

Winfried Boecken/Franz Ruland/  
Heinz-Dietrich Steinmeyer (Hrsg.)

# Sozialrecht und Sozialpolitik in Deutschland und Europa

Festschrift für Bernd Baron von Maydell

 Luchterhand

Die Deutsche Bibliothek – CIP-Einheitsaufnahme

Sozialrecht und Sozialpolitik in Deutschland und Europa : Festschrift für Professor  
von Maydell / Hrsg.: Winfried Boecken ... – Neuwied ; Kriftel : Luchterhand,  
2002

ISBN 3-472-05183-3

Alle Rechte vorbehalten.

© 2002 by Hermann Luchterhand Verlag, Neuwied, Kriftel.

Das Werk einschließlich aller seiner Teile ist urheberrechtlich geschützt.  
Jede Verwertung außerhalb der engen Grenzen des Urheberrechtsgesetzes ist ohne  
Zustimmung des Verlages unzulässig und strafbar. Das gilt insbesondere für Ver-  
vielfältigungen, Übersetzungen, Mikroverfilmungen und die Einspeicherung und  
Verarbeitung in elektronischen Systemen.

Lektorat: Hans-Helmut Ludwig, Heiko Neuhaus

Satz: Stahringer Satz GmbH, Ebstorfergrund

Druck und Binden: Betz Druck GmbH, Darmstadt

Printed in Germany, Juli 2002

# Inhaltsverzeichnis

---

	Seite
Vorwort	V
Autorenverzeichnis	XV
1. Sozialhilfe in Italien: Neueste Entwicklung <i>Edoardo Ales</i>	1
2. The European Social Model and decision making on it <i>Jos Berghman</i>	19
3. Soziale Sicherheit und Europäische Sozialcharta <i>Rolf Birk</i>	27
4. Mergers & Acquisitions and Labour Law in the European Union <i>Roger Blanpain</i>	39
5. Ist das Europäische Sozialmodell auf die Transformationsstaaten anwendbar? <i>Nada Bodiroga-Vukobrat</i>	51
6. Zulässigkeit der gesellschaftsrechtlichen Beteiligung einer Kassen- ärztlichen Vereinigung an vertragsärztlichen Praxisverbänden im Rahmen der integrierten Versorgung <i>Winfried Boecken</i>	61
7. Human Rights – quo vaditis? <i>Klaus Böhlhoff</i>	79
8. BVerfG-Durchbruch: Soziale Generationenumlage-Versicherungen, Familien(unterhalts)lastenausgleich und verfassungsrechtlicher Gleichheitssatz <i>Harald Bogs</i>	91
9. Familie und soziale Sicherheit <i>Jürgen Borchert</i>	109
10. Die Stichtagsregelung im Berufskrankheitenrecht <i>Joachim Breuer</i>	125
11. Dreigliedrige Zusammenarbeit bei der Gestaltung der nationalen Wirtschafts- und Sozialpolitik in der Türkei – dargestellt am Beispiel des Wirtschafts- und Sozialausschusses <i>Tankut Centel</i>	143
12. Labour Market Change and Pension Reform in Europe <i>Anna Christensen †</i>	153
	IX

## 30. Fifty Years of Social Insurance in Taiwan

---

*Ming-Cheng Kuo*

### I. Introduction

The year 2000 was the 50<sup>th</sup> anniversary of social insurance in Taiwan. It is now not only the time to discuss the various perspectives regarding social insurance throughout the world in the 21<sup>st</sup> century, but also the time to discuss the prospects for Taiwan's social insurance in the next 50 years.

This article focuses primarily on the analysis of Taiwan's social insurance law in the last fifty years, and the relevant legal issues rather than a global discussion of current social insurance policy. In general, this article is a discussion of the interaction between social insurance and law in Taiwan.

