

The Constitutional Court and the 29 million baht Election Funds Case

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Upon hearing the Constitutional Court's ruling on whether the Democrat Party misused 29 million baht in election funds in 2005, the verdict has caused confusion among the public. In order to understand the verdict, how the court approaches any case should be clarified.

In any case, the court approaches a verdict by providing each judge's own verdict and reasons before voting and drawing a conclusion based on the majority ruling. The verdict will use any of the judge's reasoning as a basis of the "main" verdict and all judges will help each other in developing additional explanations in incorporating all judges' opinions.

With respect to the 29 million baht case, the main reason was that the political party registrar must have an opinion that the political party has done wrong before proposing an opinion to the Election Commission members, according to article 93 of the constitution. This is performed so that there is a thorough consideration by the EC (as a government agency that manages and regulates the electoral process) before submitting a recommendation to the Constitutional Court. Therefore, if the political party registrar has no opinion that a political party has done no wrong, then the EC members can't provide a recommendation.

An additional reason is that EC members can overrule a political party registrar's opinion if the opinion of the EC is submitted to the Constitutional Court within 15 days of knowing the opinion.

Since the Constitutional Court provided 2 reasons which differ and contradict each other, there can be misunderstanding as to which reason will be used as the underlying reason to dismiss the case. Following the legal process, the reason which represents the majority of the judges' opinion will be applied.

As to why didn't the Constitutional Court consider whether the political party misused the 29 million baht, it is a matter of technicality. If there is a technicality in legal terms, the matter is automatically not considered. In practicing law, there are 2 types of laws: substantive law and procedural law.

Substantive law is a set of laws that determine what is wrongful action (how the crime is to be charged) while procedural law is a set of laws that determine the way in which procedural law can be applied (the process and way that a case is investigated). A good example is the O.J. Simpson case which was dismissed based on the way the case was investigated.

Therefore, if the political party registrar or the EC members can be allowed to give an opinion without conforming to the legal process, then their power is above the rule of law. The Constitutional Court's ruling that the EC's opinion is technically at fault provides a strong application of the rule of law that is applied worldwide and not just in this particular case.

With regards to why the court processed the case even though there was a technical fault, the submission of the case to the Constitutional Court by the EC doesn't present all facts and therefore, all witnesses should be heard from all sides. The court also doesn't know the opinion of other judges before all witnesses are heard. Finally, judges don't know whether or not the political party registrar is late in submitting the case or didn't give an opinion before the EC members. Each judge's opinion considers all points both in terms of law and fact finding before coming together to vote as no one knew about the technical fault before dismissing the case.