

New Religious Movements in courts: toward a more accommodative direction? A study of the UDV “sacred tea” case

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In 2010, the New Mexico chapter of a new religion from Brazil, called the *Centro Espirita Beneficente Uniao do Vegetal* (usually referred to as the UDV Church), signed an agreement with US authorities. The settlement allowed the Church to import and drink *hoasca*, a plant containing an illicit substance considered as particularly addictive and dangerous according to federal regulations and that is used in the preparation of a tea that UDV members drink during the Church’s religious ceremonies. Before reaching the agreement, and after a decade-long litigation that reached the US Supreme Court, members of the UDV Church were finally allowed to use *hoasca* as part of their religious practice.

This landmark decision is particularly significant as it is the first time that the federal court gives a religious group an exemption from the otherwise strictly enforced Controlled Substances Act. The Supreme Court’s decision in favor of the UDV Church was based on a new way of measuring the so-called *compelling interest*, i.e., the State’s interest in implementing a law that burdens the Church’s religious practice.

The potential impact and meaning of the court’s decision are worth studying in light of the religious freedom jurisprudence, as it may reflect a new direction of the Supreme Court’s position regarding religious freedom claims based on the 1993 Religious Freedom Restoration Act. This new trend might well be more favorable to religious groups in the future.

In this paper, I will give a brief overview of the UDV church’s main tenets and practice, an explanation of why the use of the *hoasca* has been controversial and illegal in the US for the UDV to until 2002 (when they first got a preliminary injunction on their favor) will also be

provided. The third issue discussed in this study will be the first and landmark peyote 1990 *Smith* case, I will show how this case led the government to pass the Religious Freedom Restoration Act, and analyze the UDV Supreme Court decision on the UDV case, which definitely breaks with the *Smith* ruling.

The UDV:

The church's full name is *Centro Espirita Beneficente Uniao Do Vegetal* (which is generally referred to as Uniao do Vegetal or UDV). It is a Spiritist Christian religion that originated in Brazil and that blends Indigenous and Amazonian spiritual traditions with Christian theology. The church was founded in 1961 by José Gabriel da Costa (also called Mestre Gabriel) who was a former rubber tapper, but had already existed for hundreds of years before Da Costa formally organize it. As part of the Christian doctrine of this religion, UDV members acknowledge Jesus as the son of God, but unlike mainstream Christians, they believe in reincarnation of the spirit. Another major tenet of the church is the importance to be in harmony with nature, hence the name of the church, which literally means "union of the plants". In fact, the fundamental religious practice of the UDV church is the sacramental use of a tea called *hoasca* (or *ayahuasca* among other sacred tea groups like the Santo Daime for example, which is a bigger Church that also use the *hoasca* tea in a religious context). The tea is made of two plants from the Brazilian Amazonian forest, a vine called *banisteriopsis* and a bush called *psychotria viridis*. Members of the church consider this tea a sacred drink because it is supposed to allow members to increase spiritual perception so the practice of drinking *hoasca* is central to the UDV religion. It must be mentioned though that church members only the tea in the context of their religious ceremonies as it is a way to reach a spiritual awareness that leads them to experience communion with God.

Hoasca, DMT and the CSA

The use of *hoasca* has been very controversial because the tea contains an illicit substance called *dimethyltryptamine* (often referred to as DMT), which is categorized as a Schedule I hallucinogen in the US Federal *Controlled Substances Act*, passed under

President Nixon in 1970 as part of the famous nationwide “War on Drugs”. This national policy launched about forty years ago was meant to eradicate the devastating drug use among US youngsters in the 1960s and 1970s by prohibiting the production, importation, use and distribution of certain substances. The CSA contains five Schedules which classify illicit substances according to their potential for abuse and effects on health. Among the Schedule I substances, which are listed as the most potentially addictive and dangerous one are some components of heroin or LSD for example but most notably the DMT (for the case discussed here), which is contained in the *hoasca* sacred tea. Therefore, the importation and use of the *hoasca* tea was forbidden according to the law, even for religious purposes as it contains a Schedule I substance.

