

児童憲章：THE CHILDREN'S CHARTER

— 教育法制基本用語・日英対訳(2)—

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I 児童憲章

1951年(昭和26)5月5日の「こどもの日」に児童の成長と幸福の実現を願って作成された宣言的文書である。制定の背景には、敗戦後の劣悪な社会・生活環境から児童を保護する必要が増し、子を親の従属物とみる戦前の児童観が未だ十分に正されていない状況があった。中央児童福祉審議会の発議以来、中央・地方の関係各方面における2年がかりの検討・審議を経、最終的に内閣総理大臣主宰の児童憲章制定会議において制定された。

前文、総則、本則12条から成る。総則部分にうたわれた3項目(「児童は、人として尊ばれる。児童は、社会の一員として重んぜられる。児童は、よい環境のなかで育てられる。」)は、児童一人一人の健全な成長の実現にとって必須な、時代を超えた普遍的原理を端的に集約したものと見てよい。

また「われらは、日本国憲法の精神にしたがい、児童に対する正しい観念を確立し、すべての児童の幸福をはかるために、この憲章を定める。」との前文が示すように、本憲章は、施行から4年を経過した憲法に盛られている基本的人権が、児童にも保障されるべきことを確認し宣明したものである。

たとえば、憲章の第1項:「すべての児童は、心身ともに健やかに生まれ、育てられ、その生活を保障される。」や第3項:「すべての児童は、適当な栄養と住居と被服が与えられ、また、疾病と災害からまもられる。」は、「健康で文化的な最低限度の生活を営む権利」(憲法25条1項)に対応しており、第4項:「すべての児童は、個性と能力に応じて教育され、社会の一員としての責任を自主的に果たすように、導かれる。」、第6項:「すべての児童は、就学のみちを確保され、また、十分に整った教育の施設を用意される。」などは、「能力に応じて、ひとしく教育を受ける権利」(憲法26条1項)を具体化したものとみることができる。

また、憲章制定後半世紀を経てもなお、都市化、情報化、核家族化、少子高齢化等の進展により、児童をとりまく状況が深刻な中で、「すべての児童は、よい遊び場と文化財を用意され、わるい環境からまもられる。」(第9項)、「すべての児童は、虐待・酷使・放任その他不当な取扱いからまもられる。あやまちをおかした児童は、適切に保護指導される。」(第10項)などの規定は、現代的視点から改めて捉えかえすべき課題を含んでいる。

その他の条項は、成長の場としての家庭環境の保障(第2項)、教育の具体的目標(第5項)、職業指導機会の保障(第7項)、働く児童の教育機会と生活の保障(第8項)、障害児の医療・教

育・保護の保障（第11項）、人類の平和・文化に貢献する国民像（第12項）について定めている。

児童憲章は国際連合による児童権利宣言（1959年）及び児童権利条約（1989年）の内容を先取りする先駆性を有した反面、権利宣言及び権利条約が児童を権利主体であることを明確にしているのに比して、本憲章では児童が社会によって保護されるべき存在と位置づけられたのは時代の制約だったと見られる。また憲章の定めは法律の形式をとっていないため法的効力そのものではなく、国家、社会及び国民全体が負うべき児童の幸福実現に向けた社会的、道徳的責任を明示したにとどまるが、児童の福祉や教育に関する理念を提示し、児童福祉法など関係法令の解釈指針を与えた意義は大きい。

II THE CHILDREN'S CHARTER

The Children's Charter is the declaratory document which was promulgated on May 5, 1951 (Showa 26), so that all children could develop into good adults and live a happy life. The promulgation came from the situation in those days in which children needed to be immediately protected from the worst social and economic conditions, and at a time when the old concept of a child as the parents' possession was being completely swept away. The Central Council for Child Welfare took the initiative to make the charter, and two years were spent for discussion and consideration among both national and local agencies to come to a conclusion. Lastly it was proclaimed at the Children's Charter Assembly presided over by Prime Minister (Yoshida Shigeru).

The charter consists of a preamble, three general principles, and twelve provisions. The general principles, which assert that "A child shall be respected as a human being. A child shall be considered to be an important member of society. A child shall be educated in desirable environments", are so brief and appropriate as to express the eternal truth essential to guarantee the development of every child.

As the preamble declares, "according to the ideal of the Constitution of Japan, we have made this charter in order to establish a rightful concept of the child and to attain all children's happiness", the charter aimed at a confirmation that the fundamental human rights included in that Constitution, in effect from just four years before, must be guaranteed to a child as well.

For example, the Charter's Art.1 ("All children, from birth, shall be raised mentally and physically sound, and shall live a happy life.") and Art.3 ("All children shall be given proper nutrition, housing and clothing, and be protected from diseases and disasters.") correspond to provisions of the constitution: "the right to maintain the minimum standards of wholesome and cultured living" (Cons.art.25-I). "All children shall be educated according to their personality and ability, so that they might be guided to become independent and responsible members of society." (Art.4), and "All children shall be entitled to the opportunity of attending schools and be provided with well-prepared school equipment." Those articles seem to have taken shape to "the right to receive an equal education correspondent to their ability" (Cons.art.26-II).

Today, after more than half a century has passed since the charter was adopted, the conditions surrounding children are getting worse because of urban problems, the misuse of mass-media, the increase in the number of nuclear families, the low birthrate, and the high percentage of the elderly population. Under such circumstances, those articles stating that "All children shall be provided with suitable playgrounds and appropriate cultural goods, and be protected from bad environments." (Art.9), and that "All children shall be

protected from abuse, overwork, neglect, and other unjust treatment. A child who has committed a crime shall be taken care of well and properly guided”(Art.10) lead us to notice various problems that must be reconsidered from today's viewpoint.

Other articles specify the guarantee of a family environment for the full development of the child (Art.2), educational objectives such as respect for nature, science, and the arts, the development of morality (Art.5), the guarantee of vocational guidance (Art.7), the guarantee of educational opportunity and living appropriate to the age, for the working child (Art.8), the guarantee of medical treatment, education and care for the physically and mentally disabled child (Art.11), and the ideal of the child as a citizen contributing to human peace and cultural development (Art.12).

The Children's Charter can be regarded as a pioneering advocate of the child, since it introduced the spirit and some of the content of both the Declaration of the Rights of the Child (1959) and the Convention on the Rights of the Child (1989) adopted by the United Nations, in advance of them. But the character of this charter is somewhat narrow due to the times, since it seems to consider the child to be the subject of protection by society, although the latter U.N. documents recognize the child as a citizen of exercising his own rights. And the Charter itself doesn't have legal power, because it is not a statute. It establishes the social and moral duty, not the legal obligation, of the state and the people to help accomplish the children's happiness. However, it has been of great significance, as far as it presented the ideal of children's welfare and education, and provided the direction for the Children's Welfare Law and other relevant statutes and regulations in Japan which were to follow.