

นิติราษฎร์

นิติศาสตร์เพื่อราษฎร

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Proposed
amendments to the law on defamation of the King, the Queen,
the Heir-apparent and the Regent
(Section 112 of the Criminal Code)

It is recognized that human beings, regardless of origin or status, should have human dignity, liberty, and equality, and show reasonableness and tolerance toward differing opinions, and that in a democratic society, the right to freedom of expression is indispensable and any restriction of this freedom must be in proportion to necessity and not of a form that conflicts with the essence of this freedom.

The existing law concerning defamation of, insults to and threats to the King, the Queen, the Heir-apparent, and the Regent is inappropriate both in the structure of its sections, the range of penalties, and its enforcement. In addition, the section provides no exemption for criticism, the expression of opinion or the expression of statements that are made in good faith and in order to uphold the Constitution and democratic system of government. It is at present clear that the law opens a channel for individuals to use it for political purposes or to use it in bad faith in a manner inconsistent with the intent of the law.

In order to uphold the right to freedom of expression in accordance with the objectives of the Constitution, the Nitirassadorn believes it should propose the following amendments to the law concerning defamation of, insults to and threats to the King, the Queen, the Heir-apparent, and the Regent.

Point I

The existence of Section 112

Proposal

Repeal Section 112 of the Criminal Code

Rationale

1. Section 112 of the Criminal Code currently in force was enacted through Order No. 41 of the National Administrative Reform Council dated 21 October 1976 and as a “law” of coup makers, this section lacks democratic legitimacy.
2. Since the proposal of the Nitirassadorn is to restructure several sections in the Criminal Code related to the offence of defaming of the King, it is necessary to repeal Section 112 in the form of an offence related to the security of the Kingdom in order to introduce a new section ... in the form of an offence related to the honour of the King, the Queen, the Heir-apparent, and the Regent.

Point II

Position of the section concerning offences related to the honour and reputation of the King, the Queen, the Heir-apparent, and the Regent

Proposal

1. Add provision ... concerning offences related to the honour of the King, the Queen, the Heir-apparent and the Regent to the Criminal Code.
2. Introduce a section concerning offences of defaming, insulting and threatening the King, the Queen, the Heir-apparent, and the Regent in the form...
3. Separate offences according to the nature of the offence ... into 4 types of offences:
 - Offences concerning defamation of the King
 - Offences concerning insults or threats made against the King
 - Offences concerning defamation of the Queen, the Heir-apparent and the Regent
 - Offences concerning insults or threats made against the Queen, the Heir-apparent and the Regent

Rationale

The nature of the offence of defaming, insulting and threatening the King, the Queen, the Heir-apparent, and the Regent in a Constitutional Monarchy is not severe enough to reach the point of threatening the survival, integrity or security of the Kingdom.

Point III

Positions to be protected

Proposal

Separate protection of the King from protection of the Queen, Heir-apparent, and Regent as follows:

Section ... “Whoever defames the King shall receive punishment of ...”

Section ... “Whoever insults or threatens the King shall receive punishment of ...”

Section... “Whoever defames the Queen, Heir-apparent, or Regent shall receive punishment of ...”

Section... “Whoever insults or threatens the Queen, Heir-apparent, or Regent shall receive punishment of ...”

Rationale

This is to differentiate protection of the King from protection of the Queen, the Heir-apparent, or the Regent in line with other offences.

- Offences concerning regicide (Section 107)
- Offences concerning the killing of the Queen, the Heir-apparent, and the Regent (Section 109)
- Offences concerning acts of violence against the King (Section 108)
- Offences concerning acts of violence against the Queen, the Heir-apparent, and the Regent (Section 110)

Point IV

Range of penalties

Proposal

1. No minimum penalty
2. Reduce the maximum punishment for the offence of defaming the King to imprisonment no greater than two years and limit the fine to an amount no greater than 50,000 baht.

3. Reduce the maximum punishment for the offence of insulting or threatening the King to imprisonment no greater than one year and limit the fine to an amount no greater than 20,000 baht.

