

Summary of Constitutional Tribunal Ruling

No. 3-5/2550

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

Re: Request of the Attorney-General for dissolution orders against Pattana Chart Thai Party, Paen Din Thai Party and Thai Rak Thai Party.

.....

The Attorney-General submitted an application to the Constitutional Court in request of dissolution orders against Pattana Chart Thai Party, Paen Din Thai Party and Thai Rak Thai Party. The causes raised were as follows. Thai Rak Thai Party gave financial support to Pattana Chart Thai Party and Paen Din Thai Party with respect to the nomination of candidates in the election of members of the House of Representatives on 2nd April B.E. 2549 (2006) in order to avoid the event of only one candidate contesting and such candidate receiving fewer than 20 percent of the votes of eligible voters in such constituency, in which case the Election Commission would have to hold a re-election under section 74 paragraph two of the Organic Act on Election of Members of the House of Representatives and Senators B.E. 2541 (1998). It was alleged further that Thai Rak Thai Party conspired with Pattana Chart Thai Party and officials of the Office of the Election Commission in altering the party membership database of Pattana Chart Thai Party in the computers of the Office of the Election Commission. Such alterations were made in order to enable the application of candidates from Pattana Chart Thai Party who lacked the qualification requiring no less than 90 consecutive days of party membership up to the application date for election candidacy under section 107(4) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Moreover, the leader of Pattana Chart Thai Party issued false party membership certification letters for use by the candidates as evidence in the application, and the leader of Paen Din Thai Party fabricated false minutes of meetings and party membership certification letters for use by the candidates in the applications. Those acts of the Thai Rak Thai Party violated section 66 subsections (1) and (3) of the Organic Act on Political Parties B.E. 2541 (1998). The acts of Pattana Chart Thai Party and Paen Din Thai Party violated section 66 subsections (2) and (3) of the Organic Act on Political Parties B.E. 2541 (1998). When the said matters became evident to the Political Party Registrar, the Political Party Registrar gave notice to the Attorney-General together with evidence. The Attorney-General considered the matter and found it appropriate to submit an application to the Constitutional Court for an order to dissolve all three political parties under section 67 paragraph one of the Organic Act on Political Parties B.E. 2541 (1998). The Constitutional Court issued an order admitting all three applications for consideration on 13th July B.E. 2549 (2006).

* Published in the Government Gazette Vol. 124, Part 33a, 13th July B.E. 2550 (2007).

Thai Rak Thai Party submitted a statement in reply to the allegations on points of law and points of fact which could be summarized as follows.

- The Constitutional Tribunal did not have the jurisdiction to try and adjudicate this case because the power to try and adjudicate political party dissolution cases had always been the power of the court, being a body which exercised judicial powers in the name of His Majesty the King. The Constitutional Tribunal, on the other hand, was not a court.

- Mr. Suthep Teuksuban, secretary-general of the Democrat Party, submitter of the complaint letter did not witness the acts complained of in the letter by himself. Thus, he was not an injured person under clause 3 of the Rules of the Election Commission on Investigations, Inquiries and Rulings B.E. 2542 (1999).

- The investigations carried out by the factual investigation subcommittee was inconsistent with clause 40 of the Rules of the Election Commission on Investigations, Inquiries and Rulings B.E. 2542 (1999) and the factual investigations and rulings of the Election Commission were unlawful under section 19 paragraph two and paragraph three of the Organic Act on Election Commission B.E. 2541 (1998).

- The lapse of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) also resulted in the lapse of the Organic Act on Political Parties B.E. 2541 (1998) and the Organic Act on Election of Members of the House of Representatives and Senators B.E. 2541 (1998). The consequences of law repeals rendered the causes for party dissolution null and void.

- Section 66 of the Organic Act on Political Parties B.E. 2541 (1998) was contrary to or inconsistent with section 29 paragraph one and paragraph two of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

- The rules for proceeding under section 67 of the Organic Act on Political Parties B.E. 2541 (1998) were contrary to or inconsistent with section 63 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

- All the facts claimed in the application could not be sustained.

- The acts alleged by the Attorney-General did not fall within criteria for a party dissolution order under section 66 subsections (1) and (3) of the Organic Act on Political Parties B.E. 2541 (1998).

