

Summary of Constitutional Court Ruling

No. 3/2562 (2019)

Dated 3rd March B.E. 2562 (2019)*

Re: The Election Commission applied for a Constitutional Court ruling to dissolve Thai Raksa Chart Party.

1. Summary of background and facts

On 23rd January B.E. 2562 (2019), the Royal Decree Calling a General Election of Members of the House of Representatives B.E. 2562 (2019) was enacted. Thereafter, the Election Commission, applicant, issued Announcement on Applications for Candidacy in the Election of Members of the House of Representatives, dated 24th January B.E. 2562 (2019). Clause 3 stated that a political party that wished to nominate a list of persons adopted by resolution of the political party to the House of Representatives to contest for appointment to become Prime Minister should submit a list of not more than 3 names along with letters of consent of the nominated persons to the applicant. On 8th February B.E. 2562 (2019), Thai Raksa Chart Party, respondent, submitted a letter to the applicant nominating Princess Ubolratana Rajakanya Sirivadhana Barnavadi as the person adopted by resolution of the respondent party for presentation to the House of Representatives for appointment to become Prime Minister together with a letter of consent. After the respondent's submission of such letter, on the same day, a Royal Proclamation of the Royal Institution under the Constitution of the Kingdom of Thailand was issued.

The applicant was of the opinion that the respondent's action of nominating Princess Ubolratana Rajakanya Sirivadhana Barnavadi constituted by any means an act to involve a high ranking member of the Royal Family in the political system. Such an action was inconsistent with ancient royal tradition, customs and national culture. The action was gravely inappropriate since all members of the Royal Family were above politics and observed political impartiality, and could not hold any political office. Such action of the respondent was deemed to be adverse to the democratic form of government with the King as Head of State, thus constituting a cause for the Constitutional Court to order the dissolution of the respondent party pursuant to section 92 of the Organic Act on Political Parties B.E. 2560 (2017). The applicant therefore adopted a resolution in meeting number 18/2562 on 12th February B.E. 2562 (2019) to submit an application to the Constitutional Court to order the dissolution of the respondent party. The following rulings were sought from the Constitutional Court:

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(1) to order the dissolution of the respondent party pursuant to section 92 of the Organic Act on Political Parties B.E. 2560 (2017);

(2) to order the revocation of election candidacy rights of the 14 respondent party executives pursuant to section 92 of the Organic Act on Political Parties B.E. 2560 (2017);

(3) to ban the respondent party's former executives whose election candidacy rights had been revoked from registering a new political party or becoming a political party executive or participating in the establishment of a new political party for a period of ten years as from the Constitutional Court order to dissolve the respondent party pursuant to section 94 of the Organic Act on Political Parties B.E. 2560 (2017).

2. The preliminary issue considered by the Constitutional Court

The preliminary issue was whether or not the Constitutional Court could accept this application for a ruling under section 92 of the Organic Act on Political Parties B.E. 2560 (2017).

The Constitutional Court found as follows. Upon a finding of reasonable evidence to believe that the respondent had committed an act which constituted a cause for Constitutional Court dissolution of the respondent pursuant to section 92 of the Organic Act on Political Parties B.E. 2560 (2017), the applicant submitted an application to the Constitutional Court for an order to dissolve the respondent party. The Constitutional Court therefore ordered the acceptance of this application for a ruling under section 7(13) of the Organic Act on Constitutional Court Procedures B.E. 2561 (2018) in conjunction with section 92 paragraph one of the Organic Act on Political Parties B.E. 2560 (2017).

3. The issues considered by the Constitutional Court

The Constitutional Court determined the issues to be considered and ruled on three issues, as follows.

The first issue was whether or not there was a cause for dissolution of the respondent party pursuant to section 92 paragraph one (2) of the Organic Act on Political Parties B.E. 2560 (2017).

After consideration, the Constitutional Court found as follows. The essence of a fundamental principle in the democratic form of government with the King as Head of State was stated in Royal Writing Number 1/60, dated 14th November B.E. 2475 (1932), that members of the Royal Family holding the rank of Mom Chao or higher should be above all politics. Such fundamental principle was deemed as part of the founding spirit of the Thai governing system in the Constitution and had been continuously accepted and recognised by consensus of the House of Representatives.

The King and high ranking members of the Royal Family should be above politics, in particular, in terms of not participating in political contests which could draw attacks, criticisms and prejudice to public order and harmony between the Royal Institution and the people, being the convention under the democratic form of government with the King as Head of State. Although the Draft Constitution of the Kingdom of Thailand B.E. 2489 (1946) was silent on the restriction of roles of the Royal Family in politics, this did not mean that the fundamental constitutional principle on the revered status of members of the Royal Family who were above criticism, and non-involvement in politics which could prejudice the impartiality of the Royal Institution, was annulled. This was evident in Constitutional Court Ruling Number 6/2543 and consistent with the principle that the King “reigns, but not rule”. This constitutional principle of parliamentary democracy could be found in civilised nations with monarchs as heads of states. The respondent’s actions affected the fundamental principle of the Thai democratic form of government with the King as Head of State which upheld the King’s reign but not rule principle, and by implication caused detriment and deterioration of the said principle.

The exercise of political rights and liberties recognised by the Constitution should be subject to the rules and processes provided by the Constitution and laws and should not constitute an exercise of right and liberty which would undermine the fundamental constitutional principle and destabilise the roots of the prevailing Thai democratic form of government with the King as Head of State. Even though the respondent had the right and liberty to engage in political activities as provided by the Constitution and laws, such exercise of right and liberty of a political party should be premised on the awareness that the action would not constitute a reliance of political right and liberty as recognised by the Constitution to undermine the fundamental principle, basic rules, values and spirit of the Constitution.

