

**Report No. 132/2560 on unfair discrimination in case of persons with disabilities did not benefit from tax exemption or concession**

**Complainant:** Mr. K

**The accused:** Ministry of Social Welfare and Human Security

Right to benefit from tax exemption is a reasonable measure to help persons with disabilities. This right helps support and guarantee that persons with disabilities can enjoy and use all kinds of human rights on equal basis with other people as confirmed in the Convention on the Rights of Persons with Disabilities (CRPD) of which Thailand has ratified to become a state party. Moreover, when Section 19 and Section 20 of the Empowerment of Persons with Disabilities Act B.E. 2550 (2007) and Ministerial Regulation No. 126 B.E. 2509 (1966) issued from provisions in the Fiscal Code on Exemption of Tax Revenue no.2 (81) are taken into consideration, it was found that no wordings in these two legislations state that persons with disabilities must have Thai nationality. The complainant, a foreign person with disability who pays income tax, should therefore enjoy the right to tax exemption according to Section 42 (17) of the Fiscal Code which follows principle of the Convention on the Rights of Persons with Disabilities. An explanation from the accused that a regulation of the National Empowerment of Persons with Disabilities Committee on criteria, methods and conditions for an application for persons with disabilities identity card, card issuance and assignment of officials who have an authority to issue persons with disabilities identity cards, fixing or changing rights and disclaiming of rights of persons with disabilities, and card life of the persons with disabilities identity card, B.E. 2556 (2013) provides that only persons with disabilities of Thai nationality are able to apply for persons with disabilities identity card because the law has an intention to protect and safeguard rights and interests of persons with disabilities of Thai nationality. This regulation of the National Empowerment of Persons with Disabilities Committee has never been amended or improved as recommended in a report from the National Human Rights Commission and is thus considered to be a negligence of action that is violation of human rights according to the Convention that Thailand has ratified and also according to the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014).

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Referring to a petition no. 247/2555 dated 5<sup>th</sup> June 2013 submitted to the National Human Rights Commission to seek fairness, a complainant claimed that he was a person of Norwegian nationality who had a car accident while working as an employee of a subcontract construction company in the Kingdom of Norway, making him suffering from displaced collar bones and being unable to work. Physicians diagnosed that he was 100% disabled. The complainant received pension for persons with disabilities from the government of the Kingdom of Norway and paid tax by deduction from his pension in the Kingdom of Norway. Later the complainant registered his marriage with a woman of Thai nationality and since 2006 has been living in Thailand with a temporary permission to legally enter the country. Since 2010 the complainant has chosen to pay income tax in Thailand with Phor Ngor Dor 91

but has never been granted right to tax concession or tax exemption similar to persons with disabilities of Thai nationality. The National Human Rights Commission took this case into consideration and saw that the regulation of the National Empowerment of Persons with Disabilities Committee on criteria, methods and conditions for an application for persons with disabilities identity card, card issuance and assignment of officials who have an authority to issue persons with disabilities identity cards, fixing or changing rights and disclaiming of rights of persons with disabilities, and card life of the persons with disabilities identity card, B.E. 2556 (2013) provides that only persons with disabilities of Thai nationality are able to apply for persons with disabilities identity card, and thus is a provision that unfairly discriminates against the complainant. The Commission therefore issued a policy recommendation to the accused to consider reviewing, amending and improving the regulation to cover persons with disabilities of whatever nationality who have a document confirming their permanent disabilities, so that they could enjoy tax-related rights and benefits according to report no. 600/2558 dated 21<sup>st</sup> July 2015. However, the accused by the Department of Empowerment of Persons with Disabilities later explained that the regulation is provided only for persons with disabilities of Thai nationality because the regulation has an intention to protect and safeguard rights and interests of persons with disabilities of Thai nationality. This regulation of the National Empowerment of Persons with Disabilities Committee has never been amended or improved as recommended in a report from the National Human Rights Commission.

The National Human Rights Commission took this case into consideration and saw that right to tax exemption is a reasonable measure to help persons with disabilities. This right helps support and guarantee that persons with disabilities can enjoy and use all kinds of human rights on equal basis with other people as confirmed in the Convention on the Rights of Persons with Disabilities (CRPD) of which Thailand has ratified to become a state party. Moreover, when Section 19 and Section 20 of the Empowerment of Persons with Disabilities Act B.E. 2550 (2007) and Ministerial Regulation No. 126 B.E. 2509 (1966) issued from provisions in the Fiscal Code on Exemption of Tax Revenue no.2 (81) are taken into consideration, it was found that no wordings in these two legislations state that persons with disabilities must have Thai nationality. The complainant, a foreign person with disability who pays income tax, should therefore enjoy the right to tax exemption according to Section 42 (17) of the Fiscal Code which follows principle of the Convention on the Rights of Persons with Disabilities. An explanation from the accused that a regulation of the National Empowerment of Persons with Disabilities Committee on criteria, methods and conditions for an application for persons with disabilities identity card, card issuance and assignment of officials who have an authority to issue persons with disabilities identity cards, fixing or changing rights and disclaiming of rights of persons with disabilities, and card life of the persons with disabilities identity card, B.E. 2556 (2013) provides that only persons with disabilities of Thai nationality are able to apply for persons with disabilities identity card because the law has an intention to protect and safeguard rights and interests of persons with disabilities of Thai nationality. This regulation of the National Empowerment of Persons with Disabilities Committee has never been amended or improved as recommended in a report from the National Human Rights Commission and is thus considered to be a

negligence of action that is violation of human rights according to the Convention that Thailand has ratified and also according to the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014).