

## Judicial Yuan Interpretation , Number 549

(August 2 , 2002 )

### HOLDING:

Labor insurance is established as a social security measure by the state to achieve the fundamental national policy to protect the laborers as provided in the Article 153 of the Constitution and to implement the social insurance system as provided in the Article 155 of the Constitution or Article 10 ,Section 8 of the Constitutional Amendment .The insurance fund is composed by premiums paid by the insureds , governmental subsidies and the employers' contributions . It is not the private property of the insureds .When an insured dies ,the allowance received by his/her survivors is a substitute for income in its nature to prevent them from being unprovided .Therefore ,the receipt of the allowance shall be based on the necessity for support of the survivors .It is different from the legacy of the insured which can be succeeded in accordance with the law . Article 27 of the Statute for Labor Insurance (hereinafter as

the Statute) provides that the children of the insured whose adoption registration did not pass over six months at the time of the insurance event shall not be entitled to receive the insurance payments. Though this provision has the intent to enforce social security and to prevent the fraudulent receipt of the insurance payments, the allowance for survivors under the provisions of Article 63 to Article 65 of the Statute also bases on the ethical relationship and the principle to protect and support the survivors, in order to further enforce the constitutional intent to protect the people's lives by the state while considering the fact that adopted children and other survivors were actually supported by the insured when the insured alive and could not earn a livelihood, Articles 27, 63 to 65 of the Statute shall be amended within two years from the publication of this Interpretation basing on the intent stated above by this Interpretation, especially focusing on the insurance payments for survivors' allowance and relevant matters, and taking reference from the relevant international labor conventions and social security, such as pension system

and so on ,to fully review and plan .

**【解釋文】**

勞工保險係國家為實現憲法第一百五十三條保護勞工及第一百五十五條、憲法增修條文第十條第八項實施社會保險制度之基本國策而建立之社會安全措施。保險基金係由被保險人繳納之保險費、政府之補助及雇主之分擔額所形成，並非被保險人之私產。被保險人死亡，其遺屬所得領取之津貼，性質上係所得替代，用以避免遺屬生活無依，故應以遺屬需受扶養為基礎，自有別於依法所得繼承之遺產。勞工保險條例第二十七條規定：「被保險人之養子女，其收養登記在保險事故發生時未滿六個月者，不得享有領取保險給付之權利。」固有推行社會安全暨防止詐領保險給付之意，而同條例第六十三條至第六十五條有關遺屬津貼之規定，雖係基於倫常關係及照護扶養遺屬之原則，惟為貫徹國家負生存照顧義務之憲法意旨，並兼顧養子女及其他遺屬確受被保險人生前扶養暨無謀生能力之事實，勞工保險條例第二十七條及第六十三條至第六十五條規定應於本解釋公布之日起二年內予以修正，並依前述解釋意旨就遺屬津貼等保險給付及與此相關事項，參酌有關國際勞工公約及社會安全如年金制度等通盤檢討設計。

## REASONING:

Labor insurance is established as a social security measure by the state to achieve the fundamental national policy to protect the laborers as provided in the Article 153 of the Constitution and to implement the social insurance system as provided in the Article 155 of the Constitution or Article 10, Section 8 of the Constitutional Amendment. Labor insurance is a kind of social insurance. Its purposes are to protect the laborers' lives and to facilitate social security. Under the international conventions and other countries' system, ordinarily the protections provided by the social insurance can be divided into two categories: money subsidies and welfare services. Money subsidies are the money payments to compensate the loss of income by the insured because of his/her elder, disability, death, sickness, child birth, work injury or unemployment. The functions of money subsidies are to maintain the income or to substitute the income. Social welfare services are such as hospital care, medical service, rehabilitation assistance and so on. These are also called as "tangible

payments”. The sources of the social insurance fund , which burden the above payments or services , do not limit to the premiums paid by the insureds . Our labor insurance system at present does the same . Chapter 4 of the Statute provides that the insured or beneficiary may receive insurance payments because of child birth , disease , medical treatment , disability , elder or death . The premiums of labor insurance shall be paid by the insureds , the contributions of the insurable entities and the subsidies of the Central Government or Municipalities under the direct jurisdiction of the Executive Yuan bases on the ratio set forth in the Article 15 of the Statute .

