

BREAKING CONVENTION: ESSAYS ON PSYCHEDELIC CONSCIOUSNESS



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RELIGIOUS FREEDOM AND THE EXPANSION OF AYAHUASCA CEREMONIES IN EUROPE

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Since the late 1980s, itinerant South-American shamans and congregations of the Brazilian ayahuasca religions, Santo Daime and União do Vegetal (UDV), have appeared throughout Europe. At the heart of these traditions is the consumption of ayahuasca, a psychoactive brew containing dimethyltryptamine (DMT), a Schedule I substance under the United Nations Convention on Psychotropic Substances (CPS). The legality of ayahuasca under the CPS has been interpreted differently throughout the world, as has the religious nature of these traditions.^{1,2} While freedom of religion is protected in Europe under the European Convention on Human Rights (ECHR), this protection depends on the recognition of a religion's legitimacy, and whether particular practices may be deemed a threat to public health, safety or morality. In the case of indigenous itinerant shamans, or contemporary psychotherapeutic practitioners, the legal issues are even more complex. This chapter seeks to examine the status of these ayahuasca traditions in Europe, and to investigate the role and significance of the ECHR in shaping the discourse on religious liberty and ayahuasca.

A BRIEF HISTORY OF AYAHUASCA TRADITIONS IN EUROPE

Early European experiences with ayahuasca generally took the form of workshops, or ceremonies, adapted from their original cultural contexts to cater to European tastes and the interests of the New Age movement,³ however, it was not long before structured religious groups like the Santo Daime and UDV began to take hold. In 1989, a Santo Daime delegation from the Centro Eclético da Fluente Luz Universal Raimundo Irineu Serra (CEFLURIS) arrived in Spain for the Easter Holy Week, which became the first official visit of the Santo Daime to Europe.⁴ By 1992, a branch of the Santo Daime appeared in The Hague, Netherlands.² An early Santo Daime/New Age hybrid developed in Germany in 1993, and was soon followed by more traditional congregations of the Santo Daime.² Informal practicing groups arose in Spain in the early 1990s, and by the mid-1990s branches of the Santo Daime had emerged in France and Italy.² Currently, congregations of the Santo Daime can be found in a number of European countries, including: Austria, Belgium, the Czech Republic, England, Finland, Greece, Ireland, Portugal, and Switzerland, among other small nuclei. Chapters of the UDV appeared later in the 1990s, and can now be found in Spain (first appearing in 1993), the UK (1994), Switzerland (1994), Italy (1998), and Portugal (2003).⁵

With a presence in Europe exceeding twenty years, and with congregations in numerous countries, much can be investigated regarding the history and formation of ayahuasca religions in Europe. So too the trajectories of shamans and therapeutic practitioners who have visited or established practices in Europe. Here we focus on the legal and social challenges these traditions have faced in the European community, and provide some conjecture as to how these groups might assimilate in a continent wary of both minority religions and of increasing cultural diversity, particularly when the global War on Drugs continues to have a strong hold worldwide.

There are three primary legal barriers that adherents of ayahuasca traditions face in order to practice their ceremonies in Europe. The first regards the legality of ayahuasca, which contains DMT, an internationally controlled substance. The second regards whether the Santo Daime, UDV, and other ayahuasca drinking modalities, are viewed as legitimate religious practices deserving protection under the ECHR, or whether they are seen as problematic cults, which should be prohibited. Finally, if these traditions are recognised as religions, there remains the question of whether ayahuasca poses a significant threat to public health, morals or safety. Such threats would permit individual states to prohibit religious uses of ayahuasca under Article 9(2) of the ECHR. Each of these issues will be explored below in order to provide an overall picture of the circumstances faced by different ayahuasca traditions within the current European legal and political climate.

LEGALITY OF DMT AND AYAHUASCA

The Single Convention on Narcotic Drugs, adopted in 1961, was an attempt to unify a number of international drug control treaties under one umbrella, and currently provides the foundation for international cooperation in the War on Drugs. The Single Convention can be viewed as establishing a three-part division of controlled substances, which includes plants (opium poppy, coca, cannabis), specific compounds (i.e. cocaine, dihydromorphine, hydrocodone, etc), and preparations containing specified quantities of controlled substances. This division is significant since the Single Convention is the only modern drug convention to specify plants requiring control, and because ayahuasca is a plant-based product.

