

**Report No. 476/2560 on right in the justice process related to right and liberty to life and body in case of a request to check causes of death of the accused in a special case while being in custody**

**Complainant:** Mr. C

**The accused:** No.1 Officials of the Department of Special Investigation

No.2 Ministry of Justice's Fact Finding Committee

Previous checks could not clearly pinpoint who caused injuries or death to Mr. T which was against the complainant's understanding. However, the accused no.1 who involved in the detention of Mr.T neglected their duty to ensure safety of Mr.T as the accused specified in their operational handbook and this neglect directly resulted in the death of Mr.T. This neglect therefore importantly affected Mr.T's rights, especially right and liberty to life and body and also right in the justice process, resulting in the loss of Mr.T's rights and liberties that are guaranteed and protected by the Constitution. The accused no.1's neglect to take actions as mentioned above was therefore violation of human rights. The National Human Rights Commission then recommended measures or guidelines for preventing and correcting human rights violation according to Section 247 (1) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) to the Department of Special Investigation to take actions.

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A complainant submitted a petition to the National Human Rights Commission, recorded as petition no. 684/2559 dated 1<sup>st</sup> November 2016, requesting the commission to check a claim that Mr. T, an older brother of the complainant, had been arrested by the accused no.1 and held in custody on the 6<sup>th</sup> Floor of the Department of Special Investigation Building. Later on 30<sup>th</sup> August 2016 at 03:15 am, the complainant was informed through his mobile phone that Mr. T had been sick, sent to Mongkut Watthana Hospital and later passed away. Results of an autopsy conducted by physicians from Institute of Forensic Medicine at the Police Hospital indicated that the cause of death was bleeding in abdominal cavity, broken liver caused by being crushed with non-sharp hard object, together with lack of air for breathing caused by neck tying. Altogether the death was unnatural. The accused no.1 claimed that Mr. T tied himself with socks in a room at the Department of Special Investigation. The complainant saw that this unnatural death from neck tying was likely caused by assaults from the accused no.1. When police officers from Thung Song Hong Police Station requested recorded closed-circuit TV footage, the accused no.1 claimed that the closed-circuit TV was broken down; there was no visual recording during the time of the incidence. Later on 22<sup>nd</sup> September 2016, the accused no.2 sent a letter to the complainant, seeking consent for another autopsy of Mr. T's body with computerized X-ray method and creation of three-dimensional models. Together with the letter, there was a consent form for the complainant to sign. However, content of the form was inconsistent with content of the letter; a sentence, "...and other methods in order to establish the facts," was added, making the complainant unable to trust examination by the accused no.2. Later the complainant went to listen to results of the fact findings at a meeting room in the Department of Juvenile Observation and

Protection. A physician at the meeting informed the complainant that Mr. T was dead because of neck tying. When the complainant tried to ask questions about issues he had doubt, the physician tried not to answer these questions and explained in English and medical terms that the complainant did not understand. Moreover, this physician tried to persuade the complainant to believe that Mr. T died because of neck tying. However, when the complainant looked at an autopsy report from the Institute of Forensic Medicine at the Police Hospital, it was found that there were additional details in the inquiry officers' file of case which were clearly different from results of the examination conducted by the accused no.2. The inquiry officers submitted this file of case to state prosecutors. It was pointed out at the end of this file that Mr. T died because other people made him dead. The complainant was afraid that he would not receive fairness from both the accused.

The National Human Rights Commission took this case into consideration and saw that as for the complainant's request to the commission to check the cause and circumstances around the death of Mr. T, state prosecutors had submitted a motion to criminal court, requesting the court to investigate this death according to Section 150 of the Code of Criminal Procedure as a black-numbered case Or Chor 4/2559. While checking this motion, the case was in the process of criminal court where the court would consider the case and issue legal order(s). This circumstance was related to Section 32 of the National Human Rights Commission Act B.E.2542 (1999) which provided that "in case where there was any action or neglect of action that was human rights violation and it was not the case where litigation is taking place in court, or it was the case that the court had issued judgment or final order, the commission has an authority to check and recommend measures to solve the issue according to this Act."