This article shall first review the development of Taiwan's social insurance system – with special emphasis on its juridification. Next, it attempts to categorize Taiwan's social insurance system. The fourth section focuses on legislation, especially on the relationship between the constitution and social insurance. The fifth section examines the social insurance administration, with an emphasis on the principles of the rule of law. The sixth section discusses the judicial relief of social insurance.

### II. Development of Taiwan's social insurance system – with emphasis on its juridification

At the end of the Second World War, in 1945, Taiwan became one of the provinces of the Republic of China (ROC), and subsequently the civil and criminal code of the Republic of China became applicable to Taiwan. Unfortunately, the legal system of the Republic of China did not contain a social insurance law at the time. Since the Republic of China had implemented an extremely limited social insurance system on Mainland China, with virtually no existing system of social insurance, it should not come as a great surprise that there were no social insurance laws. In the first half of the twentieth century, China had a limited industrialized socioeconomic structure, and could not maintain a program of social insurance. Nevertheless, the ROC government of the time placed great emphasis on social insurance. This was clearly demonstrated by its declaration of policies and plans for a system of social security during the Second World War and in the following postwar years.

---

\* Sincere thanks due to *Mr. Chiao Yuan-juhn* and *Mr. Paul Cameron* for their help in translation and editing. The manuscript of this article was presented under the title «Legal Analysis of Social Insurance in Taiwan» at the Conference on the Reform and Perspectives of Social Insurance, 29–30 Sep., 2000, held by the Center of Labor Law and Social Law of National Chengchi University in Taipei, Taiwan.

With the occurrence of significant political developments, particularly the Chinese Civil War, those policy declarations and plans for a social security system were never implemented on Mainland China, but were implemented instead, on Taiwan. In the twentieth century, Taiwan and Mainland China were jointly administered for a mere four years. When China implemented modern civil and criminal law codes in the 1920s and 1930s, Taiwan was a colony under Japan and thus never exposed to the legislation and policy planning on the mainland<sup>1</sup>. Despite this, Taiwan became the eventual guardian of this civil and criminal law system. Taiwan also never participated in any of the original social insurance planning, yet the results of those plans were implemented and matured on the island.

The entire process of implementing Taiwan's social insurance through juridification can be divided into three phases, as described below<sup>2</sup>:

– Development Prior to the Legislation of Labor Insurance and Government Employees Insurance, 1950–1958

Fifty years ago, on March 1<sup>st</sup>, 1950 (the same day Chiang Kai-shek once again became President of the Republic of China), Taiwan implemented its first social insurance program, which was labor insurance. This social insurance was not enacted by the Parliament, i. e. the Legislative Yuan. Rather, the Labor Insurance Regulations and Associated Implementation Rules were promulgated through an administrative regulation issued by the Provincial Government of Taiwan<sup>3</sup>. The soldiers Insurance implemented in June of the same year is similarly regulated without the legislation of the Parliament. Following this, the Regulations of the Insurance for Self-employed, and the Regulations of the Fisher Insurance and Sugar Cane Workers Insurance became effective in 1953 and 1956, respectively. Once again, these plans were not regulated by the Parliament. The only exception during this time was the 1953 Soldiers Insurance Act, which was indeed legislated by the Parliament. This law became Taiwan's first social insurance law.

It is clear that during this first phase, social insurance had little to do with legislative action. However, beginning with the above mentioned regulations and the enactment of the soldiers insurance, this was to become the prelude to the juridification of social insurance on Taiwan.

1 Social insurance in Colonial Taiwan is no longer an unfamiliar subject, but Taiwan could not receive the same social insurance administered on Japan proper. For example, the pre-war health insurance policies implemented in Japan did not extend coverage to the people on Taiwan. In any case, social insurance on Taiwan during the Japanese occupation is another subject awaiting academic research.

2 See Chan, «Taiwan», in Dixon/Kim (eds.), *Social Welfare in Asia*, London 1985, P. 324 and below; Kuo, *Alterssicherung in Taiwan – Grundprobleme sozialer Sicherung in einem jungen Industriestaat*, 1990; ders., *Social Change and Social Security in Taiwan: Lessons for the PRC*, in Krieg/Schädler (eds.), *Social Security in the People's Republic of China*, 1994, P. 340 and below; ders., *Social Security System and Social Law* (in Chinese), Taipei 1997.

