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THE DISSOLUTION OF AUM SHINRI KYÔ AS A RELIGIOUS CORPORATION

Thomas Leo Madden†

Abstract: Because of Aum Shinri Kyô's terrorist attacks using sarin nerve gas, the Japanese government sought to revoke the religious cult's status as a religious corporation under the Religious Corporation Law. The Tokyo District Court found that, in setting up a sarin production facility, Aum had deviated from its purpose as a religious organization and had endangered the public welfare, thereby justifying an order of dissolution. The Tokyo High Court affirmed, but did not reach the issue of whether the dissolution order violated Aum's followers' right to freedom of religion as guaranteed by the Japanese Constitution. In affirming the dissolution order, the Supreme Court held that the followers' right to freedom of religion had not been violated. As a result, Aum's status as a religious corporation was revoked and its assets liquidated.

I. INTRODUCTION

On March 20, 1995, terrorists attacked Tokyo's subway system with the deadly nerve gas sarin;¹ twelve people were killed and thousands more injured.² Within hours of the attack, members of the religious organization Aum Shinri Kyô were the main suspects.³ In the months that followed, Asahara Shôkô,⁴ the group's founder and undisputed leader, and scores of

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¹ Sarin (isopropyl methylphosphonofluoridate) is a highly toxic nerve gas that produces intense myosis and respiratory collapse in its victims. KINGZETT'S CHEMICAL ENCYCLOPAEDIA 865 (9th ed. 1966).

² See D.W. BRACKETT, HOLY TERROR: ARMAGEDDON IN TOKYO 1-7 (1996). While Brackett states that there were only eleven deaths, he notes that most reports give the number of persons killed as twelve, of whom one may have died from other causes. Id. at xiii.

³ See Id. at 143.

⁴ This article will follow the Japanese tradition of listing a person's surname first and given name second. In the courts, Asahara Shôkô is referred to by his real name, Matsumoto Chizuo. For the Japanese media, whether to refer to the "guru" by his spiritual title or his real name has become an issue in itself. See, e.g., Mitsuta Yuzuru, "Honmyô" ga hanzai hôdô no gensoku (The Principle of [Using] "Real Names" in Crime Coverage), YOMIURI SHIMBUN (Satellite Ed.), May 22, 1996, at 15. The Yomiuri Shimbun, a national newspaper, switched from using "defendant Asahara Shôkô" to "defendant Matsumoto Chizuo," citing the following reasons: (1) the name "Asahara" continues to cast a hidden spell over followers, allowing Matsumoto to maintain control of their minds and send them religious messages; (2) use of Matsumoto's religious title is an affront to victims and their families; and (3) all legal proceedings against Matsumoto refer to him by his real name, either exclusively or in conjunction with his religious title. Id.
the organization’s high-ranking members were arrested and charged with the attack.\(^5\)

In addition to the criminal indictments of the main members of the sect, the public prosecutor and the governor of Tokyo took the unprecedented step of demanding the dissolution of Aum Shinri Kyô as a religious corporation because of the antisocial nature of the group’s activities.\(^6\)

What follows is a review of (1) the recent history of the regulatory framework concerning religion and religious organizations in Japan; (2) certain aspects of the Religious Corporation Law\(^7\) and the practical effects of obtaining “religious corporation” status; (3) the manner with which Aum’s dissolution as a religious corporation was dealt by the courts—with a full translation of the Supreme Court’s opinion upholding the dissolution order; and (4) events concerning Aum subsequent to the Supreme Court’s decision.

II. RECENT HISTORY OF THE REGULATION OF RELIGIOUS ORGANIZATIONS IN JAPAN

The concept of religious freedom was first officially recognized in Japan in 1889 with the promulgation of the Meiji Constitution. This was largely the result of influence from foreign governments and German constitutional scholars.\(^8\) Article 28 of the Meiji Constitution ostensibly guaranteed to citizens the right to private exercise of religious faith, although the state was given the authority to limit that right if it thought public peace was threatened or civic duties might be ignored.\(^9\) However, until 1939, there were no comprehensive statutes regulating religion and the governance of religious organizations was done mainly through the use of administrative notifications and administrative guidance.\(^10\)

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\(^5\) See Brackett, supra note 2, at 166.


\(^7\) Shûkyô hôjin hô ("Shûhô"), Law No. 126 of 1951.


\(^9\) Article 28 of the Meiji Constitution provided: “Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.”

After the introduction of the State Shinto system, only Sectarian Shinto, Buddhism, and Christianity were formally recognized as religions, with all other beliefs regarded as so-called “pseudo-religions” (ruiji shūkyō). The three recognized religions were controlled through the Ministry of Education, while the pseudo-religions were governed by the Ministry of Home Affairs.

The Religious Organizations Law (Shūkyō dantaihō) was passed in 1939 and came into force the following year. This law was predominately supervisory in nature and gave the Minister of Education considerable authority over religious organizations. Examples of the Minister’s authority included the ability to restrict or prohibit the performance of religious celebrations or the promulgation of religious doctrines if the result would be to disturb the peace or to cause civic duties to be disregarded. The Minister was also given the power to replace persons holding a functional position within a religious organization if that person was deemed to have violated any regulations or provisions of the Religious Organizations Law. Moreover, all appointments of leadership positions within a religious sect required the permission of the Minister of Education. Thus, although the Meiji Constitution contained a “freedom of religion” provision, religious organizations in prewar Japan enjoyed very little actual autonomy.

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11 The formal structure of State Shinto was introduced in 1871 in an attempt to reinforce the idea of the emperor’s divinity and the uniqueness of Japan’s national polity. In Japanese, this concept was embodied in the phrase sai sei itchi (安保一致), “unity of religious ritual and government administration.” Martin Collcutt et al., Cultural Atlas of Japan 169 (1988). To further its goal of sai sei itchi, the government decreed that Shinto shrines were to be places for the observance of national rites, Shinto priests were to be government functionaries, and all citizens were obligated to register at local Shinto shrines. Id. As a consequence, a significant distinction developed within the Shinto tradition between the private and public exercise of religious faith and “the status of Shinto remained ambiguous, with a growing tendency to separate it from the sphere of religion and to align it instead with custom and patriotism.” Hardacre, supra note 8, at 120. In 1882, the government officially distinguished between Shrine (i.e., State) Shinto and Sectarian Shinto. Wilbur M. Fridell, Japanese Shire Mergers 1906-12 1-2 (1973).

12 Hirano, supra note 10, at 5.

13 Id.

14 Id. The government had previously sought to enact statutes standardizing control of religious organizations in 1899, 1927, and 1929, but all attempts failed. Consequently, the government occasionally relied on article 9 of the Meiji Constitution, which empowered the government to issue ordinances, to regulate the activities of religious organizations. By the time the Religious Organizations Law was finally passed, Japan had become thoroughly militarized and many other methods of State control were already firmly in place, e.g., control of the press, publications, and association. See generally Hardacre, supra note 8, at 124-126. The passage of the Religious Organizations Law has been referred to as the final step in the establishment of State Shinto. Hirano, supra note 10, at 5.

15 Shūkyō dantaihō, §§ 16, 25, cited in Hirano, supra note 10, at 5.

16 Shūkyō dantaihō, § 17, cited in Hirano, supra note 10, at 5.

17 Hirano, supra note 10, at 5.
The Religious Organizations Law was abolished after World War II and in its place was established the Religious Corporation Directive (Shūkyō hôjinrei). Essentially, this directive only required a religious corporation to submit the name of the sect's leader, along with the corporation's address and rules, to the relevant authorities within two weeks of its establishment as a religious corporation. However, similar to today's Religious Corporation Law, the Directive contained a provision allowing for dissolution of a religious corporation by judicial decree in the event the corporation violated a law or engaged in activity endangering the public welfare.

Perhaps the most significant aspect of the Religious Corporation Directive, however, was that it emphasized the idea of respect for freedom of religion and the notion of separation of church and state in more than just a nominal manner. These two important principles are now thoroughly entrenched in the legal consciousness of Japan; both are expressly provided for in article 20 of Japan's current Constitution and the concept of freedom of religion constitutes the ideological foundation of today's Religious Corporation Law.

III. THE RELIGIOUS CORPORATION LAW

A. Purpose and Certification Process

The Religious Corporation Law ("the Law"), which came into force in 1951, allows a religious group to obtain the status of "religious

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18 Id.
19 Shūkyō hôjinrei § 13, cited in Hirano, supra note 10, at 10 n.3.
20 Hirano, supra note 10, at 6.
21 KENPO (JAPAN CONSTITUTION), art. 20 provides:

1. 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.

