

Study on the Legal Protection System of Family Elderly Sustainment in Law of Descent

LI Xin, Anhui University of Technology

Abstract: During the transition process from “family elderly sustainment” to “social elderly sustainment”, and the trend of diversification of “family elderly sustainment” and socialization of its development mode, we should pay attention to law of descent when study on the legal protection system of family elderly sustainment. We need to improve the system of the elderly support, adjust the rank of dependents, enlarge the endowment scope, extend the endowment obligation with spiritual support, and reform the execution and collection model of alimony. We also need to construct the guardianship system for the elderly, including the selection for the guardians and defining their obligations.

Key Words: “family elderly sustainment”; “social elderly sustainment”; the advanced elderly; support; guardianship

The amendment of the law on the protection of the rights and interests of the elderly has been basically completed. One of the highlights of the draft is the transition from “family elderly sustainment” to “social elderly sustainment”. Does this mean that “family elderly sustainment” has become a “declining aristocracy”, or that “social elderly sustainment” will totally negate the function of “family elderly sustainment”? But the author believes that it is not the case. Because even in a high welfare society with a sound social security system, as a primary social control institution, its material and spiritual endowment functions are irreplaceable by any other social mechanism. Under this new situation, we should still vital on “family elderly sustainment” when we promote the coordination between family and social

About the Author: Li Xin, Female, born in Chaohu, Anhui Province, associate professor of Department of Public Management and Law, Anhui University of Technology, Post-doctoral of law, studying on civil and commercial law. (Anhui University of Technology, Ma Anshan 243032, China)

elderly sustainment, especially for the guarantee of “family elderly sustainment” under the law of descent.

1.The Sustainment for the Elderly

1.1 The Introduction to the Model of Sustainment for the Elderly

The “elderly’s self-sustainment”, “family elderly sustainment” and “social elderly sustainment” are three basic models for elderly endowment. “The elderly’s self-sustainment” refers to the elderly making a living relying on savings, labor income and other incomes rather than on their children, relatives or social security. In other words, “the elderly’s self-sustainment” is the sustainment model that aged people depends on self-financial support for elderly life. “Family elderly sustainment” refers to the elderly depending on family endowment resources, including the sustainment forces from spouses, children and relatives. Generally speaking, “family elderly sustainment” can be understood as “offspring sustainment”, namely, the offspring provide financial support, life care, spiritual comfort and personal guardianship to the elderly. While, the “social elderly sustainment” refers that the society will provide sustainment resources for the aged people, sustaining and assisting them. The main difference between those three sustainment models is who provides the endowment resources, including material, caring and spiritual resources.

1.2 The Coordination of “Elderly’s Self-sustainment”, “Family Elderly Sustainment” and “Social Elderly Sustainment”

In the period of social transition, the domestic existing endowment protection system, especially the traditional “family elderly sustainment” model is changing, while the new endowment system has not yet fully formed. Thus, the living conditions for the elderly has deteriorated in varying degrees. Under the realistic situation, it is of great importance to full play the role of those three sustainment models and to promote the coordination among them.

The purpose of elderly sustainment is to meet the needs of aged people. Under the co-existence of “elderly’s self-sustainment”, “family elderly sustainment” and “social elderly sustainment”, we need to create join force for the elderly sustainment.

Generally speaking, in regard to meet the needs for the elderly, the join force of those three sustainment model is much bigger than the combination of “elderly’s

self-sustainment” and “family elderly sustainment”, or “social elderly sustainment” alone. At present, we put forward the transition from “family elderly sustainment” to “social elderly sustainment”, which does not mean the denying of the function of “family elderly sustainment”, or totally replacing “family elderly sustainment” by “social elderly sustainment”, but stress on mutual coordinating, complementing and promoting of the two models. We are trying to build the social endowment service system with Chinese characteristics¹ accompanied by “government domination, departmental coordination, social participation and public assistance”, and at the same time using “family elderly sustainment” as the cornerstone, in order to meet the needs and guarantee the rights of the elderly to the greatest extent.

