

**The Santo Daime Church in the Netherlands:
Why the ECHR Should Consider the Case**

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ABSTRACT: After 17 years of decisions ultimately favorable to the Dutch Santo Daime Church, judges in the Netherlands changed their case law and ruled that importing into the country and using in religious rituals ayahuasca, which contains psychoactive alkaloids, is illegal. Santo Daime submitted a complaint to the European Court of Human Rights (ECHR). We argue that the case involves serious issues of religious liberty, and ECHR should consider it.

KEYWORDS: Santo Daime, Ayahuasca, Entheogens, Entheogens and the Law, Legal Cases about Ayahuasca, ICEFLU.

On March 16, 2020, Ms. Elisabeth Maria van Dorsten, as the legal representative of the Amsterdam church Ceflu Cristi–Céu da Santa Maria (“Santo Daime”), submitted a complaint to the European Court of Human Rights (ECHR), against a decision of the Dutch Supreme Court which had confirmed a ruling by the Court of Appeal of Amsterdam banning the import of ayahuasca into the Netherlands and its use in the religious ceremonies of Santo Daime.

As scholars of religion, we believe that the question submitted to ECHR involves crucial religious liberty issues, and that it is imperative that the ECHR will effectively deal with it. We are not pharmacologists, and will not elaborate on the composition of ayahuasca, which contains psychoactive alkaloids, nor on whether use for recreational and other non-religious purposes should be allowed. We only address here the question of the use of ayahuasca within the context of Santo Daime religious rituals.

1. Santo Daime is a Religion

The Dutch Santo Daime church is a branch of ICEFLU, an international religion headquartered in Brazil. Ayahuasca has been used for ritual purposes by Amazonian indigenous tribes for centuries, if not millennia. In the 1920s, Afro-Brazilian and white workers in the Amazon rainforest encountered native Brazilian tribes and their Ayahuasca rituals. An Afro-Brazilian worker, Raimundo Irineu Serra (1892–1971), founded the first Santo Daime church in 1930. Under the leadership of Serra's successor, Sebastián Mota de Melo (1920–1990), ICEFLU emerged as the largest international Santo Daime church, although several schismatic or competing groups also exist, the most well-known of which is the União do Vegetal (UDV), founded by José Gabriel da Costa (1922–1971) (Dawson 2013).

Unlike the tribal groups that existed in the Amazonian rainforest through the centuries, ICEFLU and UDV are full-fledged religions. They include a systematic doctrine, international and national leaders, a hierarchy, and codified rituals. Significantly, the title of one of the main scholarly accounts of the group is *Santo Daime: A New World Religion* (Dawson 2013).

Although defining religion is a notoriously intractable subject (Platvoet and Molendijk 1999), international institutions, in the interest of religious liberty, tend to adopt as broad a concept of “religion” as possible.

In 1993, the Human Rights Committee issued a *General Comment no. 22* as a set of guidelines for interpreting Article 18 of the Universal Declaration of Human Rights. Number 2 of *General Comment no. 22* is particularly important, as it deals specifically with new religious movements, often discriminated against as such:

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community (Office of the High Commissioner for Human Rights 1993).

2. The Use of Ayahuasca Occurs Within a Religious Context

The center of the Santo Daime experience is the ritual consumption of small quantities of ayahuasca during its ritual. Without ayahuasca, there can be no Santo Daime religion (Dawson 2013; Labate and Jungaberle 2011).

Within the context of the religious ceremonies, ayahuasca is used by Santo Daime as an “entheogen,” i.e. a substance contributing to a spiritual experience, rather than as a hallucinogen. Although chemical studies are important, they cannot support nor deny the difference between entheogens and hallucinogens. The category of “entheogen” can only be constructed with reference to the social and religious context of the ceremonies (Smith 2000).

The entheogenic use of ayahuasca by Santo Daime should not be confused with its recreational use, on which different opinions exist, but which is not the subject matter of the case submitted to the ECHR.

3. The Dutch Decisions Endanger Religious Liberty

It is strange that the Dutch Supreme Court changed its position about Santo Daime after 17 years of decisions ultimately authorizing the church to import ayahuasca into the Netherlands and use it in its rituals. Whether a changed political context influenced the decision is in itself an interesting question. However, even in a political climate very much concerned about the harmful effects of psychoactive substances, it remains true that prohibiting Santo Daime from using ayahuasca in its ceremonies amounts to prohibiting Santo Daime from existing, which is a gross violation of religious liberty.

