

# Summary of Constitutional Court Ruling No. 15/2553

Dated 29<sup>th</sup> November B.E. 2553 (2010)\*

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

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## 1. Summary of background and facts

The Political Party Registrar, the applicant, submitted an application dated 26<sup>th</sup> April B.E. 2553 (2010) to the Constitutional Court petitioning for an order to dissolve the Democrat Party, the respondent, pursuant to section 65 of the Organic Act on Political Parties B.E. 2541 (1998) or section 93 of the Organic Act on Political Parties B.E. 2550 (2007). The application could be summarised as follows.

The Committee of the Fund for Development of Political Parties passed a resolution in meeting no. 11/2547 (2004) (69) on 19<sup>th</sup> November B.E. 2547 (2004) to approve the Fund for Development of Political Parties budget appropriation as a grant for the respondent party pursuant to the 21 proposed projects and programmes submitted in the application, in the amount of 68,798,400 baht. The 2 projects relevant to this case consisted of (1) the project for 2 highway billboards (the correct amount was 10) in the amount of 10,000,000 baht and (2) the project for 175,115 campaign future boards (the correct amount was 100,000) in the amount of 37,999,955 baht (the correct amount was 30,000,000 baht). The respondent party applied for a grant from the Fund for Development of Political Parties in the amount of 19,000,000 baht. The party would make a contribution of 18,999,955 baht (the correct amount was 11,000,000 baht). On 4<sup>th</sup> January B.E. 2548 (2005), the Office of the Election Commission transferred funds from the Fund for Development of Political Parties as a grant to the respondent party in the first quarter by depositing the funds in the account of Democrat Party (Fund for Development of Political Parties) Krung Thai Bank Public Limited, Ministry of Finance Sub-Branch, account number 068-1-03199-9, in the amount of 55,738,400 baht.

The respondent sent letter no. Por Chor Por 4800020/2548 (2005), dated 10<sup>th</sup> January B.E. 2548 (2005), requesting for a revision to the proposed projects and programmes for which a grant application had been made, namely, (1) for the highway billboard project, a reduction was requested from 8,000,000 baht to 2,000,000 baht, and (2) for the campaign future board project, it was requested that the amount reduced from project (1) be applied to

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\* Published in the Government Gazette Vol. 128, Part 39a, date 23<sup>rd</sup> May B.E. 2554 (2011).

the increase for project (2). The Committee of the Fund for Development of Political Parties approved the respondent's revision of projects and sent a letter dated 21<sup>st</sup> January B.E. 2548 (2005) to inform the respondent of its decision.

On 28<sup>th</sup> March B.E. 2549 (2006), the respondent, by Mr. Abhisit Vejjajiva, filed a report of the expenditure of Democrat Party's grant for B.E. 2548 (2005) to the Election Commission.

The Election Commission was notified by the Department of Special Investigations that a complaint had been filed against TPI Polene Public Company Limited for circumstances indicating the commission of an offence under the Securities and Exchange Act B.E. 2535 (1992) and offences under related laws. It was found that references were made to the respondent on 2 allegations, i.e. that the respondent received donations and properties having monetary value from TPI Polene Public Company Limited through Messiah Business and Creation Company Limited by way of a contract of hire for production of advertising media under various projects, a concealed act to avoid reporting of the donations as required by law, and that the respondent did not expend the grant received from the Office of the Election Commission in accordance with provisions of law and did not file a factually accurate report on expenditure of political party grant to the Election Commission. In addition, Mr. Kietudom Menasawat, member of the House of Representatives for Udon Thani Province, Pheu Thai Party, submitted a petition for an examination of and proceedings against the respondent and the respondent's executives with regard to 2 similar allegations.

On 30<sup>th</sup> April B.E. 2552 (2009), the Election Commission passed a resolution to appoint an investigation committee for such matter. On 17<sup>th</sup> December B.E. 2552 (2009), in Election Commission Meeting No. 144/2552 (2009), after consideration of the investigation committee report, a resolution was passed by a majority to refer the matter to the applicant for proceedings under section 95 of the Organic Act on Political Parties B.E. 2550 (2007) on both allegations.

