UNITED NATIONS

E/NL.1996/23
14 May 1996

ENGLISH AND SPANISH ONLY
ORIGINAL: SPANISH

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

EL SALVADOR

Communicated by the Government of El Salvador

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

LAW OF 5 MARCH 1991 REGULATING DRUG-RELATED ACTIVITIES

V.96 83770 (E) (a:\1996\nar.3)

LAW REGULATING DRUG-RELATED ACTIVITIES

DECREE NO. 728

THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF EL SALVADOR

WHEREAS:

I. Under article 65 of the Constitution, the health of the citizens of the Republic is a public asset, and the State and the people have an obligation to ensure its preservation and restoration;

II. Drug addiction, owing to its scale and constant growth, has become a phenomenon which is damaging the physical and mental health of the citizens of the Republic and is also a factor giving rise to crime which undermines the economic, social, cultural and political foundations of society;

III. Methods for preventing drug trafficking and combating drug addiction include controlling drug use and establishing as offences various types of drug-related behaviour which threaten the aforementioned constitutional principle;

THEREFORE:

In the exercise of its constitutional powers and on the initiative of the parliamentary deputies Mercedes Gloria Salguero Gross, Luis Roberto Angulo Samayoa, Néstor Arturo Ramírez Palacios, Mauricio Zablah, Raúl Manuel Somoza Alfaro, Miriam Eleana Mixco Reyna, Cornelio René Vega, René García Aranica, Juan Angel Ventura Valdivieso, José Guillermo Machón Corea, Carmen Elena Caldéron de Escalón and Carlos Alfredo Miranda;

HEREBY DECREES:

the following

LAW REGULATING DRUG-RELATED ACTIVITIES

CHAPTER I
GENERAL PROVISIONS

Purpose of the Law

Article 1. The purpose of this Law is to regulate drug-related activities pertaining to the following:

(a) Cultivation, production, manufacture, extraction, storage, deposit, transport, purchase, transfer, distribution, import, export, transit and supply;

(b) Prescribing, possession or holding, dispensing and consumption;

(c) Prevention, prosecution and punishment of the acts constituting the offence or crime.

Drugs

Article 2. For the purposes of this Law, substances regarded as "drugs" shall be those specified as such in the international agreements ratified by El Salvador; those specified in the Public Health Code, the Narcotic Drug Regulations and other national laws; and in general, those substances which, irrespective of their degree of purity, produce an effect on the central nervous system and are capable of causing changes, whether by stimulating or suppressing its functioning or by modifying states of consciousness, and which, when abused, cause physical and psychological dependence or addiction.

Seeds, flowers, plants or parts thereof and any other substance from which drugs may be extracted shall also be regarded as "drugs".

The provisions of this Law shall not apply to alcoholic beverages or tobacco, to which special laws shall apply.

Prohibitions and authorizations

Article 3. All activities relating to plants and substances in the following categories shall be prohibited:

(a) Narcotic drugs;

(b) Depressants;

(c) Stimulants;

(ch) Hallucinogens;

(d) Cannabis;

(e) Any other substance considered to have such harmful effects as to warrant its prohibition by the Higher Council for Public Health.

Authorization may be granted solely for the import, production, manufacture, extraction, possession and use of the drugs referred to in the preceding article in quantities strictly necessary for the purposes of scientific research, the preparation of medicines or medical treatment.

Concept of manufacture

Article 4. The term "manufacture of drugs" shall denote any procedure whereby drugs are obtained and purified by means of any method whatsoever.

Concept of illicit trafficking

Article 5. For the purposes of this Law, the term "illicit trafficking of drugs" shall denote any activity, not authorized by a competent authority, relating to the cultivation, purchase, transfer on any basis, import, export, deposit, storage, transport, distribution, supply or transit of the substances referred to in article 2.

CHAPTER II
EXECUTIVE ADMINISTRATIVE AGENCIES

Agencies

Article 6. The State administrative agencies entrusted with implementing this Law, where appropriate, are as follows: the Ministry of Public Health and Social Welfare, the Higher Council for Public Health and the Drug Control Board, which shall have a Drug Control Executive Unit, hereinafter referred to in this Law as the Ministry, the Council, the Board and the Executive Unit respectively.

