

Santo Daime in Spain: a Religion with a Psychoactive Sacrament

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The Santo Daime Church calls ayahuasca¹ *Daime*. Ayahuasca, or Daime, is a concoction, the ingredients of which are the stem of the liana *Banisteriopsis caapi*, and the leaves of the shrub *Psychotria viridis*. Both plants grow in the tropical rainforest of South America, mainly in the high basin of the Amazon (Gates, 1982; Schultes & Hofmann, 1982). Due to the increased exploitation of the *B. caapi* to brew this concoction, studies are being conducted about its vegetative propagation (Martins & Hoff, 2007). This is done mainly in closed settings, since a large scale reproduction outside of the proper environmental conditions of the tropical rainforest, where these plants are native, seems difficult (Tucker, 2005). The main consequence of this is that the Santo Daime Church of Spain must import Daime from Brazil.

The Introduction of Ayahuasca to Spain: Introduction of Santo Daime

Until today, the first known facts about the introduction of ayahuasca to Spain, as far as we are aware, points to Francisco de la Cal, in the year 1985; he was the first carrier of this drink originating in the Colonia 5000, a community of the Santo Daime Church, close to Rio Branco in the State of Acre.

It was not until 1988 that ayahuasca was brought to Spain on a regular basis. This occurred through the Chilean doctor Claudio Naranjo, who was one of the pioneers of the studies about this substance (Naranjo, 1967, 1973). In that year Naranjo organized a Sufi meeting in the province of Almería – in a place which is known as Babia, close to Mojácar – and, through a friend of his, invited the Brazilian Dácio Mingrone, who brought ayahuasca (López-Pavillard, 2008). Thus, these were what we may call the first sessions with this beverage conducted in Spain.

According to Juan Carlos de la Cal (personal communication, 2009), “the first work which was done in Spain with the same ritual as those in Brazil was in San José in the year 1989 [March 19, a date which in that particular year coincides with the beginning of Easter week], in Cercedilla [province of Madrid] and was conducted by Daniel [López Becerra], an Argentinian *fiador* [person who maintains an explicit commitment with the church] from Céu do Mapiá.” In the same year, 1989, representatives of the Church of Santo Daime arrived in Babia,² coming from Céu do Mar, a Brazilian branch in Rio do Janeiro; a group set up originally by the psychologist Paulo Roberto Souza e Silva, Teté and Nilton Caparelli, among others (Martínez Ibars, 2002). This was the first time that members of Santo Daime celebrated their rites in Europe.

In 1992, the year that Spain celebrated the fifth centenary of the “discovery” of America, represents a turning point in the introduction of Santo Daime to this coun-

try with the arrival of Alfredo Mota de Melo in August, son of *Padrinho* Sebastião and commander of Céu do Mapiá, located close to Boca do Acre, in the Brazilian state of Amazonas. Initially, *Padrinho* Alfredo conducted sessions in Babia; later he moved them to the province of Guadalajara, a place known as Alcohete:³

During this first visit there were only three, at most four Spanish *fardados*, which were the pillars on which the building of Santo Daime in Spain was constructed. Since two of these *fardados* (Miguel Sariñena and Esther Martínez) were in Catalonia, this was the place where the next visit of Alfredo took place in August 93, when the same expectation and fascination repeated itself, for many of those hundreds of people who took part at a gathering which hadn't been announced but had been made known by word of mouth (Martínez Ibars, 2002).

In an attempt to quantify the activity of Santo Daime in Spain, they count branches in Barcelona, Gerona, Lérida, Logroño, Madrid and Mallorca. They count 250 *fardados*. Yearly about 300 other members of the Church and visitors attend the ceremonies as well (CEFLURISE,⁴ personal communication, 2009).

The Process of Recognition of the Santo Daime Church as a Religious Organization in Spain

Why might an association which is constituted by law and therefore has full judicial status be interested in enrolling in the register of religious organizations?

