

Summary of Constitutional Court Ruling No. 31/2555 (2012)

Dated 24th October B.E. 2555 (2012)*

Re: Whether or not section 5, section 12, section 13(1), (2) and (7), section 14, section 17 and section 85 of Chulalongkorn University Act B.E. 2551 (2008) were contrary to or inconsistent with section 4 and section 30 of the Constitution, and whether or not section 74 paragraph one and paragraph two of Chulalongkorn University Act B.E. 2551 (2008) was contrary to or inconsistent with section 31 and section 43 paragraph one of the Constitution.

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1. Summary of background and facts

The Central Administrative Court referred the objections of the fifth plaintiff (Assistant Professor Chuchee Chimwong), authorised representative of the second plaintiff (Associate Professor Dr. Suntrapong Rapeesuwan), third plaintiff (Associate Professor Dr. Suthanu Srisai), fourth plaintiff (Assistant Professor Dr. Duangkamol Chatprasert) and sixth plaintiff (Associate Professor Suppata Piyakesin) in Case No. 392/2552 to the Constitutional Court. In this case, the plaintiffs commenced action against the Faculty Senate of Chulalongkorn University, first defendant, President of Chulalongkorn University, second defendant, and Chulalongkorn University, third defendant, at the Central Administrative Court, seeking for a revocation of the first defendant's resolution in Meeting No. 1/2552 on 10th February B.E. 2552 (2009) with respect to the election of the Chairman of the Faculty Senate, Vice-Chairman of the Faculty Senate and Secretary-General of the Faculty Senate, as well as the Announcement of the third defendant on election results for Chairman of the Faculty Senate, Vice-Chairman of the Faculty Senate and Secretary-General of the Faculty Senate, dated 13th February B.E. 2552 (2009). The plaintiffs sought for a re-election in accordance with Chulalongkorn University Faculty Senate Regulation on Faculty Senate Operations B.E. 2552 (2009). In addition, the plaintiffs filed an objection on the questions of whether or not the enactment process of Chulalongkorn University Act B.E. 2551 (2008) was constitutional, whether or not the provisions of Chulalongkorn University Act B.E. 2551 (2008) were constitutional, and whether or not the entirety of Chulalongkorn University Act B.E. 2551 (2008) was contrary to or inconsistent with section 4, section 30, section 31, section 43, section 62, section 78, section 87, section 142 to section 153 and section 187 of the Constitution.

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2. Preliminary issue

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court had the competence to admit this application for a ruling under section 211 paragraph one of the Constitution. The Constitutional Court found on the issue of whether or not the enactment process of Chulalongkorn University Act B.E. 2551 (2008) was contrary to or inconsistent with the Constitution that the Constitutional Court had decided in Ruling No. 35-36/2544, Ruling No. 26-34/2545 and Ruling No. 2/2551 that a constitutionality review of a law under the principle of post-promulgation review pursuant to section 211 of the Constitution could not invoke the issue of the constitutionality of the enactment process as regards such law in the Constitutional Court for a ruling. As for the objection that Chulalongkorn University Act B.E. 2551 (2008) in its entirety was contrary to or inconsistent with section 4, section 30, section 31, section 43, section 62, section 78, section 87, section 142 to section 153 and section 187 of the Constitution, the Constitutional Court had decided in Ruling No. 40-49/2544 and Ruling No. 24/2545 that any objection that a provision of law to be applied by a court to a case was contrary to or inconsistent with the Constitution pursuant to section 211 of the Constitution had to specify the particular section of law that was challenged as being contrary to or inconsistent with the Constitution. Therefore, the objections in these two parts were not in accordance with section 211 paragraph one of the Constitution and were not admitted for consideration.

As for the objections that Chulalongkorn University Act B.E. 2551 (2008) was contrary to or inconsistent with the Constitution, with clear specification of the sections of Chulalongkorn University Act B.E. 2551 (2008) that were contrary to or inconsistent with particular sections of the Constitution, the Constitutional Court found that such provisions were provisions which the Central Administrative Court was going to apply to the case and there had not yet been a prior ruling of the Constitutional Court in relation to such provisions. Hence, these objections were in accordance with section 211 paragraph one of the Constitution in conjunction with clause 17(13) and clause 18 paragraph one (2) and paragraph two of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore ordered the admittance of the application in these parts for consideration.

