

# Summary of Constitutional Court Ruling No. 18/2551

**Dated 2<sup>nd</sup> December B.E. 2551 (2008)\***

**Re: The Attorney-General requested for a Constitutional Court order to  
dissolve Neutral Democratic (Matchima Thippathai) Party.**

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## **1. Summary of background and facts**

1.1 The Attorney-General, the applicant, filed an application dated 23<sup>rd</sup> September B.E. 2551 (2008) in request of a Constitutional Court order to dissolve the Neutral Democratic (Matchima Thippathai) Party, the respondent, as it became apparent to the Political Parties Registrar that the respondent had violated section 237 of the Constitution, section 94(1) and (2) and section 95 of the Organic Act on Political Parties B.E. 2550 (2007), and section 103 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007). The following requests were made in the application for ruling of the Constitutional Court.

(1) An order to dissolve the respondent party, led by Mrs. Anongwan Thepsuthin as party leader since Mr. Sunthorn Wilawan, a party executive and deputy-leader of the respondent party, candidate in the election of members of the House of Representatives for Prachinburi Province, had committed acts to acquire national governing powers through means which were not in accordance with the provisions of the Constitution, being acts in violation of section 237 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and section 94(1) and (2) of the Organic Act on Political Parties B.E. 2550 (2007), resulting in fraudulent and unfair elections.

(2) An order to revoke the election rights of the respondent party leader and party executives for a period of five years as from the date of dissolution order against the respondent party, where the revocation of election rights could be issued against the party leader and all party executives pursuant to the list in attachment 2, or the revocation of election rights could be issued against the party leader or party executives who had knowledged or neglected or was aware of the acts of the candidate, resulting in fraudulent and unfair elections and failing to prevent or carry out remedies to enable honest and fair elections under section 103 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007), depending on the discretion of the Constitutional Court.

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1.2 The respondent filed a statement in reply to the allegations, dated 19<sup>th</sup> November B.E. 2551 (2008), requesting for a Constitutional Court ruling on both questions of fact and law, including an objection to the effectiveness of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007).

## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court had the power to admit the application for a ruling under section 237 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), section 94(1) and (2) and section 95 of the Organic Act on Political Parties B.E. 2550 (2007) and section 103 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007).

After consideration, the Constitutional Court held that the application was in accordance with section 237 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), section 94(1) and (2) and section 95 of the Organic Act on Political Parties B.E. 2550 (2007), and section 103 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007) in conjunction with clause 25 and clause 27 of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore had the power to admit this application for a ruling.

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

The Constitutional Court had examined the application, supplementary application, statement in reply to the allegations, as well as carried out an examination of the evidence presented by the parties, and found that this case contained sufficient facts and evidence for a ruling. The case did not require the summons of other evidence as requested by the parties. The Court thus adjourned the inquiry pursuant to clause 37 of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007) and granted an opportunity for the respondent party leader or a representative to give an oral closing statement.

Before the Constitutional Court made a decision on the issues of the case, there was an issue which the respondent raised an objection in relation to the effectiveness of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007) that the Constitutional Court was not empowered to rely on the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007) in ordering the admittance of the application which requested for the dissolution of the Neutral Democratic (Matchima Thippathai) Party for trial proceedings since the effective period had already expired under section 300 paragraph five of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). Furthermore, the Constitutional Court's admittance of the application for consideration was not in accordance with clause 17(17) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007).

After consideration, the Constitutional Court held as follows. Section 300 paragraph five of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the

Constitutional Court to have the power of issuing rules relating to procedures and rulings while an Organic Act on Constitutional Court Procedures had not yet been enacted. The enactment of such Organic Act had to be completed within one year as from the promulgation of this Constitution. In this regard, the Constitutional Court had issued Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007), which was applied to case proceedings as well as to rulings of cases throughout this time. The provisions in Chapter 2 Jurisdiction of the Court, clause 17(17) was in accordance with the provisions of the Constitution in relation to the jurisdiction of the Constitutional Court to dissolve political parties. As for the Organic Act on Constitutional Court Procedures, while this application was pending trial, such Organic Act remained in the legislative process. The time period under section 300 paragraph five of the Constitution which required the enactment of such Organic Act within one year as from the promulgation of the Constitution was only a provision to accelerate proceedings of the legislature without any provision to nullify the effectiveness of the rules on procedures and rulings of the court in the event of failure to enact the organic law within the prescribed period. Thus, the Constitutional Court was entitled to continue to apply the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007) to the trial and ruling of cases.

The issues of the case which had to be considered were as follows.

First issue: whether or not Mr. Sunthorn Wilawan, deputy leader and executive of Neutral Democratic (Matchima Thippathai) Party committed an offence under the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007).

Second issue: whether or not there was a cause for dissolution of the respondent party.

