

The Santo Daime Legal Case in Italy¹

Walter Menozzi

Towards the middle of the 1990s in Italy, little groups of Santo Daime followers began to form, as they had in many other European and American countries. In particular, two centers affiliated with the Brazilian church of CEFLURIS emerged, one in Assisi in the province of Perugia, and another close to Genoa. From then on, these two small groups have continued to carry out their practical following of the spiritual Santo Daime liturgical calendar, being able to count on the modest amounts of sacrament that came regularly through customs in Italy equipped with a Phytosanitary Certificate issued by the Brazilian Ministry of Agriculture, which was recognized by Italian authorities. The activities of the Italian Santo Daime centers were carried out in total transparency and without any dissimulation.

The Santo Daime center of Assisi was and is known in the environs and by local institutions. For example, on two occasions the Theological Institute of Assisi (the University of Theology of the Franciscans) contacted the center of Santo Daime di Assisi. The first time was on the occasion of a research project of the Theological Institute on the variety of religious movements in the Umbria region, which was published in a book entitled *L'Arcobaleno del Sacro in Umbria* (The Rainbow of the Sacred in Umbria). In this book, the existence and the activities of the Santo Daime movement in Assisi were documented and some of the persons responsible for the center were interviewed. The second contact occurred in regard to a dissertation on Santo Daime that was undertaken for a specialized degree in fundamental theology by a postgraduate of the *Piccoli Fratelli di Foucault* Confraternity, who studied at the aforementioned Theological Institute. His dissertation describes the movement of the Santo Daime in general terms and analyzes, as a specific case, the Center of Assisi, Regina della Pace (Queen of Peace). (Curuchich, 2003) Moreover, the Italian group of Santo Daime, together with Santo Daime exponents coming from the Brazilian forest, had officially participated as a religious movement of the Amazonian forest in the inter-religious meeting that took place in September of 2003. At this gathering, the inauguration of the new Saint Francis statue at the *Eremo delle Carceri* of Assisi was celebrated. During this meeting the Santo Daime group had the occasion to sing the hymn *Sol, Lua, Estrela* of Mestre Irineu in front of the representatives of the various religious communities (Catholic, Hebrew, Muslim, Buddhist, Hindu) and the Perugia Province council members present at the celebration. The event, inside of a wider program entitled "The Week of Peace" was organized by the cultural association *Mandir della Pace* of Rome and has been filmed and transmitted on the TelePerugia TV-channel.

First Steps towards Official Recognition by State Authorities

On June 20th of 2003, with the aim of receiving official recognition of their legal position, an application for legal acknowledgment as an “agency of an operating cult” was issued to the Prefecture of the Republic in Perugia. Attached to the application was the complete documentation requested by the Ministry of the Interior needed for the registration of the Santo Daime Church as an Italian juridical entity. Among the plentiful amounts of paper produced, including an official series of documents officially translated by the Italian Consulate in Brazil, we documented the relationship to CEFLURIS,² the balance sheets, and the bylaws of the Church, in which it was specified that the religious activity was based on ritual use of the sacred beverage Santo Daime, along with details about its composition and preparation. The application for legal acknowledgment was sent to the Ministry of the Interior by the Prefecture of Perugia, together with all the documents attached.

In the meantime, however, the Brazilian Ministry of Agriculture had stopped issuing the Phytosanitary Certificate necessary for the ayahuasca tea to pass through customs in Italy. In August 2004, while coming back from Brazil, I personally was stopped with 27 liters of Santo Daime at the Perugia Airport. The customs employees, in the absence of the Phytosanitary Certificate, could do nothing but confiscate the Santo Daime tea. A juridical case was opened, in the course of which chemical analyses showed the presence of DMT in the beverage.

The case was given to the Anti-Mafia team of the *Guardia di Finanza* (GdF) in Perugia, a special police branch specializing in crimes of commerce and economic matters, including drug trafficking. On September 29th, 2004 (the day of Saint Michael) the GdF team arrived at the Santo Daime community in Assisi, Regina della Pace, and searched the houses of some Daimistas, finding and confiscating modest amounts of the Daime tea. In the following months, other house searches were conducted in Rome, Trieste, Ovada (Alessandria), and Milan. In Rome and Ovada, the GdF found other samples of the Daime tea in very small quantities.

