

witness was harmed by a crime, the witness's age, the mental or physical condition or effects upon his/her honor or other circumstances, take measures so that the spectators and the witness cannot discern the state of the other (Para. 2). This provision is similar to Art. 157-3 of the Code of Criminal Procedure.

Art. 204 of the Code of Civil Procedure is a provision relating to "Examination using devices of communication by transmission of visual images, etc." According to Item 2 which is newly added, the court may, when the witness is, taking into account the nature of the case, the witness's age, mental or physical condition, the relationship between the witness and the parties themselves or the legal representatives of the parties or other circumstances, likely to feel pressure, and his/her peace of mind may be seriously harmed while making a statement at the place where the presiding judge and the party of the case are present for examination of the witness, and when the court believes it to be appropriate, in accordance with the provisions of the Rules of the Supreme Court, examine the witness in a way using devices that allow recognition of the state of the other and communication by transmission of visual images and sound. This provision is similar to Art. 157-4 Para. 1 Item 3 of the Code of Criminal Procedure.

By the way, these provisions shall be applied *mutatis mutandis* to examination of the parties themselves and the legal representatives of the parties under Art. 210 and Art. 211 of the Code of Civil Procedure.

## 5. Criminal Law and Procedure

### **Law for the Amendment of a Part of the Juvenile Law**

Law No. 35, May 25, 2007

#### **Background:**

In the 166th Diet of 25th May 2007, the Law for the Amendment of a Part of the Juvenile Law was approved and promulgated on 1st June 2007. There are four important points of this amendment; ① the preparation of authority for police to inquire into the cases of juveniles who violate the

criminal law; ② the taking of juveniles under 14 years old to a reform school; ③ the measures in case that juveniles who are under supervision for protection do not comply with the compliances; ④ the introduction of a system of court-appointed attorneys for definite serious cases. The backgrounds will be introduced as follows.

Today, in Japan there are more and more arrests of offenders against the criminal code among the juvenile population. Above all, more and more offenders for atrocious crimes, such as robbery are arrested, and brutal and serious cases committed by juveniles who violate the criminal law frequently happen. Under such serious circumstances of juvenile delinquency, the immediate reforms for the preparation of authority for police to inquire into the cases of juveniles who violate the criminal law the measures in case that juveniles who are under supervision for protection do not comply with the compliances have become essential.

#### **Main Provisions:**

##### **① the preparation of authority for police to inquire into the cases of juveniles who violate the criminal law(6-6 Article para 1, 2,)**

The outline is as follows. This is the specification of the provisions in the Juvenile Code about requirements enabling the police to start inquiries into the cases concerning juveniles who violate the criminal law and the creation of provisions for the protection of the juvenile interests in the inquiry.

In the case of juvenile protection, it is not only important to clarify the truth of the case for coping with non-delinquent juveniles mistakenly, but also indispensable to do so for protecting properly and fostering soundly delinquent juveniles, adapted to the problems of individual delinquent juveniles. In this point, since acts performed by juveniles who violate the criminal law do not constitute a “crime”, it is impossible to investigate such cases on the basis of the Code of Criminal Procedure. Thus, it has been difficult to acquire cooperation from parties concerned, since there is no concrete ground in the Juvenile Code about the authority for the police to inquire into the cases of juveniles who violate the criminal law, although in the police the necessary inquiry and clarification of the case has traditionally been performed under the scope of arbitrary investigation.

Then, the due recognition of facts and choice of treatment in judg-

ment by family courts has been made more sufficient and authority for the police to inquire into the cases of juveniles in the Juvenile Code has been clarified in order to make a thorough recognition of facts for contribution to steps for the sound growth of juveniles.

Since juveniles who violate the criminal law cannot be blamed criminally, unlike criminal juveniles, inquiries into juveniles who violate the criminal law, which differs from investigation of crimes for the purpose of the proper realization of punitive statutes exclusively contributes to the clarification of cases and steps for the sound growth of juveniles. Juvenile Code 6-6 Article para 2 provides this object.

