

1
DECREE No. 153

The Legislative Assembly of the Republic of El Salvador,

Whereas:

I. The Law Regulating Drug-Related Activities was promulgated by Legislative Decree No. 728 of 5 March 1991, published in Official Gazette No. 52, Volume 310, of 15 March 1991;

II. The aforementioned Law has ceased to be up to date and, in order to adapt it to the present situation and take account of technological advances employed by those engaged in activities that infringe the provisions of international conventions or agreements, it is necessary to issue a new legislative instrument which enforces those principles;

III. The health of the citizens of the Republic is a public asset, and the State and the people thus have an obligation to ensure its preservation and restoration;

IV. It is the policy of the Salvadoran State to comply with signed and ratified multilateral drug conventions and agreements, and the policies and activities defined by it are accordingly directed towards the fulfilment of the commitments arising therefrom;

V. Drug addiction is a phenomenon that impairs the physical and mental health of the citizens of the Republic and is also a cause of crime which undermines the economic, social, cultural and political foundations of society;

VI. Combating and curbing illicit drug-related activities are one way of preventing the problem of drug addiction and, to that end, it is necessary to issue provisions for the eradication of such activities and establish as offences various types of conduct relating thereto which offend against the principle stated in subparagraph III above;

Therefore:

In the exercise of its constitutional powers and following the proposal of the former parliamentary deputy Rosario Acosta,

Hereby decrees the

LAW REGULATING DRUG-RELATED ACTIVITIES

CHAPTER I GENERAL PROVISIONS

Objective of the Law

Article 1. The objective of the present Law shall be to regulate drug related activities concerned with the following:

- (a) Cultivation, production, manufacture, extraction, storage, deposit, transport, purchase, transfer, distribution, import, export, transit and supply;
- (b) Establishment and organization of entities implementing preventive, treatment and rehabilitation measures in regard to persons who have become addicts and to regulate activities relating thereto;
- (c) Possession, keeping, dispensing and consumption;
- (d) Combating and penalizing acts constituting offences or administrative breaches hereunder;
- (e) Scientific research and specialized studies on the matter.

(Internet:
<http://www.csj.gob.sv/leyes.nsf/ef438004d40bd5dd862564520073ab15/92af2708c0412f2e06256df2005a43c2?OpenDocument>). Note by the Secretariat: Amends E/NL.1996/23.

Drugs

Article 2. For the purposes hereof, substances regarded as drugs shall be those specified as such in the international conventions ratified by El Salvador, those referred to in the Public Health Code and other domestic laws, and generally those which, irrespective of their degree of purity, act on the central nervous system and are capable of causing changes, by stimulating or suppressing its functioning or by altering states of consciousness and whose abuse can cause physical or psychological addiction or dependence.

Also regarded as drugs shall be seeds, flowers, plants or parts thereof and any other substances used as raw materials for the purification, modification or manufacture of drugs.

Alcoholic beverages, tobacco, solvents and inhalants shall, notwithstanding their inclusion within the scope of this subject, be regulated by specific laws.

Prohibitions and authorizations

Article 3. Any activities involving plants or substances in the following categories shall be prohibited:

- (a) Narcotics;
- (b) Depressants;
- (c) Stimulants;
- (d) Hallucinogens;
- (e) Cannabis; and

(f) Any other substance regarded as a drug whose harmful effects are such as to warrant its prohibition by the Higher Council for Public Health or by the international conventions ratified by El Salvador.

The substances referred to in the preceding article and paragraph may only be imported, manufactured, extracted, kept or used in quantities strictly necessary for scientific research, the production of medicines, medical treatment or the manufacture of products for industrial use, subject to the authorization of the Higher Council for Public Health.

Definitions and use of terms

Article 4. For the purposes hereof:

Undercover agent shall mean any member of the police authority who, irrespective of his institutional rank, has been appointed as such in writing by the Director-General of Police or his authorized representative and who is empowered in writing by the Office of the Prosecutor-General to use means of deception with the sole purpose of detecting, investigating and establishing proof of unlawful conduct as referred to herein or who has been authorized as part of an investigation, under the strict supervision of the Office of the Prosecutor-General, to instigate or provoke the commission of acts with a view to establishing the offences being investigated;

Controlled purchase shall mean the acquisition of substances of any type regulated hereunder by an undercover agent in the course of an investigation carried out within or outside Salvadoran territory in accordance with the stipulations of treaties or conventions ratified by El Salvador;

Precautionary seizure and attachment shall mean a temporary ban on the transfer, conversion, disposal or movement of property or the temporary custody or control of property under warrants issued by a court or competent authority;

Controlled delivery shall mean the technique whereby illicit drugs, narcotics, psychotropic substances, substances listed in schedule I or II annexed to the Single Convention on Narcotic Drugs of 1961 and the 1972 Protocol thereto, or substances substituted for them, are allowed to leave, transit within, pass through or enter the territory of one or more countries with the knowledge and under the supervision of their competent authorities with a view to identifying persons involved in the commission of offences established hereunder;

Transit State shall mean a country through whose territory illicit drugs, narcotics, psychotropic substances or any other types of substances regarded as illicit drugs pass and which is not the point of origin or final destination of such substances;

Protected identity shall mean the protection of the true identity of an undercover agent in the course of an investigation following a request in writing by the Director of Police or his authorized representative or with the approval of the Office of the Prosecutor-General and with the knowledge of the National Registry of Persons;

Illicit traffic in drugs shall mean any activity not authorized by the competent authority and involving the cultivation, purchase, transfer on any terms, import, export, deposit, storage, transport, distribution, supply or transit of substances referred to in article 2.

