

Summary of Constitutional Court Ruling No. 3/2553 (2010)

Dated 17th February B.E. 2553 (2010)*

Re: The Political Party Registrar petitioned the Constitutional Court for an order to dissolve Kris Thai Mankong Party

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1. Summary of background and facts

The allegations under the application and documents submitted in support of the application could be summarised as follows.

Section 42 of the Organic Act on Political Parties B.E. 2550 (2007) provided that a political party leader should prepare a report of political party activities for the preceding calendar year that was factually accurate in accordance with the procedures prescribed by the Political Party Registrar. The said report had to be filed with the Political Party Registrar by the month of March each year for general publication, with an exemption for a political party established for less than ninety days up to the last day of the calendar year. In addition, the report of political party activities had to be endorsed by the general assembly of the political party as provided under section 28 paragraph two (5) of the Organic Act on Political Parties B.E. 2550 (2007). The respondent's party fell within the criteria which obligated the filing of an annual report of political party activities for B.E. 2550 (2007) with the applicant by 31st March B.E. 2551 (2008).

The Office of the Election Commission received the respondent's annual report of political party activities for B.E. 2550 (2007) on 19th March B.E. 2551 (2008) but it was found that the report had not been endorsed by the respondent party's general assembly, hence it was not in accordance with section 28 paragraph two (5) of the Organic Act on Political B.E. 2550 (2007) and not inconsistent with the Notification of the Political Party Registrar dated 11th December B.E. 2550 (2007). The applicant therefore served a written notice dated 16th June B.E. 2551 (2008) to the respondent instructing the latter to prepare a proper and truthful report to be filed with the applicant by 31st July B.E. 2551 (2008). At the expiration of the prescribed period, the Office of the Election Commission had not yet received the respondent party's report. The applicant therefore served another written notice dated 10th September B.E. 2551 (2008) to the respondent party leader instructing the latter to submit a written explanation to the applicant within 7 days as from the receipt of notice. However, no reasons were given to the applicant within the prescribed time.

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The applicant therefore submitted an application to the Constitutional Court for the following rulings:

1) An order to dissolve the respondent's political party under section 42 paragraph two in conjunction with section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007).

2) An order, on account of the violation of section 42 paragraph two in conjunction with section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), to prohibit the executives of the dissolved respondent's political party from registering the establishment of a new political party or becoming a political party executive or being involved in the registration of a new political party for a period of five years as from the day of dissolution of the respondent's political party as provided under section 97 of the Organic Act on Political Parties B.E. 2550 (2007).

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for trial and adjudication under section 93 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court held that upon the Election Commission's finding of the respondent's non-compliance with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), being a cause for the dissolution of the respondent's political party under section 93 paragraph one, followed by a resolution instructing the applicant to submit an application to the Constitutional Court to petition for the dissolution of the respondent party pursuant to section 93 paragraph two, the case was in accordance with section 93 of the Organic Act on Political Parties B.E. 2550 (2007). The Constitutional Court therefore had the competence to try and adjudicate this case.

3. Summary of reply statement and inquisitorial proceedings.

The respondent submitted a reply statement, dated 11th February B.E. 2552 (2009), which could be summarised as follows.

Mr. Chattayakorn (Krishanapong) Nustipornlapas, the respondent's party leader, resigned from membership of the respondent party as of 29th April B.E. 2551 (2008) resulting in the termination of his political party membership. On 30th April B.E. 2551 (2008), the respondent submitted a letter to the applicant giving notice of the decrease in membership of the respondent party by 13 persons, comprising the entire executive committee of the respondent party. Thereafter, on 27th May B.E. 2551 (2008), the applicant sent a letter to the respondent acknowledging the resignation from party membership of all 13 members of the respondent political party's executive committee, and giving instructions that the senior

deputy leader of the political party should assume the duties of the political party leader in giving notice of changes to the applicant as provided under section 41 of the Organic Act on Political Parties B.E. 2550 (2007). On 24th June B.E. 2551 (2008), Mr. Chattayakorn (Krishanapong) Nustipornlapas, along with all party executive committee members, submitted their accounts of assets and liabilities to the applicant. Mr. Wasant Feemuechang, on the other hand, sent a letter to the applicant, dated 30th June B.E. 2551 (2008), giving notice to the applicant that he had tendered his resignation from membership of the respondent party as of 25th July B.E. 2549 (2006) and was therefore unable to act for the respondent's party leader in giving notice to the applicant of changes in the party executive committee. The respondent affirmed that an annual report of political party activities for B.E. 2550 (2007) had been prepared and filed with the applicant, but it was not until 16th June B.E. 2551 (2008) that the applicant only sent a written notice to the respondent stating that such report had not been endorsed by the respondent party's general assembly. The applicant's notice was sent after the resignation from party membership of all members of the respondent party's executive committee. As a result, there was no person or party executive committee to carry out compliance with section 42 of the Organic Act on Political Parties B.E. 2550 (2007).

