

Legal Regulation on the Evaluation of Teachers' Professional Titles in Public Universities

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Abstract

With the frequent disputes over the evaluation of teachers' professional title in public universities, the standardized operation of the teachers' professional title evaluation in public universities has become a new problem faced by public universities and the government. Public universities should focus on improving the self-regulation mechanism for the teachers' professional title evaluation. The government should take guidance and cooperation as the principles and replace the traditional approval model with flexible supervision. Judicial review should intervene in the teachers' professional title evaluation in public universities to protect the rights and interests of teachers, but the academic autonomy of universities should be respected.

Key words: Professional title evaluation; Self-regulation; Government regulation; Judicial review

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INTRODUCTION

In recent years, disputes over the evaluation of teachers' professional title have been reported frequently, and the teachers' professional title evaluation in public universities is even more chaotic. The teachers' professional title evaluation in public universities is not only related to the immediate interests of teachers, but also affects the

development level of teaching and research in universities. It is necessary to promote the good governance in the teachers' professional title evaluation in public universities through legal regulation. In order to establish a modern university system and promote higher education reform, it is significant to pay attention to the transformation of the evaluation system, analyze the plight and roots of the teachers' professional title evaluation in public universities, explore the legal attributes of the teachers' professional title evaluation in public universities, and build the Legal regulatory mechanism for the teachers' professional title evaluation in public universities.

1. THE PRESENT SITUATION AND PROBLEMS OF THE TEACHERS' PROFESSIONAL TITLE EVALUATION IN PUBLIC UNIVERSITIES

In recent years, with the advance of the administrative approval system reform, the authority to evaluate the teachers' professional title in public universities has been delegated to universities. The drawbacks of the traditional professional title evaluation system for teachers in public universities are gradually exposed. After the evaluation authority was completely delegated, the question of how to supervise arose subsequently.

1.1 The Evaluation of Teachers' Professional title in Public Universities under the Traditional Approval Model

Since 1960, the professional title of university teachers have been divided into four levels: professor, associate professor, lecturer, and teaching assistant, and the conditions for promotion of professional title have been stipulated. However, problems such as unclear evaluation standards and chaotic evaluation procedures have gradually been exposed. In order to solve these problems,

in 1986, the *Trial Regulations on the Evaluation of Professional title for Teachers in universities* was promulgated and implemented, establishing a professional title system combining evaluation and appointment, clarifying the responsibilities, qualifications and evaluation procedures of the four-level professional title. According to the regulations, the evaluation of university teachers' professional title is in the charge of the evaluation committee of teachers' posts in Colleges and universities established by the provinces, autonomous regions and municipalities directly under the central government, and the evaluation of university teachers' professional title must be filed with or approved by them. According to the regulations, the evaluation of university teachers' professional title is in the charge of the evaluation committee of teachers' posts in universities established by the provinces, autonomous regions and municipalities directly under the central government, and the evaluation of university teachers' professional title must be filed with or approved by them. It can be seen that since the establishment of the title evaluation of teachers in public universities in China, the administrative approval mode led by the education administrative department has been presented. Before the 1990s, in the relationship between the government and universities, power was highly concentrated in the government, forming a power allocation pattern of strong government and weak colleges. (Li, 2007, pp. 18-24)

1.2 The Evaluation of Teachers' Professional Title in Public Universities Towards the Mode of Supervision

Since the 1990s, the approval mode of university teachers' professional title evaluation has been loose. The evaluation system of teachers' professional title in public universities was written into the *Law of Higher Education* issued in 1998, which made clear the legal conditions for the evaluation of teachers' professional title in public universities. The State Council and the Ministry of Education have successively issued relevant opinions on the evaluation of teachers' professional title in public universities, clearly delegating the evaluation authority from the Ministry of Education to the provincial education administrative department. Since then, some provinces have successively expanded the autonomy of university teachers' professional title evaluation, weakened the government's control and intervention, and gradually transitioned from the original approval model to a mid-event and post-event supervision mode. In 2017, the Ministry of Education and other five departments jointly issued the *Several Opinions on Deepening the Reform of Streamlining Administration, Delegating Powers, and Optimizing Service in the Field of Higher Education*, further delegating the evaluation authority to universities.

