

# Summary of Constitutional Court Ruling No. 17/2550

Dated 18<sup>th</sup> October B.E. 2550 (2007)\*

**Re: The Political Party Registrar requested for a Constitutional Tribunal  
Order to dissolve Rak Paen Din Thai Party**

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## 1. Summary of background and facts

The Political Party Registrar, the applicant, submitted an application, dated 10<sup>th</sup> November B.E. 2549 (2006), to the Constitutional Tribunal. The application stated as follows. The applicant received notice of the establishment of Rak Paen Din Thai Party, the respondent, as a political party on 17<sup>th</sup> March B.E. 2547 (2004). Section 35 of the Organic Act on Political Parties B.E. 2541 (1998) required the party leader to prepare an annual report of political party activities in the preceding calendar year period, which must contain accurate facts in accordance with the procedures prescribed by the Political Party Registrar and submitted to the Political Party Registrar for notice within the month of March every year for further general publication. In this connection, the Office of the Election Commission had sent warning letters to political parties required to prepare annual reports of political party activities in the B.E. 2548 (2005) period as well as to give notice of such report to the applicant within March B.E. 2549 (2006).

At the end of March B.E. 2549 (2006), the Office of the Election Commission examined the submitted annual reports of political party activities for B.E. 2548 (2005). It appeared from such examinations that the respondent submitted a report of the respondent's political activities on 31<sup>st</sup> March B.E. 2549 (2006). The report was signed by Mr. Anuchit Distaprasop, acting secretary-general of the respondent party, acting on behalf of the respondent party leader. It was stated in the report that Mr. Anuchit Distaprasop exercised powers under clause 31(1) of Rak Paen Din Thai Party Rules B.E. 2547 (2004), which provided that in the case where the party leader was not present at the party office, or was unable to perform duties, if there was an essential business that required a person to act on behalf of the party leader, the persons having full powers to act on behalf of the party leader were the persons in the following order, namely the first and second deputy party leaders, but if both deputy party leaders were not present, the secretary-general would act on behalf of the party leader.

The respondent party originally had Mr. Suratin Pijarn as its party leader. Subsequently, Mr. Suratin Pijarn resigned from the office of party leader which resulted in the retirement

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\* Published in the Government Gazette Vol. 125, Part 46a, 12<sup>nd</sup> March B.E. 2551 (2008).

of the entire party executive committee. Mr. Saman Wapee, the first deputy party leader, acted for the party leader and exercised the power to call a general meeting for the election of a new party executive committee within thirty days pursuant to clause 29 paragraph one subparagraph (7) and paragraph three of the Rak Paen Din Thai Party Rules B.E. 2547 (2004).

The applicant sent a letter to Mr. Saman, the deputy party leader acting for the respondent party leader, asking for an explanation as to whether or not and the manner in which such a grant of power was made to Mr. Anuchit, acting secretary-general of the respondent party, to submit an annual report of party activities for B.E. 2548 (2005) to the Political Party Registrar. Mr. Saman replied in a letter that the duty of preparing such a report was the secretary-general's, but the report must be submitted to the party leader for an endorsement signature before further submission to the Office of the Election Commission. Mr. Saman denied that any grant of power was in any way made to Mr. Anuchit, secretary-general of the respondent party, to act on behalf of the party leader.

The respondent party's report of political party activities for B.E. 2548 (2005), which was signed by Mr. Anuchit, acting secretary-general of the respondent party and submitted to the applicant, without a grant of power from Mr. Saman, deputy party leader acting on behalf of the respondent party leader, was not in accordance with section 20 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998). It was deemed that the respondent party did not submit a report of political activities for B.E. 2548 (2005) to the applicant, being a failure to comply with section 35 and constituting a cause for political party dissolution under section 65 paragraph one subparagraph (5). As a result, the applicant submitted an application to the Constitutional Tribunal for the dissolution of the respondent party under 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).

