

## Part IV: Asian Perspective



# Life in Dignity in Japan

## – How Can the Constitutional “Right to Life” Be Adequately Guaranteed?

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## I. Introduction

At the end of World War II, Japan faced extreme poverty as well as food and housing shortages. Measures to fight poverty became a pressing issue. In December 1945, four months after the end of the war, the government adopted a cabinet decision on the “outline of emergency livelihood assistance for the needy”, a temporary emergency measure for individuals in need, which was implemented in April of the following year. Furthermore, the first public assistance law (hereinafter referred to as the ‘old public assistance law’) was enacted in September 1946 to fundamentally amend several existing laws and regulations.<sup>1</sup> Although the subsequent period of strong economic growth and the subsequent expansion of the social security system helped alleviate extreme and absolute poverty, it continues to remain an important issue in Japan today: the country’s relative poverty rate was 15.7 per cent in 2017,<sup>2</sup> one of the highest among OECD countries. Against this backdrop, ensuring a life in dignity has remained a priority in Japanese society for over 70 years since the end of World War II; however, the nature of this issue has gradually evolved and the level of political attention it has received has fluctuated considerably over time. Due to the low unemployment rates achieved during Japan’s period of strong economic growth, stable employment and substantial corporate welfare for regular workers, the issue of poverty in Japan seems, until very recently, to have been understood as being limited to single-parent families, persons with disabilities, the elderly, etc., *i.e.* persons who comprise a large part of public assistance recipients.<sup>3</sup> Regular workers benefitted from seniority wages and various corporate benefits, while their spouses were also supported through such corporate welfare. In other words, the Japanese welfare state has been underpinned by this unique corporate model and family structure.<sup>4</sup> In this context, the issue of poverty has, in some respects, faded from political discourse. It was only in the 2000s, triggered by the increase in the number of informal workers and the global economic crisis, that the issue of poverty

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1 S. Naito, ‘Seikatsu-hogo no genjō to kadai/The Current Status and Challenges of Public Assistance’ *Rippō to chōsa* (2012)331, pp. 78-79.

2 According to data provided by the Ministry of Health, Labour and Welfare. The poverty rate of children in the same year was 13.9 per cent.

3 In fact, many of today’s public assistance recipients in Japan belong to these categories.

4 This entire structure is often called ‘Japanese-style welfare society’. M. Ōsawa, *Kigyō chūshin syakai wo koete/Beyond a Corporate-Centered Society* (Iwanami Gendai Bunko Jijitsushin-sha 2020).

received renewed political attention. In 2009, for the first time in its history, the Japanese government published data on the relative poverty rate, revealing significant gaps and inefficiencies in the country's social security system, which had previously been considered well-developed.<sup>5</sup>

Today, Japan's minimum income schemes are characterised by their relatively simple framework. As a reflection of the constitutional right to life, the Public Assistance Act (enacted in 1950 to replace the previous legislation) guarantees a minimum standard of living for all citizens. Due to the principle of subsidiarity, this law provides different forms of minimum income guarantees for each eligible individual. The mechanism for determining such personalised benefits is complex, despite the simple framework described above. In addition to minimum income guarantees, there are various social insurance schemes form another key pillar of Japan's social security system. One of the schemes' primary objectives is the prevention of poverty. This chapter begins with an overview of Japanese law (Section II). It focuses first on the constitutional right to life (Art. 25 of the Constitution), its scope and its impact on the development of Japanese social security law (Section II.1). An overview of existing social benefits, including the Public Assistance Act, which is inseparably linked to the constitutional right to life is provided in Section II.2. In the next section (Section III), the Public Assistance Act, which plays a central role in Japanese legislation in ensuring a minimum standard of living, is explored.

## II. Overview

### 1. Normative Background: The Constitutional Right to Life and its Impact on the Evolution of Japan's Social Security System

After World War II, Japan's legal system underwent significant transformations. While these transformations covered a wide range of important changes, such as the shift from imperial sovereignty to popular sovereignty (Preamble, Art. 41, Art. 44), the redefinition of the Emperor as the symbolic head of State (Art. 1), the adoption of pacifism (Art. 9) and fundamental human rights,<sup>6</sup> this chapter focuses on social benefits and social protection.

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<sup>5</sup> See Section II. 2. b) cc) below.

<sup>6</sup> See S. Wagatsuma, 'Guarantee of fundamental human rights under the Japanese Constitution' *Washington Law Review* 26 (1951), p. 145.

The new Constitution of 3 May 1947 established the foundation for Japan's post-war social welfare system, introducing the right to life (生存権 – *seizōken*, Art. 25 of the Japanese Constitution).<sup>7</sup> Although the Constitution was drafted under the strong influence of the American authorities, Article 25 was primarily introduced on the Japanese deputies' initiative, who were inspired by Weimar-era social law.<sup>8</sup> Article 25 states that "all people shall have the right to maintain the minimum standards of wholesome and cultured living" (para. 1). It also provides that, in all spheres of life, the State shall promote and expand social welfare, security and public health (para. 2). Sakae Wagatsuma, one of Japan's most influential jurists of the time, argued that this provision marked a shift in line with a global trend towards 20<sup>th</sup> century fundamental rights. This shift reflected a greater emphasis by the State on the individual's well-being compared to 19<sup>th</sup> century fundamental rights, which prioritised guaranteeing individual freedom.<sup>9</sup> However, there has not always been a fruitful debate about what type of standard of living this right specifically guarantees. Although the phrase "wholesome and cultured living" clearly signifies that the right to life is not limited to mere physical survival, judicial precedents have established that defining the specific scope of a 'wholesome and cultured life' falls within the broad discretion of the legislature. According to the Supreme Court, "the minimum standards of wholesome and cultured living" is a highly abstract and relative concept, with its scope determined in relation to the country's level of cultural development, economic and social conditions, and the general standard of living during each period. It has therefore been interpreted that both the legislature and the executive branch (through delegated powers under the Welfare Act as discussed below)<sup>10</sup> are granted considerable discretion in defining and implementing this human right.

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7 In the field of labour law, it provides for the right and duty to work, the requirement for minimum working conditions to be fixed by law, the prohibition of child labour (Article 27), the right to organise collective bargaining and collective action (Article 28).

8 A strong influence of Anton Mengar's works is noted as well. T. Yamamori and Y. Vanderborght, 'Introduction: Income Security and the "Right to Subsistence" in Japan', in: T. Yamamori and Y. Vanderborght (eds.), *Basic Income in Japan: Prospects for a Radical Idea in a Transforming Welfare State* (Palgrave Macmillan 2014), pp. 2-3.

9 S. Wagatsuma, *Kenpō Fukyukai* (ed.), *Shin-kenpō to kihon-teki-jinken/ The New Constitution and Fundamental Human Rights* (Kokuritsu Shoin 1948), pp. 110. See also S. Wagatsuma (n 6), pp. 159 ff.

10 See Sec. III. 1. b) cc).

Nonetheless, Article 25 has, since its introduction, remained one of the major political and legal driving forces behind the development of social welfare in Japan, despite its slightly ambiguous judicial effect.<sup>11</sup> Hence, the establishment and ongoing development of the social security system are regarded as the State's efforts to realise or give concrete expression to this constitutional right, which is guaranteed to all Japanese citizens.<sup>12</sup> This perception of social security as the embodiment of a human right that is enjoyed equally by all citizens seems to have significantly influenced the character of Japan's social security system.

It also seems that the legislative, political and administrative leaders of the time acknowledged certain links between this new constitutional right and the social security model proposed by William Henry Beveridge in the United Kingdom in November 1942, and which garnered considerable attention among Japanese leaders shortly after the publication of the Beveridge report, even before the end of war. Several documents indicate that as early as 1943—at the height of the war—the Beveridge report was translated and studied by the Ministry of Health and Welfare, which had already begun drafting a social policy framework for the post-war period.<sup>13</sup> In 1947, a committee set up within the Ministry at the central government's request published Japan's first concise social security plan,<sup>14</sup> serving as the foundation of the country's post-war social security system. This plan was strongly influenced<sup>15</sup> by the Beveridgean idea, even reflecting a quasi-direct adoption of its principles.

