

## **Normative Issues of the Public Pension in Japan**

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### **1. Outline of the Japanese Pension System**

#### **(1) Structure of the pension system: two-tier public pension + occupational pension**

Originally, the public pension (Employees' Pension Insurance (EPI)) was introduced for employees in 1941 which was financed by wage-proportional contributions and entitled wage-proportional benefits. But in order to achieve universal coverage for all the residents, the National Pension (NP) was introduced for those who were not covered by EPI in 1961; this was financed by flat-rate contributions and entitled flat-rate benefits.

As the whole industrial and working structure of Japan changed and the number of farmers fell drastically in the 1960s and 1970s, it became impossible for the NP system to be maintained independently. Therefore, the NP was remodeled to a system paying the Basic Pension (BP) in 1986, and which covered not only farmers, the self-employed etc. who were covered by the former NP, but also the employees and their dependent spouses who had been covered until then solely by the EPI.

Since the introduction of BP, the employees and their dependent spouses have been dually covered by EPI and NP, but they pay only wage-proportional contributions to the EPI and are entitled to the flat-rate BP of each spouse and wage-proportional benefits from the EPI. In this sense, BP worked as a financial adjustment system between the NP and the EPI, which has resulted in a complex public pension system consisting of BP as the first tier and EPI as the second tier for employees.

In addition to this two-tier public pension, there is an occupational pension on top of this as a third tier. Some types of private pensions are promoted with tax concession.

#### **(2) Basic character of the pension system: basic income + substitution of former wages**

Though the original character of the EPI was the substitution of former wages, the rule to decide the benefit was changed in 1954 and the flat-rate

part was introduced into the EPI. This new rule aimed to secure minimum standards for low-paid workers and had a strong redistributive function. This part was remodeled to become the BP, with flat-rate benefits for each person individually.

Therefore, the Japanese public pension is a combination of basic income which is provided by the BP and the substitution of former wages which is provided by the EPI.

#### **(3) Unit of the system: individual + household**

The EPI was applied on the employees and their dependent family members using the household as a unit, but the NP was applied on each individual. By introducing the BP, the unit of the public pension was set as individual persons; employees came into Category 2 and their dependent spouses into Category 3. As this new rule shows, the unit of the public pension after introducing the BP was formally unified to individuals. But as has been substantially observed, the employees and their spouses continue to be treated as a household. This explains why those in insured Category 3 (dependent spouses) do not need to pay any contributions, and also explains the existence of the Survivors' Pension in the EPI.

#### **(4) Coverage: the first tier is universal through the BP system**

All the residents are covered in the NP system for the BP benefit according to their working status. The employees and the public servants are covered by the EPI and the Mutual Association respectively and are insured automatically in the NP system, too.

#### **(5) Rule and level of benefits: flat rate + wage/contribution-related**

The benefits of the BP are flat rate for each individual and adjusted to the changes in the Consumer Price Index (CPI). The benefits of the EPI are wage-proportional and the former wages are revalued to the actual level of wages at the

beginning of the pension payment and after that to the change of the CPI.

**(6) Rule and level of contribution: flat rate + wage/contribution-related**

The contribution to the EPI is 14.3% (2006) of the annual revenue which is taken over equally by employee and employer. The contribution to the BP for the employees and their spouses is financed by the EPI, and they do not have to pay additional contributions to the BP. The insured Category 1 (farmers, the self-employed, students, etc.) pay a flat-rate contribution (13,860 yen (2006)) individually.

**(7) Additional pension system: occupational and private pension (briefly)**

Occupational pension system was first introduced as a certificated plan by the tax authorities in 1962, and the Employees Pension Fund system was introduced in 1965. As there has been a long tradition of paying employees a lump sum retirement allowance in Japan, the plan and the function of the occupational pension is deeply involved with this allowance. In order to promote occupational pensions and to introduce defined-contribution pensions, a legislative measure was taken in 2001.

