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邦文要旨

障害者の権利条約は20カ国の批准を得て、2008年5月3日に発効した。日本政府が2007年9月28日に署名し、現在は批准に向けて国内法、施策の見直しを行っている同条約は、合理的配慮の欠如を含む、障害に基づく差別を禁止している。日本では、1949年に制定された身体障害者福祉法が障害差別を禁止していたが、1967年の改正によって障害差別禁止規定は削除され、2004年の障害者基本法によって27年ぶりに障害差別禁止条項が復活したという経緯がある。しかし、障害者基本法による差別禁止は、差別の定義や救済規定を含まないため、十分ではなく、権利条約が求める差別禁止のレベルには達していない。特に新たな概念である「合理的配慮」を規定し、常識として日本社会に定着させていくために、障害差別禁止規定を法的に明確に位置づける必要があり、その一つの方法が障害差別禁止法の制定である。2009年の障害者基本法の改正のタイミングと、障害者の権利条約の批准作業が重なる中、合理的配慮を行うことを義務付ける障害差別禁止の具体的な法制化の検討が求められている。その際には、既に公表されている日本弁護士連合会と、障害者政策全国研究会実行委員会それぞれによる法案、また障害のある人もない人もともに暮らしやすい千葉県づくり条例が参考となる。

邦文キーワード 障害者の権利条約 差別禁止 障害差別禁止法 身体障害者福祉法 障害者基本法

英文タイトル Convention on the Rights of Persons with Disabilities and the issues of anti-disability discrimination legislation in Japan

英文要旨

The Convention on the Rights of Persons with Disabilities (CRPD) entered into force on 3 May 2008, with the ratifications by twenty states parties. The Government of Japan signed the CRPD on 28 September 2007 and is in the process of reviewing its domestic disability laws and policies. The CRPD prohibits disability-based discrimination, including the denial of reasonable accommodation. In Japan, the Law for the Welfare of Persons with Physical Disabilities of 1949, perhaps as the world's first

anti-disability discrimination legislation, banned disability-based discrimination, but this clause was deleted in 1967. The revised Fundamental Law for Persons with Disabilities of 2004 included prohibition of disability-based discrimination. But this prohibition of disability-based discrimination does not meet the requirements of the CRPD, without a definition of disability-based discrimination and a remedy. It is very important to clarify “reasonable accommodation” and make the provision of reasonable accommodation as a common practice in Japanese society. One of the means to do so is the enactment of comprehensive anti-disability discrimination legislation. The upcoming revision of the Fundamental Law for Persons with Disabilities in 2009 and the ratification process of the CRPD present an opportunity for legislation which prohibits disability-based discrimination, including the denial of reasonable accommodation. There are draft bills prepared by the Japan Federation of Bar Associations and disability rights groups respectively as well as Chiba Prefecture’s ordinance on disability-based discrimination. They offer useful references in this much-needed exercise of elaborating a comprehensive anti-disability discrimination legislation.

英文キーワード

Convention on the Rights of Persons with disabilities, disability discrimination, anti-disability discrimination law, Law for the Welfare of Persons with Physical Disabilities, Fundamental Law for Persons with Disabilities