Thus, the committee concluded that social health insurance and old-age pensions should ideally be guaranteed for the entire population, acknowledging that, at the time, it was unavoidable and acceptable to keep these systems separate for workers and the rest of the population, with the level of benefits for workers' insurance substantially higher than for the rest of pop-

11 See Sec. III. I. b) cc) on judicial control on legislation.

12 S. Wagatsuma (n 6), p. 163.

13 E. Kasagi, 'Comprendre le développement de la sécurité sociale japonaise: l'incarnation des idées occidentales dans le contexte japonais de différentes époques', in: I. Daugareilh and M. Badel (eds.), *La sécurité sociale – Universalité et modernité: Approche de droit comparé* (Pedone 2019).

14 Syakaihosyōseido chōsa kai/ Social Security System Research Council, *Syakaihosyō seido yōkō/ Outline of the Social Security System* (Investigation Committee on Social Security Systems, October 1947).

15 Y. Matsuzaki, 'On "The Beveridge Report" and Social Security Policy in Japan: How "The Report" was the Origin' Shukutoku University bulletin 27 (1993), pp. 14 ff (in Japanese).

ulation. While the plan ultimately proposed a segmented social insurance system for workers and the rest of the population, universal coverage for both health insurance and pension insurance (including for the elderly, persons with disabilities and survivors) became a cornerstone of Japanese social policy from that point onwards. By 1966, both the health insurance and the basic (old-age, invalidity and survivors) pension schemes had achieved universal coverage, *i.e.* ensuring the entire population is covered, despite maintaining the segmented structure between employed workers and the rest of population. Unemployment insurance and occupational accident insurance were also proposed for workers in the post-war legislation.

The starting point of Japan's modern social security system highlights that its entire structure is underpinned by a universal, state-driven approach, influenced by the Beveridgian model and the constitutional right to life. At the same time, it incorporates elements of the Bismarckian social insurance concept (with contributions from both employees and employers based on wage level, and the amount of benefits is determined accordingly). This Bismarckian influence, which shaped Japanese social security legislation even before the war,<sup>16</sup> continued to leave its mark on the evolution of Japan's social security system throughout the post-war period and into the present day.

As regards the minimum income benefit (currently referred to as "state assistance"), the abovementioned plan outlined its purpose as ensuring a minimum standard of living for all individuals facing poverty, with the State assuming responsibility. The plan specified that while this system shall cover all citizens who are facing poverty, assistance is only provided if a minimum standard of living cannot be maintained through other means. These basic principles of the public assistance system—universality, subsidiarity and State responsibility—were enshrined in the Public Assistance Act of 1950<sup>17</sup> and have remained unchanged to this day. The following sections<sup>18</sup> explore the Public Assistance Act in more detail, a legal act that embodies this fundamental human right, and explicitly refers to Article 25 of the Constitution.

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16 See E. Kasagi (n 13).

17 Public Assistance Act (Act No. 144 of 1950), English translation available at: <<https://www.japaneselawtranslation.go.jp/en/laws/view/24/en>> accessed 10.12.2024.

18 See Sec. II. 2. b) bb) and Sec. III.

## 2. Different Social Benefits and their Interconnections

Before exploring the public assistance system in more detail (Section III), which is the primary, direct mechanism for guaranteeing minimum income in Japan, we first provide a general overview of the country's social security system, and explore how each scheme within the system contributes indirectly and preventatively to ensure a minimum standard of living for all citizens. Three points should be highlighted here. First, the public assistance system serves as a last resort and only takes effect after all other preventive measures have been exhausted. Second, Japan's social security system aims to prevent poverty through universal social insurance schemes. Third, there are several limitations and gaps in the country's poverty prevention policy, and the connection to the public assistance system is not always seamless.

### a) Contributory Schemes – Social Insurance

A number of social benefits have been introduced and developed to guarantee the constitutional right to life since its adoption. Today, these benefits fall into two main categories: 1) five different social insurance schemes based on type of risk each covers, namely i) health insurance, ii) pension insurance (old-age, survivors and disability pensions), iii) unemployment insurance, iv) workers' accident insurance, and v) sickness compensation, and 2) long-term care insurance. Only four of these social insurance schemes are considered here.

#### aa) Health Insurance

All persons who legally reside in Japan (except for short-term and temporary residents, *i.e.* tourists and those on short-term visas) are covered by social health insurance. Coverage is provided through different insurance schemes depending on age and professional status (employed or not).<sup>19</sup> Japan's health insurance system is divided into three schemes: 1) the health

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<sup>19</sup> Foreigners illegally residing in the country are not eligible for any medical insurance scheme (see bb) for details on their exclusion from public assistance benefits).

insurance scheme for employed workers (Kenkō-hoken)<sup>20</sup>, 2) the health insurance scheme for the elderly aged 75 and older (Kōki-kōreisya-iryō-seido), and 3) the national health insurance scheme for all individuals who are not covered by the other two schemes (Kokumin-kenkō-hoken).

These social health insurance schemes provide both medical services in kind and various financial benefits, including—albeit only for employed persons—income support during periods of absence from work due to sickness and maternity. Income compensation in case of sickness and maternity benefits are not provided to self-employed persons.<sup>21</sup> However, in terms of benefits in kind, the scope and level of insurance benefits are largely the same across all schemes. Only for the elderly and children, the out-of-pocket charge of 30 % is reduced to 10 % or 20 % (depending on the level of income for the elderly. For children, the rate of 20% is universally applied). There is a monthly cap on out-of-pocket charges, which depends on the beneficiary's age and income level.

Insurance premiums vary according to insurance scheme. Both workers and employers contribute equally to the scheme for employees based on the worker's wage level.

Among these different health insurance schemes, the National Health Insurance scheme is the most important one, ensuring access to medical insurance for low-income and unemployed persons. However, when insurance premiums are in arrears, benefits are partially restricted (requiring the insured person to initially cover any medical costs out of pocket and receiving reimbursement later). Those who are unable to pay their premiums or who do not have the necessary resources to pay out-of-pocket costs receive livelihood assistance (health assistance).

## bb) National Pensions

The National Pension scheme, which is administered by the government, covers all residents of Japan, aiming to provide basic income security for

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20 This health insurance scheme for employed workers has the same limited coverage as the pension insurance scheme for employed workers (see below, sec. cc)). See also n 26 for details on the recent reforms concerning the application of social insurance for employed workers).

21 Insurers (municipalities, prefectures or associations established by self-employed persons within the same industry) can provide these benefits voluntarily.

the elderly, persons with disabilities and survivors (basic old-age pension, basic disability pension, basic survivors' pension).<sup>22</sup> This system offers a flat-rate, rather small pension (the full amount is around EUR 440 per month), and covers a share of the beneficiary's basic income. Covering all citizens through contributions, including those without a job or income (although there are many exceptions, as discussed below), pension insurance is a key feature of Japan's pension system, and highlights the significance of social security as a poverty prevention policy.

Although this pension system is intended to be universal, it does not, in practice, provide coverage for every resident of Japan. Nor does the old-age pension guarantee the same benefit amount for all, despite the fact that the full benefit amount is standardised, as discussed above. In fact, in the case of basic pensions, each insured person—aside from workers whose basic pension premiums are included in the premiums for workers' pensions (see next section)—is required to pay a fixed premium to the insurance provider (JPY 16,520, around EUR 105 in 2023). As a result, some individuals are unable to pay contributions. In such cases, the pension is reduced (only for the basic old-age pension) or not paid at all, depending on the duration of the period of non-payment. However, legal provisions allow for a reduction or full exemption of insurance premiums under certain conditions, such as low income, but this consequently also reduces the benefit amount up to a certain limit (this also only applies to the basic old-age pension). For instance, individuals who are categorically unable to contribute—typically public assistance recipients—are automatically and fully exempt from contributions to insurance premiums (Art. 89 I, para. 2 of the National Pension Act).<sup>23</sup> Those who do not automatically qualify for full exemption can apply for a graduated exemption ranging from one-quarter, one-half, three-quarters and full exemption, depending on their income level. In such cases, the pension amount is reduced in proportion to the duration of the exemption. For example, for periods of full premium exemption, the benefit amount

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22 Similar to medical insurance, short-term and temporary residents, *i.e.* tourists and those on short-term visas, as well as foreigners illegally residing in the country, are excluded from coverage.

