

# **Summary of Constitutional Court Ruling No. 15/2550**

**Dated 26<sup>th</sup> September B.E. 2550 (2007)\***

**Re: The Political Party Registrar requested for an order of the Constitutional Tribunal to dissolve Santipap-Thai Party.**

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

The Political Party Registrar submitted an application, dated 7<sup>th</sup> February B.E. 2550 (2007), to the Constitutional Tribunal as follows. The Political Party Registry received notice of the establishment of Santipap-Thai Party on 22<sup>nd</sup> March B.E. 2549 (2006). Section 29 of the Organic Act on Political Parties B.E. 2541 (1998) stated that, within one hundred and eighty days as from the date of receipt by the Political Party Registrar of a notice of political party establishment, the political party must proceed to acquire five thousand or more members, which must at least consist of members residing in all regions in the list of regions and provinces prescribed by notification of the Political Party Registrar, as well as establish at least one political party branch in each region. It appeared, however, that upon the expiration of one hundred and eighty days on 17<sup>th</sup> September B.E. 2549 (2006), Santipap-Thai Party had established a political party branch in only one region, namely one branch in the northern region. Santipap-Thai Party's failure to satisfy the requirements of section 29 of the Organic Act on Political Parties B.E. 2541 (1998) therefore constituted a cause for the dissolution of Santipap-Thai Party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties B.E. 2541 (1998). In this connection, the Election Commission passed a resolution directing the Political Party Registrar to submit an application to the Constitutional Tribunal for the dissolution of Santipap-Thai Party under section 29 and section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998) in conjunction with section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006). In consequence thereof, the Political Party Registrar submitted an application to the Constitutional Tribunal for a dissolution order against Santipap-Thai Party.

## **2. Preliminary issue**

A preliminary issue which had to be decided was whether or not the Constitutional Court had the power to continue with the trial and adjudication of this case.

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While this case was pending trial in the Constitutional Tribunal, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was promulgated on 24<sup>th</sup> August B.E. 2550 (2007) to replace the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006). Section 300 paragraph one, paragraph three and paragraph four of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) to become the Constitutional Court and the provisions of section 35 paragraph two, paragraph three and paragraph four of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) continued to apply until the enactment of an Organic Act on Procedures of the Constitutional Court. All cases or matters pending proceedings in the Constitutional Tribunal would be continued by the Constitutional Court. Thus, the Constitutional Court had the power to rule on this application.

### **3. Issue considered by the Constitutional Court**

The issue considered was whether or not the case contained a cause for the issuance of an order to dissolve Santipap-Thai Party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties B.E. 2541 (1998) due to a failure to comply with section 29.

While the Organic Act on Political Parties and Organic Act on Election Commission under the Constitution of the Kingdom of Thailand B.E. 2550 (2007) had not yet been enacted, section 295 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that the Organic Act on Political Parties B.E. 2541 (1998) and Organic Act on Election Commission B.E. 2541 (1998) would continue to apply until the coming into force of such Organic Acts.

After consideration, the Constitutional Court held as follows. The Political Party Registrar received notice of the establishment of Santipap-Thai Party as of 22<sup>nd</sup> March B.E. 2549 (2006). Section 29 of the Organic Act on Political Parties B.E. 2541 (1998) provided that within one hundred and eighty days as from the Political Party Registrar's receipt of notice of the establishment of Santipap-Thai Party, Santipap-Thai Party must proceed to acquire five thousand or more members, which must at least consist of members residing in all regions in the list of regions and provinces prescribed by notification of the Political Party Registrar, as well as establish at least one political party branch in each region. Once it was found on the facts that upon the expiration of one hundred and eighty days on 17<sup>th</sup> September B.E. 2549 (2006), Santipap-Thai Party had proceeded to establish only one political party branch under the Rules of Santipap-Thai Party B.E. 2549 (2006) in the northern region, Santipap-Thai Party's failure to comply with section 29 of the Organic Act on Political Parties B.E. 2541 (1998) therefore constituted a cause for the dissolution of Santipap-Thai Party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties B.E. 2541 (1998). In this regard, Santipap-Thai Party submitted a statement in reply to the allegations stating that it had acknowledged the allegations made in the application of the Political Party Registrar. Santipap-Thai Party did not have any objections

to the issues raised in the application of the Political Party Registrar and admitted to all allegations made in such application.

