

BERICHTE / REPORTS

Symposium on Aging Societies and Legal Approaches

Waseda University Campus, Tōkyō, 7 July 2017

1. Brief outline of the Symposium's structure¹

The Symposium on Aging Societies and Legal Approaches was hosted by the Friederich-Ebert Foundation, the German-Japanese Association of Jurists (DJJV), the Japanese-German Center Berlin, Waseda University School of Law, and Waseda University Institute of Comparative Law, with the support of the German Federal Ministry of Justice and Consumer Protection. The Symposium, which took place on 7 July 2017, assembled experienced specialists on topics related to intergenerational justice, social security systems, commercial customs, and labour law in the context of an aging society. It was opened with remarks by Ms. Christiane Wirtz (Undersecretary of State (*Staatssekretärin*) of the German Federal Ministry of Justice and Consumer Protection and by Mr. Hiromu Kurokawa (Vice-Minister of the Japanese Ministry of Justice). The Symposium was divided into three parts, each of which had two presenters, one from Japan and one from Germany. In the first part, the presenters discussed the overarching demographic goal of intergenerational equity and the contributions that a legal system could make to achieve this goal. The second part focused on the social security programmes that support elderly people in both Japan and Germany. The presenters introduced the existing frameworks in their respective countries and discussed the challenges that an aging society poses for these systems. In the third part, the presenters discussed the issue of age-related discrimination in several fields and the solutions that might be provided by labour law and other legal instruments. Each session was followed by fascinating debates on the topics presented. The Symposium concluded with a reception that was open to all participants.

1 This report summarizes the main arguments of the presentations and discussions at the Symposium according to the understanding of the author. The Symposium was held in German and Japanese, so we draw attention to the fact that the text in this report does not represent the literal statements of the speakers.

2. *Part I – How can law contribute to intergenerational equity?*

The first part focused on intergenerational equity and the possible role of legal systems in guaranteeing it. *Prof. Makoto Usami* (Kyōto University) considered intergenerational equity by referring to the social security system and public finance, focusing in particular on the public old-age pension system and public bonds. The Japanese public pension system is based on the concept that premiums paid by the current working generations cover the current elderly citizens' pension benefits, a pay-as-you-go (PAYG) system. Due to the declining birth rate and the aging population, the intergenerational imbalance between these two fields is a serious concern. With regard to pension systems, in countries that have adopted the PAYG pension system, such as Japan, the total working population paying insurance premiums is decreasing while the total number of inactive non-working people receiving pensions is increasing, leading to an increasing intergenerational imbalance. Meanwhile, in those countries where part of the pension is covered by tax, an extensive portion of taxes is covered by the working population, meaning that the intergenerational imbalance will also increase there. Intergenerational equity must also be considered in terms of public bonds, because it is future generations who will bear the repayments while the currently living generation benefits from the public services partially provided by long-term government bonds and municipal bonds. In his presentation, Prof. Usami examined whether the currently living generation has an obligation to consider future generations in order to secure intergenerational equity in the context of pension systems and public bonds under the current conditions of an aging society. Citing various phenomena in Japan, he made several points while referring to empirical observations and the philosophical quest for justice in parallel. First, he rejected the hypothesis that the intergenerational imbalance in the pension system and public bonds is an illusion. In his opinion, the particular benefits being received by the current elderly generation cannot be justified either by their contribution to the economic growth of the post-war era or by the long-term survival of forms of social capital, such as infrastructures installed using the revenue provided by public bonds. Those who reached the standard retirement age at the end of the high economic growth period after the war (1954–1973) would now be 99 years of age and thus not members of the current pension-receiving generation. With regard to the theory that defends intergenerational imbalances in issuing public bonds by focusing on the long-term viability of social capital invested in by public bonds, such as developments in the transportation network and other infrastructure, since these forms of social capital can provide benefits for future generations, the theory sounds plausible, especially in Japan and Germany, where social capital

