

15 February 2013

**Attention:** The Speaker of the House of Representatives

**Subject:** An appeal to the decision to not accept the draft Penal Code Amendment Act (No....) B.E..... for consideration

**With reference to:**

- (1) A letter dated 29 May 2012 from the Campaign Committee for the Amendment of Article 112 including the draft Penal Code Amendment Act (No....) B.E.....with its accompanying rationale
- (2) A letter dated 11 October 2012 from the Secretariat of the House of Representatives no. SP0014/15204

Dear Sir,

This is in pursuance to your letter in (2) informing us, as representatives on behalf of the persons who signed to propose the amendment to the law, that you have decided to not consider the proposed amendment as requested in the petition signed by me and other petitioners as per (1) and to not propose the draft law for consideration by the House of Representatives. You have cited the reason that the content of the proposed amendment of the Penal Code is not compatible with constitutional provisions in Chapter III, “Rights and Liberties of Thai People,” and Chapter V, “Directive Principles of Fundamental State Policies.” We deem that your decision was not made based on correct information. In addition, the interpretation of the constitutional provisions and relevant laws is not consistent with democratic rule with the king as head of state. Therefore, on behalf of all petitioners who proposed the draft Act, we urge you to reconsider your decision. Our supporting reasons are as follows:

1. You claim that the draft Penal Code Amendment Act (No....) B.E.....is concerned with Chapter II, “The King,” and the right to freedom of expression as provided for by Article 45 has to be subjected to Article 8 (1) of the Constitution, which stipulates that the King shall be

enthroned in a position of revered worship and shall not be violated and that the state is obliged to prevent and contain any act which may constitute a violation against the King.

We deem that your rationale lacks congruence. In collectively signing up to propose the draft Act, we and other constituents proposed an amendment to the existing Penal Code without any intent to allow any persons to recklessly and arbitrarily violate the King. In the draft Act as referred to in (1), which we requested that you table for reading in the House, we have made it clear that there are various aspects of Article 112 of the Penal Code which are inappropriate. Structurally, it is currently included in the section concerning offences against national security. The punishment is also disproportionately harsh. Its enforcement procedures also pave the way for infringement of rights and liberties of the accused during the criminal process. In addition, the provision provides no exemption of guilt even in cases in which the comments, the views, or the criticism expressed are made in good faith to protect the Constitution and to uphold democratic rule. It has also become evident that in the present the law has been exploited as a political tool or has been subjected to abuse and misuse not in compliance with the spirit of the law. Amending the provision is therefore inevitable, in order to bring the institution of the monarchy in accordance with democratic principles.

The draft Penal Code Amendment Act (No....) B.E..... proposed by us and other signatories is fundamentally compatible with Chapter III, “Rights and Liberties of Thai People,” since the existing Article 112 explicitly circumscribes the right to freedom of expression which is supposed to be protected by Article 45 of the Constitution. Also, the prescribed punishment of imprisonment of three to fifteen years compromises the exercise of the right and liberty in one’s life and person as provided for by Article 32. It also affects a person’s rights in the judicial process provided for by Article 39 and 40. In addition, the punishment prescribed in Article 112 is not proportionate to the gravity of the offence. It is therefore a breach of Article 29 which provides for the extent of necessity whereby restriction can be placed on certain rights and liberties.

The amendment of Article 112 as per the draft Act has nothing to do with Article 8(1), which states that “The King shall be enthroned in a position of revered worship and shall not be violated,” as you claimed. Article 8(1) essentially reinforces the notion that Thailand is a democratic form of government with the king as head of state. The term “inviolability” simply means that no one is allowed to bring a case or to prosecute the King as per the principle that goes “the King can do no wrong” since the King shall never commit any act by himself, but there is always a person to countersign the royal command and the person who countersigned is the liable person instead of the King. As for the phrase “shall be enthroned in a position of revered worship,” it is devised so as to confer honor on the person enthroned as the King. It is technically a proclamation and does not make it compulsory for any person to do so as there is no penalty for any persons who fail to observe it. Similar clauses can be found the Constitutions of Denmark and Norway. The provision of Article 8 simply reinforces the notion that the monarchy is an important political institution of the Kingdom and is consistent with democratic rule. The purpose of Article 8 is not to curb a person’s rights and liberties or to impose any criminal punishment on any person.