Even though the law did not define the terms “overthrow” or “enmity”, both terms have plain meanings under the Thai language that were generally understood. The court could on its own accord know that the term “overthrow” referred to an action with intent to destroy or extinguish totally. As for the term “enmity”, there was no need for violence to the extent of extinguishment. One also did not have to establish oneself as an enemy or an opposition, but merely an act to obstruct or impede advancement or an act which resulted in the deterioration, decline or weakening would suffice to constitute an act of enmity. As regards the question of intent, section 92 paragraph one (2) of the Organic Act on Political Parties B.E. 2560 (2017) clearly stated that merely “may be in enmity” was prohibited. There was no requirement of direct intent or a serious harm suffered. This measure prevented serious harm from occurring on the nation’s institution. The state policy was necessary

to extinguish major flames from the source to stop the spread of small blazes into subsequent unstoppable wild fires.

It was found on clear evidence that the respondent acted with awareness and true voluntary intent. The respondent party executives apparently knew that Princess Ubolratana Rajakanya Sirivadhana Barnavadi was the eldest daughter of His Majesty King Bhumibol Adulyadej, and also the sister of His Majesty the King. Even though she had tendered her relinquishment of royal status, she remained a member of the Chakri Royal Family. The respondent's action amounted to drawing a high ranking member of the Royal Family into politics. The action also caused the ordinary Thai people to perceive the ability to utilise the Thai Royal Family, a point of unity for the entire nation, for a sly advantage by portraying political affiliation. The respondent strived to achieve a political advantage without regard to the fundamental principle of the democratic form of government with the King as Head of State. There was risk of losing the status above politics and political impartiality. These were clearly starting points of deterioration, decline or weakening would suffice to constitute an act of enmity to the democratic form of government with the King as Head of State as provided under section 92 paragraph one (2). There was reasonable evidence to believe that the respondent had committed an act under section 92 paragraph one (2). Hence, an order was issued to dissolve the respondent party.

The second issue was whether or not the election candidacy rights of the respondent party executives should be revoked under section 92 paragraph two of the Organic Act on Political Parties B.E. 2560 (2017).

The Constitutional Court found as follows. Upon finding that the respondent committed an act constituting a cause for dissolution of the respondent party pursuant to section 92 paragraph one (2) and paragraph two of the Organic Act on Political Parties B.E. 2560 (2017), based on which the Constitutional Court had already ordered the dissolution of the respondent party, the Constitutional Court could thus order the revocation of election candidacy rights of the respondent party executives in office on 8th February B.E. 2562 (2019), being the date of occurrence of the act constituting the cause for dissolution of the respondent party pursuant to section 92 paragraph two of the Organic Act on Political Parties B.E. 2560 (2017).

A consequential question which had to be considered was the appropriate period of revocation of election candidacy rights. The Constitutional Court found that the respondent's actions constituted only potential causes for enmity against the democratic form of government with the King as Head of State, and not yet an intent to overthrow the democratic form of government with the King as Head of State. Also, the action constituted only a step in the process for installation of a Prime Minister, and had not yet caused serious detriment to the nation's governing system. Moreover,

the respondent party executives immediately accepted the Royal Proclamation after acknowledgement, which showed that there was still respect for the Royal Institution. The appropriate period was therefore the period stated under section 94 paragraph two of the Organic Act on Political Parties B.E. 2560 (2017). Therefore, the election candidacy rights of the respondent political party in office on 8th February B.E. 2562 (2019), being the date of occurrence of the act constituting the cause for dissolution of the respondent party, were revoked for a period of ten years as from the date of Constitutional Court order of dissolution of the respondent party pursuant to section 92 paragraph two of the Organic Act on Political Parties B.E. 2560 (2019).

The third issue was whether or not the former executives of the respondent party whose election candidacy rights had been revoke could register a new political party or become an executive of a political party or participate in the establishment of a new political party within a period of ten years as from the Constitutional Court order dissolving the respondent party under section 92 paragraph two of the Organic Act on Political Parties B.E. 2560 (2017).

After consideration, the Constitutional Court held as follows. Section 94 paragraph two of the Organic Act on Political Parties B.E. 2560 (2017) was a provision on the consequences of legal infringement. The Constitutional Court was not given the power to order otherwise. Upon a Constitutional Court order to dissolve the respondent party, a ban had to be imposed on former executives of the respondent party holding office on 8th February B.E. 2562 (2019), being the date of occurrence of the act constituting the cause of dissolution of the respondent party, whose election candidacy rights had been revoked, from registering a new political party or becoming an executive of a political party or participating in the establishment of a new political party for a period of ten years as from the date of Constitutional Court order dissolving the respondent party pursuant to section 94 paragraph two of the Organic Act on Political Parties B.E. 2560 (2017).

4. Ruling of the Constitutional Court

The Constitutional Court therefore issued an order to dissolve Thai Raksa Chart Party, respondent, revoked the election candidacy rights of the respondent party's executives holding office on 8th February B.E. 2562 (2019), being the date of occurrence of the act constituting the cause for dissolution of the respondent party, for a period of ten years as from the date of Constitutional Court order to dissolve the respondent party, and to ban the former executives of the respondent party from registering a new political party or becoming a political party executive or participating in the

establishment of a new political party for a period of ten years as from the date of Constitutional Court order dissolving the respondent party.
