UNITED NATIONS

E/NL.1995/1-2
3 March 1995
ENGLISH
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.*

*VENEZUELA*

*Communicated by the Government of Venezuela*

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 psycho- tropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are

**Page**

*E/NL.1995/1* *Law partially amending the Organic Law on Narcotic and Psychotropic Substances* 2

*E/NL.1995/2* *Organic Law on Narcotic and Psychotropic Substances* 22

*V.95 53818 (E)* *(a:\1995\nar.2)*

E/NL.1995/1

**Congress of the Republic**

LAW PARTIALLY AMENDING THE ORGANIC LAW ON NARCOTIC AND PSYCHOTROPIC SUBSTANCES

**CONGRESS OF THE REPUBLIC**
**CONGRESS OF THE REPUBLIC OF VENEZUELA**
**EXPLANATORY INTRODUCTION TO THE ORGANIC LAW ON NARCOTIC AND PSYCHOTROPIC SUBSTANCES**

The Congress of the Republic began to study and analyse the pre-draft for partial amendment of the Organic Law on Narcotic and Psychotropic Substances, promulgated on 17 July 1984, and published in the Official Gazette of the Republic of Venezuela, extraordinary issue 3.411, [submitted] on 20 March 1990 by the Supreme Court of Justice, through the Standing Commission on Drug Abuse of the Chamber of Deputies. This pre-draft, which keeps within the scope of the legislative initiative of the Supreme Court, referred to the reform of the special penal procedure, which allowed the Legislature to make a broader reform, thereby also covering other areas, in order to bring it into line, after eight years, with the current scale and dynamic of the production of trafficking in and consumption of drugs, since the traffickers adapt more quickly and show a faster learning rate than the governments. The scope of the reform was broadened with regard to the following: general provisions; administrative matters; health and fiscal control and monitoring; offences, penalties, consumption, safety measures, treatment, rehabilitation and social reintegration; overall social prevention, trafficking and consumption; procedures in cases of illicit consumption; in cases of fines and closure of establishments, the special penal procedure and the National Commission on Drug Abuse; the creation of new titles and chapters on the offence of money laundering, its prevention, control and monitoring by the State; offences against the administration of justice and the Supreme Electoral Council, with power to legislate on and monitor the finances of the political parties and groups of electors.

With a view to adapting to the change in nature, dynamics and scale of drug-related offences, the Organic Law on Narcotic and Psychotropic Substances (LOSEP) based the entire conception of its criminal policy on changing the legal nature of the *iter criminis* of drug-related offences, not only as an offence against health, as envisaged in the partial reform of the Penal Code of 27 June 1964, drawing inspiration from articles 446 and 447 of the Rocco Code of 1 July 1931 (Italian), where such offences were deemed to be offences against public safety (offences involving direct or indirect risk to the life or the physical integrity of one or more individuals. Applying this old Eurocentrist conception, dating from the beginning of the century, drug-related offences were included among offences against health. Today, however, for our legal system — and this is an innovation — drug-related offences are *multiple offences* in terms of the various State-supervised assets that are threatened as a world-wide phenomenon.

**TITLE I**

**GENERAL PROVISIONS**

Given that article 1 sets the scope of the Law and the distinction between licit and illicit, it was necessary to include the inputs, essential chemical products, solvents and other precursors that are diverted for the manufacture of narcotic drugs, as in the case of the production of cocaine, or those used to manufacture psychotropic substances, since the 1984 LOSEP only included raw materials. Brokerage was also included as a new offence subject to control. This precaution is necessary because of the scale of the illicit traffic in such products and the requirements of the new United Nations Convention against Illicit Traffic in Narcotic Drugs and

Psychotropic Substances, a law of the Republic since 21 June 1991, as set out in Official Gazette 34.741, which supplements the LOSEP, as well as the 1961 Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances dated 20 January 1972 (laws of the Republic dated 1968 and 1972 respectively).

In the open penal provision in article 2, which enables us, by resolution, to include as prohibited substances those which may be developed by the pharmaceutical industry or the illicit drugs industry, this faculty was extended to the Ministry of Health and Social Welfare and the Ministry of Development to enable them to designate precursors, solvents, essential chemical products and other substances, whether they are used industrially or to manufacture medicines, as "controlled substances."

Article 3 draws a distinction between illicit and licit conduct. According to this provision, any end use for a substance other than that set out in this article is deemed to be illicit, with the result that the consumption of narcotic and psychotropic substances is illicit, but the treatment is governed by social interest safety measures. Its single paragraph establishes the illicit character of the diversion of chemical substances, solvents and precursors for the unauthorized manufacture of narcotic and psychotropic substances.

## TITLE II

## ADMINISTRATIVE ORDER

### CHAPTER I

### IMPORT AND EXPORT OF THE SUBSTANCES REFERRED TO IN THIS LAW

On the basis of the experience of and the views expressed by the pharmaceutical industry to the Drugs and Cosmetics Directorate of the Ministry of Health and Social Welfare, the Maritime Customs Service is included amongst the customs services duly empowered, pursuant to article 4, given the high cost of air transport in the case of large quantities, such as those required in the case of phenobarbital.

With reference to imports and exports, article 5 includes industrialists, who shall request registration and a licence for products in lists I and II of the new Vienna Convention.

Article 6 lays down the need, when making an application, to indicate the consignee of products from the non-pharmaceutical industry, in order to bring it into line with the aforesaid Convention. The industrialist, like the senior pharmacist, shall be responsible for any failure to comply with the provisions of this Law.

Article 8 establishes the necessity for *prior permission* for goods to enter or leave customs, to prevent the possibility of deceiving the Ministry of Health and Social Welfare, by seeking a licence after the goods have been placed in bond. The text includes the provision in article 114 of the Organic Customs Law, proposed by the Ministry of Finance, for granting import or export licences and includes the appropriate provisions of the new United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Article 11 harmonizes the time-limits for the withdrawal of goods with those of the Organic Customs Law. Narcotic and psychotropic substances may be delivered even if an official of the Ministry of Health and Social Welfare is not present on submission of the original inspection document. Seized goods may be handed over to the Drugs and Cosmetics Directorate of the Ministry of Health and Social Welfare not only by criminal investigation officers, but also by border customs officials. Notification and dispatch shall be directed to the Drugs and Cosmetics Division to avoid paperwork at the General Health Directorate.

Article 12 provides that, if the licence has been cancelled or has not been granted, article 114 of the Organic Customs Law shall apply and the goods shall be handed over to the Ministry of Health and Social Welfare.

## CHAPTER II

## PRODUCTION, MANUFACTURE, REFINING, PROCESSING, EXTRACTION AND PREPARATION OF THE SUBSTANCES REFERRED TO IN THIS LAW

The reform in this Chapter is the increase in the fine to be applied by the Ministry of Health and Social Welfare, with the adoption of the *fine equivalent to ... days' urban minimum wage* system, thus avoiding the fixing of invariable amounts which tend to become ridiculous as time goes by. Similarly, the period of the licence issued to produce each batch is fixed at one year.

## CHAPTER III

## RETAILING, SALE AND DISTRIBUTION OF THE NARCOTIC AND PSYCHOTROPIC SUBSTANCES REFERRED TO IN THIS LAW

Article 23 states that the value of the counterfoil books shall be decided by the Ministry of Health and Social Welfare, to allow for inflationary increases, since they currently cost more than 100 Bolivars and create losses. It also establishes the physician's obligation to notify the Criminal Investigation Authority of any mislaying, theft or robbery of the special prescription form (purple) and their duty to accept his notification and to acknowledge receipt of it. This shall be done before a new counterfoil book can be issued.

