

Summary of Constitutional Court Ruling No. 16/2553 (2010)

Dated 9th December B.E. 2553 (2010)*

Re: The Attorney-General petitioned the Constitutional Court for an order to dissolve the Democrat Party.

.....

1. Summary of background and facts

The Attorney-General (applicant) submitted an application to the Constitutional Court for a dissolution order against the Democrat Party (respondent) under section 63 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), section 68 and section 236 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and section 67 of the Organic Act on Political Parties B.E. 2541 (1998) or section 95 of the Organic Act on Political Parties B.E. 2550 (2007) as it appeared before the Political Party Registrar that the respondent had violated section 66(2) and (3) of the Organic Act on Political Parties B.E. 2541 (1998) and section 94(3), (4) and (5) of the Organic Act on Political Parties B.E. 2550 (2007). The application could be summarized as follows:

(1) The Political Party Registrar, in a letter dated 10th May B.E. 2553 (2010), sent a factual investigation file to the applicant in order to submit an application to the Constitutional Court for an order to dissolve the respondent's party in the case of the Department of Special Investigation's receipt of a complaint filed against TPI Polene Public Company Limited on circumstances indicating offences under the Securities and Exchange Act B.E. 2535 (1992) and offences under other relevant laws. References were made to the Democrat Party in 2 cases, as follows. On the first allegation, the Democrat Party received donations in the form of monies 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 the production of various media materials. It was alleged that the contract was a concealed juristic act transacted to avoid the reporting of donations received as required by law. These circumstances could constitute offences under section 66(2) and (3) of the Organic Act on Political Parties B.E. 2541 (1998) and section 94(3), (4) and (5) of the Organic Act on Political Parties B.E. 2550 (2007). As for the second allegation, the Democrat Party failed to expend the grant received from the Office of the Election Commission in accordance with the provisions of law and filed a false report on the expenditure of political party grant to the Election Commission, which could constitute an

* Published in the Government Gazette Vol. 128, Part 47a, dated 10th June B.E. 2554 (2011).

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). In addition, Mr. Kietudom Menasawas, 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 on those 2 allegations.

(2) On 30th April B.E. 2552 (2009), the Election Commission passed a resolution in meeting no. 48/2552 (2009) to appoint an investigation committee on such matter. The investigation committee conducted investigations in 3 sessions. The same resolutions were passed on both allegations. A majority resolution found it appropriate to dismiss the protest under the first allegation and a unanimous resolution found it appropriate to dismiss the protest under the second allegation.

(3) In meeting no. 144/2552 (2009) on 17th December B.E. 2552 (2009), the Election Commission passed a majority resolution to refer the matter to the Political Party Registrar for proceedings under section 95 of the Organic Act on Political Parties B.E. 2550 (2007). The Political Party Registrar subsequently issued Order No. 9/2553 (2010) dated 29th December B.E. 2552 (2009) to appoint a Review Committee for Proceedings under Section 95 of the Organic Act on Political Parties B.E. 2550 (2007).

(4) On 12th April B.E. 2553 (2010), the Political Party Registrar found that there might 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 issue which should be determined by resolution of the Election Commission, the matter was therefore urgently submitted to the Election Commission for consideration via the Chairman of the Election Commission.

(5) In meeting of the Election Commission no. 41/2553 (2010) on 12th April B.E. 2553 (2010), the Election Commission made a determination on the first allegation that the respondent's receipt of money donations from TPI Polene Public Company Limited through Messiah Business and Creation Company Limited by way of a hire contract for production of various media materials was a concealed juristic act to avoid reporting of the receipt of money donations as required by law, thereby potentially constituting an offence under section 66(2) and (3) of the Organic Act on Political Parties B.E. 2541 (1998) and section 94(3), (4) and (5) of the Organic Act on Political Parties B.E. 2550 (2007). The Election Commission therefore passed a majority resolution to direct the Political Party Registrar to notify the applicant along with evidence in order to enable the latter to submit an application to the Constitutional Court for an order to dissolve the respondent's party under section 95 of the Organic Act on Political Parties B.E. 2550 (2007).

