

Investigation Report No. 312-313/2018

Subject: The rights of persons with disabilities: A case of alleged discrimination by an airline against passengers on the grounds of disability

Complaint Issues

The National Human Rights Commission of Thailand (NHRCT) has considered it appropriate to investigate a case appearing on Facebook in which the author claims that she and her paralyzed husband traveled with an airline that provided no facilities for paralyzed passengers on a wheelchair. She and others had to lift her husband sitting in a wheelchair from the plane to a bus. The flight attendants informed her that the airline's policy was not to accept passengers who could not walk because it had no support facilities. The Commission has later received a complaint in which two other persons with disabilities claim that they have booked round-trip plane tickets to and from Bangkok-Chiang Mai, but upon showing up for boarding, the ground attendants of the airline told them that they would not be allowed to travel without a companion. They then had to buy tickets from other airlines instead. The airline refunded the fare to the first complainant for both legs of travel. The second complainant, however, got refunded only for the outbound fare and the return ticket remained valid. The staff of that airline allowed both complainants to take the return flight which was fully serviced unlike the outbound flight. Since both cases are about the rights of people with disabilities, the Commission has made a decision to consider them together.

Actions Taken

NHRCT considers that the airline has already provided facilities for people with disabilities, although the access to those facilities is not convenient because an advance notification to the airline is required to bring people with disabilities or on a wheelchair to get up and off the plane – a rule which both complainants and persons with disabilities in general are not aware of. This could be considered a solution and an attempt to provide convenience to both complainants. After the incident, an investigation was made and the employees were given warnings and punishments. Therefore, it cannot be held that the airline discriminated against both complainants on the grounds of disability. The Commission has had a resolution to end the investigation. Nevertheless, to prevent violations or unfair practices or any other potential

mistreatments, the Commission has decided to recommend following measures or guidelines to prevent human rights violations and provide remedies for the injured party to relevant agencies in accordance with Section 247 (1) of the Constitution of the Kingdom of Thailand B.E. 2017 and Section 26 (1) of the Organic Act on the National Human Rights Commission B.E. 2017, and recommendations for amendments to laws, rules, regulations or any orders to comply with human rights principles pursuant to Section 247 (3) of the Constitution of the Kingdom of Thailand B.E. 2017 and Section 26 (3) of the Organic Act on the National Human Rights Commission B.E. 2017:

Appropriate Measures or Guidelines to Prevent or Address Human Rights Violations as well as to Redress Victims of Human Rights Violations

The airline (which was complained) should proceed as follows:

(1) Redress both complainants for actual damages and the passengers who escorted/accompanied Complainant 2 by refunding the fare from Don Mueang International Airport - Chiang Mai International Airport;

(2) In the case that people with disabilities travel by booking plane tickets for more than 48 hours before departure, the airline should clearly state the conditions of services such as the requirement to make a request for a wheelchair, a cabin wheelchair or a hydraulic lift for persons with disabilities or persons on a wheelchair to board the plane at least 48 hours before traveling. Such information should be available during the ticket purchase process, seat reservation and check in, through various communication channels which are designed to be conveniently and appropriately accessed by people with different types of disabilities. For example, during online ticket booking, there should be a notification on the website. Before confirming ticket purchase online, there should be a box showing an agreement or refusal of any request for additional assistance before proceeding to purchase tickets online. In the case that people with disabilities book plane tickets less than 48 hours before departure and the airline is unable to provide facilities and assistance for persons with disabilities, the airline should inform persons with disabilities to prevent any problems that may arise and to enable people with disabilities to make informed decisions;

(3) Provide training for management personnel and relevant staff, particularly those who have the authority to make decisions whether to let passengers travel or not, to have an

understanding and awareness of the rights of people with disabilities in accessing public services, including both limitation and necessity of using the services of this group of passengers, as well as appropriate methods of communication for customers with disabilities to prevent problems similar to the complaint from happening again. Persons with disabilities should be invited to be guest speakers in such training. In the case that any passenger is not allowed to travel and is eligible for a refund, the airline should improve the system and procedures to ensure the passenger could receive the refund without delay.