2. “Family Elderly Sustainment” in China

2.1 The Tradition for “Family Elderly Sustainment”

As for the cultural traditions in ancient China, there is no doubt that filial piety is the most important of all virtues. As the old saying goes, “When parents are alive, we do not travel faraway.” According to the records of *The Analects*, once Meng Yizi asked what filial piety was; Confucius replied, “That parents, when alive, be served according to propriety; when dead, be buried and sacrificed according to propriety.” It means that when parents are getting old, children should perform the duty to support them; when suffering from illness, children should seek treatment in time and take good care of them; when passing away, children should deal with funeral affairs and sacrifice according to the local customs to remember parents’ nurturing and teaching. To ensure the carrying forward of filial piety, governors turned traditional morality into law. “Ten abominations” of Bei Qi Lv and “ten felonies” of Kai Huang Lv both contain the crime of “impiety”. “Ten abominations” of Tang Lv Shu Yi · Ming Li Lv contain the following unfilial behaviors, “When parents are alive, children divide up family property and live apart.” “Children are deficient in sustaining the elders of the family.” “Children are maltreating their grandparents or parents.” Once violated, the offspring will be severely punished. That is to say, the society adopted “family elderly sustainment” as the dominating way to sustain the elderly in ancient China. Children have the duty to sustain their parents, grandparents and other elder lineal consanguinity, which is also stipulated by law. If violated, people will be held accountable and punished according to law. From this we can see that “family elderly sustainment” has been the most common way for Chinese people to support the aged people for thousands of years.

2.2 The Latest Development for “Family Elderly Sustainment”

With the aggravating of aging population, the gradual disappearance of big family and family miniaturization, the contents and forms of “family elderly sustainment” are separated, at the same time the forms are also diversified. Judging from the present situation, the transformation of “family elderly sustainment” can be divided into three basic ways: the first one is living-together type which is the traditional way for supporting the elderly; the second one is living-apart type which leads to a common phenomenon of “empty nest family”; the third one is the socialization of “family elderly sustainment”. In modern society, some elderly people choose geracomium, senile apartment or other pension institutions to sustain themselves, but the financial expenditure comes from their family. Although the socialization of “family elderly sustainment” appears to be transformed the endowment responsibility from family to the society, it is actually achieved by “family’s purchasing of pension resource”. Therefore, the third way can also be classified as “family elderly sustainment”. The socialization process for “family elderly sustainment” refers to the process that the society gradually takes the responsibility for supporting the aged people, but the family still need to pay necessary pension resources.

2.3 The Indispensability of “Family Elderly Sustainment” at Present Stage

Firstly, demographers usually judge an aging society by the criterion that if the proportion of the elderly (over 60) to the total population is over 10%. The growth of the aging population in mainland China was speeding up; and the elderly population showed its first peak of growth. In 2015, the population of aged people over 60 in China has reached to 222 million, accounting for 16.15% of the total population.² This indicates that China has entered into the aging society. China is currently in the primary stage of socialism and will remain in this stage for a long time, which is the basic national condition in China. Under this condition and the predicament of “grow old before getting rich”, it is impracticable and unrealistic to totally count on the society to sustain the aged people.

Secondly, from the intercultural perspective, “family elderly sustainment” is the oldest, the most basic, important, vigorous and advantageous way of supporting the elderly. Chinese “family elderly sustainment” is the “feedback” way of elderly endowment. It is the maintenance for inter-generational relationship between “feeding” and “feedback”. “Family elderly sustainment” begins with the supporting and respecting of the elderly, which enhances family cohesion, promotes the harmony among family members and furtherance social stability and harmony. “Family elderly sustainment” is not only the simple economic interaction, but also the natural kinship between parents and children. In addition, “Family elderly sustainment”

provides three major conditions: material sustainment, life care and spiritual comfort, which bring more intimacy and the sense of belongings to the elderly than other sustainment models. At the same time, it is in accordance with the physiological and psychological characteristics of the elderly, by maintaining the traditional custom of respecting the aged people and full playing the function of “family elderly sustainment”. Singapore Prime Minister Li Guangyao, once highly praised the pattern of three generations under one roof, proved by Chinese history for thousands of years, for preserving the value of life for the elderly. From a certain point of view, “family elderly sustainment” is the younger generation’s recognition of the elder generation’s family and social identification and absolute authority in the family, which fully embodies the value of the aged people.

From here we can see, the trend of diversification and socialization of “family elderly sustainment” is due to the limitation of objective condition that the elderly cannot get full sustainment from their family. Therefore, the society should make maximum use of the resources provided by the family members of the elderly, to build the social endowment service system supported by community service and supplemented by institution endowment, in order to realize the full functions of elderly sustainment, like material support, physical care and spiritual comfort, and fetch up the negative functions of “family elderly sustainment” caused by the conflict between the role of “career people” and “filial children”, especially the weakening of spiritual comfort and daily life care. However, we should not consider that the family members should be relieved or exempted from the duty of maintenance for the elderly under this condition. No matter how social endowment system develops, family members are irreplaceable in meeting the elderly people’s emotional needs. It is necessary for family members to perform its duty on supporting and guarding the aged people. On the contrary, we should pay more attention to the children’s sustainment and guardianship for the elderly, under the trend of diversification and socialization of “family elderly sustainment”.

