

Legal Consideration on the Confucius Institute Development Process

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Received 14 October 2012; accepted 2 January 2013

Abstract

Confucius Institute is not a university or college in general sense. It is a non-profit communicative organization established for spreading Chinese culture and language. Confucius Institute only provides non-degree education and all overseas Confucius institutes are embranchments belonging to the headquarter in Beijing, China. Confucius institutes only adopt Sino-foreign cooperative education model. The development speed of the Confucius institutes is drastic. China has already set up around 700 Confucius institutes and classrooms all over the world. Such rapid development of the Confucius institutes is promoted by the global mandarin fever and Chinese government's great input. However, after the case that the United States' government requested some Confucius institutes' teachers return China last year, the author of this paper realizes the hidden worries brought by fast development and thus tries to give some suggestions on certain legal issues behind this.

Key words: Confucius institute; Legal considerations; Chinese teachers rights

HAO Chuan (2013). Legal Consideration on the Confucius Institute Development Process. *Higher Education of Social Science*, 4(1), 16-19. Available from: <http://www.cscanada.net/index.php/hess/article/view/j.hess.1927024020130401.2253> DOI: <http://dx.doi.org/10.3968/j.hess.1927024020130401.2253>

1. CHOOSE CHINESE LAW AS THE APPLICABLE LAW IN RESOLVING FUNDS DISPUTES

The *Constitution and By-Laws of the Confucius Institutes* stipulates that "the aforementioned funds provided by the Chinese Parties will be managed through project management measures. Detailed measures are stipulated in Regulations for Administering the Chinese Funds for the Confucius Institutes". However, Article 19 of the *Confucius Institutes Chinese Fund Management Measures* (hereinafter the *Fund Management Measures*) provides that "disputes arise between the headquarters and the Confucius institutes during carrying out the *Confucius Institutes Chinese Fund Management Measures* should be regulated by Beijing courts". Obviously, Confucius Institutes headquarters decide to choose favorable jurisdiction when there are fund disputes in the future. This choice of international judicial jurisdiction is applicable in laws. Article 244 of the *Civil Procedure Law of the People's Republic of China* stipulates that "parties to a dispute over a contract involving foreign interests or over property rights and interests involving foreign interests may, through written agreement, choose the people's court in the place which has actual connections with the dispute as the court of jurisdiction". Nevertheless, the *Fund Management Measures* loses sight of the importance of choosing governing laws in foreign-related civil-commercial business disputes. With the increasing amount of international trades and communications, many civil and commercial legal

relationships are related to foreign elements, for example, one of the litigants or both litigants are foreigners, the subject matter locates in other countries, or the action or fact of a case happened in foreign countries. Since every country has its own civil and commercial law, the court has to make sure the governing law when hear the case. Article 145 of the *General Principles of the Civil Law of the People's Republic of China* gives that "the parties to a contract involving foreign interests may choose the law applicable to settlement of their contractual disputes, except as otherwise stipulated by law". Although the *Fund Management Measures* has made Beijing court have jurisdiction, it fails in choosing the governing laws in resolving disputes. Since local laws can provide better protection for their own countries' parties than other countries', the *Fund Management Measures* should further choose Chinese laws as the governing law for resolving disputes so that to give more comprehensive protections for the Chinese parties. Paragraph 2, Article 145 of the *General Principles of the Civil Law of the People's Republic of China* provides that "If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied". In other words, if the governing law is not chosen in advance, then it is very possible for the court to not choose Chinese law when hear Confucius Institutes fund disputes. As long as the *Fund Management Measures* has made Beijing court have the jurisdiction, then it should further give stipulations on choosing Chinese laws as the governing laws. Since there are many Confucius institutes around the world, it is not possible for the Beijing court to understand comprehensively each country's laws and regulations. Therefore, it is a good choice for the Chinese parties to choose Chinese law in resolving disputes.

2. ENHANCE LEGAL PROTECTION ON TEACHING STAFF'S INTERESTS

Excellent teaching resource is the guarantee of great education. Confucius institutes' teachers are all distinguishing TCSL teachers from Chinese universities. They are appointed by the Han Ban to teach Chinese as the second language in overseas Confucius institutes. To provide detailed and comprehensive legal protection for Confucius institutes' Chinese teachers to guarantee their work and life so that to improve the teaching quality has become an urgent issue nowadays. In fact, there is no regulation or provision in Confucius institutes for protecting teachers' interests. Chinese organizations can hardly give any protection for overseas Chinese teachers, thus, it will be a good choice to choose the Confucius institutes themselves to give legal protections. The foreign cooperative parties in overseas Confucius institutes are familiar with their own countries' laws and

social environment. Therefore, to allow the Confucius institutes in foreign countries to provide legal protection and support is a great choice. Article 2 of the *Constitution and By-Laws of the Confucius Institutes* provides "this Constitution and By-Laws is applicable to all Confucius Institutes worldwide". This means that the *Constitution and By-Laws of the Confucius Institutes* has general binding force on all overseas Confucius institutes. If obligatory provisions are added into the *Constitution and By-Laws of the Confucius Institutes* for protecting overseas Chinese teachers' interests, then their legal interests can be protected better. In addition, it is also applicable to engage some professionals who have legal background to study Confucius institutes locating countries' laws and regulations so that to provide more ways for guarantee Chinese teachers' legal interests. For instance, according to related provisions in Japanese tax law, Japanese laborers' personal income tax is collected monthly in certain proportion. However, laborers having less than 20,000,000 Japanese Yen annual income can inform local tax bureau when their family population increases, medical insurance expenses increase, purchase of housing, or parents' ages exceed 70 years old, and other circumstances. Local tax bureau will return certain amount of tax that has already been paid by the laborer via adjustment by the end of the year. Anyway, if the laborer does not inform local tax bureau about his or her conditions initiatively, he or she cannot get the returned tax. After all, "law does not protect sleepers". Therefore, if there are professionals who can explain and study this kind of legal provisions for overseas Confucius institutes' teachers, they can gain more legal interests for them. Besides, we should also protect Chinese teachers' creations' intellectual property right during their work in overseas Confucius institutes by contract or other forms.

