

Summary of Constitutional Court Ruling No. 20/2551

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

**Re: The Attorney-General requested for a Constitutional Court order to
dissolve People's Power (Palang Prachachon) Party.**

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1. Summary of background and facts

1.1 The Attorney-General, the applicant, filed an application dated 10th October B.E. 2551 (2008) in request of a Constitutional Court order to dissolve People's Power (Palang Prachachon) Party, the respondent. The application could be summarized as follows.

(1) The respondent had the status of a juristic person under section 16 of the Organic Act on Political Parties B.E. 2550 (2007). Registration of the political party was accepted by the Political Parties Registrar in Political Parties Register number 9/2541 as of 9th November B.E. 2541 (2008). The respondent later notified the Political Parties Registrar that in annual general meeting number 1/2550 on 24th August B.E. 2550 (2007) a new executive committee comprising 37 members was elected for the respondent party with Mr. Samak Sundaravej as party leader and Mr. Yongyuth Tiyapairat as deputy party leader. The Political Parties Registrar acknowledged the amendment to the party rules and executive committee of the respondent on 28th September B.E. 2550 (2007). On 18th October B.E. 2550 (2007), a Royal Decree announced a general election of members of the House of Representatives on 23rd December B.E. 2550 (2007).

(2) The Election Commission announced the opening of applications for candidature in the election of proportional representation and constituency members of the House of Representatives. Mr. Yongyuth Tiyapairat, deputy leader of the respondent party, applied for candidature in the election of proportional representation members of the House of Representatives for Provincial Group 1 on behalf of the respondent. On 20th December B.E. 2550 (2007), Mr. Wijitr Yordsuwan, a candidate in the election of members of the House of Representatives for Chiang Rai Constituency 3, Chart Thai Party, filed an election protest with the Election Commission, stating in essence that a group of Tambon Chiefs in Mae Chan District had travelled to meet with Mr. Yongyuth Tiyapairat, an executive of the respondent party, in Bangkok on 28th October B.E. 2550 (2007). It was plausible that Mr. Yongyuth Tiyapairat wished to give, offer or promised to give properties or other benefits of money

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value to such group of Tambon Chiefs in order to entice them to cast votes for the respondent's election candidates or to refrain from casting votes for election candidates from other political parties. Such acts constituted offences under the law relating to elections which was likely to result in the elections not being conducted in an honest and just manner. In the election of members of the House of Representatives on 23rd December B.E. 2550 (2007), Mr. Yongyuth Tiyapairat and others were elected. On 14th January B.E. 2551 (2008), Mr. Wijitr Yordsuwan filed an application to withdraw the election protest but the Election Commission dismissed the application. On 18th January B.E. 2551 (2008), the Election Commission announced the election results with Mr. Yongyuth Tiyapairat and others as members of the House of Representatives.

(3) The Election Commission appointed an investigation committee to consider such protest. The investigation committee submitted its opinion to the Election Commission that Mr. Yongyuth Tiyapairat and Miss La-ong Tiyapairat had committed violations of section 53(1) and section 57 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007). Thus, the election rights of Mr. Yongyuth Tiyapairat and others should be revoked and a new election held for a member of the House of Representatives for Chiang Rai Constituency 3.

(4) The Election Commission ruled that Mr. Yongyuth Tiyapairat committed 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) and that the acts of Mr. Yongyuth Tiyapairat caused the election of members of the House of Representatives for Chiang Rai Constituency 3 to proceed in a dishonest and unjust manner. Thus, the election rights of Mr. Yongyuth Tiyapairat should be revoked, and criminal proceedings should be taken against Mr. Yongyuth Tiyapairat under section 53 in conjunction with section 57 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007). Also, a re-election of 1 member of the House of Representatives for Chiang Rai Constituency 3 should be held to replace the associate of Mr. Yongyuth Tiyapairat.

