

Summary of Constitutional Court Ruling No. 19/2550

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

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

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1. Summary of Background and Facts

Palang Dhamma Party, the respondent, was registered as a political party under the Political Parties Act B.E. 2524 (1981) on 9th June B.E. 2531 (1988). The Political Parties Development Fund Committee had approved projects and operational plans of Palang Dhamma Party for the annual period of B.E. 2548 (2005), altogether 5 projects, under a budget of 664,800 baht, such sums already received by the respondent.

The Office of the Election Commission sent two warning letters to all political parties that had received sponsorship funds from the Political Parties Development Fund in the annual period of B.E. 2548 (2005) to prepare a factually accurate expenditure report of political party sponsorship funds which must be submitted to the Election Commission within March B.E. 2549 (2006) under section 62 of the Organic Act on Political Parties B.E. 2541 (1998). On 31st March B.E. 2549 (2006), the respondent submitted the reporting form for expenditure of the respondent's sponsorship funds for the annual period of B.E. 2548 (2005) by facsimile, which was received by the Office of the Election Commission on 31st B.E. 2549 (2006), but did not submit copies of evidence of expenditures of the sponsorship funds to the Election Commission for examination. On 1st April B.E. 2549 (2006), the original copy of such reporting form for expenditure of sponsorship funds was sent but still did not include copies of evidence of sponsorship funds expenditure for examination by the Election Commission. The Office of the Election Commission therefore sent a letter requiring the respondent to send the documentary evidence of expenditures for the annual period of B.E. 2548 (2005) to the Office of the Election Commission within fifteen days as from the respondent's receipt of the letter.

The respondent sent a factual statement letter to the Election Commission stating that the preparation of evidence of expenditures for the annual period of B.E. 2548 (2005) had to adhere to the same accounting standards as the annual period of B.E. 2547 (2004). The respondent therefore had to make adjustments to the evidence of expenditure for consistency, which might require reimbursements of portions not properly and accurately covered by the

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evidence, in order to make a timely submission to the next extraordinary general meeting of the respondent party.

The Election Commission passed a resolution in meeting no. 116/2549(30), held on 8th November B.E. 2549 (2006), as follows. The respondent's submission of an expenditure report of sponsorship funds from the Political Parties Development Fund for the annual period of B.E. 2548 (2005) contained only the expenditure reporting form but did not include evidence of expenditures. Thus, the Election Commission was unable to verify whether or not the respondent had properly and actually expended the sponsorship funds from the Political Parties Development Fund for the annual period of B.E. 2548 (2005) in the amount of 664,800 baht. The Election Commission therefore resolved to file an application to the Constitutional Tribunal in request of an order to dissolve the respondent party under section 65(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).

Mr. Pamorn Nawaratanakorn, acting leader of the respondent party, submitted a statement in reply to the allegations, dated 25th December B.E. 2549 (2006), which could be summarized as follows.

(1) The respondent was established as a political party on 9th June B.E. 2531 (1988). The entire executive committee of the respondent party retired on 28th April B.E. 2547 (2004) under the respondent's party rules due to more than one-half of the executive committee being vacant. At the time, there were 4 acting executive committee members under the respondent's party rules. Elections for a new executive committee had not yet been held due to internal conflicts.

(2) In the calendar year B.E. 2548 (2005), the respondent received approval for sponsorship of activities under 5 projects and operational plans in the amount of 664,800 baht from the Political Parties Development Fund and received those funds for activities in accordance with the objectives. On 18th January B.E. 2549 (2006) and 24th February B.E. 2549 (2006), the respondent received a warning letter from the Office of the Election Commission to prepare a factually accurate expenditure report of sponsorship funds which must be submitted to the Election Commission within March B.E. 2549 (2006).