4. Issues considered by the Constitutional Court

The first issue was whether or not there was reasonable cause to order the dissolution of the respondent's political party pursuant to section 93 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court found as follows. The respondent was registered as a political party on 30th April B.E. 2542 (1999). Section 42 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007) provided that the political party leader should prepare a report of political party activities for the preceding annual period that was proper and truthful in accordance with the procedures prescribed by the Political Party Registrar, which should be filed with the Political Party Registrar by the month of March each year. The respondent's political party leader was therefore under an obligation to prepare an annual report of political party activities for B.E. 2550 (2007) and to file the same with the applicant by 31st March B.E. 2551 (2008). The provisions on preparation of an annual report of political party activities under section 28 paragraph two (5) of the Organic Act on Political Parties B.E. 2550 (2007) stated that endorsement by the political party general assembly was required. It was found on the facts that the applicant received the respondent's annual report of political party activities for B.E. 2550 (2007) but discovered that such report had not been endorsed by the respondent political party's general assembly. The applicant proceeded to notify the respondent to prepare a proper and truthful report and to file the same with the applicant by 31st July B.E. 2551 (2008). The respondent's political party leader failed to take any action.

The applicant therefore served a written notice to the respondent's political party leader for an explanation within 7 days as from the receipt of the notice. At the expiration of the prescribed period, the respondent's political party leader still did not carry out any rectification. The respondent argued that it had given notice of changes in the executive committee to the applicant, and that the resignation of all 13 members of the party executive committee meant that there was no party executive committee to take action in compliance with section 42 of the Organic Act on Political Parties B.E. 2550 (2007). Upon consideration of the said facts, the Constitutional Court found that the change in the respondent's party executive committee was regarded as a change of description under section 12 paragraph two (5) of which notice had to be given to the Political Party Registrar. The political party leader was under an obligation to give written notice of such changes to the Political Party Registrar within thirty days as from the date of change. The change would become effective upon the receipt an acknowledgement of change from the Political Party Registrar under section 41 paragraph two. Therefore, as it did not appear on the facts that the applicant acknowledged the changes in all 13 members of the respondent political party's executive committee, it should be deemed that the respondent still maintained a political party leader who was capable of filing a report with the applicant. The respondent's argument was unreasonable and therefore unacceptable. This case showed a cause for dissolution of the respondent's political party under section 93 of the Organic Act on Political Parties B.E. 2550 (2007). As the other arguments of the respondent would not alter the outcome of this ruling, they did not have to be considered.

The second issue was whether or not the former executives of the dissolved respondent's political party were prohibited from registering the establishment of a new political party or becoming a political party executive or being involved in the registration of a new political party for a period of five years as from the day of dissolution of the respondent's political party as provided under section 97 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court found as follows. Section 97 of the Organic Act on Political Parties B.E. 2550 (2007) provided that in the case where a political party had to be dissolved due to a violation of section 42 paragraph two, the former executives of the dissolved respondent's political party were prohibited from registering the establishment of a new political party or becoming a political party executive or being involved in the registration of a new political party for a period of five years as from the day of dissolution of the respondent's political party. Such provision stated the consequences of a violation of provisions of law without granting the Constitutional Court with powers to order otherwise. Upon finding a cause for dissolution of a political party due to a violation of section 42 paragraph two, the Constitutional Court was required to order the prohibition of former executives of the dissolved respondent's political party from registering the establishment of a new political party or becoming a political party executive or being involved in the registration of a new political party for a period of five years as from the day of dissolution of the respondent's political party.

5. Ruling of the Constitutional Court

The Constitutional Court therefore ordered the dissolution of Kris Thai Mankong Party, the respondent, pursuant to section 93 in conjunction with section 42 of the Organic Act on Political Parties B.E. 2550 (2007), and that persons holding the offices of executive committee members of the respondent's political party were prohibited from registering the establishment of a new political party or becoming a political party executive or being involved in the registration of a new political party for a period of five years as from the day of the Constitutional Court order to dissolve the respondent's political party pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007).