3. The Review of Legal Guarantee System Related to “Family Elderly Sustainment” under Law of Descent

3.1 The Systematic Review of the Protection of “Family Elderly Sustainment” Under the Law of Sustainment³

3.1.1 The Rank for the Dependents

Scholars have different opinions on the rank for parents and grandparents enjoying

the rights for endowment. The Proposal and Legislative Reasons Advocated by Chinese Civil Code Scholars hosted by Professor Liming Wang takes reference from German Civil Code and stipulates the rank for the dependents in article 511 as following: the spouse, the younger lineal relatives, and the elder lineal relatives. In other words, the younger lineal relatives have priority to enjoy the rights of maintenance than the elder. The Proposal from the Experts of Marriage and Family Law of PRC drafted by the experts group stipulates in article 130, “If there are several dependents, but the supporters are unable to sustain all of them, the dependents can ask the obligor to carry out their duties as follow rank: (1) minor children, spouse and parents; (2) grandparents and maternal grandparents; (3) son’s children, daughter’s children, underage brothers and sisters”. The Proposal for Chinese Civil Code drafted by Professor Huixing Liang stipulates in the article 1791, “If there are several dependents, the obligor are responsible for supporting all of them. If the obligor is unable to sustain all dependents, the front dependents in the follow rank have priority to ask the obligor to fulfill the obligation: (1) minor children, parents and spouse; (2) grandparents, maternal grandparents, son’s children, daughter’s children, `brothers and sisters.” In general, Professor Liming Wang believes, “If minor children, grandchildren and the elder lineal relatives all need to be supported, it is human nature for the latter to give priority to the former for being supported.” But the drafting experts group of Marriage and Family Law and Professor Huixing Liang both hold the view that parents and minor children should be kept in equal status, enjoying the rights of endowment without particular order. When comes to the rank for dependents between grandparents and maternal grandparents, the experts group and Professor Liang hold different opinions. The experts group considers that grandparents and maternal grandparents are priority in enjoying the rights than grandchildren and minor brothers and sisters. While Professor Huixing Liang views that grandparents, maternal grandparents, son’s children and daughter’s children should remain in equal status in enjoying the rights. From the author’s point of view, it is insufficient that there is no clear provision for the rank between parents and grandparents in enjoying the rights of endowment in Law of Marriage. It is a dilemma that there is no clear regulation for the situation that there are several dependents, but the obligor is lacking of financial ability to sustain all of them. What’s more, how to reconstruct the rank for dependents under the condition of “family elderly sustainment” is also an urgent problem need to be solved by Law of Marriage. We need to draw on experts’ advice in tackling this problem, in the context of “family elderly sustainment”.

3.1.2 The Endowment Scope for Dependents

There are many stipulations about parents' feeding, taking care of and guarding for children in Law of Marriage; and the scholars in marriage law circle are often talking about the parental sustainment and the maximum protection of children's interests in the relationship between parents and children. However, there are few people talking about the issue on children's obligation to sustain their parents. The duty of maintenance between parents and children defined by Law of Marriage in article 21 and 28 stipulates, "When children are unwilling to perform their endowment obligations and the parents are incapable for work or have difficulties to make a living, the parents have the right to ask their children to pay for the pension." "If children are died or unable to sustain the grandparents, the grandchildren who are capable in providing maintenance have the obligation to sustainment the grandparents." According to these two articles, we can see that the mainly endowment scope for dependents are parents and grandparents (under certain circumstances). But for the maintenance for spouse's parents, Law of Marriage has not mentioned yet; and the Law of Elderly Rights only stipulates, "The spouse of supporter should help him in performing the duty of maintenance." But it does not clearly defined that the endowment scope for dependents should contain the spouse's parents. However, the author believes that it is appropriate to bring the spouse's parents into the endowment scope to some extent, which demonstrates the moral integrity and is in line with social morality. Nevertheless, by the increasing of "421" families,⁴ the only child who need to fulfill endowment obligation is facing great stress. The single child not only need to sustain the parents but also the grandparents. Under this circumstance, it is unreasonable to ask them to sustain their spouses' parents. Thus, we can take a reference of Civil Law of Taiwan to limit the responsibilities for supporters in regarding to the endowment for the spouses' parents. According to the article 1114 in Civil Law of Taiwan, when the supporters live with their spouses' parents, there is an obligation of two parties to sustain each other. In other words, the supporters need to provide maintenance for spouses' parents when they are living together. This legislation is worth us to learn.