DMT, one of the active compounds in ayahuasca, didn't come under international regulation until the CPS was adopted in 1971. This convention added a variety of chemical compounds to the list of scheduled substances, but did not address the regulation of any additional plants. While no plants are specified for regulation, the CPS introduced

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a new definition of "preparation", referring to "any solution or mixture, in whatever physical state, containing one or more psychotropic substances."⁶ Article 1(f) In order to clarify the CPS, a commentary was subsequently published which stated that beverages and infusions made from plants were excluded from coverage,⁷ but no further guidance was provided about the definition of 'preparation'. As a result of these ambiguities in the CPS, there have been conflicting opinions regarding whether ayahuasca can be considered a controlled substance.

This issue was cause for dispute in a Netherlands court case where Santo Daime members were charged with use and distribution of DMT in violation of the CPS.^{2,8} In order to clarify the legality of ayahuasca, an opinion was solicited from the International Narcotics Control Board (INCB), a quasi-judicial body of the UN drug control system. In response, the Secretary of the INCB clarified that, "no plants (natural materials) containing DMT are at present controlled under the 1971 Convention", and that "preparations [...] made of these plants, including ayahuasca, are not under international control."⁹ Nevertheless, the Dutch court determined that it was not bound by the INCB's interpretation, and found that ayahuasca qualified as a preparation under the CPS because a combination of plants (*Banisteriopsis caapi* and *Psychotria viridis*) is required to produce the desired hallucinogenic effect.⁸

This interpretation, however, has not been universally accepted. Courts in both France and Italy have determined that ayahuasca is a derivation of uncontrolled natural products, and, while containing DMT, not specifically prohibited.^{2,10,11} In France, charges against a branch of the Santo Daime were dismissed after several years of intense court battles (1999-2005) because the plant components (*B. caapi* and *P. viridis*) were not specifically prohibited under the CPS or French law.² Following the dismissal the French government moved quickly to schedule both plants as illicit "sectoidal" products,¹² an issue we will return to later.

In Italy, the argument that ayahuasca is an uncontrolled natural product was initially rejected in 2005 by a Court in Perugia, which ruled that ayahuasca is a preparation because it is a mixture of more than

one plant. The Supreme Court of Cassazione overturned the ruling as inadmissible, citing a lack of evidence concerning how ayahuasca is actually prepared.¹³ The case was returned to the Court of Perugia to hear evidence regarding the preparation of ayahuasca, and to determine whether ayahuasca contained a "surplus" of alkaloids when compared to the alkaloid content of its component plants. At the rehearing, the Santo Daime provided expert testimony that ayahuasca is a decoction of two plants, and that the final product has an alkaloid content comparable to that of the original plants.¹¹ In light of this testimony, the court rejected allegations that ayahuasca was a prohibited preparation, and charges against the Santo Daime were dismissed.²

Due to ambiguities in the CPS, the legality of ayahuasca and its plant components will likely continue to be determined on a state-by-state basis. If a particular country determines that ayahuasca is subject to government control, however, ceremonial use of ayahuasca might still be protected under the right to religious freedom as guaranteed by the ECHR.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The foundation for religious freedom in Europe was established in 1950 with the drafting of the ECHR. Of primary importance to our discussion is Article 9, which protects the individual's right "to manifest his religion or belief, in worship, teaching, practice and observance."¹⁴

Article 9(1) Under the ECHR, individual states may proscribe certain religious activities in pursuit of one of several "legitimate aims", which include restrictive measures "in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others."¹⁴ Article 9(2) The measures taken by the state in pursuit of legitimate aims, however, must be "necessary in a democratic society,"¹⁴ Article 9(2) a phrase which has been interpreted by the European Court of Human Rights (ECtHR) to mean that limitations must be in response to a "pressing social need", and that the measures taken are "proportionate to the legitimate aim pursued."¹⁵ §50 This standard is

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similar to the one established in the United States under the Religious Freedom Restoration Act, which favoured the UDV and Santo Daime in the USA.¹

RELIGIOUS RECOGNITION OF AYAHUASCA TRADITIONS IN EUROPE

Many European countries have developed rules regulating the recognition of religious groups. These regulations have been occasionally used to deny recognition to, and ultimately prohibit, certain religious practices. The ECtHR has recognised the right of states to regulate religions, stating that "states are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population."^{16 §40} However, it requires that any restrictions on religious practices be justified and "proportionate to the legitimate aim pursued."^{16 §44}

The Santo Daime has successfully procured recognised religious status in the USA, Canada, Italy, the Netherlands, and Spain, while the UDV has, so far, procured official status in the USA and Spain. The processes necessary for religious recognition, however, are often bureaucratic and ideological, and tend not to favour minority religions. In Spain, for example, the road to recognition for the Santo Daime and UDV was onerous. Both groups were initially denied recognition based on insufficient proof of their religious character. Fortunately for the Santo Daime, the government's denial was not generated within the requisite time period, which resulted in default recognition by the Spanish government.² The UDV redrafted its documents and changed the name of its congregation to Church Virgen de la Concepcion, an important religious reference in Spain, before re-applying in 2005. The group was denied a second time, necessitating an administrative appeal. Registration was eventually granted to the UDV in 2008, seven years after their first application.²