**2. Avoiding poverty in old age**

**(1) Definition of poverty**

"Poverty" could be defined in various ways. One common way to calculate the level of poverty is to use certain lower levels of consumption expenditures; for instance, the 1st quintile or decile of all the households. This approach is adequate from the viewpoint that poverty is not merely an absolute material issue but also a socio-cultural relative matter. Another often-used scale of poverty is the benefit standard of the public assistance system. In setting up the latter, the former is also referred to directly or indirectly. In the Japanese public assistance system, after having resolved the excessively wide disparity between the living standards of general households and those of assistance beneficiaries from 1965 to 1983, the level of benefits in the public assistance has been adjusted in accordance with general consumption expenditures.

As the level of the benefit of the public assistance can be taken as a statutory confirmed socio-cultural minimum standard of living and the statistical data on the consumption expenditure are reflected in it, we may use this as an index of poverty in each country.

Because of the individual principle of public assistance, which means that the benefits cover the individual needs of each household, it is not possible to show the poverty level with a single figure. But to make the comparison with the pension benefit clear, this report refers to the standard benefit for a household of an elderly couple (a 68-year-old husband and a 65-year-old wife). The livelihood aid and the housing aid for this type of household amounts to between 134,940 yen and 102,500 yen (2006) according to the municipality where they live.

**(2) The structure and function of the present public pension system**

As stated above, the present dual public pension system was introduced to improve the financial situation of the NP by combining the EPI with the NP through the BP. The BP is financed a Pay-As-You-Go (PAYG) system by all those insured by the NP and the EPI, which means that the EPI contributes not only to the beneficiaries of the EPI group but also to some of the former NP beneficiaries. The slogan for the introduction of BP, to secure all residents their own individual BP in their old age, was so powerful and the reconstruction of the whole system was so sophisticated that this reform was widely welcomed and supported at that time. But the basic concepts of the NP and the EPI system were so different in so many ways—individual vs. household as a unit of the coverage, flat-rate contribution vs. wage-proportional contributions, flat-rate benefit vs. wage-proportional plus flat-rate benefit, with vs. without Survivors' Pension etc.—that this reform brought about a public pension system which was excessively complex and intransparent, the basic rules of which and the relation of whose burden and benefits almost nobody could understand. This is the weakest point of the Japanese system, which causes people to mistrust the public pension system and which discourages their willingness to pay

contributions.

Though the BP is not a so-called demogrant (financed by tax) but a contributory system, the state subsidy is concentrated on the BP because of its characteristic of securing basic consumption expenditures to all the residents, and one-third of the benefit expenditures are statutory, subsidized by tax. This rate is to be raised from one-third to a half in a certain year between 2007 and 2009 by virtue of the Pension Amendment Law of 2004, but its financing is inevitably connected financially and politically with the raising of the consumption tax rate, which continues to be seen as tough. No state subsidy is paid for the EPI benefits.

As the BP is a contributory pension with a state subsidy which covers all residents between 20 and 60 years old, the system allows for those who cannot afford to pay the contributions. Thus, the exemption of the obligation to pay contributions was built into the system from the beginning, and the steps were subdivided to four levels—1/4, 1/2, 3/4 and full exemption—by the Pension Reform 2004 so as to reflect the ability of each person to pay, and to minimize the number of the arrears. The benefit of the BP is calculated in accordance with the payment record of the contributions and is formulated as follows (2006):

$$\frac{66,008 \text{ yen} \times (\text{paid months} + \frac{7}{8} \times \text{months of } \frac{1}{4} \text{ exemption} + \frac{3}{4} \times \text{months of } \frac{1}{2} \text{ exemption} + \frac{5}{8} \times \text{months of } \frac{3}{4} \text{ exemption} + \frac{1}{2} \times \text{months of full exemption})}{480 \text{ months}}$$

This formula means that the full pension is reduced by the months of arrears, and in the case of exemption the benefit part which is to be financed by tax is fully guaranteed, but the contributory part is reduced according to the ratio of the exemption.

