

Summary of Constitutional Court Ruling No. 1-2/2559 (2016)

Dated 30th March B.E. 2559 (2016)*

**Re: The Political Party Registrar requested for the Constitutional Court order
to dissolve Khon Kho Pood Nee 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 Khon Kho Pood Nee 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.

The respondent received a grant under projects and plans from the Fund for Development of Political Parties for the annual periods of B.E. 2554 (2011) and B.E. 2555 (2012) pursuant to section 81 of the Organic Act on Political Parties B.E. 2550 (2007), and the funds were disbursed. Thereafter, the respondent was under a duty to prepare true and accurate reports of grant spending for the annual periods of B.E. 2554 (2011) and B.E. 2555 (2012), which had to be submitted to the Election Commission within 31st March B.E. 2555 (2012) and 31st March B.E. 2556 (2013) pursuant to section 82 of the Organic Act on Political Parties B.E. 2550 (2007).

The respondent had already submitted reports of grant spending for the annual periods of B.E. 2554 (2011) and B.E. 2555 (2012) as well as supporting documentary evidence; however, the documentary evidence for the spending report was incomplete. The applicant sent a written notice to the respondent to submit additional documentary evidence in support of the political party grant spending reports for the annual periods of B.E. 2554 (2011) and B.E. 2555 (2012) within the prescribed period. If such documents could not be submitted, the grant should be returned. The respondent, however, neither submitted additional documentary evidence nor returned the grant. No reason was provided for the failure to submit documentary evidence or return of grant. Moreover, in the annual period of B.E. 2555 (2012), the respondent did not return the outstanding balance together with interests to Fund for Development of Political Parties as reported in the spending report of grant received from the Fund for Development of Political Parties for B.E. 2555 (2012) within the period prescribed by law.

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The applicant was of the opinion that even though the respondent submitted a spending report of grant from the Fund for Development of Political Parties for B.E. 2554 (2011) and B.E. 2555 (2012) together with evidence of spending, the submission of documents was incomplete. The applicant thus 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 documentary evidence in support of grant spending or return the grant if such documents could not be provided, as well as to return the balance together with interests as reported within the prescribed period. The respondent, however, took no action. This was a case where the respondent failed to prepare a true and accurate political party grant spending report and to submit such a report to the Election Commission within the period prescribed by law without proper reasons. The Election Commission therefore adopted a resolution to direct the applicant to submit an application to the Constitutional Court for an order to dissolve Khon Kho Pood Nee Party 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 well as an order to ban persons who had held executive positions in the dissolved respondent party 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 Constitutional Court order dissolving the respondent party pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007), and an order to revoke the election rights of the leader and executives of the respondent party over a five - year period as from the 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 could admit these applications for consideration under section 93 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court found as follows. The respondent failed to prepare a true and accurate political party grant spending report for a calendar year period and to submit the report to the Election Commission within the period prescribed by law without proper reason. This was a failure to comply with section 82 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), constituting a cause for dissolution of the respondent party under section 93 paragraph one. The applicant had already submitted an application to the Constitutional Court within 15 days as from the date of acknowledgement pursuant to section 93 paragraph two. The case was therefore in accordance with section 45 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) in conjunction with section 93 of the Organic Act on Political Parties B.E. 2550 (2007) and article 17 (20) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court admitted both applications for

consideration and directed the respondent to submit a reply within fifteen days as from the receipt of a copy of the application. The Constitutional Court ordered further that both applications be consolidated into one trial.

3. Reply

The respondent submitted a reply together with supporting documents which could be summarized as follows. The respondent adopted a resolution in general meeting No. 1/2557 on 28th March B.E. 2557 (2014) to dissolve the respondent party and transfer assets to Yok Teng Utis Foundation (Public Charity) and Mr. Aphichatworawit Sriarawongsa, acting membership registrar of the respondent party, resigned from party membership and the position of the respondent party's membership registrar on 31st March B.E. 2557 (2014). Furthermore, the respondent party's executive committee's 4-year term expired pursuant to article 21 paragraph one of Thai Pen Thai Party Rules B.E. 2551 (2008), applicable as the respondent party rules, on 25th May B.E. 2558 (2015). It was therefore requested that the Constitutional Court order the dissolution of the respondent party without revoking the election rights of the leader and executives of the respondent party over a five - year period pursuant to section 98 of the Organic Act on Political Parties B.E. 2550 (2007) since the party executives' terms had already expired.

