

J. Y. Interpretation No.462 (July 31, 1998) *

ISSUE: (1) Under the Constitution, is a faculty member, who is dissatisfied with his/her evaluation committee's decision over his/her career advancement, entitled to bring an administrative appeal and later an administrative litigation to challenge their decision?

(2) What are the due process requirements for conducting a faculty promotion evaluation?

RELEVANT LAWS:

Articles 15, 16 and 23 of the Constitution (憲法第十五條、第十六條、第二十三條) ; J. Y. Interpretation Nos. 243, 266, 269, 298, 323, 382, 423, 430 and 459 (司法院釋字第二四三號、第二六六號、第二六九號、第二九八號、第三二三號、第三八二號、第四二三號、第四三〇號及第四五九號解釋) ; Articles 18 and 20 of the University Act (大學法第十八條、第二十條) ; Articles 8 and 24 of the Junior College Act (專科學校法第八條、第二十四條) ; Articles 14 and 41 of the Educators Appointment Act (教育人員任用條例第十四條、第四十一條) ; Articles 7 and 9 of the Regulation Governing the Screening of Qualification of University, Independent College and Junior College Teachers (大學、獨立學院及專科學校教師資格審定辦法第七條、第九條) ; Prece-

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dent P.T. No. 398 (Ad. Ct. 1962 (行政法院五十一年判字第三九八號判例))。

KEYWORDS:

faculty promotion review (教師升等評審), faculty evaluation (教師評審), academic performance review (學術審議), right to work (工作權), right to sue (訴訟權), academic freedom (學術自由), duty to give reasons (提出理由之義務), an administrative act (行政處分), the principle of expertise evaluation (專業評量之原則), administrative appeal (訴願), administrative litigation (行政訴訟).**

HOLDING: The authority of the faculty evaluation committee of each department, college and university over the faculty promotion review is a public authority with specified scope conferred by the law. The promotion decisions made by such a faculty committee are analogous to the decisions made on the promotion qualifications of university faculties by the Academic Performance Review Committee of the Ministry of Education. Both decisions have a significant impact on the status of faculties, such as qualifications, and therefore should be classified as administrative acts subject to administrative appeal and administrative litigation.

解釋文：各大學校、院、系（所）教師評審委員會關於教師升等評審之權限，係屬法律在特定範圍內授予公權力之行使，其對教師升等通過與否之決定，與教育部學術審議委員會對教師升等資格所為之最後審定，於教師之資格等身分上之權益有重大影響，均應為訴願法及行政訴訟法上之行政處分。受評審之教師於依教師法或訴願法用盡行政救濟途徑後，仍有不服者，自得依法提起行政訴訟，以符憲法保障人民訴訟權之意旨。行政法院五十一年判字第三九八號判例，與上開解釋不符部分，應不再適用。

tion. An evaluated faculty member who is not satisfied with the decision and has exhausted all administrative remedies available in the Teachers Act or Administrative Appeal Act is entitled to bring administrative litigation to exercise the right of instituting legal proceedings guaranteed by Article 16 of the Constitution. The ruling of Precedent P.T. No. 398 of the Administrative Court in 1962 should no longer be applied to the extent that it is in conflict with the Interpretation rendered above.

The review of promotion qualifications of faculties concerns the quality of faculties and standards of teaching and research in universities and also the people's right to work as well as the possession of vocational qualifications. To meet the principle of proportionality (Verhältnismäßigkeitsprinzip) requirement provided in Article 23 of the Constitution, such a review should be authorized by the law and the procedures promulgated by the competent agency should guarantee an objective, credible, fair and accurate evaluation of the professional, promotion.

大學教師升等資格之審查，關係大學教師素質與大學教學、研究水準，並涉及人民工作權與職業資格之取得，除應有法律規定之依據外，主管機關所訂定之實施程序，尚須保證能對升等申請人專業學術能力及成就作成客觀可信、公平正確之評量，始符合憲法第二十三條之比例原則。且教師升等資格評審程序既為維持學術研究與教學之品質所設，其決定之作成應基於客觀專業知識與學術成就之考量，此亦為憲法保障學術自由真諦之所在。故各大學校、院、系（所）教師評審委員會，本於專業評量之原則，應選任各該專業領域具有充

academic capabilities of the applicant for. Since such evaluation procedures are set up to maintain the quality of academic research and teaching, the decision should be made based upon objective professional expertise and academic achievements. This is the essence of academic freedom guaranteed by the Constitution. Pursuant to such a principle of evaluation of expertise, the faculty evaluation committee of each department, college and university should first select competent experts or academicians in each particular professional field to conduct the evaluation and then report the evaluation to the committee for review. The faculty evaluation committee of each department, college and university should defer to the evaluation made by experts or academicians unless the committee can present definite reasons based upon academic expertise for questioning the credibility and accuracy of the evaluation. An administrative agency or an administrative court may review an evaluation in dispute to see if the relevant procedures have been followed and if the judgment or evaluation made is illegal or obviously inappropriate.

