

# **“Religion and Law in Japan”**

## **A Brief Sketch of Japanese History, Tradition, and Cases**

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## **Preface**

I would like to express my deepest gratitude to my dearest friend, Mr Connan Grames of the Church of Jesus Christ of Latter-Day Saints for his giving me this honorable opportunity. I truly appreciate the long-time friendship with Mr Grames, whom I have respected for his accomplishment as a lawyer and sociologist, and his dedication to his family as a father.

## **Chapter 1 – Japanese Society and Its Traditional Faith – Animism**

Law and religion are an inalienable part of society. Religious values constitute central elements of societal values that form the rules, principles and institutions governing society.

First of all, there is a long tradition of animism in Japan. In the Japanese worldviews, there is less distance between man and the divine. From prehistoric times, Japanese people worshiped nature as divine. They believed that natural features such as mountains, rivers, stones, and plants all had spirits and venerated those as *Kami* or gods, which most were seen as the sacred powers within nature. The people offered prayers to them and sought salvation from them. Typically, the core of Shintoism, an indigenous religion of Japan, is based on the worship of nature.

Also, another special feature of Japanese religious culture rests on the polytheism in it. Contrary to the Western Judeo-Christian monotheistic tradition, so many different gods are enshrined in Japan, including human beings, animals, natural gods and even foreign gods, that there is a term "Yaorozu no kami", literally meaning 'eight million gods'. This also appears prominently in Shintoism.

Additionally, it can be worth noted that gods are portrayed as taking an integral part in the creation of the Japanese islands in the *Kojiki* (Records of Ancient Matters) and *Nihon Shoki* (Chronicles of Japan), both of the ancient chronicles officially compiled in the eighth century.

As pointed in the above, Japan is a religiously-mixed society. The following is a classic example, depicting a Japanese religious view and practice:

People go to a shrine to celebrate a New Year, celebrate Christmas on Christmas Eve, and have wedding ceremonies in Christian churches while conducting funerals according to Buddhist rites.

Interestingly, this religious culture can be evidently seen in the following statistics: Shintoism 83.9%, Buddhism 71.4%, Christianity 2%, and other 7.8%<sup>1</sup>. According to this data, the total number amounts to 175.1%, exceeding 100%. Curious to say, majority of the people consider themselves virtually non-religious. As a proof of this, when one ask the Japanese, “What is your religion?” many of them, excluding Christians and followers of new religions, will answer “I have no religion”. However, when one are asked “What is the religion of your family?” then, the answer will be “Jodo sect of Buddhism”, “Nichiren sect of Buddhism”, “Shingon sect of Buddhism” or “Soto sect of Buddhism”. That means the religion that each family has had since ancient times for the purpose of worshiping their ancestors has stayed with the household. Thus, as long as a religion in Japan is concerned, one’s religion and one’s religious faith should be separately considered. This also indicates that religion in Japan is in nature strongly linked to worshiping ancestors. Many families in Japan have small Buddhist altars (*Butsudan*) and Shinto altars (*Kamidana*; literally, “god shelf”) in their homes for conducting everyday services. In order to worship ancestors, offerings of food, flowers, and incense are regularly placed before the Buddhist altar, and Buddhist scriptures are read in front of it. Also, a Shinto altar is typically placed on a shelf built above a door lintel of the room where visitors are received. It is customary to place talismans of gods such as those of the Ise Shrine or the local tutelary deity (*Chinju no kami*)<sup>2</sup>. Even in the central Tokyo, there still remains a lot of such local tutelary deity according to Shintoism. The scenery has been woven into the fabric of daily life and can be seen in everywhere all around the country – for most of the Japanese people it is too natural to recall that there are in the form of Shintoism.

Further, most scholars believed, thus no disputes among them that a clan of people known as "Yamato" gained advantageous power over their neighboring clans at the 6th century. The rulers of Yamato clan claimed to be direct descendants of the Sun Goddess, *Amaterasu Omikami* that is enshrined at Ise Shrine, and today believed to be ancestors to the Imperial family of Japan. Goddess Amaterasu is enshrined at Ise Shrine

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<sup>1</sup> CIA, *The World Factbook*:

<https://www.cia.gov/library/publications/the-world-factbook/geos/ja.html>

<sup>2</sup> *Keys to Japanese Heart and Soul* (Kodansha International, 1996)

– Her grandson is known as *Niniginomikoto* and his great-grand son is said to be the first Emperor Jimmu.

## **Chapter 2 - From Meiji Restoration to the defeat in the World War II**

### **1. Japan has adopted Western modern law into its legal system**

The beginning of the Meiji Era (1868) saw the restoration of the Emperor's authority. With various political reforms, the old feudal political system was completely changed into new government aiming for the establishment of the modern bureaucratic system.

The early modernization of the Japanese law was primarily based on continental European legal systems and minor Anglo-American concepts. At the beginning of the Meiji Era, European legal system, especially the civil law of France and the criminal law and the constitution of Prussia-German, were the primary models for the Japanese legal system. Initially, the Meiji Government considered adopting English legal system for a constitutional monarch; however, due to a unique feature of English law, which is the doctrine of judicial precedents, they chose the continental legal system.

For comparison, it is believed that the oldest code in Japan is Taiho-Code, which was enacted in 701 in the track of Chinese legal system. By the middle of the 6th century, Buddhism and the Chinese writing system, as well as the Chinese calendar and many of its religious practices, including Confucianism and Taoism were conveyed from China via Korean Peninsula, and the early laws in Japan is believed to be heavily influenced by Chinese law. Prior to the creation of this code, it is recorded in *Nihon Shoki* that on May 6, 604, Prince Shotoku issued the “Seventeen Articles Constitution”. Every Japanese person knows him, but not so many people know the legal concepts of his “Seventeen Articles Constitution”. This is called “Constitution” in its name; however, in nature, it carries an ethical or moral significance for the aristocrats, purporting to establish a centralized government system. As adopting the Western legal concepts in its legal system was synonymously an attempt for Japan to create a completely new legal system in order for modernizing the society, the Japanese laws from the previous period that was deeply influenced by the Chinese law left no trace in this modernization process.

French legal concept became the basic philosophy of the systematic code books. But, it was so liberal and out of the French Revolution, the leaders of Meiji government felt it rather risky in maintaining the status of the Emperor. As previously described, the Japanese legal modernization was deeply influenced by Prussia-Germany, which also experienced a rapid modernization at that time. Particularly, the influence was strong in the Constitution of the Empire of Japan (“Meiji Constitution”) as well as the Criminal Code. The Meiji Constitution established clear limits on the power of the executive branch and the Emperor. It also created an independent judiciary. Civil rights and civil liberties were guaranteed, though in many cases they were subject to limitation by law and were ambiguous in wording, and in many places appeared to be self-contradictory.