Article 26 re-evaluates the penalty for a suspended physician who continues to practise (whom the previous law used to penalize as a trafficker), the penalty was a punishment which is excessive, and has been replaced by the penalty of applicable instigation or abetting, which carries a term of imprisonment of six to ten years.

The new article 27 limits to dental and veterinary surgeons the need to issue a prescription for medicines containing the substances determined by a ruling of the Ministry of Health and Social Welfare. Veterinary surgeons are also required to identify the animal and provide the owner's name.

## CHAPTER IV

## SUPERVISION AND CONTROL OF THE SUBSTANCES REFERRED TO IN THIS LAW

Article 28 extends supervision control to the raw materials, inputs, essential chemical products, solvents, precursors and other substances that may be diverted for use in the production of narcotic and psychotropic substances.

Article 30 provides that the custody and supervision of such substances for non-pharmaceutical industrial use shall be recorded in a register kept under the conditions fixed jointly by the Ministries of Development and of Finance.

Article 31 sets out that, in the case of precautionary measures of a civil or mercantile nature, the Ministry of Health and Social Welfare shall retain possession of the medicines and may dispose of them if the inventory and supervision requirements established in the Law are not fulfilled within six months. The inventory requirement is more strictly enforced if one senior pharmacist hands over to another.

Article 33 empowers the Minister for Health and Social Welfare to authorize the Drugs and Cosmetics Division and the regional directors of the National Health System in each Federal Entity to apply administrative sanctions.

## TITLE III

## OFFENCES

This Title remains divided into three Chapters: firstly, common and military offences, whether proper or improper, with their respective penalties; secondly, offences against the administration of justice; and thirdly, common provisions. All matters concerning consumption and safety measures were removed from this Title in order to separate the two forms of conduct since, in the minds of the general public and the police, a consumer is still an "offender".

### CHAPTER I

### COMMON AND MILITARY OFFENCES AND SANCTIONS

Articles 34 and 35 describe the offence of trafficking and all the forms of behaviour that constitute the activity of that illicit transnational industry and include brokerage (acting as middleman) and trafficking in solvents, essential chemical products and precursors. Article 35 corrects the wording by amending the phrase "they may contain any of the substances referred to in this Law" by the phrase "*they may contain or reproduce any of the substances referred to in this Law*", in order to avoid doubt (for example, one judge declared that, since marijuana seeds do not contain tetracannabinol, he would not issue an arrest warrant).

Article 36 restates the offence of drug possession, replacing "holding" (*tenencia*) by "possession" (*posesión*), to bring it into line with the terminology of the new 1988 Vienna Convention, and reduces the penalty to a term of imprisonment of four to six years (instead of the previous six to ten years). The aim of the reduction is to establish a system of conditional release, within LOSEP limits, in accordance with the appropriate law. It is in the application of this article that the greatest miscarriages of justice have been made and, since it has not been possible for the Judiciary to develop a body of doctrine to permit the establishment, by constant and repeated jurisprudence, of limits on quantities considered as possession, it is necessary, for the sake of legal safety, to create a list of quantities, even if this may have the negative effect of protecting an astute and careful dealer, in cases where possession may be the only indictable offence due to lack of evidence.

Only in the realm of theory can a distinction readily be made between a dealer and simple possession, since the former has a hierarchical, working and necessary subordinate relationship in the stages of the illicit transnational drugs industry, with a fundamental task in the marketing stages, so that the illicit product reaches the consumer in specific areas, whereas the possessor has no permanent link with that industry, and the reasons why he possesses, if not for own consumption or research, are infinite, as are human motivations and man's imagination. This is the dark side of society where it is impossible to foresee motives or reasons. During trial proceedings everything depends on the evidence gathered in the prosecution documents.

Consequently, the limit fixed in defining possession is 2 grams of cocaine or its derivatives, compounds or mixtures with one or more ingredients, and 20 grams of *Cannabis sativa*. If other narcotic or psychotropic substances are involved, the judge will give consideration to similar quantities, depending on the nature and the usual presentation of the substances, that is to say the presentation established by the pharmaceutical laboratories, or the quantity established per dosage unit or to prevent overdosing. No reference is made to seized drugs, but rather to the reference point that the judge will have to determine whether the seized drug comes within the

parameters of possession and *in none of such cases shall the degree of purity of the drugs be considered*, since it is not possible to accept the defence of a *non-suit* by alleging that there is no offence because the impurity is such as to make the substance innocuous.

This innovation is based on the legal nature of the offence of possession, which is merely an action or a danger. The lawmaker does not want there to be quantities of illicit drugs in society but, since not everyone who does have them is a trafficker or dealer, and since it is impossible to avoid this in reality, he cites this theoretical margin, so as to specify a quantity involving less social risk, should it fall in the hands of third persons, and to be able to grant the benefits of freedom by means of the legal definitions of committed for trial or conditional suspension of the sanction, provided that there is no other offence, that the offence is not a repeated offence and that the individual concerned is not a foreigner with tourist status, so that Venezuela does not become a paradise for tourists who take advantage of this provision and then flee the country. This is the only offence in respect of which the concept of objective responsibility is retained, notwithstanding the modern trend in penal law to eliminate the concept, although it remains in Venezuela's penal system, in article 61 of the Penal Code.

Article 37 describes, for the first time in Venezuelan legislation, which, for want of the appropriate legal terminology, is known by the terms "*money laundering*" or "*laundering*", as used by police officers. This article examines the transfer of capital and profits by whatever means, by concealment, disguise or the conversion of income into cash, securities, shares, stocks, real or personal equity or fixed or moveable assets, generated by the stages in or activities connected with the offences of trafficking, as set out in articles 34 and 35. The directors, managers or administrators with direct responsibility for the offices that conduct such operations shall be liable to the same sanction as those who legitimize them (from 15 to 25 years). Legal entities, such as organizations or institutions, for example commercial, mortgage, industrial, mining, agricultural credit and other banks established for special purposes, financial and leasing companies, capitalization companies, money-market funds and other forms of brokerage, exchange houses and branches and offices of foreign banks, shall be fined an amount equal to the value of the capital, assets or securities involved in the transaction.

"We know that the duties and rights of a legal entity shall be resolved into the duties and rights of humans, that is to say, into standards that regulate human behaviour by dividing it into duties and rights, even when the legal entities, as a collective being, are a '*real person*' made up of individuals brought together and organized to achieve purposes that go beyond the level of individual interests, through a unity of will and action that is not just the sum of individual wills, but, on the contrary, a superior will manifested through the authorities of the associated and organized community" (GIERKE). The German writers of the nineteenth century and, principally Savigni, used the expression "legal entities" to designate the legal subjects made up of a plurality of *legally organized* individuals. If we accept that the personality, whether natural (individual) or legal (collective), is not a fact or a fiction, it is a category, a form determined by the law, to which the law may relate at any factual substrate and we observe that: (1) The State as a legal entity has obligations and rights and answers for any violation thereof caused by those who represent it; (2) As Kelsen says: "When the State obliges and empowers a legal entity, this means that human behaviour is converted into a duty or a right, *without determining the subject*" and, if the "entity" is the means of regulatory accusation with respect to a possible centre of accusations, we may infer that they may be the object of *criminal liability "sui generis"* for the purpose of applying to legal entities certain *measures* that cannot be called penalties in the strict sense, and whose nature is not to penalize; this relates essentially to the area of economic and fiscal offences, in which legal entities are generally subject to fines and other measures of an administrative, rather than penal, nature (Alberto Arteaga).

