

Summary of Constitutional Court Ruling No. 1/2558 (2015)

Dated 24th June B.E. 2558 (2015)*

Re: The Political Party Registrar requested for the Constitutional Court order to dissolve Dumrong Thai Party.

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1. Summary of background and facts

The Political Party Registrar, applicant, submitted an application to the Constitutional Court to dissolve Dumrong Thai Party, respondent, pursuant to section 93 in conjunction with section 82 of the Organic Act on Political Parties B.E. 2550 (2007) as follows.

1.1 The respondent was allocated a grant under projects and plans from the Fund for Development of Political Parties in the annual period of B.E. 2556 (2013) pursuant to section 81 of the Organic Act on Political Parties B.E. 2550 (2007) for a total of 9 projects in the amount of 728,000 (seven hundred and twenty-eight thousand baht only), and the funds were disbursed. Thereafter, the Office of the Election Commission sent a written notice to the respondent to prepare an accurate report of political party grant spending, which had to be submitted to the Election Commission within 31st March B.E. 2557 (2014). The respondent submitted a report of political party grant spending for the annual period of B.E. 2556 (2013) (*Ror Ngor 2 Form*) but did not submit supporting documents and evidence of such spending transactions.

1.2 The applicant sent a written notice to the respondent to submit accurate evidence and documents supporting the political party grant spending in the annual period of B.E. 2556 (2013) to the Office of the Election Commission within 30th May B.E. 2557 (2014). The respondent, however, neither submitted such evidence and documents nor gave a proper reason for such failure to do so. Thus, this was a case where the respondent failed to submit documentary evidence to support the political party grant spending report for the annual period of B.E. 2556 (2013) or provide a proper reason within the period prescribed by the applicant pursuant to section 82 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), constituting a cause for political party dissolution under section 93. An opinion was submitted to the Election Commission accordingly for approval.

1.3 The applicant, by the approval of the Election Commission, submitted an application to the Constitutional Court for an order to dissolve the respondent party pursuant

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to section 93 of the Organic Act on Political Parties B.E. 2550 (2007) due to a failure to comply with section 82. It was requested that the persons who had held executive positions in the respondent party should be banned from registering the establishment of a new political party or becoming a political party executive, or participating in the registration of a new political party over a five - year period as from the date of Constitutional Court order to dissolve the respondent party pursuant to section 97. It was further requested that an order be given to revoke the election rights of the respondent party's leader and executives who participated, connived at or neglected or acknowledged such act but failed to intervene or remedy such act over a five - year period as from the date of Constitutional Court order to dissolve the respondent party pursuant to section 98.

2. The preliminary issue considered by the Constitutional Court

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to admit the application for consideration under section 93 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court found as follows. The applicant, by the approval of the Election Commission, found that the respondent failed to comply with section 82 in conjunction with section 42 paragraph two of the Organic Act on Political Parties B.E. 2550 (2007), thus constituting a cause for dissolution of the respondent party pursuant to section 93 paragraph one. The applicant therefore submitted an application to the Constitutional Court for proceedings to dissolve the respondent party. The application was submitted within the fifteen - day period as from the finding in accordance with section 93 paragraph two. Hence, the case was in accordance with section 45 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) in conjunction with section 93 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). The Constitutional Court therefore admitted the application for consideration and directed the respondent to submit a reply within fifteen days of receiving a copy of the application.

The respondent submitted a reply which could be summarized as follows. The respondent did not submit documentary evidence supporting the respondent's spending report because such documents had to be endorsed by the general meeting of the respondent party before they could be submitted to the applicant. Upon the expiration of the period for submission of documents in May B.E. 2557 (2014), there was a political crisis. Thus, it was not known whether the applicant was still operational and it was not possible to deliver the documents to the applicant's premises. Thereafter, an announcement annulled the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and another announcement banned all political activities. The respondent did not have the courage to submit the documents in its name. Nevertheless, the documentary evidence supporting such spending report was eventually sent to the applicant according to letter No. *Dor Thor* 02 (2549)/022, dated 29th June B.E. 2557 (2014), Re: Submission of Spending Report with Supporting

Documents pursuant to section 47 of the Organic Act on Political Parties B.E. 2550 (2007).

The applicant submitted an explanation of the relevant issues which could be summarised as follows. According to the respondent's claim that documentary evidence supporting the spending report had to be endorsed with the financial statements by the respondent party's general meeting before submission to the applicant, under section 82 of the Organic Act on Political Parties B.E. 2550 (2007) in conjunction with the Notification of the Election Commission Re: Fund for Development of Political Parties B.E. 2554 (2011), there was no requirement that a political party receiving a grant from Fund for Development of Political Parties had to obtain approval of spending from the political party's general meeting. The applicant further submitted evidence that during the period prescribed by the applicant for submission of documentary evidence supporting the spending report, the applicant's official premises were operational as usual. There was no blockade or unrest to the extent that the respondent could not contact the applicant, whether by post or facsimile. Other political parties were still able to submit documents as usual. As for the respondent's claim that documentary evidence supporting the spending report was already submitted to the applicant in letter No. *Dor Thor* 02 (2549)/022, dated 29th June B.E. 2557 (2014), such documents were financial statements under section 47 in conjunction with section 45 of the Organic Act on Political Parties B.E. 2550 (2007), which was a submission under a different section. In addition, the submission was made after the expiration of the deadline for documentary evidence submission set by the applicant. Hence, the applicant was unaware of the propriety or accuracy of spending of grant from the Fund for Development of Political Parties. The respondent failed to provide reasons for not submitting documents, causing the applicant to submit an application to the Constitutional Court for an order to dissolve the respondent party.

