

Translated Judgment

Drafting a Law Is Not Overthrow: Constitutional Court Ruling No. 3/2567

*Tyrell Haberkorn**

I. INTRODUCTION

Article 49 of the 2017 Constitution of the Kingdom of Thailand stipulates that, “No person shall exercise rights or liberties to overthrow the democratic regime of government with the king as head of state.” Should they observe such exercise, citizens have the right, if not obligation, to petition the Attorney General and Constitutional Court to take action to cease it.

Although intended to protect democracy against coups, of which there have been 13 since the end of absolute monarchy on 24 June 1932, usage of Article 49 has instead paradoxically emerged as a tool suppress democracy and human rights. The two Article 49 rulings thus far penalize the people for participating in politics, equate change of the status quo with rebellion, and aim to prevent the imagination of a different polity. Transformation of the very meaning of *law*—and who it is meant to serve—is at the core of these rulings.

The Constitutional Court made its first Article 49 ruling in late 2021 and concluded that peaceful calls for reform of the monarchy by democracy activists in

* Professor of Southeast Asian Studies, Department of Asian Languages and Cultures, University of Wisconsin-Madison, tyrell.haberkorn@wisc.edu. An earlier version of this introduction and translation of Constitutional Court Ruling No. 3/2567 was published by the Justice in Southeast Asia Lab at the University of Wisconsin-Madison. See Constitutional Court Ruling No. 3/2567, translated by Tyrell Haberkorn, “Justice in Translation 2/2024” (May 2024) Justice in Southeast Asia Lab, University of Wisconsin-Madison Center for Southeast Asian Studies <<https://seasia.wisc.edu/wp-content/uploads/sites/1794/2024/05/Justice-in-Translation-No.-2-2024.pdf>>. [Editors’ Note: This is not an official translation. At the date of online publication, an English translation of the decision had not been provided by the Constitutional Court.]

2020 constituted overthrow.¹ The movement had three primary demands: for General Prayuth Chan-ocha, the prime minister who was a holdover from the most recent coup regime of the National Council for Peace and Order (NCPO, 2014–2019), to resign; for the 2017 Constitution, drafted by an NCPO-appointed body, to be revoked and a new one drafted through a participatory process; and for the institution of the monarchy to be reformed. Elaborated through a set of 10 demands by the United Front of Thammasat and Demonstration (UFTD), a student group based at the historic center of student protest, the call for reform of the monarchy aimed to limit its political and economic power, increase transparency, and importantly, revoke Article 112 of the Criminal Code. Article 112 defines the crime and stipulates the punishment for alleged *lèse majesté*: “Whoever defames, insults, or threatens the king, queen, heir-apparent or regent shall be subject to three to 15 years imprisonment.” Part of the Criminal Code since its last major revision in 1956, and amended to increase the punishment following the 6 October 1976 massacre and coup, the use of the law has increased exponentially over the past 20 years. Those who have faced prosecution and punishment under Article 112 have done so for performing in plays, writing graffiti in bathrooms, editing magazines, having conversations in taxis, and posting on social media. Although the law stipulates defamation, insult, and threat to the monarchy as criminal, merely questioning the role and place of the monarchy in the polity is enough to face prosecution.

The Constitutional Court argued that calling for reform equated overthrow of rule by democracy with the king as head of state. Three specific activists—Arnon Nampa, Panusaya Sitthijirawattanakul, and Panupong Jadnok—were named in the petition, but the ruling was extended to the movement as a whole. The ruling was confusing for multiple reasons. First, how could peaceful calls for reform constitute overthrow of rule? Second, since both the government and the monarchy remained wholly intact, how could there be any concern about their overthrow? Instead, it was the activists who called for reform whose lives have been upturned by harassment, threats and unjust criminal prosecution.

The Constitutional Court made its second Article 49 ruling earlier this year. The petition argued that Pita Limjaroenrat, the leader of Move Forward Party (MFP), and the party itself were engaged in overthrow of rule through their proposal of a draft amendment of Article 112. The draft law was proposed to Parliament in 2021, but never made it to the floor because the Speaker decided not to advance it. The draft was then one of the 300 policy proposals used by MFP ahead of the May 2023 general election. The Constitutional Court ruled that the party had to cease advancing the proposal. Daring to imagine changing the law, amending the law, amounted to overthrow.

¹ A translation of this ruling and related documents is available from the Justice in Southeast Asia Lab. See “Constitutional Court Ruling No. 19/2564: A Selection of Documents,” translated by Tyrell Haberkorn, “Justice in Translation 7/2021” (December 2021) <<https://seasia.wisc.edu/wp-content/uploads/sites/1794/2022/06/Justice-in-Translation-7-CORRECTED-FINAL.pdf>>.

It is tempting to dismiss both rulings as the unjust actions of a judiciary that always sides with the monarchy and the state over the people.² But to do so would be foolish. Instead, we—as scholars, activists, and observers—should take the decisions seriously. In the first ruling, the Constitutional Court assessed calls for reform—that remained unimplemented—as overthrow of rule by democracy with the king as head of state. In the second ruling, the Constitutional Court found that the proposal of a draft law—that remained unexamined by Parliament, let alone enacted—was overthrow of rule by democracy with the king as head of state. A few preliminary questions arise. First, what are the elements of rule by democracy with the king as head of state? Second, what is overthrow of such a regime? If calling for reform and proposing a law are forbidden, it is unclear what democracy means. Third, how are these rulings affecting the lives of individuals and the polity? While Constitutional Court rulings do not automatically translate to criminal charges of rebellion or sedition, all of those named in the first ruling are among the nearly 300 people being prosecuted for violation of Article 112 of the Criminal Code. In the case of the second ruling, there is already an attempt to dissolve the Move Forward Party. Fourth, how might the rulings be understood and examined as part of a broader set of processes to reshape the law, limit the possibility of justice, and foreclose political participation in the Thai polity?

Note on the Translation

This translation hews very close to the original for purposes of accuracy. At times, legal writing in Thai omits the subject of a sentence or other words that would be present in English. Therefore, when needed for clarity, additional words are added in [].

² See ธงชัย วินิจจะกุล, “‘นิติรัฐอภิสิทธิ์ และราชานิติธรรม ประวัติศาสตร์ภูมิปัญญาของ Rule by Law แบบไทย,’ ปาฐกถาพิเศษป่วย อังภากรณ์ ครั้งที่ 17” [Thongchai Winichakul, “‘The Legal Privileged State and Royalist Rule of Law: History of the Genealogy of Thai-style Rule by Law,’ 17th Puey Ungpakorn Special Lecture”] *Way Magazine* (9 March 2020) (Thai), and Eugénie Mérieau, *Constitutional Bricolage: Thailand’s Sacred Monarchy vs. the Rule of Law* (Hart Publishing 2022) <<https://doi.org/10.5040/9781509927722>>.

II. TRANSLATION

[State Emblem]
In the Name of His Majesty the King
The Constitutional Court

Ruling No. 3/2567

Matter for Examination No. 19/2566
31 January 2024

Between

Mr. Theerayuth Suwankaesorn, Petitioner

And

Mr. Pita Limjaroenrat, Leader of Move Forward Party, Respondent No. 1
Move Forward Party, Respondent No. 2

Re: Petition for the Constitutional Court to Rule in Accordance with Article 49 of the Constitution

Mr. Theerayuth Suwankaesorn (Petitioner) submitted a petition for the Constitutional Court rule in accordance with Article 49. The facts in the petition and accompanying documents can be summarized as follows:

The Petitioner claimed that on 25 March 2021, Mr. Pita Limjaroenrat (Respondent No. 1), the leader of the Move Forward Party at that time and the Move Forward Party (Respondent No. 2), together proposed a draft Amendment of the Criminal Code (No. . . .), B.E. (amendment regarding the crime of defamation) to the speaker of parliament in order to abolish Article 112. The draft of Article 4 stated, “Revoke Article 112 of the Criminal Code, which was amended by National Administrative Reform Council Order No. 41, issued on 21 October 1976,” and the draft of Article 6 stated, “Add the following to Title I/II, Offences Relating to the Honor of the King, Queen, Heir-Apparent, or Regent, Article 135/5, Article 135/6, Article 135/7, Article 135/8 and Article 135/9 in Book 2 of the Criminal Code.” The draft also proposed to change the category of the offence from originally being in Book 2, Title 1, Offences Relating to the Security of the Kingdom, Chapter 1, Offences Relating to the King, Queen, Heir-Apparent, or Regent to be Chapter 4, Offences Related to Friendly Relations with Foreign Countries. It is a reduction of the level of protection of the institution of the monarchy and an amendment of the punishment according to Article 112 of the Criminal Code from originally stipulating that “Whoever defames, insults or

threatens the king, queen, heir-apparent or regent shall be subject to imprisonment of three to fifteen years,” to “Article 135/5, Whoever defames, insults or threatens the king shall be subject to imprisonment of no more than one year, a fine of no more than 300,000 baht, or both imprisonment and a fine,” and “Article 135/6, Whoever defames, insults or threatens the queen, heir-apparent or regent, shall be subject to imprisonment of no more than six months, a fine of no more than 200,000 baht, or both imprisonment and a fine.” This was a proposal to make the punishment under Article 112 less than the punishment of defamation according to Article 328 of the Criminal Code which has a punishment of no more than two years and a fine of no more than 200,000 baht. The draft of Article 6 also includes the addition of Article 135/7, “Whoever criticizes, expresses opinion, or makes a statement in good faith, to preserve rule by democracy with the king as head of state, to uphold the constitution, or for the public good, will not be guilty according to Article 135/5 and Article 135/6,” and Article 135/8, paragraph one, “For the offences in this chapter, if the accused can prove that what they were accused of [saying, writing, etc.] is true, then they shall not be subject to punishment.” It is the creation of an opening for individuals to violate the royal prerogative by criticizing the king, queen, heir-apparent or regent without it being a crime or being subject to any punishment. And adding in Article 135/9, paragraph one, “The offences in this chapter are compoundable offences” and paragraph two, “The Royal Household Bureau is to be the complainant and is the injured party for offences related to the honor of the king, queen, heir-apparent or regent,” is a proposal to make Article 112 of the Criminal Code a compoundable offence similar to the crime of defamation of ordinary people by making the Royal Household Bureau the only complainant and injured party.

