

PUBLIC INFORMATION ON THE COMPLIANCE OF CORRECTIVE MEASURES AND RECOMMENDATIONS MADE BY THE NHRCT ON THE USE OF CONFINEMENT INSTRUMENTS APPLIED TO STUDENTS OF “FREE YOUTH MOVEMENT” IN CUSTODY

1. Background

It was widely appeared in public and media that the Department of Corrections applied leg confinement instrument to seven “Free Youth Movement” students in custody when they were brought from Bangkok Remand Prison for the Military Court proceedings on 5 July B.E. 2559 [2016]. The student detainees whose legs were confined on travel to the Court since investigators of Bang Sao Thong Police Station in Samut Prakan Province requested the Court’s order to continue detention of the accused for further investigation for the second time. The leg confinement was reported in media as the use of leg shackles and raised a question of possible violation of human dignity and the right to person’s integrity.

Upon consideration, the National Human Rights Commission of Thailand (NHRCT) at the 25th meeting of B.E. 2559 [2016] on the protection and standards of human rights on 9 August 9 B.E. 2559 [2016] deemed that the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 [2014] guaranteed and protected human dignity, rights, liberty and equality of the Thai people in accordance with the tradition of democratic rule with the King as Head of State as well as with Thailand’s existing international human rights obligations. The use of power by government organizations or government officials shall take into account human dignity, rights and liberty of a person. Rights and liberty may, however, be limited by virtue of provisions of the law as deemed necessary. Government officials shall strictly exercise their authority within that scope and not beyond conditions required by law.

In the above-mentioned case, the use of tool to confine the students’ legs for the Court’s procedure to permit the request for further detention for interrogation inevitably lessened their freedom of movement, affecting their right to body, and probably caused humiliation which affected their dignity.

Despite the provision of the law allows the restriction of movement of persons in custody by using confinement instruments under Section 14 of the Correction Act B.E. 2479 [1936], there are exceptions upon significant grounds under Sections 14 (4) and paragraph two. In cases when persons in custody are taken outside prisons, authorized officers have the authority to order application of confinement instruments, and to revoke the order as deemed

appropriate. In addition, Clause 28 paragraph three of a ministerial regulation of the Ministry of Interior issued by virtue of Section 58 of the Correction Act B.E. 2479 [1936] and amendment sets out the conditions for determining application of confinement instruments to persons in custody when they are to be taken outside prisons [In case the confinement is required, use handcuffs. Unless a person who is in custody for serious offence, the use of fetters or leg chains or a set of leg chains and handcuffs may be applied.] Although the term "serious offence" is not defined by the said ministerial regulation, Section 173 of the Code of Criminal Procedure prior to its amendment (No. 15) B.E. 2527 [1984]; nevertheless, prescribed the requirement for the court to ask the defendant whether (s)he needs a lawyer. Under the said Section, the Police Department Regulation on Serious and Awful Incidents and Incidents that Require Urgent Reporting (No. 7) B.E. 2541 [1998], dated July 1, B.E. 2541 [1998], Clause 1.1 stipulates that serious and awful incidents are murder of others, robbery, stealth, arson and kidnapping people for ransom. A serious offence; therefore, refers to an awful crime committed against the public with a more severe punishment than any other offences. The case of the seven students in custody is related to a charge of violating the Order of the Head of the National Council for Peace and Order No. 3/2558 that prohibits political assembly consisting of five or more persons, a charge of causing disorder and preventing orderly voting. The charges are concerned with different opinions and a charge of failing to comply with an investigator's fingerprint order and to present cards or receipts or receipt substitutes upon an officer's check. It is not characterized as a serious and awful crime against the public. Therefore, it cannot be considered a serious offence.

Additionally, considering the general principle concerning the condition for the exercise of power by the government organization or officials in this case, the action of the officers responsible for controlling the persons in custody and the competent authority who ordered to use confinement instrument or leg chains to the seven students did not comply with the rule of law; that is, it shall be necessary or with legitimate and reasonable objective to achieve. Therefore, the act of Bangkok Remand Prison officers applying leg confinement instrument to seven students in custody was a violation of the right to person's integrity without legal authority. Besides, taking the seven students from Bangkok Remand Prison to Bangkok Military Court on July 5, B.E. 2559 [2016] with confinement instrument in the open, which was publicised around the world, was the act degrading their human dignity. Both said issues were regarded the violation of human rights as per the provisions under the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 [2014] and International Covenant on Civil and Political Rights.

The NHRCT has, therefore, resolved to submit following corrective measures and recommendations to the Department of Corrections (examination report no. 104/2559, dated August 9, B.E. 2559 [2016]).

