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Legal Aspects of the Ayahuasca Consumption in the European Union

Legální aspekty užívání ayahuasky v Evropské unii

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Abstract:

The aim of this contribution is to present drug policy of the EU member countries in relation to ayahuasca consumption. Ayahuasca is brew made from *Banisteriopsis caapi* vine and *Psychotria viridis* bush and belongs to traditional preparation of Amazonian medicine. *Banisteriopsis caapi* contains beta-carboline alkaloids (harmine, harmaline and tetrahydroharmine). The main effective substance in *Psychotria viridis* is dimethyltryptamine. The contribution informs on the legal status of these substances in the EU. Also, it includes explanations of controversial parts in legislation in relation to ayahuasca consumption. Finally, the contribution mentions organisations which deal with the protection of traditional Amazonian medicine users and research in this area.

Key words:

ayahuasca, traditional Amazonian medicine, drug policy, European Union

Abstrakt:

Cílem tohoto konferenčního příspěvku je prezentovat drogovou politiku členských států Evropské unie ve vztahu k užívání ayahuasky. Ayahuasca je odvarem z liány *Banisteriopsis caapi* a keře *Psychotria viridis*, který patří mezi přípravky tradiční amazonské medicíny. *Banisteriopsis caapi* obsahuje beta-karbolinové alkaloidy (harmin, harmalin a tetrahydroharmin). Hlavní účinnou látkou v *Psychotria viridis* je dimethyltryptamin. V příspěvku je uveden legální statut těchto látek ve státech Evropské unie. Dále jsou v něm vysvětleny sporné body v legislativě, co se užívání ayahuasky týče. Nakonec jsou v příspěvku zmíněny organizace, které se zabývají ochranou uživatelů tradiční amazonské medicíny a výzkumem v této oblasti.

Klíčová slova:

ayahuasca, tradiční amazonská medicína, drogová politika, Evropská unie

Introduction:

“Traditional medicine of the Amazon” that represents an Amazonian indigenous medical system based on the use of various healing practices and natural remedies is a problematic concept. The problem of this concept is based on the fact that some ethnic groups in the Amazon have not used it for more than 50 years (Brabec de Mori 2011). On the other hand, research data prove that native inhabitants of the Amazon have been drinking ayahuasca (which belongs to most often used remedies within this medical system) for approximately 2000 years (Naranjo 1983).

We have implemented research on the traditional medicine of the Amazon since 2007 (Horák 2013). Since July 2015, we have focused on its use in the area of Czech Republic. First of all, we performed an on-line questionnaire survey. Thanks to this survey we acquired contacts on 42 volunteers willing to take part in an anonymous interview. The questionnaire data demonstrated that treatment methods applied in Peru, where we did previous fieldwork, do not differ from those used in Czech Republic. We were also able to determine the motivation of the users of traditional Amazonian medicine, which oscillates from curiosity, through spiritual and religious reasons to treatment (Horák 2015). Thus, it is possible to distinguish three main ways of its application: recreational, religious and (traditional) medicinal.

In November 2015, we have started to record semi-structured interviews with users of the traditional Amazonian medicine in the Czech Republic. Without the contacts gained during the questionnaire survey, it would not be impossible to establish a contact with informants because they are organized in a specific, relatively closed subculture. This subculture exists due to the fact that

some substances contained in remedies from the Amazon are regulated by the law. Because of the broadness of this subject, we will focus only on ayahuasca, a cornerstone of traditional Amazonian medicine. However, tobacco and other plants are used in the Czech Republic and in other European countries as well. We will focus on legislative questions that are connected to the ayahuasca consumption only.

Basic Characteristics of Ayahuasca:

Ayahuasca basically contains two components: bark of liana *Banisteriopsis caapi* and leaves of *Psychotria viridis* bush, without the addition of any other substance besides water.

Liana contains beta-carboline alkaloids: harmine, harmaline and tetrahydroharmine (abbrev. THH), known also as leptafflorin. Harmaline has been researched since 1970s, because it is structurally similar to 10-methoxy-harmaline produced by mammal pineal gland. We may assume that effectiveness of harmaline is probably based on resemblance to this metabolite involved in the control of consciousness (Schulgin 1976).

In leaves of *Psychotria viridis* N,N-dimethyltryptamine (abbrev. DMT) can be found. DMT is an endogenous substance found in human urine and cerebrospinal fluid (Strassman 2001, 63).