Ministry of Public Health and Social Welfare

Article 7. The Ministry of Public Health and Social Welfare shall, with the collaboration of the other executive agencies named in this Law, be the Sate institution directly responsible for formulating and ensuring the implementation of preventive care, treatment and rehabilitation programmes for drug-dependent persons and for monitoring programmes administered by other legally authorized institutions.

Higher Council for Public Health

Article 8. The Council shall have the functions set forth in the Public Health Code, its own Internal Rules of Procedure, the Regulations Governing Official Pharmaceutical Products, the Regulations Governing Proprietary Pharmaceutical Products, the Regulations Governing Narcotic Drugs, and other relevant laws and regulations.

Drug Control Board

Article 9. The Drug Control Board established under Executive Decree No. 4 of 12 January 1990, published in Official Gazette No. 11, Volume No. 306 of 17 January 1990, shall be the agency responsible for:

(a) Planning, directing and coordinating all activities and measures aimed at preventing and monitoring the entry into and spread within the country of drug trafficking; and

(b) Preventing the cultivation, production, manufacture, traffic and consumption of unauthorized substances.

In pursuance of these objectives, the Board may further the establishment and operation of other public or private agencies or entities.

Drug Control Executive Unit—Functions

Article 10. The Executive Unit shall be an auxiliary body attached to the Department of Justice, collaborate in the performance of the functions assigned to the Council and the Board under this Law and have the following duties and powers:

(a) To organize control measures appropriate to its character with a view to preventing illicit trafficking in drugs and their abuse;

(b) To keep the ledgers and records necessary for the performance of its mission and to obtain drug-related data kept by other agencies;

(c) To establish subunits in any part of the national territory with the aim of ensuring greater effectiveness of operations;

(ch) To carry out inspections of any vehicle, vessel or aircraft entering national territory or, where it is deemed appropriate, of those already in circulation in the country, detaining such vehicle, vessel or aircraft for the period deemed expedient and essential for carrying out such inspection;

(d) To carry out inspections of premises where it is known that illicit drug-related activities are conducted, showing due respect in this regard for the rights guaranteed by the Constitution and other laws;

(e) To inspect and search persons suspected of carrying drugs and their equipment, hand-luggage and any other receptacles possibly being used to conceal drugs. Such inspection shall be performed with due respect for the dignity and decency of the individual, and the officers of the Executive Unit shall not involve themselves in operations entrusted to the other authorities established;

(f) To seize any substances suspected of being drugs within the meaning of this Law and to subject them to preliminary expert laboratory analysis, submitting to the respective lower court any drugs yielding a positive result. If for any reason such submission proves problematic, with the authorization of the nearest lower court judge a sample of a sufficient quantity for expert analysis shall be taken, and, in the presence of the aforementioned judge, the remainder shall be destroyed, the weight, quantity and quality of the drug being recorded in the judgement;

(g) To seize movable property or close immovable property which is used in whatsoever manner for illicit drug-related activities with the knowledge of the owner of the property, or which is the product of such activities or has been purchased with the proceeds from such activities, and to place such property at the disposal of the competent judge within a period of five days of its seizure or closure, following the taking of an inventory in the presence of two suitable witnesses;

(h) To coordinate with the appropriate authorities and agencies drug control activities at both commercial and private airports;

(i) To maintain surveillance at border posts and possible entry points to the territory of the Republic which are capable of being used for illegal drug trafficking;

(j) To trace plant crops providing raw material for the production of drugs and to locate premises or laboratories where such substances are illegally manufactured, prepared, packaged or distributed;

(k) To take measures to destroy the crops referred to in the preceding subparagraph, in the presence of the competent judge, when seizure is problematic for any reason;

(l) To monitor by means of the relevant record books or other lawful means the registration, stay and departure of guests in hotels, boarding houses, hostels or any other premises whose purpose is to provide accommodation, with the aim of investigating offences under this Law;

(m) To collaborate with the Higher Council for Public Health in the monitoring of pharmacies, hospitals, clinics, health centres and any other establishment specified in article 14 (d) of the Public Health Code;

(n) To maintain a collaborative relationship with other national authorities responsible for the control and punishment of drug-related activities;

(o) To investigate on an exclusive basis all criminal offences established by this Law and to report thereon to the competent court, to which it shall submit the relevant proceedings, charges and seized property;

(p) To conduct whatever relevant investigations may be entrusted to it by the Ministry, the Council, the Board, the Office of the Attorney-General of the Republic or the competent courts, and to duly inform them of its findings;

(q) To inform the Attorney-General of the Republic forthwith of any investigation to be initiated in respect of offences under this Law, with a view to his participating in the investigation, whether personally or through his auxiliary officers; and

(r) In general, to perform all other functions conferred upon it by other laws and those incumbent upon it as an auxiliary body attached to the Department of Justice in any matters connected with drug-related offences.