1.3 Problems in the Evaluation of Teachers' Professional Title in Public Universities

The evaluation of professional titles of teachers in public universities in my country has long been dominated by administrative powers. Whether it is the evaluation criteria for teacher titles or the specific evaluation process, it is controlled by the administrative leadership of the administrative department and the university. Therefore, the professional title evaluation process that should be dominated by academic power can hardly achieve the fairness and justice of professional title evaluation, and the nature and purpose of academic professional titles have been alienated and distorted. In addition, problems such as frequent changes in the evaluation criteria, insufficient explanation of the reasons for the evaluation results, insufficient disclosure of the evaluation procedures, and academic corruption have occurred frequently. Since the 1990s, various provinces, cities, and universities have frequently changed the evaluation criteria for professional titles in their regions or universities, which lacks the stability they deserve. In most provinces, cities and universities, the qualifications for the evaluation of teacher titles are single, focusing on thesis and neglecting teaching. Many public university teachers are faced with the embarrassing situation of unclear interpretation of the professional title evaluation rules, unknown results of the evaluation, and nowhere to ask for help when dissatisfied with the evaluation results. The decentralization of all evaluation rights of teachers' professional titles to colleges and universities has become a key system reform measure to reverse the status quo of the evaluation of professional titles of public colleges and universities. However, the level of public universities is uneven, and some universities do not yet have the conditions and ability to independently assess the titles of teachers.

2. THE LEGAL ATTRIBUTES OF THE EVALUATION POWER OF TEACHERS' PROFESSIONAL TITLES IN PUBLIC UNIVERSITIES

The elimination of the ills of the professional title evaluation system of public universities depends on the identification of the legal attributes of the right to evaluate the professional title of public universities. There is still a lot of controversy in the discussion about the legal nature of the right to evaluate teachers' professional titles. Therefore, inquiring into the legal attributes of the evaluation right of the professional titles of teachers in public universities has become a logical starting point for understanding how to legally regulate them.

2.1 Discussion on the Nature of the Evaluation Power of Teachers' Professional Titles in Public Universities

Administrative law scholars have discussed whether the evaluation of professional titles of teachers in public universities is an administrative act. Some scholars believe that the right to appraise the professional titles of teachers in public universities is the administrative power, and the behavior of the education administrative department and the authorized university to exercise this power is an administrative act. (Ye, & Zhou, 1998, pp.114-115) Some judicial judgments hold that the conduct of colleges and universities granting degrees is an act of exercising state power, and colleges and universities have the nature of organizations authorized by laws and regulations. Some scholars have also pointed out that there are logical loopholes in the reasoning of judges in judicial judgments. They believe that although the right of self-sponsorship of universities is stipulated by law, it is not authorized by laws and regulations, but is an "inherent right" (Yuan, 2006, pp.1-6) of universities. Some scholars pointed out that, in order to solve the problem of judicial review intervening in the governance of universities, the practice of interpreting the autonomy of universities as administrative powers and positioning universities as organizations authorized by laws and regulations is contrary to the academic autonomy of universities. (Wu & Liu, 2017, pp.25-30)

Some scholars have come to the following conclusion: the evaluation of professional titles of teachers in public universities is neither an internal management behavior nor an administrative behavior. The evaluation of professional titles of teachers in public universities is a kind of social power that is a matter of course for academic institutions. (Yao, 2017, pp.47-57)

2.2 The Due Attributes of the Evaluation Power of Teachers' Professional Titles in Public Universities

As a university autonomy, the right to appraise professional titles of teachers in public universities has the nature of public power. In the middle and late 20th century, with the successive failures of the free market system and the state monopoly system and the rapid rise of participatory democracy, the public power of the state showed a trend of transferring to the society. The attention of modern administrative law. (Jiang, 2015, p.3) Some scholars summarize the public power of society as "a certain number of people surrender their rights according to a specific purpose, and the collective power of an organization." (Xu, 2014, pp.79-101) When the government fails, the public power of society serves social interests and provides quasi-public products for the society, which is autonomous and limited. Tracing back to the origin of the university, the autonomy of the university conforms to the above description of the source and

nature of public power in society. At the beginning of its birth, a university was a social group formed by members spontaneously reaching a contract with the mission of pursuing learning, which constitutes the legitimate foundation of university autonomy. (Charles & Mei, 2007, pp.3-7) Universities replace the government to undertake the functions of scientific research and cultivating talents, providing services and educational public products for the society. The right to appraise professional titles of teachers in public universities reflects the autonomy of public power in society. The right to appraise professional titles of teachers in public universities is also limited as a public power in society, and its exercise is restricted to a certain extent.

