

Summary of Constitutional Court Ruling No. 19/2551

Dated 2nd December B.E. 2551 (2008)*

Re: The Attorney-General requested for a Constitutional Court order to dissolve Chart Thai Party.

.....

1. Summary of background and facts

The Attorney-General, the applicant, submitted an application to the Constitutional Court for an order to dissolve Chart Thai Party, the respondent, as it became apparent to the Political Parties Registrar that the respondent had violated section 237 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), section 94 and 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), as follows.

1.1 On 18th October B.E. 2550 (2007) a Royal Decree was enacted to declare a general election of members of the House of Representatives on 23rd December B.E. 2550 (2007). Later, the Chairman of the Election Commission announced nationwide advanced ballots from 15th December B.E. 2550 (2007) to 16th December B.E. 2550 (2007), during 08.00 hours to 17.00 hours. The respondent had the status of a juristic person registered as a political party by the Political Parties Registrar in Political Parties Register No. 5/2525 as of 8th July B.E. 2525 (1982). Subsequently, the respondent notified the Political Parties Registrar that in the annual general meeting for B.E. 2548 (2005) on 22nd April B.E. 2548 (2005), the respondent had elected a new party executive committee comprising of 55 members, with Mr. Banharn Silpa-archa as party leader and Mr. Monthien Songpracha as party deputy secretary-general. The Political Parties Registrar accepted the change in the party executive committee as of 25th July B.E. 2548 (2005).

1.2 The Chairman of the Election Commission sent a letter dated 23rd April B.E. 2551 (2008) in submission of evidence for the applicant to file an application with the Constitutional Court for an order to dissolve the respondent party. The submission could be summarized as follows.

1.2.1 The Election Commission was notified by the Chainat Provincial Office of the Election Commission that the election of members of the House of Representatives for Chainat Province Constituency 1 on 23rd December B.E. 2550 (2007) did not proceed in an honest and just manner due to Mr. Monthien Songpracha, candidate number 11 and

* Published in the Government Gazette Vol. 126, Part 16a, 16th March B.E. 2552 (2009).

Mrs. Nantana Songpracha, candidate number 12, of the respondent party committing a violation of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007). In other words, on 15th December B.E. 2550 (2007), Mr. Monthien Songpracha and Mrs. Nantana Songpracha, with lack of regard, caused others to act, aid or abet, or connive at the acts of an agent (election campaigner) in carrying out preparations to hand out monies to eligible voters at the auditorium of Chainat Pittayakom School 1 in order to entice those eligible voters to cast votes for Mr. Monthien Songpracha and Mrs. Nantana Songpracha.

1.2.2 The Election Commission found that there was sufficient evidence to support a reasonable cause to believe that Mrs. Sirirat Peampetch, Mrs. Sriprapai Topeng and Mrs. Tidarat Lektalay had carried out preparations to hand out monies to eligible voters at the auditorium of Chainat Pittayakom School 1 in order to entice eligible voters to cast votes for Mr. Monthien Songpracha and Mrs. Nantana Songpracha. There were circumstances that led to a belief that Mr. Monthien Songpracha and Mrs. Nantana Songpracha had caused others to act, aid or abet, or connive at the commission of such acts 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 Election Commission therefore held that opinion that the preparations for handing out such monies had resulted in the election of members of the House of Representatives for Chainat Province Constituency 1 had not proceeded in an honest and fair manner. The election rights of Mr. Monthien Songpracha, candidate number 11, and Mrs. Nantana Songpracha, candidate number 12, of the respondent party should therefore be revoked for a period of one year, and new elections of 2 members of the House of Representatives for Chainat Province Constituency 1 should be held. Also, criminal proceedings should be taken against Mr. Monthien Songpracha, Mrs. Nantana Songpracha, Mrs. Sirirat Peampetch, Mrs. Sriprapai Topeng and Mrs. Tidarat Lektalay. The Election Commission's opinion, including the investigation files, were sent to the Election Rights Revocation Review Committee for consideration pursuant to section 105 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007).