3 At that time, the territorial jurisdiction of the Central Government overlapped with that of the Taiwan Provincial Government.

– Development during the Period from 1958 to the Enactment of the National Health Insurance, 1958–1994

Even though Taiwan's earliest enacted social insurance measure was the 1953 Soldiers Insurance, the most notable early measure was the Labor Insurance Act, which was enacted in 1958. In the same year, the Government Employees Insurance Act was legislated as well. With the enactment of these laws, Taiwan's three main social insurance programs; i. e. labor insurance, government employees insurance and soldiers insurance, were all regulated by laws, demonstrating an emerging tendency towards juridification.

One matter warrants further consideration, and that is whether the above legislation from the Legislative Yuan or the process of juridification constituted a form of democratic discussion in social policy-making. This is doubtful as the Parliament at the time operated under an authoritarian regime, an institution of members forced out from the Communist controlled mainland. The implementation of social insurance policies should be seen as a choice made by those in power at the time rather than as the result of a democratic discussion which took place in Taiwan's society.

Subsequently, the three main social insurance programs underwent amendments by the Parliament, with the most noteworthy and sweeping of amendments made to the Labor Insurance Act. In each successive amendment to the law, the main priority was to extend the coverage of the insured, while the scope of the benefits remained secondary.

The case deserving the most attention, however, is the 1968 amendment of the Labor Insurance. With this amendment, the Executive Yuan (the Central Government) was authorized to introduce Unemployment Insurance, but it did not actually come into effect until 1999.

Besides the three main social insurance programs, there were numerous other social insurance programs implemented during this period, such as the Private School Educators Insurance Act of 1980, the Government Employees Family Health Insurance Act of 1982, and the Farmers Health Insurance Act of 1989. A plethora of insurance policy planning also occurred during the same period, but none came as the result of direct action by the Legislative Yuan, but by administrative regulation. These were namely, the 1964 Regulations of Retired Government Employees Insurance, the 1975 Regulations of Students Accident Insurance, the 1982 Regulations of Retired Government Employees and their Spouses Health Insurance, and the 1983 Regulations of Locally Elected Representatives and Village/District Chiefs Health Insurance.

Much legislation related to social insurance reform was passed by the Parliament during the second phase from 1958 to 1994. Even so, with martial law being in effect for most of this period, and with the restricted turnover of the members of the Parliament through election, legislation during this time, as in the previous phase (1950–1958), cannot be qualified as the result of a democratic process. However, with democratic changes taking place on Taiwan, such as the lifting of martial law in

1987 and the Parliament elections of 1992, the prospects for democratic juridification started to grow.

– Development from the Enactment of the National Health Insurance of 1994 to the Present, 1994–2001

Following the lifting of martial law and the complete re-election of the Parliament, the most important piece of social insurance legislation was the National Health Insurance Act, finalized in 1994<sup>4</sup>. In terms of the legislative process, although this piece of legislation was passed by an entirely new session of the Parliament, the ruling Kuomintang Party (KMT) was still in full control, and it is difficult to qualify this law as a product of social consensus. The legislation was not only criticized by the opposition party, even members of the KMT majority held reservations.

The National Health Insurance Act was controversial primarily due to its stipulation of compulsory national participation, and its establishment as the sole provider of health insurance. Therefore, during its legislative process, members of the Parliament voted to remove the compulsory stipulation. However, because of the strong endorsement of the original manuscript by the ruling KMT party and the government, the stipulation was reinstated during amendment. Although this law cannot be considered as a product of the democratic process, this experience is closely associated with the overall democratization of Taiwan. Due to the advent of democratic elections, the ruling party not only sought to bolster its political legitimacy by promoting welfare legislation (reminiscent of its promotion of the Labor Insurance Act decades ago), but also to gain voter popularity. The promulgation of the Unemployment Insurance in 1999 were also related to the presidential election of 2000.