23 In other words, recipients of public assistance retain their status of insured person and continue to accumulate pension contributions. In addition, under the exemption scheme for students, the benefit is reduced by an amount in direct proportion to the amount of exempt contributions. However, deferred contributions can be made for up to 10 years after the original payment due date.

is calculated as if only half the premiums had been paid.<sup>24</sup> In a universal pension system that covers individuals with little or no income, there will always be insured persons who are unable to contribute. These exemptions (and a mechanism that calculates premiums as having been partially paid during exemption periods) play an important role in ensuring coverage for all residents, particularly those with a low income, and in guaranteeing a certain benefit amount for all residents. However, the pension amounts provided may be lower than the full benefit amount, especially in cases where the exemption period extended for a significant duration.

For disability and survivors' pensions, the non-payment of contributions may also result in loss of pension payments, but when entitlement requirements are met, the full benefit is provided, irrespective of the individual's contribution history. This is why income security is not always universally achieved by pension schemes for the elderly, persons with disabilities and survivors, despite the system's goal of universal coverage.

The basic pension includes a special and often controversial provision for financially dependent spouses of employees. Spouses who are financially dependent (and subject to certain income requirements) on the individual insured under the employees' pension insurance<sup>25</sup> are exempt from the obligation to pay contributions. If they maintain this status for 40 years, the dependent spouse may be eligible to receive a full pension without having made any contributions. This provision was introduced in 1986, primarily to resolve the problem of poverty among women (even though male spouses may also be eligible for this scheme), who often struggle to sufficiently contribute to a pension scheme. Nevertheless, this provision has long faced strong criticism for potentially discouraging women from working full time and reinforcing part-time work among women. Spouses earning a salary over JPY 1.3 million (about EUR 8,000) are required to pay their own pension contributions. Some spouses deliberately change jobs to limit their income and ensure that it does not exceed the established threshold. This provision has also been strongly criticised from a fairness perspective, as only spouses of employed workers can benefit from this scheme. Those who are not married to an employed worker are required to pay contributions; even though they can opt for the exemption scheme

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<sup>24</sup> For periods of half premium exemption, the benefit amount is calculated as if 75 per cent of the premium had been paid. For further details, see Art. 28 of the National Pension Law (*kokumin-nenkin-hō*, Act No. 141-1959).

<sup>25</sup> See Sec. II. 2. b) cc).

in some cases, their final pension amount as noted earlier will in that case not be the full amount. Despite these valid concerns, the system has played a role in providing full old-age basic pensions for certain insured persons who were unable to pay contributions (or who lost the ability to pay contributions at specific period(s) during their lives).

It is also important to note that 50 per cent of the financial resources for the pension system come from tax revenue.

### cc) Employees' Pension Insurance (*Kōsei-nenkin*)

In addition to the National Pension scheme, employees are mandatorily enrolled in the Employees' Pension Insurance scheme (*Kōsei-nenkin-hoken*). Under this scheme, workers pay contributions in accordance with their earnings and receive a pension amount that corresponds to their contribution level and duration of their contributions. Contributions are equally shared between the worker and the employer. This scheme also provides three types of pensions – i) old-age pension, ii) disability pension, and iii) survivors' pension. The pension amount is determined, within a set range, in proportion to the worker's wage level during their years of employment and the length of their period of affiliation (contributions).

Workers covered by this pension insurance scheme do not directly contribute to the National Pension scheme, but contribute indirectly through the Employees' Pension Insurance scheme which transfers funds to the National Pension scheme, theoretically covering the national pension benefits for employees and their spouses. This means that half of the contributions to the pensions of workers and their dependent spouses are theoretically shouldered by the employer, even the share of the basic pension.

One notable characteristic of Japan's Employees' Pension Insurance scheme is the exclusion of certain part-time workers from its scope of application. In the past, all workers who worked less than two-thirds of the hours and days of full-time workers were excluded from coverage. While coverage has gradually expanded since the 2000s, workers who work less than 20 hours per week or earn less than JPY 88,000 per month continue to remain excluded from this insurance. The abovementioned two-thirds criterion continues to apply for smaller entities.<sup>26</sup> Part-time student work-

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26 Under the 2025 legislative amendments, the exemptions applicable to small-scale entities will be phased out by 2035 for both pension and health insurance (see n 20).

ers are also excluded from this pension insurance scheme. As a result, a significant number of long-term part-time workers do not receive an income-proportional pension upon retirement, having to rely solely on the basic pension.

#### dd) Pensions as Poverty Prevention

Social insurance schemes are often referred to as “poverty prevention” measures and differ from and contrast with “poverty relief” schemes, which do not depend on contributions and apply *a posteriori* and residually, are based on a means test, and are provided if the individual falls into poverty. Among the two abovementioned pillars of the pension system, the National Pension scheme plays a distinct and vital role in “poverty prevention” by ensuring a contributory pension for all residents, including those who are unemployed or have not worked at all. However, failure to pay contributions may ultimately result in a significantly reduced pension or no pension at all.

Within the framework of this contributory pension scheme, the provision allowing the employee’s spouse to receive a full pension on a non-contributory basis has, to some extent, addressed the problem of female poverty.

#### ee) Unemployment Insurance

Unemployment insurance (referred to as “employment insurance” – *koyō hoken*),<sup>27</sup> is a social insurance scheme administered by the government, in which workers and employers pay 50 per cent of premiums. The law entitles all insured workers to unemployment insurance, with some legally defined exceptions (see below on short-time workers). It classifies insured persons into four categories, with distinct regulations for each, including the scope of benefits and how they should be financed: i) ordinary insured persons (all insured workers who do not fall into the following three special categories), ii) elderly insured persons (workers aged 65 and over who do not belong to the following two categories), iii) insured persons with

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The condition regarding the salary level (JPY 88,000) will be totally removed before 2028, also for both pension and health insurance.

<sup>27</sup> Employment Insurance Act, Act No. 116 of 28 December 1974.

seasonal employment, and iv) insured persons with daily jobs. Here, we will focus on ordinary insured persons and the 'basic benefit' (Art. 13 of the Employment Insurance Act). To be eligible for this benefit, an individual who is "unemployed" 1) has left his/her job, 2) has the intention to work, 3) has the capacity to work, and 4) is unable to find employment. The individual must have been affiliated with an employment insurance and paid contributions for at least 12 months within the two years preceding the date of his/her job loss (in case of job loss due to insolvency of the employer, dismissal, harassment, etc., the required contribution period is reduced to six months). The benefit amount is calculated as a percentage of the insured person's wage level (between 45 per cent to 80 per cent, depending on age and wage level), which is determined based on the wages earned in the six months preceding loss of employment (Art. 16 and 17 of the Employment Insurance Act).

Two key characteristics of this insurance scheme should be highlighted. First, workers who work less than 20 hours per week are not covered by employment insurance.<sup>28</sup> This exclusion is based on the notion that part-time workers with short working hours have a relatively lower need for income security in case of unemployment. However, due to the rise in non-regular employment and the growing number of workers who hold multiple jobs, the need for reform to extend employment insurance coverage to include such workers has been repeatedly discussed in recent years.<sup>29</sup>

The second key characteristic is that the duration of Japanese unemployment insurance benefits is relatively short compared to European countries. This duration is based on age, the reason for leaving employment, and the period of contributions, with the maximum standard duration being 330 days (for workers aged between 45 and 65 who have at least 20 years of insurance contributions and who have left employment due to dismissal or company insolvency, for example). One notable exception applies to workers with disabilities, who are eligible for unemployment benefits for up to 360 days, provided they have been insured for at least one year.

These characteristics of Japan's employment insurance system—the relatively short duration of unemployment benefits and the limited scope of insurance coverage—increase the likelihood that part-time workers, who

<sup>28</sup> Due to the 2025 legislative amendments, the eligibility for employment insurance will be extended to part-time workers under 10 hours per week in 2028.

<sup>29</sup> See the report of the expert committee established within the Ministry of Health, Labour and Welfare (27 December 2018) <<https://www.mhlw.go.jp/content/1160100/0/000469766.pdf>> accessed 10.12.2024.

are not covered by employment insurance, long-term unemployed, or those who receive benefits for a very short time only due to insufficient contribution periods, may fall into poverty in case of unemployment, and may subsequently require public assistance.