Third issue: whether or not the election rights of the leader and executives of the respondent party should be revoked.

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) intended for national elections to proceed in a just and fair manner, especially provisions on the prevention of election fraud committed through the use of funds or other properties to buy the votes of the people to get elected. Such practices had been adopted by certain politicians for a long time until they became accustomed, creating a weak point in politics where politicians had no conscience of their serious wrongdoings. This prevented concrete developments in Thai politics and democracy and caused substantial detriment to the country since once these politicians came to power they would exploit their powers and duties to wrongfully obtain benefits through shameless corruption in order to prepare for the subsequent election and acquire further powers and wrongful benefits. Such vicious cycle continued endlessly.

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) therefore provided for clear and stringent preventive measures and sanction procedures in order to prevent such dishonest politicians from having an opportunity to cause detriment to politics as well as to promote politicians who upheld honesty to the opportunity of undertaking tasks which

would be even more beneficial to the nation and the people.

**On the first issue** of whether or not Mr. Sunthorn Wilawan, deputy leader and executive of Neutral Democratic (Matchima Thippathai) Party had committed an offence under the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007), the Constitutional Court held as follows.

On the issue of the commission of an offence by Mr. Sunthorn Wilawan, deputy leader and executive of the respondent party, an investigation had already been carried out by the Election Commission. Such proceedings were in accordance with section 239 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and section 103 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007), being proceedings of an independent organ under the Constitution pursuant to powers provided by law. Furthermore, section 239 paragraph one of the Constitution provided that a ruling of the Election Commission was final. The Constitutional Court did not have the authority to alter the ruling of the Election Commission in such a case. In this regard, the Election Commission had already made a ruling that Mr. Sunthorn Wilawan, deputy leader and executive of the respondent party, had caused others to act, aided and abetted or connived at such act committed by others, which was a violation of section 53 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007).

The issue that had already been ruled upon by the Election Commission was an identical factual issue to this case, being an issue within the adjudicative jurisdiction of the Election Commission as provided by law. Section 239 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) in conjunction with section 103 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007) provided for the Election Commission to be the adjudicator of election fraud issues. The factual issue of whether or not the acts of Mr. Sunthorn Wilawan constituted an offence under section 53 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007) was therefore deemed as having been finally determined under the ruling of the Election Commission. Moreover, it did not appear that there was any proceeding which was not consistent with the procedures provided by law. The Constitutional Court therefore did not have the competent jurisdiction to scrutinize or alter the substance and discretion exercised in such ruling of the Election Commission.

**On the second issue** of whether or not there was cause for dissolution of the respondent party, the Constitutional Court held as follows.

Section 237 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was a mandatory provision that if there was a commission of an offence by an election candidate, and if there was reasonable cause to believe that the political party leader or any political party executive connived at or neglected or was aware of the commission of an offence by the election candidate and failed to enforce preventive or remedial actions to

enable the election to proceed in an honest and fair manner, such political party would be deemed as having committed an act to acquire national governing powers through means which were not in accordance with the Constitution. Even though according to the explanation of the respondent and statement of the respondent party leader affirmed that the political party, party leader and party executives were not the committers, the law still deemed such persons as committers. Such facts were therefore unobjectionable. Even the Constitutional Court was not entitled to rule otherwise since the offence of fraud by buying votes in an election was a special offence in which the committer could employ deceitful means that were difficult to detect. The law imposed a duty on party executives to select persons who would be involved in party activities and to control, supervise and monitor those persons to avoid any wrongdoing. In this regard, there were provisions for the political party and party executives to also be accountable for the acts of party executives who had committed the offence. This was analogous to the general liability of juristic persons that a representative of a juristic person or a person authorized to act on behalf of the juristic person committed an act within the objectives of such juristic person and caused damages to another person, the juristic person should also be liable for the acts of the representative or person authorized to act on behalf of such juristic person and would not be able to deny such responsibility. Therefore, there was cause under the law in this case for the court to decide on whether or not the respondent party should be dissolved.

As the respondent was a political party, which was a very important organ in the democratic form of government, it should therefore be a model of rightfulness, legitimacy and honesty. The obtaining of members of the House of Representatives of the respondent should be achieved in good faith principally from the popularity of the election candidates and the respondent party, not from benefits or bribes to entice the electorate to cast votes in their favour. All party executives should also collaborate in performing the functions of controlling and supervising election candidates fielded by the party, as well as the party executives themselves, to prevent the commission of any act that would violate the law. However, Mr. Sunthorn Wilawan, deputy leader and executive of the respondent party employed unlawful means to get himself elected, increasing the number of members of House of Representatives gained by the respondent. Thus, the respondent was deemed as having benefitted from the act, being a serious matter.

