

Analysis of the Boundary of Judicial Review of University Regulations

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Abstract

University regulations are an important basis for reviewing the legitimacy of university management behaviors, and they play a vital role in the trial process of administrative litigation involving universities. In 1996, Yong Tian was given a withdrawal penalty by Beijing University of Science and Technology for violating the discipline of the examination. In this case, the legality and rationality of the Beijing University of Science and Technology University's regulations were the determinants of the legality and rationality of Beijing University of Science and Technology 's withdrawal punishment. The issue of the boundary of the court's review of university regulations is essentially the issue of the relationship between the autonomous management power of the university and the judicial review power, and the judicial review is both a guarantee for the autonomous management of the university and the supervision of the university's self-discipline. Through the analysis of the reasons for the trial of Yong Tian's case, it can be seen that handling the relationship between the autonomy of colleges and universities and judicial review requires a reasonable distinction between the nature of college regulations in the trial process, full respect for the "autonomous school regulations" of colleges and universities, and strict review of "interventional school regulations".

Keywords

University Regulations; Autonomy of Universities; Judicial Review.

1. Introduction

On February 29, 1996, Yong Tian carried a note about the test content with him during the course test and was discovered by the invigilator. Beijing University of Science and Technology dealt with Yong Tian as dropping out of school in accordance with school regulations and filled out a notice of change of student status, but did not directly announce the punishment decision to Yong Tian and serve the notice, nor did he go through the withdrawal procedures. Yong Tian continued to study normally at the school and participated in school activities. In June 1998, relevant departments of Beijing University of Science and Technology refused to issue a diploma for Yong Tian on the grounds that he did not have a student status.

The Haidian District Court held that Beijing University of Science and Technology was unable to prove the fact that it had peeked at the slip of paper, so it did not constitute cheating in the exam but only violated the discipline of the examination room. Therefore, the punishment imposed by Beijing University of Science and Technology did not comply with the provisions of the superordinate law. In addition, it is believed that the handling of withdrawal is related to Yong Tian's right to education, and it should be announced and served to Yong Tian in accordance with the procedures. Beijing University of Science and Technology has not performed the relevant procedures and deprived Yong Tian of his right to know and defense. Therefore, the decision of Beijing University of Science and Technology is not legitimate. In addition, Beijing University of Science and Technology has not actually handled Yong Tian's

withdrawal procedures, that is, the penalty decision has not been implemented by the school. Beijing University of Science and Technology appealed the case to the Beijing No. 1 Intermediate People's Court on the grounds that the matter was self-sponsored by the university. The Beijing No. 1 Intermediate People's Court rejected the appeal request of Beijing University of Science and Technology on the grounds that the autonomy of school management should be exercised within the scope of laws and regulations.

The trial of Yong Tian's case mainly involves three key issues: [1] The first is whether colleges and universities can become defendants in administrative litigation cases. There is no dispute today, so I will not mention it here. The second is whether the court has the power to review university discipline and school regulations. The legality of the school rules determines the legality of Beijing University of Science and Technology's sanctions, which in turn determines whether Yong Tian has a student status and his qualifications for graduation and degree certificates. However, judicial intervention conflicts with the autonomy concept of colleges and universities. Therefore, whether school discipline and school rules that violate the relevant provisions of the upper law can be used as the object of judicial review is particularly important for the trial of this case. The third is the basis for the trial of disputes in colleges and universities. This case is a precedent for judicial review of disciplinary disputes in colleges and universities, which means that there is no precedent to follow in court trials, and it is difficult to find a direct basis in the law for the focus of the dispute in this case.

2. The Relationship between "Self-management" and Judicial Review

In the Yong Tian case, Beijing University of Science and Technology believed that the punishment was a matter of university's autonomy, and the people's court should not intervene. Otherwise, it would be an infringement and interference of the inherent power of the university and an improper interference in the internal management of the university.