3. APPROPRIATELY AVOID MISUNDERSTANDINGS

In 2006, China and Malaysia had prepared to establish Confucius institutes in Malaysian universities through semi-official form; however, the Malaysian parties did not allow the Chinese parties use the name "Confucius institute" to register for they thought the "Confucius institute" has religious colors. After the Chinese parties' continuous endeavors, the Malaysian parties finally agreed to establish the Chinese Language Institute which has the same education mode and content as the Confucius institute but not the name of it. This is because the experiences of making religious doctrines replace laws in the history. Modern countries have clarified the legal principle of separation of religion from politics in their own laws. Confucius is only a cultural symbol for Chinese people while for some Southeast Asian countries, especially Indonesia, he has become more

than a cultural symbol but a religion. In early 1900s, a Chinese ethos with its core thoughts of Confucianism has been introduced to the Southeast Asia. Overseas Chinese have developed and transferred it into a folk religion for resisting local governments' discriminating policies on them. This is the so called Confucius religion which has become the 6th largest religion in Indonesia and has great influence on local overseas Chinese people's life and belief. Therefore, the Malaysian parties worried that the Confucius Institute may turn into a "Confucius religion college" and thus stopped the development of the Confucius Institute. How to appropriately avoid some countries' misunderstandings in Confucius Institutes and boost the development of the Confucius Institutes in a better way is the core issue requiring concerns. The aim for setting up Confucius Institutes is to fulfill people's need for learning Chinese language around the world, enhance other country people's understanding on Chinese language culture, strengthen education and culture communications between China and other countries, and develop friendships between China and other countries. There is no religious aim in establishing the Confucius Institutes. Due to the above mentioned historical reasons, some countries may have the religious impression on China's Confucius culture. In order to make the Confucius institutes develop in a better way, I suggest that we need to clearly provide in the *Constitution and By-Laws of the Confucius Institutes* that "Confucius Institutes do not attend any kind of religious activities".

4. THE POWER OF INTERPRETATION ON THE CONSTITUTION AND BY-LAWS OF THE CONFUCIUS INSTITUTES SHOULD BE OWNED BY THE BOARD OF DIRECTORS

Article 29 of the *Constitution and By-Laws of the Confucius Institutes* provides that "the Confucius Institute Headquarters reserves the right to interpret this Constitution and By-Laws". The Constitution is a normative legal document which requires all the organizational members' abidance. Once the Constitution is made, it has a long term stability which means it cannot be easily or randomly changed. Of course, it is necessary to make some amendments and interpretations on the Constitution when circumstance changes. However, in order to maintain the stability and authority of the Constitution, the amendment and interpretation power usually belongs to the organ of supreme power of the organization. For example, the Articles of incorporation amendment and interpretation power just belong to its board of shareholders or the general meeting of shareholders. The headquarters of the Confucius institutes is a non-profit organization which has independent

corporate capacity. It is made up by its board of directors, corporate representative of the headquarters, special project committee and other organs among which the board of directors is its supreme power organ. Therefore, the Constitution interpretation power of the Confucius Institutes should belong to the board of directors instead of generally belongs to the headquarters. As previously mentioned, the headquarters of the Confucius Institutes is made up by many organs. Thus, to give all the Constitution interpretation power to the organization does not make sense in legal theory. The board of directors constitutes 15 directors of whom 10 are overseas Confucius institutes' general directors. This membership structure can guarantee that the interpretations made by the board of directors can meet more aspects' interests as it can.

5. ESTABLISH CONFUCIUS INSTITUTES THAT HAVE INDEPENDENT CORPORATE CAPACITY IN CERTAIN DEGREE

The *Overseas Confucius Institutes Establishment Guide* provides specifically the Confucius Institutes' set up methods. Article 6 stipulates "there are three ways for establishing Confucius Institutes: domestic and overseas institutions cooperation, franchise authorized by the headquarters, and direct investment from the headquarters." In practice, most Confucius Institutes are set up by adopting the domestic and overseas institutions cooperation mode of which most cooperation cases are established with foreign universities. Confucius institutes set up by this mode usually do not have independent corporate capacity. When legal disputes arise, institutes that do not have independent corporate capacity cannot file a lawsuit on its own and obviously it is not helpful for resolving disputes. In addition, without independent corporate capacity, the education sovereignty will also be affected. Therefore, we should carry out some measures to ensure more and more overseas Confucius institutes have independent corporate capacity. A number of countries around the world has set up higher financial and hardware conditions for establishing institutes with independent corporate capacity. However, some countries also provide certain preferential conditions for non-profit legal entities' establishment for promoting non-profit public welfare establishments. For instance, in order to facilitate non-profit career' development, and improvement of programs for public good, the *Specific Non-Profit Activities Promotion Law* of Japan stipulates simpler application procedures for certain non-profit legal entities' establishment and the examine and approve process is also easier. Japan Ritsumeikan Confucius institute is the first Confucius institute that has independent corporate capacity. It is set up according to the *Specific Non-Profit Activities Promotion Law*. Therefore, the author suggest that the Chinese Parties should study related laws of the

counties that Confucius institutes locate and investigate the applicability of setting up Confucius institutes having independent corporate capacity.

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