While campaigning for the general parliamentary election in 2023, both Respondents proposed that Article 112 be abolished, with the same content as the Amendment of the Criminal Code (No. . . .), B.E. . . . (amendment regarding the crime of defamation), by setting it as a policy of the party, Respondent No. 2, and continuously campaigning on this issue. For example, on 24 March 2023, Respondent No. 1 gave a speech on the stage of the party, Respondent No. 2, at the public park in Nakhon Laem Chabang municipality in Chonburi province, asserting the policy of the party, Respondent No. 2. There was activity on the stage with a poster with the text of “Do you think that Article 112 should be abolished or amended?” Respondent No. 1 took a red sticker and put it in the slot for “Abolish” and the news reported that “Tawan-Bam went on the Move Forward stage, asked if they would abolish or amend Article 112, Pita answered and apologized.” On 18 April 2023, Respondent No. 1 spoke on the program “Election 2023 Debate,” broadcast by Thai Rat Online TV on YouTube, at minutes 0.01–0.45, “. . . the first point is the reduction of punishment. 3 to 15 years is equivalent to manslaughter. I think this punishment is too high. It is possible to reduce it to approximately 1 year. Second is that the accuser should not be able to be just anyone. It should be the office of the king’s private secretary who can bring an accusation. Third is that because it is in the chapter on national security, it causes there to be problems with the judicial discretion of its use and enforcement. It should be

removed” On 25 April 2023, Respondent No. 1 debated on the program, “Dr. Warong Battles with Pita on Article 112, Seripisut asks to join the debate,” broadcast by The Standard on YouTube. At minutes 4.00–5.25, he said that, “. . . I have to differ from the doctor on three points. The first is that the punishment of 3 to 15 years is equivalent to manslaughter. This is a law that protects the head of state that is the harshest in the world, if not the harshest ever. I have searched without finding any to this degree. We want to reduce the punishment to only 1 year. The second is that anyone can bring a case. It should be the Royal Household Bureau that is the accuser. Third, it should be taken out from the chapter on security, in order for the [accused to have the] opportunity to have the presumption of innocence first, when it is arises in Thailand” On 22 May 2023, Respondent No. 1 and the party that is Respondent No. 2 signed a memorandum of understanding (MOU) to form government that was broadcast by Thai News on YouTube. At minutes 15.38–16.09, he said that, “. . . There will be a debate in parliament on the proposal of the amendment of Article 112, and we will work together to stop the problems of Article 112. Move Forward Party maintains that we will do so. On 24 February, we brought it to parliament already. But there was no resolution. But this time, I think that there will be success and we will accomplish it. It remains proposed and will be carried out by the Move Forward Party” And on 30 May 2023, Respondent No. 1 gave an interview to the Southeast Asia correspondent for BBC’s International Service on the topic of “Pita Limjaroenrat: Not the Lawmaker You Expect,” broadcast by BBC Thai News on YouTube. There was a translation of the end of the interview about the policy to amend the lèse majesté law that, “. . . because it is what we promised the people. We have enough of a consensus. We received votes from 14 million people. They understand. It is clear and transparent that this is one of the targets that we wish to push forward” And on 3 June 2023, Mr. Sondhi Limthongkul, had the opinion in his program “Sondhitalk BBC sets up Pita: Sondhitalk (An old man tells stories)” disseminated via YouTube that “. . . there is no reason that would cause the party to stop pushing forward this issue. Mr. Pita answered Jonathan Head’s question that it is the policy that the party promised the people and 14 million people voted for Move Forward in the election”

The view of the Petitioner is that the Constitutional Court had Ruling No. 19/2564 rule that the Thai institution of the monarchy is an important pillar that is essential in rule by democracy with the king as head of state. Any action that has the intention to destroy or cause the institution of the monarchy to cease to exist, whether from speaking, writing, or various actions which cause the effect of the institution being subverted, devalued, or weakened, demonstrates an intention to overthrow the institution of the monarchy. Therefore, the exercise of rights or freedoms to demand the abolition of the law that prohibits people from violating, insulting or defaming the institution of the monarchy, which the aforementioned amendment of the Constitution and the law would have the impact of making the institution of the monarchy no longer be in a position of respect and veneration, would lead to the creation of agitation and insubordination among the people, and is an exercise of rights or freedoms that is in excess of what is appropriate and would impact or be

dangerous to state security and the peace and order and good morals of the people. It will lead to the subversion of rule of democracy with the king as head of state. Article 211, paragraph 4, of the Constitution decrees that Constitutional Court rulings have binding effect on parliament, the cabinet, the courts, independent organizations, and state agencies. The aforementioned ruling of the Constitutional Court therefore binds the Constitutional Court to have to rule the same way in this case.

The actions of the two Respondents is the exercise of rights or freedoms in the expression of opinion, speaking, writing, publication, advertising and communicating via other methods according to Article 34 of the Constitution and the liberty in coming together to form a political party according to Article 35 to abolish Article 112 of the Criminal Code, by proposing the draft Amendment of the Criminal Code (No), B.E. . . . (amendment regarding the crime of defamation) and using it as a policy in election campaigning, by doing so continuously, is an action with the intention to subvert and devalue the institution of the monarchy, and aimed at gaining political benefit without consideration for the important principles of rule by democracy with the king as head of state. It is a danger to state security. The actions of the two Respondents are overthrow of rule by democracy with the king as head of state according to Article 49, paragraph one, of the Constitution.

The Petitioner submitted the petition to the Attorney General on 30 May 2022 and requested that the Attorney General request that the Constitutional Court rule and order the two Respondents to cease their actions. But the Attorney General did not do so within fifteen days from the day that they received the petition according to Article 49, paragraph three, of the Constitution. The Petitioner therefore submitted the petition to the Constitutional Court to request that they rule according to Article 49 as follows:

- 1) The actions of the two Respondents contravene Article 49 of the Constitution;
- 2) Order the two Respondents to cease their actions to abolish or amend Article 112 of the Criminal Code;
- 3) Order for the two Respondents to cease the expression of opinion, speaking, writing, publication, advertising and communicating via other methods in order for there to be abolition or amendment of Article 112 of the Criminal Code, and for these aforementioned actions to not arise in the future.

The Petitioner submitted an additional petition which can be summarized as follows: the drafting of the draft Amendment of the Criminal Code (No. . . .), B.E. . . . (amendment regarding the crime of defamation), which the two Respondents submitted to the speaker of parliament on 25 March 2021, was not examined in parliament as Mr. Suchat Tancharoen, the first deputy speaker of parliament at that time, was the person who reviewed and set the agenda and thought that the aforementioned draft law may be in contravention with Article 6 of the Constitution.

Therefore, he sent it back to the two Respondents to revise. But the two Respondents did not do so. And Mr. Chaithawat Tulathon, the secretary of the party, Respondent No. 2, at that time, gave an interview to the media that the two Respondents aimed to abolish Article 112 of the Criminal Code, even though during the debate in parliament on 13 July 2023 there were members of parliament who disagreed with the policy.

The first matter that the Constitutional Court must examine is whether or not the Constitutional Court has the authority to accept the petition for examination according to Article 49. The view of the court is that the facts according to the petition and the accompanying documents are a case in which the Petitioner has asked the Constitutional Court to rule on whether or not the actions of the two Respondents are the exercise of rights and freedoms to overthrow rule by democracy with the king as head of state. The Petitioner submitted a petition to the Attorney General to request that he forward the petition to the Constitutional Court to be ruled on according to Article 49, paragraph two, of the Constitution. But the Attorney General did not do so within fifteen days of the Petition being submitted. The case is therefore one in which according to Article 49, paragraph three, the Petitioner can submit the petition directly to the Constitutional Court. Therefore, an order was issued to accept this petition for examination and ruling. The two Respondents were asked to submit counter-statements to the accusation and for the benefit of the examination. The Attorney General was informed that he was to send any additional evidence received swiftly to the Constitutional Court.