3.1.3 The "Spiritual Support" for the Elderly

"Spiritual support" refers to the supporter's understanding, respecting, caring for the spiritual life and trying to meet the spiritual needs for the elderly during family life, in order to make them feel happy and comfortable. "Spiritual support" is regarded as an indispensable part for "positive aging"⁵. The Law on the Protection

of the Rights and Interests of the Elderly stipulates in article 11, “The supporters should provide financial support, life care and spiritual comfort for the elderly, and meet their special needs.” The new revised Law of the Elderly also defines, “The supporters who live apart from the elderly should pay a visit regularly.” But some scholars consider that it is unreasonable to put the “spiritual support” into law. They believe, “The supporter’s spiritual comfort and support comes from his moral cognition and is closely related to his morality. If a man has the conscious to take care of the elderly, he will actively do so, even though there is no relevant regulation; however, if a man is unwilling to look after but only provide financial support for the elderly, he will reject to perform his duty, even if there has the relevant legislation... Just imagine, if supporter talks with the elderly containing malicious language, or regularly visits the elderly with insulting behaviors, can we achieve the purpose of spiritual comfort ... Therefore, from the duty performance perspective, it is inappropriate to stipulate the spiritual support obligations in the law.” However, the author considers that this point of view has its limitations. The healthy for the elderly not only depends on food, clothing and life care but also the spiritual status. The “positive aging” in our country can only be achieved by providing financial support and life care for the elderly, and in the meantime by meeting their spiritual needs, trying our best to provide spiritual comfort to them and letting them enjoy spiritual pleasure and happy life. When the material needs of the elderly are basically satisfied, they are more in need of spiritual comfort. They hope that they can often see their children, talking with them and enjoying the happiness of descendants around the knee. But with the living-apart type of “family elderly sustainment” coming out and the “empty nest family” becoming more and more common,⁶ of the elderly are lacking of spiritual comfort. At the same time, due to the large proportion of widowed elderly and the prevailing phenomenon of the elderly living alone, the loneliness for the elderly also increased sharply. It is commonly believed that the life care and financial protection should be contained in the process of parents’ taking care of their children, especially the caring for the minor children. Thus, we should hold a tolerant attitude for “spiritual support”, when comes to the endowment for the elderly. There is no clear stipulation about the actual behaviors for “spiritual support”, in the Law on the Protection of the Rights and Interests of the Elderly. Therefore, we can only pin our hope on the word “Should”. What’s more, there is still lacking of provisions about “spiritual support” in Law of Marriage. The legislative institution does not clearly define the “spiritual support” as an obligation for children and the children’s legal liability for failure in fulfilling the obligation. In this way, “spiritual support” is just a calling

words without practical sense. Therefore, the author hold the view that the legislation in our country should clearly stipulate the duty of “spiritual support”.

3.1.4 The Process Relief on Collection and Enforcement of Alimony for the Elderly

Law of Marriage has stipulated the obligation for children to provide sustainment for their parents and grandparents. But there is no clear stipulation on how to guarantee the enforcement, especially for the collection of alimony; only in article 97 of Civil Procedure Law of the People's Republic of China defines that cases of recourse to alimony can be executed firstly. The enforcement of alimony collection directly impact the financial base of “family elderly sustainment”. In the current cases of alimony collection, the court adopts the mode of “giving priority to private collection and supplementing by compulsory enforcement of the court”. The fragility of this existing collection model is very obvious. First of all, to collect the alimony by the elderly themselves will make them feel inferior and depressed, which will invisibly hurt the elderly both in psychological and emotional. Secondly, because the regular payment of alimony is small and the cost for application for compulsory enforcement is high, the elderly may give up the collection or not collect in time. In judicial practice, it is often the case that the judicial system denies the overdue alimony, since the statute of limitations has already passed. Meanwhile, the court’s compulsory implementation for alimony is a one-time solution. The court only executes the collection when the litigant applies for doing so. This fragmented implementation has difficulty in guarantee the continuous and timely payment of alimony. Therefore, for the implementation of alimony, it is necessary to formulate a set of effective relief measures to ensure the timely payment.

3.2 The Systematic Review of the Guarantee of the Guarding System for Advanced Elderly to “Family Elderly Sustainment”⁷

There is no formal guardianship system for the elderly in China’s existing law. The article 17 in General Principles of Civil Law only stipulates the guardianship for people who has no capacity and limited capacity for civil conduct. There are no corresponding guardianship measures for advanced elderly who are gradually losing their capacity for action because of age. However, “in modern society, there are plenty of aging people need to be protected”⁷. The physical and mental strength of the elderly are gradually declining with the increasing of age. There are plenty of “empty nest elderly” who need to be sustained and took care of during their daily life. The problem of guardianship for advanced elderly with declining capacity for action has become an increasingly pressing issue. We need to construct the

guardianship system for the advanced elderly, under the premise of giving full play to the important role of “family”. However, under the background of “family elderly sustainment”, who takes care of the advanced elderly, and how to take care of are the top priority of the elderly care system.