had to be drastically upgraded in the post-war period. However, looking at the improvements in social capital based on public bonds in Japan in the post-war period, the public works for such improvements can be regarded as a way of providing employment opportunities for construction workers rather than a way of providing long-lasting social capital. Usually, the more social capital is expanded, the more the serviceability of specific forms of social capital decreases and its relative costs increase. Consequently, such public works projects aimed at providing employment tend to exceed the most efficient supply volume. In addition, the depopulation of rural areas and small/medium-sized cities due to the declining birth rate and aging of the population means that the number of beneficiaries of social capital in these areas, which was maintained by revenue from public bonds, is decreasing. Thus, the issuance of public bonds for the purpose of improving social capital cannot always be justified from the viewpoint of the profit of future generations. It must be said that, for both pensions and public bonds, there is an unignorable intergenerational imbalance between benefits and burdens. Following Ideal Theory, which pursues ideal solutions while ignoring practical limitations, intergenerational justice would be established when both the correlative balance – the balance between the actions or attributions of an individual (or a group) and the benefit or burden assigned to the individual (or the group) – and the comparative balance – the balance among multiple individuals (or groups) with similar attributions or those performing similar actions – are established in the system. From this perspective, he recommended shifting the Japanese pension system to a funded one, and he remarked that public bonds, which can assist future generations if invested in family support and education, must be issued to the extent that they do not exceed their benefit for future generations. While clarifying the problems that might arise during the transition from the current pension system, he pointed out that such a drastic change would hardly be likely given the demographic and political structure, which gives the elderly generation a decisively advantageous position in the political process.

The next presenter, *Prof. Dr. Rainer Schlegel* (President of the Federal Social Court, Kassel), observed that recent demographic developments showed an impressive extension in life span. As in Japan, the composition of the population is changing in Germany, and in the coming decades there are expected to be more people who are elderly and fewer young people in the workplace. The decreasing birth rate means that a smaller number of workers will have to bear the costs of social security, especially pensions. Concerning the fair burden shared between generations, the professor made the following points. First, in terms of pensions and health care systems, he mentioned that the cost/burden distribution should be reviewed, especially from the point of view of justice and daily politics. The German old-age

pension system is also a PAYG (*Umlageverfahren*) scheme, as in Japan. He emphasized that, in this scheme, the whole system works only if the future workers are legally obliged and politically willing to pay the pensions of the elderly. Thus, a fair burden, shared between the contributors and pensioners of different generations/age-cohorts, must be established. He also questioned whether the current PAYG system is sustainable. Because of the demographic development mentioned above, future contributors have to expect an increased burden in paying for the pensions of retirees while possibly having to settle for lower pensions for themselves. Consequently, the future working generation may hesitate before agreeing to finance pensions. Moreover, he pointed out that because an aging society demands more health care services, the same can be said for nursing care insurance (*Pflegeversicherung*) and health care insurance (*Krankenversicherung*). It is questionable whether the current level of benefits for these insurances can be generated from the earnings of future generations. With regard to taxes and the environment, Prof. Schlegel remarked that although the tax revenue is increasing, there are large public bonds, and these will eventually have to be repaid by future taxpayers. Even considering the benefits that future generations may obtain from the expenditures made possible by bonds (e.g., when bonds were invested for infrastructure, education, etc.), it should be noted that about one-third of the expenditures of the German pension system is currently financed by taxation, and therefore the fair balance between generations, that is, the current beneficiaries and future taxpayers, should be questioned. This benefit gap between the generations is more serious in the environmental field, considering the consumption of vast amounts of natural resources and the environmental damage inflicted, the consequences of which last for quite a long period and cross state borders. From a legal perspective, the control function of law over intergenerational equity is limited. In the German legal system, intergenerational fairness is anchored in its Basic Law (*Grundgesetz* [GG]). Although the law can guarantee such fairness in the environmental and economical fields,² the protection cannot be extended to the social arena, since there is no spe-

2 According to the presentation, the environmental concerns for future generations were inserted in Article 20a of the GG in 1994, as a protective duty of the state. As a result of this tangle legislation, the standard tests of constitutionality are applicable here. On the other hand, the economic goals of intergenerational justice are concerned in particular with the avoidance of debts. To achieve this goal, a so-called debt limit (*Schuldenbremse*) has been inserted in Articles 109 and 115 of the GG. Although it was not successful, there was also an attempt to insert in the GG a comprehensive principle of sustainability as a state goal, including protection for future generations in social aspects. In the area of social issues, there is a lack of correspondingly concrete regulations or of a state goal aiming at sustainability.

cific provision in the GG. In this case, only the general principle of equality (Art. 3[1] of the GG) and the welfare-state principle (*das Sozialstaatsprinzip*) can be applied. In this regard, the power of constitutional law in this area is conceivably low.

