J. Y. Interpretation No.380（May 26, 1995）*

ISSUE: Article 22, Paragraphs 1 and 3, of the Enforcement Rules of the University Act require the universities to design compulsory courses commonly to be taken by all the students regardless of their majors, no student may graduate if he fails to pass the courses once finally designed. Does the said provision violate Article 11 of the Constitution which guarantees freedom of teaching to the people?

RELEVANT LAWS:

Articles 11, 23 and 162 of the Constitution（憲法第十一條、第二十三條、第一百六十二條）; Articles 1, Paragraph 2, 4, 8, 11, 23 and 25 of the University Act（大學法第一條第二項、第四條、第八條、第十一條、第二十三條、第二十五條）; Article 3 of the Private School Act（私立學校法第三條）; Articles 2 and 3 of the Act Governing the Conferment of Academic Degrees（學位授予法第二條、第三條）; Article 22, Paragraphs 1 and 3 of the Enforcement Rules of the University Act（大學法施行細則第二十二條第一項、第三項）.

KEYWORDS:

freedom of teaching（教學自由）, institutional protection mechanism（學術自由之制度性保障）, freedom of research（研究自由）, freedom of instruction（講學自由）, freedom of study（學習自由）, the legal principle of the reservation of law（法律保留原則）, university self-government（大學自治）. **

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HOLDING: The provision regarding the freedom of teaching provided in Article 11 of the Constitution is an institutional protection mechanism for academic freedom. Such provision shall encompass the freedom of research, instruction, and study, etc., in the field of college education. Article 1, Paragraph 2, of the University Act provides that "A university shall be protected under the academic freedom and shall, to the extent permitted by law, be entitled to the right of self-government." The scope of such a right of self-government shall cover all essential academic matters that relate directly to research and teaching. Although the University Act does not specifically state the arrangement of college curricula, it is one of the essential academic matters and shall therefore be included within the scope of university self-government, since it is directly related to the freedom of teaching and study. As it is explicitly given in Article 162 of the Constitution that "All public and private educational and cultural institutions state-wide shall, in accordance with the law, be subject to state supervision," such supervision of university self-

解釋文：憲法第十一條關於講學自由之規定，係對學術自由之制度性保障；就大學教育而言，應包含研究自由、教學自由及學習自由等事項。大學法第一條第二項規定：「大學應受學術自由之保障，並在法律規定範圍內，享有自治權」，其自治權之範圍，應包含直接涉及研究與教學之學術重要事項。大學課程如何訂定，大學法未定有明文，然因直接與教學、學習自由相關，亦屬學術之重要事項，為大學自治之範圍。憲法第一百六十二條固規定：「全國公私立之教育文化機關，依法律受國家監督。」則國家對於大學自治之監督，應於法律規定範圍內為之，並須符合憲法第二十三條規定之法律保留原則。大學之必修課程，除法律有明文規定外，其訂定亦應符合上開大學自治之原則，大學法施行細則第二十二條第三項規定：「各大學共同必修科目，由教育部邀集各大學相關人員共同研訂之。」惟大學法並未授權教育部邀集各大學共同研訂共同必修科目，大學法施行細則所定內容即不得增加大學法所未規定之限制。又同條第一項後段「各大學共同必修科目不及格者不得畢業」之規定，涉及對畢業條件之限制，致使各大學共同必修科目之訂定實質上發生限

government shall not only be carried out within the framework of law, but be consistent with the principle of legal reservation, as set forth in Article 23 of the Constitution. The design of core curricula, except for those explicitly regulated by the law, should also comply with said principle of university self-government. Article 22, Paragraph 3, of the Enforcement Rules of the University Act reads: "The core curriculum common to all universities shall be jointly designed by relevant personnel from all universities, upon the invitation of the Ministry of Education." Nonetheless, the University Act has not authorized the Ministry of Education to "invite" all universities jointly to design the core curriculum common to these universities. As such, the content of the Enforcement Rules of the University Act shall not add restrictions that are not stipulated in the University Act. In addition, in the last sentence of the same Article, Paragraph 1 of said Enforcement Rules, the clause "Those who fail any of the core curriculum common to all universities may not graduate" is a restriction on the qualification of graduation and therefore

制畢業之效果，而依大學法第二十三條、第二十五條及學位授予法第二條、第三條規定，畢業之條件係屬大學自治權範疇。是大學法施行細則第二十二條第一項後段逾越大學法規定，同條第三項未經大學法授權，均與上開憲法意旨不符，應自本解釋公布之日起，至遲於屆滿一年時，失其效力。

serves, in essence, to transform the design of the core curriculum common to all universities into a restrictive condition for graduation, given that Articles 23 and 25 of the University Act and Articles 2 and 3 of the Act Governing the Conferment of Academic Degrees stipulate that conditions for graduation shall fall within university self-government. Said last sentence of Article 22, Paragraph 1, of the Enforcement Rules of the University Act has gone beyond, whereas Paragraph 3 of the same Article has not been authorized by, the University Act and neither is in accord with the constitutional intent provided above. Such provisions should therefore become null and void no later than one year from the publication date of this Interpretation.