The Attorney General sent related information and evidence that can summarized as follows: On 25 March 2021, Respondent No. 1, Mr. Picharn Chowapattananawong, Mr. Thiratchai Panthumat, Miss Yanthicha Buaphuan, Miss Sirikanya Tansakun, Mr. Kanchanaphong Chongsuthanamanee, Miss Benja Saengchan, Police Major Chavalit Laohaudomphan, Mr. Nitipon Piwmow, Mr. Taophipop Limjitrakorn, Mr. Natcha Boonchaiinsawat, Mr. Pakornwut Udompipatskul, Mr. Padipat Suntiphada, Mrs. Amornrat Chokpamitkul, Mr. Prasertpong Sornnuwat, Mr. Parinya Chuayket Kirirat, Mr. Nattawut Buaprathum, Mr. Natthaphong Ruangpanyawut, Miss Nathiphat Kunsetthasit, Miss Suthawan Suban Na Ayutthaya, Mr. Woraphop Viriyaroj, Mr. Khamphong Thephakham, Mr. Somkiat Thanomsin, Mr. Thongdang Benjapak, Mr. Jirat Thongsuwan, Mr. Jarat Khumkhainam, Mr. Suthep Uan, Mr. Thanawat Komluangwat, Mr. Apichart Sirisunthorn, Mr. Ongkan Chaiyabut, Police Major Suphisan Phakdinaranat, Mr. Nattapon Seubsakwong, Mr. Sakdinai Noomnu, Mr. Manop Keereepuwadol, Mr. Wayoh Asawarungruang, Miss Wanwipa Maison, Mr. Wiroj Lakkhanaadisorn, Mr. Surachet Prawinwongwut, Mr. Thawisak Thaksin, Mr. Somchai Fangchonchit, Mr. Somkiat Chaiwisutthikul, Mr. Wuthinan Boonchu, Mr. Rangsiman Rome, and Mr. Surawat Thongbut, who are members of parliament affiliated with the party that is Respondent No. 2, a total of 44 people. They endorsed the proposal of a draft amendment to the 2019 Act to Amend the Criminal Code (No. . . .), B.E. (defamation charge). But the draft was not assigned for discussion during parliamentary session as the speaker of parliament examined the content of Article

135/7 and 135/8 (draft of Article 6) and concluded they might contravene Article 6 of the Constitution and so the draft law was flawed. Those who endorsed the proposal all signed in request of the amendment according to Rule 111 and Rule 112 of the 2019 Rules of Parliamentary Procedure. The facts show that the Petitioner submitted a petition to the Election Commission on 22 May 2023 and 24 May 2023 to examine the situation that Respondent No. 2 has continuously acted to abolish Article 112 of the Criminal Code and this be a danger to rule of democracy with the king as head of state according to Article 92, paragraph one (2), of the 2017 Organic Law on Political Parties. But the Election Commission issued an order to not accept the petition.

The two Respondents submitted a petition to extend the period of time to submit the counter-statements twice, each time for 30 days, each instance from the day that they were to submit the counter-statements. The Constitutional Court issued orders to allow these requests.

The two Respondents submitted a counter-statement and accompanying documents. They can be summarized as follows:

- 1) Article 49 of the Constitution has an external element, which is “the exercise of rights or freedoms” and has a special intention which is “in order to overthrow rule by democracy with the king as head of state.” Actions that are the overthrow of rule by democracy with the king as head of state must be the exercise of rights or freedoms with a special intention to destroy and end rule by democracy with the king as head of state. Adding names to propose the draft Act to Amend the Criminal Code (No. . . .), B.E. (defamation charge) by members of parliament affiliated with the party that is Respondent No. 2 is an action in accordance with the duties and powers of members of parliament according to Article 133, paragraph one (2) of the Constitution. It is part of the legislative process that there must be discussion and debate, which leads to adjustment and change. Draft laws must be approved by the Parliament and Senate according to Articles 136 and 137 of the Constitution, and the king, who is another level of authority who can suppress draft laws according to Article 146 of the Constitution. If a draft law passes the review mechanisms by the legislative branch, the Constitutional Court still has the duty and authority to assess the constitutionality of a law or draft law according to Article 210, paragraph one (1), of the Constitution. In addition, Article 112 of the Criminal Code is not a law that sets the form of rule. The amendment of the aforementioned law therefore does not impact or cause Article 1 or Article 2 of the Constitution to be null. It does not have an impact or dispossess the position or authority of the king, which is guaranteed by Section 2 of the Constitution, Article 6 to Article 24.
- 2) According to the principles of liberal democracy, members of parliament are representatives of the people who have the duty to advance the policies with which they campaigned for votes. That the members of parliament added their

names to endorse the draft law in accordance with the policy presented to the people is an expression of the opinion of the people via parliamentary means used by the members of parliament. The Constitution provides protection of the freedom of expression of opinion according to Article 34, paragraph one. As there is no article of law that has been specifically enacted to forbid members of parliament from proposing draft laws, the exercise of authority to intervene in the legislative process therefore impacts and dispossesses the people of freedom of expression.

Article 49, paragraph one, decrees that the exercise of rights and freedoms that is overthrow must be the action of an “individual” and does not extend to “political parties.” The proposal of a draft law by members of parliament affiliated with Respondent No. 2 is the exercise of duty and authority as members of parliament, which must not be under the command or control of the party that is Respondent No. 2 according to Article 114 of the Constitution.

- 3) The amendment of Article 112 of the Criminal Code is a process that must preserve the respected and venerated position of the institution of the king. The aforementioned law has been used as a political instrument to suppress the people. It has caused the institution of the monarchy to be pulled into being a party to the conflict with the people. It has impacted the respected and venerated position in a way that may have been avoidable. There have been previous attempts to revise and amend Article 112 of the Criminal Code. An example is from 30 December 2021, when the Truth for Reconciliation Commission prepared a report of their views on the problems of the law and enforcement of Article 112 of the Criminal Code.
- 4) Even Article 211, paragraph four, of the Constitution decrees that for Constitutional Court rulings to have a binding effect on other cases, the points of fact and law in such cases must be the same. The case in Constitutional Court Ruling No. 19/2564 is one in which the facts and behavior are that it was an instance of demonstrations calling for a resolution of the problems of the institution of the monarchy through proposing 10 demands and to revoke Article 6 of the Constitution and Article 112 of the Criminal Code. The issue in this case is that members of parliament affiliated with the party that is Respondent No. 2 proposed a draft law to amend Article 112 of the Criminal Code, which is a legislative act. The facts of the two cases are therefore different. Constitutional Court Ruling No. 19/2564 does not have a binding effect on the Constitutional Court in this case.
- 5) The draft Amendment of the Criminal Code (No. . . .), B.E. (amendment regarding the crime of defamation) is not a draft law that was proposed in order to abolish Article 112 of the Criminal Code. There are actions that are violations

of the aforementioned law. The proposal is to change the numbering of the law to organize the sections of the law systematically. The two Respondents did not propose to move the crime according to the law to be Chapter 4, Offences Against Relations With Foreign States, but proposed to move the crime to be particularly and systematically about the reputation of the king, queen, heir apparent and regent. It is not the reduction of the protection of the king because the Criminal Code does not stipulate a hierarchy or degrees of importance of the sections and chapters of law. Every article that stipulates crimes in the Criminal Code is equally important. Organizing the sections and chapters of the laws does not cause there to be different legal effect. The two Respondents did not only propose to reduce the punishment for Article 112, but proposed to amend the punishment for all defamation and insult of individuals in various different statuses. Therefore, the crime of defaming the king would have a punishment of imprisonment of not more than one year or a fine of no more than 300,000 baht, or both a fine and imprisonment. That is higher than the punishment for this crime committed against ordinary people and this proposal to reduce the punishment is in accordance with the proposal that the Khana Nitirat made.

The proposal of draft Article 6 to add Article 135/7 and Article 135/8 is based on the principle of democracy that protects the rights and freedoms of expression of opinion. Those who commit the crime or are accused and who can prove that their actions are taken in good faith are to be exempt from guilt and punishment. This is in accordance with the speech of King Bhumibol Adulyadej on 4 December 2005. The addition of content to Article 135/9 is the setting of the Royal Household Bureau as the injured party with the authority and duty to initiate and stop cases; this will maintain the authority of the institution of the monarchy to initiate or stop a case at any time.

- 6) Article 42, paragraph one (2), of the 2018 Organic Act on the Procedures of the Constitutional Court stipulates that the Petitioner must narrate the matter and all of the actions for which they request the Constitutional Court to issue an order, along with providing the related facts and behavior. The Petitioner cited opinion and the interviews given by individuals, which do not have the character of being substantiated facts and the narration in the petition on the actions of the two Respondents is conjecture and may contravene the Constitution.

Regarding the news of the parliamentary meeting and the interview given by the secretary of the party, Respondent No. 2: this is merely the reproduction of headlines without noting the justification for why this is a primary part of the accusation. The two Respondents may not understand the accusations sufficiently to be able to respond. The petition of the Petitioner is therefore not in line with the Article 42, paragraph one (2) of the 2018 Organic Act on the Procedures of the Constitutional Court.

