

J. Y. Interpretation No.684 ( January 17, 2011 ) \*

**ISSUE:** Is a student who claims that his/her rights are violated by a university's administrative decision other than an expulsion or similar decision entitled to bring administrative appeal and litigation against the decision ?

**RELEVANT LAWS:**

Article 16 of the Constitution ( 憲法第十六條 ) ; J. Y. Interpretation Nos. 380, 382, 418, 462, 563, 626, 653, and 667 ( 司法院釋字第三八〇號、第三八二號、第四一八號、第四六二號、第五六三號、第六二六號、第六五三號、第六六七號解釋 ) .

**KEYWORDS:**

right to administrative appeal ( 訴願權 ) , right to litigation ( 訴訟權 ) , J. Y. Interpretation No. 382 ( 釋字第三八二號解釋 ) , expulsion ( 退學 ) , right to education ( 受教育之權利 ) , significant impact ( 重大影響 ) , administrative decision ( 行政處分 ) , other constitutional rights ( 其他基本權利 ) , Where there is a right, there is a remedy ( 有權利即有救濟 ) , university self-government ( 大學自治 ) .\*\*

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\* Translated by C. L. Chen

\*\* Contents within frame, not part of the original text, are added for reference purposes only.

**HOLDING:** When a university makes administrative decisions or other public authority measures for realizing educational purposes of seeking academic truth and cultivating talents or for maintaining the campus order, if the decisions or measures infringe the student's right to education or other constitutional rights, even if the decisions or measures are not expulsions or similar decisions, based on the mandate that where there is a right, there is a remedy under Article 16 of the Constitution, the student whose right has been infringed shall be allowed to bring administrative appeal and litigation and there is no need to place special restrictions. To this extent, the holding of J. Y. Interpretation No. 382 is hereby modified.

**REASONING:** Article 16 of the Constitution guarantees the people the right to administrative appeal and the right to litigation. When the rights of an individual are violated by public authority, the individual may duly bring administrative appeal and litigation to seek adequate remedies (*see* J. Y. Interpretation

**解釋文：**大學為實現研究學術及培育人才之教育目的或維持學校秩序，對學生所為行政處分或其他公權力措施，如侵害學生受教育權或其他基本權利，即使非屬退學或類此之處分，本於憲法第十六條有權利即有救濟之意旨，仍應許權利受侵害之學生提起行政爭訟，無特別限制之必要。在此範圍內，本院釋字第三八二號解釋應予變更。

**解釋理由書：**人民之訴願權及訴訟權為憲法第十六條所保障。人民於其權利遭受公權力侵害時，得循法定程序提起行政爭訟，俾其權利獲得適當之救濟（本院釋字第四一八號、第六六七號解釋參照），而此項救濟權利，不得僅因身分之不同而予以剝奪。

Nos. 418 and 667). This right to remedy may not be deprived of merely because of the status of the individual.

On the question of whether people who, as students, are subject to schools' actions may bring administrative appeal and litigation, J. Y. Interpretation No. 382 holds the view that it depends on the contents of the actions. For an expulsion or similar decision based on enrollment rules or disciplinary regulations and sufficient to alter the student status of a student and to hinder the student's opportunity to receive education, because it has significant impact on the individual's constitutional right to education, it constitutes the administrative decision under the Administrative Appeal Act and the Administrative Litigation Act and, therefore, the student may bring administrative appeal and litigation against it. As to the school's actions against a student necessary for maintaining the campus order or realizing educational purposes and do not infringe the right to education, such as recording a demerit or reprimand, the student can

本院釋字第三八二號解釋就人民因學生身分受學校之處分得否提起行政爭訟之問題，認為應就其處分內容分別論斷，凡依有關學籍規則或懲處規定，對學生所為退學或類此之處分行為，足以改變其學生身分及損害其受教育之機會時，因已對人民憲法上受教育之權利有重大影響，即應為訴願法及行政訴訟法上之行政處分，而得提起行政爭訟。至於學生所受處分係為維持學校秩序、實現教育目的所必要，且未侵害其受教育之權利者（例如記過、申誡等處分），則除循學校內部申訴途徑謀求救濟外，尚無許其提起行政爭訟之餘地。惟大學為實現研究學術及培育人才之教育目的或維持學校秩序，對學生所為行政處分或其他公權力措施，如侵害學生受教育權或其他基本權利，即使非屬退學或類此之處分，本於憲法第十六條有權利即有救濟之意旨，仍應許權利受侵害之學生提起行政爭訟，無特別限制之必要。在此範圍內，本院釋字第三八二號解釋應予變更。

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only appeal within the school and is not allowed to bring administrative appeal or litigation. However, when a university makes administrative decisions or other public authority measures for realizing educational purposes of seeking academic truth and cultivating talents or for maintaining the campus order, if the decisions or measures infringe the student's right to education or other constitutional rights, even if the decisions or measures are not expulsions or similar decisions, based on the mandate that where there is a right, there is a remedy under Article 16 of the Constitution, the student whose right has been infringed shall be allowed to bring administrative appeal and litigation and there is no need to place special restrictions. To this extent, the holding of J. Y. Interpretation No. 382 is hereby modified.

Teaching, research, and students' freedom of learning at university are all protected by the Constitution and a university is entitled to the right of self-government to the extent permitted by law (*see* J. Y. Interpretation No. 563).