Appointment by the Attorney-General

Article 11. The Attorney-General of the Republic shall, on a permanent basis, appoint to the Executive Unit such auxiliary officers as he considers appropriate for the purpose of monitoring and assisting in the investigation of offences under this Law, from the stage of police inquiries onwards, with a view to checking strict compliance with correct legal procedure. Such appointment shall be made without prejudice to the appointment by the defendant of his own defence counsel.

Data-processing centre

Article 12. The National Crime Data-Processing Centre under the Ministry of Defence and Public Safety shall collaborate with the Council, the Board, the Executive Unit, the Office of the Attorney-General of the Republic and with the courts in conducting research on drugs, and to that end shall have the following functions:

(a) To keep up-to-date information on the most important stages of criminal proceedings relating to drugs;

(b) To keep an up-to-date register of all persons charged with drug-related offences;

(c) To compile and keep information furnished by international organizations on drug-related activities;

(ch) To furnish information to agencies actively concerned with drug-related issues.

For the purposes of the first two functions, the courts shall be required to supply the Centre with the relevant information.

Approval of work plans

Article 13. Duly established private agencies whose purpose is to prevent and combat drug addiction shall submit their work plans for approval to the Board, together with their statutes if so requested by the latter.

Authorization of campaigns

Article 14. The Drug Control Board shall be the body with competence to authorize and coordinate publicity campaigns regarding the harmful effects of drugs carried out by whatsoever public communication media.

CHAPTER III
MONITORING

Monitoring bodies

Article 15. The Council and the Executive Unit shall have exclusive competence, within their respective mandates, for monitoring the manufacture, import, export and marketing of proprietary chemical and pharmaceutical products containing drugs or used in their processing, extraction or transformation. Their distribution by pharmacies, establishments or any other type of enterprise shall also be subject to monitoring by the aforementioned bodies.

The bodies referred to in the preceding paragraph may establish whatever regulations they deem appropriate for the purposes of monitoring, giving notice of them through general or special instructions relating to prohibitions, limitations and controls on the trade in and use of drugs.

Schedule of drugs

Article 16. The Council shall, within the first two months of each year, establish a schedule of drugs and all pharmaceutical preparations and products containing them in accordance with the categories established in article 3 of this Law, of which it shall notify the prescribing practitioners, specifying those in which it is absolutely prohibited to trade and those which may be obtained by means of a prescription issued by a physician, dentist or veterinary surgeon.

The Council shall further transmit a copy of said schedule to the Supreme Court of Justice for the information of the competent courts.

The schedules may be communicated to the public by whatsoever means the Council deems appropriate.

Mandatory inscription

Article 17. Any packaging or wrapping of a proprietary pharmaceutical product containing any drug shall, in addition to stating the full formula of its contents on the label, also bear the following inscription

in a conspicuous place and in conspicuous script: "Warning: Sale against medical prescription only and subject to control by the Higher Council for Public Health".

Drugs in transit

Article 18. The Board shall be the body with competence to authorize the transit through national territory of drugs or proprietary pharmaceutical products containing them, provided that it is requested to do so by the country of destination through its consular office. The Executive Unit shall be notified of all such requests and the decision taken in each case so that it may take the appropriate action.

Original documents

Article 19. The public officials responsible for the formalities pertaining to the import of the substances referred to in this Law shall require that, where so requested, imported substances be accompanied by the original permit or licence documents issued by the Council.

Places for the importation of drugs

Article 20. Drugs or proprietary pharmaceutical products containing drugs may be imported only through Acajutla Port, El Salvador International Airport and the land customs offices at Las Chinamas, El Poy and El Amatillo; due authorization by the Council shall be required for the recovery of such drugs or preparations from the respective customs zones.

