

No. 1030

人身保護法

HABEAS CORPUS ACT

(Law No. 199, Jul. 30, 1948)

EHS LAW BULLETIN SERIES

EHS Vol. I

AR

HABEAS CORPUS ACT

(Law Oo. 199, Jul. 30, 1948)

(Object)

Article 1. The present Act shall make it its object to enable the people to recover the liberty of person actually deprived of unlawfully in a prompt and easy manner through judicial procedure in accordance with the spirit of the Constitution of Japan which guarantees the fundamental human rights.

(Demand for relief against illegal detention)

Article 2. Any person whose liberty of person is under restraint without due process of law may apply for relief pursuant to the provisions of this Act.

2. Any person may make the application mentioned in the preceding paragraph on behalf of the person restrained.

(Application filed by attorney)

Article 3. The application mentioned in the preceding Article shall be made by an agent who shall be an attorney-at-law; provided however, that in cases where there exist special circumstances, this shall not prevent the applicant from acting for himself.

(Procedure for demand)

Article 4. The application mentioned in Article 2 may be made, either in writing or by word of mouth, to the High Court or District Court having jurisdiction over the locality in which the person restrained, the person putting him under restraint, or the applicant is found or resides.

(Matters to be given prima facie proof upon application)

Article 5. When making application, the matters set forth below shall be clarified and materials for prima faie proof thereof furnished:

- (1) The full name of the person under restraint;
- (2) The tenor of supplication;
- (3) The facts of detention;
- (4) The person known to be putting restaint.

Note: The titles of each Article are attached by translator for the convenience of readers, though the Japanese original text has no such titles.

(5) The place of detention, if known.

(Duty to give prompt justice)

Article 6. With regard to the application mentioned in Article 2, the Court shall give prompt justice.

(Dismissal of application)

Article 7. In cases where the application fails to fulfil the conditions or lacks the required prima facie proof, the Court may dismiss it by way of a ruling.

(Transfer of cases)

Article 8. The Court with which the application mentioned in Article 2 has been filed may, upon application by the person making application or of its own motion, transfer the case to some other competent Court which is considered appropriate for the case.

(Preparatory investigation)

Article 9. Except in the cases mentioned in the preceding two Articles, the Court may, with a view to preparing for the examination at the date of questioning, forthwith make necessary investigations concerning the reasons for detention and other matters, through listening to statements of the person placing restraint, the detainee, the applicant or his attorney, as well as of other persons involved in the case.

2. The preparatory investigation mentioned in the preceding paragraph may be conducted by a member of the body of judges constituting the Court.

(Ruling of provisional release, etc., bringing detainee to Court)

Article 10. When deemed necessary, the Court may, prior to giving the judgment mentioned in Article 16, provisionally release the person detained, or take any other appropriate measures, by way of a ruling, either causing him to promise on oath to appear at any time upon summons being issued, or imposing conditions which the Court deems appropriate, in order to discharge him out of custody.

2. In case the detainee mentioned in the preceding paragraph fails to appear in response to summons, he may forcefully be brought before the Court.

(Ruling for dismissal of application)

Article 11. As a result of the preliminary investigation,

I (AR 2)

if it is found that application is without justification, the Court shall, by way of a ruling, dismiss the application, without resorting to the procedure of questionings.

2. In granting the ruling mentioned in the preceding paragraph, the Court shall cancel the measures mentioned in the preceding Article which it had taken before, and ordering the detainee to appear before the Court, hand him over to the person who had been detaining him.

(Persons involved summoned; order issued to person detaining)

Article 12. Except in the cases mentioned in Article 7 or paragraph 1 of the preceding Article, the Court shall summon the applicant or his attorney, the person detained, and the person detaining him for questioning, naming the hour and day as well as the place thereof.

2. To the person placing restraint, an order shall be issued to produce the detainee at the hour and day and the place specified as provided for in the preceding paragraph and also to submit, not later than the date of questioning mentioned in the preceding paragraph, a written reply concerning the time and day when, as well as the place where, the detention took place and the reasons for detention.