3. THE REGULATION PATH OF THE EVALUATION OF TEACHERS' PROFESSIONAL TITLES IN PUBLIC UNIVERSITIES

At present, the evaluation of professional titles of teachers in public universities in my country is undergoing reform. The most important issue of decentralization is the reasonable arrangement of power structure and the issue of supervision and coordination. (Wei & Wang, 2018, p.38) In addition to decentralizing the evaluation of professional titles of college teachers and improving methods of evaluation of teachers' professional titles, improvements should be made from three aspects: college self-regulation, supervision by the competent authority, and judicial review.

3.1 Self-Regulation of the Evaluation of Teachers' Professional Titles in Public Universities

The self-regulation of public colleges and universities on their autonomous behavior is more effective than that of the government. This self-regulation of social groups "avoids excessive intervention by the state, and divides a safety line between the state and the group. At the same time, social groups can digest policies in the implementation of their expertise, information, experience, and judgment, and promote It provides an environment for effective implementation of national policies, which cannot be achieved by the direct intervention of the state alone." (Zhang, 2015, p.122) Public colleges and universities have gradually mastered the autonomy in the evaluation of professional titles, which is conducive to "reducing the problem of power rent-seeking due to the number of professional titles. The teachers in the development of disadvantaged colleges and universities have a relatively fair opportunity for the evaluation of professional titles. The fairness of the process of appraisal of professional titles of college teachers has been highlighted." (Liu, 2017, pp.81-86)

First, public colleges and universities have the right to independently formulate rules for the evaluation of professional titles of teachers. Specific content such as the application requirements for professional titles at all levels, the evaluation criteria for professional titles, evaluation organizations, evaluation procedures, and methods of publicizing evaluation results should be specified in the rules. Public colleges and universities should follow the principle of legal superiority when formulating the evaluation rules of teachers' professional titles, and should not conflict with the provisions of laws and regulations. The rules for the evaluation of professional titles of teachers in public colleges and universities should conform to the principle of proportionality. When formulating professional title evaluation rules, colleges and universities should combine their own school-running characteristics and school-running capabilities, and draw up classification evaluation standards in accordance with the differences in the professional technical skills of teachers in different professions and positions.

Second, in the evaluation of professional titles, colleges and universities should improve their internal governance structure, establish independent professor committees and academic committees, and implement professional peer evaluation. Modern university governance emphasizes common governance, emphasizes the decision-making participation of stakeholders inside and outside the university, and particularly emphasizes the participation of academic staff in administrative governance. (Zhang, 2018, p.76) Although academic committees of colleges and universities have been established for a long time, it is rare that they can truly operate independently. The members of the academic committee are not elected by all professors. Most of them are appointed by the administrative department. They are attached to an administrative institution of the school and cannot independently conduct academic management and evaluation. Therefore, my country's public colleges and universities need to set up independent, authoritative, and legitimate professional title evaluation organizations. Independence is embodied in the exclusion of interference from administrative power, authority is embodied in the ability of members to make professional judgments, and legitimacy is embodied in the proper organization and membership qualifications.

Third, the evaluation of professional titles of teachers in public universities should follow the principle of due process. All the exercise of public powers should follow the minimum fair procedures. The evaluation procedures for the professional titles of teachers in public colleges and universities should meet the following three requirements: The first is information disclosure, that is, public colleges and universities should publicize the qualifications for application of professional titles, evaluation criteria, evaluation procedures, and results announcement methods

before the evaluation of teacher professional titles, and publicize the evaluation results and objection deadlines after the evaluation. The second is to explain the reasons, that is, colleges and universities should explain the reasons for the teachers who do not meet the application conditions and have not succeeded in the evaluation. The third is to listen to opinions. The principle of natural justice in British administrative law has a core rule, that is, people's defenses must be heard fairly. (William, 1997, p.95) The evaluation of professional titles of teachers in public universities shall respect and guarantee the right of teachers to make statements about their own situation and the right to defend against unfavorable results.

Fourth, the appeal system for teachers in public universities should be improved. Improving the dispute resolution mechanism of public colleges' teachers' professional titles is an important part of the self-regulation of the evaluation of public colleges' titles. The complaint of college teachers was originally a dispute resolution mechanism set up to protect the rights and interests of college teachers, but the teacher complaint system in my country's colleges and universities has not played a substantial role. The main reason is that the appeal system of colleges and universities lacks neutrality and clear legal basis in entity and procedure." The most important value of internal appeals is not in justice, but in resolving disputes through communication and negotiation, and maintaining good order within the university." (Zhan, 2008, pp.105-134) Public colleges and universities can formulate corresponding appeal rules for disputes over the evaluation of teacher titles, and clarify the appeal procedures and handling methods for such disputes. While providing a basis for teacher complaints, it also further regulates and urges public universities to handle complaints.