CHAPTER II ADMINISTRATIVE AND EXECUTIVE AGENCIES

Article 5. The National Anti-Drug Commission, hereinafter "the CNA" or "the Commission", shall be established as a body operating under the direction of the President of the Republic, who shall appoint its Executive Director.

The CNA shall be responsible for planning, coordinating, supervising and assessing governmental policies, plans and strategies aimed at preventing and combating the illicit sale, trafficking and abuse of drugs and measures for the rehabilitation of addicted persons.

The CNA shall comprise the Ministers (or their representatives) of the Interior, of Public Health and Welfare, of Education and of National Defence and the Higher Council for Public Health and be presided over by the Executive Director appointed by the President of the Republic.

Ministry of the Interior

Article 6. The Ministry of the Interior, acting through the National Civil Police as the auxiliary organ of the justice administration system, and the latter, acting through the Anti-Narcotics Division, shall have the following functions:

(a) To design, manage and coordinate all activities and measures to prevent and curb the penetration and spread of drug trafficking in the country;

(b) To prevent the cultivation, production, manufacture, trading, consumption, marketing and export of unauthorized substances;

(c) To inspect any land vehicles, aircraft and seagoing vessels entering or operating on national territory where there is sufficient evidence to suggest that they are transporting substances specified in

article 2 hereof, and detain them for a maximum period of seventy-two hours, during which time any necessary procedures shall be conducted to ascertain whether they have been used for the commission of any offence referred to herein;

(d) Under the functional direction of the Office of the Prosecutor General, to carry out inspections on any premises where it is known that unlawful drug-related activities are being committed, in the course of which inspections the rights guaranteed by the Constitution and other laws shall be respected;

(e) To carry out examinations of persons where there are sufficient grounds to presume that any individuals are concealing in their clothing or belongings or are carrying attached to their body any articles relating to an offence and to perform body searches whenever deemed necessary owing to the existence of proof or evidence. A record of all steps taken shall be drawn

up in accordance with the provisions of the Code of Criminal Procedure and be submitted to the competent court. In the cases referred to above, the auxiliary organ shall have the right to arrest or detain persons for a maximum period of seventy-two hours;

(f) To seize, without the need to request judicial approval thereof, any substances suspected of falling within the definition of drugs as established herein and to submit them to expert laboratory analysis. If that analysis proves positive, the case shall be referred to the Office of the Prosecutor-General. Such expert appraisal may be introduced in proceedings as an oral statement. If the expert appraisal establishes that the substance does not fall within the definition set out in article 2 hereof, the substance shall be duly returned to its lawful owner. If, for justified reasons, such surrender proves difficult, a quantity sufficient for expert analysis shall, with the authorization of the prosecutor concerned, be taken, the remainder shall be destroyed in the presence of the prosecutor and the weight, quantity and quality of the drug shall be noted in the case documents. In that event, the prosecutor shall sign the record drawn up of all steps taken and a report thereon shall be sent to the competent judge;

(g) Under the functional direction of the Office of the Prosecutor General, to seize or close on a precautionary basis movable property or establishments used in any way for drug-related activities and place them at the disposal of the competent authority;

(h) Under the functional direction of the Office of the Prosecutor General, to seize movable or immovable property where there is sufficient circumstantial evidence that such property has been acquired with proceeds from the marketing of drugs and to place the property at the disposal of the competent authority;

(i) To coordinate drug control activities at commercial and private airports, heliports and ports with the relevant authorities or agencies;

(j) To exercise surveillance at frontier posts and places of possible entry into the territory of substances regarded as drugs hereunder and under conventions ratified by El Salvador; [1]

(k) To locate areas of cultivation of plants used as raw materials for the production of drugs and premises or laboratories when they are illegally manufactured, prepared, packaged or distributed;

(l) To carry out, under the functional direction of the Office of the Prosecutor-General, the destruction of crops referred to in the preceding subparagraph in the presence of the prosecutor concerned if, for justified reasons, their transfer proves difficult;

(m) For the purpose of investigating offences referred to herein, to verify, from relevant registers or by other lawful means, the arrival, residence and departure of persons staying at hotels, boarding houses, guest houses or any other premises used for the provision of accommodation, to which end the owners of such establishments shall regularly inform the Anti-Narcotics Division of guests' movements or, whenever so required, present the registers or other records kept for that purpose and shall allow its personnel to inspect such documents on the premises;

(n) To cooperate with the Higher Council for Public Health, whenever so requested by it, in the control of pharmacies, hospitals, clinics, health centres and any other establishments as laid down in the Public Health Code;

(o) To maintain cooperation with authorities of other countries responsible for the control and suppression of drug-related activities, whenever so requested by them and in accordance with conventions and agreements concluded by El Salvador;

(p) To investigate, under the functional direction of the Office of the Prosecutor-General, any criminal offences established hereunder with a view to presentation of the relevant injunctions to the competent court or judge of the departmental capital in the area of jurisdiction concerned;

(q) To carry out such investigations as may be ordered by the Office of the Prosecutor-General and duly report on the outcome thereof; and

(r) In general to discharge any functions entrusted by other laws.

