

Legal Recognition of the União do Vegetal in Spain

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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).