

Summary of Constitutional Court Ruling No. 6-7/2557 (2014)

Dated 23rd April B.E. 2557 (2014)*

**Re: The Political Party Registrar requested for a Constitutional Court order
to dissolve Bamrungmueang Party.**

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1. Summary of background and facts

The Political Party Registrar, applicant, submitted a total of two applications to the Constitutional Court for an order to dissolve Bamrungmueang Party, respondent, pursuant to section 93 in conjunction with section 42 paragraph two and section 82 of the Organic Act on Political Parties B.E. 2550 (2007), stating as follows:

1.1 The respondent received a grant allocation under a project and plan from the Fund for Development of Political Parties in the annual period of B.E. 2555 (2012) in the amount of 558,364 baht (five hundred and fifty-eight thousand three hundred and sixty-four baht only). The respondent was under a duty to prepare a true and accurate report on spending of the grant for development of the respondent party for the year of B.E. 2555 (2012), which should be submitted to the Election Commission by 31st March B.E. 2556 (2013) pursuant to section 82 of the Organic Act on Political Parties B.E. 2550 (2007). The respondent, however, failed to comply with such requirement. The applicant sent written notices to the respondent to take action on up to two occasions. Upon expiration of the said period, the respondent did not submit a report on the respondent party's spending of the grant for the period of B.E. 2555 (2012) to the Election Commission. The applicant therefore relied on powers under section 82 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007) to notify the respondent to submit a spending report together with evidence of spending of the political party's grant for the period of B.E. 2555 (2012) to the Office of the Election Commission within 30 days as from the respondent's receipt of the written notice. The respondent, however, failed to take action. The Election Commission therefore adopted a resolution directing the applicant to submit an application to the Constitutional Court for an order to dissolve the respondent party.

1.2 The applicant sent a written notice to the leader of the respondent party to prepare a true and accurate report of the respondent party's activities for the year of B.E. 2555 (2012) and to notify the applicant within 31st March B.E. 2556 (2013) pursuant

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to section 42 of the Organic Act on Political Parties B.E. 2550 (2007). However, upon expiration of the said period, the applicant had not received a report of the respondent party's activities. The applicant therefore relied on powers under section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007) to notify the respondent to prepare a true and accurate report of the respondent party's activities for the year of B.E. 2555 (2012), which had to be adopted by the general meeting of the respondent party pursuant to section 28 paragraph two (5) of the Organic Act on Political Parties B.E. 2550 (2007), and to notify the applicant within 30th June B.E. 2556 (2013). Upon expiration of the said period, the applicant had not yet received a report of the respondent party's activities for B.E. 2555 (2012). The Election Commission therefore adopted a resolution to direct the applicant to submit an application to the Constitutional Court for an order to dissolve the respondent party.

1.3 The applicant submitted an application to the Constitutional Court for the dissolution of the respondent party pursuant to section 93 of the Organic Act on Political Parties B.E. 2550 (2007) due to a failure to comply with section 42 paragraph two and section 82. It was further requested that those who had held executive positions in the respondent party should be banned from registering the establishment of a new political party or becoming a political party executive or participating in the registration of the establishment of a new political party over a five - year period as from the Constitutional Court order to dissolve the respondent party pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007), and that the respondent's party leader or party executive who had participated, connived at or neglected or known the commission of such act and failed to intervene or remedy the act should also have their 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).

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 admit both applications for a ruling under section 93 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court found as follows. The respondent party failed to comply with section 42 paragraph two and section 82 of the Organic Act on Political Parties B.E. 2550 (2007). The applicant, by the approval of the Election Commission, submitted an application to the Constitutional Court within fifteen days as from the date of applicant's acknowledgement. Hence, the case was in accordance with section 93 of the Organic Act on Political Parties B.E. 2550 (2007) in conjunction with article 17 (20) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court had the competence to admit both applications for consideration and the respondent was directed to submit a reply to the allegations within fifteen days as from the receipt of a copy of the application. The respondent, however, did not submit a reply. There was sufficient

evidence in the case for a ruling to be made. Thus, no hearing was held and both applications were consolidated into one trial and ruling.

3. The issues considered by the Constitutional Court

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 42 paragraph two and section 82.

The first question to be decided was whether or not the respondent failed to comply with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). The Constitutional Court found as follows. The applicant had sent a written notice to the respondent to prepare a true and accurate report of the respondent party's activities in the year B.E. 2555 (2012) and to submit such report to the applicant within 31st March B.E. 2556 (2013) pursuant to section 42 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007). Upon the expiration of such period, the applicant did not receive a report of the respondent party's activities. The applicant therefore relied on powers under section 42 paragraph two to serve a written notice on the respondent to prepare a report of the respondent party's activities for the year of B.E. 2555 (2012). Upon the expiration of the period prescribed by the applicant, the applicant did not receive a report of the respondent party's activities for the year of B.E. 2555 (2012). Hence, this was a case where the respondent failed to prepare a report of the respondent party's activities for the year of B.E. 2555 (2012), and after the applicant's order to prepare a report within the prescribed period, the respondent still failed to submit a report without reasonable excuse. Thus, there was a cause for the Constitutional Court to order the dissolution of the respondent party pursuant to section 93 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007).