REASONING: The provision regarding the freedom of teaching provided in Article 11 of the Constitution aim at safeguarding academic freedom. Such a safeguard mechanism should be enforced by means of university organization as well as other institutional administrations, namely, an institutional protection mecha-

解釋理由書：憲法第十一條關於講學自由之規定，以保障學術自由為目的，學術自由之保障，應自大學組織及其他建制方面，加以確保，亦即為制度性之保障。為保障大學之學術自由，應承認大學自治之制度，對於研究、教學及學習等活動，擔保其不受不當之干涉，使大學享有組織經營之自治權能，

nism. To protect academic freedom, the right of universities to govern themselves should be recognized, so that academic activities such as research, teaching and learning do not have to be subject to improper intervention, and universities may thus enjoy the right of self-government in terms of organizational as well as operational matters, whereas individuals may enjoy academic freedom. As it is explicitly given in Article 162 of the Constitution that "All public and private educational and cultural institutions state-wide shall, in accordance with the law, be subject to state supervision," and Article 1, Paragraph 2, of the University Act that "A university shall be protected under the academic freedom and shall, to the extent permitted by law, be entitled to the right of self-government," the education authorities' supervision of universities should be authorized by the law, and the law per se should abide by the principle of the reservation of law provided in Article 23 of the Constitution.

個人享有學術自由。憲法第一百六十二條規定：「全國公私立之教育文化機關，依法律受國家之監督。」大學法第一條第二項規定：「大學應受學術自由之保障，並在法律規定範圍內，享有自治權。」是教育主管機關對大學之監督，應有法律之授權，且法律本身亦須符合憲法第二十三條規定之法律保留原則。

It is our understanding that academic freedom is closely related to the develop-

按學術自由與教育之發展具有密切關係，就其發展之過程而言，免於國

ment of education. With respect to the process of development, academic freedom, which is supposed to be free from intervention of the State, shall first reveal itself by means of the freedom of research and instruction, whereas the scope of safeguarding academic freedom shall extend to cover all other important academic activities that have to do with excelling in knowledge and exploring the truth, such as the formation of the research motive, the proposal of a research project, the composition of the research staff, the allocation of the research budget, the publication of the research results, etc. These academic activities should not only be protected but allowed to share the resources of society. Aside from research, matters of teaching and learning, such as the design of curricula and courses, the content of lectures, the evaluation of scholastic aptitude, the rules of examinations, the students' freedom to choose major(s) and curricula and student autonomy are also protected. Besides the aforementioned, the organization of universities and the evaluation and employment of instructors also fall within university self-

家權力干預之學術自由，首先表現於研究之自由與教學之自由，其保障範圍並應延伸至其他重要學術活動，舉凡與探討學問，發現真理有關者，諸如研究動機之形成，計畫之提出，研究人員之組成，預算之籌措分配，研究成果之發表，非但應受保障並得分享社會資源之供應。研究以外屬於教學與學習範疇之事項，諸如課程設計、科目訂定、講授內容、學力評定、考試規則、學生選擇科系與課程之自由，以及學生自治等亦在保障之列。除此之外，大學內部組織、教師聘任及資格評量，亦為大學之自治權限，尤應杜絕外來之不當干涉。大學法第四條、第八條、第十一條、第二十二條、第二十三條私立學校法第三條前段均定有大學應受國家監督之意旨，惟教育主管機關依法行使其行政監督權之際，應避免涉入前述受學術自由保障之事項。至於大學課程之自主，既與教學、學習自由相關，屬學術之重要事項，自為憲法上學術自由制度性保障之範圍。大學課程之訂定與安排，應由各大學依據大學自治與學術責任原則處理之。

government and should not be susceptible, specifically, to exterior interventions that are inappropriate. Articles 4, 8, 11, 22, 23, and the first sentence of Article 3 of the Private School Act reveal the legislative intent that universities should be subject to the supervision of the state; nevertheless the education authorities should refrain from tampering with the aforementioned matters regarding academic freedom when exercising their power of administrative supervision under the law. Since the autonomy of college curricula is relevant to the freedom of teaching and of learning and is therefore a matter of importance to academics, it should also be embraced by the institutional protection mechanism of academic freedom under the Constitution. Thus, the design and arrangement of university curricula should be handled by each university in accordance with the principle of university self-government and academic responsibility.

