

**The Israel–Japan Disability Studies International Seminar
‘Localization of UNCRPD’**

**Japanese Laws and Linguistic Rights :
Necessary Conditions and Issues to Introduce
the International Concept of Linguistic Rights into
Japanese Law System**

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Self-Introduction

My Majors : Constitutional Law and Human Rights Law

- Interested in Judicial System in France ➡ Met the Brezhoneg (Breton) Language Speakers in France
- In the 1990s, There was Little Research on The Linguistic Issues in Japanese Legal Academia
- Changing the Subject to Linguistic Rights Research
- Currently Interested in Language Issues in Japan :

Heritage Languages (Ainu, Languages in Ryukyu islands, and Heritage Language of Koreans in Japan)

Issues around Japanese Sign Language

Issues around Education of the Japanese as Second Language

Several Important Issues around Japanese Language (Dialects, Plain Japanese and Information Accessibility, etc.)

Main Issues for Today

How Could We Localize the International Human Rights Concept?

- In Japan :

No Ratified Any Individual Complaints Mechanism for International Human Rights Conventions

No National Human Rights Institutions (NHRIs) set out by Paris Principles (1993)

No Ratification of Some Human Right Conventions including Major ILO Treaties

My Topics: Some Human Rights have not been Recognized in Japan

- Issues of Linguistic Rights

Localization Issue of Linguistic Rights in Japan

(1) What are Linguistic Rights?

The concept of Linguistic rights are Developed in International Law and Recognized as Basic Human rights.

- Post-WW I : Protection of Language Minority in Eastern Europe by Treaties
 - Post-WWII : Language Becomes Non-discrimination Item of Equal-Protection Clauses
- Through Several Human Rights Treaties, the Linguistic Rights are Implemented and Detailed

However, in Japanese Legal System, No Laws about the Linguistic Rights.

- Government Never Shows the Legal Interpretations about Linguistic Rights
- No Lawsuits about Linguistic Rights

But Currently the First Lawsuit about Japanese Sign Language Filed at Sapporo District Court, Hokkaido.

(2) Linguistic Rights Contents

4 Categories of Linguistic Rights

- Rights for First Language, **L1**
- Rights for Heritage Language, **HL**
- Rights for Community Language, **CL**
- Responsibilities of National and Local Governments for Linguistic Rights

(2) Linguistic Rights Contents

Rights for **L1** : First Language

- L1 is Acquired “Naturally” in the Childhood
- L1 Should Be Fully Acquired, Available for Communication in Comfort and Contribute to Development of Human Cognitive Abilities

Rights to Learn L1 / Rights for No Deprivation of L1

Rights for Education in L1 (Especially in Primary Education)

Rights of Daily Life Use of L1

Rights for Heritage of L1

Rights of Access to the L1 Speaker Communities

(2) Linguistic Rights Contents

Rights for HL : Heritage Language

- HL is the Language of the Social and Cultural Community Related to Her/His Identity
- In Some Cases, Such as Ainu in Japan, LI (Japanese) is Different from HL(Ainu Language)

Rights to Learn HL and to Learn in HL

Rights to use HL as Daily Life Language

Rights to Preserve, Inherit and Develop HL

Right to Operate Mass Media Organizations in HL

Rights to Join HL Speakers' Community (Especially Abroad)

(2) Linguistic Rights Contents

Rights of **CL** : Community Language

- **CL is the Language Mainly Used in Living Area**

Rights to Interpretation and Translation Service between Her/His LI and CL

Rights to Learn CL

Responsibility of National and Local Governments for Linguistic Rights

- **To Offer Education Opportunities and Speaking Situation for Each of LI, HL and CL**
- **To Arrange the Interpretation and Translation between LI and CL (Especially, in Medical Service, Judicial Process and Academic Situation)**
- **To Assist Maintenance, Development Participation to LI or HL Communities**
- **Public Awareness to Majority Language People**

Including to Offer the Opportunities to Learn Minority Languages as Second Language for Majority Language People

(2) Linguistic Rights Contents

Two Aspects of Linguistic Rights: Individual Rights and Collective Rights

- Sometimes Individual Rights of L I Conflict with Collective HL Rights

In the Case of Interference with Children Learning CL as L I from the HL Community

In the Case of Restriction of CL Learning Rights in HL Revival Movement Area

The Impact on Linguistic Rights by CRPD

- Expansion of the Concept of Linguistic Rights from Spoken Languages to Visual Languages (Sign Languages)

Report of UN Human Rights Council by F. de Varennes (HRC, 2020)

“Right of L I Education for Minority Children Include Sign Language Education”

- Revealing Issues about the Children under Deprivation of L I Acquisition (**Language Deprivation**)