Article 16.1 of the Spanish Constitution recognizes the individual's freedom of religion and worship. Nevertheless, when an association is enrolled in the register of religious organizations, this has various legal consequences: the most relevant is the recognition of one's legal identity as a religious group, which gives it a more definite status. This presents the opportunity to manifest its complete autonomy in order to establish its own norms within the organization. As the Spanish Constitutional Court said, this status "is also being projected towards an outside perspective" through which "one can exercise religious liberty collectively with immunity of constraint, without obstacles or disturbances of any kind." Thus, the Criminal Code in its article 523 "orders a specific and increased protection against whoever «violently, threatening, disturbing or assaulting, hinders, interrupts or disturbs the acts, functions ceremonies or manifestations of the religious confessions which are enrolled in the corresponding public register of the Ministry of Justice ...»" (España, Tribunal Constitucional, 2001). Thus, it is not irrelevant whether it is or is not *legalized*.⁵

The first steps taken by Daimistas to be recognized as a Church were given in Barcelona in the summer of 1993, motivated by some headlines in the sensationalist press about the activities of Santo Daime (Martínez Ibars, 2002). It continued in 2000 following the arrest of the Daimistas in Madrid, and ended with the administrative and judicial process which lasted from 2001 until 2003, the date on which the Church was finally enrolled in the register of religious organizations.

In Easter of 1993, a group of Daimistas lead by Nilton Caparelli conducted sessions in Ibiza and in Catalonia. In May, a group of fifteen people got together in Catalonia and started to conduct sessions on a regular basis. In August of the same year, *Padrinho* Alfredo travelled to this Autonomous Region and in Barcelona Alfredo in-

troduced a selection of Daimista hymns. This event was reported in sensationalist media and caused alarm and fear among the organizers. It also caused the first steps to be taken in the attempt to legalize the Santo Daime Church in Spain through its enrollment in the registry of religious organizations (Martínez Ibars, 2002). Nevertheless, the initial fear caused by the press headlines calmed down and after a while other fears arose: the enrollment in the registry of religious organizations and appearance next to other religious groups would cause the risk of being confused with another sect and that the registry itself could give publicity to some activities which had been developing discreetly. In the end, all this caused the rejection of the idea of legalization, considering that by then there were no more “than a mere handful of people” (Juan Carlos de la Cal, personal communication, 2007).

The situation continued without changes until April 4, 2000 when officials of the Narcotics Central Unit (*Unidad Central de Estupefacientes*) arrested two people from Brazil and one from Spain who had come to pick up the others at the Barajas Airport in Madrid. All three were members of the Santo Daime Church, and they were brought to the Police Headquarters where they were kept under arrest for three days; they were then transferred to the Soto el Real Prison (Cal, 2009; Ribeiro, 2005).

The press described the news of the arrest using expressions such as “a sect which originated in Brazil,” “destructive sect,” “Cefluris, the mother sect,” “cover,” “catcher of followers,” and “pseudo-religion.” In the articles it was written, as a vague piece of information, that “altars” had been found, which left the reader to judge for himself how to assess this fact (ABC, 2000; El País, 2000; Interviú, 2000).

On April 7, 2000 the two Brazilians were sentenced to provisional prison and the Spanish Santo Daime member was sentenced to provisional freedom under bail. In the committal order CEFLURIS was described as a sect, the rituals of which are based on the consumption of Daime:

which contains an active psychotropic substance known as DMT, (Dimethyltryptamine), a substance which is scheduled in the List I of those psychotropic substances which are under international investigation by the Vienna Convention of 1971, and which cause great health damage producing hallucinogenic effects which create a moral dependence on the “guru” or “shaman” who leads the ingestion, and, at the same time, a physical dependence on the substance (España, 2000a).

During the investigational phase of the proceedings, the judge incorporated a series of reports and documents, in which the DMT found in the samples of the ayahuasca confiscated was quantified.

In the abovementioned report by the Spanish Scientific Police Division (*Comisaría de Policía Científica*), dated May 25, 2000, the DMT quantified in various samples of ayahuasca is given. In the sample where a high concentration of DMT was found, a typographical error occurred, according to which the concentration of DMT was 87%. The error was corrected through an enlargement of the expert report on June 6, 2000, in which it was shown that the percentage of DMT was 0.087% (see chart below). The sample which had the least DMT contained 0.022%. The variability of the concentration of DMT found in the samples, a common occurrence in ayahuasca, is significant (Callaway, 2005a, p. 152-153; Riba 2003, p. 16).