The applicant issued Order No. 9/2552, dated 29<sup>th</sup> December B.E. 2552 (2009) to appoint a Review Committee for Proceedings under the Organic Act on Political Parties B.E. 2550 (2007) in order to conduct a review of the investigation file prepared by the investigation committee in the case of the respondent. The committee carried out a review and collation of evidence and submitted an opinion to the applicant. The applicant submitted an opinion to the Chairman of the Election Commission on 12<sup>th</sup> April B.E. 2553 (2010) that an offence could have been committed under section 94 of the Organic Act on Political Parties B.E. 2550 (2007), which was a matter of great significance. It was suggested that the matter be urgently submitted to the Election Commission via the Chairman of the Election Commission for resolution. The Chairman of the Election Commission thence submitted the matter to the meeting of the Election Commission.

The Election Commission examined the summary of facts prepared by the Review Committee for Proceedings under the Organic Act on Political Parties B.E. 2550 (2007) as

well as other relevant evidence and found that the respondent had committed wrongdoings pursuant to both allegations. On the second allegation, it was found that the respondent had not expended the grant received from the Office of the Election Commission in accordance with provisions of law and had filed an expenditure report of political party grant which was not factually accurate to the Election Commission, thus constituting a probable cause of an offence under section 62 and section 65 of the Organic Act on Political Parties B.E. 2541 (1998) and section 82 and section 93 of the Organic Act on Political parties B.E. 2550 (2007). It was decided that the applicant should notify the Attorney-General so that the latter could petition the Constitutional Court for an order to dissolve the respondent party pursuant to section 94(3) and (4) and section 95 of the Organic Act on Political Parties B.E. 2550 (2007) on the basis of both allegations.

Thereafter, on 21<sup>st</sup> April B.E. 2553 (2010), the Election Commission passed a resolution in meeting no. 43/2553 (2010) to approve the applicant's petition to the Constitutional Court for the dissolution of the respondent party pursuant to section 93 of the Organic Act on Political Parties B.E. 2550 (2007). The applicant therefore submitted an application to the Constitutional Court for the following decisions.

1. An order to dissolve the respondent party pursuant to section 62 in conjunction with section 65 of the Organic Act on Political Parties B.E. 2541 (1998) or section 82 in conjunction with section 93 of the Organic Act on Political Parties B.E. 2550 (2007).

2. An order to prohibit executives of the respondent party, which should be dissolved due to noncompliance with section 62 of the Organic Act on Political Parties B.E. 2541 (1998) thus constituting a cause for dissolution of a political party as provided under section 65, from forming a new political party or from becoming a political party executive or being involved in a filing for the formation of a new political party under section 8 for a period of five years as of the day of the respondent's dissolution under section 69, or due to noncompliance with section 82 which constituted a cause for dissolution of a political party as provided under section 93 of the Organic Act on Political Parties B.E. 2550 (2007), the said persons be prohibited from filing for the formation of a new political party or from becoming a political party executive or being involved in a filing for the formation of a new political party for a period of five years as from the day of the respondent's dissolution under section 97.

3. An order to revoke the election rights of the respondent party's executives for a period of five years as from the day of the Constitutional Court order to dissolve the party pursuant to article 3 of the Announcement of the Council for Democratic Reform No. 27 Re: Amendment of Announcement of the Council for Democratic Reform No. 15, dated 21<sup>st</sup> September B.E. 2549 (2006), dated 30<sup>th</sup> September B.E. 2549 (2006), or in the alternative, an order to revoke the election rights of the respondent party's leader and executives for a period of five years as from the day of Constitutional Court order to dissolve the party pursuant to section 98 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 the application for trial.

The Constitutional Court, after deliberations, ordered the admission of the application for trial under article 17(20) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007).

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

The respondent submitted a reply to the allegations along with supporting documents to the Constitutional Court which could be summarised as follows. The respondent never received funds from TPI Polene Public Company Limited. The respondent had no knowledge of and had no prior involvement in the allegation that TPI Polene Public Company Limited had entered into a contract with Messiah Business and Creation Company Limited for the production of advertisements. Such a matter was a private dealing between the two companies. Also, Messiah Business and Creation Company Limited never handed over any monies received from TPI Polene Public Company Limited to the respondent, party leader or respondent party executives in the elections. The respondent proposed projects and programmes in the request for a grant from the Fund for Development of Political Parties to the Office of the Election Commission in August B.E. 2547 (2004). There were 2 projects under the election expenditure plan that were related to this case. The Committee of the Fund for Development of Political Parties passed a resolution in a meeting on 19<sup>th</sup> November B.E. 2547 (2004) to approve the budget for such projects and programmes. Moreover, in regard to the expenditure of monies from the Fund for Development of Political Parties, the respondent filed a report on the expenditure of grant from the Fund for Development of Political Parties in the B.E. 2548 (2005) period as provided under section 62 of the Organic Act on Political Parties B.E. 2541 (1998) on 28<sup>th</sup> March B.E. 2549 (2006). Thereafter, the Election Commission reviewed the expenditures under the projects for which the respondent received a grant in the year B.E. 2548 (2005) and passed a resolution stating that the respondent had fully and duly complied with regulations. The investigation of this matter was therefore terminated. The respondent's actions thus did not amount to a contravention of regulations. If the Fund for Development of Political Parties found that there was a loss or contravention of regulations, it was able to order the respondent to pay compensation under section 63 of the Organic Act on Political Parties B.E. 2541 (1998) or section 83 of the Organic Act on Political Parties B.E. 2550 (2007).