For the purposes of this article, it shall be prohibited to authorize private premises for use as customs zones.

If the Council deems fit, it may remove samples of drugs or pharmaceutical products containing drugs from the customs for the purpose of examination, before authorizing delivery to the importer.

Presumption against the importer

Article 21. For the purposes of this Law, there shall be a presumption of law that the importer has received the quantities of drugs specified in the import certificate or clearance document. In the event of his receiving only part or none of the quantities specified, he shall immediately report that fact to the Council, which shall likewise notify the Board and the Executive Unit so that the latter may open an investigation into the matter.

Responsible drug control officer

Article 22. In hospitals, clinics, health-care homes and centres of a similar kind, the officer responsible for the control of drugs or proprietary pharmaceutical products containing them shall be the director or superintendent of the establishment or the person acting on his behalf.

Submission of samples and inspection

Article 23. The owners or managers of enterprises engaging in the import, manufacture, packaging, storage, distribution or sale of products containing drugs shall be required to submit any samples requested by the Council.

They shall also permit officials and employees who have been duly authorized by the Council, the Board or the Executive Unit, or have been duly empowered by the competent court, to perform whatever inspections they consider necessary and to produce without delay any documentation or drugs that such officials or employees might wish to see.

Irregularities or anomalies

Article 24. If such documents or drugs are not presented, or if irregularities or anomalies are found in either case, the Executive Unit shall immediately report the situation to the Council, which shall take the appropriate action. Such action shall not prevent the launching of inquiries or performance of seizures in cases where the irregularities detected constitute a criminal offence.

Authorization for cultivation and production

Article 25. No persons may engage in the cultivation or production of drugs, even for the purposes of performing an experiment, without due authorization by the Higher Council for Public Health, which may grant such authorization only where the following conditions are fulfilled:

(a) That the persons in question have submitted to the control, inspection and monitoring measures concerned; and

(b) That they are registered with the Council as individuals or establishment operating within the chemical or pharmaceutical industry or as biological research laboratories, in accordance with article 14 (d) of the Public Health Code.

Authorization to import and prepare drugs

Article 26. Pharmaceutical, industrial or scientific research laboratories which require for their operation drugs or other substances referred to in this Law may import, purchase, process, prepare or distribute such drugs or substances subject to authorization in each case by the Council, which may grant such authorization within the limits that it itself establishes, provided that processing and preparation are subject to the following conditions:

(a) That the raw materials, chemicals or solvents required are obtained with the authorization of the Council; and

(b) That the Council is notified of such processing or preparation sufficiently in advance for it to be able to order whatever control measures it deems appropriate.

Such authorization shall also be required by any person engaging in an activity entailing the use of specific substances such as precursors, chemical products or solvents employed in the processing and preparation of drugs.

Registers of drug stocks

Article 27. Laboratories employing substances controlled under this Law or involved in their production or sale shall keep a detailed register of their stocks on forms authorized by the Council so that such operations may be monitored by officials representing the Council, and shall have available suitable premises for storing such substances.

Control of the dispatch of drugs

Article 28. Any person legally authorized by virtue of his official duties to dispatch drugs shall keep a ledger in which he shall make a daily record of incoming drugs, stocks of drugs on hand and outgoing drugs in accordance with receipts submitted, so that sales of drugs may be duly monitored by the Council authorities. He shall also be required to submit receipts of sales each month to the Council for the purposes of monitoring.

Search and inspection of premises

Article 29. Without prejudice to the provisions of article 181 of the Code of Criminal Procedure, where sufficient grounds exist to justify the presumption that particular premises or an establishment have been used in contravention of the provisions of this Law, the competent judicial authority shall carry out their search and inspection either *ex officio* or at the request of the Council, the Board or the Executive Unit.

International cooperation

Article 30. It shall be incumbent upon the State and other institutions assisting, in accordance with the law, in the investigation, monitoring and punishment of drug production and trade to secure international cooperation in this sphere for the purpose of coordinating research and control programmes and also to cooperate with other agencies and institutions with a view to the punishment of offences under this Law.

Requirement on persons in charge of organizations

Article 31. The owners or managers of social, cultural, recreational, sporting or other organizations shall ensure that the illicit activities referred to in this Law do not take place in their premises.

