

J. Y. Interpretation No.712 ( October 4, 2013 ) \*

【Case concerning restrictions on the adoption of people of the Mainland Chinese Area】

**ISSUE:** Is it unconstitutional for a court to rule that Taiwanese parents with children or adopted children may not adopt children of their spouse from the Mainland Area.

**RELEVANT LAWS:**

Article 22, Article 23, of Article 27 Paragraph 1 Subparagraph 3, and Article 174 Paragraph 1 of the Constitution( 憲法第二十二條、第二十三條、第二十七條第一項第三款、第一百七十四條第一款 ); Preamble and Article 11 of the Additional Articles of the Constitution ( 憲法增修條文前言、第十一條 ); J.Y.Interpretations Nos. 362, 552, 554, 618, 689, 696, and 710 ( 司法院釋字第三六二號、第五五二號、第五五四號、第六一八號、第六八九號、第六九六號、第七一〇號解釋 ); Article 65 Paragraph 1 of the Act Governing the Relations Between People of the Taiwan Area and the Mainland Area( 臺灣地區與大陸地區人民關係條例第六十五條第一款 ).

**KEYWORDS:**

human dignity ( 人性尊嚴 ), principle of proportionality ( 比

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\* Translated and edited by Lawrence L Lee.

\*\* Contents within frame, not part of the original text, are added for reference purposes only.

例原則), proportion of the population (人口比例), family system (家庭制度), institutional protection (制度性保障), free development of personality (人格自由發展), overregulation(限制過當), freedom to adopt (收養子女之自由).\*\*

**HOLDING:** Article 65 Paragraph 1 of the Act Governing the Relations Between People of the Taiwan Area and the Mainland Area states that “the court shall not approve People of the Taiwan Area adopting [the] children of the Mainland Area under any one of the following circumstances: 1. where any one of the adoptive parents already has a child or adopted child...” The section of the clause pertaining to the restriction of people of the Taiwan area adopting children of a spouse from the Mainland Area violates Articles 22 and 23 of the Constitution of the Republic of China and the principle of proportionality. It is to be held invalid from the date of issuance date of this.

**REASONING:** Based on the notion of human dignity, an individual’s autonomy and the free development of his/her personality shall be safeguarded

**解釋文：**臺灣地區與大陸地區人民關係條例第六十五條第一款規定：「臺灣地區人民收養大陸地區人民為養子女，……有下列情形之一者，法院亦應不予認可：一、已有子女或養子女者。」其中有關臺灣地區人民收養其配偶之大陸地區子女，法院亦應不予認可部分，與憲法第二十二條保障收養自由之意旨及第二十三條比例原則不符，應自本解釋公布之日起失其效力。

**解釋理由書：**基於人性尊嚴之理念，個人主體性及人格之自由發展，應受憲法保障（本院釋字第六八九號解釋參照）。婚姻與家庭為社會形成與發

by the Constitution (see Judicial Yuan Interpretation No. 689). Marriage and family serve as the foundation by which society develops and shapes itself, and are thus institutionally protected by the Constitution (see Judicial Yuan Interpretations Nos. 362, 552, 554, and 696). The family system is based on the free development of personality and is essential for ensuring the functions of inheritance, education, the economy and culture. It is vital for an individual's growth in society and is the foundation of the creation and development of our society. Adoption is part of our country's family system. It is an action that establishes a parent-child relationship with a view to creating an identity. In this way it forms human relationships between the adopter and adopted of education, nurturing, support, belonging and inheritance of property. It plays an important role in developing the mind and body and molding the personality of both adopter and adopted. The people's freedom to adopt children, in particular the freedom of development of personality for both adopter and adopted, is protected under Article 22 of the Constitution.

展之基礎，受憲法制度性保障（本院釋字第三六二號、第五五二號、第五五四號及第六九六號解釋參照）。家庭制度植基於人格自由，具有繁衍、教育、經濟、文化等多重功能，乃提供個人於社會生活之必要支持，並為社會形成與發展之基礎。而收養為我國家庭制度之一環，係以創設親子關係為目的之身分行為，藉此形成收養人與被收養人間教養、撫育、扶持、認同、家業傳承之人倫關係，對於收養人及被收養人之身心發展與人格之形塑具有重要功能。是人民收養子女之自由，攸關收養人及被收養人之人格自由發展，應受憲法第二十二條所保障。

