

# **Summary of Constitutional Court Ruling No. 10-11/2557 (2014)**

**Dated 17<sup>th</sup> September B.E. 2557 (2014)\***

**Re: The Political Party Registrar requested for a Constitutional Court order  
to dissolve Thai Por-Pieng 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 Thai Por-Pieng 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) as follows.

1.1 The respondent was allocated a grant under a project and plan from the Fund for Development of Political Parties for the annual period of B.E. 2555 (2012) in the amount of 760,000 baht (seven hundred and sixty thousand baht only), and the respondent had already filed a report of spending of the political party grant in such annual period with the respondent. The applicant, however, was of the opinion that the respondent had not submitted all evidence, making it not possible to examine the accuracy and lawfulness of the respondent's spending. The applicant therefore notified the respondent to submit additional evidence or a return of the funds. The respondent did not take any action. The applicant was of the opinion that the respondent failed to submit a report of spending of grant from the Fund for Development of Political Parties for the annual period of B.E. 2555 (2012) together with evidence of spending within the period set by the applicant pursuant to section 82 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), thus constituting a cause for dissolution of the political party under section 93.

1.2 The applicant sent a written notice to the respondent party leader to prepare a proper report of activities of the respondent party for the annual period of B.E. 2555 (2012) pursuant to section 42 of the Organic Act on Political Parties B.E. 2550 (2007) within 31<sup>st</sup> March B.E. 2556 (2013). However, the applicant did not receive a report of the respondent party's activities for the annual period of B.E. 2555 (2012). 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 an accurate report of the respondent party's activities for the annual period of B.E. 2555 (2012), which had to be sanctioned by the respondent party's general meeting pursuant to section 28 paragraph two (5) and submitted to the applicant within 30<sup>th</sup> June B.E. 2556 (2013). Upon the expiration of

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the deadline, the applicant did not receive a report of the respondent party's activities for the annual period of B.E. 2555 (2012). Hence, there was a failure to comply with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007) constituting a cause for political party dissolution under section 93.

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 requested for the Constitutional Court order to dissolve the respondent party pursuant to section 93 of the Organic Act on Political Parties B.E. 2550 (2007) due to the failure to comply with section 42 paragraph two and section 82. It was further requested that persons who had been executive officers of the respondent party should be banned from registering the establishment of a new political party or becoming an executive of a political party or participating in the registration 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, and that the party leader and executives of the respondent party who participated, connived at or neglected or acknowledged such act but failed to intervene or remedy the act should have their election rights revoked over a five - year period as from the date of the Constitutional Court order to dissolve the respondent party pursuant to section 98.

## **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 consideration under section 93 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court held 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 day of making the finding. The case was therefore 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 therefore ordered the admittance of the order for consideration and directed the respondent to submit a reply within fifteen days as from the date of receiving a copy of this application. However, the respondent did not submit any reply.

During trial in the Constitutional Court, the Announcement of the National Council for Peace and Order abolished the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and provided that all applications, files, cases or any matters proceeded under the Organic Act on Political Parties B.E. 2550 (2007) pending in the Court prior to 22<sup>nd</sup> May B.E. 2557 (2014) remained within the competence of the Court. Subsequently, the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) was promulgated. The

Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) provided that the Constitutional Court had the competence to try cases under the Organic Act on Political Parties and proceedings and rulings of the Constitutional Court would be in accordance with the Rules of the Constitutional Court on Procedures and Rulings in force on the day prior to the effective date of this Constitution. The Constitutional Court therefore continued to have competence to consider this case. There was sufficient evidence in the case for a ruling to be made. Thus, there was no hearing and both applications were consolidated into one trial.

### **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 Constitutional Court found as follows. The respondent did not receive a report of the respondent party's activities for the annual period of B.E. 2555 (2012). Thus, the respondent failed to prepare a report of the respondent's activities for the annual period of B.E. 2555 (2012). When the applicant ordered a report to be filed within a prescribed period, the respondent failed to submit a report without proper reason. There was thus a cause for the Constitutional Court to order the dissolution of the respondent party under section 93 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). As for the respondent's receipt of grant allocation under a project and plan from the Fund for Development of Political Party for the annual period of B.E. 2555 (2012), under section 81 of the Organic Act on Political Parties B.E. 2550 (2007), the respondent had to submit a report of grant spending of the respondent party for the annual period of B.E. 2555 (2012). However, upon an examination of facts by the applicant, it was found that such spending report was inaccurate. The applicant thus sent a written notice to the respondent to provide an explanation and submit additional documents or return the funds within the prescribed period, but the respondent neither gave an explanation nor submitted additional evidence or returned the funds. Thus, this was a case where the respondent failed to submit an accurate report of political party grant spending. There was a cause for dissolution of the respondent party under 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 could register the establishment of a new political party or become a political party executive or participate 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 respondent party's leader or executives participated, connived at or neglected or acknowledged such act but failed to intervene or remedy such act would also have their 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. Section 97 of the Organic Act on Political Parties B.E. 2550 (2007) provided for the consequences of a violation of a provision of law. The provision did not empower the Constitutional Court to order otherwise. Upon finding a cause for the dissolution of the respondent party due to a violation of section 42 paragraph two and section 82, the Constitutional Court had to order a ban on persons who had held executive positions in the respondent party pursuant to Notification of the Political Parties Registrar Re: Acknowledgement of Changes in Party Executives and Rules of Thai Por-Pieng Party, dated 9<sup>th</sup> June B.E. 2554 (2011), 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 over a five - year period as from the date of political party dissolution. Furthermore, the respondent had a duty to report political party grant spending in a calendar year period pursuant to section 82. A spending report had to be done by the party leader and party executives who had the powers and duties to carry out the party's activities in accordance with section 17 paragraph one. Upon finding on the facts that the respondent party failed to submit an accurate spending report for the respondent party's grant in the annual period of B.E. 2555 (2012) pursuant to its duty, which was a neglect of care and a failure to perform duties under section 82 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). In this case, it could be inferred that the respondent's party leader and executives participated, connived at or neglected or acknowledged such act but failed to intervene or remedy the actions relating to such failure to report. The Constitutional Court therefore ordered the revocation of election rights of the party leader and executives of the respondent party pursuant to the Notification of the Political Parties Registrar Re: Acknowledgement of Changes in Party Executives and Rules of Thai Por-Pieng Party, dated 9<sup>th</sup> June B.E. 2554 (2011) over a five - year period as from the date of dissolution of the respondent party.

#### **4. Ruling of the Constitutional Court**

The Constitutional Court ordered the dissolution of Thai Por-Pieng 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). The Constitutional Court further ordered a ban on those who had held executive offices in the respondent party pursuant to the Notification of the Political Parties Registrar Re: Acknowledgement of Changes in Party Executives and Rules of Thai Por-Pieng Party, dated 9<sup>th</sup> June B.E. 2554 (2011) 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 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 the election rights of the party leader and executives of the respondent party pursuant to the abovementioned Notification of the Political Party Registrar were 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).