### **(3) Internal system to secure basic income and its limitation**

#### **a. Role and function of the BP**

Compared with the public pension system of Germany where the contributory and equivalent principle is dominant, the Japanese public pension system with BP benefit seems more adequate to secure a basic income in old age to all

residents. By setting the benefit level of the BP, the basic consumption expenditures are taken into account, and in fact the full pension for an elderly couple amounts to 132,016 yen/month, which is almost equal to the standard livelihood aid with housing aid for the same type of household as mentioned above. However, in so far as the BP continues to be a contributory pension system, it is not expected that this system will work as a security of basic income:

(a) Those who have been legally insured for the full period of 40 years but exempted from the whole contribution are entitled to only half of the full pension =33,004 yen per month which is far below the poverty line.

(b) There is a tendency that the arrears rate is increasing up to about 33% (2005) of all the insured of Category 1 of the NP system. This phenomenon, which is called the "undermining of the NP system," is one of the most serious challenges to the public pension system of Japan and it is more frequently observed with the younger people living in urban areas. The Social Insurance Agency took measures against this and began compulsory execution on typical reasonable cases as a warning, but it is not easy to improve the situation. Those who refused or failed to pay contributions are sanctioned in the sense that they get a proportionally smaller amount of pension in old age. In the worst cases with less than 25 years of legally insured period, be it a paid or exempted period, no BP is paid.

#### **b. Liability of the state to secure basic income through basic pension**

- Through the analysis of the judgments concerning handicapped students without Invalidity BP -

Old age and disability are typical common risks which make employees unable to work permanently, and thus lose the means of livelihood. Therefore, both risks have been the two major insurance accidents of the public pension system since its origin in 1889. The characteristic of the two risks are, however, quite different in the lifespan. Old age does not happen suddenly one day; thus people have plenty of time to prepare for it. The benefit structure reflects this, and the entitlement to the Old-age Pension requires rather a long time; for example, 25 years

in Japan. In this sense, Old-age Pensions are similar to savings. The risk of disability, in contrast, could happen at any time in life for everyone and should be protected against whenever it becomes a reality, regardless of the insured period until that time. In other words, the Invalidity Pension has a much stronger element of insurance than the Old-age Pension. Although it is crucial to think of this difference when considering the liability of the state in securing its nationals the minimum means of existence, it is worth considering analyzing the judgments on the liability of the state for handicapped people who could not receive the BP because they were injured as students, while they were exempted from the obligation to contribute towards the pension insurance.

Three judgments of local courts<sup>1</sup> in 2004/2005 have admitted the liability of the state for legislative forbearance. Although Parliament should have taken measures to offer students over 20 years old the possibility of protecting themselves against accident or injury by the Pension Reform of 1985 at the latest, no such measure was taken. This brought about intolerable discrimination between the handicapped of 20 years old or those under who are entitled to the Invalidity BP without any contribution from 20 years old, and was judged to be in contravention of the Constitution, paragraph 14 (on equal protection of the laws). It is worth mentioning in this regard that these judgments did not accept the liability of the state based on the human right to live of the Constitution, paragraph 25.

Propelled by the handicapped persons' movement strengthened by these judgments, Parliament passed a new law which provides certain categories of the handicapped with a quasi Invalidity Pension financed wholly by tax revenue. However, all these judgments of the local courts were quashed in the revision courts<sup>2</sup> which evaluated the concrete legislative measures to be within a reasonable legislative discretion, and denied the liability of the state.

The dispute in these cases centered on whether exemption of the students of 20 years old or over from compulsory insurance was reasonable and whether the different handling of

the handicapped persons whose invalidity occurred before or after they were 20 years old was in contravention of the principle of equal protection of the laws. After this series of the judgments by the high courts, the same conclusion was adopted in other local courts.

