

Legal Update on the Santo Daime case in Ireland

Thomas St John O'Dea

Ireland has a long history of religious practice and the freedom to practice religion (subject to public order and morality) are enshrined in Article 44 of the Irish Constitution. As this article is being written there is a case before the Irish High Court in which the Commander of Céu dos Santos, a branch of Centro Eclético da Fluente Luz Universal Raimundo Irineu Serra ("The Raimundo Irineu Serra Eclectic Center of the Flowing Universal Light", or CEFLURIS) seeks a ruling that the laws prohibiting his use of the sacrament of Daime are an infringement of his rights under the Irish Constitution. The constitutional challenge is a direct result of his recent trial, and conviction for possession of a prohibited substance, namely DMT under the Irish drug laws. A brief history of the trial is set out below. It will be interesting to see how the court deals with this case. I believe it will take at least two years before the constitutional case is heard.

In common with other European countries there has been a resurgence of alternative spiritual practices in Ireland in the last twenty years. The Santo Daime community has a number of followers and works are held regularly at various points throughout the country. There have been visits from prominent members of the Church in Brazil, Holland and elsewhere over the years and these works by a revolving congregation of up to 40 people. As numbers of people increase, so does the need for regular supplies of Daime. Some of this has come into the country from Brazil, through the mail. The number of packages sent from Brazil drew the attention of Customs & Excise who intercepted a shipment of approximately 10 litres of Daime on the 15th of March 2006 and had a sample forensically tested. It turned out to contain minute amounts

of DMT which is prohibited under Irish drug laws. In March 2006 The Gardai (police) were notified and the package was delivered to the commander's address by an undercover police officer posing as a postman. When the commander accepted the package he was arrested and charged with possession of a controlled substance with intent to supply. The premises were searched and more Daime was found. This was confiscated along with the rest. A number of people had begun to arrive at the premises for a spiritual work of the Santo Daime religious calendar called "concentration". They were also questioned but not charged. The commander was taken to the local police station and questioned. He gave a statement to the police and after spending the night in jail, was released on bail.

The case finally came to trial in March 2007 at Monaghan District Court. The State presented its case by reading the sworn statement of the defendant. As the case progressed it became evident that this was far more than a drug possession case. It was obvious that the Daime was being used for religious purposes and this led to a discussion of the Santo Daime religion and doctrine. However, despite this, the judge was hostile to the defence throughout the trial and favoured the prosecution witnesses, particularly the laboratory technician who had tested the sample. The arguments made by the defence as to the amount of DMT present in the sample, together with the evidence of the defence expert witness seemed to annoy the judge. He refused to consider the points made. It was clear, however, that the amount of DMT present in the sample was miniscule compared to the volume of material seized. The judge also considered the evidence concerning the rituals of the Santo Daime ceremonies and this had some impact in his final sentence. He found the defendant guilty of possession of a controlled

substance. He fined the defendant 5000 euros. The charge of supply, which is far more serious, was dropped. He ordered that the Daime be destroyed and bound the defendant to keep the peace failing which he would consider a jail sentence. Leave to appeal was granted.

The district court case was judicially reviewed later in 2007 on the grounds that the judge exceeded his authority in imposing a fine of this size. At the hearing, the High Court referred the matter back to the same judge in the district court for re sentencing. However, they refused to quash the conviction without reason.

The re-sentencing hearing was held in February 2008. This time, however, the judge was extremely mild. He agreed that the defendant could not be compared to a criminal. He said the case was very unusual and he had much time to reflect on it. He understood that a tea was made with herbs from the Amazon rainforest and that it was a Christian sect with catholic influences. He said that freedom of religion was enshrined in the Irish Constitution but that he was not free to make judgements on these matters. He said the chemistry in the tea was complicated and this also needed clarification, but not by the district court. He reduced the fine from 5000 euros to 300 euros. He eliminated the jail sentence completely. He did not require that the defendant sign a peace bond, and he postponed the destruction of the Daime until after the constitutional case.

This decision gives the defendant *locus standii* (standing) for the constitutional challenge referred to at the beginning of this article. Meanwhile the works continue in a low key way. A long road lies ahead but with good preparation and a sympathetic judge the Santo Daime members are optimistic of success.