(5) On 18th March B.E. 2551 (2008), the Election Commission filed an application at the Supreme Court. The Supreme Court issued Order No. 5019/2551 dated 8th July B.E. 2551 (2008) which ruled that there was reasonable cause to believe that Mr. Yongyuth Tiyapairat committed 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) and that such act resulted in the election of members of the House of Representatives in Chiang Rai Province to not proceed in an honest and just manner as per the application of the Election Commission. The election rights of Mr. Yongyuth Tiyapairat should therefore be revoked and a re-election held for 1 member of the House of Representatives for Chiang Rai Constituency 3 to replace Mr. Yongyuth Tiyapairat's associate under section 111 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007). An order was therefore issued to revoke the election rights of Mr. Yongyuth Tiyapairat for a period of five years as from the date of the order and a re-election held for 1 member of the House of Representatives for Chiang Rai Constituency

3 to replace Miss La-ong Tiyaipairat, who was an associate of Mr. Yongyuth Tiyaipairat.

(6) On 15th July B.E. 2551 (2008), the Election Commission appointed an investigation committee to examine facts in the case of the Supreme Court's order to revoke the election rights of Mr. Yongyuth Tiyaipairat. The investigation committee's opinion could be summarized as follows. Payment of sums were actually made between Mr. Yongyuth Tiyaipairat and 10 Tambon Chiefs, and as a result of those acts by Mr. Yongyuth Tiyaipairat, deputy leader of the respondent party, it was found that there was reasonable cause to believe that Mr. Yongyuth Tiyaipairat had committed violations of section 53 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007), and that such acts resulted in the election of members of the House of Representatives for Chiang Rai Province not proceeding in an honest and just manner as provided under section 237 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). In this case, Mr. Yongyuth Tiyaipairat, deputy leader of the respondent party, also deemed as a party executive, had committed an act which caused the election to proceed in a dishonest and unjust manner, and such act was binding upon the respondent under section 237 paragraph two of the Constitution. Thus, it was deemed that such political party had committed an act to acquire national governing powers through means which were not in accordance with the provisions of this Constitution, consistent with Supreme Court Order 5019/2551. It was therefore held that such acts of Mr. Yongyuth Tiyaipairat fell within the scope of an act which violated section 237 of the Constitution and section 94 of the Organic Act on Political Parties B.E. 2550 (2007).

(7) The Political Parties Registrar concurred with above opinion, which was submitted to the Election Commission on 2nd April B.E. 2551 (2008). The Election Commission passed a resolution approving the opinion of the Political Parties Registrar to notify the applicant to take further proceedings. The Political Parties Registrar therefore submitted evidence together with the factual investigation file for such case to the applicant for proceeding with the submission of an application to the Constitutional Court for an order to dissolve the respondent party under section 94 and section 95 of the Organic Act on Political Parties B.E. 2550 (2007) in conjunction with section 111 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007).

The applicant examined the facts from the evidence submitted by the Chairman of the Election Commission in the capacity of the Political Parties Registrar. An application was therefore filed with the Constitutional Court for the following orders:

1. An order to dissolve the respondent party under section 237 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), section 94 and section 95 of the Organic Act on Political Parties B.E. 2550 (2007) and section 111 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007).

2. An order to revoke the election rights of the party leader and executives of the respondent party for a period of five years as from the date of dissolution order against the

respondent party, in which case an order could be issued to revoke the election rights of the party leader and all executives of the respondent party according to the list attached to this application, or to revoke the election rights of the party leader and executives of the respondent party who connived at, or neglected, or was aware that the candidate's acts resulted in the election not proceeding in an honest and just manner and failed to restrain or remedy the act to enable the election to proceed in an honest and just manner under section 237 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), subject to the discretion of the Constitutional Court.

1.2 The respondent submitted a statement in reply to the allegations dated 19th November B.E. 2551 (2008) which could be summarized as follows.