22 The Religious Corporation Law expressly states that all administrative organs of the national government must respect the guarantee of freedom of religion provided in the Constitution and, therefore, none of the provisions of the Religious Corporation Law may be interpreted to limit the religious activities of individuals or organizations. Shūho § 1(2).
Dissolution of a Um Shinri Kyō corporation (shūkyō hōjin) upon satisfying certain prescribed conditions. The Law’s purpose is “to accord legal capacity to religious groups in order to help such groups maintain and operate institutions of worship and other property, or to allow such groups to manage business affairs in order to achieve their objective of owning such institutions and other property.”

Thus, the Law purports to deal exclusively with the secular aspects of running or establishing a religious organization and its practical effect is to allow religious organizations to conduct business (e.g., enter into contracts, purchase or sell real estate, etc.) in the name of the organization.

In order to be established as a religious corporation, an organization must obtain a certificate from the “authorities concerned” and publicly announce to its followers and other interested parties the fact of its incorporation. In deciding whether to certify a particular religious group, the authorities inquire whether the group fits within the definition of “religious organization” (shūkyō dantai) provided in the Law. In so doing, the authorities may investigate whether or not the group actually has followers and truly engages in the performance of religious rites, but may not examine the group’s doctrine or manner of worship. A certificate of incorporation may be rescinded within one year of its issuance if it is discovered that the necessary requirements are lacking.

B. Tax Treatment of Religious Corporations

One of the most important benefits accorded to religious corporations is the substantially favorable treatment they receive under the tax laws of Japan. The foremost tax benefit is due to a religious corporation’s designation under the Corporation Tax Act as a “nonprofit foundation.”

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23 Shūhō § 1(1).
24 Shūhō § 12(1). The Japanese term is shokatsu-chō (所轄庁). Basically, the proper authority is the governor of the prefecture in which the religious corporation is located. Shūhō § 5(1). But if the particular religious corporation has facilities or affiliates in more than one prefecture, the proper authority is the Minister of Education. Shūhō § 5(2).
25 Shūhō § 12(2).
26 A “religious organization” is defined as a group or denomination possessing facilities of worship whose objectives are to spread religious doctrine, perform rites and religious ceremonies, and foster spiritual enlightenment in its followers. Shūhō § 2.
27 Hirano, supra note 10, at 7.
28 Shūhō § 80(1).
29 For a detailed discussion of how religious corporations are taxed, see Tamakuni Fumitoshi, Shūkyō hōjin kazei no arikata (How Religious Corporations are Taxed), 1081 JURISUTO 16 (1995).
30 The Japanese term is köeki hōjin (公益法人). Hōjin zeihō, Sched. 2.
Primarily, so long as a religious corporation’s activities remain nonprofit, any income earned is exempted from all corporate taxes.\(^{31}\) Moreover, that portion of a religious corporation’s activities deemed to have a profit-making purpose is taxed at a lower rate (27%) than that of ordinary corporations (37.5%).\(^{32}\) Religious corporations receive similarly favorable treatment under the Local Taxes Act; specifically, a religious corporation’s nonprofit activities are not subject to enterprise taxes (jigyōzei),\(^{33}\) prefectural inhabitants’ taxes (dōfukenshinzei)\(^{34}\) or municipal inhabitants’ taxes (shichōsonminzei).\(^{35}\)

Other tax benefits include the following: (1) religious corporations do not pay fixed property taxes (koteishinzei)\(^{36}\) or urban planning taxes (toshikeikakuzei)\(^{37}\) on buildings or land located within their grounds and serving the original purpose of the corporation; (2) religious corporations are exempt from paying real estate acquisition taxes (fidōsanshutokuzei)\(^{38}\) or registration/licensing taxes (tōroku menkyozei)\(^{39}\) when acquiring precinct buildings or land; (3) an exception provided in the Consumption Tax Act allows religious corporations to deduct from taxable income the amount of tax paid on purchases of consumer goods;\(^{40}\) (4) a religious corporation may include as losses expenditures paid out of its profit-making assets for the purpose of religious activities (the amount is limited to 27% of the particular fiscal year’s income);\(^{41}\) and (5) as a result of their designation

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\(^{31}\) Hōjinzeihō § 4(1).
\(^{32}\) Hōjinzeihō § 66(1), (3). Japan’s business community has been adamantly calling for a decrease in the corporate tax rate on the ground that, compared to other developed nations, corporations in Japan are overburdened with taxes and such a rate reduction is necessary to allow Japanese businesses to be internationally competitive. However, the government has been staunch in its position to keep the rate at its current level. *See* Yūgishōchihenashi, zaigen ni; ōhaga gensetō hitei (*Curtailing Favorable Measures as a Source of Revenue; Broad Tax Reduction Denied*), YOMURI SHIMBUN (Satellite Ed.), Nov. 27, 1996, at 1.

\(^{33}\) Chihōzeihō § 72-5(1)(ii).
\(^{34}\) Chihōzeihō § 25(1)(ii). “Dōfukenshinzei” refers to Hokkaidō, Kyoto-fu, Osaka-fu, and all other prefectures (ken) in Japan. The dōfukenshinzei applies to Tokyo-to as well, but there are also additional special tax provisions applicable to Tokyo. *See* ZEIHO YÔGO JITEN (DICTIONARY OF TAX TERMS) 373, 378 (1988).

\(^{35}\) Chihōzeihō § 296(1)(ii).
\(^{36}\) Chihōzeihō § 348(2)(i).
\(^{37}\) Chihōzeihō § 702-2(2).
\(^{38}\) Chihōzeihō § 73-4(1)(ii).
\(^{39}\) Tōroku menkyozeihō § 4(2).
\(^{40}\) Shōhi zeihō § 60(4).
\(^{41}\) Hōjinzeihō § 37(4).
under the Income Tax Act as “public corporations,” religious corporations pay no income tax on earnings in the form of interest or stock dividends.

C. Dissolving a Religious Corporation

Section 43 of the Law establishes six possible causes for the involuntary dissolution of a religious corporation: (1) the occurrence of something prescribed in the regulations as a cause for dissolution; (2) merger, where the surviving organization is not the original religious corporation; (3) bankruptcy; (4) withdrawal of status recognition by the authorities within the one-year probationary period; (5) judicial decree pursuant to section 81(1) of the Law; and (6) in situations where the religious corporation status of an organization depends on the inclusion within that organization of a religious group, the termination or dissolution of that religious group.

The provision of concern with regard to Aum Shinri Kyō is the ability to order the dissolution of a religious corporation pursuant to judicial decree established in section 81(1). Section 81(1) contains five sub-items, each providing a reason for the authorities, interested parties, or the public prosecutor to call for a religious corporation’s dissolution. Generally speaking, however, the causes provided in section 81(1) can be divided into two types. The first type is where it is acknowledged that a religious corporation has violated the law in a way that clearly and profoundly endangers the public welfare or where it has engaged in behavior significantly deviating from the objectives of a religious organization. The second type is where the religious substance of a religious corporation or organization is no longer present and the status of religious corporation is purely nominal.

When a group’s religious corporation status is removed pursuant to judicial decree, the court appoints a person to act as liquidator of the

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42 The Japanese term is kōkyō hōjin (公共法人). Shotoku zeihō, Sched. 1(1).
43 Shotoku zeihō § 11(1).
44 Shōhō § 43(2)(i).
45 Shōhō § 43(2)(ii).
46 Shōhō § 43(2)(iii).
47 Shōhō § 43(2)(iv).
48 Shōhō § 43(2)(v). Section 81(1) lays out the bases on which judicial dissolution may be ordered. See following paragraph in the text.
49 Shōhō § 43(2)(vi).
50 Shōhō § 81(1)(i).
51 Shōhō § 81(1)(ii-first half).
52 Shōhō § 81(1)(ii-second half)-(v).
corporation in response to the request of the authorities, the interested parties, or the public prosecutor. If no regulations exist for disposing of any of the organization's property, such property can be given to other religious organizations or used for the public good. Otherwise, the property will escheat to the national treasury.

IV. THE DECISION OF THE TOKYO DISTRICT COURT

The public prosecutor and the Governor of Tokyo demanded that Aum Shinri Kyō be issued an order of dissolution. This demand was in response to various incidents, including the sarin attack on Tokyo's subway system and the Matsumoto sarin incident, for which high-ranking members of the religious organization had been indicted.

The Government's assertions and Aum's responses have been paraphrased below, followed by a summary and partial translation of the District Court's decision.

A. The Government's Assertions

(1) Aum is a registered religious corporation which received its corporate certificate from the Governor of Tokyo in August, 1988. Matsumoto Chizuo (a.k.a. Asahara Shōkō) is the corporation's legal representative.

