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LAWS AND REGULATIONS

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

GUATEMALA

Communicated by the Government of Guatemala

NOTE BY THE SECRETARY-GENERAL - In accordance with the relevant Articles of the International Treaties on Narcotic Drugs, the Secretary-General has the honour to communicate the following legislative text.

E/NL.1975/42

DECREE NO. 92-70

THE CONGRESS OF THE REPUBLIC OF GUATEMALA

CONSIDERING:

That, as a result of the serious phenomenon of addiction and other disabilities caused by the use of drugs, particularly by young persons, the existing laws on narcotic drugs must, as a matter of urgency, be brought up to date in order to obviate serious dangers to health and other consequences threatening the inhabitants of the national territory;

CONSIDERING:

That under the existing law a person who consumes drugs is punishable in the same way as one who traffics in and cultivates them and that this is inconsistent with the interests both of justice and of society; and considering that, since the aforementioned drugs are sometimes necessary for health, it is appropriate to regulate the powers of licensed medical practitioners and druggists and to ensure that professional ethical rules are not infringed as a result of such medical practitioners and druggists taking advantage of the status and powers conferred on them by the law in order to act illegally, to the detriment of society;

CONSIDERING:

That it is necessary to impose drastic punishments on persons who, in order by such means to be successful in corrupting minors and causing serious problems in centres in which sentences are served, distribute drugs to minors and in the Republic's penal centres, since the resultant evils are more serious in such surroundings than would be the case if the drugs were distributed elsewhere;

THEREFORE:

On the basis of articles 85, 87, 90 and 170, paragraph 1, of the Constitution of the Republic,

ENACTS:

The following amendments to the Health Code, Government Decree 1877:

ARTICLE 1. Article 78 shall read as follows:

"Article 78: The marketing, preparation, processing, import, export, traffic in and use of narcotic drugs shall be subject to the following:

1. International treaties, agreements or arrangements, which are binding on the country;
2. The provisions of this Code and other laws of the Republic;
3. Regulations issued by the Executive Organ through the Ministry of Public Health and Social Welfare;
4. Provisions issued by the Directorate-General of Health Services with a view to better observance of treaties, laws and regulations."

ARTICLE 2. Article 79 shall read as follows:

"Article 79: For the purposes of this Code and its regulation, drugs or dangerous substances mean those drugs or dangerous substances which may affect the physical or mental health of individuals or groups and which may create physical addiction or psychological dependence.

The following are dangerous drugs or substances:

- (a) Opium, in its various forms and derivatives;
- (b) Morphine, in its salts and derivatives;
- (c) Cocaine, in its salts and derivatives;
- (d) Heroin, its salts and derivatives;
- (e) Opium poppies;
- (f) Coca leaves;
- (g) Cannabis, in any of its forms;
- (h) Plant or fungus extracts, such as LSD, Peyotl, Psilocybine and others;
- (i) Amphetamines and similar drugs;
- (j) Barbiturates;
- (k) Drugs and substances which, under the provisions of international conventions that are binding on the Republic of Guatemala, are deemed to be dangerous."

ARTICLE 3. Article 80 shall read as follows:

"Article 80: The following are strictly prohibited in the Republic:

- (a) The sowing, cultivation and harvesting of cannabis, the opium poppy and coca;
- (b) The import, preparation, possession, holding, distribution, use of, traffic in and export of prepared opium, cannabis and its preparations, coca and heroin.

Furthermore, propaganda to the public, by any means of dissemination whatsoever, direct or indirect, in favour of use of the drugs referred to in this chapter is prohibited. Persons infringing this provision shall be liable to a penalty of one year's incommutable corrective imprisonment. The advertising to the professions concerned of pharmaceutical preparations containing narcotic drugs shall be permitted only subject to the rules of the pertinent regulation. This prohibition shall not apply to publications of a scientific nature."

ARTICLE 4. Article 85 shall read as follows:

"Article 85: The Directorate-General of Health Services shall be responsible for establishing rules and ensuring that personal consumption of the drugs referred to in article 79 occurs only for therapeutic purposes. It is authorized to commit to appropriate hospitals or sanatoria, in accordance with legal procedure and with a view to their treatment and rehabilitation, persons who, by reason of their drug addiction, constitute a threat to the security and peace of persons, of their families or of society in general."