3. The issues considered by the Constitutional Court

The Constitutional Court examined the application, supplemental application and supporting documents and found that six issues were raised by the five applications as regards whether or not the provisions of Chulalongkorn University Act B.E. 2551 (2008) were contrary to or inconsistent with the Constitution. However, the objection as to whether or not section 5 of Chulalongkorn University Act B.E. 2551 (2008) was contrary to or inconsistent with section 78(2) of the Constitution, whether or not section 13 of Chulalongkorn University Act B.E. 2551 (2008) was contrary to or inconsistent with section 49 and section 78(1) of the Constitution, whether or not section 77 paragraph three of Chulalongkorn

University Act B.E. 2551 (2008) was contrary to or inconsistent with section 142 to section 151 of the Constitution and whether or not section 86 of Chulalongkorn University Act B.E. 2551 (2008) was contrary to or inconsistent with section 187 of the Constitution were issues without merit for consideration under section 211 paragraph two of the Constitution. The two remaining issues considered by the Constitutional Court were as follows:

(1) On the question of whether or not section 5, section 12, section 13(1), (2) and (7), section 14, section 17 and section 85 of Chulalongkorn University Act B.E. 2551 (2008) were contrary to or inconsistent with section 4 and section 30 of the Constitution, the Constitutional Court found as follows. Section 4 of the Constitution was a provision in Chapter 1 General Provisions. The provisions in this Chapter recognised and protected human dignity, rights, liberties and equality of persons. These provisions did not contain any text which recognised particular rights and liberties of a person since those rights and liberties were specifically provided for in other sections of the Constitution. Thus, this was not a provision which granted a person the right to object or claim that a provision of law was contrary to or inconsistent with this section of the Constitution. On the other hand, section 5, section 12, section 13(1), (2) and (7), section 14, section 17 and section 85 of Chulalongkorn University Act B.E. 2551 (2008) were provisions on the status of Chulalongkorn University, job security of university employees, functions of the university, revenues of the university, security for the use of assets for university educational purposes and transitory provisions for procedures in the event a vacancy in an official position and hired position of a university administrative unit. Such provision thus provided for essential substances relating to the administration of personnel, assets and revenues of Chulalongkorn University in order to ensure independence and flexibility in the administration of Chulalongkorn University, consistent with the governance principle for non-governmental and non-state enterprise agencies under the supervision of the state in accordance with the intent of Chulalongkorn University Act B.E. 2551 (2008). Such provisions applied to the relevant persons stated by law on an equal basis and without unfair discrimination pursuant to section 30 of the Constitution.

(2) On the question of whether or not section 74 paragraph one and paragraph two of Chulalongkorn University Act B.E. 2551 (2008) was contrary to or inconsistent with section 31 and section 43 paragraph one of the Constitution, the Constitutional Court found as follows. Section 74 of Chulalongkorn University Act B.E. 2551 (2008) was a transitory provision which stipulated that the person holding office of University President under Chulalongkorn University Act B.E. 2522 (1979) on the effective date of this Act would remain in office until the expiration of term. However, if such person was a university government official, he/she should express an intent to change his/her status to a university employee pursuant to this Act within fifteen days of this Act coming into force. Upon the expiration of the fifteen day period under paragraph one, if the incumbent did not express an intent to change his/her status to a university employee, such person would vacate office and the provisions of section 78 paragraph two would apply *mutatis mutandis*. Section 78

paragraph two provided that an expression of intent under paragraph one should be as provided by university regulation. An expression of intent, once submitted, could not be withdrawn. Upon an examination of the intent of Chulalongkorn University Act B.E. 2551 (2008) together with the roles, mission and functions of the University President under section 27 of Chulalongkorn University Act B.E. 2551 (2008), which provided for the University President as the superior executive, directly responsible to the University's administration, and section 32, which provided for the University President's authority as the university representative for all undertakings, as well as having the state functions, in particular under (1) to have the power and duty to administer university activities to ensure conformity with the objectives and policies of the university, it was discernible that the office of University President was key to the success of Chulalongkorn University's administration to achieve the intents and purposes of the university which differed from the governance principles under Chulalongkorn University Act B.E. 2522 (1979). Therefore, such provision constituted an essential measure to ensure that Chulalongkorn University had a chief executive who was able to continually provide education as a public service, consistent with the approach to the administration of university as non-governmental and non-state enterprise agencies within the supervision of the state. If such person vacated the office of University President due to a non-expression of intent to convert to a university employee, the vacation of office only affected the administrative position without prejudice to the government official status of such person. The effect of law did not cause any inequality of rights or liberties under section 31 of the Constitution and did not restrict the liberty to engage in an occupation as provided under section 43 paragraph one of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 5, section 12, section 13(1), (2) and (7), section 14, section 17 and section 85 of Chulalongkorn University Act B.E. 2551 (2008) were neither contrary to nor inconsistent with section 4 and section 30 of the Constitution, and section 74 paragraph one and paragraph two of Chulalongkorn University Act B.E. 2551 (2008) was neither contrary to nor inconsistent with section 31 and section 43 paragraph one of the Constitution.