## **2. Formation of religious law**

### **(1) The Emperor became deified - from the nineteenth century Shinto came to be regarded as the national religion of Japan**

The Constitution of the Empire of Japan (“Meiji Constitution”) was promulgated on February 11, 1889<sup>3</sup>. This was the basis of establishing the constitutional monarch, explicitly conferring the sovereign right on the Emperor for the first time in the Japanese history. Art.3 of the Constitution of Imperial Japan provides that “Emperor is sacred and inviolable”.

### **(2) Emphasis on the superiority of Shintoism to any other religion**

Norinaga Motoori, the authority of Japanese classics advocated the teachings of Shintoism on the basis of Japanese classics, which is called “Restored Shintoism”. In his findings, the soul inherent to Japan is in *Kojiki* and his thought developed that Goddess Amaterasu is the ruler of this world and Japan that the descendant of the Goddess govern is superior to the other countries. This became the spirit behind the political movement for absolutizing of the Emperor’s authority.

## **Chapter 3 - From the Defeat in the World War II to the present**

### **1. Introduction of new constitution and freedom of religion**

#### **(1) Turmoil of the legislative body**

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<sup>3</sup> <http://www.ndl.go.jp/constitution/e/etc/c02.html>

After the Second World War, the Japanese legal system underwent major reform under the guidance and direction of the Occupation authorities. Namely, American law had the strongest influence, replacing and overlaid onto existing rules and structures. The Constitution, criminal procedure law, and labor law, all crucial for the protection of human rights, and corporate law were substantially revised. Therefore, the Japanese legal system today is essentially a hybrid of the continental and Anglo-American legal structures, with strong underlying "flavors" from indigenous Japanese and Chinese characteristics.

Notably, the new constitution was proclaimed on November 3, 1946 and subsequently promulgated on May 3 in 1947. Prior to the enforcement, the outline of religious policy can be first seen in the Potsdam Declaration. This is incarnated in the form of Shinto Directive subsequent to the Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan. The directive was based in part on the

The directive was based in part on the United States Constitution's guarantee of freedom of religion. According to the directive, State Shinto was to be stripped of public support and of its "ultra-nationalistic and militaristic" trappings. The remnants were to be permitted to exist as part of sectarian Shinto, an unprivileged equal among other faiths, supported only by voluntary offerings.

No public funds could be used to support Shinto shrines or priests. The Emperor could no longer report on public matters to his ancestors in official visits to the shrines. But he and other officials could worship as private individuals. Shinto doctrine would be deleted from text books. "Militaristic and ultra-nationalistic ideology" could not be promoted or encouraged in connection with Shinto or any other creed. These doctrines were specifically banned: that the Emperor is superior to other rulers because he descends from the sun; that the Japanese people are superior to other peoples, or the Japanese islands superior to other lands, because Amaterasu so willed.

Thus, the directive was more than formal separation of Church and State. It was an attempt by U.S. officials to draw the line between genuine religious doctrine and harmful social propaganda.

## **(2) Newly organized religions and their distorted views**

Religious Corporation Act was enacted in April 1951 and all of the existing religious organizations started transforming into the new form in accordance with the law. Half of them ended up in dissolution. The proceedings for the rest of them were completed in three years from enactment. At the time of 1954, all the registered religious sectors amounted to total 371; including Buddhist 166, Christians 36, Shintoism 141, and others<sup>4</sup>.

Recently, there are not good examples of newly established religious organizations to hide behind the generous Buddhist or some religion in carrying out their deeds – Some have taken advantage of preferential tax system for religious corporations avoiding tax, or deceive the troubled people into buying very expensive items. Further, as discussed in details in the following chapter, it should be noted that Aum Shinrikyo, a cult religion, founded by Shoko Asahara, currently on death row, caused its sarin gas attack on the Tokyo subway system in 1996 where 12 people were victimized. It is well known that this cult publicized itself as a sect of Buddhism, but finally provoked this incident in order to realize the Armageddon in which they believed and to prove its own belief in public.

## **Chapter 4 – Post-war leading cases**

By way of background, most of the post-war constitutional cases have been related to the controversies surrounding Yasukuni Shrine, which is a Shinto shrine in central Tokyo that commemorates Japan's war dead. The shrine was founded in 1869 with the purpose of enshrining those who have died in war for their country and sacrificed their lives to help build the foundation for a peaceful Japan. The spirits of about 2.5 million people, who died for Japan in the conflicts accompanying the Meiji Restoration, in the Satsuma Rebellion, the First Sino-Japanese War, the Russo-Japanese War, the First World War, the Manchurian Incident, the Second Sino-Japanese War and the Pacific War, are enshrined at Yasukuni Shrine in form of written records, which note name, origin and date and place of death of everyone enshrined.

### **Case 1: Suenaga v. Tsu-City**

The Tsu City Shinto Groundbreaking Ceremony Case

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<sup>4</sup> Agency for Cultural Affairs, *Meiji Ikou Shukyo-seido Hyakunen Shi* (100 Year History of Religious System after the Meiji Era), (Harashobou, 1983), p.371

1971 (Gyo-Tsu) No.69, *Minshu Vol.31, No4, 533* (Sup.Ct., G.B., Jul.13, 1977)

**FACTS** A groundbreaking-ceremony of a Tsu-City municipal gymnasium (“Groundbreaking Ceremony”) hosted by Tsu municipal government took place in a Shinto-style at the construction site of the gymnasium in Tsu-City on January 14, 1960. Tsu-City officials coordinated this Groundbreaking Ceremony and four Shinto priests of the *Oichi-Jinja* shrine presided over it. As expenses for the Groundbreaking Ceremony, the Mayor of Tsu-City disbursed ¥7,663 (for reward of ¥4,000 for the Shinto priests and ¥3,663 for offering). A member of Tsu-City Counsel filed a lawsuit for damages against this disbursement under Article 242(2) of the Local Autonomy Act. The plaintiff alleged that this Tsu-City’s activity would violate Art.20<sup>5</sup> (3) of the Constitution. The court of first instance held that the Groundbreaking Ceremony does not apply to the violation of Art.20 (3) of the Constitution as although one cannot deny that it looks as a religious ceremony and apparently is categorized as such, it is also in nature a customary activity and is not purported to mission or publicize Shintoism. On the other hand, the Osaka High Court, the court of appeal, subsequently held that the Groundbreaking Ceremony was not a social formality or customary activity, but a religious ceremony according to and inherent to Shinto rites, and thus applies to the “religious activity” stipulated in Art.20(3) of the Constitution. Upon this judgment, Tsu City appealed to the Supreme Court.