Although enforcement of the National Health Insurance Act presented numerous problems, it did produce positive outcomes. It subsequently provided more than 96% of the population with access to medical treatment and health care. The integration of this program with the legal system has resulted in the consolidation of health insurance regulations, otherwise scattered among unrelated statutes, and thus has given meaning to codification. Consolidating the different health insurance schemes into one nationalized system has led to controversies, but the harmonizing of the contents has been a very promising development.

In addition to the integration of the health insurance regulations, the Legislative Yuan in 1999 also integrated the Government Employees Insurance Act and the Private School Educators Insurance Act into the Government Employees and Educators Insurance Act, which was enacted in the spirit of legislative codification.

From the preceding analysis we can clearly see that the laws associated with social security during this particular period are still not the product of a democratic discussion, but its democratic tendencies have become much stronger. The presence of limited codification is the most important development during this phase.

<sup>4</sup> See *Kuo*, Grundprobleme der Volkskrankenversicherung in Taiwan, FS für Zacher, P. 457 and below.

### III. Categories of Taiwan's Social Insurance System

In the past, Taiwan's social security system could be characterized as one which was geared towards formally designated professions or insured units, but since the implementation of the National Health Insurance, it has become a universalized system. Thus, the following analysis will discuss the following two categories: 1) Social insurance for the formally designated professions or insured units; and 2) Social insurance for all the inhabitants – the National Health Insurance.

#### 1. Social insurance for the formally designated professions or insured units

##### a) government employees

The social insurance programs most intimately related to government employees (incl. civil and military servants and educators of the public educational institution) are the Government Employees and Educators Insurance and the Soldiers Insurance Programs with their associated laws, as mentioned previously, the Government Employees and Educators Insurance Act and the Soldiers Insurance Act. All the old-age/invalidity/survivor benefits paid by both of these insurance programs are in the form of a lump sum benefit. However, there is a special 18% savings interest rate provided for this lump sum benefit which can potentially change this insurance into an annuities system.

In addition, the government employees (also incl. civil and military servants and educators of public educational institution) are also covered by a pension system. This system is similar to the German civil servant pension plan in that it draws its financial resources from the government's budget. Following a 1993 revision, the system has become more similar to that of the government employee's pension insurance of Japan. Under this program the retirees can choose their benefits either in the form of an annuity or in the form of a lump sum benefit, or a combination of the two types. If they chose the lump sum benefit, there is also a special 18% savings interest rate provided that may potentially change this insurance into an annuities system.

With such a system, Taiwan's government employees can enjoy what few countries can offer – a double tiered social security plan. What is notable is that the total sum of the two benefits, when combined, will allow a retiree (civil servants and educators may retire after 25 years service, while a professional soldier after 20 years service) to receive a retirement income equivalent to eighty percent of their previous income. A retiree with 30 years service can get more than this, possibly the sum of their previous income or more<sup>5</sup>.

##### b) Labor

The social insurance program most applicable to labor is the Labor Insurance with its associated Labor Insurance Act. With the implementation of the medical benefits

<sup>5</sup> The bureau of the personnel administration of the Executive Yuan testified that a retiree may receive, at most, a pension equal to 97% of their previous income (Bulletin of Legislative Yuan, no. 3123, p.203). Owing to the reform of the pension system in 1995 the replacement ratio has become greater year by year.



from the National Health Insurance, the primary benefit of labor insurance is the payment for the cases of old age, invalidity, death, sickness, injury, maternity and unemployment. As medical care is no longer covered by labor insurance, the benefits for the cases of sickness, injury and maternity are limited to a cash benefit, i.e. the sickness-injury allowance and maternity allowance. In addition, accident compensation remains a payment dispensed by labor insurance, but since medical care is trusted to the Central Health Insurance Bureau, the insured or his/her dependent receives from the Bureau of Labor Insurance cash payments for injury, sickness, disability or death caused by accidents. In these cases, the insured will receive more benefits than in non-accidental cases. For instance, in the case of invalidity an extra 50% of the benefit will be paid.

