Supplementary Volume

Data

● Article 6

a

“Complex Discrimination of Women with Disabilities: Common Text Data”

Data distributed at the 22nd Kubota Memorial Symposium “Complex Discrimination of Women with Disabilities and Conventions on Human Rights” held on December 19, 2015 by the Japan Civil Liberties Union (JCLU)

“edited by DPI Women’s Network, published on January 31, 2019”

(hereinafter excerpts)

p. 5, Graph 2: Annual Income of Single Household (Unit: ten thousand yen)

Note) Prepared and made into a graph based on “Research Study on Income Guarantee of Persons with Disabilities and the Service and Support Measures,” ‘Ministry of Health, Labour and Welfare, Grant-in-Aid for Scientific Research, 2005 ~ 2007 Comprehensive Research Report’ by Yukiko Katsumata et al., in 2008, p. 81, Table 18

b

Source: Yoshida, Hitomi. “Gender Statistics of Persons with Disabilities: Japanese Current State and Problem.” Review of Gender and Law No.3, Ed. Asakura, Mutsuko, Tokyo: Shinzansha Publisher, 2016. Pp.185-187.

Table: Status of Preparation of Persons with Disabilities Gender Statistics in Japan

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Name of Statistical Survey | A: Existence of gender column in the questionnaires/  B: Existence of entry of calculation by gender | Organization in charge of the survey | Remarks |
| 1 | Patients | A: Yes  B: Yes/Possible to understand the care receiving rate by gender and age, number of estimated hospitalized and outpatients | Statistics and Information Department, Minister's Secretariat, Ministry of Health, Labour and Welfare | Periodic/Every three (3) years |
| 2 | Survey of Social Welfare Institutions | A: None  B: None/Transitions in number of persons with disabilities can be confirmed by type of disabilities regardless of gender | Statistics and Information Department, Minister's Secretariat, Ministry of Health, Labour and Welfare | Periodic/every year |
| 3 | Survey of Difficulties in Living (Survey of Actual Circumstances of Children and Persons with Disabilities at Home in Japan) | A: Yes  B: Partially yes/Calculation results by gender are only available of “number of persons holding rehabilitation certificates by age class, gender, and degree of disability.” | Policy Planning Division, Department of Health and Welfare for Persons with Disabilities, Social Welfare and War Victims' Relief Bureau, Ministry of Health, Labour and Welfare | Periodic/Every five years |
| 4 | Survey on persons with physical disabilities | A: Yes  B: None/Summary and the detailed tables are published but no calculation by gender. | Policy Planning Division, Department of Health and Welfare for Persons with Disabilities, Social Welfare and War Victims' Relief Bureau, Ministry of Health, Labour and Welfare | Periodic/Every five years |
| 5 | Survey on persons with intellectual disabilities | A: Yes  B: Partially yes/In the Table 1 and Table 2 of the “Summary of Survey Results,” there is “number of persons by gender, by age group and by degree of disability. But there is no calculation crossed with other elements. | Policy Planning Division, Department of Health and Welfare for Persons with Disabilities, Social Welfare and War Victims' Relief Bureau, Ministry of Health, Labour and Welfare | Periodic/Every five years |
| 6 | Survey on Status of Certification for Classification of Degree of Disability | A: Yes  B: None/Only the summary of survey is posted on the website of the Ministry of Health, Labour and Welfare. | Mental Health and Disability Health Division, Department of Health and Welfare for Persons with Disabilities, Social Welfare and War Victims' Relief Bureau, Ministry of Health, Labour and Welfare | Periodic/every year |
| 7 | Calculation Results of Status of Employment of Persons with Disabilities | A: None  B: None | Employment Measures for the Elderly and Persons with Disabilities  Department, Employment Security Bureau, Ministry of Health, Labour and Welfare | Periodic/every year |
| 8 | Survey of Employment of Persons with Physical Disabilities, Intellectual Disabilities and Mental Disabilities | A: Yes/Questionnaires are not posted on the website and paper reports were not confirmed, but confirmation was made by inquiries with the organization.  B: None/ In the survey districts of National Census, which were excerpted at random, survey was conducted for persons with disabilities having disability certificates and the households to which the persons belong. In the summary of the survey, reference to and calculation by gender are non-existent. | Employment Measures for the Elderly and Persons with Disabilities  Department, Employment Security Bureau, Ministry of Health, Labour and Welfare | Periodic/Every five years |
| 9 | Survey of Employment of Persons with Disabilities | A: Yes  B: Partially yes/Office survey and individual survey. In the “summary of results,” other than gender ratio of persons with disabilities employed by the workplace subject to survey is stated for each of three disabilities, there is no calculation by gender. | Employment Measures for the Elderly and Persons with Disabilities  Department, Employment Security Bureau, Ministry of Health, Labour and Welfare | Periodic/Every five years |
| 10 | School Basic Survey | A: Yes  B: (Only special needs education schools) Yes/There are several counting by gender and number of students and status after graduation can be calculated in detail. | Analytical Research Planning Division, Lifelong Learning Policy Bureau, Ministry of Education, Culture, Sports, Science and Technology | Periodic/every year |
| 11 | Comprehensive Survey of Living Conditions of Pensioners | A: Yes  B: Partially yes/For 9 groups out of table groups classified into 31 groups, cross-tabulation by gender is posted for welfare pension and disability pension respectively. We can observe the correlationship with daily living, employment, status of households, income and pension tiers, etc. | Actuarial Research Division, Pension Bureau, Ministry of Health, Labour and Welfare | Periodic/every year |
| 12 | Survey on Public Pension Enrollment | A: yes  B: None | Research Office, Pension Service Planning Division, Pension Bureau, Ministry of Health, Labour and Welfare, | Periodic/every three years |
| 13 | Survey on Living by Social Security | A: Not published  B: None | Public Assistance Division, Social Welfare and War Victims' Relief Bureau, Ministry of Health, Labour and Welfare | Periodic/every year |
| 14 | Survey on Public Assistance Recipients | A: Yes  B: None | Public Assistance Division, Social Welfare and War Victims' Relief Bureau, Ministry of Health, Labour and Welfare | Periodic/every month |
| 15 | Survey of Status of Living of Persons with Disabilities | A: Yes  B: Yes | Policy Planning Division, Department of Health and Welfare for Persons with Disabilities, Social Welfare and War Victims' Relief Bureau, Ministry of Health, Labour and Welfare | Extraordinary/conducted in 2003 |
| 16 | Status of Implementation of Act on the Prevention of Spousal Violence | A: Yes  B: Partially yes/Overview was published including the fact that consultations from the victims with disabilities were 2,471 cases in 2005, that telephone consultations were 63.8%, that visiting consultations were 33.1% and that persons with intellectual and mental disabilities are 83.7%. | Cabinet Office, Council for Gender Equality, Special Investigation Committee on Violence against Women | Extraordinary/Report in March 2007 |
| 17 | Survey by Tokyo Metropolitan Government, Basic Survey on Welfare and Health | A: Yes  B: Yes/Gender classification is made for overall survey results and cross-tabulation was also made. Detailed data was posted on the website. | Bureau of Social Welfare and Public Health, Tokyo Metropolitan Government | Extraordinary/ |
| 18 | Report of the Survey of Learning Support to Students with Disabilities at Universities, Junior Colleges and Higher Professional Schools | A: None  B: None/exhaustive survey with collection rate of 100% | Special Support Division, Student Services Department, Independent  Administrative Institutions Japan Student Services Organization | Periodic/every year |
| 19 | Research Study on Income Guarantee of Persons with Disabilities and the Service and Support Measures | A: Yes  B: Yes/Based on surveys of two cities, it provides data by which employment rate and income can be compared with calculation by gender or general statistics, while classifying by such forms of household as single household, family of procreation, stereotactic family of orientation. In analysis, persons with disabilities and gender are mentioned. | National Institute of Population and Social Security Research, Yukiko Katsumata et al. | Extraordinary/ conducted in 2005-2006. Reported at the end of 2007 |
| 20 | Report of the Results of Survey on Community Life of Persons with Disabilities | A: Yes  B: Yes/In the summary of the report of survey results posted on the website, it is stated that 62% of respondents were men and 38% were women, but no cross-tabulation. | Kyosaren (Former Name: Kyodo Sagyosho Zenkoku Renrakukai) | Extraordinary/conducted from July 2015 to February 2016. Reported in February 2016 |
| 21 | Current Status of Employment of Persons with Disabilities in Japan - From Survey of Employment of Persons with Disabilities in 2003 | A: Yes/Re-calculation of this Table [6]  B: Yes/In the summary of survey results, gender was not mentioned at all. In the detailed table, cross-counting is entered by gender, age group, three disabilities, wages, status and working hours, etc. | Posted in National Institute of Vocational Rehabilitation, “Data Series 38” | Issued in November 2007 |

Source: Prepared by the author by adding and correcting “Persons with Disabilities Gender Statistics (1): Status of Preparation of Persons with Disabilities Gender Statistics in Japan” by Kumiko Usui, Noriko Seyama, Hitomi Yoshida (2012), “NWEC Gender Equality Statistics Newsletter” No. 10, by National Women’s Education Center

c

The DPI (Disabled Peoples’ International) Women’s Network “Survey of Difficulties in Living for Women with Disabilities”

From May to September 2011, the Network asked 87 women with disabilities from their twenties to their seventies in Japan to fill in questionnaires related to troubles they experienced as a result of being women with disabilities and experiences of having difficulties in living and it collected 75 questionnaires. In parallel, it conducted hearings surveys from June 17, 2011 to November 19, 2011 and 16 persons cooperated into the survey. Most of the responses related to “sexual victimization” and 31 persons out of 87 respondents experienced sexual victimization. Number of responses answering sexual victimization totaled 45 cases and 10 cases were at the places of care, welfare facilities and medical care, 4 cases were by superiors, etc., at their workplace and 2 cases were by teachers and staff at school and 3 cases were by family members at home.

By disability, nearly 60% were persons with visual disabilities and followed by 20% orthopedically impaired.

d

1. Judgment of the Mito District Court as of March 31, 2004 (Hanrei Jiho, No. 1858, p. 118, Hanrei Times No. 1213, p. 220, etc.)

Representative of a carton box processing company physically assaulted three employees with intellectual disabilities by hitting and kicking them, raped and committed indecent assaults, etc., and also caused those employees to call other female employees to be raped, etc. Damage liability was recognized against the representative under Civil Code, Article 710, but he was not prosecuted in a criminal case.

2. Judgment of the Chiba District Court as of April 28, 2005 (D1-Law.com Hanrei Taikei)

For a case where the teacher of a special needs education class at a public elementary school was accused of indecent assault against two female children with intellectual disabilities in charge by the teacher at the school, the teacher was given a verdict of not guilty because the proof of prosecutors was insufficient.

Later, a civil case was filed for one of the girls and in the judgment of the Chiba District Court in December 2008, sexual assaults were partially recognized and the Prefecture and City were ordered to pay \600,000. In the judgment of the Tokyo High Court as of March 14, 2010 upon appeal, furthermore, 22 assaults was recognized, including touching the body in a classroom and ordered the Prefecture and City to pay \3,300,000 in total.

● Article 7

a

Ministry of Education, Culture, Sports, Science and Technology: Status of Disciplinary Actions, etc., related to Corporal Punishment (Educational Personnel) (2016) (Excerpts)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| (1) Number of occurrences | | | | | | |
| Elementary school | Junior High School | Compulsory Education School | High School | Middle Education School | Special Needs Education School | Total |
| 188 | 252 | 0 | 187 | 0 | 27 | 654 |
|  | | | | | | |
| (4) Victimized children and students | | | | | | |
| Elementary school | Junior High School | Compulsory Education School | High School | Middle Education School | Special Needs Education School | Total |
| 359 | 402 | 0 | 335 | 0 | 44 | 1140 |

b

Ministry of Education, Culture, Sports, Science and Technology: Status of Disciplinary Actions, etc., related to Obscene Acts, etc. (Educational Personnel) (2016) (Excerpts)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| (1) Status of disciplinary actions, etc., related to obscene acts, etc. (Responsibility of the person) (2016) | | | | | | | | |
| Dismissal | Suspension of Service | Wage Reduction | Reprimand | | Total | Admonition, etc. | | Grand Total |
| 129 | 50 | 15 | 3 | | 197 | 29 | | 226 |
| (4) Type of School to which the persons subject to dispositions belong | | | | | | | | |
|  | | Number of persons subject to disposition A | | Number of persons at school B | | | A/B | |
| Elementary school | | 68 | | 410,116 | | | 0.02% | |
| Junior High School | | 79 | | 235,223 | | | 0.03% | |
| Compulsory Education School | | 0 | | 934 | | | 0.00% | |
| High School | | 67 | | 185,288 | | | 0.04% | |
| Middle Education School | | 0 | | 1,687 | | | 0.00% | |
| Special Needs Education School | | 12 | | 86,810 | | | 0.01% | |
| Total | | 226 | | 920,058 | | | 0.02% | |

(5) Characteristics of the party subject to obscene acts, etc.

|  |  |  |
| --- | --- | --- |
|  | Number | Ratio |
| Children of the school | 22 | 9.7% |
| Students of the school | 87 | 38.5% |
| Graduates of the school | 10 | 4.4% |
| Persons younger than 18 years old | 31 | 13.7% |
| Education trainees | 0 | 0.0% |
| Teachers and staff of the school | 38 | 16.8% |
| Teachers and staff of another school | 1 | 0.4% |
| Other general citizens | 37 | 16.4% |

Prepared and made into a chart based on “(5) Characteristics of the party subject to obscene acts, etc.” in “Ministry of Education, Culture, Sports, Science and Technology: Status of Disciplinary Actions, etc., related to Obscene Acts, etc.” (Educational Personnel) (2016)

● Article 9

a

1. UR Lease Barrier Case (Judgment of the Tokyo District Court as of February 18, 2011 (Wages and Social Security, No. 1543/1544, p. 106)

Lease contract of a room of high-rise lease housing, which had been advertised as having the feature of roof green space on the roof above the 28th floor and transportation on a pedestrian walkway from the building to a railway station, was executed by Plaintiff, a user of a wheelchair. However, a person can go to the roof floor from the 28th floor of this building by stairs, and in addition, as no elevator was installed in the middle of the pedestrian walkway, it was impossible for the user of the wheelchair to move by using the pedestrian walkway from the building to the railway station. Therefore, Plaintiff claimed damages to Urban Renaissance Agency (UR), the owner of the building and lessor as well as Shinagawa City, which installed and manages the pedestrian walkway. Plaintiff argued against Shinagawa City that as the user of the wheelchair cannot go to the railway station from the building via the pedestrian walkway without an assistant because it did not install an elevator on the pedestrian walkway, it lacked safety that ordinarily should be provided for a pedestrian walkway and violated the State Redress Act, Article 2, paragraph 1.

The judgment recognized the responsibility for default under violation of the explanation obligation of UR, Defendant in execution of the contract, but the responsibility of Shinagawa-City, Defendant was not recognized as the pedestrian walkway did not lack safety that ordinarily should be provided by public structures with respect to the responsibility under the State Redress Act, Article 2, paragraph 1.

2. Case of Undeveloped Restroom for Wheelchair (Judgment of the Tokyo District Court as of July 23, 2001, Judgment of the Tokyo High Court as of March 28, 2002, Decision of the Supreme Court as of October 25, 2002 (Hanrei Times, No. 1131, p. 142, the same, p. 139))

Plaintiff, a user of a wheelchair claimed against Defendant A, a railway operator for installation of a wheelchair accessible restroom and damages, arguing that non-installation of a wheelchair accessible restroom in the cars operated on the B Line and C Line fell under illegal acts. Plaintiff also claimed for national government compensation against Defendant, the national government due to failure to give instructions to Defendant A.