## b) Non-Contributory Schemes

### aa) Child Allowance and Allowance for Single-Parent Families

All other social benefits are non-contributory, *i.e.* they are financed through taxes, and include various social services for persons with disabilities (personal care, caregiver services, daycare, residential care facilities, transportation services, etc.) as well as services for children (nursery care, children's homes), which will not be described in detail here.

On the other hand, there are also financial allowances, such as child allowance (*jidō-teate*)<sup>30</sup> and single-parent family allowance (*jidō-fuyō-teate*),<sup>31</sup> which are provided based on income criteria. While we will not delve into the technical details of the eligibility conditions of these two allowances here, it is important to note that the two allowances serve quite distinct purposes, which is clearly reflected in their differing eligibility criteria.

The single-parent family allowance focuses primarily on addressing poverty, based on the assumption that single-parent families are at a higher risk of falling into poverty. This allowance is therefore provided to a parent raising a child (or children) on their own, and is subject to stringent income conditions (an income of around EUR 11,000 annually to be eligible for the full benefit amount, for a single parent raising one child. The amount can vary depending on the number of children). Additionally, the absence of one parent from the child's household is a central criterion for eligibility for this allowance, with "parent" being interpreted in a relatively broad sense. Consequently, if the parent who lives with the child marries someone other than the child's other parent, the parent that is living with the child will no longer be eligible for the single-parent family allowance, even though the new spouse has no legal obligation to support the child.

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<sup>30</sup> Act on Child Allowance, Act No. 73 of 1971.

<sup>31</sup> Child-rearing Allowance Act, Act No. 238 of 1962.

In contrast to the single-parent family allowance, the purpose of the child allowance is not as clear-cut and has, at times, been subject of controversy. When child allowance was introduced in 1971, its primary aim was to prevent poverty in families with a large number of children. Thus, the allowance was initially only granted to families with three or more children depending on household income. In 1978, a supplementary allowance was introduced for families with low incomes. However, the legislator at the time explained that this allowance was not exclusively reserved for low-income families;<sup>32</sup> the income condition had been introduced due to budgetary constraints rather than as a fundamental principle of the scheme (the allowance is financed by both the State and employers). The ambiguity surrounding the aim of this allowance has since persisted and even increased, particularly since the 1990s, when attention and expectations shifted towards its role as a measure to address the declining fertility rate. The allowance was thus expanded in terms of three aspects: i) the number of children (since 1992, child allowance is provided from the first child), ii) the amount of benefit provided, and iii) the income threshold (the income condition was abolished in 2010, but reintroduced one year later). Parents raising a child under the age of 15 are entitled to a benefit amount of JPY 15,000 (for children aged 0-3) or JPY 10,000 (for children aged 3-15), subject to an income condition that is relatively less stringent compared to the single-parent family allowance (the gross income threshold for eligibility ranges from around JPY 6,000,000 to 8,000,000 (between EUR 38,000 to EUR 51,000) annually, depending on the number of family members living in the beneficiary's household). The government is currently discussing an increase of this benefit in an effort to boost the stagnant birth rate. Today, the significance of child allowance as a poverty alleviation measure has largely been relativised and diluted. In other words, the justification at the time the scheme was first introduced that the allowance was not exclusively intended for low-income families has been confirmed in the meantime by the significant expansion of the benefit's scope.

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<sup>32</sup> M. Sato, 'Jidō-teate-seido no hensen ni kansuru ichi-kōsatsu/Study on the Changes in the Child Allowance System' *Nenpō Kō-kyō-seisaku-gaku* (2022)16, pp. 79-99.

## bb) Minimum Income – Public Assistance

Since its enactment in 1950, the Public Assistance Act (*Seikatsu hogo ho*) has played a key role in guaranteeing the constitutional right to life. This has been repeatedly, explicitly or implicitly, referenced within the act itself (Art. 1, Art. 3, Art. 8, para. 2), and consistently recognised in extensive case law since the 1960s.<sup>33</sup> The Public Assistance Act is a direct embodiment of the constitutional guarantee of the right to life as stipulated in Art. 25, para. 1 of the Constitution.

The Public Assistance Act holds a unique legal status as an embodiment of the constitutional right to life, requiring careful interpretation. For example, courts tend to apply relatively strict interpretations when assessing administrative discretion, particularly in decisions concerning the withdrawal of public assistance benefits from those in need.<sup>34</sup>

The purpose of public assistance is to ensure that a minimum standard of living is guaranteed by the State to all citizens in need (Art. 1). The same law applies to the elderly, persons with disabilities, single-parent families, etc. The universal character of this law needs to, however, be nuanced in two key aspects. First, according to both the Ministry of Health, Labour and Welfare (MHLW) and the Supreme Court, the law does not extend to foreign nationals, including long-term visa holders and asylum seekers.<sup>35</sup> However, since 1954, the MHLW has applied the law to certain foreign nationals *mutatis mutandis*, and this treatment, based on administrative circulars, continues to apply to this day. This *mutatis mutandis* application of public assistance is restricted to foreign nationals with permanent residence or a similar status. Asylum seekers are excluded from such treatment and are only granted minimal assistance payments (amounting to less than

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33 See the *Asahi* case, Supreme Court (24 May 1967) 21-5 *Minshū*, 1043. The Supreme Court has repeatedly held that the standard of living guaranteed by the right to life (Art. 25) is abstract and relative in nature and does not grant courts the authority to require legislators to enact specific legislation, and that under current law, it is the Public Assistance Act that embodies this constitutional right.

34 See, for instance, Supreme Court (23 October 2014) 2245-10 *Hanreijihō 10*. In this judgment, the Supreme Court ruled on the guidance provided by the welfare office, which is discussed below (III. 2. b)): unless the instructions a recipient is required to follow are explicitly set out in writing, an unfavourable measure, such as the suspension or termination of assistance, cannot be imposed on them, as though they had violated these instructions. See Section III.l.c) cc) for a discussion on the limited judicial oversight over executive and parliamentary legislative discretion.

35 Supreme Court (18 July 2014) 386 *Hanrei-Chihō-Jichi 78*.

welfare benefits) and access to residential accommodation in case of hardship. Access to such support is not a legal right of asylum seekers; they can claim such support in court. In a 2001 ruling, the Supreme Court stated that based on the provisions and objectives of the law, public assistance does not extend to illegal aliens, asserting that this exclusion does not violate Art. 25 of the Constitution.<sup>36</sup>

Second, access to benefits is strictly limited by the subsidiarity principle, meaning that some individuals and households may not be eligible for protection, even if they are facing poverty. As explored in more detail in the analysis, public assistance is only available as a last resort, *i.e.* after the individual in need has already exhausted all of his/her assets, income, work capacity, and all other social benefits (Art. 4 of the Public Assistance Act). For instance, an individual in need may be denied welfare benefits if, regardless of the reason, he or she does not relinquish all assets (that exceed the minimum standard of living). In addition, young people, especially those without health problems or disabilities, may be deemed as not having fully exploited their earning capacity and may be denied public assistance, even if they are at risk of poverty. Therefore, in case of continued unemployment—once the relatively short period of unemployment insurance benefits mentioned above<sup>37</sup> has ended—public assistance is not always readily and immediately available for unemployed persons. In reality, there is a large gap between the two systems, which means there is a certain number of unemployed persons who do not receive any social benefits at all.<sup>38</sup> It is also important to note that more than half of current public assistance recipients are aged 65 or older.<sup>39</sup> In other words, despite being designed as a universal system, the strict application of the subsidiarity principle sometimes makes the welfare system inaccessible, especially for younger people. Moreover, as a consequence of the principle of subsidiarity, other social benefits outlined in this section take priority over public assistance. For example, if the basic pension described above is insufficient to meet the

36 Supreme Court (25 September 2001) 1768-47 *Hanrei-Jihō* 47.

37 See Sec. II. 2.

38 Additionally, it is often pointed out that the take-up rate of public assistance in Japan is relatively low (with estimates varying widely among experts. Experts' estimates range from 10 per cent to 30 per cent, and in some cases even lower). See, for example, the detailed observation of H. Ogawa, 'Hinkon Setai no genjo /The Current Situation of The Households in Poverty' *Keizai Kenkyū* 51 (2000)3, p. 220.

