

# Summary of the Constitutional Court Ruling No. 30/2543

Dated 13<sup>th</sup> July B.E. 2543 (2000)\*

**Re : The Founder of Numchai Party requests for a Constitutional Court ruling on the order of the political party registrar.**

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## 1. Background and summarized facts

Mr. Numchai Chamfuk, the founder of Numchai Party, the applicant, as the Leader of the Party submitted an application to the political party registrar for the establishment of a political party named “Numchai Party.” Thereafter, the political party registrar, the respondent, by the letter dated 18<sup>th</sup> March B.E. 2542 (1999), informed that the acknowledgement was refused because Mr. Numchai Chamfuk was imprisoned in Nan Province Penitentiary under the Nan Provincial Court warrant No. 540/2542 and No. 70/2542 dated 8<sup>th</sup> March B.E. 2542 (1999). Mr. Numchai Chamfuk as an executive committee of the Party therefore had no qualification under section 14 paragraph one subparagraph (4) in conjunction with section 12 and section 21 of the Organic Act on Political Parties, B.E. 2541 (1998).

The applicant was of the opinion that the issuance of a warrant of arrest during the submission of the application to establish a political party and the accusation of 8 charges against him by a policeman without any aggrieved person were to spite him. As a result, he could not find any security to bail himself out in time. The applicant also referred to section 33 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which provided that a suspect or an accused in a criminal case had to be presumed innocent before the passing of a final judgment. Furthermore, at the time of submission of an application to the Constitutional Court, the applicant was already bailed out.

## 2. Preliminary issue

Section 192 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that “The fundamental substance of the organic laws on various matters as prescribed in the Transitory Provisions shall necessarily be contained in the organic law on such matter in accordance with this Constitution.” The Organic Act on Political Parties, B.E. 2541 (1998) was an organic act enacted by virtue of section 192, section 323 and section 328 (1) which provided that the organic law on political parties had to at least

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\* Published in the Government Gazette, Vol. 118, Part 56a, dated 16<sup>th</sup> July B.E. 2544 (2001).

contain substance in relation to the establishment of a political party and the entry of its establishment in the Register of Political Parties. Such substance was provided in section 17 paragraph one of Chapter 1 of the Organic Act on Political Parties, B.E. 2541 (1998) which was read as “Any applicant for the establishment of a political party which does not agree with the order refusing to acknowledge the entry of the establishment of the political party by the Registrar under section 14 or section 15 has the right to submit an application to the Constitutional Court for a ruling within thirty days as from the date of receiving the letter informing such the refusal from the Registrar.” It appeared that the organic act contained substance in accordance with section 192 and section 328 (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which it empowered the Constitutional Court to rule on the acknowledgement of the establishment of a political party by the registrar. In addition, section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that “The trial and adjudication of cases are the powers of the Courts, which must proceed in accordance with the Constitution and the law and in the name of the King.” Consequently, the Constitutional Court had a power to rule on the application submitted by the founder of Numchai Party under section 17 of the Organic Act on Political Parties, B.E. 2541 (1998). The Constitutional Court accordingly delivered the copy of the application to the respondent for submission of a response statement and information on case proceedings to the Nan Provincial Court.

### **3. The issues considered by the Constitutional Court**

Was the refusal of the political party registrar to acknowledge the establishment of Numchai Party in accordance with section 14 paragraph three of the Organic Act on Political Parties, B.E. 2541 (1998)?

The Constitutional Court held the following opinion:

A ground referred as a reason for ordering the refusal of acknowledgement of Numchai Party’s establishment was that the applicant who was elected to be the Leader of the Party and who submitted the application of its establishment was imprisoned in Nan Province Penitentiary under the Nan Provincial Court warrant. The applicant became disqualified to exercise the right to vote at an election. As a result, he was under the prohibition to be a founder of a political party under section 8 of the Organic Act on Political Parties, B.E. 2541 (1998) followed by that his leadership of the Party was terminated. These resulted in that the executive committee of the Party had no qualification under section 14 paragraph one subparagraph (4) and section 14 paragraph three of the Organic Act on Political Parties, B.E. 2541 (1998) which provided that “After the Registrar has received an application for the establishment of a political party, he shall examine the following particulars: ... (4) the executive committee of that political party has the qualifications under section 12;” The case was under section 14 paragraph three of the Organic Act on Political Parties, B.E. 2541 (1998) which provided that “In the case where the Registrar has examined the

application and is of the opinion that the qualifications or the number of founders of the political party, the directive principles of policy and the regulations of the political party, the qualifications of the executive committee or the name or the emblem of the political party are not in accordance with paragraph one (1), (2), (4) or (5), the Registrar shall refuse to acknowledge the entry of the establishment of the political party and notify the founders of that political party in writing of the refusal together with reason within thirty days from the date the Registrar received an application for the establishment of the political party.”

After considering supporting documents of the respondent and documents in relation to case proceedings against the applicant submitted by the Nan Provincial Court, the Constitutional Court was of the opinion that the applicant was a person who joined with other persons to have not less than fifteen in number in order to establish Numchai Party under section 8 of the Organic Act on Political Parties, B.E. 2541 (1998) which provided that “Persons of Thai nationality by birth who are not less than twenty years of age and not being under any of the prohibitions to exercise the right to vote at an election under the Constitution and not less than fifteen in number can form a group of founders of a political party for the purpose of building people’s political will and carrying out political activities in fulfillment of such will through the democratic regime of government with the King as Head of the State.” As regards the prohibitions to exercise the right to vote at an election, section 106 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that “A person under any of the following prohibitions on the election day is disfranchised: ... (3) being detained by a warrant of the Court or by a lawful order;” When the facts appeared in accordance with the statement made by the respondent and the applicant did not object whatsoever that he was detained in Nan Province Penitentiary under the warrant of the Nan Provincial Court, the applicant’s case therefore was under section 14 paragraph one subparagraph (4) and section 14 paragraph three of the Organic Act on Political Parties, B.E. 2541 (1998).

#### **4. Ruling of the Constitutional Court**

The Constitutional Court held that the order made by the political party registrar refusing to acknowledge the establishment of Numchai Party was in accordance with section 14 paragraph three of the Organic Act on Political Parties, B.E. 2541 (1998). The application therefore was dismissed.

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