Ministry of Public Health and Welfare

Article 7. The Ministry of Public Health and Welfare shall be the governmental institution directly responsible for formulating and implementing treatment and rehabilitation programmes for drug-addicted persons and monitoring any such programmes administered by other lawfully authorized institutions.

Ministry of Education

Article 8. The Ministry of Education shall be the governmental institution directly responsible for formulating, executing and supervising drug-abuse prevention programmes.

Ministry of National Defence

Article 9. The Ministry of National Defence shall, within the framework of the armed forces as laid down in article 212 of the Constitution, cooperate with the CNA to the extent required.

Higher Council for Public Health

Article 10. The Higher Council shall have the functions specified in the Public Health Code, its Internal Regulations, the Regulations on Official Pharmaceuticals, the Regulations on

Proprietary Medicines and the Regulations on Narcotic Drugs and in any other related laws and regulations.

Publicity campaigns

Article 11. The CNA shall be the agency responsible for promoting, coordinating and reviewing governmental and private publicity campaigns conducted through any media with a view to preventing the harmful effects caused by drug consumption and abuse.

Approval of workplans

Article 12. Governmental and duly authorized private entities whose objective is to prevent drug addiction shall submit their workplans to the Commission for approval.

The Commission shall, within a maximum time limit of thirty working days, issue decisions on workplans submitted to it for approval.

CHAPTER III CONTROLS

Lists of drugs

Article 13. The Higher Council for Public Health shall within the first two months of every year prepare a list of drugs and of all proprietary medicines, and preparations containing them, in accordance with the categories established herein, which it shall communicate to dispensers, specifying those drugs, medicines or preparations whose trade is totally prohibited and those which may be purchased under medical, dental or veterinary prescription, as applicable.

It shall further send such list to the Supreme Court of Justice, the Office of the Prosecutor-General, the National Civil Police and the Commission with a view to communication thereof to the competent judges and prosecutors.

The lists shall be publicized through the main media and any others deemed appropriate by the Higher Council.

Transit inscriptions

Article 14. All wrappings or packaging for proprietary medicines containing any drugs whose sale has been authorized by the Higher Council for Public Health under medical prescription shall, in addition to showing the full formulae of their contents, bear the following inscription in bold lettering in a prominent position: "Warning: for sale by medical prescription only and subject to control by the Higher Council for Public Health".

Drugs in transit

Article 15. The Higher Council for Public Health shall be the agency responsible for authorizing the transit across national territory of drugs, or proprietary medicines containing them, whenever so requested by the country of destination through a consular service.

Notification of every request and the decision thereon shall be sent to the Anti-Narcotics Division in order that it may take the appropriate measures and inform the CNA.

Import applications

Article 16. Public officials and employees entrusted with import formalities relating to substances referred to herein shall require applications to be accompanied by the original permit or licence documents issued by the Higher Council for Public Health.

Locations for drug imports

Article 17. Imports of drugs, or of proprietary medicines containing them, may be effected solely via frontier posts, ports and airports designated by the CNA, following consultation with the competent institutions, and the approval of the Higher Council for Public Health shall be essential for their withdrawal from the relevant customs houses.

For the purposes of this article, the authorization of private premises as customs houses shall be prohibited.

If the Higher Council for Public Health deems it necessary, it may withdraw samples of drugs, or of proprietary medicines containing them, from customs, for analysis purposes, prior to authorizing delivery to the importer.

Presumption in regard to importers

Article 18. For the purposes hereof, it shall be a presumption of law that the importer has received the quantities of drugs specified in the import certificate or clearance document. If the importer has not received them in whole or in part, the importer shall immediately inform the Higher Council for Public Health, which shall give immediate notification to the Anti-Narcotics Division in order that it may initiate the relevant investigation.

Persons responsible for control of drugs

Article 19. At hospitals, clinics, health centres and similar premises, the director or manager of the establishment or person deputizing for him shall be responsible for the control of drugs or of proprietary medicines containing them.

Furnishing of samples and conduct of inspections

Article 20. Owners or managers of businesses engaged in the import, manufacture, packaging, storage, distribution or sale of products containing drugs shall furnish any samples requested of them by the Higher Council for Public Health.

They shall further allow duly authorized officials and employees of the Higher Council and of the Anti-Narcotics Division to carry out such inspections as they deem necessary and shall produce without delay any documents and stocks of drugs requested of them.

Irregularities and anomalies

Article 21. If any documents or stocks of drugs are not presented or irregularities or anomalies are discovered in either or both, the Anti-Narcotics Division shall immediately inform the Higher Council for Public Health, which shall take appropriate measures. Notwithstanding the foregoing, if the irregularities detected are presumed to constitute offences, the relevant procedures shall be initiated and precautionary seizure or attachment shall be carried out.

Authorization to cultivate or produce

Article 22. No persons or entities may engage in cultivation or production of drugs, even for experimentation purposes, without the corresponding authorization from the Higher Council for Public Health, which may grant such authorization provided that the following requirements are met:

- (a) They shall undergo the relevant controls, checks and inspections; and
- (b) They shall be registered with the Higher Council as individuals or establishments operating in the chemical or pharmaceutical industry or as biological science research laboratories, as laid down in the Public Health Code.

