

J. Y. Interpretation No.372 (February 24, 1995) *

ISSUE: The Supreme Court's precedent holds that "although a spouse who has suffered unbearable mistreatment in cohabitation is entitled to sue for divorce, it does not include cases where the other party temporarily loses control and overreacts to the spouse's misconduct." Is the said precedent in conflict with the Constitution, thus being void?

RELEVANT LAWS:

Universal Declaration of Human Rights (世界人權宣言); Article 9, Paragraph 5, of the Amendments to the Constitution (憲法增修條文第九條第五項); Article 1052, Paragraph 1, Subparagraph 3 of the Civil Code (民法第一千零五十二條第一項第三款); Supreme Court's Precedent S.T. 4554 (Supreme Court, 1934) (最高法院二十三年上字第四五五四號判例).

KEYWORDS:

personal dignity (人格尊嚴), personal safety (人身安全), unbearable mistreatment cohabitation (不堪同居之虐待), marriage (婚姻), domestic violence (家庭暴力). **

HOLDING: The maintenance of personal dignity and the protection of per-

解釋文：維護人格尊嚴與確保人身安全，為我國憲法保障人民自由權

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sonal safety are two of the fundamental concepts underlying the constitutional protection of the people's freedoms and rights. Our society expects that the institution of marriage should be protected by preventing domestic violence and by improving mutual respect between spouses. To determine what constitutes "unbearable mistreatment in cohabitation" as provided in Article 1052, Paragraph 1, Subparagraph 3, of the Civil Code, the courts should, case by case, take into account the degree of the mistreatment suffered by the injured party, the levels of education of both parties, their social status, and so on, and determine whether the continuity of the marriage is threatened. If the degree of mistreatment suffered by the injured party goes beyond the encroachments on personal dignity and security that would be tolerated by most spouses, this should be seen as unbearable mistreatment in cohabitation. The Supreme Court's Precedent S.T. 4554 (Supreme Court, 1934) held that: "although a spouse who has suffered unbearable mistreatment in cohabitation is entitled to ask for a divorce, this does not include cases where the

利之基本理念。增進夫妻情感之和諧，防止家庭暴力之發生，以保護婚姻制度，亦為社會大眾所期待。民法第一千零五十二條第一項第三款所稱「不堪同居之虐待」，應就具體事件，衡量夫妻之一方受他方虐待所受侵害之嚴重性，斟酌當事人之教育程度、社會地位及其他情事，是否已危及婚姻關係之維繫以為斷。若受他方虐待已逾越夫妻通常所能忍受之程度而有侵害人格尊嚴與人身安全者，即不得謂非受不堪同居之虐待。最高法院二十三年上字第四五五四號判例謂：「夫妻之一方受他方不堪同居之虐待，固得請求離婚，惟因一方之行為不檢而他方一時忿激，致有過當之行為，不得即謂不堪同居之虐待」，對於過當之行為逾越維繫婚姻關係之存續所能忍受之範圍部分，並未排除上述原則之適用，與憲法尚無牴觸。

other party temporarily loses control and overreacts to the spouse's misconduct." This Precedent, which does not exclude the operation of the abovementioned fundamental ideas and social expectations if the other party's overreactions threaten the continuity of the marriage, is not in violation of the Constitution.

REASONING: The maintenance of personal dignity and the protection of personal safety are contained in the Universal Declaration of Human Rights, and are also two of the fundamental concepts underlying our constitutional protection of the people's freedoms and rights. Article 9, Paragraph 5, of the Amendments to the Constitution, which provides that: "The State shall protect the dignity of women, safeguard their personal safety, eliminate sexual discrimination, and further substantive gender equality," enshrines the above ideas. In Interpretation No. 365, this Council has held that this constitutional protection shall also be applicable to marital relations and domestic life. The objective of marriage is for a husband and wife to live together. The