3.2.1 The Selection and Appointment of the Guardians for Advanced Elderly

In a general guardianship, it is taken for granted that the spouse is the legal guardian for the dependent. However, in regarding to the guardianship of advanced elderly, it is indeed inappropriate for the spouse to act as the first legal guardian. Usually, the spouse of advanced elderly is also in old age. It is still unknown whether the spouse needs a guardian or not, or whether the spouse is physical and mental capable for supervising the elderly. In addition, there is no adequate and effective guardian supply system for the advanced elderly in Civil Law. The author believes that we need to take reference from foreign legislation to improve domestic regulation on selecting the guardian for advanced elderly according to the actual situation in China, in order to give full play the important role of “family elderly sustainment”.

3.2.2 The Responsibilities for Guardian of Advanced Elderly

In contrast with the guardianship provisions in General Principles of the Civil Law, the guardianship of the advanced elderly includes personal care and property management. Personal care refers to the affairs concerning the dependent’s life and recuperation, including providing help for the elderly’s physical and health. But the actual nursing work is not included in the obligation of supervising the elderly. Nevertheless, in the context of “family elderly sustainment”, children should respect for the elderly’s willingness when providing guardianship to them.

The financial management for the advanced elderly includes commodity exchange; pension income and expenditure; personal assets management; personal savings and capital management, like the storage for relevant documents, deposit books and certificates. However, when comes to the handling of real estate, such as housing, the relevant organization should appropriately limit the guardian’s property management right for the elderly. This is also a good solution for handling the housing disputes between the elderly and their children in china. According to statistics, among the disputes of supporting the elderly, housing disputes accounted for more than 30%. In rural areas, it is very common for the elderly having disputes with their children for housing. And the living conditions for most aged people are lower than those of their children and other family members. In the city, because of

the housing shortage, many aged people have no choice but living together with their married children. Some adult children change the housing property without authorization. And some even drive the aged people into the corridor or balcony on the ground of overcrowding, which seriously violates the elderly's right of habitation. ⁸Although Law on the Protection of Rights and Interests of the Elderly has made a clear stipulation to the advanced elderly's right of habitation, but it is difficult to carry out due to the lacking of concrete procedure. In order to avoid the negative mental impact on the elderly, we need to limit the guardian's residency management right.

4. The Rethink of Legal Protection System Related to “Family Elderly Sustainment” in Law of Descent

4.1 The Improvement for the Endowment System for the Elderly

4.1.1 The Adjustment for the Rank of Dependents

As mentioned earlier, the Law of Marriage has no clear stipulation on the rank of dependents like parents and grandparents. Therefore, we need to reconstruct the rank of dependents under the background of “family elderly sustainment”. As for the rank of parents in enjoying the rights of endowment, the author holds the view that we should put the underage children, parents and spouse into equal status. Indeed, we need to protect the interest of underage children and spouse. However, under the basic national conditions for surging of the population aging and slow development of domestic social security system, we need to take a correct attitude towards the family's vital function in elderly endowment. To emphasis on “family elderly sustainment” means that we should also attach great importance to children's obligation of supporting the parents. We don't need the provision similar to the Civil Law of Taiwan defining that the elder dependents has priority to enjoy the right of endowment than the younger dependents. ⁸ But we should realize that our parents provide us life care without preconditions, it is unreasonable to give spouse and children the priority to enjoy the right of being supported than parents when they all need sustainment. Therefore, it is appropriate to stipulate in Law of Marriage that to keep spouse, parents and children in the same order for endowment and provide sustainment according to the portion.

When comes to the endowment rank of grandparents and material grandparents, the author agrees with the provision stipulated in the Proposal for Chinese Civil Law Draft drafted by Professor Huixing Liang. The provision defines that to

keep grandparents, material grandparents, son's children and daughter's children in the same rank for endowment. We emphasize on the importance of "family elderly sustainment", the younger generation's endowment for the elder and the children's sustainment for parents, however, the interests of younger generation cannot be ignored neither. The protection for the interest of children at greatest extend and the sustainment for the elderly should be equally important, neither can be neglected. It is reasonable to keep grandparents, material grandparent, son's children and daughter's children into equal status. Therefore, if there are several dependents and the supporter is lacking of financial ability to sustain all of them, we can arrange the rank of dependents as follows: (1) spouse, parents and children (2) grandparents, material grandparents, son's children, daughter's children, brothers and sisters.