4. The issues considered by the Constitutional Court

The Constitutional Court found that there was sufficient evidence to make a ruling. Thus, there was no hearing pursuant to article 32 paragraph one of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007) and the Constitutional Court determined that there were 3 issues to be decided as follows:

(1) Whether or not there was a cause to dissolve the respondent party under section 82 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court found as follows. The respondent had the duty to prepare true and accurate grant spending reports for the annual periods of B.E. 2554 (2011) and B.E. 2555 (2012) and to submit such reports to the Election Commission within 31st March B.E. 2555 (2012) and 31st March B.E. 2556 (2013) pursuant to section 82 of the Organic Act on Political Parties B.E. 2550 (2007). The respondent had already submitted the respondent's grant spending reports for B.E. 2554 (2011) and B.E. 2555 (2012) together with documentary evidence, but the submission of documentary evidence of spending was incomplete. The applicant relied on powers under section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007) to send a written notice to the respondent to submit additional documentary evidence of political party grant spending in B.E. 2554 (2011) and B.E. 2555 (2012) within a prescribed period, and if the respondent was unable to submit such evidence, the grant should be returned. The respondent, however, neither

submitted additional documentary evidence nor returned the grant, and did not give any reason. Furthermore, in B.E. 2555 (2012), the respondent did not return the outstanding balance together with interests to the Fund for Development of Political Parties as reported in the spending report of grant received from the Fund for Development of Political Parties for B.E. 2555 (2012) within the period prescribed by law. This was a case where the respondent failed to prepare a true and accurate report of political party grant spending for a calendar year period and to submit the report to the Election Commission within the period prescribed by law without proper reasons. Hence, 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).

(2) Whether or not 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 a new political party over a five - year period as from the Constitutional Court 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) was a provision on the consequences of a legal violation which did not give the Constitutional Court the power to order otherwise. Upon finding a cause for dissolution of the respondent party due to a violation of section 82, the Constitutional Court had to order a ban on those persons who had held executive positions in the respondent party pursuant to the Notification of the Political Party Registrar Re: Acknowledgment of Changes in the Executive Committee of Thai Pen Thai Party, dated 21st January B.E. 2554 (2011) and 25th May 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 dissolution of the respondent party.

(3) Whether or not the leader and executives of the respondent party who participated, connived at or neglected or acknowledged such act but failed to intervene or remedy such act should have election rights revoked over a five - year period as from the 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 had the duty to report political party grant spending in a calendar year pursuant to section 82. Such spending report was prepared by the party leader and party executives who were charged with the powers and duties of administering the party in accordance with section 17 paragraph one and were collectively responsible for resolutions of the party executive committee and actions taken pursuant to section 17 paragraph three. As regards the respondent's argument that the respondent party's general meeting had adopted an unanimous resolution to dissolve Khon Kho Pood Nee Party and the entire party executive committee had retired due to the expiration of term, the Constitutional Court found that a political party dissolution would occur only upon the causes stated in section 92 paragraph

one (1) of the Organic Act on Political Parties B.E. 2550 (2007) and the respondent party rules. In this case, the party rules did not provide for a cause for political party dissolution and the retiring party executive committee should continue to perform duties until a new party executive committee was acknowledged by the Political Party Registrar. As the respondent failed to prepare correct grant spending reports for the annual period of B.E. 2554 (2011) and B.E. 2555 (2012) according to its duty, and there was credible evidence that the leader and executives of the respondent party participated, connived at or neglected or acknowledged such act but failed to intervene or remedy such act, an order was therefore issued to revoke the election rights of the leader and executives of the respondent party pursuant to the Notification of the Political Party Registrar Re: Acknowledgement of Changes to the Executive Committee of Thai Pen Thai Party, dated 21st January B.E. 2554 (2011) and 25th May B.E. 2554 (2011), over a five - year period as from the date of order to dissolve the respondent party pursuant to section 98 in conjunction with section 17 and section 82 of the Organic Act on Political Parties B.E. 2550 (2007).

5. Ruling of the Constitutional Court

The Constitutional Court ordered the dissolution of Khon Kho Pood Nee Party, respondent, pursuant to section 93 in conjunction with section 82 of the Organic Act on Political Parties B.E. 2550 (2007), and banned persons who had held executive positions in the respondent party pursuant to the Notification of the Political Party Registrar Re: Acknowledgement of Changes to the Executive Committee of Thai Pen Thai Party, dated 21st January B.E. 2554 (2011) and 25th May B.E. 2554 (2011) from registering the establishment of a new political party or becoming a political party executive, or from 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 revoked the election rights of the leader and executives of the respondent party pursuant to such Notification of the Political Party Registrar 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).