The pharmacological effect of ayahuasca is determined by synergy between both types of substances. Beta-carboline alkaloids inhibit enzymes of monoamine oxidase (abbrev. MAO) in the gastrointestinal tract and preclude an oxidative deamination of DMT. Otherwise, the effects of DMT cannot be reached by the oral application. A psychoactive effect occurs after the substance reaches the brain by the blood vessels. It remains a mystery how the indigenous inhabitants of Amazonia were able to discover a right liana that enables otherwise inactive DMT to become effective in megadiverse area of the Amazon rainforest (McKenna et al. 1986, 78).

In relation to the therapeutic application of ayahuasca, it is interesting to find out that THH blocks the reuptake of serotonin (5-hydroxytryptamine, abbrev. 5-HT). It causes the increase of mediator levels of dopamine, norepinephrine and serotonin in the central nerve system. DMT acts on proteins that transport 5-HT. It is known as an agonist of 5-HT_{1a} and 5-HT₂ receptors. The number of serotonergic synaptic connections grows in long term users of ayahuasca (Callaway 1994, 61; Beltrán Gallego 2007, 15).

Bouso et al. (2013) confirm that ayahuasca does not cause addiction and tolerance development. The use of this substance in controlled conditions can be considered safe.

Globalisation of Ayahuasca:

Ayahuasca has become a global phenomenon. It is possible to take part in ayahuasca session not only in the Czech Republic and neighbouring countries but also in Spain, Estonia, South Africa etc. (Balzer 2005; Labate a Jungaberle, 2011; Sobiecki 2013; López-Pavillard 2015; Kaasik 2016).

An expansion of ayahuasca out of South America was caused especially in relation with the spread of Brazilian syncretic churches Santo Daime and União do Vegetal that use it as a sacrament (Labate - Feeney 2012). These churches have their origins in the culture of Brazilian mestizos (*caboclos*), who formed their own interpretation of ayahuasca during the so called rubber-tree era (1880-1914), when they worked in jungle parts of neighbouring Peru and Bolivia. In remote rainforest communities, the influence of catholic church was weak (Luna 2002, 34-40).

During the first half of 20th century, these religious tendencies were not able to surpass other evangelical cults that prevail in Brazil. The public interest has grown since 1950s, when beatniks, hippies and scientists started to be interested in ayahuasca (Burroughs - Ginsberg 1963; Dobkin de Rios 1972; McKenna 1993). The debate on the drug status of ayahuasca was initiated in Brazil, where it was finally legalised due to the enlightened approach of local politicians, who have had a personal experience with it (Labate – Sena Araújo 2002). Members of these churches participated in original research on possible neurological and psychological deficits caused by the ayahuasca consumption (Grob 2006, 63-93) and safety of its administration to pregnant women, children and adolescents (Dobkin De Rios et al. 2005; Labate 2011).

Except Brazil, ayahuasca is legal in Peru. In 2008, it was declared a national cultural heritage by the law No. 28 296. Out of South America it is possible to use it legally also in the Netherlands and in New Mexico.

Syncretic churches also exist in Australia, Argentina, Belgium, Canada, England, France, Japan, Italy, Ireland, Mexico, Portugal, Spain and Switzerland (Tupper 2008; Tupper 2009). During the fieldwork, we have discovered that Santo Daime church is active in the Czech Republic as well (Horák, unpublished data).

Ayahuasca community is well-established internationally without any regard to geographic distances. It enabled commercialization of ayahuasca that is thus available worldwide. Ayahuasca is now produced, distributed and consumed globally. Anyone with a free internet access can order it by e-mail. However, a risk of criminal penalty exists, if national laws are not taken into account.¹¹

Legal Aspects of Ayahuasca in the EU:

As it was said before, the basic preparation of ayahuasca consists of a minimum of two herbal ingredients. However, it may include their analogues (e.g. *Diplopterys cabrerana* for DMT, *Peganum harmala* for beta-carboline alkaloids) and many more varieties of plants to modify the basic preparation effects (Rätsch 1998). Further, we provide an analysis of the complex issues connected with this controlled “substances” containing preparation.

The production and trade of psychoactive substance chemically known as DMT is prohibited by the 1971 Convention on Psychotropic Substances of United Nations and appears in the Green List of the International Narcotics Control Board (INCB) with PD-004 code. Beta-carbolines (harmala alkaloids) are not analogues of any scheduled substance (Erowid 2015a).

