

J. Y. Interpretation No.399 (March 22, 1996) *

ISSUE: A person's right to select his own name is fully protected under Article 22 of the Constitution. Is the Ministry of the Interior's directive prohibiting the change of one's name in conflict with the said constitutional safeguard?

RELEVANT LAWS:

Article 22 of the Constitution (憲法第二十二條) ; J. Y. Interpretation Nos. 137 and 216 (司法院釋字第一三七號、第二一六號解釋) ; Article 6, Paragraph 1, Subparagraph 6, of the Act of Naming (姓名條例第六條第一項第六款) ; Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act (司法院大法官審理案件法第五條第一項第二款) .

KEYWORDS:

the right of an individual to select one's own name (姓名權) , right of personality (人格權) , administrative agency (行政機關) , agency-in-charge (主管機關) , Administrative Court (行政法院) .**

HOLDING: The right of an individual to select his/her own name is a type of personal right. The name of an individ-

解釋文：姓名權為人格權之一種，人之姓名為其人格之表現，故如何命名為人民之自由，應為憲法第二十二

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

ual signifies an aspect of his/her personality. Therefore, the right to choose one's own name is a physical freedom safeguarded under Article 22 of the Constitution. Article 6, Paragraph 1, Subparagraph 6, of the Act of Naming provides for an application procedure requiring approval from the agency-in-charge in order to change one's name on the grounds of indecent pronunciation of character(s) in the name or other identified special reasons. Whether identified special reasons exist for the change of one's name must be determined by the agency-in-charge on a case-by-case basis, in accordance with concrete facts. Characters used in names, their pronunciations and meanings are all interrelated factors. Indecency in the pronunciations or euphemistic secondary meanings fall within the category of other identified special reasons stated in the above referenced Act. The Interpretation Letter by the Ministry of Interior, dated April 19, 1976, Ref. No. Tai-Nei-Hu-Tze-682266, that reads, "the legislative term 'indecent names' allows no expanded definition through their pronunciations or euphemistic secondary meanings," is con-

條所保障。姓名條例第六條第一項第六款規定命名文字字義粗俗不雅或有特殊原因經主管機關認定者，得申請改名。是有無申請改名之特殊原因，由主管機關於受理個別案件，就具體事實認定之。姓名文字與讀音會意有不可分之關係，讀音會意不雅，自屬上開法條所稱得申請改名之特殊原因之一。內政部中華民國六十五年四月十九日臺內戶字第六八二二六六號函釋「姓名不雅，不能以讀音會意擴大解釋」，與上開意旨不符，有違憲法保障人格權之本旨，應不予援用。

trary to the constitutional safeguard of personal rights, and therefore shall not be followed or applied.

REASONING: As stated in Interpretation No. 137 by this Yuan, any administrative agency may issue interpretive rulings concerning the laws and regulations that it undertakes to enforce, which rulings may in turn be applied by judges in adjudicating cases, but will not necessarily bind them as the judges may adopt opinions different from such rulings when they apply the law. Interpretive rulings of laws by the administrative agency-in-charge are for the reference of judges in adjudication, who, however, are not bound thereby. On the other hand, any administrative ruling that has been cited by a court as the basis of its judgment is subject to our review, as Interpretation No. 216 of this Yuan has inferred. We are able to ascertain from the dictum of the Administrative Court Judgment, 83-Pan-Tze-948, although not clearly stated so therein, that the administrative ruling of the Ministry of Interior, dated as of April 19, 1976, Ref. No. Tai-Hu-Nei- Tze-

解釋理由書：按行政機關依其職掌就有關法規為釋示之行政命令，法官於審判案件時，固可予以引用，但得依據法律，表示適當之不同見解，並不受其拘束，本院釋字第一三七號解釋即係本此意旨；主管機關依其職掌就有關法規所為釋示，固可供法官於審判案件時參考，但不受其拘束。惟如經法院引用為裁判之基礎者，參照本院釋字第二一六號解釋，得為違憲審查之對象。本案行政法院八十三年度判字第九四八號判決理由中雖未明確指出具體適用何項法令，但由其所持法律見解，可判斷該項判決係以內政部六十五年四月十九日臺內戶字第六八二二六六號函釋為判決基礎。依司法院大法官審理案件法第五條第一項第二款之規定，應予受理。

682266 was implicitly referred to as the basis of the referenced judgment, and therefore, take the matter according to Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act.

The right to choose a name is a type of personal right. The name of an individual signifies an aspect of his personality. Therefore, the right to choose one's own name is a physical freedom safeguarded under Article 22 of the Constitution. Article 6, Paragraph 1, of the Act of Naming sets forth several restrictions upon application by private citizens for a name change; Subparagraph 6 further provides for an application procedure requiring approval from the agency-in-charge in order to change one's name on the grounds of indecent pronunciation of character(s) in the name or other identified special reasons. The agency-in-charge shall apply objective criteria to determine what constitutes indecent pronunciation of character(s) in a name. As for the identified special reasons, this term involves an indefinite concept of law, and the agency-

姓名權為人格權之一種，人之姓名為其人格之表現，故如何命名為人民之自由，應為憲法第二十二條所保障。姓名條例第六條第一項就人民申請改名，設有各種限制，其第六款規定命名文字字義粗俗不雅或有特殊原因經主管機關認定者得申請改名，命名文字字義粗俗不雅者，主管機關之認定固有其客觀依據，至於「有特殊原因」原亦屬一種不確定法律概念，尤應由主管機關於受理個別案件時，就具體事實認定之，且命名之雅與不雅，繫於姓名權人主觀之價值觀念，主管機關於認定時允宜予以尊重。姓名文字與讀音會意有不可分之關係，讀音會意不雅，自屬上開法條所稱得申請改名之特殊原因之一。內政部六十五年四月十九日臺內戶字第六八二二六六號函釋「姓名不雅，不能以讀音會意擴大解釋」，與上開意旨不符，有違憲法保障人格權之本旨，應不予援用。

in-charge must accordingly make its decision on a case-by-case basis, in accordance with concrete facts. Whether or not the characters chosen in giving names are decent hinges upon the subjective value judgment of the person who enjoys the right to a name, such naming process deserves deference from the agency-in-charge in making its own decisions thereof. Characters used in names, their pronunciations and meanings are all inter-related factors. Indecency in the pronunciations or euphemistic secondary meanings fall within the category of other identified special reasons stated in the above referenced law. The Interpretation Letter by the Ministry of Interior, dated April 19, 1976, Ref. No. Tai-Nei- Hu-Tze-682266, that reads “the legislative term ‘indecent names’ allows for no expanded definition through their pronunciations or euphemistic secondary meanings,” is contrary to the constitutional safeguard of personal rights, and therefore shall not be followed or applied.