(1) Supreme Court Order 5019/2551 was not binding on the respondent, party leader and executives of the respondent party, who were not parties in such case. Also, Mr. Yongyuth Tiyapairat did not commit any act which was in violation of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007), rules or notifications of the Election Commission that would cause the elections on 23rd December B.E. 2550 (2007) to proceed in a dishonest and unjust manner. The respondent did not commit any act to acquire national governing powers through means which were not provided under the Constitution which would constitute a cause for dissolution of the respondent party. Moreover, the party leader and executives of the respondent party did not connive at the acts of Mr. Yongyuth Tiyapairat or neglected or were aware of such acts and failed to restrain or remedy the act to enable the election to proceed in an honest and just manner, which would constitute a cause for the Constitutional Court to order the revocation of election rights.

(2) The respondent did not commit any act which could be deemed as an act to acquire national governing powers through means which were not provided by the Constitution of the Kingdom of Thailand B.E. 2550 (2007) that would constitute a cause for the Constitutional Court to issue a party dissolution order under section 237 of the Constitution and section 94(1) and (2) of the Organic Act on Political Parties B.E. 2550 (2007). This was because a political party and elections constituted essential fundamental elements of the democratic form of government. A political party was a political body which had a key role with respect to the people and was deemed as a political representative body of the people and had a role on the nation.

(3) The party leader and none of the executives of the respondent party had any knowledge of the matters to which Mr. Yongyuth Tiyapairat was alleged or neglected or was aware of such acts and failed to restrain or remedy the act to enable the election to proceed in an honest and just manner that would constitute a cause for dissolution of the respondent party and revocation of election rights of the respondent party's executives.

(4) The investigations carried out by the Election Commission and the submission of application by the applicant in this case infringed the due process rights of the party leader and executives of the respondent party under section 40 of the Constitution of the

Kingdom of Thailand B.E. 2550 (2007). The proceedings were therefore not carried out in accordance with the rule of law under section 3 paragraph two of the Constitution.

For the foregoing reasons, the respondent therefore motioned for the Constitutional Court to dismiss the application.

The Constitutional Court examined the application, statement in reply to the allegations, documents in support of the application and evidence of the parties and found that this case contained sufficient facts and evidence for a ruling. It was therefore not necessary to summon additional evidence as motioned by the parties. The Court thus adjourned the inquiry under clause 37 of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007) and granted an opportunity to the respondent party leader or a representative to deliver a closing statement.

2. Preliminary issue

The preliminary issue ruled by the Constitutional Court was whether or not the Constitutional Court had the power to admit this application for ruling.

This 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 111 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 issues of the case which had to be ruled upon were as follows.

The first issue was whether or not Mr. Yongyuth Tiyapairat, deputy leader of the People's Power (Palang Prachachon) Party and executive of the People's Power (Palang Prachachon) 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 second issue was whether or not there was a cause for dissolution of the respondent political party.

The third issue was whether or not the election rights of the party leader and executives of the respondent political party should be revoked.

Ruling

On the first issue was whether or not Mr. Yongyuth Tiyapairat, deputy leader and

executive of the People's Power (Palang Prachachon) 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), it was held as follows.

The Supreme Court had already ruled that Mr. Yongyuth Tiyapairat, deputy leader of the respondent party, had committed 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) which resulted in the election of members of the House of Representatives for Chiang Rai Province not proceeding in an honest and just manner, pursuant to Supreme Court Order 5019/2551. The issue already ruled upon by the Supreme Court was an identical factual issue in this case. Such issue was within the adjudicative jurisdiction of the Supreme Court. Section 239 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) in conjunction with section 111 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007) specifically provided that the Supreme Court would be the adjudicator of issues on fraud in elections of members of the House of Representatives or senators. The issue was therefore deemed as final according to such Supreme Court Order. The Constitutional Court was not authorized to review the ruling on the issue which was within the jurisdiction of the Supreme Court. Also, the Constitutional Court was not a court empowered to consider appeals against judgments or orders of the Supreme Court.