Authorization to import and produce drugs

Article 23. Pharmaceutical research or industrial laboratories which for their operations require drugs or other substances referred to herein may import, purchase, process, produce or distribute them following authorization in all cases by the Higher Council for Public Health, which may grant such authorization, within the limits fixed by it, and cases of processing or production shall be subject to the following rules:

- (a) The required raw materials, chemicals or solvents shall be purchased with the authorization of the Higher Council;
- (b) The Higher Council shall be notified of the processing or production sufficiently in advance in order that it may arrange such controls as it deems appropriate.

It shall be necessary for such authorization to be obtained by any persons or entities requiring for their business specific substances, such as precursors, chemicals or solvents, which could be illicitly used in the processing or production of drugs.

Registers of drug stocks

Article 24. Pharmaceutical research or industrial laboratories which use substances hereby controlled or are engaged in their production or sale shall keep a detailed register of their stocks, using forms authorized by the Higher Council for Public Health, in order that such operations may be supervised by its authorized representatives and by the Anti-Narcotics Division, and shall possess suitable premises for their storage.

Control of dispensing of drugs

Article 25. Persons who by reason of their position are authorized by law to dispense drugs shall keep a ledger in which they shall enter on a daily basis the incoming, existing and outgoing stocks of such drugs, in accordance with the prescriptions received, in order that sales thereof may be duly controlled by the authorities of the Higher Council for Public Health and by the Anti-Narcotics Division. They shall also send the prescriptions to the Higher Council, on a monthly basis, for control purposes.

Entry and search of premises

Article 26. Without prejudice to the provisions of article 173 of the Code of Criminal Procedure, where there are sufficient grounds to presume that the provisions hereof are being infringed on any premises, a search and, if appropriate, the entry of the premises with a court warrant shall be carried out by the Anti-Narcotics Division under the direction of the Anti-Narcotics Department of the Office of the Prosecutor-General.

A search with prior warning of entry shall be admissible without a court warrant, in the cases specified in article 177 of the Code of Criminal Procedure, if the resident consents to such entry by reason of discovery of an offence in course of commission or an imminent risk of its perpetration or a serious risk to any persons.

International cooperation

Article 27. In matters falling hereunder, the State shall be responsible for securing international cooperation with a view to coordinating research, prevention and training programmes with the aim of strengthening institutions which in accordance with the law are involved in investigating, controlling or penalizing drug trafficking or production, and cooperating with other agencies and institutions for the purpose of punishing breaches hereof.

Obligations of managers of facilities

Article 28. Owners or managers of facilities used for social, cultural, recreational, sporting or any other purposes shall prevent the occurrence on their premises of the illicit activities referred to herein.

Procedures relating to destruction of drugs

Article 29. Control agencies shall be represented in all judicial procedures involving the

destruction of drugs or instrumentalities used in the commission of offences referred to herein, for which purpose they shall be duly summoned.

Penalties for breaches

Article 30. Persons guilty of breaches of any control measures referred to in articles 14, 17, second paragraph, 21, 23, 24, 25, 26 and 29 shall be punished, in accordance with the law, by fines equivalent to up to eight times the current minimum urban wage and, depending on the seriousness of the breach, with disqualification from carrying on their business and closure of their establishment, without prejudice to any criminal liability incurred by them.

The fines referred to in the preceding paragraph shall be imposed by the Higher Council for Public Health and the proceeds therefrom shall be deposited in the General Fund of the Nation.

CHAPTER IV OFFENCES

Sowing and cultivation

Article 31. Anyone who without lawful authorization sows, cultivates or harvests seeds, flowers, plants or parts thereof from which it is possible, naturally or by any means, to obtain drugs that produce physical or psychological dependence shall be punished by imprisonment from five to fifteen years and a fine of between five and two thousand five hundred times the current minimum monthly urban wage.

Manufacture and processing

Article 32. Anyone who without lawful authorization produces, manufactures, processes, extracts or obtains drugs shall be punished by imprisonment from ten to fifteen years and a fine of between five and two thousand five hundred times the current minimum monthly urban wage.

Illicit trafficking

Article 33. Anyone who without lawful authorization purchases, transfers on any terms, imports, exports, deposits, stores, transports, distributes, supplies, sells, dispenses or otherwise traffics seeds, leaves, plants, flowers or substances or products referred to herein shall be punished by imprisonment from ten to fifteen years and a fine of between fifty and five thousand times the current minimum monthly urban wage.

If the commission of the offence involves acts of international trafficking in which the national territory is used as a transit State or as a place of import or export, the punishment shall be increased by one third of the maximum penalty specified.

Possession and keeping

Article 34. Anyone who without lawful authorization possesses or keeps seeds, leaves, flowers, plants or parts thereof or illicit drugs in quantities of less than two grams, as referred to herein, shall be punished by imprisonment from one to three years and a fine of between five and one thousand times the current minimum monthly urban wage. [1]

If the quantities possessed or kept are equal to or more than two grams, as referred to herein, the punishment shall be imprisonment from three to six years and a fine of between five and one thousand times the current minimum monthly urban wage. [2]

If possession or keeping is for the purpose of carrying out any of the activities indicated in the preceding article, the punishment shall, irrespective of the quantity, be imprisonment from six to ten years and a fine of between ten and two thousand times the current minimum monthly urban wage. [2]

This provision shall not apply if the act committed falls within a more serious criminal offence category. [2]

Aiding, abetting and encouragement

Article 35. Anyone who in any way aids or abets the illicit cultivation of or trafficking in seeds, flowers, plants or parts thereof or drugs, or their manufacture, extraction, processing or production, or encourages their illicit use shall be punished by imprisonment from six to ten years and a fine of between twenty-five and two thousand five hundred times the current minimum monthly urban wage.

