

Report on Investigation Results No. 64/2561

Child's rights in case that there was no penalty for related officials involved in the establishment of Private Children Foster Homes without legal registration

Issues of Complaint

The National Human Rights Commission of Thailand received a complaint requesting for an investigation on a case of a claim that at present there are many private children welfare facilities being set up without legal registration which is an offence according to the Child Protection Act B.E. 2546 (2003), Chapter 6: Nursery, Shelter, Welfare Centre, Welfare Protection Centre, and Development and Rehabilitation Centre. However, when complaints were submitted, government agencies with authority to deal with this matter just neglected as there is no penalty for responsible officials, which impacted children under care of private children welfare facilities that have not legally registered according to the law were taken care below standards and being physically, mentally and sexually abused.

Actions taken

The National Human Rights Commission of Thailand (NHRCT) took this case into consideration and saw that officials according to the Child Protection Act B.E. 2546 (2003) are considered to be officials according to the Criminal Code. When these officials received any complaint and did not take actions according to their authority, they then had committed wrongdoing for an offence of negligence of their duty which is an offence against their official position according to Section 157 of the Criminal Code which is a law that has already provided penalties for officials who neglected to perform their duties in general and covered this offence. It is therefore not necessary to have specific penalties for officials who do not take actions when they are informed about Nursery, Shelter, Welfare Centre, Welfare Protection Centre, and Development and Rehabilitation Centre that have not been registered with the authority. This case therefore cannot be considered to have actions, or neglect to have actions, that are violation of human rights at all and the Commission there passed a resolution to end the story.

Recommendations

(1) Ministry of Social Development and Human Security should work together with nurseries, shelters, welfare centres, welfare protection centres, and development and rehabilitation centres to promote and support these units to abide by the law concerning legal registration, taking into consideration first on the rights and best interests of the child.

(2) Ministry of Social Development and Human Security should do public relations and disseminate information about taking actions according to Child Protection Act B.E. 2546 (2003) in case of legal registration, and also support, promote and give advice to these facilities that are not yet able to take care of children according to the minimum standards which are actions to look for cooperation in taking care of children for their best interests.

(3) Ministry of Social Development and Human Security should enjoin Social Development and Human Security Office in every province to speedily report information about nurseries, shelters, welfare centres, welfare protection centres, and development and rehabilitation centres in the province of its responsibility to Department of Children and Youth to add to the database system in order that checking could be done faster.

(4) Ministry of Interior should issue a circular notice enjoining officials according to Section 24 of the Child Protection Act B.E. 2546 (2003) who are subject of the Interior Ministry to cooperate with Provincial Social Development and Human Security Offices to survey, check and promote nurseries, shelters, welfare centres, welfare protection centres, and development and rehabilitation centres in each province.

Successes/progress in human rights protection

(1) Ministry of Interior has already informed provincial governors of all the provinces to take actions according to the NHRCT's recommendations on measures to prevent human rights violation.

(2) Department of Children and Youth reported that Ministry of Social Development and Human Security by Department of Children and Youth has a task to develop, assist and protect welfare of children and youth, including to promote and take care of private nurseries, so that operation of private nurseries is effective and children's welfare is protected according to the Child Protection Act B.E. 2546 (2003). Actions have been taken as follows:

(2.1) Conduct campaign, do public relations and give advice on operation of private nurseries which consists of shelters, welfare centres, welfare protection centres, and development and rehabilitation centres, both those that had been legally registered and those that had not been registered, according to standards fixed by rules of Ministry of Social Development and Human Security, so that children shall be taken care of according to the minimum standards.

(2.2) Go to field areas to visit and check private nurseries, both at the center and in the regions, and coordinate with Provincial Social Development and Human Security Offices to survey private nurseries, both those that had been legally registered and those that had not been registered, to create central database on children's welfare protection, leading to correct registration according to rules of Ministry of Social Development and Human Security.

(2.3) In case of a complaint was submitted that any children under care of a private nursery, whether it has or has not been registered, was injured physically, mentally and sexually, facts would be investigated together with a multidisciplinary team. If wrongdoing was found as in the complaint, primarily the children would be taken away from the nursery to protect their welfare. Then meetings of the Child Protection Committee at the central authority and at provincial level depending on what area the incident occurred would be convened to assess officials who had committed that wrongdoing according to Section 398 of the Criminal Code which states that "Anyone who did anything that was an abuse to a child aged not more than fifteen years old, a patient or an old person who must depend on that person to make a living or on any other matter is to be punished by imprisonment of not more than one month, or by paying a fine not more than ten thousand Baht, or by both imprisonment and fine paying". In the part of the concerned private nursery, it shall be cautioned to know about laws that protect children's welfare. If it was found that the facility did not take actions according to recommendations it had been given, the private nursery, whether it had or had not been registered, would be closed. In the region, authority to do so is in the hand of the provincial governor for the best interests of children.