4.1.2 To Include the Spouse's Parents into Sustainment Scope under Certain Circumstances

The spouse's parents are not included in sustainment scope in China's existing laws. Families are the basic units for supporting the elderly. The endowment for parents by either side of the couple is an important task for a family. The endowment needs far more the help from the spouse. At the same time, we need to mention the stipulation in the Law of Succession. The stipulation defines that the widowed son/daughter-in-law who provides the endowment for the spouse's parents can be listed as the first successor. This provision coincides with the suggestion that we incorporate the spouse's parents into the scope of dependents under certain circumstances. In other words, only the spouse who performs the duty for supporting the elderly has the right for succession. As mentioned before, in order not to excessively increase the obligation of endowment for spouse, and consistent with the structure and common life style of families in the real society, we can take a reference of Civil Law of Taiwan limiting the supporter's obligation when incorporate the spouse's parents into the scope of dependents. That is to say, when the supporter lives with the spouse's parents, there is an obligation of supporting each other between two parties.

4.1.3 To Incorporate "Spiritual Support" into the Endowment Obligation for the Elderly

We can draw on experience from foreign regulation about "spiritual support" for the elderly. German laws have detailed provisions. German legislation clearly define by enumeration that children must spend one third of their legal holidays to visit and accompany for parents. When it comes to parents' birthday, wedding anniversaries and other moments that will impact on elderly's emotions, children

must visit their parents and send blessings to them at the first time. If children neglect the “spiritual support” for the elderly for a long time, the elderly can disclose to the community. After the disclosure, the policeman will give warnings or financial punishment, even detention for the children. Some northern European countries has regulated the housing distance between children and their parents, and how many times they should spend to visit their parents per day, per week, per month and per year.⁹ We should take examples from foreign legislation to set general articles for “spiritual support” and stipulate the obligation of “spiritual support” for the adult children. If the children refuse to carry out their obligation, parents have the rights to ask their children to make apologize and meet their basic spiritual needs. If the circumstances are serious, the relevant departments can protect the rights and interests for the elderly by admonition, make a statement of repentance and detention for the supporters, and so on. At the same time, the listing articles have clearly stipulated that children must make a phone call or visit to greet parents during their birthday, double Ninth Festival and some other memorable occasions. Children’s abusing, insulting, slandering and other mental abusing to the elderly is strictly forbidden.

4.1.4 To Reform the Collection and Enforcement Model for Alimony

In order to ensure the financial base for “family elderly sustainment”, we need to reform the existing model for collection and enforcement of alimony. We can take a reference for foreign legislation to ensure the broad authority of the court in the acquisition of information and operation process and the adequate, timely and effectively collection for alimony.

First of all, we need to provide information support. In order to guarantee the richness, realistic, comprehensive information of obligor, we should endow the court with the power to obtain obligor’s information through different channels, such as from the obligor’s work place, financial institution and other institutions relevant to obligor’s income and property. Secondly, endow the court with the power to collect the alimony. The litigant can voluntarily apply for the court to collect alimony for them. If doing so, the litigant should register the alimony agreement or protocol in executive board of the court. The court will help litigant to collect the alimony regularly and continuously, and then transfer the alimony to litigant. This kind of collection can be continued until the applicant’s apply for withdrawal or after the death of the applicant. Again, during the process of the enforcement of the court, we can take a reference of the maintenance regulations stipulated in Singapore law and the deduction of alimony from children defined in American law. ⁹If obligor defaults on alimony payment, the court can directly deducts the pay-

ment from obligor with a fixed alimony payment unit. If obligor without a fixed alimony payment unit defaults on alimony payment, the court can revoke their business license, driving license and other qualification certificate, or limit and prohibit their ability to get loan or other preferential policies.

4.2 To Construct the Guardianship System for the Advanced Elderly¹⁰

Compared with the legal system of maintenance, most of the countries in the world have a complete legal system for the caring of advanced elderly. Many countries have special stipulation for the elderly, especially for the advanced elderly, as a special group in the adult guardianship system. France has amended its provision of guardianship system in 1968, stipulating that the actual capacity for action of the elderly declining with age can be judged by personal cases review. The relevant department can carry out “special judicial protection or guardianship, and properly management” for them. Germany has also revised its legislation in 1990s, to replace the guardianship and protection system by holding in trust. Germany has also established the anti-aging authorization system which allows the elderly with capacity for action to authorize the people they trust as their representatives, when they are losing the ability to act. Japanese adult hindsight system¹¹ selects assistance for people with mild dementia or mental disorder. In the meantime, they has promulgated a special law-Law of Arbitrary Guardianship, which is very suitable for advanced aging society. The common law countries have established the continuous agency authority system on the basis of judicial precedent in 1950s, which involves not only the property management but also the life care for the elderly. Therefore, we need to draw on advanced legislation to incorporate the advanced elderly into guardianship and improve the domestic guardianship system for advanced aged people.

