

**Social Rights under the Dilemma between the Constitutional
Guarantee and the Social Policy Changing:
A Comparative Study of Adjudications of German Federal
Constitutional Court on the Issues of Old Age Pensions and
Subsistence Minimum**

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Abstract

Constructing and maintaining the social security systems which aim to realize the constitutional clauses of the welfare state are based on the current governmental financial capacity; and the economics, social and demographical conditions. Because of dynamic changing of those conditions the policy makers keep on modifying and adjusting the social rights provided by the social security laws. How far could the social rights be protected by the constitution law against the adaption? Would the constitutional guarantee of social rights hinder the necessary reform of social policy? Such questions aren't discussed sufficiently in the theses in our country and the constitutional interpretations of Judicial Yuan.

This article will focus on the issues of rights of old age pensions created by the social insurance and rights of subsistence minimum provided by the public assistance systems, and analyze how the German Federal Constitutional Court brings the considerations of dynamical characters of social policies into the legal doctrines. Thereby it has clarified precisely the extent of constitutional proprietorship of old age pensions, and also developed procedural requirements to strengthen constitutional examining of contents of subsistence minimum. The thinking path of the German adjudications provides a mode of interactive argumentations between constitutional interpretations and dynamical changing

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on the social policies. All in all, the theses and verdicts in Germany are worthwhile for us to refer to the judicial review on the issues of constitutional guarantee of social rights.

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