

Legal Attribute and Regulation Path of University Degree Revocation Right

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Abstract: The current Regulations on Academic Degrees in China can no longer meet the needs of the development of higher education. At present, the Academic Degrees Law is being formulated in full swing. Based on this background, this paper starts with the legal nature of the right to revoke a degree, and then discusses the current legal dilemma of the right to revoke a degree, including the unclear structure of power and responsibility and rights, the boundary of judicial review, and the imperfect procedural rules and relief mechanism. On the basis of pointing out the problems, this paper puts forward some suggestions for perfection, trying to put forward the regulatory path for perfecting the degree revocation system.

1. Introduction

In recent years, the dispute of degree revocation has gradually attracted public attention, and a degree dispute can often lead to great discussion in the whole society. On the one hand, this kind of dispute is relatively rare and related to the vital interests of the public, on the other hand, because the relevant laws, regulations and decision-making procedures are not perfect, there is a huge space for controversy. We urgently need to improve the relevant institutional rules of degree revocation, respond to the public's expectation of the rule of law, and make the dispute of degree revocation properly handled under the framework of the rule of law.

2. The Nature of Disputes

2.1 The Theory of Administrative License Revocation

Some scholars believe that degree conferring is an administrative license and a special administrative license with independent characteristics. Degree conferring is not only the certification of students' academic level, but also an important access certificate for students to continue their studies or participate in social competition and job hunting and entrepreneurship after entering the society, which has the beneficial nature of administrative license. At the same time, the degree granting is granted according to the application, and it is granted according to law after the school has verified that it meets the conditions for degree granting, and it also conforms to the licensing procedures of general administrative license, so the degree granting belongs to

administrative license. This view supports treating degree awarding as a special administrative license. Although it is special, it still classifies the theory of administrative license as such a specific administrative act after being reformed. Therefore, the act of degree revocation, as an extension of the act of degree granting, is considered as the revocation of administrative license.

However, degree conferring has some characteristics different from general administrative licensing. First of all, the ordinary administrative license can automatically expire or be abolished passively when the license period expires or the license base is lost. However, the conferment of a degree is lifelong, and once the degree is awarded, it will be valid for life, and it cannot be revoked if the non-parties are at fault when awarding it. Secondly, the general administrative license has some basic conditions, such as the business license must abide by relevant laws and regulations, the legal professional qualification license must abide by legal professional ethics, etc. If the attached conditions are violated, the administrative license will be revoked according to law. There are no additional conditions attached to the degree award. Therefore, the author thinks that there are defects in the theory of administrative license revocation.

2.2 The Theory of Revocation of Administrative Confirmation

Some scholars also believe that conferring academic degrees is a positive evaluation of the academic level and ability of the relative person, a specific administrative act of confirming, recognizing, proving and announcing existing legal facts, and it does not create new rights or change or eliminate legal relations, and belongs to administrative confirmation. However, there is something wrong with this view. The theory of administrative confirmation looks at the link of "confirmation" in isolation, and there are also confirmation of existing legal relations within administrative license, such as legal professional qualification certificate, doctor qualification certificate, accountant qualification certificate, etc., which all include the confirmation of the relative person's corresponding professional ability. The confirmation of existing facts and abilities is not a unique feature of administrative confirmation. Therefore, the author thinks that the revocation of degree belongs to the revocation of administrative confirmation.

2.3 The Theory of Administrative Punishment

There are also views that degree revocation is an administrative punishment. This view originated in the case of *Chen Ying v. Sun Yat-sen University*. Chen Ying forged his academic credentials and passed the postgraduate entrance examination. After that, he successfully completed his studies, defended his thesis and obtained his master's degree. Six years after graduation, he was found to have faked his admission qualification and was revoked his degree by Sun Yat-sen University. In this case, Chen Ying proposed that the revocation of the degree of Sun Yat-sen University was an administrative punishment. The main reason why the act of degree revocation is regarded as administrative punishment is that it is similar to the revocation of business license in administrative punishment, but in fact there are essential differences between them. Administrative punishment refers to the behavior that the administrative organ punishes the administrative counterpart who violates the administrative order by reducing the rights and interests or increasing the obligations, that is, the biggest feature of administrative punishment is "disciplinary". However, the cases of degree revocation are often caused by the improper behavior of the revoked person, which does not qualify for conferring a degree. The revocation of a degree is to restore the order of the degree to normal, without impairing the rights and interests of the revoked person or increasing his obligations. Secondly, the revocation of business license is the improper behavior of the relative person in business activities after legally obtaining the business license, which leads to the revocation of the license, and it is still legal and effective before being revoked. The degree

revocation is because the revoked person is illegal when he obtains the degree, and the degree revocation has the nature of error correction, so the degree revocation does not belong to administrative punishment.