The National Human Rights Commission therefore could not use its authority to check and recommend measures to solve problems related to this issue and thus considered this case ended. As for the issue whether or not the accused no.2 had done or neglected to do anything that was violation of the complainant's human rights related to the case of Mr.T's death, it was seen that Ministry of Justice appointed the accused no.2 to check facts related to the incidence and could pointed out that Mr. T was dead from pressing marks around his neck but could not identify what was the object that had been tied around his neck, and whether the mark was caused by self neck-tying or being hanged. When checking was completed, the accused no.2 reported to Ministry of Justice. Later Ministry of Justice informed the Director General of the Department of Special Investigation to consider taking actions according to its authority which was a correct performance of its duties to create fairness for the complainant as the injured person according to the right in the justice process guaranteed and protected by the Constitution. As for the case that the complainant claimed that content of a consent form that would allow for autopsy of Mr.T was different from content of the letter asking for consent and he did not trust results of checking done by physician who was a member of the committee in the accused no.2, it was found that the accused no.2 had checked facts related to the case of Mr. T's death according to its authority in order to find out the cause of death of Mr. T and concluded the results according to existing evidence. So it was considered that laws were enforced to provide farness to the complainant as a stakeholder who would properly receive rights in the justice process as guaranteed and protected by the Constitution

from this incidence. There was no fact or evidence to indicate unfairness caused by actions of the accused no.2. The commission therefore considered this case ended.

However, concerning the death of Mr. T while being the accused of the Department of Special Investigation, when the Constitution was taken into consideration, it was seen that the Constitution guaranteed a right of the accused to be treated properly in the justice process. Moreover, the Constitution guaranteed right and liberty to life and body. This right bound Department of Special Investigation to enforce the law, that was Department of Special Investigation and the accused no.1 had duties to take actions according to laws and regulations related to detention of Mr. T, so that Mr. T's life and body would be safe, and he would be properly treated according to the scope of right in the justice process guaranteed by the Constitution. However, in case of Mr. T, a fact was clearly established that Mr. T died while he was detained as the accused in the building of Department of Special Investigation, and checking by Department of Special Investigation and Ministry of Justice could be seen that officials in duty related to detention of Mr. T were not strict, showing negligence of their duties to look after Mr. T as prescribed in an instruction manual concerning detention of the accused by the accused detention and exhibit keeping section of the Department of Special Investigation. This led to an investigation in case of officials' disciplinary offence. There are also several other important notices, especially the fact that Department of Special Investigation assigned security personnel to detain the accused (Mr. T), only two of the accused no.1 were assigned to control the area, and allowing closed-circuit TV which was important equipment for surveillance to be out of order, for example. These facts and notices show that even if investigation could not pinpoint who caused Mr. T's injuries or death, which was different from the complainant's understanding, the accused no.1 involved in detention of Mr. T did neglect to take care of safety of Mr. T who was the accused as prescribed by the instruction manual. This was negligence of actions that directly resulted in the death of Mr. T. This negligence therefore affected the essence of Mr. T's rights, especially right and liberty to life and body and right in the justice process, resulting in the loss of rights and liberties of Mr. T that were guaranteed and protected by the Constitution. Negligence of actions by the accused no.1 was therefore violation of human rights. The National Human Rights Commission then sent recommendations about measures or guidelines for preventing and solving problems of human rights violation according to Section 247 (1) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) to the Department of Special Investigation to take actions as follows:

(1) To increase stricter measures for detention and taking care of the accused in any special case, including the place of detention must be appropriate and provide safety for the accused, officials on detention duty must have proper expertise and specific skills, and existence of strict rules, regulations and guidelines.

(2) Speed up investigation in this case of complaint to get a conclusion and quickly reveal results of the investigation to the public in order to reduce doubts and suspicions of the people and create trust in the operation of the Department of Special Investigation.