

A Study on Theoretical Construction of the Right of Claim on Social Assistance Benefits: From the Perspective of Comparative Study in the Mainland and Taiwan of China

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Abstract

In China, governmental administrative departments conduct property investigations to confirm social assistance objects whose incomes can not maintain a basic standard of living, namely these people legally obtain the right of claim on social assistance benefits. The right of claim on social assistance benefits not only reflects the effective implementation of the benefits administration legislation which protects individual legitimate rights and interests, but also is a response to the goal of the state public welfare administration which is expected to guarantee a basic living standard for everyone.

Key words: Benefits administration; Social assistance; The right of claim on social assistance benefits; Administrative action.

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INTRODUCTION

In 1938, the German scholar Ernst Forsthoff put forward that “The provision of public services for the living is a task of the modern administration.” This important proposition had become the core of Forsthoff’s benefits administration theory that gave a theoretical basis of the protection of individual rights in public law. The concept

of benefits administration has been gradually accepted by the administrative law scholars in the mainland China. At present, the governmental benefits administration can be approximately divided into the governmental supply administration, the governmental social security administration and the governmental aids administration and so on. The governmental social security administration can be divided into the social assistance (public assistance), social insurance, social benefits and social welfare (Minami, 2009). This paper will take the right of claim on social assistance benefits as an example, to explore its implementation mechanisms and its relief methods. This way may have more practical significance than overall justifying the legitimacy and rationality of the right of claim on social assistance benefits.

1. THE PAYMENT METHODS OF SOCIAL ASSISTANCE BENEFITS

Social assistance is generally considered to be the last means for against poverty in the system of social security (Ditch, 1999). Since entering modern times, along with the development of the society, social assistance has been often defined as a service or system, in which, the benefits paid by the government aid low income people who’s earning less than the minimum living level. Compared to other forms of social security, social assistance is a payment pattern that is directly for the purpose of people’s survival and it does not take the form of reciprocal payment against delivery as a precondition. After the governmental administrative departments conduct property investigations to confirm social assistance objects whose incomes can not maintain a basic standard of living, these assistance objects legally obtain the right of claim on social assistance. The right of claim on social assistance benefits not only reflects the effective implementation of the benefits administration legislation which protects the individual legitimate rights

and interests, but also is a response to the goal of the national public welfare administration which is expected to guarantee a basic standard of living for everyone.

In the legislation of many states, social assistance definitions reflect both the purpose and intention of social assistance. In our country, “Social Assistance Law (Draft)” defines that the social assistance refers to material aids and services provided by the state and the society for citizens who are difficult to meet the basic needs of survival by relying on their own efforts.¹ In the “Social Assistance Law”² promulgated in the Taiwan region of China, the first article points out that the purpose of the social assistance law is “to take care of low and middle income households and victims of emergency trouble or disaster, and to assist in their independence”. The second article defines types of social assistance that are “living assistance, medical aid, emergency relief and disaster relief”. Living assistance, also known as life protection or the resident minimum living guarantee is the core of social assistance. In the Taiwan region of China, in the social assistance, “more important assistance is the living assistance” (Shen, 2007). In the mainland, “Social Assistance Law (Draft)” points out that “the basic content in social assistance is guarantee for the resident minimum living level”. Generally speaking, providing social assistance benefits must follow a legal procedure and have governmental administrative departments’ relevant decisions. For example, the “Taiwan Social Assistance Law” defines the application procedure of living assistance: First, low income households apply for living assistance benefits (low income households apply for living assistance benefits in the local competent authority of city directly controlled by the central government or county (city)); and the local competent authority (the competent authority of city directly controlled by the central government or county (city) should, within five days as of accepting an application, send inspectors to investigate the applicant family environment, economic status and so on) verifies the application, and then approves the application (if all documents are submitted, the application comes into effect in the approval month). In practice, a low income household generally applies for the living assistance

benefits in the local governmental office of the household registration area. After an initial check for the application, the application is sent to the Bureau of Social Affairs. The Bureau begins to review the application. The day when the applicant gets all documents ready is the accepted day for filing the application. After the approval, the living assistance benefits will be sent to the applicant from the month of filing the application. The competent authority regularly or irregularly checks whether the low income households are eligible, if it finds that a household is not an eligible low income household, it will cancel the relevant approval since the day when it finds the fact, and stop to grant living assistance benefits in the next month (Shen, 2007).

