



Ministry of Health and Ministry of Ecclesiastical Affairs acquitted in case of the right to religious practice.

The Danish Eastern High Court has per March 15, 2016 put to judgment in two combined cases concerning the right to religious practice.

In 2014, a Danish religious movement appealed to the Danish health authorities for exemption from the law on narcotics. The movement also filed to the Minister of Ecclesiastical Affairs to be recognized as a congregation in the country.

The movement wished to receive permission to import Ayahuasca wine for use as a sacrament in connection with the movements religious rites. Ayahuasca wine contains the substance DMT, which is subject to the legislation on narcotics.

By decision of January 8, 2015, Ministry of Health declined to allow the movement to import Ayahuasca wine, and by decision of January 27, 2015, the Ministry of Ecclesiastical Affairs refused to approve the movement as a congregation in this country.

Eastern High Court found that Ministry of Health and Ministry of Ecclesiastical Affairs decisions do not conflict with Denmark's international obligations to protect individuals' freedom of religion.

High Court's reasoning is as follows:

The decision of January 8, 2015 from Ministry of Health, formerly Ministry of Prevention and Health.

By the decision the Ministry refused to grant the applicant exemption from § 3, paragraph. 1 of the Decree on drugs in order to be able to introduce ayahuasca-wine, which undisputedly contains DMT, to Denmark.

DMT is listed in Annex 1, List B, no. 70, in the notice of narcotics. DMT must only be used for medical or scientific purposes in accordance with the Executive Order. § 3, paragraph. 1. This Order is issued, among others on the basis of the law on narcotics § 2. 1, in which Ministry of Health is authorized to decide that substances, including groups of substances that per international adoptions or that the Board of Health estimates endangering due to the narcotic properties which the substances have, or are suspected of having, in this country may only be used for medical or scientific purposes.

DMT is also listed in Appendix I to the UN Convention on Psychotropic Substances. It follows from Article 2 that the inclusion of substances on the psychotropic-convention list is based on a recommendation from a world health organization. In the 17th report of the WHO Expert Committee

on Drug Dependence, 1970, p. 15, DMT is classified in "Group (a)." Substances covered by this group of WHO "...recommended for control because their liability to abuse constitute an especially serious risk to public health and because they have very limited, if any, therapeutic usefulness."

As per the National Board of Health undated stance on "groups of substances under the notice on narcotics" it appears in the same way, that the intake of substances under the tryptamine group, to which DMT belongs, involves a risk of overdose with seizures and unconsciousness and psychotic symptoms with hallucination.

Against this information, it is found unobjectionable to take the view that the restriction of the use of DMT for medical or scientific purposes is justified by the fact that their consumption may pose a serious risk to health and public policy. The scientific studies, adduced as evidence by the applicant, does in this context not lead to a different result. Reference is hereby also made to the Medical Legal Council in the statement of June 25, 2015.

The Health Ministry's decision means that the applicant can not legally use ayahuasca-wine during the exercise of Santo Daimés rituals. High Court finds that this in isolated terms constitute a significant breach of the applicant's freedom to manifest one's religion through "worship."

Since the restriction in the use of DMT, as stated above, are prescribed by law, and are justified by the reasoning that the intake of DMT can pose a serious risk to health and to public policy, the Court, however, finds that the interference with the applicant's freedom to manifest one's religion is a necessary and proportionate interference in a democratic society, and that the intervention does not contradict the Danish international obligations to respect the right to freedom of religion, neither in the European Convention on Human rights Article 9 or in the UN Covenant on civil and political rights Article 18.

The Ministry's decision relates to the substances, which because of their effects may only be used for medical or scientific purposes, and thus concerns an issue that is not affected by Denmark's obligations under EU law. EU nationals access to Denmark in regards to the rules on free movement, are not regulated by the decision. The decision has the character of a general regulation of access to the use of narcotics, which apply to all in this country and which in practice does not affect nationals from other EU states more severely or more often than Danish nationals. Consequently, the decision is not a restriction on freedom of movement. Hereafter, High Court does not find, that the European Union Charter of Fundamental Rights apply in relation to the Ministry of Health's decision, reference to. Charter Article 51.

It is also undisputed during the case, that the introduction of ayahuasca wine in Denmark for religious use, demands that the Ministry of Health, pursuant to § 28 of the Ordinance on narcotics, grant an exemption, and therefore the High Court has not found it necessary to take a separate stance on whether or not a ban against ayahuasca-wine, is covered by Denmark's international obligations under the UN Convention on psychotropic substances.

Hereafter, High Court acquits the Ministry of Health of the claims made by the applicant.

The decision of 27 January 2015 from the Ministry of Ecclesiastical Affairs, formerly the Ministry of Children, Equality, Integration and Social Affairs.

The ministry's approval of communities and congregations, are so that priests or similar authorities may

be authorized to perform marriages with civil validity by the Marriage Act. A decision of approval, implies delegating the right to perform marriages, and an examination of whether the delegation by objective criteria, takes place in an administrative manner. Of the Ministry of Ecclesiastical Affairs reply to question 12 in connection to the Danish parliament reading of the marriage act (Folketingstidende 1968-69, tillæg B, sp. 1927-30), a number of requirements, which a religious community or congregation must meet to be approved. It shows that: "It will of course also be ensured that in the religious community nothing is taught or done which is contrary to morals or public order."

The Ministry would hereafter, in accordance with the government's reply to question 12 under parliamentary examination, inter alia, assess whether the applicant's rituals are contrary to good morals or public order.

It is undisputed, that without permission it is illegal to import ayahuasca-wine in Denmark, and the Ministry of Health had in it's decision of January 8 2015 refused dispensation. High Court does not find, regardless of the applicant's submission, that the ministry (now Ministry of Ecclesiastical Affairs), had the authority to alter this decision.

By letter dated January 14 2015 the Ministry asked the applicant to state whether the applicant still intended to use ayahuasca wine in connection with religious rituals, or whether the applicant as a result of the Ministry of Health's decision of January 8 2015 would refrain from establishing and using ayahuasca wine. The applicant was not clear on this, but stated in their letter of January 20 2015, that it was still essential to their religious practice, that it is recognized, that the applicant has the right to use ayahuasca wine as part of their religious rituals. In a letter dated February 6 2015, the Ministry stated that it would reopen the case if the applicant submitted an unequivocal statement about not wanting to import- and use ayahuasca wine. The applicant did not submit such a declaration. On this basis, the Court justified that the ministry took the view, that the applicant will continue to import and use ayahuasca wine, thereby violating the law on narcotics, which would be contrary to morals or public order.

The court does not find that the Ministry's refusal to approve the applicant as a congregation in itself constitute an interference with the applicant's freedom to manifest one's religion. The decision does not involve an assessment or a reduction in the applicant's exercise of religion, including the freedom to manifest one's religion through "worship." There is therefore not an interference with the applicant's religious freedom or a violation of Denmark's international obligations.

High Court hereafter acquits the Ministry of Ecclesiastical Affairs of the claims of the applicant.

Further information can be obtained from the press contact Judge, High Court Judge Katja Hoegh (phone 99 68 65 12 or 41 25 90 31).

Request of copy of the judgment should be directed to Regnskab@oestrelandsret.dk. For printout payable 175 kr. Read more on www.oestrelandsret.dk.