Unlike pension benefits in industrialized countries the above mentioned old-age/invalidity/survivor benefits are paid in a lump sum payment. The old-age benefits are paid at most 45, or exceptionally 50 units of the average salary of the last three working years. The invalidity benefits are paid in accordance with the actual extent of the invalidity, with at most 1200 days of insured salary. The death benefits are paid in principle in a lump sum of 30 units of average insured salary, but if the insured time is shorter than 2 years, 20 units, and if shorter than 1 year, 10 units.

Workers in the private sector are not able to enjoy the same pension system as a government employee. The Labor Standards Act, implemented in 1984, stipulates that private enterprises must provide old age benefits for retired laborers, but this is a lump sum payment rather than an annuity plan. This lump sum benefit will be paid in accordance with the working years, at most 45 units of average monthly salary of the last three years. This plan currently is flawed and has been sharply criticized for its ineffectiveness.

#### c) Farmers

Farmers have a special social insurance known as the Farmers Health Insurance. The primary purpose of this program was to provide medical treatment and health care for farmers. In addition to this medical care, this insurance also provided an invalidity allowance, maternity allowance and death allowance. However, since the National Health Insurance was implemented it no longer provides for medical care, but continues to provide cash benefits for all the other contingency, i.e. maternity, invalidity and death.

#### d) Students

The Student Accident Insurance Regulations is a program which provides for students' accidents. Since the implementation of health insurance this program is not as important as before, but it is still a program that provides cash benefits in the event of an accident.

### 2. Social Insurance for all the inhabitants – the National Health Insurance

The National Health Insurance is the only social insurance program implemented for all the inhabitants. In principle, with few exceptions, every citizen is insured

under the National Health Insurance Scheme. By law, all inhabitants must pay a compulsory insurance premium. However, there is still about 4% of the eligible population who fail to pay the premium, and then in principle are rejected to claim the benefits.

#### IV. Social insurance legislation in Taiwan – with emphasis on the constitutional basis of social insurance and its impact on social insurance legislation

Taiwan's current constitution is the Constitution of the Republic of China promulgated on Mainland China in 1946. Up to this day, the main body of the Constitution has not been amended. Not long after its ratification and promulgation, the Temporary Provisions During the Period of Communist Rebellion effectively froze certain sections. This was substantively equivalent to making amendments to the Constitution. The Temporary Provisions were finally abrogated in 1987, and replaced by the promulgated Constitutional Amendments in the same year. The Constitutional Amendments were further amended in 1992, 1994, 1997 and 1999.

According to the current Constitution and Constitutional Amendments, the constitutional basis of social insurance can be classified into two categories, i. e. of guidance and direction, and of human right.

In terms of guidance and direction, this is derived from Article 1 of the Constitution, which stipulates the basic form of this country; Chapter 14, Section 4 on social security, Article 155 in particular. In addition, Paragraph 5, Article 10 of the Constitutional Amendments is also relevant to social insurance.

The meaning of the Three Principles of the People in Article 1 of the Constitution, is advocated in some circles, as »of the people, by the people, for the people«, while others believe that it means Dr. Sun Yat-Sen's »Three Principles«, i. e. nationalism, democracy, and social well-being. In the past, the majority favored the latter interpretation. Whether it is appropriate to assume that Sun's personal views should be accounted for when interpreting the constitution is another topic for consideration. But in reviewing Dr. Sun Yat-Sen's views on social welfare during the beginning of the 20<sup>th</sup> century, Sun not only advocated that the nation should take care of its minors and retirees, but also wrote that China should pursue a national social policy similar to Germany's.

