

# **Summary of Constitutional Court Ruling\* No. 3/2556 (2013)**

**Dated 13<sup>th</sup> March B.E. 2556 (2013)**

**Re: The Political Party Registrar requested for a Constitutional Court order to dissolve Cheewit Tee Dee Kwa Party.**

.....

## **1. Summary of background and facts**

The Political Party Registrar, applicant, submitted an application to the Constitutional Court for an order to dissolve Cheewit Tee Dee Kwa Party, respondent. The facts stated in the application and supporting documents could be summarised as follows. The applicant served a written notice to the leader of the respondent party to prepare the party's annual report of the year B.E. 2554 (2011) and to submit the report to the applicant by March B.E. 2555 (2012). The respondent had submitted such report of the respondent party's operations for the year B.E. 2554 (2011), but it was not approved by the respondent party's general assembly. The report was therefore not in compliance with section 28 paragraph two (5) of the Organic Act on Political Parties B.E. 2550 (2007), and the Election Commission had deliberated and passed a resolution to authorise the applicant's submission of an application to the Constitutional Court to commence proceedings for the dissolution of the respondent party pursuant to section 93, and to divest the party leader and party executives of the right to file an establishment of a political party pursuant to section 97.

## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for a ruling, and whether or not the application process for commencement of proceedings to dissolve the respondent party was lawful.

The applicant, by the approval of the Election Commission, was of the opinion that the respondent party had failed to comply with section 42 of the Organic Act on Political Parties B.E. 2550 (2007), constituting a cause for the dissolution of the respondent party under section 93 paragraph one. The Election Commission thus adopted a resolution to authorise the applicant's submission of application to the Constitutional Court to commence proceedings for the dissolution of the respondent party pursuant to section 93

---

\* Published in the Government Gazette Vol. 130, Part 58a, dated 2<sup>nd</sup> July B.E. 2556 (2013).

paragraph two. The case was therefore in accordance with section 93 of the Organic Act on Political Parties B.E. 2550 (2007) in conjunction with clause 17(20) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). Hence, the Constitutional Court admitted this application for consideration. Furthermore, section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007) provided for the Registrar, with the approval of the Election Commission, to submit an application to the Constitutional Court within fifteen-days of a finding by the Registrar. Since it was found on the facts that the cause for dissolution of the respondent party was known by the applicant on 3<sup>rd</sup> September B.E. 2555 (2012), the applicant's submission of application on 11<sup>th</sup> September B.E. 2555 (2012) was therefore made within the fifteen day period prescribed by law. Thus, the application was consistent with section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007).

### **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.

The Constitutional Court found as follows. The facts stated in the application and supporting documents, undisputed by the respondent, were settled as follows. Even though the respondent submitted the party's annual report of the year B.E. 2554 (2011) with the applicant within the timeframe prescribed under section 42 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007), such report had not been approved by the respondent party's general assembly. The report was not deemed to file under section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). The case therefore showed 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 issue was whether or not the former executives of the respondent party could file notice of the establishment of a new political party or become a political party executive or participate in the filing of the establishment of a new political party within the five-year period 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).

The Constitutional Court found as follows. Section 16 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007) provided for a political party to be a juristic person with an executive committee responsible for the political party's activities. The intent of this provision was to ensure the continuity of political party's activities, which would not be disrupted by the termination of any person or group of persons. The juristic person should continually have an authorised personnel or operator on a continual basis. In the case of the respondent, even though the respondent party articles did not provide

for the retiring executive committee to remain in office, the respondent, as a political party was under an obligation to maintain political party activities in accordance with the constitution and laws. Therefore, the entire former executive committee should continue to perform duties until the new party executive committee takes office. Mr. Woratawarit Tantipirom, who claimed to have resigned from leadership of the respondent party, had signed a letter submitting the respondent party's annual report of the year B.E. 2554 (2011) to the application in his capacity as the respondent party leader and acted as the chairman of the respondent party's general assembly. Mr. Woratawarit Tantipirom thus ostensibly continued to act as the respondent party leader as well as a party executive or agent of the respondent party to enable the respondent party's operations. Moreover, the law provided for party executives to be collectively responsible for all the resolutions of the political party executive committee and the discharge of legal functions of the political party executive committee, except where it was proven that one did not participate in the action as evidenced in the meeting minutes stating one's objection in a meeting of the political party executive committee, or in the absence of a record in the meeting minutes, that a letter had been submitted to the meeting chairman within seven days of the meeting.

Mr. Woratawarit Tantipirom was thus under a collective responsibility for the resolution of the respondent party executive committee. The actions of Mr. Waratwarit Tantipirom implicated him formerly as an executive of the respondent party under the definition in section 97 of the Organic Act on Political Parties B.E. 2550 (2007). Furthermore, since such provision was a provision on the consequence of a legal violation which did not grant the Constitutional Court with a discretion to rule otherwise, upon a finding of a cause for dissolution of the respondent party due to a violation of section 42 paragraph two, the Constitutional Court had to order the prohibition of the former party executive from filing notice of the establishment of a new political party or from becoming a political party executive, or participating in the filing of the establishment of a new political party, within a period of five years as from the dissolution of such political party.

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

The Constitutional Court ordered the dissolution of Cheewit Tee Dee Kwa Party, the respondent, pursuant to section 93 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), and the prohibition of former executives of the respondent party pursuant to the Political Party Registrar Notification Re: Acknowledgement of Changes to the Executives of Cheewit Tee Dee Kwa Party, dated 5<sup>th</sup> November B.E. 2551 (2008), from filing notice of the establishment of a new political party or becoming a political party executive, or participating in the filing of the establishment of a new political party, within a period of five years 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).

---