Respondent No. 1 stated that when, on 24 March 2023, he took a red sticker and put it in the slot to abolish Article 112, it was merely to persuade those who asked him and listening to the speeches to calm down and listen to the reasons why it is more appropriate to amend Article 112 than abolish it. While campaigning for the parliamentary election, Respondent No. 1 used the policy of the amendment of Article 112. There were no speeches or campaigning on a proposal to abolish the aforementioned law. When Respondent No. 1 held a press conference to sign the MOU to form government, he answered reporters' questions by noting that he would carry out the amendment of Article 112 through parliamentary means only. The amendment of the aforementioned law was not in the MOU to form a government. In addition, the excerpts from the media programs were his personal opinions, and the Petitioner reordered the statements in the interviews of Respondent No. 1 to be incorrect and then included them as evidence in this petition. This does have the status of substantiated facts. This is a situation in which neither key issue appears nor are all of the actions that are the reason why the Constitutional Court must rule, along the related facts and behavior, present. The petition of the Petitioner is not in line with Article 42, paragraph one (2) of the 2018 Organic Act on the Procedures of the Constitutional Court.

For the benefit of the examination, on the basis of the Article 27, paragraph three of the 2018 Organic Act on the Procedures of the Constitutional Court, related agencies were asked to make additional counter-statements in writing according to the points that the Constitutional Court set. This can be summarized as follows:

- 1) The National Police Commissioner sent related information and evidence. It can be summarized as that there were members of the party executive committee, members of parliament, and members of the party, Respondent No. 2, who joined or appeared in activities related to the campaign to abolish or amend Article 112 of the Criminal Code as follows:

Between 28 May 2022 until 23 January 2023, Mr. Krithiran Lerturitphakdi, Mr. Sakon Suntharanitkit, Mr. Setawan Tuaprakhon, Mr. Taweewong Tothawiwong, and Mr. Sahawat Khumkhong joined the activity of "Stand Stop Imprisonment" in Nakhon Sawan province, Pathumthani province, Ayutthaya province, and Chonburi province, respectively. All are members of parliament affiliated with the party that is Respondent No. 2. The aforementioned activity includes the demand to reform the judicial process, cease the prosecution of political cases, and for all political parties to have a policy to abolish Article 112. There is the standing and holding of signs that read "#Abolish A. 112."

Between 28 October 2021 and 31 October 2021, Miss Witsana Chunchavan, Mr. Piyarat Chongthep, and Mr. Rangsiman Rome joined the demonstration for the activity of

“The people in parliament, Walk on to abolish Article 112” in front of Parliament and “Ratsadornprasong Abolish Article 112” in the area of the Ratchaprasong intersection. All are members of parliament affiliated with the party that is Respondent No. 2. The demonstrations included the proposal to abolish or amend Article 112 of the Criminal Code. There was the collection of signatures of the people of 10,000 people. There was the setting up of a table with a poster attached to it that read “Abolish 112” “112 silences the people” and “Reform the institution of the monarchy.”

On 24 March 2023, the party that is Respondent No. 2 organized speeches by those from Move Forward Party at the municipal public park in Laem Chabang, Sriracha district, Chonburi province. Respondent No. 1 got up to speak on the stage and his opening comment was, “. . . Now, I, as the head of the Move Forward Party, have put a sticker saying abolish, but I have to apologize to the two juniors to let me amend it first for the following reasons. Regarding my answer to this question that why do we have to amend it, it is because I believe that there is a greater opportunity to amend it. I believe in the draft of Move Forward Party, whether it is the issue of no one using the institution to harm anyone, of being able to criticize without having to be imprisoned, to reduce the punishment, taking this or that law out of the area of security. No one will have to go to prison for merely asking a question anymore. If the brothers and sisters proposed a law to abolish Article 112 to Move Forward, I would support it also. Therefore, I have to apologize to the two juniors to please let me amend Article 112 in the parliament first. If the parliament won’t accept to amend it, Move Forward still come out to struggle together . . .”

- 2) The director of the National Intelligence Agency sent related information and evidence. It can be summarized that from 24 March 2021, the party that is Respondent No. 2 campaigned for the abolition or amendment of Article 112 of the Criminal Code both in the physical world and on social media. They did so by indicating that there were problems with the aforementioned law and that it was used as a political tool. This law was enforced against a great number of people, which caused the institution of the monarchy to have questions raised about it and to damage its reputation. The party that is Respondent No. 2 was impacted by the aforementioned law, as Miss Chonticha Changrew, a member of parliament affiliated with the party that is Respondent No. 2, and was released on temporary bail as a defendant accused of violation of Article 112 of the Criminal Code. They therefore proposed to amend Article 112 and used it to campaign for the general parliamentary election on 14 May 2023. The party that is Respondent No. 2 demanded the rights to bail for defendants accused of violation of Article 112 of the Criminal Code by claiming that the aforementioned right is a civil and political right according to international principles that Thailand adheres to as part of a network of 172 states. The members of parliament affiliated with the party that is Respondent No. 2 used their parliamentary position as collateral to request bail for defendants accused of violation of Article 112 of the Criminal Code, including Respondent No. 1, Mr.

Rangsiman Rome, a member of parliament affiliated with the party that is Respondent No. 2, Ms. Suthawan Suban Na Ayutthaya and Mr. Thongdaeng Benchapak, a former member of parliament affiliated the party that is Respondent No. 2.

- 3) The secretary of the National Security Council sent related information and evidence. It can be summarized that members of parliament, both those in the present and those formerly affiliated with the party that is Respondent No. 2, have campaigned to amend and abolish Article 112 of the Criminal Code as follows:

On 5 November 2021, Mr. Rangsiman Rome, a member of parliament affiliated with the party that is Respondent No. 2, posted a message on his personal Facebook account that “I signed to abolish Article 112. Anyone who is interested can sign at this link: www.no112.org.” He invited the people to abolish Article 112 of the Criminal Code.

On 10 June 2022 and 22 January 2023, Mrs. Amornrat Chokpamitkul, a former member of parliament affiliated with the party that is Respondent No. 2, went to provide encouragement to Mr. Piyabutr Saengkanokkul, the leader of the Progressive Movement, when he went to meet with investigating officials following a summons as a person accused of violating Article 112 of the Criminal Code. She held up a sign that said “#Abolish 112#” and posted to her personal Facebook account that, “. . . if parliament is not strong enough to join hands to help amend this law to be more just for society, then the only choice left will be to abolish Article 112 permanently following the demands of the people.”

On 24 January 2023, Miss Benja Saengjan, a member of parliament affiliated with the party that is Respondent No. 2, joined the “Stand Stop Imprisonment” activity to listen to and forward the three demands of the people. One of these includes “. . . 3. Political Parties must propose the policy to abolish #A112.” Signs were held up with the message “#Abolish 112.”

On 26 January 2023, Mrs. Panyarat Nanthaphusitanon, a member of parliament affiliated with the party that is Respondent No. 2, joined the “Stand Stop Imprisonment” activity and held up a sign that read “Abolish Article 112.”

- 4) The Criminal Court sent related information and evidence. It can be summarized as the names of accused or defendants who are members of the House of Representatives for party that is Respondent No. 2 and includes Miss Chonticha Changrew. Those who have requested bail or serve as bail guarantors include Mr. Natthapong Ruangpanyawut, Mrs. Amornrat Chokpamitkul, Mr.

Rangsiman Rome, Mr. Chavalit Laoudomphan, Miss Thirapat Kulsetthasin, Mr. Thongdaeng Benchapak, and Miss Suthawan Suban Na Ayutthaya.

For the benefit of the examination, on the basis of the authority according to Article 27, paragraph 2, of the 2018 Organic Act on the Procedures of the Constitutional Court, the Constitutional Court organized an inquisitory process of 6 witnesses. This included 4 expert witnesses, including Emeritus Professor Vitit Muntarborn, Associate Professor Puli Fuwongcharoen, Associate Professor Suphamit Bitiphat, and Assistant Professor Ronnakorn Bunmee. They provided written statements of facts and opinions to the Constitutional Court. Two individual witnesses, Mr. Pita Limjaroenrat and Mr. Chaithawat Tulathon provided written statements of the facts and opinion in advance to the Constitutional Court as well as testifying further in front of the Constitutional Court. The parties to the case examined all of this evidence between 12 to 13 December 2023. It can be summarized as follows:

- 1) Emeritus Professor Vitit Muntarborn provided that in the enforcement of sentences, there should be the opportunity for the judges to use their discretion in imposing a punishment that is not detention or imprisonment. The cases in which youth are accused should be carried out with the social standards in line with the Child Protection Act.
- 2) Associate Professor Puli Fuwongcharoen provided that the *lèse majesté* law and laws that are used to protect the head of state inevitably limit the people's freedom of expression. Regarding whether or not the aforementioned limiting of the freedom is appropriate and to what degree depends on the content of the law, the characteristics of its enforcement, and importantly, the situation of society. Having a law that protects the head of state from actions that are held to be threats or intimidation is not controversial.
- 3) Assistant Professor Ronnakorn Bunmee provided that Thailand has rule by democracy with the king as head of state. The status of the Thai king is in "a position of not being open to abuse according to Article 6 of the Constitution" and is "respected and venerated as the soul and unifier of the Thai people." Constitutional Court Ruling No. 19/2564 guaranteed the position of the king. The amendment of Article 112 of the Criminal Code should be done without abolishing the aforementioned article but making it to be most in line with the values and context of present-day Thai society.
- 4) Associate Professor Suphamit Bitiphat provided that the protection of the institution of the monarchy to be sustainably secure must involve finding a way for the value of the important institution in Thai culture to be in line with the values of international standards related to civil and human rights.