Article 155 also provides that for the promotion of social welfare the state should introduce social insurance. Various amendments made to the Constitutional Amendments bear a more direct relationship to social insurance with the most noted being Article 10, Paragraph 5 of the Constitutional Amendments which specifies that the state should promote national health insurance. Paragraph 7 stipulates that the state shall guarantee insurance for the physically and mentally disabled, and finally, Paragraph 8 refers once again the state shall emphasize social insurance.

When the government implemented the 1984 Labor Standards Act, which required employers to undertake the responsibilities of severance pay and old-age benefits, but took no action to strengthen social insurance, the resultant change of labor insurance benefits, such as the old age/disability/survivor benefits into an annuity system and the implementation of Unemployment Insurance, called into question the government's and parliament's respect for the constitutional provisions on social insurance. In another case, in writing the Interpretation No. 189 in 1984, the Grand Justices Assembly of the Judicial Yuan<sup>6</sup> mentioned Article 154, which addresses labor-capital's conciliation and cooperation, but failed to mention the more relevant Article 155. Indeed, the Grand Justices Assembly seemed to have overlooked the relevant social insurance constitutional provisions.

However, this oversight has been somewhat corrected in recent years. The Interpretation No. 472 of the Grand Justices Assembly in 1999 stated that:

The compulsory participation in the National Health Insurance is to conform to the constitution. However, to refuse to provide medical care because of the inability to pay the premium doesn't conform to the constitutional regulation regarding social insurance and national health insurance, and in this case the state should assist such an inhabitant.

In addition to this order, this Interpretation asks for more examination of the components of the National Health Insurance, i.e. the organization (inclusive of the reform of single organizations to multiple organizations), the categories of the insured, the premium, etc. so as to allow them to conform to the constitution.

As for human rights, it will be asked. The relationship between social insurance and human rights will be discussed as follows:

### 1. Equality

In regards to the issue of equality, Taiwan's implementation of social insurance has exhibited two kinds of inequalities. One is unequal treatment within the same law; the second is unequal treatment as the result of different laws.

One example of unequal treatment within the same law is the Labor Insurance Act. An example of unequal treatment within the Labor Insurance Act is the disparity in government subsidies given to employees versus those who are self-employed. Typically, up to forty percent of the insurance premium of the self-employed can be subsidized by the government, while the employee can receive up to only ten percent.

<sup>6</sup> The Grand Justices Assembly is an Institution similar to the Supreme Court or the Constitutional Court. The Judicial Yuan is the top organization of the judicial institution. Members of the Grand Justices Assembly are in principle, judges and university professors. The role of the university professors is notable, not only for their academic background, but also their education background. Among the 15 grand justices there are 8 professors. 5 of the 8 professors have studied in Germany or Austria and all graduated with a doctor degree. Both the president and vice-president of the Judicial Yuan were also members of the Grand Justices Assembly, and they graduated with doctorates from Germany and Austria respectively. Since the end of the World War II, Taiwan has become very USA-oriented, and such an European-oriented phenomena is an absolute exception.

It has been said that the self-employed ought to be entitled to a greater share of subsidies because they do not have an employer who can pay their premiums. However, this rationalization is erroneous since the payment of the insurance premium by the employer is merely a procedural matter, with the transfer premium still borne by the employees.

Inequalities within the law can also be found in the National Health Insurance Act. In accordance with this law, the insured are classified into employee, self-employed, the locally insured (inhabitant without a classified occupation, such as a millionaire), farmers, etc. The subsidy for the premium to the aforementioned groups is very different. While an employee receives a 10% subsidy, a self-employed or locally insured person will receive a 40% subsidy, and a farmer 70%.

The second kind of inequality, unequal treatment under different laws, is illustrated in the following cases:

- A farmer receives a 70% subsidy for the premium of the Farmers Health Insurance, while a laborer receives only a 10% subsidy for the premium of the Labor Insurance.
- A fifty years old government employee who has not yet reached the age of fifty, can be entitled to receive a pension equivalent to over eighty percent of their previous income, and in some cases even the total income or more; while a sixty-five years old laborer can only receive a limited lump sum benefit.