Consequently, as in penal law there is no doctrine whereby a legal entity may be the active subject of an offence, in those offences which, by their nature, dynamic and magnitude, require the infrastructure of a legal entity, but not only as a means or instrument, but also as a complex legal actor (enterprise, corporation or holding company), by virtue of their structure, organization, relations and technical aspects (specialized knowledge), as in the case of banks, finance institutions, credit institutions, etc., with regard to the legitimation of capital, which

is the matter in hand, we have to accept — so that there may be criminal liability in the strict sense — the will of the physical person and a volitional power (capacity to understand and to want) that only corresponds to the physical individual, since the community as such has no volitional capacity, as a collective faculty, different from that of the individuals who comprise it (Manzini), which is why, according to Dr. Alberto Arteaga, "the community as such can carry out *voluntary acts*, as stated by Manzini, but has no motives or ideas of its own and acts with the general assent of individual wills or of an individual will, which is formed and determined by an exclusively individual mental process with reference to collective interests". For these reasons (conceptual limitations), legal entities may not commit offences and, in this connection, Bettiol (quoted by Alberto Arteaga) says that "Penal law presupposes the finalizing action of a human being, governed by a will understood in the individual, psychological and non-normative sense". The individual paradigm of the mental model governs criminal liability and it would be bold to propose a paradigm that has not been accepted to make legal entities active actors in offences, in order to incorporate it into the Law, which, by its very nature, has many powerful opponents, who would question such an innovation, hence the use of the dominant thesis of considering legal entities *as actors with "criminal liability sui generis"*; this is not understood as criminal liability in the strict sense, i.e., the criminal liability of natural persons, but rather in connection with the offence committed by physical persons, applying to them the consequences of the punishable act committed by them, *with the sole aim* of imposing on them fines to compel them to be more responsible in the control and monitoring of the legitimation of capital. In our legal system there are precedents in article 42 of the superseded Consumer Protection Law, and in article 22 of the Law on the Sale of Land.

Article 38, relating to the *intermediate perpetrator*, lays down that the use of minors or mentally disabled individuals is also taken to include members of the native population belonging to clearly defined tribes located in areas far from population centres.

Article 42, concerning instigation, which was criticized for advocating a single and severe punishment of 14 years for all offences, now imposes lighter penalties in months, on the basis of the standard set in this regard in the draft Tamayo-Sosa Penal Code, in order be far-sighted and avoid future contradictions in the legal system. It includes administrative penalties involving fines and anyone who incites another to contravene it shall be liable to imprisonment for a term of between three and six months.

Article 43 introduces the LOSEP *military offences* and it is important to note that, in all instances, in the "*in fine*" section, when they are examined by a military tribunal, the procedure of the Code of Military Justice shall apply "*with the items of evidence and the system of assessment established in this Law*", thereby avoiding an omission that would have barred access to the evidence and advances made in criminal science, in respect of the collection of evidence relating to the nature and the dynamic of such offences, which put them at a disadvantage. The section on aggravating circumstances in article 43 includes churches of all denominations.

Article 45, relating to *animals used for competitive purposes*, has been extended to all animals and there is a one-year reduction in the penalty under article 44, which is imposed on anyone who persuades people engaging in sports to use drugs, with the penalty thus remaining two to four years. This avoids the objection that sports people used to be equated with animals.

Article 47 is the strategic focus of the offences covered by this Law, referring, not in a doctrinaire manner but rather in the text, to offences against State security, in line with the modern, democratic and popular concept of security. It is envisaged that such behaviour shall be a military offence "*even for non-military personnel*" when professional soldiers are involved or when the situation is initiated, sustained or assisted by national or foreign armed forces. Hence this takes account of the experience of Nicaragua and the "Contras".

The aim of article 48, which applies to a sentry who consumes drugs, is to remove possible discrimination, by not considering it to be an offence against the security of the national armed forces; for this purpose, on the basis of article 503 of the Code of Military Justice and for the purposes of the application of that article, others who are also on sentry duty are included, such as military police, those in charge of the telegraph or telephone service, or any other communications service, the reserve guard, orderlies, couriers and those carrying orders.

Article 49 extends the offence of water contamination to cover water for public use and articles for use in public catering, except that this offence shall fall within the competence of regular jurisdiction.

Article 51 establishes military jurisdiction for a professional soldier, regardless of rank or military status, who commits the common offences set out in the LOSEP, and corrects the interpretation that allowed for the soldier's remission to regular jurisdiction if civilians are involved in the commission of the common law offence, making it a *military offence of improper conduct*, since it relates to the principle of subordination, observance and discipline in the Armed Forces. It is envisaged that, in cases where professional soldiers act in conjunction with civilians or *non-professional soldiers*, all persons involved shall be judged by military tribunals, according to the procedure set out in the Code of Military Justice, supplying the means of proof and assessment of evidence set out in the LOSEP. This solves the problem of the natural judge.

## CHAPTER II

## OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE IN THE APPLICATION OF THIS LAW

The Organic Law on Narcotic and Psychotropic Substances establishes a Chapter entitled "Offences against the administration of justice". The illicit transnational drug trafficking industry operates within the context of organized crime and is a factor of corruption that may reach any official of the public institutions of the State. In the eight years that the Law has been in effect, the social communication media have publicized many cases in which officials have been compromised by getting involved in situations running counter to the Law, through the financial influence of the drug traffickers. These provisions establish penalties aimed at forestalling the corruption of such officials of the Judiciary. In no case shall these provisions be extrapolated to cast doubt on the honesty of the entire Judiciary. It is assumed that the majority of judges, who work in difficult conditions through lack of an appropriate infrastructure and the scarcity of judges in proportion to the population with which they have to deal, are honest. This is why the Judiciary will have its own instrument to control corruption that may occur within its ranks, since the judges of first instance, in penal matters, or in the military tribunals, in the case of military matters, will be the ones competent to deal with these special offences, and the traffickers or their representatives will have another obstacle to overcome in achieving aims contrary to the administration of justice.

It is important to note that, when this Chapter was created, a change was made in the Law governing the legal profession, which is a strictly administrative law and envisages administrative and disciplinary penalties, such as removal from office, official warning and suspension, which are imposed by an administrative body, the Council of the Judiciary. The Law contains, in article 44, a proviso by which there may be applied appropriate penal sanctions, in addition to removal from office, and the Organic Law on Narcotic and Psychotropic Substances is the one dealing with the penal aspect by establishing sanctions for officials who fail to comply with the provisions of this Chapter. Hence article 52 refers to the offence of denial of justice, which is envisaged in article 19 of the Code of Civil Procedure.

Article 53 lays down that it is an offence for *the judge to delay the proceedings in order to prolong the period of detention of the accused or in order to ensure that the relevant penal proceeding lapses*, that is to say, if there is intent, fraud or a definite will to misrepresent, which shall be proven if this provision is to be applied.

Article 56 establishes penal sanctions for irregular conduct to the detriment of the accused, as part of the corrupt practices of many officials, such as charging money to issue papers, to make transfers, to move the accused from the cells to the court and to alter reports. The penalty increases gradually, depending on how frequently the official repeats the offence.