Provision of means

Article 36. Anyone who possesses, manufactures, transports or distributes equipment, materials or substances knowing that they are to be used in any activities referred to in articles 31, 32 and 33 shall be punished by imprisonment from five to fifteen years and a fine of between five and two thousand times the current minimum monthly urban wage.

Provision of premises, buildings and establishments

Article 37. Anyone who knowingly, on any terms, provides, supplies, uses or assigns any building, premises or establishment for the manufacture, production, extraction, storage, cultivation, sale, supply or consumption of drugs or the storage of equipment, materials or substances used for the purpose of facilitating drug trafficking shall be punished by imprisonment from five to fifteen years and a fine of between twenty-five and two thousand five hundred times the current minimum monthly urban wage and the measures laid down in article 67 hereof shall be taken in regard to the property seized. [1]

Prescribing and supplying

Article 38. Any medical practitioner who prescribes or supplies drugs requiring a prescription when they are not indicated for treatment purposes or in breach of the relevant laws or regulations shall be punished by imprisonment from three to five years and a fine of

between five and one thousand times the current minimum monthly urban wage.

Alteration of medicinal products

Article 39. Anyone who uses drugs in the manufacture of pharmaceutical products in doses exceeding those authorized shall be punished by imprisonment from three to five years and a fine of between five and one thousand times the current minimum monthly urban wage.

Unlawful dispensing of medicinal substances

Article 40. Anyone authorized to dispense medicinal substances containing drugs who dispenses them in a form, quality or quantity other than that specified on the medical prescription shall be punished by imprisonment from three to five years and a fine of between five and one thousand times the current minimum monthly urban wage.

If the dispensing is effected without a medical prescription and the product is not obtainable without the fulfilment of such requirement, the penalty shall be imprisonment from five to fifteen years and a fine of between five and two thousand times the current minimum monthly urban wage.

Administering of drugs

Article 41. Anyone who, for non-therapeutic purposes or without a medical prescription, administers any type of drug to another person, with that person's consent, shall be punished by imprisonment from three to six years and a fine of between five and one thousand times the current minimum monthly urban wage.

If the person to whom the drug is administered does not give his or her consent or if the person consenting is below the age of eighteen years or not criminally responsible for his or her actions, the punishment shall be imprisonment from six to eight years and a fine of between fifteen and two thousand times the current minimum monthly urban wage.

Alteration or falsification of prescriptions

Article 42. Anyone who alters or falsifies medical prescriptions, wholly or in part, and thereby obtains for himself or for another person drugs, or medicines containing them, shall be punished by imprisonment from three to six years and a fine of between five and one thousand times the current minimum monthly urban wage.

Receiving of illegally obtained property

Article 43. Anyone who, for the purpose of obtaining any advantage for himself or for a third party following the commission of any offence hereunder and acting without prior conspiracy, conceals, acquires or accepts cash, securities or articles knowing that they are the proceeds of that offence, or were used to commit it, shall be punished by imprisonment from four to eight years and a fine of between five and one thousand times the current minimum monthly urban wage.

For the purposes of application of this article, it shall be immaterial whether the unlawful act from which the property was derived was committed on national or foreign territory.

Shielding of criminals

Article 44. Anyone who, having knowledge of the commission of any offence hereunder and acting without prior conspiracy, assists the perpetrator or accomplice in evading the authority's investigations or in escaping the action of the authority shall be punished by imprisonment from four to five years and a fine of between five and one thousand times the current minimum monthly urban wage.

Promotion of drug use

Article 45. Anyone who by any means directly or indirectly promotes the use or consumption of drugs or any activities hereby penalized shall be punished by imprisonment from three to six years and a fine of between five and one thousand times the current minimum monthly urban wage.

Open behaviour

Article 46. Anyone whose behaviour in a public place, a place accessible to the public or a private place involves acts relating to the use or consumption of drugs shall be punished by imprisonment from one to three years and a fine of between one and one hundred times the current minimum monthly urban wage.

E/NL.2007/44-45 Page
13

Inciting, inducing or assisting the consumption of drugs

Article 47. Anyone who by any means incites, induces or assists another to use or consume drugs shall be punished by imprisonment from two to four years and a fine of between five and five hundred times the current minimum monthly urban wage.

If the person incited, induced or assisted is below the age of eighteen years or not criminally responsible for his or her actions, the punishment shall be imprisonment from five to ten years and a fine of between ten and one thousand five hundred times the current minimum monthly urban wage.

Unlawful procurement of drugs

Article 48. Anyone who by intimidation, violence or deception procures any drugs, or pharmaceutical products containing them, from any person whose trade or occupation is concerned with health care shall be punished by imprisonment from four to eight years and a

fine of between ten and two thousand five hundred times the current minimum monthly urban wage.

Cooperation in drug trafficking

Article 49. Anyone who knowingly supplies resources or means of any kind for the illicit cultivation, manufacture or production of or trafficking in drugs shall be punished by imprisonment from four to eight years and a fine of between ten and two thousand five hundred times the current minimum monthly urban wage.

Distribution intermediaries

Article 50. Anyone who in any way acts as an intermediary between drug manufacturers or producers and consumers shall be punished by imprisonment from five to ten years, unless the act constitutes a more serious offence established hereunder, and a fine of between ten and two thousand five hundred times the current minimum monthly urban wage.

