

Summary of Constitutional Court Ruling No. 4/2561 (2018)

Dated 5th June B.E. 2561 (2018)*

Re: The Ombudsman submitted a matter to the Constitutional Court for a ruling under section 231(1) of the Constitution on whether or not section 140 and section 141 and section 141 paragraph one (5) and paragraph two of the Organic Law on Political Parties B.E. 2560 (2017), as amended by Order of the National Council for Peace and Order No. 53/2560 Re: Implementation of the Organic Law on Political Parties, were inconsistent with section 25, section 26, section 27 and section 45 of the Constitution.

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1. Summary of background and facts

The Ombudsman, applicant, submitted a matter to the Constitutional Court for a ruling under section 231(1) of the Constitution. The facts in the letter and supporting documents could be summarised as follows.

Police Lieutenant General Viroj Pao-in, Acting Leader of Pheu Thai Party, and Mr. Abhisit Vejjajiva, Leader of the Democrat Party, submitted written complaints to the applicant which could be summarised as follows. Order of the National Council for Peace and Order No. 53/2560 Re: Implementation of the Organic Law on Political Parties raised constitutionality questions because it caused grievances or unfairness to the public or imposed an unnecessary or disproportionate burden on the public, and constituted a violation of rights under the Constitution. Furthermore, the issuance of such Order of the National Council for Peace and Order was inconsistent with the spirit and process under the Constitution. Both complainants claimed that the Order of the National Council for Peace and Order, which came into force as of 22nd December B.E. 2560 (2017), had the effect of repealing and amending several essential provisions of section 140 and section 141 of the Organic Law on Political Parties B.E. 2560 (2017). In other words, there were changes to the membership of existing members of political parties. As a consequence, a member of a political party established under the Organic Law on Political Parties B.E. 2550 (2007) who had qualifications and was free of disqualifications under section 24 and wished to continue as a member of such political party had to submit a confirmation letter of membership to the leader of such political party together with evidence of qualifications and absence of disqualification under

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section 24. The member also had to pay political party dues within thirty days of 1st April B.E. 2561 (2018). After the expiration of such time limit, a member who did not submit a membership confirmation letter would no longer be a member of such political party. It was further provided that a political party had to serve notice to the Political Parties Registrar within thirty days of the expiration of such time limit. However, a political party that had already been established could not publicise to communicate with members who wished to confirm membership of the political party since article 4 of such Order of the National Council for Peace and Order prohibited a political party under section 140 from convening a general meeting, as well as the establishment of a political party branch and provincial political party representative, a meeting of political party members or any actions of a political nature. Moreover, the provision promoted only newly established political parties, which could recruit members as from 1st March B.E. 2561 (2018). The prescribed measures for membership applications to newly established political parties were also easier than confirmation of memberships of existing political parties which required a written confirmation. There were also changes to the establishment of political party branches and provincial political party representatives, in particular, section 141 paragraph one (5) and paragraph two. As a result, there was no provision which recognised the political party branches lawfully established under the Organic Law on Political Parties B.E. 2550 (2007). It followed that political parties registered under the previous law no longer had any political party branches. However, such political parties had to establish political party branches and provincial political party representatives, in the requisite number, under restrictive conditions and time limits. In addition, the issuance of such Order of the National Council for Peace and Order was not in accordance with the conditions for the exercise of powers under section 44 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014), and was not undertaken in accordance with the constitutional provisions. Hence, the said Order was unconstitutional. In this regard, both complainants requested the applicant to submit the matter to the Constitutional Court for a ruling.

The applicant was of the opinion that the Order of the National Council for Peace and Order had the status of a provision of law pursuant to section 231(1) of the Constitution and such provision of law failed to safeguard the rights and liberties of membership of a political party recognised under section 25 in conjunction with section 45 of the Constitution. The provision also disproportionately increased the burden or limited the right or liberty of a person pursuant to section 26 of the Constitution and constituted an unfair discrimination against a person due to a difference in personal status, social standing and political differences. This was contrary to the principle of equality recognised and safeguarded under section 27 of the Constitution. The applicant therefore submitted the matter together with an opinion to the Constitutional Court for a ruling under section 231(1) of the Constitution that section 140 and section 141 of the Organic Law on Political Parties B.E. 2560 (2017), as amended by Order of the National Council for Peace and Order No. 53/2560 Re: Implementation of the Organic Law on Political Parties were inconsistent with section 25, section 26, section 27 and section 45 of the Constitution.

2. The preliminary issue considered by the Constitutional Court

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to accept the application for ruling under section 231(1) of the Constitution.