Drug-destruction operations

Article 32. The monitoring bodies shall be represented at any judicial procedure involving the destruction of drugs or instrumentalities employed in the commission of offences under this Law, for which purpose their presence shall be requested in accordance with the law.

Penalties for infringement

Article 33. Any person infringing any of the measures of control set out in articles 17, 20, second paragraph, 24, 26, 27, 28, 29 or 32 shall be liable in accordance with the law to a fine of 500 to 10,000 colones and, depending on the seriousness of the infringement, to disqualification from pursuit of the activity engaged in or closure of the premises, without prejudice, however, to any criminal responsibility incurred.

The fines specified in the preceding paragraph shall be imposed by the Council and the proceeds therefrom shall be transferred to the National General Fund.

The provisions of this article shall not apply if the infringement has already been punished under other laws or regulations specified in article 8.

CHAPTER IV
OFFENCES

Sowing and cultivation

Article 34. Any person who, without legal 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 liable to a term of imprisonment of five to ten years.

Manufacture or processing

Article 35. Any person who, without legal authorization, produces, manufactures, transforms, extracts or produces drugs shall be liable to a term of imprisonment of five to fifteen years.

Illicit trade, trafficking and storage

Article 36. Any person who, without legal authorization, acquires, transfers on any basis whatsoever, imports, exports, deposits, stores, transports, distributes, supplies, sells or dispenses the seeds, leaves, plants, flowers or substances or products specified in article 34, or engages in any other trafficking activity in their connection, shall be liable to a term of imprisonment of five to fifteen years.

Possession and holding

Article 37. Any person who, without legal authorization, possesses or holds seeds, leaves, flowers, plants, or parts thereof, or drugs referred to in this Law in quantities which, in the judge's carefully considered opinion, indicate their commercial use, or who, although duly authorized, is unable to prove that their possession is justified, shall be liable to a term of imprisonment of three to six years. If the purpose of such possession is to engage in any of the activities specified in the preceding article, the penalty shall be a term of imprisonment of six to ten years.

Aiding, abetting and encouragement

Article 38. Any person who in any way aids and abets the illicit cultivation of or trafficking in seeds, leaves, flowers, plants or parts thereof or of drugs, or their manufacture, extraction, processing or preparation, or encourages their abuse shall be liable to a term of imprisonment of six to ten years.

Provision of means

Article 39. Any person who possesses, manufactures, transports or distributes equipment, materials or substances in the knowledge that they will be used in any of the activities referred to in articles 34, 35 or 36 shall be liable to a term of imprisonment of five to ten years.

Provision of premises, buildings or establishments

Article 40. Any person who, on any basis whatsoever, provides, furnishes, uses or designates any building, premises or establishment for the manufacture, preparation, extraction, storage, cultivation, sale, supply or consumption of drugs shall be liable to a term of imprisonment of five to ten years, with closure of the premises or establishment.

Prescription or supply

Article 41. Any medical practitioner who prescribes or supplies drugs which require a prescription when they are not indicated for treatment purposes or in contravention of the relevant laws or regulations shall be liable to a term of imprisonment of three to five years.

Alteration of medicaments

Article 42. Any person who uses drugs in the manufacture of pharmaceutical products in higher doses than those authorized shall be liable to a term of imprisonment of three to five years.

Illicit dispensing of medicinal substances

Article 43. Any person authorized to dispense medicinal substances containing drugs who dispenses them in a form, quality or quantity different from that specified in the medical prescription shall be liable to a term of imprisonment of three to five years.

If dispensing was conducted without a medical prescription in the case of a product requiring such prescription, the penalty imposed shall be a term of imprisonment of five to ten years.

Administration of drugs

Article 44. Any person who, for non-therapeutic purposes or without a medical prescription, administers any type of drugs to another person with the consent of that person shall be liable to a term of imprisonment of three to six years.

If the person to whom drugs are administered does not give his consent, is aged under 18 years or is not criminally responsible for his actions, the penalty shall be a term of imprisonment of six to eight years.

Alteration or falsification of prescriptions

Article 45. Any person who alters or falsifies medical prescriptions, wholly or in part, and thereby obtains, for himself or for another, drugs or medicines containing drugs shall be liable to a term of imprisonment of three to six years.