The court stated that “it is natural that individual dignity of a person with a disability should be respected and for that purpose, it is necessary that persons with disabilities can participate in society in every aspect of social life. From such viewpoints, it is desirable that proper equipment should be installed in public transportation so that persons with disabilities can move around without any trouble. It is recognized as Defendant A made efforts including installation of cars easy to be used by persons with disabilities and it is expected to continue such efforts.” However, the Tokyo District Court dismissed the claims of Plaintiff by denying the arguments of Plaintiff of violation of the Constitution, Article 22, Article 14, and violation of the Ordinary Railway Structure Regulations, Article 32 which provides for the model design.

Thereafter, the Tokyo High Court dismissed the appeal and the Supreme Court dismissed the final appeal.

3. Case of Claim for Confirmation of Unconstitutionality of Non-installation of an Elevator at an Overpass Station (Judgment of the Osaka District Court as of March 11, 1999, Judgment of the Osaka High Court as of January 21, 2000 (Hanrei Times, No. 1055, p. 213))

Plaintiff, a person with a physical disability using an electric wheelchair sought confirmation of unconstitutionality of provision of passenger carriage service on presumption of assistance by the station staff of Defendant without installing a passenger elevator at E Station and F Station of D Line of Defendant, an operator of railway business and Plaintiff claimed damages as non-installation of an elevator falls under the defect of workpiece on land and station staff used insulting and discriminatory words and damages for dangerous actions.

Osaka District Court denied the interest of confirmation regarding the petition for confirmation and rejected the petition. Regarding the defect, after reviewing the safety with respect to provision of passenger carriage service by Defendant relying on the assistance of station staff for users of wheelchairs, the court stated it cannot be regarded as illegal service provision and dismissed the claim of Plaintiff. Regarding the acts of station staff, the court held they constituted illegal acts, etc., and accepted part of claims of Plaintiff.

The judgment stated, “in order to substantially guarantee the freedom of movement of persons with disabilities, it is desirable to actively promote installation of an elevator in such facilities with high public nature as railway stations. … (Installation of elevators is the moral obligation to make efforts, but just because non-installation) is not unconstitutional or illegal, efforts of railway operators to develop elevators, etc., must not be neglected. In light of the current social requirements of ensuring substantial equality between persons with physical disabilities and persons without disabilities, we should say investment for substantially ensuring freedom of movement of persons with physical disabilities should be regarded as having a high priority among various investments of Defendant.”

Plaintiff appealed and at the appeal trial, in place of claim for confirmation, added the claim for installation of elevators at both stations. Osaka High Court, however, held it could not be interpreted as to allow the appellant (Plaintiff) to directly claim for installation of elevators. Regarding the argument on claim for installation of elevators based on the passenger carriage contract and obligation of security, the court held that the minimum content of equipment and safety of railway facilities to be provided are delegated to the decision of railway operators other than those public regulations under the Railway Business Act and the carriage contract does not include requirements for installation of certain facilities desirable for users and the Court dismissed the appeal of the appellant (Plaintiff).

b

The number of installed traffic signal units is about 208,000 in Japan, out of which, barrier-free traffic signals remain at about 40,000 units (White Paper on Traffic Safety in Japan 2018).

There are 9,229 railway stations in Japan (as of October 2018 in the database of railway lines and stations in Japan with latitude and longitude by the Japan Geographic Data Center). However, platform doors to prevent falling by station users are only installed at 725 stations (website of the Ministry of Land, Infrastructure, Transport and Tourism as of the end of March 2018). There are no statistics on braille blocks.

For barrier-free traffic signals, it is provided in the basic policy under Barrier-free Law, Article 3, paragraph 1 implementation of smooth transportation, but generally they are limited only to the district mainly of passenger facilities in municipal areas and the district where facilities for the elderly and persons with disabilities are concentrated (focused improvement district), and this is insufficient.

● Article 11

a

The foundations of disaster countermeasures are the Disaster Countermeasures Basic Act and the Disaster Relief Act. Out of which, the Disaster Countermeasures Basic Act was amended upon the occurrence of the Great East Japan Earthquake in 2011 and the heads of municipalities was required to prepare the list of residents who need assistance to evacuate during a disaster, but individual evacuation plans to be developed based on the list are only formalistic even if prepared and no training was provided and in fact, they did not fully function.

By the amendment, obligation to make efforts to improve the living environment at evacuation shelters was imposed and the Cabinet Office (in charge of disaster prevention) developed such specific guidelines as “Guidelines for the evacuation support of residents who need assistance to evacuate during a disaster” and “Guidelines for ensuring a good living environment in shelters.” However, these guidelines have hardly worked.

<http://www.bousai.go.jp/taisaku/hisaisyagyousei/youengosya/h25/hinansien.html>

b

As reports of administration on Kumamoto Earthquake, the following are the main reports: (A) “Examination Report on the Efforts at Restoration and Reconstruction after Four Months from the Occurrence of the Kumamoto Earthquake (Kumamoto Prefecture, March 2018),” (B) “Examination Report of Responses for Three Months from Kumamoto Earthquake (Kumamoto Prefecture, March 2017),” (C) “Kumamoto Earthquake in 2016: Kumamoto City Records of Earthquake Disasters ~ Toward Restoration and Recovery ~ Records of One Year from Occurrence of Earthquake (Kumamoto City, March 2018).”

Among them, refer to p. 157 of B, p. 131 ~ p. 132 of C for the problems in support to residents who need assistance to evacuate during a disaster, p. 143 ~ p. 144 of C for the problems in the designated evacuation shelters, p. 163 of B, p. 160 ~ p. 161 of C for the problems in welfare evacuation shelters, p. 155 ~ p. 156 of C for the problems in responses to the residents who require special consideration for disaster prevention at evacuation shelters and p. 100 of A for the problems in temporary emergency housing.

Regarding the actual circumstances of being left at home in case of a disaster, refer to Yomiuri Shimbun on September 16, 2016, ‘In order to prevent isolation of persons vulnerable to disasters, “bond construction” in daily life,’ and regarding the problems in temporary housing, refer to Kumamoto Nichinichi Shimbun on July 9, 2016, “Temporary housing, wheelchair inaccessible, narrow entrance even with steps, a man with a disability gave up moving in, 2016 Kumamoto Earthquake.”

c

If the housing environment and living environment were destroyed, it is difficult in most cases for persons with disabilities to restore on their own and daily welfare services for persons with disabilities do not assume support for such needs at the time of disaster.

Therefore, “Affected Area Persons with Disabilities Center, Kumamoto” launched by the local organization for persons with disabilities, which provided disaster support specialized in affected persons with disabilities prepared flyers to support persons with disabilities who could not go to evacuation shelters and the whereabouts are unknown and distributed at evacuation shelters and mailed to all persons with disabilities of about 43,000 persons living in Kumamoto City in cooperation with Kumamoto City. About 70 telephone calls were received a day from persons with disabilities who read the SOS flyers.

On the front of a flyer, offer for support and contact information and on the back, examples of specific support specialized in disabilities by disasters are stated.

According thereto, we can understand the occurrence of disaster needs which cannot be covered by disability welfare services provided during ordinary times.

Affected Area Persons with Disabilities Center, Kumamoto has continued to provide direct support to more than 500 persons with disabilities several times respectively as of October 2018.



**Affected Area Persons with Disabilities Center,  
Kumamoto**



Waiting for your consultations and contact

(See the back)

861-8037 2-6-11 Nagaminenishi, Higashi-ku, Kumamoto City

TEL: 096-234-7728

FAX: 096-234-7729

E-mail: [hisaitikumamoto@gmail.com](mailto:hisaitikumamoto@gmail.com)

Website: http://hisaitikumamoto.jimdo.com/

The Center was launched in cooperation with various organizations for persons with disabilities and welfare organizations in Kumamoto.

The Center carries out activities as the local headquarters of Japan Disabilities Forum (JDF) in cooperation with Yumekaze Fund, which has previously supported the affected areas.

(9:00 a.m. ~ 6:00 p.m.)

(24 hours available)

**call**

**“Affected Area Persons with Disabilities Center, Kumamoto”**

(JDF Local Headquarters)

To persons with disabilities

The Center helps with any kind of trouble for affected persons with disabilities (physical, intellectual, psychiatric, etc.).

**Activities for Affected Area  
Persons with Disabilities Center, Kumamoto**

The Center, upon receiving an SOS from persons with disabilities, visits individual homes in many cases to confirm the situations and provide support from persons with welfare experience.

We received an SOS from more than 100 persons from the beginning to the end of May and have provided the following support by persons involved in welfare who provide support as volunteers.

|  |
| --- |
| * Provision of materials essential for life and living * Care of meals and bathing at night * Support for watching children with disabilities during the daytime * Support for transportation to hospitals and attendance * Mental support such as listening patiently * Installation of simplified beds * Transportation of spring water to those who cannot drink tap water due to chemical substance sensitivity * Removal of broken prefabricated buildings and block fences and transportation to waste disposal site * Disposal of furniture and fixtures (transportation to waste disposal site) * Emergency measures for destruction of pipes of plumbing, kitchen and bathroom * Clean up of inside of a room * Support for washing clothes * Support for bathing * Support for transportation from an evacuation shelter to another * Support for moving in a new home * Transportation for moving baggage from an evacuation shelter to own home * Search and intermediation for housing * Provision of useful information about housing * Employment consultations * Consultations on living expenses * Consultations on repair expenses and living expenses * Information provision for daily commodities and arrangement of operators * Consultations on receipt of welfare services |

We respond to various requests, while over 300 persons involved in welfare throughout Japan listening to the stories of affected persons in a month.

The Center is a private organization and cannot do everything. We might may ask you to request professional operators. However, we make efforts to respond to your needs to the extent possible in collaboration with other professional volunteer organizations.

● Article 12

a

JFBA 58th Human Rights Protection Conference/Symposium as of October 1, 2015, 2nd Sectional Group Keynote Report “From ‘Adult Guardianship System’ to ‘System of Support for Decision-Making’ ~ Aiming at Realization of Self-determination Rights of Persons with Dementia and Disabilities ~”

(Hereinafter Excerpts)

4 Trend in Judgment of Duties of Professional Guardians based on Specific Examples

In the questionnaires, in order to survey the status of awareness of each professional guardian, we asked how the guardian makes a determination using a specific example (Q7).

Example: Person who is 45 years old and has intellectual disability, equivalent to about a 6 year old.

Living with mother. Deposit of \20 million and income from an apartment (estate of father). About \100,000 plus a month

Desire of the Person (Q7 (1)): To buy a feather futon set at \600,000 (now the person has a futon which can be used)

(1) The responses in descending order were “to talk with the person why the person wants to buy” (approx. 49%), “to determine as a guardian with reference to the opinions of the mother on the will of the person” (approx. 33%), “to persuade the person not to buy it as it is not particularly necessary” (approx. 10%), and there were very few who responded “to accept the will of the person” (approx. 0.7%). Looking at the trend by profession of attorney, judicial scrivener and certified social worker, the order of responses did not change, but for the ratio of the responses, “to talk with the person why the person wants to buy,” certified social worker (approx. 79%) was greater than attorney (approx. 55%) and judicial scrivener (approx. 43%). In other responses, a method of talking with the person was employed such as “to explain less expensive products are available” and “to consider by comparing with other various futon” and the responses delegating to courts such as “to hear opinions of a family court in advance” and “to be finally determined by the court” and also the response not to buy as “it is for the benefit of the person to persuade not to buy since the person is equal to the intellectual level of a 6 year old.” As shown in this example, “to follow the will of the person” is the least even if the person can afford from the assets and we understand the trend of at first confirming the true intent of the person. The responses “to persuade the person not to buy it as it is not particularly necessary” were relatively few, but judging from the fact that the response “to determine as a guardian with reference to the opinions of the mother on the will of the person” was 2nd, it was proved that there is a certain tendency that guardians make comprehensive judgment focusing on other situations while respecting the will of the person.

(2) In this example, in Q7 (2), talking with the person and the mother after hearing that the person wanted to buy a futon, the following new situations were revealed. We asked how a guardian will respond in such an event.

New situations: While the mother was not at home, a visiting sales person recommended buying a futon. The person says, “I want to buy a feather futon set as I want to see the sales person again.”

The responses in descending order were “to talk with the person about the reasons for motivation of desiring to see the sales person again and confirm whether the decision to buy a feather futon will change if another method is found” (approx. 64%), “to persuade the person not to buy it as it is not particularly necessary” (approx. 15%), “to determine not to buy a futon as a guardian as the will of the person is inappropriate” (approx. 11%). In other responses, most of them were in the direction of not buying by means of working on the sales person such as “to see the sales person,” “to tell the sale person that a guardian was appointed” and “to cancel with the sales person and talk with the person taking much time.” Looking at the tendency by profession of attorney, judicial scrivener and certified social worker, the order did not change but for certified social workers, the ratio of “to talk with the person about the reasons for motivation of desiring to see the sales person again and confirm whether the decision to buy a feather futon will change if another method is found” is high (approx. 81%) and the ratio of “to persuade the person not to buy it as it is not particularly necessary” is low (approx. 5%) compared with profession of attorney and judicial scrivener. Accordingly, it was apparent that the responses of guardians will become more careful through confirmation of the will of the person when it was found that sales method had a problem, and it was proved that, in particular, attorney and judicial scrivener had stronger tendency to deny the purchase.

b

Webpage of Citizens’ Committee to Eliminate Disqualifying Clauses on Disability

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | | | | | |
| Category | Subject | Example | Number of Laws | | |
| 2016 | 2009 | 2002 |
| Qualification is not granted/  sometimes not granted | Adult wards, person under curatorship | Teacher, public servant, architect | 211 | 193 | 145 |
| Mental and physical disabilities | Sailor, tax accountant, certified public accountant | 72 | 72 | 67 |
| Mental disabilities | Driving a car, nurse, judicial scrivener | 72 | 63 | 64 |
| Visual disabilities | Doctor, ship officer, boat pilot, pharmacist | 32 | 32 | 30 |
| Hearing and language disabilities | Railroad engineer, public nurse, veterinarian | 28 | 28 | 26 |
| Disqualify/  sometimes disqualify | Adult wards, person under curatorship, mental and physical disorder, mental and physical disabilities, any kind of disability | Members of the National Public Safety Commission, board of education, Administrative Complaint Review Board, and radiological technologist, speech therapist, and director, auditor, accounting auditor and liquidator of incorporated association and foundation | 362 | 361 | 336 |
| Restrictions on rights not limited to qualification and license | Various restrictions on rights | Involuntary hospitalization for medical care and protection, temporary/permanent exemption from school attendance, special provision for reduction in minimum wages, witness of vehicular homicide, specific secret protection and testament | 25 | 26 | 23 |
| Number of laws (no duplication) | | | 506 | 486 | 427 |

Duplicate classification

Survey of Citizens’ Committee to Eliminate Disqualifying Clauses on Disability, Secretariat: March – June 2016 (2016, 2009), October – November (2002)

Initial source: Citizens’ Committee to Eliminate Disqualifying Clauses on Disability Newsletter No. 68 (issued in late November 2016)

c

Supreme Court, General Secretariat, Family Bureau “Overview of Adult Guardianship Cases - January ~ December 2016 -”

(Hereinafter excerpts)

\*Reprinted from the website of Court, “The Overview of Adult Guardianship Related Cases –January ~ December 2016” with the approval of Supreme Court, General Secretariat, Family Bureau.

