Ministry of Foreign Affairs

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Our reference
MINBUZA-2016.893446

Date 18 January 2016
Re Your letter of 14 October 2016

Dear Mr David Kaye,

Thank you for your letter of 14 October 2016 to the Minister of Foreign Affairs concerning the defamation laws in the Dutch Criminal Code, in particular the law of lese-majesty (articles 111-113) and other provisions criminalising the defamation of foreign heads of state (articles 118, 119 and 267). Having consulted with the Minister of Security and Justice, I can answer the questions you raised as follows.

Your first question concerns the compatibility of the criminal provisions and maximum sentences provided for in the law with the Netherlands' obligations under international human rights instruments, in particular article 19 of the International Covenant on Civil and Political Rights (ICCPR), which protects the right to freedom of expression. Your second question concerns steps taken or intended to be taken to repeal or reform criminal defamation laws pertaining to the King and foreign heads of state. You also ask specifically for information on the current status of the draft bill to repeal the lese-majesty provisions (bill no. 34456-2 submitted by MP Kees Verhoeven to the House of Representatives).

Lese-majesty was included as a punishable offence in the Criminal Code in 1830 in order to protect the dignity of the King and should be regarded as a recognition of the public interest that exists in protecting the dignity of the highest authority. The protection of the person of the King is in this regard only a secondary reason for criminalisation. The provision also attests to the King's neutral position within the constitutional system; the King's bringing suit to defend himself against

defamation could be seen as incompatible with that neutrality. Thus, the rationale behind the criminalisation of lese-majesty is grounded in the reasons given in article 19, paragraph 3 of the ICCPR for limiting the right laid down in article 19, paragraph 1 ICCPR. The maximum penalties stipulated in the relevant criminal law provisions reflect the

punishment that these offences were deemed to merit at the time the provisions were drafted or amended. It is important to note that Dutch criminal law explicitly prescribes maximum penalties. Courts are free to impose any sentence they deem appropriate on anyone convicted of the offence – including no penalty at all (art. 9a of the Criminal Code) – up to the maximum penalty prescribed in the relevant provisions. The maximum penalties laid down in the descriptions of the offences in articles 111, 112, 113, 118, 119 and 267 of the Criminal Code are therefore not indicative of the sentences imposed in practice.

According to the legislative history, defamation of a foreign head of state was made a criminal offence in order to protect the safety and dignity of foreign heads of state during state visits to the Netherlands. The provision can also serve to ensure that a state visit proceeds smoothly (Parliamentary Papers, House of Representatives II 1975/76, 11 249, nos. 6-8, pp. 7-9). These reasons are compatible with article 19, paragraph 3 of the ICCPR.

Your second question concerns the possible amendment of these provisions in the Dutch Criminal Code.

As you state in your letter, there is a member's initiative bill from MP Kees Verhoeven before Dutch parliament that proposes to repeal the lese-majesty offences in articles 111, 112 and 113 of the Criminal Code as well as the offences in articles 118, 119 and 267 (3º) concerning defamation of a foreign head of state. In accordance with customary practice in the Dutch parliamentary process, the government will adopt a position on the bill when it is debated in the House of Representatives. The government will take the substance of your letter into account when determining its position. At the time of writing, the preparatory written procedure in the House of Representatives has been concluded and the member's bill is waiting to be discussed in a plenary session in the House of Representatives.

In a letter of 20 April 2016 (Parliamentary Papers, House of Representatives 2015/16, 29 279, no. 316), the Minister of Security and Justice indicated that views on the desirability of special criminal-law protections against the defamation of foreign heads of state have evolved. The principal question is whether the general provisions on defamation (articles 261, 262 and 266 of the Criminal Code) provide sufficient protection for foreign heads of state. The Minister of Security and Justice has stated that he is prepared to examine whether articles 118 and 119 of the Criminal Code can be repealed and, if so, what the best approach would be. For constitutional reasons, priority will be given to the member's bill proposing the repeal of the lese-majesty provisions as well as articles 118, 119 and 267 (3º) of the Criminal Code concerning defamation of foreign heads of state.

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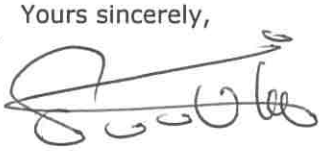
I hope that the information above sufficiently answers your questions for this moment. I will provide you with an update about the evolution of the parliamentary discussion on the member's bill over the next months,

Should you have any further questions, please do not hestiate to contact me.

Yours sincerely,



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