As a result, these offences against the administration of justice, based on Chapter I of Title XI of Book 2 of the Offences Against the Administration of Justice of the Draft Penal Code, submitted to the Legislative Commission of the Congress of the Republic by Professor Jorge Sosa Chacín and Professor José Miguel Tamayo Tamayo, reflect the trend in all modern codes to maintain the course of justice, as well as honour and respect for those who administrate justice, with a view to building up a healthy, vigorous and honest Judiciary.

## CHAPTER III

## PROVISIONS COMMON TO THE PRECEDING CHAPTERS

The innovative features of article 57 include, as proposed by the Supreme Court of Justice, the granting of the benefits of committal for trial and conditional suspension of the penalty. The offences that may qualify for these benefits are also specified.

Article 58 reiterates the denial of release on bail, except in cases in which the court of first instance has issued a verdict of not guilty, in order to conform to the new Law governing the Benefits of Penal Procedure and there is a general indication of the offences in which the benefit of committal for trial applies, including the offence of possession.

In article 59, in order to issue the committal order and conditional suspension of the sentence, it is necessary, in addition to the requirements set out in the Law governing the Benefits in Penal Procedure, that the individual has committed another offence, that he is not a recidivist, that he is not a foreigner with tourist status and that the sentence does not exceed eight years (this is why the sentence was reduced to a maximum of eight years for possession). It should be noted that, in order to avoid possible contradictions, the maximum limits established in the Law governing Benefits in Penal Procedure do not apply.

It is also expressly established that, for trafficking offences, in all their forms, as set out in articles 34 and 35, the offence of possession in article 36, that of money laundering in article 37, and that of drug trafficking to harm the State or the national armed forces, as mentioned in article 47, the definition of an attempted or frustrated offence is not acceptable. The aim is to avoid judgements that the nature of those offences does not admit, by virtue of the fact that they are formal offences that are carried out or perpetrated by a simple act or omission, regardless of whether the unlawful outcome is achieved by the active subject or agent; *they are offences involving anticipated execution.*

Article 60 includes forfeiting of nationality as an additional penalty for the offences covered by this Law.

Article 66 was amended to remove the direct assignment of all confiscated assets to the Ministry of Health and Social Welfare. The aim of the 1984 Law was to make available to the Ministry the substances confiscated, which could then be used to manufacture medicines, as well as laboratory apparatus, equipment and instruments. This wording has been changed and a really important innovation introduced, with the aim of speeding up the allocation of the seized assets stemming from the "*iter criminis*" for drugs. It is laid down that, in the event of a final verdict of guilty, the assets shall be placed at the disposal of the Ministry of Finance, *without auction*, so that the Ministry may, in turn, allocate them to public or private bodies engaged in prevention, control, supervision, treatment, rehabilitation, social reintegration and law enforcement. The purpose of this provision is

to ensure that the assets go directly to the State authorities concerned with the relevant activities and do not fall into the hands of private persons who fulfil the "highest bidder" requirements.

Another innovation in article 66 is that not only will the items used to commit offences referred to in this Law be seized, but also *any property that is strongly suspected of stemming from the offences or the proceeds of the offences laid down in this Law*. Finally, this article contains a provision that bars the judge trying the case from authorizing the use of the assets seized or recovered on service missions, since experience shows that there are judges who have allocated them for use contrary to the provisions of the Code of Criminal Procedure, the Penal Code and the Law governing Property recovered by the Police, contrary to the intention of the rules of procedure which, since they involve public order, are imperative and not discretionary, as stated by Manzini in his observation that "the scope for discretion available to the criminal judge in application of the Law may be exercised only when it is expressly and therefore exceptionally laid down in the law itself". This illegal practice of allocating the assets recovered or seized runs counter to the principle of defence since the assets are already unavailable to the parties for expert analyses and counter-analyses and induce greed on the part of the public authorities; this leads, among other things, to rivalry between the actors and law enforcers, minimizing the synergy of the enforcement system and stepping up chances of corruption within the ranks of the police (Kilian Zambrano). This article also reaffirms the principle whereby anyone acting as a legal depositary, not being a civil servant, shall be regarded as equivalent to one, for the purpose of responsibility for the care, custody and conservation of the assets.

The amendment to article 68, which legally constitutes "grounds for acquittal", and the precedents for which are to be found in the Venezuelan legislation in articles 163 and 245 of the Penal Code and article 485 of the Code of Military Justice, consists in the provision of certain security measures for the defendant who may have recourse to this article while he or she is in detention, since our legal system does not envisage any form of witness protection. The judge, the Public Prosecutor and the director of the penal establishment are responsible for the personal safety of the defendant and shall keep his or her statement secret, if the individual so wishes.

The "*opinion of the judge*" is eliminated so that the assessment of the evidence should not lean towards the method of *free conviction* that may be arbitrary and dangerous by establishing the method of assessment of evidence as applicable in this Law, with the express exceptions of *rational or critical assessment*, the so-called "healthy criticism"; this is scientific in nature and obliges the judge to reason and determine with greater accuracy the grounds on which he accepts or rejects an item or element of evidence. This is very different from subjective assessment or free personal interpretation, in that rigour shall be applied in the assessment. Article 68 also includes the phrase "*other than those already involved in the case*" in conjunction with the revelation of perpetrators, accomplices or accessories, which was taken from Colombian law, to help the investigation as a whole in order to reduce further the criminal organization's capacity for production.

When the National Guard proposed the elimination of this article, alleging that improper use of it had been made by some criminal court judges and that it was unfair, since the beneficiary had also committed an offence, it was explained that this provision is a recourse to negotiation that should not disappear completely, since no one knows whether or not it could be very useful in future police investigation. It was pointed out that our penal system does not include the concept of negotiation, as exists in Anglo-Saxon law, but that it was important to keep such a concept, given the nature of the offences concerned.

The annulled article 69 of the LOSEP established drug-related financial activity, designed to show who benefits from that illegal trade, as well as the physical person or legal entity acting as intermediary or middleman, for the purpose of disguising or concealing assets presumed stemming from such activities, and also established the steps that could be taken by the criminal court judge, on his own account or at the behest of the Public Prosecutor's Office, for the purpose of securing such assets, in which connection the drafters of the 1984 Law envisaged this form of criminal conduct which, at that time, did not have the range of recourse that it has today.

Hence, on the basis of experience which indicates that drug traffickers, in their efforts to gain total and absolute control of the vast financial power generated by the illicit transnational industry, create new forms and make use of new systems to try to legitimize the capital acquired at the different stages or in the different activities of drug trafficking, this provision has been amended and broadened in the new articles 71 and 72 in order to tailor it to the current situation.

The new article 73 authorizes telephone tapping, filming or voice recording, in such a way that it is in line with the Law governing the Protection of Privacy of Communications, promulgated on 16 December 1991, to protect the privacy, confidentiality, inviolability and secrecy of communications between individuals, but without hindering the necessary work of criminal investigation, and preventing arbitrary and clandestine activities. An infringement of the provision shall be punished by a term of imprisonment between three and five years.

