

# Summary of Constitutional Court Ruling No. 23/2550

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

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

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

The Political Party Registrar (the applicant) submitted an application, dated 16<sup>th</sup> May B.E. 2549 (2006), to the Constitutional Court in request of an order to dissolve Thai Chuay Thai Party (the respondent) under section 65 paragraph two of the Organic Act on Political Parties B.E. 2541 (1998). It was alleged that the respondent failed to comply with section 26 of the Organic Act on Political Parties B.E. 2541 (1998). In other words, the respondent's general meeting was not in accordance with clause 70 of the Thai Chuay Thai Party Rules B.E. 2542 (1999), which provided that a general meeting had to be attended by no fewer than one hundred members, whereas the respondent submitted that the annual general meeting of B.E. 2547 (2004), held on 27<sup>th</sup> April B.E. 2548 (2005), was attended by 135 persons, but 31 persons were not included in the quorum, thus leaving 104 persons attending and having the right to cast votes in the meeting.

During the course of an order of the Constitutional Court directing the applicant to submit a supplemental statement on the examination of membership of the respondent party, in particular of persons who had testified to the applicant, as well as information on the respondent party pertaining to the application, which were to be used for further adjudication, the Council for Democratic Reform with the King as Head of State declared the repeal of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) on 19<sup>th</sup> September B.E. 2549 (2006) and abolished the Constitutional Court along with the Constitution. The Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) was subsequently promulgated on 1<sup>st</sup> October B.E. 2549 (2006) wherein section 35 provided that all matters provided by law as powers of the Constitutional Court or problems which arose on the constitutionality of a law would become the powers of the Constitutional Tribunal, and that all cases or matters pending proceedings in the Constitutional Court prior to 19<sup>th</sup> September B.E. 2549 (2006) would be transferred to the powers and responsibilities of the Constitutional Tribunal.

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\* Published in the Government Gazette Vol. 125, Part 58a, 21<sup>st</sup> April B.E. 2551 (2008).

The applicant delegated the fact-finding investigations to the Office of the Election Commission. Testimonies from 12 participants of the meeting stated that they were not aware of the meeting, did not attend the meeting and did not register their attendance in the meeting. 4 participants of the meeting stated that they were not members of the respondent party. Moreover, the respondent's party leader added that three persons who were elected as party executives were not members of the respondent party and one person was concurrently a member of another political party. Additional investigations of the political party membership database revealed that three persons elected as political party executives were not members of the respondent party, consistent with the respondent's statement that certain executives were not members of the respondent party. The respondent was given an opportunity to file a supplemental statement of facts to affirm the membership of the party executives along with relevant documents, but the respondent did not take any action. From those facts, it was therefore inferred that the general meeting was attended by only 81 persons, which was not in accordance with clause 70 of the Thai Chuay Thai Party Rules B.E. 2542 (1999) and section 26 of the Organic Act on Political Parties B.E. 2541 (1998), constituting a cause for political party dissolution under section 65 paragraph one subparagraph (5). The matter appeared before the applicant on 16<sup>th</sup> May B.E. 2549 (2006), at which date the applicant signed the application submitted to the Constitutional Court.

The respondent submitted a statement in reply to the allegations which could be summarized as follows. The various circumstances stated in the application resulted from *bona fide* negligence with no other hidden agenda. Trust was placed upon the "party election director" because he was the person in charge of the preparation of various documents which were directly presented to the respondent. No doubt was therefore raised on the various events which occurred. The respondent did not have any intention of committing a wrongful act. As for the examination of party membership information, such membership information were kept at the respondent's party office and the applicant was not capable of knowing the increases or decreases in party membership in any calendar year. The applicant should not have examined party membership only from the applicant's political party membership database. As it was found at the time of the meeting that there were 135 members in attendance, a quorum was thereby constituted without any objection. The meeting reached a unanimous resolution to commence the meeting and thus such resolution should be upheld.

The applicant could reclaim sponsorship funds received from the Political Parties Development Fund for B.E. 2549 (2006) upon the occurrence of a cause for termination or dissolution of the respondent party pursuant to a Constitutional Court order, and the respondent had already returned sponsorship funds received from the Political Parties Development Fund of B.E. 2549 (2006).