Unlawful activities at educational establishments

Article 51. Anyone belonging to the teaching or administrative staff or having managerial or supervisory duties at an educational establishment of whatsoever nature who tolerates, or fails to report to any law-enforcement agency, any trafficking or possession of drugs at that establishment on having knowledge thereof shall be punished by imprisonment from four to eight years and a fine of between ten and two thousand five hundred times the current minimum monthly urban wage.

Preparatory acts, offer, conspiracy and unlawful association

Article 52. Preparatory acts for the perpetration of any offence established hereunder, an offer made for the same purpose, or any person who conspires with one or more persons to commit an act punishable as an offence or who, alone or with the assistance of another person, carries out at least one act in fulfilment of the agreed purpose, whether or not such act is otherwise lawful in itself, without the need for the existence of a formal agreement, shall be punished by the penalty laid down for the offence which is the object of the preparatory acts, offer, conspiracy or association.

In the cases provided for in the preceding paragraph, the completion of the offence for which the unlawful association had been formed shall not give rise to any exclusion of criminal liability and a conspiracy shall similarly be deemed to have existed even if the offence for which the unlawful association had been formed was not completed.

Failure to report

Article 53. Owners or managers of facilities referred to in article 28 who tolerate, or fail to report to any law-enforcement agency, any unlawful drug related activities on premises owned or managed by them on having knowledge thereof shall be punished by imprisonment from four to eight years and a fine of between ten and one thousand five hundred times the current minimum monthly urban wage.

Specific aggravating circumstances

Article 54. The following shall constitute aggravating circumstances in connection with offences hereunder:

- (a) If the offence affects or may affect persons below the age of eighteen years, pregnant women or persons suffering from mental illness or psychological impairment;
- (b) If the perpetrator encouraged the use or consumption of drugs at educational establishments, welfare or recreational centres for children, military or police units or detention or rehabilitation centres or if the perpetrator is a person referred to in article 27 hereof;
- (c) If the perpetrator is entrusted with the prevention or prosecution of offences hereunder;
- (d) If the perpetrator takes advantage of his public office, uses firearms or carries on an occupation directly connected with public health;
- (e) If the unlawful act was committed by an organized criminal group to which the accused belongs;
- (f) If the perpetrator was involved in other internationally organized criminal activities or in other illegal activities facilitated by the commission of the offence;
- (g) If the unlawful act was committed by an organized criminal group to which the accused belongs;
- (h) If there was any victimization or use of minors by the perpetrator;
- (i) If the perpetrator had been convicted of a similar offence by a domestic court.

In the aforementioned cases, the punishment may be increased by up to one third of the maximum penalty specified for the offence committed.

Specific extenuating circumstances

Article 55. The punishment may be reduced to the minimum penalty specified herein in the following cases:

- (a) If, during extrajudicial procedures or at the pretrial investigation stage, the accused discloses the identity of the perpetrators or accomplices or furnishes sufficient particulars to prosecute them;
- (b) If, during extrajudicial procedures or at the trial stage and prior to the verdict, the

accused provides information that makes it possible to seize or confiscate drugs or property constituting drug-related proceeds.

Concurrence of offences

Article 56. If, as a consequence of offences referred to herein, other unlawful acts are perpetrated, the rules relating to the concurrence of offences shall apply.

CHAPTER V SPECIAL PROVISIONS

Status of investigating agents

Article 57. Members of the Anti-Narcotics Division shall, when required to carry out acts in investigations undertaken in connection with offences described in chapter IV hereof, have the status of witness and not of defendant provided that they act within the scope of instructions and authorizations given to them in writing by the Chief of the Anti-Narcotics Division or by the person deputizing for him at that time.

If, in the course of acts carried out in the performance of their duties, members of the Anti-Narcotics Division impair any legally protected interests, a presumption of law that defences or grounds of innocence operate in their favour shall be constituted by the report submitted to the Office of the Prosecutor-General, and duly approved by the Chief of the Anti-Narcotics Division, on the circumstances in which the acts occurred.

Technique of controlled purchase

Article 58. The police authority, acting through undercover agents, shall be empowered to effect the controlled purchase of drugs, using for that purpose cash, securities or other means of payment, which may be furnished by the police authority.

In cases where precautionary seizure or attachment of cash, securities or the like is carried out, once the origin of the funds is proven before the trial court and it is established that they were provided by the police authority as means of payment required in its investigations, the funds shall be immediately returned to the police authority. Where the origin of the funds disbursed in the controlled purchase operation by the police authority is established and the precautionary seizure or attachment is not sufficient to repay the sum disbursed by the police authority, the latter may recover such sum through the financial system provided that the person from whom the controlled purchase was effected has dealings with the banks of El Salvador.

If the controlled purchase involves disbursements or deposits abroad, the procedure established for controlled delivery operations shall be used for the recovery thereof.

A record of all steps taken shall be drawn up, in accordance with all the formalities laid down by law, and shall be assessed in the related proceedings as documentary evidence.

Technique of controlled delivery

Article 59. The Office of the Prosecutor-General shall authorize and supervise the use of the technique of controlled delivery as provided for in article 11 of the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

The authorities of the State making such arrangements shall at the earliest opportunity provide the Office of the Prosecutor-General with information on the steps taken by them in connection with goods forming the subject of a controlled delivery operation and on the subsequent judicial acts.

