

Some Reflections on The Dissolution of Political Parties in Thailand

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The dissolution of political parties is a measure available for governments in many countries to handle with political parties posing harms to their democracies or existence.¹ In recent years, it has become much contentious not only before national courts but international and regional human rights bodies.² A number of judgments of the European Court of Human Rights are concrete examples thereof. In Thailand where its democratic regime of government has been on a tortuous path due to ‘seasonal’ coups – almost every ten to fifteen years since its transformation into a democracy in 1932, the measure has recently been invoked frequently and drawn controversies to an unprecedented scale.

I. Grounds for Party Dissolution

According to the Thai Constitution 2007 and the Organic Act on Political Parties of 2007, the grounds for dissolving a political party are divided into 3 categories.³

(i) *Discontinuation* is the forced closure of a party that has been inactive on various grounds; for examples, not nominating a candidate for two consecutive general elections or eight years either periods of which is longer; having its members less than 5,000 people for a whole year; not calling for a general meeting nor holding any activity for a whole year without a reasonable cause. In sum, a party is to lose its legal status for non-compliance with formal requirements. The Election Commission, an independent body under the Constitution, has the power to issue a proclamation of discontinuation published in the Government Gazette, but any person concerned has the right to appeal to the Constitutional Court.

(ii) *Voluntary Dissolution* occurs in the cases provided by a party’s regulation or its amalgamation with another party.

¹ See, John Finn, ‘Electoral Regimes and the Proscription of Anti-democratic Parties,’ pp. 51-77, in David C. Rapoport and Leonard Weinberg, *The Democratic Experience and Political Violence*, (London: Frank Cass Publishers, 2001).

² See, Eva Brems, ‘Freedom of Political Association and the Question of Party Closures,’ pp. 120-195, in Wojciech Sadurski, *Political Rights under Stress in 21st Century Europe*, (Oxford: OUP, 2006).

³ Section 68 and 237 of the Thai Constitution 2007, and Section 91 to 98 of the Organic Act on Political Parties 2007.

(iii) *Involuntary Dissolution* is to be exercised by an order of the Constitutional Court if a party has carried out an act: that is detrimental to the security of the State or its democracy with the King as the Head of State; that is a gain of the power in administration of the State by unconstitutional means; and, that is contrary to law or public order or good morals. Also it applies to a party: that allows foreigners to become its members; that knowingly receives illegal contributions; that interferes with campaigning for senators; or that frames another party or person for criminal offences under the Political Parties Law.

Most arguably, section 237 paragraph 2 of the Constitution clearly states the cause for dissolving a party as a result of a wrongdoing having done by any candidate of such party in an election if the following conditions are met. First, the commission of an illegal act contrary to the Election Law results in an election not proceeding in an honest and fair manner. Second, the leader or any executive of such party has connived at or allowed the commission thereof or, having known of the commission thereof, failed to prevent or take remedial action in order to render the election to proceed in an honest and fair manner. Accordingly, it shall be deemed that such party has committed an act with a view to acquiring the power to rule the country by any means which is not in accordance with the modes provided in this Constitution. In other words, the party is to be automatically considered anti-democratic. More controversially, the party's leader and executives are to be deprived of their right to vote, right to be elected for public office, and right to form, and be an executive of, a party for five years; whereas the original wrongdoer shall be prosecuted for criminal charges and liable to the suspension of his voting right for a much longer period.

II. Analyses

To date there have been several academic oppositions to such stipulations, particularly, the last ground.

First, a single commission of an electoral fraud, a vote-buying, or any other wrongdoing rendering an unfair election in a constituency is *not* the equivalence of anti-democratic acts likes those committed by the Nazi or Fascist parties during WW II, the communist underground invasions during the cold war, or, in particular, coups d'état frequently staged in the country. It is overstated and irrational. On the other hand, the Thai political culture and the conditions of elections in Thailand where vote-buying and electoral frauds are chronically rampant are always put forward as a defense. The proponents thereof insist that such a strong medicine is needed if wishing to get away from the current plight since it is a necessary evil for deterring electoral corruptions. On this account, extensive empirical researches have to be carried out to prove whether it can lead to such desirable outcome.

Second, the political wills of those jointly forming a party and becoming members thereof are easily wiped out on account of even a wrongdoing. Dissolving a party based on this

ground is self-contradictory as section 65 of the Constitution guarantees the freedom of Thais to form a party and to carry out political activities. It sounds more acceptable if they are involved, directly or indirectly, with such illegal act, but if not so, they are being punished for what they did not do. On the other hand, the proponents claim that members of such party have to be responsible for neglecting or carelessly choosing the party's executive or candidates in an election. Admittedly, it affects the freedom of other members of such party, but it is a necessary evil to force them to actively participate in the party's internal administrations given the fact that more than 90 per cent of members of almost all Thai parties are so in name only.

Moreover, albeit a constitutional provision, Thailand is bound by the International Covenant on Civil and Political Rights. A review of the *travaux préparatoire* of the ICCPR indicates that article 22 thereof guaranteeing the right to freedom of association grants individuals residing in State Parties the protection against unjustifiable dissolution of political parties.⁴ However, it is argued that no applicable cases may be applied directly to this particular case. Additionally, an individual complaint cannot be submitted to the UN Human Rights Committee (HRC) because the country did not accede to the First Optional Protocol to the ICCPR. Analogous to the European Court of Human Rights' notion on the margin of appreciation, this kind of questions should fall within that margin. Had a complaint ever made to the HRC, it would have yielded to the State's sovereignty.

Third, Thai political parties have never evolved into a truly democratic institution linking between peoples and their representatives who share a mutual political ideology. Generally, a party is formed by elite politicians pursuing the same political goals, that is, to get elected and become a government. That is all! Thai parties are thus not "a mass party;" in fact, they are under the control of elites in such parties and businessmen supporting them financially. This poor characteristic can be ameliorated by intra-party democratic mechanism which requires a long period of time for materialization. But hardly has the mechanism been implemented, although required by law, since parties have functioned and evolved intermittently as a result of coups and the ease of dissolving parties. On July 13, 2009, 46 parties operate whereas approximately 90 parties have been dissolved since 1998, 4 of which were parties having MPs and were in then coalition governments. The present criteria for dissolving parties are therefore disadvantageous to the Thai democratic development as a whole.

Nevertheless, the above argument is rebutted by the fact that virtually all dissolved parties were closed on formalistic causes, e.g. failure to submit annual financial report, or not holding any political activity for a whole year, and so on. The supporters of this harsh measure always stick to the claim that it is a necessary evil to drive the country out of this vicious circle, that is, buying votes in an election, becoming a government, recovering costs of election from kickbacks taken while in office, and finally a coup is staged on the ground that it is a necessary evil to get rid of corruptions.

⁴ Eva Brems, *above*, at 121-122.