(3) On 31st March B.E. 2549 (2006), the respondent prepared an expenditure report of the respondent party's sponsorship funds for the calendar year period of B.E. 2548 (2005), which was transmitted to the Election Commission by facsimile and received by the Election Commission on the same day. The original copy was sent by express mail service and was received by the Election Commission on the following day, i.e. 1st April B.E. 2549 (2006). The respondent gave an oral notification to the Election Commission that the submission of expenditure evidence was delayed because the respondent had received a letter from the Office of the Election Commission, dated 1st March B.E. 2549 (2006), requiring the respondent to make adjustments and corrections to errors and deficiencies in the B.E. 2547 (2004) financial statements before closing all relevant accounts in B.E. 2548 (2005) so as to carry forward factually accurate balances for the financial statements of B.E. 2548 (2005) as

well as for the account opening records for B.E. 2549 (2006).

(4) Police General Wasana Permlarp, Chairman of the Election Commission and the applicant, ruled that the respondent had not committed an offence under section 62. An application was therefore not submitted to the Constitutional Court within fifteen days as from the date when the respondent became aware that the respondent had not submitted documentary evidence of expenditures.

(5) Due to the Announcement of the Council for Democratic Reform No. 15, dated 21st September B.E. 2549 (2006), which prohibited existing political parties from holding a meeting or carry out any other activities, the applicant's order requiring the respondent to comply with letter No. Lor Tor (Thor Bor Phor) 0402/15048, dated 19th October B.E. 2549 (2006), and No. Lor Tor (Thor Bor Phor) 0402/15723, dated 7th November B.E. 2549 (2006), were therefore acts which were not consistent with the intentions of the law.

The Political Party Registrar, the applicant, submitted a supplementary statement, dated 2nd March B.E. 2550 (2007), which could be summarized as follows.

(1) The respondent was barred from raising the Office of the Election Commission's notice to the respondent requiring adjustments and modifications to the errors and deficiencies before closing all relevant accounts for the year B.E. 2548 (2005) as a cause for not submitting documentary evidence of expenditures of the respondent's sponsorship funds in the annual period of B.E. 2548 (2005) to the Election Commission because such accounting errors in the year B.E. 2547 (2004) were not relevant to the documentary evidence of sponsorship funds of Palang Dhamma Party in the annual period of B.E. 2548 (2005).

(2) On the date of the Political Party Registrar's notice of the matter under section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998), Constitutional Court Ruling No. 42/2546, dated 28th October B.E. 2546 (2003), Re: The Political Party Registrar requested for a dissolution order against Thai Party, stated that the date of the Political Party Registrar's notice of a matter was the date when the applicant considered and approved the submission of an application to the Constitutional Court. In the respondent's case, the Election Commission passed a resolution in meeting no. 116/2549(30), held on 8th November B.E. 2549 (2006), directing the applicant to submit an application to the Constitutional Tribunal in order to request for an order to dissolve the respondent party. The Chairman of the Election Commission, in the capacity of the applicant, therefore submitted an application to the Constitutional Tribunal for a dissolution order against the respondent party on 16th November B.E. 2549 (2006), which was within the fifteen day period as from the date of the applicant's notice of the matter.

(3) The acts of the applicant in ordering the respondent to comply with letter of the Office of the Election Commission No. Lor Tor (Thor Bor Phor) 0402/15048, dated 19th October B.E. 2549 (2006), and letter of the Office of the Election Commission No. Lor Tor (Thor Bor Phor) 0402/15723, dated 7th November B.E. 2549 (2006), were instances which the applicant notified the respondent the give an explanation of the expenditure of

sponsorship funds for the annual period of B.E. 2547 (2004) and that the applicant called for the return of sponsorship funds that had been disbursed from the Political Parties Development Fund for B.E. 2548 (2005). Those acts did not have any direct relevance to the applicant's submission of an application to the Constitutional Tribunal for a dissolution order against the respondent under section 65(5) of the Organic Act on Political Parties B.E. 2541 (1998).