The new article 74 authorizes monitored delivery, as distinct from the controlled delivery of drugs, which is expressly prohibited because, even though it is an expeditious procedure for catching traffickers in the act, in our criminal law system this ingenious police practice is a flagrant violation of the rule of law, since it implies the commission by the police officer, of the offence of instigation to commit an offence, simulation of a punishable act, drug trafficking and corruption of public officials, when they receive emoluments from foreign police forces and because they use some of the confiscated drugs for such purposes, thereby infringing their responsibility to keep the seized substances intact for the purpose of destruction. There is a penalty of imprisonment of between four and six years for anyone who fails to comply with the provisions of this article, without prejudice to any administrative, civil or criminal liability that may be incurred. It is thus possible to uphold the view that the prosecution and punishment of an offender may never justify jeopardizing the rule of law of a nation, its sovereignty and its self-determination, since those principles also apply when the State is sovereign in establishing the procedures which shall prevail for citizens in legal and jurisdictional matters and in exercising the "*ius puniendi*". These procedures shall always be subject to prior authorization by a criminal court judge, with the consent of the Public Prosecutor's Office, which is an essential prerequisite if this information or delivery is to be valid.

## TITLE IV

## CONSUMPTION

### CHAPTER I

### CONSUMPTION AND SAFETY MEASURES

Article 75 could not be implemented because the Executive Branch failed to create the necessary infrastructure for the application of the safety measures, such as adequate numbers of physicians, as indicated in article 114, special prevention centres and sufficient treatment and rehabilitation centres, which meant, in practice, that the consumer's conduct was criminalized, thus creating *a serious negative effect that jeopardizes the individual rights of the consumer*, who is not considered criminal by the Law, but rather a subject at risk (not a dangerous subject), to whom the safety measures of a social nature apply, on the basis of the programme set out in section 10 of article 60 of the Constitution. When the consumer's sickness becomes drug dependence, it is the sickness of a functional "out-patient", which is why the term "*sub-ratione*", and not "*esencialiter*", is used, since the description fulfils the polemic objective of focusing on prevention rather than on law enforcement.

In recent years the preferred solution has not been in step with the attitude adopted by our judges and, what is more, the National Executive has not provided the political, economic, institutional/organizational or informational resources to apply the safety measures to consumers, as indicated by the "*mens legislatoris*". In

Barquisimeto, for example, some judges have opted not to apply the safety measures because of the lack of institutions, whose creation is the responsibility of the State. Sebastian Soler, supported by the 1984 LOSEP, advocated in each concrete case, determination of the immediate personal dosage level, depending on the particular characteristics of the patient, as well as the patient's tolerance, clinical history and physical configuration, in order to prevent injustice, which generated no practical results and necessitated, as in the case of possession, a return to the approach based on a table or catalogue, which gives the judges and consumers greater certainty that its application is as close as possible to the exact observation of the Law. In the greater good of social security and the protection of the individual rights and guarantees of the consumer, which should be safeguarded, the decision was taken to sacrifice the lesser good of endeavouring to prevent the circulation of small quantities of drugs, on the grounds of consumption. This is a question of relative values and approaches.

With this objective in mind, as with the offence of possession, the approach sets out to establish, with the prerequisite that the person should be a drug consumer, a quantity that is understood to be a *personal dose* (no longer immediate). With regard to consumption, the ceiling for compounds and mixtures is fixed at 2 g for cocaine and 20 g for *Cannabis sativa*, while, for other drugs, judges shall consider similar amounts, depending on the nature and usual presentation of the substance. In this respect the level of purity is indeed taken into account. The judge shall rule on the basis of the report of the forensic experts. Larger quantities shall not be accepted under the pretext of precaution. The intention is clear: although the possession of drugs for personal consumption in very small amounts is accepted, the lawmaker does not aim to facilitate consumption.

In article 78, the term "social reintegration" ("*reinserción social*") is replaced by "social rehabilitation" ("*reincorporación social*"), which goes beyond the concept of a "cured" individual, such as a person freed from drug consumption, and aims at obtaining a socially active individual.

The single paragraph of the amended article 85 envisages fines for the parents, representatives or family of the consumer who fails to accept the guidance and treatment indicated by the specialists.

## CHAPTER II

## PROVISIONS COMMON TO THE PRECEDING CHAPTER

This new Chapter represented a transfer of the provisions on consumption that used to be mixed in with the provisions relating to offences, thus keeping them separate and in line with the subject of consumption and the safety measures. Two new articles were incorporated in this way. They were based on the Law governing the Metropolitan Transport Systems, promulgated in the Official Gazette No. 3.155 of 29 April 1983. Articles 22 and 26 of that Law establish employment and penal provisions for workers who are under the influence of drugs in the exercise of their functions, by which they may be dismissed from their jobs or subject to penal sanctions if they risk the safety of passengers or when, as a result, there is a disaster or accident. This corrects an omission in the 1984 Law, since the Law governing the Metropolitan Transport Systems was omitted from the systematic survey of relevant laws.

The two new articles (articles 89 and 90) seem to create a conflict with article 367 of the Organic Labour Law that prohibits members of aircraft crews from consuming alcohol or using drugs on or off duty. It is useful to point out in this connection that the Organic Labour Law established the prohibition but did not expressly envisage any penalty for a worker who fails to comply, and obliges reference to be made to serious negligence or dismissal, as indicated in article 102 of the Law in question, with the ensuing problem of whether the negligence relates to grounds A, D, E, G or I; this is settled in the single paragraph of article 89 of the LOSEP, which absolutely prohibits workers from exercising their functions under the influence of medicines that may contain narcotic or psychotropic substances, or other substances that might interfere with their physical or mental capabilities, including medicines prescribed by a doctor, thus complying with the provisions of the International

Civil Aviation Convention, signed by Venezuela in Chicago in 1944, and the subsequent conventions. The LOSEP thus complements the Organic Label Law when it specifically indicates the penalty and requires the worker to comply with his or her obligations, as set out in the contract of employment, when the worker is under the influence of such medicines, issued on medical prescription. The apparent conflict is resolved by application of the LOSEP provision, since it is organic and specific on this subject and because it embodies an express provision that removes the ambiguity of the Organic Labour Law.

## TITLE V

## INTEGRAL SOCIAL PREVENTION

This Title has been changed from "Prevention" to "*Integral Social Prevention*", in line with the programmatic content of its two Chapters which, with a high-level vision of the future, provide for the prevention of offences and the prevention of consumption.

## CHAPTER I

## GENERAL PROVISIONS

Article 91 broadens the sphere of action by the State to include prediction, estimation and prevention, as a means of knowledge about future facts. The results of each of these approaches would be used by the State, as the principal actor, to design a plan for differential action, and the inputs are intended to help go beyond the concept of prevention, which is misunderstood as a means of action and not of knowledge and its adoption as a panacea to cope with the problem of drug production, trafficking and consumption.

## CHAPTER II

## INTEGRAL SOCIAL PREVENTION WITH REGARD TO NARCOTIC AND PSYCHOTROPIC SUBSTANCES

Article 96 in this Chapter expands the State's social infrastructure by creating the legal concept of *halfway houses*, designed to fill a gap at the preparatory stage of rehabilitation and treatment and at the post-treatment stage, which are often lacking since users have no infrastructure to provide support for them as they enter the treatment and rehabilitation institutions and when they leave them, since there is no State support to help them to adjust, in the search for work or a settled abode. The text was also amended to include the prediction, estimation and prevention of trafficking, as well as consumption, in article 98.

Article 101 establishes that the State shall carry out a toxicological examination of all State officials, without exception. There is now a single paragraph that sets out the obligation for enterprises to devote a percentage of their net annual revenue to programmes for the integral social prevention of drug trafficking and consumption.

