

J. Y. Interpretation No.457 (June 12, 1998) *

ISSUE: Are the relevant provisions of the Regulation for Handling of the Veterans Affairs Commission-Owned Housing and Farmlands Vacated by Married Veterans after Their Hospitalization, Retirement or Death, which deprive a married daughter of a veteran of her heirship in respect of the distributed farmland and its subsequent cultivation upon the veteran's death, in violation of the Constitution?

RELEVANT LAWS:

Article 7 of the Constitution (憲法第七條) ; Article 10-VI of the Amendments to the Constitution (憲法增修條文第十條第六項) ; Section 4-III of the Regulation for Handling of the Veterans Affairs Commission-Owned Housing and Farmlands Vacated by Married Veterans after Their Hospitalization, Retirement or Death as proclaimed by the Veterans Affairs Commission, the Executive Yuan (行政院國軍退除役官兵輔導委員會發布之「本會農場有眷場員就醫、就養或死亡開缺後房舍土地處理要點」第四點第三項) .

KEYWORDS:

principle of gender equality (男女平等原則) , substantive gender equality (兩性地位實質平等) , distributed state farmland (配耕國有農場土地) , sexual and marital discrimination (性別及已婚之差別待遇) .**

* Translated by Vincent C. Kuan.

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

HOLDING: “All citizens of the Republic of China, irrespective of sex, shall be equal before the law; the state shall further substantive gender equality.” The foregoing provisions are unambiguously set forth in Article 7 of the Constitution and Article 10-VI of the Amendments to the Constitution, respectively. The state organ, in implementing public administration missions, shall also comply with the aforesaid constitutional provisions while engaging in private acts that are subject to private law. The Regulation for Handling of the Veterans Affairs Commission-Owned Housing and Farmlands Vacated by Married Veterans after Their Hospitalization, Retirement or Death as proclaimed by the Veterans Affairs Commission, the Executive Yuan, are undoubtedly designed to ensure the livelihood of veterans and their surviving dependents, whereby parcels of state farmland are distributed to veterans as special and preferential treatment by the state. As such, the rights and legal benefits so conferred are different from those acquired by ordinary citizens. A legal relationship of loan for use is formed between

解釋文：中華民國人民，無分男女，在法律上一律平等；國家應促進兩性地位之實質平等，憲法第七條暨憲法增修條文第十條第六項定有明文。國家機關為達成公行政任務，以私法形式所為之行為，亦應遵循上開憲法之規定。行政院國軍退除役官兵輔導委員會發布之「本會各農場有眷場員就醫、就養或死亡開缺後房舍土地處理要點」，固係基於照顧榮民及其遺眷之生活而設，第配耕國有農場土地，為對榮民之特殊優惠措施，與一般國民所取得之權利或法律上利益有間。受配耕榮民與國家之間，係成立使用借貸之法律關係。配耕榮民死亡或借貸之目的使用完畢時，主管機關原應終止契約收回耕地，俾國家資源得合理運用。主管機關若出於照顧遺眷之特別目的，繼續使其使用、耕作原分配房舍暨土地，則應考量眷屬之範圍應否及於子女，並衡酌其謀生、耕作能力，是否確有繼續輔導之必要，依男女平等原則，妥為規劃。上開房舍土地處理要點第四點第三項：「死亡場員之遺眷如改嫁他人而無子女者或僅有女兒，其女兒出嫁後均應無條件收回土地及眷舍，如有兒子准由兒子繼承其權利」，其中規定限於榮民之子，不論結婚與否，均承認其所謂繼承之權

a veteran and the state as far as the distributed farmland is concerned. Upon the death of the veteran or the fulfillment of the loan for use, the competent authority should terminate the contract to reclaim the farmland so as to use the national resources in a reasonable manner. If, instead, the competent authority allows the veteran's surviving dependents to continue using and cultivating the originally distributed housing and farmland for the specific purpose of ensuring their livelihood, it should then consider whether the scope of the term "dependents" should extend to the veteran's children, and should consider their abilities to earn a living and cultivate the farmland to determine whether it is necessary to continue the assistance before making appropriate plans based on the principle of gender equality. Section 4-III of the aforesaid Regulation for Handling of the Housing and Lands provides, "If the surviving spouse of the deceased veteran remarries but without issue or only has daughter(s), the land and housing shall be reclaimed unconditionally upon the marriage of the daughter(s); and the rights of the veteran

利，與前述原則不符。主管機關應於本解釋公布之日起六個月內，基於上開解釋意旨，就相關規定檢討，妥為處理。

may be inherited by his son, if any.” The relevant provisions stating to the effect that the right of inheritance in respect of a deceased veteran is limited to his son regardless of the son’s marital status are inconsistent with the aforesaid principle. Therefore, the competent authority shall, within six months from the date of this Interpretation, carefully review and revise the relevant provisions based on the aforesaid essence of this Interpretation.

