

Summary of Constitutional Tribunal Ruling No. 1-2/2550

Dated 30th May B.E. 2550 (2007)*

**Re: Request of the Attorney-General for dissolution orders against
Prachatipatai Gao Na Party and Democrat Party.**

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The Attorney-General filed applications for dissolution orders against the Democrat Party and Prachatipatai Gao Na Party alleging violations of section 66 subsections (2) and (3) of the Organic Act on Political Parties. The Constitutional Tribunal ordered both applications to be tried together. The facts under the applications and supporting documents could be summarized as follows.

First application. The Attorney-General filed an application for the dissolution of Prachatipatai Gao Na Party on allegations that Miss Isara, or Pornarint Yuangprasit, leader of the Prachatipatai Gao Na Party, issued letters in her capacity as political party leader certifying and nominating Miss Nipa Janpoti, Mrs. Rachanu Tangsee and Mr. Suvit Ob-oon as election candidates in Trang Province despite those three persons not being members of the party for the complete duration of 90 days. The certification letters were thus false and constituted acts detrimental to the democratic form of government with the King as head of state, as well as acts which were inconsistent with laws or good morals of the people under section 66 subsections (2) and (3) of the Organic Act on Political Parties B.E. 2541 (1998). It was therefore requested that the Constitutional Court issue an order to dissolve Prachatipatai Gao Na Party and revoke the election rights of the political party executives for a period of 5 years as from the date of party dissolution order.

Prachatipatai Gao Na Party filed a statement in reply to the allegations which could be summarized as follows. All three candidates had applied for membership of Prachatipatai Gao Na Party in compliance with all the application procedures prescribed in the party rules and the party leader authorized the party memberships as of 15th November B.E. 2548 (2005). In addition, the Constitutional Court in Ruling No. 9/2549, dated 8th May B.E. 2549 (2006), stated that the elections on 2nd April B.E. 2549 (2006) were unconstitutional and therefore the allegations made by the Attorney-General for the dissolution of Prachatipatai Gao Na Party should also lapse.

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Second application. The Attorney-General filed an application for the dissolution of Democrat Party on the following allegations.

1. The Democrat Party, by the party leader and party executives, jointly organized campaign speech platforms which made false allegations and induced misconceptions on the popularity of Pol. Lt. Col. Thaksin Shinawatra and members of the Thai Rak Thai Party, and induced people to abstain from voting for any election candidate or political party in the constituencies.

2. The Democrat Party, by Mr. Sathit Wongnongtoey, connived in Mr. Taksanai Keesun's nomination of three candidates from Prachatipatai Gao Na Party who did not meet the qualifications for candidacy in the election of members of the House of Representatives in Trang Province and thereafter arranged a press conference alleging the Thai Rak Thai Party of hiring those three persons to apply for election candidacy.

3. The Democrat Party, by Mr. Taikorn Polsuwan, hired Mr. Wantawarit Tantipirom, leader of Cheewit Tee Dee Gwa Party, to announce false allegations in a press conference that Mr. Suvat Liptapanlop hired members of the Cheewit Tee Dee Gwa to apply for candidacy in the election of members of the House of Representatives.

4. The Democrat Party, by former members of the House of Representatives for Songkla Province, collaborated with Mr. Chalee Nopawong na Ayudhya, a close associate of Mr. Trairong Suwankiri, in obstructing the application for election candidacy of smaller political parties in Songkla Province.

The above acts in 1 to 4 constituted acts which were detrimental to the democratic form of government with the King as head of state, as well as acts inconsistent with the law or good morals of the people under section 66 subsections (2) and (3) of the Organic Act on Political Parties B.E. 2541 (1998). It was therefore requested that the Constitutional Court issue an order to dissolve the Democrat Party and revoke the election rights of party executives for a period of 5 years as from the date of party dissolution order.

The Democrat Party filed a statement in reply to the allegations on the legal and factual issues.

The statement in reply to the allegations on the legal issues may be summarized as follows.

1. The Organic Act on Election of Members of the House of Representatives and Senators B.E. 2541 (1998) had already ceased to be in force along with the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

2. The application filed by the Political Party Registrar for the dissolution of the Democrat Party was not made in accordance with the Organic Act on Election Commission B.E. 2541 (1998) and Rules of the Election Commission on Investigations, Inquiries and Rulings B.E. 2542 (1999).