Article 102 establishes coordination, by the National Commission on Drug Abuse, and other changes, so as to expand integral social prevention, by making the Ministry of Education responsible for it at all levels of education.

Article 104 has been amended to specify the responsibility of the Ministry of Transport and Communications, since experience has shown that wrong publicity and propaganda play a considerable role in debasing, falsifying and undermining our values and, despite the fact there is a standard that penalizes the forms

used by various communication media, the latter always find ways of evading responsibility, for which reason the concept of independent producers has been included. There is a fine equivalent to a number of days' urban minimum wage for legal entities and it is clearly indicated that failure to comply with this provision amounts to an *incitement* to consume and an *instigation* to trafficking. Another new feature is that administrative proceedings may be set in motion on the initiative of the Ministry of Transport and Communications or at the request of the National Commission on Drug Abuse.

Article 105 establishes a fine equivalent to a number of days' urban minimum wage for anyone who infringes the ban on publication of the names and photographs of the persons involved in special proceedings for illicit consumption.

Article 107 establishes the responsibility, alongside the National Executive, of the offices of the regional governments to set up guidance and rehabilitation centres, under the sponsorship of the Ministry of Health and Social Welfare.

## TITLE VI

## PROCEEDINGS

### CHAPTER I

### PROCEEDINGS IN CASES INVOLVING ILLICIT CONSUMPTION OF THE SUBSTANCES REFERRED TO IN THIS LAW

The amendment of this Chapter is essential to protect consumers who are not offenders. The very serious problems caused by the lack of infrastructure and trained personnel have made it impossible for judges to apply this procedure in a suitable manner and consumers are therefore confined in prison centres, thereby criminalizing their behaviour. The physical and moral damage done to the consumer in prisons and police detention centres is serious and has social repercussions on the family and the community, as well as consequences that are more damaging than the act of consumption itself.

The 1984 LOSEP laid down the establishment of special prevention centres, a requirement that the National Executive was unable to fulfil. Furthermore, in the capital of the Republic there is no special prevention centre where a person apprehended *in flagrante* or *quasi flagrante* in the consumption of drugs may be "detained". Such persons are taken to judicial lock-ups or prisons and are kept in conditions of deplorable overcrowding, in which they suffer violation, injury and aggression and contract diseases or worse, and come into contact with real criminals. It is therefore necessary for the person to be "remanded", not imprisoned, in a *non-penitentiary-type* special prevention centre.

In Article 112, so that the alleged consumer may spend the least possible time on remand, a 24-hour period is established for the Criminal Investigation Police or the National Guard to arrange for a toxicological analysis of urine, blood and other body fluids taken from the alleged consumer and, once the analysis has been made, the individual shall be provisionally released, on condition that he or she reports, on the following day, to the arresting police agency, according to the notice issued on release. The investigation may not exceed eight days from the arrest of the alleged consumer; during this time the relevant file shall be sent to the court.

Article 113 lays down that, within eight days of receiving the file, the judge shall decide whether to ratify the measure granting parole if the toxicological and biochemical analysis of the substances and other elements attest that the individual is a consumer or whether to revoke it because the individual is not a consumer (possession, distribution, etc.) in order to begin the criminal proceedings. An individual who is a consumer will

be ordered to undergo the analyses referred to in article 114, which are of a medical, psychiatric, psychological and forensic nature, and, if necessary, a new toxicological analysis. This analysis may be postponed to a later date if the individual has already been granted parole. It is currently impossible to carry out all these analyses since there are not enough physicians, and none in the interior of the country; this makes the article a dead letter, for which reason it is envisaged that, in areas that have no physicians, the judge may appoint doctors in private practice as recognized experts, subject to article 145 of the Code of Criminal Procedure. He may also appoint them whenever he thinks fit (for instance, if there are not sufficient physicians).

The aim of these amendments is to ensure that the consumer does not spend an undue period on remand in conditions that are not fitting for someone who is not a criminal. One criticism of these innovations might be that, once the individual is released, he may ignore the proceedings and disappear, but it should be noted that, currently, almost half of those granted parole disappear at the beginning of their period of freedom or discontinue out-patient treatment, and the new wording creates no more of a negative impact than is now the case as regards fulfilment of the requirements; the negative effect may diminish with the provision of different treatment that is not degrading or does not violate human rights. This is another matter to be weighed by the lawmakers.

In conjunction with the safety measures applied, article 116 lays down suspension of the licence to operate a vehicle, vessel or aircraft, as applicable, suspension of the licence to bear arms and suspension of the passport or its equivalent. The judge may revoke the decision to suspend the passport if the consumer can reliably demonstrate that he will be treated abroad and he shall submit medical reports, on conclusion of the treatment, so that the other measures may be revoked.

Article 118 lays down that a person aged under 18 years shall, during the proceedings, be granted probation or be placed with a family, as set out in the Law to Protect Minors, for the duration of the treatment. In no case may an under-age individual who may not have been involved in activities punishable under criminal laws or police ordinances be detained with under-age offenders.

The new article 124 specifically states that the special prevention centres are non-penitentiary remand centres for alleged consumers who have not committed any punishable act. An alleged consumer may not be detained in remand by the police while the investigation is proceeding and toxicological analyses are being made. The judges and representatives of the Public Prosecutor's Office are authorized to house the alleged consumer in a police station, prefecture or other “ad hoc” premises.

## CHAPTER II

## PROCEDURE IN CASES OF FINES AND CLOSURE OF PREMISES

Article 125 refers to articles 228 and 229 of this Law, in cases in which a fine is converted into detention and the article has a single paragraph to regulate the requirements relating to fines, as an accessory to the main penalty, that may be imposed by the ordinary adjudication.

Article 127 lays down that the trial shall open with an order to proceed that may be issued officially or at the behest of the competent authority.

## CHAPTER III

## CRIMINAL PROCEEDINGS IN CASES INVOLVING THE OFFENCES SET OUT IN THIS LAW

### SECTION 1

## COMPETENCE

Article 141 adopts the order established in Article 127 of the Supreme Court of Justice pre-draft, which marks a return to priority for the place where the acts were committed, in contrast to the provisions of the 1984 LOSEP, which gave equal standing to the place where the acts were committed and the place where the alleged perpetrator was arrested. The matter of competence has been simplified and, when two authorities of equal status are involved, the matter is referred to the one involved first.

Article 142 includes military tribunals alongside criminal court judges of first instance, as being competent to preside in the cases that relate to them. It sets out who is competent to hear summary proceedings, thus including military tribunals, filling the gap in the general provision that used to include only officials who are placed in that category by the Law governing Criminal Investigation Police and including those indicated in article 100 of the Code of Military Justice.

Article 143 confers *autonomy and independence* on the Armed Forces, as the principal body of the Criminal Investigation Police, in order to bring to an end a long-running complaint and old dispute between the main investigating authorities. Periods of 48 and 72 hours are retained for the auxiliary bodies and their subordination to the Technical Section of the Criminal Investigation Police.