## **ISSUE**

1. Principle of the separation of state and religion under the Constitution
2. Meaning of “religious activity” stipulated in Art. 20(3) of the Constitution
3. The nature of the Groundbreaking Ceremony; whether it is a customary event and whether the Groundbreaking Ceremony of a municipal gymnasium in a Shinto style sponsored by a municipal government applies to “religious activity” embodied in Art. 20 (3) of the Constitution and violates freedom of religion.

**DECISION** According to the Supreme Court findings, the Groundbreaking Ceremony does not apply to the violation of Art.20 (3) of the Constitution.

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<sup>5</sup> Article 20 of the Constitution provides as follows: Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.  
(2) No person shall be compelled to take part in any religious act, celebration, rite or practice.  
(3) The State and its organs shall refrain from religious education or any other religious activity.



## **REASON**

1. Principle of the separation of a state and any particular religion means that a state should remain religiously neutral. This does not mean, however, non-permissibility for a state to have any ties with a religion, but rather, it is to limit having such religious connection between the state and a religion where the purpose and effect of a state's religious activity is in excessive levels in relation to the principal aim of the principle, the constitutional guarantee of the freedom of religion in light of social and cultural background of the nation.
2. Religious activity stipulated in Article 20(3) of the Constitution does not apply to all religious activities of a state and its institutions. It refers to an activity where such an activity carries the religious agenda to support, facilitate and/or promote, or has suppressive and/or restrictive effects on a certain religion<sup>6</sup>.
3. Religious aspects of the Groundbreaking Ceremony in a Shinto style, which was arranged by the municipal government, are undeniable. However, the purpose of the ceremony is only secular, namely to wish an assurance of the solidness of the construction site and the safety in the construction works at the commencement of the construction. Furthermore, it is only ceremonial that accords with the common practice of Japanese society and it cannot be said that the ceremony would result in suppressive or interferential effects on other religions. In light of these findings, this Groundbreaking Ceremony does not apply to the "religious activity" in Article 20 (3) of the Constitution.

### **Case 2: Sawa v. Koiwa Elementary School**

1982 (Gyo-U) No.151, *Hanrei Times*, No.592, 122 (Tokyo. Dist. Ct., Civ. 3<sup>rd</sup>. Div. Mar. 20, 1986)

**FACTS** Plaintiffs were the two students of Koiwa Elementary School at Edogawa-ku. On a school's parents' day, they attended at a Sunday school class at their regular church instead of going to the school. This was recorded as "absence" on their separate students' record cards as well as the school's evaluation record, which was formed on a term basis. The two students, daughters of the co-plaintiffs, sued the principal of Koiwa Elementary School and Edogawa-ku for a cancellation of the record and claimed for the damages.

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<sup>6</sup> This set up the standard for the courts to rule over subsequent disputes on "religious activities" in Art.20 (3).

**ISSUE** Does parents' day scheduled for Sunday at public elementary schools infringe Christians' freedom of religion? Whether this administrative decision of recording the absence on the school evaluation record can be a subject to a *Kokoku-soshou* (administrative case litigation)<sup>7</sup> case?

**DECISION** The Tokyo District Court dismissed the claims.

**REASON** The record at the school's evaluation card is a mere tool for sharing the information regarding the attendance of students among teachers. Thus, this is not directly have a legal effect on the rights and duties of the plaintiffs. Also, the parents' day on Sunday at public elementary schools is in accordance with the School Education Acts and it is procedurally legal to make students who did not participate in the parents' day absent. As it is within the principal's authority as to whether the school has parents' day on Sunday, it would be substantially illegal as torts only in the event that the principal abuse his/her discretionary power. Consequently, the disadvantage to the plaintiffs are within the range of tolerate and there was no abuse of its authority by the principal.

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<sup>7</sup> Art.2 and 3 of the Administrative Case Litigation Act (Act No.139 of May 16, 1962) stipulates as follows:

Art.2: The term "administrative case litigation" as used in this Act means actions for the judicial review of administrative dispositions, public law-related actions, citizen actions and interagency actions.

Art.3 (1): The term "action for the judicial review of an administrative disposition" as used in this Act means an action to appeal against the exercise of public authority by an administrative agency.

(2): The term "action for the revocation of the original administrative disposition" as used in this Act means an action seeking the revocation of an original administrative disposition and any other act constituting the exercise of public authority by an administrative agency (excluding an administrative disposition on appeal, decision or any other act prescribed in the following paragraph; hereinafter simply referred to as an "original administrative disposition").

This is an English Translation, cited from

<http://www.japaneselawtranslation.go.jp/law/detail/?id=1922&vm=04&re=01&new=1>

### **Case 3: Nakatani v. Japan**

The Enshrinement of dead SDF Officers Case: 1982 (O) No. 907 *Minshu Vol.31, No.4*, at 533 (Sup.Ct., G.B., Jun.1, 1988)

**FACTS** Yasuko Nakatani, plaintiff, was a devout Christian. Ten years after she was baptized, her husband, Takafumi, an officer of the Japan Self Defense Force (“SDF”), died in a car accident during his duty hours. The funeral of Takafumi took place according to Buddhist rites. A few months later, she placed ashes of her late husband in the vault of the church she attended regularly. She attended every service at the church to pay respect to her late husband’s memory. Yamaguchi Taiyuukai, an association for retired SDF officials had long wished for a collective enshrinement at Yamaguchi Gokoku Shrine<sup>8</sup> for the SDF officials those who are from Yamaguchi and died in the line of duty. With the assistance of a staff member of the Yamaguchi SDF Office, Yamaguchi Yuutaikai requested to Yamaguchi Gokoku Shrine to enshrine 27 officials, including Takafumi. Yamaguchi Gokoku Shrine accepted it concluding a contract with Taiyuukai and subsequently enshrined those officers including Takafumi. Yasuko was saddened by this and filed a lawsuit to cancel such request proceedings to enshrine her husband at Yamaguchi Gokoku Shrine and claimed for the damages. The court of first instance dismissed the claim.

### **ISSUE**

1. Did a SDF staff member’s act, assisting a private institution to have a SDF official who died in the line of duty enshrined collectively at a Shinto shrine, apply to “religious activity” referred to in Art.20(3) of the Constitution?
2. In case that a religious act by a private individual disturbed a widow’s tranquility in her religious life to respect her late husband’s memory and console his souls and whether or not such case infringe legal benefit.

