

談死後認領非婚生子女繼承權 — 簡評最高法院 100 年臺上字第 452 號判決*

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關鍵詞：民法、非婚生子女、繼承權、死後認領、繼承人

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摘要

民法親屬編於西元 2007 年修正時，新增死後認領制度(民法第 1067 條第 2 項)，使非婚生子女縱於生父死亡後，仍得向生父之繼承人提起認領之訴，以取得婚生子女之地位。惟經死後認領之非婚生子女，對其生父是否享有繼承權？實務上多認為，依民法第 1069 條但書，其生父之繼承人已繼承之法定應繼分不受認領溯及效力之影響，故該準婚生子女，不能繼承其生父之遺產。

民法第 1069 條但書是否剝奪經死後認領之非婚生子女之繼承權？該條但書所謂「但第三人所得之權利，不因此而受影響」應如何解釋？均產生諸多疑問。本文參考日本法例，並重新審視繼承權之根據，認為在解釋上將共同繼承人排除於所謂「第三人」之範疇或認民法第 1069 條但書之權利不包含繼承權，方可達到死後認領制度保護非婚生子女權利之目的。若能再次修法加以明文，將更能澄清此項爭議。

The Right of Inheritance of the Legitimate Child: A Brief Review

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Abstract

In the amendment of Part IV of civil law in 2007, the legislator enact Article 1067 II. It enables the child born out of wedlock to file a claim against the father's successors in order to get the status of legitimation after the father's death. However, Could the legitimate child, who is acknowledged after his natural father's death, inherit the father's property? The prevailing views of Taiwanese courts hold that the successors' entitled portion will not be affected by the effect of retroactivity according to the proviso of Article 1069. Therefore, the child could not inherit the father's property.

Does the proviso of Article 1069 in Civil Law really deprive the legitimate child, who is acknowledged after his natural father's death, of his right of inheritance? How should we explain the proviso of Article 1069 "but the existing rights of the third parties will not be affected thereby"? There are many questions remain unanswered. This article refers to Japan Law and reconsiders the basement of the right of the inheritance. If we could exclude the heir from the meaning of "the third parties" or assume that "the existing rights" does not include the right of inheritance, the object of Article 1067 II, which protects the right of the child born out of wedlock, would be fulfilled. It would be better if the legislator amend this article to clarify the dispute.