However, at point 285 of INCB annual report (2010, 46) are explicitly listed plants and herbal “preparations” such as ayahuasca, iboga, peyote, psilocybe mushrooms and others that are not subject to control under the 1971 Convention. The only controlled plants included are: cannabis, poppy and coca. Ayahuasca does not appear in any of the lists of internationally controlled substances. The “preparation” is legally separated from the “substance”, so ayahuasca should not be considered as illegal. Nevertheless, this issue is the subject of competing interpretations and the number of arrests is increasing last years (Tupper – Labate 2012; Sánchez - Bouso 2015, 15). People were brought to justice accused of alleged drug trafficking ayahuasca, although they have been usually released without charge (Ellens - Roberts 2015).

The INCB’s guidance is not binding on courts. National and international courts are not required to follow it. Such guidance is often called “commentary”. In the hierarchy of international law, court decisions take precedence over commentaries. For example, in 2014 the European Court on Human Rights found in the case of Franklin-Beentjes, a Dutch member of the ayahuasca church CEFLURIS, that ayahuasca was a “preparation” containing DMT and therefore covered by the convention (ECHR 2014).

The 1988 UN Convention Against Illegal Trafficking of Narcotics and Psychotropic Substances added certain provisions that affect the legal status of plants containing psychotropic substances. According to Art. 14.2, states should adopt suitable measures to eliminate the illicit cultivation of plants that contain narcotics or psychotropic substances, while respecting fundamental human rights, taking into consideration traditional legal uses, and respecting historical evidence and environmental protections (UN 1988, 14; ADF 2016a). However, the requirement to document “historic evidence” of traditional use of plants that are used for the ayahuasca preparation could be hardly fulfilled in the EU countries.

¹¹ For example, in the Czech Republic, drug supply is a criminal offence punished by 1-5 years of imprisonment. Punishment range extends to 2–10, 8–12, 10–18 years of imprisonment in case of aggravating circumstances, e.g. involvement of minors, larger/ significant/ large scale of act/benefit, injury or death, or involvement of (international) criminal organisations. Penal code, art. 283 (1-5) (EMCDDA 2016).

People harmed by domestic laws (e.g. if the law restricts their religious freedom to consume ayahuasca for religious purposes) can challenge the laws in international tribunals such as the ECHR or the Inter-American Court of Human Rights (IACHR).

Table 1 contains information on the legal status of ayahuasca compounds in the EU. The accuracy of the information provided here cannot be guaranteed. We were not able to consult national laws because of language limitations. Appropriate national drug laws should be always revised. International conventions (like the drug conventions) take precedence over national laws.¹²

Tab. 1 Overview of EU member countries having information on legal status of active substance of ayahuasca

EU country	DMT	Harmine	Harmaline	THH
Austria ¹³	illegal	legal	legal	legal
Belgium	illegal	legal	legal	legal
Bulgaria	illegal	legal	legal	legal
Croatia	illegal	legal	legal	legal
Cyprus	illegal	legal	legal	legal
Czech Republic ¹⁴	illegal	legal	legal	legal
Denmark ¹⁵	illegal	legal	legal	legal
Estonia ¹⁶	illegal	legal	legal	legal
Finland ¹⁷	illegal	legal	legal	legal
France ¹⁸	illegal	illegal	illegal	illegal
Germany ¹⁹	illegal	legal	legal	legal
Greece	illegal	legal	legal	legal
Hungary	illegal	legal	legal	legal
Ireland	illegal	legal	legal	legal
Italy ²⁰	illegal	legal	legal	legal
Latvia	illegal	legal	legal	legal

¹² If the convention outlaws any substance, a country technically cannot legalize it; it can only choose not to enforce the laws. But if the convention does not outlaw the substance, that does not mean that a country cannot choose to outlaw the substance, if it wants to. The international drug conventions set the minimum, not the maximum.

¹³ An excerpt from BGBl. II Nr. 374/1997 - Suchtgiftverordnung (First stated by the United Nations in 1971). To get the full picture go to <http://www.ris.bka.gv.at/bgbl/> and search for "Suchtgiftverordnung - SV".