- 5) Respondent No. 1 testified that he did not have any thought to amend Chapter 2 on the king in the Constitution, but would amend the entire Constitution, including Chapter 2. It can be carried out under the conditions that the aforementioned amendment does not contravene Article 255 of the Constitution, which stipulates that the Constitution cannot be amended in way that changes rule by democracy with the king as head of state or the form of the state. The chapter about the king in the Thai Constitution has been amended many times already. Article 112 of the Criminal Code is a law that protects the head of state. There is no problem vis-à-vis rule by democracy with the king as head of state in Thailand. But it is setting the punishment that is appropriate to the crime to create a balance between the protection of the head of state and freedom of expression of the people. Respondent No. 1, as a member of parliament, once submitted a draft law to amend Article 112 of the Criminal Code. His consciousness was not under the command or order of anyone.

Respondent No. 1 used the proposal to amend Article 112 in campaigning, as it is a policy of the party that is Respondent No. 2 that was submitted to the Election Commission without being called to provide any additional response or any opposition from the Election Commission. At present, he is not using the proposal of the draft amendment of Article 112 of the Criminal Code in meeting with the people and does not have a plan to submit a draft law to amend Article 112 of the Criminal Code to parliament or to support its proposal in any way given this case in the Constitutional Court. Respondent No. 1 has never been involved in campaigning for or proposing to abolish Article 112 of the Criminal Code. He is not and has never been a person who committed the crime or was involved in committing the crime, never used to commit the crime or supported it or aided in any way those who have violated Article 112 of the Criminal Code. As individuals who are accused of violating Article 112 of the Criminal Code, as long as they have not had a final judgment that they are guilty, must be held to be innocent and have the right to be granted temporary release while the court is carrying out its examination. Respondent No. 1 has been a bail guarantor. Bail is an inherent right and the examination of whether or not to grant temporary release is at the discretionary power of the judiciary. Being a bail guarantor for individuals who have been accused of violating Article 112 of the Criminal Code or other crimes is not equivalent to supporting the commission of the accused crime.

The proposal of the draft Amendment of the Criminal Code (No. . . .), B.E. . . . (amendment regarding the crime of defamation) to parliament on 25 March 2021 did not involve any consultation with the party that is Respondent No. 2, but there was an understanding about it. Members of parliament are not under the command of anyone and have their own prerogative. The proposal of laws does not pass a resolution by the party executive committee. Members of parliament propose on their own in accordance with Article 112, paragraph one

(2), of the Constitution. There has been the use of Article 112 to prosecute the people, 268 cases, since 2020. In particular, there are 20 cases in which the accused are children or youth who are less than 18. This is the increased use of this law and it does not positively affect the institution of the monarchy. Respondent No. 1 wants to mitigate the political crisis. Therefore, he thinks that the matter can be brought into the [parliamentary] mechanism to find a social consensus. There will not be a monopoly on opinions present because proposing a law leads to the establishment of a committee, there is a senate, and there is the process of potential suppression at multiple stages. The legislative process is therefore a solution for society to have an institution of the monarchy that is the center of the heart and that is secure for the nation.

Respondent No. 1 has been the bail guarantor for Miss Tantawan (Tawan) Tuatulanon, an accused or defendant in an Article 112 of the Criminal Code case. He was contacted by a lawyer from Thai Lawyers for Human Rights. Respondent No. 1 believes in access to the right to bail and the principle of the presumption of innocence. The judges in the case have the right to decide whether or not an accused or defendant is granted bail. If a judge does not grant bail, it is not possible to be released. This does not mean that Respondent No. 1 agrees or disagrees with the actions of the accused. Regarding other crimes, Respondent No. 1 has never served as a bail guarantor because he has not been contacted in other cases. Respondent No. 1 has joined the political activity of “Stand Stop Imprisonment” in many statuses, including as an observer and a parliamentary committee member. He has not gone alone, but with representatives of many political parties and with the participation of the Minister of Justice. Even though Respondent No. 1 participated, he does not support the demands of the aforementioned group.

Respondent No. 1 thinks that the actions that are held to overthrow of rule by democracy with the king as head of state are the actions following Article 255 of the Constitution that change the form of rule from a single state or from rule by democracy with the king as head of state. But proceeding according to the legislative process according to constitutional duties and authority is not overthrow of rule. He agrees with Constitutional Court Ruling No 28–29/2555 that the protection of the head of state must be higher than the people. But what is important is that the setting of criminal punishment must be proportional. For example, in the time of R.S.118, the punishment [for lèse majesté] was set at three years imprisonment. Therefore, balance must be found between freedom of expression of opinion of society and the matters of rule and security of the state in many forms. This issue must be brought to enter the parliamentary process. The things that we think or imagine to be destruction or danger will be distilled and will disappear or be reduced.

The regulations of the party that is Respondent No. 2 include, in item 9, the political ideals of freedom, equality, and solidarity. It is a political ideal of the party that is

Respondent No. 2 that equality and keeping up with the world must be created. It is not related to having an intention to overthrow or change rule. The aforementioned principle is applicable to ordinary people. It is not related to the institution of the monarchy. The party that is Respondent No. 2 adheres to rule by democracy with the king as head of state (Constitutional Monarchy) only.

Respondent No. 1 does not know whether or not there is instigation to cause youth to violate Article 112 of the Criminal Code. But in the position of a political party or a member of parliament, he must attempt to reduce the problems so conflict will not arise. Respondent No. 1 once knew that the party executive committee and members of parliament of the party that is Respondent No. 2 expressed opinion on social media to abolish Article 112. Respondent No. 1 attempted to create understanding with the aforementioned individuals that the proposal to abolish is not in line with the ideals of the party and not in line with what the party proposed to the public. Respondent No. 1 and the party that is Respondent No. 2 insisted that it has to be an amendment of the law via the legislative process only. Regarding the members of the party at this time, there are approximately 80,000–90,000. Respondent No. 1 does not know which party members have also expressed this opinion. According to Document No. So. 33/1, Respondent No. 1 gave a speech in Chonburi province on 24 March 2023 that was the expression of his intention regarding the urgent situation. He reiterated the matter of the amendment of the law through the legislative process only. He has never supported the abolition of Article 112.

- 6) Mr. Chaithawat Tulathon testified that the party that is Respondent No. 2 has never proposed a draft amendment of Article 112 of the Criminal Code to parliament. But there have been members of parliament affiliated with the party that is Respondent No. 2 who have submitted the draft Act to Amend the Criminal Code (No. . . .), B.E. . . . (defamation charge), of which one of the articles to be amended is Article 112 of the Criminal Code. The proposal of laws by members of parliament is the prerogative of members of parliament. They are not under the command of the party that is Respondent No. 2. At present, the party that is Respondent No. 2 does not have a proposal to propose a draft mentioned of Article 112 of the Criminal Code given this case in the Constitutional Court. Article 112 of the Criminal Code is a law that protects the head of state. There is no problem vis-à-vis rule by democracy with the king as head of state in Thailand. But it is setting the punishment that is appropriate to the crime. To create a balance between the protection of the head of state and freedom of expression of the people. The party that is Respondent No. 2 does not have any thought to amend Chapter 2 on the king of the Constitution, but would amend the entire Constitution. It can be carried out under the conditions that the aforementioned amendment does not contravene Article 255 of the Constitution, which stipulates that the Constitution cannot be amended in way that changes rule by democracy with the king as head or state and the form of

the state. The Thai Constitution has had amendments to the Constitution with changes to the chapter on the king many times previously.

The party that is Respondent No. 2 is not and has never committed the crime or been involved in committing the crime, never used to commit the crime or supported it, or aided in any way those who have violated Article 112 of the Criminal Code. The witness does not know if people who violated Article 112 of the Criminal Code whose cases are final are members of the party. But there is a member of the party who has been judged by the Court of First Instance to be guilty of violation of Article 112 of the Criminal Code. This is a case in which an appeal is being considered by a higher court. According to Article 29, paragraph two, of the Constitution, there must be the presumption of innocence in criminal cases before there is a final judgment. Accused individuals cannot be treated as if they are guilty. Members of the party have freedom in their political expression. The party that is Respondent No. 2 is not of the disposition to control the political expression of individuals who are members of the party. If the actions of an individual who is a member of the party are a crime according to any law, they are not actions taken in the status of being a member of the party, but are their individual actions. The witness thinks that with regards to being a bail guarantor of a person accused of violation of Article 112 of the Criminal Code, as long as there is not a final judgment that the person is guilty, then the person must be presumed to be innocent. They have the right to be granted bail while the court is examining their case. That members of the party that is Respondent No. 2 are bail guarantors is their inherent right and the examination of whether or not to grant bail is at the discretion of the judiciary. It cannot be advanced that being a bail guarantor for a person accused of violating Article 112 of the Criminal Code or any other crime is equivalent to supporting the criminal actions of which they are accused.

The party that is Respondent No. 2 has never been involved in or supported the campaign or proposal to abolish Article 112 of the Criminal Code. The witness does not know if there are members of the party that is Respondent No. 2 who have been involved in or supported the aforementioned instance. And there is no resolution of the party to force the party members to campaign or propose the abolition of Article 112 of the Criminal Code.