## **2. Preliminary Issue**

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

While this case was pending 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). Section 300 paragraph one, paragraph three and paragraph four of the new Constitution 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 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 and 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 consider this application.

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

While the case was pending proceedings in the Constitutional Court, the Organic Act on Political Parties B.E. 2550 (2007) was enacted. The Organic Act was published in the Government Gazette on 7<sup>th</sup> October B.E. 2550 (2007) and came into force as of 8<sup>th</sup> October B.E. 2550 (2007). A preliminary question therefore had to be decided on 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 26 and section 65 of the Organic Act on Political Parties B.E. 2541 (1998) were provisions which were in force at the time when the respondent failed to comply with the law. On the other hand, section 29 and section 91 of the Organic Act on Political Parties B.E. 2550 (2007) were provisions of law enacted subsequently. The Constitutional Court therefore applied section 26 and section 65 of the Organic Act on Political Parties B.E. 2541 (1998) to the trial and adjudication of this application.

The subsequent question which had to be decided by the Constitutional Court was whether the case contained 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 26.

After consideration, the Constitutional Court held as follows. Section 26 of the Organic Act on Political Parties B.E. 2541 (1998) provided that a general meeting of a political party must consist of the political party executive committee, representatives of political party branches and members in accordance with the rules and procedures prescribed by the political party rules. Clause 69 of the Thai Chuay Thai Party Rules B.E. 2542 (1999) provided that a general meeting must consist of members of the party who were party executives, current members of the House of Representatives, current ministers, representatives of party branches, if any, and members who had received news of the party ordinary or

extraordinary general meeting from the party executive committee, and clause 70 paragraph one provided that a general meeting had to be attended by no fewer than one hundred persons to constitute a quorum. The respondent had notified the applicant that the annual general meeting for B.E. 2547 (2004) was held on 27<sup>th</sup> April B.E. 2548 (2005) and attended by 135 persons, 31 of whom were not included in the quorum, thus leaving only 104 persons in attendance and having the right to cast votes in the meeting. The meeting passed a resolution to change party policies and elected a new party executive committee. However, according to the facts uncovered from the investigation carried out by the Office of the Election Commission on persons attending the respondent party's general meeting pursuant to the list of attendees in the general meeting, it was found that 12 persons claiming attendance in the meeting affirmed that they had not actually attended the meeting and had not signed their registration. Upon the Election Commission's finding that the signatures of 12 persons attending the general meeting were confirmed as being those who had not attended the meeting and had not signed their registration in the general meeting, such facts were sufficient for a finding that the respondent party's general meeting did not meet the requisite attendance of one hundred persons. The respondent's argument that the Election Commission had not inspected membership of the respondent party from the respondent's database, but instead inspected membership solely from the applicant's database, was untenable. It was further found that 4 other attendees of the meeting were not members of the respondent party. In addition, the respondent's party leader also gave a statement that 3 party executives were not party members and 1 other party executive was concurrently a member of another party. Examinations of the political party membership database affirmed that 3 persons elected as party executives were not members of the respondent party. Therefore, it could be inferred that the said 23 persons in the list of attendees in the meeting could not be counted as constituting a quorum. This left the actual number of persons attending the meeting who could be counted as constituting a quorum at 81, which was not in accordance with clause 70 of the Thai Chuay Thai Party Rules B.E. 2542 (1999), which provided that an ordinary general meeting must consist of no fewer than one hundred persons. The annual general meeting of B.E. 2547 (2004) of the respondent party was therefore not in accordance with section 26 of the Organic Act on Political Parties B.E. 2541 (1998). The case thus contained a cause for a dissolution order against 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 in the statement in reply to the allegations that the application was submitted 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 held that the date at which the matter appeared before the Political Party Registrar was the date when the applicant considered and gave its approval to the submission of an application to the Constitutional Court on 16<sup>th</sup> May B.E. 2549 (2006). The applicant submitted an application, dated 16<sup>th</sup> May B.E. 2549 (2006), which was received by the Constitutional Court on 25<sup>th</sup> May B.E. 2549 (2006). Upon counting the number of days from the applicant's consideration and approval to the date of application to the

Constitutional Court, it was found that the application was made 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 Thai Chuay Thai Party.

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