2.4 Theory of specific administrative acts

Some scholars also believe that due to the rich connotation of a degree, the nature of the right to revoke a degree is not completely consistent under different circumstances. On the basis of summarizing and sorting out the cases of degree revocation, the sources of degree revocation right include at least three categories: the revocation right extended by teaching management right, the revocation right extended by academic evaluation right and the revocation right generated by academic honor code. Considering the different situations in practice, it should be specifically analyzed and defined. Therefore, it is not necessary to classify the act of degree revocation as a stylized specific administrative act, but to treat it as an independent specific administrative act.[1]

3. The Legal Dilemma of the Right to Revoke a Degree

3.1 The structure of Rights and Responsibilities and the Structure of Rights and Meanings are Unclear

At present, the basis of degree revocation is mainly composed of national laws and regulations and university rules and regulations. At the national level, there are Regulations on Academic Degrees, Interim Measures for the Administration of Academic Degrees, and Measures for Handling False Dissertations. At present, the Academic Degrees Law is being formulated, and the Academic Degrees Law (Draft) also stipulates the conditions for revoking academic degrees. Article 17 of the Regulations on Academic Degrees stipulates: "The degree-conferring unit may revoke the degree that has been awarded if it finds serious violations of these regulations such as fraud and forgery, and after reconsideration by academic degree evaluation committee." The Academic Degrees Law (Draft) is further refined on this basis. The draft proposes that the degree will be revoked in the following three situations: first, there are academic misconduct such as plagiarism, forgery, data fraud, artificial intelligence ghostwriting, etc. in the dissertation or practical achievements; Second, stealing, fraudulently using another person's identity, replacing the admission qualification obtained by others, or obtaining the admission qualification and graduation certificate by illegal means such as favoritism and malpractice; Third, there are other illegal acts that should not be awarded degrees during the study period. "It can be seen that China's laws and regulations on degree revocation are gradually improving and more detailed.

Inside colleges and universities, there are documents such as school rules and regulations independently formulated by colleges and universities, and detailed rules for the implementation of degree granting. Because these documents are independently reviewed by colleges and universities, different schools have different regulations on degree revocation due to different school levels and management conditions. Some colleges and universities simply list the situation of degree revocation, and explain the relief rights and delivery channels enjoyed by the revoked person. Some colleges and universities choose to directly cite the Academic Degrees Regulations without setting additional conditions for degree revocation.

No matter the laws and regulations at the national level or the rules and regulations at the university level, there are provisions on the revocation of academic degrees, but there are some problems that the provisions are relatively broad and vague. First of all, what exactly is fraud and academic misconduct? At present, internationally recognized academic misconduct refers to fabrication, tampering or plagiarism in the process of applying for a project and implementing the

results of a research report. That is, academic misconduct is mainly limited to "forgery, tampering and plagiarism". Only in the field of degree revocation, the meanings of "fraud and forgery" and "academic misconduct" have not yet been determined, and they still belong to the general and vague category. It is precisely because of the lack of clear legal guidance that colleges and universities often cite the rules of degree conferring in their own schools for identification in practical application, which has a very large discretionary space. At the same time, there is a lack of supervision mechanism for colleges and universities to exercise their power, which often leads to the disapproval of the revoked people, which in turn leads to administrative litigation disputes. It can be seen that the first problem to be solved is to clarify the substantive conditions of degree revocation, the rights and responsibilities of colleges and universities, and the rights and remedies of the relative person.[2]

3.2 The Border Issue of Judicial Review

In the case of degree revocation, judicial review will inevitably involve the field of academic autonomy in colleges and universities, which often brings conflicts. The concept of academic freedom originated in Europe. With the development of higher education in the world, it has been widely recognized by all countries in the world. Colleges and universities enjoy autonomy in the academic field and exclude interference from other administrative organs, judicial organs or social groups. In China, this concept is expressed as "running schools independently". Because we recognize that colleges and universities perform the administrative functions of conferring degrees as authorized organizations, they must be bound by the principles and rules of administration according to law. In the case of degree revocation, colleges and universities often strictly grasp the decision of degree revocation for the need of maintaining academic purity and fairness; In order to supervise the administrative organs to perform their duties according to law, judicial review often strictly examines the revocation behavior of colleges and universities from the perspectives of the basis, procedures and whether the parties' relief rights are guaranteed. In this case, there is a conflict between academic freedom and judicial review in colleges and universities.