1. Number of petitions (Data 1)

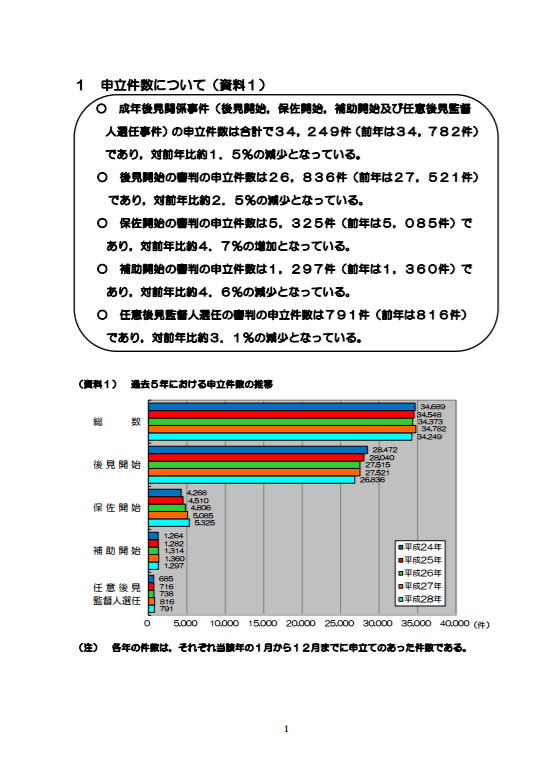
○ Number of petitions for adult guardianship cases (cases for commencement of guardianship, commencement of curatorship, commencement of assistance and appointment of voluntary guardian supervisor) was 34,249 cases in total (34,782 cases in the previous year), a decrease of about 1.5% compared with the previous year.

○ Number of petitions for adjudication of commencement of guardianship was 26,836 cases (27,521 cases in the previous year), a decrease of approximately 2.5% compared with the previous year.

○ Number of petitions for adjudication of commencement of curatorship was 5,325 cases (5,085 cases in the previous year), an increase of approximately 4.7% compared with the previous year.

○ Number of petitions for adjudication of commencement of assistance was 1,297 cases (1,360 cases in the previous year), a decrease of approximately 4.6% compared with the previous year.

○ Number of petitions for adjudication of appointment of voluntary guardian supervisor was 791 cases (816 cases in the previous year), a decrease of approximately 3.1% compared with the previous year.



**(cases)**

**(Data 1) Transitions in the number of petitions in the past five years**

**(Note) Cases in each year are cases which were petitioned from January to December of the respective year.**

Total

Commencement of guardianship

Commencement of curatorship

Commencement of assistance

Appointment of voluntary guardian supervisor

**2012**

**2013**

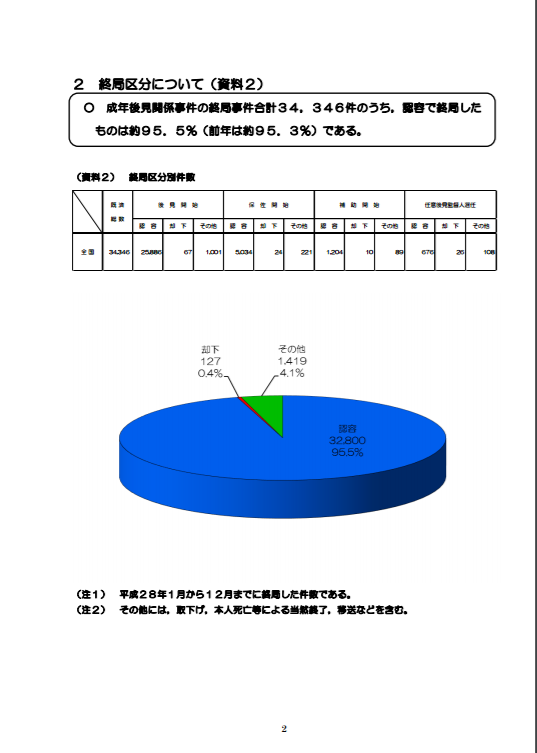
**2014**

**2015**

**2016**

2. Type of Final Judgment (Data 2)

○ Out of total concluded cases of adult guardianship of 34,346 cases, 95.5% (95.3% in the previous year) were concluded by admission.



**(Data 2) Number of Cases by Type of Final Judgment**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Total number of concluded cases | Commencement of guardianship | | | Commencement of curatorship | | | Commencement of assistance | | | Appointment of voluntary guardian supervisor | | |
| Admission | Dismissal | Other | Admission | Dismissal | Other | Admission | Dismissal | Other | Admission | Dismissal | Other |
| Nationwide | 34,346 | 25,886 | 67 | 1,001 | 5,034 | 24 | 221 | 1,204 | 10 | 89 | 676 | 26 | 108 |

**(NOTE 1) Number of cases which were concluded from January to December 2016**

**(NOTE 2) In Other, withdrawal, natural termination by the death of the person and transfer, etc., are included.**

Admission

Other

Dismissal

d

Nikkei Online Edition as of April 14, 2016 (distributed by Kyodo Tsushin)

Wrongful acts of adult guardians, majority are professionals: 37 cases in 2015

It was proved by April 14, as a result of an investigation by the Supreme Court that 37 cases of such wrongful acts were confirmed in the last year (total damages of \110 million) as embezzlement by “professionals” of attorneys and judicial scriveners who were guardians under the adult guardianship system managing properties of persons whose judgment ability is inadequate due to dementia, etc., which was the worst number reported ever.

As the cases of embezzlement of deposits of the elderly persons by guardians had continued, the Supreme Court started investigation in June 2010. Total wrongful acts of guardians including relatives were fewer than the previous year for the first time since the start of investigation in 2010.

Wrongful acts of total adult guardians have continued to increase as 311 cases in 2011 (total damages of \3,340 million), 624 cases in 2012 (total damages of \4,810 million), 662 cases in 2013 (total damages of \4,490 million) and 831 cases in 2014 (total damages of \5,670 million), but the number decreased in the last year at 521 cases (total damages of \2,970 million).

Out of which, acts of professionals were 6 cases in 2011 (total damages of \130 million), 18 cases in 2012 (total damages of \310 million), 14 cases in 2013 (total damages of \90 million), 22 cases in 2014 (total damages of \560 million) and in the last year, 37 cases (total damages of \110 million), which was the largest number reported ever.

Ratio of professionals to guardians has been increasing on a yearly basis and in 2012, it exceeded 50% and was nearly 65% in 2014. Most of appointed professionals were judicial scriveners accounting for 25.5% of the total, with attorneys accounting for 20.4% and certified social workers accounting for 9.9%.

In order to prevent wrongful acts, the “Guardianship Support Trust System” started in 2012, in which money not required for daily living is deposited in a trust bank and a certain amount cannot be disbursed without instruction from a family court. Use of the system rapidly increased and was 5,274 cases for the period from January to October last year, which significantly exceeded 2,754 cases from the previous year. [Kyodo]

● Article 13

a

Examples of disadvantages due to non-provision of information guarantees and reasonable accommodation in judicial procedures

1. Civil Case Losing a case and being attached without the person knowing due to lack of reasonable accommodation

Regarding a loan obligation for which the name of a person with an intellectual disability was forced to loan due to economic abuse by the custodian of the person, notification of payment was given, but as the notice from the summary court could not be understood by the person and was left, declaration of provisional execution was granted and attachment became possible.

2. Administrative Case Elapse of time due to lack of reasonable accommodation

Notice of decision of nonpayment of pension was delivered to a person with serious disabilities in the upper and lower limbs, but as the person could not open an envelope, the person could not confirm the contents until a reliable helper visited the person. Therefore, the period for appeal elapsed. However, in the litigation for revocation of decision of nonpayment, the court determined the time of delivery to the post of the person as the time of commencement of the period and rejected the claim.

3. Criminal Cases

(1) False charge due to lack of reasonable accommodation

Defendant with inherent hearing disabilities who had used sign language for communication could not read Japanese and did not well understand Japanese sign language. Therefore, a request was made in court for a relay interpretation with a deaf interpreter capable of using Japanese sign language, but this was not accepted by the judge. For that reason, although it was a case arguing not guilty, contesting the facts, subtle nuance in interrogation of Defendant could not be conveyed and was eventually convicted.

(2) Severe Punishment due to lack of reasonable accommodation

As Defendant with development disabilities could better understand visual information than hearing information, the person usually adopted a method of answering questions after reading the contents written on a piece of paper. However, as taking notes was not permitted by the judge, Defendant could not answer questions well and was confused, and left a worsening impression with the judge, and a very severe sentence was imposed.

(3) Repeated Convictions due to lack of reasonable accommodation

Defendant with an intellectual disability thought that a person would be arrested by the police and be confined in prison if a person committed wrongful acts, but it is difficult to understand the true meaning of being sentenced. As Defendant could not receive rehabilitation programs in consideration of the characteristics of disabilities in prison, Defendant would commit another crime soon after release and repeatedly enter into prison. Defendant has 18 criminal convictions and has spent the majority of life in prison.

b

False charge

1. Judgment of the Utsunomiya District Court as of March 2005 (D1- Law.com Hanrei Taikei)

In August 2004, a man with a serious intellectual disability was arrested and indicted for suspected robbery. Initially the disability was not questioned and the trial was about to be decided as a confessed case. However, as the real offender appeared separately, the public prosecutor made a closing argument of not guilty and the Utsunomiya District Court declared on March 10, 2005 a not guilty verdict for robbery. In national government compensation litigation later, the responsibility of the national government was admitted as the prosecutors interrogated and indicted without considering the characteristics of intellectual disability of being induced and ingratiation (Judgment of the Utsunomiya District Court as of February 28, 2008, Hanrei Jiho, No. 2026, p. 104, Wages and Social Security, No. 1469, p. 43).

2. Judgment of the Kagoshima District Court as of February 23, 2007 (Hanrei Times No. 1313, p. 285)

In 2003, at the election of members of the Kagoshima Prefectural Assembly, a member who was elected for the first time was indicted for violation of the Public Offices Election Act (corruption and corrupted) as the member distributed \1,910,000 to residents, but in 2007, all 12 defendants were declared to be not guilty and the decision became final.

In this case, the following illegal interrogations were made: police officers shouted in loud voices and conducted questioning by hitting the desk, made defendants to state in loud voices toward the outside of a window and also during interrogation, defendants were forced to step on the paper on which the names of relatives were written and a defendant claiming bad physical condition was not allowed to return home and interrogation continued, keeping the defendant lying in bed. The two persons, for whom a false record of statement stating “a meeting was held” was made at first, were proved to have intellectual disabilities and the characteristic of being highly induced was incorporated.

3. Judgment of the Toyama District Court (Shomu Geppo, Vol. 62, No. 2, p. 151)

A man, who was arrested, detained, indicted, convicted and served a sentence for rape and attempted rape, was determined not guilty in a retrial because the real offender was arrested after his sentence. The man claimed damages against the Prefecture, national government, police officers and public prosecutors as the investigation and interrogation by the police officers of the Prefecture police and interrogation, preparation of the records of statement, prosecution and maintaining public prosecution by public prosecutors were illegal and claims against Prefecture (police) were partially admitted. The man had a slight intellectual disability.

4. Decision of the Kagoshima District Court as of June 28, 2017 (D1-Law.com Hanrei Taikei)

In November 1979, by reason of murder of a man at the age of 42, the eldest brother, second eldest brother and the wife of the eldest brother were indicted for murder and abandonment of a corpse and the eldest son of the second eldest brother was indicted for abandonment of a corpse. On March 31, 1980, the Kagoshima District Court sentenced imprisonment of 10 years for the wife of the eldest brother, who was suspected of being the principal, imprisonment of 8 years for the eldest brother and imprisonment of 7 years for the second eldest brother and imprisonment of 1 year for the eldest son of the second eldest brother. Wife of the eldest brother consistently denied the allegations, but the other three defendants admitted all offenses from the stage of investigation and went to prison without appeal. Wife of the eldest brother contested by appeal and final appeal, but the Fukuoka High Court, Miyazaki Branch dismissed the appeal on October 14, 1980 and the Supreme Court dismissed the final appeal on January 30, 1981 respectively.

Each of eldest brother, second eldest brother and the eldest son of the second eldest brother had intellectual disabilities. After serving their sentences, each of them appealed false charges at the appeal trial of the wife of the eldest brother.

Wife of the eldest brother continued to claim for retrial and on June 28, 2017, the Kagoshima District Court finally decided to commence retrial upon the third claim for retrial. Decision of retrial was also made for the eldest brother (already died from disease). Eldest son of the second eldest brother also claimed for retrial, but he killed himself without waiting for the result and as the grandmother who succeeded to the claim died, the procedure for retrial was terminated. The second eldest brother also killed himself.

c

Litigation capacity - civil case

Persons with serious intellectual disabilities brought litigation claiming that the Services and Supports for Persons with Disabilities Act imposes a burden according to benefit for provision of welfare services, violates the “equality under the law (Constitution, Article 14)” and infringes on the “right to live (Constitution Article 25)” and damages “individual dignity (Constitution Article 13).” The Otsu District Court did not permit statement of written complaint only by Plaintiff without adult guardians. Finally, litigation proceeded by appointing a special agency to Plaintiff by applying by analogy the Code of Civil Procedure, Article 35 “provision where the litigation capacity of Defendant is suspicious” (Refer to Lawsuit Claiming the Unconstitutionality of the Services and Supports for Persons with Disabilities Act - Parties who rose up” Seikatsushoin 2011).

d

Litigation capacity - criminal cases

1. Example where dismissal of prosecution was not decided for more than 19 years until cancellation of prosecution by a public prosecutor.

In the trial upon reversal at the Okayama District Court in a case where a man (64) in Okayama City, who had a hearing disability and could hardly read, write or understand sign language was prosecuted for theft, the public prosecutor rescinded prosecution because “doubt about no litigation capacity of Defendant could not cleared and improvement could not be expected.” Upon rescinding the prosecution, the Okayama District Court decided to dismiss prosecution on September 3, 1999. It was 19 years after the arrest of the man (Asahi Shimbun, September 4, 1999).

2. Example of a man with Schizophrenia was detained for over 17 years in the detention center without suspension of execution of detention and died

A male defendant whose prosecution was suspended because the man lacked litigation capacity died in Chiba Prison. The person died in prison after being left in the detention center for more than 16 years without treatment after determination of suspension of prosecution based on an evaluation of “insanity” due to Schizophrenia (Asahi Shimbun, August 10, 2010)

3. Example of Judgment that determined the case fell under the cause for dismissal of prosecution

This is the case where a one-year old boy and his grandfather were killed in Toyota City, Aichi in 1995. For the man who was arrested and indicted, prosecution procedure had been suspended for about 17 years because the man lacked litigation capacity due to insanity. Nagoya District Court, Okazaki Branch held on March 20, 2014 that Defendant had both treatment-resistant Schizophrenia and a disability of cognition due to shrinkage of the brain, and also had no litigation capacity and recovery could not be expected. In this case where a public prosecutor repeatedly answered that they would not cancel prosecution at the request of consideration for cancellation of prosecution by the court because Defendant was not expected to recover litigation capacity, as it lacks material litigation conditions after public prosecution and subsequently “the procedure for pubic prosecution became invalid due to the breach of the provision,” the court declared dismissal of prosecution by applying mutatis mutandis the Code of Criminal Procedure, Article 338, Item 4 (Judgment of the Nagoya District Court, Okazaki Branch as of March 20, 2014 (Hanrei Jiho, No. 2222, p. 130)).

4. Judgment of the Supreme Court as of December 19, 2016

Nagoya High Court, at the appeal trial of the above case, held that the court could not determine the discretion of a public prosecutor for making a decision not to rescind prosecution was unreasonable and the case did not fall under the extreme case where it is recognized as apparently unreasonable that a public prosecutor did not rescind prosecution. Then, the court remanded the case to the court of first instance as the first instance judgment that dismissed prosecution erred in interpretation of application of the Code of Criminal Procedure, Article 338, Item 4 and illegally dismissed prosecution, which must be reversed.