## SECTION 2

## INVESTIGATION

Article 144 amends the idea that the criminal proceeding begins in the procedural forms indicated in article 130 and adopts the following wording "*the offences set out in this Law may be adjudicated ...*". It corrects the order of precedence of the forms of procedure, placing procedure *ex officio* before procedure by indictment. As a means of proceeding, indictment is still excluded, since the nature of these *multi-offence crimes of safety and public action* make it counterproductive to accept this form of proceeding, which lends itself to many shameless manoeuvres, in an effort to avoid penalty or as a political instrument for retaliation or to discredit a political opponent, or as an instrument of the so-called "judicial terrorism", which would create an undesired social effect. It is established that the criminal proceeding begins with the *order to proceed* and it is established that, if the date is omitted from the *ex officio* order to proceed, the date shall be taken as that of the indictment or that of the *ex officio* proceeding or of the first proceeding, in order to be certain of the beginning of the trial, for the purposes of prescription and the establishment of deadlines.

Article 131, whose content is doctrinaire, is revoked.

As in the Code of Criminal Procedure, article 145 separates again the forms of evidence to prove the commission of an offence and to demonstrate culpability. The confession is again only for the purposes of culpability and "criminal responsibility". The latter phrase was removed, since "criminal responsibility" and "criminal culpability" are distinct concepts. *Criminal responsibility* is a declaration resulting from all features of the punishable act (action, type, non-juridical nature, culpability, punishability and, in certain cases adjective conditions of punishability), whereas *criminal culpability* is a characteristic feature of the offence: it is normative in nature and, so that the individual may be declared criminally responsible, it is necessary to prove in advance all the elements of the offence (Roberto Yépez Boscán). Item 5 of this article has been changed from "visual inspections" to "police or judicial inspections".

The confession is left as evidence of culpability. Also retained is the *requirement of validity* of the signatures of the defender and of the representative of the Public Prosecutor's Office, since the current Code of Civil Procedure so requires, and the judge will therefore understand that it is an essential procedural requirement

to guarantee the authenticity of the document. There shall also be *cause for ex officio reconsideration*, a detail that is necessary because it does not exist in articles 68 and 69 of the Code of Criminal Procedure, since this requirement for the presence of the defender in the information statement only appears on the LOSEP. Section 1 of article 69 of the Code of Criminal Procedure indicates that the procedure may be reconsidered *ex officio* if the defender was not present during the examination or the charging procedure, on which basis it is doctrinally valid to extend it to the information statement, pursuant to the LOSEP, on the basis of the Miranda Law in Anglo-Saxon procedure, in order to guarantee the defence as from that procedure. The indication of a timetable for the taking of information statements by judicial authorities is restored, in that it helps to avoid early-morning statement sessions, using "third degree" methods.

Article 146 lays down that the official shall note the characteristics of the substances that can normally be noted and those revealed by expert analysis, for immediate analysis. It sets out all conditions relating to the handover of the seized substances, if they have therapeutic use, to the Ministry of Health and Social Welfare. It sets out the destruction of those substances, in accordance with practical requirements, and establishes the possibility of appointing, in rotation, a judge from among those with jurisdiction, to oversee the destruction of the seized drugs within 30 days.

## SECTION 3

## WARRANT OF ARREST

Article 147 lays down a fine equivalent to a number of days' urban minimum wage for officials who fail to comply with the deadlines, or who neglect or delay the trial, and, in addition, the penal sanctions for offences against the administration of justice shall apply, where applicable.

Article 148 clarifies the doubt regarding the problems that have occurred in practice, such as failure to include the records relating to a completed open inquiry or when there is no reason for summary proceedings, on which the higher criminal court judges have different views and penalize the judges of first instance when they include or exclude these articles of the Code of Criminal Procedure (articles 99, 206 and 208) when drafting their conclusions. This resolves the serious polemic whereby the examining officials are barred from applying the provisions of article 99 of the Code of Criminal Procedure, when the LOSEP does not revoke that provision, and article 148 does not contradict it.

Although the principal criminal investigation authorities are not jurisdictional in nature, they do have a jurisdictional function, and *the actor is confused with the function*. Moreover, this includes recourse to claim, without prejudice to any disciplinary, penal and civil liability that the individual may incur. Even when it is an interlocutory decision with recourse to judicial review, the sequence of recourses, set out in the Code of Criminal Procedure, is not interrupted since, if the examining official, among those set out in article 72 *ejusdem*, rejects the indictment on the grounds set out in article 99 of the Code of Criminal Procedure and declares that there is no need for a summary proceeding, the representative of the Public Prosecutor's Office may claim before the court of first instance hearing the case, and the decision on the claim shall be heard in appeal by the higher court, from which there may be recourse to judicial review and, although the examining courts cease to be relevant, all the other instances examining the criminal case remain effective and the criminal investigation authorities examine it by delegation "*ope legis*" of the courts dealing with the case. This decision shall be subject to compulsory consultation and claim.

The pre-draft of the Supreme Court of Justice starts with a fundamental objective: to eliminate *Section 4* of the 1984 LOSEP on "*revision*" (revoked articles 143 and 144), which had the effect of delaying the trial, infringing the time-limit set by the Chamber of Criminal Appeal and accumulating work. There is a marked trend

to return to the provisions of the Code of Criminal Procedure. The new systems create new problems and uncertainty for those who apply them.

## SECTION 4

## GENERAL PROVISIONS

The general provisions governing the summary proceedings, originally envisaged in section 5, are relocated and article 155 is amended by the addition of a paragraph on the possibility that the defence counsel may sign the copies of the originals provided.

Article 157 has been supplemented to include a provision empowering the Public Prosecutor's Office to request the continuation of the examining stage, in those cases in which no one has been arrested and which were initiated by the police agencies, if there has been no police activity before the court dealing with the case after 30 days.

## SECTION 5

## PLENARY PROCEEDINGS

This was previously section 6. Article 158 sets out the "*closure of the summary proceedings*". This is correct terminology, eliminating the term "termination". It also establishes a legal procedural opportunity for the presentation of the charge-sheet, since this enables the defender to become acquainted with the content of the charges.

The new article 159, on the public hearing of the accused, includes the provision that the accused shall be heard for not more than three calendar days. Article 160 specifies the exact moment when dilatory exceptions or pleas for inadmissibility may be made and countered.

The new article 162, on the reallocation or suspension of the case, the latter not being specifically covered by the Law, is improved by the provision that, if the person under investigation was not assisted when making his information statement or if the document was not signed by the defence or by the representative of the Public Prosecutor's Office, the case may be reallocated.

Article 163 makes no change in the conditions on evidence outside the jurisdiction of the LOSEP. The new article 164 obliges the court dealing with the case to order the furnishing of evidence that may not have been furnished in the summary proceedings or evidence that the accused may have adduced in the public hearing, as well as any evidence that the court may consider useful.

Article 165 is amended so that the parties to the proceedings may use any other means of evidence that they think appropriate to demonstrate their claims, provided that it is not prohibited by the Law. As regards evidence, the LOSEP approach adopts the method of legal [*tarifada*] evidence and maintains the system of healthy critique, making it possible to relate the system of assessing evidence and the means of evidence to the regime set out in the Code of Civil Procedure.

Articles 166, 167, 168, 169, 170 and 171 have been slightly amended. The new article 172 states that no associates may be appointed and no advisers may be consulted. Articles 173, 174, 175 and 176 remain essentially the same as those in the previous Law, apart from some corrections, such as that made to article 173 in respect of deferment in order to reach a decision.

## SECTION 6

## JUDGEMENT

Previously section 7. Article 177 has been amended with regard to terminology. For example, the term "assessment" ("*apreciación*") was replaced by "analysis" ("*análisis*"), since the latter was felt to be more comprehensive, for the purposes of examining evidence and, furthermore, because, in this Law which has no system of healthy critique, it permits the judge to use his knowledge and experience to make soundly-based assessments, and the term "clarity" ("*claridad*") was replaced by "exactness" ("*exactitud*"), because not everything that is clear is exact. Article 163 of the 1984 LOSEP was revoked.