1.2.3 The Election Rights Revocation Review Committee found that the Election Commission's opinion was derived from an examination and decision based on facts presented by evidence in the investigation file as well as a consideration of the characteristics of the offence under section 53 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). The Election Commission's opinion was therefore lawful. Moreover, it did not appear that the Election Commission had not acted in an unjust manner. The Election Commission therefore issued an order pursuant to resolution of meeting number 15/2551 on 18th January B.E. 2551 (2008) to withhold the announcement of election results of Mr. Monthien Songpracha and Mrs. Nantana Songpracha, to revoke the election rights of Mr. Monthien Songpracha and Mrs. Nantana Songpracha for a period of one year, and to hold new elections of 2 members of the House of Representatives for Chainat Province Constituency 1, as well as to take criminal proceedings against Mr. Monthien Songpracha,

Mrs. Nantana Songpracha, Mrs. Sirirat Peampetch, Mrs. Srirapai Topeng and Mrs. Tidarat Lektalay.

1.2.4 Thereafter, the Election Commission passed a resolution in meeting number 21/2551 on 30th January B.E. 2551 (2008) to refer the opinion of the investigation committee to the Legal Advisory Committee of the Election Commission for consideration of the legal issue of whether or not in the case where an election candidate who was a political party executive committed an offence under section 103 paragraph one of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007) such political party would be deemed as having committed the act under section 103 paragraph two of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007). The opinion of the investigation committee was also sent to the Political Parties Registrar for consideration pursuant to section 95 of the Organic Act on Political Parties B.E. 2550 (2007).

1.2.5 The Legal Advisory Committee of the Election Commission held the opinion that the facts were settled that where the election candidate who was a political party executive had committed an offence himself, the case would be deemed as the political party committing the act in order to acquire national governing powers through means which were not provided in the Constitution of the Kingdom of Thailand B.E. 2550 (2007) pursuant to section 103 paragraph two of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007). The Election Commission was under a duty to take further proceedings under the Organic Act on Political Parties B.E. 2550 (2007).

1.2.6 The Election Commission passed a resolution in meeting number 47/2551 on 2nd April B.E. 2551 (2008) to grant an opportunity for the respondent to give an explanation to the Election Commission on 8th April B.E. 2551 (2008). The respondent explained that the opinion of the investigation committee which held that the Mr. Monthien Songpracha's offence was a commission of offence in the capacity of a constituency election candidate should also be considered.

1.2.7 The Election Commission, by a majority vote in meeting number 51/2551 on 11th April B.E. 2551 (2008), gave its approval in accordance with the opinion of the Political Parties Registrar and Legal Advisory Committee of the Election Commission that the acts of Mr. Monthien Songpracha was subject to section 237 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and section 103 paragraph two of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007). The evidence along with the factual investigation files were therefore sent to the applicant for further proceedings under section 95 of the Organic Act on Political Parties B.E. 2550 (2007).

1.2.8 The applicant, after consideration, found that the evidence was insufficient. The applicant therefore sent a letter to the Political Parties Registrar to establish a working group to compile supplemental evidence. In due course, the Political Parties Registrar and

a representative of the Office of the Attorney-General established a working group. The working group later reached a unanimous resolution to notify the applicant to submit an application to the Constitutional Court for an order to dissolve the respondent party.

1.3 The applicant therefore submitted an application to the Constitutional Court in request of the following:

1.3.1 An order to dissolve the respondent party under section 237 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and section 94(1) and (2) and section 95 of the Organic Act on Political Parties B.E. 2550 (2007).

1.3.2 An order to revoke the election rights of the party leader and party executives of the respondent for a period of five years as from the date of dissolution order against the respondent party under section 103 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007), subject to the discretion of the Constitutional Court.