Therefore, as a result of final appeal by the attorney, the Supreme Court held that although the Code of Criminal Procedure does not provide the form of trial terminating prosecution in such case, considering that litigation capacity was subsequently lost and the determination of the recoverability was an issue, it is reasonable to determine by a judgment after oral arguments in the same manner as the Code of Criminal Procedure, Article 338, Item 4, which provides for dismissal of prosecution by judgment and that the court could dismiss prosecution by judgment, applying mutatis mutandis the Code of Criminal Procedure, Article 338, Item 4 if it is determined that it would be impossible to resume prosecution procedure because the recovery of litigation capacity could not be expected after suspension of prosecution procedure due to lack of litigation capacity of Defendant (Judgment of the Supreme Court, December 19, 2016, Supreme Court Reports (criminal cases), Vol. 70, No. 8, p. 865, Saibansho Jiho, No. 1666, p. 11).

e

Tendency of courts with respect to calculation of lost profit of minor children with disabilities

In present judicial practices in calculation of damage amounts, a calculation method called “individual accumulation method” is used. According to this calculation method, if damages to a human body have occurred, damages are classified into “proprietary damage” and “mental damage” and the former is further classified into “active damage” and “lost profit.” Damage amounts are separately calculated for each of these damages and the aggregate thereof shall be calculated as the damage amount.

For lost profit, the position of compensation for the income lost by the victim from an accident is taken and in general, calculation is made with reference to the previous income of the victim. For example, however, in case of such victims with no income as minors, it is difficult to calculate lost profit when considering future income as there are differences in wages by gender and the existence of disabilities, etc., in actual society.

Accordingly, in the precedents, with respect to the gender wage gap, calculation based on the average wages without distinction between men and women is admitted by reason of the tendency of various possibilities of employment and employment environment, etc.

For children with disabilities, however, as stated below, calculations were made based on amounts much lower than the average wages with reference to the status at the time of death, without considering the tendency of various possibilities of employment and employment environment, etc.

While situations have gradually improved, there is no precedent that calculations were conducted based on average wages even after the ratification of the Convention on the Rights, and discrimination between children without disabilities has not yet been resolved.

1. Judgment of the Yokohama District Court as of March 5, 1992 (Hanrei Jiho, No. 1451, p. 147)

Regarding an accidental death by drowning during a swimming class of a boy with autism (then 16 years old) who enrolled at a school for children with disabilities, the court calculated lost profit as \1,200,000 based on an annual income at workshop (about \70,000) as the boy was likely to work at local workshop after graduation.

This judgment is quite unjust as it did not consider the possibility of employment of persons with disabilities and the media also raised the issue as “persons with disabilities are still discriminated against even after death” (Tokyo Shimbun, March 6, 1992).

In a judgment by the Tokyo High Court at an appeal trial on November 29, 1994, the following judgment which should significantly be brought attention was made.

“In order to value the life of a person in terms of monetary value, it is too low to value the life of a person (whether a child with a disability or not) to calculate income from a workshop as a base, which is inappropriate (one could go so far as to say even if a person lost his life by an illegal act that the value is determined as nil for children with serious disabilities and seriously sick persons who have no ability to work).”

Nevertheless, in the judgment, the court calculated lost profit as \18 million, with reference to minimum wage, etc.

2. Judgment of the Oita District Court as of July 29, 2004 (Hanrei Times, No. 1200, p. 165)

Regarding the case of death of a child with limb trunk impairment due to congenital brain paralysis due to a fat embolism as a result of fracture of the femur when a teacher of prefectural school for children with disabilities conducted movement training, lost profit was denied at death at 11 years old, the child could only talk in a babbling manner and could only take a seated position and required care for living in general, including meals and it is difficult to recognize the probability of obtaining working ability in any form in the future.

3. Judgment of the Aomori District Court as of December 25, 2009 (Hanrei Jiho, No. 2074, p. 113)

The court calculated lost profit based on minimum wage for the case where a child (then 16 years old), who had entered the facility for children with intellectual disabilities, died from drowning in a bath.

4. Settlement before the Sapporo District Court as of December 4, 2009 (Yuji Kodama, “Human Rights of Children and Persons with Intellectual and Development Disabilities” Gendaishokan, 2014)

Regarding accident case where a child with autism (then 17 years old) who got off a bus and dashed into the road and crossed in front of the bus and died by getting hit by a car, the court calculated the lost profit of a child with severe autism based on minimum wage.

5. Judgment of the Saitama District Court as of December 11, 2015 (D1-Law.com Hanrei Taikei)

The court calculated the lost profit of a girl with Down syndrome (then three years and nine months old), who died by drowning in the swimming pool of a nursery facility, based on an amount reducing 30% from the average wages (a female high school graduate).

f

False charge, stricter punishment, repeated offenses due to inadequate understanding of judges (citizen judges), public prosecutors and police officers in a criminal procedure

1. False Charge

If interrogations are conducted without investigators understanding the characteristics of statements and disabilities, records of statements different from the truth might be prepared and the risk of making false charges will be greater.

A specific example is, in addition to Item 2 above, the Case of Kaizuka Arson Dismissal of Prosecution – In January 2009, a suspect having rehabilitation certificate B1 was arrested and indicted on suspicion of arson of the inhabited building, etc. As it was a citizen-judge trial, interrogations of public prosecutors were recorded, and it was reported that the situations were recorded, in which the suspect admitted all the facts along the inducement of the suspect by prosecutors (Asahi Shimbun, January 20, 2011). As the public prosecutor rescinded prosecution, the Osaka District Court, Sakai Branch dismissed prosecution on the same day.

2. Stricter Punishment – Judgment of the Osaka District Court as of July 30, 2012 (D1-Law.com Hanrei Taikei)

A man with Asperger’s syndrome who shut himself away for 30 years stabbed his biological elder sister and by the citizen-judge trial of the murder case, the Osaka District Court rendered a sentence harsher than the demand of the public prosecutor. The reason therefor was as follows.

“In terms of sound social convention, if the defendant returns to society without sufficient reflection, even though he is affected by a mental disability, there is a concern that the defendant might commit similar crimes against a person who does not follow the will of the defendant at that time among those who have contact with the defendant. Under the present conditions in society where no receptacle is prepared corresponding to mental disabilities due to Asperger’s syndrome and it is not expected, we have to say there is a further concern about reoffending, (snip) and it is necessary to make the defendant reflect deeper by detaining in prison for the longest period permitted and it will contribute to maintaining social order.”

The appeal trial reversed the original judgment and the sentence was reduced because the disabilities should be regarded as favorable in relation to the circumstances of the crime of the defendant and the recognition of facts was wrong in that the defendant did not reflect and that there was no receptacle (Judgment of the Osaka High Court as of February 26, 2013, Hanrei Times, No. 1390, p. 375).

3. Repeated Offenders

According to the Correction Statistics Annual Report 2017 (names of crimes of new inmates and psychiatric diagnosis by the number of cases sent to prison), out of new inmates, those who were sent to prison for the first time totaled approximately 40% of all inmates. In terms of psychiatric diagnosis, those who have no mental disabilities totaled 41.6% and those who have some form of mental disability totaled 34.5%. That is, the ratio of re-institutionalization is higher for inmates who received psychiatric diagnosis. This tendency does not change for repeat offenders, and among those who were went to prison 10 times or more, those who do not have mental disabilities totaled 759 persons accounting for 4.5% out of new inmates without mental disabilities, while those who have mental disabilities totaled 145 persons accounting for 5.5%. Out of persons with mental disabilities, those who have intellectual disabilities totaled 14 persons. And out of new inmates with intellectual disabilities, 5.1% were sent to prison 10 times or more. That is, those who are diagnosed as having mental disabilities, and in particular those who are diagnosed as intellectual disabilities show higher re-institutionalization ratio.

As a result of special survey of the Ministry of Justice in 2014, out of the total inmates of 56,039 persons at 77 facilities subject to the survey, it is reported that those who have intellectual disabilities totaled 774 persons and those who are suspected of intellectual disabilities totaled 500 persons. Out of those who have intellectual disabilities and are suspected thereof, those who were re-institutionalized (sent to prison more than once) totaled 342 persons account for 27% and among the target persons of survey, the higher the age becomes, number of institutionalizations increases and among those who are “65 years old or older,” “5 times or more” account for 68.5% (43.9% of the total inmates). Furthermore, the average times of institutionalization totaled 3.8 times for the target persons of survey and 3.1 times for total inmates and there is a statistical difference between the two. Looking at the composition ratio by the number of institutionalizations, among the target persons of survey, those who are institutionalized “5 times or more” are larger than the ratio among total inmates.

According to the special survey of the Ministry of Justice in 2006, a high percentage of repeat offenders was shown soon after the previous release as, out of re-institutionalized inmates, those who committed a crime again within three months from the previous release were 38.3% and 69.2% of those who have intellectual disabilities or suspected thereof repeat offenses within one year.

It was found that there are many persons with disabilities who are institutionalized as repeat offenders in a short period of time after release, but we consider at least a considerable number of them cannot receive welfare support after the release as proper certification of disabilities was not made and they are released into society under the same conditions as prior to imprisonment and eventually become repeat offenders. In the special survey of the Ministry of Justice in 2014, out of those who have intellectual disabilities and are suspected thereof, those who received various welfare services totaled 41.8% and the main contents are receipt of welfare benefits for 144 persons (26.3%), receipt of pensions such as disability basic pension for 68 persons (12.4%) and institutionalization in the facilities for persons with intellectual disabilities for 19 persons (3.5%) and we can understand that more than half of them did not receive welfare services.

g

Ratio of persons with disabilities among inmates

According to the Correction Statistics Annual Report 2017, out of new inmates of 19,336 persons in 2017, persons without mental disabilities totaled 16,698 persons and persons with mental disabilities totaled 2,638 persons. Statistically, approximately 13.6% of new inmates have form of mental disability. Looking at the ability test values of new inmates, as those whose IQ-equivalent value is less than 70 totaled 3,879 persons, approximately 20.1% of new inmates are suspected of intellectual disabilities. It is estimated that persons with mental disabilities totaled about 3,300,000 persons and persons with intellectual disabilities totaled about 740,000 persons, and the ratio to total population of about 127,800,000 persons in Japan is 2.5% and 0.6% respectively, accordingly, we can understand that the ratio of persons with disabilities is very high in new inmates.

In this regard, according to the White Paper on Crime 2017, out of the total number of arrested person of 226,376, persons with mental disabilities (including persons with intellectual disabilities) and those who are suspected thereof are 4,084 persons in total. The ratio is only 1.8%, but we assume they are given prison sentences at a considerable ratio. We can see that persons with disabilities are given prison sentences at very high ratio if they are arrested.

h

Cases considered to be due to insufficient understanding by police officers and correction officers

1. Case where the suspect went into cardiac arrest as the suspect was being held down by five police officers as they did not understand that the suspect would panic due to a disability

On September 25, 2007, a man with an intellectual disability and autism (then 25 years old) was stopped by a police officer while he was returning home by bicycle on a road in Saga City, and the man panicked and tried to flee, and then collided with a motorcycle running in front of him. Thereafter, the man was held down by five police officers and died immediately thereafter.

As the man had a moderate intellectual disability, he had a weak ability to understand and perceive the situation and an ability to process information was not very high. Therefore, it was difficult for him to judge what had happened to him. As he also had an autism spectrum disability, it was extremely difficult for him to respond to sudden occurrences. He stuck to his routine and went to the workshop every day with a bag full of things on the front basket of his bicycle.

Therefore, the man on the bicycle appeared to wander around and the police became suspicious. He was too sensitive and jumped up when he was touched. Nevertheless, the police officer suddenly grabbed the neck of the man and the surprised man went wild, but the police officers did not recognize his disability and pinned him down forcibly.

In this case, upon decision by quasi-prosecution claim equivalent to indictment, and the police officers were accused of a crime of assault and cruelty resulting in injury by special civil servants, but the Saga District Court declared not guilty on March 29, 2011. The bereaved family claimed civil damages, but it was not accepted (Judgment of the Fukuoka High Court as of December 21, 2015).

2. Abuse Case in Prison

In the early morning of October 23, 2005, an inmate with a mental disability killed himself/herself at Tokushima Prison. The person who was suffering from depression, in the treatment room, was assaulted and pinned down by a medical section manager and he left without treatment as he did not receive sufficient medication or infusion was not given.

In October 2007, 80 inmates accused the medical section manager of assaulting them for the period from his assignment in April 2004 to July 2007, but the situation was not improved, and angers of inmates exploded and on November 16, 2007, a riot occurred in Tokushima Prison.

In February 2008, 26 persons including inmates and their relatives accused the Tokushima District Public Prosecutors’ Office of the crime of assault and cruelty resulting in injury by special civil servants three staff, including the medical section manager and Tokushima Prison Directors. However, in October, Tokushima District Public Prosecutors’ Office dismissed the case against the three persons as “it was legitimate medical treatment and there was no fact of hitting and kicking.” (Refer to NPO Corporation, Center for Prisoners’ Rights, “Emergency Appeal on Ascertaining the Truth about the Tokushima Prison Incident and Prevention of Recurrence”).

●Article 16

a

○ August 20, 2008, Appendix of Cases to the JFBA Opinion on Legislation of Prevention of Abuse of Persons with Disabilities “Cases and Analysis of Abuse in each Field”

(Hereinafter Excerpts)

III. Abuse at School

1. Actual Circumstances and Case Analysis

ⅰ. Judgment of the Nagoya District Court as of June 21, 1993 (Hanrei Jiho, No. 1487, p. 83, Hanrei Chihojichi, No. 147, p. 46)

A teacher committed an assault against a 2nd year high school boy with an intellectual disability in a classroom with only the boy and the teacher present and damaging the boy’s eyes and grabbing his groin. Bleeding (subconjunctival hemorrhage) was observed in his eyes, but only the testimony of the student was the evidence as to the cause for the bleeding.

The student won at the first instance as the fact of victimization was recognized, but the judgment was reversed in the 2nd instance (Judgment of the Nagoya High Court as of November 27, 1995). Statement of the victimized student was regarded as being made under the influence of his mother with her assistance and the fact of victimization was denied and final appeal was also dismissed and became final (Decision of the Supreme Court as of November 9, 1998).

ⅱ. Judgment of the Chiba District Court as of April 28, 2005

This is the obscene case of girls (several) with intellectual disabilities by the class teacher of special classes of a public elementary school. The offending teacher was indicted, but declared not guilty and the judgment became final by the High Court (February 2006). In the civil case claiming damages against the offending teacher by one of the victimized children, 22 cases of assault were admitted and payment of \3,300,000 in total was ordered to be paid by the Prefecture and City, the employers of the teacher (Judgment of the Tokyo High Court as of March 14, 2010).

ⅲ. Judgment of the Yokohama District Court, Kawasaki Branch as of June 21, 1999

The case where a male class teacher repeatedly committed obscene acts in the restroom of the school, etc., (violation of the Charter) against a 3rd year junior high school girl with an intellectual disability, a student of a class for children with disabilities. The offending teacher was indicted and although the defendant denied the charge, he was convicted and given a prison sentence of one year and six months and became the final (Judgment of the Tokyo High Court as of November 20, 2000).

ⅳ. Yokohama Obscenity Case

A class teacher of individual support class of Yokohama City Junior High School committed obscene acts against a 1st year junior high girl with an intellectual disability and was convicted in a criminal case as a violation of the Charter (in 2005. Prison sentence of one year).

