

Summary of the Constitutional Court Ruling No. 42/2545

Dated 18th July B.E. 2545 (2002)*

Re : Political Party Registrar's application for an order to dissolve Boran Ruk Party

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1. Background and summarized facts

The political party registrar (an applicant) submitted an application to the Constitutional Court for an order to dissolve Boran Ruk Party (a respondent). The application stated that the political party registrar acknowledged the establishment of Boran Ruk Party as a political party on 14th August B.E. 2544 (2001). Under section 29 of the Organic Act on Political Parties, B.E. 2541 (1998), Boran Ruk Party had to prepare to have not less than five thousand members, which shall comprise those from each Region according to the list of Regions and Changwats notified by the registrar and had to have at least one branch of the political party in each Region within one hundred and eighty days from the date the registrar had acknowledged its establishment. According to the Member Register of Boran Ruk Party, the Party had 5,671 members, including 2,950 honorary members. However, after examining documentary evidences of the admission of the Party's members and the register of honorary members (Form Tor Por 4), which were submitted by the respondent, the applicant was of the opinion that statement given by the respondent could not be referred as to support the fact of whether the Party's intention of inviting 2,950 persons having the right to vote at constituency 1, Amphoe Mueang Roi Et, Changwat Roi Et, to be Boran Ruk Party's honorary members was reached such persons, and whether they had acknowledged the invitation and had no objection to it. The fact that the respondent presented the list of 2,950 persons to whom the Party delivered letters of invitation to be its honorary members, with evidences of mail delivery and with strong belief that such letters were received due to no mail return and no objection, to the meeting of its executive committee in order that the committee would pass the resolution of admitting them to be such members of the Party, was deemed as being referred to by the respondent only to take benefit of it. Such the 2,950 invited persons could not be deemed as members of Boran Ruk Party under article 35 of the Bylaws of Boran Ruk Party B.E.2544 (2001). Boran Ruk Party thereby could not have 5,000 members, and this was deemed as not complying with section 29 of the Organic Act on Political Parties, B.E. 2541 (1998). The case therefore constituted a cause for the dissolution of Boran Ruk Party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties, B.E. 2541 (1998).

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2. Preliminary issue

The Constitutional Court ordered the acceptance of the application for hearing and delivered the copy of such application to Boran Ruk Party for acknowledgement and submitting a response statement pursuant to the Rule of the Constitutional Court on the Constitutional Court Procedure B.E. 2541 (1998).

3. The issue considered by the Constitutional Court

The political party registrar applied the quorum of judges of the Constitutional Court for adjudication and making an order to dissolve Boran Ruk Party pursuant to section 65 paragraph one and paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998).

The Constitutional Court held that the issue to be considered was whether the respondent prepared to have not less than 5,000 members within one hundred and eighty days from the date the political party registrar had acknowledged its establishment under section 29 of the Organic Act on Political Parties, B.E. 2541 (1998).

Being a member of a political party constituted various rights and duties. In some case where a prohibition by law was broken, such the member may be subject to a criminal penalty. As a result, the entry for being a political party's member had to be on voluntary basis by expression of such intention. Normally, the intention could be expressed by means that a person who wished to be the member of a political party filled in an application form and signed his name or affixed his finger print in the application pursuant to the rule prescribed in section 9 of the Civil and Commercial Code and then submitted such application to a political party of which he intended to be a member in order that such the political party gathered all application and then reported to the political party registrar. In this case, the respondent prescribed in article 34 of its bylaws that "Members of Boran Ruk Party consists of two types which are honorary members and general members" and in article 35 of the same that "An honorary member is a person who has special competence or educational qualification, who supports or may support the Party, and who is invited by the Executive Committee of the Party to be an honorary member. When the Executive Committee has passed the resolution to invite any person to be such an honorary member, the Leader of the Party shall deliver the letter of invitation by mail to such person. If there is no objection of the invitation within the time period specified in the letter, the invited person shall have membership of the Party and be separately registered in honorary member registration. The honorary member of the Party shall also have all qualifications prescribed in article 36." The said provisions implied that after delivering by the Leader of the Party a letter of invitation of a person having prescribed qualifications to be an "honorary member", the invited person who had not made an objection within the specified time period was immediately deemed as the "honorary member" of the Party. Despite that meaning of the respondent's bylaws, the Constitutional Court was of the opinion that such person could be only an "honorary member" according to

the intention of the respondent. The said person could not be deemed as the member of the Party under the spirit of section 29 of the Organic Act on Political Parties, B.E. 2541 (1998), which provided that there had to be the expression of intention to be such the member as already stated.

Although the fact stated in the statement of the respondent that the respondent invited 2,950 persons in Amphoe Mueang, Changwat Roi Et to be its honorary members could be relied on, no evidence appeared that such invited persons expressed their intention to apply for membership of the Party. Therefore, persons in that number could not be deemed as members of the Party under the meaning of section 29 of the Organic Act on Political Parties, B.E. 2541 (1998). When the total number of the Party's members was deducted by the number of 2,950 persons, the respondent had only 2,721 members. In addition, it was appeared that the respondent had not prepared to have additional members in order to reach the total number of its member not less than 5,000 within the time period specified by law. The Constitutional Court thereby held that within 180 days from the date of 14th August B.E. 2544 (2001), which was the day that the political party registrar acknowledged its establishment, the respondent had not prepared to have not less than 5,000 members. This was a cause for the dissolution of a political party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties, B.E. 2541 (1998). It was therefore the duty of the political party registrar, regardless of the approval of the Election Commission, to submit an application to the Constitutional Court under section 65 paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998).

4. Ruling of the Constitutional Court

By virtue of section 65 paragraph two of the Organic Act on Political Parties, B.E. 2541 (1998), the Constitutional Court, by a majority of 14 votes to 1 vote, ordered the dissolution of Boran Ruk Party.