## **4. Summary of respondent's motion for preliminary ruling on a legal question and the applicant's objection.**

The respondent filed a motion with the Constitutional Court for a preliminary ruling on a legal question which could be summarised as follows. Section 93 paragraph two of the

Organic Act on Political Parties B.E. 2550 (2007) contained provisions on the person having the authority to submit an opinion on the dissolution of a political party, i.e. only the Political Party Registrar had the power to rule on whether or not there was probable cause for the dissolution of a political party pursuant to a complaint. Similar provisions were enacted in section 67 of the Organic Act on Political Parties B.E. 2541 (1998) and section 95 of the Organic Act on Political Parties B.E. 2550 (2007). The Election Commission had no power to submit an opinion on such matter. The Election Commission merely had the power to approve the Political Party Registrar's submission of an application to the Constitutional Court for an order to dissolve a political party. According to the facts stated in the application, the process taken had omitted a step and was not in accordance with the rules provided by law. As a consequence, the opinion and resolution of the Election Commission on such matter were inconsistent with section 65 of the Organic Act on Political Parties B.E. 2541 (1998) and section 93 of the Organic Act on Political Parties B.E. 2550 (2007). The applicant therefore did not have the power to submit an application to the Constitutional Court for an order to dissolve the respondent's party. Although the Chairman of the Election Commission attended the meeting of the Election Commission on 12<sup>th</sup> April B.E. 2553 (2010), his participation, however, was merely in the capacity of an Election Commissioner, not as the Political Party Registrar. Moreover, the applicant did not have the power to conduct an investigation nor to submit an application in this case since the proceedings were not taken within the period prescribed by law. In other words, the applicant's allegations concerned the improper use of monies from the Fund for Development of Political Parties, which was regarded under section 50 of the Organic Act on Election of Members of the House of Representatives and Installation of Senators B.E. 2550 (2007) as an election expense. As a result, an objection had to be filed within one hundred and eighty days as from the day of announcement of election results.

The applicant filed an objection to the respondent's motion for preliminary ruling of legal question, which could be summarised as follows. The actions of Mr. Aphichart Sukhaggonond, the Chairman of the Election Commission, in voting for a resolution on 12<sup>th</sup> April B.E. 2553 (2010) on the second allegation that the respondent had committed a wrongdoing and that an application for party dissolution should be filed under section 93 paragraph two were also regarded as the opinion of the Political Party Registrar. Therefore, the deliberations in meeting on 21<sup>st</sup> April B.E. 2553 (2010) and the Election Commission's unanimous opinion in favour of the applicant's submission of an application to the Constitutional Court in the case of the respondent's violation of section 82 for a Constitutional Court order to dissolve the respondent party, were proceedings undertaken in compliance with section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). Moreover, the cause of action in this case related to the improper expenditure of monies from the Fund for Development of Political Parties and the filing of a factually inaccurate report of expenditure of monies from the Fund for Development of Political Parties, not a case of an objection to election expenditures as claimed by the respondent. Thus, the time prescription for the submission of an objection within 180 days as from the day of announcement of election results as provided under section 94 of the Organic Act on Election of Members of

the House of Representatives and Senators B.E. 2541 (1998) or section 114 of the Organic Act on Election Members of the House of Representatives and Installation of Senators B.E. 2550 (2007) did not apply. Also, there was no prescription period for a case on the wrongful or improper use of monies from the Fund for Development of Political Parties.

## **5. The issues considered by the Constitutional Court**

The Constitutional Court determined that the following issues required ruling:

The first issue was whether or not the submission of the application for dissolution of the respondent party was lawful.