Análisis Cuantitativo de las muestras que contienen N,N-Dimetiltriptamina (DTM) extracción macerando durante 48 horas

MUESTRA n°	% DMT
4 Barajas	0,057
5 Barajas	0,087
6 Barajas	0,054
29 Galileo	0,071
32 Ronda Segovia	No hay cantidad suficiente para la extracción
34 Mérida	0,061
35 Mérida	0,064
39 Mérida	0,022
8 Boadilla	No hay cantidad suficiente para la extracción
113 Boadilla	No hay cantidad suficiente para la extracción

Source: Spanish Home Office. Police headquarters. Scientific Police Division. Analysis Unit – Chemical Analysis Section Ref. 323-Q1-00. “Enlargement of the expert report N°323-Q1-00 about a quantitative analysis of samples which contain DMT,” June 6, 2000

On July 10, 2000 the National Institute of Toxicology gave out a report in which the low toxicity of DMT found in the samples was shown. This brought the conclusion that in order to reach a concentration of 0.087% of DMT the psychoactive dose must be “at least one liter, and probably much more.” The conclusions of the Report are due to the information handled by those who wrote it in the sense that “the intravenous doses of DMT described as hallucinogens are between 75 and 100 mg for an adult”; orally the doses must be “at least ten times higher than those set for the intravenous way (and probably much higher)” (España, 2000b).

Finally, on October 20, 2000, the Investigating Court (*Juzgado de Instrucción*) n°3 of Madrid ordered the file of the proceedings in which the affirmations of the abovementioned toxicology report were gathered. They came to the conclusion that the substance was incapable of “injuring the juridical asset protected by the crime in the article 368 of the C.C. (Criminal Code).” Then the judge Teresa Palacios pointed out that the arrested people were regular consumers, that the quantity of the drug was insignificant “therefore it was not enough to produce hallucinogenic effects (ten liters of ayahuasca were inspected in Barajas), that the projected place for the consumption was a closed space where no third party could interfere and participate in a hypothetical distribution of the substance, that the people who consumed it were “people who were sure and determined,” and that the consumption occurred immediately.” Due to this, judge Palacios concluded that “most definitely these are various addicts who

build a common ground with the goal of acquiring the substance which was to be consumed between all of them” (España, 2000b).

When this judicial process was over, of course, we [the members of the Santo Daime Church] were talking to the judges ... we said, what are we going to do now? You have been keeping us in limbo for six months now, two people in jail.... you did not crush us but you caused us some damage. Now, the idea is that we want a replacement, an indemnification, how do we do that? (Juan Carlos de la Cal, personal communication, 2007).

Thus, people of the National Court told them that they did what they thought was advisable but at the same time they suggested that instead of filing a complaint against them, they should fight for its *legalization*: “To demand its recognition so that this will not repeat itself,” they told them (Juan Carlos de la Cal, personal communication, 2007).

Hence, on June 19, 2001 the Santo Daime Church was formed (CEFLURISE), and the statute expressed as primary goal “the reconciliation of the Christian experiences, beliefs and doctrines with those of the Indian cultures of Amazon” (article 2.1), and declared its spiritual subordination to CEFLURIS (Centro Eclético de la Fluente Luz Universal Raimundo Irineu Serra) (article 5). In its article 6 it says:

With the goal of facilitating the experience of transcendence and the communion with God, with brothers and nature in some liturgical celebrations we administer a sacrament which is called Santo Daime, a drink which is property of the religious community. It has a strong symbolic meaning (common-union), is outside legal traffic and cannot be bought or sold nor be any kind of property.

In order for it to be used correctly, the church is responsible for its transport, guarding and custody as well as for the care and surveillance. Thus, anybody who wants it can have access to it without any discrimination and it may be administered only in specific liturgical celebrations (España. Ministerio de Justicia, 2001).

Some days later, on June 22, 2001, the whole documentation was presented to the General Department of Religious Affairs (*Dirección General de Asuntos Religiosos*) within the Ministry of Justice, asking for the enrollment of the Santo Daime Church (CEFLURISE) in the register of religious organizations.

On December 17, 2001 the Ministry of Justice decided to deny the enrollment of the Santo Daime Church. In point 4 of the resolution it said that:

...the religious preponderance of the ends of the organization is not proved. Religious ends mix with others which are of social, cultural or humanistic character which does not unite the essential and mainly religious character which, in the sentence expressed by the Supreme Court on June 25, 1990, is a requirement for the enrollment in the register of religious organizations.

