

# **Summary of Constitutional Court Ruling No. 4-5/2553 (2010)**

**Dated 31<sup>st</sup> March B.E. 2553 (2010)\***

**Re: The Political Party Registrar petitioned the Constitutional Court for an  
order to dissolve Palang Kasetrakorn Party**

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

The Political Party Registrar submitted a total of two applications to the Constitutional Court petitioning for an order to dissolve Palang Kasetrakorn Party pursuant to section 93 of the Organic Act on Political Parties B.E. 2550 (2007) and an order to prohibit the executive committee members of the dissolved Palang Kasetrakorn Party from registering a new political party or becoming an executive committee member of a political party or being involved in the registration of a new political party for a period of five years as from the day of dissolution of Palang Kasetrakorn Party pursuant to section 97. An order was also sought to revoke the election rights of the political party leader and executive committee members of Palang Kasetrakorn Party for a period of five years as from the day of order to dissolve Palang Kasetrakorn Party pursuant to section 98. The Constitutional Court ordered the consolidation of these two applications into one trial.

According to the application and supporting documents, the following summary could be provided. Application for trial no. 51/2551 (2008) stated that the respondent's political party fell within the criteria which required the preparation of an annual report of the respondent's political party activities for B.E. 2550 (2007) to be filed with the applicant by 31<sup>st</sup> March B.E. 2551 (2008). The respondent submitted a report which had not been endorsed by the general assembly of the respondent's political party, which was therefore not in accordance with section 28 paragraph two (5) of the Organic Act on Political Parties B.E. 2550 (2007) and the Notification of the Political Party Registrar Re: Procedures for Reporting Political Party Activities B.E. 2550 (2007), hence deemed as not duly made under section 42 paragraph one. The applicant instructed the respondent to prepare a proper report and file the same with the applicant within a prescribed period. The respondent, however, failed to take action and requested for an extension. The Election Commission, after deliberations, found that the respondent failed to take proper action within the stated period and therefore gave approval for the applicant's petition to the Constitutional Court. As for application for trial no. 42/2552 (2009), a case was presented under section 82 which required a political party receiving a grant to expend those funds as stipulated by law and to

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prepare a report of the political party's expenditure of such funds to be filed with the Election Commission by the month of March of the following year. The respondent received a grant in the amount of 2,256,800.00 baht but did not submit all of the required documents and evidence in connection with the expenditure of such funds. The applicant had instructed the respondent to give an explanation as well as to submit additional documents and evidence in connection with the expenditures within a prescribed period, but the respondent failed to submit any such document or evidence. The Election Commission therefore approved the applicant's petition to the Constitutional Court.

## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court had the competence to admit the applications for trial and adjudication. Section 42 paragraph one provided for a political party leader to prepare a report of political party activities to be filed with the Political Party Registrar by the month of March each year. If the report was not filed, the Registrar would order that the report had to be filed within a prescribed period. Upon the expiration of such period, if the report was not filed without a reasonable excuse, the Registrar with the approval of the Election Commission would take proceedings to dissolve the political party. Section 82 of the Organic Act on Political Parties B.E. 2550 (2007) provided that a political party receiving a grant shall expend such grant as stipulated by law and shall prepare an accurate report on the expenditure of such funds to be submitted to the Election Commission by the month of March of the following year. Section 93 of the Organic Act on Political Parties B.E. 2550 (2007) provided that in the event that a political party failed to comply with section 42 paragraph two or section 82, such political party should be dissolved. In such an event, the Registrar with the approval of the Election Commission should submit an application to the Constitutional Court. Hence, the Constitutional Court had the competence to try and adjudicate these applications.

## **3. Summary of reply statement and inquisitorial proceedings.**

The respondent submitted a statement in reply to the allegations which could be summarised as stating that the significant political instability had caused the respondent's political party to postpone its party general assembly. On the day of inquisitorial hearing, the respondent did not appear in court and did not rebut the facts stated in the applicant's applications.

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

The Constitutional Court determined the following issues for consideration.

**The first issue** was whether or not there was a cause for dissolution of the respondent's political party under section 93 of the Organic Act on Political Parties B.E. 2550

(2007) due to a failure to comply with section 42 paragraph two and section 82 of the said Act. In the case under section 42, it was found that the respondent had an obligation to prepare a report which had to be endorsed by the general assembly. Prior to the reporting deadline, the applicant had notified the respondent to ensure understanding of and strict compliance with the law. When the applicant discovered upon inspection that the report had not been endorsed by the respondent's political party general assembly, instructions were given to the respondent to prepare a proper report within a prescribed period. The respondent, however, failed to take action, claiming incompetence and ignorance due to the newness of the law. The Constitutional Court found that as the respondent was under an obligation to take action, in which regard the applicant had sent a letter to explain the detailed procedures with clarity as well as instructed that rectifications be undertaken, the excuse for not being able to convene a general assembly was unreasonable. It was therefore held that the respondent failed to comply with section 42 paragraph two. The case showed a cause for the dissolution of the respondent's political party under section 93. As for the case under section 82, the Constitutional Court found that the respondent had reported the expenditure of grant funds by the respondent's political party but the documents and evidence supporting the expenditures were incomplete, and the respondent failed to submit documents and evidence as required by the applicant. Thus, it was held that the respondent failed to report the political party's expenditure of the grant as provided under section 82 without reasonable excuse pursuant to section 42 paragraph two. The case therefore showed a cause for dissolution of the respondent's political party under section 93.

**The second issue** was, in the event of the dissolution of the respondent's political party, whether or not the party leader and party executive committee members would have their rights revoked under section 97 of the Organic Act on Political Parties B.E. 2550 (2007) and their election rights revoked under section 98. The Constitutional Court found that section 97 was a provision on the consequences of a violation of the law which did not grant the Constitutional Court with any power to order otherwise. As for the revocation of election rights under section 98, the Constitutional Court found that the respondent, by the party leader and party executive committee members, who had the authority to carry out political party activities, were under an obligation to prepare a report on the political party's expenditure of grant funds in accordance with section 82 of the Organic Act on Political Parties B.E. 2550 (2007). Upon the respondent political party's failure to report the political party's expenditure of the funds in B.E. 2550 (2007) without reasonable cause, the case therefore showed reasonable evidence to believe that the respondent's political party leader and political party executive members participated, conspired or was negligent or had knowledge of such acts but failed to suppress or rectify the acts relating to such non-submission of report.

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

By virtue of the aforesaid reasons, the Constitutional Court therefore ordered the dissolution of the respondent's political party under section 93 in conjunction with section 42 paragraph two and section 82 of the Organic Act on Political Parties B.E. 2550 (2007) and that the persons holding the offices of political party executive committee members of the respondent's political party were prohibited from registering a new political party or becoming political party executive committee members or being involved in the registration of a new political party for a period of five years as from the day of Constitutional Court order to dissolve the respondent's political party under section 97 of the Organic Act on Political Parties B.E. 2550 (2007). In addition, the election rights of the respondent's political party leader and political party executive committee members were revoked for a period of five years as from the day of the order to dissolve the respondent's political party under section 98 of the Organic Act on Political Parties B.E. 2550 (2007).

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