On the respondent's objection that an offender under section 237 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) had to be a different person from the offender under paragraph one, and affirmed that the party leader and other party executives did not connive or neglected or were aware of such act and failed to employ preventive or remedial measures to enable the elections to proceed in an honest and fair manner, the Constitutional Court found that if an offender under paragraph one was a party executive himself, it was inherently apparent that such party executive had an intention and committed the offence even more so than just a mere connivance. It was therefore not necessary for the party leader or other party executives to connive, neglect or be aware and fail to prevent or remedy the acts to enable honest and fair elections, since the party executive

who committed the offence under paragraph one also had the status of a party executive at the time of the commission of the offence. This case was therefore more serious than the case of an offence committed by another person who was not a party leader or executive, in accordance with the legal principle that when the law prohibited an evil, other things which were more even would also be prohibited. This was consistent with the conscience of honest people generally and consistent with the logic that “it is more so”. The argument raised by the respondent was therefore not accepted.

As Mr. Sunthorn Wilawan, deputy leader and party executive of the respondent party, had an important role in the party, he was under a duty to control and monitor party members under his administration to ensure honest and fair elections. However, by committing an offence himself, which was a serious offence and a threat to the development of the country’s democratic form of government. This case, therefore, showed cause for the dissolution of the respondent party so that a precedent for exemplary political behaviour be set and in order to have a preventive effect on the same offence in the future.

On the respondent party’s argument that section 103 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007) was contrary to or inconsistent with section 237 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court held that section 103 of such Organic Act was neither contrary to nor inconsistent with section 237 of the Constitution. On the contrary, such provisions were mutually consistent. A political party was a juristic person under the law established under the Organic Act on Political Parties B.E. 2550 (2007). The juristic person status of a political party therefore terminated as provided by law. The dissolution of a party as a means of terminating the status of a political party could be achieved under an Organic Act, not necessarily restricted to merely those provided under the Constitution.

On the respondent’s objection that the Constitutional Court did not have the power to dissolve the party, but only had the power to issue an injunction order to halt the acts under section 68 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court held that the application for party dissolution in this case was an application for party dissolution under section 237 paragraph two in conjunction with section 68 of the Constitution. This was not an application for party dissolution under merely section 68 of the Constitution. The Court therefore had the power to rule the dissolution of the party without having to issue an injunction to halt the act under section 68 paragraph three. As for the filing of application by the applicant, such filing of application at the court was made in accordance with section 95 of the Organic Act on Political Parties B.E. 2550 (2007), and had duly proceeded in accordance with all aspects of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The proceedings were therefore in accordance with provisions of law.

As for the respondent’s argument that Mr. Prachai Leawpairat, the party leader, had resigned as of 4<sup>th</sup> December B.E. 2550 (2007), and therefore the party executives should be deemed as already having vacated office, the Constitutional Court held that even though the

party leader's resignation would result in the retirement of the entire executive committee, but clause 30 paragraph five of the Neutral Democratic (Matchima Thippathai) Party Rules B.E. 2550 (2007) also provided for all of the party executives to continue to perform their functions until the Political Parties Registrar accepted the new changes in the party executive committee. Mr. Sunthorn Wilawan was therefore deemed as still having the status of a Neutral Democratic (Matchima Thippathai) Party executive at the time of the occurrence. Being merely a caretaker did not alter such status.

**On the third issue** of whether or not the election rights of the leader and executives of the respondent party should be revoked, the Constitutional Court held as follows. Section 237 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that in the event of a Constitutional Court order to dissolve a political party, the election rights of the leader and executives of such party should be revoked for a period of five years as from the date of political party dissolution order. This was a resonance of section 68 paragraph four of the Constitution which provided similarly. Such provision provided a legal mandate that once a court ordered the dissolution of a party, the election rights of the leader and executives of the political party remaining in such positions at the time of the commission of the offence should be revoked for a period of five years. The court did not have the discretion to order otherwise. The revocation of election rights of the leader and executives of a political party in this case was made pursuant to section 237 paragraph two in conjunction with section 68 paragraph four of the Constitution, not pursuant to the Organic Act on Political Parties B.E. 2550 (2007). In any case, the provisions of such Organic Act could not overrule the provisions of the Constitution.

As for other motions or objections submitted by the respondent, once the Constitutional Court had already ruled on all issues determined, it was not necessary to make further rulings.

#### **4. Ruling of the Constitutional Court**

The Constitutional Court, by unanimous resolution, decided to dissolve Neutral Democratic (Matchima Thippathai) Party, the respondent, and revoked the election rights of the leader of the Neutral Democratic (Matchima Thippathai) Party and executives of the Neutral Democratic (Matchima Thippathai) Party who remained in such positions at the time of commission of the offence for a period of five years as from the date of political party dissolution order by the Constitutional Court pursuant to section 237 paragraph two in conjunction with section 68 paragraph four of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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