○ Judgment of the Kobe District Court as of November 11, 2005 (Hanrei Jiho, No. 1918, p. 48)

For a case where a student with Down syndrome at a Prefectural Junior High School for deaf persons was hit by a teacher on the face and chest, etc., during practice for an athletic meet and was injured both mentally and physically, and a claim for damages was admitted.

b

○ August 20, 2008, Appendix of Cases to the JFBA Opinion on Legislation of Prevention of Abuse of Persons with Disabilities “Cases and Analysis of Abuse in each Field”

(Hereinafter Excerpts)

V. Abuse at Medical Institutions

3. Actual Circumstances and Case Analysis

ⅰ. A Hospital Case

In March 1984, it was proved that violent control of patients and extreme human rights violations were conducted in a hospital as a whole, including violence against hospitalized patients (two patients died) and treatment without qualification. The hospital director was given a prison sentence of one year and a fine of \300,000 by several crimes, including violation of the Postmortem Examination Act (Asahi Shimbun as of March 26, 1985), which was a case triggering amendment of the Mental Health (Seishin-Eisei) Act to the Mental Health (Seishin-Hoken) Law.

ⅱ. B Hospital Case

In April 1994, a male nurse assistant entered a room where female patients were hospitalized, and shot an air-gun and a bullet hit the right hand finger of a patient. However, the nursing care records were blacked out. According to the testimony of the related persons then, it is said that the nurse assistant had said, “let’s make an example of patients” and committed incidents other than the above. At the same hospital, medical protection hospitalization and restrictions on action were applied without a full-time mental health designated doctor (Asahi Shimbun as of April 26, 1994).

ⅲ. C Hospital Case

In February 1997, when a female patient was eating a snack in a restroom without permission, a junior nurse gave her a warning but the patient denied the fact. The junior nurse got angry and hit the face of the patient and together with other several nurses, swung the patient grabbing her by both legs and hit her head against the wall of a corridor and the patient died. The junior nurse was given a prison sentence (Mainichi Shimbun, July 2, 1997).

ⅳ. D Hospital Case

In March 1997, several nurse assistants punished patients by using bats, etc., and killed two patients. For two cases of bodily injury resulting in death, the hospital Director had reported acute cardiac failure to conceal the crime by treating them as death from disease. The hospital routinely administered large amounts of psychotropic drugs to keep patients in bed and also frequently used isolation and restraints as a means of control of patients (Osaka Yomiuri Shimbun, as of May 5, 1997).

ⅴ. E Hospital Case

In November 1998, in order to restrain a female patient, three nurses tied up the patient on the stump with a diameter of about 80cm in the courtyard of the hospital.

ⅵ. F Hospital Case

The hospital restrained patients by binding the body by a leash like a dog in a tatami room, which was called “dog binding” and also continued routinely conducting “seven point restraint” on both hands, both shoulders, body and both legs. It also conducted IVH, forced nutrition supply from the clavicle or veins of patients who were capable of eating from the mouth in order to take in additional medical fees (Minaminippon Shimbun as of November 5, 1998).

ⅶ. G Hospital Case

In February 2001, in the middle of winter, they took off the clothes of a patient and watered the patient from a hose on the patient’s head in the athletic grounds of the hospital and the nurse department head hit the head of the patient with a golf club. When the patient asked for pocket money, they threatened, “you will be restrained” or said, “you should die” (Osaka Yomiuri Shimbun, as of February 9, 2001).

ⅷ. H Hospital Case

In July 2002, because a male patient, who was hospitalized for Schizophrenia, did not follow instructions, a nurse assistant hit the man on his face and he fell down and died (Mainichi Shimbun as of July 19, 2002).

ⅸ. I Hospital Case

In November 2004, information from a whistleblower was received that since May 2002, there were three assaults and obscenity cases by nurses against patients and the prefecture conducted an investigation. The Prefecture confirmed one case and issued an improvement order. The case was that a nurse hit the head of a patient against the wall and pressed the patient’s neck by the elbow because the nurse was kicked by a female patient. According to the whistleblowing, there was a case of a nurse hitting the head of the female patient, who asked to open a cigarette pack, by keys carried by the nurse, and the case of causing male and female patients to perform sexual acts (Mainichi Shimbun as of November 24, 2004).

ⅹ. J Hospital Case

In July 2006, a junior nurse got angry at the patient who did not follow instructions during meals in the hospital and caused an injury on the face and head by assault of hitting and kicking that took two weeks to recover. The nurse was summarily ordered to pay \200,000 (Saitama Shimbun as of July 21, 2006).

ⅺ. K Clinic Case

In January 2007, a doctor got angry with a female patient who asked for an explanation about diagnostic results and hit her head against the wall by grabbing her hair, saying, “you won’t understand even if I explain” and caused injury that took three weeks to recover (Sanyo Shimbun as of January 23, 2007).

ⅻ. L Hospital Case

In February 2007, it was proved that a nurse assistant assaulted a patient (Mainichi Shimbun as of February 7, 2007).

c

August 20, 2008, Appendix of Cases to the JFBA Opinion on Legislation of Prevention of Abuse of Persons with Disabilities “Cases and Analysis of Abuse in each Field”

(Hereinafter Excerpts)

VI. Abuse at Detention Facilities, including Prisons, etc.

2. Actual Circumstances and Case Analysis

(1) From Warnings and Requests of Committee for the Protection of Fundamental Human Rights of each Bar Association

a. Osaka Bar Association

To: Osaka Detention Center

Date of Notice to the Recipient: February 24, 2004

Treatment Result: Request

Summary of Conclusion: Petitioner who was detained awaiting judicial decision has been treated for mental disease for a long time, but symptoms never improved and physical conditions deteriorated. As Petitioner felt dissatisfaction about the content and administration quantity of drugs, Petitioner applied to receive a medical checkup by an external doctor, but application was refused. We request to promptly have an external doctor desired by Petitioner conduct a medical checkup if the request is reasonable and Petitioner can receive treatment by its own expenses.

b. Kyoto Bar Association

To: Kyoto Detention Center

Date of Notice to Recipient: October 10, 2003

Treatment Result: Warning

Summary of Conclusion: Petitioner has been detained at the Kyoto Detention Center since February 7, 2003, and suffered from mental pain by groundless discriminatory treatment based on the reason that Petitioner was infected with HIV. Such acts wrongfully discriminate against Petitioner by reason that Petitioner was infected with HIV and infringes on human rights of Petitioner. Therefore, we warn not to repeat such treatment by providing thorough training and education for the staff so that proper treatment can be made based on the correct medical knowledge of HIV and HIV infected persons in the future. Specific treatments were as follows: (i) “HIV” was written on the washbowl in which a razor used by Petitioner is washed. (ii) Dishes used by Petitioner were not collected after meals and the staff had Petitioner keep them. (iii) In physical checks of Petitioner, the staff used vinyl gloves. (iv) The staff caused Petitioner to exercise alone. (v) The staff treated clothes of Petitioner separately from others in washing. (vi) The staff treated futon of Petitioner separately by wrapping with a blue sheet. (vii) The staff always had Petitioner take a bath at the end.

c. Nagoya Bar Association

To: Nagoya Prison

Date of Notice to the Recipient: September 24, 2003

Treatment Result: Request

Summary of Conclusion: Considering that Petitioner was not given any opportunity to receive medical checkups by a doctor having professional knowledge and experience of treatment of HIV infectious disease while Petitioner was imprisoned at Nagoya Prison, if it is found that there is a patient of HIV infectious disease among inmates, care must be taken so that medical care by a doctor having professional knowledge of treatment of HIV infectious disease can be received, including receiving treatment at the HIV treatment core hospital.

(2) From the Investigation Results Report by Death Ledger Investigation Group of the Ministry of Justice (Cases about which neglect is suspected)

a. Reference No. 165

Facility Name: Fuchu Prison

Date of Death: August 10, 1999

Name of Disease and Disability: After effects of organic solvent, psychopathic personality (explosiveness)

Cause of Death: Acute cardiac failure

b. Reference No. 918

Name of Facility: Osaka Detention Center

Date of Death: July 19, 1994

Name of Disease and Disability: After effects of stimulants

Cause of Death: Subdural hemorrhage by the head being hit, traumatic subarachnoid hemorrhage and brain contusion, etc.

c. Reference No. 1590

Facility Name: Tokyo Detention Center

Date of Death: June 30, 2002

Name of Disease and Disability: Narcolepsy (sleep disorder by which a person feel too sleepy during the day)

Cause of Death: Suicide

d. Reference No. 987

Facility Name: Utsunomiya Detention Branch

Date of Death: December 15, 2002

Name of Disease and Disability: Depression Cause of Death: suicide

e. Reference No.1506

Facility Name: Shizuoka Prison

Date of Death: August 10, 1999

Name of Disease and Disability: Obsessive-compulsive disorder (squeamishness) Suspected Schizophrenia

Cause of Death: Anorexia, arrhythmia

f. Reference No. 1558

Facility Name: Tokyo Detention Center

Date of Death: March 26, 1997

Name of Disease and Disability: prison reaction, suspected Schizophrenia

Cause of Death: acute cardiac failure

g. Other Problematic Examples

(a) Cases where lack of proper medical care was the remote cause and which should be regarded as neglect of mental disability

No. 1533 was the death of a patient of Schizophrenia by suffocation from vomit and excreta while observing the development with wearing leather cuffs as the patient went wild. No. 288 was the death of suffocation from food of the patient of mental disease who cannot make communication as repeating abnormal behavior. No. 913 resulted in death by hitting the head on the door of the cell due to abnormal behavior and anorexia, in which case psychiatric medical treatment was lacking. For all of the above cases, necessity for having patients be treated at proper medical institutions was pointed out.

(b) Cases which can be regarded as neglect as a result of nutrition failure by anorexia

No. 189 and No. 1540, etc., are such cases and especially in the later case, the patient developed clouded consciousness from low levels of nutrition even though it was in a penal facility, in which case criminal liability of doctors, etc., should have been accused.

d

1. Abuse Case at Prefectural Sodegaura General Welfare Center in Sodegaura City, Chiba

In November 2013, one of the patients died as a result of assault by staff. In the investigation after the incident, it was proved that continued abuse acts were committed by several staff, but no one in the workplace reported and no records were entered concerning such situations in the support records and support journals (Sankei Shimbun as of August 8, 2014).

2. Abuse Case at A Facility in Akita Prefecture

In April 2013, a staff injured a person staying in the facility and the city received a report from the facility that physical abuse was suspected, but the city failed to secure safety of persons staying in the facility and report to Akita Prefecture (Kahoku Shimpo as of November 19, 2014).

3. Abuse Case at B Facility in Kochi Prefecture

It was proved by a report from custodians that the facility had constantly locked rooms from the outside at night and it was improved by guidance of the Prefecture. The facility did not record management of locks at night and did not observe the three requirements of the response scheme under the Abuse Prevention Act, but it was reported that Kochi prefectural authorities, which gave guidance, expressed its opinion in the Prefectural Assembly that locking did not fall under abuse as lock management was unavoidable (Kochi Shimbun as of November 6, 2014).

4. Abuse Case at C Facility in Yamaguchi Prefecture

Report of images shot by a concealed camera, in which care staff repeatedly committed assaults and mental abuse by words against users, surprised society. In this case, mental abuse was reported with the image earlier, but the City Abuse Prevention Center did not take any action (J-cast News as of June 11, 2015).

● Article 17

a

**[Number of Cases]**

♦ Sterilization without the consent of the persons totaled about 16,500 cases, and when including those due to hereditary disease, etc., out of sterilization for which consent was obtained, the number is totaled about 25,000.

♦ Sterilization without consent of persons were reviewed and determined by the “Eugenic Protection Review Board” established by Prefectures.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Consent of Person Necessary | | | Consent of Person Unnecessary | |
| Determination by Review Board | Consent of Guardian  Determination by Review Board |
| Article 3 | | | Article 4 | Article 12 |
| Hereditary diseases, etc. | Leprosy | Maternal protection | Hereditary diseases | Non-hereditary diseases |
| 6,965 | 1,551 | 819,905 | 14,566 | 1,909 |

About 16,500 cases

About 8,500 cases

About 25,000 cases

(Data of the Ministry of Health, Labour and Welfare, March 5, 2018)

b

○ November 19, 1998, International Covenant on Civil and Political Rights (Covenant B) Human Rights Committee, the 64th Session

31 The Committee, while acknowledging the abolition of forced sterilization of disabled women, regrets that the law has not provided for the right level of compensation to persons who were subjected to forced sterilization, and recommends that the necessary legal steps be taken.

○ October 30, 2008, Human Rights Committee, the 94th Session

6 The Committee is concerned that many of its recommendations made after the consideration of the State party’s fourth periodic report have not been implemented. The State party should give effect to the recommendations adopted by the Committee in the present as well as in its previous concluding observations.

○ August 20, 2014, Human Rights Committee

5 The Committee is concerned that many of the recommendations made after the consideration of the State party’s fourth and fifth periodic reports have not been implemented. The State party should give effect to the recommendations adopted by the Committee that are contained in the present concluding observations, as well as those in its previous concluding observations.

○ March 7, 2016, Convention on the Elimination of All Forms of Discrimination against Women

25 The Committee recommends that the State party conduct a study on the extent of past violations in the form of forced sterilizations of women under the Eugenic Protection Act and that it prosecute and adequately punish perpetrators, if they have been convicted. The Committee further recommends that the State party adopt specific measures aimed at providing all victims of forced sterilization with assistance to access legal remedies and that it provide them with compensation and rehabilitative services.

c

○ On January 30, 2018, a woman in her sixties in Miyagi Prefecture brought litigation before the Sendai District Court against the national government to seek compensation of \11 million as sterilization imposed on a person with intellectual disability under the old Eugenic Protection Act violated the Constitution, guaranteeing individual dignity, but the government and the Diet continued to neglect a remedy. This was the first case in the country, making the national government liable for forced sterilization.

According to the complaint, the woman has a severe intellectual disability from the effects of anesthesia due to an operation on the cleft palate at the age of one. She was subject to sterilization at the age of 15 by reason of “hereditary mental weakness” and before reaching the age of 30, the right ovary was extracted due to ovarian cystoma which seems to have been caused by the operation.

The woman was shunned due to being unable to give birth and ant attempts at marriage ended in failure. The woman argues, “I was infringed the right to pursue happiness guaranteed by Article 13 of the Constitution and omission of the government and the Diet which failed to take or legislate measures for victim relief is illegal.” (Asahi Shimbun, Tokyo Shimbun as of January 31, 2018).

○ A woman in Miyagi Prefecture who brought litigation before the Sendai District Court on May 17, 2018 was subject to sterilization of binding the fallopian tube at the age of 16 because she was diagnosed as having a slight intellectual disability according to an intelligence test which she took at the prefectural mental retardation rehabilitation counseling center in 1963. Due to her body being unable to give birth, she experienced divorce three times.

The woman emphasized, “I continued to claim for an apology and compensation against the national government for about 20 years from 1997 when I first asked the Prefecture to disclose information of the operation, but my requests were deliberately ignored” (Kahoku Shimpo as of May 18, 2018).

○ On June 28, 2018, a total of three persons, a husband and wife in Hokkaido and a man in Kumamoto Prefecture, brought litigation before the Sapporo and Kumamoto District Courts respectively claiming compensation against the national government because they were forced to undergo sterilization or undergo an artificial abortion under the old Eugenic Protection Act. This was the second one of concurrent litigation following the one in May. The woman (75) and husband (81) lament “we wanted to give birth and raise a child” (Mainichi Shimbun as of June 28, 2018).

Woman argues, “I have an intellectual disability which seems to be caused by fever at around 1 or 2 years old. In 1977 I married my husband and got pregnant in 1981, but my pregnancy was noticed while I was bathing with family members and they persuaded me to abort. On June 11, 1981, my husband asked to sign the written consent for abortion and eugenic operation by my family members and signed the written consent as he could not resist. I received an abortion and eugenic operation at Takigawa Municipal Hospital on June 12, 1981.”

