

Commentary

The Banning of Future Forward

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On 21 February 2020, Thailand’s Future Forward Party was dissolved by order of the Constitutional Court (the “Court”).¹ Sixteen members of the party executive—including leader Thanathorn Juangroongruangkit, Secretary-General Piyabutr Saengkanokkul, and spokesperson Pannika Wanich—were banned from holding political office for the next 10 years. Eleven of the 16 were also party list Members of Parliament (“MPs”). The party’s crime? Illegally accepting two loans from Thanathorn, totalling 191 million baht. The case hinged on the Court’s interpretation of Sections 62 and 72 of the Organic Act on Political Parties B.E. 2560 (2017) (“2017 Political Parties Act”).

Future Forward represented an unparalleled development in Thailand’s politics: a brand-new party, fielding a slate of candidates who had never before held elected office, secured 81 seats in the March 2019 elections and became the third largest party in Parliament.² Led by a charismatic billionaire auto parts tycoon, and commanding overwhelming support from younger voters, Future Forward was seen by Thailand’s political establishment and network monarchy—including the powerful military—as an existential threat to the existing conservative order. At least 19 different lawsuits were brought against Future Forward and its leaders during the party’s short-lived existence between March 2018 and February 2020. Most of these cases were opportunistic, even trivial—but all consumed considerable time and resources. As Khemthong Tonsakulrungruang has noted, collectively these legal cases

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¹ Constitutional Court Decision No. 5/2563, 21 February 2020; for an official English summary, see Office of the Constitutional Court, Press Release No. 7/2019, 21 February 2020 <https://www.constitutionalcourt.or.th/occ_en/download/article/article_20200305112117.pdf>.

² See Duncan McCargo and Anyarat Chattharakul, *Future Forward: The Rise and Fall of a Thai Political Party* (NIAS Press 2020).

amounted to a sustained campaign of ‘lawfare’ against Future Forward and the progressive political values it represented.³

For all the leader’s talk about supporter donations and crowd-funding, Future Forward would have struggled to perform so well in the 2019 election without Thanathorn’s financial support.⁴ Ordinary Thai voters are generally reluctant to give money to politicians: all Thai parties rely on backing from wealthy individuals and companies, and Future Forward was essentially bankrolled by the party leader. Thanathorn’s assets declaration, made in the wake of the March 2019 general election, revealed that he was the wealthiest MP in a parliament dominated by the very rich.⁵ The Constitutional Court case hinged on a couple of contentious financial transactions: Thanathorn had loaned 191.2 million baht (equivalent at the time to US\$5.9 million) to Future Forward, in two instalments.⁶ The loans involved formal legal contracts between Thanathorn and the party. The first contract, for 161.2 million baht, was signed on 2 January 2019, while a smaller loan of 30 million baht was agreed following the elections on 11 April 2019.⁷

The basic facts underpinning the case are not disputed: Thanathorn never denied making the loans. Rather, the central issue concerned whether the 2017 Political Parties Act could properly be applied to them. The English summary of the Court judgement is a masterpiece of opacity:

Political party activities shall rely upon an income of political parties as stated in section 62 of the said Organic Act concerning the sources of incomes. As such, any money spent for operating the political activities, not derived from the sources and means of acquiring it as prescribed by laws shall be conceived as illegal money. Although the Organic Act on Political Parties B.E. 2560 (2017) does not explicitly forbid the political parties from obtaining a loan, it is not acknowledged in the Act that the political parties can do so either. Additionally, a political party is a legal entity under the public law. Even if the loan is not an income, it would be considered to be a revenue and political finance. Therefore, the process pertaining to the political parties in acquiring the money and their expenses shall be conducted within a legal boundary.

³ Khemthong Tonsakulrungruang, “Anakot Mai: ‘Lawfare’ and Future Forward Party’s Legacy” *New Mandala* (28 February 2020) <<https://www.newmandala.org/anakot-mai-lawfare-and-future-forward-partys-legacy/>>.

⁴ See “Thanathorn Unfazed by EC’s Probe into Loans to Future Forward Party” *Thai PBS World* (21 September 2019) <<https://www.thaipbsworld.com/thanathorn-unfazed-by-ecs-probe-into-loans-to-future-forward-party/>>.

⁵ “Thanathorn is Richest MP with 5.6 Billion Baht Assets” *Thai News Agency* (20 September 2019) <<https://tna.mcot.net/tna-346602>>.

