



**Following the decision that determined Surachai Danwatthananusorn (Saedan) and Siam Thirawut did not qualify as beneficiaries entitled to compensation under the Damages for the Injured Person and Compensation and Expenses for the Accused in the Criminal Case Act, their families have challenged it before the Court of Thailand and persist in their efforts to secure aid from the Thai government.**

On September 22, 2023, at the Department of Liberty and Rights Protection, Ministry of Justice, Prani Danwananusorn, the wife of Surachai Danwatthananusorn (Saedan), and Kanya Thirawut, the mother of Siam Thirawut, both individuals who are believed to have been forcibly disappeared, filed an appeal against the negative decision of the Committee on the Damages for the Injured Person and Compensation and Expenses for the Accused in the Criminal Case Act.

They have been accompanied for several months by Protection International (PI), the Cross Cultural Foundation (CrCF), and the Thai Lawyer for Human Rights (TLHR).

Going back to December 8, 2022, at the Ministry of Justice, Prani and Kanya submitted a request to exercise their rights as victims in a criminal case under the Damages for the Injured Person and Compensation and Expenses for the Accused in the Criminal Case Act, considering that their husband and son, respectively, have been forcibly disappeared for over four years.

While fighting for information about the whereabouts and fate of Surachai and Siam, whom they believe were forcibly disappeared since December 2018 and May 2019, respectively, on February 9, 2023, The Sub Committee Determining Damages for the Injured Person and Compensation and Expenses for the Accused in Criminal Case Act B.E. 2544 decided to dismiss the requests of both families, stating that Surachai and Siam were not victims within the definition of the Damages for the Injured Person and Compensation and Expenses for the Accused in the Criminal Case Act because there was no clear evidence that their lives, bodies, or minds had been injured.

After receiving an unfavorable decision from the Committee, on March 24, 2023, both families challenged the decision. On August 23-24, 2023, Prani and Kanya received the verdict from the committee that dismissed their joint request. The Sub Committee Determining Damages for the Injured Person and Compensation and Expenses for the Accused in Criminal Case Act provided the same reasoning, stating that there was no clear evidence that Surachai and Siam had suffered damage to their lives, bodies, or mental well-being. Therefore, they were not considered victims eligible for compensation under Section 3 of the Criminal Compensation Act.

Once again, both families challenged the decision, summarizing their reasons for disagreement as follows:

First, Thailand is bound by obligations to protect the rights and freedoms of its citizens under the Constitution of the Kingdom of Thailand B.E. 2560 (2017), domestic laws, and international agreements related to human rights. Torture and actions resulting in the disappearance of individuals, carried out by state authorities, are considered severe violations of human rights and contravene the Constitution of the Kingdom of Thailand B.E. 2560 (2017). Moreover, under international treaties regarding human rights, conventions against torture and cruel, inhuman, or degrading treatment or punishment, and agreements related to protecting persons from enforced disappearance, Thailand is obligated to provide remedies to individuals who have been forcibly disappeared.

Second, individuals who are forcibly disappeared, both under international treaties on the protection of all persons from enforced disappearance and under Article 3 and Article 7 of the Prevention and Suppression of Torture and Enforced Disappearance Act, must be considered potential victims eligible for compensation under Article 3 of the Damages for the Injured Person and Compensation and Expenses for the Accused in the Criminal Case Act.

Since February 22, 2023, Thailand enacted the above-mentioned law, which in its Article 3 defines 'detention' as the apprehension, custody, detention, imprisonment, or other similar acts that restrict a person's physical freedom. Article 7 states that any person acting as a state official who detains or abducts a person, denies or conceals the fact of detention or the whereabouts of such a person, causing the person not to be protected by the law, commits a crime of enforced disappearance until such time as the fate of the person becomes known.

Based on the facts of the cases of Surachai and Siam, it is believed that both individuals have been forcibly disappeared to the extent of losing their lives. According to the Damages for the Injured Person and Compensation and Expenses for the Accused in the Criminal Case Act, Thailand is obligated to protect its citizens from disappearances, without them having to prove injury and/or damage to life, body, or mind. The disappearance of both individuals constitutes a crime and a violation of human rights; therefore, Surachai and Siam are considered victims under Article 3 of the Damages for the Injured Person and Compensation and Expenses for the Accused in the Criminal Case Act, eligible for compensation for rehabilitation and as a legal safeguard in protecting the freedoms of the people, as well as in accordance with the state's responsibility principles. These principles are crucial in providing protection for the freedoms of the people, ensuring justice, and aligning with the protection of people's rights under international law.

Third, access to rehabilitation and compensation for the disappeared and their families should not depend on proving that the disappeared person has reached the point of death. The United Nations Working Group on Enforced or Involuntary Disappearance (WGEID) has stated in its General Comment on Article 19 of the Declaration on the Protection of all Persons from Enforced Disappearance, 1992, that access to rehabilitation and compensation for the disappeared and their families should not depend on proving that the disappeared person has reached the point of death. The victims are not required to present death certificates to receive compensation.

The responsibilities and duties of the state under this declaration go beyond merely searching for disappeared individuals. The state is also responsible for protecting the right to adequate compensation

for the families of the disappeared, for the losses suffered during the period of disappearance, such as physical or mental harm, lost opportunities, material losses, and more, including compensation in cases where the disappeared person has died. Compensation must be proportionate to the gravity of the human rights violation and the 'suffering' of the disappeared person or their family.

In addition to requesting that the appellate Court reconsider or amend the Committee's decision, Prani and Kanya also demand the investigation of the primary evidence related to the case to establish clear facts about the case.

Since Article 25 of the Damages for the Injured Person and Compensation and Expenses for the Accused in the Criminal Case Act stipulates that the appellate Court's decision is final, the decision in the cases of Surachai and Siam will set a precedent for other similar cases, or having a favorable decision from the court is the first step in getting compensated.

In cases where the victims are individuals who have been forcibly disappeared, it is noteworthy that the Thai government may develop policies regarding the protection and compensation of individuals whose rights and freedoms have been violated in some way.

Prani and Kanya's struggle will continue until they are duly compensated

Briefing by Protection International (PI), the Cross Cultural Foundation (CrCF), and the Thai Lawyer for Human Rights (TLHR)