The Smith case and the Religious Freedom Restoration Act:

Since its inception in 1970 and for over thirty years, the CSA had been strictly implemented and no religious group would be allowed to use any of the substances mentioned in the law. However, in 1990, a landmark case, *Smith v. Employment Division of Oregon*, led the US Supreme Court to judge a case involving the use of an illicit substance taken in a religious context. In fact, the issue that the justices had to address in the litigation did not directly involve the use of an illicit drug taken in religious ceremonies, but the argument developed by the defendants extensively relied on First Amendment claims. Indeed, in the *Smith* case, two men who belonged to the *Native American Church*, had been fired after they had ingested a hallucinogenic plant called peyote (and categorized as a Schedule I substance) and claimed they should not be denied unemployment compensations as they had used peyote as part of their religious practice and the “misconduct” claim made by their former employers could not prevent them from getting the compensations. The issue at stake was whether or not the use of peyote, which was considered a crime according the State’s CSA, could be a proper basis for the State to deny the compensations. The case reached the US Supreme Court, which reversed the former rulings of the Oregon Court of Appeals and of the Oregon Supreme. The federal court concluded that the state could deny unemployment benefits to a person fired for violating a state prohibition on the use of peyote, even though the use of the drug was part of a religious ritual. The decision was commented

upon in the media, and a big majority of the newspapers denounced the ruling as a step back in religious freedom jurisprudence. In fact, the Supreme Court's decision was even ill received in the political sphere, and in order to counteract the potential effects of the ruling as a judicial precedent, Congress decided to pass a law meant to "restore" religious freedom.

In 1993, a bill introduced by Congressman Chuck Schumer was voted and signed into law by then President Bill Clinton. The law was called Religious Freedom Restoration Act and was meant to make sure (I quote) "that interests in religious freedom are protected.". What is particularly interesting in the fact that Congress passed this law only three years after the Smith decision is that it was specifically aimed at limiting the impact of the court's 1990 ruling. Besides, President Clinton himself explained in a statement he made after the passage of the law that the RFRA was specifically meant to counteract the federal judges' decision, he said: *"The power to reverse legislation by legislation, a decision of the United States Supreme Court, is a power that is rightly hesitantly and infrequently exercised by the United States Congress. But this is an issue in which that extraordinary measure was clearly called for. As the Vice President said, this act reverses the Supreme Court's decision Employment Division against Smith and reestablishes a standard that better protects all Americans of all faiths in the exercise of their religion in a way that I am convinced is far more consistent with the intent of the Founders of this Nation than the Supreme Court decision."*

The interference of the Congress in the matter was not very well received by the Supreme Court, which considered that the government had overstepped its authority in trying to limit the impact of the Smith decision. Therefore, in *City of Boerne v. Flores*, a 1997 case involving the Catholic church that seeking a building permit in a historic district, the court said that the RFRA was unconstitutional as applied to a state and local government actions, thus limiting the scope of the law, and leaving doubts about whether or not it could apply to federal agencies actions.

The UDV or "sacred tea" case: the events leading to the litigation and the judicial decision by courts

As I mentioned earlier, the UDV church usually has the tea imported from Brazil since the plants used in preparation of the drink are only to be found in the Amazonian forest.

So in 1999, the US customs agents seized over 30 gallons of *hoasca* tea that was shipped to the Sante Fe branch of the church in New Mexico. The federal government filed no criminal charges but the leader of the UDV church in the US, Jeffery Bronfman, decided to file a suit against the Department of Justice, the DEA, and the US Customs Service, claiming that the seizure of the barrels of *hoasca* were a violation of the members' religious rights under the 1993 Religious Freedom Restoration Act, the law that had been passed by Congress as a response to the Smith decision. In filing the suit, the church sought a preliminary injunction that would allow UDV members to use *hoasca* during its religious ceremonies and therefore prevent the government from charging them under the CSA. The case was first heard in 2002 by the New Mexico district court which ruled in favor of the UDV. The government based its arguments on the US 1970 CSA as well as the United Nations international Convention on Psychotropic Substances that had been signed by 34 countries including the United States in 1971. The Convention was meant to prohibit the use of psychoactive drugs. After hearing the State's arguments, Judge Parker, who was deciding the case, concluded that UDV members should be allowed to use *hoasca* for religious purposes because the government had failed to show that it had a compelling interest in prohibiting the use of the "sacred" tea. He therefore granted the preliminary injunction, explicitly enjoining the federal agencies not to interfere in the UDV members' religious rights. The conclusion of the judge reads as follows:

"In this case, the Court has concluded that the Government has failed to carry its heavy burden of showing a compelling government interest in protecting the health of UDV members using hoasca, or in preventing the diversion of hoasca to illicit use. In addition the Government has not demonstrated that prohibiting the UDV' ceremonial use of hoasca furthers an interest in adhering to the 1971 Convention of Psychotropic Substances because the treaty does not appear to extend to hoasca."