The two kinds of inequalities just described create situations of unequal allocation of social resources, as well as social inequality. Under these conditions, this social insurance system actually generates more social inequities and social law perpetuates social injustices. This author wrote »The Harmonization and Integration of the Old Age Security System«, a paper which discussed this issue in length<sup>7</sup>.

Presently, there is an increasing awareness of this kind of inequality. Although not directly relating to social insurance, but relating to a housing policy for the professional soldiers, the Interpretation No. 485 in 1999 of the Grand Justices Assembly will be in the future a very important guidance, as it states:

- considering the limitations of the social resources, the social policy legislation should consider equal treatment between inhabitants;
- the social benefits should be based upon the consideration of the financial situation, the income, and household of the receiver;
- the distribution of welfare resources can not be based only upon the occupation or status of the receiver;
- the goal of social benefits should aim for the satisfaction of a basic life standard, and should avoid over-benefits.

<sup>7</sup> This article is inscribed in »Pension and its legal norm« edited by the author (in Chinese), Taipei 1999, p.261 and below.

## 2. Property

As for social insurance, neither the Government Employees and Educators Insurance, nor the Labor Insurance provide protection of expected benefits. Hypothetically, if a fifty year old worker or civil servant with twenty insurance years decides to quit his or her job, he or she loses the right to old age benefits forever. In this case it will be asked, if such lack of protection of vested right is in violation of the constitutional protection of property. The Grand Justices Assembly acknowledged this problem in Interpretation No. 434 in 1997 and recommended revisions in social insurance. After this interpretation, many issues in the Government Employee and Educators Insurance were given consideration, but it is still required that applicants should be still working, when he or she claims such an old-age benefit. Thus, this problem is still unresolved. However, in the future, this interpretation will serve as a very important principle.

Even the public pension for government employees or the workers old-age benefits which are regulated by the Labor Standards Act provide no protection of expected benefits. Such a lack of vesting deserves also a constitutional review.

## 3. Freedom

The discrepancy in the expected benefits protection system has seriously restricted the freedom of employment mobility for laborers, civil servants and educators. Clearly, this discrepancy within the system has not only violated the constitutional right to property, but has also violated the constitutional protection of freedom.

The issue of freedom and the National Health Insurance's compulsory participation became a hotly debated issue in Taiwan. The case of compulsory participation was delivered by members of the parliament to the Grand Justices Assembly for interpretation. It subsequently declared in Interpretation No. 472 in 1999 that there was a constitutional basis for compulsory participation. However, the Grand Justices Assembly asked for more substantial help for those in need of welfare, and reforms to the National Health Insurance in order to conform to the principles of social insurance and the constitution.

Related to the issue of compulsory participation has been the role, in recent years, of planning agents (above all the Economic Construction and Planning Committee of the Executive Yuan) and scholars (above all economists) in advocating an individual account plan; not only for an individual retirement account, but an account for medical care, as well. This implies instituting a compulsory savings plan. However, there is no constitutional basis for such a compulsory savings plan, and whether it will affect the people's right to freedom and property is a constitutional matter that requires careful review.

## V. The administration of social insurance – with emphasis on the principle of rule of law

During the 1950s, in the early days of social insurance implementation, Labor Insurance and Soldiers Insurance were created by administrative regulations of the government instead of by legislation of the Legislative Yuan. This began to change after 1953, due to new legislation. Despite the new legislation, much social insurance continued to originate from the government such as the Retired Government Employees Insurance, the Locally Elected Representatives and Village/District Chiefs Health Insurance, and the Low Income Households Health Insurance. However, with the Legislative Yuan's enactment of the National Health Insurance, all of the previous health insurance schemes were integrated to this universal program.

Today, there are still a few insurance schemes that haven't been legislated. The Students Accident Insurance is such an exception. In addition, in regards to the 18 percent interest rate program for the Government Employees, this also has no legal basis.