大學教學、研究及學生之學習自由均受憲法之保障，在法律規定範圍內享有自治之權（本院釋字第五六三號解釋參照）。為避免學術自由受國家不當干預，不僅行政監督應受相當之限制（本院釋字第三八〇號解釋參照），立

To prevent academic freedom from the undue interference of the state, not only the administrative supervision should be considerably restricted (*see* J. Y. Interpretation No. 380) but the legislature may regulate university affairs only to a reasonable extent (*see* J. Y. Interpretation Nos. 563 and 626). The agencies or courts that hear administrative appeal or administrative litigation cases brought by university students should, based on the principle of university self-government, to an adequate extent defer to the professional judgment of universities (*see* J. Y. Interpretation No. 462).

Separately, one of the petitioners argues that Article 4, Paragraph 1 of the Administrative Litigation Act violates Article 16 of the Constitution and is inconsistent with J. Y. Interpretation No.653. This part of the petition does not specifically indicate how the provision contravenes the Constitution objectively but merely disputes the appropriateness of fact-finding and law-application of the courts from a personal subjective per-

法機關亦僅得在合理範圍內對大學事務加以規範（本院釋字第五六三號、第六二六號解釋參照），受理行政爭訟之機關審理大學學生提起行政爭訟事件，亦應本於維護大學自治之原則，對大學之專業判斷予以適度之尊重（本院釋字第四六二號解釋參照）。

另聲請人之一認行政訴訟法第四條第一項規定，違反憲法第十六條，且與司法院釋字第六五三號解釋意旨不符，聲請解釋憲法部分，係以個人主觀見解爭執法院認事用法之當否，並未具體指摘該規定於客觀上究有何牴觸憲法之處，核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理，併此指明。

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spective and, therefore, does not satisfy the requirement set forth in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act. According to Article 5, Paragraph 3 of the Constitutional Interpretation Procedure Act, this part of the petition shall be dismissed.

Justice Chen-Shan Li filed concurring opinion.

Justice Yeong-Chin Su filed concurring opinion.

Justice Tzong-Li Hsu filed concurring opinion.

Justice Ching-You Tsay filed concurring opinion.

Justice Yu-hsiu Hsu filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Chun-Sheng Chen filed concurring opinion.

Justice Shin-Min Chen filed dissenting opinion in part.

本號解釋李大法官震山提出協同意見書；蘇大法官永欽提出協同意見書；許大法官宗力提出協同意見書；蔡大法官清遊提出協同意見書；許大法官玉秀提出協同意見書；黃大法官茂榮提出協同意見書；陳大法官春生提出協同意見書；陳大法官新民提出部分不同意見書。

### EDITOR'S NOTE:

Summary of facts:

1. Petitioner X was a first year master's student at a graduate school of a university. In the first semester of the 2008-09 academic year, he attempted to select a course entitled "Corporate Governance and Business Development" offered at the EMBA program by another college of the university. The university rejected this class selection on the ground that the petitioner was not a student of the EMBA program. After the petitioner went through the appeal within the university, administrative appeal and administrative litigation but the cases were all dismissed for lack of legal conformity, he filed this petition.
2. Petitioner Y was a fourth year master's student at another graduate school of the same university. On March 16, 2004, he sought the permission from the Extracurricular Activities Section of the Office of Student Affairs to put up on campus the poster in support of

### 編者註：

事實摘要：

1. 聲請人 X 為某大學研究所碩一學生，97 學年度上學期，跨院加選他學院 EMBA 學程所開設的「公司治理與企業發展」科目，學校認聲請人非該學院 EMBA 學生，否准其加選。聲請人迭經校內申訴、訴願不受理及行政訴訟以不合法為由駁回確定，爰聲請解釋。
2. 聲請人 Y 為同大學另系研究所碩四學生，93 年 3 月 16 日向學校學生事務處課外活動指導組申請在該校公告欄及海報版張貼「挺扁海報」，時值公職人員競選期間，學校以違背國家法令為由否准所請。聲請人迭經校內申訴、訴願不受理及行政

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a certain candidate during the period of an election of public officials. The university rejected his application on the ground that the act would violate national laws. After the petitioner went through the appeal within the university, administrative appeal and administrative litigation but the cases were all dismissed for lack of legal conformity, he filed this petition.

3. Petitioner Z was a sophomore at the Department of Tourism Industry of a private institute of technology. In the end of the second semester of the 2002-03 academic year, he requested the teacher of an obligatory course to reschedule the final examination to an earlier date because of the conflict of schedule between the original date of the examination and the date of the tourism Japanese tour guide examination of 2003, and the teacher agreed. However, subsequently, the teacher failed him in the course and, as a result, the petitioner could not graduate in 2003. The petitioner argued

訴訟以不合法為由駁回確定，爰聲請解釋。

3. 聲請人Z為某私立技術學院進修部觀光餐旅學群觀光事業科二年級學生，因91年度下學期期末必修科目考試日期，與92年觀光日語導遊筆試日期衝突，向授課教師申請提前考試獲准，然該必修科目嗣經授課教師評定成績不及格，致無法於92年畢業。聲請人主張成績評分不公影響畢業，迭經校內申訴、行政訴訟以不合法為由駁回確定，爰聲請解釋。

that the evaluation was not just and adversely affected his graduation, and after going through appeal within the university and administrative litigation but the cases were all dismissed, he filed this petition.