

Summary of the Constitutional Court Ruling No. 42/2546

Dated 28th October B.E. 2546 (2003)*

**Re : Political Party Registrar applied to the Constitutional Court for an
order to dissolve Tai Party**

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1. Background and summarized facts

The political party registrar submitted three applications to the Constitutional Court. The first application dated 9th October B.E. 2545 (2002) applied for an order to dissolve Tai Party for the reason that Tai Party spent subsidy for postage stamp cost from the Fund for Development of Political Parties not in accordance with section 62 of the Organic Act on Political Parties, B.E. 2541 (1998). The second application dated 17th March B.E. 2546 (2003) applied for the order to dissolve Tai Party for the reason that the operation of Tai Party's general meeting was not in accordance with article 62 of the Bylaws of Tai Party, B.E. 2541 (1998) (There shall be not less than the half of members of the executive committee and representatives of political party branches presenting at the meeting) as provided by section 26 of the Organic Act on Political Parties, B.E. 2541 (1998). Lastly, the third application dated 25th June B.E. 2546 (2003) applied for the order to dissolve Tai Party for the reason that Tai Party did not prepare an accurate expenditure report of subsidy for the year B.E. 2545 (2002) and did not submit it to the Office of the Election Commission within March of the subsequent calendar year according to section 62 of the Organic Act on Political Parties, B.E. 2541 (1998). The three applications constituted causes to dissolve Tai Party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties, B.E. 2541 (1998). The political party registrar therefore submitted the applications to the Constitutional Court for the order to dissolve Tai Party under section 65 paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998).

The facts as stated in the first application could be summarized as follows. Tai Party was allocated the subsidy for postage stamp cost from the Fund for Development of Political Parties on 22nd March B.E. 2544 (2001) in the sum of 142,623.63 Baht. The Party, however, had not spent the received sum of money according to the objective as applied for disbursement until the date of 12th July B.E. 2545 (2002). It had been more than one year when the Party paid by that money for the postage stamp cost to the Communications Authority of Thailand. Tai Party argued that the political party registrar did not attach the resolution of the Election Commission deciding on the guilt of Tai Party in the issue as required by section 10 subparagraph (6) and section 19 of the Organic Act on the Election

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Commission, B.E. 2541 (1998). The fact that Mr. Thanabadin Sangsathaporn, the Party's leader, made an advance payment for other business of the Party from the sum for postage stamp cost could not constitute a cause for the dissolution of the Party. The application of the applicant was submitted beyond the period of fifteen days as provided by section 65 paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998).

In the second application, article 61 and article 62 of the Bylaws of Tai Party provided that the quorum of ordinary or extraordinary general meeting of the Party had to consist of not less than half of the following persons attending the meeting: members of the executive committee, members of the Party being members of the House of Representatives or being ministers at the time (if any), and representatives of the party political branches consisting of the head of each political branch and a member of each political branch committee. Tai Party had 31 members of the executive committee and 10 representatives from five party political branches, but no members of the Party being members of the House of Representatives or being ministers. In this connection, the members of Tai Party that could attend a meeting should be 41 in total, and the number that could constitute a quorum of a meeting was 21. However, only 17 members attended the ordinary general meeting (No. 1/2545) on 30th April B.E. 2545 (2002). The attendees were less than half of all members, and were not sufficient to constitute the quorum according to the Party's bylaws and section 26 of the Organic Act on Political Parties, B.E. 2541 (1998). Tai Party stated, in response, that some members of the executive committee resigned from members of the Party in the beginning of the year B.E. 2545 (2002) and already reported there of to the applicant in the form of a letter notifying the increased or decreased number of party's members in the previous calendar year (Form Tor. Por. 5). The executive committee therefore consisted of only 22 members not 31 members.

In the third application, the political party registrar submitted the application stating that Tai Party received the sum of money from the Election Commission for the program and plan of the year B.E. 2545 (2002) in two installments. The first installment was disbursed for the Party's business expenses in the sum of 39,300 Baht, the publication of publicity materials in the sum of 209,600 Baht and the academic lecture arrangement program for the spread of Party's policies and activities in the sum of 39,300 Baht. The second installment was disbursed for the business expense program in the sum of 39,300 Baht. The total sum was so far 327,500 Baht. Moreover, the public utility expenses were disbursed in two installments in the sum of 27,000 Baht each, which was 54,000 Baht in total. The total sum of all those was 381,500 Baht. Tai Party submitted the report on the subsidy expenditure for the year B.E. 2545 (2002). The Party submitted only the report form without specifying any details but remarking that the details of subsidy allocations and programs could not be specified because part of documents were kept in the Party's head office (the old office) which was subject to the dispute with the place owner and was locked up. The Office of the Election Commission, accordingly, notified Tai Party to specify the details of subsidy disbursement and to submit relevant evidences and documents within fifteen days as from the date of acknowledgement of the notice. Tai Party stated, in response, that the Party was

not allocated the money for the academic lecture arrangement program to spread Party's policies and activities in the sum of 257,200 Baht (the true sum was 157,200 Baht) from which the sum of 39,300 Baht was truly disbursed. However, the facts were appeared in the examination that the said sum of money was already disbursed.

2. The issue considered by the Constitutional Court

Did the case constitute a cause for an order to dissolve Tai Party according to the application made by the political party registrar?

