

Summary of Constitutional Court Ruling No. 18/2550

Dated 18th October B.E. 2550 (2007)*

**Re: The Political Party Registrar requested for a Constitutional Tribunal order
to dissolve Thammatipatai Party**

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1. Summary of Background and Facts

The Political Party Registrar, the applicant, received notice of the establishment of Thammatipatai Party, the respondent, in the Political Parties Register pursuant to the Organic Act on Political Parties B.E. 2541 (1998) on 13th August B.E. 2546 (2003). Section 35 of the Organic Act on Political Parties B.E. 2541 (1998) required the political party leader to prepare a factually accurate report of political party activities for the proceeding annual period according to the procedures prescribed by the Political Party Registrar, and such report must be submitted to the Political Party Registrar within the month of March every year for further public notice. The Office of the Election Commission had sent warning letters to political parties that were required to prepare reports of political party activities for the annual period of B.E. 2548 (2005) and to submit such reports to the applicant within the month of March B.E. 2549 (2006).

At the end of March B.E. 2549 (2006), the Office of the Election Commission reviewed the submission of reports of political party activities for the annual period of B.E. 2548 (2005) and found that the respondent submitted a report of political party activities to the applicant on 4th April B.E. 2549 (2006), which was past due the period prescribed by law. The submission was made together with a letter, dated 4th April B.E. 2549 (2006), stating an admission that the late submission was a result of an error by the respondent party's executive committee which failed to exercise prudence, but without any intention to withhold the submission of a report of its activities for the annual period of B.E. 2548 (2005). The letter was also accompanied by a request for time extension for the submission. The Office of the Election Commission considered the case and held that the respondent's submission of a report of party activities for the annual period of B.E. 2548 (2005) was not in accordance with section 35. As a result, there was a cause for dissolution of political party under section 65 paragraph one subparagraph (5). The Political Party Registrar therefore 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)

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in conjunction with section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) due to the respondent's failure to comply with section 35 of the Organic Act on Political Parties B.E. 2541 (1998).

Thammatipatai Party, by Mr. Surapong Waenkaew, the party leader, submitted a statement in reply to the allegations, dated 2nd January B.E. 2550 (2007), stating as follows:

1) Thammatipatai Party had prepared report according to Form Thor Phor 8 together with an expenditure report which were thereafter submitted to an official of the respondent at the respondent's office on 29th March B.E. 2549 (2006). The respondent's official, however, notified the respondent by telephone that Thammatipatai Party had not yet submitted a report of political party activities (Thor Phor 8). The Party therefore submitted the missing portions of the report on 4th April B.E. 2549 (2006). Thus, it could not be deemed that the party submitted Form Thor Phor 8 after the legal period had expired since there was no re-submission but merely the submission of missing or deficient portions. On the contrary, the subsequent submission should be deemed as continuous to the first submission, which happened to encounter deficiencies in the transmission of documents.

2) The Political Party Registrar, the respondent, became aware of the cause of action on 3rd November B.E. 2549 (2006) and submitted an application to the Constitutional Tribunal on 10th November B.E. 2549 (2006). Thammatipatai Party considered this case to be barred by the limitation period.

The Constitutional Tribunal admitted the respondent's statement in reply to the allegations and served a copy of such statement in reply to the allegations to the applicant who was given an opportunity to submit a supplemental statement.

The Political Party Registrar, the applicant, submitted a supplemental statement, dated 19th February B.E. 2550 (2007), which could be summarized as follows. The Office of the Election Commission notified the respondent by telephone that the respondent had not submitted a report of its activities within the period prescribed by law. Such call was not made to require the submission of additional documents. Moreover, the respondent had sent a letter requesting a time extension for submission of the respondent report of party activities for the annual period of B.E. 2548 (2005) to the applicant, also admitting that the late submission was a result of an error by Mr. Khampu Nakochang who failed to exercise prudence. As for the respondent's claim that the official receiving the respondent's documents erred in failing to exercise prudence in the examination of documents, after an examination was carried out on the letter which Mr. Pisanu or Mr. Baramee Inawan received from the respondent on 29th March B.E. 2549 (2006), the letter was found to be letter No. Thor Thor Tor 29/2549 Re: Form for Expenditure Reporting of Thammatipatai Party Sponsorship Funds. However, there did not appear to be letter No. Thor Thor Tor 28/2549 Re: Form for Reporting Political Party Activities for the Annual Period of B.E. 2548 (2005) as claimed by the respondent.