3. The Attorney-General filed an application with the Constitutional Court for the dissolution of the Democrat Party inconsistently with section 67 of the Organic Act on Political Parties B.E. 2541 (1998).

The statement in reply to the allegations on the factual issues may be summarized as follows.

1. The campaign speeches delivered by the Democrat Party which addressed the Thaksin regime as being destructive of democracy, an interference of independent bodies, interference of the Senate, interference of the media and causing problems of abuse, corruption and treachery were good faith expressions of opinion that contained no false statement.

2. The Democrat Party and Mr. Sathit Wongnongtoey never used, supported or connived in Mr. Thaksanai's alleged actions.

3. Mr. Taikorn was not an agent of Mr. Suthep Teuksuban, and according to the evidence presented in the investigation files of the NCCC Investigation Subcommittee, it would appear that Mr. Taikorn did not hire Mr. Wantawarit to arrange a press conference to falsely accuse Mr. Suvat or the Thai Rak Thai Party.

4. The Democrat Party and former members of the House of Representatives for Songkla Province did not connive in the assembly of the public at the place of application for candidacy in the election of members of the House of Representatives for Songkla Province.

The Constitutional Tribunal had the jurisdiction to try and adjudicate this case because section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) provided that any matters provided by law as being within the Constitutional Court's jurisdiction, or a question which arose as to whether a law was contrary to or inconsistent with the Constitution, should be within the jurisdiction of the Constitutional Tribunal. It was also provided that all cases or matters pending proceedings in the Constitutional Court prior to the conclusion of the Constitutional Court should become the powers and responsibilities of the Constitutional Tribunal.

The Constitutional Tribunal considered the application, reply statements of both parties and the evidence presented in the inquiries and gave decisions on the questions of law and questions of facts which could be summarized as follows.

1. The Organic Act on Election of Members of the House of Representatives and Senators B.E. 2541 (1998) remained effective and did not lapse with the Constitution of the Kingdom of Thailand B.E. 2540 (1997) which was repealed by the Announcement of the Council for Democratic Reform No. 3.

2. The Political Party Registrar was able to make a direct referral of the complaint in this case to the Attorney-General for the subsequent submission of an application to the Constitutional Court without having to defer to the consideration of the Election Commission

since such proceedings were the specific powers of the Political Party Registrar under section 67 of the Organic Act on Political Parties B.E. 2541 (1998).

3. The fact that the Political Party Registrar's request for dissolution of the Democrat Party raised a total of 8 causes while the Attorney-General's application for party dissolution raised only 4 causes could be deemed as the Attorney-General's satisfactory submission of an application to the Constitutional Court. Therefore, the establishment of a working group to gather evidence for transmission to the Attorney-General for re-submission of an application to the Constitutional Court was not necessary, since this was not a case where the Attorney-General did not submit an application to the Constitutional Court under section 67 paragraph one of the Organic Act on Political Parties B.E. 2541 (1998).

4. Constitutional Court Ruling No. 9/2549 which decided that the general election of members of the House of Representatives on 2nd April B.E. 2549 (2006), up till the date of ruling, was unconstitutional affected the proceedings within the powers and duties of the Election Commission, but did not have the effect of annulling or revoking the acts of political parties which constituted causes for party dissolution. Therefore, the allegations against Prachatipatai Gao Na Party stated in the Attorney-General's application did not lapse.

5. The organization of campaign speeches on the works of Pol. Lt. Col. Thaksin by the party leader and executives of the Democrat Party, since they addressed conducts that could be indicative of Pol. Lt. Col. Thaksin and certain members of the government as having obtained masked benefits or having conferred benefits to associates, critiques on such matters were within the reasonable scope of action of the general public because Pol. Lt. Col. Thaksin was the Prime Minister and thus a public person. As for the campaign speeches or persuasions to cast votes in the 'abstain' box, such actions were the rights of the people under section 326(4) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and section 56 of the Organic Act on Election of Members of the House of Representatives and Senators B.E. 2541 (1998). Therefore, such actions did not constitute false allegations or delusions on the popularity of Pol. Lt. Col. Thaksin, the party leader, and election candidates from Thai Rak Thai Party, nor amounted to persuasions of the constituent to refrain from voting for any candidate or political party which contested in every constituency.