Also, the same article refers to “the values of harmony, love, truth and justice” which have a philanthropic, rather than religious content ⁶ (España. Ministerio de Justicia, 2001).

In point 6 of the same rejecting resolution the ministry claims the lack of a doctrinal body through which Santo Daime expresses its religious beliefs “which they want to impart to other people,” neither does it prove “the existence of ministers of worship or priests in their distinct denominations and functions,” two characteristics

which according to the Ministry of Justice define a religion. These characteristics however are simply administrative interpretations imparted by the Ministry itself. Article 3 in the Spanish norm that regulates the Religious Freedom indicates what is out of the religious:

“Article Three [Section] Two. It will be excluded from the protection of the present Law the activities, purposes and entities related to the study and experimenting of psychic or parapsychologic phenomena or the diffusion of humanistic or spiritual values or other similar ends apart from the religious” (España, 1980).

It is a negative definition that defines what is not. Apart from this there is no systematic description of what is religion, simply isolated remarks in administrative resolutions like the preceding one, or in sentences of the Supreme Court or the Constitutional Court.

The application for the enrollment of the Santo Daime Church was submitted on June 22, 2001. According to the Spanish legislation, the administration must respond within a time frame of six months. If this time frame is exceeded without an official response, it is understood that the application has been accepted by positive administrative silence. Even though the notification of the denied resolution was issued on December 17, it was not conveyed until January 8 the following year and thus passed the legal time frame of six months. This allowed Santo Daime to begin a litigation process against the Administrative Agency, in order to enroll in the Registry of Religious Organizations. The whole process can be traced in the chronological chart at the end of this chapter. On March 14, 2003 the sentence was passed. On October 8, 2003 judgment was executed in favor of the church being enrolled in the register of religious organizations.

So at last Santo Daime got listed in the register of religious organizations not because the Ministry of Justice analysed the matter in depth but because it made a mistake of procedure.

The Procedure of Importation and Possession of Daime

Once the difficult task of the legalization was achieved, on November 17, 2005, Santo Daime applied to the Spanish Agency for the Regulation of Drugs and Health Care Products (*Agencia Española del Medicamento y Productos Sanitarios*) for the authorization of the importation and possession of ayahuasca, a petition that was rejected by the agency by negative silence. Santo Daime appealed against this rejection on March 23, 2006, before the Madrid's Administrative Law 1 Court (*Juzgado Central de lo Contencioso-Administrativo*) nº 8⁷, which passed a verdict on June 1st, 2007, and turned down the interposed appeal by the church. The Santo Daime Church interposed an appeal in a second instance against the abovementioned sentence before the national court, litigious-administrative court, 4th section. This court passed a verdict on January 16, 2008, once again rejecting the claims of the Santo Daime Church.

In the first denying verdict, a report by the Medicines Agency (*Agencia del Medicamento*) on July 6, 2006 was presented in which it was pointed out that *B. caapi* is a plant the commercialization of which “is prohibited because of its toxicity” by an order of the Ministry of Health and Consumer Affairs (*Ministerio de Sanidad y*

Consumo): “The symptoms of poisoning produced by this plant are: sweating, paleness, profuse sweating, salivation, dilation of the pupils and nausea. Cases of mortal poisoning exist.” The *P. viridis* is said to provoke “cardiotoxicity (arrhythmias), hypertension, pulmonary weakness and gastrointestinal disorder, additionally yielding the danger which derives from its slow elimination through the urine. This can take up to 60 days, and causes the risk of accumulating the active substance in the organism.” The verdict concludes that ayahuasca is a substance that can be considered a drug and psychotropic substance, and thus must be subject to the Pharmaceutical Legislation (*Ley del Medicamento*) (Law 25/1990, of December 20, articles 41 y 42), and the order of the Ministry of Health (*Ministerio de Sanidad*) (Order SCO/190/2004, January 28).

