

Summary of the Constitutional Court Ruling No. 42/2547

Dated 13th May B.E. 2547 (2004)*

Re: Political Party Registrar's application for an order to dissolve Thai Prachathipatai Party

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1. Background and summarized facts

The political party registrar submitted an application to the Constitutional Court for an order to dissolve Thai Prachathipatai Party under section 65 paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998) on the ground that Thai Prachathipatai Party spent its subsidy 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 reasons were: (1) the Party transferred money to its branches after being complained, (2) the Party transferred incomplete amount of money as received from the said Fund, (3) some part of money was transferred after the balance account was closed at the end of the calendar year under section 38 of the Organic Act on Political Parties, B.E. 2541 (1998), (4) there was no evidence of transfer of money received from the Fund to its branches, (5) the evidence of payment for other costs was presented as the evidence of payment for public facility costs, and (6) the cheque of Phaholyothin Branch of Thai Military Bank (Public Company Limited) No. 0606617 dated 25th January B.E. 2543 (2000) in the sum of 5,399.35 Baht issued by Bualuang Electric Company Limited for Mrs. Chavivan Sankhao and the deposit slip for her account were not appeared in the financial statement of the Party.

2. Preliminary issue

There were two issues:

The first issue: Did Thai Prachathipatai Party expend the subsidy for postage stamp and public facility costs for the year B.E. 2543 (2000) borne by the fifth branch (Chatuchak), the ninth branch (Thawi Watthana), the sixteenth branch (Bangkhla) and the twentieth branch (Bangmulnak) in accordance with section 62 of the Organic Act on Political Parties, B.E. 2541 (1998)?

According to the application of the political party registrar, there were 6 following issues to be considered:

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1) Did Thai Prachathipatai Party transfer the subsidy to its branches after being complained? The Constitutional Court held the following opinions. The facts revealed that the Party transferred the subsidy for postage stamp and public facility costs for the year B.E. 2543 (2000) to the fifth branch (Chatuchak) on 10th January B.E. 2544 (2001) before complaining, to the ninth branch (Thawi Watthana) on 27th August B.E. 2544 (2001) after complaining, to the twentieth branch (Bangmulnak) on 27th August B.E. 2544 (2001) after complaining. However, it was believed that the Party had not transferred the subsidy to the sixteenth branch (Bangkhla).

2) Did Thai Prachathipatai Party transfer all amount of the subsidy received from the Fund for Development of Political Parties to its branches? The Constitutional Court held the following opinions. The facts revealed that Thai Prachathipatai Party transferred the subsidy for postage stamp and public facility costs for the year B.E. 2543 (2000) to the fifth branch (Chatuchak) and the ninth branch (Thawi Watthana) in the complete amount as received from the Fund for Development of Political Parties, but to the twentieth branch (Bangmulnak) not in the complete amount thereof. However, it was believed that the Party had not transferred the subsidy to the sixteenth branch (Bangkhla).

3) Was partial subsidy transferred after closing the account at the end of the calendar year under section 38 of the Organic Act on Political Parties, B.E. 2541 (1998)? The Constitutional Court held the followings. The facts revealed that Thai Prachathipatai Party transferred the subsidy for postage stamp and public facility costs for the year B.E. 2543 (2000) to the fifth branch (Chatuchak) on 10th January B.E. 2544 (2001), the ninth branch (Thawi Watthana) and the twentieth branch (Bangmulnak) on 27th August B.E. 2544 (2001). It was accordingly deemed that the Party transferred such subsidy to the said three branches beyond the time for closing the account prescribed in section 38 of the Organic Act on Political Parties, B.E. 2541 (1998) which was at the end of the calendar year (31st December B.E. 2543 (2000)).

4) Did Thai Prachathipatai Party have evidences supporting the transfer of subsidy from the Fund for Development of Political Parties to its branches? The Constitutional Court considered the evidences and held that the Party had evidences supporting the transfer of subsidy from the Fund for Development of Political Parties to the fifth branch (Chatuchak), the ninth branch (Thawi Watthana), and the twentieth branch (Bangmulnak).

5) Did Thai Prachathipatai Party use the evidence of other payment as the evidence of payment for public facility costs? The Constitutional Court held the followings. The facts revealed that the Party used the evidence of other payment as the evidence of payment for public facility costs of the twentieth branch (Bangmulnak).

