

## Same-sex Marriage: Marriage restrictions ‘unconstitutional’

Written by Taipei Times

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Judicial Yuan Secretary-General Lu Tai-lang yesterday issues Constitutional Interpretation No. 748 on the legality of same-sex marriage during a news conference in Taipei.

**Photo: CNA**

The Council of Grand Justices yesterday ruled that the Civil Code, which says an agreement to marry can only be made between a man and a woman, “violated” constitutional guarantees of freedom of marriage and equality.

The landmark Constitutional Interpretation No. 748 rules in favor of allowing homosexual couples to register for marriage, and grand justices have asked the legislature to amend relevant laws within two years to protect the interests of homosexuals.

If the government has not changed the law in two years, same-sex couples will be allowed to register their union at household registration offices, Judicial Yuan Secretary-General Lu Tai-lang (呂太郎) said.

The Civil Code violates the freedom of marriage and equal rights for all citizens as guaranteed by the Constitution, Lu said.

The grand justices made the ruling after receiving two requests for a constitutional interpretation of the issue.

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One request was filed by veteran gay rights advocate Chi Chia-wei (齊齊偉) in 2015 after his attempt to register his same-sex marriage was rejected by Taipei’s Wanhua District (萬華區) household registration office in 2013 and subsequent court appeals failed.

The other request was filed by the Taipei Department of Civil Affairs in 2015, after three same-sex couples filed an administrative lawsuit against the government after their marriage registrations were rejected by the department.

Justice Huang Jui-ming (黃迺明) abstained from the vote and took no part in deliberations, the ruling said.

Dissenting opinions were filed by Justice Huang Horng-shya (黃宏夏) and Justice Wu Chen-huan (吳陳煥).

“Marriage is a union between a man and a woman, who live life together as an institution, which is protected by the Constitution. Making changes would involve altering social and cultural values, which should not be made by merely copying developments in other nations... Therefore, the decision to legalize same-sex marriage should be made by a referendum,” Wu said.

It is a fallacy to rule that Civil Code provisions are unconstitutional, Huang Horng-shya said.

Same-sex marriage is not a fundamental human right to be universally protected, she said.

She said that she supports legislating legal protections of civil unions for same-sex adults, but does not view a homosexual union the same way as a marriage between a man and a woman.

Among the main reasons cited for the majority decision were that prior interpretations mentioning “husband and wife” or “a man and a woman” were made within the context of heterosexual marriage.

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“This court has not made any interpretation on the issue of whether two people of the same sex are allowed to marry,” the ruling said.

The Civil Code does not require the ability to procreate as a requirement for marriage and reproduction is not an essential element of marriage, the ruling said, adding that procreation should not be an essential element of marriage.

Opposition to same-sex marriage based on safeguarding social and ethical values is incompatible with the spirit and meaning of equal rights as protected by the Constitution, the ruling said.

The Judicial Yuan also issued a three-page abstract on the ruling in Chinese and English, to accompany Constitutional Interpretation No. 748, which is 24 pages long.

Legal experts said it was rare for the Judicial Yuan to issue an English-language statement of a constitutional interpretation. They see the move as an official declaration to the international media of the decision that has made Taiwan the first Asian nation to recognize same-sex unions.

In response to media queries over whether same-sex foreign nationals could register their marriage in Taiwan, Lu did not give a direct answer, but said they would have to abide by provisions in the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements (民事法律適用法).

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