In the second denying verdict the judicial decree pointed out that in the report of the Medicines Agency in July 2006 the existence of DMT in ayahuasca was already shown. For that reason the brew was scheduled in the List I of the annex of the agreement about psychotropic substances on February 21, 1971. In article 7, its use and import was prohibited “except for scientific and medical reasons, by previous authorization and investigation by the state.” Also, it was required that ayahuasca must remain prohibited by the order of the Department of Health. In the order it is indicated that the part of the *B. caapi* which must be controlled is the root, “the species *Banisteriopsis* (also yajé, yagé or kapi) has the structure of a creeper or liana of the Amazonian jungle (see <http://es.wikipedia.org/wiki/banistriopsiscaapi>); it is a root, thus it appears as such in the order.” The sentence showed that once it was established that ayahuasca is a psychotropic substance, “it doesn’t include the use with ends that differ from the ones which had been legally dictated, the debate is resolved, hence the legal norms prevent the use that the appellant claims” (España, 2008).

Moreover, if the constitutionally recognized right of religious freedom is violated, as the Santo Daime Church complained, the sentence shows that the freedom of religion and worship is not an absolute right. It must be limited not only for health reasons but also for reasons of public order, which is protected by law, just the same as with the regulated use of psychotropic substances at international conventions. Because of this:

“the exercise of the protected rights is recognized in article 16 of the SC [Spanish Constitution] and may not disregard the legal frame with which one has to cope, the reason why we **cannot understand** (sic) that the right to practice the acts of worship is violated when at the same time one claims the use and possession of substances which are subject of a strict pattern of intervention, in which the use, except for medical or investigational ends, is prohibited” (italic in original text; bold added by us).

Santo Daime appealed this sentence (España, 2008).

Conclusions

From a legal point of view the use of a psychoactive sacrament has important consequences. The Spanish Criminal Law sanctions “those who cultivate, produce or circulate, or in any other way spread, help or facilitate the illegal consumption of toxic substances, drugs or psychotropic substances” with jail (article 368 of the penalty

code). It is a matter of a “blank law,” meaning that the law itself makes reference to another law, which tells us which substances are considered to be drugs, and therefore might lead to the use of this Criminal Law. In this case, to know substances that are considered a drug or psychotropic we have to look to the Vienna Convention 1971 and the lists of its annexes. DMT is included in the first list of the Convention; thus, anybody who carries out any of the described acts in this article with ayahuasca can be punished.

Nevertheless, there is no penalty for the consumption, nor for the actions that people take to prepare themselves for the consumption, such as the production, the cultivation or purchase. The Spanish Supreme Court has been interpreting this legislation and by case law has legalized the shared consumption, as long as this happens among habitual consumers, without publicizing the event, when it is done by people who are sure and determined of what they are doing and there is no context of gain.

This is the situation of any person consuming ayahuasca in Spain, and this caused various groups of individuals to form “clubs” of ayahuasca consumers, who perform their consumption as a group in order to minimize the risk of being convicted for it. These risks never disappear completely. The prerequisite which is most difficult to fulfill is the one that demands all the participants to be “habitual consumers,” which excludes the possibility that people who have not consumed ayahuasca previously can participate. As a result, neophytes will never take part in these groups and if they do they may not declare being so.

The Church of Santo Daime can be considered one of these “clubs,” among other things. This is what judge Palacios did when she freed the Daimistas who had been arrested in the Barajas airport in the above mentioned incident (see also Labate, 2005, p. 401-402). Additionally, the Santo Daime Church counts on other protective shields: the freedom of religion and worship. The consumption of Daime is part of their religious practice, and consequently, this right is realized in the exercise of constitutionally protected freedom.

Religious freedom reaches its limit when it comes to the protection of public order. This includes “the safeguard of security, health and public morality, essential elements of public order protected by law in the confines of a democratic society” (Article 3 of the Organic Law 7/1980, July 5, of Religious Freedom) (España, 1980). Thus, as we can see in many cases in other countries reported through this volume, any criminal contingency related to the liturgical use of Daime by the Santo Daime Church will be judged, and these two conflicting rights will be put in balance: freedom of religion and worship vs. order and public health. It will be decided according to the concrete supposition, determining which one is more relevant.

