

# Thailand, : Who is an 'Heir(-Apparent)?': An old issue that is still new today

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Apart from the problem of interpreting the legal meaning of the term 'defame' in Article 112, where the current standards of the courts use a very broad interpretation, the scope of the royal persons protected by the law has a similarly problematic interpretation, despite the fact that the law clearly specifies only four positions, namely, the King, the Queen, the Heir-Apparent and the Regent.

The position that seems to be the most problematic is 'heir-apparent'. This has been a delicate issue for many years. Documents that will confirm this issue in fighting a case be used for the defense are extremely difficult to access. What is strange is that this is still the case even when we have entered the reign of King Rama X.

The underlying reasons for the judges' frustration can be found in the cases involving Princess Sirindhorn, including those of Prachuap Intaphat a decade ago, Chanwit Chariyanukul, who was tried shortly after the 2014 coup, the two defendants in Kamphaeng Phet, and Anon, whose lawsuit has cleared the Court of First Instance and the Appeal Court. In each locality and at each level, the courts demonstrated 'sensitivity' towards the issue and gave reasons that differed from each other.

## Prachuap Intaphat

Prachuap's case was heard in 2004, when the court of the First Instance handed down a sentence of ten years, the Appeal Court five years, and, finally, the Supreme Court four years. We can see different interpretations of the term "heir-apparent" throughout the case, from the court of the First Instance to the Supreme Court.

The Court of the First Instance defined 'heir-apparent' as a son or a daughter of the King. Initially, the public prosecutor accused him on an ordinary defamation charge, under Article 326 in the Criminal Code, for defaming Princess Sirindhorn. The Court found this was inappropriate for the Princess' status. The Appeal and the Supreme Courts referred to the 1924 Palace Law of Succession; and hence both ruled that defaming Princess Sirindhorn did not constitute lèse majesté. The appellate courts dismissed the offense relating to the Princess and only imposed sentences for the offenses relating to Queen Sirikit, and then Crown Prince Vajiralongkorn.

Here are extracts from verdicts to illustrate the issue.

The Court of the First Instance: "In the 1999 Royal Institute Dictionary, the term 'Heir-Apparent' refers to a person who will ascend to the throne. It does not refer to any 'right'. When interpreted in combination with Article 112, it must be in accord with the terms, 'King' and 'Queen,' which precede the term 'Heir-Apparent.' Consequently, 'Heir-Apparent' under the provision of Article 112 refers to every royal 'heir' or 'heiress' of the King, not to any specific royal person. ... The term must mean that Princess Sirindhorn is within the meaning of 'Heir-Apparent' under Article 112. But this does not go so far as to make a final decision on the term "heir-apparent" in the 1924 Palace Law of Succession... An interpretation of the law that an offense against Princess Sirindhorn can be brought under Article 326, as with an ordinary person, may not be done under any circumstance and is

utterly inappropriate. Such an interpretation is under the general authority which the Court uses to uphold the sanction under the law, with consideration of customary law, the intention or principle of law, to uphold the institution of the monarchy and justice.”

The Appeal Court (and the Supreme Court): “The plaintiff as public prosecutor has investigated the status of Princess Sirindhorn, because the matter involves the authority to file a lawsuit. The designation or removal of an heir-apparent is in accordance with the 1924 Palace Law of Succession, which is the law concerning specifically the royal succession. Since Princess Sirindhorn is not the heir-apparent; the act does not constitute an offense under Article 112.”

### **Chanwit Chariyanukul**

Nonthaburi Provincial Court read the verdict in 2014. The offense was reportedly committed in 2010. Chanwit was accused of distributing copies of a flyer criticizing the Monarchy, including King Rama IX, Queen Sirikit, then Crown Prince Vajiralongkorn and Princess Sirindhorn. The public prosecutor prosecuted four different counts based on the alleged insult to each royal family member.

The defendant testified that he distributed the flyers, which constituted bona fide criticism. He argued that the distribution of a single flyer should constitute only one count. However, if the court insists on penalizing him as the public prosecutor proposed, he should be penalized on only three counts, pertaining to each of the royal family members protected royal defamation law. The defendant said that the public prosecutor sent a letter to ask the Royal Household Bureau to provide the number of heirs-apparent. The prosecutor received a letter in reply that Crown Prince Vajiralongkorn was the only heir-apparent. The judges summoned the defendant’s attorney and the public prosecutor to view the letter in the courtroom, but the defense lawyer was not permitted to make a copy of the letter.

