
J.Y. Interpretation No. 563 (July 25, 2003)*

Expulsion of Graduate Student Case

Issue

Does adoption of a Qualification Exam Outline to expel a student who fails a qualification test twice exceed the scope of university autonomy and violate the Constitution?

Holding

[1] Freedom of teaching under Article 11 of the Constitution bestows upon universities the freedom to instruct, to conduct research and to learn, and the right of autonomy in teaching, research and other academic matters. In supervising universities, the government, according to Article 162 of the Constitution, shall formulate statutes to the extent that they follow the principle of university autonomy. Legislative bodies shall not arbitrarily utilize the law to compel universities to establish particular units and infringe upon their autonomy of internal organization. Administrative agencies shall not utilize ordinances to interfere with the curriculum and syllabi of the universities, thus infringing upon the freedoms of teaching and research. The standard of legislative and administrative policies, to the extent consistent with university autonomy, shall be properly constrained (*see* J.Y. Interpretations Nos. 380 and 450).

[2] According to Article 6, Paragraph 1 of the Degree Conferral Act amended and promulgated on April 27, 1994, “after completing the required courses, presenting a thesis, and passing the final examination given by the Committee on Master’s Degree Examination,” the graduate student shall receive a degree. This

* Translation and Note by Wei-Feng HUANG

is the basic regulation of degree conferment as part of the government's supervision over universities. Since university autonomy is institutionally protected by the Constitution, in order to guarantee that the conferment of a degree upholds a certain standard, universities may certainly formulate related qualifications and conditions to earn a degree to the extent reasonable and necessary. On June 14, 1996, National Chengchi University passed a Master's Degree Examination Outline Regulation: Each department could on its own initiative regulate that a graduate student shall pass a qualification exam before presenting his/her thesis (Article 2, Paragraph 1). The Department of Ethnology from this school also amended its Qualification Exam Outline for master's degree candidates on September 19, 1996, and established the subject test for master's degree candidates accordingly. The provisions of this Qualification Exam Outline did not exceed the scope of university autonomy; thus, there exists no issue of applicability of Article 23 of the Constitution.

[3] The University Act, as amended and promulgated on January 5, 1994, does not explicitly regulate expulsion of students and its related matters. To maintain academic quality and nurture students' character, universities have the power and responsibility to examine students' academic achievement and conduct. Formulating the regulations stipulated by the procedures on the expulsion of students whose grades are below a certain standard or whose conduct has significantly deviated from proper behavior is within the scope of university autonomy. Legislative bodies shall formulate statutes to properly regulate, to the reasonable extent that universities are still entitled to the right of autonomy, nation-wide university academic matters. National Chengchi University and its Department of Ethnology followed the above-mentioned specification: A degree candidate for Master of Ethnology who does not pass after taking the subject test twice should be expelled. Such regulation is a matter of self-government of this school and does not contradict the meaning of the aforesaid constitutional

principle. Universities administering the punishment of expulsion have a great influence on the rights of the student. Certainly, the formulation and execution of related regulations is to follow due process, and their content should be reasonably appropriate.

Reasoning

[1] University autonomy is within the scope protected by the freedom of teaching under Article 11 of the Constitution. Universities are entitled to the right of autonomy in teaching, research, learning and other academic matters, such as internal organization, curriculum models, research topics, scholastic aptitude evaluations, examination rules and graduation requirements. In supervising universities, the government, according to Article 162 of the Constitution, shall formulate statutes, to the extent that they follow the principle of university autonomy, in order to prevent improper intervention in university matters, further develop universities' characteristics, and achieve their purposes of increasing knowledge and nurturing talent. Legislative bodies shall not arbitrarily utilize the law to compel universities to establish particular units and infringe upon their autonomy of internal organization. Administrative agencies shall not utilize ordinances to interfere with the curriculum and syllabi of universities, thus infringing upon freedom of teaching and research. The standard of legislative and administrative policies, to the extent consistent with university autonomy, shall be properly constrained. The competent authorities of education may only exercise their supervisory powers over university operations on the legality issues (*see* J.Y. Interpretations Nos. 380 and 450).

[2] The purposes of universities are to conduct academic research, educate individuals, promote culture, serve the society and encourage the nation's development (Article 1, Paragraph 1 of the University Act). As educational institutions, universities have missions to grow national morality and cultivate

students' healthy and sound character (*see* Article 158 of the Constitution and Article 2, Paragraph 2 of the Fundamental Act on Education). The University Act, amended and promulgated on January 5, 1994, does not explicitly regulate the matter of student expulsion. To fulfill the purpose of university education, universities have the power and responsibility to examine students' academic achievement and conduct. Formulating the regulations stipulated by the procedures on the expulsion of students whose grades are below a certain standard or whose conduct has significantly deviated from proper behavior is within the scope of university autonomy. Legislative bodies shall formulate statutes to properly regulate, to the reasonable extent that universities are still entitled to the right of autonomy, nation-wide university academic matters. National Chengchi University and its Department of Ethnology followed the above-mentioned specification: A degree candidate for Master of Ethnology, who fails a subject test twice, should be expelled. Such regulation is a matter of self-government of the school and does not contradict the spirit and meaning of the aforesaid constitutional principle.

