

Summary of Constitutional Court Ruling No. 2/2560 (2017)

Dated 11th October B.E. 2560 (2017)*

**Re: The Political Parties Registrar requested for a Constitutional Court order
to dissolve Pheu Prachachon Thai Party.**

.....

1. Summary of background and facts

The Political Parties Registrar, applicant, submitted an application to the Constitutional Court for an order to dissolve Phue Prachachon Thai Party pursuant to section 93 in conjunction with section 82 of the Organic Act on Political Parties B.E. 2550 (2007). The respondent received a sponsorship for projects and work plans from the Political Parties Development Fund pursuant to section 81 of the Organic Act on Political Parties B.E. 2550 (2007) for the annual period of B.E. 2557 (2014) and funds had already been disbursed in 2 tranches in a total amount of 428,865 baht. Subsequently, the applicant sent a notice to the respondent to submit documents and evidence of expenditure along with an application for disbursement only for the portion of expenditures between 1st January B.E. 2557 (2014) and 22nd May B.E. 2557 (2014), which should be submitted to the Election Commission within 31st March B.E. 2558 (2015) pursuant to section 82 of the Organic Act on Political Parties B.E. 2550 (2007). The respondent submitted a report on expenditure of political party sponsorship funds for B.E. 2557 (2014) by registered post on 1st April B.E. 2558 (2015).

The applicant examined the report on expenditure of political party sponsorship funds for B.E. 2557 (2014) together with supporting documents of the respondent and found certain projects with respect to which the respondent's disbursements did not match the submitted documents and evidence. The applicant therefore exercised powers under section 82 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2017) to notify the respondent to return sponsorship funds to the Political Parties Development Fund in the amount of 44,535.33 baht within the prescribed period. The respondent, however, failed to comply with the applicant's order, who became aware on 8th May B.E. 2560 (2017). The applicant, after deliberation, reached the decision that it could be inferred from the facts that the respondent intentionally failed to prepare a true and accurate report of expenditure of political party sponsorship funds for the calendar year. On 9th May B.E. 2560 (2017), the Election Commission adopted a resolution to approve the applicant's submission of an application to the Constitutional Court for an order to dissolve the respondent party pursuant to section 93 in conjunction with section 82 of the Organic Act on Political Parties B.E. 2550

* Published in the Government Gazette Vol. 135, Part 11a, dated 23rd February B.E. 2561 (2018).

(2017), and requested for an order to ban persons who held executive offices of the dissolved respondent party pursuant to Notification of the Political Parties Registrar Re: Acknowledgment of Changes to Party Policies, Party Articles and Executive Committee of Phue Prachachon Thai Party, dated 16th May B.E. 2556 (2013), Re: Acknowledgment of Changes to Phue Prachachon Thai Party Executive Committee, dated 2nd April B.E. 2557 (2014), Re: Acknowledgment of Changes to Phue Prachachon Thai Party Executive Committee, dated 30th April B.E. 2557 (2014), Re: Acknowledgment of Changes to Phue Prachachon Thai Party Executive Committee, dated 17th November B.E. 2557 (2014), and Re: Acknowledgment of Changes to Phue Prachachon Thai Party Executive Committee, dated 24th March B.E. 2558 (2015), from registering the establishment of a new political party within five years as from the date of Constitutional Court order to dissolve the respondent party pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2017), and to order the revocation of election rights of the party leader and executives of the respondent party pursuant to the aforementioned Notifications of the Political Parties Registrar for a period of five years as from the date of Constitutional Court order to dissolve the respondent party pursuant to section 98 of the Organic Act on Political Parties B.E. 2550 (2007).

2. The preliminary issue considered by the Constitutional Court

The preliminary issue was whether or not the Constitutional Court had the competence to accept this application for consideration under the Constitution and section 93 of the Organic Act on Political Parties B.E. 2550 (2007).

After deliberation, the Constitutional Court found as follows. The applicant exercised powers under section 93 of the Organic Act on Political Parties B.E. 2550 (2007). The applicant submitted an application to the Constitutional Court on 19th May B.E. 2560 (2017). The submission was made within fifteen days as from the applicant's finding pursuant to section 93 paragraph two. The case was in accordance with section 101(10), section 210 paragraph one (3) in conjunction with section 3 paragraph two, section 188 paragraph one, section 273 paragraph two and section 279 paragraph one (3) of the Constitution in conjunction with section 93 of the Organic Act on Political Parties B.E. 2550 (2007) and article 17(15) of the Constitutional Court Rules on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore ordered the acceptance of this application for consideration and directed the respondent to submit a reply to the allegations within fifteen days of receiving a copy of the application. The respondent, however, did not submit a reply to the allegations.

3. The issues considered by the Constitutional Court

The Constitutional Court considered the application and supporting documents in the case file and found that there was sufficient facts in this case for a ruling. An inquiry was therefore not undertaken pursuant to article 32 paragraph one of the Constitutional Court Rules on Procedures and Rulings B.E. 2550 (2007), and determined that there were three issues which had to be decided.