While states undoubtedly have a variety of motivations in limiting recognition of religious groups, it is necessary to recognise that much of

Europe views 'New Religious Movements' (NRMs) suspiciously. The European experience with cults, such as Sun Myung Moon's Unification Church and the Order of the Solar Temple, has led governments across Europe to attempt to curb the influence and practice of NRMs; efforts that often appear to categorise religious minorities as a social problem.^{2,17} To limit the activities of NRMs, many countries have not only implemented strict regulations on religions, but have also adopted legislation outlawing brainwashing, variously referred to as "the deceitful abuse of a state of ignorance or a situation of weakness", or "the crime of mental manipulation."¹⁷ p153-4

The movement to regulate and restrict the activities of NRMs has been strongest in France, culminating in the passage of the About-Picard law in 2001, which criminalised "the fraudulent abuse of a state of ignorance or weakness."¹⁸ Article 20 Under this law, the government can hold a whole religious group responsible for the illegal activities of its leaders; activities that, if repeated, allow the government to permanently dissolve a religious organisation. By outlawing the plant components of ayahuasca, the French government has positioned itself to permanently dissolve the Santo Daime Church.

The classification of *Banisteriopsis caapi* and *Psychotria viridis* in France as 'sectoidal' products is unique and requires further explanation.¹² This legislative move was essentially an attempt to associate these plants with brainwashing and sects, a derogatory term for some NRMs in France. The sectoidal classification likely stems from an essay that claimed a preparation of *B. caapi* and *P. viridis* may produce "chemical submission" in users.¹⁹ p77 By labelling these plants as 'sectoidal', the French government has implicitly taken the position that there is no legitimate use of ayahuasca, and that the religious use of these plants poses an unacceptable threat to individual liberty. This position implies that adherents to the Santo Daime and UDV are not volitional participants in their religion, but rather are victims of some type of hallucinogen-based brainwashing. Thus, in France, the stereotypical notions of hallucinogens and sects have been drawn together in a way that clearly demonises ayahuasca practices.

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While procuring religious recognition in various countries poses difficulties, particularly where anxieties about NRMs are high, another important consideration regards the centrality of ayahuasca to these practices. The issue of centrality is duly illustrated by a lesser-known case from the Netherlands, where two ayahuasca drinkers claimed protection under Article 9 of the ECHR.²⁰ The following statement by one of the appellants, "I can practice my religion without the use of ayahuasca", was a key consideration for the Supreme Court in determining that the risks to public health posed by ayahuasca outweighed the religious interests of the appellants.^{20 §3.3} Significantly, court cases in the Netherlands involving the Santo Daime religion — where daime (ayahuasca) was recognised as a fundamental sacrament to their religious practice — have found the religious interests of the Daimistas to be greater than the government's interests in protecting public safety.^{8,21} Taken together, these court cases suggest that the centrality of ayahuasca to a particular religious practice may be key to a successful claim under the ECHR.

Although official religious recognition by a state is not necessary to invoke Article 9 of the ECHR, which protects both freedom of religion and freedom of thought, both government recognition and showing that the sacrament is central to the religious practice should help solidify religious liberty claims under the ECHR. The pervasive suspicion of NRMs has created problems for minority religions, and is perhaps the biggest barrier to acceptance for new religions in Europe. Nevertheless, states must be able to justify restrictions on religious activities under ECHR Article 9(2) as measures that are pursuant to a "legitimate aim", and which are "necessary in a democratic society."

LIMITATIONS ON RELIGIOUS FREEDOM

The interests of public health, morals, and safety, are all considered legitimate and permissible reasons to limit freedom of religion under Article 9 of the ECHR. Thus, if a particular state considers ayahuasca to be a controlled substance, either nationally or internationally, then it may restrict its use, as long as ayahuasca can be shown to pose a

threat to these legitimate government interests. However, restrictive measures must be deemed "necessary in a democratic society" and be proportional to the state's aims. As a result, an overview of potential outcomes is warranted.