### **DECISION**

1. The Supreme Court held that such act does not apply to “religious activity” referred to in Article 20.3 of the Constitution.
2. The Supreme Court found that this religious act, which could have disturbed tranquility of one’s religious life, did not infringe the legal benefit of Freedom of religion (These separate decisions have supplementary opinion and dissenting opinion).

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<sup>8</sup> Gokoku shrines are designated as places of worship for those who died in the war.

## **REASON**

1. Upon Yamaguchi Yuutaikai's request to Yamaguchi Gokoku Shrine to enshrine SDF officials who died in line of duty, a staff member of the Yamaguchi SDF Office contributed to the institution to a fulfillment of the enshrinement seeking the improvement in the status of SDF officials and elevation of their morale. A staff member of the SDF helped a branch office, an incorporated association to enshrine SDF officials who died in line of duty collectively in order to promote the social positions of the SDF and elevate morale – he made inquiries to other SDF offices as to how they deal with enshrinement of such officials and allowed the chairperson of the above-mentioned institution to review the responses to those queries. The court finds that these acts do not have direct implication on religion and the staff member does have little religious agenda to do so. Considering the status of those SDF officials' actions, the court could not find that, in the view of ordinary people, they are to arouse interest in a specific religion, to support, facilitate and/or promote one or to have suppressive and/or restrictive effect on other religions than Shinto. For those reasons, the court held that this SDF staff member's act shall not apply to "religious activity" stipulated in Article 20(3) of the Constitution.

2. Even though a religious act of a private person respecting and consoling a deceased husband had disturbed peace in widow's religious life, the court cannot find the act alone as infringement on legal merits where such act should apply to invasion of freedom of religion and the manner of such is in excess of socially permissible levels.

**Note:** According to the court findings, the fact that Takafumi's family including his father and brother were explicitly supportive for the enshrinement as well as the plaintiff's father should be worth noted here. Additionally, Takafumi was not a Christian. Further, it is interesting to note that one of the Judges referred to in his opinion that family members should be tolerate with others' religious belief.

### **Case 4: Inoue et.al v. Iwate Prefecture**

Iwate Yasukuni Case: 1987 (Gyo-Ko) No.4, 1990 (Gyo-Ko) No.10, *Gyosaishu vol.42, no.1, 1* (Sendai High Court, Civ. 3<sup>rd</sup>, Jan. 10, 1991)

**FACTS** This case involves two lawsuits against a local government by the local residents. In 1979, Iwate Prefectural Assembly passed a resolution to seek official visits to Yasukuni Shrine by the Emperor and the Prime Minister. The chairman of the assembly submitted an opinion letter regarding the resolution and other issues to the PM

and others. In relation to the expenses of the printing and submission of the opinion letter, Mr Inoue, a resident of Iwate Prefecture and others filed a lawsuit for damages against the members of the Assembly who spoke in favor of the resolution and voted for it on the ground of the first sentence of Art.242 (2)2.iv of the Local Autonomy Act as a main claim. Further, they filed another lawsuit where they demanded the return for the unjust enrichment against the chairman and for the damages in tort against the members as a preliminary claim (Case1). Separately, Iwate Prefecture contributed from public funds as *tamagushi-ryo* to the religious organization Yasukuni Shrine when it held its Spring and Autumn Ceremony and similarly, as *kento-ryo*<sup>9</sup> to Yasukuni Shrine when it held the Mitamasai Ceremony. In relation to these, the residents of Iwate sued the governor of Iwate and two officials (a senior official and a section chief) of Iwate where they claimed for the damages on the ground of the first sentence, Art.242 (2), para.1, item 4 of the Local Autonomy Act (Case2). The court of first instance (Morioka District Court) dismissed the main claim of Case1 (*kyakka*)<sup>10</sup> as the court found the official visits to Yasukuni Shrine as constitutional on the basis of the inseparability of public official from private person, and rejected the suit of the preliminary claim of Case1 (*kikyaku*)<sup>11</sup>. Regarding Case2, the court dismissed the claim against the governor and the senior official and rejected the suit of the claim against the section chief finding that the expenses for the tamagushi-ryo, etc. are a social custom. The Sendai High Court revoked a part of the original judgment. According to the court findings, the official visits by the Prime Ministers and others violates Art.20 (3) of the Constitution and thus the resolution to seek such visits is against the law; the expenses from the public funds for the tamagushi-ryo, etc. is against Art.20 (3); however, the court denied the liability for the damages of the appellees. In consequence, the high court dismissed the appeal of the suit against the senior official, denied the liability of the governor and rejected the appeal of the suit against the section chief, applying the Iwate prefectural ordinance that exempt its officials from responsibility for compensation. Upon this judgment, Iwate prefectural government made a *tokubetsu kokoku*<sup>12</sup> appeal to the Supreme Court.

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<sup>9</sup> Fees for votive light in Shinto

<sup>10</sup> *Kyakka* is dismissal of a claim without going into the proceedings.

<sup>11</sup> *Kikyaku* is dismissal of a claim as the result of the court findings that the suit in dispute has no sufficient legal ground.

<sup>12</sup> Article 336(1) of the Code of Civil Procedure goes as follows: Against an order and a direction made in a district court or summary court against which no appeal may be entered as well as an order and a direction made in a high court, a special appeal against a ruling may further be filed with the Supreme Court on the grounds that the respective judicial decision contains a misconstruction of the Constitution or any other violation of the Constitution. This is due to that the Constitution

**ISSUE** (1) The interpretation and application of Art.20 (3) of the Constitution  
(2) Admissibility of the suit against the head of a local public body, the chairman and members of a local assembly by its local residents. If admissible, how courts should treat the head's liability for a sole decision of the officials.

**DECISION** The Supreme Court, 2<sup>nd</sup> Petty Bench dismissed the appeal from the Iwate prefecture.

**REASON** There are no such grounds in this case as provided in Article 419 (2) of the Code of Civil Procedure (current Art.336) "grounds that the respective judicial decision contains a misconstruction of the Constitution or any other violation of the Constitution"<sup>13</sup>.