After deliberations, the Constitutional Court found as follows. The applicant was of the opinion that the Order of the National Council for Peace and Order had the status of a provision of law pursuant to section 231(1) of the Constitution and such provision of law failed to safeguard the rights and liberties of membership of a political party recognised under section 25 in conjunction with section 45 of the Constitution. It was also asserted that the provision disproportionately increased the burden or limited the right or liberty of a person pursuant to section 26 of the Constitution and constituted an unfair discrimination against a person due to a difference in personal status, social standing and political differences. This was contrary to the principle of equality recognised and safeguarded under section 27 of the Constitution. The applicant therefore submitted the matter together with an opinion to the Constitutional Court for a ruling under section 231(1) of the Constitution that section 140 and section 141 of the Organic Law on Political Parties B.E. 2560 (2017), as amended by Order of the National Council for Peace and Order No. 53/2560 Re: Implementation of the Organic Law on Political Parties were inconsistent with section 25, section 26, section 27 and section 45 of the Constitution. Hence, the case was in accordance with section 231(1) of the Constitution and section 50 of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018). The Constitutional Court had the competence to accept the application for consideration and issued an order accordingly. The Chairman of the Election Commission, Head of the National Council for Peace and Order, Police Lieutenant General Viroj Pao-in, Acting Leader of Pheu Thai Party, and Mr. Abhisit Vejjajiva, Leader of the Democrat Party, were directed to submit a written opinion and related information to the Constitutional Court.

3. The issues considered by the Constitutional Court

The Constitutional Court determined the following issues for consideration.

The first issue was whether or not section 140 of the Organic Law on Political Parties B.E. 2560 (2017), as amended by Order of the National Council for Peace and Order No. 53/2560 Re: Implementation of the Organic Law on Political Parties was inconsistent with section 25, section 26, section 27 and section 45 of the Constitution.

After deliberations, the Constitutional Court found as follows. Section 140 of the Organic Law on Political Parties B.E. 2560 (2017), as amended by Order of the National Council for Peace and Order No. 53/2560 Re: Implementation of the Organic Law on Political Parties recognised the liberty of a person to choose and grant trust to a particular political party by subscribing membership to a political party. This was a recognition of a person's liberty under section 45 of the Constitution. The prescription of rules and conditions for political party membership, as well as prescribing a duty on political parties to maintain

an accurate and complete membership registry that was not overlapping and was updated, was therefore essential to the development of the political party institution as regards the continuation of political party membership. This was an affirmation of the support of the people for the operations of such political party. This provision of law was thus a key element in political reform. A political party member was given the opportunity to review one's firm intent to remain as a member of such political party, independently and voluntarily. Section 140 was therefore not a restriction of right and liberty of a political party member and political party. On the contrary, this measure was in accordance with the spirit of the Organic Law on Political Parties B.E. 2560 (2017) and still conferred recognition and protection of rights and liberty to unite in the establishment of a political party pursuant to section 25 and section 45 of the Constitution. This measure did not disproportionately increase a burden or limit a right or liberty of a person. Furthermore, the provision was applied generally pursuant to section 26 of the Constitution and did not constitute an unfair discrimination against a person under section 27 of the Constitution.

The second issue was whether or not section 141 paragraph one (5) and paragraph two of the Organic Law on Political Parties B.E. 2560 (2017), as amended by Order of the National Council for Peace and Order No. 53/2560 Re: Implementation of the Organic Law on Political Parties were inconsistent with section 25, section 26, section 27 and section 45 of the Constitution.

After deliberations, the Constitutional Court found as follows. Section 141 of the Organic Act on Political Parties B.E. 2560 (2017), as amended by Order of the National Council for Peace and Order No. 53/2560 Re: Implementation of the Organic Law on Political Parties was a necessary process for political parties. Political party branches and provincial representatives of political parties were mechanisms for enabling the political participation of the public in all areas throughout the country via subscription to membership of a political party. This body of people were distributed to the regions. This reflected the principle of the people's political party in accordance with the spirit of the law which gave political party members an opportunity to widely participate and take independent actions free from domination or direction of a person who was not a member of the political party. Such rules and conditions could have some impact on a political party in the event of an inability to complete the undertakings within the time limit. Nonetheless, the law was flexible and allowed a political party that was unable to complete undertakings within the time limit by authorising the Election Commission to adopt a resolution to extend such time limit pursuant to section 141 paragraph two. Furthermore, a body has been established to review the exercise of powers of the Election Commission with regard to its decision on any matter under this section which had a political impact. A political party which disagreed with a decision could submit an application to the Constitutional Court for a ruling under section 141 paragraph three. This was a recognition of a political party's right to access the court in the event of an infringement of right or liberty recognised under section 25 paragraph three of the Constitution and in accordance with the rule of law. Section 141 paragraph one (5) and paragraph two were therefore not disproportionate restrictions of rights or liberties of the

people, but were measures consistent with the spirits of section 45 of the Constitution. In addition, there was a recognition and safeguard of rights and liberties to unite in the establishment of a political party pursuant to section 25 of the Constitution. Section 45 did not disproportionately increase a burden or restriction of right or liberty of a person, and was a law generally applicable pursuant to section 26 of the Constitution. The provisions were also not an unfair discrimination against a person under section 27 of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 140 and section 141 paragraph one (5) and paragraph two of the Organic Act on Political Parties B.E. 2560 (2017), as amended by Order of the National Council for Peace and Order No. 53/2560 Re: Implementation of the Organic Law on Political Parties, were neither contrary to nor inconsistent with section 25, section 26, section 27 and section 45 of the Constitution and therefore did not raise a constitutionality question.