Since, although juveniles and their guardians have always been able to request an attorney as a legal representative, according to provisions in the Civil Code on the stage of inquiry by police, the requested attorney is not given a status as an attendant in the Juvenile Code, and a minor has to get consent from his/her legal representative in order to perform a legal act according to Article 5 para 1 of Civil Code, juveniles must acquire consent from their legal representative for asking for an attorney at law. Article 6-3 of the Juvenile Code says that by the specification of authority enabling police to start a compulsory inquiry into the cases concerning juveniles who violate the criminal law, more sufficient protection of the juvenile interests in the inquiry and authority for juveniles and their guardians to select an attorney at law as an attendant will be recognized. Thus juveniles can select a legal attendant by themselves and their guardians cannot cancel the effectiveness of a selection without their consent with them.

Since compulsory dispositions traditionally can be conducted in the cases concerning juveniles who violate the criminal law, difficulties in the solution of cases have been pointed at when the investigation and seizure of objects such as weapons, the inspection of objects and scenes and the autopsy of a dead body need be performed. Thus 6-5 of Juvenile Code makes possible compulsory disposition, such as seizure, investigation, inspection and appraisal by contract.

6-6 of the Juvenile Code says that the system of sending the case to a consultation office for children by the police, since reforming the treatment of an inneshgared case is considered as proper corresponding to the clarification of authority for the police to inquire into the cases of juveniles

who violate the criminal law.

**② the taking of juveniles under 14 years old to a reform school**

Since article 2 of the old Reform School Code said that boys and girls who can be expropriated to elementary or medical reform schools had to be not less than 14 years old, the protection disposition of sending to a reform school could not be chosen when the sent juveniles were not under 14 years old at that time. However, it is thought necessary and appropriate for sound rearing that juveniles, who even if they are not over 14 years old, have some serious and complicated problems in their character, and because of the problems this leads to atrocious delinquency, repeat the brutal misconduct from their childhood and commit unlawful acts again and again after being released from a protection school, enjoy an education for correction as early as possible. Thus article 1-2-2 of the Reform School Code says that the age proper for expropriation to a reform school is not decided uniformly and expropriation to an elementary or medical reform school is possible only when “it is thought in particular as necessary” (24 article para 1 proviso) even if the juveniles are not over 14 years old, in order to establish the system of choice for the best treatment adapted to the problems individual juveniles have.

**③ the measures in case that juveniles who are under supervision for protection do not comply with the compliances**

The main content of probation is to direct and supervise the boys and girls for their observance of compliances. This direction and supervision shall be conducted by giving necessary and appropriate indications in order that probation officers and juvenile probation officers may keep a contact with juveniles, observe the behavior regularly and make them comply with the compliances. But in fact many delinquent juveniles frequently repeat the violation of compliances in spite of the repeated indications of probation officers and juvenile probation officers, and probation officers and juvenile probation officers sometimes cannot even make contact with the juveniles. There are more cases where the probation as treatment inside society cannot function substantially and traditionally there was no legal system which could cope with such situations effectively.

Thus article 26-4 para 1 says that the director of the probation office can give a warning to juveniles who do not comply with the compliances and family courts can decide that they should be sent to a children office

for independence assistance or a reform school with a protection disposition other than probation, when the courts regard the violation of compliances despite that indications as a new situation during this probation, and in answer to an offer of the director of the probation office judge that there is a grave violation of compliances to a serious degree, and the juveniles cannot be improved and corrected even if this probation is continued.

**④ the introduction of system of court-appointed attorney for definite serious cases.**

According to article 22-3 para 1 of the old Juvenile Code, traditionally, an attorney at law as legal attendant was selected in necessary cases where the decision of prosecutors' participation in juvenile trials is made and there is no attorney at law as a legal attendant. Except in this case, there is no system of giving an attorney at law as legal attendant by paying with the public burden in juvenile trials.

But when steps for probation are taken in serious cases, the decision of disposition very influential to juveniles, such as the sending of juveniles to reform school and a prosecutor will be predicted and a more proper choice of treatment is requested because the social influence is so great.

Moreover, it is difficult for juveniles taken into custody to receive direct assistance from their family and surrounding people. There are cases where proper positive activity is performed for collection of documents concerning the content of the case and the juveniles' behavior and circumstances and adjustment of the circumstances.

Therefore article 22-3 para 2 says that family courts can give an attorney at law as a legal attendant to children with its authority when measures for probation of sending to the Juvenile Classification Office are taken and there is no attorney at law as a legal attendant.

**Editorial Notes:**

This amendment of the Juvenile Code makes the Juvenile Code approach the criminal procedure for adults at the cost of guardianship and education. More attention should be paid to movements of further amendments in order that the original meaning of the Juvenile Code may not vanish.