

Summary of Constitutional Court Ruling No. 8-9/2555 (2012)

Dated 28th March B.E. 2555 (2012)*

**Re: The Political Parties Registrar Requested for a Constitutional Order to
Dissolve Puen Kaset Thai Party**

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1. Summary of background and facts

The Political Parties Registrar, applicant, submitted a total of two applications to the Constitutional Court requesting for an order to dissolve Puen Kaset Thai Party, respondent, pursuant to section 93 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), and requesting for an order to prohibit the executives of the dissolved respondent party from filing notice of the establishment of a new political party or from becoming a political party executive or from participating in the filing of a notice to establish a new political party for a period of five years as from the dissolution of the respondent party, pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007).

The facts in both applications and supporting documents could be summarized as follows:

Section 42 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007) provided that “a political party leader shall prepare an accurate report of political party activities in the preceding calendar year period in accordance with the procedure prescribed by the Registrar, and shall notify the Registrar within the month of March every year for general publication, except for a political party that has been established for less than ninety days up to the last day of the calendar year.” The respondent party was therefore subject to the rules requiring a report of political party activities for the preceding annual period to be filed with the applicant within the specified time limit.

First application (case no. 21/2553)

The Office of the Election Commission received the respondent party’s annual report of activities for the year B.E. 2551 (2008), but the report was not done by the general meeting of the respondent party. Thus, it was not in accordance with section 28 paragraph two (5) of the Organic Act on Political Parties B.E. 2550 (2007) and Notification of the Political Parties Registrar Re: Procedures for Reporting Political Party Activities B.E. 2550 (2007), dated

* Published in the Government Gazette Vol. 129, Part 97a, dated 10th October B.E. 2555 (2012).

11th December B.E. 2550 (2007). The report was therefore not duly made under section 42 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007). The applicant exercised powers under section 42 paragraph two to serve a written notice, dated 10th August B.E. 2552 (2009), to inform the respondent to prepare an accurate report of the respondent party's activities for the annual period of B.E. 2551 (2008) in accordance with section 28 paragraph two (5) and to notify the applicant within 10th October B.E. 2552 (2009).

The applicant sent a letter requesting for a time extension of the endorsement of the report for B.E. 2551 (2008) to 31st December B.E. 2552 (2009) citing reasons that the respondent party was a small party and faced administrative problems. Upon the expiration of the time limited specified by the applicant, the applicant had not yet received the respondent party's report of activities for B.E. 2551 (2008). The applicant thus sent a written notice dated 21st October B.E. 2552 (2009) to inform the respondent that a time extension could not be granted, and that the respondent was required to give reasons for failing to report activities of the respondent party for the annual period of B.E. 2551 (2008) within seven days of receiving the letter. The respondent received the letter but failed to give reasons within the specified time limit.

The Office of the Election Commission was of the opinion that the respondent failed to comply with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), thus constituting a cause for party dissolution. It was thus proposed that the applicant took actions to dissolve the respondent party pursuant to section 93 paragraph two. On 31st May B.E. 2553 (2010), the applicant gave his approval and made a submission to the meeting of the Election Commission for endorsement. The Election Commission adopted a resolution in meeting number 58/2553 on 3rd June B.E. 2553 (2010) approving the applicant's filing of an application to the Constitutional Court for proceedings to dissolve the respondent party pursuant to section 93 paragraph two, which was a case where the respondent party failed to comply with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). The first application was filed at the Constitutional Court on 16th June B.E. 2553 (2010).

Second application (case no. 51/2553)

The respondent failed to file a report of party activities with the applicant in accordance with section 42 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007). The applicant therefore exercised powers under section 42 paragraph two to serve a written notice to inform the respondent to prepare an accurate report of the respondent party's activities for the annual period of B.E. 2552 (2009) pursuant to section 28 paragraph two (5), and to notify the applicant within 31st July B.E. 2553 (2010). Upon the expiration of the time limit specified by the applicant, the applicant had not yet received the report of the respondent party's activities for the annual period of B.E. 2552 (2009). The applicant therefore sent a written notice to the respondent to give reasons for failing to report activities of the respondent party for the annual period B.E. 2552 (2009) within seven days of receiving

the notice. The respondent received the notice but failed to give any reasons within the specified time limit.

The Office of the Election Commission was of the opinion that the actions of the respondent party was a failure to comply with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007) thus constituting a cause for party dissolution. It was thus proposed that the applicant take actions to dissolve the respondent party pursuant to section 93 paragraph two. On 20th December B.E. 2553 (2010), the applicant gave his approval and made a submission to the meeting of the Election Commission for endorsement. The Election Commission adopted a resolution in meeting number 140/2553 on 23rd December B.E. 2553 (2010) approving the applicant's filing of an application to the Constitutional Court for proceedings to dissolve the respondent party pursuant to section 93 paragraph two, which was a case where the respondent party failed to comply with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). The second application was filed at the Constitutional Court on 30th December B.E. 2553 (2010).

The applicant requested for a Constitutional Court ruling in both applications, as follows:

1. To order the dissolution of the respondent party pursuant to section 93 paragraph two in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007).