The subsequent question which had to be decided was whether or not clause 3 of the Announcement of the Council for Democratic Reform No. 27, dated 30<sup>th</sup> September B.E. 2549 (2006), which provided that in the case where the Constitutional Court or other organ exercising the functions of the Constitutional Court issued an order to dissolve a political party due to a violation of a prohibition under the Organic Act on Political Parties B.E. 2541 (1998), the election rights of the executives of such political party should be revoked for a period of five years as from the date of party dissolution order, was still applicable, and whether or not it was applicable to the dissolution of a political party under section 65 paragraph one subparagraph (5) due to a failure to comply with section 29 of the Organic Act on Political Parties B.E. 2541 (1998).

The Constitutional Court held as follows. Section 309 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that all matters recognized by the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) as consistent with the laws and the Constitution, including acts relating to such matters, whether prior to or subsequent to the promulgation of the Constitution, such matters and acts would be deemed as consistent with this Constitution, and section 36 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) provided that announcements and orders of the Council for Democratic Reform with the King as Head of State, or orders of the Head of the Council for Democratic Reform with the King as Head of State, that were announced or made between 19<sup>th</sup> September B.E. 2549 (2006) and the date of promulgation of this Constitution, would continue to be in force and shall be deemed as consistent with the laws and the Constitution. As a result of those provisions, the Announcement of the Council for Democratic Reform No. 27, dated 30<sup>th</sup> September B.E. 2549 (2006) therefore continued to be applicable.

The question which followed was whether or not the Announcement of the Council for Democratic Reform No. 27, dated 30<sup>th</sup> September B.E. 2549 (2006), was applicable to the dissolution of a political party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties B.E. 2541 (1998) due to a failure to comply with section 29 of such Act.

The Constitutional Court held as follows. The Organic Act on Political Parties B.E. 2541 (1998) provided for causes of political party dissolution in section 65 and section 66. There were differences, however, in each section. In other words, section 65 paragraph two empowered the Constitutional Court to order the dissolution of a political party in one of the following events as stated in section 65 paragraph one, (1) a cause for dissolution under the party rules, (2) having fewer than fifteen members remaining, (3) merger with another political party, and (4) failure to comply with provisions of law, e.g. failure to comply with section 29 in proceeding to acquire members and party branches within one hundred and eighty days subsequent to the establishment of the political party. This failure to

comply with section 29 did not have the characteristics of a serious act or a threat to the democratic form of government with the King as Head of State. Therefore, failure to proceed under section 29 was not an act of such severity as to call for a revocation of election rights of the political party executives. These causes were different from the causes for requesting the Constitutional Court to order the dissolution of a political party under section 66, i.e. the commission of an act to overthrow the democratic form of government with the King as Head of State under the Constitution, or to acquire national governing powers by means which had not been provided for in the Constitution, or commission an act which could be detrimental to the democratic form of government with the King as Head of State under the Constitution, or commission an act which could pose a threat to State security or an act inconsistent with laws or public order or good morals of the people, or commission of an act of violation under section 23 paragraph one, section 52 or section 53. It was apparent that the offences under section 66 were either serious or posed a threat to the democratic form of government with the King as Head of State similar to the provisions in section 63 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), which provided that a person could not exercise rights or liberties under the Constitution to overthrow the democratic form of government with the King as Head of State under this Constitution, or to acquire national governing powers through means that had not been provided in this Constitution. As this case involved a request to the Constitutional Court for a dissolution order against Santipap-Thai party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties B.E. 2541 (1998) due to a failure to comply with section 29, it therefore followed that clause 3 of the Announcement of the Council for Democratic Reform No. 27, dated 30<sup>th</sup> September B.E. 2549 (2006), could not be applied to the case. The decision was unaffected by whether or not there was a request for an order to revoke the election rights of Santipap-Thai Party executives.

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

By virtue of the reasons stated above, the Constitutional Court issued an order under section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998) to dissolve Santipap-Thai Party.

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