

Thailand outlaws gender discrimination

by

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Introduction: The Gender Equality Act (2015) came into force in September 2015. Prior to this, there were only general anti-discrimination rights contained in the Constitution. In this article, we consider the nature and scope of its provisions.

What is discrimination?: Unfair gender discrimination means: any act or omission of an act, which causes division, discrimination or limitation of any right and benefit, either directly or indirectly, without justification, due to the fact that a person is male or female, or of a different appearance from his/her own sex by birth.

Regulatory committees: The Act sets up two regulatory committees:

(a) Gender Equality Promotion Committee (“Sor Tor Por Committee”)

This Committee has duties to establish policies and action plans for promotion of gender equality, to advise the Cabinet with policy recommendations and proposals, to collect statistics, and draft regulations for the *Wor Lor Por* Committee.

(b) Committee for Consideration of Unfair Gender Discrimination (“Wor Lor Por Committee”)

This Committee has the following powers:

- to decide cases where there have been complaints of unfair gender discrimination
- to take temporary measures for protection or mitigation
- to issue orders
- to submit complaints to the Ombudsman

Strangely, members of both Committees must be Thai nationals by birth and aged over 35. It is ironic that an Act such as this, is so discriminatory in defining the composition of its regulatory committees!

Anti-discrimination protections and obligations: The Act provides that:

- Policies, rules, regulations, notifications, projects or procedures, whether by government agencies, private organizations or any individual which amount to unfair gender discrimination, are prohibited
- Implementation of principles to eliminate discrimination or to encourage persons to exercise their rights and freedom as others, for protection of a

person's safety and welfare, for compliance with religious principles, or for national security, are deemed not to be discrimination.

Right to take action: Any person believing that he/she has suffered or is likely to suffer loss caused by acts of unfair gender discrimination (providing not subject to pending proceedings or the subject to a final court judgment, may complain to the *Wor Lor Por* Committee for consideration whether an act is discrimination or not. The decision of the *Wor Lor Por* Committee is final.

Such a complaint does not prevent the right of a person to sue for damages in civil proceedings. In such case, the court may award damages other than in money. If the discrimination was intentional or by gross negligence, the court may award damages at four times the actual loss.

A complainant can either sue himself/herself or ask an organization to sue on their behalf.

Limitation period: Legal proceedings must be issued within two years from the date on which the *Wor Lor Por* Committee has made a decision, or from the date on which the Administrative Court has issued a final decision.

Interim order: Whilst a complaint is under consideration, the *Wor Lor Por* Committee may issue a temporary order before making a decision, to protect or mitigate loss faced by the victim, as necessary and appropriate.

Powers of Wor Lor Por Committee: Where a decision has been made by the *Wor Lor Por* Committee that there has been discrimination, the Committee may issue the following orders:

- that any relevant government agency, private organization or relevant individual takes any action to end and prevent discrimination, and
- to ensure that there is damages and remedies provided to an injured party

The *Wor Lor Por* Committee may prescribe conditions deemed necessary in order for offenders to take action.

Submission of complaint to the Ombudsman: Where the *Wor Lor Por* Committee has decided that there has been discrimination, but there no judgment has been issued by the Constitutional Court, it shall then submit the case to the Ombudsman for onward submission to the Constitutional Court, to assess whether such legal provision is contradictory to the Constitution.

Procedural and investigatory powers: The *Wor Lor Por* Committee or its officers have power to:

- enter any residence or premises to collect evidence under a search warrant
- to send an inquiry letter, or summon a person to give a statement, or supply things or documents to support its considerations.

Damages and remedies: Once the *Wor Lor Por* Committee has issued a decision that there has been discrimination, an injured party is entitled to damages and remedies. He/she must claim this within one year from the decision of the *Wor Lor Por* Committee.

The right to receive damages and remedies is not assignable and does not survive death.

Nature of damages: Damages for an injured party shall be provided in cash or kind, as follows:

- damages for loss of income during a period of inability to work
- damages for loss of commercial opportunity which can be calculated in money,
- damages for expenses of medical care, including physical and mental rehabilitation, and
- damages and remedies in other form or character.

Administrative damages no bar to civil action: Damages and remedies do not end any right to issue civil proceedings claiming damages.

Punishment for breaches of duty: The Act contains a scheme of fines, and in some cases, imprisonment, for breach of duties imposed by the Act.

Comment: This Act is novel in several regards:

- apart from general duties imposed under previous constitutions, this is the first occasion that a specific Act has been issued to prohibit gender discrimination.
- The definition of discrimination is very widely cast, it applies to “*any right or benefit*” and therefore may be invoked e.g. to discrimination in employment, education, or the provision of goods or other services
- The definition of discrimination is also wide enough to enable transgender people to bring claims under the Act.

There are still enabling regulations to be issued before this Act can be invoked. And we shall have to wait to see the attitude in practice of the regulating Committee and the Courts to complaints of discrimination.

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