**【解釋理由書】**

勞工保險係國家為實現憲法第一百五十三條保護勞工及第一百五十五條、憲法增修條文第十條第八項實施社會保險制度之基本國策而建立之社會福利措施，為社會保險之一種，旨在保障勞工生活，促進社會安全。社會保險所提供之保障，依國際公約及各國制度，通常分為兩類：金錢補助及福利服務。金錢補助係為補償被保險人因為老年、殘障、死亡、疾病、生育、工作傷害或面臨失業情況喪失所得時所為之金錢給付，此類金錢給付分別具有所得維持、所得替代之功

能；社會福利服務則指直接提供諸如住院照護、醫療服務、復健扶助等，學理上稱為「實物給付」。負擔上述各項給付及服務之社會保險基金，其來源初不限於被保險人所繳納之保險費，我國現行勞工保險制度亦同。依勞工保險條例第四章規定對於被保險人或其受益人所提供之保險給付，計有生育、傷病、醫療、殘廢、老年、死亡等項，勞工保險之保險費，則依同條例第十五條所定之比例，由被保險人、投保單位分擔及中央政府與直轄市政府補助。

The insurance payments received by the insured or beneficiary when the insurance event occurred is out of the labor insurance fund which is composed by moneys paid by the government when the labor insurance was founded ,the earned premiums of the year of occurrence and its interests ,the surplus of the income of the exertion of the fund (see Article 66 of the Statute) . It shall be noted that the insurance fund ,even though which is the source for insurance payments ,is not the private property of the insureds .When an insured dies , the allowance received by the survivors in accordance with the Article 63 of the Statute , which is designed by the labor insurance agency

to protect the survivors ,is to prevent them from being unprovided .Thus ,such allowance is different from the legacy of the insured which can be succeeded according to the law .The scope of the survivors of the above Article is also different from the successors of the legacy under the Article 1138 of the Civil Code .

保險事故發生時被保險人或其受益人所受領之保險給付，係由勞工保險創立時政府一次撥付之金額、當年度保險費及其孳息之收入與保險給付支出之結餘、保險費滯納金、基金運用之收益等所形成之勞工保險基金支付之（勞工保險條例第六十六條參照），可知保險給付所由來之保險基金並非被保險人私有之財產。被保險人死亡，同條例第六十三條規定之遺屬所得領取之津貼，乃勞工保險機構出於照護各該遺屬所為之設計，用以避免其生活無依，故遺屬津貼有別於依法所得繼承之遺產，上開遺屬之範圍與民法第一千一百三十八條所定遺產繼承人亦有不同。

Article 27 of the Statute provides that the children of the insured whose adoption registration did not pass over six months at the time of the insurance event shall not be entitled to

receive the insurance payments. Though the limitation of the adopted children's adoption registration for over six months as a requirement to the insurance payments has the intent to prevent the fraudulent receipt of the insurance payment, it would be more consistent with the Statute's systematic design to provide the survivors' allowance if the adoption was approved by the court and the adopted children were actually supported by the insured when the insured alive and could not earn a livelihood as a requirement to receive the survivors' allowance. The constitutional intent to assist and redress the unmaintable people by the state can be further enforced. Furthermore, the allowance of survivors under the Articles 63 and 64 surely can be received by the spouse, children, parents or grandparents according to the sequence of the Article 65 of the Statute which is based on the ethical relationship. The others, such as grandchildren or siblings, can receive payments only when they were supported by the insured. ~~This is~~ these are based on the necessity for support of the survivors. Recognizing the above Article that the

survivors' receipt of the allowance is to subsidize the living expenses of the survivors who were supported by the insured when the insured alive , to prevent them from being unlocated , from being unprovided lives , in order to be more consistent with the constitutional intent , the requirement to receive the survivors' allowance should be those who were actually supported by the insured when the insured alive and unable to earn a livelihood . Articles 27 , 63 to 65 of the Statute shall be amended within two years from the publication of this Interpretation basing on the intent stated above by this Interpretation , especially focusing on the insurance payments for survivors' allowance and relevant matters , and taking reference from the relevant international labor conventions and social security , such as pension system and so on , to fully review and plan .