You have decided that the draft Penal Code Amendment Act (No....) B.E..... is concerned with Chapter II, “The King,” and the right to freedom of expression as provided for by Article 45 has to be subjected to Article 8 (1) of the Constitution which stipulates that the King shall be enthroned in a position of revered worship and shall not be violated and therefore the draft Act to amend the Penal Code is not compatible with Chapter III, “Rights and Liberties of Thai People,” and Chapter V, “Directive Principles of Fundamental State Policies,” and therefore it cannot be read by the House as required by Article 163 of the Constitution. We deem that your decision was made based on factual inaccuracies and is not legally correct. Even though the Article 112 of the Penal Code is concerned with the King, it does not mean that since it is related to the King, it shall have no ramifications on the rights and liberties provided for in Chapter III, “Rights and Liberties of Thai People.” The evidence clearly indicates that the punishment imposed by Article 112 impacts the exercise of the rights and liberties of persons.

In addition, your decision indicated in (2) misrepresents relevant laws. It is stated in your letter that the proposed amendment of Article 112 as per (1) shall enable a person to have freedom of expression without limitation and as a result she or he may express opinions or commit acts which violate the King and that the person shall enjoy impunity and a lack of liability. It is very clear that the proposed amendments by the petitioners shall have no such effect.

We and other constituents, altogether 30,383 persons, have proposed the draft Penal Code Amendment Act (No....) B.E..... to the House of Representatives. We aimed for the House, which is where the representatives of the people meet, to take the opportunity to consider amending and improving the aforementioned flaws of Article 112 of the Penal Code, in order to uphold the value of all relevant constitutional provisions. It should enable the legal provisions to be made most suitable and in harmony with the rule of law and democratic rule with the king as head of state. In other words, it shall help to enhance the protection of the right to freedom of expression as provided for by Article 45, and at the same time help to maintain the most revered position of the King as stipulated in Article 8. Last but not least, it shall help to uphold Article 3(1) of the Constitution regarding the sovereign power of the Thai people. This is the cardinal rule among all other constitutional provisions and no incompatibility with this rule can result from the enforcement of other constitutional provisions or laws.

2. Your decision as the Speaker of the House to deny the reading of our proposed amendment as per (2) is deemed an administrative order as per the Administrative Procedure Act B.E.2539 (1996) coupled with the Act on Governing the Signing of Petition to Propose Laws B.E 2542 (1999). The order made by the Central Administrative Court no. 2005/2555 ruled that compliance with Article 30 of the Administrative Procedure Act B.E.2539 (1996) has to be completed prior to issuing any order such as yours.

It is deemed that your decision to disallow the House to read our proposed amendments is in breach of Article 30 of the Administrative Procedure Act B.E.2539 (1996). And we, representatives of the constituents who sign petitions to propose the amendment, have not been

included in the decision-making process thus far and we have not been well-informed or given the chance to adequately provide our opinions and arguments prior to the issuance of the order. As you have failed to comply with the procedural requirements prior to issuing the order, and since no exemptions were available to waive such requirements, your order is thus unlawful.

Based on the aforementioned arguments, we disagree with the decision made by you in your capacity as the Speaker of the House as per letter (2). We would like to submit our petition to appeal your decision as you are considered a competent officer as per Article 2(15) of Ministerial Regulation no. 4 (2007) and the Administrative Procedure Act B.E.2539 (1996).

Please kindly review our appeal and reconsider your decision as per (1) at your earliest convenience. We request that you, as the Speaker of the House of Representatives, proceed with the appeal process against your decision in compliance with legal procedure.

Yours sincerely,

Appellants

(Prof Emeritus Charnvit Kasetsiri)

(Prof Dr. Nidhi Eoseewong)

(Assoc Prof Dr. Puangthong Pawakapan)

(Assoc Prof Dr. Worachet Pakeerut)

(Asst Prof Dr. Yukti Mukdawijitra)

(Mr. Rawee Siri-issaranand)