The second issue was whether or not the respondent's actions as stated in the application were subject to the Organic Act on Political Parties B.E. 2541 (1998) or the Organic Act on Political Parties B.E. 2550 (2007).

The third issue was whether or not the respondent had expended monies granted by the Fund for Development of Political Parties in B.E. 2548 (2005) in accordance with the approved projects.

The fourth issue was whether or not the respondent had prepared a factually accurate report on the expenditure of political party grant in B.E. 2548 (2005).

The fifth issue was whether or not, and if so how, in the case where there was a cause for the dissolution of the respondent's party, the party leader and party executives should have their election rights abrogated or revoked under the Organic Act on Political Parties B.E. 2541 (1998) or the Announcement of the Council for Democratic Reform No. 27 Re: Amendment of the Announcement of the Council for Democratic Reform No. 15 dated 21<sup>st</sup> September B.E. 2549 (2006), dated 30<sup>th</sup> September B.E. 2549 (2006), or the Organic Act on Political Parties B.E. 2550 (2007).

So as to ensure that the trial of this case proceeded in a suitable manner, the Court found it appropriate to rule on the second issue first.

**The second issue** was whether or not the respondent's actions stated in the application were subject to the Organic Act on Political Parties B.E. 2541 (1998) or the Organic Act on Political Parties B.E. 2550 (2007).

The applicant alleged that the respondent had committed a violation of the law thereby constituting a cause for party dissolution in the period between B.E. 2547-2548 (2004-2005). During such period, the Organic Act on Political Parties B.E. 2541 (1998) was effective. At the time of application, however, the Organic Act on Political Parties B.E. 2550 (2007) was enacted to replace the Organic Act on Political Parties B.E. 2541 (1998). Thus, with respect to the provisions pertaining to the causes for dissolution of a political party in this case, the provisions of the Organic Act on Political Parties B.E. 2541 (1998), which was in

force at the time of occurrence of such causes, should prevail in this ruling in accordance with Ruling of the Constitutional Court No. 17/2550 (2007). The application of the Organic Act on Political Parties B.E. 2541 (1998) to a ruling only meant a ruling on the substantive law, i.e. the provisions prescribing the wrongdoings or prohibitions or regulations. The procedural law, on the other hand, must conform to the Organic Act on Political Parties B.E. 2550 (2007), which was the law in force at the time of these legal proceedings.

**The first issue** was whether or not the submission of an application for dissolution of the respondent party was lawful.

The submission of an application to the Court for the dissolution of a political party was governed by section 93 of the Organic Act on Political Parties B.E. 2550 (2007), which stated in paragraph two that “when it appeared before the Registrar that a political party showed a cause under paragraph one, the Registrar, with the approval of the Election Commission, shall submit an application to the Constitutional Court within fifteen days as from such finding of the Registrar.” From the said provisions, it could be seen that once the Political Party Registrar knew that a political party had committed a violation of section 82 of the Organic Act on Political Parties B.E. 2550 (2007) thereby constituting a cause for the dissolution of such political party under section 93 paragraph one, upon such facts appearing before the Political Party Registrar, regardless of whether the knowledge was obtained on the Political Party Registrar’s own accord or by notification from any person, the Political Party Registrar was the competent authority to make a preliminary determination on whether or not such known acts constituted a cause for dissolution of the political party. If the Political Party Registrar found that a political party had violated section 82, such a case would constitute facts appearing before the Political Party Registrar. It was therefore the duty of the Political Party Registrar to seek the approval of the Election Commission in order to submit an application to the Constitutional Court for the dissolution of such political party. The law provided that the prior approval of the Election Commission must be sought in order to ensure that proceedings on this significant matter were carried out prudently. The law also provided that a preliminary determination on whether or not a political party had violated section 82 was the power of the Political Party Registrar since section 82 was a provision on the supervision of the proper expenditure of political party sponsorship funds, including documentary operations i.e. the due preparation of documents and reports, which were normally routine tasks under the direct supervisory authority of the Political Party Registrar to ensure legal compliance of political parties. Such matters were within the powers and duties of the Political Party Registrar who regularly exercised inspections. Section 93 therefore provided for the Political Party Registrar to submit a direct application to the Constitutional Court.