On the other hand, the religious practice of the Santo Daime Church, with freedom, as is the case of Santo Daime and UDV in the USA (see Haber and Bronfman in this volume), is also very much influenced by the administrative law. This part of the law concerns all questions of import and storage of Daime. By holding back DMT, everything associated with its preparation, import and distribution is within the scope of the law 29/2006, of July 26, which deals with the guarantees and rational use of medicaments and health products, which in turn is conditioned by a series of directives of the European Union. This law and its normative development establish a series of requirements such as labeling and bottling, manufacture, etc, which should

be a great effort to achieve. The main problem, though, is that the law stipulates the only legitimate use for a psychotropic substance to be as medicine, excluding the possibility of Daime to surrender to this Law for liturgical use.

Thus, we see two aspects oppose each other: public order on the one hand, which is expressed in a legislation protecting the public health, and freedom of religion and worship on the other hand. For the free exercise of freedom of religion and worship it is necessary that this judgment will not be applied; thus the approval of an exception for Daime is necessary, not for medical but for sacramental use, and it will be allowed to be subject to the medicine law in order for it to develop the right of free legal use. The outcome of this legal conflict is very unpredictable. This can only be left to the high judicial authorities of Spain and will depend on their understanding of freedom of worship if this, in the case of the Santo Daime Church, entails the consumption of Santo Daime.

Presently, after analyzing the two cases in which Santo Daime were involved, one in the criminal and the other in the civil law, it can be said that the tolerance applied to Santo Daime is based more on the fact of it being a group of consumers rather than it being consumed in a religious environment. Had this not been the case, importation of Daime should have been legalized as a sacrament.

Chronological Chart of Santo Daime in Spain

04/04/2000	Arrests at Barajas airport (Madrid)
05/04/2000	Preliminary report of the Scientific Police Division in which DMT is found
07/04/2000	Investigation phase. Judicial decree of prison by the judge Baltasar Garzón Real. Central court of Instruction nº5 of Madrid. Previous abridged proceedings 88/2000
07/04/2000	News about arrests and registers appear in the press
25/05/2000	Expert examination report nº323-q1-00 about quantitative analysis of samples which contain DMT
06/06/2000	General scientific police division. Laboratory of chemistry. Madrid. Expert examination report corresponds to the issue N/Ref 323-Q1-00 relative to the quantification of the sample which contains DMT
27/06/2000	Report of the Spanish agency of drugs, Ministry of Health and Consumer Affairs, corroborating the qualitative and quantitative analysis of DMT in the analyzed ayahuasca by the Scientific Police Division
10/07/2000	Ministry of Justice. National Institute of Toxicology. Report N°04508/00 Enlargement. S/Ref. D.P. nº 60/00 in which the minimum dose of one liter or more is established for ayahuasca to have psychoactive effects
20/10/2000	Judicial decree from the judge Teresa Palacios by which the previous proceedings are filed. Abridged proceeding 60/2000, instruction court nº3, Madrid, juridical decree 20/10/2000
19/06/2001	Foundation of the association "Santo Daime Church (CEFLURISE)"
22/06/2001	Request of the enrollment of CEFLURISE in the register of religious organizations
08/01/2002	Denying resolution by the general director of religious matters
23/05/2002	Petition at the Administrative Central Court against the Judgment dated 08/01/2002 pleading positive administrative silence. Litigious-

	administrative court. Section: 3. Madrid. Ordinary proceeding 548/2002. Recurrent: Santo Daime Church in Spain
03/10/2002	Respond to the objection by Santo Daime by the attorneys of the state, on 03/10/2002
14/03/2003	Sentence. Judicial decree nº 548/02. Madrid, 14/03/2003. Litigious administrative objection nº 548/2002 interposed by Santo Daime against the resolution of Dir. Gral. of religious matters of 17/12/2001, in which the enrollment was denied, and against the resolution by the same authority of 4/06/2002 which refused the objection of the interposed reposicion against the former
07/10/2003	Notification of the Department of Justice, signed by the general director of religious matters, Alberto de la Hera, agreeing to the enrollment of the Santo Daime Church of Spain
08/10/2003	Enrollment in the register. Certified notification by the register the Santo Daime Church, agreeing to the enrollment into the register of religious organizations, signed by M ^a Rosa Andrés García
17/11/2005	Application to the agency for the regulation of drugs to import Daime
23/03/2006	Appeal before the central court of the litigious-administrative number 8
01/06/2007	Denying verdict by the Central court of the litigious-administrative number 8, in the ordinary proceedings 58/2006
16/01/2008	Denying verdict by the national audience, litigious-administrative court, Section 4 ^a