Regarding the proposal of the law to amendment to Article 112 of the Criminal Code: there was not a resolution of the party that is Respondent No. 2 but it was the exercise of prerogative in the status of being a member of parliament to propose a draft law. That is to say, it is not every member of parliament that is affiliated with the party who is Respondent No. 2 who endorsed the proposal of the aforementioned draft law. Putting the policy on the issue of the amendment of Article 112 of the Criminal Code on the website of the party that is Respondent No. 2 does not require agreement or a resolution by the party beforehand. It is the duty of the party's media team to do so. All

300 of the party's policies were submitted to the Election Commission and did not have to further pass the party executive committee. And it is not necessary for the head of the party or the secretary of the party to know the total content of what is posted. Regarding the regulations of the party that is Respondent No. 2, item 9 includes the political ideals of freedom, equality, and solidarity. This means that the party that is Respondent No. 2 places importance on the promotion of the rights and freedoms of the people. There should be no one who is discriminated against. But the king, in the position of being the head of state, will receive special protection. That is to say, the witness cannot remember additional details behind the aforementioned political ideal of the party that is Respondent No. 2.

Regarding the point of joining the political activities and expressing opinions on social media online of members of the party that is Respondent No. 1 that are related to the campaign to abolish or amend Article 112 of the Criminal Code: sometimes, the members of parliament go to observe in the community or join in observation in the status as members of parliamentary committee members. During that period, there were many demonstrations in which fighting arose between the police and protestors. The witness himself joined in observation of the demonstration in front of parliament. But he did not get up to speak. Regarding the expression of opinion on social media online by members of the party that is Respondent No. 2: it is the expression of opinion by individuals, whether they are members of parliament or members of the party. The witness is unable to ascertain who has expressed what, how, and when. But the members of parliament affiliated with the party that is Respondent No. 2 have never submitted a draft law to abolish Article 112 of the Criminal Code or had a meeting on the aforementioned point. The Facebook account of the aforementioned party that is Respondent No. 2 has never disseminated or supported the abolition of Article 112 of the Criminal Code. On 13 December 2023, the witness was the bail guarantor for Miss Rukchanok Srinok, a criminal defendant in Red Case No. Or. 683/2565, on the violation of Article 112 of the Criminal Code. As Miss Rukchanok Srinok is a member of parliament affiliated with the party that is Respondent No. 2, the lawyer had the witness use his position and assets as guaranty for her bail. He has been a bail guarantor in many cases, not for any one particular accusation or crime. Providing bail for Miss Rukchanok Srinok, for her to have the right to fight her case outside until it is final, is an ordinary right in the judicial process that every citizen should receive. It does not mean that the bail guarantor supports the actions in any way.

The two Respondents submitted a closing statement. It can be summarized as the party that is Respondent No. 2 had a general meeting, No. 1/2020 on 14 March 2020, and had a general resolution to revoke the 2020 Move Forward Party Regulations and use the 2020 Move Forward Party Regulations (Amendment No. 1, 2020) until the

announcement of the use of the 2023 Move Forward Party Regulations which are in force now. There was the announcement of the political ideals of the party, which are “freedom, equality, solidarity.” The aforementioned phrase is the same phrase of the announcement of the political ideals of the Future Forward Party, according to No. 6, paragraph one, of the 2018 Future Forward Party Regulations. In Constitutional Court Ruling No. 1/2563, they ruled that the 2018 Future Forward Party Regulations were not a threat to rule by democracy with the king as head of state. No. 9, paragraph two, of the Move Forward Party Regulation further notes that “The Move Forward Party adheres to rule by democracy with the king as head of state.” This is the demonstration that the party that is Respondent No. 2 has the ideal to adhere to rule by democracy with the king as head of state and adheres to Article 6 of the Constitution.

The Constitutional Court has examined the petition, the additional petition, the counter- statements, the evidence from related agencies, the witness testimony, the statements or facts or opinions of expertise, the closing statements of the two Respondents and the accompanying documents. The Court holds that the case has problems of law and sufficient evidence to examine and rule. Therefore, the Court halted the inquiry according to Article 58, paragraph one, of the 2018 Organic Act on Procedures of the Constitutional Court. The Court determined that the point that had to be examined and ruled was whether or not the actions of the two Respondents were the exercise of rights and freedom to overthrow rule by democracy with the king as head of state according to Article 49, paragraph one.

Upon examination, the Court is of the view that Article 49, paragraph one, states that “No person shall exercise rights or freedoms to overthrow the democratic regime of government with the King as Head of State.” Paragraph two states that “Any person who has knowledge of an act under paragraph one shall have the right to petition to the Attorney General to request the Constitutional Court for ordering the cessation of such act.” Paragraph three states that “In the case where the Attorney General orders a refusal to proceed as petitioned or fails to proceed within fifteen days as from the date of receiving the petition, the person making the petition may submit the petition directly to the Constitutional Court.” And paragraph four states that, “The action under this section shall not prejudice the criminal prosecution against the person committing an act under paragraph one.”

The incontrovertible facts are that on 25 March 2021, Respondent No. 1 and members of parliament affiliated with the party that is Respondent No. 2, a total of 44 people, proposed the draft Act to Amend the Criminal Code (No), B.E. (defamation charge) to the speaker of parliament (Document Ro. 3). During the campaign for the general parliamentary election in 2023, Respondent No. 1 used the policy of the party that is Respondent No. 2 to campaign for votes. They proposed to amend Article 112 of the Criminal Code and have continued to proceed with this (Document Ro. 4). Both Respondents have continually campaigned to amend or abolish the aforementioned law by joining demonstrations and holding activities that are related to the abolition of Article 112 of the Criminal Code (Documents So. 21 to So. 36). There are members of the party executive committee, members of parliament,

and members of the party that is Respondent No. 2 who are accused or bail guarantors of accused in cases of violation of Article 112 of the Criminal Code (Documents So. 19 to So. 20). There is the expression of opinion both to amend or abolish the aforementioned law through organizing political activities and posting on social media online many times (Document So. 37).

The dispute that must first be ruled on according to the counter-statements of the two Respondents is that the Petitioner narrated his petition by citing individual opinions. This was speculation and there was no substantiation of the related facts or behavior. He did not stipulate the basis of the charge of how the two Respondents overthrew rule by democracy with the king as head of state. This caused the two Respondents to be unable to understand the petition and whether or not this petition is legal under Article 42, paragraph one (2) of the 2018 Organic Act on the Procedures of the Constitutional Court. The Court holds that in the petition, the additional petition, and the documents accompanying the petition, the Petitioner claimed that on 25 March 2021, Respondent No. 1 and others proposed the draft Act to Amend the Criminal Code (No. . . .), B.E. (defamation charge) to the speaker of parliament in order to abolish Article 112 of the Criminal Code. It was used as a policy in campaigning and they continue to carry it forward. It is the exercise of rights or freedoms to overthrow rule by democracy with the king as head of state according to Article 49, paragraph one, of the Constitution. He referred to various evidence, including material evidence such as photographs, audio and video files, and transcripts of events that demonstrated the actions of the two Respondents at the end of the petition, which is part of it. The petition was sufficiently clear for the two Respondents to understand the nature of the actions of which they were accused and to be able to fight the case. The petition of the Petitioner is legal under Article 42, paragraph one (2) of the 2018 Organic Act on the Procedures of the Constitutional Court.

The point that must be examined and ruled on is whether or not the actions of the two Respondents are the exercise of rights or freedoms in order to overthrow rule by democracy with the king as head of state according to Article 49, paragraph one, of the Constitution.

Upon examination, the court finds that the law is the set of regulations that those with authority enact in order to enforce upon individuals to follow in order to set a system of relations among individuals, or between individuals and the state in order to use in the administration of the country. For a given society to be able to live together in a peaceful and orderly manner without people taking advantage of one another it is necessary to have a clear, defined, and just set of regulations. The legislative branch or the parliament is the body that exercises the sovereign legislative power of the country according to constitutional principles. The Constitution is the highest law in the country. Any article of law that contravenes the Constitution cannot be enforced. The enactment of laws by the legislative branch or the parliament must be examined to ensure that they do not contravene the principles set by the Constitution. The process of enacting laws must be constitutional. Even though the proposal of draft laws to parliament is the parliamentary method, and the Constitution

stipulates that the legislative branch has the direct duty and authority to propose and examine draft laws, when there is a draft law that has passed the examination mechanisms of the legislative branch, the Constitutional Court has the duty and authority to examine the constitutionality of the law or draft law according to Article 210, paragraph one (1) of the Constitution. This is held to be an audit and balancing of the power of the legislative branch. Article 49 of the Constitution sets the duty and authority of the Constitutional Court to examine actions that are the exercise of rights and freedoms to overthrow rule by democracy with the king as head of state without stipulating any particular actions as being exempt. Can the proposal of law by the legislative branch therefore be an action which may be examined and found to be overthrow of rule by democracy with the king as head of state?