When making a determination, the law did not require the Political Party Registrar to make a determination on his own accord. The Political Party Registrar therefore had the power to appoint or request an opinion from any person, including a request for an opinion from the Election Commission. A Determination however remained under the Political Party Registrar’s competence to consider and make an opinion prior to dissolution of a political

party. The Election Commission, despite its being a more superior organ than the Political Party Registrar, did not have the power to make a preliminary determination on whether or not there was a cause for political party dissolution under section 82. The Election Commission merely had the power to approve a submission made by the Political Party Registrar.

According to the application, reply statement and motion for preliminary ruling on a legal question submitted by the respondent, together with the objection to the motion for preliminary ruling on a legal question submitted by Mr. Apichart Sukhaggonond, the Political Party Registrar, the following finding of facts was made. In March B.E. 2552 (2009), the Department of Special Investigations and Mr. Kiatudom Menasawat petitioned the Political Party Registrar for an investigation of the respondent's violation of the Organic Act on Political Parties B.E. 2550 (2007) in two instances, namely that (1) the payment made by TPI Polene Public Company Limited to Mesiah Business and Creation Company Limited as hire for the production of promotional materials was a concealed donation made by TPI Polene Public Company Limited to the respondent, and (2) the respondent's expenditure of the political party grant was not in accordance with the law and the expenditure report was not factually accurate.

After receiving the notice from the Department of Special Investigations and Mr. Kiatudom Menasawat, Mr. Apichart Sukhaggonond submitted the matter to the meeting of the Election Commission on 30<sup>th</sup> April B.E. 2552 (2009). The Election Commission then passed a resolution to appoint a committee to investigate the matter and report to the Election Commission. The investigation committee, after an investigation and review of the relevant evidence, found that the respondent had not committed a wrongdoing in both instances. A unanimous opinion was given on the second instance, which was the cause of action in this case, and an investigation report was submitted to the Election Commission for acknowledgement. Thereafter, on 17<sup>th</sup> December B.E. 2552 (2009), the Election Commission deliberated on the report filed by the investigation committee and passed a majority resolution which instructed the Political Party Registrar to proceed under section 95 of the Organic Act on Political Parties B.E. 2550 (2007) in both instances. In that resolution, Mr. Apichart Sukhaggonond, in his capacity as Chairman of the Election Commission, voted in the minority and gave his opinion on both instances as follows: (1) it was not found on the facts that TPI Polene Public Company Limited donated funds to the respondent and (2) it was neither found that the expenditure of political party grant was not in accordance with the law nor that the expenditure report was not true and accurate; thus the protest should be dismissed in accordance with the opinion of the investigation committee.

Subsequent to the resolution by the Election Commission, Mr. Apichart Sukhaggonond, in his capacity as the Political Party Registrar, issued an order on 29<sup>th</sup> December B.E. 2552 (2009) to appoint a Review Committee for Proceedings under the Organic Act on Political Parties B.E. 2550 (2007) pursuant to the majority resolution of the Election Commission. Such appointment of a fact-finding committee as part of the exercise of legal functions was within the powers of the Political Party Registrar as provided under section 6 paragraph one



of the Organic Act on Political Parties B.E. 2550 (2007). Thereafter, on 12<sup>th</sup> April B.E. 2553 (2010), the chairman of the fact-finding committee submitted a summary of facts and an opinion to the Political Party Registrar. On the same day, Mr. Apichart Sukhaggonond, in his capacity as Political Party Registrar, entered his opinion at the bottom of the fact-finding committee's letter reporting the outcome of deliberations that "after consideration, I find from the facts compiled by the Political Party Registrar's working group in addition to those preliminarily compiled by the investigation committee appointed by the Election Commission, that there might have been a commission of an act under section 94 of the Organic Act on Political Parties; as this is an important matter, it should be deliberated and determined by the Election Commission; thus the matter should be urgently submitted to the Election Commission through the Chairman of the Election Commission." It also appeared from Exhibit Ror 14 that the Political Party Registrar only held the opinion that there might or might not have been a commission of an act under section 94 of the Organic Act on Political Parties B.E. 2550 (2007). As this was an important matter, it was therefore referred to the Election Commission for determination.

