

Report No. 151-152/2559 on right and liberty to occupation in a case that qualifications and prohibition of security guards required by Security Guard Business Act B.E. 2558 (2015) affected right and liberty to occupation.

Issue of complaint

A complainant submitted a petition to the National Human Rights Commission of Thailand (NHRCT) requesting it to provide recommendations for amendment of the Security Guard Business Act B.E. 2558 (2015) which was violating human rights principle. It was claimed by the complainant that Section 34 a. (3) and b. (3) of the Act which provided qualifications and prohibitions of security guards were provisions that went against security guards' right and liberty to occupation and affected security firms. Definition of "security business" provided in Section 3 was discrimination against security guards who provide service in private security business.

Actions taken

The NHRCT took into consideration the complaint which focused on a requirement by the Security Guard Business Act B.E. 2558 (2015) that security guards must complete compulsory education. It saw that spirit of the Security Business Act B.E. 2558 (2015) was actually to strengthen capacity of security guards in their work to maintain peace and order in society, and in addition, international standards, that is the International Code of Conduct for Private Security Service Provider (PSCs), prescribes qualifications of security guards by paying attention to working standards and skills without stating about level of education, the NHRCT therefore came to a view that level of education was not a guarantee that those who completed compulsory education would perform their duty to maintain security with a sense of responsibility and effectiveness. International laws also provide that to set up any condition as qualification, it must be necessary or very much related to characteristics of the work to perform (Inherent Requirement Exception). Therefore a required condition that security guards must complete compulsory education is therefore inconsistent with principles of international human rights instrument and with the liberty on occupation according to principles of the Constitution. As for a condition that persons who used to be imprisoned for committing certain offence were prohibited to be security guards as provided in Section 34 b. (3) of the Security Guards Business Act B.E. 2558 (2015), the Commission opined that it was consistent with the goal and the principle of proportionality, and did not affect the gravamen of right and liberty according to principles of the Constitution. However, when base of offence stated in the provision is taken into consideration, restricting an offender's right to work at three years for all offences is inappropriate and inconsistent with the legal moral principle concerning things that have different benefits or values. For example, for an offence related to life, the legal moral is human life. For an offence against property or ordinary taking by stealth, the legal moral is ownership and possession. Additional consideration was taken over a condition that a security guard must have Thai nationality, the Commission cited that previously there was no legal provision about nationality and the occupation of security guard had never been reserved for persons with Thai nationality. Having Thai nationality as a qualification is therefore not consistent with principles of international human rights instruments and other related principles. As for the spirit of law enforcement, it was seen that the Security Guard Business Act B.E. 2558 (2015) could not raise standards of security guard business and strengthen capability of security guards, and could not be effectively enforced because this

law did not cover certain groups of people, that were those who provide security service directly without going through security guard business and security service provided by government agencies as prescribed by the Prime Minister. Moreover, authority given by Section 41 of the law to security guards is likely to affect human rights. The NHRCT therefore opined that it should propose recommendations for improvement of the law and policy recommendations to the government cabinet and related government agencies as follows:

Policy recommendations or recommendations for improvement of the law

Policy recommendations

(1) The Cabinet should prescribe a policy that private security business must pay attention to skill development or training of security guards in areas that may affect human rights, so that their practice would be consistent with international standards, that is the International Code of Conduct for Private Security Service Provider (PSCs), and also prescribe remedial measures in case of human rights violation in the Guiding Principles for Business and Human Rights (UNGPs): Implementing the United Nations “Protect, Respect and Remedy” as a framework.

(2) The Cabinet through the Royal Thai Police, Security Business Control Committee, War Veterans Organization of Thailand and private security business sector should discuss with each other for cooperation in order that the law could be enforced effectively. For instance, they should jointly establish security service standards and standards for central security service course that covers business owners who hire security guards directly as their employees and security service provided by security service firms in order to establish legal equality and considerations of personal rights and liberties. Several parties should be allowed to participate in skill development and training of security guards. This would also be a learning process that helps the private sector to be more responsible for their conduct of business.

(3) The Cabinet through the Royal Thai Police, Security Business Control Committee, War Veterans Organization of Thailand and private security business sector should discuss with each other to prescribe cost assessment for implementation of this Act, and fair management of security guards’ types of work, such as, for example, changes of places where security guards provide security service which must be noted and reported, and there must be a regulatory impact assessment (RIA) in every two years whether or not this law should be improved after this Act came into effect in order to make its legal provisions are effective and recognized by all parties.

Recommendations for Improvement of the law

(1) The Cabinet through the Royal Thai Police should review a required qualification in Section 34 a. (3) of the Security Guards Business Act B.E. 2558 (2015) that those who want to be a security guard must complete compulsory education according to the law about compulsory education.

(2) The Cabinet through the Royal Thai Police should review a condition prohibiting those who were sentenced by court to imprisonment to be a security guard for three years provided in Section 34 b. (3) of the Security Guards Business Act B.E. 2558 (2015) by considering appropriateness for each basis of wrongdoing, prescribing period of time that each former convict would be restricted their right to work in line with the legal

moral, so that all former convicts' right to work would not be equally restricted for different basis of wrongdoing.

(3) The Cabinet through the Royal Thai Police should review and abolish requirement of Thai nationality as a qualification for security guards as provided in Section 34 a. (1) of the Security Guards Business Act B.E. 2558 (2015).

(4) The Cabinet through the Royal Thai Police and Security Business Control Committee should enact a law prescribing standards for security service and standards for security service course by taking into consideration importance of human rights.

Successes/progress in human rights protection

General Prawit Wongsuwan, a Deputy Prime Minister, issued an order assigning the Royal Thai Police to be the main agency to take this case into consideration together with Ministry of Defense, Ministry of Interior, Ministry of Labour, Ministry of Justice, Office of the Council of State, Office of the Consumers Protection Board and related agencies to study guidelines and appropriateness of the NHRCT's recommendations.

The Cabinet passed a resolution on 9th May 2017 acknowledging results of the consideration and actions taken according to policy recommendations or suggestions for improvement of laws as proposed by the Royal Thai Police which could be summarized as follows: In the case of educational background of security guards, those who had already become security guard would be exempted; educational background was not required. As for those who became security guard after 4th March 2016 would be exempted from this educational background requirement as well by changing the required condition from completion of compulsory education course at present to completion of compulsory education course applied at the time they completed their education. As for enactment of law prescribing standards for security service and standards for security service course by taking into consideration importance of human rights, a subject about human rights promotion and protection would be included in the course for certified security guards.