Even in the matter of Invalidity Pension, the state is not responsible for securing all residents against possible accidents by means of BP. Moreover, as was confirmed in the high court, to decide the coverage of compulsory insurance lies within a wide legislative discretion. In order to protect the right to live, there is a public assistance system with a means test as a last resort. This is truer for the role and function of the Old-age BP, that requires long contributory periods, and allows wide alternatives individually to prepare for financial needs in old age.

#### **(4) The role of the public assistance and the public pension**

In the preceding argument I have described the basic rules and the functions of the BP and public assistance, which shows first of all that poverty—and therefore the benefits of the public assistance—is decided on individual needs of each person or household, but that BP, be it a demogrant financed by tax or contributory, is in contrast based upon a certain amount of money which reflects basic consumption expenditures in general. Thus, because of the difference in the principles of both benefits, BP cannot be expected to play a dominant role in avoiding poverty in old age.

Second, the Japanese BP is still a contributory pension, though subsidized by tax for 1/3 of the benefit expenditures or 1/2 in the future. This necessarily results in the fact that many elderly who failed to pay or were exempted from paying contributions between 20 and 60 years old can accordingly receive only a much lower amount than the full pension.

Taking all these rules and actual situations into consideration, this report comes to the conclusion that the BP alone cannot and need not be an internal measure to avoid poverty in old age, though it could be a powerful tool to eliminate poverty in old age. Its standard may be decided on the balance of the contribution burden

and the benefit level, in so far as it reflects the development of the general consumption expenditures and does not drive too many elderly into the last safety net of the public assistance. In this sense, the goal of avoiding poverty should be achieved through the combination of the BP and the public assistance. With regard to the public assistance, it is often pointed out that this does not function sufficiently because of the stigmatization caused by the means test and the regress to the family members who are liable for the maintenance of the applicant for the public assistance. In order to remove such stigmas, the introduction of basic security for the elderly and people with disabilities, financed wholly by tax, in Germany indicates a new direction, and this should be examined also in Japan.

### **3. Family and the Pension System**

#### **(1) Family status in the pension system**

In the Japanese public pension system, both EPI and NP, the family or household itself is not institutionalized in the statutes of the law. The definitions of spouse, man, wife, child, etc. are, however, frequently used in the law, especially in the context of Survivors' Pensions and the insured Category 3 of the NP system. This is quite natural and easy to understand when we remember the character of the pension benefit as a substitution of former wages or the maintenance by the main earner through wages. In this way, the basic structure of the actual pension system premises a certain type of household. In the former EPI before the introduction of the BP in 1986, a couple of an employee and his/her dependent spouse was assumed to be the unit of the system, which reflected the standard lifestyle of employee families with single earner. The families of farmers and other self-employed were different from this, because the dependency relation within a family was not so clear as with the employees. By establishing the NP system in 1961 for the former groups that were not covered by existing EPI, the unit of the system was based on individuals, which meant that each resident in Japan aged between 20 and 60 years old would be compelled to enter the NP as an individual. As stated above, through the introduction of the BP for the employee groups also, about half of the

pension benefits for the average earner of the then EPI was disassembled substantially to the individual unit i.e. BP for the employee and his/her dependent spouse while the other half remained as a new EPI which corresponded to the wage/contribution-related part for the insured. As the component of a common livelihood for the couple still exists potentially in this part, the distribution of the acquired pension right comes up in the form of pension splitting in case of divorce and a Survivors' Pension in the case of death of the main earner. Thus, the fundamental structure of the public pension of Japan became complex and intransparent after the introduction of BP, and as for the unit of the system, both factors of individual and household exist in a mixed way for the employees group.

#### **(2) Maintenance adjustment by divorce and the pension benefits** - Juridical precedents on the distribution of public pension by divorce-

##### **a. Distribution of property by divorce**

By the reform of the Civil Code after World War II, an article on the distribution of property was introduced as the proprietary effect of divorce (Article 768<sup>3</sup>) (to be applied mutatis mutandis by Article 771 for judicial divorce). Although there are various theories and opinions concerning the nature of this article, most of the theories and juridical precedents agree that distribution of property by divorce includes following three components: First, clearing of the common property which was gained through collaboration by the couple; second, compensation of damages caused by divorce; third, alimony to the spouse who could be in need after divorce.

