

Summary of Constitutional Court Ruling No. 2/2549

Dated 26th January B.E. 2549 (2006)*

Re: The President of the House of Representatives referred the petition of members of the House of Representatives to the Constitutional Court for a ruling on the membership of Mr. Chuwit Kamolwisit, party-list member of the House of Representatives from Chart Thai Party.

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1. Summary of Background and Facts

118 members of the House of Representatives exercised powers under section 96 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) by entering their names in a petition to the President of the House of Representatives in request of a reference to the Constitutional Court for a ruling on whether or not the membership of Mr. Chuwit Kamolwisit had terminated. The reason stated was that the Constitutional Court had given a decision in Constitutional Court Ruling No. 3/2548 which dissolved Ton Trakul Thai Party, the respondent being its leader, upon its merger with Chart Thai Party as the main party on 6th January B.E. 2548 (2005). It was contended therefore that the respondent became a member of Chart Thai Party as from the date of Constitutional Court order, i.e. 6th January B.E. 2548 (2005), and that the respondent's election as a party-list member of the House of Representatives from Chart Thai Party was not in accordance with section 107(4) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) in conjunction with section 72 and section 73 of the Organic Act on Political Parties B.E. 2541 (1998) since the respondent had not been a member of Chart Thai Party for a period of ninety days. The respondent thus lacked the qualifications to apply for candidacy in the election of members of the House of Representatives. As a result, the respondent's membership of the House of Representatives terminated under section 118 paragraph one subparagraph (4) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

2. Issue Considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not Mr. Chuwit Kamolwisit's membership of the House of Representatives as a party-list member from Chart Thai Party terminated under section 118 paragraph one subparagraph (4) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) due to a disqualification under

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section 107(4) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

After consideration, the Constitutional Court held as follows. The provisions of section 72 paragraph one of the Organic Act on Political Parties B.E. 2541 (1998) which stated that “members of the former political party shall become members of the newly established political party and all assets, liabilities, rights and obligations of the former political party shall be transferred to the new political party as from the date of Constitutional Court order,” meant that upon the merger of one or several political parties with another party, as the principal political party, into a single political party, the transfer of assets, liabilities, rights and obligations of the former political party to the new political party was only applicable to the assets, liabilities, rights and obligations of the political party, but not to the membership of the political party. Therefore, the determination of membership period in the new political party had to be in accordance with section 107(4) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), which stated that “[a member of the House of Representatives] had to be a member of any one political party for a consecutive period of not less than ninety days up to the date of application for candidacy,” as well as the final provisions of section 73 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998) which provided for the *mutatis mutandis* application of section 72. Thus, the determination of membership period in the new political party had to commence from the date of Constitutional Court order dissolving the political party that had merged into the principal political party.

Once a finding of facts was made from the application that the respondent was formerly a member of Ton Trakul Thai Party, which subsequently merged into Chart Thai Party as the principal political party under section 73 of the Organic Act on Political Parties B.E. 2541 (1998), and that the Constitutional Court issued an order to dissolve Ton Trakul Thai Party upon merging into Chart Thai Party as the principal political party on 6th January B.E. 2548 (2005), the respondent was thus a member of Chart Thai Party as of 6th January B.E. 2548 (2005). The determined period of membership of Chart Thai Party, being the political party under which the respondent applied for candidacy in the election of party-list members of the House of Representatives, to the date of application for candidacy in the election of members of the House of Representatives, i.e. 7th January B.E. 2548 (2005), was only one day. The respondent therefore lacked the qualification for eligibility to apply as a candidate in the election of members of the House of Representatives under section 107 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), which stated that “a person having the following qualifications have the right to be a candidate in an election of members of the House of Representatives... (4) being a member of any and only one political party for a consecutive period of not less than ninety days up to the date of applying for candidacy in an election.” As a result, the respondent’s membership of the House of Representatives terminated under section 118 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), which stated that “membership of the House of Representatives terminates upon... (4) being disqualified under section 107,” as from the date of Constitutional Court ruling, pursuant to section 97 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

3. Ruling of the Constitutional Court

Mr. Chuwit Kamolwisit's membership of the House of Representatives as a party-list member from Chart Thai Party terminated under section 118 paragraph one subparagraph (4) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) due to a disqualification under section 107(4) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).