Clearly, religious liberty has limits, and can be limited for public health purposes. Several countries, for example, have forbidden religious gatherings during the COVID-19 epidemic. However, both international case law and Dutch cases before the present one concluded that the risk to public health created by the ritual consumption of ayahuasca in Santo Daime (and UDV) rituals is low or non-existent. In 2006, in *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, the U.S. Supreme Court ruled on a UDV case that, even if one believes the government's own experts, the level of health risk caused by the use of ayahuasca within the limited and controlled context of the rituals does not establish the government's "compelling interest" that would authorize restricting religious liberty (U.S. Supreme Court 2006).

While the U.S. Supreme Court mentioned precedents concerning peyote, a cactus also including psychoactive alkaloids used in religious ceremonies by Native Americans, another important precedent is the use of wine during the Catholic Mass. Catholics believe that during the Mass the sacramental bread literally becomes the body of Jesus Christ, and the sacramental wine becomes the blood of Jesus Christ. Without bread and wine, there cannot be a Catholic Mass, and without the Catholic Mass and the Eucharist, Catholicism as we know it would not exist.

Catholic Canon Law includes very strict provisions on what kind of bread and wine can, and cannot, be used in the Mass. Non-alcoholic wine is excluded. The wine to be used in the Catholic ritual should be alcoholic. When Prohibition was introduced in the United States, the official rhetoric against alcoholic beverages was not less strong, and probably more, than the rhetoric against psychoactive substances in present-day Netherlands. Yet, the Catholic Church announced it had no intention to switch to non-alcoholic wine—nor, from its point of view, was it at liberty to do so, since it believes the use of (alcoholic) wine had been dictated by Jesus himself. After some skirmishes, the U.S. government gave up, and introduced in the National Prohibition Act (often referred to as the Volstead Act) a Section 3 of Title 2, stating that, as an exception to the general provision, "wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed." The exception did not benefit Catholics only, as Jews and some Protestant denominations also used wine in their rituals. Later, a Section 6 was included to prevent abuses and re-sale of wine for non-religious purposes, clarifying that the

ritual use of wine should be under the responsibility of “a rabbi, minister of the gospel, priest, or an officer duly authorized for the purpose of any church or congregation” (Newsom 2005, 743).

Indeed, the comparison between the use of wine during Prohibition by the Catholic Church and the use of plants including psychoactive alkaloids today was made by U.S. Supreme Court Justice Harry Blackmun (1908–1999), when dissenting from the majority opinion in the *Smith* peyote case. “During Prohibition, Blackmun wrote, the Federal Government exempted the sacramental use of wine by the Roman Catholic Church from its general ban on possession and use of alcohol” (quoted in Newsom 2005, 741). Blackmun’s comment is relevant for our case, as it implied that there is a definite risk of being more attentive to the religious liberty rights of a large body such as the Roman Catholic Church than to the same rights when claimed by smaller, minority groups such as the Santo Daime or Native American religions.

It would not be a valid counter-argument that wine is less dangerous than ayahuasca for public health, because, again apart from any medical or pharmacological consideration, *at the time of Prohibition* alcoholic beverages were regarded as a scourge poisoning a whole nation, and this opinion, right or wrong, informed the Volstead Act.

4. Conclusions

In conclusion, prohibiting the import and use of Ayahuasca by the Dutch Santo Daime church is equivalent to ruling that church out of existence by judicial fiat, which is a clear breach of religious liberty. This conclusion is based on the facts that,

- (1) Santo Daime is undoubtedly a religion.
- (2) It is a religion that can only exist with rituals including the use of ayahuasca.
- (3) Without entering pharmacological arguments, it is generally agreed that the danger to public health created using limited quantities of ayahuasca during Santo Daime ceremonies is limited.
- (4) Such a minor risk does not justify gross violations of religious liberty.

(5) Historical precedents, including about the use of wine in Catholic Masses during Prohibition in the United States, do support the above conclusions.

(6) International courts, including the U.S. Supreme Court, came to the same conclusion.

(7) If the problem is “diversion” (as the U.S. Supreme Court called it in the UDV case), i.e. the possible illegal resale of ayahuasca for non-religious uses, there are other ways of preventing it through registers of the quantities of ayahuasca imported, controls, etc., which may effectively prevent these abuses without infringing on Santo Daime’s religious liberties. Similar provisions were adopted to prevent “diversion” of Catholic Mass wine during Prohibition.

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