- There were causes in this case which made it inappropriate to dissolve Thai Rak Thai Party.

- The Announcement of the Council for Democratic Reform No. 27, dated 30th September B.E. 2549 (2006), was not applicable to the causes for party dissolution under section 66 of the Organic Act on Political Parties B.E. 2541 (1998) as causes for the revocation of election rights of party executives.

- The Announcement of the Council for Democratic Reform No. 27, dated

30th September B.E. 2549 (2006), did not have retroactive effect.

- The Constitutional Tribunal could not revoke the election rights of party executives at the time of occurrence of this case, since subsequent to the Thai Rak Thai Party's submission of a reply statement on 19th September B.E. 2549 (2006), during early October B.E. 2549 (2006), certain party executives resigned from their positions, including the leader of the Thai Rak Thai Party, on 3rd October B.E. 2549 (2006), which caused all the remaining party executives retired from office.

Pattana Chart Thai Party submitted a statement in reply to the allegations which could be summarized as follows. Pattana Chart Thai Party did not commit the acts alleged by the Attorney-General. The investigations of the Election Commission were unlawful under section 19 of the Organic Act on Election Commission B.E. 2541 (1998) because Pattana Chart Thai Party was not given an opportunity to submit a factual statement letter and present evidence and it was not evident that the ruling of the Election Commission was made in writing signed by all Election Commissioners constituting the quorum.

Paen Din Thai Party submitted a statement in reply to the allegations which could be summarized as follows. Paen Din Thai Party did not commit the acts alleged by the Attorney-General. Also, the Central Administrative Court gave judgment that the elections on 2nd April B.E. 2549 (2006) were unconstitutional and therefore revoked. The Attorney-General could not invoke the causes arising from such election to request for a party dissolution order since the causes of action arose from acts of a political party in violation of the law that had already been tried in legal proceedings. All the allegations should therefore be dismissed.

The Constitutional Tribunal considered in detail the applications, statements in reply to the allegations of all three parties and all the evidence submitted by the parties and gave decisions on points of law and points of fact which could be summarized as follows:

1. The Constitutional Tribunal had the jurisdiction to try and adjudicate this case because section 35 paragraph one of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) provided for the establishment of a Constitutional Tribunal and section 35 paragraph four provided that all cases pending proceedings in the Constitutional Court prior to the conclusion of the Constitutional Court shall be transferred to the powers and responsibilities of the Constitutional Tribunal. Also, the Constitutional Tribunal was comprised of judges from the Courts of Justice and Administrative Courts, which were judicial bodies acting in the capacity of His Majesty the King and enjoyed independence. The trial proceedings contained fundamental safeguards of open trials, opportunities for parties to present their opinions before a final adjudication, the right to inspect documents relating to themselves, opportunities to object to a Constitutional Judge and the provision of reasons in decisions or orders of the Constitutional Tribunal pursuant to the Rules of the Constitutional Tribunal on Adjudicative Quorum, Procedures and Rulings B.E. 2549 (2006) issued under section 35 paragraph three of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006). The transfer of cases pending in the Constitutional Court to the jurisdiction

of the Constitutional Tribunal pursuant to section 35 paragraph four of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) was therefore not inconsistent with the principle of the legal state as claimed.

2. Section 67 of the Organic Act on Political Parties B.E. 2541 (1998) provided that when an act under section 66 became evident to the Political Party Registrar, the Political Party Registrar should notify the Attorney-General together with evidence for submission of an application to the Constitutional Court for a dissolution order against such political party. It was evident from such provision that the identity of the person filing a complaint to the Political Party Registrar on a political party that had committed an act under section 66, or whether or not such complainant had witnessed the event first-hand, was not a relevant consideration. The Political Party Registrar was empowered to conduct an investigation in this case.

3. Fact-finding investigations and rulings on questions or objections under the Organic Act on Political Parties B.E. 2541 (1998) were powers of the Political Party Registrar. Therefore, it was not necessary to proceed under section 19 paragraph two and paragraph three of the Organic Act on Election Commission B.E. 2541 (1998). Also, the proceedings were undertaken pursuant to an order of the Political Party Registrar, not pursuant to an order of the Election Commission. The proceedings were therefore not subject to clause 40 of the Rules of the Election Commission on Investigations, Inquiries and Rulings B.E. 2542 (1999).