4.2.1 The Selection of Guardian for Advanced Elderly

According to the articles 1773 to 1792 in Civil Code of Germany, the advanced elderly has a bad or good physical condition, but advanced in ages, wandering in spirit and unable to deal with their own affairs; if their children have a good mental and spiritual condition and willing to take care of the elderly and his property; under this condition, the court can choose that person as guardian according to his application or ex officio. The German guardianship court choose a natural person as guardian with following characteristics: The natural person is within the scope of duties prescribed by the court, to deal with the affairs of the elderly according to law; and take care of the elderly by themselves in necessary scope. If the adult have

no suggestion for candidate of guardian, we should take into account the kinship or other relationships, especially like parents, children, spouse and life partner in same sex; and the danger of conflict of interest in choosing the guardian. Only if there is no other suitable person who is willing to perform the supervision obligation, shall we choose the guardian from the person in the profession. According to the article 372 of the Civil Code of Switzerland, the adult that unable to deal with his own affairs due to worn with age, other diseases or lacking of experience can be arranged for guardian after application. The relevant guardianship department should choose the spouse or close relatives of the dependent as guardian. Meanwhile, the law has also regulated that the adult with age of 60 can refuse to accept the role of guardian. The article 490 of the Civil Code of France has also regulated that the government can provide protection for the people weaken by age. What's more, the family's supervision should precedence over the relevant management institutions. ¹⁰In other words, in regard to appointing guardian, countries like Germany, Russia and French all taking consideration of kinship and family relationship. Generally speaking, spouse and children are the first choice for the guardian for advanced elderly.

The author hold the view that the primary guardian for advanced elderly should be chosen from spouse under age of 60 or grown up children, according to realistic national conditions. Confucius said, "I was began to study at the age of 15; to be independent at the age of 30; to understand the world at the age of 40; to know the destiny at the age of 50; to listen to others' at the age of 60; to follow the heart without overstepping the bound of correctness at age of 70." Therefore, people regarded the 60 as the beginning of old age. It is unrealistic to ask an aged people over 60 to supervise another advanced elderly. Thus, it is reasonable to limit the candidate of guardian at the age of 60. Only if the advanced elderly has no spouse or children under age of 60, shall we consider to choose guardian from other relatives or relevant government institutions. In providing supervision for the elderly, the spouse and children who live together with the elderly understand his living habits most. So, this regulation can make full paly of the function of family endowment.

4.2.2 The Responsibilities for the Guardians of Advanced Elderly

4.2.2.1 To Emphasis on "Self-determination" for Advanced Elderly in Dealing With Personal Caring Affairs

According to the article 858 of Civil Code of Japan, "In dealing with the life care, convalescence, nursing and property management for the elderly, the guardian must

respect the willingness of the elderly, and take into consideration of the elderly's physical and mental conditions." For example, "It is taken for granted that we should make nursing contract on the basis of choosing the right nursing services and service enterprises." The author believes that we should take a consideration for the provision of Civil Code of Japan, emphasizing on the general principal of respecting the willingness of the elderly, and respect the "the right of self-determination" for the elderly.¹²

4.2.2.2 To Restrict the Guardian's Disposition Right for the Elderly's Real Estate

There are many regulation in foreign legislation in regarding to the property management for advanced elderly. The article 1907 of Civil Code of Germany stipulated that the guardian must obtain the permission from the court to terminate the elderly's housing lease contract. The guardian should inform the court immediately for elderly's losing of their residence due to the guardian terminates the leasehold or by other means. According to the article 490 of Civil Code of France, if we must deal with the residency rights or transfer the movable property, the relevant contract must be approved by the judge and not impact other procedures according to the nature of property, in order to protect the interests of the elderly. Taking a reference from foreign legislation, the author considers that the housing property for the elderly mostly came from their labor income. In order to guarantee the life in their later years, they must protect their personal properties accumulated over a long period of time. If the elderly's personal legal property is violated, it will directly affect the life in their later years. Therefore, the housing property and other real estate need special legal protection. Children cannot deal with the elderly's real estate alone. The disposition of the real estate of the elderly is invalid, if there is no permission of the court.