(2) Matsumoto Chizuo and a number of his followers collectively committed the crime of homicide preparation. Specifically, Aum is charged with creating sarin—a poison gas whose only use is to kill human beings—

53 Shühō § 49(2).
54 Shühō § 50(2).
55 Shühō § 50(3).
56 Takahashi v. Aum Shinri Kyō, 1544 HANREI JIHŌ 43 (Tokyo Dist. Ct., Oct. 30, 1995). The original District Court opinion contains no footnotes; all footnotes were added by the translator.
57 This incident occurred on June 27, 1994, in the city of Matsumoto, Nagano Prefecture. Sarin was supposedly released by members of Aum near a government apartment house in an attempt to kill three district court judges residing therein. The judges were presiding over a complicated real estate case involving Aum's purchase of land near Matsumoto in 1991. The sect's prospects of winning the suit were looking bleak. The three judges escaped relatively unharmed, mostly due to a shift in the wind direction immediately after the sarin was released. However, the nerve gas killed seven persons and injured more than 20 others living in the area. See generally BRACKETT, supra note 2, at 27-43.
58 1544 HANREI JIHŌ at 44.
at the sect's "Satyam Number 7 lab" in Kamikuishiki-mura, Yamanashi Prefecture, with the objective of committing mass murder.\(^5\)

(3) Because Aum conducted illegal activities clearly recognized as endangering the public welfare and engaged in behavior significantly deviating from the objectives of a religious organization as expressed in section 2 of the Religious Corporation Law,\(^6\) dissolution pursuant to section 81(1)(i) and section 81(1)(ii-first half) of the Law is appropriate.\(^6\)

\section*{B. Aum's Response}

(1) The purpose of the chemical lab at Satyam Number 7 was not to create sarin, and the sect did not undertake to produce sarin. The lab was being built to produce the insecticide DDVP,\(^6\) but it was demolished before being completed.\(^6\)

(2) Even if a few of the higher-ranking members of Aum were undertaking to produce sarin in the lab, it was not the organization itself engaging in such endeavors and Matsumoto Chizuo was not involved. The officers in charge of Aum did not consent to an undertaking the objective of which was to kill people and did not approve of any expenditures to fund such an undertaking. The individual acts of overzealous members, impatient to seize control of the sect upon the natural death of Matsumoto Chizuo, are not the acts of Aum Shinri Kyō.\(^6\)

(3) At the time in question, the production of sarin was not illegal.\(^6\) Moreover, the production of sarin does not equate to having homicide as an objective.

\(^5\) Id.

\(^6\) The objectives of a religious organization are to spread religious doctrine, perform rites and religious ceremonies, and foster spiritual enlightenment in its followers. Shūhō § 2.

\(^6\) 1544 Hanrei Jiho at 44.

\(^6\) DDVP is an abbreviation for dimethyl dichlorovinyl phosphate. Hawley's Condensed Chemical Dictionary 348 (12th ed. 1993). It is highly toxic to house flies and also used as a fumigant. Kingzett's Chemical Encyclopaedia, supra note 1, at 286.

\(^6\) 1544 Hanrei Jiho at 44.

\(^6\) Id. at 44-45.

\(^6\) One month after the Tokyo subway sarin attack, Japan's National Police Agency drafted a bill proposing prohibitions and corresponding penalties for dealing with sarin and other poisonous chemicals. The bill was passed as Law No. 78 of 1995, and is called Sarin-tō ni yoru jinshin higai no bōshi ni kan suru hōritsu (Law Concerning the Prevention of Casualties Caused by Sarin and Other Poisonous
Aum has been attacked by outside forces with poison gas and foresees the possibility of having biological weapons, poison gas, or nuclear weapons used against it by the great powers in a future final World War. Thus, Aum engaged in experiments to develop antidotes to such chemicals as sarin, soman, tabun, and VX gas. This was purely for self-protection and not for use in a murderous attack. Production of sarin for the purpose of self-protection cannot be viewed as significantly violating the public welfare.

(4) Presently, Aum is sincerely pursuing the objectives expected of a religious organization—i.e., spreading its doctrine and fostering religious enlightenment among its followers. Aum is continuing its activities as a well-controlled religious organization and is improving as a place of worship for the spiritual good of virtuous citizens.

Aum has expelled the members who are suspects in the criminal cases, recommended to members who are the subject of police manhunts that they surrender, and otherwise cooperated in the investigation. Aum presently has approximately 1,500 followers who are sincerely devoted to religious activities. There is no essential reason to order the dissolution of Aum, which is the base of these followers’ right to live. Such an order would only cause the dispersion of this large number of followers and promote social instability.

The number of followers who participated in these criminal activities amounts to less than five percent of the entire congregation. If the criminal liability of blameworthy high-ranking officials is properly dealt with, the reasons for a dissolution order are eliminated. Confusing the criminal

Substances). See Tsuyuki Yasuhiro, Sarin-tō ni yoru jins hin higai no bōshi ni kan suru hōritsu no gaiyō ni tsuite (Summary of the Law Concerning the Prevention of Casualties Caused by Sarin and Other Poisonous Substances), 1076 JURISUTO 47 (1995). According to this new law, if one releases sarin, the penalty would be imprisonment of two years to life (§ 5). Preparing, importing, transferring, accepting or storing sarin would incur a maximum sentence of seven years’ penal servitude (§ 6). Providing funds, raw materials, land, facilities, equipment, vehicles, etc. for the purpose of producing or transporting sarin would incur a maximum sentence of three years’ penal servitude (§ 7).

66 The District Court stated that there was no objective evidence to support Aum’s claim that it had been attacked with poison gas. 1544 HANREI JIHÔ at 49. The Tokyo High Court mentioned that Aum’s attorney, Aoyama Yoshinobu, had confessed to filing a false complaint against the operator of an agricultural waste disposal facility in Kamikuishiki-mura. The complaint accused the operator of attacking and injuring, with intent to kill, members of Aum. Aum Shinri Kyō v. Doi, 1548 HANREI JIHÔ 26, 32 (Tokyo High Ct., Dec. 19, 1995).

67 1544 HANREI JIHÔ at 45.

68 KENPÔ, art. 25(1) provides: “All people shall have the right to maintain the minimum standards of wholesome and cultured living.”
liability of a small number of followers with the liability of the entire 
religious corporation itself conflicts with the spirit of section 1(2) of the 
Religious Corporation Law.\(^6^9\) Moreover, the discarding of a large number 
of followers and robbing them of a place of worship with a dissolution order 
based on the criminal culpability of a few followers is nothing more than 
the imposition of collective responsibility, and violates articles 13 (respect 
for the individual) and 20 (freedom of religion) of the Constitution.\(^7^0\)

(5) In the criminal trials related to this case, which are currently pending, 
the prosecutor must prove circumstances showing the existence of the crime 
of homicide preparation. Thus, the argument over this request for an order 
of dissolution should await the result of the criminal trials. Issuing an order 
of dissolution before a guilty verdict in the criminal cases is contrary to the 
spirit of “presumed innocence” embodied in the Code of Criminal 
Procedure. Such a proceeding should be labeled a witch trial.\(^7^1\)

C. The District Court's Findings and Judgment\(^7^2\)

(1) After listing the circumstances of Aum Shinri Kyō’s incorporation as 
a religious corporation and briefly touching on the doctrine of the sect, the 
court evaluated the position of Matsumoto Chizuo within Aum and 
concluded that the reins of power were held exclusively by him. The court 
emphasized the fact that Matsumoto had been Aum’s legal representative 
since its inception and that every new follower needed Matsumoto’s 
approval before being allowed into the congregation.\(^7^3\)

Of more significance to the court than Matsumoto’s hold on the 
adминистration of Aum’s everyday activities, however, was his position as 
the sect’s spiritual leader and the way followers were expected to

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\(^6^9\) See supra note 22.

\(^7^0\) 1544 HANREI JIHÔ at 45.

\(^7^1\) Id. The first criminal judgment regarding the various incidents in this case was handed down by 
the Tokyo District Court on March 22, 1996—nearly seven weeks after the Supreme Court’s upholding of 
the order to dissolve Aum as a religious corporation. See Japan v. B, 1568 HANREI JIHÔ 35-43 (Aug. 11, 
1996). The District Court found three of Aum’s members guilty of homicide preparation (Penal Code art. 
201) for their participation in the construction of the sect’s Satyam Number 7 chemical laboratory. One of 
the three was also found guilty of illegally supervising the storage of dangerous substances (Fire Service 
Law §§ 41(1)(ii), 10(1)). The District Court concluded that the three defendants had conspired with 
Matsumoto Chizuo and other members of the sect to produce and release sarin with mass murder as their 
intention and found November, 1993, as the time when the crime of homicide preparation was established.

\(^7^2\) The numbers in this section correspond to numbered sections in the original opinion.