4. An Organic Act under the Constitution of the Kingdom of Thailand B.E. 2540 (1997) had the same legal status as a general Act. The repeal or annulment of an Organic Act under the Constitution of the Kingdom of Thailand B.E. 2540 (1997) therefore required a repealing law or a new law in force. After the Council for Democratic Reform seized governing powers, there was no issuance of a repealing order or promulgation of a new law to replace both Organic Acts. Therefore, both Organic Acts did not lapse along with the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and nor did the causes for party dissolution under section 67 which arose prior to the lapse of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Acts in violation of the Organic Act on Election of Members of the House of Representatives and Senators B.E. 2541 (1998) also remained as offences.

5. Section 328 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) empowered the legislative body to enact laws which had the effect of terminating or dissolving a political party. Whereas section 47 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) recognized the liberty to establish a political party, such liberty did not extend to the point of prohibiting the legislative body from enacting laws to penalize political parties regardless of the unlawfulness or detriments caused to the nation by the acts of the political party. Thus, section 66 subsections (2), (3) and (4) of the Organic Act on Political Parties B.E. 2541 (1998) were not provisions which restricted the rights and liberties to establish a political party beyond the provisions of the Constitution of the

Kingdom of Thailand B.E. 2540 (1997), and nor did the provisions exceed the extent of necessity or affected the essential substance of the personal liberty to conglomerate as a political party. The provisions were therefore consistent with section 29 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). As for the objection that the provisions were not properly enacted under section 262 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), the right to raise such an objection was granted only to members of the House of Representatives, senators and the Prime Minister.

6. Once the Constitutional Court orders a political party to cease an act to overthrow the democratic form of government with the King as head of state, or an act to acquire national governing powers by means other than that provided in the Constitution of the Kingdom of Thailand B.E. 2540 (1997), the Constitutional Court had a discretionary power to order the immediate dissolution of the political party under section 63 paragraph three. There was no need for an order to cease the act under paragraph two. Therefore, section 67 of the Organic Act on Political Parties B.E. 2541 (1998) was neither contrary to nor inconsistent with such provision.

7. The elections on 2nd April B.E. 2549 (2006), which had already been annulled, did not have the effect of revoking the offences that had already been committed since they were different matters.

8. It was found on the facts that General Thammarak Isarangul Na Ayudhya and Mr. Pongsak Raktapongpaisal gave financial support to Pattana Chart Thai Party and Paen Din Thai Party to nominate candidates in the election of members of the House of Representatives on 2nd April B.E. 2549 (2006) in order to avoid the case of only one candidate running and such candidate receiving fewer than 20 percent of the votes of the number of eligible voters in such constituency. If such an event occurred, the Election Commission must hold a re-election under section 74 paragraph two of the Organic Act on Election of Members of the House of Representatives and Senators B.E. 2541 (1998). In addition, Thai Rak Thai Party collaborated with Pattana Chart Thai Party and officials of the Office of the Election Commission in altering the party membership database of Pattana Chart Thai Party in the computers of the Office of the Election Commission in order to enable candidates of Pattana Chart Thai Party who lacked the qualification requirement of being a party member for no fewer than 90 consecutive days up to the date of candidacy application under section 107(4) of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) to file applications. Moreover, Pattana Chart Thai Party leader issued false party membership certification letters for use by the candidates in submitting their applications, and Paen Din Thai Party leader fabricated false minutes and issued false party membership certification letters for use by the candidates in submitting their applications. The acts of Thai Rak Thai Party violated section 66 subsections (1) and (3) of the Organic Act on Political Parties B.E. 2541 (1998). The acts of Pattana Chart Thai Party and Paen Din Thai Party violated section 66 subsections (2) and (3) of the Organic Act on Political Parties B.E. 2541 (1998).

9. General Thammarak Isarangul Na Ayudhya and Mr. Pongsak Raktapongpaisal were important executives of the Thai Rak Thai Party and received a significant amount of trust from the party executive committee and the party leader in undertaking to secure the swift return of Thai Rak Thai Party to power. Thai Rak Thai Party never held a party executive meeting to seek clarifications on the allegations prior and subsequent to the elections despite the significance of the matter which affected the image of the Thai Rak Thai Party. It could be inferred that the acts of General Thammarak and Mr. Pongsak were acts of and binding on Thai Rak Thai Party.