39 See data of the Ministry of Health, Labour and Welfare, <<https://www.mhlw.go.jp/content/12201000/000908527.pdf>> accessed 10.12.2024.

minimum standard of living, public assistance is provided as a supplement to the basic pension to make up the shortfall.

While the Public Assistance Act's primary objective is to guarantee a minimum standard of living, its second key objective is to promote the autonomy of those living in poverty. Despite the various academic debates about the significance of 'autonomy' in this context, we will focus here on its central and foundational significance only. In other words, autonomy refers to the ability of a person in need to regain independence and to no longer have to rely on welfare. Public assistance, at least as envisioned by the law, is not intended to be a permanent solution, and courts have repeatedly emphasised this point in their interpretations of the Public Assistance Act. These interpretations have been highlighted not only in cases where social welfare offices encourage public assistance recipients to work, but also in various other cases, such as educational opportunities for young recipients,<sup>40</sup> as well as cases in which the judges allow public assistance recipients to put aside savings for their children's education.<sup>41</sup>

While public assistance is the responsibility of the State, its actual implementation is left to local authorities and the social welfare offices (*Fukushijimusho*) established by them.

cc) Support System for Autonomy of Individuals in Need (Seikatsu-Konkyusha-Shien-Seido)

In the 2000s, the issue of the 'working poor' gained significant attention in Japan as a result of the rise in the number of non-regular workers, combined with the impact of the Lehman shock. In this context, there was growing awareness about the limitations of public assistance, particularly for the younger generations. Partially related to this situation, a debate arose about the advantages of providing public support to individuals before they fall into extreme poverty. It was argued that public assistance could help prevent individuals from falling into poverty or make it easier for them to get out of poverty. Concerns about providing assistance to vulnerable population groups even before their standard of living falls below the threshold to qualify for public assistance were expressed in particular during the reform of 2013, which introduced a "system of support for the

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40 Kumamoto District Court (4 October 2022) 1819 *Chingin-to-Shakaihoshō* 42.

41 Supreme Court (16 March 2004) 58-3 *Minshū* 647.

autonomy of individuals in need".<sup>42</sup> The lack of sufficient employment support within the public assistance framework was also raised as problematic. The new law introduced a series of services (counselling, short-term housing allowance, support for (re)entering the labour market, etc.), giving these benefits a provisional and anticipatory character, providing access to support for vulnerable population groups that are not yet eligible for public assistance.

The law also introduced a housing allowance for this population group, which is quite novel in the context of Japan's social security system, even though the scope of coverage and duration of benefits are admittedly quite modest. This allowance (*jyū-taku kakuhō kyūfu kin*, Housing Security Benefit) covers beneficiaries' actual rent amount up to the housing assistance's threshold for, in principle, a period of three months (renewable for up to nine months). This benefit is granted in cases of job separation, business closure or a decrease in income that is comparable to the aforementioned events, provided the household meets the income requirements and the recipient is actively seeking employment (or working to restore their business). The eligibility is extended to not only employed workers but also to self-employed workers. This is a new approach within Japanese law, which now recognises income reduction as a risk that is comparable to job separation.

Finally, the law places strong emphasis on assisting recipients in securing employment. Combined with the large number of elderly recipients, as previously mentioned, concerns have been raised that the public assistance system lacks adequate employment support for recipients. The new law aims to enhance early employment support for those in need who have not yet received any public assistance, enabling them to quickly (re)enter the labour market.

#### dd) Exceptional Allowance Related to the COVID Pandemic

Finally, an exceptional benefit introduced during the pandemic is worth mentioning. On 20 April 2020, the government decided to grant a one-time allowance of JPY 100,000 to all residents of Japan (*Tokubetsu-kyūfukin*, special lump-sum allowance) to "support households quickly and efficiently

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<sup>42</sup> Act No. 105 of 2015. For more information on this law and the context of legislation, see also E. Kasagi, 'L'aide sociale au Japon à la recherche d'un niveau de vie minimum' *Droit Social* (2020)10, p. 842.

through a simple system”, according to the Ministry of Internal Affairs and Communications. Initially, the government considered making the payment conditional on a significant reduction in the beneficiary’s income due to the COVID-19 pandemic, but this idea was later abandoned. Given strong public opposition and the need to speed up the payment process, the government ultimately adopted a uniform allowance for all residents. Although this benefit was created within the scope of a simple administrative “programme” that was of a discretionary nature, and was paid only once (*i.e.* it is not a periodic allowance), it has the potential to re-launch and reignite the debate in Japan on a universal, flat-rate income referred to as “basic income”, borrowing the Anglo-Saxon term. Such a basic income would differ significantly from Japan’s existing public assistance system, which while universal, remains highly targeted and individualised.

#### ee) (Quasi) Absence of Housing Allowance

One notable characteristic of the Japanese social security system, particularly compared to European countries, is the near-total absence of a housing allowance. There is no social benefit to offset the costs of housing, with two exceptions, namely i) housing assistance, which is available to public assistance recipients, and ii) the housing grant, which is provided for a limited period (in principle, three months with a possible extension up to nine months) within the scope of the support system to promote the autonomy of people in need, as mentioned above, sec. II. 2. b) cc). This housing grant is provided if the main breadwinner i) has left his/her employment or closed his/her business within the past two years or ii) when his/her ability to earn a wage or other income has been reduced to the same extent as if he/she had left his/her job or closed his/her business, provided that this reduction is not due to personal responsibility or personal circumstances. As a result, the benefit is quite restrictive in terms of both eligibility and the duration of the benefit.

In other words, Japan’s social security system has historically paid little attention to the financial burden of housing, except for those who are living in poverty or at risk of poverty.<sup>43</sup>

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43 At the same time, the recently introduced housing grant has gained significance in recent years as the eligibility criteria for the benefit have been relaxed.

One reason for this situation is the traditional employment practice in Japan, whereby companies, especially large corporations, have covered housing costs for permanent employees through corporate housing allowance. However, with the transformation of these employment practices and the rise in the number of non-regular employees, the lack of universal housing security is becoming an increasingly important policy issue, though this topic will not be discussed here in detail.

### III. Analysis

In this section, we provide a detailed analysis of Japan's public assistance system (Public Assistance Act), which ensures a minimum standard of living.

#### 1. Social Assistance Benefits

##### a) Various In-kind and Cash Benefits

The Public Assistance Act provides various in-kind and cash benefits, aiming to offer a comprehensive guarantee of a minimum standard of living. More specifically, the act provides for eight types of benefits: i) livelihood assistance, ii) education assistance, iii) housing assistance, iv) health assistance, v) long-term care assistance, vi) maternity assistance, vii) occupational assistance, and viii) funeral assistance (Art. 11 of Public Assistance Act). Among these, livelihood assistance—primarily provided in cash—plays a central role, as it is designed to cover the costs of basic daily needs such as food, clothing, transportation and other essentials to maintain a basic standard of living (Art. 12). Education assistance covers the costs of school materials and school meals during the years of compulsory education. Housing assistance covers the costs of rent and, for homeowners, the costs related to maintenance. As a component of public assistance, housing assistance subsidises a limited amount of rent and remains the primary social benefit for housing costs within Japan's broader social security system.<sup>44</sup> Health assistance, which is provided in kind, is intended to cover

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44 Except for the very limited allowance described above in Section II. 2. b) ee).

the cost of healthcare with no out-of-pocket expenses for the recipient<sup>45</sup> (Art.15). Long-term care assistance provides in-kind services similar to those provided by long-term care insurance.<sup>46</sup> Maternity assistance is a cash benefit that covers childbirth expenses.

The payment of these eight types of assistance is limited. In other words, the costs or services that do not fall within these categories are not covered by social assistance. The existing categories are interpreted relatively flexibly. For instance, the high school education fee (which is not covered by education assistance as it is not part of compulsory education) can be covered under the occupational assistance scheme if deemed helpful for the recipient to increase his/her chances of finding employment.

