

# Summary of Constitutional Court Ruling No. 10-11/2555 (2012)

Dated 28<sup>th</sup> March B.E. 2555 (2012)\*

**Re: The Political Parties Registrar Requested for a Constitutional Order to Dissolve Siam 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 Siam 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 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.

**First application.** The applicant sent a written notice to the respondent party to prepare and submit a report of activities of the respondent party for the annual period of B.E. 2551 (2008) within the month of March B.E. 2552 (2009). The applicant received the respondent party's report of activities for the annual period of B.E. 2551 (2008), but upon examination it was found that the report was not done by the respondent party's general meeting, which was not consistent with section 28 paragraph two (5) of the Organic Act on Political Parties B.E. 2550 (2007) and not consistent with the Notification of the Political Parties Registrar Re: Procedures for Reporting of Political Party Activities B.E. 2550 (2007) dated 11<sup>th</sup> December B.E. 2550 (2007). The report was regarded as not in accordance with section 42 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007). Hence, the applicant exercised powers under section 42 paragraph two to notify the respondent to prepare an accurate report of the political party's activities for the annual period of B.E. 2551 (2008) that was compliant with the law. Upon the expiration of the time limit specified by the applicant, the applicant did not receive a report of the respondent party's activities for the annual period of B.E. 2551 (2008). The applicant therefore notified the respondent party to give reasons for failing to submit a report to the applicant. The respondent party, however,

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failed to give any reasons within the specified time limit. Thereafter on 31<sup>st</sup> May B.E. 2553 (2010), the applicant deliberated and found that the respondent's actions was not compliant with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), and constituted a cause for party dissolution. The applicant thus sought the approval of the Election Commission, who later adopted a resolution approving the applicant's submission of an application to the Constitutional Court for proceedings to dissolve the respondent party pursuant to section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). The applicant submitted the application to the Constitutional Court on 16<sup>th</sup> June B.E. 2553 (2010).

**Second application.** The applicant sent a written notice to the respondent party to prepare and submit a report of activities of the respondent party for the annual period of B.E. 2552 (2009) within the month of March B.E. 2553 (2010). The applicant received the respondent party's report of activities for the annual period of B.E. 2552 (2009), but upon examination it was found that the report was not done by the respondent party's general meeting, which was not consistent with section 28 paragraph two (5) of the Organic Act on Political Parties B.E. 2550 (2007) and not consistent with the Notification of the Political Parties Registrar Re: Procedures for Reporting of Political Party Activities B.E. 2550 (2007) dated 11<sup>th</sup> December B.E. 2550 (2007). The report was regarded as non-compliant with section 42 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007). Hence, the applicant exercised powers under section 42 paragraph two to notify the respondent to prepare an accurate report of the political party's activities for the annual period of B.E. 2552 (2009) that was compliant with the law. Upon the expiration of the time limit specified by the applicant, the applicant did not receive a report of the respondent party's activities for the annual period of B.E. 2552 (2009). The applicant therefore notified the respondent party to give reasons for failing to submit a report to the applicant. The respondent party, however, failed to give any reasons within the specified time limit. Thereafter on 20<sup>th</sup> December B.E. 2553 (2010), the applicant deliberated and found that the respondent's actions was not compliant with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), and constituted a cause for party dissolution. The applicant thus sought the approval of the Election Commission, which later adopted a resolution approving the applicant's submission of an application to the Constitutional Court for proceedings to dissolve the respondent party pursuant to section 93 paragraph two of the Organic Act on Political Parties. The applicant submitted the application to the Constitutional Court on 30<sup>th</sup> December B.E. 2553 (2010).

## **2. Preliminary issue**

The preliminary issue considered by the Constitutional Court was whether or not the application processes for dissolution of the respondent party were lawful.

The Constitutional Court found as follows. According to the facts in the first application, the Political Parties Registrar, applicant, reached a finding on 31<sup>st</sup> May B.E. 2553 (2010), but

the applicant submitted an application to the Constitutional Court on 16<sup>th</sup> June B.E. 2553 (2010), which was a submission after the lapse of the fifteen day time limit imposed by law. The process of submission of an application to dissolve the respondent party was not in accordance with section 93 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). The application was therefore dismissed.

As for the second application, it appeared before the Political Parties Registrar, applicant, that on 20<sup>th</sup> December B.E. 2553 (2010), the applicant submitted an application to the Constitutional Court on 30<sup>th</sup> December B.E. 2553 (2010). The submission was therefore made within the fifteen day time limited imposed by law. The submission process was thus 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 Constitutional Court, after consideration, made the following findings. Under section 42 paragraph one of the Organic Act on Political Parties B.E. 2550 (2007), the respondent party leader was under a duty to prepare a report of the respondent party's activities for the annual period of B.E. 2552 (2009), which had to be sent to the applicant within 31<sup>st</sup> March B.E. 2553 (2010). When preparing such a report of the respondent party's activities, section 28 paragraph two (5) provided that the report had to be done by the general meeting of the political party. As it was found on the facts that the report of the respondent party's activities for the annual period of B.E. 2552 (2009) was not done by the respondent party's general meeting, the report was therefore non-compliant with the law and incorrect under the Notification of the Political Parties Registrar Re: Procedures for Reporting Political Party Activities B.E. 2550 (2007), dated 11<sup>th</sup> December B.E. 2550 (2007). The report was therefore inconsistent with 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 leader of the respondent party to prepare a report of party activities for the annual period of B.E. 2552 (2009) that was factually accurate and in accordance with the provisions of law. The leader of the respondent party, however, failed to take any action. The applicant thence served a notice requiring the leader of the respondent party to give reasons to the applicant. Upon the lapse of the time period prescribed by the applicant, the leader of the respondent party still failed to comply with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007). Hence, 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).

Section 97 of the Organic Act on Political Parties B.E. 2550 (2007) provided that "in the case where a political party must be dissolved due to a violation of section 42 paragraph two... the person who previously held an executive office in the dissolved political party may not file notice of the establishment of a new political party or become a political party executive, or participate in the filing of notice of the establishment of a new

political party, for a period of five years as from the dissolution of the political party.” This provision stated the consequences of a violation of the law. The Constitutional Court was not conferred any competence to order otherwise. Upon a finding of a cause for dissolution of the respondent party due to a violation of section 42 paragraph two, the Constitutional Court had to order the prohibition of persons who previously held executive offices of the dissolved political 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 notice of the establishment of a new political party, for a period of five years as from the dissolution of the political party.

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

The Constitutional Court ordered the dissolution of the respondent political party pursuant to section 93 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), and prohibited persons holding executive offices in the respondent party from filing notice of the establishment of a new political party, or becoming a political party executive, or participating in the filing of notice of the establishment of a new political party, for a period of five years as from the Constitutional Court order dissolving the respondent party, pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007).

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