Recommended Measures or Guidelines for the Promotion and Protection of Human Rights

(1) The Ministry of Transport should:

(1.1) Establish standards and guidelines on providing low-cost airline services for persons with disabilities, to serve as guidelines for all airlines to ensure efficient and equal treatment of people with disabilities;

(1.2) Act as a focal point for coordination and cooperation with networks of people with disabilities to allow them to provide comments and recommendations to the air transportation business on the matters related to, among others, the construction of buildings and premises, the procurement of equipment and facilities, the provision of services by operators and staff, based on the principles of Universal Design for universal access and special needs of each type of disability;

(2) The Department of Airports should enforce the law on persons with disabilities, such as the Empowerment of Persons With Disabilities Act, B.E. 2007, the Ministerial Regulation prescribing attributes of/or the provision of equipment, facilities or services in the premises, vehicles and transportation system so that people with disabilities can access and use, B.E. 2013, and the Ministerial Regulation prescribing facilities in buildings for persons with disabilities and the elderly, B.E. 2005, in all airports by distributing materials, equipment and facilities and providing services at various points of the airport thoroughly.

Recommended Improvement of Laws, Regulations or Orders

(1) The Civil Aviation Authority of Thailand under the Ministry of Transport should propose regulations regarding the protection of the rights of disabled passengers to access public transport, especially lowcost airlines. There should be a requirement that commercial air transport

operators or airlines cannot refuse to accept passengers with disabilities except for cases specified in the regulations of the Civil Aviation Board, to ensure the same standard for all airlines. The Civil Aviation Authority of Thailand should also set standard guidelines of all airlines on basic assistance for persons with disabilities; and

(2) The Ministry of Transport, by the Department of Airports and the Airports of Thailand Public Company Limited, should propose amendments to the Ministerial Regulation prescribing attributes of or the provision of equipment, facilities or services in the premises, vehicles and transportation system so that people with disabilities can access and use B.E. 2013, including adding a requirement to provide cabin wheelchairs, hydraulic lifts for lifting people with disabilities in wheelchair to board the plane, without adding the cost for this part to the airport usage fee collected from commercial airline operators.

Achievement/Progress in Human Rights Protection

(1) The Civil Aviation Authority of Thailand has stated that it has prepared relevant laws by proposing the Air Navigation Bill (No. ..) B.E. The National Legislative Assembly has already passed it into law. Section 41/133, Paragraph three, of the law states that "Licensees of civil aviation business operation under Section 41/125, who are commercial air transport business operators and foreign air operators licensed under Section 41/126, shall not refuse to transport people with disabilities according to the Empowerment of Persons with Disabilities Act except for cases in paragraph one or paragraph two or as specified in the regulations of the Civil Aviation Board." The exception concerns safety and security reasons and includes the case of passengers who behave inappropriately or have a history of inappropriate behaviors during the flight of an aircraft.

(2) The Department of Airports has informed that:

(2.1) Airports under the Department of Airports have already provided facilities and services for people who need special assistance as specified by law. The Department has inspected facilities and services available at all 28 airports and found the following facilities: parking space, ramps, signs and symbols, information service, toilets, elevators, stairs, escape areas, tactile paving, seats for people with disabilities or wheelchair parking space, and warning announcements and information announcements for visually impaired people and LED display or warning signs for hearing impaired people.

In addition, the Department of Airports has established and provided guidelines for providing services to persons with disabilities in air travel to airports under the Department. The guidelines have 12 points resulting from consultation between representatives from the Office of Permanent Secretary of the Ministry of Transport, the Civil Aviation Authority of Thailand, the Airports of Thailand Public Company Limited, the Airline Operators Committee and 10 domestic airline operators on February 12, 2015.

(2.2) There are two airports under the Department of Airports that provide hydraulic lift equipment for wheelchairs, including Krabi Airport which is serviced by Thai Airways International Public Company Limited and the service fee is charged. Another equipment is in Hua Hin Airport which has only a small number of passengers using such equipment. So the equipment will be delivered to Krabi Airport which has a large number of flights and passengers in order to make the most of the equipment.

(3) The complained airline has stated that it has invited the complainants to be guest speakers for its training program on the topic of rights and equality of persons with disabilities and Inclusive Air Transport Service Training, and has prepared a manual on how to assist and facilitate each category of persons with disabilities and the elderly, based on the manual on how to assist and facilitate each category of persons with disabilities and the elderly for transport service providers (Ground Quality Safety and Security Assurance Dept. (CQ)) for employees to follow.