The article prescribes only that distribution should be decided "taking all the other circumstances into consideration," but based on the origin and the spirit of the article, it is widely acknowledged that the concrete measures for the distribution should be decided in pursuit of the clearing of the common property of the couple. Moreover, it is pointed out that by measuring the common property gained by collaboration, the contribution of the wife in the form of housework should be properly evaluated. The second component follows this and the third component i.e. distribution as alimony should be examined

only when the divorced spouse is in need even after taking measures according to the first and the second component. In this case, proprietary reserves of the spouse liable to maintenance on the one hand and the need of another spouse entitled to maintenance on the other are required, and the concrete amount should be decided based on the degree of both of these.

#### **b. Juridical precedents on the distribution of public pension by divorce**

With regard to the handling of the public pension in the process of distribution of property by divorce, the judgments of the courts are mixed with negative and positive attitudes, and have also changed with time. This is not hard to understand, because the right to distribution itself has a multi-dimensional complex character as stated above; additionally, the right to receive pensions in the future is quite uncertain, and it is difficult to evaluate its proprietary value at the time of divorce. On the other hand, a certain tendency can be seen to accept public pension benefits as a common property, and to order the payment of a part of it. The juridical precedents based on the analysis of 13 cases by Ninomiya (Ninomiya 2003) are described below.

##### **(a) Cases in which pension benefits are already paid**

In 1980s, judgments began to be observed which acknowledged pension benefits as a common basic property or as the means for the spouse liable to pay<sup>4</sup>. Positive cases followed in the 1990s, in which it was ordered to pay a part of the pension benefit by distribution as an alimony<sup>5</sup>. Although this was one step ahead from the viewpoint of security of the divorced spouse—usually the wife—in need, its effect was limited in the sense that the alimony is admitted as far as the spouse liable to pay has enough reserves for the maintenance and the other spouse remains in need. Furthermore, in so far as the right to receive a part of the pension derives from the pension right of the other, it diminishes when the beneficiary dies.

In recent years, the judgment of the court has begun to admit the payment of a part of public pension benefits as a clearing of the common

property, based on the idea that it was made through collaboration of the couple<sup>6</sup>. In these cases, the length of marriage which should be crucial for the amount of pension was not considered to measure the amount of distribution, and the living condition of the both spouses were taken into consideration. Thus, it is pointed out that in these cases the character of clearing was indeed stressed, but the aspect of alimony still remained at the same time. Additionally, the problem which was shown by the distribution as an alimony, whereby the payment ends with the death of the spouse liable to maintain, still remained unsolved.

##### **(b) Cases in which future pension expectancy was handled**

As for the future pension expectancy, some judgments refused to take its value into account because this depends on excessively uncertain circumstances, such as the future retirement or death of the insured. In other cases, however, the court considered this by measuring the amount of distribution, for the reason that the pension is a quid pro quo of contribution which was borne through collaboration during a long marriage period and that the husband will enjoy favorable pension benefits in the future.

Through the above examinations, it could be summarized that the application of the regulation on the distribution of property by divorce in the Civil Code has different components and despite the tendency to stress it as an aspect of clearing, it remains still halfway. A critical limitation of this regulation from the perspective of divorced wives is that the payment comes to an end when the husband dies, and this cannot be surmounted by the efforts of the courts through application of the law. Legislative measures are thus necessary.

##### **(3) Pension splitting**

Pension splitting can be discussed from two different aspects, i.e. in the context of the individualization of pension benefit and the equalization of accrued gain during marriage. The viewpoints are deeply connected to each other but the logic and the structure of the system as a result becomes quite different.