The Additional Articles of the Constitution clearly state "... responding to necessity before national reunification, according to Article 27 Paragraph 1, Subparagraph 3, and Article 174, Paragraph 1, enacted the Additional Articles of the Constitution, Article 11 of which provides that "For managing affairs and the relations of rights and obligations between people living in the free area and the mainland area, relevant laws may be specifically enacted." Consequently, Article 65 Paragraph 1 of the Act Governing the Relations Between People of the Taiwan Area and the Mainland Area serve as a specially enacted law to protect the rights and obligations between the people from the two areas (see Judicial Yuan Interpretations Nos. 618, and 710). Article 65 Paragraph 1 of the Act Governing the Relations Between People of the Taiwan Area and the Mainland Area states: "The court shall not approve People of the Taiwan Area adopting children of the Mainland Area under any one of the following circumstances: 1. where any one of the adoptive parents already has a child or adopted child." Under the current state

憲法增修條文前言明揭：「為因應國家統一前之需要，依照憲法第二十七條第一項第三款及第一百七十四條第一款之規定，增修本憲法條文如左：……。」憲法增修條文第十一條亦明定：「自由地區與大陸地區間人民權利義務關係及其他事務之處理，得以法律為特別之規定。」而臺灣地區與大陸地區人民關係條例即為規範國家統一前，臺灣地區與大陸地區間人民權利義務及其他事務所制定之特別立法（本院釋字第六一八號、第七一〇號解釋參照）。該條例第六十五條第一款規定：「臺灣地區人民收養大陸地區人民為養子女，……有下列情形之一者，法院亦應不予認可：一、已有子女或養子女者。」（下稱系爭規定）是在兩岸分治之現況下，就臺灣地區人民已有子女或養子女而欲收養大陸地區人民者，明定法院應不予認可，對臺灣地區人民收養大陸地區人民之自由有所限制。

of separate governing bodies in the two areas, this Act prohibits parents of the Taiwan area with a child or adopted child from adopting a child from the Mainland Area. The current Act prohibits the court from approving such an adoption and is a violation of the right to adopt for the people of the Taiwan Area.

Dealing with cross-strait affairs requires consideration[s] of and judgment[s] regarding[on] numerous economic, political, and social factors. The constitutional interpreters should rightfully give due respect to the decisions made by the legislative branch, which represents the diverse opinions of the people, and have ample information on hand in that regard unless there has been any noticeable or significant oversight on the part of the legislative branch (see Judicial Yuan Interpretation No. 618). However, restrictions placed on the people of the Taiwan area adopting people of the Mainland area should not violate Article 23 of the Constitution.

鑑於兩岸關係事務，涉及政治、經濟與社會等諸多因素之考量與判斷，對於代表多元民意及掌握充分資訊之立法機關就此所為之決定，如非具有明顯之重大瑕疵，職司法律違憲審查之釋憲機關固宜予以尊重（本院釋字第六一八號解釋參照）。惟對臺灣地區人民收養大陸地區人民自由之限制，仍應符合憲法第二十三條比例原則之要求。

Legislators took into consideration the close cultural and ancestral ties between people of Taiwan and the Mainland area before legislating against the adoption of people from the Mainland Area. Should the people of the Taiwan Area be free to adopt people of the Mainland Area without limitation, a large displacement of population from the Mainland Area to the Taiwan Area may occur, threatening the stability and safety of society (see Legislative Yuan Gazette, vol. 81, no. 51 p. 152). Thus in the interests of the welfare and well-being of the general public, the Act prohibits the adoption of people of the Mainland Area by persons who already have a child or adopted child. This prevents a population displacement from the Mainland Area to the Taiwan Area, and meets the original intent of the legislation.

However, for people of the Taiwan Area to adopt[ing] children of a spouse from the Mainland Area [spouse's child(ren), may encourage] is conducive to encouraging marital happiness, family harmony. It also[ and] fosters the adopted

立法者鑑於臺灣與大陸地區人民血統、語言、文化相近，如許臺灣地區人民依民法相關規定收養大陸地區人民，而無其他限制，將造成大陸地區人民大量來臺，而使臺灣地區人口比例失衡，嚴重影響臺灣地區人口發展及社會安全，乃制定系爭規定，以確保臺灣地區安全及社會安定（立法院公報第八十一卷第五十一期（上）第一五二頁參照），核屬維護重要之公共利益，目的洵屬正當。系爭規定就已有子女或養子女之臺灣地區人民收養大陸地區人民時，明定法院應不予認可，使大陸地區人民不致因被臺灣地區人民收養而大量進入臺灣地區，亦有助於前揭立法目的之達成。