Once the Office of the Election Commission found that the respondent had submitted a report of the respondent party's activities for the Annual Period of B.E. 2548 (2005) after the expiry of the due date prescribed by law, thereby constituting a wrongful act under section 35 of the Organic Act on Political Parties B.E. 2541 (1998), the matter was presented to the applicant. However, at the time, Police General Wasana Permlarp, the Political Party Registrar, resigned from office and hence there was no person who was authorized to act in the capacity of the Political Party Registrar. The Office of the Election Commission therefore prepared a factual summary which was presented to Mr. Apichart Sukatkanont in his capacity of the new Political Party Registrar in order to submit such matter to proceedings in the meeting of the Election Commission. The Election Commission later passed a resolution finding it appropriate to submit an application to the Constitutional Tribunal 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) in conjunction with section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006). As a result, the applicant submitted an application dated 10th November B.E. 2549 (2006) to the Constitutional Tribunal requesting for a dissolution order against the respondent party, which was within the fifteen day period as from the date which the applicant became aware of the cause for dissolution of the respondent party.

The case was pending proceedings in the Constitutional Tribunal when subsequently the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was promulgated on 24th 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 that 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 remain in force 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 resumed by the Constitutional Court. Therefore, the Constitutional Court had the power to try and adjudicate this application.

Additionally, 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 7th October B.E. 2550 (2007), coming into force as of 8th October B.E. 2550 (2007).

2. Preliminary issue

A preliminary issue which had to be considered 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 35 and section 65 of the Organic Act on Political Parties B.E. 2541 (1998) were provisions in force at the time of the respondent's failure to comply with the legal prescriptions. On the other hand, section 42 and section 93 of the Organic Act on Political Parties B.E. 2550 (2007), although such provisions came into force subsequently, were not enacted to achieve a different result to exonerate the political party from dissolution for the same cause. The Constitutional Court therefore applied the provisions of section 35 and section 65 of the Organic Act on Political Parties B.E. 2541 (1998) to the trial and adjudication of this case.

3. Issue considered by the Constitutional Court

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

After consideration, the Constitutional Court held as follows. Section 35 of the Organic Act on Political Parties B.E. 2541 (1998) provided that a political party should prepare an accurate report of political party activities for the preceding annual period according to the procedures prescribed by the Political Party Registrar and such report should be submitted to the Political Party Registrar within the month of March every year. It was found on the facts that the applicant had sent a letter, dated 23rd January B.E. 2549 (2006), to all political party leaders on the preparation of the report of political party activities for the annual period of B.E. 2548 (2005) which had to be completed within March B.E. 2549 (2006). Attached to the letter was a form for the reporting of political party activities (Form Thor Phor 8). After the expiration of the period under section 35, i.e. 31st March B.E. 2549 (2006), the Office of the Election Commission, upon examination, found that the respondent had not submitted a report of the respondent party's activities for the annual period of B.E. 2548 (2005). The respondent was therefore notified by telephone of such non-submission of report. Mr. Khampu Nakochang, the deputy secretary-general of the respondent party, appeared in person to meet with the Director of Political Party Activities on 3rd April B.E. 2549 (2006) and admitted that a report of the respondent party's activities for the annual period of B.E. 2548 (2005) had not been submitted. On 4th April B.E. 2549 (2006), the respondent submitted a report of the respondent party's activities for the annual period of B.E. 2548 (2005) together with letter no. 30/2549, dated 4th April B.E. 2549 (2006), requesting for a time extension for the preparation of such report of activities. The respondent admitted that on 29th March B.E. 2549 (2006) the respondent did not submit a report of the respondent party's activities, but on such date the respondent only submitted an expenditure report of the respondent's sponsorship funds pursuant to section 62. Thus, upon finding that the respondent submitted a report of the respondent party's activities for the annual period of B.E. 2548 (2005) on 4th April B.E. 2549 (2006), which was past the due date prescribed by law, it was therefore held that the respondent failed to comply with section 35 of the Organic Act on Political Parties B.E. 2541 (1998). The case therefore 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).

As for the respondent's argument that the application was submitted after the expiration of the fifteen day period prescribed under section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998), it was held that the date which the Political Party Registrar acquired notice of the matter was the date when the applicant considered and approved the submission of an application to the Constitutional Court on 3rd November B.E. 2549 (2006). The applicant subsequently submitted an application, dated 10th November B.E. 2549 (2006), which was admitted by the Constitutional Court on 13th November B.E. 2549 (2006). After counting the days from the applicant's consideration and approval to the date when the application was admitted by the Constitutional Court, it was found that the application was made within the fifteen day period under section 65 paragraph two. The respondent's argument therefore could not be sustained.

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 Thammatipatai Party.