6) The cheque of Phaholyothin Branch of Thai Military Bank (Public Company Limited) No. 0606617 dated 25th January B.E. 2543 (2000) in the sum of 5,399.35 Baht issued by Bualuang Electric Company Limited for Mrs. Chavivan Sankhao and the deposit slip for her account were not appeared in the financial statement of the Party. The Constitutional Court held the followings. It was true that, on 25th January B.E. 2543 (2000), the sum of

5,399.35 Baht in the form of Thai Military Bank's cheque was transferred to the ninth branch (Thawi Watthana) having Mrs. Chavivan Sankhao as the President. This could be concluded that such transfer was for public facility costs for the year B.E. 2542 (1999) not for the year B.E. 2543 (2000). Therefore, this case needed not to be appeared in the financial statement of the Party for the year B.E. 2543 (2000).

The second issue: Did Thai Prachathipatai Party prepare the expenditure report of its subsidy for the year B.E. 2543 (2000) accurately pursuant to section 62 of the Organic Act on Political Parties, B.E. 2541 (1998) ?

The Constitutional Court held the following opinions. Thai Prachathipatai Party received the subsidy for postage stamp and public facility costs for the year B.E. 2543 (2000) in the sum of 353,913.53 Baht. The Office of the Election Commission transferred that sum of money to the Party for 13 times: the first to eleventh transfers done in the year B.E. 2543 (2000) for the total sum of 269,058.62 Baht and the twelfth and thirteenth transfers done in the year B.E. 2544 (2001) for the total sum of 84,854.91 Baht. Accordingly, the accurate financial statement of Thai Prachathipatai Party for the year B.E. 2543 (2000) prepared on 31st December B.E. 2543 (2000) should be: (1) the subsidy for public facility costs in the sum of 269,058.62 Baht, (2) public facility costs in the sum of 269,058.62 Baht, and (3) the unpaid subsidy for public facility costs in the sum of 84,854.91 Baht. Thai Prachathipatai Party reported its expenditure of subsidy by stating in the financial statement for the year B.E. 2543 (2000) that there were the subsidy for public facility costs in the sum of 272,135.76 Baht and public facility costs in the sum of 272,135.76 Baht. Furthermore, it stated in the balance sheet at the date of 31st December B.E. 2543 (2000) that the unpaid subsidy for public facility costs was in the sum of 60,000 Baht. Such report was inaccurate.

3. The issue considered by the Constitutional Court

The issue which the Constitutional Court had to consider was whether the case constituted a cause for an order to dissolve Thai Prachathipatai Party according to the application of the political party registrar.

The Constitutional Court held the following opinions. Thai Prachathipatai Party had not transferred the subsidy for postage stamp and public facility costs for the year B.E. 2543 (2000) to its sixteenth branch (Bangkhla) and transferred it to the ninth branch (Thawi Watthana) and the twentieth branch (Bangmulnak) after being complained. For the twentieth branch, the subsidy was not transferred in the exact amount as received from the Fund for Development of Political Parties. The transfer of such subsidy by the Party to its branches occurred after the end of the calendar year as provided by section 38 of the Organic Act on Political Parties, B.E. 2541 (1998) to be the time of closing the account of the Party. Furthermore, that the Party used the evidence of other payment as the evidence of payment for public facility costs of the twentieth branch (Bangmulnak) was deemed that Thai Prachathipatai Party spent its subsidy not in accordance with section 62 of the Organic Act on

Political Parties, B.E. 2541 (1998). That the Party prepared its balance sheet and income and expenditure statement at the date of 31st December B.E. 2543 (2000) to be submitted to the Election Commission by stating the received subsidy for public facility costs in the sum of 272,135.76 Baht (the accurate sum was 269,058.62 Baht), public facility costs in the sum of 272,135.76 Baht (the accurate sum was 269,058.62 Baht) and the unpaid subsidy for public facility costs in the sum of 60,000 Baht (the accurate sum was 84,854.91 Baht) was deemed that Thai Prachathipatai Party prepared inaccurate expenditure report of its subsidy under section 62 of the Organic Act on Political Parties, B.E. 2541 (1998).

4. Ruling of the Constitutional Court

The Constitutional Court, by the majority of 12 judges against 1 judge, held that the case constituted a cause to order the dissolution of Thai Prachathipatai Party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties, B.E. 2541 (1998). Therefore, 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 Thai Prachathipatai Party.