**Case 5: Matsuzawa v. Osaka City**

Osaka Stone Statutes Case: 1989(Gyo-Tsu) No.147, *Shumin No.166, 625*, Sup. Ct., 1<sup>st</sup> P.B., Nov. 16, 1991

**FACTS** Osaka City promoted rebuilding its city-provided housings. Upon this, two separate neighborhood associations made requests to Osaka City to provide the city-provide housing land for building a new stone statute and a city owned land for a relocation of the stone statute that had been already built in a nearby private property. Osaka City allowed these associations to utilize those properties for the building and relocation of the stone statutes free of cost as the city government considered it preferable to facilitate the city-provided housing project and union of the local residents. Matsuzawa, a resident of Osaka City, sued Osaka City for a court confirmation; allegedly Osaka City neglected demanding the ejection of these city-owned properties against of the two associations, that this neglecting violated Art.20 (3) and Art.89<sup>14</sup> of the Constitution.

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stipulates that the Supreme Court is the court of last instance, providing in Article 81 of the Constitution as follows: The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

<sup>13</sup> This Supreme Court decision is not included in publications.

<sup>14</sup> Article 89: No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

**ISSUE** Whether the Osaka City's allowance of the use of its properties to the two neighborhood associations for the building and relocation of the stone statutes for free of charge violate Art.20 (3) and Art.89 of the Constitution.

**DECISION** Osaka City's allowance of the use of its properties for free of charge for the building and the relocation of the stone statutes is not violation of Art.20 (3) or Art.89.

**REASON** Regarding Osaka City's permission of the use of its properties for free of charge for the building and relocation of the stone statutes, this is purported to facilitate the city housing rebuilding project and thus with no religious agenda. Accordingly, the stone statutes have lacked their religiousness. Also, these neighborhood associations are not purported for religious activities and their activities in relation to the maintenance of the stone statute remain within the scope of traditional and customary activities.

#### **Case 6: X v. Kobe Municipal Technical College**

Case concerning Jehovah's Witness refusal to attending at Kendo Session: 1995 (Gyo-Tsu) No.74, *Minshu*, vol.50, No.3, at 12 (Sup. Ct., 2<sup>nd</sup> P.B., Mar.8, 1996)

**FACTS** X was a student of Kobe Municipal Technical College ("Kobe Technical College") and a follower of the Jehovah's witnesses as well as his parents. At Kobe Technical College, health and physical education ("P.E.") was required for all students as a compulsory subject. Students had to take *Kendo*<sup>15</sup> sessions in the first or second term, and 70-mark was allotted to Kendo out of a 100-mark for P.E. on a term basis. In following his religious faith, abiding strictly by the Bible, X believed that taking part in the practice of Kendo was essentially reconcilable with his religious faith. Before the Kendo session started, X along with other students who were followers of the religion went to the four P.E. teachers. They requested that they should be given alternative activities such as writing a report and the alike. The teachers turned down the request right away. While attending the Kendo class, X did not participate in kendo practice. X tried to hand in his paper to his teacher, only to be refused. X's standing for this subject ended up below the school standard. According to the school regulation where completion in all the compulsory subjects is required for students to go to the next grade, Kobe Technical College did not allow X move up to the next grade. In the following year, X did not join in the practice of Kendo and again failed to advance. Upon this, Y,

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<sup>15</sup> Literally meaning 'way of the sword', kendo is one of Japan's traditional martial arts.

principal of the school dismissed X in accordance with its rule, finding X as “inferior in academic ability” and “there is no likelihood that” X “will be able to complete school course”. X sued Y at the Kobe District Court for the cancellation of the Y’s two separate actions: having kept X back to repeat the first grade and expelled X from the school and suspension of such executions. The court of first instance dismissed X’s claims. X filed an appeal, and the Osaka High Court accepted the X’s claim. The college appealed to the Supreme Court.

**ISSUE** In the event that a student refuses to take part in a certain activity at school for religious reasons, whether the school’s treatment without offering alternatives to the student suffering a disadvantage is unconstitutional and/or beyond the scope of its discretionary authority. Vice versa, this is as to whether the (public) school allowing such alternatives and/or refraining from giving penalty as such can be a violation of separation of state and religion.

**DECISION** The Supreme Court unanimously dismissed the College’s appeal.

**REASON** The Supreme Court found that it is not construed as a case where the neutrality of public education in relation to religion would be undermined. When a student refuses to participate in kendo practice for reasons of religious faith, the school should make an investigation into whether there is any rational relevance between the religious teachings explained by the student in question and the refusal to participate. Similarly, the Court cannot find that the school action of offering alternative activities such as requiring the students to take part in alternative P.E. activities, write reports and so on and evaluating the results thereof, has religious implications in its purpose, or has the effect of supporting, enhancing, or promoting a specific religion or the effect of oppressing or interfering with those believing in other religions or those with no religion. These points are substantiated in view of the purport of the Judgment of the Case 1971 (Gyo-Tsu) No.69<sup>16</sup> and applied in this case in the course of protecting freedom of religion.

**Case 7: Aum Shinrikyo v. Prosecutor-General, et al.**

The Dissolution of Aum Shinrikyo Case: 1996 (Ku) No.8, *Minshu vol.50, No.1, at 199* (Sup.Ct., 1<sup>st</sup> P.B., Jan.30, 1996)

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<sup>16</sup>*Minshu Vol.31, No4, 533* (Sup.Ct., G.B., Jul.13, 1977)



**FACTS** A dissolution order request of Aum Shinrikyo, a cult religious organization with a juridical personality under the Law on Religious Organizations was filed with the Tokyo District Court by Tokyo District Public Prosecutors Office chief public prosecutor and Tokyo Metropolitan Governor under Article 81(1) of the Religious Corporation Law on the ground that this cult organization produced sarin gas systematically and in an organized manner for the purpose of mass murder that were provided in Art.81(1), item1 and the first half of item2 of the Law. Aum argued that such dissolution order would erode the basis of religious life of the followers of their religion, and in substance, infringe upon the freedom of religion of the followers, and therefore against Art.20 of the Constitution. The court of first instance issued the dissolution order. Tokyo High Court dismissed Aum's appeal. Aum filed a Special *Kokoku*-appeal in accordance with Art.336 (1) of the Code of Civil Procedure with the Supreme Court.

**ISSUE** Whether or not the dissolution order is against Art.20 (1) of the Constitution.

**DECISION** The Supreme Court dismissed the Special *Kokoku*-appeal.

**REASON** The Supreme Court found that the dissolution order based on Art. 81(1), subpara 1 and the first half of subpara.2 of the Law in relation to the religious organization that produced sarin gas systematically and in an organized manner for the purpose of mass murder is intended solely to the secular side of the religious organization, not purported to intervene spiritual or religious connection between the organization and its followers. Further, the court found that in order to deal with this religious organization, it is necessary and appropriate to remove its legal personality. Even though such a dissolution order caused disadvantages to the religious organization and its followers in conducting religious activities, the effects of such disadvantage would remain indirect and de facto. Under the circumstances as such, the court find that the dissolution order is a necessary and inevitable legal action and thus does not violate Art.20 (1) of the Constitution.

