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# MAJOR JUDICIAL DECISIONS

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Jan. — Dec., 1988

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## 1. Constitutional and Administrative Law

### a. Constitutional Law

**The constitutionality of Shintoist enshrinement by the help of state organ.**

Decision by the Grand Bench of the Supreme Court on June 1, 1988. Case No. (o) 902 of 1982. A *jokoku* appeal claiming cancellation of Shintoist enshrinement and damages. 42 *Minshū* 277; 1277 *Hanrei Jihō* 34; 669 *Hanrei Taimuzu* 66.

[Reference: Constitution of Japan, Article 20.]

#### *[Facts]*

The lawsuit was filed in 1973 by Yasuko Nakaya against the state and the Yamaguchi prefectural chapter of the Self-Defense Forces Friendship Association. The plaintiff's husband, Lt. Takafumi Nakaya of the Ground Self-Defense Force, was killed in a car accident while on duty in January 1968. Mrs. Nakaya, a Christian, had laid his ashes to rest at a Christian church in Yamaguchi.

In April 1972, the SDF Yamaguchi Regional Liaison Office noti-

fied her and other widows of SDF members from the Yamaguchi prefecture that the souls of those SDF men were going to be enshrined at a Shintoist “*gokoku*” (guardian of the state) shrine in the prefecture.

In spite of her refusal, the enshrining was carried out at the request of the Yamaguchi chapter of the SDF Friendship Association, a group of retired SDF members. During the preparation for the enshrining, the SDF Yamaguchi Regional Liaison Office, a state organ, was actively involved.

Mrs. Nakaya brought an action for damages in the Yamaguchi District Court in January 1973 against the state and the Association, demanding that the chapter of the Association retract the request of the enshrinement of her husband and that the Association and the state pay her ¥1 million in damages.

In March 1979 the Yamaguchi District Court ruled in her favor. The state appealed to the Hiroshima High Court but the high court sustained the lower court’s ruling and dismissed the appeal in June 1982. The state appealed to the Supreme Court.

### *[Opinions of the Court]*

*Jokoku* appeal allowed; the Hiroshima High Court’s decision reversed and the respondent’s (plaintiff’s) claim dismissed.

The collective enshrining was made at the request of the Yamaguchi prefectural chapter of the SDF Friendship Association, and was not a result of any joint action by the chapter and the SDF Yamaguchi Regional Liaison Office, a state organ.

The help which officials of the liaison office gave in facilitating the enshrining can hardly be considered to constitute a religious act defined by Article 20(3) of the Constitution.

Since no state religious action is involved in this case, the issue is whether or not the Shintoist Yamaguchi *gokoku* shrine, a private religious body, in enshrining the respondent’s (plaintiff’s) dead husband violated the legally protected interests of the respondent (plaintiff), a Christian.

Generally speaking, when the interference in one’s religious freedom by other people or private organizations “exceeds socially ap-

proved boundaries,” he or she should be awarded legal remedy. The constitutional guarantee of religious freedom, however, calls for tolerance on the part of a believer in one religion toward those of other religions.

So long as no coercion or disadvantage is accompanied, the respondent’s (plaintiff’s) claim to live a religious life in a quiet religious environment without interference by others in the death of one’s intimate relatives cannot be considered a legal interest which deserves a legal remedy.

**[Comment]**

The Court denies the SDF Regional Liaison Office’s (i.e., state’s) participation in the enshrinement process. To reach this conclusion, the Court reversed the lower courts’ findings of facts. “Conspiracy” of the Friendship Association prefectural chapter and the Regional Liaison Office, however, seems a precise description of the enshrinement process. So characterized, the Regional Liaison Office’s action may constitute an excessive, unconstitutional entanglement in religion.

In contrast to the lower courts’ rulings, the Court requires the existence of coercion to award legal remedy to those who were religiously interfered with, which many commentators think is unreasonably restrictive.

Finally the Court’s reasoning that the Christian respondent (plaintiff), a religious minority in this case, is asked to tolerate a Shintoist majority is a surprising conceptual perversion. The Shintoist enshrinement of a Christian woman’s dead husband over her refusal is the last instance in which a Christian minority’s tolerance for others is at issue.

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