

Summary of Constitutional Court Ruling* No. 49/2554 (2011)

Dated 28th December B.E. 2554 (2011)

Re: Cheevit Tee Dee Kwa Party requested the Constitutional Court for a ruling in the case of whether or not the Political Party Registrar's denial to register changes in party policy, party rules and party executives was consistent with the Organic Act on Political Parties B.E. 2550 (2007).

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1. Summary of background and facts

Cheevit Tee Dee Kwa Party (the applicant) held an annual general meeting which adopted changes in party policy, party rules and an election of new party executives due to the resignation of Mr. Watwarit Tantiprom from the position of leader of the applicant party. A letter was sent to notify the Political Party Registrar (the respondent) of the change. The respondent subsequently sent a letter to inform the applicant that a quorum of the general meeting was not constituted in accordance with section 29 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007). As a consequence, the Political Party Registrar rejected the change in party policy and party rules pursuant to section 41 of the Organic Act on Political Parties B.E. 2550 (2007). However, since the resignation of Mr. Watwarit Tantiprom from the position of leader of the applicant party, which led to the en masse retirement of the executive committee, was in accordance with the law, this change was accepted. As regards the general meeting's resolution to elect a new party executive committee, since there was no secret ballot as required under section 29 paragraph three, and furthermore the applicant party's executive committee did not meet the quorum requirement under section 11, the Political Party Registrar therefore denied registration of the change in party executives as provided under section 41 of the Organic Act on Political Parties B.E. 2550 (2007). The applicant stated that the respondent failed to hear the applicant's explanation affirming that the number of members present at the general meeting was sufficient and that those present were genuine members. It was contended that the respondent merely relied on the inspection of the Provincial Office of the Election Commission as a cause for denial of registration. If a quorum was, in fact, not properly constituted, the verbal expression of resignation by the party leader to the meeting should also be void. The respondent, however, regarded the resignation as effective. As for the issue on the election of party executives, the applicant argued that a secret ballot was not necessary because it was not required by any party executive or at least one-hundredth of those present at the meeting.

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The applicant was therefore of the opinion that the party resolution at the general meeting was lawful. The applicant thus requested the Constitutional Court to give a ruling pursuant to section 41 and section 13 in conjunction with section 9 and section 11 of the Organic Act on Political Parties B.E. 2550 (2007) on whether or not the order of the Political Party Registrar which denied registration of changes in the party policy, party rules and party executives was consistent with the Organic Act on Political Parties B.E. 2550 (2007).

2. Preliminary issue

The Constitutional Court admitted the application for adjudication pursuant to section 41 in conjunction with section 13 of the Organic Act on Political Parties B.E. 2550 (2007) and article 17(20) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007).

3. The Respondent's Reply

The Political Party Registrar (the respondent) submitted a reply stating that an inspection had shown that a certain number of those present at the meeting were not members of the applicant party and another portion was not even actually present. Hence, the number of persons present at the meeting failed to meet the legal threshold. Furthermore, the election of party executives was not conducted by secret ballot. The respondent had already given an opportunity to the applicant to give a statement of facts and present evidence but the applicant was unable to prove membership of the applicant party of those present at the meeting. In this regard, section 19 paragraph seven of the Organic Act on Political Parties B.E. 2550 (2007) provided a presumption that the party membership register in the electronic system was legally true and accurate. As for the election of party executives, section 29 paragraph three in conjunction with section 28 paragraph two (3) of the Organic Act on Political Parties B.E. 2550 (2007) provided that the election must be done by secret ballot. However, from the inspection of the minutes of the applicant's meeting and facts, it was found that there was no secret ballot. Thus, the election was invalid. In regard to Mr. Watwarit Tantipiroom's resignation from the position of party leader that was declared in the general meeting, since section 106(3) of the Constitution provided the term "resignation", which was consistent with the term used in article 20 paragraph (2) of the applicant's party rules, it was therefore deemed that an intent to resign may be expressed either in writing or verbally and that the recipient could be a public audience. This was analogous to Constitutional Court Ruling No. 19/2552 dated 2nd December B.E. 2552 (2009). The resignation was therefore valid and proceedings of the respondent were lawfully consistent with section 6 of the Organic Act on Political Parties B.E. 2550 (2007).

4. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not the Political Party Registrar order which denied registration of changes in party policy, party rules and party executives was consistent with the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court, after consideration, found as follows. Mr. Watwarit Tantipirom's resignation from leadership of the applicant party by expression of intent to the applicant party general meeting was effective. As a consequence, the party executive committee retired en masse pursuant to article 20 paragraph two (9) of the applicant party rules. The general meeting's subsequent open election of party executives, and not by secret ballot, was in violation of section 29 paragraph three in conjunction with section 28 paragraph two (3) of the Organic Act on Political Parties B.E. 2550 (2007). The ensuing election of applicant party executives was therefore unlawful. The applicant party was left with neither a party leader nor a party executive committee. For these reasons, there was no party leader who was authorised to execute the notification of changes in party policy, party rules and party executive committee pursuant to the applicant party rules. Hence, the respondent's order to deny registration of changes in party policy, party rules and party executives was consistent with the Organic Act on Political Parties B.E. 2550 (2007).

5. Ruling of the Constitutional Court

The Political Party Registrar order which denied registration of changes in party policy, party rules and party executives of Cheevit Tee Dee Kwa Party was consistent with the Organic Act on Political Parties B.E. 2550 (2007). The application was dismissed.