Thai Lawyers for Human Rights reported on its website that a part of the verdict reads, “the defendant’s action is defaming the Monarch, who shall be enthroned in a position of revered worship and shall not be violated. The Monarchy contributed incalculable benevolence to the country and the all Thai subjects. The content which the defendant wrote in the flyer is regarded as an act that defames the [royal] institution, which constitutes an offense under Article 112. The defendant is sentenced to imprisonment for six years. With regard to the issue of having to consider whether or not the Princess Sirindhorn is heir-apparent under Article 112 of the Criminal Code, the court makes no judgment because it is not necessary for the case, as the defendant’s action is already regarded as one offence.”

### **Atsadaphon and Noppharit**

The royal defamation case came under the jurisdiction of the Provincial Court of Kamphaeng Phet in 2015. The defendants were charged with making a false claim that they were able to request the presence of Princess Sirindhorn to preside over a temple consecration ceremony. There were people demanding money from the temple. There were four offenders. Two pleaded guilty and were sentenced to seven years and four months for falsifying public documents, impersonating officials by wearing a uniform they were not entitled to, and lèse majesté. The defendants that pleaded guilty had their prison term halved to three years and eight months. After a general royal pardon, the two prisoners were released. The remaining two defendants remain imprisoned until the present, while their attorney has stubbornly fought for a certain document.

Firstly, the defendants’ attorney petitioned the court to summon a document from the Provincial Court of Thanyaburi in a similar case where the defendant was accused of defaming Princess Sirindhorn. In that case, the investigating officer sent a letter to the Royal Household Bureau asking

about the status of Princess Sirindhorn. The official received a reply (during the reign of King Rama IX) that the only heir-apparent appointed was then Crown Prince Vajiralongkorn. The reply was referred to in the Provincial Court of Thanyaburi and the investigating officer also testified in Court. Ultimately, the defendant won the case.

Thiraphan Phankhiri, a member of defense team said, “The Court did not allow the issuance of a summons for the letter, for the reason that it does not appear that the letter clearly exists, although we referred to the correspondence number of the Royal Household Bureau.”

The second time, defense lawyers filed a new petition to the court to issue a summons for the document again, citing the testimony of the investigating officer and the plaint in the case at Thanyaburi Provincial Court. Most importantly, the petition documented the Royal Household Bureau’s reply to an inquiry from the investigating officer, which is essential for the defendant’s argument in the case. In the end, the court refused to issue a summons.

“The Court called the lawyers to discuss the matter and said only that the Court may not cross the line,” said Thiraphan.

The lawyers attempted, for the third time, to search for a document on the Council of State’s website, which publicly displayed a consultation letter from the Royal Police Department in 1989, that the Crown Prince is the only heir-apparent. The Court issued a summons to the Council of State; however, one day after the summons was delivered, the document was removed from the Council of State’s website. The Council of State, citing the Rule on Maintenance of Official Secrets 2001 and the Public Information Act 1997, sent a fax to the Court declining to deliver the document. The Council of State reasoned that document is classified state information and its release could cause damage. The defense lawyers are requesting the Court to summon the Secretary General of the Council of State to testify if there are reasonable grounds for denying access to the document.

In the document in question, the Royal Household Bureau states that the official title in Thai of Princess Sirindhorn includes the term “สมเด็จพระราชกุมารี” which may be literally translated as “Crown Princess of Siam” which means a daughter of a Siamese king, and does not mean a designated heir to the throne. Therefore, Princess Sirindhorn was not covered under Article 112. The document also stated that the police had voiced concern on how to prosecute alleged defamation of Princess Sirindhorn under the normal criminal defamation law (Article 326 of Criminal Code) since the Criminal Procedure Code states that a defamation suit must be filed by the person defamed. The police further stated that since such cases should not be known to the Princess, they could not prosecute the alleged defamation of the Princess.

“Generally, the defence must be given full opportunity to prove the innocence of the defendant. In this [lèse majesté] case, I feel that in every procedure where the law gives us the authority and the right, as soon as we use the right, we are blocked and we meet obstacles. In other cases, we have never found obstacles of this size,” said Thiraphan.

## **Anon**

Anon’s case was not covered in the news. He was accused defaming Princess Sirindhorn while chatting in a private conversation with a friend. Anon was accused in 2012, and despite the police initially making a non-prosecution order, the case was tried in 2014, shortly after the coup, similar to many other lèse majesté cases that had been dropped. Anon’s case was tried in the Provincial Court of Thanyaburi. The Court of the First Instance and the Appeal Court dismissed the charge because the offense did not constitute lèse majesté. Nevertheless, the verdict is not final as the public prosecutor in the case has appealed to the Supreme Court.

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\* Prachatai. Thu, 21/12/2017 - 11:47:

<https://prachatai.com/english/node/7520>