⁶ ย้อนดูสัญญาเงินกู้ 2 ฉบับ 191.2 ล. เอื้อ ปย. อนาคตใหม่ ชนวนเปิดฉาก ‘ธนาธร-พวก’ [“Looking Back at the Two Loan Contracts for 191.2 million to Future Forward Causing the End of ‘Thanathorn and associates’” *Issara News Agency* (21 February 2020) <<https://www.isranews.org/investigative/investigate-asset/85829-report00-85829.html>>] (Thai).

⁷ The first loan had an interest rate of 7.5 per cent per annum and was to be repaid in three instalments: 80 million baht in year 1, 40 million baht in year 2, and 41.2 million baht in year 3. The second loan contract was signed on 11 April 2019 for 30 million baht, to be repaid in one year at 2 per cent interest. This low rate of interest was cited in the Constitutional Court verdict when Future Forward was dissolved on 21 February 2020.

Considering the intention of the Constitution and other related laws, the political parties' loan, therefore, shall be in compliance with that purpose.⁸

In short, the 2017 Political Parties Act says nothing at all about loans: so how can Future Forward taking out two loans have violated the Act? The Court acknowledges that a loan is not the same as 'income,' but the judgement nevertheless asserts that the same loan should be considered as 'revenue'—a distinction that many laypeople would struggle to understand. In short, the Constitutional Court ruled 7:2 that these loans were illegal donations, despite the fact that they were not donations, and that the 2017 Political Parties Act did not even mention loans—so how could they be illegal?⁹ In any case, Section 72 of the Act was concerned with funds received from 'illegal' sources, such as drug deals or money-laundering, and was not intended to apply to someone like Thanathorn whose wealth came from legal business activities. The Constitutional Court judgement also argued that the interest rates (of 7.5 per cent and 2 per cent respectively) set for the repayment of the loans to Thanathorn were too low—yet the election laws said nothing at all on this subject either.¹⁰

Ironically, Thanathorn had brought these woes upon himself by talking publicly about his loans to the party, including at one event at the Foreign Correspondents' Club of Thailand.¹¹ Virtually all major political parties in Thailand accepted under-the-table subventions from rich donors: by promoting transparent party financing and speaking openly about its funding, Future Forward had not been rewarded, but punished with a death sentence.

The dissolution of Future Forward generated a strong backlash, including widespread international criticism and a wave of campus protests.¹² Saronee Archawanunkul argued that the loan was not in any sense 'income', since it was a debt that the party has to return.¹³ According to iLaw, political parties are not government organizations, and are thus entitled to take out loans. While both of these arguments might be dismissed as coming from those ideologically aligned with Future Forward, by no means all of the Court's detractors fell into this category. In a highly unusual

⁸ Decision No. 5/2563 (n 1) 2.

⁹ เงินกู้ การครอบงำพรรคการเมือง และคำฟ้องของ กกต ["Loans, Interference in Political Parties, and the Complaints of the EC"] *The Momentum* (9 January 2020) <<https://themomentum.co/future-forward-party-loans-lead-to-its-dissolution/>>] (Thai).

¹⁰ เปิดข้อกฎหมายคดียุบพรรคอนาคตใหม่: เงินกู้ไม่ใช่รายได้และกฎหมายไม่ได้ห้าม ["Exposing Laws Causing Dissolution of Future Forward: A Loan is Not Income, And Not Prohibited By Law"] *iLaw* (18 February 2020) <<https://www.ilaw.or.th/node/5556>>] (Thai).

¹¹ See Mongkol Bangprapa, "Thanathorn May Face Probe over Future Forward Party Loan" *Bangkok Post* (19 May 2019) <<https://www.bangkokpost.com/thailand/politics/1680556/thanathorn-may-face-probe-over-future-forward-party-loan>>; and Joseph O'Connor, "Election Commission Goes to Court to Have Future Forward Disbanded for Illegal Funding over B200 in Loans" *Thai Examiner* (13 December 2019) <<https://www.thaia Examiner.com/thai-news-foreigners/2019/12/13/future-forward-party-ban-illegal-funding-election-commission-thanathorn-constitutional-court/>>.