¹⁴ According to the opinion of the Supreme Court dated 3/13 2014, sp. ref. Tpjn 301/2013, published under number 15/2014 of the Collection of Judicial Decisions and Opinions, Criminal Part, it is not allowed to possess more than 0.60 g of DMT in powder or crystal and 0.5 l of ayahuasca. Possessing this "larger than small quantity" is only an offence. Anyway, any handling with these substances and preparations, including the supply or delivery, is considered a crime (see Sections 283-287 of the Penal Code). The possession or cultivation of plants containing DMT in a small quantity are prohibited by Offences Act, § 30/1 j, k under penalty of up to 15.000 CZK.

¹⁵ DMT is reportedly on the "B-List" of drugs.

¹⁶ DMT is Schedule I.

¹⁷ <http://www.finlex.fi/fi/laki/ajantasa/2008/20080543>

¹⁸ As of May 3, 2005, France added harmine, harmaline, tetrahydroharmine (THH), harmol, and harmalol to the list of controlled substances. URL: <https://goo.gl/UPyB7Q>

¹⁹ DMT: Schedule I / Highest level of control, unable to be prescribed, manufactured, or possessed as of Sep, 1999. (listed as [2-(5-Methoxyindol-3-yl)ethyl]dimethylazan).

²⁰ Listed in Tabella I of "Tabelle delle sostanze stupefacenti e psicotrope", making it illegal to possess, purchase, or sell.

Lithuania	illegal	legal	legal	legal
Luxembourg	illegal	legal	legal	legal
Malta	illegal	legal	legal	legal
Netherlands	illegal	legal	legal	legal
Poland ¹	illegal	legal	legal	legal
Portugal	illegal	legal	legal	legal
Romania	illegal	legal	legal	legal
Slovakia	illegal	legal	legal	legal
Slovenia	illegal	legal	legal	legal
Spain	illegal	legal	legal	legal
Sweden	illegal	legal	legal	legal
United Kingdom	illegal	legal	legal	legal

Sources: EROWID 2015b, ADF 2016b

Conclusion:

Available data suggest that practices connected to the use of traditional Amazonian medicine are reasonably safe, if traditional application procedures are followed. Anyway, considerations on potential therapeutic use and human rights have to be balanced with the issue of public safety.

Ayahuasca is an effective therapeutic tool, if the session is guided by an organiser experienced in its preparation and application. Side effects with possible fatal consequences can occur in the case of non-adherence to the traditional prescriptions. So called diet, a set of specific dietary arrangements complemented by sexual abstinence plays a crucial role in the session organisation (Horák 2013, 60-63). Possible health issues can be also related to the use of ayahuasca by people with risky personality structure or not informed session participants.

Considering the legal status of ayahuasca, there is no general consensus between judges and law enforcement officials on whether it is illegal because it contains DMT, or not. It is up to national governments to make the final decision in their own jurisdictions on whether to impose controls on the plants used for the decoction or the preparation itself (ADF 2016b). In all cases, it should be considered that making ayahuasca illegal just because it contains a prohibited substance is reductionist and it does not reflect sociocultural complexity of its ritual use, which makes the preparation safe and applicable in the treatment of various diseases of civilization (Frecka et al. 2016).

Organisations such as Plantaforma para la defensa de la ayahuasca and Ayahuasca Defense Fund (abbrev. ADF) are active in the protection of ayahuasca users (PDA 2014). International Center for Ethnobotanical Education, Research & Service (abbrev. ICEERS) is involved in the research and dissemination of up-to-date information on traditional Amazonian medicine.

Summary:

This conference contribution is focused on legal aspects of ayahuasca consumption in member countries of the European Union. Ayahuasca is a preparation made of liana *Banisteriopsis caapi* and *Psychotria viridis* bush, which is used in the traditional Amazonian medicine. Beta-carbolines (harmala alkaloids) contained in *Banisteriopsis caapi* are not analogues of any scheduled substance. Dimethyltryptamine, main active compound of *Psychotria viridis*, is illegal in EU member countries according to the 1971 Convention on Psychotropic Substances of United Nations and appears in the Green List of the International Narcotics Control Board. However, in INCB annual report from 2010 is explicitly declared that plants and herbal preparations such as ayahuasca are not subject to control under the 1971 Convention. International drug policy is inconsistent. Organisations that are active in

²¹ DMT is schedule I (I-P group) in Poland.

the protection of ayahuasca users include Plantaforma para la defensa de la ayahuasca and ADF. ICEERS is involved in the research and dissemination of up-to-date information on traditional Amazonian medicine.

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