REASONING: “All citizens of the Republic of China, irrespective of sex, shall be equal before the law; the state shall further substantive gender equality.” The foregoing provisions are unambiguously set forth in Article 7 of the Constitution and Article 10-VI of the Amendments to the Constitution, respectively. The state organ, in carrying out public administration missions, shall also comply with the aforesaid constitutional provisions while formulating rules and engaging in private acts that are subject to private law. The Regulation for Handling of the Veterans Affairs Commission-Owned Housing and Farmlands Vacated by Mar-

解釋理由書：中華民國人民，無分男女，在法律上一律平等；國家應促進兩性地位之實質平等，憲法第七條暨憲法增修條文第十條第六項定有明文。國家機關訂定規則，以私法行為作為達成公行政目的之方法，亦應遵循上開憲法之規定。行政院國軍退除役官兵輔導委員會中華民國六十九年七月十一日發布之「本會各農場有眷場員就醫、就養或死亡開缺後房舍土地處理要點」，係國家為因應政府遷台初期客觀環境之需要，安置國軍退除役官兵，照顧此等有眷榮民之生活，經由行政院國軍退除役官兵輔導委員會將所經營之國有農場耕地配予榮民耕種，乃對榮民所採之特殊優惠措施，與一般國民所取得

ried Veterans after Their Hospitalization, Retirement or Death as proclaimed by the Veterans Affairs Commission, Executive Yuan, on July 11, 1980, are designed by the state to deal with the circumstances in the wake of the government's retreat to Taiwan by helping veterans to settle down and earn a living. Under the said regulations, numerous parcels of state farmland administered by the Veterans Affairs Commission are distributed to veterans as special and preferential treatment by the state. As such, the rights and legal benefits so conferred are different from those acquired by the ordinary citizens. A legal relationship of loan for use is formed between a veteran and the state as far as the distributed farmland is concerned. A loan for use is a contract without compensation that forms a specific relationship between the loaner and loanee. Upon the death of the veteran or the fulfillment of the loan for use, the competent authority should terminate the contract to reclaim the farmland so as to use the national resources in a reasonable manner. If, instead, the competent authority allows the veteran's surviving dependents to continue using and

之權利或法律上利益有間。受配耕榮民與國家之間，係成立使用借貸之法律關係。使用借貸為無償契約，屬貸與人與借用人間之特定關係。配耕榮民死亡或依借貸之目的使用完畢時，主管機關原應終止契約收回耕地，俾國家資源得合理運用。主管機關若出於照顧遺眷之特別目的，使其繼續使用、耕作原分配房舍暨土地，則應考量眷屬之範圍應否及於子女，並衡酌其謀生、耕作能力，是否確有繼續輔導之必要，使具相同法律上身分地位者，得享同等照顧，依男女平等原則，妥為規劃。上開房舍土地處理要點第四點第三項：「死亡場員之遺眷如改嫁他人而無子女者或僅有女兒，其女兒出嫁後均應無條件收回土地及眷舍，如有兒子准由兒子繼承其權利」，其中規定限於榮民之子，無視其有無謀生能力及輔導必要，又不問結婚與否，均得繼承其權利。姑不論農場耕地之配耕可否作為繼承之標的，竟僅以性別及已否結婚，對特定女性為差別待遇，與男女平等原則有違。主管機關應於本解釋公布之日起六個月內，基於上開解釋意旨，就相關規定檢討，妥為處理。

cultivating the originally distributed housing and farmland for the specific purpose of ensuring their livelihood, it should then consider whether the scope of the term “dependents” should extend to the veteran’s children, and weigh their abilities to earn a living and cultivate the farmland to determine whether it is necessary to continue with the assistance to enable those with equal legal status and standing to enjoy the same benefits before making appropriate plans based on the principle of gender equality. Section 4-III of the aforesaid Regulation for Handling of the Housing and Lands provides, “If the surviving spouse of the deceased veteran remarries but is without issue or only has daughter(s), the land and housing shall be reclaimed unconditionally upon the marriage of the daughter(s); and the rights of the veteran may be inherited by his son, if any.” The relevant provisions, which state to the effect that the right of inheritance in respect of a deceased veteran is limited to his son regardless of whether the son is capable of making a living, whether it is necessary to render assistance, and whether the son is married, are inconsis-

tent with the principle of gender equality without having to consider whether the distributed farmland may be the subject matter of inheritance because they have gone so far as to give discriminatory treatment to a specific class of women based on sex and marital status. Therefore, the competent authority shall, within six months from the date of this Interpretation, carefully review and revise the relevant provisions based on the aforesaid essence of this Interpretation