勞工保險條例第二十七條規定：「被保險人之養子女，其收養登記在保險事故發生時未滿六個月者，不得享有領取保險給付之權利。」以養子女收養登記滿六個月為領取保險給付之限制，雖含有防止詐領保險給付之意，惟為貫徹國家對人民無力生活者負扶助與救濟義務之

憲法意旨，以收養子女經法院認可後，確有受被保險人生前扶養暨其本身無謀生能力之事實為請領遺屬津貼之要件，更能符合勞工保險條例關於遺屬津貼之制度設計。又同條例第六十三條及第六十四條之遺屬津貼，於配偶、子女、父母、祖父母係基於倫常關係，一律得依同條例第六十五條順序受領。至其餘孫子女與兄弟姊妹則須有專受被保險人扶養之事實，始能受領給付，係基於應受照護扶養遺屬之原則而為之規定。然鑑於上開規定之遺屬得受領遺屬津貼，原為補貼被保險人生前所扶養該遺屬之生活費用而設，以免流離失所，生活陷於絕境，從而其請領遺屬津貼亦應同以受被保險人生前扶養暨無謀生能力之事實為要件，始符前開憲法旨意。勞工保險條例第二十七條及第六十三條至第六十五條規定應於本解釋公布之日起二年內予以修正，並依前述解釋意旨就遺屬津貼等保險給付及與此相關事項，參酌有關國際勞工公約及社會安全如年金制度等通盤檢討設計。

Grand Justice Yueh-Chin Huang ,Concurring .

I agree with the principle of this Interpretation .But the subject legal relationship of this case involves the social security system ,in order to manifest its legal meaning ,I respectfully file this concurring opinion .

協同意見書

大法官 黃越欽

本件解釋原則，本席表示贊同。惟本案系爭法律關係涉及社會安全制度，為使其在法制上之意義更臻明顯，爰提出協同意見書如下：

I. In order to promote the worldwide value ,the international conventions shall be used as a legal source :

Since the recent years ,the more newly created matters ,their legal relationship are more unified among the states .Because many international organizations often enact the conventions or rules to unify the steps of the different states .Thus ,in the spheres ,like social security ,labor , economics and trade , finance and tax ,intellectual property ,environmental protection and so on ,the conventions

are increased day by day , the contents are also more in detail too .Especially ,after the formation of the World Trade Organization (WTO) ,such phenomena are more evident .The Internation Labor Organization(ILO) may be considered as the original creator of such phenomena .There are hundreds of conventions or legislative recommendations made by ILO ,which plays the critical role in the worldwide value to protect human rights .In this Interpretation ,the international conventions is used as a legal source .This is a very pleasing phenomenon for the growth of our constitutional interpretation system .

#### 一、國際公約應作為法源以促進普世價值

近世以來，愈屬新興事務，其法律關係之國際統一程度愈高，原因在於國際組織常透過公約規制，齊一各國步伐。因此在社會安全、勞動、經貿、財稅、智慧財產、環保等各方面，公約數量日增，內容日益詳盡。尤其世界經貿組織（WTO）成立以後，此種現象更加明顯。而此種現象之濫觴當推國際勞工組織（ILO），ILO 之公約與立法建議書數以百計，對人權保障之普世價值發揮極為關鍵性之作用。本案解釋文能以公約作為法源，對我國釋憲制度之成長，乃極為可喜之現象。