Secondly, because the revocation of degrees in colleges and universities is generally determined by academic degree evaluation committee, the problems involved often involve their professional fields, which need to be evaluated by experts and teachers of this major. However, judicial review focuses on the revocation itself, and it is often impossible to evaluate professional issues. Some scholars suggest that the standard of judicial review should be divided into academic reasons and non-academic reasons. Academic reasons should examine the legality of revocation behavior in colleges and universities, and the rationality standard should be placed under the self-management of colleges and universities, while non-academic reasons should conduct a comprehensive review of revocation behavior, examining both legality and rationality. However, it may be inappropriate for academic reasons to be evaluated only by the academic committee of the university that made the revocation decision. First of all, the revoked person will naturally have distrust of the university, and it is easy to disapprove the decision made by the university to revoke the degree. In addition, if the academic revocation reasons are not properly reviewed from the perspective of respecting the academic autonomy of the university, it may bring a blank of power restriction.

Finally, the incidental review of other normative documents in the case of degree revocation includes not only the legal norms at the national level, but also the review of degree management regulations at the university level as the basis for degree revocation. Among them, the review criteria include both academic reasons and non-academic reasons, and non-academic reasons are composed of political standards and moral standards. There is no doubt that academic reasons such as fraud and academic misconduct can be used as reasons for degree revocation. However, due to

the misunderstanding of fraud and academic misconduct in colleges and universities, some revocation standards for degree revocation are stricter than the Academic Degrees Ordinance, and some are more relaxed than the Academic Degrees Ordinance, which may lead to different revocation results in the same situation and different treatments in judicial review.

3.3 Procedural Rules and Relief Mechanisms are not Perfect

As the basic principle of administrative law, colleges and universities should follow the principle of due process in exercising the right to revoke their degrees, which requires not only the procedures of prior investigation and notification, but also the rights of the parties to make statements, defend themselves and apply for a hearing. The Regulations on Academic Degrees only stipulates that a degree can be revoked after reconsideration in academic degree evaluation committee, but does not stipulate specific procedures. The Academic Degrees Law (Draft) further stipulates: "Before making a decision not to grant or revoke a degree, the degree-conferring unit shall listen to the statements and arguments of the degree applicant or degree winner." However, it is still a relatively macroscopic and general provision, which may not be enforceable in specific judicial practice. In the typical cases of Yu Yanru v. Peking University and Li Tao v. South China University of Technology, the parties concerned all pointed out that the principle of due process was not followed in revoking degrees in colleges and universities. In the case of Yu Yanru, the school asked Yu Yanru, the party concerned, to express his opinions on whether his thesis constituted plagiarism at the expert meeting in the investigation stage. After that, he did not listen to the statements and arguments of the parties, and made a decision to revoke his degree. The school believes that listening to students' opinions does not constitute a violation of the principle of due process, but the court believes that listening to the statements and defenses of the parties should exist as a very important and independent part of the degree revocation procedure, and simply explaining them is not enough to protect the rights of the parties. In Li Tao's case, the school had no procedural awareness from beginning to end, no awareness of the protection of the rights of the parties, and did not let students participate in any procedure, which completely excluded them. This major procedural violation can not be remedied by the subsequent appeal procedure. When colleges and universities exercise the right to revoke their degrees, they often ignore the procedural matters in the process because the current revocation procedural rules are not perfect and there is no clear basis for implementation, and because they lack procedural concepts and attach importance to the substantive elements of degree revocation, which will inevitably lead to violations of the rights of the revoked people and disputes.

In addition, the relief mechanism after degree revocation is not perfect. The Academic Degrees Ordinance doesn't stipulate how the parties should provide relief after the degree is revoked. Therefore, in practice, campus appeals often can't effectively solve disputes due to the lack of a system framework to follow and the confusion of procedures, but become the focus of controversy in subsequent administrative litigation. Secondly, it is far from enough to stipulate only the appeal in school as the pre-procedure of external relief. The specific limitation of appeal, the specific department of the degree-granting unit and the specific procedure of appeal in the school need to be further refined. As an off-campus relief, administrative reconsideration and administrative litigation also lack clear guidance on how to treat the school and how to protect students' rights due to the particularity of degree revocation cases. Finally, the campus appeal mechanism as a pre-procedure has not been effectively implemented. Complaints in schools tend to lack neutrality, and the complaint procedure often becomes a mediation procedure without real complaint handling. The complaint institution may lack the necessary professional knowledge to conduct a comprehensive and in-depth review. At the same time, because of the lack of enforcement ability of the appeal

procedure, compared with administrative reconsideration and litigation, this system is easy to be shelved and difficult to play its role.