分專業能力之學者專家先行審查，將其結果報請教師評審委員會評議。教師評審委員會除能提出具有專業學術依據之具體理由，動搖該專業審查之可信度與正確性，否則即應尊重其判斷。受理此類事件之行政救濟機關及行政法院自得據以審查其是否遵守相關之程序，或其判斷、評量有無違法或顯然不當之情事。現行有關各大學、獨立學院及專科學校教師資格及升等評審程序之規定，應本此解釋意旨通盤檢討修正。

Current provisions regarding faculty qualifications and promotion evaluation procedures in universities, independent colleges and junior colleges should be thoroughly reviewed and revised in accordance with this Interpretation.

REASONING: Article 16 of the Constitution guarantees the people's right to administrative appeal as well as to sue in a court of law. Such a right will not differ because of a person's status. This has been reiterated repeatedly in Interpretations Nos. 243, 266, 298, 323, 382 and 430 rendered by the [Judicial] Yuan regarding people possessing the status of civil servants or others also involved in various litigations. There exists an administrative act regardless of the terms or modes employed therein, whenever 1) an administrative agency exercises public authority and unilaterally makes a decision over specific matters; or 2) an institute established in accordance with the law exercises public authority based either on direct authorization of the law or on authorization made by a competent administrative agency in accordance with

解釋理由書：人民有訴願及訴訟之權，憲法第十六條定有明文。此項權利，並不因其身分而受影響，此迭經本院釋字第二四三號、第二六六號、第二九八號、第三二三號、第三八二號及第四三〇號等解釋在案，就人民因具有公務員或其他身分關係而涉訟之各類事件中，闡釋甚明。而行政機關行使公權力或依法設立之團體，直接依法律規定或經政府機關就特定事項依法授與公權力者，就該特定事項所作成之單方行為，不問其用語、形式，皆屬行政處分，此亦經本院釋字第二六九號、第四二三號及第四五九號解釋在案。

the law over specific matters and unilaterally makes a decision over specific matters. This also has been reiterated repeatedly in Interpretations Nos. 269, 423 and 459 rendered by the [Judicial] Yuan.

The faculties in universities, independent colleges and junior colleges are divided into four levels: professors, associate professors, assistant professors and lecturers. According to Articles 18 and 20 of the University Act, Articles 8 and 24 of the Junior College Act provide that faculty promotions should be reviewed by the faculty evaluation committee of each department, college and university. The qualifications for teachers in schools of various levels are provided in the Educators Appointment Act. And Article 14 of this Act authorizes the Ministry of Education to promulgate the Regulation Governing the Screening of Qualification of University, Independent College and Junior College Teachers. Articles 7 and 9 of the said Regulation provide that faculty qualifications should be reviewed first by the faculty evaluation committees of each school and then submitted to the Aca-

大學、獨立學院、專科學校教師分教授、副教授、助理教授及講師，有關教師之升等，由各該學校設校、院、系（所）教師評審委員會評審，大學法第十八條、第二十條及專科學校法第八條、第二十四條定有明文。教育人員任用條例就公立各級學校教師之任用資格有所規定，同法第十四條並授權教育部訂定「大學、獨立學院及專科學校教師資格審查辦法」，該辦法第七條及第九條規定，教師資格之審查，由學校教師評審委員會審核通過後，送教育部提交學術審議委員會審議決定，經審查合格者，始發給教師證書。至私立學校教師之任用資格及其審查程序，依教育人員任用條例第四十一條，亦準用前開條例之規定。是各大學校、院、系（所）及專科學校教師評審委員會關於教師升等之評審，係屬法律授權範圍內為公權力之行使，其對教師之資格等身分上之權益有重大影響，均為各該大學、院、校所為之行政處分。受評審之教師於依教

demic Performance Review Committee of the Ministry of Education for approval before a teaching certificate is issued. Article 41 of the same Act provides that the provisions of the Act shall apply, where appropriate, to the qualifications for teachers of private schools and the review procedures thereof. Therefore, faculty promotion decisions made by the faculty evaluation committee of each department, college, and university as well as of vocational academies are exercises of public authority with specified scope conferred by law. Such decisions have a significant impact on the status of faculties, and therefore should be classified as administrative acts. An evaluated faculty member who is not satisfied with the decision and has exhausted all administrative remedies available is entitled to bring administrative litigation to exercise the right of instituting legal proceedings guaranteed by Article 16 of the Constitution. The 1962 Precedent P.T. No. 398 of the Administrative Court ruling that, “only those people whose rights or interests are adversely affected by an illegal or inappropriate administrative act made by a central or local