\(^7^3\) 1544 HANREI JIHÔ at 45.
unconditionally embrace him as their “guru.” The court quoted passages from Aum’s religious textbook and excerpts from a document found on a floppy disk confiscated from the sect that clearly reflected a mindset conducive to the acts of homicide preparation. These passages repeatedly recited to followers the fact that they were disciples of Asahara Shōkō; that he must be their absolute foundation and the only thing to remain constant in their life; that fulfilling the intentions and instructions of the guru was everything, all else being futile and without virtue; that it was their mission to serve Asahara so that his instructions and desires would be realized as quickly and precisely as possible; that any means should be used to achieve desired results; etc.

(2) Next the court discussed certain aspects of the nerve gas sarin, noting its characteristics, use, toxicity and method of production. The court found that sarin is an extremely deadly synthetic chemical that does not exist in nature and that there is no other use for it other than the killing of human beings.

(3) The court noted certain facts regarding the condition of the Satyam Number 7 lab. The court acknowledged the existence of facilities and equipment that would normally constitute a chemical plant. Examples include an electrolysis lab, tanks for raw materials, storage tanks for chemicals produced, a centrifuge, a distillation tower, and a number of pipes connected to the various equipment. Concealing all this equipment and keeping it from being easily observed by any non-members who might enter the building was an altar and large religious statue. The court also mentioned the existence of a separate and extremely air-tight room equipped with elaborate ventilation and a shower at the entrance.

74 The crime of homicide preparation is established in article 201 of the Penal Code, which states: “A person who makes preparations for the purpose of committing a crime provided in the preceding two articles [homicide and killing an ascendant, respectively] shall be punished with imprisonment at forced labor for not more than two years; provided that punishment may be remitted in light of the circumstances.” Although the District Court’s opinion does not mention article 201 of the Penal Code, it repeatedly refers to the crime of homicide preparation (satsujin yobi zai) and the act of homicide preparation (satsujin yobi kōi).
75 1544 HANREI JIHŌ at 45-46.
76 Id. at 46.
77 Id. The Court noted that although a few of the pipes had been cut, the plant had otherwise not been seriously damaged and could be put back into production. Id. at 47.
78 Id. at 46.
(4) Next, the issue of whether the Satyam Number 7 lab was a sarin-producing lab was discussed. The court concluded from the evidence that it was easy to objectively infer that the lab was designed to produce extremely large amounts of sarin. The evidence the court cited consisted of the following:

(i) Handwritten notes and flowcharts on a computer disk found in the control room of the Satyam Number 7 lab spelled out the process for producing sarin. The final product was referred to only as "***," but it is clear from a chemical standpoint that this final product was sarin;

(ii) Chemicals were detected in the many pieces of equipment in the lab that correspond to the chemical ingredients of the raw materials and chemical intermediates and by-products that would be expected to be found if the chemical process described in the flowcharts had been followed;

(iii) Aum purchased large quantities of the raw materials that are used in the production of sarin through a number of "dummy companies" the sect had set up and these chemicals were confiscated from Aum’s facilities; and

(iv) From February to December, 1994, the amount of electricity consumption at Aum’s Kamikuishiki-mura premises increased dramatically. The court concluded that this increase could only be accounted for by the operation of the laboratory equipment in the Satyam Number 7 lab.79

The court then discussed Aum’s assertion that the lab was used to produce the insecticide DDVP and concluded that such an assertion could not be accepted. The court relied on the facts that the equipment was not hooked up to produce DDVP and that no chemicals were detected in the lab which one would expect to find if Aum’s DDVP assertion were true; on the contrary, only chemicals that one would not expect to find from the production of DDVP were detected.

The court concluded:

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79 Id. at 47-48. The electrolysis equipment was powered from a separate source and was not included in the court's calculation of the increase. Id. at 47. See also infra note 117 and accompanying text.
Sarin is an extremely toxic nerve gas that has no use other than the killing of human beings. The fact that such a chemical laboratory was constructed and designed to produce large amounts of sarin is sufficient in itself to infer a willful intention to murder a large number of persons and to establish the crime of homicide preparation.\(^8\)

(5) Finally, the court took up the issue of whether the act of homicide preparation falls within the purview of section 81(1)(i) and (ii) of the Religious Corporation Law, thus constituting a reason for dissolving Aum Shinri Kyō as a religious corporation. In this regard, the court stated:

There is no disagreement that a crime as serious as homicide preparation profoundly endangers the public welfare and significantly deviates from the objectives of a religious organization. However, crimes enumerated in the Penal Code have as their subject natural persons and cannot be committed by a religious corporation itself. Nonetheless, the idea that criminal conduct cannot be a reason for dissolution simply because the religious corporation is not subject to the Penal Code would invite a state of affairs contrary to the purpose of according corporate status to religious organizations and the protection that accompanies such status. This would not be appropriate.\(^8\)

We hold that when one of the causes provided in section 81(1) is found to have occurred "concerning the religious corporation,"\(^8\) it is not always necessary that there be a strict congruence between the religious corporation and that corporation’s illegal acts or other activities that deviate from its objectives as a religious corporation.\(^8\)

The question of when a crime can constitute a cause for ordering the dissolution of a religious corporation must be addressed. It is natural that a religious corporation cannot be stripped of its corporate status when its members commit some

\(^{80}\) Id. at 48.

\(^{81}\) Id.

\(^{82}\) The phrase is "shaikyō hōjin ni tsuite."

\(^{83}\) 1544 HANREI JIHÔ at 48.
kind of crime unrelated to the organization or its activities. However, when it is shown that a large part of a religious organization's members or its pivotal leaders have participated in criminal activities as organized acts of the religious group, and it is commonly accepted that there is an inseparably close relationship between the organization's activities and the execution of serious crimes, dissolution of that religious corporation should be allowed based upon the first two sub-items of section 81(1) of the Religious Corporation Law. Under such circumstances, it is possible to conclude that (1) an applicable cause for dissolution exists, and (2) that allowing the organization to keep its corporate status would go against the objectives of the Religious Corporation Law. The standard should consist of a substantial inquiry into whether or not the criminal act was in fact an organizational activity of the group, not simply whether there was consent for the criminal activity by the religious corporation's formal decision-making body.

... It is impossible to conceive that the construction and operation of this kind of laboratory was the result of only a handful of high-ranking members and some followers acting on their own initiative. As mentioned above, within Aum Shinri Kyó, founder Matsumoto Chizuo's existence was absolute; followers were compelled to completely embrace him and to make sure that all his intentions were realized. Furthermore, in its statement in this case, defendant has acknowledged engaging in sarin research and development and the evidence shows that a high-ranking member with a graduate degree in organic and physical chemistry has acknowledged that investigative research into sarin was conducted pursuant to the instructions of Matsumoto Chizuo. ...

Putting together all of the above facts, it is proper to conclude that the construction and operation of the sarin laboratory in this case, i.e., the acts of homicide preparation,

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84 Id. at 48-49.
85 Id. at 49.
were done at the instruction of defendant’s founder and legal representative Matsumoto Chizuo, or at least upon his approval and consent, and were carried out as the organizational activities of Aum Shinri Kyō. Viewed from the perspective of current societal ideas, there is an inseparably close relationship between the group’s organizational activities and the execution of this serious crime. Therefore, we hold that there is cause for dissolution pursuant to section 81(1)(i) and (ii) of the Religious Corporation Law.

The present attitude and religious activities of defendant’s followers cannot be accurately ascertained given the lack of relevant evidence from defendant, but there may be a large number of followers who had nothing to do with the various crimes associated with this case. However, as previously acknowledged, defendant religious organization is uniquely the product of Matsumoto Chizuo’s existence. It has been determined that under his instructions and approval the group systematically engaged in criminal activities that were strongly antisocial in nature. Thus, while it may be necessary to give some sort of consideration to the group’s common followers in the process of liquidation, their existence is no reason to deny the order for dissolution. Ordering the dissolution of Aum Shinri Kyō is in accordance with the aim of the Religious Corporation Law and neither conflicts with the legal intent of section 1(2) of the Law nor violates articles 13 or 20 of the Constitution.