- 1 Ayahuasca is a Quechua word which is a compound of two names: Aya which translates to “carcass, dead, corpse”, and Waskha, which translates to “rope, straight, string, cable or anything intertwined or braided and made of materials such as wool, agave or leather” (Academia Mayor de la Lengua Quechua, 1995).
- 2 According to Alberto Groisman, the first session would be held at Caravaca (province of Murcia) (Groisman, 2000)
- 3 Ignacio Martín Poyo played a significant role in the introduction of ayahuasca in Spain in the period from 1988 to 1992.
- 4 Centro Ecléctico de la Fluente Luz Universal Raimundo Irineu Serra España
- 5 For the Daimistas the enrolment in the register of religious organizations assumes its legalization in Spain, even though the Santo Daime Church wasn't illegal before this enrolment. According to our experience in this field, it seems that they have internalized that their religious practice will only be legal in Spain when their Church is recognized as a religion after its registration has taken place and so the process of registering is usually known as "legalization process" (see Cal, 2009).
- 6 Santo Daime (CEFLURISE) and UDV were not questioned as “sincere religions” in its processes, as it happened in the USA (See Bronfman and Haber in this volume).
- 7 Court in charge of trying litigations in which an administrative agency is a party to a case arising from actions taken by the agency in the exercise of its functions.

Legal Recognition of the União do Vegetal in Spain

José Vicente Marín Prades

Preliminary studies for the registration of the CEBUDV in the Registry of Religious Entities of the Ministry of Justice in Spain

On the first day of April in the year 2000, studies to support legal recognition of the CEBUDV started in Spain. The initial technical information showed that in compliance with Article 5 of the Spanish Organic Law of Religious Liberty (1980, Ley Orgánica de Libertad Religiosa), the CEBUDV should be registered in the Religious Entity Registry (Registro de Entidades Religiosas; hereafter RER), which is an organ of the Ministry of Justice, created by Royal Decree 142/1981. The registration of an entity within the RER confers Government recognition of the institution as a legally constituted entity, conferring upon it certain legal rights under the law.

According to Article 6 of the Organic Law of Religious Liberty (1980), once registered, the entities have full autonomy and can establish their own organizational rules, internal regiment, as well as nominate their religious leaders and maintain relationships with other religious organizations, be they national or foreign ones.

Favorable Decision Regarding the Consumption of Ayahuasca in Spain

On October 20th, 2000, the judge Maria Tereza Palácios filed a conclusive decision in the process against the Brazilian citizens who had entered Spain with 10 liters of ayahuasca. (España, 2000b, our translation) The detention occurred because the introduction of the tea into the country was considered a crime against public health, since ayahuasca contains DMT, a substance that is listed as a drug in the United Nations Convention of Psychoactive Substances of 1971.

The scientific commission of the police analyzed samples of the ayahuasca apprehended and verified that the “purity” of the DMT was 0.087%. The National Institute of Toxicology stated that for the DMT to be considered a hallucinogen the quantity of intravenous DMT must be between 75 and 1000 mg and, when taken orally, the amount must be at least 10 times more. (España, 2000b) Acknowledging this evidence, the judge affirmed that “we can conclude that the apprehended substance, considering its purity and liquid state, shows it to be a product incapable of harming the juridical good protected by Article 368 of the Criminal Code.” Because the amount of DMT in the ayahuasca was considered very low, the judicial decision stated that it could not be considered a drug. Consequently, introduction of ayahuasca into Spain could not be characterized as drug trafficking.

Registry of the Centro Espírita Beneficente União do Vegetal in the Notary Public's Office

In Spain, the written request for inclusion in the Religious Entity Registry must be accompanied by an authenticated document that proves the foundation and establishment of the entity in Spain. According to Article 3° of the Royal Decree 142/1981, this document must be registered in the notary public's office. In compliance with this article, on the 5th of May, 2001, the Centro Espírita Beneficente União do Vegetal was officially founded in Spain.

The CEBUDV Request for Registration in the Religious Entity Registry of the Ministry of Justice

On July 11th of 2001, the Centro Espírita Beneficente União do Vegetal entered its inscription request in the Religious Entity Registry of the Justice Ministry. On December 26th of 2001, it was denied by the Ministry of Justice.

