiffs were injured by the violation of freedom of expression and the loss of opportunity and time to earn a living through the distribution of the film within a reasonable period. Considering the circumstances and gravity of the wrongful acts, the Plaintiffs were awarded compensation in the amount of 500,000 Thai Baht with interest at the rate of 7.5% per annum of the principal, calculated from 3 April 2012 (the date on which the Defendant No. 2 issued the order prohibiting the film's distribution in Thailand, which was deemed to be the date the wrongful acts were committed against the Plaintiffs) until 9 August 2012 (the date on which the case was filed). The Defendant No. 3 who was the secretariat office of the Defendant No. 2 should be liable for the compensation including interest to the Plaintiffs, according to Section 5 of the Act on Liability for Wrongful Act of Officials, B.E. 2539 (1996).

The Supreme Administrative Court reversed the judgment of the Administrative Court of First Instance. The Court ordered the revocation of the Defendant No. 2's order prohibiting the distribution of the film "Shakespeare Must Die" in Thailand including the Defendant No. 1's order dismissing the Plaintiffs' appeal. The Court also ordered the Defendant No. 3 to make compensation for the Plaintiffs in the amount of 513,217.21 Thai Baht with interest at the rate of 7.5% per annum of the principal amount of 500,000 Thai Baht from the date of filing the case until 10 April 2021, including interest at the rate of 3% per annum or at a new rate revised by the Ministry of Finance as prescribed in the Royal Decree, plus an additional 2% per annum of the principal amount, from 11 April 2021 until full payment is made. All other claims were dismissed.

Keyword: Constitution, Rights and Liberties, Freedom of Expression, Film Censorship
 คำสำคัญ: รัฐธรรมนูญ สิทธิและเสรีภาพ เสรีภาพในการแสดงความคิดเห็น การห้ามฉายภาพยนตร์

(แบบสำรวจความคิดเห็นต่อเอกสารวิชาการ ที่จัดทำโดยบุคลากรสำนักวิจัยและวิชาการ)



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