This case has interpreted and applied the Religious Corporation Law in determining whether or not the defendant religious corporation should be ordered to dissolve. The pursuit of individual criminal liability in criminal trials contemplates different purposes and is subject to different evidentiary legal procedures. Thus, defendant’s assertion that a

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86 Id.
87 Id.
88 Id.
dissolution order proceeding should wait until verdicts have been issued in the criminal trials is without merit.\footnote{Id.}

In violating the law, defendant clearly engaged in behavior that profoundly endangered public welfare and acted in a way that significantly deviated from the objectives of a religious organization. We conclude that defendant is a religious group that should no longer receive the protection of the Religious Corporation Law.\ldots\footnote{Id.}

V. THE DECISION OF THE TOKYO HIGH COURT\footnote{Aum Shinri Kyō v. Doi, 1548 HANREI JIHÔ 26 (Tokyo High Ct., Dec. 19, 1995).}

Aum Shinri Kyō immediately appealed the dissolution order to the Tokyo High Court.\footnote{Shihō § 81(5) provides for immediate appeal of a dissolution order and for a stay of that order while the appeal is pending.} In rejecting the sect’s appeal, the Tokyo High Court accepted all the facts found by the lower court and made new findings based on facts that came to light in the concurrent criminal investigations and trials.\footnote{Id. at 29-30.}

New findings of fact included the revelation that Aum had organized its internal structure to resemble the national government of Japan, with departments named after the various government ministries. The court also noted that (1) the sect’s facility at Kamikuishiki-mura was equipped with a heliport; (2) in September, 1993, Matsumoto had instructed one member to travel to the United States to obtain a helicopter operator’s license; and (3) Matsumoto had ordered the purchase of a large helicopter. Apparently, according to the court, the sect was planning to release poisonous gas from the air.\footnote{Id. at 30.}

Aum’s appeal contained the same assertions as those in the District Court decision. Nonetheless, the High Court expressly found that section 81(1) of the Religious Corporation Law had been properly applied by the District Court. Namely, the High Court held that Aum’s activities amounted to homicide preparation as established in article 201 of the Penal Code. This profoundly endangered the public welfare and significantly deviated from the objectives of a religious organization.\footnote{Id. at 29, 33.}
However, a significant portion of the High Court’s decision dealt with Aum’s assertion that the dissolution order violated the constitutionally guaranteed right to freedom of religion of its followers provided in article 20 of the Constitution. In this regard, the High Court struggled with the issue of the standing of a religious corporation to assert the constitutional rights of third parties (i.e., its followers). According to the Court, because of the special faith-based relationship between a religious organization and its followers, there may be instances where it is appropriate to grant a religious corporation standing to assert the rights of its followers. In order to do that, however, it would be necessary to identify each individual follower and to clearly show that the resulting liquidation of the religious corporation through the dissolution order would greatly burden and adversely affect the followers’ individual rights to freedom of religion. The High Court held that these requirements currently were not clearly present and, thus, it was not necessary to make a constitutional determination regarding Aum’s assertion of its followers’ article 20 rights.

VI. TRANSLATION OF THE DECISION OF THE SUPREME COURT

A. Appellant’s Reasons for its Appeal to the Supreme Court

(1) The decision below, in which the court’s deliberations concluded right on schedule, was a so-called political trial and an abandonment by the
court of its judicial duty (violating the right to trial provided by article 32 of the Constitution). Namely, as is clear from the record, respondent submitted a report [to the High Court] regarding the criminal trial of each defendant in the homicide preparation cases on December 15 (appellant received a copy on the same day) and the decision of the High Court was handed down on December 19. This means that the High Court did not take time to examine the contents of the report of the [criminal] trials. This is also clear from the fact that no quotes or citations from the report are contained in the opinion.

It is clear that respondent submitted the above-mentioned report because it was thought to be indispensable in proving respondent's assertions. It is such important evidence that without its adoption the High Court's decision in this case cannot be allowed to stand.

Furthermore, a report of the record of the homicide preparation criminal trials is expected to be submitted [in this appeal]. Even if respondent does not submit this report, it will contain evidence of a nature that appellant itself would submit. Finding as fact the acts of homicide preparation without examining the record of the criminal trials produces misunderstandings of the facts.

The record of the criminal trial is indispensable evidence with regard to the facts of former [Aum] legal representative Matsumoto's "instructions." Naturally, in seeking a judgment, Matsumoto is expected to deny the fact of any such "instructions," assert his innocence, and present counter-evidence. In such a situation, it is possible that a verdict of "not guilty" will be handed down. The foregoing circumstances are mentioned in Matsumoto's statement.

Accordingly, the nature of this case is such that hastily making findings of fact from the report alone is not proper. A decision should wait until after the conclusion of the criminal trials.

Also, the dissolution order issued by the District Court, which noted that ninety-nine percent of appellant's followers were neither involved in, nor liable for, the series of crimes in this case, imposes collective responsibility on innocent individuals. This is because the order to dissolve appellant forces this ninety-nine percent of its followers (approximately

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99 KENPÔ, art. 32 provides: "No person shall be denied the right of access to the courts."

100 900 HANREI TAIMUZU at 164.

101 Id.

102 Id.

103 Id.
1,800 persons) to abandon their religious life—even though they are entirely absolved of any liability—because [of the acts] of a small part of appellant's constituents. Although appellant asserted . . . that this was a substantial violation of article 20 (freedom of religion), article 25 (right to live), and article 13 (freedom of the individual) of the Constitution, there was absolutely no adjudication of this issue.

Thus, the decision of the High Court is illegal because of its inexhaustive examination and defective reasoning and should be reversed.\textsuperscript{104}

(2) The findings of Matsumoto's "instructions" as facts despite a presumption of "innocence" is a violation of article 31 of the Constitution (guarantee of due process) and should be rescinded.\textsuperscript{105}

The finding of these facts is (1) a conclusion of guilty by the High Court before the opening of the criminal trial, (2) an absolute misconception of the facts, (3) a violation of the Code of Criminal Procedure, and (4) a rash act denying the right to trial. Namely, the record of the homicide preparation criminal trials has been produced, but it is noted that each defendant denied the existence of a conspiracy or any intent to kill, and a guilty verdict has not yet been handed down.\textsuperscript{106}

At this stage, the Code of Criminal Procedure presumes innocence. The decision below was not based on any direct evidence, but on an ardent belief in the indirect evidence contained in the trial record. This presents a concern that the facts were misunderstood. If it turns out that Matsumoto's "instructions" are not found to be facts [by the criminal court], the basis for the dissolution order disappears. In such a situation, the dissolution order should be withdrawn, but it is doubtful that [once implemented] the present state [of Aum] could be recovered.

From this perspective as well, the judgment of the High Court is illegal.\textsuperscript{107}

(3) Appellant and appellant's followers have a separate legal existence and the decision that appellant's followers cannot have standing is illegal.

\textsuperscript{104} Id.
\textsuperscript{105} Id.
\textsuperscript{106} Id. at 164-65.
\textsuperscript{107} Id. at 165.
The followers in this case are so-called *shukke shinja*;\(^\text{108}\) the basis of their entire being is dependent on the existence of appellant, with whom they have a relationship that is different from the kind of relationship commercial corporations or other religious corporations have with their constituents. Namely, the *shukke shinja* who make up appellant's core membership turn over all of their personal property, possess no personal property whatsoever, and enjoy only the property and facilities of appellant in an arrangement that makes a religious life possible. Consequently, all of appellant's property consists of property donated by its followers (property contributions), including its *shukke shinja*, and it is not going too far to say that appellant possesses no property that is its own.\(^\text{109}\)

The actual interested persons in appellant's dissolution are its approximately 1,800 followers. In contrast to other religious corporations whose dissolution would neither directly intrude on nor threaten the religious life of their followers, the dissolution order in this case immediately affects the rights of appellant's followers by eliminating the very foundation of their religious life.

From this perspective, appellant's *shukke shinja* members are interested persons and possess standing as parties. This point is clear from the statements of each follower submitted by appellant.\(^\text{110}\)

(4) A decision concerning whether circumstances for dissolution exist violates the right to freedom of religion of these followers, who make up appellant's membership and consequently constitute its collective will.

The court below found that ninety-nine percent of appellant's followers were not involved in, and naturally were not liable for, the crimes associated [with this case]. Surely, in light of the fact that these followers did not commit these past criminal acts, it is inconceivable that, as now managed by these followers, appellant religious organization will engage in any future unlawful conduct (i.e., conduct endangering the public welfare).\(^\text{111}\)

The opinion of the High Court stated that "Matsumoto's position did not stop at being the legal representative." But Matsumoto has already communicated to appellant through his attorney his intention to resign as

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\(^{108}\) The term *shukke* (出家) refers to the idea of forsaking or renouncing the world. Thus, *shukke shinja* (出家信者) may be translated as "followers who have forsaken the world."

\(^{109}\) Id.

\(^{110}\) Id.

\(^{111}\) Id.

legal representative and as an official [of Aum]. Appellant has accepted his resignation and appellant’s legal representative has already been changed to Muraoka Tatsuko.

Moreover, Muraoka Tatsuko has made the following statements:

Even high-ranking officials will probably be expelled from the religious organization if it is established at trial that they were connected with these atrocious crimes. The Great Master is no exception.

The wanted criminals who are currently in hiding have already been expelled because they have not complied with the organization’s demand that they turn themselves in.\textsuperscript{112}

Regarding appellant’s teachings, Muraoka stated: “The compilations of primitive Buddhism and yoga teach against the destruction of life. . . . Thus, even if the Great Master were to order the execution of illegal acts that have homicide as their objective, there would be absolutely no room for compliance.”