In February 2005, a Brazilian girl, a Santo Daime *fardada*, arrived in Milan to stay for an extended period of time. She wrote an email to us expressing that she was carrying two liters of Daime tea from Brazil. A few days later, the GdF arrived at her home, took the Daime and arrested her. The Santo Daime church of Italy then contacted her lawyer in order to send him all the documents necessary for a juridical recognition of Santo Daime, but the lawyer did not trust us and remained suspicious. While the girl was in prison, the judge in Milan let her know that if she confessed to guilt, she would be condemned to one and a half years of probation (thereby avoiding prison) and that she then could exit immediately and go back to Brazil (probably without the permission to re-enter the Republic of Italy). Facing the options (confessing to be guilty in order to immediately exit from the prison or facing a long imprisonment) she accepted and departed after having spent 3 to 4 weeks in the San Vittore prison in Milan.

In total, 37 liters of Santo Daime were seized in Italy.³ Some liters of the seized Daime were found in the house of a psychologist living in Rome who did not attend CEFLURIS Italy and was not affiliated with the Santo Daime (i.e. as a *fardado*).

On March 15th, 2005, I was preparing to leave for a 10-month mission to Mozambique for the Italian Ministry of Foreign Affairs the next day. I was in Reggio Emilia, my native city, when the GdF of Perugia arrived to arrest me on the suspicion that I was an escape risk. The next day, 20 more Daimistas were arrested in Assisi, Ovada, Trieste, and Turin, including the Brazilian girl who had just been released from prison. She had left the prison in the morning, and the police arrived in the evening of the same day to re-arrest her.

On the day of these arrests, a local daily paper published an article in which the movement of Santo Daime was described as a satanic sect based on black magic and orgiastic rituals. In the same article, it was declared that the GdF had arrested 24 persons related to the “sect.” Those persons had not yet been arrested, but were able to read in the newspaper that they had been (although this effectively happened the following night). Obviously, that local daily paper knew about the news of the arrest of 24 persons two days in advance. The news crossed over to some of the greater national daily papers and to television. Although these reports lacked the macabre nature of that first article in the local daily paper, they still preserved the scandalous tones (“police dismantled a sect that uses a new devastating drug,” “drugs traffickers disguised as pseudo-religion,” etc.). Some national newspapers wrote that “dozens of liters of pure DMT” had been seized, although the term more frequently used was “devastating drug.” The Italian news agency *Ansa* “reported” a trade value of 900,000 Euros for seven liters of the beverage.

The crimes we were accused of were heavy: Criminal association and international drug trafficking were the heaviest ones. A huge number of recorded phone calls and emails were brought forward in court by the GdF for the judge, but these included nothing demonstrating any illicit trafficking or economic profits. Among the large quantity of documents presented by the GdF to the judge in Reggio Emilia (where I had been arrested), were chemical analyses of the Daime tea falsely demonstrating a DMT content of 15%.⁴ Two months later we received all the documents which had been produced by the GdF, including three different chemical analyses dated to February 2005 – i.e. before the arrest – showing a presence of 0.064% DMT at maximum for all the samples of Santo Daime tea taken from the CEFLURIS members, while the samples taken from the aforementioned psychologist in Rome had been analyzed with 15% DMT, which certainly must have been an error. However, the later analysis was the only one which had been shown by the GdF to the Judge in Reggio Emilia.

After about 7 to 10 days in prison, the judge gave house arrest to all 21 imprisoned people. Among the persons arrested were a young pregnant woman and men and women from various professional backgrounds (e.g. architects, business consultants, teachers), some of them in their fifties or sixties, without any legal or criminal record, but on the contrary with personal histories of clear moral integrity. In the hundreds of pages of wiretapped telephone recordings and emails, the greater accusations regarded some few thousands of Euros sent to a Brazilian non-profit NGO for documented environmental and humanitarian projects. In the course of the trial no evidence was presented of financial misdeeds in regard to the accusation of international drug trafficking.

In the legal documents of the accusation a number of plain contractions emerged. For example, in order to describe the effects of ayahuasca, the description of acute effects caused by an injection of pure DMT was presented, portraying the duration of acute effects as lasting from 20 to 30 minutes (obviously a simple “copy and paste” from a DMT drug study), although at another point in the document the Santo Daime rituals were described as lasting longer, sometimes six to eight hours.