4. Reduce the maximum punishment for the offence of defaming the Queen, Heir-apparent or Regent to imprisonment no greater than one year and limit the fine to an amount no greater than 30,000 baht.

5. Reduce the maximum punishment for the offence of insulting or threatening the Queen, Heir-apparent, or Regent to imprisonment no greater than six months and limit the fine to an amount no greater than 10,000 baht.

Rationale

1. During the Absolute Monarchy, no minimum penalty was imposed for the offence of defaming, insulting and threatening the King. Therefore, under a Constitutional Monarchy, no minimum penalty shall be imposed for such an offence.

2. The Court will have the opportunity to use its discretion to impose an appropriate penalty for each case.

3. Protection of individuals with the position of King, Queen, Heir-apparent and Regent should be appropriate to their positions and therefore offences should carry a maximum penalty higher than that for the offence of defamation of an ordinary person which carries a penalty of imprisonment not exceeding one year, or fine not exceeding 20,000 baht, or both, and should strike a balance between the severity of the offence and the penalty that the person committing the offence should receive, according to the principle of proportionality stipulated in the Constitution. The maximum penalty should therefore be reduced.

4. As Head of State, the King has a different status from that of the Queen, the Heir-apparent, or the Regent, and therefore a different maximum penalty should also be imposed.

5. As the nature of the offence and the losses incurred from the offence of defamation are different from the nature of the offences and the losses incurred by the offences of insults or threats, it is therefore appropriate to separate the two kinds of offences and provide for different punishments.

Point V

Exemption from constituting an offence

Proposal

The following exemption from constituting an offence should be added:

Section ... “Whoever in good faith criticizes, expresses an opinion or expresses statements in order to uphold the democratic system of government with the Monarch as Head of State under the Constitution, in order to protect the Constitution, for academic purposes or for the public interest, shall not commit an offence under Section ... and Section ...”

Rationale

Section 45 of the Constitution of the Kingdom of Thailand guarantees the right to freedom of expression, and the expression of opinion in good faith for the above purposes should not be a criminal offence.

Point VI

Reasons for exemption

Proposal

The following reasons for exemption from punishment should be included:

Section ... “In the case of a defamation offence characterized by ... if the person accused of committing such an offence can prove that the statement made is true, he or she shall not be punished

If the accusation is an offence concerning the royal person or personal affairs, and the proof does not serve public interest, the proof shall not be permitted.”

Rationale

Though such an act is an offence, if the act is the expression of a statement which is true and which serves the public interest, it should be exempt from punishment.

Point VII

Accusatory authority

Proposal

1. General public shall be barred from filing a complaint that an offence has been committed pertaining to the honour of the King, the Queen, the Heir-apparent and the Regent.
2. The Bureau of the Royal Household should be the complainant regarding offences pertaining to the honour of the King, the Queen, the Heir-apparent and the Regent.

Rationale

1. To prevent any ordinary person from using the section as a political tool or in bad faith.
2. As the Office of His Majesty's Principal Private Secretary is a government agency, it has authority as the secretariat of the monarch under Section 46, Paragraph 1 (1) of the 2002 Revision of Ministries, Sub-Ministries and Departments Act. The Office has the status of a department and is under the command of the prime minister under Section 46, Paragraph 2 of the 2002 Revision of Ministries, Sub-Ministries and Departments Act. There is a Legal Affairs Division whose duty is to carry out work pertaining to law and procedures within the responsibility of the Office of His Majesty's Principal Private Secretary. It is therefore appropriate for the Office to perform the duty of protecting the honour of the King, Queen, Heir-apparent, and the Regent.

Note: In addition to being a proposal for the reform of Section 112 of the Criminal Code, Nitirassadorn intends for this to serve as a standard for the future reform of other rules concerning offences of defamation or insults in the Criminal Code to become systematic and in line with this proposal as well.

Nitirassadorn: Law for the People

Tha Prachan, 26 Dec 2011.