

Concrete Measures for Ensuring Complete Implementation of This Convention Under the Juvenile Justice System

1. The Juvenile Act provides that “the purpose of this Act is to subject delinquent Juveniles to protective measures to correct their personality traits and modify their environment, and to implement special measures for juvenile criminal cases, for the purpose of Juveniles' sound development” in Article 1. Then, it defines a person under 20 years of age as a “Juvenile” (Article 2) . Moreover, the Juvenile Act and other laws provide proceedings or measures to be taken against a Juvenile when he/she has committed a crime, which are different from those to be taken against an adult (a person of 20 years of age or older).

All juvenile cases, in contrast to adult criminal cases, should be referred from judicial police officers or public prosecutors to family courts (Articles 41 and 42 of the Juvenile Act). Then, the family court should investigate the cases (Article 8, paragraph (1) of the same Act). It is provided that the investigation shall be carried out by making use of medical, psychological, pedagogical, sociological and other expert knowledge (Article 9 of the Act). In order to realize that, a system of a family court investigating officer as a specialist has been established and a medical treatment room in charge of a medical diagnosis, etc. is placed in the family court. In addition, juvenile classification homes in charge of assessment of Juveniles in answer to requests from the family courts are placed in the Ministry of Justice.

A hearing and decision held by a family court has a judicial function, in that it determines the presence or absence of a fact of delinquency. At the same time, it has a welfare function, in that it takes educational, protective and welfare measures for improving or rehabilitating a Juvenile so as to have him/her reintegrate into society smoothly. Therefore, in order to make the most of both of these functions, the family court adopts a hearing structure in which a judge can directly talk to a Juvenile and take an educational approach to him/her.

2. The provisions of the Convention have been implemented as follows.

[Article 37 (a) of the Convention]

The Constitution provides that the infliction of torture by any public officer and cruel punishments are absolutely forbidden (Article 36 of the Constitution), that no person shall be compelled to make a statement against himself/herself (Article 38, paragraph (1) of the Constitution), and that confession made under compulsion, torture or threat, or after unduly prolonged arrest or detention shall not be admitted in evidence (paragraph (2) of the same Article). Furthermore, the Code of Criminal Procedure provides that confession made under compulsion, torture or threat, after unduly prolonged arrest or detention, or when there is a doubt on its voluntariness shall not be admitted in evidence (Article 319, paragraph (1) of the Code).

Please refer to paragraph 170 of the combined fourth and fifth periodic reports of Japan with regard to the death penalty and life imprisonment without parole.

[Article 37 (b) of the Convention]

Please refer to paragraph 167 of the combined fourth and fifth periodic reports of Japan. When the family court finds it necessary for its hearing and decision, the family court may refer a Juvenile to a juvenile classification home (Article 17, paragraph (1) of the Juvenile Act). The procedure and period of such measure are provided for in the Juvenile Act and the Rules on Juvenile's Hearing and Decision.

[Article 37 (d) of the Convention]

The Constitution provides that no person shall be arrested or detained without being at once informed of the charges against him/her or without the immediate privilege of counsel (the first sentence of Article 34 of the Constitution) and that at all times the accused shall have the assistance of competent counsel (Article 37, paragraph (3) of the Constitution). The Code of Criminal Procedure provides that the accused or the suspect may appoint counsel at any time (Article 30, paragraph (1) of the Code), that, when the accused or the suspect against whom a detention warrant is issued is unable to appoint counsel because of indigence or other reasons, the court shall appoint counsel for the accused upon his/her request and the judge shall appoint counsel for the suspect against whom the detention warrant is issued upon his/her request (the main clause of Article 36 of the Code, Article 37-2 of the Code), that, when the accused is a minor, the court may appoint counsel ex-officio if there is no counsel for the accused (Article 37 of the Code), and that the accused or the suspect in custody may, without any official being present, have an interview with, or send to or receive documents or articles from counsel or

prospective counsel upon the request of a person entitled to appoint counsel (Article 39 of the Code).

Furthermore, the Juvenile Act provides that the Juvenile or the Custodian of the Juvenile may, with a family court's permission, appoint an attendant and that no permission shall be needed to appoint an attorney at law as the attendant (Article 10, paragraph (1) of the Act). Please refer to paragraph 157 of the combined fourth and fifth periodic reports of Japan with regard to a court-appointed attendant in certain serious cases in which a public prosecutor may participate.