Health and safety played a curious role in the prosecution of two members of the Santo Daime who were charged with importation of illicit drugs, with intent to distribute, after bringing ten litres of daime into Spain in 2000.² The confiscated beverage was analysed in order to determine whether "dangerous" levels of DMT were present. The result of the toxicological analysis, which failed to take into account the potentiating effects of harmala alkaloids, determined that the DMT content in the confiscated beverage was too low to produce inebriation, based on DMT's known oral activity. The judge, relying on the conclusions of the toxicology report, dismissed the charges, finding that the daime could not be considered a threat to public health given the low levels of DMT found.^{1,22} Additionally, the judge considered that the ayahuasca was intended for private consumption by a group of individuals with a history of ayahuasca use rather than for general distribution; a fact that supported a finding of limited public risk.²² It is interesting to note that the court reasoned that the Santo Daime was some sort of insulated "addict community", using ayahuasca only among themselves, rather than considering it as a religious group with potential liberty interests. This approach differs substantially from the way these groups understand their sacramental use and results in a sort of 'ironic victory'.

In Germany, a court determined that the mere presence of DMT was sufficient to find that ayahuasca posed a threat to public health, and justified prohibiting its religious use.² This ruling is questionable under the ECHR. The German government was never required to demonstrate that the limitations on religious use of ayahuasca served a "pressing social need"¹⁵, nor that the restrictions placed on DMT were proportional to the government's goal of protecting public health.²³ Germany's justification for prohibiting religious ayahuasca use, based on its mere illegality, would likely be seen as an insufficient application of the ECtHR's test, which requires

examining not only the basis but also the means used for restricting particular religious activities.

A British court similarly dismissed application of this test when hearing an ECHR defence of marijuana possession by a Rastafarian. The court, while recognising Rastafarianism as a legitimate religion, determined that prohibition of cannabis under the Single Convention was sufficient proof of a "pressing social need" to justify restricting religious use. Additionally the court rejected the defence's arguments that the prosecutor be "required to conduct a trial, hearing evidence as to the merits or demerits of cannabis."²⁴ ⁵³¹ One significant difference between cannabis and ayahuasca, however, is that cannabis is clearly controlled under the Single Convention, whereas the legality of ayahuasca under the CPS is much murkier. While different countries are likely to come to different conclusions about the threats posed by ayahuasca, each state must still meet the requirements for limiting religious freedom as outlined by Article 9(2). In situations where the outcomes appear inconsistent with the ECHR and ECtHR case law, as in the German and English cases mentioned here, the ayahuasca groups might consider applying to the ECtHR for review. The ECtHR has yet to hear any cases dealing with the religious use of psychoactive substances, and such a case may help to clarify how restrictions on religious activities are to be examined under Article 9(2).

CONCLUSION

In this chapter we have attempted to outline the three main barriers to the practice of ayahuasca religions, shamanisms, and therapeutic activities involving ayahuasca in Europe. While the questions of legality, religious legitimacy, and perceived risks of ayahuasca use are the same questions asked in each country, how they are answered varies considerably. Despite the presence of international conventions aimed at unifying drug control laws and creating universally recognised human rights, Europe remains a diverse continent with varied political and cultural interpretations of international and European law. The CPS

and ECHR might best be seen as providing broad guidelines within which individual states must manoeuvre. As we have seen, the Santo Daime and UDV have had some preliminary success in establishing themselves as official religions in several countries; however, the members of these religions, and other ayahuasca practitioners, continue to face persecution in Europe and elsewhere. This persecution needs to be understood, not only in light of the continuing influence of the worldwide War on Drugs, but also in view of the generalised anxiety toward NRMs in Europe.

The cases discussed here show that having a recognised religious use, in contrast to recreational or other use, is desirable. Nevertheless, obtaining recognition of new religious groups can be complicated and often involves facing hostile and ethnocentric definitions of what qualifies as a legitimate religion. For practitioners who are outside of the more conventionally recognised syncretic-Christian ("religious") modalities of the Santo Daime or UDV, the situation is even more challenging. Shamans, either indigenous or New Age, or persons such as licensed psychologists holding therapeutic ayahuasca ceremonies, are less likely to be protected as religious practitioners under the ECHR.

While it is unlikely that any new convention will be able to standardise drug control or religious rights, the gradual state-by-state recognition of the Santo Daime and UDV may help build a foundation of legitimacy upon which these groups may seek to gain broader acceptance. In the future, however, it may be necessary for these groups to apply to the ECtHR on religious freedom grounds in order to obtain a clear precedent regarding their right to use their sacrament. While such a move runs the risk of a negative outcome, the result could also lead to a more uniform application of the ECHR. For now, ayahuasca religions, itinerant shamans, and therapeutic practitioners, continue to face a patchwork of regulatory schemes throughout Europe, with only a few countries recognising the validity of these traditions and their right to use this controversial Amazonian brew.

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