Mr. Buntaweesak Amornsint, leader of Pattana Chart Thai Party, was involved in the alteration of the Pattana Chart Thai party membership database and receipt of funds from General Thammarak as a representative of Pattana Chart Thai Party. It could be inferred that the acts of Mr. Buntaweesak were acts of and binding on Pattana Chart Thai Party.

Mr. Bunbarameepon Chinaraj, leader of Paen Din Thai Party, connived in the Mrs. Tatima Pawalee's receipt of funds from General Thammarak as well as issued false party membership certification letters. It could be deemed that the acts of Mr. Bunbarameepon were acts of and binding on Paen Din Thai Party.

10. The acts of Thai Rak Thai fell within the ambit that could be deemed as the acquisition of national governing powers through means that were not in accordance with those provided in the Constitution under section 66(1), being detrimental to the security of the state or being inconsistent with laws, public order or good morals of the people under section 66(3).

The acts of Pattana Chart Thai Party and Paen Din Thai Party fell within the ambit that could be deemed as acts detrimental to the democratic form of government with the King as head of state under the Constitution and section 66(2) of the Organic Act on Political Parties B.E. 2541 (1998). The acts also posed threats to the security of the state and were inconsistent with laws or public order or good morals of the people under section 66(3).

11. The acts of Thai Rak Thai Party were committed to acquire national governing powers through means which were not provided in the Constitution and posed a threat to the security of the state or inconsistent with law or public order or good morals of the people. There was a lack of regard for the essential principles of the democratic form of government, lack of due respect for the laws of the nation and lack of capability to remain as a political party that could create legitimate politics or the further implementation thereof in the democratic form of government. Therefore, there were causes for the dissolution of Thai Rak Thai Party.

As for Pattana Chart Thai Party and Paen Din Thai Party, these were parties founded for the interests of the founders or party executives showing no characters of a legitimate political party. Therefore, there were causes for the dissolution of Pattana Chart Thai Party and Paen Din Thai Party.

12. The Announcement of the Council for Democratic Reform No. 27 was applicable to the causes for party dissolution under section 66 subsections (1), (2) and (3) of the Organic Act on Political Parties B.E. 2541 (1998) because the provisions of section 66 subsections (1), (2) and (3) were inherently clear as prohibitory provisions. Any political party violating any such prohibition could be dissolved. Such provisions were equivalent to a prohibition against a political party committing any such act.

13. The Announcement of the Council for Democratic Reform No. 27, dated 30 September B.E. 2549 (2006), which revoked election rights, did not impose criminal penalties. The provisions merely constituted legal measures consequential of laws which authorized the dissolution of a political party that had violated a prohibition under the Organic Act on Political Parties B.E. 2541 (1998). These measures were implemented in order to deprive party executives who had caused detriment to society and the democratic form of government of the opportunity to recommit acts which would cause further detriment to society within a period of time. Even though election rights were fundamental rights of citizens in a democratic society, the enactment of laws stipulating the persons entitled to vote as appropriate to society conditions, or in order to maintain the continued existence of the democratic form of government, were justifiable. Clause 3 of the Announcement of the Council for Democratic Reform No. 27 was therefore retrospectively applicable to the commission of acts which constituted causes for party dissolution in this case.

14. The resignation of party executives that held office at the time of occurrence of the events, prior to the date of Constitutional Tribunal ruling, did not absolve those party executives from the acts of the political party committed at the time when they were still in office. To rule otherwise would result in an undesirable result and enforcement of the spirits of the law would be rendered ineffective. Thus, the Constitutional Tribunal had the authority to revoke the election rights of such political party executives.

The Constitutional Tribunal therefore issued an order to dissolve Thai Rak Thai Party, Pattana Chart Thai Party and Paen Din Thai Party, and revoked the election rights of 111 executives of Thai Rak Thai Party, 19 executives of Pattana Chart Thai Party and 3 executives of Paen Din Thai Party for a period of 5 years as from the date of political party dissolution order.