Mr. Apichart Sukhaggonond, in his capacity as Chairman of the Election Commission, summoned a meeting of the Election Commission on 12<sup>th</sup> April B.E. 2553 (2010) and presented the review results of such committee to the Election Commission for deliberation. The meeting of the Election Commission passed a unanimous resolution on the instance stated in the application of this case that the respondent's party should be dissolved, and a majority resolution that the Political Party Registrar should notify the Attorney-General along with evidence so that the Attorney-General could file an application to the Constitutional Court for a dissolution order against the respondent's party pursuant to section 95. Mr. Apichart Sukhaggonond, in his capacity as Chairman of the Election Commission, gave his personal opinion in voting for the resolution that "the Political Party Registrar with the approval of the Election Commission shall submit an application to the Constitutional Court within fifteen days pursuant to section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007)." Thereafter, on 21<sup>st</sup> April B.E. 2553 (2010), the Election Commission held another meeting. The Political Party Registrar, as the Chairman of the Election Commission, however, was not present at the meeting. The meeting passed a unanimous resolution to approve the Political Party Registrar's submission of an application to the Constitutional Court for dissolution of the respondent's party under section 93 of the Organic Act on Political Parties B.E. 2550 (2007). The opinion given by Mr. Apichart Sukhaggonond upon voting in the meeting of the Election Commission on 12<sup>th</sup> April B.E. 2553 (2010) was deemed as the opinion of the Political Party Registrar.

A question which had to be decided was therefore whether or not the individual opinion of the Chairman of the Election Commission given upon voting in the meeting of the Election Commission on 12<sup>th</sup> April B.E. 2553 (2010) constituted an opinion of the Political Party Registrar.

The Organic Act on Political Parties B.E. 2550 (2007) separated the powers and duties of the Political Party Registrar and the Chairman of the Election Commission, the latter

being a constituent of the Election Commission. The different positions entailed different functions. The factors applicable as rules for determining various questions depended on the functions and tasks incidental to the position held at that time. The law provided for the Political Party Registrar to determine whether or not a wrongdoing had been committed under section 82 of the Organic Act on Political Parties B.E. 2550 (2007) since the Political Party Registrar had the duty of supervising the legal compliance of political party operations and had good knowledge of the details of such operations. The Chairman of the Election Commission and the Election Commission, on the other hand, did not have the duty to supervise the functioning of political parties, but merely had the power to review the rationality of the Political Party Registrar's opinion. The issues put forward for their determination were therefore different in the essence.

On 12<sup>th</sup> April B.E. 2553 (2010), Mr. Apichart Sukhaggonond gave 2 opinions. One was given in the written instruction for the submission of the matter to the meeting of the Election Commission where it was clearly specified that the opinion was given in the capacity of the Political Party Registrar. As for the opinion given in the vote cast in the meeting of the Election Commission, such opinion was given in the capacity of the Chairman of the Election Commission. The opinion of Mr. Apichart Sukhaggonond in such vote was part of the resolution of the meeting of the Election Commission. The Political Party Registrar did not have any power to participate in the votes in the meeting of the Election Commission. The vote was therefore different from the written instruction for the submission of the matter to the Election Commission for deliberations as earlier given in the capacity of the Political Party Registrar. An opinion was thus submitted to the Election Commission for endorsement. The opinion of Mr. Apichart Sukhaggonond in the vote cast in the capacity of the Chairman of the Election Commission on 12<sup>th</sup> April B.E. 2553 (2010) could not be deemed as the opinion of the Political Party Registrar. Determining otherwise would lead to a finding on the facts that Mr. Apichart Sukhaggonond had already cast a vote in the capacity of the Chairman of the Election Commission at an earlier time in the meeting of the Election Commission on 17<sup>th</sup> December B.E. 2552 (2009) that the respondent had applied the political party grant in accordance with the objects of the project with the modifications requested and already approved. Yet, there was no such deeming that the opinion given in the capacity of the Chairman of the Election Commission on such an occasion constituted the opinion of the Political Party Registrar. As the law provided for the Political Party Registrar to submit the application in this case to the Constitutional Court, the expression of Mr. Apichart Sukhaggonond's individual opinion in the meeting of the Election Commission in his capacity as Chairman of the Election Commission on 12<sup>th</sup> April B.E. 2553 (2010) therefore did not constitute an opinion of the Political Party Registrar.