Prof. Schlegel also referred to several cases of precedence and summarized how the court found an imbalance in each specific case, including as regarding intergenerational issues. In the cases of precedence of the Federal Constitutional Court that dealt with long-term care insurance (*Pflegeversicherung*) regarding the family support requirement of GG (Art. 3[1] in conjunction with Art. 6[1]), the Court found an imbalance between the total contribution of parents, who make a generative contribution through the raising of children, and the contribution of childless people (judgment of 3 April 2001, 1 BvR 1629/94). Thus, legislators provided for the intragenerational³ equality by increasing the required contribution from insured childless people. The same issue might be found in other types of insurance, in particular in the pension system, but neither legislators nor the Court has recognized this so far. In the view of the federal social court (*Bundessozialgericht* [BSG]), family compensation is not a task of the statutory pension system (*gesetzliche Rentenversicherung* [GRV]), but a task for society as a whole and therefore to be financed by taxes, although the contribution-free child bonus contradicts this view. It is also incompatible with the wage- and contribution-based nature of pension systems and with the principle of participation equivalence. Considering fundamental rights (*Grundrechte*) and the welfare-state principle (*Sozialstaatsprinzip*), Prof. Schlegel argued that Art. 3(1) of the GG (the general principle of equality) is the appropriate tool, especially to compare groups of people living in the same period, as the Court mentioned in its case regarding long-term-care insurance (*Pflegeversicherung*). Thus, the Article at least can derive an obligation of intergenerational equity in the field of pension systems. However, the Federal Constitutional Court has officially refused to derive intergenerational equity from the general principle of equality, since the general principle of equality presupposes a rational formation of comparison groups in order to determine if different treatment is necessary for those groups, and such formation of groups is only possible within a certain period of time. Intergenerational equity is not a general term of the GG; since the principle of “*lex posterior derogat legi priori*” applies, the GG cannot deal with sustainability in a comprehensive sense. Thus, fundamental rights and the welfare-state principle in the GG can

3 Prof. Schlegel distinguishes between *intra*generational justice, which refers to justice within the same generation/age group or justice between different generations within an age group, and intergenerational justice, which refers to justice between the current population and the future population.

protect only those living today. However, the presenter emphasized, it does not prevent the legislature from protecting future generations, even without a specific constitutional obligation. The legislature is now working on intergenerational justice, including raising the age limits to receive pensions and adopting a new formula to determine the current pensions. At the end, Prof. Schlegel briefly offered several opinions on ways to accomplish the goal of “intergenerational fairness” (*Generationengerechtigkeit*), such as the following: social burden sharing must be accepted, and none of the generational groups involved in the PAYG scheme should feel that they are being burdened unreasonably compared to their contributions. A consensus should be achieved if possible on how the costs of social security can be financed and how fair burden sharing can be achieved. The costs of social security must not lead to disproportionate negative employment effects, such as unemployment. Opportunities for new employment should not be damaged, and thus the retirement age should not be regarded as a taboo. The financing of the system must allow taxpayers and contributors to save for themselves, and this should not be superfluous; the personal responsibility of each individual must be an essential aspect of all social security systems. Moreover, the current political structure of Germany favours participation in the electoral process, implying a structural problem that favours the present over the future. It should be noted that because of the current demographic changes, young voters and those voters not yet born will not have strong political advocates. A prolongation of the legislative period of the Bundestag and a parent’s right to vote or a family right to vote would encourage long-term policymaking and promote the representations of young/future generations. A strengthening of the Parliamentary Advisory Council on Sustainable Development (*Parlamentarischer Beirat für nachhaltige Entwicklung*) or the establishment of an independent Expert Council on Sustainability (*Expertenrat für Nachhaltigkeit*) can also be recommended.