The respondent, by Mr. Jiradech Tumnat, the party leader, submitted a statement in reply to the allegations which could be summarized as follows. On such last reporting date, a failure to take action could be detrimental to the respondent party. Mr. Anuchit, acting secretary-general of the respondent party, therefore submitted the report of political party activities for B.E. 2548 (2005) to the applicant. Such action was taken on behalf of the party leader due to the party leader's resignation and the first and second deputy leaders were not able to take action because of their not being present at the party office, after also having account of the matter's urgency, by virtue of clause 31 paragraph one subparagraph (1) (k) of the Rak Paen Din Thai Party Rules B.E. 2547 (2004). After the report submission was made by Mr. Anuchit to the Election Commission, the action taken on behalf of the party leader was presented to the respondent party executive committee and the general meeting of the respondent party respectively. Such proceedings were deemed as being compliant with the respondent party rules, and it was deemed that the respondent party had already complied with section 35 of the Organic Act on Political Parties B.E. 2541 (1998). It was therefore requested that the Constitutional Tribunal dismiss the application.

The applicant submitted a supplemental statement which could be summarized as follows. The act of Mr. Anuchit, acting secretary-general of the party, acting on behalf of the party leader in signing the report of party activities submitted to the applicant, claimed to be undertaken by virtue of clause 31 paragraph one subparagraph (1) (k) of the respondent's party rules, was not allowed. This was because a political party had the status of a juristic person. Acts involving third parties had to be carried out according to section 20 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998). In this case, Mr. Saman, the first deputy party leader, acting on behalf of the respondent party leader, denied any grant of power to Mr. Anuchit, acting party secretary-general, to act on behalf of the party leader. Therefore, it was a case where the respondent failed to make a factually accurate report of political party activities for the annual period of B.E. 2548 (2005) under the procedures prescribed by the Political Party Registrar and to make a submission of such report to the Political Party Registrar within March B.E. 2549 (2006).

## **2. Preliminary issue**

The preliminary issue which had to be considered was whether or not the Constitutional Court had the power to resume the trial and adjudication of this application.

The case was pending trial in the Constitutional Tribunal when subsequently 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 that the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) would 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) would continue to apply until the enactment of the Organic Act on Procedures of the Constitutional Court. All cases or matters pending proceedings in the Constitutional Tribunal were resumed by the Constitutional Court. Thus, the Constitutional Court had the power to consider this application.

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

The issue considered by the Constitutional Court was whether or not the case contained a cause for the dissolution of the respondent under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties B.E. 2541 (1998).

While this case was pending proceedings in the Constitutional Court, the Organic Act on Political Parties B.E. 2550 (2007) was enacted and published in the Government Gazette on 7<sup>th</sup> October B.E. 2550 (2007). The Organic Act came into force as of 8<sup>th</sup> October B.E. 2550 (2007).

A preliminary question which had to be decided was whether the Constitutional Court should apply the provisions of the Organic Act on Political Parties B.E. 2541 (1998) or the Organic Act on Political Parties B.E. 2550 (2007) to the trial and adjudication of this case.

After consideration, the Constitutional Court held as follows. Section 20 paragraph two, section 35 and section 65 of the Organic Act on Political Parties B.E. 2541 (1998) were provisions in force at the time when the respondent failed to comply with the legal prescriptions whereas section 17 paragraph two, section 42 and section 93 of the Organic Act on Political Parties B.E. 2550 (2007), even though they were provisions of law enacted subsequently, were not enacted to achieve a different result to the extent of absolving the respondent from party dissolution for the same cause. The Constitutional Court therefore applied section 20 paragraph two, section 35 and section 65 of the Organic Act on Political Parties B.E. 2541 (1998) to the trial and adjudication of this case.

The subsequent question which had to be decided was whether or not there was a cause under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties B.E. 2541 (1998) for dissolution of the respondent party.

After consideration, the Constitutional Court held as follows. Section 20 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998) stated that “the political party leader shall be the political party’s officer in dealings with third parties. For this purpose, the political party leader may grant written authorization for one or several executives to act on his/her behalf.” Once it was found on the facts that Mr. Anuchit Distaprasop, acting secretary-general of the respondent party, was the signor of the report of party activities without written authorization from Mr. Saman Wapee, first deputy leader of the respondent party acting as the party leader, the report of party activities was therefore made by a person who did not have the authority under section 20 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998). Moreover, the respondent was able to prepare a report of party activities for the annual period of B.E. 2548 (2005) and submit such a report to the applicant on any day within the period prescribed by law. Thus, the respondent was barred from raising urgent necessities as a defence. Therefore, the preparation of a report of the respondent party’s activities for the annual period of B.E. 2548 (2005) was not in compliance with section 35 of the Organic Act on Political Parties B.E. 2541 (1998). The case contained a cause for the dissolution of the respondent party under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties B.E. 2541 (1998).

#### **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 Rak Paen Din Thai Party.

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