**Case 8: Azuma et al. v. Japan**

Kansai Yasukuni Case: 1989 (Ne) No.2352, *Hanrei Times*, No.789 (Osaka High Court, Civ.3<sup>rd</sup> Div., Jul. 30, 1989)

**FACTS** Mr Yasuhiro Nakasone, then Prime Minister of Japan made an official visit to

Yasukuni Shrine on Aug 15, 1985 (“Official Visit”). He used an official car, entered his name as Yasuhiro Nakasone, Prime Minister of Japan on the guest list in a hall of worship, vowed deeply to the inner shrine with other member of the cabinet, and paid 30,000 yen from the public fund as a donation for flowers. Mr Azuma and others, plaintiffs, were the families of war victims. They filed a lawsuit for damages against Prime Minister Nakasone, alleging that this Official Visit would violate Art.20 (3) and Art.89 of the Constitution, would constitute the infringement of the freedom of religion and caused the plaintiffs emotional sufferings. The court of first instance rejected the plaintiffs’ claims without making a judgment on the issue as to whether the Official Visit is unconstitutional, finding that there was no infringement of the plaintiffs’ rights. The plaintiffs appealed.

**ISSUE** In the light of the criteria in the Tsu Groundbreaking Ceremony case, whether this Official Visit would apply to the “religious activity” that is provided in Art.20 (3) of the Constitution. Whether this Official Visit would violate Art.20 (3) and Art.89 of the Constitution.

**DECISION** The Osaka High Court upheld the judgment of the court of first instance while stating that it was skeptical about the official visits to Yasukuni Shrine by the Prime Minister being constitutional.

**REASON** In judging whether the act of a state’s organ’s apply to the religious activity that is stipulated in Art.20 (3) of the Constitution, the court deemed it appropriate to review the following points in light of common sense and with objective view: public view on the activity, doer’s intention, purpose, its religious agenda, degree, the effect of the activity on the public, and other circumstances. Considering that the fact that this Official Visit was made solely to offer his prayers of reverence and gratitude and to console the souls of the war dead; not to purport to “support, facilitate and/or promote” Yasukuni Shrine or Shintoism; the offering of his prayers was made in informal manner<sup>17</sup> considering some public opinion; public funds were used for the flowers offered in the main hall, and others, it seems that this Official Visit does not apply to the violation of Art.20(3) and Art.89 of the Constitution. On the other hand, however, seeing that Yasukuni Shrine is a religious judicial person established under the Religious Corporation Act that conducts its ceremonies and activities, promotes its religious agenda, guides its followers, and possesses the facilities for religious activities such as

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<sup>17</sup> He vowed to the main shrine and observed to a silent prayer.

shrine's pavilion and others, even though the purpose of the worship in such facilities at Yasukuni Shrine is simply to commemorate the war dead, it would be undeniable that the activity has some link with shrines and Shintoism, carrying religiosity in its appearance. Considering all the relevant items including the above-mentioned and others, the court suspected of violation of Art.20 (3) and Art.89 of the Constitution. However, the court held that the plaintiffs' claim be dismissed as their legal rights were not infringed by the Official Visit.

### **Case 9: Matsumoto et al. v. Soka-Gakkai**

Itamandara Case: 1976(O) No.749, *Minshu Vol.35, No.3, at 443* (Sup.Ct., 3<sup>rd</sup> P.B., Apr.7, 1981)

**FACTS** Soka-Gakkai solicited donations allegedly for the construction of a main hall to enshrine the principal image of Buddha on its ordination platform. After donations were made, however, it turned out that the principal image of Buddha on image that Soka-Gakkai enshrined in the main hall, the so-called "Itamandara" turned out not to be the image designed by the *Nichiren-shu* Sect to be "the principal image constructed by *Nichiren* on October 12, Koan Year 2". At the time of the fund-raising, Soka-Gakkai claimed that the date that the main hall completed construction would correspond to the date of *Kosenrufu* (propagation of the Buddhist faith of the Three Great Secrets of *Nichiren* throughout Japan and the whole world) and that the main hall would thus become the "commemorative ordination platform." However, once the hall was constructed Soka-Gakkai disclosed that it was not the completion of the platform of the Three Great Secrets and that *Kosenrufu* was not yet completed. Mr Matsumoto and other former followers of Soka-Gakkai sued Soka-Gakkai to recover the donation of approximately US\$50,000. Matsumoto and others demanded restitution for Soka-Gakkai's unjust enrichment on the ground that the donations were invalid by reason of mistake. The court of first instance dismissed the plaintiffs' claim. The appellate court vacated the decision of the court of first instance and remanded this judgment to the court of first instance for substantive review.

**ISSUE** Whether the suit of a form of dispute over the concrete right and duties where religious values and religious doctrine at issue are the premise for a possible legal

resolution by the court is admissible to the court. Is this applicable to “legal dispute” stipulated in Art.3 (1) of the Court Act<sup>18</sup>?

**DECISION** This suit does not apply to the “legal disputes”.

**REASON** The courts lack power to adjudicate if they are required to make religious judgments on preliminary issues that will determine the validity of the claim. Even though a suit takes the form of dispute over the concrete rights and duties and a judgment on the value of the object of worship or on religious dogma remain as a preliminary issue to a final decision on the validity of the claim, if such religious issues are to determine the result of the lawsuit and the crux of the dispute, such a lawsuit does not apply to the “legal dispute” in Art.3 of the Court Act.

## **Chapter 5 – What worries lawyers? Causes of headache**

### **A Case study in relation to the ultra-orthodox Jewish practices in prison in Japan: Must and Must Not of the Jewish People**

Recently, I encountered quite an interesting case where a minor from Israel was involved. First of all, he was an ultra-orthodox Jewish from Bnei Brak, a center of the Orthodox Judaism, nearby Tel Aviv. He was raised in this exceedingly religious society in Israel where 95% of the residents are ultra-orthodox Jewish people strictly adhering to the religious rules<sup>19</sup>. In addition, unlike the majority of Israeli, they speak Yiddish, not Hebrew.

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<sup>18</sup> Act No.59 of 1947 (Amendment: Act No.36 of 2006)

Article 3 (1) Courts shall, except as specifically provided for in the Constitution of Japan, decide all legal disputes, and have such other powers as are specifically provided for by law.