2. THE BASIS OF THE RIGHT OF CLAIM ON SOCIAL ASSISTANCE BENEFITS

2.1 The Source of the Right of Claim on Social Assistance Benefits

The right of claim on social assistance benefits is a right that a relative administrative person uses to claim benefits from the government for supporting his life and also is a right of claim under the public law. The right of claim under the public law comes from a special legal status. The special legal status is the basis of the right of claim and also is the object that the right of claim serves and protects (Xu, 2010). When we talk about the relation between the individual rights and the state’s rights, the individual legal status which is corresponding to subjective public law rights of the individual can be divided into three types: First, the passive status; the second is positive status, the third is the active status.³ The “positive status” reflects that the freedom of the individual can not be achieved if there is not the state or legal norms formulated by the state. This freedom applies to the beneficial right, procedural right and participation right. Among them, the positive status in basic rights for the public law points to some rights including the administrative beneficial right. Beneficial right, compared with the traditional freedom right, is an individual right that an individual requires the state to do a special action actively for him so he can enjoy the benefits. Beneficial right is aimed at the duty of the state, namely the state needs to actively provide certain services or benefits for the realization of the citizen’s fundamental rights. The content of the benefits may be the legal processes which guarantee the realization of the citizen’s fundamental

¹ On August 15, 2008, Legal Affairs Office of the State Council issued the “Social Assistance Law of the People’s Republic of China (Draft)”, to collect people’s views of the community. The article 3 defines that the social assistance refers to material aids and services provided by the state and the society to the citizens who are difficult to meet the basic needs of survival by relying on their own efforts. The basic content of social assistance is guarantee for the resident minimum living level. The implementation of special assistance, natural disaster relief, temporary relief and other assistance is according to the actual situation.

² In China’s Taiwan region, “Social Assistance Law” was promulgated on June 14, 1980, and the law had a total of 27 articles at that time. The law was amended in 1997, 2000 and 2004, and the recent revision was made on December 10, 2010. It has been in force since July 1, 2011, and has a total of 46 articles.

³ Some literature divides the individual legal status into four types: The first is the passive status that individuals only have obligations such as military service obligations without rights; the second is the passive status such as individuals enjoy the freedom; the third is the positive status and the fourth is the active status.

rights and services, and also may be material and financial aids for the citizen (Zhang, 2006). The administrative beneficial right is a basic right corresponding to the right of claim. The right of claim comes from the administrative beneficial right. The right of claim is a secondary right. The right of claim is a right with independent status. The purpose and significance of its existence are to achieve the basic right content (Yuan, 2005), meet interests demand and balance interests.

2.2 The Legal Basis of the Right of Claim on Social Assistance Benefits

In the modern administrative law, the right of claim includes two types: First, it is the right of claim on protection, namely a relative person requires the administrative main body to protect his personal rights, property rights, other legitimate rights and interests, and rights against illegal actions; second, the right of claim for satisfying the interests, namely a relative person's right that he uses to require the administrative main body to be act or omission, in order to meet his certain interests (Yu, 2011). The right of claim on social assistance belongs to the second type and is the right that a relative person requires the governmental administrative departments to take payment action to meet his needs in living support, Medical aid, emergency relief, disaster relief and so on. The legal basis of the right of claim on social assistance is a specific legal norm – the social assistance benefits law. In the specific social assistance law, the main body of social assistance benefits, the main body of the right of claim on social assistance and the content of social assistance benefits should be established in the law and regulations. If it is stipulated in the law, the normative basis for the right is able to be effectively formed. In this case, the social assistance law can clearly define the right of claim on social assistance, or we can derive the right according to the existing social assistance law. However, it is not that all of laws explicitly state to grant a right of claim, many administrative laws have no direct terms to grant citizens the right of claim, and some laws only stipulate the obligation or duty of governmental administrative departments. It is a difficult problem in public law whether a right of claim can be inevitably derived from the corresponding terms of obligation and responsibility of administrative departments, and solving the problem often depends on a judge's interpretation (Xu, 2010).