3.2 Government Supervision on the Evaluation of Teachers' Professional Titles in Public Universities

In addition to the self-regulation of universities themselves, government supervision is also indispensable. As scholars say: "University autonomy and state supervision complement each other. The so-called category of university autonomy cannot be infringed by legislators, does not mean that university autonomy and state power are in an opposing relationship between each side, or that they are independent of each other without interference." (Huang, 2013, pp.5-27)

Under the background of deepening the reform of decentralization and management in the field of higher education, the government needs to speed up the pace of functional transformation. For the evaluation of professional titles of teachers in public universities, it is necessary to reverse the traditional thinking mode of administrative approval, innovate the supervision method, and accelerate the process of adapting to the

transition from the role of manager to the role of server. The competent departments of universities should focus on the following four aspects: First, whether the direction is correct. The evaluation of professional titles of college teachers must conscientiously implement the education policies of the party and the country, and put the evaluation of teacher ethics first. The second is whether the policy is implemented. The evaluation of professional titles of college teachers must comply with national laws and regulations and title policies, and meet the requirements of the reform of the professional title system. The third is whether the procedures are strict. The procedures for the establishment of documents such as the evaluation methods of college titles and the operation plan, the establishment of the evaluation organization and the evaluation operations must be standardized and sound. The current supervision measures are more of result supervision, with more detailed supervision requirements on the results of professional title evaluation, while the supervision requirements on the evaluation process are unclear. (Qu, 2019, p.51) The fourth is whether the result is fair. Review whether there are violations of discipline and law, affecting the fairness of the results, and affecting the legitimate rights and interests of teachers. The decentralization of the evaluation power of college titles is a manifestation of respect for the academic autonomy of colleges and universities, but the decentralization of evaluation power still cannot avoid the disadvantages of the previous system. The reason is that the first is that the evaluation work of universities is not open enough, and the second is that the education authority has not fulfilled its substantive supervision obligations in the matter. After power is delegated to colleges and universities, the education authorities should strengthen substantive supervision. On the one hand, strengthen the overall supervision of the rule setting, program design, and result generation of the evaluation of professional titles of college teachers. On the other hand, strengthen the supervision of participants in the evaluation of professional titles of college teachers. Strengthen the supervision of teachers, judges, colleges and universities and department leaders in the evaluation and application of professional titles. Enhancing the sense of regulation and responsibility of all parties is the focus of effective supervision. Teachers who commit fraud, academic misconduct or bribery will be punished in the form of revoking the evaluation results and not participating in the evaluation again within the specified time limit, depending on the severity of the circumstances. Strengthen the supervision of the expert database of professional title judges. Further expand the selection range of judges, break the boundaries of ownership and industry, focus on absorbing high-level industry experts and experienced first-line professional and technical personnel, and optimize the structure of the judges team.

A positive and interactive relationship should be maintained between the supervision of the education authority and the self-regulation of universities. The state promotes the reform of streamlining administration and delegating power in the education field, and devolves part of the education management functions to internal systems with autonomous capabilities to promote the establishment of a system's self-regulatory mechanism. At the same time, the establishment of an internal system's self-regulation mechanism also depends on legislative support and administrative cultivation. In China, both the legislative department and the administrative department have doubts about the autonomy of the supervised, and lack the encouragement and guidance that they should have. This has led to the hesitation of the supervision system at the legislative and law enforcement level that cannot be coupled with the reform decision-making. The competent education department should change the concept of supervision, explore the establishment of a supervision model that combines rigidity and flexibility, and apply the guidance and cooperation-based governance method to the supervision of the evaluation of professional titles of teachers in public universities. As a new administrative activity method, administrative guidance has strong flexibility. Its characteristic of focusing on negotiation and communication is conducive to reducing law enforcement costs and resolving social conflicts. It is a flexible management method that can be applied to the field of administrative supervision. (Mo, 2013, pp.1-25) Educational authorities can learn from the use of administrative guidance to encourage and guide public colleges and universities to regulate the operation of teachers' professional title evaluation rights, and guide public colleges and universities that have no independent evaluation experience to formulate teacher professional title evaluation standards that meet their own school-running characteristics and school-running capabilities. In addition, since the evaluation of professional titles of teachers in public universities involves judgments on academic matters, they can learn from the principles of cooperation in German academic law." The principle of cooperation, as a mode of relaxation and balance, also helps academics to adapt to national norms." (Tsutomu, Yoshiichi, & Kiyoshi, 2014, pp.217-223) The government and universities can divide powers and responsibilities by signing contracts to clarify the power and boundaries of the evaluation of professional titles of teachers in public universities and the regulatory responsibilities and boundaries of government departments. The establishment of a contractual relationship between the government and universities aims to allow the government to return the power belonging to universities to universities, avoid excessive interference by administrative power in the autonomy of universities, and promote the formation of a balanced governance pattern of limited government