惟臺灣地區人民收養其配偶之大陸地區子女，將有助於其婚姻幸福、家庭和諧及其與被收養人之身心發展與人格之形塑，系爭規定並未就此種情形排除法院應不予認可之適用，實與憲法強調人民婚姻與家庭應受制度性保障，及

children's physical and mental well-being and helps develop their personality. The provision in dispute does not address such areas, and is a de facto contradiction of the Constitution's principle to protect the marriage and family of the people[']s rights to marriage and family system] as well as their human dignity and freedom to develop their personality. From this perspective, the constraint placed on the adoption of people of Mainland Area is an overregulation and opposes the intent to protect the general welfare of the public. This section of the clause pertaining to the restriction of people of the Taiwan area adopting children of a spouse of the Mainland Area[ spouse's child] violates the principle of proportionality of Article 23 of the Constitution and the freedom to adopt of Article 22 of the Constitution and shall be held invalid on the date of issuance of this Interpretation.

To lessen the court's intervention in the people's freedom to adopt, relevant agencies should consider the political, economic, and social implications when processing requests for adoption from the

維護人性尊嚴與人格自由發展之意旨不符。就此而言，系爭規定對人民收養其配偶之大陸地區子女自由限制所造成之效果，與其所欲保護之公共利益，顯失均衡，其限制已屬過當，與憲法第二十三條比例原則不符，而抵觸憲法第二十二條保障人民收養子女自由之意旨。於此範圍內，系爭規定與本解釋意旨不符部分，應自本解釋公布之日起失其效力。

為減少干預人民收養子女之自由，相關機關對臺灣地區人民收養大陸地區人民之其他相關規定，仍應考量兩岸政治、經濟及社會因素之變遷，適時檢討修正，併此指明。

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people of the Taiwan Area who wish to adopt people of the Mainland Area. Relevant regulations should also be examined and updated in a timely way.

Justice Yeong-Chin Su filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion, in Justice Beyue C. Su joined.

Justice Chun-Sheng Chen filed concurring opinion.

Justice Pai-Hsiu Yeh filed concurring opinion in part and dissenting opinion in part.

Justice Chang-Fa Lo filed concurring opinion in part and dissenting opinion in part.

Justice Shin-Min Chen filed dissenting opinion in part.

**EDITOR'S NOTE:**

Summary of facts: 1.A has three daughters from his prior marriage. He applied to adopt the children of his present spouse from the Mainland Area. The Taiwan Taipei District Court denied his application to adopt children from the

本號解釋蘇大法官永欽提出之協同意見書；黃大法官茂榮及陳大法官碧玉共同提出之協同意見書；陳大法官春生提出之協同意見書；葉大法官百修提出之部分協同部分不同意見書；羅大法官昌發提出之部分協同部分不同意見書；陳大法官新民提出之部分不同意見書。

**編者註：**

事實摘要：（一）聲請人A於前婚姻育有三女，再婚後欲收養其配偶與前夫所生之大陸地區子女，向臺北地方法院聲請認可收養，經法院依系爭規定駁回。（二）B原為大陸地區人民已有一子，改嫁臺灣地區人民取得中華民國

Mainland Area based on the Act Governing the Relations between People of the Taiwan Area and People of the Mainland Area. 2.B was a Mainland Area National with one son who later divorced and remarried in Taiwan. After obtaining his Taiwanese citizenship, he divorced his Taiwanese spouse and applied to adopt his orphan son from the Mainland Area. The Taiwan New Taipei District Court denied his application based on the Act Governing the Relations between People of the Taiwan Area and People of the Mainland Area.

The two applicants appealed the decisions twice but were twice dismissed by the court. The petitioners filed for a judicial interpretation and argued that the rulings were unconstitutional and contravened the equal protection clause of Articles 5 and 7 as well as the right to adoption of Article 22 and the principle of proportionality of Article 23 of the Constitution. The Justices of the Constitutional Court considered the two cases to be of the same nature and made the above Interpretation.

國國籍來台後離婚，欲收養已在大陸地區辦妥收養程序之大陸地區孤兒，向臺灣板橋地方法院（現為臺灣新北地方法院）聲請認可收養，經法院依系爭規定駁回。

二聲請人均不服，分別抗告及再抗告，均遭裁定駁回而確定，爰認系爭規定有牴觸憲法第5條、第7條保障之平等權及第22條保障人民收養子女自由之意旨，與憲法第23條比例原則不符，分別聲請解釋。大法官就二案先後受理，因二聲請人主張違憲標的相同，乃予以併案審理。