<sup>19</sup> It is well known that the Jewish religion has the 613 commandments, including:

- ✧ You shall not cut your sideburns so that they no longer appear so that you could pray while curling up your sideburns. Also, you must keep your hair at certain length.
- ✧ If you are of a male of legal age, your shirts must have pieces of string.
- ✧ You must wear a "Kippah", a Jewish skull cap on your head. As the Talmud explains that because there is divine presence over your head, you should cover your head to show respect to God.

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- ✧ Orthodox Jewish women must cover their hair - some extreme ultra-orthodox Jewish women shave heads and wear only a kerchief (tichel) on their head.
  - ✧ Men must wear a black coat, which is called Jewish Kaftan.
  - ✧ For language, must utilize Yiddish and Hebrew only. -> Since Hebrew is a biblical language and to say a solemn prayer, Hebrew is not basically are not spoken in daily conversation. They use Yiddish, which is similar to German and spoken mostly in Eastern Europe.
  - ✧ Must not read other than religious newspapers and religious magazines - basically, they do not do anything considered to be secular such as reading popular magazines, or watching TV or movies, etc.
  - ✧ Must pray every morning from a particular time for a certain period of time -> they pray a few times a day, including: morning prayers, prayers before meals, prayers after meals, and alike.
  - ✧ Shabbat: the Jewish day of rest - On Shabbat, you must refrain from all of the works (i.e., cooking, transporting except going to your nearest Synagogue by foot, etc.) As it is considered that the period of time from the sunset of Friday until the one of Saturday is the time governed by God, man shall not spend that period of time for their own.
  - ✧ The Ten Commandments: A set of biblical principles appears in the Book of Exodus and Deuteronomy.
  - ✧ For head: Kippa and black hat
  - ✧ For clothing: Kaftan (black coat) Tallit (Jewish prayer shawl)
  - ✧ Underwear: Tallit Katan - fringed garment with Tzizit, attached to the four corner of the Tallit Katan.
  - ✧ For prayers: observant Jewish wear Tefillin, small black leather boxes with leather straps containing verses from the Torah, held on one arm by the strap. They look like a mountain priest.
  - ✧ Passover: During Passover, consumption of any food or food product containing fermented grain products is prohibited. The home must be thoroughly cleaned as Jewish law forbids remaining of any such material in a Jewish possession. During this festival, they eat Matzoh, which contains no yeast as their staple diet, not ordinal bread. Regarding this, the related authority made another exception for the orthodox Jewish prisoners - as a rule, to give food is not allowed, but the authority took special treatment, in the form of purchase by the prison, they allowed us to give Matzoh.
  - ✧ Yom Kippur: They fast, pray and repent for all the wrong doing against God for a year, and refrain from work. For the Imprisoned criminals, we asked the authorities for special treatment, to allow them to fast, avoid labor at factories.
  - ✧ Religious Law and Ministry of Religion: Israel makes their decision in accordance with their religious belief – These two offer the key criterion for judgments in addition to ordinary laws.

By way of background knowledge, traditionally, Jewish religion is not necessarily seen as a religion. In nature, it was considered as rather a collection of the teachings and rules given by the God<sup>20</sup>. Also, one could say that Jewish religion is guidance for the right course of action and the path to follow that the God has defined for the Jewish people. The tradition of the Jewish religion is a guidance of the essential concepts as to the God, reveal, and human beings, but also an incarnation in the various forms of these beliefs. They include ceremony, formality, code of conduct, and law. It was the Torah and the mitzvah, building block of ancient Israel; those have given the continuity and its identity to the Jewish religion<sup>21</sup>.

It would be ultra-orthodox Jewish people that most rigorously and eagerly follow this Guidance to live their daily lives. Due to his extraordinarily unique cultural and religious background, when he was detained in a penal facility in Japan, there arose various concerns as to whether he would be able to maintain minimum level of living while detained in the penal facility abroad. Accordingly, we made a petition to the relevant authorities for special preference for his religious belief.

On this petition, we placed emphasis on the freedom of religion as we consider it as one of the essential rights for a human being to maintain dignity of oneself. In Japan, the Constitution explicitly provides in Art.20: “Freedom of religion is guaranteed to all”. Technically, in addition to this constitutional right, we relied on the relevant provisions of the Act on Penal Detention Facilities, the Rules on Penal Detention Facilities<sup>22</sup> and Official Notice of the Ministry of Justice.

For example, long sideburns and growing beards are especially important for the religious life of Jewish people. This is related to the rule “You shall not round the corners of your heads”<sup>23</sup>. This is one of the 613 Mitzvah<sup>24</sup>, duties of life; including Kosher<sup>25</sup>, Shabbat, Passover, Yom Kippur and others. This negative commandment

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<sup>20</sup> Untermann, p.9

<sup>21</sup> Untermann, p.15,16

<sup>22</sup> Ordinance of the Ministry of Justice No.57 of 2006 (Amendment: Ordinance of the Ministry of Justice No.20 of 2012) <http://law.e-gov.go.jp/cgi-bin/strsearch.cgi>

<sup>23</sup> Levikitus 19:27

<sup>24</sup> Jewish tradition holds that the Torah contains 613 Mitzvah - 248 positive commandments (commands to perform certain actions) and 365 negative commandments (commands to abstain from certain actions).

<sup>25</sup> Kashrut is the set of Jewish dietary laws. Food that may be consumed according to *Halakha* (Jewish law) is termed Kosher in English.

<http://www.jewishvirtuallibrary.org/jsourc/Judaism/kashrut.html>

prohibits shaving sideburn. In order for him to follow this religious rule, we referred to Art.60 (1) of the Act on Penal Detention Facilities (“Act”), which provides: “Sentenced persons shall, pursuant to a Ministry of Justice Ordinance, be required to have haircut and shaves” and exceptionally, Art.26 (4) of the Rules on Penal Detention Facilities (“Rules”), providing: “Sentenced persons shall not have haircut and/or shaves in cases where the sentenced persons wish not to have haircuts and/or shaves, if deemed appropriate.....considering his/her religion... and other circumstances...” We considered it that his case has this exceptional reason.

In addition to this, we had to do something for his diet. Since detained, he had lost about 40 kg of his weight. We believe that he had nothing other to strictly follow his religious practice in the penal institution – We were informed that all he could eat were boiled eggs and slices of grilled salmon. According to the Jewish rules, the meals prepared by non-Jewish people are deemed to be “impure” and thus having such food is prohibited. They are allowed to have “Kosher” only, cooked properly in accordance with the Jewish law. According to Art.40 and 43 of the Act, inmates shall be supplied with meals<sup>26</sup> as a general rule; however, if inmates cannot have a regularly supplied diet for religious reasons, such an inmate shall be supplied with different diet from ordinary supplied food in accordance with an official notice (*Tsutatsu*) of the Chief of the Correction Bureau. We also requested to the authorities in the petition that these provisions should be applied to his case.