The Spanish law 30/1992, which regulates Administrative Procedures, determines that the maximum period for the interested person to receive a response from governmental organs is six months. Thus, after this period, the inscription in the RER is compulsory as established by the "principle of administrative silence." (Law 30/1992, Article 42) This is what had happened in the case of the "Iglesia del Santo Daime de España" in the RER. However, it is important to clarify that registries made due to the "principle of the administrative silence" also provide full rights to the entities inscribed.

In summary, the judicial foundation of the Ministry of Justice's resolution denying the CEBUDV's registration request were:

1. Formal registration in the RER provides the Entity with legal recognition, and the Organic Law of Religious Liberty (1980) affirms the right of such legally recognized entities as having special rights under the law.
2. "Although, through the documentation presented, the will of the solicitants is clear to create an entity with a Church or Confession nature, this condition was not credited sufficient."

Constitution of the Entity Centro Espírita Beneficente União do Vegetal – Núcleo Inmaculada Concepción

After the denial of the RER inscription, an attorney who specialized in religious matters was hired by the CEBUDV. The lawyer prepared an informative report for the CEBUDV. In this document he recommended the constitution of a new entity. After the favorable opinion of the Juridical Department of the CEBUDV, on the 6th of August 2004, as suggested, the name "Centro Espírita Beneficente União do Vegetal – Núcleo Inmaculada Concepción" was approved. Accordingly, on the 13th of April 2005, the new entity was constituted and registered in the Notary's Public Office. For this purpose, following the lawyer's instruction, the CEBUDV statutes were modified to reflect requirements of Spanish norms.

New Solicitation of Inscription in the Religious Entity Registry

Once the new entity had been established, the request for inscription in the RER of the “Centro Espírita Benéfico União do Vegetal – Núcleo Inmaculada Concepción” was made on the 6th of May 2005.

On the 11th of November 2005, the Registration was once again denied on the grounds that the same request had already been denied in 2001 because the information presented was insufficient for the entity to be characterized as a confessional religious institution. The CEBUDV then faced the choice to appeal administratively (*reposición*) or judicially (*recurso contencioso-administrativo*). It decided to initially try the administrative channel, lodging a *recurso de reposición* in the Ministry of Justice on the 20th of December 2005. In the appeal, it contested the assumption that the entity was the same as the one which had applied in 2001, and presented jurisprudence of the Spanish high courts in favor of religious liberty.

The *recurso de reposición* was denied on January 26th of 2006 due to the similarities of the entities. Having exhausted all the administrative possibilities, a contentious-administrative appeal was lodged in the National Audience (Audiencia Nacional).

Appeal to the National Audience

The National Audience has its headquarters in Madrid and has the power to judge, *inter alia*, crimes against the Royal House, High Organs of the Nation, and the government. The contentious-administrative unit of the National Audience solves contentious-administrative appeals against resolutions and acts of the Ministries and Secretariats of the State. Thus, as the denial of an inscription in the RER is a function of the Ministry of Justice delegated to the General Directory of Religious Matters, the National Audience is the proper place to file an appeal. On the 31st of March 2006, the contentious-administrative appeal no. 201/2006 was filed with identical arguments as in the *recurso de reposición*.

On the 4th of October 2007, the National Audience gave a favorable response to the CEBUDV, annulled the resolution of the Ministry of Justice, and recognized the CEBUDV's right to be registered in the Religious Entity Registry. On the 16th of June 2008, the CEBUDV was inscribed as a religion in the RER of Spain under the registration number 1475 RG.¹

Conclusion

The recognition of the CEBUDV as a religion in Spain creates a precedent that can be used in favor of the recognition of the CEBUDV in other European countries. Furthermore, Spain is a party to the European Convention of Human Rights (Council of Europe, 1950), which guarantees the right to have and practice religion. As such, the recognition in Spain can be used by the European Court of Human Rights in favor of similar cases.

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- 1 To see the CEBUDV inscription in the Religious Entity Registry, access its website <http://dgraj.mju.es/EntidadesReligiosas/NCindex.htm> . On this website it is also possible to consult all religions registered in Spain. (Website accessed in June, 2009).