

ARTICLE 112

Lèse-majesté Law

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WHAT IS ARTICLE 112?

Lèse-majesté, or the crime of injury to royalty, is defined by Article 112 of the Thai Criminal Code, which states that defamatory, insulting or threatening comments about the king, queen and regent are punishable by three to 15 years in prison. In the past decades however, Article 112 has been dangerously politicised. It has been used as a political weapon, at first to undermine political opponents and later to attack anyone with different political ideologies. It also points to the injustice caused by the Thai government in defending the use of Article 112.

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WHAT ARE THE PROBLEMS?

PROBLEMS FROM THE LEGAL PROVISION

- The penalty rate of three to fifteen year imprisonment is too high and comparable to an offence of preparation to commit the insurrection, or manslaughter, or kidnapping of a minor younger than fifteen years.
- The minimum penalty rate of three years is also too high. Even though the case could be trivial, the Court is left with no discretion but to impose at least this penalty rate.
- There is a vague element of crime, particularly regarding the term “insult” which has been interpreted so widely covering a variety of acts or expressions.
- Article 112 protects persons holding different positions including the King, the Queen, the Heir-apparent, or the Regent, equally and indiscriminately, even though the damage done to the King should be more severe than the damage done to other personalities.
- Article 112 is included in the “Title I” on “Offences relating to the Security of the Kingdom.” Therefore, its interpretation and enforcement can be cited for the sake of maintaining national security and that would do a disservice to the defendants.

PROBLEMS FROM ITS ENFORCEMENT

- Article 112 has been subjected to extensive interpretation and use in order to criminalise a variety of actions without a clear boundary. It is elusive for ordinary persons to understand which kind of act constitutes the offence.
- Any ordinary person can bring charges against another person invoking Article 112. It does not oblige the injured party to make the complaint. As a result, Article 112 has been used to accuse so many individuals.
- Law enforcement officials involved with the prosecution per Article 112 have often found themselves subject to sheer pressure from society. Consequently, it would be difficult for them to make any discretion in favour of the defendants, i.e., by refusing to indict the case, or allowing the alleged offenders to have bail or dismissing the case.

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EXAMPLES OF CASES

In most cases, the Court of Justice often imposes five years per count, for example, in the cases against Somyot Prueksakasemsuk, Daranee (Da Torpedo), and Ampon Tangnoppakun (Uncle SMS). Meanwhile, in several other cases, the Court has opted to impose much harsher penalties including the case against Piya Julkittipan who was sentenced to nine years for his Facebook comments critical of the monarchy, Charnvit who was sentenced to six years for distributing lèse-majesté leaflets, and the case of bookseller who sold the Thai

translation of “The Devil’s Discus: An Inquiry into the death of Ananda, King of Siam” who was sentenced to three years. Under the rule of the military government, the Military Court often imposes 10 years of imprisonment per count, for example, the cases against Hassadin Uraipraiwan and 9 others who was accused of producing “Banpodj” audio clips criticising the royal family, Pongsak Sriboonpeng Thiansutham and Sutthijitseranee (critical comments toward the monarchy on Facebook), and Samak Pantay (damaging the portrait of the King and

Queen). Meanwhile, the Court may impose harsher or lighter penalties such as the case of Sasivimon who was sentenced to eight years per count for her insulting comments about the monarchy, Nirand for five years per count (for publicising fame statement of the Bureau of the Royal Household), and Opas Chansuksai (writing graffiti insulting the monarchy) for three years per count.

HOW DOES IT AFFECT THE SOCIETY?

Article 112 has been regularly invoked to crack down on political opponents and used by all political factions. But the target is not only at political factions. The massive number of people prosecuted by Article 112, the harsh penalty rate coupled with the trial procedure whereby most of the accused have been denied bail and the Court has ordered a secret trial, have engendered a burgeoning climate of fear. It has engulfed the whole society with the notion that the monarchy is untouchable

and unspeakable and people are supposed to practice self-censorship. They have to be utmost cautious when discussing any issues about the monarchy including during personal communication and public communication. Such a condition has gravely compromised Thai people’s knowledge and understanding about the monarchy. In addition, given that Article 112 has been used for serious criminalisation, it has been abused to revenge another person even among

people who are related to each other, for example, the case of an older brother who took his own younger sibling to the Court on this charge by alleging that his brother was making a lèse-majesté remark, or the cases in which fake Facebook pages have been created to retaliate another person accusing them of committing lèse-majesté offence as a result of personal feud such as the above-mentioned case of Sasivimon.

HOW DOES IT AFFECT THE MONARCHY?

When news about how a number of people have been prosecuted using Article 112 and how they have been sentenced to harsh penalties is made public, it has drawn out criticisms that the law has been used to stifle freedom of expression and human rights. It

sometimes has an indirect ramification on the image of the monarchy in Thailand, particularly when such news broke into the international community. It could incur negative feelings among them against the monarchy. In addition, since it is highly sensitive to discuss the

issues about the monarchy in Thailand, it has distanced the institution from the perception of ordinary persons making it not accountable and not adjusted to the modern world.

RECOMMENDATIONS

1. To have Article 112 excluded from the “Title I” on “Offences relating to the Security of the Kingdom”.
2. To add another Title on “Offences relating to the Reputation of the King, the Queen, the Heir-apparent, or the Regent”,
3. To segregate the protections between the King and other personalities including the Queen, the Heir-apparent, or the Regent
4. To change the penalty rate by removing the minimum punishment and fixing the maximum punishment to three years and to separate between the ordinary defamation and the act on publication.
5. To include as a defence if the criticism is made in good faith
6. To include as a defence if it can be proven that the statement made is true and serves public interest and;
7. To prohibit an ordinary person to bring such charges against another person and the legal standing should be confined to just the Bureau of the Royal Household.
8. The international community can play an important role in applying pressure on the Thai government to seriously consider the reform of the lèse-majesté law, for ultimately the protection of the basic human rights of the Thai people, as well as the responsibility of Thailand in supporting the global human rights agenda.