

# Summary of Constitutional Court Ruling No. 5/2559 (2016)

**Dated 31<sup>st</sup> August B.E. 2559 (2016)\***

**Re: The Political Party Registrar requested for the Constitutional Court order to dissolve Chart Samuccee Party**

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## 1. Summary of background and facts

The Political Party Registrar, applicant, submitted an application to the Constitutional Court for an order to dissolve Chart Samuccee Party, respondent, 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 application could be summarised 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. 2555 (2012), B.E. 2556 (2013) and B.E. 2557 (2014) pursuant to section 81 of the Organic Act on Political Parties B.E. 2550 (2007). In the annual periods of B.E. 2555 (2012) and B.E. 2556 (2013), and the funds were disbursed. In the annual period of B.E. 2557 (2014), however, the respondent claimed the funds in two tranches. The respondent was therefore under a duty to prepare true and accurate grant spending reports for the annual periods of B.E. 2555 (2012), B.E. 2556 (2013) and B.E. 2557 (2014), which had to be submitted to the Election Commission within 31<sup>st</sup> March B.E. 2556 (2013), 31<sup>st</sup> March B.E. 2557 (2014) and 31<sup>st</sup> March B.E. 2558 (2015) pursuant to section 82 of the Organic Act on Political Parties B.E. 2550 (2007).

The respondent had already submitted grant spending reports for the annual periods of B.E. 2555 (2012), B.E. 2556 (2013) and B.E. 2557 (2014) as well as supporting documentary evidence. The submissions were, however, incomplete or inaccurate. The applicant therefore notified the respondent to submit additional documentary evidence to support the spending of grant and/or demand additional return of the political parties grant within the prescribed period. If such documentary evidence could not be submitted, the grant should be returned. Several oral communications were also made. The respondent's letter of explanation did not provide credible reasons and the respondent took no further action. It was deduced from these facts that the respondent had an intent to not prepare true and accurate reports of political party grant spending for the said calendar years pursuant to section 82 in conjunction with section 42 paragraph two of the Organic Act on

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Political Parties B.E. 2550 (2007) constituting a cause for dissolution of the political party under section 93. The Election Commission adopted a resolution in meeting No. 21/2559 on 12<sup>th</sup> May B.E. 2559 (2016) to direct the applicant to submit 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 (2007), and for an order to ban persons who had held executive positions in the respondent party pursuant to the Notification of the Political Party Registrar Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 29<sup>th</sup> March B.E. 2555 (2012); Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 30<sup>th</sup> April B.E. 2555 (2012), Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 13<sup>th</sup> November B.E. 2555 (2012), Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 2<sup>nd</sup> May B.E. 2556 (2013), Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 8<sup>th</sup> May B.E. 2556 (2013), Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 3<sup>rd</sup> September B.E. 2556 (2013), and Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 28<sup>th</sup> April B.E. 2557 (2014), 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 Party as from the date of Constitutional Court order to dissolve the respondent party under section 97 of the Organic Act on Political Parties, and for an order to revoke the election rights of the leader and executives of the respondent party pursuant to such Notifications 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).

## **2. The preliminary issue considered by the Constitutional Court**

The preliminary issue was whether or not the Constitutional Court could admit this application 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 true and accurate reports of political party grant spending for certain calendar years and failed to submit such reports to the Election Commission within the period prescribed by law without proper reasons. These inactions constituted failures 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 pursuant to section 93 paragraph one. The applicant submitted an application to the Constitutional Court within 15 days of making such a finding pursuant to section 93 paragraph two. Hence, the case was 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 therefore admitted the application

for consideration and directed the respondent to submit a reply within fifteen days of receiving a copy of the application. The respondent, however, did not submit any reply.

### **3. The issues considered by the Constitutional Court**

The Constitutional Court found that there was sufficient evidence in this case to reach a ruling. No hearing was held pursuant to article 32 paragraph one of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court then proceeded to determine that there were 3 issues which had to be decided as follows.

(1) Whether or not there was a cause for 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 82.

The Constitutional Court found as follows. The respondent received grants under projects and plans from the Fund for Development of Political Parties for the annual periods of B.E. 2555 (2012), B.E. 2556 (2013) and B.E. 2557 (2014). The respondent was therefore under a duty to prepare true and accurate reports of the respondent's political party grant spending, which had to be submitted to the Election Commission within 31<sup>st</sup> March B.E. 2556 (2013), 31<sup>st</sup> March B.E. 2557 (2014) and 31<sup>st</sup> March B.E. 2558 (2015) pursuant to section 82 of the Organic Act on Political Parties B.E. 2550 (2007). 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 to support the political party grant spending for the annual periods of B.E. 2555 (2012), B.E. 2556 (2013) and B.E. 2557 (2014), and/or to return the grant within the prescribed period. However, upon the expiration of such periods, the respondent took no action. The respondent's failure to submit additional documentary evidence, failure to return the grant within the period prescribed by the applicant, and failure to give reasons for such failure to submit additional documentary evidence and return of grants therefore constituted a case where the respondent failed to submit true and accurate reports of political party grant spending for the annual periods of B.E. 2555 (2012), B.E. 2556 (2013) and B.E. 2557 (2014) which had to be submitted to the Election Commission within the period prescribed by law without proper reasons. 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).

(2) Whether or not 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 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 the consequences of violating a provision of law. The Constitutional Court does not have any discretionary power to rule otherwise. Upon a finding of a cause for dissolution of the respondent party due to a violation of section 82, the Constitutional Court had to order a ban on persons who had held executive positions in the respondent party pursuant to the Notification of the Political Party Registrar Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 29<sup>th</sup> March B.E. 2555 (2012); Re: Acknowledgement of Changes in the Executive Committee of Chart Samaggi Party, dated 30<sup>th</sup> April B.E. 2555 (2012), Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 13<sup>th</sup> November B.E. 2555 (2012), Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 2<sup>nd</sup> May B.E. 2556 (2013), Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 8<sup>th</sup> May B.E. 2556 (2013), Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 3<sup>rd</sup> September B.E. 2556 (2013), and Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 28<sup>th</sup> April B.E. 2557 (2014), 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 pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007).

(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 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. There was a finding that the respondent was under a duty to prepare reports of political party grant spending for certain calendar years in accordance with section 82, and that the spending report had to be sanctioned by the party leader and executives who had powers and duties in regard to the party operations in accordance with section 17 paragraph one and were collectively responsible for resolutions of the party executive committee and exercise of functions under section 17 paragraph three. The respondent's failed to prepare grant spending reports for the annual periods of B.E. 2555 (2012), B.E. 2556 (2013) and B.E. 2557 (2014) in accordance with its duty, with facts and circumstances to indicate that there was cause and 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. Thus, there was cause for an order 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 in the Executive Committee of Chart Samuccee Party, dated 29<sup>th</sup> March B.E. 2555 (2012); Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 30<sup>th</sup> April B.E. 2555 (2012), Re: Acknowledgement of Changes in the Executive Committee

of Chart Samuccee Party, dated 13<sup>th</sup> November B.E. 2555 (2012), Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 2<sup>nd</sup> May B.E. 2556 (2013), Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 8<sup>th</sup> May B.E. 2556 (2013), Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 3<sup>rd</sup> September B.E. 2556 (2013), and Re: Acknowledgement of Changes in the Executive Committee of Chart Samuccee Party, dated 28<sup>th</sup> April B.E. 2557 (2014) over a five - year period 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 Chart Samuccee Party, respondent 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) and banned persons who had held executive positions in the respondent party pursuant to the abovementioned Notifications of the Political Party 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 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 the said Notifications of the Political Party Registrar over a five - year period 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).

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