

Abstract

As long as a political party is an indispensable factor in the democratic system, dissolution of a political party seems to be but necessary to maintain the self-defense principle in the democratic system. In the democratic system, dissolution of a political party well shows a self-defense and counterattack system to an opponent of democracy. From this reason, Democratic States cannot refuse the necessity of the aforesaid principle and the recognition of freedom of people in forming a political party.

With regard to Thailand, dissolution of a political party was first happened in the first Thai law on political party. The Thai Constitutions and laws on political party mention many restrictions and reasons to dissolve a political party such as prohibiting a party to do any act which may harm State's security or conflict with law or public order as well as forbidding some general matters.

However, since the entry into force of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), issue on legal provisions on dissolution of a political party has been widely discussed. Article 237 paragraph 2 of the Constitution B.E. 2550 (2007) specifies that an executive board of director of a political party who violates law on election may be deemed as an action of the whole political party. In such case, if the Constitutional Court orders to dissolve such political party, the right to vote at an election of the executive board of directors of a political party shall be suspended for the period of five years as from the date such order is made. This is a punishment to all directors even though some directors of the political party do not know the violating act of the other directors. Hence, this provision excessively restricts right and freedom of people as well as conflicts with the democratic principle, security on right principle, general constitutional principles including the Legal State and the rule of law as recognized by the Constitution.

Considering the Act Amending Organic Law Governing Political Party B.E. 2550 (2007), there is a provision prescribing a number of causes to dissolve a political party like the previous laws on political party. It also mentions general prohibitions for political party. As a result the violating political party may be dissolved by the order of the Constitutional Court. However, after weighing up the benefit of the public and the loss of the private, it is shown that the said provision excessively limits right and freedom of people.

Considering dissolution of a political party in foreign law, namely, in the German law, dissolution of a political party will occur when such political party has an objective to cut off freedom or destroy democracy or when the establishment of such political party harms the survival of the State. These reasons are considered as conflict with the Constitution. In France, a power to dissolve a political party is belong to the President with the approval of the Cabinet. This is a power of the executive to consider the dissolution of a political party, not the judiciary as in Germany and Thailand. However, the reasons for dissolution of a political party in French law are not different from the ones in Germany. Specifically, the political party has an intention which may affect to the integrity of the nation, which attack the security of the government of the Republic, which destroy the measure concerning the legal establishment of the Republic, etc. Nevertheless, there is not any reason to dissolve a political party based on the general matters like in the case of Thailand.

Furthermore, when considered the outcome of the dissolution of France and Germany, unlike the present Thai law, they do not impose that the act of one person shall be deemed as the act of the whole party and that the dissolution of a political party will lead to suspension of right to vote at an election of the executive board of directors of a political party.

Another important issue of a political party in Thailand, additionally, is the problem from the interpretation of the Constitutional Court in a self-restriction way. Worse, the Constitutional Court interprets provisions in the Constitution in a contradictory manner. Therefore, it ruins the principle on legal security and conflicts with the judicial right which is the heart of the protection right and freedom of people.

This author, in order to solve the issue on dissolution of a political party in the Thai legal system, recommends an amendment to Article 237 of the Constitution B.E. 2550 (2007). It should repeal a provision mentioning an offense of some directors of a political party is considered as an offense of the whole political party together with the provision granting a power to the Constitutional Court to deprive the right to vote at an election of the executive board of directors of a political party who neither know nor conspire with the offence originating the dissolution. However, it should remain the only reason or restriction of the dissolution that is when the political party is found to undermine the Constitutional Monarchy with the King as Head of State. Moreover, the exercise of power on reviewing the case of the Constitutional Court, as a judicial organ, has to take the principle on the protection right and freedom of people into account so it can maintain the concept of dissolution of a political party as in the intention of the democratic principle.