Once proceedings have been initiated, the Office of the Prosecutor General may authorize the use of the technique of controlled delivery. It may also request foreign authorities trying a case involving controlled delivery to submit all the related depositions, which may be used in the local proceedings.

With the consent of the parties concerned, illicit consignments whose controlled delivery has been agreed upon may be intercepted or allowed to continue intact or with the narcotic drugs or psychotropic substances which they contain replaced wholly or in part.

Collaborators

Article 60. In the event of an investigation, the police authority shall be empowered, under the strict supervision of the Office of the Prosecutor General, to obtain the assistance of national or foreign collaborators with a view to their participating in an undercover police operation, in which case the police authority shall keep their identity secret in order to guarantee their physical or personal integrity, and may adopt such measures as are provided for in the Code of Criminal Procedure for the protection of witnesses. [1]

The Anti-Narcotics Division shall, with the knowledge of the Office of the Prosecutor-General, maintain, under strict confidentiality, a register of collaborators as referred to in the preceding paragraph.

Bank or tax secrecy and freezing of accounts

Article 61. Bank secrecy and tax confidentiality shall not be effective in the investigation of offences referred to herein. Information obtained shall be used solely as evidence in such investigation and may be ordered only by the trial judge or the Office of the Prosecutor-General.

The seizure or hand-over of banking, financial or commercial documents shall be subject to a judge's warrant, which the latter shall issue, in cases where appropriate, in the document ordering the initiation of the investigation.

The Office of the Prosecutor-General shall, if the urgency of the case so requires, order the freezing of suspects' bank accounts while the proceedings or investigations concerned are in progress.

Requests for information

Article 62. The Office of the Prosecutor-General may request information from any governmental, autonomous or private entities or individuals for the purpose of investigating offences hereunder and such entities and individuals shall be obliged to furnish the information requested.

Compilation of information

Article 63. The Office of the Prosecutor-General and the Anti-Narcotics Division shall establish and maintain a database on drug-related offences, in which both national and international information shall be compiled.

Temporary closure of establishments

Article 64. Where the circumstances of the case so require, the Prosecutor-General, or his authorized representative in the investigation, may order the total or partial temporary closure, for the period and to the extent strictly essential, of any premises where it is known that an offence established hereunder has been committed.

In cases where closure is ordered at the trial stage, the judge shall, by a reasoned decision, rule on the admissibility thereof on the basis of the grounds put forward by the party concerned or his legal representative.

In a final verdict of conviction, the court shall, when pronouncing its judgment, order the forfeiture of the property.

Procedures relating to seizure, destruction and surrender

Article 65. The investigating officer assigned to the case shall note in the case documents any precautionary seizure or attachment, destruction or confiscation carried out, in particular of drugs, substances, plants or parts thereof, recording, by expert means, precise details of the quantity, weight, name, quality, degree of purity and any other particulars deemed important, except as provided for in subparagraph (l) of article 6.

Where confiscation involves drugs, it shall not be necessary to have such measure approved before the judicial authority but, in the case of precautionary seizure, attachment or distraint of articles or documents connected with offences or presumed to be connected with any unlawful act punishable hereunder, approval thereof shall be sought before the relevant court.

With the exception of suitable and appropriate motor vehicles, vessels and aircraft or useful articles for combating drug trafficking, any property which is the subject of a precautionary seizure or attachment order shall be placed at the disposal of the competent judge, who shall make an inventory of the property and deposit it in safe keeping. Where confiscation relates to drugs, such property shall be retained by the judge until verification has been carried out by expert appraisal and security seals shall be affixed to the receptacles containing the confiscated items.

In the event of non-compliance with the provisions of the preceding paragraph or misplacement, removal, destruction, impairment or loss of drugs or articles connected with offences punishable hereunder occurring within the court, the principal judge of the court shall be liable therefore. In that case, a report shall be submitted to the relevant judicial authorities with a view to permanent suspension of the judge from his post, without prejudice to any criminal liability incurred. The same penalty shall be imposed on the investigating officer who carried out the confiscation or the prosecutor in charge of the case if their liability for the acts described above is established.

Where precautionary seizure or attachment relates to money, the judge shall send such property to the Directorate-General of the Treasury for deposit in the Third-Party Funds in Safe Keeping account within a time limit of three days from the date of receipt thereof.

Judicial destruction of drugs

Article 66. When confiscated drugs or substances are no longer required for trial purposes, the judge shall order their destruction unless it is established that they may be used for therapeutic purposes, in which case they shall be handed over to the Ministry of Public Health and Welfare and may also, at the written request of the Anti-Narcotics Division, be handed over for training purposes only.

Instrumentalities or materials specifically intended for use in the commission of offences punishable hereunder shall also be destroyed, unless they may be lawfully used by any governmental entity.

For purposes of destruction, the judge shall re-verify by expert assessment the characteristics of the confiscated property and appropriate method of destruction. The act of destruction may be attended by the parties, who shall be duly summoned for that purpose. The attendance of a representative of the Technical and Forensic Division of the Office of the Prosecutor-General shall be obligatory and the destruction shall be carried out, at the place, date and time previously stated, in the presence of witnesses appointed by the judge. [3]

The competent judge shall retain a sample of the destroyed drugs as procedural evidence of the existence of the offence, and such sample shall be sent under safe-keeping arrangements to the Higher Council for Public Health for destruction once the final verdict becomes enforceable.