Alerting International Society to the Violation of Independent Linguistic Rights

(3) Paradigm Changed by UNCRPD

CRPD : Human Rights based on Social Model of Disability

- **Paradigm Shift from Binominal Situation of Social Rights / Rights for Freedom**
Reconsidering “To Achieving Progressively the Full Realization of the Rights” in Article 2 of ICESCR
Optional Protocol to the ICESCR (2008) : Introduction of Individual Complaints Mechanism
- **Paradigm Shift from the Binominal of People without Disabilities / People with Disabilities**
People with Disabilities Changes from “Protected” to “Subjects of Self-realization”
People with Disabilities Recognized as Minority Because of Disabilities
- **Through the Newer Paradigm of CRPD ➡ the Reconsideration of Interpretation of the Past Human Rights Conventions**

(4) Localization of Linguistic Rights in Japan

Japanese Monolingualism without Official Language Legislation

- **The Clauses about Equal Protection of Law in Japanese Constitution: No Mention about Language Discrimination**

Grundgesetz für die Bundesrepublik Deutschland and Costituzione della Repubblica Italiana established around the same time have the Clause about Language Discrimination

- **All Legislation, Administrative Order, and Judicial Documents Written only in Japanese: Japanese Language is Official Language in de facto**
- **The Heritage Activities for Minority Languages in Japan: Based on Self-Help Efforts (Excluding the Ainu language)**
- **The Language of Japanese Public Education: Japanese Only Policy**
Sign Languages and the Other Spoken Languages than Japanese: Used Only as a Means of Learning Japanese
- **No Safeguard for Children whose LI Other than Japanese: No Ensuring the Cognitive Development and the Comprehension of the Course Works**

(4) Localization of Linguistic Rights in Japan

Governments Attitudes to International Conventions

- The Conventions : Domestic Legal Effects in Japan ➡ After Ratification
Japanese Courts: Evading the Direct Application of the International Treaties.
Linguistic Rights: Hard to Apply to the Domestic Cases in Japan
- Reject of ratification of the Individual Complaints Mechanism
- Reject of NHRIs set out by Paris Principles (1993)

Conflict between Constitutional Studies and International Human Rights Studies

- Constitutional Studies : Concerning about the Constraints of National Sovereignty by International Laws
- The Lower the Majority’ s Awareness of Human Rights, the Harder to Guarantee the Human Rights of Minorities
Claiming Human Rights by the Minority Often Criticized and Attacked in Japan

(4) Localization of Linguistic Rights in Japan

Issues Specific to Japanese Sign Language : Attitude of the Association in charge, Japanese Federation of the Deaf (JFD)

- JFD Rejects the Distinction between Japanese Sign Language (JSL), and Signed Japanese (SJ)
 - No Claiming the Educational Rights of JSL as LI for Deaf Children
 - No Claiming the Training of Teachers to Teach Deaf Children in JSL
- The Sign Language Interpreter Training by JFD: Teaching Something Like SJ
 - Lack of Interpreter for JSL Signers
 - Lack of Professional Sign Language Interpreters in the Areas of Expertise
- JFD : Afraid of Segmentation of the Deaf and the Late-deafened People
 - What Needed?: The Solidarity Based on Scientific Understanding of Language

(5) Laws Concerning Languages in Japan

Laws Concerning Languages in Japan: Recently Enacted One after Another.

- Act on the Promotion of Ainu Culture, and Dissemination and Enlightenment of Knowledge about Ainu Tradition, etc. (April 2019)
- Japanese Language Education Promotion Act (June 2019)
- Revised Basic Act for Persons with Disabilities (August 2011) : The First Act of Recognition of Sign Language as a Language in Japan

Sign Language Bill co-proposed by 4 opposition parties (June 2019 ➡ Fall 2021 withdrawn)

Sign Language Ordinances by More than 400 Local Governments

Additional Resolution to Information Accessibility Acts at House of Representatives (May 2022) : mentioned to enactment of Sign Language Law

These “Language” Laws Have Nothing with “Linguistic Rights”

- All of Them: Conceptual Law
No Specific Responsibility to the National or Local Governments

References

- Education, language and the human rights of minorities, Report of the Special Rapporteur on minority issues. (Human Rights Council Forty-third session 24 February-20 March 2020) <https://undocs.org/A/HRC/43/47>
- Mori, S., Sugimoto, A., (2019) 6. Progress and Problems in the Campaign for Sign Language Recognition in Japan., De Meulder, M., Murray, J.J., McKee, R.L. (eds.) *The Legal Recognition of Sign Languages : Advocacy and Outcomes around The World*. Multilingual Matters, Bristol, pp.104-108.
- 杉本篤史 (2022) 「第4章 言語権の視点からことばの教育を再考する」稲垣みどり、細川英雄、金泰明、杉本篤史 (編著) 『共生社会のためのことばの教育 自由・幸福・対話・市民性』明石書店, pp.110-140.
- 杉本篤史 (2019) 「日本の国内法制と言語権—国際法上の言語権概念を国内法へ受容するための条件と課題」社会言語科学22(1), pp.47-60.
- 高嶋由布子、杉本篤史 (2020) 「人工内耳時代の言語権—ろう・難聴児の言語剥奪を防ぐには」言語政策16, pp.1-28.