Moreover, the written instruction of Mr. Apichart Sukhaggonond given in his capacity as the Political Party Registrar, as evidenced by the memorandum in Exhibit Ror 13, did not constitute a decision or opinion of the Political Party Registrar on whether or not the respondent had committed an act constituting a ground for party dissolution. The instruction was merely a submission to the Election Commission for deliberations on the possibility of the commission of an act under section 94. In any event, an act under section 94 of the

Organic Act on Political Parties B.E. 2550 (2007) was neither related to the unlawful expenditure of political party grant nor to the false reporting of expenditures, violations under section 82, which would constitute a cause for dissolution of the respondent's party under section 93. As the Political Party Registrar had not yet given an opinion on the dissolution of the respondent's party under section 93 of the Organic Act on Political Parties B.E. 2550 (2007), the opinion given by the Election Commission on 21<sup>st</sup> April B.E. 2553 (2010) therefore constituted an irregularity in the essence of legal procedures. Hence, there was no legal effect in terms of authorizing the Political Party Registrar to submit an application to the Constitutional Court for the dissolution of the respondent's party.

Aside from the above, there was an alternative reason for the ruling. Since the intent of the Organic Act on Political Parties B.E. 2550 (2007) was to ensure that the discharge of functions by the Political Party Register was scrutinized by the Election Commission, as an internal audit within the agency, the procedural law thus provided procedures for submitting an application for political party dissolution. The Election Commission was also an organ entrusted with the power to conduct fact-finding investigations and make rulings on questions or objections arising from acts carried out under the Organic Act on Political Parties B.E. 2550 (2007). These functions were in accordance with section 236 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The Election Commission therefore had the power to control and supervise the performance of functions by the Political Party Registrar. The Political Party Registrar had to comply with the resolution of the Election Commission, and the Political Party Registrar had to submit an application to the Constitutional Court for a political party dissolution order pursuant to the procedures and time limits prescribed in the process contained in the currently applicable procedural law, i.e. section 93 paragraph two and section 95 of the Organic Act on Political Parties B.E. 2550 (2007).

In an alleged case under section 93 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007), section 93 paragraph two did not provide that the Political Party Registrar should submit an opinion that a political party showed a cause under paragraph one to the Election Commission in order to seek the latter's endorsement for the submission of an application to the Constitutional Court for the dissolution of such political party. This was different to an alleged case under section 94 of the Organic Act on Political Parties B.E. 2550 (2007) where section 95 paragraph one provided that upon facts appearing before and verified by the Political Party Registrar, i.e. the Political Party Registrar had to review the case pursuant to the powers and duties of the Political Party Registrar, a submission would then be made to the Election Commission along with an opinion on whether the political party had committed an act under section 94 irrespective of whether the opinion also proposed the dissolution of such political party. This was consistent with the legislative intent that the exercise of discretion by the Political Party Registrar be reviewed and scrutinized by the Election Commission in both cases of submissions for dissolution or non-dissolution of such political party.

Therefore, in the case under this application, the applicant could either submit or not submit an opinion that the respondent showed a cause under section 93 paragraph one of the

Organic Act on Political Parties B.E. 2550 (2007) to the Election Commission. After the applicant's receipt of a letter requesting investigations on the respondent from the Department of Special Investigations and Mr. Kiatudom Menasawat, thereafter, on 30<sup>th</sup> April B.E. 2552 (2009), the Election Commission passed a resolution in meeting no. 48/2552 (2009), stating reasons that facts had appeared before the Election Commission but not yet before the Political Party Registrar that there was a reasonable cause to believe that an act had or had not been committed in violation or non-compliance with the law as alleged in both allegations. A resolution was therefore passed to appoint a committee chaired by Mr. Isara Limsiriwong to conduct an investigation on such matter.