In the consideration of the first application, the Constitutional Court held the following opinion. The respondent was allocated the subsidy from the Fund for Development of Political Parties on 22nd March B.E. 2544 (2001) for the postage stamp cost in the sum of 142,400 Baht and telephone cost in the sum of 223.63 Baht, the total of which were 142,623.63 Baht. It had been for more than one year when Tai Party paid to the Communications Authority of Thailand for postage stamp cost on 4th July B.E. 2545 (2002). The fact therefore was clearly appeared that even though the respondent already received the subsidy from the Fund for Development of Political Parties, it did not spend such money according to intended objectives. This did not comply with section 62 of the Organic Act on Political Parties, B.E. 2541 (1998). According to the statement of the respondent that the applicant did not attach the resolution of the Election Commission deciding on the guilt of the respondent in this matter pursuant to section 10 subparagraph (6) together with section 19 of the Organic Act on the Election Commission, B.E. 2541 (1998), the Court held that the inquiry of the facts was in compliance with the Organic Act on Political Parties, B.E. 2541 (1998). This Act provided that the political party registrar was in charge and section 5 and section 6 thereof provided that the Chairman of the Election Commission had to be the registrar and had power and duty, and control of the execution of this Organic Act. Therefore, when the political party registrar was of the opinion that there was a cause to dissolve the Party of the respondent, the case needed not to follow section 10 subparagraph (6) of the Organic Act on the Election Commission, B.E. 2541 (1998). The statement of the respondent could not be heard.

As for the statement of the respondent that the advance payment from the sum for postage stamp cost by Mr. Thanabadin Sangsathaporn, the Party's leader, for other businesses of the Party could not constitute a cause for the dissolution of the Party, the Court considered section 37 paragraph one and section 20 paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998) together with section 70 paragraph one and section 70 paragraph two of the Civil and Commercial Code, which provided that the leader of a political party had to be the representative of such party as being a juristic person, and held that such statement could not be heard.

As for the statement of the respondent that the applicant submitted the application beyond the specified period of fifteen days, the Court held that the date of the appearance of the matter to the political party registrar was the date that the applicant considered and

approved to submit the application to the Constitutional Court on 27th September B.E. 2545 (2002) according to Statement Note of the Secretary-General of the Election Commission No. L.T. 0402 (FPS.) /734 dated 25th September B.E. 2545 (2002) reporting the case where the respondent expended the subsidy not in accordance with section 62 of the Organic Act on Political Parties, B.E. 2541 (1998). The period from the appearance date up to the date of 9th October B.E. 2545 (2002) that the applicant submitted the application to the Constitutional Court was within fifteen days pursuant to section 65 paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998). Such statement of the respondent could also not be heard.

In the consideration of the second application, the Court held the following opinion. Tai Party, the respondent, had 41 members who could attend the meeting. Among those members, there were 31 members of the executive committee. Apparently, only 17 members attended the ordinary general meeting (No.1/2545) on 30th April B.E. 2545 (2002). The attendees of the general meeting were accordingly less than half of all members which could constitute the quorum under article 62 of the Bylaws of Tai Party and section 26 of the Organic Act on Political Parties, B.E. 2541 (1998). The respondent argued against the number of 31 executive committee members. It stated that some members of the executive committee resigned from members of the Party at the beginning of the year B.E. 2545 (2002) and such resignation was already reported to the applicant. Under section 33 paragraph one of the Organic Act on Political Parties, B.E. 2541 (1998) providing that the leader of the political party had to notify in writing the amendment of policies or bylaws of the political party, or items under section 13 paragraph two subparagraph (5) of the same Act to the political party registrar for recording the amendment within thirty days from the date thereof and section 33 paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998) providing that the amendment under paragraph one had to be valid when the political party registrar notified its acknowledgement, the Court held that the notification of the increased or decreased number of Tai Party's members for the year B.E. 2545 (2002) (Form Tor.Por. 5) by the respondent, which the law required such notification once a year, was not the notification in case of the amendment which could result in the decreased number of the executive committee members from 31 to 22. When it appeared that there were 17 from 41 members attending the meeting, it could therefore deem that the respondent held the ordinary general meeting (No. 1/2545) dated 30th April B.E. 2545 (2002) not in compliance with section 26 of the Organic Act on Political Parties, B.E. 2541 (1998).

As for the statement of the respondent that the applicant submitted the application beyond the time period prescribed by the law, the Court held that the date of approval by the applicant which was on 17th March B.E. 2546 (2003) could deem as the date the matter was appeared to it. The applicant submitted the application to the Constitutional Court for the dissolution of Tai Party on 25th March B.E. 2546 (2003). Such submission thus was done within the period of fifteen days under section 65 paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998). The statement of the respondent could therefore not be heard.

In the consideration of the third application, the Court held that the respondent reported the expenditure of the subsidy for the year B.E. 2545 (2002) by submitting the Form without specifying any details except remarks. Since the fact from hearing revealed that the certain sum of subsidy had truly been disbursed, the statement of the respondent could not be heard as a rebuttal under the provision of section 62 of the Organic Act on Political Parties, B.E. 2541 (1998). The case therefore constituted another cause for the dissolution of the respondent's Party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties, B.E. 2541 (1998).

3. Ruling of the Constitutional Court

The Constitutional Court held by 13 judges that the case constituted the cause to dissolve Tai Party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties, B.E. 2541 (1998) and by 2 judges that the application of the political party registrar was dismissed.

By virtue of section 65 paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998), the Constitutional Court ordered the dissolution of Tai Party.