3. Part II – Aging society and the system of social security

In the second part of the Symposium, presenters introduced structures of social security systems that were more concrete, as well as actual adjustments in progress to prepare for the coming aging society. The first presenter, Prof. Go Fukushima (Kansai University), approached one possible method for securing the sustainability of pension insurance systems alongside the serious aging of the population. In order to ensure the sustainability of pension insurance, the options available to legislators are (1) raising the age for receipt of the old-age pension or (2) reducing the benefit level of the old-age pension. However, these alternatives cannot realize the goal of the pension, which is to secure a certain income for the elderly, and would

result in the elderly being required to continue working. When the elderly continue to work while receiving a pension, it becomes necessary to re-examine the coordination of their pension and their income. As in Germany, the current Japanese old-age pension starts when a pensioner reaches a certain age, and retirement itself is not considered as an insurance contingency. In Japan, payments usually start at the age of 65. This age has been raised in light of, for example, a prolonged working life, the increase in life expectancy, and the decreasing birth rate. Along with this, there is a risk of a loss in income between the age of retirement, which is generally 60 years of age, and the age at which the pension payment starts (65 years old). This gap is supposed to be compensated for by the early receipt of the pension or continued work after the retirement age.⁴ The raising of the starting age for pension benefits requires a long-term transition plan, since an abrupt rise may harm the trust of current contributors, especially those who have contributed over a long term. Therefore, legislators must take action as soon as possible if the rise is to be carried out. The rise in recipient age inevitably increases the early receipt of old-age pension, although such a receipt means a certain reduction in payments. Considering the goal of the pension system, which is to guarantee the income of elderly people, it is conceivable that the reduction rate might be eased in the case of early receipt. As mentioned above, even if an elderly person earns wages, this does not prevent him or her from receiving a pension. In this case, the benefit from the pension must be adjusted. This adjustment can be justified on the basis of the purpose of the pension system, namely, to secure an income for elderly people. This adjustment will be made when the sum of the individual's income from the pension and from work exceeds a certain amount, this limit being designed to increase as the amount of wages increases in order to promote work among the elderly. Here, a problem can be found from the perspective of the principle of insurance, namely, equalization between insurance premiums and benefits, since such adjustments restrict pension benefits for elderly people who earn high wages. However, if you look at the system in which the pension received by today's elderly people is covered by the contributions made by today's working population, paying the full pension to elderly people who earn as much as those working cannot be

4 In the Japanese system, a pensioner cannot choose to receive a disability pension instead of the early receipt of an old-age pension with a reduction because the disability pension is determined not by capacity to work or the amount of wages that could be earned but mainly by the extent of damage to physical and mental functions. Consequently, a reduction in the disability pension to prevent elderly people from choosing to receive it instead of the early receipt of old-age pensions does not become a problem in Japan.

justified from the perspective of intergenerational equity. Therefore, such an adjustment must be seen as reasonable. Considering the benefit level of the old-age pension, it is necessary to guarantee the actual value of the pension benefit in order to satisfy the purpose of income security. For this reason, Japanese old-age pensions implement a slide system that responds to the income level of the working population and price fluctuations. Given the demographic changes, the variability in the composition of the population should also be taken into account in this shifting. If the sliding rate is adjusted by the further aging of population, the benefit level of the old-age pension will fall significantly; such a reduction in the benefit level of pensions, to reduce the burden on the working population, requires elderly people receiving pensions to bear the cost of an aging society. This can be justified in terms of intergenerational equity. Although such an adjustment ensures the sustainability of the pension system, it may endanger the purpose of pensions. When the pension does not work to provide income security for the elderly, the legitimacy of the current compulsory use of pension insurance could be questioned. If the income substitution rate of the pension falls below 50%, the adjustment of the sliding rate consistent with the demographic rate of change must be stopped, and the legislature must reconsider the benefit level of the pension. As long as the national pension system is an insurance scheme, the nation's old-age pension payments cannot provide income security on their own; they can only partially make up the total. Compulsory participation in pension insurance can be justified only when the benefit level of the pension exceeds the standard value of social assistance. The Japanese old-age pension system is now trying to balance two different demands: the sustainability of the pension system and the income security of the elderly.

