

J.Y. Interpretation No. 462*

(July 31, 1998)

ISSUE: 1) Whether under the Constitution a faculty member, who is dissatisfied with their evaluation committee's decision over his/her career advancement, is 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 LAW:

Articles 15, 16 and 23 of the Constitution; Articles 18 and 20 of the Universities Act; Articles 8 and 24 of the Vocational Academies Act; Articles 7, 8, 9, 14 and 41 of the Educational Personnel Employment Act; Precedent P.T. No. 398 (Ad. Ct. 1962)

KEYWORDS:

Faculty promotion review, faculty evaluation, academic performance review, right to work, right to sue, academic freedom, duty to give reasons, an administrative act, the principle of expertise evaluation

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 over the promotion qualification 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. An evaluated faculty 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 to sue 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 repugnant to this Interpretation rendered above.

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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 qualification. To meet the proportionality requirement provided in Article 23, 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 over the professional, academic capabilities of the applicant for promotion. Since such evaluation procedures are set for maintaining 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 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 shaking 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 judgement 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.

REASONING:

Article 16 of the Constitution guarantees the people's right to administrative appeal as well as to sue in a court. Such a right will not differ because of his/her status. Such an understanding has been reiterated repeatedly in Interpretations No. 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 litigation. 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 the law over specific matters and unilaterally makes a decision over specific matters. Such an

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understanding has been reiterated repeatedly in Interpretations No. 296, 423 and 459 rendered by the [Judicial] Yuan.

The faculties in universities, independent colleges and vocational academies are divided as professors, associate professors, assistant professors and lecturers. According to Articles 18 and 20 of the Universities Act, Articles 8 and 24 of the Vocational Academies 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 Educational Personnel Employment Act. And Article 14 of this Act authorizes the Ministry of Education to promulgate Measures Governing Qualification Review of Faculties in Universities, Independent Colleges and Vocational Academies. Articles 7 to 9 provide that faculty qualifications should be reviewed first by the faculty evaluation committees of each school and then submitted to the Academic 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. A faculty evaluated who is not satisfied with the decision and has exhausted all administrative remedies available is entitled to bring administrative litigation to exercise the right to sue 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 agency may bring administrative appeal pursuant to Article 1 of 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 repugnant to the Interpretation rendered above.

According to Article 15 of the Constitution, people’s right to work should be guaranteed. Therefore all kinds of decent 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 can not 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 qualification. To meet the proportionality requirement contained in Article 23, such a review should be authorized by law and the procedures promulgated by the competent agency should guarantee an objective, credible, fair and accurate evaluation over the professional, academic capabilities of the applicant for promotion. Since such evaluation procedures are set 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 shaking the credibility and accuracy of the evaluation. When necessary, the committee should provide the applicant with an opportunity to make a written or oral presentation 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 judgement 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.