師法或訴願法等用盡行政救濟途徑後，仍有不服者，自得依法提起行政訴訟，以符憲法保障人民訴訟權之意旨。行政法院五十一年判字第三九八號判例：「依訴願法第一條規定，提起訴願，唯人民對於中央或地方官署所為不當或違法之處分致損害其權利或利益者，始得為之。至各級公務人員以公務員身分所受主管官署之懲戒處分，則與以人民身分因官署處分而受損害者有別，自不得對之提起訴願。」其與上開解釋不符部分，應不再適用。

agency may bring administrative appeal pursuant to Article 1 of the Administrative Appeal Act, whereas civil servants of all levels suffering from disciplinary actions taken by the employing agency may not bring administrative appeal as the situation is different from the former,” should no longer be applied to the extent that it is in conflict with the Interpretation rendered above.

According to Article 15 of the Constitution, the people’s right to work should be guaranteed. Therefore all kinds of proper jobs necessary for earning a living should be protected by the state, and any restriction on vocational freedom must be based on just reasons and cannot go beyond necessity. The review of promotion qualifications of faculties has an impact upon the quality of faculties, standards of teaching and research in universities, the right to work, as well as the possession of vocational qualifications. To meet the principle of proportionality requirement contained in Article 23, such a review should be authorized by law and the procedures promulgated by the competent

按憲法第十五條規定，人民之工作權應予保障，是以凡人民作為謀生職業之正當工作，均應受國家之保障，對於職業自由之限制，應具有正當之理由，並不得逾越必要程度。大學教師升等資格之審查，關係大學教師素質與大學教學、研究水準，並涉及人民工作權與職業資格之取得，除應有法律規定之依據外，主管機關所訂定之實施程序，尚須保證對升等申請人專業學術能力及成就作成客觀可信、公平正確之評量，始符合憲法第二十三條之比例原則。教師升等資格評審程序既為維持學術研究與教學之品質所設，其決定之作成應基於客觀專業知識與學術成就之考量，此亦為憲法保障學術自由真諦之所在。是以各大學校、院、系（所）及專科學校教師

agency should guarantee an objective, credible, fair and accurate evaluation of the professional, academic capabilities of the applicant for promotion. Since such evaluation procedures are set up for the maintenance of quality academic research and teaching, the decision should be made based upon objective professional expertise and academic achievements. This is the essence of academic freedom guaranteed by the Constitution. Pursuant to such a principle of expertise evaluation, the faculty evaluation committee of each department, college and university should first select competent experts or academicians in each particular professional field to conduct the evaluation and then report the evaluation to the committee for review. The faculty evaluation committee of each department, college and university should defer to the evaluation made by experts or academicians unless the committee can present definite reasons based upon academic expertise for questioning the credibility and accuracy of the evaluation. When necessary, the committee should provide the applicant with an opportunity to make a written or oral presen-

評審委員會，本於專業評量之原則，應選任各該專業領域具有充分專業能力之學者專家先行審查，將其結果報請教師評審委員會評議。教師評審委員會除能提出具有專業學術依據之具體理由，動搖該專業審查之可信度與正確性，否則即應尊重其判斷；評審過程中必要時應予申請人以書面或口頭辯明之機會；由非相關專業人員所組成之委員會除就名額、年資、教學成果等因素予以斟酌外，不應對申請人專業學術能力以多數決作成決定。受理此類事件之行政救濟機關及行政法院自得據以審查其是否遵守相關之程序，或其判斷、評量是否以錯誤之事實為基礎，是否有違一般事理之考量等違法或顯然不當之情事。現行有關各大學、獨立學院及專科學校教師資格及升等評審程序之規定，應本此解釋意旨通盤檢討修正。又行政法院五十七年判字第四一四號判例，業經本院釋字第三三八號解釋不予適用在案，併此指明。

tation during the review procedures. Where the committee is composed of faculties of non-relevant expertise, it may only consider factors such as quota, seniority, and teaching performance and should not decide on the academic capabilities of the applicant by majority vote. An administrative agency or an administrative court may review the evaluation decision under dispute to see if the relevant procedures have been followed, and if the judgment or evaluation made is illegal or obviously inappropriate. Current provisions regarding faculty qualifications and promotion evaluation procedures in universities, independent colleges and vocational academies should be thoroughly reviewed and revised in accordance with this Interpretation.