6. On the applicant's allegation that the Democrat Party connived in Mr. Thaksanai's bringing Miss Nipa, Mrs. Rachanu and Mr. Suvit to apply for membership of Prachatipatai Gao Na Party, and to apply for candidacy in the election of members of the House of Representatives for Trang Province, and thereafter organizing a press conference stating that Thai Rak Thai Party hired those three persons, it was found that Mr. Thaksanai brought those three persons to apply for party membership and election candidacy in the election of members of the House of Representatives while knowing that those three candidates had not actually been members of Prachatipatai Gao Na Party for a full period of 90 days. However, Mr. Sathit and the Democrat Party did not connive in or supported the actions of Mr. Thaksanai and it was not found that Mr. Suthep organized a press conference to falsely accuse Thai Rak Thai Party of hiring those three candidates.

7. On the applicant's allegation that the Democrat Party, by Mr. Taikorn, hired Mr. Wantawarit, leader of the Cheewit Tee Dee Gwa Party, to accuse Mr. Suvat, executive of the Thai Rak Thai Party, it was not found that Mr. Taikorn hired Mr. Wantawarit to accuse Mr. Suvat. On the other hand, it appeared that Mr. Taikorn searched for evidence from Mr. Wantawarit because Mr. Taikorn believed that the Thai Rak Thai Party had hired smaller parties to contest in the elections.

8. On the applicant's allegation that the Democrat Party obstructed the applications for candidacy of smaller parties in the election of members of the House of Representatives for Songkla Province, it was found that there were actual obstructions but the executives and members of the House of Representatives of the Democrat Party did not participate in such obstructions.

9. On the applicant's allegation that the Prachatipatai Gao Na Party issued false party membership certification letters to Miss Nipa, Mrs. Rachanu and Mr. Suvit, who had not been party members for 90 consecutive days, for use as evidence in the applications for candidacy in the election of members of the House of Representatives, it was found that Miss Isara, or Pornarint, leader of the Prachatipatai Gao Na Party, actually issued such false certification letters while knowing that those three persons had not been party members for 90 days.

As for the revocation of election rights of the executives of the political party that had been dissolved as a result of having violated the prohibitions under the Organic Act on Political Parties B.E. 2541 (1998) as from the date of party dissolution order pursuant to the clause 3 of the Announcement of the Council for Democratic Reform No. 27, it was found that the revocation of election rights was not a criminal penalty, but merely a legal measure which was a result of the legal power to dissolve a political party that had violated a prohibition under the Organic Act on Political Parties B.E. 2541 (1998) so as to prevent the political party executives who had caused detriment to the nation and democratic rule from recommitting acts that would be detrimental for a determined period of time. Although election rights were fundamental rights of the people in a democratic society, provisions of laws prescribing persons who should have eligible rights that were suitable to society conditions, or to enable the continued existence of democratic rule, were valid. Clause 3 of the Announcement of the Council for Democratic Reform No. 27 was therefore retrospectively applicable to acts which constituted causes for party dissolution in this case.

The Constitutional Tribunal held that the Democrat Party had not committed the alleged act. Thus the application was dismissed in relation to the request for dissolution of the Democrat Party. On the other hand, Prachatipatai Gao Na Party had committed the alleged acts which were detrimental to the democratic form of government with the King as head of state, and acts which were inconsistent with laws or good morals of the people, as provided under section 66 subsections (2) and (3) of the Organic Act on Political Parties B.E. 2541 (1998). Those acts lacked good conscience towards the people and paid no regard to the detriment and impact caused to the nation. As a result, the Constitutional Tribunal

ordered the dissolution of Prachatipatai Gao Na Party under section 67 in conjunction with section 66 subsections (2) and (3) of the Organic Act on Political Parties B.E. 2541 (1998), and revoked the election rights of nine Prachatipatai Gao Na Party executives, who were party executives at the date of the commission of the prohibited act under the Organic Act on Political Parties B.E. 2541 (1998), for a period of 5 years as from the date of the order dissolving Prachatipatai Gao Na Party pursuant to clause 3 of the Announcement of the Council for Democratic Reform No. 27, dated 30th September B.E. 2549 (2006).