On April 4th, 2005, we had the first hearing at the local Court of Perugia following our request to the judge to re-examine the case. We presented a complete set of documents regarding religious, international juridical and scientific aspects about our activities, and the destination of the contributions we were sending each year to the IDA NGO (*Instituto de Desenvolvimento Ambiental*), including an official letter from the WWF Brazil specifically written for the Italian consulate in Manaus, Amazonas. However, the main argument of our legal Defense at this point was about the fact that the Santo Daime is not included in the list of controlled substances under Italian law, a fact confirmed by the United Nations International Narcotics Control Board (INCB) by a letter that had been produced for the Dutch Santo Daime case.⁵ Moreover, our defense introduced a sample of an herbal product in the form of tablets, acquired without medical prescription in a normal pharmacy, containing DMT, as could be read from the composition on the label. The product was sold with Ministerial authorization.

The Court rejected our Defense arguments declaring that “the Santo Daime, being a mixture of two plants and not only one, is not a natural product but has to be considered like a laboratory preparation, appositely containing DMT.” Following this hearing, 9 of the 21 people arrested (the ones that had personal supplies of the Daime confiscated) had to remain on house arrest, being suspected of danger of collusion and the stated risk of “crime recurrence.” However, the other 13 were let free because the public prosecutor could not produce any evidence of their involvement in the case. Following this rejection, our Defense made an appeal to the Supreme Court of Cassazione in Rome.

After a period of two months, the enquiries were concluded, with the consequent forfeiture of the suspicion of danger of collusion, but those who were held on house arrest had to remain there because of the risk of “crime reiteration.” By the end of July, all of us were freed at last.

On June 24th, 2005 (the day of Saint John the Baptist) my lawyer called me to inform me that the Supreme Court had agreed to hear our arguments with a hearing in Rome scheduled for the 6th of October 2005. On October 7th, 2005 (Sebastião Mota de Melo’s birthday), we received the result of the hearing of the previous day. Victory: The Supreme Court accepted our appeal and our arguments, declaring that the public prosecutor did not demonstrate any reason to arrest us, and so the arrests and the rejection by the local court were both annulled.⁶ The Supreme Court re-sent the case to a new Court in Perugia to reanalyze it. We then had to wait for the written motivation of the Supreme Court to understand the reasons we achieved this very good result.

On December 15th, 2005 (Raimundo Irineu Serra’s birthday), my lawyer called to inform me that he had just received the written motivation of the Italian Supreme Court. In its rationale for the judgment, the Supreme Court of Cassazione does not

take a position with respect to the status of ayahuasca in Italian law. However, it does provide guidelines for the interpretation of the law. The main points of this declaration were concerned with how the Italian law needed to be interpreted regarding drugs in the specific case of a substance made from natural plants which are not under control by any convention on narcotics, but which nonetheless contain an alkaloid under control:

- The Supreme Court declared that the public prosecutor failed to show how ayahuasca/Santo Daime was actually prepared;
- If the substance was a laboratory product containing DMT, it should be forbidden;
- but if the substance (in this case the Santo Daime tea) was a preparation that resulted from a “simple derivative process” of natural plants not under control, it depended on whether the preparation’s effects were a product of the effects of the consumption of both original plants or not; in particular,
- if the substance presented a clear “surplus” of alkaloids with respect to the original plants and if the effects are very potentiated with respect to the ones induced by the consumption of both the original plants, in this case the preparation also needed to be under control;
- However, if the preparation presents a quantity of alkaloids (and if also the effects are) comparable to the consumption of the original plants, the preparation is not under control.

After having provided the guidelines to interpret the Italian drug law, the Supreme Court concluded that the public prosecutor had not shown cause to arrest us, and so annulled the arrests and sent the case back to the local Court of Perugia to reanalyze it.

On January 13th, 2006, we had a hearing at the new Court in Perugia. We were able to present a new scientific report authored and signed by an Italian chemist in which he concluded that the Santo Daime tea was a “decoction” of two plants (as defined in the aforementioned letter by the INCB). He stated that it was clearly the product of a “simple derivative process” of natural plants and presented a quantity of alkaloids comparable to the original plants (however, in this document there are no numerical data about the presence of alkaloids in the natural plants).