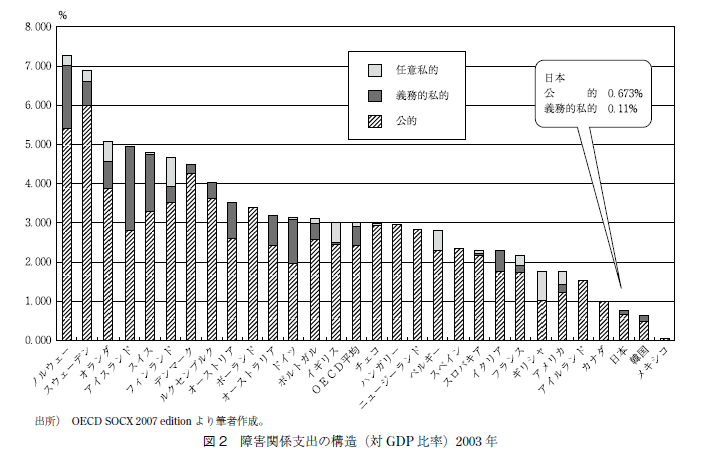
○ On September 28, a total of 6 persons both men and women with intellectual disabilities and hearing disabilities in their 60’s to 80’s living in Miyagi and Hyogo concurrently brought litigation before the three District Courts of Sendai, Osaka and Kobe, claiming the national government pay compensation for damages totaling \107 million because they were forced to receive sterilization under the old Eugenic Protection Act (1948~1996) (Mainichi Shimbun as of September 29, 2018).

A woman who brought litigation before the Osaka District Court said “when I was in the 3rd year of junior high school (15 years old), I suffered from Japanese encephalitis and due to a continued high fever, my brain was damaged and I experienced an intellectual disability because of the aftereffects. Determination of the rehabilitation certificate is B1 (intermediate degree). After graduating from high school, my mother brought me to a gynecologic hospital in Osaka City and forced me to become hospitalized and undergo sterilization. I can clearly remember the words of my mother at the time of the operation and the name and address of the gynecologic hospital and also clearly remember the pain and deep regret at that time. What I wish most is to get back may body before the operation. But as it is impossible, at least a prompt apology and sufficient compensation should be made.”

● Article 19

a

Based on the “Positioning of Japanese Policies for Persons with Disabilities in terms of International Comparison - Considering International Comparative Study and Comparison of Cost Statistics - Yukiko Katsumata,” Ministry of Health, Labour and Welfare, “National Institute of Population and Social Security Research” the Quarterly of Social Security Research 2008, (Autumn 2008), p. 145, Figure 2



Voluntary, private

Japan

Public: 0.673%

Compulsory, private: 0.11%

Source) Prepared by the Author based on OECD SOCX 2007 edition

Norway

Sweden

Netherlands

Iceland

Switzerland

Finland

Denmark

Austria

Poland

Australia

Germany

Portugal

UK

OECD Average

Czech

Hungary

New Zealand

Belgium

Spain

Slovakia

Italy

France

Greece

USA

Ireland

Canada

Japan

Korea

Mexico

Compulsory, private

Public

Luxembourg

**Figure 2: Structure of Costs related to Disabilities (ratio to GDP) in 2003**

b

The following are precedents where the court held illegal dispositions to refuse (including partial refusal) public care benefits, etc., necessary for independent living of persons with disabilities.

1. First Litigation of Person A: Judgment of the Tokyo District Court as of November 29, 2006 (Wages and Social Security, No. 1439, p. 55)

2. Funehiki City Support Expense Litigation: Judgment of the Fukushima District Court as of September 18, 2007 (Wages and Social Security, No. 1456, p. 52)

3. Second Litigation of Person A: Judgment of the Tokyo District Court as of July 28, 2010 (Hanrei Times, No. 1356, p. 98, Wages and Social Security, No. 1527, p. 23)

4. Litigation of Mr. B: Judgment of the Osaka High Court as of December 14, 2011 (Hanrei Chihojichi, No. 366 p. 31, Wages and Social Security, No. 1559, p. 21)

5. Wakayama ALS Litigation: Provisional order of mandamus by the Wakayama District Court as of September 26, 2011 (Hanrei Times, No. 1372, p. 92, Wages and Social Security, No. 1552, p. 21)

6. Wakayama ALS Litigation: Judgment of the Wakayama District Court as of April 25, 2012 (Wages and Social Security, Combined No. 1567/1568, p. 68, Hanrei Times, No. 1386, p. 184, Hanrei Jiho, No. 2171, p. 11)

7. Litigation of Electric Wheelchair Protective Device Expenses: Judgment of the Fukuoka District Court as of February 9, 2015 (Wages and Social Security, No. 1632 p. 45. The case where disposition refusing application for protective device expense of electric wheelchair for a person with a cardiac disability was held illegal)

c

“Standards for burden of national treasury” is determined by the Ministry of Health, Labour and Welfare on a yearly basis up to the maximum fixed amount of at-home welfare benefits to be paid to local governments by the national government according to the disability support category of persons with disabilities living in the local community. This means the “revised edition in the year of the standards for the amount of burden of disability welfare service expenses, etc., determined by the Minister of Health, Labour and Welfare (Notification of the Ministry of Health, Labour and Welfare No. 530 as of September 29, 2006)” That is, if the local government made payment exceeding the standard amount, the expenses exceeding the amount shall be borne by the local government.

d

The national government does not allow use of the disability welfare system for attending schools and companies based on text as excluding the “outing related to such economic activities as commutation and sales activities and a full-year and long-term outing” in the Notification of the Ministry of Health, Labour and Welfare No. 530 as of September 29, 2006, the “Standards for calculation of the amount of expenses required for designated welfare services for persons with disabilities, etc., and appropriate welfare service for persons with disabilities under the Act on Comprehensive Support for Daily and Social Lives of Persons with Disabilities,” Appended Table, Unit Amount Table of Nursing Care Payment, etc., but they do not constitute grounds for such limitation.

e

Basic Agreement. Services and Supports for Persons with Disabilities Act which was enforced in April 2006 adopted the “benefit principle,” which imposed a harsher burden if disabilities are more severe and the necessity of welfare support is greater. For that reason, many people with disabilities had to give up use of the welfare system one after another and 70 persons with disabilities became Plaintiffs and instituted a lawsuit claiming the unconstitutionality of the Services and Supports for Persons with Disabilities Act, designating the national and local governments as Defendant.

The national government sympathized with the complaints of Plaintiff et al. and the national government and Plaintiff et al. executed on January 7, 2010, a basic agreement that the Services and Supports for Persons with Disabilities Act shall be repealed by August 2013 and the national government reflects on sincerely that the Act injured the human dignity of persons with disabilities. The Agreement is referred to as “Basic Agreement.” The national government also affixed signatures on the settlement in which the national government pledged to comply with the Basic Agreement against the 14 District Courts in Japan. But the national government has not complied with the Agreement and only made such minor revision as changing the name of the Services and Supports for Persons with Disabilities Act to the Comprehensive Support Act and has not performed the promise to repeal the Act. Refer to the webpage of the Ministry of Health, Labour and Welfare below.

<http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/hukushi_kaigo/shougaishahukushi/goui/index.html>

The matters confirmed in the Basic Agreement were as follows.

I. Firm commitment of repeal of the Services and Supports for Persons with Disabilities Act and enactment of a new act.

The national government (Ministry of Health, Labour and Welfare) shall promptly abolish the system of benefit principle (fixed rate principle), repeal the Services and Supports for Persons with Disabilities Act by August 2013 at the latest and implement a new comprehensive welfare legal system. The system shall be based on the philosophy that enhancement of disability welfare measures is to support exercise of basic human rights of persons with disabilities based on the Constitution, etc.

II. Concluding observation and reflection on enactment of the Services and Supports for Persons with Disabilities Act

1. The national government (Ministry of Health, Labour and Welfare) sympathizes and sincerely accepts the feelings of Plaintiff et al. who brought litigation of unconstitutionality based on the Constitution, Article 13, Article 14 and Article 25 and the theory of normalization.

2. The national government (Ministry of Health, Labour and Welfare) expresses its sincere reflection to persons with disabilities including Plaintiff et al. and their families that they immediately enforced the system of the Services and Supports for Persons with Disabilities Act without conducting sufficient survey of actual circumstances or taking into account opinions of persons with disabilities at the stage of legislative process and conducted introduction, etc., of benefit principle (fixed rate principle), resulting in great confusion and adverse impact on persons with disabilities, families and related people which deeply injured human dignity of persons with disabilities. Also, based on such reflections, the national government will develop and implement the future measures.

3. Plaintiff et al. evaluate that, in order to reform the overall new systems for persons with disabilities, the “Ministerial Board of Disability Policy Reform” centering on persons with disabilities was promptly established and it was decided new comprehensive welfare system shall be developed at the Board. When enacting a new comprehensive welfare system, the national government (Ministry of Health, Labour and Welfare) will have sufficient discussions with participation of persons with disabilities at the Board based on the above reflections, considering the written requests as of this day submitted by group of Plaintiffs and attorneys.

III. Issues on Enactment of New Law

Group of Plaintiffs and attorneys indicated the following items as to how burden of users should be, etc.

[1] It shall not exceed the burden amount at the time of implementation of support expense system and the time when reduction measures were taken under the current Services and Supports for Persons with Disabilities Act.

[2] Not to place burden on users at least on households exempted from municipal inhabitant tax.

[3] Recognition of income shall be made only about the person with a disability, excluding the income of the family, including the spouse.

[4] Abolish the principle of preference of long-term care insurance (Services and Supports for Persons with Disabilities Act, Article 7) and selection system, etc., considering the characteristics of disabilities shall be introduced.

[5] Burden of actual expenses shall be reviewed immediately based on the results of “Survey Results of Actual Circumstances of the Burden of Users before and after Enforcement of the Services and Supports for Persons with Disabilities Act” conducted by the Ministry of Health, Labour and Welfare (Published on November 26, 2009).

[6] To establish the system to which the will of persons with disabilities shall be fully reflected by establishing the opportunity for consultations where persons with disabilities can participate in the process of determination of benefits so that the benefit amount to enable persons with disabilities to live securely no matter how severe their disabilities are and determination shall be made corresponding to the individual needs of support.

For that purpose, fundamental review shall be made, including abolition of the national treasury burden standard system and disability degree classification system.

The national government (Ministry of Health, Labour and Welfare) shall, in construction of a new welfare system at the “Council for Institutional Reform for Persons with Disabilities” and “Committee” established under the “Ministerial Board of Disability Policy Reform,” not presuming the integration with the current long-term care insurance system, based on the above-mentioned problems of the Services and Supports for Persons with Disabilities Act, indicated by Plaintiff et al. of the Litigation, review and respond to the following matters upon sufficiently taking into account the current living status and needs of persons with disabilities. The national government shall also consider the discussions on the rights of persons with disabilities toward ratification of the Convention on the Rights and results of the “Survey Results of Actual Circumstances of the Burden of Users before and after Enforcement of the Services and Supports for Persons with Disabilities Act” (Published on November 26, 2009).

[1] How the burden of users should be

[2] How benefit determination should be

[3] Compensation payment method

[4] Scope of “disabilities” without lack of system

[5] Improvement of the domestic laws to realize ratification of the Convention on the Rights and ratification of the Convention on the Rights

[6] Increase of the disability related budget, corresponding to the global level

IV. Current Measures for Burden of Users

The national government (Ministry of Health, Labour and Welfare) shall take measures to make free of charge burden of users for disability welfare services and protective device under the Services and Supports for Persons with Disabilities Act and Child Welfare Act with respect to persons with disabilities and guardians of children with disabilities of low income (exempt from municipal inhabitant tax) from April 2010 in order to promptly abolish the benefit principle (fixed rate principle) until repeal of the Services and Supports for Persons with Disabilities Act.

In this regard, measures for burden of users related to medical payment for services and support shall be an important task for the time being.

V. Examination to Ensure Performance

Based on the Basic Agreement, regular consultations shall be held between group of Plaintiffs and attorneys and the national government (Ministry of Health, Labour and Welfare).

f

“Framework recommendations” refers to the “Recommendations on General Welfare Committee for the Framework of Comprehensive Welfare Act for Persons with Disabilities - Toward Enactment of a New Law” as of August 30, 2011, prepared by the Cabinet Office, General Welfare Committee of the Council for Institutional Reform for Persons with Disabilities. This is a document summarizing discussions at the “General Welfare Committee” which is comprised of 55 members at various positions, centering on persons with disabilities in order to construct a new comprehensive disability welfare legal system after the repeal of the Services and Supports for Persons with Disabilities Act and established under the “Council for Institutional Reform for Persons with Disabilities” established in January 2010 by the “Ministerial Board of Disability Policy Reform” established in December 2009, aiming at improvement of domestic laws toward ratification of the Convention on the Rights of Persons with Disabilities. Discussions started in April 2010 and active discussions were made and the Proposal was prepared on August 30, 2011 by a unanimous agreement and submitted to the government in September 2011.

In the contents, the significance of a new law was confirmed based on the two public documents of the Convention on the Rights of Persons with Disabilities and the Basic Agreement as “it shall be enacted to comprehensively guarantee necessary support as legal rights, and further aiming at realizing a society of coexistence, where difference and diversity are respected and no one is excluded and all are recognized as human beings in order to guarantee life with dignity, freedom of movement, communication, support for employment, regardless of type and degree of disability so that persons with disabilities can exercise rights in social living equally with persons without disabilities and any person with a disability shall not suffer from lack of the system.”

Summary of the framework recommendations is as follows.

(First part omitted)

II. Regarding “Introduction”

(Snip)

2. “Two Guidelines underlying the framework recommendations”

(1) Convention on the Rights of Persons with Disabilities

(2) “Basic Agreement Document”

○ Prompt abolition of the benefit principle (fixed rate principle) system

○ Repeal of the Services and Supports for Persons with Disabilities Act by August 2013 at the latest

○ Implementation of a new comprehensive welfare legal system

“The system shall be based on the philosophy that enhancement of disability welfare measures is to support exercise of basic human rights of persons with disabilities based on the Constitution, etc.”

○ “expresses its sincere reflection … (the Services and Supports for Persons with Disabilities Act, in particular the benefit principle system, etc.) deeply injured human dignity of persons with disabilities.”

○ “in construction of a new welfare system … not presuming the integration with the current long-term care insurance system”

3. “6 points to be aimed at by the Act”

[1] Equality and impartiality between citizens without disabilities

There are gaps at present. Disabilities could occur to anyone. Ensuring equality and impartiality.

[2] Resolution of lack of system: To resolve the situations where support cannot be extended because of lack of system.

[3] Correction of gaps: To ensure the support level which is secure anywhere.

[4] Resolution of social problems that cannot be neglected: To establish the community support system to resolve “social hospitalization.”

[5] Support services corresponding to the needs of the person: System in which individual disabilities and needs are respected and the wishes of the person is respected.

[6] To ensure stable budget: The task for the time being = To ensure the budget at the average level of OECD countries

III. “I-1 Philosophy, Purpose and Scope of the Act”

1. Preambles shall be established. Comment: It is essential to put up the basic philosophy in the preamble.

2. The Act shall be referred to as the ‘Comprehensive Welfare Act for Persons with Disabilities’

3. Provision of the Purpose of the Act

[Title] Purpose of the Act

[Conclusion]

○ The following contents shall be incorporated as the purpose of the Act.

- That the Act is based on fundamental human rights under the Constitution, Article 13, Article 14, Article 22, Article 25, etc., and the amended Basic Act for Persons with Disabilities, and enacted from the standpoint of the philosophy that all persons with disabilities shall be respected as individuals equally enjoying the fundamental human rights and equality with others shall be guaranteed.

