

Translation by Gayle of the original in Spanish, available here:
http://www.bialabate.net/wp-content/uploads/2008/08/Sentencia_Chile_Marzo_2012.pdf

Santiago, March twentieth of two thousand and twelve.

This court of the 4th Trial of Oral Judgments in the Penal System of Santiago, having met after a rigorous debate on the disposition of article 339 of the Penal Code, has resolved by unanimous vote:

I. In relation to the accusation by the Public Ministry of the crime of illegal trafficking in narcotics, foreseen and sanctioned in the 3rd articles of law 20,000, this court has determined to absolve César Rafael Ahumada Lira and Danae Dimitra Saenz Razis, keeping especially in mind the following in making the decision:

First, as far as proof of the charge, it was not shown that the accused had conspired to offer a numerous group of persons the ingestion of dimethyltryptamine (DMT) in an aqueous solution obtained by an extract of the vegetal species ayahuasca.

In effect, with the proof offered, it was shown that what was offered by the accused to third parties was a potion known internationally by the name of ayahuasca, and not DMT, as the accusation maintains. On the contrary, it was shown that the prohibited substance DMT is not obtained through the extraction of the vegetal species ayahuasca, as the prosecutor's accusation maintain, but rather that it is obtained from another plant, *psychotria viridis* (called chacruna), a species not mentioned in the charge.

In the second place, even if it were demonstrated that the decoction of the mentioned plant ayahuasca, complemented with the plant chacruna, produces a concoction known as

Ayahuasca for that plant's being the main contribution, and that it contains some concentration of DMT present in the chacruna, it was not demonstrated that these cause some kind of risk to the health of the persons. Indeed, the expert at the Legal Medical Institute, Boris Duffau, could not determine the concentration of DMT obtained from the concoction confiscated from the accused, and, on the contrary, defense expert Jordi Riba maintained that the dose of this liquid that are commonly distributed and that were brought to the court has only 0.05% DMT, of which only 15% or 20% passes into the circulatory system, and the experts Jose Carlos Bouso and Jacque Mabit expressed clearly that the Ayahuasca potion is not the same as DMT, a substance which, besides, is present in the human body and in other mammals.

In the third place, it must be emphasized that the 5th article of the Rule of Law 20,000, which expressly indicates the plant species used to produce narcotic or psychotropic substances, whose sowing, planting, cultivation and harvest constitute a punishable act, does not mention *Banisteriopsis caapi* (ayahuasca) nor *psychotria viridis* (chacruna).

Nor does said regulation mention the Ayahuasca concoction as a prohibited substance, so to punish the accused would suppose a clear infringement of the

principle of law.

On the contrary, in the letters brought by the defense, in which exists an express pronouncement of the International Narcotics Control Board about the material, it is expressed that no concoction obtained by the decoction of said plants is under the control of said organization, established in the 1961 Single Convention on Narcotics. And even if there are countries that have regulated, permitted or prohibited Ayahuasca, in the case of Chile, there exists no legislative pronouncement in respect to it.

Finally, with the accumulation of antecedents poured in this case, the court drew the conviction that, far from constituting a danger for the public health, the conduct of the accused has had important benefits reported for multiple people, several of whom took the stand to related their experiences.

II. - In relation to the accusation formulated by Public Ministry of the crime of less serious injuries on the person of Maria Magdalena Castillo Schmidt, this court has also determined to absolve César Rafael Ahumada Lira and Danae Dimitra Saenz Razis, keeping especially in mind in deciding it thus that in this type of case, it has not been proven that the accomplishment of a typical, unlawful and guilty action has caused the result that the law prohibits, at no time was it demonstrated beyond all reasonable doubt that the picture of Magdalena Castillo presented by the doctor had its origin in the ingestion of Ayahuasca, nor that the symptoms specified by the affected one they constitute a harmful result, and still less than it was caused by the action of the accused, nor is it possible to qualify it as malicious by the proofs submitted, On the contrary, it was shown in the case that she was found in psychiatric treatment for eight years for a psychiatric borderline personality disorder and eating disorder, and was subject to constant medication that was voluntarily suspended, leaving the patient destabilized for weeks before her participation in the ritual, which was without harm as demonstrated by the clinical records during her internment in the hospital grounds that show her her vital signs were within the normal range, in such a way that it is not possible to establish the existence of the intoxication that is the foundation of the second allegation.

Finally, this court does not lose sight of the fact that, to decide as it has, the Article 340 of the Penal Process Code establishes that: "No one can be condemned for a crime except when the court that judges arrives, beyond all reasonable doubt, at the conviction that there has really been committed a punishable act that is the object of the accusation..." The norm partially transcribed establishes, as has been said at other opportunities, what must be the standard for conviction in a genuine Democratic State of Law and under the rule of presumption of innocence, and the character of the ultimate rationale for penal sanction for the very grave consequences that an unjust penalty can cause to the one who suffers it, and to all of society." Recalling professor Julio Maier: "the requirement for a sentence of condemnation, in the end, the application of a punishment, can only be founded on the certainty of the court that fails about the existence of a punishable act attributed to the accused. Precisely, the lack of certainty represents the impossibility of the State's destroying the presumption of innocence, constructed by the law, that gives refuge to the accused, a reason by which it leads to absolution. Any other position of the judge with respect to the truth, doubt or probability, prevents the sentence..." The legal measures that have been

decreed against the defendants are disposed of, and it is become ordained that this decision be noted in all public and police records and indexes in which they will appear. The sentence will be written up by the magistrate Geni Espinoza Morales and will be published on 28 March at 15:00 hours.