3. Added entries shall be made in the order mentioned in the preceding paragraph that when falling to obey the order, the person placing restraint may forcefully be brought before the Court or detained until he obeys the order, and that he may be punished with an administrative fine not exceeding five hundred yen per day while the delay continues.

4. Between service of the order and the date of questioning, there shall be an interval of three clear days, and the session for questioning shall be held within one week of the day the application mentioned in Article 2 has been made; provided however, that in cases where there exist special circumstances, the periods may each be either shortened or extended.

(Notice to judge or public procurator who issued warrant of detention; their attendance at questioning)

Article 13. The order mentioned in the preceding Article shall be notified to the Court or public procurator who issued the warrant of detention.

I (AR 3)

2. The judge of the Court or the public procurator mentioned in the preceding paragraph may attend the session for questioning.

(Investigation open to public; State-appointed counsel)

Article 14. The investigation on the date of questioning shall be conducted in open Court with the attendance of the person under restraint, the person putting him under restraint, the applicant and his counsel.

2. When there is no counsel, the Court shall appoint him from among attorneys-at-law.

3. The counsel mentioned in the preceding paragraph may ask for travelling expenses, daily allowance, hotel expenses, and remuneration.

(Examination of means for showing prima facie case)

Article 15. On the date of questioning, after listening to statements of the applicant and the reply of the person placing restraint, there shall be examination of materials for prima facie proof.

2. The person placing restraint shall give prima facie proof of causes of detention.

(Judgment for dismissal of application; judgment granting application)

Article 16. When, as a result of questioning, application is found to be without justification, the Court shall dismiss application by way of a judgment and hand the detainee over to the person who had been detaining him.

2. In the case mentioned in the preceding paragraph, the provisions of Article 11 paragraph 2 shall apply mutatis mutandis.

3. When the application is found justified, the Court shall, by way of a judgment, release the detainee.

(Person detaining or applicant liable for costs)

Article 17. In the trials provided for in Article 7, Article 11 paragraph 1 and in the preceding Article, the Court may cause the person placing restraint or the applicant to bear in whole or in part the expenses required for the proceedings.

(Penalties imposed on person detaining who fails to obey order)

Article 18. In case where the person detaining fails to obey the order mentioned in Article 12 paragraph 2, the Court may

forcefully bring him before the Court or detain him until he obeys the order, and also punish him with an administrative fine at the rate of five hundred yen or less per day while the delay continues.

(Detainee's proposal to retain counsel)

Article 19. In cases where the person under restraint has proposed to retain counsel, the person placing restraint shall, without delay, notify it to the attorney-at-law named by him.

(Notice and report to Supreme Court)

Article 20. The Court to which the application mentioned in Article 2 has been made or the Court to which the case has been transferred shall forthwith notify the Supreme Court thereof and also report to the said Court the progress as well as the result of the case.

(Appeal to Supreme Court)

Article 21. Appeal against a judgment of an inferior Court may be taken to the Supreme Court within three days.

(Supreme Court's power to judge on its own)

Article 22. When deemed especially necessary, the Supreme Court may order transfer of a case pending in an inferior Court, regardless of its degree of progress, and handle the case on its own.

2. In the case mentioned in the preceding paragraph, the Supreme Court may quash or modify the decision or disposition made by the inferior Court.

(Supreme Court's power to enact rules)

Article 23. The Supreme Court may prescribe necessary rules concerning the application, questioning, decision, and other matters.

(Precedence of decisions given under present Act)

Article 24. A decision given under other laws which is unfavorable to the person under restraint shall lose its effect to the extent it conflicts with the decision given under this Act.

(Restriction on re-detention)

Article 25. Any person who has been granted relief under this Act shall not, unless upon judgment of a Court, be again put under restraint because of the same causes.

(Penal provisions)

Article 26. Any person who has removed or harbored the person detained or enabled him to escape by hiding, or committed any other act which obstructs the relief granted under this Act, or any person who has purposely made false statements in the written reply mentioned in Article 12 paragraph 2 shall be punished with imprisonment with hard labor for a term not exceeding two years or a fine not exceeding fifty thousand yen.

SUPPLEMENTARY PROVISIONS:

This Act shall come into force as from the day sixty days shall have elapsed since the date of its promulgation (September 29, 1948).