Judge Parker's decision was then appealed by the State and heard again by the Tenth Circuit Appeals Court, which upheld the district court's decision. But the government appealed again, this time to the federal Supreme Court. The case was heard by November 2004, and the justices allowed the preliminary injunction to continue. Two months after the federal court's decision, the government filed another appeal asking the court to overturn the injunction. So in 2005, the case of *Gonzales v. O Centro Espirita*

Beneficente Uniao do Vegetal was heard again. The issue to be debated was “*whether the Religious Freedom Restoration Act of 1993 [...] requires the Government to permit the importation, distribution, possession, and use of Schedule I hallucinogenic controlled substance, where Congress has found that the substance has a high potential for abuse, it is unsafe even under medical supervision, and its importation and distribution would violate an international treaty.*” (“Quote from the Petition presented by Attorney General Gonzales”). The oral arguments on both sides were basically the same as those developed in the previous hearings, and the court finally upheld the preliminary injunction in favor of the UDV church. The majority opinion was written by Chief Justice Roberts, and consists of four parts answering the points made by the State during the hearing. Part I of the opinion summarizes the facts leading to the litigation as well as an explanation of the Controlled Substances Act and the Religious Freedom Act. In the second part, the judge asserts that the RFRA places on the government the burden to prove its compelling interest in prohibiting the importation and use of hoasca by UDV members, which according to the Court, the State had failed to do. The third part of the opinion answers the government’s argument according to which allowing the use of *hoasca*, which contains a Schedule I substance, will lead to further exemptions from the CSA based on First Amendment claims. To this argument the Court answers that the phrasing of the RFRA states that the compelling interest should be applied to each claimant, which means that each case and each ruling will not necessarily be the same in cases raising this issue. In the final part of the opinion, concerning the government’s claim that an exemption in favor of the UDV church would violate the 1971 United Nations Convention on Psychotropic Substances, the Court agreed that the Convention includes solutions or mixtures containing substances prohibited by the act, but asserted that the government did not produce any evidence of the “international consequences” (quote) of granting an exemption for *hoasca*. Therefore, the Court upheld the injunction and remanded to the case to the District court for further proceedings. In 2008, affirmed the injunction despite the government’s claim that the previous rulings went against the CSA prohibition, and two years later, in July of 2010, the UDV church and the State finally reached an agreement that permanently set the importation and sacramental use of *hoasca* by church members. In addition to the settlement, the government also agreed to pay for the fees that the UDV had to pay during the ten year legal battle. So the 2010 can be considered a major victory for the group.

Conclusion:

The decision of the Supreme Court is particularly significant because it challenges for the first time (since the Smith decision had been in favor of the State) more than thirty years of the “war on drug” landmark domestic policy. The CSA, which had been strictly implemented before the UDV case, had to show deference to religious freedom claims. The impact of such a decision is still to be observed on religious freedom future cases but it might be the first step toward a more accommodative approach to minority religions whose practices conflict with the law. Indeed, by requiring federal agencies to prove its compelling interest in interfering with a group’s religious freedom, the Supreme Court seems to have taken a major shift away from the Smith reasoning in its religious freedom jurisprudence. With its ruling based on RFRA considerations, the court also reaffirms the application of the 1993 law on the federal level whereas it had sought to limit the scope of RFRA to states only in the 1997 Boerne v. Flores case. The impact of the UDV case is also to be observed in another *hoasca* tea case, decided in 2008 by the Oregon Supreme Court, which ruled in favor of the Santo Daime Church, another Brazilian religious group that also got the right to use *hoasca* (which they call *ayahuasca*) in their religious ceremonies. The conclusion of this “second tea case”, which whose reasoning was quite similar to that of the UDV decision, might well represent a new, more accommodative direction in religious freedom jurisprudence.