Transactions derived from drug-related offences

Article 46. Any person who, personally or through an intermediary, whether an individual or a corporate entity, carries out business transactions with other persons or financial, commercial or any other establishments using money or proceeds derived from illicit activities under this Law shall be liable to a term of imprisonment of eight to fifteen years.

The same penalty shall be applied to the intermediary, owner, legal representative or manager of the establishment who authorized, committed or carried out such transactions knowing the illegitimate origin of the money or proceeds.

Any person, other than the persons mentioned in the preceding subparagraph, who, knowing the illicit source of the proceeds, authorizes, permits or carries out the transactions referred to in this article by taking advantage of his office, position or post shall be liable to a term of imprisonment of five to ten years.

The monies or proceeds shall be presumed in law to be derived from transactions connected with drug-related offences if, within a maximum period of three years computed retroactively, their negotiation has been proposed or requested by or on behalf of a person prosecuted for any of the offences under this Law.

Receiving stolen property

Article 47. Any person who, for the purpose of obtaining any advantage, either for himself or for a third party, following the commission of any offence under this Law and without prior agreement, conceals, acquires or receives money, assets or property in the knowledge that they are the proceeds of that offence or were used to commit it shall be liable to a term of imprisonment of three to five years.

For the purposes of the application of this and the preceding article, it shall be immaterial whether the offence giving rise to such proceeds was committed on national territory or abroad.

Shielding of criminals

Article 48. Any person who, being aware of the commission of any offence under this Law and, without prior agreement, assists the perpetrator or accomplice in evading the authority's investigations or in escaping the action of the authority shall be liable to a term of imprisonment of one to five years.

Advocacy of drug use

Article 49. Any person who, directly or indirectly, advocates by whatsoever means the use or consumption of drugs or the pursuit of any activity punishable under this Law shall be liable to a term of imprisonment of three to six years.

Intentional exhibition

Article 50. Any person who, in a public place, in a place open to the public or in a private place, for the evident purpose of exhibitionism, carries out acts related to the use or consumption of drugs shall be liable to a term of imprisonment of one to three years.

Incitement, inducement or facilitation of drug use

Article 51. Any person inciting, inducing or assisting another person, by any means whatsoever, to use or consume drugs shall be liable to a term of imprisonment of two to four years. If the person so incited, induced or assisted was under 18 years of age or not criminally responsible for his actions, the penalty shall be four to six years.

The same penalty shall be applied to any pregnant woman who knowingly consumes drugs which may cause damage to the foetus or newborn child.

Illicit obtaining of drugs

Article 52. Any person who, through intimidation, violence or deceit, obtains any drug or pharmaceutical product containing a drug from a person whose profession or office is connected with public health shall be liable to a term of imprisonment of four to eight years.

Cooperation in drug trafficking

Article 53. Any person who knowingly supplies any type of means or resources for the illicit cultivation, manufacture or preparation of drugs or for illicit trafficking in drugs shall be liable to a term of imprisonment of four to eight years.

Brokerage in distribution

Article 54. Any person who performs any act of brokerage between manufacturers or producers of drugs and consumers shall be liable to a term of imprisonment of five to ten years, provided that the act does not constitute a more serious offence established under this Law.

Illicit activities in educational centres

Article 55. Any person on the teaching or administrative staff of an educational centre of whatsoever kind, or entrusted with managerial or inspection functions with regard to such a centre, who permits or fails to disclose or report to any of the bodies entrusted with application of this Law acts known to them involving the trafficking or possession of drugs in that centre shall be liable to a term of imprisonment of one to four years.

Criminal associations

Article 56. Any person who belongs to a national or international association formed for the purpose of committing any act punishable under this Law shall be liable to a term of imprisonment of four to eight years.

Failure to disclose or report

Article 57. Any owner or manager of the entities referred to in article 31 who, in the knowledge that illicit drug-related activities are taking place on premises under his authority or responsibility, permits them or fails to disclose or report them to any of the bodies entrusted with application of this Law shall be liable to a term of imprisonment of one to three years.

Offences aggravated by result

Article 58. Should one or more persons die as a consequence of offences established under this Law, the perpetrator shall be liable to a term of imprisonment of eight to twenty years.

Should the consequence be serious or very serious injuries or the loss or impairment of mental faculties, the punishment shall be imprisonment for a term of six to twelve years.