Thus, the judgment below was the product of a unique logic based on either a distortion or absolute misunderstanding of appellant’s doctrine and can be said to be an extreme misunderstanding of the facts. From all perspectives, it is a fact that within appellant’s organizational rules and religious doctrine there is no allowance for approving of such atrocious crimes as this case presents.\textsuperscript{113}

From the very fact that ninety-nine percent of the organization’s followers were not involved and are not liable for the crimes associated with this case, it is clear that there is no basis for the misgivings (groundless apprehensions) indicated in the judgment below regarding the organization’s doctrine and rules.

Although Matsumoto has been arrested, detained, and indicted in these crimes and has no present or future ability to exercise authority as appellant’s legal representative—something no one with any common sense could deny—the judgment below is based on the premise that it is still possible that Matsumoto has such authority. This is a finding of fact that violates the rule of experience.\textsuperscript{114}

\textsuperscript{112} Id.

\textsuperscript{113} Id.

\textsuperscript{114} Id.
The decision below indirectly suggests that Matsumoto might be found innocent and released. This reflects completely unconfirmable, groundless apprehensions. Matsumoto has absolutely no ability to use, via his government-appointed attorney, the executory powers he once held over the organization. Making these findings about appellant’s present state of affairs based on such “groundless apprehensions” cannot be permitted.

Moreover, it is always possible to amend “The Rules of Aum Shinri Kyō” themselves. The very fact that the court below found these rules to be the rules of a “criminal organization” is perplexing. Ninety-nine percent of appellant’s constituents are virtuous followers who, abiding by these rules, have had absolutely no connection with these crimes. This is clearly a misunderstanding of the facts.

It is objectively clear that Matsumoto has absolutely no ability to participate in the future management of appellant organization or otherwise involve himself in its affairs. The findings of fact by the court below regarding the present situation of appellant is contrary to social justice and should be reconsidered.

From this perspective as well, it is clear that the determination by the court below that appellant’s essence has not “improved” is an illegal judgment that forces ninety-nine percent of appellant’s followers to forfeit their place of worship. It is a measure that substantially interferes with these followers’ right to freedom of religion and violates article 20 of the Constitution.

(5) Regarding the serious misunderstanding of facts in this case: When the court below made its fact findings as though sarin was produced in the Satyam Number 7 lab (the petition asserts that it was merely planned), it utilized imagination that ignored all objective evidence. As previously indicated, such speculation was only possible because there was no examination of the evidence submitted by appellant in the form of data on the electrical power used by the “electrolysis laboratory.”

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115 Id.
116 Id. at 165-66.
117 The Japanese term for "electrolysis" is denkai (電解). Aum’s brief writes this term with the following characters: 電解. However, this appears to be a spelling error. While 電解 and 電解 are both pronounced “denkai,” the latter, which means “electric field,” does not fit well within the context of the text because it is electrolysis that is necessary in the production of sarin. See 1544 HANREI JIHÔ at 47 (discussing the process which Aum allegedly used to produce sarin). Moreover, the District Court’s opinion uses the characters 電解プラント (“electrolysis laboratory”) in referring to a laboratory located on the third floor of Satyam Number 7 that was one of the three main laboratories making up Aum’s chemical
Namely, the amount of electricity consumed by Satyam Number 10 (the source of the power for the electrolysis laboratory [in Satyam Number 7]) until December, 1994, or January 1, 1995, was no different from the amount consumed from January 1, 1995, onward. This fact is evidence that the “electrolysis laboratory” was not in operation. Why was this information not mentioned in the opinion? Even respondents, in their report, acknowledge that the “electrolysis laboratory” was defective and that the production [of sarin] from phosphorus pentachloride was practically impossible. Although the court found that appellant planned to produce sarin using phosphorus pentachloride (of which not more than one paltry ton was purchased), in actuality the mass production of sarin was not possible. Thus, the factual findings [of the court] are contradictory.\textsuperscript{118}

Appellant asserts that if the “production of sarin” is a fact, then the method of production should be specified. The decision below is illegal because it completely ignores this point. Specifying the “method of sarin production” would be meaningful in determining the important matter of whether the alleged objective of mass-producing sarin could actually have been accomplished. Omitting such fact-finding is impermissible.\textsuperscript{120}

(6) The elements constituting the “crime of homicide preparation” are contrary to previous judicial precedent.

The act of homicide preparation means “an act capable of effectuating the objective of homicide.” Even if the production of sarin was undertaken in the Satyam Number 7 lab, if no actual production and storage of sarin occurred, the “objective of homicide” could not have been realized. Not only has appellant not confirmed the production of even one drop of sarin, it is also clear from the inspection that there was no storage of sarin. Thus, the interpretation of the phrase, “acts of homicide preparation,” was wrong and is contrary to judicial precedent.

Naturally, none of appellant’s members who have been indicted have any knowledge of sarin. Still more, they deny that it was to be used for “homicide” and it is clear that their statements in the trial record suggest

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\textsuperscript{118} The Japanese term is go-enka-rin (五塩化リン). It was found by the District Court to be a chemical from which sarin could be synthesized. 1544 HANREI JIHŌ at 47.

\textsuperscript{119} 900 HANREI TAIMUZU at 166.

\textsuperscript{120} Id.
that the purpose of producing sarin was for self-protection. Thus, it is possible that the indicted members will be found innocent.\footnote{Id.}

Accordingly, the findings of fact, made as though the indicted members are guilty, are contrary to the presumption of innocence embodied in the Code of Criminal Procedure. This makes the judgment below very difficult to comprehend; it denies appellant the right to trial and is a violation of the Constitution.\footnote{Id.}

(7) On many issues the decision below violates the Constitution and, thus, should be reversed. Also, section 81 of the Religious Corporation Law provides that when a dissolution order is appealed, a "stay of the enforcement [of the order is supposed to] come into effect." Thus, we request a judgment which immediately stays the dissolution order's enforcement.

In connection with this, while allowance for appeal still existed, the Eighth Department of Civil Affairs of the Tokyo District Court treated this case as final and used its authority to appoint a "liquidator." This measure was founded on the idea that the Supreme Court will deny this appeal and the arguments contained in it. Because restoration to the present condition would be impossible [if such liquidation takes place], we ask for the exercise of judicial administrative supervision [to stay liquidation].\footnote{Id. at 163.}

B. Judgment of the Supreme Court

The appeal is dismissed. Costs to appellant.\footnote{Id.}

C. Reasoning

Regarding appellant's third and fourth reasons for appeal, presented by attorneys Katō Toyozō and Suzuki Hideo:

Appellant's argument, in short, is that the dissolution order issued by the Tokyo District Court and the decision of the Tokyo High Court dismissing appellant's immediate appeal rob appellant's followers of the foundation of their religious life, substantially infringe on their right to
freedom of religion and, therefore, violate article 20 of the Constitution. What follows is an examination in light of this argument.

The dissolution order in this case was issued against appellant, a religious organization with corporate status under the Religious Corporation Law. The order was issued because of the existence of cause [for dissolution] under section 81(1)(i) and (ii) of the Law.\textsuperscript{125}

The purpose of the Law is to allow a religious group to obtain corporate status (§ 4), giving that group legal capacity to maintain and operate its facilities for worship and other assets (§ 1(1)). In other words, the Law's regulation of a religious organization deals exclusively with the secular side of the organization and in no way deals with the spiritual or religious side. It does not purport to interfere with any exercise of the right to freedom of religion, such as the religious activities of believers (§ 1(2)).

The system of dissolving a religious corporation pursuant to section 81 is a judicial procedure which makes possible the compulsory breakup of a religious corporation and the removal of its corporate status. Such dissolution is fitting when allowing a religious organization to keep its legal capacity would be inappropriate or unnecessary either because (1) it is clear the religious corporation has violated the law in a way that profoundly endangers the public welfare (§ 81(1)(i)), (2) the religious corporation has engaged in behavior significantly deviating from the objectives of a religious organization (§ 81(1)(ii-first half)), or (3) the religious substance of the religious corporation or organization is no longer present and the status of religious corporation is purely nominal (§ 81(1)(ii-second half)-(v)). A dissolution order pursuant to section 81 of the Law is to be interpreted in the same manner as an order to dissolve a commercial company (Commercial Code § 58).\textsuperscript{126}

Even if a religious corporation is dissolved pursuant to a dissolution order, nothing prevents followers from continuing the religious organization absent its corporate status, forming a new organization, or purchasing new facilities or goods for use in religious activities. In other words, a dissolution order has absolutely no legal effect prohibiting or restricting the religious activities of believers.

