

---

## **J.Y. Interpretation No. 644 (June 20, 2008)\***

---

### **The Prohibition against Associations Advocating Communism or Secession Case**

#### **Issue**

Are the provisions of the Civil Associations Act that prohibit the establishment of an association that advocates communism or secession from the State unconstitutional?

#### **Holding**

Article 2 of the Civil Associations Act stipulates that: “[t]he organization and activities of a civil association shall not advocate Communism or secession from the State.” Article 53, First Sentence of the same Act provides that “no permission shall be granted... for those applicants/civil associations that violate Article 2.” The foregoing provisions allow the competent authority to conduct a review of the content of a person’s political speech to determine whether any statement therein “advocate[s] Communism or secession from the State” prior to the establishment of an association, and as the grounds for disapproval. This has clearly exceeded the scope of necessity and is not in conformity with the purpose of constitutional protection of people’s freedom of association and freedom of speech. Therefore, within the scope of this Interpretation, the foregoing provisions shall become null and void from the date of announcement of this Interpretation.

#### **Reasoning**

---

\* Translation by Andy Y. SUN

[1] An individual whose constitutional rights are unlawfully infringed upon may, in accordance with Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act, petition this Court to review the constitutionality of the statutes or regulations applied by a final decision of the court of last resort after the exhaustion of ordinary judicial remedies. The scope of review by this Court is not merely limited to those laws or regulations specifically identified in the petition, and shall entail the laws or regulations being substantially cited as the basis of the final judgment. The present petition only alleges that Article 2 of the Civil Association Act contravenes the Constitution, among other things, with Article 2 stating “[t]he organization and activities of a civil association shall not advocate Communism or secession from the State.” It is a provision that is concerned with *actus juridicus* (a juristic or legal act), which must be applied in combination with Article 53, First Sentence of the same Act: “no permission shall be granted... for those applicants/civil associations that violate Article 2”, which is concerned the legal effect. Given that the Supreme Administrative Court Judgment 90-Pan-349 (2001), which upheld the competent agency’s administrative disposition to deny the petitioners’ application for establishing a political organization due to violation of Article 2 of the Civil Associations Act, in substance touches upon the application of the above-mentioned Article 53, First Sentence of the same Act, these two provisions shall be jointly reviewed in this Interpretation.

[2] The purpose of Article 14 of the Constitution, which provides the people with freedom of association, is to protect the right of the people to form associations and participate in their activities based upon mutual consent, and also to ensure the sustenance of the associations, self-determination regarding their internal constitution and affairs as well as freedom to conduct external activities. In addition to the protection of freedom to develop individual character by way of organized format, the freedom of association further encourages those with a

sense of citizenry to actively participate in socio-economic and political affairs through the formation of civil associations. Different associations may be subject to different legal protections and restrictions depending upon their different virtues to individuals, to the whole society or to democratic constitutional systems. Yet each respective protection of the freedom of association is based upon each individual's free will to organize, and the level of restrictions considered the most severe are those designed to control and limit the establishment of an association. Therefore, the grounds for approval or disapproval of the establishment shall be subject to strict scrutiny in determining whether such legal restrictions are compatible with the principle of proportionality under Article 23 of the Constitution so as to conform with the freedom of association protected by the Constitution.

[3] The Civil Associations Act categorizes civil associations into occupational, social and political associations. All of them are non-profit in nature, with an occupational association being formed by the institutions and associations in the same trade or the jobholders of the same occupation with a view to coordinate relationships between colleagues, enhance common benefits and promote social economic construction (Article 35 of the same Act); a social association being composed of individuals or associations for the purpose of promoting culture, academic research, medicine, health, religion, charity, sports, fellowship, social service or other public welfare (Article 39 of the same Act); and a political association being organized by citizens with a view to help form political volition and promote political participation for citizens based on common ideas of democratic politics (Article 44 of the same Act).