management, relative autonomy of universities and active participation of society. (Zhou, 2013, p.76)

3.3 Judicial Review of the Evaluation of Teachers' Professional Titles in Public Universities

On the one hand, the legislature can revise the law to include the exercise of public power in the scope of judicial review. On the other hand, the court can exert judicial initiative and develop corresponding rules through individual judgments." Starting from a traditional concept, the foundation for institutional adjustment or change must be laid by the legislature first, and the administrative and judicial departments can only be legitimate if they act within the framework of the rules established by the legislator. However, the actual operation of administrative power has not and has never been not accepting the constraints of this concept, and although the court is not obvious, it is also in the process of resolving individual disputes, especially in the handling of some difficult cases, quietly as a positive force to promote the evolution of the system. " (Shen, 2000, pp.159-203)

In addition to the established rules, the court review activities of public university teachers' professional titles should also follow the basic principles of administrative law, such as the principle of exhaustive administrative relief, the principle of legality review, the principle of limited review, and the principle of procedural review priority. First, before judicial review intervenes in the right to appraise professional titles of public colleges and universities, school relief should be exhausted. Social public power is autonomous. From the exercise of power to the relief of infringements caused by the exercise of power, the self-regulation of the social organization that exercises the power should be the main means of regulation. Public colleges and universities need to improve the internal teacher complaint system, promote the effective resolution of disputes on the evaluation of teacher titles within the colleges and universities, and reduce the number of disputes that enter the lawsuit. Second, the legality review principle is the basic principle of my country's administrative litigation system, and the review of public power should also follow this principle. The court should uphold the principle of legality review and review whether the standards, organizational settings, and review procedures for the evaluation of professional titles of teachers in public universities are legal. Third, the court should abide by the principle of limited review of the autonomous behavior of colleges and universities. The purpose of judicial review intervening in the evaluation of professional titles of public colleges and universities is to achieve effective and loop-free relief to the rights of college teachers. While promoting this goal, the academic autonomy of colleges and universities should be taken into account. The court needs to weigh the relief of teachers' rights and respect for the autonomy of universities. Fourth, the court should further invoke the principle

of due process as the review standard on the basis of reviewing the legality of the evaluation procedures for the titles of teachers in public universities. As far as the procedures for the evaluation of professional titles of college teachers are concerned, the core elements should consist of disclosure, explanation of reasons, and defense. Disclosure elements include the publication of various relevant policy documents before the job title evaluation, the publication of the teaching and scientific research results of each applicant after the application, and the publication of the voting results after the evaluation. The explanation elements include explanations of the reasons for those who are not qualified to declare and those who have not passed the review. The defense elements include that the applicant has the right to defense any unfavorable decisions in the process of job title review. The lack of procedural justice is widespread in the current complicated and lengthy process of professional title evaluation in colleges and universities.

CONCLUSION

Public colleges and universities should improve the self-regulation mechanism for the evaluation of teachers' professional titles, establish scientific evaluation standards, set up standardized evaluation procedures, respect the academic autonomy of the evaluation subject, and unblock the channels for teacher complaints and relief. In addition, after the decentralization of the evaluation of professional titles of colleges and universities, the strengthening of supervision by the education administrative department has become a top priority. In addition to establishing a strict verification and spot check system and a mechanism for punishment of violations, attention should be paid to the supervision of people, and the awareness of responsibility of review participants should be strengthened. Educational administrative departments should explore the establishment of a flexible supervision method based on the principles of administrative guidance and cooperative governance, lead the standardized operation of the evaluation of professional titles of teachers in public universities, and pay attention to cultivating social forces to participate in supervision. Finally, judicial review should be limitedly involved in the evaluation of teachers' professional titles in public universities. While respecting the academic judgments of academic committees of universities, judicial review should provide the last line of defense for teachers' rights relief.

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