On 17<sup>th</sup> December B.E. 2552 (2009), in meeting of the Election Commission no. 144/2552 (2009), after deliberations on the report of the investigation committee pertaining to both allegations, a majority resolution was passed to refer the matter to the applicant in order to consider taking proceedings under section 95 of the Organic Act on Political Parties B.E. 2550 (2007) on both allegations. The applicant, in his capacity as the Chairman of the Election Commission, voted in the minority to dismiss the application to dissolve the respondent's party on both allegations due to the absence of a finding of wrongdoing. The applicant's opinion was not binding on the Election Commission since the applicant was required to comply with the majority decision. However, as the majority resolution of the Election Commission was a determination on both allegations, each determination should be considered separately and carefully. Only the resolution on the allegation under section 95 of the Organic Act on Political Parties B.E. 2550 (2007) was deemed as a majority resolution which ordered the applicant to present an opinion before submitting to the Election Commission for further consideration. On this allegation, the applicant was able to appoint a committee to assist in making a review prior to presenting an opinion. As for the allegation under section 93 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007), the Election Commission's majority resolution which also included an instruction that the applicant should first submit an opinion for consideration by the Election Commission was an ambiguity in the application of the law in such agency. Thereafter, in meeting no. 41/2553 (2010) on 12<sup>th</sup> April B.E. 2553 (2010), the majority opinion reasoned that the facts in both allegations were interconnected. As a result, the resolution passed still notified the applicant to take proceedings under section 95 of the Organic Act on Political Parties B.E. 2550 (2007). In this regard, the applicant and Mr. Wisut Pothithan, an Election Commissioner, gave the opinion that the applicant should submit an application to the Constitutional Court pursuant to section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). In meeting no. 43/2553 (2010) on 21<sup>st</sup> April B.E. 2553 (2010), the Election Commission passed a clear unanimous resolution which affirmed endorsement for the applicant's submission of an application to the Constitutional Court pursuant to section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). This showed that the majority decision of the Election Commission had already given approval for the applicant's submission of an application to the Constitutional Court pursuant to section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007) since 17<sup>th</sup> December B.E. 2552 (2009). The applicant was not required to submit a prior opinion. In this case, it could be deemed that

facts had already appeared before the Political Party Registrar that the respondent showed a cause under section 93 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007) and that the Election Commission had already given approval for the submission of an application to the Constitutional Court. The fifteen day time limit for submission of an application to the Constitutional Court therefore commenced from 17<sup>th</sup> December B.E. 2552 (2009), which was the date of resolution by the Election Commission.

As regards the respondent's issue of Order No. 9/2552 (2009) dated 29<sup>th</sup> December B.E. 2552 (2009) appointing a review committee to review the investigation report of the investigation committee chaired by Mr. Isara Limsiriwong and the Election Commission's majority resolution in meeting no. 41/2553 (2010) on 12<sup>th</sup> April B.E. 2553 (2010) re-approving the instruction to the applicant to notify the Attorney-General in order to submit an application to the Constitutional Court for dissolution of the respondent's party on both allegations pursuant to section 94(3) and (4) and section 95 of the Organic Act on Political Parties B.E. 2550 (2007); despite the Election Commission's unanimous resolution in meeting no. 43/2553 (2010) on 21<sup>st</sup> April B.E. 2553 (2010) giving approval for the Political Party Registrar's submission of an application to the Constitutional Court for a party dissolution order against the respondent pursuant to section 93 of the Organic Act on Political Parties B.E. 2550 (2007), such proceedings were merely internal reviews within the agency and an attempt to clarify the application of legal provisions within the agency, which was still subject to the time limit under section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), i.e. this was a case where an application had to be submitted to the Constitutional Court within fifteen days as from 17<sup>th</sup> December B.E. 2552 (2009), being the day when the Election Commission passed a majority resolution after deliberations on the report of the first investigation committee chaired by Mr. Isara Limsiriwong, appointed by the Election Commission. Such date was also deemed as the day when facts appeared before the Political Party Registrar. Thus, when the applicant submitted an application in this case on 26<sup>th</sup> April B.E. 2553 (2010), the fifteen day limit prescribed by law had already expired. The process of submitting the application for dissolution of the respondent party was therefore unlawful.

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

The Constitutional Court, by a majority (4 to 2), held that the submission process of the application for dissolution of the respondent's party had been unlawfully conducted. There was no need to make a further ruling on the other issues. One of the four in the majority reasoned that in this case facts had appeared before the Political Party Registrar and the Election Commission had approved the Political Party Registrar's submission of an application to the Constitutional Court since 17<sup>th</sup> December B.E. 2552 (2009). The submission of application in this case therefore exceeded the fifteen day limit imposed by law.

Three of the four in the majority reasoned that facts had not yet appeared before the Political Party Registrar that a violation of the law which would constitute a cause for dissolution of the respondent's party had been committed, and that the Political Party

Registrar had not yet submitted an opinion that there was a cause for dissolution of the respondent's party pursuant to section 93 paragraph two. Also, the Political Party Registrar had not yet sought the approval of the Election Commission. As for the opinion of the Chairman of the Election Commission in the meeting of the Election Commission on 12<sup>th</sup> April B.E. 2553 (2010), such an opinion was not made in the capacity of the Political Party Registrar. The submission process of the application for dissolution of the respondent's party therefore had been unlawfully conducted.

By virtue of the aforesaid reasons, the Constitutional Court dismissed the application.

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