Preparatory acts, association and conspiracy

Article 59. Acts preparatory to the commission of any offences under this Law shall be punished by a term of imprisonment of one to three years, and any association and conspiracy with the same objective by a term of imprisonment of six months to two years.

Special aggravating circumstances

Article 60. The following shall be considered to be special aggravating circumstances in connection with offences under this Law:

(a) If the offence affects or may affect persons under the age of 18 years, pregnant women, or persons suffering from mental illness or physical disability;

(b) If the perpetrator has encouraged the use or consumption of drugs at educational establishments, centres for the protection and recreation of children, military units or penal institutions, or if the perpetrator is one of the persons referred to in article 31 of this Law;

(c) If the perpetrator is responsible for the prevention or prosecution of offences under this Law;

(ch) If the perpetrator has taken advantage of his public office, uses arms or carries on an occupation directly connected with public health.

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

Special extenuating circumstances

Article 61. The punishment may be reduced to one half of the minimum indicated in this Law in the following cases:

(a) If, during the extrajudicial proceedings or the pre-trial investigation, the accused discloses the identity of perpetrators of offences or their accomplices and furnishes sufficient information to permit their prosecution;

(b) If, during the extrajudicial proceedings or the trial and prior to the verdict, the accused provides information that makes it possible to seize or confiscate drugs or the proceeds of drug-related offences.

Concurrence of offences

Article 62. If, as a consequence of offences under this Law, other criminal acts are perpetrated, the rules relating to the concurrence of offences shall apply.

CHAPTER V
SPECIAL PROVISIONS

Capacity of investigating officers

Article 63. Members of the Executive Unit, provided that their actions are necessary for the investigations conducted in relation to the acts described in Chapter IV, and that they act within the orders and authorizations given to them in writing by the Chief of the Executive Unit or the person acting on his behalf at the time in question, shall have the capacity of witnesses and not of defendants.

When, in the course of measures taken in the performance of their duties, the members of the Executive Unit injure a legally protected interest, a legal presumption of a defence or ground for preclusion of culpability in favour of the agent shall be constituted by the report submitted to the competent judge and approved by the Chief of the Unit to which they belong with regard to the circumstances in which the respective acts took place.

Banking or tax secrecy and freezing of accounts

Article 64. Banking secrecy and confidentiality in matters of taxation shall not apply in the investigation of offences under this Law. Any information received shall be used solely for the purposes of evidence in such investigation and may be ordered only by the competent judge. Such information may also be requested by the Department of Public Prosecution in accordance with its organizational act.

For the purposes of the confiscation or requesting of banking, financial or commercial documentation, it shall be necessary for the judge to issue an order, which he shall transmit at the appropriate time in the same writ as that ordering the institution of the investigation.

The judge or Chief of the Executive Unit may, when the urgency of the case so requires, order the freezing of the bank accounts of the accused for the duration of the trial or the respective investigation. When the freezing of bank accounts is ordered by the Chief of the Executive Unit, the measure may not be applied for a period greater than three days, within which time he shall notify the competent judge accordingly for decision by the latter as to the justification or otherwise of that measure.

Precautionary closure of buildings

Article 65. When necessitated by the circumstances of the case, the investigating officer conducting the inquiries pursued by the Executive Unit may order the precautionary total or partial closure, for the time and to the extent strictly necessary, of hotels, boarding-houses, establishments where alcoholic beverages are sold or consumed, restaurants, clubs, nightclubs, performance halls and, in general, any premises where he knows that an offence under this Law has been committed. In cases where closure is ordered, the trial judge shall decide whether such action is justified on the basis of the arguments presented by the interested party or his legal representative.

Seizure, destruction and disposal

Article 66. The investigating officer appointed by the Executive Unit shall, in the course of proceedings, keep a record of any seizure, destruction or confiscation operation performed, in particular with regard to drugs, substances, plants or parts thereof, specifying in detail with the assistance of a specialist their quantity, weight, number, quality, degree of purity and any other characteristic that he considers important.

Except in the case provided for in article 10 (k), any property seized shall be deposited, following verification by means of an expert assessment of the facts established by the Executive Unit, whereupon safety seals shall be placed on the receptacles containing the seized property.