As regards the respondent's argument that the Supreme Court Order was not binding on the respondent, party leader and other party executives since they were not parties in the case, the Constitutional Court found that the issue which had to be ruled upon by the Constitutional Court in this case was not the issue of whether or not the respondent, party leader and other party executives had committed violations of section 53 of the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007), but a ruling on whether or not once Mr. Yongyuth Tiyapairat, in his capacity as deputy leader and executive of the respondent party, had committed 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 Constitutional Court could order the dissolution of the party and order the revocation of election rights of the party leader and party executives under section 237 in conjunction with section 68 paragraph four of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). It was not necessary to rule on whether the respondent, party leader and other party executives had also committed an offence. Thus, the respondent's argument was not within the jurisdiction of the Constitutional Court to rule otherwise from the ruling of the Supreme Court.

On the respondent's objection that the acts for which Mr. Yongyuth Tiyapairat was alleged to have violated the law occurred prior to the respondent's resolution to submit Mr. Yongyuth Tiyapairat as an election candidate and therefore Mr. Yongyuth Tiyapairat was not a 'candidate' at the time of the commission of offence, the Constitutional Court found that the Supreme Court had already ruled on this issue that even though at the time of commission of offence, Mr. Yongyuth Tiyapairat was not an 'election candidate', however,

subsequent to the application for candidature, the acts were also deemed to have been committed in his capacity as an election candidate. Thus, this matter was also not within the Constitutional Court's jurisdiction to rule otherwise.

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

Section 237 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was an absolute legal presumption that if there was evidence of a reasonable cause to believe that a political party leader or any political party executive connived at or neglected or was aware of the election candidate's offence and failed to restrain or remedy such act to enable the election to proceed in an honest and just manner, the law would deem such political party as having acted to acquire national governing powers through means which were not provided in the Constitution. Even though according to the facts the political party, political party leader or political party executives were not the offenders, the law still deemed such persons as being offenders. Those facts were therefore non-rebuttable. Even the Constitutional Court could not rule otherwise. Since the offence of election fraud by vote-buying had a special characteristic of the offender employing sophisticated means that made detection difficult, the law therefore provided for the duty of party executives to screen persons who would participate in the party's activities and to control, supervise and monitor the party members from the commission of offences. In this regard, there were provisions on the liabilities of the political party leader and party executives for acts committed by a party executive, analogous to the general principle of liabilities for juristic persons which provided that if a representative of a juristic person or a person authorized to act on behalf of a juristic person, while acting within the objectives of such juristic person, caused damage to another person, the juristic person could not deny responsibility. In this case, it was therefore deemed that there was a cause under the law which required the Constitutional Court to make a ruling on whether or not the respondent political party should be dissolved.

On the respondent's argument that the 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 that it was affirmed 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 in order to enable the election to proceed in an honest and just manner, the Constitutional Court held that if the offender under paragraph one was himself a party executive, it was inherently apparent that such party executive had the intent and act of the offence, even more so than a mere connivance at others. It was therefore not necessary that the party leader or other party executives had to connive at or neglect or become aware of such act and fail to restrain or remedy the act in order to enable the election to proceed in an honest and just manner.

As for the respondent's argument that a political party was an organ which was an essential fundamental element of the democratic form of government and therefore a political party should have stability and not be easily dissolved, the Constitutional Court held

that the stability of an organ had to be based on quality standards in the honest undertaking of activities by the political party. Although an inferior quality party could be dissolved, a person who possessed pure political ideologies had the fundamental right to establish a political party in an honest and just manner, which would be of genuine benefit to the democratic form of government.