3. ELEMENTS FOR ESTABLISHING THE RIGHT OF CLAIM ON SOCIAL ASSISTANCE BENEFITS

In addition to discussed the origin of the right of claim on social assistance benefits and the legal norm basis as the theoretical pillar above, the specific elements of the establishment of the right of claim on social assistance

benefits also include a clearly established benefit standard according to the law and the specific implementation provisions of the administrative body that is the governmental administrative departments for giving social assistance benefits.

3.1 The Elements for the Benefit Standard

Sometimes, because the law is too abstract or not fully combined with the local reality, it is the lack of operability for implementing a benefit standard in the judicial practice and it may have many questions in confirming a specific right of claim. For example, in China's Taiwan, the "Supreme Administrative Court" made a sentence in the year 2011 (the judgment no. 1389), in this case, the social assistance applicant had to sue the applicant's only son (legal supporter) to require the support. After the hearing of a civil court, the civil court decided that the legal supporter should monthly pay 2,000 new Taiwan dollars as living expenses of the applicant according to the legal supporter's economic ability. However, according to the property investigation regulations of the article 4 and 5 in Taiwan's "Social Assistance Law", no matter the legal supporter can actually or should pay how much the amount, as long as the legal supporter has the ability to support, the applicant and the legal supporter will be directly treated as a economic community and all incomes of the applicant and the legal supporter will be summed up. The "Supreme Administrative Court" decided that the legal supporter had the ability to pay \$2,000 a month in alimony, thus the legal supporter was not a person who had no ability to support other people, as defined in the term 3 of the article 5, so the legal supporter also belonged to the family of the applicant. Because the legal supporter had 30,000 new Taiwan dollars incomes every month, this decision caused the applicant could not become a low income household because the household income was too high.

The Social Assistance Law has a presupposition that defines that lineal blood relatives averagely share all resources. In the cases of supporting older lineal blood relatives, this presupposition is often not associated with social facts, even ignores the legal supporters' economic ability, and is more stringent than the provisions of the Family Law. It may cause presupposition contradictions in the relevant laws and the disability of the society safety net finally. (Chen, 2013)

3.2 The Elements of Administrative Action

The administrative action's implementation is a key that decides whether the right of claim on social assistance is established. The administrative action is called the "administrative settlement" by scholars in Taiwan (Zhang, 2003). The administration of social assistance, as a whole, has not a legal relationship with an applicant of social assistance before his applicant. Because of a decision of the administration, a legal relationship has been established that the administration will give the applicant benefits. Therefore, an administrative action

of social assistance is a settlement that establishes a new legal relationship and forms a series of rights and obligations between the parties who have not had these rights or obligations before. Because the administrative action is directly related to the rights and obligations of the parties and is connected to the administrative review and the administrative litigation, therefore the administrative action has always been the focus of both theory and practice study. The administrative actions, the implementation content of administrative actions, the related rights, and the administrative remedy and so on are directly affecting the effective implementation of the applicants' rights and have the vital significance.

