

# **Summary of Constitutional Court Ruling No. 22/2550**

**Dated 1<sup>st</sup> November B.E. 2550 (2007)\***

**Re: The Political Party Registrar requested for a Constitutional Tribunal  
order to dissolve Thammachart Thai Party.**

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## **1. Summary of Background and Facts**

The Political Party Registrar (the applicant) submitted an application, dated 2<sup>nd</sup> November B.E. 2549 (2006), to the Constitutional Tribunal in request of an order to dissolve Thammachart Thai Party (the respondent) due to the respondent's failure to submit a report on expenditure of political party sponsorship funds for the annual period of B.E. 2548 (2005) under section 62 of the Organic Act on Political Parties B.E. 2541 (1998).

The Office of the Election Commission had sent 2 warning letters to political parties which were recipients of sponsorship funds from the Political Parties Development Fund in the annual period of B.E. 2548 (2005) to prepare factually accurate reports of expenditure of sponsorship funds, which had to 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). At the expiration of the period prescribed by law, the Election Commission did not receive any expenditure report of sponsorship funds for the annual period of B.E. 2548 (2005) from the respondent. Thereafter on 7<sup>th</sup> April B.E. 2549 (2006), the Office of the Election Commission received a letter from the respondent, signed by Mr. Rattakij Kurakaew, deputy-director of the respondent party, acting on behalf of the respondent's party leader, which contained a submission of the respondent's expenditure report of sponsorship funds for the annual period of B.E. 2548 (2005), along with a power of attorney by Admiral Chai Suwannapab, the respondent's party leader, who had granted authorization to Mr. Rattakij to carry out such proceedings. An explanation was also given for the cause of delay in submitting a report past due the period prescribed by law which could be summarized as stating that in the transmission of a letter to the Chairman of the Political Parties Development Fund, the expenditure report of sponsorship funds was sent in the same envelope as the report of political party activities (Form Thor Phor 8), but it appeared that the administrative officials did not post the documents in the same envelope. The respondent were therefore under the wrongful belief that both reports had already been sent in the same envelope, and upon subsequent discovery of the error the respondent promptly sent the documents in order to comply with the law. The respondent insisted that there was no intention to avoid such duty.

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\* Published in the Government Gazette Vol. 125, Part 55a, 1<sup>st</sup> April B.E. 2551 (2008).

The Office of the Election Commission had examined the Political Parties Register and found that Mr. Rattakij did not hold the position of the respondent's party executive under section 12 of the Organic Act on Political Parties B.E. 2541 (1998). The Office of the Election Commission therefore submitted the matter to the Committee on Political Party Activities and Referenda for consultation. In the meeting of the Committee on Political Party Activities and Referenda No. 5/2549, held on 13<sup>th</sup> July B.E. 2549 (2006), the opinion was given that the respondent submitted a report of expenditures after the period prescribed by law had expired, and that the applicant was advised to submit an application to the Constitutional Court for an order to dissolve the respondent party due to a failure to comply with section 62 of the Organic Act on Political Parties B.E. 2541 (1998). However, due to certain events at that time which led to the vacation of office by the Chairman of the Election Commission, in his capacity as Political Party Registrar (Police General Wasana Permlarp), there was no person authorized to carry out the submission of application to the Constitutional Court under the law.

Subsequently, the Council for Democratic Reform with the King as Head of State issued Announcement No. 13 to continue the effectiveness of the Organic Act on Election Commission B.E. 2541 (1998) and to appoint an Election Commission, and Announcement No. 15 to continue the effectiveness of the Organic Act on Political Parties B.E. 2541 (1998). Later, there was a Royal Proclamation to promulgate the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006), which was published in the Government Gazette on 1<sup>st</sup> October B.E. 2549 (2006). Section 35 of such Constitution provided for the establishment of a Constitutional Tribunal and that all matters prescribed by law as powers of the Constitutional Court became the powers of the Constitutional Tribunal. The Office of the Election Commission therefore submitted a brief of the facts to the new Election Commission in meeting no. 112/2549 (26), held on 30<sup>th</sup> October B.E. 2549 (2006). The meeting held that the respondent did not submit an expenditure report of sponsorship funds for the annual period of B.E. 2548 (2005) in accordance with section 62 of the Organic Act on Political Parties B.E. 2541 (1998). Therefore, there was a cause for political party dissolution under section 65 paragraph one subparagraph (5) of the Organic Act on Political Parties B.E. 2541 (1998). Even though after the expiration of such period the respondent submitted an expenditure report of sponsorship funds, such proceedings were carried out by Mr. Rattakij who was the deputy director of the respondent party, not an authorized officer of the political party under section 20 paragraph two in conjunction with section 12 of the Organic Act on Political Parties B.E. 2541 (1998). The meeting therefore resolved that the applicant should submit an application to the Constitutional Tribunal for a ruling under the provisions of law. As a result thereof, the applicant submitted an application to the Constitutional Tribunal in request of an order to dissolve Thammachart Thai Party under section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998).

