

J. Y. Interpretation No.242 (June 23, 1989) *

ISSUE: The Part of Family in the Civil Code prohibits bigamy. In case of violation of the said prohibitory provision, an interested party may petition the court for its annulment. However, if a second marriage was concluded after the spouse of the first marriage was forcibly separated from her husband or his wife during the civil war period and had no hope to be reunited under this drastic change of circumstances and this situation has lasted for decades, shall the spouse of the first marriage still be permitted to avail herself (or himself) of said prohibitory provisions to invalidate this putative marriage, thus depriving the innocent putative spouse of the rights and protections so provided in Article 22 of the Constitution?

RELEVANT LAWS:

Article 22 of Constitution (憲法第二十二條) ; Articles 985 and 992 of the Civil Code (民法第九百八十五條、第九百九十二條) .

KEYWORDS:

marriage (婚姻) , monogamy (一夫一妻婚姻制度) , spouse (配偶) .**

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

HOLDING: Article 985 of the Part of Family in the Civil Code before the revision of June 3, 1985, provides that “Any person who has a spouse shall not marry again.” Article 992 provides that “For any marriage in violation of Article 985, interested parties may bring action asking the court to invalidate the marriage. But once the relationship of a prior marriage has ended, this request will be denied.” These two articles are necessary for maintaining a monogamous society. They are not in conflict with the Constitution. However, those subsequent marriages arising from the circumstances of significant changes in the nation which caused earlier spouses to be separated and prevented their reunion inherently are different from normal ones. For these subsequent marriages having long time of actual cohabitation, if the above-mentioned Article 992 were applied to these subsequent marriages, it would significantly disrupt the family life and human relations and might lead to social disorder. This would be in conflict with Article 22 of the Constitution which provides that people’s freedoms and rights shall be protected.

解釋文：中華民國七十四年六月三日修正公布前之民法親屬編，其第九百八十五條規定：「有配偶者，不得重婚」；第九百九十二條規定：「結婚違反第九百八十五條之規定者，利害關係人得向法院請求撤銷之。但在前婚姻關係消滅後，不得請求撤銷」，乃維持一夫一妻婚姻制度之社會秩序所必要，與憲法並無牴觸。惟國家遭遇重大變故，在夫妻隔離，相聚無期之情況下所發生之重婚事件，與一般重婚事件究有不同，對於此種有長期實際共同生活事實之後婚姻關係，仍得適用上開第九百九十三條之規定予以撤銷，嚴重影響其家庭生活及人倫關係，反足妨害社會秩序，就此而言，自與憲法第二十二條保障人民自由及權利之規定有所牴觸。

REASONUNG: The legislative purpose of Article 985 of the Part of Family in the Civil Code before the revision of June 3, 1985, which provides that “Any person who has a spouse shall not marry again”, is to reaffirm the genuine institution of monogamy. For any marriage in violation of this article, Article 992 shall apply, which provides that “For any marriage in violation of Article 985, interested parties may bring action asking the court to invalidate this marriage. But once the relationship of a prior marriage has ended, this request will be denied.” The absence of a statute of limitations on this right to bring action is not in conflict with the Constitution because allowing actions to be brought any time is necessary to maintain a monogamous society. In contrast to the revised Article 988, which renders subsequent marriages void, the Part of Family in the Civil Code before the revision only declares subsequent marriages revocable. Therefore, subsequent marriages are still valid unless they are invalidated by the court. Those subsequent marriages arising from the circumstances of significant changes in the nation which

解釋理由書：中華民國七十四年六月三日修正公布前之民法親屬編，其第九百八十五條規定：「有配偶者，不得重婚」，旨在建立一夫一妻之善良婚姻制度，其就違反該項規定之重婚，於第九百九十二條規定：「結婚違反第九百八十五條之規定者，利害關係人得向法院請求撤銷之。但在前婚姻關係消滅後，不得請求撤銷」，以資限制。此項規定，並不設除斥期間，乃在使撤銷權人隨時得行使其撤銷權，為維持一夫一妻婚姻制度之社會秩序所必要，與憲法並無牴觸。惟修正公布前民法親屬編未如修正公布後之第九百八十八條規定重婚為無效，則重婚未經撤銷者，後婚姻仍屬有效，而國家遭遇重大變故，在夫妻隔離，相聚無期，甚或音訊全無，生死莫卜之情況下所發生之重婚事件，有不得已之因素存在，與一般重婚事件究有不同，對於此種有長期實際共同生活事實之後婚姻關係，仍得適用上開第九百九十二條之規定予以撤銷，其結果將致人民不得享有正常婚姻生活，嚴重影響後婚姻當事人及其親屬之家庭生活及人倫關係，反足以妨害社會秩序，就此而言，自與憲法第二十二條保障人民自由及權利之規定，有所牴觸。至此情形，聲請人得依本院釋字第一七七號及

caused earlier spouses to be separated and prevented their reunion, or even any contact with each other, inherently, are different from normal ones. For these subsequent marriages having long time of actual cohabitation, if the above-mentioned Article 992 were applied, it would significantly disrupt the family life and human relations and might lead to social disorder. And this would be in conflict with Article 22 of the Constitution which provides that people's freedoms and rights shall be protected. Therefore, according to this Court's Interpretations Nos. 177 and 185, the petitioner of this case may request the court to retry this case.

Justice Tieh-Cheng Liu n filed dissenting opinion.

Justice Rui-Tang Chen filed dissenting opinion.

第一八五號解釋意旨，提起再審之訴，併予說明。

本號解釋劉大法官鐵錚、陳大法官瑞堂分別提出不同意見書。