[4] Article 2 of the Civil Associations Act stipulates, “[t]he organization and activities of a civil association shall not advocate Communism or secession from the State.” The first Sentence of Article 53 of the same Act provides, “no permission shall be granted... for those applicants/civil associations that violate

Article 2.” Accordingly, the said Act grants the competent agency the power to disapprove the establishment of a non-profit civil association on the grounds that it advocates Communism or secession from the State.

[5] Freedom of speech is an indispensable mechanism for the normal development of a democratic and diverse society due to its virtues of facilitating self-fulfillment, exchange of ideas, pursuance of truth, realization of people’s right to know, formation of consensus on public issues, as well as promoting all kinds of reasonable political and social activities (*see* J.Y. Interpretation No. 509). Any restrictions by law on the freedom of speech must meet the principle of proportionality. Taking the so-called “advocating Communism or secession from the State,” which is a kind of political advocacy, as grounds for disapproving the establishment of a civil association amounts to bestowing on the competent authority the power to review the content of the speech itself, and therefore constitutes a direct restriction on the people’s basic right of free speech. Article 5, Paragraph 5 of the Additional Articles of the Constitution provides, “[a] political party shall be considered unconstitutional if its goals or activities endanger the existence of the Republic of China or the free democratic constitutional order.” Nevertheless, obtaining prior approval is not a prerequisite for the establishment of a political party; instead, a political party may be disbanded only by the judgment of the Constitutional Court after it has been established and its goals or activities have put the existence of the Republic of China or the democratic constitutional order in jeopardy. Thus, disapproval for the establishment of a civil association based on violation of Article 2 of the Civil Associations Act gives the competent agency the authority to conduct substantive review of the speech’s content before the association is established. In this vein, if it is discovered that an association has carried out the above-mentioned advocacies, and the facts collected at the time are sufficient to verify the existence of the aforesaid jeopardy, the competent agency may then withdraw (which has been amended to “revoke”

as of December 11, 2002) the approval in accordance with Article 53, Last Sentence of the same Act (amended and promulgated on January 27, 1989), to achieve the purpose of disbandment. If disapproval is rendered from the outset of an application to form a civil association, it would be no different from the prohibition of establishment of a civil association merely on the ground that it advocates Communism or secession from the State. This has clearly exceeded the scope of necessity under Article 23 of the Constitution and is not in conformity with the purpose of constitutional protection of people's freedom of association and freedom of speech. Hence, within the scope of this Interpretation, Article 2 and Article 53, First Sentence of the Civil Associations Act, as indicated above, shall become null and void from the date of announcement of this Interpretation.

### **Background Note** Ed Ming-Hui HUANG

The petitioner filed an application to the Department of Social Welfare, Taipei City Government to establish a social association called "Taipei Mainlanders Society for Taiwan Independence." The Department of Social Welfare regarded it as an application to organize a political association with the goal of "pushing ahead Taiwan Independence in a peaceful way," and thereby disapproved the application based on its incompatibility with Article 2 of the Civil Association Act.

The Petitioner filed an administrative appeal and initiated proceedings against the decision, which were in turn dismissed by the Appeal Board and Administrative Courts. Then, he petitioned the Constitutional Court for constitutional interpretation, claiming that Article 2 of the Civil Associations Act which was applied in Supreme Administrative Court Judgment 90-Pan-349 (2001) is in violation of the freedom of association under Article 14 and freedom of speech under Article 11 of the Constitution.

This Interpretation is the second time for the Constitutional Court to

adjudicate a case primarily relating to the freedom of association under Article 14 of the Constitution. In J.Y. Interpretation No. 479, for the first time, the Constitutional Court elaborated on the meaning of the freedom of association as “people's right to freely determine the purposes and forms of their associations.” In fact, J.Y. Interpretation No. 479 placed more emphasis on the “form” of association, since it struck down a regulation that infringed on the associations' right to choose their own names. By contrast, this Interpretation clearly focuses on the “purpose” of the association, because what the disputed provisions deprived is people’s right to establish an association for advocating Communism or secession. As a result, these two Interpretations together form the very basis of the constitutional protection of freedom of association in Taiwan.