
J.Y. Interpretation No. 728 (March 20, 2015)*

Qualifications for Successors of Ancestor Worship Guilds Case

Issue

The Act Regarding Ancestor Worship Guilds provides that the qualifications of successors of ancestor worship guilds established before the promulgation of the Act shall abide by their guild charters. Are such provisions of the Act constitutional?

Holding

Article 4, Paragraph 1, First Sentence of the Act Regarding Ancestor Worship Guilds provides, “For the guilds established before the promulgation of this Act, the qualifications of successors are subject to their guild charters.” This Sentence does not use gender as a classification to determine the qualifications of successors. In reality, most of the guild charters follow the traditional clan concept of succession, which limits succession to male offspring (including adopted sons) only, while excluding female offspring in most cases. However, the adoptions of these charters are actions of the guild founders and their descendants, authorized by private laws, in order to establish associations and dispose of their inherited property. In principle, these actions shall be respected based on the principle of private autonomy for maintaining the stability of the legal order. Therefore, the said Sentence, which provides that the qualifications of guild successors shall be subject to the guild charters, does not infringe upon women’s property rights and therefore does not violate gender equality under Article 7 of the Constitution.

Reasoning

* Translation and Note by Hsiao-Wei KUAN

[1] The petitioners asked this Court to review the constitutionality of Article 4 of the Management Charter of the LU Wan-Chun Ancestor Worship Guild (hereinafter “Charter”), adopted on July 31, 1986, which was ruled upon by the Supreme Court in its 99-Tai-Shan-963 Civil Judgment (2010) (hereinafter “the final judgment”). The Charter is neither a “statute” nor “regulation” as provided for in Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act, and therefore is not eligible subject matter for interpretation. Yet the content of the Charter was cited by the final judgment when it referred to Article 4, Paragraph 1, First Sentence of the Act Regarding Ancestor Worship Guilds (hereinafter “the disputed provision”), as the basis of the main ruling. The disputed provision reads, “For the guilds established before the promulgation of this Act, the qualifications of successors are subject to their guild charters.” Since the petitioners filed their petitions in accordance with the said provision of the Constitutional Court Procedure Act (which was mistakenly listed in the petition as Article 4, Paragraph 1, Subparagraph 2 of the Council of Grand Justices Procedure Act), the disputed provision may be considered the petitioned subject matter to be reviewed as well. This Court may therefore review the constitutionality of the disputed provision. It is so explained here.

[2] An ancestor worship guild is an association with properties donated by the founders for the purpose of worshiping their ancestors or other persons (*see* Article 3, Subparagraph 1 of the Act Regarding Ancestor Worship Guilds). Its formation and existence involve the freedom of association, right to property, and freedom of contract of the founders and of their descendants. The disputed provision may, in reality, result in different treatment between men and women in cases where the relevant charters follow the traditional clan concept of succession, which limits the succession to male offspring (including adopted sons) only and excludes female offspring in most cases. However, the disputed provision, on its face, does not use gender as a classification to determine the qualifications of

successors. Its purposes are to maintain the stability of the legal order and to prohibit *ex post facto* laws. Moreover, adoptions of these charters were actions of the guild founders and their descendants to establish associations and dispose of their inherited property via private laws. In principle, these actions are to be respected based on the freedom of association under Article 14, property rights under Article 15, and the freedom of contract and principle of private autonomy under Article 22 of the Constitution. The disputed provision may have resulted in different treatment in reality. Such difference, however, is not arbitrary. It does not violate the spirit of gender equality under Article 7 of the Constitution. Nor does it infringe upon women's right to property.