2. To order the prohibition of executive office holders of the dissolved respondent party for a violation under section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007) from filing notice of the establishment of a new political party or taking office as a political party executive, or participating in the filing of a notice of establishment of a new political party for a period of five years as from the dissolution of the respondent party pursuant to 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 both applications for trial and ruling under section 93 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court, after examining the applications, ordered the admittance of the applications for trial and ruling under section 93 of the Organic Act on Political Parties B.E. 2550 (2007) in conjunction with clause 17(20) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The applications were consolidated into one trial. The respondent was directed to submit a reply within fifteen days of receiving a copy of the application. The respondent, however, did not submit any reply.

The subsequent issue which had to be ruled upon was whether or not the submission process of the application to dissolve the respondent party was lawful.

After consideration, the Constitutional Court made the following findings. Section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007) provided that the Registrar, by the approval of the Election Commission, should submit an application to the Constitutional Court within fifteen days of the Political Parties Registrar finding that a political party had failed to comply with section 42 paragraph two for a Constitutional Court order to dissolve the respondent party. Under the first application, the Political Parties Registrar, applicant, made a finding on 31st May B.E. 2553 (2010) but submitted an application to the Constitutional Court on 16th June B.E. 2553 (2010). Hence, the application was submitted after the expiration of the fifteen day period specified by law. The submission of an application to dissolve the respondent party was therefore not in accordance with section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). This application was dismissed.

As for the second application, the Political Parties Registrar, applicant, made a finding on 20th December B.E. 2553 (2010). The Political Parties Registrar submitted an application to the Constitutional Court on 30th December B.E. 2553 (2010), which was a submission within the fifteen day period. The submission of this application was therefore in accordance with section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007).

3. The issues considered by the Constitutional Court

The first issue was whether or not there was a cause for dissolution of the respondent party pursuant to section 93 of the Organic Act on Political Parties B.E. 2550 (2007) due to a failure to comply with section 42 paragraph two.

The Constitutional Court made the following findings. The respondent's notice to establish a political party was registered on 16th September B.E. 2545 (2002). Section 42 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007) provided that a political party leader should prepare an accurate report of political party activities in the preceding annual period in accordance with procedures prescribed by the Registrar. Notice of the report should be sent to the Registrar within March every year. The leader of the respondent party was thus under a duty to prepare a report of the party's activities in the annual period of B.E. 2552 (2009) and to notify the applicant within 31st March B.E. 2553 (2010). In regard to the preparation of such report of the respondent party's activities, section 28 paragraph two (5) of the Organic Act on Political Parties B.E. 2550 (2007) provided that the report must be done by the general meeting of the respondent party. Upon a finding of facts from the application and supporting documents that the report of the respondent party's activities for the annual period of B.E. 2552 (2009) must be prepared

by the respondent party leader and notice given to the applicant within 31st March B.E. 2553 (2010), but at the expiration of the said time limit, the respondent party leader neither prepared a report nor sent notice to the applicant pursuant to section 42 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007), the applicant thus exercised powers under section 42 paragraph two to notify the respondent party leader to prepare an accurate report of party activities for the annual period of B.E. 2552 (2009) pursuant to section 28 paragraph two (5) and to notify the applicant within 31st July B.E. 2553 (2010). At the expiration of such time limit, the respondent party leader still failed to take any action. The applicant thus served a written notice to state reasons within seven days of receiving the notice. After the expiration of the time limit specified by the applicant, the respondent party leader had not taken any action to comply with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). Hence, this was a case where the respondent party failed to prepare a report of its activities for the preceding annual period. Even after the applicant ordered reporting within a specified time limit, the respondent party leader still failed to submit a report without stating a plausible reason as provided under section 42 of the Organic Act on Political Parties B.E. 2550 (2007). Thus, there was a cause for the Constitutional Court to order the dissolution of the respondent party pursuant to section 93 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007).

The second issue was whether or not the respondent party executives should be prohibited from filing notice of the establishment of a new political party, or taking office as a political party executive, or participating in the notice filing of the establishment of a new political party, within five years as from the dissolution of the respondent party, pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court made the following findings. Section 97 of the Organic Act on Political Parties B.E. 2550 (2007) provided that “in the case where a political party is dissolved due to a violation of section 42 paragraph two... the person who once held an executive office of the dissolved political party shall be prohibited from registering notice of an establishment of a new political party or taking office as a political party executive or to participate in the registration of a notice of the establishment of a new political party during the five year period as from the day of dissolution of the political party.” This provision provided the consequences of violation of the law, not providing the Constitutional Court with any power to order otherwise. Thus, upon finding a cause for the dissolution of the respondent party due to a violation of section 42 paragraph two, the Constitutional Court was obliged to order the prohibition of persons who held executive offices in the dissolved political party from filing notice of the establishment of a new political party, or from taking office as a political party executive, or from participation in the filing of a notice of establishment of a new political party for a period of five years as from the day of dissolution of the political party.

4. Ruling of the Constitutional Court

The Constitutional Court thus ordered the dissolution of Puen Kaset Thai Party, respondent, pursuant to section 93 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), and prohibited the respondent party's executives from filing notice of establishment of a new political party, or taking office as a political party executive, or participating in the filing of notice of establishment of a new political party for a period of five years as from the day of the Constitutional Court order to dissolve the respondent party, pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007).