II. The judicial review on the matters for the legislative discretion by the Constitutional Interpretation Agency :

The attitude of this Yuan's constitutional interpretation ,in the past ,we are very respectful on the matters which are reserved for the Congress and legislative discretion .Because in our constitution ,the separation of powers between legislature and judiciary is very clear ,therefore this Yuan is very restrained on such matters . This attitude is based on the domestic legal order .If we take the stand from the international viewpoint ,because the worldwide value is to implement the aims or purposes of the conventions ,the member states of the conventions have the duty to faithfully express the intents of the conventions ,therefore the room for legislative discretion is very limited : In order to ensure the proper application of the legislative discretion ,the Constitutional Interpretation Agency shall use the conventions as the legal sources to review the laws passed by Legislative Agency .This is the expression of faithfully

interpreting the constitutional principles .In this case ,the holding of this Interpretation considers that the relevant Agencies ,by taking reference from the international conventions and the laws of the other countries ,shall fully review the Articles 27 , 63 and 65 .This could promote the proper application of the legislative discretion .

## 二、釋憲機關對立法裁量之審查

本院釋憲之態度，向來對國會保留及立法裁量權極為尊重，蓋以我國憲政秩序中立法與司法之界限分明，本院對此極為自制。然此乃就國內法律秩序而言，如以國際之格局視之，則在以普世價值之實現為宗旨之公約要求下，各公約會員國國會之任務，無非即在忠實表達公約之意旨，所謂立法裁量空間實極有限，為確保立法裁量權之正確行使，釋憲機關以公約為法源，檢視立法機關所制定之法律，毋乃正是憲法原則忠實詮釋之表現。本案解釋文認為，有關機關應於二年內斟酌公約及各國立法例，對勞工保險條例第二十七條、第六十三條、第六十五條等通盤檢討，對立法裁量權之正確行使，應能發揮促進之功能。

III. The legal principles on social security system are

different from those on traditional civil law :

In our Constitution ,on the Chapter of “Fundamental National Policy” ,there are some provisions relating to social security .They are not originally enacted in our state .In fact ,after the passage of “the International Conventions for the Minimum Standards on Social Security” in 1952 ,we enacted the Statute in 1958 .The vast contents of the later are following the 1952 Conventions .The basic principles of the above Conventions :

- social insurance as the core part of social security system;
- social security fund is the public property;
- the purpose to receive the social insurance payment is to actually maintain the income or to substitute the income;
- use the annuity as the method for payment;

### 三、社會安全制度之法律原則有別於傳統民事法律原則

我國憲法基本國策中有關社會安全之規定，並非我國所獨創，事實上，一九五二年社會安全最低基準公約通過後，我國旋於民國四十七年（一九五八年）制定公布勞工保險條例，內容大多以一九五二年公約為張本，然公約之基本原則：

社會安全制度以社會保險為核心

社會保險基金係公共財產

社會保險給付之受領係以實際所得維持或代替為目的

以年金制度為給付方式

The above principles are abided by most states . But when we founded the social security system ,we did not totally follow the above principles .The provisions of Article 63 to Article 65 of the Statute commingle social security payment with the legacy succession of private law . In order to exclude the happenings of “moral hazard” in insurance contract ,the Article 27 of the Statute sets the above limitation on the adopted children .The Article 63 divides the survivors into two categories .Among them ,the spouse ,children ,parents or grandparents surely can receive the survivors’ allowance without considering whether they were supported by the insured when the insured alive or they had income or not .As to the grandchildren and siblings ,only those who were supported by the insured can receive such benefits .Such provisions do not make difference

between the legal principles on social security system and those on traditional civil law .Furthermore , there is no annuity as the payment method ,~~the receipt of the payment by the survivors~~ who receive the payments also does not base on the substitute for income .These do not consider the real necessity of the survivors' lives .The mismatch is very clear .