Any money seized shall be transferred by the judge to the Treasury Department to be deposited in the "Third-party funds safe keeping account" within a period of three days of the date of receipt.

Judicial destruction of drugs

Article 67. When seized drugs or substances are no longer required for the purposes of the proceedings, the judge shall order their destruction, unless it is established that they can be used for therapeutic purposes, in which case they shall be turned over to the Ministry of Public Health and Social Welfare.

Instrumentalities or equipment specially intended for use in the commission of offences under this Law shall also be destroyed, unless they may be used legitimately by an official entity.

For the purposes of destruction, the judge shall, by means of an assessment performed by an expert, recheck the characteristics of the seized property and the appropriate method of destruction. The act of destruction may be attended by the parties, who shall be duly summoned, but shall necessarily be attended by a representative of each of the bodies monitoring application of this Law and shall take place in the presence of two witnesses appointed by the judge at the place, date and time previously stated.

The competent judge shall retain a sample of the destroyed drug as procedural evidence of the existence of the offence, and shall send it under guard to the Council to be destroyed when the final verdict becomes enforceable.

Confiscation

Article 68. Property, objects, money, vehicles or assets used in the commission of offences under this Law or derived therefrom or acquired by means of assets obtained from the commission of such offences shall be confiscated.

If property, objects or vehicles used to commit offences under this Law are not owned by the persons involved, they shall be returned to their lawful owner if he is held to be free from responsibility. Confiscation shall be ordered by the court of first instance in the case of a conviction.

Judicial disposal of property

Article 69. In pronouncing the final verdict, the judge shall order that confiscated property be turned over to the Board to be assigned to the official entities for use in the preventive care, treatment and rehabilitation of drug-dependent persons, or to the Executive Unit, or to be auctioned.

In the latter case, the proceeds from the auction shall be paid into the National General Fund.

If all or part of the money seized and submitted to the judge has been furnished by the Executive Unit as a necessary means in the investigations conducted, it may be returned to that Unit at any time, provided that the origin of the money has been verified.

Exclusion of benefits

Article 70. Any person charged with any offence under this Law shall forfeit entitlement to release on bail and to the award of a suspended sentence.

Persons convicted of offences with any of the aggravating circumstances specified in article 60 shall forfeit entitlement to conditional release.

Confidentiality of investigation

Article 71. Because of the nature of the crimes which it is called upon to investigate, the activities of the Executive Unit shall be confidential, without this in any way impairing the rights enjoyed by the accused under the Constitution and other laws.

Proceedings from which the jury is excluded

Article 72. The jury shall be excluded from proceedings in connection with offences under this Law.

Evidentiary value of statements by co-perpetrators or accomplices

Article 73. In cases relating to offences under this Law, statements made by co-perpetrators or accomplices in the same offence shall be valid and shall 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 74. Where no provision is made in this Law, the provisions of ordinary law shall apply, provided they are not at variance with this Law.

Applicable procedure

Article 75. The procedure indicated in the Code of Criminal Procedure shall apply in the investigation of offences under this Law.

Revocation

Article 76. Articles 300 to 305 of the Criminal Code, as well as the provisions of laws and other statutory rules establishing offences embodied in this Law or in any way at variance or in conflict with them, are hereby revoked.

Effect

Article 77. This Decree shall enter into force eight days after its publication in the Official Gazette.

Done in the Blue Room of the Legislative Palace, in San Salvador, this fifth day of March, nineteen hundred ninety-one.

Luis Roberto Angulo Samayoa,
Vice-President

Mauricio Zablah,
Secretary

Mercedes Gloria Salguero Gross,
Secretary

Raúl Manuel Somoza Alfaro,
Secretary

Néstor Arturo Ramirez Palacios,
Secretary

Dolores Eduviges Henriquez,
Secretary

Macla Judith Romero de Torres,
Secretary

To be published at the Presidential House, in San Salvador, this thirteenth day of March, nineteen hundred ninety one.

Alfredo Felix Christiani Burkard,
President of the Republic

René Hernández Valiente,
Minister of Justice

Gilberto Lisandro Vásquez Sosa,
Minister of Public Health and Social Welfare

Decree Law No. 728 of 5 March 1991, published in Official Gazette No. 52, Volume 310, of 15 March 1991.