

## Recognizing the Rights of the Disabled- Verdict of the Constitutional Court

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Protecting the rights of the disabled has been addressed both generally and specifically in different instruments adopted by the United Nations. In general, The **Universal Declaration of Human Rights** has been used as a common standard in ensuring the rights to which all human beings are inherently entitled. More specifically, the **Convention on the Rights of Persons with Disabilities** aims to protect rights of persons with disabilities by promoting and ensuring their equality under the law.

In a case submitted to the Constitutional Court of Thailand, Sirimit Boonmoon, a disabled lawyer accused the Judicial Commission of violating the constitution by turning down his application to become an associate judge. The following discussion analyzes the rights and the basis of the verdict.

Generally speaking, the rights declared in the Universal Declaration of Human Rights would have been sufficient to protect all human beings in a perfect world. However, in reality, certain groups such as women, children, refugees, and the disabled have been the most vulnerable in being granted these rights. Therefore, the adoption of the Convention on the Rights of Persons with Disabilities ensures that societies acknowledge that all its subjects must be provided with the opportunities to live life to their fullest potential. In article 4, *“Countries that join the Convention engage themselves to the develop and carryout policies, laws and administrative measures for securing the rights recognized in the Convention and abolish laws, regulations, customs and practices that constitute discrimination.”*

The Convention on the Rights of Persons with Disabilities took effect on 3 May 2008 and includes 153 signatories and 117 parties of the world. Member states and governments under the UN have an obligation to adhere to its articles. As a member state, Thailand is also subject to this convention and submitted its signature on 30 March 2007.

Moreover, the constitution of Thailand specifically enshrines the protection of the physically disabled. Under the 2007 Constitution, Part 2 “Equality” Article 30 states *“All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights. Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education, or Constitutional political views, shall not be permitted. Measures determined by the State in order to eliminate obstacles to or promote persons’ ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three.”*

With regards to the Constitutional Court verdict on the Court’s prior decision in May 2002 which ruled that the Section 26 (10) of the Act on Regulations of Judicial Officials of the Courts of Justice allowed the judiciary committee and its

subcommittee to use discretion to bar Sirimit Boonmoon from sitting for the judges' entrance examination, the justices concluded that it did constitute discrimination prohibited by Constitution.

Although this case has been ruled and the previous verdict did not constitute discrimination, the prior decision was based on the 1997 Constitution, which did not have a specific article for disabled persons like the 2007 Constitution. This is the primary reason the Office of the Ombudsman reaccepted the complaint and submitted it to the Constitutional Court for consideration.

As the justices issued a formal verdict on 13 June 2012, the prior verdicts applied unjust discrimination on the disabled judge and portrayed him as having physical or health conditions. The words used in those rulings "... having physical and mental characteristics that did not match..." were therefore discriminatory. As a result, the Judicial Commission's selection criteria did not test the applicant's true knowledge and capabilities.

A deeper look into one of the Judges's individual rulings points out that the Judicial Commission not only based its decision on the participant's disability but also failed to use the selection criteria that truly tested the skills and capabilities of the participant. The responsibilities of an associate judge did not require physical mobility as the daily tasks take place within the courtrooms. Judicial procedures such as fact finding or the interview of witnesses need not be done in person but can be delegated to another official for that particular case. The essential characteristic of a law practitioner and more specifically an associate judge should therefore be the application of justice and impartiality.

Furthermore, in consideration of article 19 of the 2007 Constitution, *"The restriction of such rights and liberties as recognized by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substance of such rights and liberties. The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorizing its enactment shall also be mentioned therein. The provisions of paragraph one and paragraph two shall apply mutatis mutandis to rules or regulations issued by virtue of the provisions of the law."*