Notes

1. People's Daily reported in December 7, the National Development and Reform Commission (NDRC) and Ministry of Civil Affairs (MCA) are formulating the elderly pension service system plan for "the Twelfth Five-Year". During "the Twelfth Five-Year" period, our country will build the social pension service system with Chinese characteristics on the basis of family sustainment, depending on community service, supplemented by institutional endowment, making sure the matching of capital and service, guaranteeing the combination of free charge service, low compensation service and paid service, accompanied by "government domination, departmental coordination, social participation and public assistance".
2. The Statistic Bulletin on the Development of China's Elderly Undertakings in 2015, released

- by the Office of the National Committee on Aging in June 2016.
3. In a board sense, “sustainment” refers to the relationship between the rights and obligations in mutual financial support and life care according to legislation for particular relatives, including the elder generation’s “raising” for the young, the “maintenance” between the peers and the young generation’s “taking care of” the elder. In a narrow sense, “sustainment” refers to the “maintenance” between the peers, especially for mutual financial support and life care for couples according to legislation. The “sustainment” in this article refers to the meaning in the board sense. The elderly in the rank of dependents is the most important issue for sustainment for the elderly.
 4. The so called “421” family refers to the family with four elders, a couple and a children. With the majority of the first generation of “single children” entering into the age of marriage, the “421” family becomes the mainstream in our society.
 5. WHO has initiated and carried out a “global action for positive aging” during 1999, the international year for the elderly. Positive aging refers to the process that the elderly optimize the chance for health, participation and protection in order to improve the living quality. It refers to that the elderly can participate the social activities according to their own needs, vision and ability. If they need help, they can obtain full protection, guarantee and taking care of.
 6. According to the statistics of Chongqing Senior Citizens’ Work Committee, Chongqing has totally of 5.13 million elderly people in the year 2010. And the “empty nest elderly” has reached to 1.81million in the year 2008. In recent years, the degree of empty nest has exceeded half portion of total population.
 7. In regarding to the relation between “sustainment”, “guardianship” and “support for the elderly”, the author thinks that “support for the elderly” in a narrow sense mainly refers to provide endowment to the elderly without guardianship, however, “sustainment for the elderly” in a board sense refers to the endowment and guardianship for the elderly. The “sustainment” refers to the supporter’s providing of material help, body care and spiritual support. It mainly emphasis on actual labor activities. The aim of setting guardianship is to remedy supervisee’s incapability for act. It contains not only the maintenance for the elderly, but also the guardianship including property and personal management. And the supervision system for advanced elderly emphasis on the endowment for the elderly, which includes life care and property management, Thus, there is indeed a coincidence between the personal guardianship and physical care for advanced elderly in some degree. Of course, the sustainment system for the elderly will not be affected by the establishment of the guardianship system. The guardianship and sustainment system for advanced elderly are not coincidence or parallel. They are complementary to each other in order to build a more perfect pension system. The purpose of these two system is to better protect the interest for the elderly.
 8. According to article 1116 of Civil Code of Taiwan, if there are several dependents and the support’s financial ability cannot sustainment all of them, the dependents can be supported as follow ranks: the elder lineal relatives, the younger lineal relatives, spouse, brothers and sisters, the head of the family, the spouse’s parents, daughter-in-law and son-in-law.
 9. Singapore has promulgated the Law of Sustainment for Parents in Nov. 2nd, 1995. According to the article 6 of this legislation, if the accused children do not comply with the law, the court will bring in a verdict that the children must pay the living expenses and pension for their parents. The payment can be paid monthly, at set intervals or by one lump sum. The specific amount and payment method will decided by the court. In addition, the court has the

right to ask the applicant to deposit their pension into bank or purchase an annuity insurance when necessary. The legislation of United States stipulates that when children seek for alimony from their parents, it can be issued by the maintenance agency or court to the employers to directly deduct the alimony from the employee's wages and transfer to the maintenance agency or the court. See, Delaware state courts: <http://courts.delaware.gov/How%20To/Sustainment>, last visited Jan.10, 2011.

10. To replace "the system of guardianship for advanced elderly" by "the system of guardianship for the elderly" is because the guardianship of the elderly in adult guardianship system is mainly referred to old people advanced in age and poor in health. At the same time, the elderly guardianship system covers a wide range, and has a series of provisions for the supervisor, the supervisee and the supervision procedures. In this article, we only discuss the part relevant to the selection and obligation of guardian under the background of "family elderly sustainment".
11. The civil code of Japan named guardianship as "hindsight", which means support and taking care of.
12. "The right of self-determination" is also known as the right of making decisions by oneself. It means that "people can make decisions by themselves if it has nothing to do with others. If the decision does harm for themselves, people should take the relevant responsibilities", or "the public force shall not interfere in the decision for private thing". See, Hasebe Yasuo, eds .Modern Constitution. Japanese Review Society, 1995 :58.

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