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 under section 93 of the Organic Act on Political Parties B.E. 2550 (2007) due to a failure to comply with section 82.

The Constitutional Court found as follows. The respondent received a grant under a project and plan from the Fund for Development of Political Parties for the annual period of B.E. 2556 (2013), and such funds were already disbursed. The respondent was therefore under a duty to prepare an accurate report of spending of the respondent party's grant, which had to be submitted to the Election Commission within 31st March B.E. 2557 (2014). The respondent submitted only a report of the respondent party's grant spending for the annual period of B.E. 2556 (2013) without submitting documentary evidence in support of such spending. The applicant sent a written notice to the respondent to submit documentary evidence in support of the spending within a prescribed period, but the respondent neither submitted documentary evidence in support of the spending report nor give reasons for such failure to send documentary evidence. This was a case where the respondent failed to

prepare an accurate report of the respondent party's grant spending and make a submission of such report to the Election Commission within the period prescribed by law without reasonable excuse. Hence, there was a cause for dissolution of the respondent party under section 93 in conjunction with section 82 of the Organic Act on Political Parties B.E. 2550 (2007).

The second issue was whether or not persons who had held executive positions in the respondent party should be banned from registering the establishment of a new political party or becoming an executive of a political party or participating in the registration of a new political party over a five - year period as from the Constitutional Court order to dissolve the respondent party pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007), and whether or not the leader and executives of the respondent party who participated, connived at or neglected or acknowledged such act but failed to intervene or remedy such act should have election rights revoked over a five - year period as from the Constitutional Court order to dissolve the respondent party pursuant to section 98 of the Organic Act on Political Parties B.E. 2550 (2007).

The Constitutional Court found as follows. Section 97 of the Organic Act on Political Parties B.E. 2550 (2007) was a provision on the consequences of a violation of a provision of law which did not give any discretion to the Constitutional Court to order otherwise. Upon a finding of a cause for dissolution of the respondent party due to a violation of section 82, the Constitutional Court had to order a ban on the persons who had held executive positions in the respondent party pursuant to the Notification of the Political Party Registrar Re: Acknowledgement of Changes to the Executive Committee of Dumrong Thai Party, dated 7th December B.E. 2555 (2012), and dated 10th June B.E. 2556 (2013), who were persons in office during the period when the respondent party received and spend the political parties grant from the Fund for Development of Political Parties for the annual period of B.E. 2556 (2013), from registering the establishment of a new political party or becoming a political party executive, or participating in the registration of a new political party over a five- year period as from the dissolution of the respondent party. Furthermore, the respondent party had a duty to prepare a spending report for political party grant in a calendar year pursuant to section 82, whereby the spending report had to be prepared by the party leader and party executives who were charged with the duties of administering the party's activities in accordance with section 17 paragraph one and paragraph three, being a legal principle on collective responsibility of political party executives in carrying out administration in accordance with functions prescribed by the political party rules and the Organic Act on Political Parties. Upon a finding of facts that the respondent party failed to report the respondent party's grant spending for the annual period of B.E. 2556 (2013) in the proper discharge of their duties, constituting a neglect and omission of duty under section 82 of the Organic Act on Political Parties B.E. 2550 (2007), it was therefore deemed that there was a cause and reasonable evidence to find that the respondent's party leader and executives participated, connived at or neglected or acknowledged such act but failed to intervene or remedy such acts pertaining to the report. The Constitutional Court therefore ordered the

revocation of election rights of the respondent party's leader and executives pursuant to the Notification of the Political Party Registrar Re: Acknowledgement of Changes to the Executive Committee of Dumrong Thai Party, dated 7th December B.E. 2555 (2012), and dated 10th June B.E. 2556 (2013), who were persons in office during the period when the respondent party received and spend the political parties grant from the Fund for Development of Political Parties for the annual period of B.E. 2556 (2013) over a five - year period as from the order the dissolve the respondent party.

4. Ruling of the Constitutional Court

The Constitutional Court ordered the dissolution of Dumrong Thai Party, respondent, pursuant to section 93 in conjunction with section 82 of the Organic Act on Political Parties B.E. 2550 (2007), and banned the persons who had held executive positions in the respondent party pursuant to the Notification of the Political Party Registrar Re: Acknowledgement of Changes to the Executive Committee of Dumrong Thai Party, dated 7th December B.E. 2555 (2012), and dated 10th June B.E. 2556 (2013), from registering the establishment of a new political party or becoming a political party executive, or participating in the registration of a new political party over a five - year period as from the Constitutional Court order to dissolve the respondent party pursuant to section 97 of the Organic Act on Political Parties B.E. 2550 (2007), and revoked the election rights of the leader and executives of the respondent party pursuant to the aforementioned Notification of the Political Party Registrar over a five - year period as from the Constitutional Court order to dissolve the respondent party pursuant to section 98 of the Organic Act on Political Parties B.E. 2550 (2007).