In addition, the implementation of Unemployment Insurance is a result of the legislature granting authority to the government in order to institute the necessary implementation rules. The scope of authority granted to the government by the legislature in this instance is obviously too great.

From such legal developments in Taiwan it is evident that there has been a consistent trend towards juridification in the sphere of the Taiwan's social insurance. In the sphere of social policy, especially in the sphere of social insurance, the law plays more and more an important role. Social insurance without legal foundation can now be found only in exceptional cases. This also means that the implementation of a social insurance without democratic discussion is no longer acceptable.

In the past, there have always been questions in academic circles about whether social benefits should be ruled by the principle of the »Rule of Law«. However, there are no longer questions, at least in the sphere of social insurance. In this year (2001), the interpretation No. 524 of the Grand Justices Assembly stated:

The National Health Insurance is a compulsory insurance that extensively handles the welfare of all the inhabitants; hence all the rights and obligations relating to this insurance should be clear and concrete; the principle of the Rule of Law finds its application in the sphere of this insurance and when some authorization is given to the administration, such authorization should be always clear, concrete and expectable by the insured.

Included in this interpretation is a description of some administration regulations concerning the limitations and exclusion of benefits of the National Health Insurance that do not conform to the constitution.

## VI. The judicial relief of social insurance

From the discussion thus far, it is obvious that Taiwan is becoming an increasingly legal society, even though in the field of social benefits, whether there is an efficient judicial relief is an issue that deserves close attention. From the interpretations of the Grand Justices Assembly mentioned above, it is obvious that the judicial review, at least on the level of constitutional review, has been active. However, besides such constitutional review what judicial relief can an insured count on?

Taiwan's social insurance system, more specifically, labor insurance and the National Health Insurance have a system of disputes review committee that constitutes the first level of the overall procedure for conflict resolution. After this, there is an administrative petition procedure in the relevant ministry. These procedures can be thought of as constituting the internal control of the social insurance program. Within all the procedures, the attending board consists of not only the personnel of the social insurance administration and ministry, but also experts and university professors, to ensure impartiality. Although there is such participation, heavy caseloads and the procedure of collective review most certainly affects the quality of decision-making and review.

As for external control there is a two-level appeals procedure in the administrative courts. The procedure is presided over by professional judges, but as there is no specialized court overseeing social insurance, and there is no advisory panel providing assistance, the competence of a judicial review is highly questionable<sup>8</sup>.

## VII. Concluding Remarks

In terms of constitutional capabilities, especially in terms of human rights, a reasonable level of juridification and codification has been demonstrated in actual practice, especially in the last few years. As for its implementation in accordance with the rule of law, although full compliance has not occurred, there is clear evidence of positive developments. Finally, in regards to the right to insurance claims, there are still numerous problems that need to be resolved.

Although Taiwan's system of social insurance laws has numerous shortcomings, and progress has been slow, its positive developments deserve recognition. With its current foundation, it has great potential for continued development. From Taiwan's experience, it is also clear that the ideas of social insurance systems may be transplanted from abroad, but forging a sound system takes time and continued self-adjustment and reflection.

The experience with social insurance in Taiwan proves once again that the law is an indispensable instrument of social policy, especially as regards social insurance. In

<sup>8</sup> These problems involve Taiwan's legal education and national examination systems. Due to the legal education system and its related national examination systems' neglect of social law, the majority of judges and attorneys are not familiar with this subject matter. In recent years, there has been some improvement, but it is still very limited.

the past, the shortcomings of the social insurance system in Taiwan, especially the unequal treatment among different social classes and social strata, can be explained by the lack of a sufficient and efficient democracy and legal norms, especially the respect for human rights. Without law, there are no objective norms, and without a democratic discussion, the sound development of social insurance is difficult to expect. Today, along with political reform and the more active role of the Grand Justices Assembly, such problems are gradually being resolved. In the long run, if democracy, human rights, and the rule of law become more extensive in Taiwan, a more comprehensive social insurance system should be obtainable.