The applicant found that there was insufficient evidence. A letter was therefore sent to the Political Party Registrar for the appointment of a working group for collection of additional evidence, comprising representatives of the Political Party Registrar and representatives of the Office of the Attorney-General. The working group concluded that the applicant should submit an application to the Constitutional Court.

(6) The applicant therefore submitted an application to the Constitutional Court for the following decisions:

1. An order to dissolve the respondent's party pursuant to section 68 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and section 94 and section 95 of the Organic Act on Political Parties B.E. 2550 (2007).

2. An order to prohibit executives of the dissolved respondent's party 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 for a period of five years as from the day of the respondent party's dissolution under section 97 of the Organic Act on Political Parties B.E. 2550 (2007).

3. An order to revoke the election rights of the respondent party's leader and executives in office at the time of the event 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, dated 30th September B.E. 2549 (2006), or under section 68 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and section 98 of the Organic Act on Political Parties B.E. 2550 (2007).

2. Preliminary issue

The Constitutional Court ordered the admission of the application for a ruling 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 statement in reply to the allegations, as follows:

(1) The investigation conducted by the Department of Special Investigations was unlawful since the power to investigate an offence under the Organic Act on Political Parties was vested in the Political Party Registrar and the Election Commission. Also, these two allegations were not criminal cases specified under section 21 of the Special Investigations Act B.E. 2547 (2004). On the contrary, they were new and distinct cases from the cases involving allegations of wrongdoings by TPI Polene Public Company Limited under the Securities and Exchange Act B.E. 2535 (1992) and those cases had not yet been authorized for special investigation.

(2) The respondent's acts occurred towards the end of B.E. 2547 (2004) till the beginning of B.E. 2548 (2005). The Organic Act on Political Parties B.E. 2541 (1998), which was in force at the time of the act, therefore applied.

(3) The resolutions of the investigation committee to dismiss the allegations against the respondent's party on all 3 occasions were deemed as opinions of the Political Party Registrar. The Political Party Registrar's opinion in the meeting on 17th December B.E. 2552 (2009) that the respondent's party had not committed a wrongdoing was consequentially deemed as final and a dismissal of the complaint. The Political Party Registrar therefore did not have the authority to reconsider the case. The review committee appointed by the Political Party Registrar also did not enjoy any legal recognition as opposed to the review committee under the Rules of the Election Commission on Investigations and Rulings B.E. 2550 (2007) which pertained only to a case under section 105 of the Organic Act on Election of Members of the House of Representatives and Installation of Senators B.E. 2550 (2007). The Political Party Registrar therefore did not have the power to appoint a review committee.

(4) The Election Commission failed to provide the respondent or leader of the respondent's party with a summary of the allegations so as to give notice of the particular laws violated by the respondent.

(5) The allegation that the respondent unlawfully received money donations had to be filed as a protest within 180 days under section 50 of the Organic Act on Election of Members of the House of Representatives and Installation of Senators B.E. 2550 (2007). The protest in this application was, however, filed after the expiration of the limitation period.

(6) The respondent's party did not receive any money donations from TPI Polene Public Company Limited through Messiah Business and Creation Public Company Limited as alleged.

Subsequently, the respondent submitted a motion to the Constitutional Court for a preliminary ruling on the question of law concerning Ruling of the Constitutional Court No. 15/2553 (2010) which required a determination by the Political Party Registrar on the existence of a probable cause for dissolution of a political party before referring the matter to the Election Commission along with such opinion so as to enable the latter to exercise scrutiny over the Political Party Registrar's discretion. As the Political Party Registrar had not yet given an opinion pursuant to the procedure provided under section 95 of the Organic Act on Political Parties B.E. 2550 (2007), the opinion given by the Election Commission was therefore a material error in the legal procedure. As a result, the applicant did not have the legal power to submit an application in this case.