In cases involving initial investigative procedures where the perpetrator of the offence cannot be identified, the destruction of the drugs may by way of exception be ordered by the Office of the Prosecutor-General in observance of the same formalities as set out in this article.

[1]

Disposal of seized property

Article 67. All movable and immovable property, vehicles, instrumentalities, materials, cash, securities and other articles used in the commission of offences hereunder and assets or proceeds derived from such acts shall be subject to precautionary seizure or attachment, as appropriate.

If they are not claimed within a time limit of ninety days from seizure, they shall, with the exception of cash and securities, be transferred immediately to the Office of the Prosecutor-General for administration purposes and allocation for use by institutions entrusted with combating drug trafficking.

Confiscation

Article 68. There shall be established a special fund to which proceeds from disposal of confiscated property of unlawful origin shall be allocated for the following activities, in the order listed:

- (a) The provision of financial assistance to governmental institutions entrusted with or supporting the task of combating drug trafficking in El Salvador;
- (b) The operation of the victim and witness protection programme; [4]
- (c) The rewarding of persons who have effectively contributed to the discovery of offences hereunder and whose collaboration has been duly established;
- (d) Rehabilitation programmes for victims of drug addiction; and
- (e) Social programmes concerned with drug-addiction prevention.

Those goods, materials or assets shall be disposed of by public auction in accordance with the stipulations of the Law on Storage, unless such property may be used to strengthen institutions engaged in combating offences referred to herein, in which case it shall be allocated to those institutions in accordance with procedures laid down by the Office of the Prosecutor-General.

The use of such property shall be audited by the National Audit Office.

Return of property

Article 69. Should cash, securities, articles, assets or vehicles used in the perpetration of offences hereunder not be owned by the person involved, they shall be returned to their lawful owner unless liability is incurred by the latter, in which event, if the property is the subject of precautionary seizure or attachment, the burden or proof shall be reversed and the presumed owner shall be required to establish lawful ownership of the property within a strict time limit of two calendar months.

Judicial disposal of property

Article 70. In the final verdict, the court shall order that confiscated property be transferred to the Special Fund for Proceeds of Drug-Trafficking and Related Offences for use by entities entrusted with combating drug trafficking.

Where confiscation relates to money, such property shall also be transferred to the Special Fund, in accordance with the formalities set out above.

Excluded privileges

Article 71. Persons charged with any offence referred to herein shall not be granted the privilege of release from custody or conditional suspension of sentence.

Persons found guilty of offences whose commission involved any of the aggravating circumstances specified in article 54 shall not be entitled to the privilege of substitution for time spent in detention on remand.

Confidentiality of investigations

Article 72. During initial investigative procedures, the actions of the Anti-Narcotics Division and of the Office of the Prosecutor-General shall, owing to the nature of the offences being investigated, be confidential but this shall in no way affect the rights conferred upon the accused by the Constitution and other laws.

Non-jury trials

Article 73. Offences established hereunder shall not be tried by juries.

Evidentiary value of statements by joint perpetrators and accomplices

Article 74. In cases involving offences established hereunder, statements made by joint perpetrators or accomplices to the same offence shall be valid and be assessed as evidence if, by application of the rules of free evaluation, they are consistent with the other evidence in the trial.

Supplementary provisions

Article 75. With regard to any matters not provided for herein, the provisions of international conventions ratified by El Salvador and the stipulations of ordinary laws that are not at variance therewith shall apply insofar as is relevant.

Special nature of the Law

Article 76. The present Law shall, by reason of its special nature, have precedence over any other laws at variance therewith.

Repeal

Article 77. All parts of the Law Regulating Drug-Related Activities promulgated by Legislative Decree No. 728 dated 5 March 1991, published in Official Gazette No. 52, Volume 310, of 15 March 1991, subsequent amendments thereto and any other provisions at variance therewith shall be repealed.

Entry into force

Article 78. The present Decree shall enter into force eight days following its publication in the Official Gazette.

Done at the seat of the Legislature, San Salvador, this second day of October in the year two thousand and three

Ciro Cruz Zepeda Peña, President
 José Manuel Melgar Henríquez, First Vice-President
 José Francisco Merino López, Third Vice-President
 Marta Lilian Coto Vda. de Cuellar, First Secretary.
 Elizardo González Lovo, Third Secretary
 Elvia Violeta Menjivar, Fourth Secretary

Presidential House, San Salvador, this thirteenth day of October in the year two thousand and three

Francisco Guillermo Flores Pérez, President of the Republic
 Conrado López Andreu,
 Minister of the Interior

Amendments:

[1] Decree Law No. 215 of 4 December 2003, published in Official Gazette No. 228, Volume 361, of 5 December 2003.

[2] Decree Law No. 253 of 22 January 2004, published in Official Gazette No. 32, Volume 362, of 17 February 2004.

[3] Decree Law No. 1019 of 4 May 2006, published in Official Gazette No. 88, Volume 371, of 16 May 2006.

[4] Decree Law No. 1032 of 26 April 2006, published in Official Gazette No. 95, Volume 371, of 25 May 2006.

Presidential House, San Salvador, this twenty-ninth day of January in the year two thousand and four

To be published

Francisco Guillermo Flores Pérez, President of the Republic
 Juan José Daboub Abdala, Minister of Finance (honorary)
 Herbert Abraham Betancourt Quijada, Minister of Public Health and Welfare