[3] Nevertheless, Article 4, Paragraph 1, Second Sentence of the Act Regarding Ancestor Worship Guilds provides, "For those guilds without any charter or without any applicable rule in the charter, successors shall be limited to male offspring (including adopted sons)." This Sentence uses gender as a classification to determine the qualifications of successors and thus constitutes different treatment. However, Paragraph 2 of the same Article provides, "For those members without male offspring, their unmarried daughters are qualified to serve as successors." Paragraph 3 of the same Article provides,

Daughters, adopted daughters, and sons-in-law of uxorilocal marriages may also serve as successors, if meeting one of the following criteria: (1) when two-thirds of the current successors agree in writing; (2) when two-thirds of the attending members agree in a meeting with a majority of the current successors of the Assembly present.

These two Paragraphs aim to alleviate the different treatment of Paragraph 1. In addition, Article 5 of the Act Regarding Ancestor Worship Guilds provides, "After this Act takes effect, the successors shall include all such persons who

jointly take responsibility to worship their ancestors, upon inheritance of any successor of guilds with or without corporate personhood.” This Article also adheres to the principle of gender equality. Nevertheless, different treatments still exist within the overall institution of successors. Under Article 7 of the Constitution, “All citizens of the Republic of China, irrespective of sex ... shall be equal before the law.” Article 10, Paragraph 6 of the Additional Articles of the Constitution reads, “The State shall protect the dignity of women, safeguard their personal safety, eliminate gender discrimination, and further promote substantive gender equality.” The said Additional Article of the Constitution imposes on the State an obligation to promote substantive gender equality. Furthermore, in light of Articles 2 and 5 of the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the General Assembly of the United Nations on December 18, 1979, the State shall bear a positive obligation to protect women in order to implement substantive gender equality. In determining the qualifications of successors for the ancestor worship guilds established before the promulgation of the Act Regarding Ancestor Worship Guilds, authorities concerned shall review and revise the related provisions, in due time, to ensure that the laws keep pace with time and become more compatible with the principle of gender equality and the people's freedom of association, property rights, and freedom of contract under the Constitution, by taking into account the State's positive obligation to protect women under the said Additional Article of the Constitutional *vis-à-vis* the principle of the stability of the law, as well as social changes and the changing functions of ancestor worship guilds.

Background Note by the Translator

The petitioner, Ms. Pi-Lien LU (in an uxorilocal marriage), is the eldest daughter of Mr. Chin-Jung LU, who is a successor of the LU Wan-Chun Ancestor Worship Guild. The other petitioner, Mr. Chia-Sheng LU, is Pi-Lien LU's son

(with the same surname as his mother). Chin-Jung LU's living maintenance was provided for by the petitioners. He had three more sons, none of whom had a male child. When Chin-Jung LU and two of his sons passed away, only the youngest son, Mr. Hsueh-Chuan LU, remained. Article 4, First Sentence of the Management Charter of the LU Wan-Chun Ancestor Worship Guild (hereinafter "Charter"), adopted on July 31, 1986, provides, "In a case where a registered successor dies, his lineal heirs have the right to appoint a representative to serve as the successor. However, pursuant to the relevant government regulations, daughters have no right to claim inheritance from ancestor worship." Consequently, succession to Chin-Jung LU's membership in the LU Wan-Chun Ancestor Worship Guild was inherited by Hsueh-Chuan LU only. The petitioners thus initiated a civil litigation, claiming they were entitled to inherit the status of successor. The case was dismissed by the Taiwan Panchiao District Court (now renamed as the Taiwan New Taipei District Court). On appeal, their claim was rejected by the Taiwan High Court in its 97-Shan-617 Civil Judgment (2009) and by the Supreme Court in its 99-Tai-Shan-963 Civil Judgment (2010). Both decisions applied Article 4, Paragraph 1 of the Act Regarding Ancestor Worship Guilds, which provides, "For the guilds established before the promulgation of this Act, the qualifications of successors are subject to their guild charters." Accordingly, both decisions dismissed the petitioners' claim based on the Charter's provision that only allowed male descendants of the lineal heirs to serve as successors. Consequently, the petitioners petitioned for interpretation on the grounds that the said Charter provision as applied in the said Supreme Court Judgment was unconstitutional under Article 7 of the Constitution.