As nature of these requests were not to affect the maintenance of order and management in the penal institutes, the relevant authority considered for the special lifestyle arising from his religious faith and directed particular attention to it while he was detained. He

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<sup>26</sup> Article 40: Inmates shall be lent, or supplied with, the articles listed in the following items (except for books, etc.; hereinafter the same shall apply in this Section) and required for the daily life in the penal institution (except for the articles listed in the items of paragraph (1) of Article 42):

- (i) Clothing and bedding;
- (ii) Meals and drinking water or tea;
- (iii) Articles such as daily necessities, pens and erasers.

(2) In addition to what is provided for in the preceding paragraph, inmates may, pursuant to a Ministry of Justice Ordinance, and as occasion demands, be lent room ornaments and other articles used for the daily life in the penal institution (except the articles listed in the items of paragraph (1) of Article 42), or supplied with sweets and favorite articles (except for intoxicating liquor; the same shall apply hereinafter).

Article 43: The articles lent or supplied pursuant to the provision of Article 40 or paragraph (2) of the preceding Article shall be both suffice for the maintenance of inmates' health and appropriate in light of the status as an inmate, taking into consideration the actual situation of national life.

is now sent back to Israel. Additionally, I was informed from my acquaintance that due to the nature of this issue, the embassy of Israel in Japan had taken a strong interest in it and watched how things would develop.

## **Chapter 6 – Hidden Christians (*Kakure Kirishitan*)**

### **1. Hidden Christians – Survival from the religious persecution and their secret faith**

*Silence*<sup>27</sup> is a novel of historical fiction by Japanese author late Shusaku Endo<sup>28</sup> published in 1966, which depicts the story of European missionaries and Japanese Christians in the 17<sup>th</sup> century Japan – In the time of Hidden Christians, subsequent to the defeat of the Shimabara Rebellion in Nagasaki, they endured persecution. During that period, as the Tokugawa Shogunate strictly banned any missionary works and condemned Christianity, they were destined to suffer the slings and arrows. Some missionaries and many Japanese Christians lost their faith to save their lives while others kept their faith and died in agony.

Since Nagasaki opened its port in 1571, it was Japanese main gateway and notably, only port open to foreign countries during the isolation period. Please let me quote an introduction of Christianity and Nagasaki from the UNESCO's website<sup>29</sup> below as explanation of historical background:

“Christianity was introduced in Japan by Jesuit missionary Francis Xavier in 1549 and spread rapidly in the western part of the nation. The Jesuits established their mission base in Nagasaki, where a port of foreign trade with Portugal was developed. The city of Nagasaki played an important role as a key base for the missionary work in Japan. Churches and Christian culture flourished here, and the Young Delegates of Tenshō set off from Nagasaki in 1582 for Europe, where they had an audience with the Pope. Their visit conveyed a fact that Christianity had taken root in Japan. However, with the Tokugawa shogunate's anti-Christian policy which banned the religion, Christianity was severely suppressed, resulting in the revolt against the regime (Shimabara Uprising) in 1637. Christian historic sites that tell of this period of suppression have been preserved until today.”

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<sup>27</sup> Shusaku Endo, *Silence* (Shinchosha, 1966). *Silence* English Translation by William Johnston. (Taplinger Published Company, 1969)

<sup>28</sup> Endo was a catholic himself.

<sup>29</sup> <http://whc.unesco.org/en/tentativelists/5096/>



“During the prohibition on Christianity, adherents moved to remote islets and islands where they passed down from generation to generation the traditions of baptism and *orasho* (derived from the Latin word *oratio* ["prayer"], *orasho* are the prayers and hymns originally taught by the Jesuit missionaries and passed down orally) and continued in their faith until the ban was lifted in the Meiji period (1868-1912). Nagasaki Prefecture and the surrounding area are home to many churches built after the long period of suppression. These churches are testimonies of the suppressed adherents' re-acquisition of religious freedom and its long process. These Christian churches are also considered as excellent examples of the quality structural design resulting from the fusion of the Western architectural techniques brought by the foreign priests and Japan's traditional architectural techniques. The churches form particular cultural landscapes, associated with distinctive natural settings surrounding them.”

Back in the 16<sup>th</sup> century, 26 Christians – four Spaniards, one Mexican, one Indian born of Portuguese family, three Japanese Jesuits and seventeen Japanese, who were all members of the Third Order of St. Francis – were executed by crucifixion on February 5, 1597 in Nagasaki on the orders of Hideyoshi Toyotomi. They are called “Twenty-six Martyrs”, the first Christian martyr in the country<sup>30</sup>.

Actually, Hideyoshi initially was very generous to the Christians as well as his predecessor Nobunaga Oda. Due to the growing number of incidents where the Christians expanding its strength persecuted the Buddhist and Shintoism, Hideyoshi had to promulgate the order expelling Christian missionaries and forbidding Christian faith in 1587. However, even after the promulgation of the order, the mission was virtually tolerated for a while. It was only after the incident of San Felipe that Hideyoshi began persecuting the Christians in a full scale. For the reasons, it is believed that Hideyoshi did not like the St. Francis and St. Augustine became very active in their missionary work near Kyoto while the Jesuit refrained voluntarily from their mission; there were inflight among these three missionaries; and others.

The Oe Tenshudo – a Romanesque cathedral in Oe, Amakusa, where many hidden Christian followers were found 160 years after the Shimabara Rebellion and the fierce battlefield of the Shimabara Rebellion. When this Rebellion was over, all Christians were believed to be destroyed. This beautiful white cathedral is built in 1933 by a French Priest Garnier. He was born in France in 1860 and sent to Japan as a missionary.

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<sup>30</sup> <http://www.26martyrs.com/>

After Anti-Christian Edicts was lifted, Garnier had dedicated all of his life to his mission in Amakusa. It should be noted that he cut down on his spending to save for US\$ 2 or 3 million and had put all of this his own money to build the cathedral.<sup>31</sup>

## **2. A Tragedy in Nagasaki – History is always an irony**

The blast of the atomic bomb in the end of the World War II over Nagasaki inflicted enormous damage to Urakami Cathedral. The pilot was unaware that the target was the Christian Cathedral – it was totally destroyed as the picture indicates.

It is, however, now restored to its former state.

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<sup>31</sup> *Jipang Club* (Kotsu-Shimbun-Sha) *February 2012, vol.28, No.2*, 8-13 For further references,