According to the provisions of the Taiwan's "Administrative Appeal Law" and "Administrative Litigation Law", the administrative departments have the obligation to render the administrative disposition for the people's application cases according to the law. If a person's rights or legal interests are damaged by the administrative departments which should settle a case but not, the person should first follow the sequential appeal procedure, then he can bring a litigation over the administrative obligations and he shall not directly bring a generally benefit lawsuit. Taiwan scholars generally divided the administrative appeal into two interpretations of broad sense and narrow sense. The broad sense appeal refers to a general administrative appeal of a relative administrative person and the appeal has also become an arbitrary appeal. The narrow sense appeal, also known as a formal appeal, refers to an applicant requires a review for a settlement from the administrative department which makes the settlement or its superior department according to the Taiwan "Administrative Appeal Law", because he suffers damage of his rights due to illegal or improper measures of the administrative department. Settling the appeal belongs to the function of administrative adjudication which constitutes the antecedence procedure of an administrative litigation (Ren, Cui, & She, 2006). A litigation over the administrative obligations is a method that an applicant requires for a remedy from a higher administrative department or the former administrative department when the applicant thinks that the former administrative department illegally or improperly handles his case, improperly dismisses a settlement, or the former administrative department has not made a settlement in the statutory period in accordance with the law (Li, 2006). In the current Taiwan existing administrative remedy system, a person must bring an appeal to an administrative department first, and then he can bring litigation over the administrative obligations.

With the minimum living standard security as an example, China promulgated the "Regulations on Guaranteeing Minimum Subsistence for City Residents" in 1999, the article 15 stipulates that an urban resident may

apply for an administrative review if he is not satisfied with the decision made by the civil affairs department of the county government, including disapproving his application for the minimum living standard security, reducing or suspending his social assistance benefits, or giving an administrative punishment to him. If he is still dissatisfied with the review decision, he may bring an administrative litigation according to the law. The article 32 of the "Social Assistance Law (Draft)" defines that an applicant or the relief object may apply for an administrative review according to the law if he is not satisfied with the decision made by the social assistance management department or relevant agencies, including disapproving his application for the social assistance, adjusting or suspending his social assistance, or giving an administrative punishment to him. If he is dissatisfied with the review decision, he may bring an administrative litigation according to the law. Both "Regulations on Guaranteeing Minimum Subsistence for City Residents" and "Social Assistance Law (Draft)" mention the word "may" in the use of a method for the administrative remedy. The word "may" has a selective meaning that seems to imply that an applicant "may" apply for a review or "may" bring an administrative lawsuit, and the applicant can choose a method for administrative remedy when the administrative action is controversial; and "dissatisfied with the review decision" seems to show that an applicant should apply for a review first when the administrative action is controversial. However, in the judicial practice, some courts have already put the administrative review as the prepositive procedure in the social assistance benefit disputes. For example, in the administrative case no. 0071 of the Changsha City Intermediate People's Court of the Hunan province. "The Administrative Assistance Dispute Case of Social Security of Li Xiaoping et al and the Lowest Life Standard Security Bureau of Furong District of Changsha City" in 2009, the second instance court held that

According to the article 15 of the 'Regulations on Guaranteeing Minimum Subsistence for City Residents', the case is a review case..... Li Xiaoping, one of the appellants, no longer wants to bring an administrative litigation after he accepted the review decision from the Civil Affairs Bureau of Changsha City. However, another appellant Li Wei does not apply for an administrative review. Li Wei does not meet the statutory conditions because Li Wei directly brings an administrative lawsuit to the People's Court. From the actual situation of the case, it has no practical significance to require Li Wei to apply for an administrative review first and then bring an administrative lawsuit. In order to reduce the litigant's trouble, it is not necessary to change the judgment of first instance which requires Li Wei to apply for an administrative review first and then bring an administrative lawsuit.

Because the Law or the regulations has fuzzy provisions for the implementation of the administrative remedy, it is bound to affect the choices of the parties. It leads to chaos in the administrative procedure, lower

judicial efficiency and conflicts among the legislation, administration and judiciary. This situation will not help the realization of the right of claim on social assistance benefits. Further, for clearly defining administrative actions as elements of the establishment of the right of claim on social assistance benefits, on the one hand, we should strengthen the formulation of the legal norms to provide accurate, clear and strong basis and guarantee for judicial trials; on the other hand, we should develop and enrich the types of administrative litigation of our state, increase and strictly define the types of litigation over the administrative obligations. It will gradually solve the problem that the judgment form of administrative litigation has the limitation and difficult to adapt to hear administrative cases.

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