4. The Perfect Path of Degree Revocation Right

4.1 Based on the Principle of Statutory Licensing, the Conditions for Revocation Shall be Clearly Defined

As an authorized organization, universities should also refer to the principle of administrative organs adhering to the law when exercising their degree revocation authority, and make clear provisions on the revocation authority of universities through legislation. Due to the imperfect provisions of current effective laws and regulations on the right to revoke degrees, it is also difficult to establish an effective operating mechanism for the right to revoke degrees. First of all, the definition of related concepts should be clarified, and concepts such as "fraud and forgery" and "academic misconduct" should be identified. Due to the lag of legislation, we can't stipulate all academic misconduct. With the development of the times, there will inevitably be more academic misconduct similar to "artificial intelligence ghostwriting". Choosing enumeration method is also a helpless and expedient measure. However, I don't think it is appropriate to stipulate such a blanket clause that "there are other illegal acts that should not be awarded degrees during the study period". Legislation should be modest, even if there is a new revocation in the future, it should not be revoked arbitrarily according to the principle of protecting the interests of trust. Therefore, academic misconduct and falsification of admission qualifications should be enumerated, and the revocation conditions should not be too broad, otherwise it would violate the original intention of restricting the revocation authority of colleges and universities.

In addition, the revocation conditions should be distinguished according to the different reasons for revocation. Among the reasons for academic revocation, it is generally accepted that the degree is revoked because of plagiarism and falsification of academic achievements required by dissertations and graduation, and it is required that "the quality does not meet the standard", but the revocation standard is not clear. We should establish an index plagiarism level, which should be quantified, and an expert Committee composed of experts from both inside and outside the school should be formed to make a comprehensive determination, so as to make the most fair and reasonable determination as far as possible. As for students' other academic tasks in school, such as course assignments and academic achievements other than degree application, I think it is not appropriate to consider them under the condition of degree revocation. Among non-academic reasons, whether the degree should be revoked due to moral factors is still controversial. In my opinion, it should be clearly stipulated that students can revoke their degrees if they commit criminal acts during their school years and are investigated by judicial organs according to law. Students' criminal behavior after graduation does not belong to the scope of school assessment, so it is not appropriate to revoke their degrees, and negative evaluation should be made by judicial organs. As for moral issues, because of their rich connotations, it is difficult to form a unified recognition standard, so it is not appropriate to include them in the case of degree revocation.

4.2 Abide by the Principle of Due Process and Standardize the Degree Revocation Procedure

At present, the standard of degree revocation lacks clear provisions on the revocation procedure, and there are some provisions at the university level, but they are not unified. The specific steps of degree revocation should be basically explained in the provisions at the national level. The procedure of degree revocation should be carried out in the following steps: first, start an investigation. Colleges and universities can start the investigation procedure when they have their

own preliminary evidence to find that students have academic misconduct or fraudulent admission qualifications. Second, the degree investigation committee of the college to which the students belong conducts a preliminary investigation to fully understand the specific situation, collect relevant evidence, listen to the opinions of the parties and ask them to provide evidence, and summarize the investigation data. Third, listen to statements and arguments. Separating the statement and defense of the parties from the investigation will help the school fully respect the rights of the parties, and also help the parties fully express their views and defend themselves. Fourth, a hearing can be organized. The author thinks that the hearing link of administrative license can be introduced here, and the university can make a hearing decision according to its functions and powers or the parties take the initiative to apply. In principle, the hearing should be held in public, because it involves the personal privacy of the parties, and it can be held in private according to their application. A person other than the investigation committee shall act as the moderator. If students or interested parties think that the moderator has an interest in the case, they may apply to ask him to withdraw. Fifth, make a decision. If it is considered that the degree should not be revoked, the investigation will be terminated, and if it is considered that it should be revoked, it will be submitted to the school degree investigation Committee. The meeting shall be organized by the degree investigation committee of the university and decided by democratic majority decision, and the number of participants and the voting ratio may be stipulated. Sixth, inform. The parties concerned shall be informed of the cancellation decision in writing. And inform the parties of their right to appeal and the time limit for appeal, and the right to apply for administrative reconsideration or bring an administrative lawsuit after appeal.[3]

4.3 The Introduction of Diversified Rights Relief Mechanism

At present, the relief system after the degree is revoked has not been properly stipulated in the degree system, which department the parties should appeal to after the degree is revoked, how to connect the relief on campus with the relief off campus, and how to re-apply for the degree, etc., which need to be further improved.

