

**Recommendation No.2/2560 on recommended measures or guidelines for promotion and protection of human rights in case of treatment towards detainees who were consigned to custody**

The National Human Rights Commission of Thailand (NHRCT) has several important notices about the justice process, that are a case of delay in the investigation process carried out by inquiry officers when the accused/alleged offender who had committed an offence in an area, committed another offence in another area; a case that state prosecutors needed to present the accused whom they sued in court on the day litigation was made, but the accused who had been temporarily released had escaped; and a case that a court which had jurisdiction over the prison area where the accused was detained used its judgment not to accept litigation made by state prosecutors, reasoning that it was more convenient to sue the accused in the local area where collection of evidence in the case and investigation was conducted. Conditions of these cases affected rights of the accused, resulting in they did not enjoy the right to have speedy investigation as guaranteed and protected by Constitution of the Kingdom of Thailand and consequently created injustice against the accused. In addition, when efficiency of the penitentiary system was considered, the fact that government agencies could not completely resolve cases where the accused were consigned to custody resulted in the penitentiary system subsequently had more burden to take care and control the accused being detained and because too many people were detained, they did not have their behaviours developed to be in discipline which would entitle them to receive a right to have their penalty suspended, days of imprisonment reduced, or pardoned by the King depending on nature of each case. The NHRCT therefore saw it appropriate to recommend measures or guidelines for promotion and protection of human rights according to Section 247(3) of the Constitution of the Kingdom of Thailand B.E. 2560 (2016) to related government agencies.

The NHRCT received a petition from a group of complainants who had been detained in a prison, requesting inquiry officers to speed up their investigation and evidence gathering in the cases that they became the accused according to bench warrants, that was when inquiry officers had already sent a letter to prison authority to consign the alleged offenders to custody, they often did not quickly investigate the cases, sum up file of the case and send them to state prosecutors, or state prosecutors had received the file of the case, but could not bring the accused to have litigation at the court with jurisdiction to try the case. This caused delay, resulting in the accused who were consigned to custody did not receive rights or benefits enjoyed by detainees because they did not have qualifications and conditions specified in the Penitentiary Act B.E. 2479 (1936) which has at present been amended to be Penitentiary Act B.E. 2560 (2017), especially benefits in terms of right to have their days of imprisonment being reduced and their penalty being pardoned by the King on important dates of the country. The NHRCT took this petition into consideration and saw that this complaint involved right of the accused to have their cases investigated correctly, quickly and fairly, and involved performance of officers in the justice process according to the Code of Criminal Procedure. The NHRCT therefore initiated considerations, studies, fact findings, analysis and development of recommendations or guidelines for promotion and protection of human

rights, including amendment and improvement of laws, regulations or orders to make them consistent with human rights principle.

The NHRCT took this case into consideration and saw that easy, convenient, fast and all round access to the justice process, and right to have correct, fast and fair investigation or trial, is a right guaranteed and protected by Constitution of the Kingdom of Thailand B.E. 2550 (2007) which is still protected by Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014). In order to make these rights being in effect according to the intendment of law, the Constitution requires these rights to have direct binding effect with the parliament, government cabinet, court and organizations set up by the Constitution and government agencies that in their actions to enact, enforce and interpret laws with authorities mandated to them, they have to take human dignity, rights and liberties of persons into consideration in order that their use of authority would be considered to be protection of rights and liberties of persons and would not constitute human rights violation. After checking facts related to the petition submitted to the NHRCT, several important notices have been found as follows:

Firstly, it was found that inquiry officers in the area where the accused had committed an offence received a complaint and had already charged the accused in a criminal case. Later the accused was temporarily released and escaped. He then committed another offence in another area, and was arrested and prosecuted again, while inquiry officers in the area where the previous case was stale did not know about it, prosecution was thus not continued, or knew about it but did not carry on continuously with the prosecution until it was quickly concluded. It was therefore seen that this was an unreasonable delay caused by the inquiry officers which affected the accused's right in the justice process and caused human rights violation.