### b) Standards for Public Assistance

The law grants the Minister of Health, Labour and Social Affairs the authority to determine the scope of welfare benefits (Standards for Public Assistance, Art. 8 (1) of the Public Assistance Act). The welfare standards must meet but not exceed individuals' minimum basic needs according to age, sex, household size, area of residence and other relevant circumstances according to type of assistance (Art. 8, para. 2).<sup>47</sup> This administrative norm plays a central role in the public assistance system, as these standards define

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- 45 As mentioned above, social health insurance requires the insured person to pay 30% of the medical fee.
- 46 Long-term Care Insurance Act, Act No. 123-1997. All individuals aged 65 and older, including those receiving social assistance, are also covered by long-term care insurance. Individuals aged 40-65 years who remain covered by social health insurance (as explained below, recipients of social assistance can maintain their affiliation with their health insurance if they are employed) are also covered by long-term care insurance. Long-term care assistance is primarily intended for those under 65 who are not covered by social health insurance for workers.
- 47 Public Assistance Act No. 144 of 1950: "Article 8, para. 1: Public assistance shall be provided, based on the level of the demand of a person requiring public assistance, which has been measured according to the standard specified by the Minister of Health, Labour and Welfare, to the extent that makes up the shortfall thereof that cannot be satisfied by the money or goods possessed by said person.(2)The standard set forth in the preceding paragraph shall be one that sufficiently satisfies but shall not exceed the demand pertaining to a minimum standard of living, taking into consideration the age, sex, household composition and location of the person requiring public assistance and any other necessary circumstances according to the type of public assistance", English translation from: <<https://www.japaneselawtranslation.go.jp/en/laws/view/24/en>> accessed 10.12.2024.

the scope of welfare benefits and the eligibility criteria for receiving public assistance, particularly the amount of livelihood assistance, ensuring that individuals whose income falls below a given threshold qualify for public assistance. Article 8, para. 1 of the Public Assistance Act stipulates that public assistance should be provided based on the need for support, assessed according to the criteria specified by the Minister, to the extent that it compensates for the shortfall that the person's financial capacity cannot cover. From this legal provision, it can be inferred that the criteria for determining both eligibility for public assistance and the level of assistance granted are generally aligned. In practice, however, subtle differences exist between the two; for instance, the assessment of eligibility for public assistance does not initially account for special expenditures, such as housing assistance. These specific benefits are added after determining the total amount of public assistance the individual is eligible to receive.

Despite the critical importance of this administrative norm, the law outlines only very few regulations on how the level of assistance should be determined, leaving significant discretion to the Minister of Health, Labour and Welfare. The law only states that assistance must be set at a level 'capable of maintaining the minimum standards of wholesome and cultured living' (Art. 1), and that the standards for public assistance must consider elements such as age, sex, type of household and place of residence (Art. 8, para. 2). This requirement means that the criteria for determining the minimum standard of living are numerous and varied, while the Public Assistance Act aims to guarantee a universal minimum standard of living for all. The "minimum standard" the law intends to provide is not uniformly defined for everyone.

As mentioned above, the law requires public assistance standards to take several elements such as age, sex, type of household and place of residence into account. Different supplements are provided for certain categories of recipients, including persons with disabilities, single-parent households, or for certain life events, such as pregnancy, childbirth, etc., to address very specific needs. Consequently, the scope of benefits provided is highly personalised.

Table 1 – Example 1

*Household consisting of three persons (a couple with one child) [33, 29 and 4 years old] (monthly amount: yen)*

District	1 <sup>st</sup> grade-1	1 <sup>st</sup> grade-2	2 <sup>nd</sup> grade-1	2 <sup>nd</sup> grade-2	3 <sup>rd</sup> grade-1	3 <sup>rd</sup> grade-2
Livelihood assistance	158,760	153,890	149,130	149,130	142,760	139,630
Housing assistance (max.)	69,800	44,000	56,000	46,000	42,000	42,000
Total amount	228,560	197,890	205,130	195,130	184,760	181,630

Table 2 – Example 2

*Household consisting of three persons (a single parent with two children) [30, 4 and 2 years old] (monthly amount: yen)*

District	1 <sup>st</sup> grade -1	1 <sup>st</sup> grade -2	2 <sup>nd</sup> grade-1	2 <sup>nd</sup> grade-2	3 <sup>rd</sup> grade-1	3 <sup>rd</sup> grade-2
Livelihood assistance (including additional allowance for single-parent households)	190,550	185,750	179,270	179,270	171,430	168,360
Housing assistance (max.)	69,800	44,000	56,000	46,000	42,000	42,000
Total amount	260,350	229,750	235,270	225,270	213,430	210,360

Table 3 – Example 3

*Single-person household [68 years old] (monthly amount: yen)*

District	1 <sup>st</sup> grade-1	1 <sup>st</sup> grade-2	2 <sup>nd</sup> grade-1	2 <sup>nd</sup> grade-2	3 <sup>rd</sup> grade-1	3 <sup>rd</sup> grade-2
Livelihood assistance (including additional allowance for elderly persons)	77,980	74,690	70,630	70,630	67,740	66,300
Housing assistance (max.)	53,700	34,000	43,000	35,000	32,000	32,000
Total amount	131,680	108,690	113,630	105,630	99,740	98,300

Source: Ministry of Health, Labour and Welfare.

The districts are established within municipalities, based on the level of consumption expenditure of the residents in each municipality.

### c) How Are Minimum Standards Determined and Adjusted?

#### aa) Maintaining a Certain Distinction Between these Standards and those of the Average Household

Although there are no legal requirements on the frequency of revisions, the minimum standards are typically reviewed every five years.<sup>48</sup> As mentioned earlier, this ministerial decision only includes a few legal provisions, leaving the Minister with significant room for discretion. Within this broad discretion, the Minister has revised these standards by sometimes explicitly and sometimes implicitly combining various considerations. Until 1961, the minimum living standard was determined in absolute terms (known as the “market basket” method), but this approach has since 1965 gradually shifted towards a method that aligns the welfare standard more closely with the standard of living of ordinary households. A significant shift occurred in Japan’s understanding of poverty, moving from the concept of absolute poverty to relative poverty. There has not been a complete break, however, as the minimum standards continue to be determined based on the previous standards set by the market basket method, while adjusting the overall amounts.<sup>49</sup> Since 1984, the living standards of households receiving public assistance have been considered to have reached a certain baseline. As a result, according to the Ministry’s official explanation, welfare standards have been adjusted to maintain the then-existing level of disparity with the living standards of ordinary households. Specifically, the revision of the minimum standards has generally been based on the growth rate of private final consumption expenditure, incorporating a wide range of available statistical data.<sup>50</sup> In recent revisions, the adjustments made have ensured that the amount of assistance provided aligns with the consumption levels of the bottom 10 per cent of households. Not surprisingly, there has been considerable criticism of the lack of democratic control in the determina-

48 Nevertheless, this does not mean that the amount of all types of assistance is revised and modified every five years.

49 During the revision process, the discussions on relative and absolute poverty are often blurred. For more details, see R. Iwanaga, *Seikatsu-hogo ha saitei-seikatsu wo dō kō-sō shitaka/ How Has Public Assistance Conceived Minimum Living Standards?* (Minerva Shobō 2011), pp. 157 ff.

50 “The National Household Income and Expenditure Survey” conducted by the Ministry of Internal Affairs and Communications is the main source used, but other materials and data have not been excluded.

tion of these minimum standards as well as the intransparency of the decision-making process.<sup>51</sup>

As mentioned earlier, these minimum standards serve as both criteria for determining the level of public assistance and for determining the conditions for eligibility, meaning that public assistance is granted if the applicant's income and assets fall below this threshold.

#### bb) Welfare Level and Minimum Wage

In Japan, the Minimum Wage Act<sup>52</sup> provides for the setting of minimum wages in each region (prefecture). According to Article 9 (para. 2), workers' cost of living is one of the factors considered when setting the minimum wage, in addition to the wages and financial capacity of enterprises in the region. The Act further stipulates that the consideration of workers' cost of living must align with measures related to public assistance to ensure that workers can maintain the minimum standard for a wholesome and cultured life (para. 3). Prior to the 2000 amendment, which introduced this provision, the minimum wage level was so low that even full-time workers who earned minimum wage made less than the amount provided by public assistance. The minimum wage level has gradually but steadily increased since this amendment and has largely resolved this so-called "reverse phenomenon" for full-time workers.

#### cc) Constitutional Review of the Standards for Public Assistance

The level of welfare benefits and any reductions can be challenged in court. As the level of public assistance is determined by ministerial decree based on the criteria described above,<sup>53</sup> the issue is whether the administrative legislation falls within the scope of the discretion conferred on the Minister by the Public Assistance Act, and whether the right to subsistence, as required by the Constitution, is adequately reflected in the welfare benefits being provided.