The second question to be decided was whether or not the respondent failed to comply with section 82 of the Organic Act on Political Parties B.E. 2550 (2007). The Constitutional Court found as follows. The respondent received a grant allocation under a project and plan from the Political Parties Development Fund in B.E. 2555 (2012) pursuant to section 81 of the Organic Act on Political Parties B.E. 2550 (2007). The respondent was therefore under a duty to prepare a true and accurate report of the respondent's grant spending in B.E. 2555 (2012) and to submit such a report to the Election Commission within 31st March B.E. 2556 (2013) pursuant to section 82 of the Organic Act on Political Parties B.E. 2550 (2007). Upon the expiration of the period, the respondent did not submit a report on the respondent's grant spending in the year B.E. 2555 (2012). The applicant therefore relied on powers under section 82 in conjunction with section 42 paragraph two to serve a written notice on the respondent to prepare a report of grant spending together with evidence of such grant spending. However, upon the expiration of the period prescribed by the applicant, the applicant still did not receive a report of the respondent party's grant spending in B.E. 2555 (2012). In this case, the respondent therefore failed to prepare a report

of the respondent party's grant spending in B.E. 2555 (2012) and after the applicant ordered a filing of the report within the prescribed period, the respondent still failed to file the report without reasonable excuse. Hence, there was cause for the dissolution of the respondent party pursuant to section 93 in conjunction with section 82 of the Organic Act on Political Parties B.E. 2550 (2007).

The second issue was whether or not the persons who had held executive positions in the respondent party should be banned from registering the establishment of a new political party or becoming a political party executive, or participating in the registration of the establishment of a new political party over a five - year period 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 (2007), and whether or not the leader or executives of the respondent party who participated, connived at or neglected or had acknowledgement of such acts but failed to intervene or remedy such acts should have election rights revoked over a five - year period 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).

The first question to be decided was whether or not the persons who had held executive positions in the respondent party should be banned from registering the establishment of a new political party or becoming a political party executive, or participating in the registration of the establishment of a new political party over a five - year period 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 (2007). The Constitutional Court found as follows. Section 97 of the Organic Act on Political Parties B.E. 2550 (2007) provided for the consequences of violating a provision of law. The provision did not provide the Constitutional Court with the power to order otherwise. Upon a finding of a cause for dissolution of the respondent party due to a violation of section 42 paragraph two and section 82, the Constitutional Court had to order the ban of those who had held executive positions in the respondent party pursuant to Notification of the Political Parties Registrar Re: Acknowledgement of Change in Executives of Bamrungmueang Party, dated 9th August B.E. 2555 (2012), from registering the establishment of a new political party or becoming a political party executive, or participating in the registration of the establishment of a new political party over a five - year period as from the date of dissolution of such political party.

The second question to be decided was whether or not the leader or executives of the respondent party who participated, connived at or neglected or had acknowledgement of such acts but failed to intervene or remedy such acts should have election rights revoked over a five - year period 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). The Constitutional Court found as follows. The respondent party was under a duty to prepare a report of political party grant spending in a calendar year period in accordance with section 82. The spending report had to be done by the party leader and party executives who were charged with the powers and duties of operating the party's activities as provided

under section 17 paragraph one. Upon finding on the facts that the respondent party failed to report the respondent party's grant spending in the annual period of B.E. 2550 (2007) without reasonable excuse as provided under section 82 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). Thus, it could be deemed that the respondent's party leader and party executives participated, connived at or neglected or acknowledge of the acts but failed to intervene or remedy the acts pertaining to the failure to submit such a report. An order was therefore issued to revoke the election rights of the respondent's party leader and party executives pursuant to Notification of the Political Parties Registrar Re: Acknowledgement of Change in Executives of Bamrungmueang Party, dated 9th August B.E. 2555 (2012), over a five - year period as from the date of order to dissolve the respondent party.

4. Ruling of the Constitutional Court

The Constitutional Court ordered the dissolution of Bamrungmueang Party, respondent, pursuant to section 93 in conjunction with section 42 paragraph two and section 82 of the Organic Act on Political Parties B.E. 2550 (2007), and banned executives of the respondent party pursuant to Notification of the Political Parties Registrar Re: Acknowledgement of Change in Executives of Bamrungmueang Party, dated 9th August B.E. 2555 (2012), from registering the establishment of a new political party or becoming a political party executive, or participating in the registration of the establishment of a new political party over a five - year period as from the date of dissolution of such political party pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007), and revoked the election rights of the respondent's party leader and executives pursuant to such Notification of Political Parties Registrar over a five - year period as from the date of Constitutional Court to dissolve the respondent party pursuant to section 98 of the Organic Act on Political Parties B.E. 2550 (2007).