The respondent submitted a statement in reply to the allegations, dated 28<sup>th</sup> December B.E. 2549 (2006), which could be summarized as follows. Authorization was granted to Mr. Rattakij whereby such grant of authorization was made pursuant to the duly registered

party rules. Moreover, the Election Commission did not object to such rules and the application was made past the fifteen-day period prescribed by section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998).

The applicant submitted a supplemental statement, dated 12<sup>th</sup> February B.E. 2550 (2007), which could be summarized as follows. The respondent's argument on grant of authorization was untenable since political party proceedings were governed by specific provisions of law, and the respondent was a political party which had been founded since B.E. 2546 (2003) and therefore should be aware of such provision of law. As regards such submission of application, the applicant acquired knowledge of the respondent's non-submission of an expenditure report of sponsorship funds on 30<sup>th</sup> October B.E. 2549 (2006) in Election Commission meeting no. 112/2549 (26). The applicant therefore submitted an application to the Constitutional Tribunal in request of an order to dissolve the respondent party on 2<sup>nd</sup> November B.E. 2549 (2006), which was within the period as from the date when the applicant became aware of the matter as prescribed by law.

## **2. Preliminary Issue**

A preliminary issue which had to be decided was whether or not the Constitutional Court could resume the consideration of this application.

During proceedings 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) wherein section 300 paragraph one, paragraph three and paragraph four 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 and coming into force of the Organic Act on Procedures of the Constitutional Court. All cases or matters pending proceedings in the Constitutional Tribunal were to be resumed by the Constitutional Court. Therefore, the Constitutional Court had the power to resume the consideration of this application.

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

During 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 therefore had to be decided as to 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 consideration of this case.

After consideration, the Constitutional Court held that section 62 and section 65 of the Organic Act on Political Parties B.E. 2541 (1998) were provisions of law in force at the time of the respondent's failure to comply with the law. On the other hand, section 42, section 82 and section 93 of the Organic Act on Political Parties B.E. 2550 (2007) were provisions of law which were subsequently enacted. Therefore, the Constitutional Court applied section 62 and section 65 of the Organic Act B.E. 2541 (1998) to the consideration of this case.

The following question which had to be 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) and paragraph two of the Organic Act on Political Parties B.E. 2541 (1998) due to a failure to comply with section 62 of the Organic Act on Political Parties B.E. 2541 (1998).

After consideration, the Constitutional Court held as follows. Section 20 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998) provided that "the political party leader shall be the authorized officer of the political party in activities relating to third parties; for this purpose, the political party leader may grant a written authorization for one or more political party executives to act on his/her behalf." As it appeared on the facts that Mr. Rattakij, deputy director of the respondent party, acted on behalf of the respondent's party leader in signing the report of party activities while he was neither the political party leader nor a political party executive with a written authorization to act on behalf of the party leader under section 20 paragraph two in conjunction with section 12 of the Organic Act on Political Parties B.E. 2541 (1998), the acts were therefore tantamount to the respondent's non-submission of an expenditure report for political party sponsorship funds for the annual period of B.E. 2548 (2005). It could be deemed that the respondent failed to prepare a factually accurate report of expenditure of political party sponsorship funds for the calendar year and to submit such a report to the Election Commission within March of the following year under section 62 of the Organic Act on Political Parties B.E. 2541 (1998). The case therefore contained a cause for the Constitutional Court to order the dissolution of the respondent party under section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998).

As for the respondent's argument that the authorization granted to Mr. Rattakij was made pursuant to the duly registered party rules, to which the Election Commission did not make any objections, the Constitutional Court found that even though the party rules provided for the powers and duties of the party secretary-general with the party director as the administrator of party activities, such matters were related only to the internal administration of party activities. The respondent could not invoke the party rules against the Political Party Registrar, the applicant, who was a third party, since in dealings with third parties, the authorized officer was restricted by law to only those holding positions under section 12 of the Organic Act on Political Parties B.E. 2541 (1998), which were specific provisions of law. The respondent could not grant authorization to persons other than those specified by section 12. The preparation of an expenditure report of political party sponsorship funds by an unauthorized person was therefore equivalent to the non-submission

of an expenditure report of political party sponsorship funds by the political party. This argument raised by the respondent was thus unsustainable.

As for the respondent's argument that the application was submitted past due the fifteen-day period prescribed by section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998), the Constitutional Court held that the date which the Political Party Registrar became aware of the matter was the date when the applicant considered and approved of the submission of an application to the Constitutional Court, i.e. 30<sup>th</sup> October B.E. 2549 (2006). The applicant submitted an application dated 2<sup>nd</sup> November B.E. 2549 (2006), which was received by the Constitutional Court on 6<sup>th</sup> November B.E. 2549 (2006). The numbers of days from the applicant's consideration and approval to the date of submission to the Constitutional Court was within the fifteen-day period prescribed by section 65 paragraph two. This argument raised by the respondent was therefore 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 Thammachart Thai Party.

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