上述原則為大多數國家所共同遵守，但我國並未完全以此等原則建構社會安全法制，勞工保險條例第六十三條至第六十五條之規定，竟將社會保險給付與私法之遺產繼承混合規定，而為排除保險契約上「道德危險」之發生，則於同條例第二十七條另設養子女限制條款。上開條例第六十三條將遺屬分為兩類，其中配偶、子女、父母及祖父母不問是否曾受被保險人生前扶養或有無收入一概得領取遺屬津貼；至於孫子女及兄弟姊妹則以專受其扶養者為限，顯然未能區別社會安全法制與傳統民事法律原則。且給付之方式並無年金之配套，而受領給付之遺屬亦非以所得替代之事實為基礎，並未考量遺屬生計之實際需要，扞格之處極為明顯。

Since the property of labor insurance is the common property of the all participants of the labor insurance which

is set up for mutual assistance based on social solidarity relationship, such property can not be considered as the private property of the deceased insured. The right which the survivors is entitled to is not the right of succession on personal private property, but bases on the "social benefit". For the sake of taking care of the lives of survivors of the deceased, the labor insurance pays for allowance. The cause for such payments does not base solely on "status", but bases on the social security. Thus, in order to save public resources and to prevent abuse, it is necessary to set proper limitation.

按勞保財產乃參加勞保所有成員基於社會連帶關係所成立共濟組織之共同財產，非死亡勞工個人之私產可比。遺屬所行使之權利並非個人私產之繼承權，而係基於「社會受益權」關係，勞保為照顧死亡者遺屬之意思所給付之津貼，給付原因已非純因「身分」，而係以社會安全為理由。因此，為擄節公共資源，防止濫用，適當加以限制乃屬必要。

From the examples of the international conventions and the laws of other states, the aim of the social security system is always to protect those who are actually in need. The purpose

of the survivors' payments after the death of the insured, its legal character is the substitute of income, is to prevent the survivors from being unprovided or unlocated. Therefore, the legal basis for payments shall be on the fact of support, and the dispute on the status can be prevented. In the meantime, the annuity shall be adapted as the payment method to prevent the waste or spendthrift by the lump sum payment, which is unable to achieve the effect for the long-term assistance, the protection may become vanished.

查國際公約及先進國家之立法例，有關社會安全法制，無不以實際保障為宗旨。就被保險人死亡之遺屬給付而言，其給付標的之法律性質係「所得代替」，用以避免遺屬頓失生活依據而流離失所，因此以扶養事實為法律基礎，避免發生身分之爭執，同時在給付方式採年金制，以免因一次給付容易導致浪費或虛擲，未能發揮長期照護效果，使保障落空。

IV. Under the fundamental national policy, the state shall bear the burden to guarantee the people's social security :

Under the fundamental national policy, the state's duty to people's social security, the payment only is not enough, the

state also bears the burden to guaranteed them . If the survivors' allowance is paid by lump sum , there is no careful review to check whether the receivers can support their lives or not . If their investments are failings , or waste out of their moneys , how can they maintain their lives . Since the allowance is not paid by annuity , it is impossible to adjust the payment because of the inflation or the change of price index on time . Such questions shall be the significant contents for the state to resolve under its guaranty duty on social security . After fully review , it would be more consistent with the constitutional intent to protect people's social security .

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Translated by:  
Yih-Feng Huang

#### 四、根據基本國策，國家對人民社會安全義務負有擔保責任

查基本國策國家對人民社會安全之義務，並非以單純給付為已足，而應善盡其擔保責任。本案之遺屬津貼採一次給付，對受領人是否能據此維持其生計，並未能盡詳實審查之能事，如因投資失敗、揮霍或浪費殆盡，其後之生計又如何維持。又因非年金支付方式，故無從依通貨膨脹或物價指數隨時調整，諸如此類之問題，均係國家對社

會安全給付之擔保責任亟應重視之內容。允宜通盤檢討後使其更加符合憲法保障人民社會安全之意旨。