1.4 The respondent submitted an explanation in reply to the allegations which could be summarized as follows.

1.4.1 The applicant's description in the application in relation to Mr. Monthien Songpracha was a description on the acts of a person under section 237 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). It could not be deemed that Mr. Monthien Songpracha acted as a party executive in conniving or neglecting or being aware of such act and failed to restrain or remedy the act in order to enable the election to proceed in an honest and just manner. The applicant was required to also provide a description which included all the elements under section 237 paragraph two of the Constitution, i.e. that the party leader or any political party executive, excluding Mr. Monthien Songpracha, connived at or neglected or became aware of such act and failed to restrain or remedy the act in order to enable the election to proceed in an honest and just manner. The acts of Mr. Monthien Songpracha could not therefore be deemed as acts of the respondent, the party leader of the respondent, or the executives of the respondent party. In addition, there were no first-hand witnesses or other evidence to cause a reasonable belief that Mr. Monthien Songpracha had any relationship with Mrs. Sriprapai Topeng, Mrs. Sirirat Peampetch and Mrs. Tidarat Lektalay. Only circumstantial evidence was available from political rivals of other political parties who gave incriminating testimonies and narrative descriptions to create links with those three persons. Thus, Mr. Monthien Songpracha did not commit offences under section 94(1) and (2) and section 95 of the Organic Act on Political Parties B.E. 2550 (2007) as alleged.

1.4.2 The Election Commission's passing of a resolution after considering only the investigation report of the investigation committee without also examining the investigation report of the Chainat investigation subcommittee was not in accordance with the Rules of the Election Commission on Investigations and Rulings B.E. 2550 (2007). As a result, the resolution of the Election Commission was not made in accordance with provisions of law nor in a just manner.

1.4.3 With respect to the allegations that Mrs. Sriprapai Topeng, Mrs. Sirirat Peampetch and Mrs. Tidarat Lektalay had committed violations of section 53(1) and section 137 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007), it appeared that the Chainat investigation subcommittee found that such allegations did not contain substance and therefore decided to close the matters in relation to such criminal cases. The investigation officer of Chainat District Provincial Police Station “ordered that prosecution would not be filed” along with the state attorney who also concurred that prosecution would not be filed, resulting in the conclusion of the criminal case since Mr. Monthien Songpracha, Mrs. Nantana Songpracha, Mrs. Sriprapai Topeng, Mrs. Sirirat Peampetch and Mrs. Tidarat Lektalay did not commit the alleged offences. Also this case did not present any motive for the respondent to commit any act to cause the election to proceed in a dishonest and unjust manner in order to acquire national governing powers through means that were not provided in the Constitution.

1.4.4 In this case, a Chainat investigation subcommittee and an investigation committee were appointed to investigate the same matter, which were overlapping investigations. The issues that were investigated were also unclear.

1.4.5 According to the application, it was specified that “Mrs. Sriprapai Topeng gave monies to Miss Natakant Gerdeam in the amount of 400 baht and had spoken to induce Miss Natakant Gerdeam to cast votes for Mr. Monthien Songpracha and Mrs. Nantana Songpracha.” The respondent replied in its statement that neither had money ever been given to Miss Natakant Gerdeam in the amount of 400 baht nor inducement made to cast votes for Mr. Monthien Songpracha and Mrs. Nantana Songpracha as alleged.

1.4.6 Upon examination of protest file number 7/2550, it was found that Mr. Prawit Muangpoh stated that there were witnesses with knowledge of the commission of the offence, namely Mr. Prakorb Yaemjerm, Mr. Snan Binchai and Mrs. Pramual Yaemjerm. However, once the investigation subcommittee summoned such witnesses for interrogation, all three witnesses denied and affirmed that sums were never received from candidates in the election of members of the House of Representatives for Chainat. This showed that Mr. Prawit Muangpoh intended to falsify evidence and incriminate Mrs. Monthien Songpracha and Mrs. Nantana Songpracha so as to have their election rights revoked.

1.4.7 The list of the respondent party’s executive committee submitted by the applicant to the Constitutional Court was not current. The submission was therefore unfair for 12 former executives of the respondent party, who did not have the status of party executives at the time of the alleged acts.

After consideration, the Constitutional Court found that the case contained sufficient facts and evidence for a ruling. It was not necessary to summon additional documents or evidence as requested by the parties. The Constitutional Court therefore ordered the adjournment of inquiries and granted an opportunity for the respondent party leader or a representative to deliver a closing oral statement.

2. Preliminary issue

The preliminary issue which had to be ruled upon by the Constitutional Court was whether or not the Constitutional Court had the power to admit this application for ruling. After consideration, it was held that the application was made 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 ruling.

