

私立高等教育機構退場法律制度之現況與未來 —私人興學自由、大學自治與國家監督之三面關係

The present situation and future of juristic exit mechanism for private institution of higher education

— the relationship between the freedom of private education, autonomy of university, and state supervision —

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摘 要

面臨少子化衝擊及我國高等教育監管方式等諸多原因，導致私人興辦之高等教育機構經營困難。私立高等教育機構一旦發生經營危機，將造成學生受教權、教職員工工作權之權益影響，故當代法治國家對此事務有制訂法律之義務。惟渠等法律設置，尤其是基於預防而強制私立學校啟動輔導或退場程序，勢必產生私人興學自由、大學自治及國家監督力量三股力量彼此間相互制肘。本文試從憲法基本權保障與大學自治法理形塑出國家監督管制界線，且該界線必須透過法律規範予以明文，始符合法治國思想。惟教育主管機關卻遲至2020年方提出法律案送交立法院審查，易言之，我國至此之前處理私立高等教育機構退場相關問題並無完整法律規範，毋寧透過不完整之法律規定及大量行政法規作為處理相關問題之法源依據，故本文認為此等現象係違反法律保留原則。今教育主管機關已草擬專法規範私立學校退場問題，並完成立法程序，故本文擬從基本權利保障與大學自治等不同角度檢討新法中啟動私校強制退場之法律要件之合憲性。研究結果顯示：規範方式已符合法律保留要求；檢視啟動強制私校進入退場程序之法律要件後，認為規範已充分考量私人興學自由且未侵害大學自治；再以擔保責任概念為標準，檢討新法國家擔保責任實現方式，其結果亦符合學理上所形塑之標準。最後，規範主要針對強制退場之程序設計，但有關私校自願退場部分則未作任何規定，未來應針對此部分進行規定，避免違

反平等原則要求。

關鍵詞：

少子化、私立退場法制、私人興學自由、大學自治、擔保責任

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Abstract

Owing to the impact on lower birth rate and the supervised method of private higher education in our country, etc., the management in private higher education becomes difficult. Once the private institution of higher education face the management crisis, it will influence on the students' rights to education and the faculties' rights to work. The contemporary constitutional states, therefore, have the responsibility to enact the regulation for this issue. While enacting these regulations, especially to enforce the private schools to start the counseling or exit mechanism which based on prevention, it will cause the conflict between the freedom of private education, autonomy of university, and state supervision. This article tries to shape the demarcation line of national supervision regulations, which starts from the constitutional fundamental rights and autonomy of university. The demarcation line of national supervision regulations should be stipulated by a statute that will conform the constitutional state. The education authority, nevertheless, proffers the act to the legislation yuan until 2020. In other words, there are not complete regulations of exit mechanism for private high school. The way to handle the exit mechanism for private high school are only incomplete regulations and tons of administrative regulations. Thus, this article argue that this phenomenon violates the principle of legal reservation. The education authority has already enacted the draft, so this article focuses on the constitutionality of elements of law that enforce the private schools to start the exit mechanism through the constitutional fundamental rights and autonomy of university, etc. According to the

research, the draft has already met the requirement of the principle of legal reservation. There are full consideration of the freedom of private education and not violation of autonomy of university after the examination of elements of law of exit mechanism for private high school. Last, the regulations only focus on the exit mechanism, without the voluntary exit mechanism for private high school which should amend this part in the future in order to meet the requirement of principle of equality.

Keywords :

lower birth rate, exit mechanism for private institution of higher education, freedom of private education, autonomy of university, security liability