2. Preliminary issues

The case was pending proceedings in the Constitutional Tribunal when 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). Thereafter, the Organic Act on Political Parties B.E. 2550 (2007) was enacted and came into force as of 8th October B.E. 2550 (2007). Preliminary issues therefore had to be decided on whether or not the Constitutional Court had the power to resume the trial and adjudication of this application, and if so, 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.

The Constitutional Court held as follows. 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 continue to be in force until the enactment of the 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. Thus, the Constitutional Court had the power to try and adjudicate this application. The Constitutional Court also found that section 62 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 requirements. As for section 82 and section 93 of the Organic Act on Political Parties B.E. 2550 (2007), although provisions enacted subsequently, they were not enacted to achieve a different result in exonerating the political party from dissolution for the same cause. Therefore, the Constitutional Court applied the provisions of section 62 and section 65 of the Organic Act on Political Parties B.E. 2541 (1998) to the consideration of this application.

3. Issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not there was a cause for the dissolution of the respondent party under section 65 (5) and section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998) due to a failure to comply with section 62 of such Organic Act.

The Constitutional Court held as follows. The respondent had prepared an expenditure report for sponsorship funds granted by the Political Parties Development Fund for the annual period of B.E. 2548 (2005) and submitted such report to the Election Commission by facsimile on 31st March B.E. 2549 (2006), but did not include documentary evidence of the expenditure of sponsorship funds to the Election Commission for verification. Thereafter, the Office of the Election Commission sent Urgent Letter No. Lor Tor (Thor Bor Phor) 0402/5889, dated 10th April B.E. 2549 (2006), to the respondent requesting that the documentary evidence of expenditures for the annual period of B.E. 2548 (2005) be sent to the Election Commission within fifteen days as from the date of the party's receipt of the letter. The respondent, however, did not send the documentary evidence of expenditures to the Election Commission for verification. Therefore, it was deemed that the respondent failed to prepare a factually accurate expenditure report of sponsorship funds for the annual period of B.E. 2548 (2005) and to submit such a report to the Election Commission within 31st March B.E. 2549 (2006). Thus, there was a case for the Constitutional Court to issue an order under section 65(5) and section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998) to dissolve the respondent party.

As for the respondent's argument that the delay in submission of evidence of expenditure was due to the respondent's receipt of letter of the Election Commission No. Lor Tor (Thor Bor Phor) 0401/3493, dated 1st March B.E. 2549 (2006), giving notice of the examination result of the financial statements of B.E. 2547 (2004), which required the respondent to make adjustments for accounting errors, the Constitutional Court found that such letter was an instance where the Election Commission notified the respondent of the result of the examination of the respondent's financial statements for B.E. 2547 (2004). The letter was not relevant to the preparation of an expenditure report for sponsorship funds of the political party for B.E. 2548 (2005) under section 62. The respondent's argument was therefore unsustainable.

As for the respondent's argument that the application was submitted by the applicant after the expiration of the fifteen day period prescribed by section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998), the Constitutional Court found 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 the application to the Constitutional Court on 8th November B.E. 2549 (2006). Since the applicant submitted an application on 15th November B.E. 2549 (2006), which was received by the Constitutional Court on 16th November B.E. 2549 (2006), the application was therefore made within fifteen days as provided under section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998). The respondent's argument was therefore unsustainable.

As for the respondent's argument that the Announcement of the Council for Democratic Reform No. 15 issued on 21st September B.E. 2549 (2006) prohibited existing political party from holding meetings or carrying out any political activities, and as a result thereof the respondent was unable to carry out activities relating to the administration of finance, properties or other interests of the respondent, the Constitutional Court held that the

respondent had not prepared and submitted a factually accurate expenditure report to the Election Commission before the issuance of such Announcement of the Council for Democratic Reform. Therefore, there was a cause for dissolution of Palang Dhamma Party under section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998). This argument made by the respondent was unsustainable.

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 Palang Dhamma Party.