Secondly, it was found that in case that the accused had been temporarily released and then escaped, when inquiry officers had concluded a file of the case and their opinions for state prosecutors, in the past, state prosecutors could not accept the file of case from the inquiry officers according to Office of the Supreme Attorney General's Regulation on Prosecution by State Prosecutors B.E. 2547 (2004) and Office of the Supreme Attorney General's letter No. Sor Or (Sor Por) 0081/Wor 145 which provided that state prosecutors could accept a file of the case which inquiry officers concluded that prosecution should be proceeded, but as the accused was detained in a prison which was under jurisdiction of another court, prosecution process could begin only when that court issued a final judgment for the case being litigated, or when the inquiry officers had the accused transferred to be in the area under jurisdiction of the court that their state prosecutors could sue the accused. At present, even if the Code of Criminal Procedure has been amended to allow state prosecutors to accept a file of case from inquiry officers even when the officers could not bring the accused in person to them, the state prosecutors still could not take that case to court as the law still provides that state prosecutors must present the accused at the court on the day of litigation.

Thirdly, it was found that when inquiry officers send a file of case to state prosecutors at the court which has jurisdiction over a prison where the accused was detained and the state prosecutors accept the file of case for consideration whether or not to issue a prosecution

order and then take the accused to court which has jurisdiction over the prison for litigation, the court could use its judicial discretion not to accept the plaint/charge sheet for consideration, reasoning that evidence in the case and investigation of the offence occurred in another local area, it would be more convenient for a court which has jurisdiction over the area to settle the case instead of court which has jurisdiction over local area where the accused was detained. Section 22 (1) of the Code of Criminal Procedure also does not force court of first instance where the accused is in its jurisdiction to settle the case; it is up to the court of first instance to use its judicial discretion whether or not it would accept to settle the case, taking into consideration convenience of the trial.

From these three notices, it could be seen that the circumstances affect rights of the detained accused because they are deprived of their right to have quick investigation as guaranteed and protected by the Constitution; this results in unfairness against the accused in detention. In addition, when effectiveness of the correction system was taken into consideration, a fact that government agencies could not completely solve the problem concerning proceedings of the detained accused, the corrections system then has more burden to take care of and control the accused in detention. The accused in detention may not have their behaviours developed to be in discipline and thus entitle them to gain the right to have their punishment suspended, their days of imprisonment reduced or their punishment being pardoned by the King depending on each specific case. The NHRCT saw that it should recommend measures or guidelines for promotion and protection of human rights according to Section 247 (1) of Constitution of the Kingdom of Thailand B.E. 2560 (2017) as follows:

- (1) Department of Corrections and Royal Thai Police should work together to consider having guidelines to solve the problem of delay that occurs in the investigation of freeze cases when the accused fled during investigation process and later committed another case of offence or committed an offence in another area and court issued an order to detain the accused during investigation, a prison or penal institution that detains the accused is to speed up checking information about the case and report to inquiry officers in the local area where the accused had fled. When the inquiry officers knew about the incidence, they must speed up and complete their investigation according to the due process and then quickly send a file of case to state prosecutors. If it appeared that proceedings of the case of which the accused was detained was completed in the court of first instance, the prison or penal institution is to inform the inquiry officers to submit a file of case to state prosecutors and coordinate with the Department of Corrections to transfer the accused from the prison or penal institution where the accused had been detained to another prison with jurisdiction over the area where the offence had taken place, so state prosecutors could proceed for litigation in court without having to wait until the case was nearly expired.
- (2) The National Justice Administration Development Committee should coordinate with Office of the Court of Justice to adopt the audio-visual transmission system in form of teleconference to use in court trials where testimonies in other courts or other office of the state or other places must be heard more, so that measures according to Section

230/1 of the Code of Criminal Procedure would be in effect which would help solve the problem concerning treatment of the accused in freeze case according to this report and trials of the court of justice could be quickly completed.

- (3) The National Justice Administration Development Committee should coordinate with agencies in the justice process, especially the Ministry of Justice which is responsible for the National Single Window on Justice (NSWJ) to urge all agencies in the justice process to link up with each other, share and exchange their information, in order to better solve the problem concerning treatment of the accused in freeze cases during the period of investigation.