- That the Act shall guarantee, with respect to measures to support exercising of fundamental human rights by persons with disabilities and their independence and social participation, the opportunities of selection of where and with whom persons with disabilities live and also guarantee that persons with disabilities can receive support necessary to be guaranteed the opportunities for participating in any field of activities as the fundamental right of persons with disabilities regardless of type, degree of disabilities and age, etc.

- That the Act clarifies that the national and local governments shall be obliged to resolve social disadvantages due to disabilities and that they shall be obliged to develop measures for support necessary for persons with disabilities to become independent and participate in society and to carry out such measures comprehensively and deliberately.

- That, based on the above items, the Act shall realize a society where all citizens are not separated by the existence of disabilities and cohabit, mutually respecting personality and individuality.

4. Provision of Philosophy of the Act

- Provision confirming the transfer to the subject of rights from the subject of protection.

- Provision confirming transfer of the concept of disabilities to social model from medical model.

5. Confirmation of the “fundamental right to maintain independent living in the community”

○ The following rights shall be confirmed in the Comprehensive Welfare Act for Persons with Disabilities as the right to maintain independent living in the community.

1. Provision that persons with disabilities have the right to life of whom shall not be endangered due to disabilities and that the right to receive support for that purpose shall be guaranteed.

2. Provision that persons with disabilities are guaranteed the right to make (self) decisions, while receiving necessary support.

3. Provision that persons with disabilities shall have the right to determine where and with whom they live according to their own will, the right to determine how they will live and the right not to be imposed of the specific lifestyle and the right to receive support for that purpose shall be guaranteed.

4. Provision that persons with disabilities shall have the right to maintain life as a citizen as equal to others using the language (including such nonverbal language as sign language) and communication means selected by them and the right to receive information and communications support for that purpose shall be guaranteed.

5. Provision that persons with disabilities have the right to move at their own will and the right to receive support for outing assistance and guide helpers, etc., for that purpose shall be guaranteed.

6. Provision that the right to receive above support shall be most suitable for individual situations of persons with disabilities.

7. Provision that the national and local governments shall be obliged to carry out these measures.

[Explanations]

The above confirms the core rights confirmed in the above-mentioned purpose of the Act.

In particular, in order to realize full participation of persons with disabilities, it is important to provide the fundamental method of support to persons with disabilities where it is necessary to correspond to individual situations of each person requiring support and method of support under the Comprehensive Welfare Act for Persons with Disabilities shall be necessary and suitable for the individual situations.

For that purpose, (self) decision-making of persons with disabilities shall be made upon receiving necessary support, including sufficient information provision in the process of self decision-making, according to the selection based on their own will without unjust influence of others.

Guarantee of information and communication is not sufficient if it is provided in a discretionary manner, and unless it is specified that it has the meaning of guarantee of fundamental human rights as premises for maintaining a democratic society, the significance of confirmation in the Convention on the Rights of Persons with Disabilities stating that “Language” includes spoken and sign languages and other forms of non spoken languages and confirmation in the Basic Act for Persons with Disabilities stating that language includes sign language which is a nonverbal language shall be neglected.

Furthermore, the Services and Supports for Persons with Disabilities Act positioned support for transportation as discretionary services, but it is confirmed in the precedents, etc., that guarantee of freedom of transportation is important measures based on fundamental human rights and it is essential to firmly specify to that effect in the Comprehensive Welfare Act for Persons with Disabilities.

(Snip)

11. “Relationship with Long-term Care Insurance”

○ Comprehensive Welfare Act for Persons with Disabilities guarantees necessary supports for persons with disabilities as an individual enjoying fundamental human rights, based on the needs of persons with disabilities in daily life and social life regardless of type and degree of disabilities, which has an inherently different purpose and nature of the act from the Long-term Care Insurance Act. Based on such difference, the system shall be designed as a separate legal system.

○ Even after persons reached the age covered by long-term care insurance, support received previously shall generally be received continuously.

IV. “I-2 Scope of (Persons with) Disabilities”

[Title] Provisions of Subject covered by the Act

[Conclusion]

○ Persons with disabilities (including children with disabilities) covered by the Comprehensive Welfare Act for Persons with Disabilities shall be the persons with disabilities provided for in the Basic Act for Persons with Disabilities, Article 2 paragraph 1.

“Basic Act for Persons with Disabilities (promulgated as of August 5, 2011)

Article 2 In this Act, the meanings of the terms listed in the following items are as prescribed in the respective items.

(1) “Person with a disability” refers to a person with a physical disability, a person with an intellectual disability, a person with a mental disability (including developmental disabilities), and other persons with disabilities affecting the functions of the body or mind (hereinafter referred to collectively as “disabilities”), and who are in a state of facing substantial limitations in their continuous daily life or social life because of a disability or a social barrier.

(2) “Social barriers” refers to items, institutions, practices, ideas, and other things in society that stand as obstacles against persons with disabilities engaging in daily life or social life.”

○ “Disabilities affecting the functions of the body or mind” in the above definitions shall include functional disabilities in connection with chronic diseases.

Comment: They are basically in line with the definitions of the amended Basic Act for Persons with Disabilities enforced as of August 5, 2011.

- It was confirmed that “disabilities affecting the functions of the body or mind” in the definitions shall include functional disabilities in connection with chronic diseases as an additional provision.

V. “I-3 Selection and Determination (Benefit Determination)”

1. “How to determine benefit determination”

○ Basic method of new benefit determination shall be as follows.

1. It shall be based on the maximum respect of the will of the person with a disability (and the family) and the way of living desired by the person.

2. Based on the equality with others, necessary and sufficient benefit quantity corresponding to individual situations of the individual shall be guaranteed.

3. Support guidelines shall be standardized to a certain degree and be transparent.

4. The process from application to determination shall be easy to understand and smooth.

2. “Mechanism of Benefit Determination”

○ Process of benefit determination shall generally be as follows.

1. A person who seeks support under the Comprehensive Welfare Act for Persons with Disabilities (including legal representative) shall develop the service use plan related to support requested by the person and shall make an application to the respective municipality.

2. The municipality shall confirm that the person requesting support has a “disability.”

3. The municipality shall conduct a needs assessment based on the support guidelines of the municipality with respect to the service use plan developed by the person.

4. If it is determined that the content of application does not conform to the level of support guidelines by the person or the municipality, the municipality shall have consultations and coordination with the person (and support persons) and benefit determination shall be made by the municipality accordingly.

5. If consultations and coordination do not reach in an agreement, it shall be reviewed by a collegiate body established in municipalities (or region) as a third party organization and benefit determination shall be made by the municipality based on the results.

6. If the person is unsatisfied with the benefit determination by the municipality, the applicant may bring an appeal to the Prefecture, etc.

(Snip)

4. “Confirmation of “Disabilities””

We propose that certification of disabilities can be accepted by the statement of opinions, etc., of professionals without holding the disability certificates, while maintaining the system of disability certificates.

(Snip)

6. “Consultations and Coordination”

○ If it is determined that the content of application does not conform to the level of guidelines by the person with a disability or the municipality, the municipality shall have consultations and coordination with the persons with disabilities (and support persons) and benefit determination shall be made in accordance therewith.

7. “Establishment and Functions of Collegiate Body”

○ Municipalities shall establish collegiate bodies composed of the party consultants, consultation support professionals, person who know well the status of community social resources and persons with disabilities as a third party organization in preparation for non-agreement through the above consultations.

(Snip)

● Establishment of Personal Assistance System

● Individual benefit of transportation care (transportation support services, activity support services, and accompanying support services)

(Snip)

IX. “I-7 Burden of Users”

1. Burden of Users

○ In terms of equality with others, expenses paid by everyone such as expenses for food and lighting, heating and water shall be borne by persons with disabilities, but necessary support in connection with disabilities shall generally be provided free of charge.

To those who have a significant amount of income, burden shall be required according to the income. In determination, the income shall be the income of the persons with a disability in case of an adult and the income of the household head in case of a minor person with a disability.

For the burden of users for a person with much income, it is necessary not to exceed the current level of burden by aggregating the burden of users of necessary services, including use of long-term care insurance.

(Remainder omitted)

● Article 21

a

Communication support services of comprehensive support services for persons with disabilities

1. Dispatch services of communication support persons

Municipalities conducting dispatch services of sign language interpreters: 93.4%

Municipalities conducting dispatch services of summarized transcript writers: 75.1%

2. Services to station sign language interpreters

Municipalities conducting services to station sign language interpreters: 38.4%

3. Municipalities requiring burden of users

Dispatch services of sign language interpreters: 2.8%

Dispatch services of summarized transcript writers: 2.7%

Dispatch services of sign language interpreters and interpreting assistants for persons who are deaf/blind: 2.8%

According to the survey of the Ministry of Health, Labour and Welfare, Department of Health and Welfare for Persons with Disabilities, Independence Support Promotion Office. Refer to the data distributed at the Social Security Council (Persons with Disabilities Section) as of September 8, 2015, “How support should be, including dispatch of persons who provide sign language interpretation and other support for those who have difficulties in communication due to disabilities in hearing, language and voice functions, etc.”

b

1. Ratio of closed-captioned broadcasts

NHK General Broadcasts: 80.6%

NHK Educational Broadcasts: 69.2%

5 major commercial broadcasting stations in Tokyo: 57.9%

2. Audio description broadcasts for persons with visual disabilities

NHK General Broadcasts: 10.1%

NHK Educational Broadcasts: 14.5%

5 major commercial broadcasting stations in Tokyo: 2.9%

3. Sign Language Broadcasts

NHK General Broadcasts: 0.1%

NHK Educational Broadcasts: 2.6%

5 major commercial broadcasting stations in Tokyo: 0.1%

Refer to the “Results of Closed-captioned Broadcasts in 2015” published by the Ministry of Internal Affairs and Communications as of November 25, 2016

● Article 24

a

Precedents related to active promotion of separated education

1. Judgment of the Tokyo High Court as of January 28, 1982 (Hanrei Times, No. 474, p. 242)

It does not violate the Constitution, Article 14, Article 25, Article 26 that children with disabilities are separated from children without disabilities according to the degree of disabilities and providing education similar to ordinary elementary school at the elementary division of a school for children with disabilities and also education necessary to provide knowledge and skills to supplement the inadequacy.

2. Decision of the Tokyo District Court, Hachioji Branch as of June 23, 1989 (Hanrei Jiho, No. 1323, p. 97)

A private school corporation providing integrated education of elementary and junior high school refused continuation of a student to junior high school due to a mental disability, but the provisional disposition of status protection by the student was admitted.

3. Decision of the Kobe District Court as of July 22, 1991 (Hanrei Times, No. 775, p. 92, the same, No. 780, p. 141)

Although the student passed the academic test, the principal of a city high school made disposition of not permitting entrance due to muscular dystrophy and the claim for suspension of validity of disposition was refused because it lacked the interest of claim.

4. Judgment of the Asahikawa District Court as of October 26, 1993 (Hanrei Jiho, No. 1490, p. 49)

Although establishment of special needs class was internally determined, at the consultations with the parents of a student with mental and physical disabilities, a staff of the city board of education made them strongly expect enrollment in an ordinary class and it was held illegal as it violated fair and equitable principle or reasonable duty of care. However, the court held that, at the time of entering the public school, decision on whether the principal of a city high school would allow children with mental and physical disabilities to enter ordinary classes or special needs classes is delegated to the authority of the principal under the School Education Act, Article 28, paragraph 3 and children and their parents had no right of selection.

5. Judgment of the Saitama District Court as of January 28, 2004 (Hanrei Chihojichi, No. 255, p. 78)

When a parent applied to a nursery school, the city refused the application for the nursery school because the child was not suitable for group nursing due to a disability, although the child lacked daycare. It was held the breach of alternative protection obligation that the city neglected without taking any particular alternative measure.

6. Judgment of the Tokushima District Court (Hanrei Chihojichi, No. 270, p. 48)

Regarding the decision of the town board of education that did not permit enrollment of a five-years old child with schistorrhachis, it was held deviating or abusing the discretion as there is no reasonable cause for not permitting enrollment if the board made careful and flexible judgment on the means to conquer the difficulties, including mental and physical status of the child and degree, etc., of situations making enrollment difficult.

7. Decision of the Tokyo District Court as of January 25, 2006 (Hanrei Jiho, No. 1931, p. 10)

A child before attending school, who received a tracheotomy and is equipped with a cannula, applied for a nursery school, but the director of the nursery school made the disposition of not permitting enrollment twice because it was difficult to ensure proper nursing. Therefore, in the case of seeking provisional order of mandamus for enrollment at the nursery school, provisional order of mandamus was made against the city to approve enrollment to the nursery school.

8. Decision of the Nara District Court as of June 26, 2009 (Wages and Social Security, No. 1504, p. 47)

A girl with limb function disability due to brain paralysis was attending a local public elementary school and desired to go to a local public junior high school. However, the board of education designated the school for children with disabilities (special needs education school) as her school for continued study and refused enrollment at the local junior high school. Therefore, the girl brought litigation seeking provisional order of mandamus for enrollment at the local junior high school and it was accepted.

b

Sankei Shimbun Electronic Edition as of September 20, 2018, a.m. 7:00 (distributed by Kyodo Tsushin)

Litigation over Designation of School for Children with Disabilities: Appeal of “Normal School Life with Friends”; Yokohama District Court

For the litigation by a child A (6) and the parents in Kawasaki City who sought the City and Prefecture to approve enrollment at the local elementary school as requested, claiming that designation of the Prefectural special needs education school as their school due to severe disability constitutes discrimination and it is illegal, the first oral argument was held at the Yokohama District Court (Presiding Judge: Hiroshi Kawamura). Parents appealed “we would like my child to spend a normal school life with friends” and the City and Prefecture expressed their intention to contest.

Mother B (48) stated in the statement of opinions, “at the kindergarten, smiles increased and expressions became richer by spending time with friends. I want A to grow while being inspired at the local elementary school.” Attorney of Plaintiff argued, “it is the guaranteed right to grow with children of the same age. This treatment is infringement of human rights.” According to the attorney group of Plaintiff, it was the first litigation seeking administrative illegality over designation of the school after enforcement of the Persons with Disabilities Discrimination Elimination Act in 2016, which prohibits discriminatory treatment by reason of disabilities.

According to the written complaint, child A is equipped with an artificial respirator due to congenital myopathy, an intractable/rare disease. In entrance of the elementary school in April of this year, parents had desired she would attend the local Kawasaki City elementary school, but the city board of education gave notice in March for the child to enter a special needs education school of the prefecture as “specialized education is appropriate.” Parents submitted a medical certificate of the primary doctor stating that special needs education class at the local elementary school is appropriate, but the decision of the board was not changed.

c

Precedents related to cases where children could not continue to attend school because reasonable accommodation was not provided

1. Judgment of the Osaka District Court as of February 2000 (Hanrei Jiho, No. 1741, p. 113)

Two children with intellectual disabilities claimed for damages because they could not continue attending school due to insufficient improvement of the educational environment by an elementary school principal and the city board of education. The judgment held that principals of elementary schools are not necessarily required to improve the educational environment, but if there is an obligation to determine whether or not to assign a child with a disability to a special needs education class after comprehensively evaluating and considering the situation from scientific, educational, psychological and medical perspective, obligation to determine personnel assignment from an educational perspectives and circumstances in which the child came to be unable to attend school due to acts or omissions of the teacher in charge, they should be required to take some action. However, in this case, the court held the principal of elementary school did not specifically violate the obligation to improve educational environment.

