MAJOR LEGISLATION

Jan. — Dec., 1995

1. Constitutional and Administrative Law

a. Constitutional Law

1995 Revision of the Incorporated Religions Act.

Promulgated on December 15, 1995. Ch. 134. Effective not later than one year from December 15, 1995 and fixed by Cabinet Order.

[Background of the Legislation]

In 1995 Japan experienced two historic disasters of the greatest magnitude: the Hanshin Awaji Earthquake on January 17, and a series of incidents, allegedly caused by the AUM Shinrikyo Cult, that culminated in the subway sarin gas incident on March 20. After it became obvious that the government was inadequately prepared for crises in general or had performed quite poorly in coping with those situations, the nation seethed over whether the existing system in Japan was equipped with sufficient arrangements for so-called crisis prevention. In response to this nationwide concern, a bill amending the Incorporated Religions Act was proposed particularly to address the problems allegedly caused by the fanatic cult. Thus, the Minister

of Education asked the Council on Incorporated Religions, an advisory organ established under the Incorporated Religions Act, to discuss whether it was necessary to revise the Act in April, 1995. The Council provided the results of its deliberations to the Minister in September, 1995. Then, the government submitted its amendments to the Diet in October, 1995, with a proposal to establish a special committee, instead of the Standing Committee on Education, for deliberation about the amendments. While one of the opposition parties, the Shinshinto Party, which has been strongly supported in elections by Soka Gakkai, one of the huge religious organizations in Japan, objected to entering into deliberations at the beginning because of procedural mistakes in the process of deliberation in the Council, the bill was passed by the House of Representatives without any disruption. However, in the House of Councilors, since the governmental parties asked to invite to the Diet some teachers of religion, including Daisaku Ikeda, the honorary president of Soka Gakkai, as witnesses, the Shinshinto Party strongly resisted, in fear of harrassment to him and the religious organization. After they reached an agreement that they would hear from the president of Soka Gakkai, instead of Mr. Ikeda, however, the bill was finally passed by the Diet in December, 1995.

[Main Points of the Act]

The competent authority for an incorporated religion is the governor who has jurisdiction over the site of its main office (Article 5 (1)). If, however, the precincts or buildings of an incorporated religion lie in some other prefecture, or if an incorporated religion comprises the one whose precincts or buildings lie in some other prefecture, the Minister of Education is the competent authority (Article 5 (2)).

An incorporated religion must make an inventory at the time of its establishment, and an inventory and a statement of income and expenditures within three months after the end of every fiscal year (Article 25 (1)). An incorporated religion must possess an inventory, a statement of income and expenditures, and the like, at all times in its office (Article 25 (2)). An incorporated religion must submit a copy of an officer list, an inventory, a statement of income and

expenditures, a balance sheet (if one is drawn up), papers related to the precincts or buildings, and the like, to the competent authority within four months after the end of every fiscal year (Article 25 (4)). An incorporated religion must have a person read those papers or books prescribed in the preceding paragraph, if he or she is a believer or other interested person, has a legitimate interest in reading those papers or books, and his or her request for reading them is recognized as not having an unreasonable purpose (Article 25 (3)).

The competent authority may ask for a report or may ask through its staff members about matters concerning the management or administration of a business or enterprise by the incorporated religion concerned, if there is some doubt concerning whether it has not used income from its profit-making enterprise for its benefit, it lacked the requirements necessary to be an incorporated religion at the time of its certification, or there is a ground for an order of dissolution concerning the incorporated religion concerned. In this case, if the staff members try to enter facilities of the incorporated religion, they must obtain consent from a representative officer, responsible officer, and other interested person of the incorporated religion (Article 78-2 (1)). The competent authority must ask for the opinion of the Council on Incorporated Religions in advance if utilizing the said authority (Article 78-2 (2)).

[Comment]

The Incorporated Religions Act, which permits religious organizations to be treated as corporate entities and governs incorporated religions generally, was enacted in 1951, succeeding its predecessor, the Incorporated Religions Ordinance. In view of the constitutional guarantees of religious freedom and the separation of church and state, it is generally accepted that the Act should be interpreted and applied in accordance with the basic principle that state must get only minimally involved with religion. According to the Act, then, incorporated religions may engage in profit-making activities unless they are contrary to their purposes. In addition, as a kind of public interest juristic person, incorporated religions are given tax exemption privileges for their public service work and tax rates are lowered for

their profit-making activities through tax-related laws and regulations.

The discussion about amending the Incorporated Religions Act, though it assumed a political tinge as the amendment was argued in the Diet, was originally triggered by the unprecedented, peculiar incidents which presumably involved a new-risen fanatic cult. In this respect, it is understandable that there was widespread public opinion which supported its amendment. However, whether it was necessary to revise the Act should have been judged deliberatively, for, first of all, it was quite doubtful whether the series of criminal incidents arose due to defects in the Act. Although it was said that some of the criminal acts might have been prevented by applying the provisions of the Act rigorously, it was almost impossible to apply those provisions to deter unforeseen crimes at that time. In addition, the Act is not a criminal law that can control criminal acts by incorporated religions. Thus, it is difficult to expect the Act to serve as a guardian to secure a peaceful life for the public.

Based on this view, this amendment is ineffective to counter such criminal acts as it is expected to prevent. For example, although the newly established right provided by the Act to question incorporated religions may be an epoch-making device for an Act, its effectiveness is doubtful since it is not accomplished through a speedy procedure. If such is the case, instead of ending up with a short-sighted revision of the Act, we should instead dare to wrestle with the financial aspects of incorporated religions in order to meet public expectations. In particular, in light of the realities of some huge incorporated religions, it is quite natural that not a few Japanese feel some unfairness in the present tax system's treatment of so-called religious businesses. In addition, excessive political activities by some huge religious groups seem to increase social distrust toward religious organizations in general. Thus, taking this opportunity, it is desirable to conduct a thorough re-examination of the tax system's treatment of incorporated religions on the one hand and the relationship between religions and politics on the other hand, while emphasizing the constitutional values of religious freedom and the separation of church and state. In any case, in light of pure national sentiment, further legislative actions seem inevitable.