**a. Pension splitting in the context of the individualization of public pension**

**(a) De facto pension splitting by the introduction of the BP**

As stated above, the BP was introduced officially to establish individual basic pensions for all residents, including women, and substantially to relieve the NP system through financial adjustment between the NP and the EPI. Although the actual word of "pension splitting" was not used at that time, this meant nothing but the de facto pension splitting of about half of the pension benefit for average earner of the EPI on the first level. As an advantage of the reform, it was explained that women, including dependent wives, can enjoy public pensions in old age even in the case of divorce, but the BP itself is guaranteed irrespective of divorce. In this sense, it can be understood as a de facto pension splitting in the context of the individualization of the pension unit.

The problem of the BP from this aspect could be described as follows:

First, there was no single discussion from this viewpoint of whether it is adequate to reconstruct and dismantle the EPI partly into individual system.

Second, it is not sufficiently explained which reasons justify the deprivation of a part of the benefits of a spouse which was legally accrued as a consideration of the performed contribution.

Third, the amount of the pension benefit of the EPI for the insured was reduced by the amount of BP for his/her spouse and this could be a substantial damage for the beneficiary, if he/she loses his/her spouse at an early stage.

**(b) Pension splitting for the dependent in the EPI**

Pension splitting of the rest of the EPI was discussed as one of six issues in the "Committee on the pension policy as it ought to be corresponding to the change of lifestyle of women" which submitted its report in December 2001. Taking the discussions in this report into consideration and after negotiation with the ruling party which required cautious handling so as to avoid a negative influence on the family bond,

two sorts of pension splitting were introduced by the Pension Reform Act of 2004.

One of the pension splitting types is for the dependent spouse which is called "the pension splitting for the Category 3." As this regulation was strictly restricted to reasonable cases, such as divorce or cases where a person has been missing for a long period, after negotiation with the ruling conservative party, it is confused with the splitting by divorce which is to be discussed in the following section: however, this was originally quite different from the latter and is based on the idea of the individualization of public pensions, which leads to the concept of the BP. In order to justify the division, a fundamental concept was prescribed in the law that the contribution to the EPI paid by the insured spouse is considered to be borne in collaboration with the dependent spouse. In this type of splitting, the insurance record of the spouse is automatically divided into two based on the claim of the other spouse, but is applied solely to the marriage period after 2008. 4.1. This rule is criticized in many ways; one may claim that it should not be restricted to the cases of divorce; on the other hand, most of the criticism of the BP could be applied to this system.

**b. Pension splitting by divorce**

Another type of pension splitting—pension splitting by divorce—was also introduced by the Pension Reform Act of 2004. Concrete rule of this type of splitting is as follows;

Average standard wages<sup>7</sup> of both spouses during their marriage can be divided and the difference can be delivered to the spouse with the lower average standard wage. This results in direct foundation or increase of the public pension right of the latter. This regulation is applied for both single-earner couples and double-earner couples. Whether to divide or the amount to be distributed should be decided according to their agreement or disposition by the court. This regulation shall be applied to the divorce after 2007.4.1, but includes the periods of marriage before that.

The similar regulation was already introduced by the First Marital Law Reform Act of 1976 in Germany and this new rule itself is rational and

harmonizes with the Japanese divorce right of the Civil Code and its application by the court. However, it has some crucial defects as follows:

First, it is not merely an issue of pension rights and should have been treated as one of the important issues of the distribution of property by divorce in the Civil Code; yet it lacked this viewpoint and was handled exclusively from the viewpoint of the pension policy. This was quite different from the standpoint of the German reform in 1976.

Second, as a result of this shortsighted measure solely within pension rights, distribution of public pensions and other property such as occupational pension, private pensions or other forms of property could be handled separately which could easily lead to the inadequate distribution of the total common property.

Third, in deciding on the solution of pension splitting in the light of public rights, almost no examination or consideration of probable hard cases was taken, even though it could have been easily foreseen from the experiences in Germany since 1977 that some very hard cases would occur. After pension splitting by divorce, a wife may die before the pension age; the man must then live for the rest of his life with his reduced pension without any advantage for a divorced spouse. A flexible reevaluation system which could avoid unnecessarily hard cases must be established as soon as possible, based on the intensive analysis of cases under the new rules.