For comparison with the Japanese situation, *Prof. Dr. Raimund Waltermann* (University of Bonn) explained the reforms to the statutory pension system that Germany has already carried out. In this case, both the benefit level of the pension and the age limit for receipt of the pension are considered. Unlike Japan, Germany has already given priority to the sustainability of the system, rather than to the level of pension benefits. Germany has moved from a defined benefit system to a defined contribution system. In 2001, the goal of securing a standard of living through the statutory pension was abolished, and the goal since then has been to keep contribution rates stable. Since 2001, expenditure has been based on contributed income. This will inevitably reduce the level of pensions in an aging society and leaves open the opportunity of extending the working life. This task is assigned not only to social security law but also equally to labour law and social law. Unlike the previous presentation, Prof. Waltermann suggested that the reform of disability pensions was conceivable in order to support those who

were no longer fully able to work before the age for receipt of the old-age pension.⁵ Moreover, focusing on employment law, the presenter introduced the recently implemented *Flexirentengesetz*, which promotes a gradual transition to retirement. In addition, a new regulation introduced in 2014 into pension insurance law (*Rentenversicherungsrecht*) provides the option of subsequent, multiple, short-term periods of employment after the retirement age. Ways to design contracts and integrate older people into working life should continue to be considered in the light of future demographic changes. In Germany, the old-age pension is distributed in several ways. The statutory pension insurance discussed above is applied to employees and thus includes the vast majority of people. In addition, there are pension systems for the civil service and professional pension schemes. For instance, the pensions of civil officers, judges, and soldiers are tax financed. Moreover, there is a traditional supplementary pension in addition to the statutory pension. Some employers provide additional occupational pensions (*betriebliche Altersversorgung*) called *Zusatzversorgung* in the public service sector.⁶ Such occupational pensions are the so-called “second pillar” of the German pension plan. In the middle of 2017, the Bundestag passed a reform of the law to help small and medium-sized enterprises to implement a company pension plan. This law will enter into force on 1 January 2018. In order to keep the contribution rates stable in the pension system, the legislature also has a legal framework to build a tax-based pension plan supported by the state (*Riester-Rente*). This should no longer be considered an additional pension but should act as a partial replacement of the statutory pensions system when it no longer maintains the proper level of benefits. We have not yet seen whether the shift to a system based on these three pillars – statutory pension insurance, occupational pension, and *Riester-Rente* – guarantees a sustainable social pension system. Due to the income dependence of the statutory pension, those who have been earning low incomes will likely receive pensions below the level of social assistance. In the interplay of labour law and social law, the monetary output of labour has the greatest importance for the quality of the pensions. The German pension system is based theoretically on a model-working style that is covered by a permanent employment contract, although in Germany about 25% of employees work in the so-called low-wage sector (*Niedriglohnssektor*), and in this sector it is barely possible to make the required contribution. Furthermore, the self-employed, a portion of population that is growing due to digitization, are only partially covered by the compulsory

5 See previous footnote.

6 The company pension scheme, especially in the field of public services in Germany, is often based on collective bargaining contracts.

pension system. Looking at health care, the risk of illness is covered mostly by these three schemes: statutory health insurance, private health insurance, and tax-financed subsidies for civil officers. In all three, expenditure on illness has risen particularly sharply in recent years. The statutory long-term care insurance (*Pflegeversicherung*), which is covered by the statutory health insurance, is also affected by the demographic changes in terms of cost pressure. The number of those who receive long-term-care insurance is rising. This cost pressure is also caused by the fact that elderly people are increasingly being cared for in care facilities rather than by the family. The German law on long-term-care insurance has been comprehensively reformed, and the concept of long-term care, which defines the insurance risk, was changed. The new concept of long-term care takes greater account of the situation of mentally impaired, cognitively impaired, and dementia-affected people and facilitates their use of services.