¹² มองประเด็นการยุบพรรคอนาคตใหม่ ด้วยแนวคิดความยุติธรรมต่างรุ่นในสังคมตุลาการสูงวัย ["On the Dissolution of Future Forward, Different Perspectives on Justice Between Attorneys in Different Generations"] *The Momentum* (3 March 2020) <<https://themomentum.co/intergenerational-justice/>>] (Thai).

¹³ "Loans" (n 9).

move, 36 academics from Thammasat University's very prestigious Faculty of Law signed a statement criticising the judgement, although most of them were personally unsympathetic to Future Forward's progressive agenda.¹⁴

As Chulalongkorn University legal scholar Khemthong Tonsakulrungruang wrote:

Some critics have called Future Forward naïve and gullible for walking into a legal pitfall. But it is difficult, if not impossible, to avoid one when the Court takes such an arbitrary approach to legal interpretations. . . . In Thailand, where every other political party is given untold amounts of money from undisclosed sources, Future Forward publicly declared its sources of funding — yet was punished by a fanatical law obsessed with creating clean politics.¹⁵

Thailand's Constitutional Court is an inherently political entity, and its decisions on important cases have generally reflected the interests of the dominant power-holders of the day.¹⁶ The February 2020 Future Forward banning had some important parallels with the Court's controversial dissolution of the Thaksin Shinawatra-aligned Thai Raksa Chart Party in the middle of the 2019 election campaign.¹⁷ In both cases, political considerations trumped legal niceties, informing decisions that apparently reflected the preferences of the network monarchy and the military hierarchy, despite violating the norms of common sense.

No less than eight political parties have been dissolved by Thailand's Constitutional Court since 2007, another world record.¹⁸ Party banning is a blunt legal instrument that has been over-wielded in Thailand for partisan ends: technical financial violations, such as the one Thanathorn was accused of, do not meet international legal standards justifying such drastic remedies. Thanathorn and Future Forward tried to play by the rules, entering Parliament legitimately and trying to advance their ideas through legal and permissible means. As a medium-sized opposition party, Future Forward certainly articulated a dissident view, but posed no threat to the continuing survival of the Prayut Chan-ocha government. The problem with closing down oppositional spaces is that opponents end up with nowhere to go, and have no incentive to work within the system. By declaring Future Forward's funding illegal and casting its founders into the wilderness, the Thai elite had declared war on a younger generation.

¹⁴ "Law Professors Oppose Constitutional Court's Dissolution of Future Forward" *Thai PBS World*, (24 February 2020) <<https://www.thaipbsworld.com/law-professors-oppose-constitutional-courts-dissolution-of-future-forward/>>.

¹⁵ Khemthong, "Anakot Mai" (n 3).

¹⁶ See Duncan McCargo, *Fighting for Virtue: Justice and Politics in Thailand* (Cornell University Press 2019) 184–210 <<https://doi.org/10.7591/cornell/9780801449994.001.0001>>.

¹⁷ See Duncan McCargo, "Democratic Demolition in Thailand" (2019) 30(4) *Journal of Democracy* 128–30 <<https://doi.org/10.1353/jod.2019.0056>>.

¹⁸ See Aim Sinpeng, "Party Banning and the Impact on Party System Institutionalization in Thailand" (2014) 36(3) *Contemporary Southeast Asia* 442–66 <<https://doi.org/10.1355/cs36-3e>>.

As Khemthong wrote prophetically at the time, “Now the dissolution has sent Thai youths into a direct clash with the gerontocratic establishment.”¹⁹ The Constitutional Court decision immediately served to de-legitimate both the Court itself, and the larger system it represented. In the months and years that followed, Thailand experienced an extraordinary wave of youth-led protests—nearly 400 in total during the remainder of 2020, covering 62 different provinces.²⁰ On 10 August 2020, speakers at a rally on Thammasat University’s Rangsit campus issued an unprecedented and shocking ten-point declaration, demanding wholesale reform of the monarchy. Banning Future Forward inflamed young voters and helped fuel an emerging generational rift in Thailand’s already fractured society. The Constitutional Court’s Decision No. 5/2563 soon assumed its rightful place among the most calamitous legal decisions in Thailand’s troubled political history.

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¹⁹ Khemthong, “Anakot Mai” (n 3).

²⁰ See Duncan McCargo, “Disruptors’ Dilemma? Thailand’s 2020 Gen Z Protests” (2021) 53(2) *Critical Asian Studies* 175–191 <<https://doi.org/10.1080/14672715.2021.1876522>>.