During proceedings in court, the Organic Act on Political Parties B.E. 2560 (2017) was promulgated, coming into force on the day following the date of publication in the Government Gazette (published on 7th October B.E. 2560 (2017)). Although the new Organic Act did not provide for the dissolution of political party due to such political party failing to prepare a true and accurate report on expenditure of political party sponsorship funds for an annual period, the transitory provision in section 150 paragraph one provided that this Organic Act did not prejudice dissolution proceedings against a political party, and for such purpose, it was deemed that the Organic Act on Political Parties B.E. 2550 (2007) remained in force. The Constitutional Court therefore had the competence to continue with the consideration and ruling of this application.

The first issue was whether or not there was a cause for dissolution of the respondent party under section 93 of the Organic Act on Political Parties B.E. 2550 (2007) due to a failure to comply with section 82.

After deliberation, the Constitutional Court found as follows. The respondent received a sponsorship from the Political Parties Development Fund. The respondent was therefore under a duty to prepare a true and accurate report on expenditure of political party sponsorship funds for the annual period of B.E. 2557 (2014), which had to be submitted to the Election Commission within 31st March B.E. 2558 (2015). However, it was found upon examination that the respondent's use of funds did not match the evidence reported. The respondent thus sent a written notice to the respondent to return sponsorship funds to the Political Parties Development Fund within the period prescribed by the applicant. Upon expiration of the said period, the respondent failed to comply with the applicant's order. The respondent's failure to return sponsorship funds within the period prescribed by the applicant and failure to provide an explanation of reasons for such failure to return sponsorship funds therefore constituted a failure of the respondent to prepare a true and accurate report on expenditure of political party sponsorship funds for the annual period of B.E. 2557 (2014) without reasonable cause. Hence, there was a cause for dissolution of the respondent party pursuant to section 93 in conjunction with section 82 and section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007).

The second issue was whether or not former executives of the respondent party could register the establishment of a new political party or become political party executives, or participate in the registration of a new political party within a period of five years as from the Constitutional Court order to dissolve the respondent political party pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007).

After deliberation, the Constitutional Court found as follows. Section 97 of the Organic Act on Political Parties B.E. 2550 (2007) was a provision on the consequence of a violation of a provision of law. The provision did not give competence to the Constitutional Court to order otherwise. Where there was a cause for dissolution of a political party under section 82, the Constitutional Court had to order a ban on the former executives of the respondent party pursuant to the aforementioned Notifications of the Political Parties Registrar

from registering the establishment of a new political party or becoming a political party executive or participating in the registration of a new political party within five years as from the dissolution of the respondent party pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007).

The third issue was whether or not the party leader and executives of the respondent party who participated, connived at or neglected or was aware of such an action and failed to intervene or remedy such action should have election rights revoked for a period of five years as from the date of Constitutional Court order to dissolve the respondent party pursuant to section 98 of the Organic Act on Political Parties B.E. 2550 (2007).

After deliberation, the Constitutional Court found as follows. The respondent party was under a duty to prepare a report on expenditure of political party sponsorship funds for the calendar year period in accordance with section 82. Such a report on expenditure had to be done by the party leader and party executives, who had the powers and duties of undertaking the party operations in accordance with section 17 paragraph one and were collectively responsible for the resolutions of the party executive committee and discharge of functions under section 17 paragraph three. Upon finding that the respondent failed to prepare a true and accurate report on expenditure of sponsorship funds for the annual period of B.E. 2557 (2014), and there were facts and circumstances to indicate that there was reasonable cause and evidence to believe that the party leader and party executives participated, connived at or neglected or were aware of such actions and did not intervene or remedy such action, the Constitutional Court could therefore order the revocation of election rights of the party leader and executives of the respondent party pursuant to the aforementioned Notifications of the Political Parties Registrar for a period of five years as from the date of order to dissolve the respondent party pursuant to section 98 of the Organic Act on Political Parties B.E. 2550 (2007).

4. Ruling of the Constitutional Court

The Constitutional Court ordered the dissolution of Phue Prachachon Thai Party, respondent, pursuant to section 93 in conjunction with section 82 of the Organic Act on Political Parties B.E. 2550 (2007), and ordered the ban of former executives of the respondent party pursuant to Notification of the Political Parties Registrar Re: Acknowledgment of Changes to Party Policies, Party Articles and Executive Committee of Phue Prachachon Thai Party, dated 16th May B.E. 2556 (2013), Re: Acknowledgment of Changes to Phue Prachachon Thai Party Executive Committee, dated 2nd April B.E. 2557 (2014), Re: Acknowledgment of Changes to Phue Prachachon Thai Party Executive Committee, dated 30th April B.E. 2557 (2014), Re: Acknowledgment of Changes to Phue Prachachon Thai Party Executive Committee, dated 17th November B.E. 2557 (2014), and Re: Acknowledgment of Changes to Phue Prachachon Thai Party Executive Committee, dated 24th March B.E. 2558 (2015), from registering the establishment of a new political party within five years as from the date of Constitutional Court order to dissolve the respondent party pursuant to section 97 of the

Organic Act on Political Parties B.E. 2550 (2017), as well as ordered the revocation of election rights of the party leader and executives of the respondent party pursuant to the aforementioned Notifications of the Political Parties Registrar for a period of five years as from the date of Constitutional Court order to dissolve the respondent party pursuant to section 98 of the Organic Act on Political Parties B.E. 2550 (2007).