4. *Part III – Discrimination against the elderly: Justification and restrictions on discrimination against the elderly in commerce and under labour law*

In this part, the pros and cons of differential treatments based on age were presented from both countries, and the sorts of justification required in each jurisdiction were discussed. *Prof. Dr. Karl Riesenhuber* (Ruhr-University Bochum) pointed out that the prohibition of age discrimination under European and German law could work to the disadvantage of elderly people. In Germany, two legal regulations and conceptual foundations can be found in this area. One comes under European law and the other under national law. Discrimination prohibitions have had a prominent role in EU law for a long period; a prohibition of discrimination based on sex regarding pay was already included in the European Economic Community treaty in 1957. The area of discrimination prohibitions was gradually extended, and since 2000, discrimination based on age has been prohibited, together with discrimination based on racial and ethnic origin, religion or belief, disability, or sexual orientation. In national regulations, anti-discrimination requirements have been implemented today in the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz* [AGG]). In accordance with the AGG, age discrimination is prohibited not only in the field of work but also under civil law. The introduction of the prohibition of age-based discrimination in civil law was highly controversial in Germany given that it limits the freedom of individuals. But beyond this basic concern, there has been insufficient discussion of the question whether such prohibitions are really necessary and indeed – if they are needed – to what extent. Similarly, there has been little consideration of whether such discrimination has already been restrained or

eliminated to a certain extent by market functions. Focusing on the connection with an aging society, it must be emphasized that the prohibition of age discrimination under EU law and the AGG is not designed to protect elderly people in particular. Banning the use of age-attributed wording in job advertisements also means banning wording that could be associated with the elderly.⁷ Granting longer holidays to older employees, which used to be customary in Germany, now has to be justified from the perspective of age discrimination because it treats younger employees disadvantageously. Any favoritism must be concretely justified, and the rationalizing function of anti-discrimination law works not only as a benefit but also as a potential hazard for elderly people. The AGG certainly regards the protection of older workers as a legitimate aim, but what “older” means is not clarified in the law. Conversely, the younger generation, which can be particularly vulnerable in an aging society, may welcome the principle of equality. The traditional increase in remuneration in connection with age also constitutes direct discrimination based on age and thus requires justification. The European Court of Justice (ECJ) considered that it was permissible to link salary graduation directly to work experience as an indicator of professional experience to be rewarded, but age itself cannot be regarded as an adequate way of indicating such experiences because basing higher salary levels on age also benefits any newly recruited older employee. The assumption of a higher financial need for elderly people, which had been traditionally accepted in Germany, combined with respect for elderly people, was also rejected by the Court as implausible. Thus, the ban on age discrimination does not allow this custom any longer without proper justification. While the presenter also introduced several court cases examining whether age could be the appropriate indicator in different situations, such as for estimating physical capacity or optimizing the distribution of employment, he said that even the retirement age constitutes direct discrimination and thus requires justification. The ECJ, however, recognizes such age limits as justifiable in general. It ultimately concerns a socio-political balance between the generations. With regard to retirement pensions, the older worker is typically less dependent on gainful employment than the younger worker is. In addition, younger workers are more worthy of protection be-

7 The presenter introduced the following case as an example. For job advertisements, youth has to be excluded as a competitive parameter, and thus advertising a vacancy to work “in a young and dynamic team” can be banned because it carries the implication that the applicant must also be “young and dynamic.” Similarly, a vacancy notice that includes words such as “experienced,” “experienced in life,” and “dignified” can also be banned because those qualities can be considered attributable to elderly people.

cause they should at least be given the opportunity to earn an old-age pension. German law recognizes the interest of employment as a fundamental right because work also fosters personal development, social contact, recognition, and more. In an aging society, therefore, the possibility of practising a profession is fundamentally important. Long-term employment is also in demand due to a shortage of skilled workers, a common complaint in Germany. On the other hand, due to digitalization, work opportunities may decrease. Accordingly, there is a need to address ways of distributing work fairly between the generations, and retirement age limits provide one such formal instrument for distributing working opportunities between generations. The presenter also discussed areas of business life, such as whether different types of treatment based on age are justifiable for insurance purposes, when renting accommodation, or when offering discounts for seniors. In each area, such treatment requires a certain justification. German and European prohibition of age discrimination – not discrimination against the elderly – can be assessed as follows: specific protection of the elderly may have practical importance in an aging society, but young people also need special protection because they can easily be a minority in the increasingly aging society which we face. Accordingly, when discussing individual issues, the way in which prohibitions against discrimination work in favour of the elderly need to be considered, as well as how they require equality for younger people.