First of all, we should be clear about the pre-appeal in the school. The parties should seek internal remedies first, and when internal remedies are not enough to solve disputes, they should turn to external remedies, which is conducive to rational allocation of judicial resources and safeguarding the rights of the parties. If the revoked person disagrees with the revocation decision, he may lodge a complaint with the complaint handling committee within 30 days after receiving the revocation decision. The personnel composition of the complaint handling committee should be composed of teachers' representatives, experts and scholars and school leaders, and experts from related fields outside the school and legal experts can also be introduced to ensure the professionalism and authority of the complaint procedure as much as possible.

Then, if the revoked person still disagrees with the review decision, he can apply for administrative reconsideration or bring an administrative lawsuit according to law, and then he has entered the stage of external relief. The administrative reconsideration can be carried out according to the general administrative reconsideration, and the party concerned shall submit an administrative reconsideration to the education department, local government or Ministry of Education in charge of the university within 60 days from the date of receiving the review decision. If the parties file an administrative lawsuit, the case will enter the judicial field, which will inevitably touch on the issue of judicial review. First, it is not appropriate to treat the scope of review differently because of the different reasons for revocation. Some scholars suggest that the judicial review model of the United States should be used for reference to conduct limited judicial review of cases revoked for academic reasons and conduct comprehensive judicial review of cases

revoked for non-academic reasons. In my opinion, since the disputes over the revocation of academic degrees are concentrated on academic matters, it is obviously a passing sight if the academic part is not reviewed because of respecting the academic autonomy of colleges and universities, which does not touch the core of the case dispute. Therefore, no matter what the reasons for revocation are, they should be included in the scope of judicial review, and only need to be slightly distinguished in the intensity of review. The judicial review on non-academic revocation reasons, revocation procedures and applicable legal rules should be stronger, and the judicial organs can take a lower-intensity judicial review on the identification of academic issues, which can infer that the claims of colleges and universities are true, unless there is enough evidence to overturn them. Second, a comprehensive judicial review should be made on the revocation procedure. The focus of many degree disputes is whether colleges and universities protect the procedural rights of the parties. On the one hand, we should improve the procedural matters in the process of revocation in colleges and universities, on the other hand, we should promote the effective operation of revocation procedures through judicial supervision. A comprehensive review should be made of the investigation procedures, statements and defenses of the parties and voting procedures in the process of revocation. Third, because colleges and universities often invoke the rules and regulations of the school when making revocation decisions, they should also conduct incidental review of the normative documents of colleges and universities when the parties put forward them. We should examine whether the school rules and regulations on which the school is based belong to the formulation authority of the school, whether they violate the superior law, and whether they are correctly applied.

Finally, the system of degree reapplication should be improved. After a student's degree is revoked, he should be given a chance to turn over a new leaf and be allowed to reapply for a degree. To apply for a degree after the degree is revoked, we can learn from the provisions of the lawyer's license and stipulate a certain prohibition period, such as prohibiting the parties from reapplying for a degree to the degree-granting unit within two years after the degree is revoked. It is also necessary to further clarify what procedures should be followed for the parties to apply for a degree again. Different revocation situations can be stipulated to apply for a degree again according to different procedures, and a certain assessment period and assessment items can be stipulated. After the assessment period expires, the revoked person can really repent and complete the assessment items. Can apply for a degree again.

5. Conclusions

To conclude, the degree revocation right not only reflects the expectation of independent running and academic freedom of the university as an educational subject, but also embodies the specific administrative act that the university as an administrative subject has the right to revoke a degree. We should treat this right with caution. In order to better regulate the degree of colleges and universities. The right of revocation, the legal attribute of the right to revoke a degree is still the focus of controversy in the theoretical circle, because it is directly related to what rules are restricted when exercising the right. As there is still no consensus and legislation has not made provisions, it may be safer to regard it as an untyped administrative act at present. Because the current effective degree revocation system in China is principled, not practical in specific cases, and the procedural rules and relief rules are not perfect, which brings difficulties in case handling. Therefore, we can improve the system, clarify the scope of functions and powers of colleges and universities, and improve the dispute resolution mechanism to reduce the occurrence of similar incidents.

References

- [1] Wang Youhai. *Legal Governance of Degree Revocation Right—Also on the System Design of Degree Revocation Clause in Academic Degree Law* [J]. *Exploration of Higher Education*, 2021,(09):27-33.
- [2] Zhan Zhongle. *Review and Prospect of China's Academic Degree Legislation—Comment on the Draft Academic Degree Law* [J]. *Research on New Liberal Arts Education*, 2023, (02):77-89+142-143.
- [3] Zhang Hang. *On the Legalization of Degree Revocation Procedure and Its Construction Scheme* [J]. *Exploration of Higher Education*, 2021, (02):35-41.