4. The issues considered by the Constitutional Court

During the trial, the court ordered the inclusion of files and evidence in the case of Constitutional Court Ruling No. 15/2553 (2010) for consideration in this case. It was also found that there was sufficient evidence in this case to make a ruling on the legal issues. An order was therefore issued to omit an inquiry. As for the motion for preliminary ruling on a

question of law, the court found that there was already sufficient evidence to determine the legal questions, thus a decision on this motion was not required. This matter raised 2 issues for consideration, as follows:

The first issue was whether or not this case concerned an application under section 68 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The Constitutional Court found that section 68 concerned a case where the Attorney-General had reviewed facts and submitted an application to the Constitutional Court for an order to terminate an act to overthrow the democratic form of government with the King as head of the the state or to acquire national administration powers by means that were not in accordance with the constitutional provisions. This application, however, did not involve a petition to the Constitutional Court for an order to terminate any act. The application was therefore not an application under section 68 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), but merely constituted an application under section 95 of the Organic Act on Political Parties B.E. 2550 (2007).

The second issue was whether or not the process of application for the dissolution of the respondent's party had been properly conducted under section 95 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court found as follows. Section 95 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007) provided that “when it appears before the Political Party Registrar or when the Political Party Registrar is notified by the Election Commission and, after review, finds that a political party has committed an act under section 94, the Political Party Registrar, with the approval of the Election Commission shall notify the Attorney-General along with evidence...” Such provisions meant that upon a finding that a political party has committed an act constituting a cause for dissolution of such party, the Political Party Registrar shall at first have the duty to carry out a review and reach an opinion to determine the cause for dissolution of the party. After the Political Party Registrar reached an opinion, the approval of the Election Commission would be sought for a referral of the matter to the Attorney-General for submission of an application to the Constitutional Court for an order to dissolve such political party. The power to give a preliminary opinion was the exclusive power of the Political Party Registrar. The provision of law required the prior approval of the Election Commission to ensure that proceedings of such matter of significance were carried out prudently. On the contrary, if the Political Party Registrar found that there was no violation of such law, the Election Commission would not have the power to decide on the dissolution of any political party.

The Constitutional Court found further as follows. The majority resolution of the Election Commission in meeting no. 144/2552 (2009) on 17th December B.E. 2552 (2009) referred the matter to the Political Party Registrar for consideration under section 95 of the Organic Act on Political Parties B.E. 2550 (2007) since there was no proper opinion of the Political Party Registrar. Thereafter, on 12th April B.E. 2553 (2010) the Political Party Registrar submitted an opinion to the Election Commission that “after consideration I find

based on the facts collected further by the Political Party Registrar's working group that the case may show an act under section 94 of the Organic Act on Political Parties B.E. 2550 (2007); thus constituting an important matter which should be submitted to the Election Commission for consideration." Such text of the Political Party Registrar failed to state an opinion on whether or not there was a cause for dissolution of the respondent's party. Moreover, the documents in support of the application also specified that the Political Party Registrar only held the opinion that an act under section 94 of the Organic Act on Political Parties B.E. 2550 (2007) might or might not have been committed. Upon consideration of the opinion of Mr. Apichart Sukhaggonond (Chairman of the Election Commission) in the meeting of the Election Commission on 12th April B.E. 2553 (2010), who held the opinion that the application should be dismissed due to lack of evidence to sustain an allegation of wrongdoing by the respondent's party, even though such an opinion was not regarded as the opinion of the Political Party Registrar, it still showed that Mr. Apichart Sukhaggonond, the Political Party Registrar did not yet hold the opinion that the respondent's party had committed any act which would constitute a cause for party dissolution.

5. Ruling of the Constitutional Court

Based on the foregoing reasons, it did not appear that the Political Party Registrar had reached a prior opinion that the respondent had committed an act constituting a cause for political party dissolution under section 95 of the Organic Act on Political Parties B.E. 2553 (2010). The opinion of the Election Commission in the meeting on 12th April B.E. 2553 (2010) to approve the submission of a notice by the Political Party Registrar to the Attorney-General along with evidence for the latter's submission of an application to the Constitutional Court for an order to dissolve the respondent's Democrat Party therefore amounted to a failure to adhere to the procedures provided by law, a procedural irregularity and a lack of authority to give approval or disapproval under section 95 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007). The Constitutional Court held by a majority of 4 to 3 that the application for dissolution of the respondent's party was unlawful.

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