2. Judgment of the Osaka District Court as of November 4, 2005 (Hanrei Jiho, No. 1936, p. 106, Wages and Social Security, No. 1417)

A child with a pervasive developmental disorder, who was enrolled at the class for children with disabilities at elementary school established by the City, could not continue attending school because of recurrence of PTSD previously developed at a nursery school, which was caused by instructions on school lunch by the teacher without reasonable accommodation. The court ordered the City to pay compensation for damages, including consolation money as the principal failed to perform the obligation to conduct sufficient hearings of the conditions of the child and the accommodation that must to be taken and improve the system to thoroughly notify the teacher of such information together with the autistic characteristics of the child.

d

Judgment of the Yokohama District Court as of June 23, 1976 (Hanrei Times, No. 347, p. 228)

The case where the parent of a physically disabled child, who went by school bus to a school for children with disabilities in Kanagawa, claimed compensation for damages against Kanagawa Prefecture as the parent was injured mentally and physically by the stress resulting from the difficulty of their child attending school due to a sudden change in bus route and bus stop by the school. Against this background, the child and parent previously relocated to a place from which they could easily get to the previous bus stop of the school bus for the convenience of the parents attendance.

Yokohama District Court pointed out that the school did not give prior notice of a change in the school bus route and explanation was inadequate, but did not recognize negligence of the school by admitting that the school conducted a survey and seriously reviewed preparation and implementation of the operation plan of school bus in terms of convenience of all children attending by school bus and the degree of physical disabilities.

● Article 27

a

Webpage of the Ministry of Health, Labour and Welfare, “Status of Employment Support to Persons with Disabilities” 3. Results of Monthly Average Labor Charge (Wages)

(Hereinafter Excerpts)

**Average labor charge (wages) in 2015**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Type of Facility | Average labor charge (wages) | | Number of facilities (places) | 2014 (Reference) | |
| Monthly amount | Hourly amount | Monthly amount | Hourly amount |
| Support for continuous employment type B business office  (as compared with the previous year) | \15,033  (101.3%) | \193  (103.2%) | 9,910 | \14,838 | \187 |
| Support for continuous employment type A business office  (as compared with the previous year) | \67,795  (102.1%) | \769  (102.0%) | 3,155 | \66,412 | \754 |

○ **Comparison between 2006 and 2015**

|  |  |  |  |
| --- | --- | --- | --- |
| Subject Business Establishment | Average labor charge (wages)  <increase or decrease ratio> | | |
| Average labor charge of the facilities subject to labor charge increasing plan (\*)  \* In 2006, support for continuous employment type B business office, admission/day-care vocational aid center, small-scale day-care vocational aid center | (2006)  \12,222 | → | (2015)  \15,033 <122.9%> |
| Average labor charge of the facilities subject to the labor charge doubling 5-year plan and labor charge increasing plan continuously from 2006 at support for continuous employment type B business office (as of the end of 2015) | (2006)  \12,542 | → | (2015)  \16,598 <132.3%> |

b

Regarding welfare employment, the Labor Standards Act and other labor laws, applied to ordinary workers do not apply. In the NPO Corporation, Council B case (judgment of the Nagasaki District Court as of February 21, 2017), regarding the Plaintiff who earned labor charges by receiving support for continuous employment under the service use agreement on designated continuous employment support executed with the Defendant NPO (Type B, Non-employment), the court admitted the illegal act liability with respect to sexual harassment against the Plaintiff by recognizing it as, between Plaintiff and Defendant NPO, “there are relationships similar to a legal relationship under the labor contract and the relationships have closer social contact as the welfare facility for persons with disabilities” and held that the Defendant NPO was liable under the contract to maintain an environment of the facility that is easy for users to work or use (hereinafter referred to as “Obligation to Maintain a Workplace Environment). If labor law theory is directly applied, such remedial precedents are unnecessary.

c

Ministry of Health, Labour and Welfare, Counting Results of Status of Employment of Persons with Disabilities in 2017

(Excerpts from Summary Table)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Summary Table | | | | | | |
| Status of Employment of Persons with Disabilities as of June 1, 2017 | | | | | | |
| 1. Status of employment at private companies (Legal employment ratio: 2.0%) | | | | | | |
|  |  | [1] Number of workers underlying the calculation of the legal number of persons with disabilities to be employed | [2] Number of persons with disabilities | [3] Actual employment ratio | [4] Number of companies achieving the legal employment ratio/Number of companies | [5] Achievement ratio |
|  | Private companies | 25,204,720.0 | 495,795.0 | 1.97% | 45,553/91,024 | 50.0% |
|  |  | (406,981) |  |  |  |
|  | (24,650,200.5) | (474,374.0) | (1.92%) | (43,569/89,359) | (48.8%) |
|  |  | ※[ ] shows the actual number. The same shall apply hereinafter. | | | | |

d

Ministry of Health, Labour and Welfare, “Results of Re-inspection of Status of Appointment and Dismissal of Persons with Disabilities at National Administrative Organizations as of June 1, 2017” Excerpts

1. Overview

○ Under the Act on Employment Promotion etc., of Persons with Disabilities (Act No. 123 of 1960, hereinafter referred to as “Act”), Article 40, it is provided that national organizations shall report in the report on the status of appointment and dismissal of persons with disabilities to the Minister of Health, Labour and Welfare of the status of appointment and dismissal of staff who are persons with disabilities on a yearly basis.

○ Although the status of appointment and dismissal of persons with disabilities as of June 1, 2017, which were counted based on the above reports were published on December 12, 2017, together with the status of employment of persons with disabilities, as the “Counting Results of Status of Employment of Persons with Disabilities in 2017,” it was found that the figures at national administrative organizations were wrong and re-inspection was conducted. As the revised figures were reported by each agency, the results are now published.

○ As a result of re-inspection, the number of persons with disabilities was 3,407.0 persons, a decrease of 3,460.5 persons from 6,867.5 persons and the actual employment ratio decreased to 1.19% from 2.49%, which means the shortage is 3,396.5 persons as compared with the previous 2.0 persons.

2. Background

○ On May 11, 2018, the Ministry of Finance made a referral with the Ministry of Health, Labour and Welfare (Employment Measures for Persons with Disabilities Division, Employment Development Department, Employment Security Bureau) on the scope of persons with disabilities covered by reports under the Act.

○ Based thereon, the Ministry of Health, Labour and Welfare made inquiries on May 16, 2018 with national administrative organizations about the scope of persons with disabilities recorded in the reports of the status as of June 1, 2017.

○ As a result, there were errors in the scope of persons with disabilities covered by the System of Obligation to Employ Persons with Disabilities at several national administrative organizations, and on June 20, 2018, Manager of Employment Measures for Persons with Disabilities Division, the Ministry of Health, Labour and Welfare, requested managers of the personnel affairs division of each organization to re-inspect the scope of persons with disabilities covered by reports for the reported contents of the status as of June 1, 2017 and resubmit if correction is necessary for the reported contents.

○ As a result of the re-inspection, the results are summarized based on resubmitted reports and now published.

e

In the Company A Case (Judgment of the Tokyo District Court as of July 29, 2015 (Hanrei Jiho, No. 2279, p. 125)), it was determined that the reason for the leave of absence was not extinguished at the expiration of the period of leave of absence for a worker with Asperger’s syndrome and the claim for confirmation of the status under the labor contract was dismissed. It was held, “the obligation to provide reasonable accommodation shall not impose on the employer obligation with excessive burden, exceeding the contents of the labor contract governing the parties. Therefore, employment security obligation and obligation to provide reasonable accommodation shall not require the employer to always accept workers with disabilities under any condition however they are as the provision of labor” and showed the intention to restrict the obligation to provide reasonable accommodation in relation to the content of the labor contract.

There is a case which did not recognize the trial attendance of a worker with depression as provision of work (Judgment of the Nagoya District Court as of March 28, 2017 (Rodo Hanrei No. 1161, p. 46). In the case of Plaintiff, who was an employee of Defendant B, it was contested [1] confirmation of the status having the rights under the labor contract in a situation where the person was dismissed due to the expiration of a medical leave of absence because of mental disease and Plaintiff argued the mental disability was cured before the expiration of the period and [2] whether test attendance for 6 months of Defendant (trial attendance, rehabilitation attendance) which was conducted during the period of medical leave of absence is recognized as provision of work. The court held that the test period for 6 months is significantly long, but the system itself could not be regarded as immediately requiring or forcing provision of work under the labor contract.

f

Leaflet posted on the webpage of Japan Organization for Employment of the Elderly, Persons with Disabilities and Job Seekers, “Information about Various Subsidies in Employment Levy System for persons with disabilities” p. 3, excerpts

**Subsidy for Measures for Commutation of Persons with Severe Disabilities**

**(Subsidy to Employers, etc., who take measures making commutation easier)**

Where employers who employ as workers or continue to employ persons with severe physical disabilities, intellectual disabilities, mental disabilities or persons with physical disabilities who have significant difficulty in commutation or the organizations of such employers composed of employers who employ such persons with severe disabilities take measures to make commutation of such persons with disabilities easier, part of the expenses shall be subsidized.

In this regard, where the period exceeds six (6) months from the employment of the persons with disabilities subject to subsidy and if it is determined that it is not necessary to make commutation easier, it shall not be subject to subsidy, except for those who acquired disabilities or disabilities which are recognized as becoming more severe, etc., or in the case of personnel relocations, etc.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of Subsidy** | **Subject persons with disabilities** | **Subsidy ratio** | **Upper Limit** | **Period of payment** |
| **[1] Subsidy to rent housing**  ○ Rent of housing for subject persons with disabilities | ● Persons with severe disabilities  ● Persons with 3rd degree trunk impairment  ● Persons with 3rd degree visual disabilities  ● Persons with 3rd or 4th degree lower limb disabilities  ● Persons with 3rd or 4th degree movement function disabilities due to non-progressive brain disease before the infant period  ● Persons having more than one of 5th degree lower limb disabilities, trunk impairment and movement function disabilities due to non-progressive brain disease before the infant period  ● Persons with intellectual disabilities  ● Persons with mental disabilities  Subject persons with disabilities need to be five or more.  \* “[2] Assignment of Instructors]”  “[4] Purchase of a bus for commutation”  “[5] Consignment of a driver of a bus for commutation” | 3/4 | ● Household: \100,000/month  ● Single person: \600,000/month | 10 years |
| **[2] Subsidy for assignment of instructors**  ○ **Assignment of instructors to** **housing for subject persons with disabilities**  (including organizations of employers) | ● Assignment one person: \150,000/month |
| **[3] Subsidy for payment of housing allowance** | ● One person with a disability: \60,000/month |
| **[4] Subsidy for purchase of a bus for commutation**  ○ Purchase of a bus for commutation of the subject persons with disabilities  (including organizations of employers) | ● One bus: \7 million |  |
| **[5] Subsidy for consignment of drivers of buses for commutation**  ○ Consignment of persons who engage in driving of buses for commutation of subject persons with disabilities (including organizations of employers) | ● One consigned person: \6,000/time | 10 years |
| **[6] Subsidy for consignment of commutation assistants**  ○ Consignment of commutation assistants who conduct instructions and assistance, etc., to make commutation of the subject persons with disabilities easier | ● One consigned person: \2,000/time  ● Transportation expense: \30,000/certification | 1 month |
| **[7] Subsidy for lease of a parking place**  ○ Lease of a parking place used by the subject persons with disabilities who need to commute by driving a car by on their own | ● One person with a disability: \50,000/month | 10 years |
| **[8] Subsidy for purchase of a car for commutation**  ○ Purchase of a car used by the subject persons with disabilities who need to commute by driving a car by on their own | ● Persons with 2nd or higher degree upper limb disabilities  ● Persons with 2nd or higher degree upper limb movement function disabilities due to non-progressive brain disease before the infant period  ● Persons with 3rd or higher degree trunk impairment  ● Persons with 3rd or higher degree function disabilities of heart, kidney or respiratory organs, or bladder or rectum, small intestine, or immunity or liver function disabilities due to human immunodeficiency virus  ● Persons with 4th or higher degree lower limb disabilities  ● Persons with 4th or higher degree movement function disability due to non-progressive brain disease before the infant period  ● Persons having more than one of 5th degree lower limb disabilities, trunk impairment and movement function disabilities due to non-progressive brain disease before the infant period. | ● Purchase: \1.5 million/car  (In case of persons with 1st degree or 2nd degree both upper limb disabilities: \2.5 million/car) |  |

(Note) Submission due date of certification application:

Subsidies under [4] and [8]: By the preceding day of the scheduled contract (ordering) date for purchase

Subsidies under [1] and [7]: Within three months from the following day of the date of lease agreement on housing or parking place

Subsidies under [2], [5] and [6]: By the preceding day of assignment or consignment

Subsidy under [3]: Within three months from the date when housing allowance was first paid

\*Subsidies other than [6]: Within the due date above and within 6 months from the date of employment. For persons with acquired disabilities, within 6 months from the following day of reinstatement. In case of personnel relocations, within 6 months from the following day of personnel relocations.

● Article 28

a

National Institute of Population and Social Security Research, “Social Security Study” Vol. 1 No. 2 “Problems and Prospects of Disability Pension,” Yu Momose

p. 345 “Level of benefit of disability pension: As a problem of the current disability pension, benefit level can be indicated. … The level of only disability basic pension is deemed to be extremely low.”

p. 348 “As compared with Western countries, in Japan, it is the characteristics of certification of disabilities that medical conditions of functional disabilities and the degree of restrictions on daily living ability are considered. Under such certification of disabilities, a problem may arise when the scope of subjects tends to be narrower and all persons with disabilities who require an income guarantee due to a decrease in income earning ability cannot be included.”

b

It is reported that there are about 3,320,000 persons who are positioned as the persons subject to employment measures (persons at home who are between 18 years old and 64 years old) by the national government (Refer to the Ministry of Health, Labour and Welfare, “Status of Measures for Employment Support to Persons with Disabilities”).

Out of which, total workers employed by companies (companies with 50 or more employees, legal employment ratio of is 2.0%) and public organizations which are required to be employed under the Act for the Promotion of Employment is 453,133.5 persons (Refeto the Employment Measures for Persons with Disabilities Division, Employment Development Department, Employment Security Bureau, Ministry of Health, Labour and Welfare, “Counting Results of Status of Employment of Persons with Disabilities” in 2015). Simply calculated, the employment ratio is approximately 13%. There are workers at companies less than 50 employees, but according to the survey regardless of the size of a company conducted by the Ministry of Health, Labour and Welfare (Refer to the “Survey of Actual Circumstances of Employment of Persons with Disabilities in 2013”), the number of persons with disabilities employed by private companies is estimated to be 631,000 persons, only employment ratio of 19%.

c

There is a notification by a Manager of the Public Assistance Division, Social Welfare Bureau, Ministry of Health, Labour and Welfare (Social Security No. 34) as of April 1, 1963 related to ownership of a car by households with persons (children) with disabilities. It provides for the general requirements as satisfying all of the following: [1] The purpose of regular hospital visits is apparent, [2] use of other public transportation is significantly difficult, [3] disposal value is low and generally smaller than 2,000cc displacement, [4] expenses to maintain a car are securely covered by other measures, [5] the person drives or the family or a caregiver drives for hospital visits. While, there are special provisions in case of special circumstances, the general requirements are strictly applied, but the principle and exception shall be reversed so that all persons with disabilities having mobility difficulties shall generally be permitted to use a car.

● Article 29

a

Litigation of confirmation of voting rights of a person with a disability (brought before the Osaka District Court as of March 16, 2016)

It is extremely difficult for a man with a both upper limb functional disability due to congenital cerebral palsy to write letters in small boxes and columns. If he writes on his own and cast a vote, it might be invalidated due to the letters running outside of the boxes and columns and he wanted to vote through the assistance of a helper whom the person trusted on behalf of him, but the man was refused permission to vote as substitution by a helper is not permitted. Therefore, the person brought litigation seeking confirmation of the right to vote by designating a helper whom he trusted as an assistant.