However, when a dissolution order is final, a liquidation process takes place (Shūhō §§ 49(2), 51) which disposes of the religious corporation's property—worship facilities and other things used for

\textsuperscript{125} Id.
\textsuperscript{126} Id.
religious activities (§ 50). As a result, some interference with the followers’ ability to continue religious activities that involved use of such property is possible. Accordingly, even if the legal regulations affecting religious corporations do not directly restrict the religious activities of followers, if some kind of interference does indeed occur, a careful inquiry is necessary into whether or not such restrictions are permitted in light of the importance of freedom of religion as one of the spiritual freedoms guaranteed in the Constitution.

As previously mentioned, the system of dissolving a religious corporation pursuant to section 81 deals exclusively with the secular side of a religious corporation and is for an exclusively secular purpose; it is not intended to interfere with the spiritual or religious side of a religious organization or its followers. Looking at the dissolution order in this case from this perspective, it can be said that the goals of this system are reasonable.

As established by the court below, appellant’s legal representative Matsumoto Chizuo and several high-ranking members, on Matsumoto’s orders, planned the production of large amounts of the poison gas sarin with the purpose of killing many people. By mobilizing many followers, using appellant’s physical facilities, and investing appellant’s funds, they deliberately and systematically produced sarin. Thus, appellant clearly violated the law in a way that profoundly endangered the public welfare and engaged in behavior significantly deviating from the objectives of a religious organization. In response to these activities of appellant, it is necessary and appropriate to dissolve appellant and revoke its corporate status. Should this unavoidably give rise to any interference with the religious activities of Aum Shinri Kyō or its followers, the interference is merely incidental to the dissolution order.

Accordingly, even considering the impact on the spiritual and religious aspects of the religious group Aum Shinri Kyō and its followers, the dissolution order in this case is a necessary and unavoidable legal response to appellant’s activities. Moreover, because the dissolution order was issued pursuant to a judicial investigation at trial under the provisions of section 81 of the Law, a just proceeding has been assured.

Although freedom of religious activity should be accorded the maximum amount of respect, it is not completely unrestricted. In light of

\[127\] Id.
\[128\] Id. at 163-64.
the above points, the dissolution order in this case and the dismissal of the appeal by the court below must be viewed as not violating article 20(1) of the Constitution. That such an interpretation is warranted is clear from precedent set by this Court ([Nishida v. Japan], 17 KEISHÔ 302, (Sup. Ct., G.B., May 15, 1963)). The arguments of appellant cannot be accepted.\footnote{129}

Regarding the remaining reasons for appeal:

The points [appellant] raises, including claims of unconstitutionality, are nothing more than assertions that the decision below was simply illegal or that the deliberations of the court below were abuses of discretion. [These points] do not constitute grounds for appeal as prescribed in section 419-2 of the Code of Civil Procedure.\footnote{130}

Accordingly, we unanimously dismiss this appeal and place the responsibility of costs upon appellant.

(Ono Masao, C.J. [of this Petty Bench], Takahashi Hisako, Endo Mitsuo, Fujii Masao, J.J.).

VII. AFTERMATH

The Supreme Court’s decision upholding the order to dissolve Aum as a religious corporation is the final word as far as the Religious Corporation Law’s application to Aum is concerned. However, Aum Shinri Kyô and a number of its individual members are facing further legal proceedings as a result of their various criminal activities. In addition, Aum’s abuse of its religious corporation status has prompted amendments to the Religious Corporation Law. What follows is a brief look at the subsequent state of affairs.

A. Liability of Individual Members of Aum Shinri Kyô

Matsumoto Chizuo and other members of the sect are currently facing criminal charges regarding the many offenses committed by Aum—the three main crimes being the Tokyo subway sarin attack, the sarin attack in Matsumoto City, and the murders of the three members of the Sakamoto family in November, 1989.\footnote{131} Moreover, Matsumoto Chizuo and other

\footnote{129} Id. at 164.

\footnote{130} Section 419-2(1) of the Code of Civil Procedure provides for special appeal only when the disputed decision alleges a misinterpretation of the Constitution or other constitutional inconsistency.

\footnote{131} See generally Oitsumerareta Matsumoto hikoku (Defendant Matsumoto’s Back to the Wall), YOMIURI SHIMBUN (Satellite Ed.), Nov. 1, 1996, at 23. The Sakamoto incident involved the murder of
Aum followers have recently been ordered to pay solatium damages totaling ¥790 million to survivors of deceased victims and to persons injured in the Tokyo subway attack.\textsuperscript{132}

B. \textit{Aum Shinri Kyō's Bankruptcy and Liquidation}

Aum's assets were frozen on December 14, 1995.\textsuperscript{133} The sect was subsequently declared bankrupt by the Tokyo District Court on March 28, 1996.\textsuperscript{134} However, Aum's trustee in bankruptcy reported that the total amount of claims against the sect exceeded assets by nearly four times, so that creditors may receive only ten to twenty percent of what they are actually owed.\textsuperscript{135}

Since early 1996, Aum's numerous facilities throughout Japan have been surrendered to the government in slow succession.\textsuperscript{136} The first Aum facility to be shut down by the government was Satyam Number 8 at Aum's Kamikuishiki-mura compound on February 8, 1996.\textsuperscript{137} The last followers vacated the communal facilities at Kamikuishiki-mura on October 31, 1996, in order to surrender the property to the bankruptcy administrator.\textsuperscript{138}
C. Recent Amendments to the Religious Corporation Law

Aum's abuse of its religious corporation status prompted much political thought regarding the appropriateness of the provisions of the Religious Corporation Law. As a result, the Law was partially amended on December 15, 1995, with the changes to become effective within one year.

According to the Religious Corporation Council, the amendments are an attempt to bring the Law's provisions in line with the vast social developments of the past few decades. The Council thought it imperative to amend the Law in a way that balances religious corporations' need for autonomy with the necessity to keep them socially responsible.

The most significant changes to the Law deal with a religious corporation's obligation to disclose information about itself and its activities. First, followers and other interested parties are given the ability to obtain information from the religious corporation. Specifically, they are accorded the right to demand that the religious corporation furnish account books and other documents that the corporation is required to keep under section 25 of the Law. The religious corporation must grant followers this right of inspection, provided a reasonable benefit exists and no unlawful purpose is intended.

The Religious Corporation Council (Shikyō dantai to shikyō hōjin seido (Religious Organizations and the System of Religious Corporations), 1081 JURISUTO 11, 11 (1995). See also Hirano, supra note 10, at 10 n.7 acknowledging that the discussion of amendments to the Religious Corporation Law arose because of the Aum incidents, but expressing doubt about whether the incidents were the result of “defects” in the Law since they could have been avoided through proper application of the Penal Code and the tax laws).

Shūhō, amended by Law No. 134 of 1995. See generally 1793 KANPŌ 2-3 (1995); See also Shikyō hōjin seidō no kaisei ni tsuite (Regarding the Amendments to the Religious Corporation System), 1081 JURISUTO 24-26 (1995); Shikyō hōjinshō no ichibu o kaisei suru hōritsu-an shinkyō taishō jōbun (Before and After Textual Comparison of the Partially Amended Religious Corporation Law), 1081 JURISUTO 27-31 (1995).

The Religious Corporation Council is a deliberative council made up of religious leaders and scholars whose role is to assist the Minister of Education in matters relating to the administration of the Religious Corporation Law. See Shūhō §§ 71-77. The amendments to the Law changed the maximum number of council members from 15 to 20. Shikyō hōjinshō no ichibu o kaisei suru hōritsu-an shinkyō taishō jōbun (Before and After Textual Comparison of the Partially Amended Religious Corporation Law), supra note 140, at 28.

Shikyō hōjin seidō no kaisei ni tsuite (Regarding the Amendments to the Religious Corporation System), supra note 140, at 24.

Shūhō § 25(3) (as amended). Religious corporations are required to maintain the following documents: (i) the sect’s rules and its certificate of incorporation; (ii) a list of members' names; (iii) a list of the corporation's assets, and its balance sheet as well as its income statement, if any; (iv) documents regarding precinct buildings not stated on the list of assets; (v) documents and records regarding the
Of perhaps greater significance, however, is that the authorities are empowered with more extensive oversight capabilities regarding the activities of religious corporations. This new oversight ability, which is the most obvious and direct response to the Aum incidents, is twofold in nature. First, a religious corporation is obligated to submit annually to the authorities a copy of the documents it is required to maintain in its office under section 25(2) of the Law. These documents are to be submitted in April, at the close of the fiscal year.

Secondly, an entirely new provision was added to the Law giving the authorities the power to question members of a religious corporation and collect information from a religious corporation under certain prescribed circumstances. Specifically, this power may be exercised whenever the authorities have sufficient reason to believe that cause exists (1) to suspend profit-making activities; (2) to rescind the certification of incorporation; or (3) to dissolve the corporation pursuant to section 81(1)(i)-(iv) of the Law. Before these amendments, even if there appeared to be sufficient reason, no legal provision was available to allow the authorities to confirm the existence of any infractions.