### **c. How to handle the Survivors' Pension**

It is clear that fundamental reconstruction of Survivors' Pensions is necessary if we change the pension system to an individual basis, because it is the substitution of maintenance which derives from the concept of a household. But the fact that many women are still dependent on the wages of their husbands and live together means that it is not realistic to replace the Survivors' Pension with an individual pension. By the last reform in 2004 therefore, a minor change was introduced which limits the length of receiving Survivors' Pension for young widow under 30 years old with no child to five years instead of life long. There are merits and demerits to the individual pension and the Survivors' Pension, but if the

abovementioned individualization becomes the basic rule, then the position of Survivors' Pension should be fundamentally reviewed. In the opinion of this report, despite the diversification of family or lifestyles, the family is the basis of the society, and measures in a public pension should support and strengthen the function of families instead of weakening or dismantling it. From this viewpoints, introducing choice between pension splitting and the Survivors' Pension on agreement of the couple like in Germany could be one of the rational solutions.

### **(4) Evaluation of unpaid work within family in the pension system**

In Japan, the policy of evaluating unpaid work in the family such as raising children or elderly care has not been pursued, unlike in Germany where Article 6 of the Basic Law (Constitution) clearly declares that marriage and family stand under the special protection of the state order. Such tendency can be observed not merely in pension policy but also in child allowance, refusal of cash benefits in LTCI and so on. The family bond has been considered to be too normal to support financially, and the increasing preference of women to work outside the family makes it difficult to make the idea of rewarding unpaid work with cash benefits be widely accepted by the public.

In contrast, a policy of promoting the harmonization of family work and paid work outside the family has been promoted. As a result, a policy of increasing nursery schools has been pursued, and the benefits from the unemployment insurance are entitled for the insured employees in the form of child-raising leave for one year, on the level of 40%<sup>8</sup> of former wages, and the contribution of both employee and employer to the pension and medical insurance during this period is exempted. In case of elderly care, the same amount is paid to the insured for three months.

Although measures to acknowledge unpaid work in the family in Japan are limited as stated above, new dimensions could possibly opened, if the lowest birthrate of 1.26 in 2005 declines further and the sense of crisis is shared seriously by the public. The drastic improvement of child

allowance or the introduction of measures to regard child-raising periods as the contributory periods in the public pension system could then be adopted, measures which have been put into practice and strengthened in the last three decades in Germany.

<sup>1</sup> The judgment of Tokyo Local Court of 2004.3.24, the judgment of Niigata Local Court of 2004.10.28 and the judgment of Hiroshima Local Court of 2005.3.3.

<sup>2</sup> The judgment of Tokyo High Court of 2005.3.25, the judgment of Niigata High Court of 2005.9.15 and the judgment of Hiroshima High Court of 2006.2.22.

<sup>3</sup> Article 768 of the Civil Code prescribes as follows; (1) A divorced spouse can claim the distribution of the property to the other spouse. (2) If the interested parties cannot agree with each other concerning the distribution of the property, he/she can claim the judgment instead of agreement in the family court within the two years following divorce. (3) In the case of paragraph 2, the family court decides whether to distribute and the amount and the method of distribution after taking into consideration the amount of the property which both parties gained through their collaboration and all the other circumstances.

<sup>4</sup> The judgment of Tokyo High Court of 1983.9.8 and others.

<sup>5</sup> The judgment of Yokohama Local Court of 1997.1.22 and others.

<sup>6</sup> The judgment of Sendai Local Court of 2001.3.22 and others.

<sup>7</sup> Average standard wage is the personal average wage through the whole employed period of each insured after reevaluation of nominal wages in the past to the actual level of wage. It is used as a basis of the calculation of the pension benefit of each insured in the EPI (Article 43 of the EPI Act).

<sup>8</sup> This percentage will be raised to 50% from 2007.10.1.

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