Article 49 of the Constitution is a law that intends to be a measure of protection of the system of rule by democracy with the king as head of state. This has two important elements, which are democracy and the king as head of state. The word “democracy” refers to a form of rule in which the sovereign power belongs to the Thai people. The phrase “the king as head of state” refers to a country in which the form of the head of state is a king. The principle contained in Article 49, paragraph one, was first legislated in Article 35 of the 1932 Constitution of the Kingdom of Siam, amended in 1952, and was included in each subsequent constitution. It is the laying down of principles to protect rule by democracy with the king as head of state from threats and dangers which arise from the exercise of rights or freedoms in the constitution. The aim is for these constitutional values and principles to protect the existence of the system of democracy with the king as head of state from dying out. This article protects against the exercise of rights and freedoms that would destroy the fundamental principles of the constitution and shake the foundation of rule by democracy with the king as head of state until it deteriorates or disappears. This mechanism is to protect rule from being destroyed by the exercise of political rights or freedoms beyond their limits by either individuals or political parties.

Article 112 of the Criminal Code is a law that sets the actions that are crimes and prescribes the punishment for those who defame, insult or threaten the king, queen, heir-apparent or regent. Any person who commits crimes under this aforementioned law must be criminally punished because doing so is in line with Thailand having rule by democracy with the king as head of state. The Constitution decrees that the king is one of the institutions in the Constitution due to historical reasons, ancient royal traditions and legal traditions. In addition to being a primary institution of the nation, the king is in a position of respect and cannot be violated. He cannot be accused or prosecuted in any way. The prestige of the institution of the monarchy upholds the prestige of the nation. Protecting the significant qualities of rule by democracy with the king as head of state therefore must be legally protected so that there is no violation of the king as head of state and as a primary institution of the nation as guaranteed and protected by the constitution.

That Respondent No. 1 and members of parliament affiliated with the party that is Respondent No. 2, a total of 44 people, proposed the draft Act to Amend the

Criminal Code (No. . . .), B.E. (defamation charge) to the speaker of parliament on 25 March 2021. This was in order to amend Article 112 of the Criminal Code from originally having been in Title 1, Chapter 1, Offences Related to the Security of the Kingdom to be Chapter 1/2, Offences Related to the Honor of the King, Queen, Heir-apparent or Regent. Book 2 of the Criminal Code divides the offences into 13 chapters, ordered from offences that impact the state, offences that impact the duties of the bureaucracy, offences that impact the public, offences that impact society and the people and offences that impact individuals. Even though the two Respondents' arguments that the Criminal Code does not set a hierarchy of importance of the titles and chapters of law, each chapter of the Criminal Code is ordered according to the importance and gravity of each title and every article of law. Article 112 is in Title 1, Offences Related to the Security of the Kingdom, as both the security of the kingdom and the honor of the head of state must be protected. This is in line with Article 2 of the Constitution, which guarantees that Thailand adopts a democratic regime of government with the king as head of state. The institution of the monarchy therefore is important to the security of the country because the king and Thailand, or the Thai nation, exist as one. He is the heart of the people in the nation and preserves the strength of the unity of the people in the nation. Offences against the institution of the monarchy are therefore offences against national security as well. That Respondent No. 1 and others proposed to remove Article 112 from Chapter 1, Offences Related to the Security of the Kingdom is an action that aims to make Article 112 an offence without the importance or gravity as offences in Chapter 1 and to no longer be held as an offence that impacts the national security. This has the intention to separate the institution of the monarchy and Thai nation-ness, which is significantly dangerous to state security. The Constitutional Court, in Constitutional Court Ruling No. 28–29/2555 set the foundation about Article 112 that the offence of defaming, insulting, or threatening the king, queen, heir-apparent or regent is a more severe offence than defaming or insulting ordinary people in line with Article 326 of the Criminal Code. In addition, to protect the king, queen, heir-apparent and regent from violation from easily being defamed, insulted or threatened, there will be no law with exceptions of offences or exemption from punishment in the way that there is with Article 329 and 330 of the Criminal Code. That Respondent No. 1 and others proposed to amend the law for those who committed the crime to demonstrate a reason for exception of exemption from punishment according to draft Article 6 which would add Article 135/7 that whoever criticizes, expresses opinion, or makes a statement in good faith, to preserve rule by democracy with the king as head of state, to uphold the constitution, or for the public good, will not be guilty. And add Article 135/8 that if the accused can prove that what they were accused of [saying, writing, etc.] is true, then they shall not be subject to punishment. The aforementioned draft law would cause those who commit the offence to be able to claim that they misunderstood and believed it in good faith to be true to fight their case. The proving of the truth in each case will be the same as that used by those who commit the offence of defamation of ordinary people to fight their cases, even though the offence is more severe than defamation or

insult of ordinary people. The examination of cases by the court will have to include inquiry of evidence according to claims, debates and argument between the parties in the case. The proving [of the truth] will unavoidably refer to or accuse the institution of the monarchy, which is in a position that should be respected and venerated. It is therefore not in line with Article 6 of the Constitution that decrees that the King shall be enthroned in a position of revered worship and shall not be violated. It will cause the content [deemed to be an offence] to be publicly disseminated and it will weaken the reputation [of the king]. In addition, that Respondent No. 1 and others proposed that the offence according to Article 112 is a compoundable offence and added Article 135/9, paragraph one, that “The offences in this chapter are compoundable offences” and paragraph two, that “The Royal Household Bureau is to be the complainant and is the injured party for offences related to the honor of the king, queen, heir-apparent or regent.” By making the Royal Household Bureau the complainant and the only agency that is injured, this aims to make offences according to Article 112 into offences that are only the issue of the members of the institution of the monarchy. It is a reduction of the protection of the institution of the monarchy. It makes the state no longer a directly injured party of this offence. It makes the institution of the monarchy into an opponent of the people and it would be in contravention to Article 6 of the Constitution. It would make the commission of offences of violation of Article 112 into actions that do not impact the nation or people, even though the commission of such offences are an attack on the hearts of the Thai people who respect and venerate the institution of the monarchy, because he is the head of state and center of the nation, that the state must protect and must be an injured party in criminal cases.

Therefore, even though the proposal of a draft amendment of Article 112 of the Criminal Code is within the duties and authority of members of parliament according to the legislative process according to Article 133 of the Constitution and the aforementioned draft law did not make it to the floor in parliament, the proposal of this law was carried out by members of parliament affiliated with the party that is Respondent No. 2 only (Document So 7/8 to So 7/13). Both Respondents testified to the court that they acknowledged that the party that is Respondent No. 2 provided the aforementioned policy to the Election Commission to use as a policy in campaigning for the 2023 general parliamentary election. At present, the policy to amend Article 112 of the Criminal Code is still listed as a policy on the website of the party that is Respondent No. 2 (Document Ro 4). The two Respondents have used the proposal of a law to amend Article 112 as a policy of the party that is Respondent No. 2 in campaigning, even though they did not have a draft amendment of Article 112 of the Criminal Code to show what points they would amend along with the policy of the party that is Respondent No. 2. But on the website of the party that is Respondent No. 2, there is discussion of the amendment of Article 112 and that it will be amended in the manner of the draft Amendment of the Criminal Code (No. . . .), B.E. (amendment regarding the crime of defamation) that was submitted to the speaker of parliament on 25 March 2021. Therefore, it can be considered that the party that is Respondent No. 2 along with Respondent No. 1 proposed the aforementioned draft

law to the speaker of parliament, in which the content of the draft law proposed was characterized by demonstration of the intention of the two Respondents to wish to reduce the protection of the institution of the monarchy. They aimed to do so by passing the draft law and relying on the legislative process to create legitimacy via concealing it within parliamentary process. Further, the two Respondents exhibited the behavior of politically campaigning in order to continually propose these aforementioned ideas to the general public in the form of the policy of the party that is Respondent No. 2. The general public, without knowing the true intentions of the two Respondents, might believe following the opinions that are expressed through the proposal of the draft law and the party policy. Additionally, the Constitutional Court had Ruling No. 3/2562 that the important content which is the fundamental principle of Thai democracy was stipulated in Royal Statement No. 1/60, issued on 14 November 1932 that the king and the members of the royal family are above politics, especially in the sense that they will not enter to have a role or be a party to struggle or campaign politically, which may lead to attacks or blame, and eliminate the neutrality of the institution of the monarchy. This appeared clearly in Constitutional Court Ruling No. 6/2543 which ruled that, “The king exercises sovereign power. He is above politics. He is politically neutral.” That the two Respondents used the proposal of the amendment of Article 112 to lower the status of the institution of the monarchy as a policy with which to campaign during the election, and continues to do so, is the utilization of the institution of the monarchy to garner votes and win the election. It aims to make the institution of the monarchy an opponent of the people. It causes the institution of the monarchy to be attacked and blamed without consideration for the fundamental principles for rule by democracy with the king as head of state, of which a cornerstone is that the king must be above politics and must be politically neutral. That the two Respondents proposed a draft amendment of Article 112 of the Criminal Code and used this as a policy in election campaigning had the intention to erode and destroy the institution of the monarchy to damage, degrade or weaken it and ultimately lead to overthrow of rule by democracy with the king as head of state.