The Court of Perugia pronounced a judgment which conformed to the Supreme Court opinion confirming the annulations of the arrests, and the Court declared that we were arrested without any legal cause. Furthermore, this Court declared that in its opinion the Santo Daime tea seemed not to be under drug law control. This juridical opinion was very positive for the Santo Daime church in Italy. After these declarations, the public prosecutor was obliged (although he did not agree) to ask for the dismissal of the case.

On April 4th, 2006, after just a bit more than an year since the arrests of the Italian Daimistas, and exactly on the same day (one year later) of the first rejection of our case in Perugia, the new Judge of the Court of Perugia concluded this chapter, accepting the request for dismissal of the case, arguing that the public prosecutor did not demonstrate cause to consider the Santo Daime tea forbidden under Italian law, so there was no evidence that the arrested Daimistas committed any crime. This

statement was the crowning achievement of the important victory we had in the Supreme Court of Cassazione in Rome, in October 2005.

Except for the ones that had insufficient contacts with the Italian CEFLURIS group and were therefore unknown, all of the 21 persons involved in the arrests can show in their personal life that they were normal and calm citizens, without any history of legal problems and with laudable propensity to support ecological and humanitarian projects. In the psychological analysis of the juridical passions that have moved to such a mystification of the truth, it remains doubtful what the original motivations were. However, there are no doubts that such passions have been encouraged by the fact that it is easy to have mass-media and public opinion support, when state authorities act in the name of the total “war against drugs.” It did not make any difference for the state authorities involved that the case was about a sacrament of probably millenarian origin, with none to very little evidence of any toxicity, with ritual use already legally recognized by various European and North and South American magistracies, or that the arrested persons were respected citizens practicing their own religion for ten years in Italy without any damage to health or public order.

A couple of months after the acquittal in Perugia, I received a letter from the Public Prosecutor of Perugia in which he was applying for a new trial regarding a penal procedure on the seizure of a modest amount of Santo Daime in Reggio Emilia, which happened during the arrests on March 15th, 2005. Today it still remains unclear, from the juridical point of view, why of the four penal procedures that had been started (Perugia, Rome, Alessandria, Reggio Emilia), only three were unified in one penal procedure at the Court of Perugia while the other one (of Reggio Emilia) remained separated from the other three. However, as it turned out, it still remained in the hands of the Public Prosecutor (PP) of Perugia. At the preliminary hearing, held in Perugia on October 4th, 2006 (the day of Saint Francis of Assisi), the PP of Perugia declared itself “geographically incompetent” since the procedure addressed happenings in the administrative area of Reggio Emilia. The judge accepted that the PP was incompetent and concluded by sending the trial to Reggio Emilia.

During the year of 2007, the PP of Reggio Emilia, after having received the huge quantity of documents regarding the procedure, decided to nominate a technical expert who had to answer to the questions formulated by the Supreme Court of Cassazione in Rome with respect to the two cited points that had not been demonstrated by the PP in Perugia:

1. If ayahuasca/Santo Daime can be considered a “simple derivative process from natural plants”; and,
2. If the amounts of alkaloids present in ayahuasca and the effects of their consumption were comparable to those of the consumption of the two original natural plants (assumed jointly).

The Defense nominated a chemist as its own technical expert in order to confront the expert of the PP. From the scientific literature it appeared clearly that ayahuasca can be defined as a simple derivative process from natural plants, and that the alkaloid amount presented in the confiscated Santo Daime tea, the object of the seizure, was remarkably lower (up to ten times lower) than that presented in the analyzed samples of natural plants in scientific articles.⁷ Nonetheless, the expert of the PP concluded

that probably, even if the amount of alkaloid was less, the effects could have been greater in the consumption of the beverage due to a probable higher “bioavailability” of alkaloids in comparison to the mixed ingestion of the natural plants. Our technical expert answered such conclusions by emphasizing their lack of certainty and of scientific basis, since the consumption of the natural plants cut in very small pieces (or pulverized) could also supply a higher “bioavailability” of alkaloid. Nevertheless, the PP requested to commence trial in the Court of Reggio Emilia.