On the other hand, *Prof. Ryoko Sakuraba* (Kōbe University) presented both the merits and demerits of making a distinction based on age under Japanese labour law and business customs. Looking at the recruitment and treatment of employees, distinguishing candidates/employees by age is widely practised in Japan. Although certain distinctions are forbidden by legislation, and several precedential cases have also shown the ineffectiveness of some specific distinctions based on age, distinction based on age itself is not considered illegal. Although corporations are obliged by law to give equal opportunities to (future) employees regardless of age, this obligation is rarely being met. Since it is hardly possible to set an age requirement in a vacancy notice, candidates have little way of knowing whether they were denied a position because of their age, and so they cannot effectively accuse the corporation of discrimination. In addition, this obligation allows for many exceptions. For example, it is considered permissible to recruit only young people on the basis of the need for career development through long-term service. Especially in regular employment with no fixed term, recruiting only “new graduates” is a strong Japanese business custom. While such recruitment works in favour of inexperienced young people, those who are not new graduates are treated disadvantageously in terms of opportunities for employment. The law calls for companies to “make ef-

forts” to consider the latter, but it is not mandatory, and consequently consideration is given instead to the efficiency of corporate practice. At most Japanese companies, employment automatically ends when an employee reaches a certain age. Legally, this retirement age cannot be lower than 60. In addition, as mentioned in earlier presentations, the age to start receiving the public old-age pension in Japan has been raised to 65. The law, therefore, also requires companies to take certain measures to secure employees’ opportunities of being employed until the age of 65. These measures – raising the retirement age, continuing employment, or abolishing the retirement age – were implemented by 99.2% of the companies covered in the research conducted in 2015, with the help of the existence of penalties. The most popular measure is continuing employment, most commonly by reemploying once-retired workers under a fixed-term contract. The retirement system itself has never been banned as a form of discrimination based on age because it functions as *de facto* employment security until the retirement age. Although the retirement age has historically been a way for employers to exclude the elderly, it also has secured a certain period of employment for them because it functions as an age before which they will not be let go. For this reason, the retirement age was set according to the demands of labour unions. In this regard, the retirement age has the merit of securing employment as well as the demerit of forced retirement. The seniority wage, which increases according to age and length of service period, has been a quite simple and convenient scheme for both employers and employees, especially in the post-war era, for the reorganization of the workforce. The disadvantages of the seniority wage system are that it does not reflect the content of professions or the ability of employees, and it raises the cost of hiring elderly people. This also led the Supreme Court to recognize the rationale of reducing wages after an employee reached a certain age. Workers reemployed under a fixed-term contract after retirement often find that their wages are reduced. The seniority wage also leads to situations in which elderly people are encouraged to retire or become subject to dismissal. In Japan, there is no legislation prohibiting discrimination based on age. This is because both merits and demerits exist in differentiated treatments based on age, as mentioned above. Distinction by age could be banned if the starting age for pension payments is raised further because a greater number of elderly people would remain at work, and the characteristics of (older) employees, such as health conditions, would diversify. This would require individual-based treatments for elderly workers, and in such circumstances, maintaining the uniform distinction based on age may lose its rationale.

5. *Closing Remarks*

In the Symposium, the presentations covered a reasonable range of the legal issues and problems that our aging society faces in relation to its social and political structures. By approaching these through both conceptual and specific case studies, the presenters showed the similarity of the social security schemes and implicit problems for both countries; further, they introduced the different measures and legal interpretations taken in each country. The Symposium provided an opportunity to consider the problem of today's aging society by questioning the sustainability of current social security systems. The Symposium indicated that a fair benefit-burden balance should be established between the elderly and the young, and also future generations, while ensuring sufficient income and health care for the increasing number of elderly people and while also offering opportunities for the elderly to participate in the workplaces of a steadily aging society. By offering all participants an opportunity to exchange their opinions in the subsequent reception, the Symposium certainly contributed to further comparative studies.

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