解釋理由書：人格尊嚴之維護與人身安全之確保，乃世界人權宣言所揭示，並為我國憲法保障人民自由權利之基本理念。憲法增修條文第九條第五項規定：「國家應維護婦女之人格尊嚴，保障婦女之人身安全，消除性別歧視，促進兩性地位之實質平等」即在宣示上述理念。此一憲法意旨，於婚姻關係及家庭生活，亦有其適用，業經本院釋字第三六五號解釋釋示在案。婚姻係以夫妻之共同生活為目的，配偶應互相協力保持其共同生活之圓滿、安全及幸福，因而夫妻應互相尊重以增進情感之和諧，防止家庭暴力之發生，不僅為維繫婚姻所必要，亦為社會大眾所期待。民法第一千零五十二條第一項第三款規定夫妻之一方受他方不堪同居之虐待者，得向法院請求離婚，旨在維持夫妻任何一方之人格尊嚴與人身安全。若一

spouses should strive and cooperate to maintain their mutual satisfaction, security and happiness. Therefore, it is not only a necessity for a stable marriage but also generally expected that a husband and wife should respect each other to improve mutual harmony and to prevent domestic violence. Article 1052, Paragraph 1, Subparagraph 3, of the Civil Code, which provides that a spouse who suffers unbearable mistreatment inflicted by the other party in cohabitation is entitled to resort to the courts for a divorce, is aimed at protecting the personal dignity and safety of both spouses. If the mistreatment becomes so severe that the continuity of the marital relationship seems unlikely, a request for divorce should be approved. To determine so-called “unbearable mistreatment in cohabitation,” the courts should, case by case, take into account the degree of the mistreatment suffered by the injured party, the levels of education of both parties, their social status, and so on, and determine whether the continuity of marriage is threatened. If the degree of mistreatment suffered by the injured party goes beyond the encroach-

方受他方不堪同居之虐待，夫妻繼續共同生活之目的，已無可期待，自應許其訴請離婚。所謂「不堪同居之虐待」應就具體事件，衡量夫妻之一方受他方虐待所受侵害之嚴重性，斟酌當事人之教育程度、社會地位及其他情事，是否已危及婚姻關係之維繫以為斷。若受他方虐待已逾越夫妻通常所能忍受之程度而有侵害人格尊嚴與人身安全者，即不得謂非受不堪同居之虐待。

ments on personal dignity and security that would be tolerated by most spouses, this should be seen as unbearable mistreatment in cohabitation.

The Supreme Court's Precedent S.T. 4554 (Supreme Court, 1934) held that: "although a spouse who has suffered unbearable mistreatment in cohabitation is entitled to ask for a divorce, this does not include cases where the other party temporarily loses control and overreacts to the spouse's misconduct." The holding said only that the other party temporarily losing control and overreacting to the spouse's misconduct should not necessarily be seen as inflicting unbearable mistreatment in cohabitation. Accordingly, once education levels, social status and other relevant factors have been taken into account, if the overreactions do not threaten the continuity of the marriage, the request for a divorce based on unbearable mistreatment in cohabitation should not be approved. This precedent does not intend to confer upon the other party powers to punish the party who commits the misconduct. If the degree of mistreat-

最高法院二十三年上字第四五五四號判例謂：「夫妻之一方受他方不堪同居之虐待，固得請求離婚，惟因一方之行為不檢而他方一時忿激，致有過當之行為，不得即謂不堪同居之虐待」，係說明「因一方之行為不檢而他方一時忿激，致有過當之行為」，非當然構成「不堪同居之虐待」之要件。所指「過當之行為」經斟酌當事人之教育程度、社會地位及其他情事，尚未危及婚姻關係之維繫者，即不得以此認為受他方不堪同居之虐待而訴請離婚。惟此判例並非承認他方有懲戒行為不檢之一方之權利，若一方受他方虐待已逾越夫妻通常所能忍受之程度而有侵害人格尊嚴與人身安全之情形，仍不得謂非受不堪同居之虐待。最高法院二十三年上字第四五五四號判例意旨，對於過當之行為逾越維繫婚姻關係之存續所能忍受之範圍部分，並未排除民法第一千零五十二條第一項第三款規定之適用，與憲法之規定尚無牴觸。

ment suffered by the injured party goes beyond the encroachments on personal dignity and security that would be tolerated by most spouses, this should be seen as unbearable mistreatment in cohabitation. Therefore, the Supreme Court's Precedent S.T. 4554 (Supreme Court, 1934), which does not exclude the application of Article 1052, Paragraph 1, Subparagraph 3, of the Civil Code if the other party's overreactions become detrimental to the continuity of marriage, is not in violation of the Constitution.

Justice Young-Mou Lin filed concurring opinion.

Justice Jyun-Hsiung Su filed concurring opinion and dissenting opinion in part.

Justice Tong-Schung Tai filed dissenting opinion in part, in which Justice Vincent Sze joined.

本號解釋林大法官永謀提出協同意見書；蘇大法官俊雄提出協同（含部分不同）意見書；戴大法官東雄與施大法官文森共同提出部分不同意見書。