While the legal procedure in Reggio Emilia was continuing, our Defense had submitted a request to the PP of Perugia, as a result of the acquittal, to return the Santo Daime seized, but the PP rejected it, declaring that he considered the beverage a narcotic. The Defense appealed to the Supreme Court of Rome opposing such a rejection. On April 23rd, 2008 (the day of Saint George), the Supreme Court issued a decree that the Court of Perugia had to give back the Santo Daime seized.

On May 13th, 2008 (Blessed Virgin of Fatima and *Pretos Velhos* day), the period of positive events for the Santo Daime Doctrine in Italy continued with the constitution of the Italian branch of the Santo Daime church CEFLURIS in a public act in Assisi. On this day, CEFLURIS Italy was registered in the Italian Government Agency as a “religious organization in the exercise of the cult” (which is a translation of the proper legal term in Italy: “organizzazione religiosa nell’esercizio del culto”). This organization represents a confederation of Italian churches and centers that carry on the Santo Daime Doctrine. The birth of CEFLURIS Italy represented an important step in the process of legally asserting the public existence of the Santo Daime church to state institutions as well as the demonstrating the seriousness and the transparency of the spiritual work of Santo Daime in Italy.

September 15th, 2008 marked the return of all the Santo Daime tea that had been seized in the years before by the Court of Perugia, including the modest amount of Santo Daime that had been seized in Reggio Emilia and about which there was still the legal proceeding at the Court of Reggio Emilia. This restitution of the Santo Daime tea had happened just a few days before the European Meeting of the Santo Daime Churches in 2008 that took place in Assisi between September 29th and October 7th, 2008. This meeting had seen the participation of more than 350 persons from 20 different European and non-European countries.

On February 19th, 2009, there was a hearing for the trial at the Court of Reggio Emilia. To understand the defense line and the results of the hearing, we need first to pay attention to some considerations about our juridical situation, in particular:

1. If ayahuasca/Santo Daime was considered on the list of controlled psychotropic substances, then in Italy an acquittal based exclusively on Religious freedom, as in Holland or the USA, would at that moment be impossible at a first level Court, even if it could be demonstrated that there are no risks to health or the public order. A constitutional case could be opened, but this would be a new and long path, in the course of which we would not know about the legal status of the Santo Daime in Italy;
2. The classification of ayahuasca as being on or off the list of controlled substances is not strict, and is a matter subject to interpretation;
3. In 2005, the Supreme Court of Rome provided some help in this interpretation. In particular, it said that if the beverage – in regard to the quantity of al-

kaloids and the nature of the effects – can be compared to the natural plants consumed together, and if the natural plants are not included in the list, the beverage also cannot be included on the list of controlled substances. Then, during the hearing:

4. We were able to demonstrate that the quantity of alkaloids in the beverage is lower than in the plants (there are some articles by Ott, 1994 and by Callaway, Brito and Neves, 2005 studying the quantity of alkaloids in the natural plants); and it was not possible to demonstrate that the effects of the alkaloids are really stronger when drinking the beverage compared to eating (in some way) the plants;
5. We were also able to underline some important points to psychologically influence the judge:
 - a. There are no risks for the health or public order as shown in the Brazil, Holland, Spain, USA, and Canada cases;
 - b. There are strong historical roots in religious tradition of the ritual use of Santo Daime, and there is a strong religious interest in our use of the beverage: It was impressive for the judge to acknowledge the constitution of the Italian Church of CEFLURIS that we organized on May 13th, 2008;
 - c. There is no evidence for a black market for ayahuasca, possibly due to its emetic and purgative effects, its voluminous presence (for example, making it difficult to traffic), and its organic characteristics that need a certain care in conservation;
 - d. All of these points were not necessary from a purely juridical point of view, but they were important and necessary to convince the court that the Santo Daime is a good thing and so to influence the interpretation of the law in our favor.

Conclusion

Finally, one of the Public Prosecutors was completely convinced in our favor and asked the judge for a total acquittal of the case in Reggio Emilia because the beverage cannot be included on the list of forbidden substances under current Italian Law. The judge then fixed a hearing on March 26th, 2009 to hear the Defense and give his final declaration.

On March 26th, 2009, the judge of Reggio Emilia Court declared the acquittal of the case because “the crime does not subsist.” In the following written motivation he explained that although he does not have enough data to define the risk for health, there is no evidence, from the scientific point of view, to demonstrate that ayahuasca/Santo Daime can be included on the list of controlled psychotropic substances, in the terms clarified by the Supreme Court of Cassazione in Rome.