Please refer to paragraph 167 of the combined fourth and fifth periodic reports of Japan with regard to the right to challenge the legality of the deprivation of his or her liberty before independent and impartial authority and to a prompt decision on any such action.

[Article 40, paragraph 2 (a) of the Convention]

The Constitution provides that “no person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he/she has been acquitted, nor shall he/she be placed in double jeopardy” in Article 39.

[Article 40, paragraph 2 (b) of the Convention]

(i) Those provided in article 40, paragraph 2 (b) of the Convention are respected as principles of criminal procedure in practice.

(ii) With regard to notification of a crime, the Code of Criminal Procedure provides that the court shall serve a transcript of a charging sheet, which includes charged facts, the crime, etc., on the accused (Article 271, paragraph (1) of the Code). It also provides that, when the transcript of the charging sheet fails to be served on the accused within two months after the date of institution of prosecution, the prosecution shall lose its effect retroactively. Furthermore, it provides that the public prosecutor shall first read out the charging sheet at the opening proceeding of a trial (Article 291, paragraph (1) of the Code).

(iii) The Constitution provides that in all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal (Article 37, paragraph (1) of the Constitution). Please refer to the answer to article 37 (d) of the Convention with regard to the right to counsel.

(iv) With regard to not being compelled to give testimony or to confess guilt, please refer to the answer to article 37 (a) of the Convention. The Code of Criminal Procedure

provides that, when interrogating a suspect, a public prosecutor, public prosecutor's assistant officer, or judicial police official shall in advance notify the suspect that he/she is not required to make a statement against his/her will (Article 198, paragraph (2) of the Code). It also provides that the presiding judge shall, after a charging sheet has been read out, notify the accused that he/she may remain silent at all times or may refuse to answer particular questions and of other necessary matters at a trial (the first part of Article 291, paragraph (4) of the Code).

Furthermore, the Constitution provides that the accused shall be permitted full opportunity to examine all witnesses and shall have the right of compulsory process for obtaining witnesses on his/her behalf at public expense at a criminal trial (Article 37, paragraph (2) of the Constitution). The Code of Criminal Procedure provides that the public prosecutor and the accused or his/her counsel may attend the examination of a witness (Article 157, paragraph (1) of the Code) and that he/she may, when he/she attends the examination, examine the witness him/herself after notifying the presiding judge of his/her intent (paragraph (3) of the same Article).

(v) The Code of Criminal Procedure provides that the accused has a right to appeal (Article 351, paragraph (1) of the Code), that he/she may file an appeal against a judgment in the first instance on such grounds as an error in the finding of facts, an unreasonable sentence, an error in the application of laws and regulations, and a violation of laws and regulations in the court proceedings (Articles 382, 381, 380, and 379 of the Code), that he/she may file a final appeal in the Supreme Court on such grounds as a violation of the Constitution and a conflict with a Supreme Court precedent (Article 405 of the Code). The Court Act provides that an appeal from a judgment in the first instance shall be under the jurisdiction of a High Court (Article 16, item (i) of the Act) and that a final appeal shall be under the jurisdiction of the Supreme Court (Article 7, item (i) of the Act).

(vi) The Code of Criminal Procedure provides that, when the court has a person who is not proficient in the national language make a statement, it shall have an interpreter interpret it (Article 175 of the Code) and that, when the court has a person who is unable to hear or speak make a statement, it may have an interpreter interpret it (Article 176 of the Code). It also provides that the court may exempt the accused from payment of court costs including interpretation costs when it is clear that he/she cannot afford them because of indigence (Article 181, paragraph (1) of the Code).

(vii) The Juvenile Act provides that a hearing held by a family court shall not be open to the public (Article 22, paragraph (2) of the Act). Furthermore, it provides that neither article nor photograph shall be published, from which a Juvenile who is subject to a hearing and decision held by a family court or a person against whom public prosecution is instituted for a crime committed when he/she was a Juvenile could be identified based on name, age, occupation, residence, appearance, etc. (Article 61 of the Act).

[Article 40, paragraph 3 (a) of the Convention]

Article 41 of the Penal Code provides that an act of a person less than 14 years of age is not punishable.

[Article 40, paragraph 3 (b) of the Convention]

The family court should refer a case to a child consultation center's director, etc. when it finds it appropriate to take measures prescribed in the provisions of the Child Welfare Act as a result of an investigation, while it should make a ruling of non-commencement of hearing when it finds it inappropriate to subject the case to its hearing as a result of the investigation (Article 18, paragraph (1) and Article 19, paragraph (1) of the Juvenile Act).