ARTICLE 5. Article 87 shall read as follows:

"Article 87: The introduction into the country, the transport, use, cultivation, carrying, possession, supplying or trafficking in any form whatever of the drugs referred to in article 80 of this Code shall in every case constitute the crime resulting from the respective activity or deed, and the guilty person shall be liable to the following penalties:

- (a) The cultivation of plants or fungi which may provide the source for any of the prohibited drugs shall be punishable by 10 years' corrective imprisonment;
- (b) The introduction into the country, or supply, of prohibited drugs, or traffic in them in any form whatever, shall be punishable by 10 years' corrective imprisonment;
- (c) Habitual use or consumption of prohibited narcotic drugs shall be punishable by three years' corrective imprisonment;
- (d) Occasional use or consumption of the drugs referred to in this article shall be punishable by one year's "arresto mayor";
- (e) The possession, transport or carrying of prohibitive drugs shall, depending on the quantity involved, be punishable as follows:
 - (1) By one year's "arresto mayor" if the weight of the article which is the subject of the infringement does not exceed 28.6 grammes (1 ounce);
 - (2) By two years' corrective imprisonment if it exceeds the aforementioned weight but does not exceed 400 grammes (1 pound);
 - (3) By three years' corrective imprisonment if it exceeds the aforementioned weight but does not exceed 11.5 kg. (1 "arroba");
 - (4) By four years' corrective imprisonment if it exceeds the aforementioned weight but does not exceed 46 kg. (1 "quintal");
 - (5) By eight years' corrective imprisonment if it exceeds the aforementioned weight.

Where the illicit act was directed against minors, this fact shall be regarded as an aggravating factor.

The penalties referred to in this article shall be commutable by one third, but if the penalty was imposed for occasional use or consumption of the drug, the whole penalty may be commuted.

Presumption may not provide the sole basis for imposition of the penalty for the offences of traffic in or cultivation of narcotic drugs.

An alien committing any of these offences shall, after serving his sentence, be expelled from the country."

ARTICLE 6. After article 87, a new article shall be added, reading as follows:

"Article 87-A: Directors and wardens of prisons as well as those chiefs who are on duty in detention centres when the other employees under their orders or the criminals imprisoned in the aforementioned centres distribute narcotic drugs, barbiturates, hallucinogens or derivatives of the aforementioned substances within the said establishments, shall be criminally liable as co-perpetrators of the offences referred to in article 87 of this Code and shall accordingly be liable to the penalties mentioned in that article and, in addition, to absolute disqualification for the period of the sentence."

ARTICLE 7. Article 88 shall read as follows:

"Article 88: Only qualified pharmacists, doctors, chemists, dental surgeons and veterinary surgeons who hold university degrees, are recognized members of their professional associations and are licensed to practise by the Directorate-General of Health Services may prescribe or dispense the drugs mentioned in article 79 of this Code.

The purchase and holding of such drugs by patients or private persons may be considered permissible only if there is a duly authorized medical prescription."

ARTICLE 8. Article 89 shall read as follows:

"Article 89: Medical practitioners, pharmacists, chemists, dental surgeons and veterinary surgeons who acquire and prescribe or dispense the drugs referred to in article 79 without complying with the law and its regulations shall be guilty of an offence against public health and shall be punished in accordance with the provisions of article 87 of this Code."

ARTICLE 9. Article 90 shall read as follows:

"Article 90: Only the Higher Public Health Council, having previously consulted the "Ministerio Publico", and for specifically determined licit purposes, may authorize the controlled cultivation, introduction or use of marijuana or Indian hemp or both simultaneously and their derivatives."

ARTICLE 10. After article 92, an article shall be added reading as follows:

"Article 92-A: All judges of the ordinary criminal courts throughout the Republic shall be entitled to conduct criminal investigations into these offences. Upon expiry of a period of five days from the arrest of the accused or from receipt of the report of the offence, they shall refer the proceedings to the proper special court."

Article 11. This Decree shall enter into force eight days after its publication in the "Diario Oficial."

Passed to the Executive Office for publication and implementation.

Done at the "Palacio del Organismo Legislativo", in the city of Guatemala, on the twenty-fourth day of November one thousand nine hundred and seventy.

MARIO SANDOVAN ALARCON,

President

"Palacio Nacional", Guatemala, 16 December 1970.

Be it known and implemented.

CARLOS ARANA OSORIO