The argument of the two Respondents is that according to the principles of liberal democracy, members of parliament have a duty to be representatives of the people and carry forward their campaign policies and that the endorsement of draft laws according to the policies presented to the people by representatives of parliament is an action taken in the status of being members of parliament, which is their prerogative according to Article 133, paragraph one (2), of the Constitution, and is not under the command of the party. The facts emerged that the proposal of the draft Amendment of the Criminal Code (No. . . .), B.E. . . . (amendment regarding the crime of defamation) on 25 March 2021 was carried out entirely by members of parliament affiliated with the party that is Respondent No. 2 (Document So 7/9 to So 7/13). Both Respondents testified to the Constitutional Court and acknowledged that the party that is Respondent No. 2 proposed the policy to amend Article 112 of the Criminal Code to the Election Commission to use as a policy to campaign for votes in the 2023 general

parliamentary election and at present this policy remains on the website of the party that is Respondent No. 2 (Document Ro 4). This argument is therefore untenable.

The argument of the two Respondents that Article 49 of the Constitution is applicable only to ordinary individuals and not political parties: Respondent No. 1, as the leader of a political party, and the party that is Respondent No. 2 are juristic persons with the important objective to carry out political activities according to rule by democracy with the king as head of state. But when Chapter 3 of the Constitution is examined, it does not specify persons as ordinary individuals only. In addition, Article 20 and Article 23, paragraph one (1) and (5), of the 2017 Organic Act on Political Parties stipulates that a duty of political parties is to give clear importance to the promotion of rule by democracy with the king as head of state. Article 49 of the Constitution therefore can be enforced on political parties as juristic persons. The party that is Respondent No. 2 played a role in political movement that corresponded to the political movements of various groups by campaigning, inciting and instigating to create a trend in society to support the abolition or amendment of Article 112 of the Criminal Code. There is a group of individuals who conduct an activity called Stand Stop Imprisonment. They have a demand for all political parties to propose a policy to abolish Article 112 of the Criminal Code. There is also a group of individuals who at present are members of parliament affiliated with the party that is Respondent No. 2 who join the demonstrations by the group United People's Party to Abolish 112 who have a campaign to abolish or amend Article 112 of the Criminal Code. Mr. Rangsiman Rome and Mrs. Amornrat Chokepamitkul have behavior that supports the demand to abolish Article 112 of the Criminal Code and have posted about it on their personal Facebook accounts. In addition, there is the behavior related to being the bail guarantors for accused or defendants in Article 112 cases. This includes Respondent No. 1, Mr. Chaithawat Tulathon, Mr. Rangsiman Rome, Miss Suthawan Suban Na Ayutthaya, Mr. Thongdaeng Benjaphak, Mrs. Amornrat Chokepamitkul, Mr. Natthapong Ruangpanyawut, Miss Benja Saengchan, Mr. Chavalit Laohaudomphan, Miss Thirapat Kulsetthasin and Mr. Thiratchai Panthumat, while currently or formerly being members of parliament affiliated with the party that is Respondent No. 2 according to the document of the National Intelligence Agency (Document So 20), Royal Thai Police (Documents So 21 to So 36), the National Security Council (Document So 37), the Criminal Court (Document So 46), the Khom Chad Luk website, and the testimony of both Respondents to the Constitutional Court. Additionally, members of parliament affiliated with the party that is Respondent No. 2 have behavior related to committing offences under Article 112 of the Criminal Code. This includes Mr. Piyarat Chongthep, Miss Chonticha Changrew, and Miss Rukchanok Srinok as appears in the statement of the Criminal Court (Document So 46), the iLaw website, and the testimony of the two Respondents. Actions that are offences under Article 112 of the Criminal Code are criminal offences that the person who committed them must have actions that contain the elements of the crime before being accused and prosecuted. The two Respondents may therefore be unable to claim that they are different opinions or they are political cases because the exercise or rights and

freedoms according to Article 34 of the Constitution forbids the exercise of rights or freedoms if they impact state security, public order or the good morals of the people. The expression of opinion or the joining of a demonstration that includes a campaign for the abolition of Article 112 of the Criminal Code or being a bail guarantor for an accused or defendant with an accusation under Article 112 of the Criminal Code or being a person who committed the offence oneself, all of this behavior demonstrates that the party that is Respondent No. 2 is a political group that has the secret intention of wanting to change, amend or abolish the measure of law that protects the institution of the monarchy. This was especially the case on 24 March 2023, when the party that is Respondent No. 1 organized a big set of speeches in the municipal park in Laem Chabang, Sriracha district, Chonburi province. Miss Tantawan Tuatulanon and Miss Orawan Phuphong went on stage and invited Respondent No. 1, and candidates for parliament of the party that is Respondent No. 2 to join their “Do you think that Article 112 should be abolished or amended?” activity. Respondent No. 1 took a red sticker and put it in the slot to abolish Article 112. Even though Respondent No. 2 argued and testified to the Constitutional Court that this was merely an expression to calm the questioner and the other attendees before listening to the speech about the reasons why it was appropriate to amend Article 112 of the Criminal Code and a way to manage the situation to avoid violence, the facts in a document from the Royal Thai Police show that the Respondent said, “. . . If the brothers and sisters proposed a law to abolish Article 112 to Move Forward, I would support it also. Therefore, I have to apologize to the two juniors to please let me amend Article 112 in the parliament first. If the parliament won’t accept to amend it, Move Forward will come out to struggle together” (Document So 33). This demonstrates the intention of Respondent No. 1, who is the head of the party that is Respondent No. 2, and that at that time he was prepared to support the abolition of Article 112 of the Criminal Code, which would cause the elimination of the law for the protection of the institution of the monarchy. Because if it cannot be resolved in parliament, he is ready to carry it out using means other than the legislative process. The Constitutional Court ruled in Ruling No. 19/2564 that, “Actions that have the express intention to destroy the institution of the monarchy are the erosion and destruction of rule by democracy with the king as head of state.” Therefore, the Constitutional Court has set a norm about rule by democracy with the king as head of state that the king must exist above politics and must be politically neutral. Any actions, including those of promotion and destruction that cause the institution of the monarchy to lose its position of being above politics and politically neutral; that are the erosion and destruction of it; or the reason for its deterioration, degradation or weakening, fit the form of being overthrow of rule by democracy with the king as head of state.

The two Respondents argued that Article 49 of the Constitution has a basic element that the actions that are overthrow of rule by democracy with the king as head of state must be the exercise of “rights and freedoms.” But the word “right” refers to the power that is guaranteed and protected by law so that no individual will encroach upon [others] or exercise their rights in excess until they are a violation of the rights

of others. The word “freedoms” refers to the condition of humans to be free in their self determination to decide what they will do or not do. However, the exercise of freedoms must not be contrary to the public order or good morals of the people, and may not violate the rights or freedoms of other individuals. Article 25 and Article 34 of the Constitution set the framework for the exercise of rights and freedoms to be in accordance with the International Covenant on Civil and Political Rights (ICCPR). Article 19 provides for three exceptions as follows: (1) must not impact national security or safety; (2) must not impact public order; and (3) must not impact the rights and freedoms of other people. The substantiated facts are that the actions of both Respondents are characterized by being the exercise of freedoms in the expression of opinion to call for the destruction of rule by democracy with the king as head of state by concealing it within the proposal to amend Article 112 of the Criminal Code and using this as a policy of the party. Even though the incident in the petition has already passed, the campaign for the abolition or amendment of the Criminal Code by the two Respondents is ongoing and in the form of a movement. Many forms are used, including demonstrations that make demands, organizing political activities, campaigning via social media, proposing draft laws to parliament, and using it as an election campaign policy. If the two Respondents are left to continue the aforementioned actions, overthrow of rule by democracy with the king as head of state is not far off. The actions of the two Respondents is therefore the exercise of rights or freedoms to overthrow rule by democracy with the king as head of state according to Article 49, paragraph one, of the Constitution, with Article 49, paragraph two, providing the Constitutional Court with the authority to order the cessation of any of the aforementioned actions in the future.

On the basis of the aforementioned reasons, the Court rules that the actions of the two Respondents are the exercise of rights and freedoms to overthrow rule by democracy with the king as head of state according to Article 49, paragraph one, of the Constitution. According to Article 49, paragraph two of the Constitution and Article 74 of the Organic Act on the Procedures of the Constitutional Court, the Court orders the two Respondents to cease the expression of opinion via speaking, writing, publication, advertising and communicating via other methods in order for there to be abolition or amendment of Article 112 of the Criminal Code. In addition, the Court orders for there to not be amendment of Article 112 of the Criminal Code via means other than the legitimate legislative process that may arise in the future.

Mr. Warawit Kangsasiatam
President of the Constitutional Court

Mr. Nakharin Mektrirat
Constitutional Court Judge

Mr. Punya Udchachon
Constitutional Court Judge

Mr. Udom Sittiwirattham
Constitutional Court Judge

Mr. Wiroom Sangtian
Constitutional Court Judge

Mr. Chiranit Havanond
Constitutional Court Judge

Mr. Noppadon Theppitak
Constitutional Court Judge

Mr. Bunjongsak Wongprachaya
Constitutional Court Judge

Mr. Udom Rathamarit
Constitutional Court Judge

Suggested Bibliographic Citation:

Tyrell Haberkorn. "Translated Judgment: Drafting a Law Is Not Overthrow: Constitutional Court Ruling No. 3/2567." *Thai Legal Studies*, vol. 4, no. 1, July 2024, pp. 72–101. <https://doi.org/10.54157/tls.274832>.