1.1 Corrective Measures

The Department of Corrections must urge and warn its officials to consider application of confinement instruments strictly in compliance with the Correction Act B.E. 2479 [1936] and the ministerial regulation of the Ministry of Interior issued in accordance with Section 58 of the Correction Act B.E. 2479 [1936] and amendment with the intention to prevent the re-occurrence of similar human rights violation

1.2 Recommendations

(1) The Department of Corrections should assess its officials' understanding regarding security maintenance with due respect of human rights of persons in custody. Education, training and monitoring of the development of standards of security and human rights should be organized regularly and continuously.

(2) Officials responsible for controlling persons in custody should consider the application of confinement instruments strictly in accordance with the law, and wardens shall order applying them to persons in custody only as required by law.

(3) The Department of Corrections should consider instruments with modern technology to replace existing confinement instruments to render due respect to human dignity, rights and liberty of persons in custody.

(4) Once the confinement instruments are applied, the Department of Corrections should consider measures to protect dignity of the detained persons. Photographing people with confinement instruments and publishing to the public will humiliate them and degrade their dignity. In this connection, the Department may use uniforms for persons in custody that can conceal the confinement instruments, and while taking such persons outside prisons, photographing should be prevented.

(5) The Department of Corrections should separate people in their custody. People who commit serious offences, particularly against lives, bodies or properties, should be separated from those who have committed offences of politics in nature such as security or political offences, or offences in manners that are non-life-threatening. The latter group should be considered on a case-by-case basis as to how to be detained appropriately.

2. Results of Implementation of Corrective Measures and Recommendations

The Department of Corrections issued letters no. MOJ 0705.1/27651 dated September 20, B.E. 2559 [2016], memorandum no. MOJ 0705.1/10419 dated April 24, B.E. 2560 [2017], and the most urgent letter no. MOJ 0704.1/7284 dated March 18, B.E. 2564 [2021], informing the NHRCT of its implementation of corrective measures and recommendations made by the NHRCT, as well as its opinions to promote and protect human rights. Summary is as follows.

2.1 The Department has urged Bangkok Remand Prison officials to consider the application of confinement instruments to persons in custody strictly in compliance with Section 14 of the Correction Act B.E. 2479 [1936] and amendment, the ministerial regulation of the Ministry of Interior issued in accordance with Section 58 of the Correction Act B.E. 2479 [1936] and amendment, including an order note to act with caution and strictness.

2.2 The Correctional Staff Training Institute, which trains officers of the Department, has reaffirmed the understanding with the officers concerning security in line with human rights protection of persons in custody and put emphasis in all training courses for staff, such as a course for newly employed correctional officers and a warden course, to treat such persons with due respect of human dignity.

2.3 Officers responsible for supervising persons in custody shall give instruction to use confinement instruments strictly in accordance with the law. The Department has ordered prisons and correctional facilities to comply with the law all the time, and issued warnings in case the application of confinement instruments does not comply with the law.

2.4 The Department has now deployed confinement instruments which are more humane, similarly to other civilized nations. At the same time, it still maintains effective control in accordance with the Department's Announcement on the designation and size of handcuffs and leg chains.

2.5 The Department has considered implementing the recommendation on the use of uniforms to conceal confinement instruments, and views that special lanes should be provided for persons in custody that would better prevent photographing by the media than such uniforms would. This, however, requires a budget and involves other agencies, such as the Courts of Justice, Ministry of Defence and Ministry of Justice. The Department has issued a note to all prisons in Bangkok jurisdiction to comply with a guideline suggested by the Criminal Court; that is, if the accused or defendants are in the process of requesting temporary release, officials will arrange to separate them to a room pending the temporary

release without having to search them. When the court rules that the temporary release is not allowed, officials shall proceed in accordance with regulations. In this connection, the Criminal Court has now provided specific room for the purpose. Nevertheless, as for provincial courts, commuting to and from courts falls within the authority of police officers, not of the Department. In addition, any escape or attack during commuting or while at courts will affect the image of security within responsibility of agencies concerned. The Department has, therefore, urged all prisons to coordinate with related authorities – both provincial courts and the local police - to establish tight and safe control measures. For example, fetters and handcuffs are to be checked for security prior to handing over persons in custody to police officers. Commuting to and from courts shall be provided in suitable vehicles and with suitable drivers. As for other measures, the instruction manual in taking persons in custody to and from courts shall be followed.

2.6 For the recommendation related to separation of persons in custody, the Department has legal guidelines in accordance with the recommendation, dividing people in custody into female inmates, inmates under 25 years old and sentenced for the first time, inmates convicted of life-threatening and physical offences, and inmates convicted of damage to chattel, etc.

3. Resolutions of the NHRCT

The NHRCT at the 29th meeting of B.E. 2564 [2021] on the protection and standards of human rights on 22 June B.E. 2564 [2021] acknowledged the results of the Department of Corrections' implementation of the corrective measures and recommendations in the case. As for the Department's opinions in respect of the preparation of special lanes for persons in custody to prevent photographing by the media that requires a budget and cooperation with various agencies, such as Court of justice, Ministry of Defence and Ministry of Justice, the NHRCT will discuss the matter with related authorities to systematically resolve it.