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51 See R. Iwanaga (n 49), pp. 302, 303.

52 Minimum Wage Act (Act No. 137 of 1959).

53 See Section III.I.b).

Japanese courts, including (and especially) the Supreme Court, have generally been reluctant to review the constitutionality of legislation,<sup>54</sup> a tendency that is even more obvious in cases concerning social security legislation related to Article 25 of the Constitution.<sup>55</sup> As noted above, the Supreme Court has repeatedly held that “the minimum standards of wholesome and cultured living” is an extremely abstract and relative concept, the specific scope of which must be determined in relation to the level of cultural development, economic and social conditions, and the general standard of living. According to the Supreme Court, when translating such provisions into actual legislation, the State’s financial situation cannot be ignored and thus requires complex, multifaceted and highly technical considerations, along with policy judgments based on these considerations. Therefore, the decision on specific legislative measures to fulfil the purpose of Article 25 of the Constitution is left to the broad discretion of the legislature and is generally not subject to judicial review, except in cases where it is deemed extremely unreasonable and must be considered a clear excess or abuse of discretion.<sup>56</sup> The Supreme Court has also recognised that these principles apply not only to parliamentary legislation but also to administrative legislation.<sup>57</sup>

In a Supreme Court decision of 2012, where the reduction of welfare payments for the elderly was challenged as contradicting Article 25 of the Constitution as well as Article 3 and 8, para. 2 of the Public Assistance Act,<sup>58</sup> the Court reviewed the criteria for judicial oversight of the Ministry’s broad discretion on public assistance standards. According to this decision,

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54 The Supreme Court has so far declared only 11 laws to be unconstitutional. See also K. Tonami, ‘Judicial review in Japan and its problems’ Waseda Bulletin of Comparative Law 33(2015), pp. 1-11, available at <<https://www.waseda.jp/folaw/icl/assets/uploads/2015/09/1-11-Judicial-Review-in-Japan-and-its-Problems.pdf>> accessed 10.12.2024.

55 T. Yamamori and Y. Vanderborght (n 8), p. 3. See also H. Sasanuma, ‘La justiciabilité des droits sociaux au Japon, la revue des droits de l’homme’ (2012), pp. 195 ff. <<https://revdh.files.wordpress.com/2012/04/la-justiciabilite3a9-des-droits-sociaux-au-japon.pdf>> accessed 10.12.2024.

56 The Horiki case, Supreme Court (7 July 1982) 36-7 *Minshū* 1235.

57 The Asahi case (n 33), Supreme Court (28 Feb. 2012) 66-3 *Minshū* 1240.

58 Decision of Third Petty Bench, 28 February 2012, *Minshū*, vol. 6, n° 3, p. 1240. As mentioned above, sec. II. 2. b) bb), these two articles directly refer to the constitutional right to life guaranteed by Art. 25 of the Constitution. Therefore, the Supreme Court has, in litigation concerning the minimum standard of living, assessed consistency not directly with Art. 25 of the Constitution but with these two provisions of the Public Assistance Act.

determining whether there has been an excess or abuse of administrative discretion requires consideration of the following two factors: 1) errors or omissions in the Ministry's decision-making procedure and process, and 2) whether the decision to adopt measures such as a gradual reduction of benefits based on recipients' expectations and the impact on their life. In other words, while the judiciary remains reluctant to determine the minimum standard of living guaranteed by the Constitution, it is willing to exercise a certain, albeit limited, degree of oversight over the ministerial decision-making process.

Today, litigation is underway over the reduction in public assistance levels between 2013 and 2015 on the grounds of falling prices due to deflation. The decision-making framework set out by the Supreme Court in 2012 has been used by the lower courts, with several of their judgments finding that the reductions violated the Public Assistance Act due to errors and omissions in the decision-making process.<sup>59</sup> In June 2025, the Supreme Court ruled that the drastic cuts in public livelihood assistance benefits infringed upon the Public Assistance Act (Art. 3 and Art. 8, para 2),<sup>60</sup> marking the first recognition that the government's livelihood assistance standards could be unlawful. According to the decision, the indicators used to adjust welfare benefit levels to account for deflation were not in line with experts' opinions. The Court has therefore recognised "errors and omissions in the decision-making procedure and process",<sup>61</sup> following the framework proposed by the Supreme Court decision in 2012.

dd) Adjusting Public Assistance Benefits to the Circumstances of Individuals and Households

The scope of benefits is determined once the social welfare office has reviewed the individual's application and approved his/her request for assistance. To define the precise scope and type of support needed, the social welfare office applies the benefits standards outlined in Article 8

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59 See, for example, Nara District Court (11 April 2023), available on the Courts' website <[https://www.courts.go.jp/app/files/hanrei\\_jp/040/092040\\_hanrei.pdf](https://www.courts.go.jp/app/files/hanrei_jp/040/092040_hanrei.pdf)> accessed 10.12.2024. One of the key issues at stake is which data to use to determine the average household's level of consumption.

60 See n 58.

61 Decision of Third Petty Bench, 27 June 2025.

of the Public Assistance Act. This ensures that the assistance provided to the individual meets his/her needs: in line with the Public Assistance Act, which requires that the assistance provided is 'effective and adequate' (Art. 9), the social welfare office reviews the needs of the individual and the household in terms of age, sex, health conditions, etc.<sup>62</sup> The Public Assistance Act places strong emphasis on addressing the specific needs of each individual and household, which underpins both the criteria for defining the minimum standard of living and the individual decision to grant the applicant public assistance. The law thus ensures that the assistance provided to each beneficiary (individual or household) must correspond, as closely as possible to his/her individual and specific needs.

For example, an applicant with a child in school, who owns an own home, and suffers from health problems, may receive a combination of livelihood assistance, education assistance and healthcare assistance. An applicant without children and no health problems, but who has difficulty paying rent, may be eligible for housing assistance in addition to livelihood assistance. The provision of only health assistance is also possible if the out-of-pocket costs for medical care impose a heavy financial burden on the applicant, who is otherwise capable of supporting him-/herself.

## 2. Conditions for Receiving Benefits

One important feature of public assistance is its subsidiary nature (principle of subsidiarity, Art. 4 of the Public Assistance Act). Welfare payments are subject to a strict means test and are only provided when the household's income and assets fall below a minimum standard of living. A situation of need is thus a primary condition for eligibility for public assistance benefits. In addition, as a general rule, individuals are required to utilise any available assets and explore all feasible employment opportunities (b), and apply for any other available social benefits (c). Furthermore, within the scope of the maintenance obligations under the Civil Code, support from family members is, in principle, given priority (d).

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62 Public Assistance Act (Act No. 144 of 1950), Article 9: "Public assistance shall be provided effectively and appropriately by taking into consideration the differences between the actual needs of individuals or households, such as the age, sex and health conditions of the person requiring assistance".

a) Situation of Need (Means Test)

aa) Standards for Public Assistance as an Income Threshold

Since the Public Assistance Act protects all individuals in need, the only condition an applicant must fulfil to receive welfare benefits is to be in a situation of need (for example, there is no condition related to age).

When the standard of living of the applicant's household falls below the threshold established by these criteria, the social welfare office provides support to bridge the gap between the household's standard of living and the minimum standard of living. The livelihood assistance criteria play a decisive role in practice. As mentioned above, the amount of public assistance, including livelihood assistance, is determined based on various factors related to the applicant's household (household size, the age of household members, location of the household, etc.). The social welfare office primarily assesses whether the household's income falls below the established threshold for the minimum standard of living, while ensuring that all of the applicant's assets exceeding the minimum necessity have been fully exploited. Regarding assets, by way of example, the applicant may keep his/her residence, unless its disposal value is significantly higher than its use value. The determination of whether household necessities, such as household appliances, meet the minimum necessity standard is based on whether they are widely owned by the average household in the area where the applicant lives.