As regards the respondent's argument that the respondent had prescribed measures to prevent the respondent's election candidates from committing violations of laws, rules or notifications of the Election Commission prior to the promulgation of the Royal Decree announcing the general election of members of the House of Representatives on 23rd December B.E. 2550 (2007) whereby a meeting had already been held to notify candidates of the respondent, the Constitutional Court held that such proceedings, even if they were actually taken, did not exonerate liability under the law in the case of the party leader, party deputy leader or executives of the respondent party committing the offences themselves. Therefore, once the facts appeared that an offence was committed by a person who was an executive of the respondent party, the respondent was thus liable under the provisions of law.

On the respondent's argument that the respondent did not obtain any benefit from the acts of Mr. Yongyuth Tiyapairat as alleged, the Constitutional Court held that this issue had already been ruled upon by the Supreme Court that the acts of Mr. Yongyuth Tiyapairat had caused the elections in Chiang Rai Province to proceed in a dishonest and unjust manner which resulted in the respondent having more members of the House of Representatives, being an important benefit.

As for the respondent's argument that the investigation carried out by the Election Commission's investigation committee and the submission of application in this case was a violation of due process rights, which was not in accordance with the rule of law, the Constitutional Court held that on the issue of investigations by the Election Commission, the Supreme Court had already ruled that such proceedings were lawful. As for the submission of this application, the applicant was under a duty to submit an application to the court under section 95 of the Organic Act on Political Parties B.E. 2550 (2007) and had duly taken all proceedings as provided under the Rules of the Constitutional Court on Procedures and Ruling B.E. 2550 (2007). The proceedings were therefore in accordance with the provisions of law.

Since Mr. Yongyuth Tiyapairat, in his capacity as party deputy leader, being also an executive of the respondent party, had been a member of the House of Representatives for several terms and played important roles in the party until respect was given to become the party deputy leader and President of the House of Representatives. Mr. Yongyuth Tiyapairat was therefore under a duty to control and monitor the members of the party under his administration to participate in the elections in an honest and just manner. In spite of that, however, Mr. Yongyuth Tiyapairat committed an offence himself, which was a serious offence and a threat to the development of the democratic form of government in the country. The case therefore contained reasonable cause for the dissolution of the respondent so as to set a precedent for good political conduct and in order to deter repeat offences.

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, 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 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 the political party. This measure reiterated section 68 paragraph four of the Constitution which contained a similar provision. Such provisions was a mandatory legal provision that once the court ordered the dissolution of a party, the election rights of the political party leader and executives of the political party in office at the time of the commission of the offence should be revoked for a period of five years. The court could not exercise discretion to order otherwise. As for the objections of the respondent and related persons that the revocation of election rights of the political party leader and executives of the political party could only be enforced in the case where the political party leader or each particular executive of the political party connived at or neglected under section 98 of the Organic Act on Political Parties B.E. 2550 (2007), the Constitutional Court held that revocation of the election rights of the political party leader and executives of the political party in this case were revocations under section 237 paragraph two in conjunction with section 68 paragraph four of the Constitution, not under the Organic Act on Political Parties B.E. 2550 (2007). Nonetheless, even the provisions of such Organic Act could not override the provisions of the Constitution. All the objections of the respondent and related persons in this case therefore did not have merit.

4. Ruling of the Constitutional Court

By virtue of the foregoing reasons, the Constitutional Court unanimously held that the People's Power (Palang Prachachon) Party, the respondent, should be dissolved, due to Mr. Yongyuth Tiyaipairat, deputy leader of the People's Power (Palang Prachachon) Party and executive of the People's Power (Palang Prachachon) Party, having committed an offence under the Organic Act on Election of Members of the House of Representatives and Obtaining Senators B.E. 2550 (2007), resulting 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 under section 68 in conjunction with section 237 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). In addition, the election rights of the leader of the People's Power (Palang Prachachon) Party and executives of the People's Power (Palang Prachachon) Party in office at the time of the commission of the offence were revoked for a period of five years as from the date of the political party dissolution order issued by the Constitutional Court under section 237 paragraph two in conjunction with section 68 paragraph four of the Constitution.
