

Right to Claim a Special Contribution Fee (A Statutory Care Legacy) in Austrian Private International Law (summary)

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Japan's system of special contribution claims was introduced in 2018 in Article 1050 of the Japanese Civil Code. This system belongs to an unusual category from a comparative legal point of view, for example, no similar system exists in the German Civil Code (BGB). In contrast, in Austria, the system of *Pflegevermächtnis* was introduced in the Austrian Civil Code § 677 (ABGB) by the Inheritance Amendment Act of 2015 (ErbRÄG 2015).

The *Pflegevermächtnis* was legislated with reference to Article 2057a BGB (equivalent to Article 904bis of the Japanese Civil Code), however, the resulting legislation is similar to the Japanese right to claim a special contribution fee.

In Austria, as in Japan, an aging society has developed along with changes in the composition of the population due to the ever-increasing average life expectancy. As the age of the population increases, the number of people who require long-term and constant care increases, as do the number of relatives or living companions who take care of the elderly. However, the elderly are usually cared for by their close relatives or others who are obliged to assist them, and this care is often provided free of charge or with little or no compensation. Compensation for the contribution for such caretakers to the cared-for has become a real and important issue.

Pflegevermächtnis has been described by Austrian scholars as “a creditor's claim dressed up as inheritance law (*schuldrechtlichen Anspruch im erbrechtlichen Kleid*)” and has been described as “a Janus-head-like legal personality”. In addition to such metaphorical criticisms, the legal structure of “legal bequests (*gesetzliches Vermächtnis*)”, which the Austrian legislator is said to have assumed, has now been subject to various criticisms by scholars. These criticisms seem to stem from the problem of the unclear legal nature of a bequest to care.

There are two theories regarding the determination of the nature of *Pflegevermächtnis*: one says that it is an inheritance law and the other says that it is unjust enrichment. The purpose of a bequest is to compensate the caretaker whose expectation of counter-benefits

to the caretaker's benefits has been betrayed (compensation). Because of this purpose of the caretaker bequest, Baldovini characterizes the caretakers bequest claim as a creditorial claim. Since there is no contractual relationship between the caretaker and the donee, the caretaker bequest claim is considered a type of unjust enrichment claim. The care bequest claim is a type of unjust enrichment claim, which is called *condictio causa data causa non secuta*. This makes an important suggestion for the determination of the nature of the right to claim special contribution under the Japanese private international law.