In some cases, the social welfare office may advise applicants to relinquish certain assets to qualify for public assistance. For example, the possession of a car is not permitted unless a special need for one is recognised.

bb) Households

Whether an individual qualifies for public assistance and, if so, what type/level of assistance he/she is entitled to, is determined on a 'household-by-household' basis (Art. 10 of the Public Assistance Act). This approach is justified by the notion that the need for and scope of assistance should align with the individual's actual living conditions. However, the application of this rule, in many cases, has a similar *de facto* effect of requiring members of the same household to support each other financially, which raises

theoretical concerns about its relationship with both the legal obligation to support family members and the principle of subsidiarity (supra.).

In certain situations, the law also allows for the exceptional division of a household into separate units. One example of this is when a child from a household that receives public assistance wishes to attend university and earns his/her own tuition fee or has received a scholarship. In such cases, the child can be formally excluded from the household for public assistance purposes. This allows the child to attend university on his/her part-time salary or scholarship, while continuing to live with his/her family. The child's income is not included in the calculation of the household's income. The social welfare office has a certain degree of discretion in deciding whether to separate a household into different units.

#### b) Exhausting One's Earning Capacity

The requirement to exhaust one's earning capacity is not easy to apply, given each applicant's distinct and complex situation. Depending on the applicant/recipient's circumstances, three factors are considered in practice: i) his/her ability to work, ii) his/her willingness to work, and iii) the availability of job opportunities. For the sake of simplicity, let us assume that the individual is currently unemployed (although, in reality, public assistance may be provided even while an individual is employed, if his/her wage income is insufficient to maintain a minimum standard of living). When the applicant is 65 years or older, the social welfare office generally treats the individual as lacking capacity for work. In other words, the requirement to exhaust one's earning capacity does not, in practice, apply to elderly persons in need. This is also the case for those with a significant disability and are therefore considered to lack capacity for work. For individuals who are theoretically able to work, both their willingness to work and the availability of job opportunities are examined. If the individual is willing to work but no job opportunity is available, he/she is deemed to have exhausted his/her earning capacity. Some scholars argue that an individual's willingness to work is an irrelevant factor, erroneously emphasising moral judgment. However, it seems that this factor might, in some cases, be useful when considered in relation to available job opportunities; if a person is actively seeking employment (*i.e.* is willing to work) but cannot find a job, it can logically be inferred that no suitable job opportunities are available for him/her.

The principle of subsidiarity applies not only when making the decision to grant public assistance but also throughout the period during which the recipient receives assistance. In this context, the social welfare office can give instructions to recipients to undertake efforts to find employment (or to increase their income if they are already working; Art. 27 of the Public Assistance Act).<sup>63</sup> If the recipient fails to comply with these instructions and does not undertake the necessary efforts to find a job, public assistance can be reduced, temporally suspended or terminated (Art. 62, paras. 1 and 3). The instructions must be clear and documented to justify any unfavourable decisions regarding the recipient's eligibility for assistance.<sup>64</sup> The social welfare offices have broad discretion over these instructions, including their content (such as specifying the use of savings, if any, for certain purposes or reminding recipients of their legal obligation to accurately declare their income, etc.) and the timing of the issuance of instructions (if and when such instructions are given), as well as the content and timing of any measures taken in response to non-compliance.<sup>65</sup>

### c) Exploitation of All Other Social Benefits

The Public Assistance Act also requires all other social benefits to have been fully exploited before the person is granted public assistance benefits (Art. 4, para. 2 of the Public Assistance Act). Individuals in need should

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63 Article 27 of the Public Assistance Act states that “a public assistance implementing agency may give a recipient guidance or instructions necessary for maintaining or improving his or her livelihood or otherwise achieving the objectives of public assistance.” This means that the guidance and instructions are not limited to those related to the principle of subsidiarity. However, the guidance and instructions related to this principle are a typical and significant example of instructions given on the basis of this article.

64 Apart from these instructions, which may be linked to unfavourable measures, social welfare offices can also offer advice to individuals in need (including those not yet receiving public assistance), but only upon their request (Art. 27-2), without any negative consequences if the individual does not follow the office’s advice. Thus, communications of a varied legal nature coexist in the casework routinely carried out by social welfare offices.

65 This, however, does not exclude the possibility that certain instructions and unfavourable measures may be annulled if they exceed the scope of discretion granted by the Public Assistance Act. Courts often deem the termination of assistance illegal when such a measure is taken without first considering more moderate alternatives, such as a reduction in the level of assistance. See, for example, Yamaguchi District Court judgment, 19 October 2022.

first apply for and make use of the different social benefits indicated above (Section II.2.) and can only access public assistance if they are still unable to maintain a minimum standard of living. The accumulation of public assistance with other social benefits is only possible to the extent that they are insufficient for maintaining the minimum standard of living.

#### d) Support Obligation of Family Members

The Public Assistance Act stipulates that assistance from family members who have a legal obligation to support the person in need as defined in the Civil Code (*Miinpo*) should take precedence over the provision of public assistance (Art. 4, para. 2 of the Public Assistance Act). This component of the principle of subsidiarity differs slightly in nature from this principle's other elements mentioned earlier; it is not a requirement for the public assistance applicant to request or ensure that his/her support obligations are fulfilled by family members. However, the social welfare office can contact the applicant's family members if they have the financial means to support him/her and encourage them to support the person in need – without, however, being able to enforce this obligation. They may also inquire with public authorities or private entities, such as banks or the family members employers, to determine whether they have the capacity to support the applicant (Art. 28, para. 2, Art. 29 of the Public Assistance Act). If the family member(s) agree(s) to support the applicant but this support is still insufficient to meet the minimum standard of living, the applicant can receive public assistance benefits to cover the difference.

The Civil Code establishes support obligations for two groups of relatives; the first group includes immediate family members, including brothers and sisters (Art. 877, para. 1 of the Civil Code). The second group consists of third-degree relatives, who may be required to provide support if ordered to do so by a family court ruling (Art. 877, para 2). Current administrative practice encourages the fulfilment of support obligations without differentiating between these two groups, which is considered problematic in legal doctrine because it contradicts the abovementioned family law framework established by the Civil Code (family members in the second group are only required to provide support if ordered by a family court).

#### IV. Concluding Remarks

Japan's social security system is designed to uphold the universal and constitutional right to life guaranteed by Article 25 of the Constitution based on two primary pillars: 1) social insurance as a mechanism for preventing poverty and 2) public assistance as a means of alleviating poverty. As mentioned in the introduction, the system's structure appears relatively straightforward on paper, with Article 25 serving as its foundation. From a social insurance perspective on poverty prevention, one key feature is the universal applicability of the two main social insurance schemes – health-care and pensions. However, as discussed in this contribution, significant gaps exist in this so-called "universal" social insurance system, particularly concerning part-time workers. On the other hand, public assistance is regulated by the strict principle of subsidiarity, making access to the system challenging, especially for the working poor. Moreover, the level of public assistance does not, in practice, guarantee a uniform minimum standard of living for all citizens; instead, it varies according to each individual's circumstances. Thus, Japan's social security system, which on paper appears to have a simple structure, must be understood and discussed in a more nuanced way.

From a legal perspective, Japan's system of minimum income guarantee is implemented by the Public Assistance Act, which directly embodies and realises Article 25 of the Constitution. On the other hand, its role in judicial review remains relatively limited. In other words, the minimum standard of living guaranteed by Article 25 of the Constitution is in most cases determined by the Public Assistance Act and by the Minister of Health, Labour and Welfare (who sets the standards for public assistance). As pointed out several times already, the Public Assistance Act, which plays a crucial role, is characterised by very broad administrative discretion in two aspects: first, ministerial discretion determines the scope of the minimum standard of living, meaning that the scope of constitutional human rights is left almost entirely in the hands of the executive; as noted in the analysis, this process for exercising such discretion lacks transparency, and despite longstanding criticism in the past, there have so far been no indications of reform. Second, the social welfare offices have broad discretion in applying the minimum standards set by the executive to individual recipients, in conducting the casework and following up with the recipient households to ensure that public assistance is provided appropriately. Although this

mechanism aligns with the law's purpose—ensuring that minimum living standards are tailored as closely as possible to the needs of individuals and households—the broad discretion places a burden on caseworkers, and unfortunately, there have also been numerous court rulings deeming the exercise of this discretion is unlawful.<sup>66</sup> Despite the compelling constitutional declaration of the right to life, there is still much room for improvement towards fully realising a life in dignity in Japan.

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<sup>66</sup> See n 65.