In spite of the legal vicissitudes that occurred in Italy in 2005, and after the acquittal at the Court of Perugia in April 2006, the Santo Daime Doctrine experienced a period of remarkable expansion with the consolidation of the historical centers and the birth of a number of new *pontos* (small churches). Only seven months after its

constitution, CEFLURIS Italy approached a number of nearly 200 members, of which approximately 70 are fardados. As of May of 2009, approximately 300-400 persons are connected to the centers of the Santo Daime in Italy.

Thanks to these good results from the juridical point of view, the spiritual activity of Santo Daime centers in Italy is continuing. Nonetheless, the dialogue with the authorities of Justice has not yet finished. The PP of Reggio Emilia appealed the judge's sentence of March 26th, 2009, and we have still to see if the second level Court in Bologna will accept this appeal and open a second level process.

Meanwhile, at the end of 2009, the NAS (Nucleo Anti-Sofisticazioni; a branch of Carabinieri police that investigates food health security) has opened an enquiry on some of us asking to analyze a sample of Santo Daime through the Health Ministry. The Santo Daime seized by NAS (Carabinieri's food security branch) of Perugia in Assisi in the period between December 2009 and January 2010 was returned to CEFLURIS Italia following the Application for release from seizure CEFLURIS Italia submitted in September 2010.

The procedure was initiated in late 2009 by NAS of Perugia as a result of the psychiatric hospitalization of two people with addictions and psychiatric disorders; one of whom mentioned that months earlier he had attended some of our spiritual works. This procedure had led the NAS to seize about one liter of Santo Daime from the Assisi center. Later, in June of 2010, a complaint was filed which led to investigations of some of us. In September 2010, we presented the Application for return of the Santo Daime taken.

We then learned that the Santo Daime had been delivered to the Ministry of Health for chemical analysis. We accompanied our attorney and our chemist to this analysis during the month of December 2010.

On January 12th, 2011 the NAS returned the seized Santo Daime. The documents indicate that the Public Prosecutor in Perugia had already given orders to release it on October 7th, 2010 (the birthday of Padrinho Sebastião), following our Application, but waited for the analysis of the Ministry of Health, which was produced on December 30th, 2010, before executing the order of release.

The NAS reported the content analysis of the Ministry of Health, which specified that the drink is a decoction of the plants *Banisteriopsis caapi* and *Psychotria viridis*, which are not controlled under Italian law.

In conclusion, in my opinion all the results obtained until now were necessary to protect us and the continuation of our spiritual works. However, if the police and the public prosecutors continue their investigations and try to obstruct our activity, the solution may be to reach an agreement with the public authorities in order to permit ritual use only of the sacrament based on protection of religious freedom, and maintain the substance as prohibited for other uses, as is the case in Brazil, Canada, USA and The Netherlands.

-
- 1 The juridical documents of the Italian case referred to in this text can be found at the “Ayahuasca – Santo Daime online Library” at <http://www.santodaime.it/Library/libraryindex.htm> (Accessed on July 15th, 2010).
 - 2 CEFLURIS (Centro Eclético Fluente Luz Universal Raimundo Irineu Serra) is the largest Santo Daime organization (church) in Brazil and the world.
 - 3 Subsequently, it has been shown that in all the Santo Daime samples from CEFLURIS there was present a quantity of DMT between 0.02% and 0.06%.
 - 4 Refer to the pharmacological article of Jordi Riba in this volume for detailed information on usual amounts of DMT in the ayahuasca tea.
 - 5 See the article of Adèle van den Plas in this volume.
 - 6 For a qualified comment on the sentence of the Supreme Court of Cassazione see *Rivista Penale* 09/2006, p. 946-948.
 - 7 In our argumentation we also referred to scientific data from Dr. Callaway’s article “Various Alkaloid Profiles in Decoctions of *Banisteriopsis caapi*,” published in the *Journal of Psychoactive Drugs*, Vol. 37, no 2 (June 2005). In this study he analyzes 37 Psychotria plants, finding in the dry leaves a quantity of DMT of up to 1.7% (average 0.75%) so, between 10 and 20 times higher than the DMT concentration (0.064%) found in our Daime.