

J. Y. Interpretation No.87 (December 9, 1960) \*

**ISSUE:** What are the legal effects for an adoption carried out against the statutory restrictions on age?

**RELEVANT LAWS:**

Articles 72 and 1073 of the Civil Code (民法第七十二條及第一千零七十三條) .

**KEYWORDS:**

Revocation (撤銷) , indictment (起訴) , spirit of law (法意) .\*\*

**HOLDING:** Pursuant to Article 1073 of the Civil Code, an adopter should be at least 20 years older than his adoptive child. Nevertheless, if the adoptive relationship violates the stipulation, it is certainly not invalid and revocation can only be filed for an adoptive relationship. Thus, the interpretation of Yuan-je Tze No.3120, Paragraph 5 (Judicial Yuan), should be upheld.

**解釋文：**收養子女違反民法第一千零七十三條收養者之年齡應長於被收養者二十歲以上之規定者，僅得請求法院撤銷之，並非當然無效。本院院解字第三一二零號第五項就此部分所為之解釋，應予維持。

**REASONING:** According to

**解釋理由書：**按收養子女違反

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\* Translated by Lawrence L. C. Lee.

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

Yuan-je Tze No.3120 (Judicial Yuan), Paragraph 5, inferred from Yuan yuan No.2271, Article 1073 of the Civil Code has no stipulation similar to that of annulment of marriage against an adoptive relationship which violates the age restriction. However, marriage and adoption are acts which both involve relationships. Thus, the legal reason for annulling an illegal marriage and an illegal adoption are the same. Article 579 of the Code of Civil Procedure stipulates specific litigation to quash an adoption indictment, and the court determines whether there are grounds for such an indictment. However, the Civil Code does not stipulate specific litigation concerning an adoption indictment. Thus, an illegal adoption should fall under the same interpretation as that for an annulment of marriage. The Code of Civil Procedure was enacted after the enforcement of the Civil Code, and based on the spirit of said law, which stipulates specific litigation concerning an adoption indictment, what has already been elucidated should not be considered inapplicable. The abovementioned interpretation has been in force for a long time. If it

民法第一千零七十三條規定年齡之限制，業經本院院解字第三一二零號第五項參照本院院字第二二七一號解釋，以違反該條規定年齡限制之收養子女民法雖未設有類於撤銷結婚之規定，但結婚與收養子女同為發生身分關係之行為，關於撤銷違法結婚之規定在違法之收養亦有同一之法律理由，自應類推適用，況民事訴訟法第五百七十九條以下就撤銷收養之訴規定其特別訴訟程序，應以民法上認有撤銷收養之訴為前提，民法上既別無關於撤銷收養之訴之規定，則前開認為違法之收養，應類推適用關於違法結婚之撤銷程序之解釋，徵諸民法頒行後制定施行之民事訴訟法猶併就撤銷收養之訴規定其特別程序之法意，洵難謂為不當，解釋在案，此項解釋行之已久，若驟予變更，足使以前已經取得是項收養身分關係之多數人在家庭或社會發生種種糾紛甚至遭受無窮損害。至聲請解釋原函所指收養者別有非法利益之意圖，則屬民法第七十二條之問題，要與原解釋僅就違反民法第一千零七十三條規定收養年齡限制所為之解釋不生影響，不得執為聲請變更原解釋之論據。

were to be amended, it could harm many people who obtained adoptive relations under this interpretation and might cause family and social disputes. Concerning the petition stating that the adoptor has an illegal interest in this case, this issue should be considered under Article 72 of the Civil Code. It does not influence the adoption age restriction of Article 1073 of the Civil Code. Therefore, the original interpretation should be upheld.

Justice Shang-Kuan Shih filed dissenting opinion, in which Justice Ji-Jong Wang, Justice Yien-Cheng Shih, Justice Jou-Kang Jing, Justice Han Hu and Justice Fan-Kang Tseng joined.

本號解釋史大法官尚寬、王大法官之侖、史大法官延程、景大法官佐綱、胡大法官翰與曾大法官繁康共同提出不同意見書。