Despite these considerable changes, however, the Religious Corporation Council was purposefully cognizant of the need to uphold the ideological underpinning of the Law—the guarantee of freedom of religion. For example, with respect to the amendments dealing with the ability to oversee the activities of religious corporations, the authorities are expressly admonished to respect a corporation’s religious characteristics and customs and to be especially mindful not to interfere with the religious corporation’s right to religious freedom.
D. Application of the Subversive Activities Prevention Act to Aum

Aum was also the subject of proceedings pursuant to the Subversive Activities Prevention Act (the Act)\textsuperscript{152} that would have completely outlawed the sect from carrying out any activities whatsoever. On July 11, 1996, the Japanese government, citing a threat to public security, formally filed a request to “ban”\textsuperscript{153} Aum Shinri Kyō through application of the Act.\textsuperscript{154} If Aum had indeed been outlawed, it would have been the first group ever banned under the Act.\textsuperscript{155} However, on January 31, 1997, the Public Security Examination Commission rejected the government’s request to ban the group.\textsuperscript{156}

The administrative process for banning a group under the Act is as follows:\textsuperscript{157} (1) the Ministry of Justice’s Public Security Investigation Agency (the Agency) determines whether or not the particular group should be subjected to the Act; (2) if the Agency decides to begin proceedings to ban the group, hearings are held whereby the group is given a chance to exculpate itself;\textsuperscript{158} (3) if, after these hearings, the Agency is convinced that the group should be banned, it makes an official request to the Public Security Examination Commission (the Commission) to ban the group;\textsuperscript{159} (4) the Commission reviews all the evidence and makes a decision on

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\textsuperscript{152} Hakai katsudō bōshihō (Law No. 240 of 1952).
\textsuperscript{153} The Japanese term is kaisan (解散), the same term used in the Religious Corporation Law, but translated as “dissolution.” Kaisan as used in the Subversive Activities Prevention Act carries a somewhat different meaning than that contemplated by the Religious Corporation Law. While under the latter, kaisan means liquidation of a group’s assets, under the Subversive Activities Prevention Act, the term essentially means a banning of all meetings, publications, and fund-raising by the group.
\textsuperscript{154} See Oumu kaisan o seikyū: Habōhō tekkyō e saishō tetsuzuki (Demanding Aum’s Dissolution: Final Procedures in Application of the Subversive Activities Prevention Act), YOMIURI SHIMBUN (Satellite Ed.), July 12, 1996, at 1.
\textsuperscript{155} For a detailed discussion of the Subversive Activities Prevention Act and some of the problems presented by its application to Aum Shinri Kyō, see Okudaira Yasuhiro, “Habōhō mondai” o megutte (Concerning the Problems of the Subversive Activities Prevention Act), 1087 JURISUTO 96 (1996).
\textsuperscript{156} See Habōhō: tekkyō o kikyaku (Request to Apply Subversive Activities Prevention Act Rejected), YOMIURI SHIMBUN (Satellite Ed.), Feb. 1, 1997, at 1.
\textsuperscript{157} See generally Kaishaku kijun, irei no sóki kōhyō (Unprecedented Early Announcement of Interpretation Guidelines), YOMIURI SHIMBUN (Satellite Ed.), July 12, 1996, at 26 (containing a diagram of the process for banning a group via the Subversive Activities Prevention Act).
\textsuperscript{158} With regard to Aum, six hearings were held between January 18, 1996, and June 28, 1996; Matsumoto Chizuo appeared at two of these hearings. Id.
\textsuperscript{159} The Public Security Examination Commission (Kōan shinsa inkai) is an independent cabinet committee consisting of seven members, each knowledgeable in matters of law. For a brief explanation of the Commission and its functions, see Hōmushō kara dokuritsu shita gyōsei-i: kōan shinsa inkai no shikshun to wo? (An Administrative Commission Independent of the Ministry of Justice: What is the Structure of the Public Security Examination Commission?), YOMIURI SHIMBUN (Satellite Ed.), July 3, 1996, at 21.
whether to issue an order banning the group; (5) if the Commission orders the group banned, the group may appeal to the courts for relief.

The main provisions of the Subversive Activities Prevention Act in question with regard to Aum are sections 7 and 8, which allow for the dissolution of a group if that group engages in violent activities with a political motive and poses a serious present and future threat to society at large. According to the Public Security Investigation Agency, Aum presented such a threat to society because its dogma and political doctrine remained unchanged.\(^\text{160}\)

The question of whether to restrict Aum’s activities via the Subversive Activities Prevention Act stimulated much debate within Japan. While eighty to ninety percent of people polled supported the Agency’s decision to invoke the Act against Aum,\(^\text{161}\) a majority of Japanese lawyers and legal scholars were opposed.\(^\text{162}\) The main concern of the Japan Federation of Bar Associations was that the Act may be unconstitutional and may “be the cause of trouble for democracy in the future[.]”\(^\text{163}\) Another concern was that, by modern standards, the Act’s procedural measures are remarkably lacking in their ability to guarantee any real due process.\(^\text{164}\) Nonetheless,

\(^{160}\) See Habōhō tekiyō no kaishaku kijun zenbun (Full Text of Interpretation Guidelines for Application of the Subversive Activities Prevention Act), YOMIURI SHIMBUN (Satellite Ed.), July 12, 1996, at 23; Habōhō tekiyō no seikyū riyū (Reasons for Demanding Application of the Subversive Activities Prevention Act), YOMIURI SHIMBUN (Satellite Ed.), July 12, 1996, at 23. The Agency’s position has been criticized for ignoring the many sanctions imposed on Aum and its pivotal members through other legal proceedings (e.g., the order dissolving Aum as a religious corporation, the decision declaring Aum bankrupt, and the various criminal and civil proceedings directed at a number of the sect’s members). See Okudaira, supra note 155, at 102-103. Okudaira suggests that, due to these numerous legal sanctions, Aum’s base is undergoing drastic changes, thus significantly alleviating the fear that Aum as a group will engage in future violent, subversive activities. Id. at 102. See also Oumu e no habōhō tekiyō: “shōrai no kiken” saishū kentō (Applying the Subversive Activities Prevention Act to Aur: Final Investigation into “Future Danger”), YOMIURI SHIMBUN (Satellite Ed.), Nov. 27, 1996, at 1 (reporting that the question of future danger was the main issue of discussion). Okudaira also suggests that the Agency should be obligated to prove the necessary elements for dissolution more persuasively than is currently required under the Act. Okudaira, supra note 155, at 103.

\(^{161}\) Okudaira, supra note 155, at 96.

\(^{162}\) Bar Federation Against Applying Subversion Law to AUM [sic], JAPAN ECON. NEWSWIRE, May 24, 1996, available in LEXIS, Allnewsplus.

\(^{163}\) Id. While the constitutional issue presented by the order to dissolve Aum as a religious corporation involved the freedom of religion, the issue presented by dissolution through the Subversive Activities Prevention Act deals mainly with the rights of freedom of association and freedom of expression which are guaranteed in article 21 of the Constitution, which provides: “(1) Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. (2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.”

\(^{164}\) See generally Okudaira, supra note 155, at 98-102 (emphasizing, inter alia, that the Public Security Examination Commission essentially has unfettered discretion and decision-making powers and the particular group being regulated is guaranteed virtually no right to participate in the process).
the Agency persisted in its attempt to use the Subversive Activities Prevention Act to completely stamp Aum out of existence.\footnote{\textsuperscript{165} See, e.g., Shin-shōko, shūnai ni mo teishutsu: Oumu wa "izen kiken" (New Evidence to be Submitted Within the Week: Aum "Remains Dangerous"), \textit{YOMURI SHIMBUN} (Satellite Ed.), Oct. 30, 1996, at 1 (reporting new evidence in support of banning Aum that the Agency planned to submit to the Public Security Examination Commission, including the following: Aum continues to spread its doctrine through a homepage on the Internet; the current leaders of the sect are preaching that "Armageddon is not yet over"; Matsumoto Chizuo’s position within the sect remains unchanged; and the sect is collecting tens of millions of yen in the form of fees for participation in initiation rites, etc.).}

According to the Public Security Examination Commission, a major factor in its decision not to ban Aum was that the group no longer posed a future threat to society.\footnote{\textsuperscript{166} \textit{Id.}} The Commission noted that (1) due to a shrinkage of its personnel, material, and financial assets, Aum had been significantly weakened, and (2) the group had made the transition from a cloistered and secluded religious organization to one that is now safely dispersed throughout society.\footnote{\textsuperscript{167} \textit{Id.}} However, the Commission did suggest that the group’s movements should continue to be monitored and that a plan was needed to help integrate Aum followers back into society.\footnote{\textsuperscript{168} \textit{Id.}}