So what is the relationship between "university's autonomy", "Self-management" and judicial review for colleges and universities? "university's autonomy" refers to the behavior of colleges and universities to independently organize schools, make decisions, and carry out various tasks in accordance with legal and social needs. "Autonomous management" refers to university autonomy, "it generally means that universities should independently determine their own development goals and plans, and implement them, free from the control and interference of the government, church or any other social legal person organization." [2] "Autonomous management" externally refers to the relationship between the university, the government and the society "independently" without excessive interference; internally, it refers to the internal management relationship between the school and teachers and students. Therefore, as far as the former is concerned, judicial review should highlight the guarantee of the "autonomy" of universities in governing the university according to law; as far as the latter is concerned, judicial review should be reflected in the supervision of university self-discipline.

Obviously, in Yong Tian's case, the sanction decision made by Beijing University of Science and Technology was not simply an internal management behavior. The school's decision to withdraw from school undermined Yong Tian's right to education according to law. "In order to overcome some of the narrowness and behavioral anomie that may occur in universities, limited judicial intervention can effectively protect the rights of the counterparts of the school.... The judicial review of universities by the people's courts is limited to procedural review and limited entity review and does not involve substantive teaching and academic issues. The so-called procedural review is to review whether specific administrative actions are conducted in accordance with legal procedures; the so-called limited entity review is to review whether the content of specific administrative actions is legal." [3]

In this case, Yong Tian was given a disciplinary action of dropping out by Beijing University of Science and Technology for carrying notes related to the test content. On the one hand, Beijing University of Science and Technology imposes sanctions on Yong Tian's violation of relevant regulations of the examination room by carrying items that are prohibited from being brought into the examination room, and the formulation of the school rules on which such acts are based are within the scope of the autonomous management of universities and should not be used as judicial review. On the other hand, the punishment decision of Yong Tian by the Student Disciplinary Committee should reflect the principles of fairness, impartiality and openness, perform the notification procedure, and protect the right of appeal. Because Beijing University of Science and Technology's punishment of Yong Tian has already involved the basic human right of education stipulated by the Basic Law, the punishment of withdrawal is directly related to Yong Tian's degree and graduation certificate. If Yong Tian believes that he has not yet reached the level of behavior prescribed by the school that is sufficient to cause him to be punished by dropping out, under such circumstances, the school should protect Yong Tian's clear right to know, appropriate right of defense, and legal right to appeal. The limited intervention of judicial review is not an infringement and interference on the school's self-sponsored school. On the contrary, it can not only protect the legitimate rights and interests of students, but also realize the supervision of the "Self-management" of the university and the management of the school according to law.

3. Autonomous School Regulations or Interventional School Regulations?

3.1. The Legal Positioning of University Regulations in the Current Law

According to Article 30, Paragraph 1 of the "Higher Education Law", "Universities obtain legal personality from the date of approval. The president of a university is the legal representative of the university." According to the "Higher Education Law", the relationship between a university and its internal teachers and students, Depends on the regulations drawn up by the university itself. Among them, the "internal management system" is an indispensable content of the articles of association prescribed by law.

On the basis of these two articles, the "Higher Education Law" grants the autonomy of legal persons of colleges and universities according to Articles 32 to 37. As far as the actual situation is concerned, the actual university articles of association that specify internal management mechanisms and other matters often take "detailed regulations" and "implementation measures" as their external manifestations. In summary, as a concrete manifestation of the internal administrative management norms of universities, school discipline and school rules are effective only within the university's own "internal management system", and its content should follow the provisions of the upper law, not conflict with the laws, regulations and rules. In other words, the regulations of universities need to uphold the principle of the law (herein referred to as laws, regulations and rules) and have the power to "self-sponsor school" and "self-manage" under this premise.