Article 23 of the University Act regulates the extension and reduction of the academic years as a matter of univer-

大學法第二十三條對於大學修業年限之延長及縮短，規定為大學自治事項，有關辦法授權由各大學自行擬定，

sity self-government and authorizes each university to draft relevant rules, so that they may be enforced after receiving the approval from the Ministry of Education. As such, the Ministry of Education is merely in the position of exercising "supervision on legitimacy" over the operation of each university. When exercising such "supervision on legitimacy," it is certain that the Ministry of Education should comply with the protection of academic freedom and the respect of university self-government and, therefore, should not add restrictions not provided by law. By the same logic, the design of the core curriculum should be in accordance with said principle of university self-government, unless the law provides otherwise. It is provided in Article 22, Paragraph 3, of the Enforcement Rules of the University Act that "The core curriculum common to all universities shall be jointly designed by relevant personnel from all universities, upon the invitation of the Ministry of Education." Nonetheless, the University Act has not authorized the Ministry of Education to "invite" all universities jointly to design the core cur-

報請教育部核備後實施，故教育部對各大學之運作僅屬於適法性監督之地位。教育部監督權之行使，應符合學術自由之保障及大學自治之尊重，不得增加法律所未規定之限制，乃屬當然。大學之必修課程，除法律有明文規定外，其訂定亦應符合上開大學自治之原則，大學法施行細則第二十二條第三項規定：「各大學共同必修科目，由教育部邀集各大學相關人員共同研訂之。」惟大學法並未授權教育部邀集各大學相關人員共同研訂共同必修科目，大學法施行細則所定內容即不得增加大學法所未規定之限制。教育部依此所定各大學共同必修科目僅係提供各大學訂定相關科目之準則。同條第一項後段「各大學共同必修科目不及格者不得畢業」之規定，為對畢業條件所加之限制，各大學共同必修科目之訂定因而發生限制畢業之效果，而依大學法第二十三條、第二十五條及學位授予法第二條、第三條規定，畢業之條件係屬大學自治權範疇。大學法施行細則第二十二條第一項後段自係逾越大學法規定，又同條第三項未經大學法授權，均與前揭憲法意旨不符，應自本解釋公布之日起，至遲於屆滿一年時，失其效力。於此期間，大學共同必修科目之設置，應本大學自治之精神由

riculum common to these universities. As such, the content of the Enforcement Rules of the University Act shall not add restrictions that are not stipulated in the University Act. The core curriculum common to all universities designed by the Ministry of Education serves as, according to the aforesaid reasoning, nothing more than a sample guideline for the reference of universities when designing their respective core curricula. The clause "Those who fail any of the core curriculum common to all universities may not graduate" in the last sentence of the same Article, Paragraph 1 of said Enforcement Rules, is a restriction on the qualification of graduation and therefore serves, in essence, to transform the design of the core curriculum common to all universities into a restrictive condition to graduation, given that Articles 23 and 25 of the University Act and Articles 2 and 3 of the Act Governing the Conferment of Academic Degrees stipulate that conditions for graduation shall fall within the extent of university self-government. Said last sentence of Article 22, Paragraph 1, of the Enforcement Rules of the University Act

法律明文規定，或循大學課程自主之程序由各大學自行訂定，併此指明。

has gone beyond, whereas Paragraph 3 of the same Article has not been authorized by, the University Act and neither is in accord with the legislative intent of the Constitution provided above. Such provisions should therefore become null and void no later than one year from the publication date of this Interpretation. In addition, it is our intention to point out that, during said period, the design and arrangement of the core curriculum common to all universities shall either be regulated explicitly by law, in compliance with the spirit of university self-government, or designed by each university, based on the procedure of autonomy.

Justice Young-Mou Lin filed concurring opinion, in which Justice Huey-Ing Yang joined.

Justice Hsiang-Fei Tung filed dissenting opinion, in which Justice Vincent Sze and Justice Hua-Sun Tseng joined.

本號解釋林大法官永謀、楊大法官慧英共同提出協同意見書；董大法官翔飛、施大法官文森與曾大法官華松共同提出不同意見書。