[3] According to the Degree Conferral Act, amended and promulgated on May 6, 1983, a graduate student shall "study for more than two years, finish the required classes and thesis, pass all subjects, and be selected as a candidate for a master's degree" (Article 4, Paragraph 1). Moreover, "the candidate must pass the final examination and be qualified by the Ministry of Education" (Article 4, Paragraph 2), and then the university will confer upon him/her a master's degree. The above provision was amended on April 27, 1994, to read: "graduate students from universities' master's degree programs, after completing the required courses, presenting a thesis, and passing the final examination given by the Committee on Master's Degree Examination, shall receive a master's degree" (Article 6, Paragraph 1). The purpose was to preclude a qualification procedure

by the Ministry of Education, enhance universities' right of autonomy to confer a degree, and thus only set a basic regulation on the conferment of a degree. Although such clause "pass all the subjects" has been removed, and "the candidate must pass the final examination" has been amended to "passing the final examination given by the Committee on Master's Degree Examination", university autonomy is institutionally protected by the Constitution, for in guaranteeing that the conferment of a degree maintains a certain standard, universities could certainly formulate related qualifications and conditions of taking a degree to the extent reasonable and necessary. Article 25, Paragraph 2 of the University Act, which states: "For graduate students from Master's or Ph.D. programs, who have fulfilled the course requirements and passed all subjects, such university shall respectively confer a Master's or a Ph.D. degree," follows the same principle. During the Conference of School Affairs in National Chengchi University on June 14, 1996, the school passed a Master's Degree Examination Outline Regulation: Each department could on its own initiative regulate that a graduate student shall pass a qualification exam before presenting his/her thesis (Article 2, Paragraph 1). The Department of Ethnology from this school also amended its Qualification Exam Outline for master's degree candidates on September 19, 1996, and established the subject test for master's degree candidates accordingly. The provisions of this Qualification Exam Outline did not exceed the scope of university autonomy; therefore, there is no issue of applicability of Article 23 of the Constitution.

[4] The students' rights to learn and to be educated shall be protected by the government (Article 8, Paragraph 2 of the Fundamental Act on Education). A university's act of expulsion or of any other similar punishment which alters the status of the student and his or her right to be educated significantly associates with the rights and interests of the student (*see* J.Y. Interpretation No. 382). When

punishing a student with expulsion according to university regulations, the cause of expulsion and rules of related matters shall be reasonably appropriate, and their formulation and execution shall follow due process. Article 17, Paragraph 1 of the University Act states: "To enhance the educational effect of universities, an elected student representative shall attend the Conference of School Affairs and any other conference associated with academics, life, and formulation of rules related to reward and punishment." Paragraph 2 of the same Article states: "Universities shall safeguard and assist students to form autonomous associations, manage any affairs related to students' learning, life and rights in school, and establish a system of petitions for students to protect their rights." Certainly, universities shall follow the rules related to the formulation of regulations and student petitions.

Background Note by the Translator

As a degree candidate for Master of Ethnology at National Chengchi University in 1996, the petitioner was unable to pass after taking the subject test twice in 1996 and 1997, respectively, and was therefore expelled from the university on June 6, 1997, in accordance with Article 2, Paragraph 1 of the National Chengchi University Master's Degree Examination Outline Regulation, promulgated on June 14, 1996, and Article 4 of the Department of Ethnology of National Chengchi University Qualification Exam Outline for Master's Degree Candidates, promulgated on September 19, 1996 (collectively referred to as the "Regulations").

After exhausting ordinary judiciary remedies in 1998, the petitioner brought the case before the Constitutional Court in 1999, challenging the constitutionality of the expulsion. The petitioner alleged the expulsion pursuant to the Regulations added additional restrictions not prescribed by Article 6,

Paragraph 1 of the Degree Conferral Act and infringed upon the petitioner's right to be educated, thereby violating the Gesetzesvorbehalt principle under Article 23 of the Constitution.

The Constitutional Court holds, however, in J.Y. Interpretation No. 563 that the passage of the Regulations by the university is an exercise of university autonomy, which is institutionally protected by the Constitution, in order to guarantee that the conferment of a degree maintains a certain standard; as such, universities could certainly formulate related qualifications and conditions of conferring a degree to the extent reasonable and necessary.

In addition to J.Y. Interpretation No. 563, issues related to “university autonomy” have also been discussed in J.Y. Interpretations No. 380 and 450. The Constitutional Court indicated in J.Y. Interpretation No. 380 that conditions set forth for graduation were to fall within the purview of university autonomy, and the Enforcement Rules of the University Act, authorizing the Ministry of Education to “invite” all universities to jointly design the core curriculum common to those universities, had gone beyond the scope prescribed by the University Act, added restrictions not provided by the University Act and therefore violated the Constitution. A similar doctrine was also illustrated in J.Y. Interpretation No. 450, in which the Constitutional Court reiterated that universities are to enjoy autonomous rights insofar as they fall within the scope related to freedoms of teaching and study; as such, Article 11, Paragraph 1, Subparagraph 6 of the University Act, specifically prescribing that all universities were to establish an Office of Military Training with staff, infringed upon the literal meaning and spirit of “university autonomy” as warranted by the Constitution.

Furthermore, J.Y. Interpretation No. 462 touched on the issue of whether a faculty member in a university who failed in his/her promotion evaluation was entitled to legal remedies and what the due process requirements were for

conducting a faculty promotion evaluation. In both J.Y. Interpretation No. 563 and No. 462, the Constitutional Court emphasizes that maintaining the quality of academic research and teaching is the essence of academic freedom guaranteed by the Constitution. The Constitutional Court elaborates in J.Y. Interpretation No. 563, “When expelling a student according to university regulations, the cause of expulsion and rules of related matters shall be reasonably appropriate. Their formulation and execution shall follow due process requirements”. Additionally, in J.Y. Interpretation No. 382, the Constitutional Court held that in light of expulsion’s significant impact on the people’s right to education guaranteed by the Constitution, such a disciplinary action shall be classified as an administrative act, and the disciplined student is entitled to bring an administrative appeal and litigation after exhausting all remedies available within his/her school.