In terms of the contents of Articles 27 to 37 of the "Higher Education Law", colleges and universities have the autonomy of "Self-management" and "self-sponsored education" conferred by the law, and the autonomy of colleges and universities is reflected in the "internal management system". It is to formulate a charter in accordance with the law to manage internally. In his article "Research on the Legal Attributes of University Regulations", Professor Zhu Mang called "the norms that an organization can set up independently and regulate the organization's own internal order" as "autonomous norms". In the context of the "Higher Education Law" Next, this kind of self-established school rules to regulate internal order is referred to as "autonomous school rules". [4] As far as the "Higher Education Law" is concerned

with the positioning of colleges and universities, as an independent legal person organization, its own charter itself has the status of the highest standard of internal management.

3.2. The New Legal Position of the University Regulations

The judgment of Yong Tian case mainly reflects two levels of progress: On the one hand, it has made an expanded understanding of the "administrative agency" stipulated in Article 25 of the Administrative Procedure Law of the People's Republic of China, that is, a substantial understanding. The term "administrative agency", "administrative agency" is rather an "administrative subject" or a subject that exercises administrative power. As long as it essentially exercises administrative power, it can be a defendant in administrative litigation. On the other hand, it is determined from Article 21 and 22 of the Education Law and Article 8 of the Degrees Regulations that the issuance of graduation certificates and degree certificates belong to the category of "the law has given it to exercise certain administrative powers". Therefore, the application of Article 25 of the Administrative Litigation Law confirms universities the qualifications of defendants in administrative litigation involving universities.

According to the judgment in the Yong Tian case, the court adopted a formalist method of judging whether the subject matter is "authorized". The determination of "authorization" is based on the "national implementation" specified in laws and regulations. The existence of expressions such as "approved by the state" and "authorized by the State Council". As the "Education Law", "Higher Education Law" and other laws authorized to exercise part of the administrative power of the organization as the administrative body, the relationship between administrative power and the university has evolved from an external relationship to an internal relationship. Originally, universities can only act as administrative powers' objects, but in this way, colleges and universities become the main body of exercise of administrative power under certain circumstances. The exercise of administrative power enters the school, and the college directly affects students. Under this circumstance, the relationship between students and universities is quite different from "Internal Management Relationships of Higher Education Institutions" stipulated in "Higher Education Law" and "Education Law", instead same or similar to the administrative legal relationship formed based on specific administrative actions. The relationship with students when colleges and universities exercise the administrative power granted by law is the relationship between the administrative subject and the administrative counterpart, rather than the internal management behavior of the school based on internal management needs that only extends to the rights that students enjoy within the school.

It can be seen from this that the school regulations of colleges and universities actually contain two levels. The first level is defined by the Education Law and the Higher Education Law. As an organization with independent legal person status, colleges and universities enjoy the autonomy of internal management. The autonomous school regulations formulated, as the internal regulations of the legal person, have the highest status in the internal management of the school; the second level, the autonomous school regulations of universities cannot interfere with the activities of the universities to exercise the administrative powers granted by the national law, The content of administrative power exercised by colleges and universities does not belong to the scope of the autonomous management of colleges and universities.

4. Conclusion

Therefore, the autonomy scope of the autonomous school regulations of universities should be refined within the provisions of the upper law. The autonomy regulations of universities do not allow universities to exercise their own initiative. Therefore, as far as the university regulations are concerned, they can be regarded as a dual unified whole, part of which is the "autonomous school regulations" for autonomous management affairs of universities. The natural power of

Self-management; the other part is "Interventional school regulations" involving the exercise of state power by universities, which are the school regulations that exercised by universities "authorized" by the state or "representing" the state according to the law.

The Yong Tian case is just the beginning, and the subsequent "Yue Chu case", "Huayu Wu case", "Wenjie Xie case", "Xiaoqiang He case" and "lu Gan case" are all related to this issue. Judicial review should distinguish between "autonomous school regulations" and "interventional school regulations", strictly review "interventional school regulations", protect students' rights, fully respect the "autonomous school regulations", and maintain the "autonomous management" and "self-sponsored school" of colleges and universities Power.

References

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