3. Issues considered by the Constitutional Court

On the first issue of whether or not Mr. Monthien Songpracha, deputy secretary-general of Chart Thai Party and executive of Chart Thai Party committed an offence under the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007), it was held as follows.

The issue on the commission of offences by Mr. Monthien Songpracha, deputy secretary-general and executive of the respondent party had already undergone the investigation process of the Election Commission. As section 239 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that the ruling of the Election Commission would be final, the Constitutional Court therefore did not have the power to alter the ruling of the Election Commission in such case. In this regard, the Election Commission had already ruled that Mr. Monthien Songpracha, deputy secretary-general and executive of the respondent party, had caused others to commit acts, aided or abetted, or connived at the commission of acts by others, which were violations 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 ruled upon by the Election Commission was an identical factual issue to this case, also being an issue within the adjudicative jurisdiction of the Election Commission as provided by law. The ruling of the Election Commission was therefore final. Moreover, it did not appear that there were any proceedings which were not duly carried out in accordance with provisions of law. The Constitutional Court thus did not have the authority to review or alter the substance or exercise of discretion in such ruling of the Election Commission.

On the second issue of whether or not there was cause for dissolution of the respondent party, it was 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 an offence committed by an election candidate and there appeared to be evidence for reasonable cause to believe that the political

party leader or any political party executive connived at or neglected or was aware of such act and failed to restrain or remedy the act so as to enable the election to proceed in an honest and just manner, such political party would be deemed as having acted to acquire national governing powers through means which were not in accordance with the provisions of this Constitution pursuant to section 68. In the case where the Constitutional Court ordered the dissolution of such political party, the election rights of the political party leader and political party executives would be revoked for a period of five years as from the date of dissolution order against such political party.

Such constitutional provision provided an absolute legal presumption which was final. Even the Constitutional Court could not rule otherwise. This case therefore could be deemed as having cause under the law which the court had to rule on whether or not the respondent party should be dissolved.

On the respondent's argument that a person who committed an offence under section 237 paragraph two of the Constitution had to be a different person from the offender under paragraph one, and that affirmation was given that the party leader and other party executives did not connive at or neglected or were aware of such act and failed to restrain or remedy the act so as to enable the election to proceed in an honest and just manner, the Constitutional Court held that the respondent's argument was not plausible.

As for the respondent's argument that the respondent had imposed measures to prevent the respondent's election candidates from violating the law, the Constitutional Court held that, even though there was great sympathy for the statement made by the respondent party leader, due to the apparent facts that there was a commission of offence by an executive of the respondent party, the respondent thus had to be liable pursuant to the provisions of law.

On the third issue of whether or not the election rights of the political party leader and executives of the respondent party should be revoked, it was held as follows.

Section 237 paragraph two of the Constitution of the Kingdom of Thailand provided that in the case where the Constitutional Court ordered the dissolution of a political party, the election rights of the political party leader and executives of such political party should be revoked for a period of five years as from the date of dissolution order against such political party. Such provisions were mandatory provisions of law to the effect that once the court ordered the dissolution of a party, the election rights of the political party leader and political party executives holding office at the time of the commission of the offence would be revoked for a period of five years. The court could not exercise discretion to order otherwise.

As for other requests or objections of the respondent, once the Constitutional Court made a ruling on all issues of the case, it was not necessary to rule on those requests and objections.

4. Ruling of the Constitutional Court

By virtue of the foregoing reasons, the Constitutional Court held that the Chart Thai Party should be dissolved due to the commission of an offence under the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007) by Mr. Monthien Songpracha, deputy secretary-general of Chart Thai Party and Chart Thai Party executive, which resulted in the election not proceeding in an honest and just manner, being an act to acquire national governing powers through means which were not provided by section 68 in conjunction with section 237 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), and that the election rights of Chart Thai Party leader and executives of Chart Thai Party in office at the time of the commission of the offence be revoked for a period of five years as from the date of order by the Constitutional Court to dissolve the political party pursuant to section 237 paragraph two in conjunction with section 68 paragraph four of the Constitution.