## SECTION 7

## APPEAL FOR JUDICIAL REVIEW

This section, which was previously section 8, has been amended to allow for an appeal for judicial review based on the evidentiary system of healthy critique, that is to say the rational assessment of the evidence, which allows some intelligent and scientific freedom on the part of the judge, without any value being given *a priori* by a legal assessment that it is good inasmuch as the evidence is demonstrated.

Article 179 permits recourse on the merits of the case with reference to verdicts that apply physical punishment of six years or more. Article 180 lays down obligatory appeal if a sentence of ten years or more is imposed.

Article 181, with its three grounds for appeal for judicial review is based on the current Venezuelan Code of Civil Procedure, which incorporates the system of healthy critique, and the Colombian Code of Penal Procedure, dated 18 August 1989, which also incorporates that system, thereby reflecting the progress made and the modern attitude in our legislation governing the penal process, which was already an innovation, prior to the Code of Civil Procedure, in the 1984 LOSEP.

Article 182 sets out the modalities for recourse on substantive provisions or a defect of activity, and article 183 lays down automatic appeal in the event of public order and institutional infringements. Article 184 relates to annulment of the verdict without remand.

## SECTION 8

## GENERAL PROVISIONS

This was previously section 9. Article 186 re-establishes the system of healthy critique, that is to say the free and reasoned appraisal of the evidence by the judge, bearing in mind "*unless there is an express rule for evaluating the merits of evidence in this Law*".

Consequently, three new articles have been created to analyse and appraise the evidence, in accordance with the system of healthy critique and evaluation of the evidence. Article 189 requires that a statement by a police officer, with reference to an alleged case of possession, shall be ratified by the court hearing the case, if it is to have any value. The aim is also intended, by recourse to the Law, to discourage the practice of planting small quantities of drugs on an individual (a practice known as "*sowing drugs*"), which has come under such criticism in society. Articles 191, 193 and 197 have been reworded to make them more relevant. Article 175 of the 1984 LOSEP is revoked.

## SECTION 9

## EXTRADITION

This was previously section 10. It is designed to go further than the previous LOSEP since, despite the fact that it is innovative in allowing a request for extradition, not only in plenary proceedings, but also in summary proceedings, it was deemed necessary to be more specific about the content thereof. The subject is dealt with in accordance with the Vienna Convention, on the non-extradition of a national for any reason, and the Law also refers to the extradition of an alien, including when not granted or under which conditions it is granted. Similarly, mention is made of the grounds for suspending the extradition of an alien and prohibiting re-extradition. It covers the consequences of obtaining naturalization, after committing an offence, for the purpose of gaining the protection given to Venezuelans and evading extradition. The extradition of an alien is also specified with reference to that person's involvement in an offence and extradition for the application of security measures, all of which is covered in the new articles 199 to 204.

## TITLE VII

## NATIONAL COMMISSION ON DRUG ABUSE

This Title sets out the powers and duties of the National Commission on Drug Abuse, which has a role in strategy, planning and control and in the task of advising the President of the Republic. The list of the ministries making up the Commission is brought up to date and it is indicated that the general directors shall represent those ministries on the Commission. Another innovation is the inclusion of the (regional) governors with a view to setting up regional offices. Article 209 specifies the functions of the Commission, developed in the light of experience.

Article 210 lays down rules governing the operation of public or private institutions and organizations involved in treatment, rehabilitation and social reintegration, which shall be subject to the regulations, resolutions and directives issued by the National Commission on Drug Abuse and the Mental Health Division of the Ministry of Health and Social Welfare. It also indicates the compulsory requirement to provide data and information to those bodies on request, in order to control and monitor them, since practice has shown that they may be used by confidence tricksters in the health industry to disguise their activity. Article 211 lays down the responsibility of the Ministry of Transport and Communications.

## TITLE VIII

This Title is a new addition to the Law and has two Chapters.

## CHAPTER I

## PREVENTION, CONTROL AND MONITORING TO DEAL WITH MONEY LAUNDERING

This new Chapter lays down for the National Executive, through the Ministry of Finance, the Ministry of Development, the Venezuelan Central Bank, the Office of the Superintendent of Banks, the Bank Protection and Deposit Guarantee Fund, the National Securities Commission, the Records and Notaries Directorate of the Ministry of Justice, the Technical Corps of the Criminal Investigation Police, the Combined Armed Forces, the Office of the Superintendent of Insurance, the Office of the Superintendent of the Savings and Loan System, and other competent agencies, coordinated by the National Commission on Drug Abuse, the duty of drawing up and developing an operational plan covering preventive measures to avoid, nation-wide, the use of the banking and financial system for the purpose of laundering capital (money and financial assets) from the transnational illicit

drugs industry. This Chapter is necessary because the amendment of Title III "Offences" defines the offence of legitimizing capital (known as "*money laundering*"), but without a preventive system for the banks and financial institutions as well as all institutions or individuals connected with professions, offices, industries or businesses that may be used by the transnational illicit drugs industry to launder capital, the activity of the State would be ineffectual.

Consequently, account has been taken of the relevant provisions of the Vienna Convention, and the very extensive document produced by the Heads of State or Government of the seven major industrialized countries and the President of the European Economic Community in Paris, in July 1989, establishing the basic recommendations to be adopted by countries when developing measures against money laundering. These documents form the basis for provisions that shall be fulfilled by banks and financial institutions in the identification of customers, registration, restrictions on bank secrecy and the obligation to provide information, protection of employees and those institutions' internal programmes, as well as the responsibility of the Venezuelan Central Bank to design and develop a system of information on international transfers of currency and bearer instruments, that are equivalent to cash, with sufficient security measures to ensure the proper use of information, without in any way prejudicing the free movement of capital.

The National Executive has the duty of supervising, controlling and monitoring the transfer of precious metals, collectors' items, jewels, works of art, and other similar items of value, when they are transported abroad for sale for foreign currency. Any transfer using false commercial invoices or involving a surcharge on imports or the use of parallel or mutual support loans shall also be monitored. Similarly, it is the responsibility of the Ministry of Justice, through the Records and Notaries Directorate, to monitor the buying and selling of real estate, and fines are fixed for offenders, as set out in articles 213 to 220 inclusive.

## CHAPTER II

## SUPREME ELECTORAL COUNCIL, POLITICAL PARTIES AND ELECTORAL GROUPS

Articles 221 to 225 of this new Chapter establish a set of provisions with regard to the control that political parties and electoral groups shall exercise over their finances, in order to ensure that they are not vitiated by the corruption that favours the transnational illicit drugs industry, for the purpose of attaining political power in State institutions.

## TITLE IX

## FINAL AND TRANSITORY PROVISIONS

Article 228, on the conversion of fines into detention, has been revised to clarify the fact that the fines shall be imposed by the authorities of the National Executive, apart from those that are expressly of jurisdictional competence, and that the conversion shall not apply in the case of insolvency or inability to pay.

Article 229, relating to the use to which the fines are put, creates an exception to the rules in article 66, for the purpose of re-allocating money for the creation and upkeep of treatment and rehabilitation centres which, with article 23, constitute the permitted exceptions.

In article 230, which provides for the establishment of treatment and rehabilitation centres, reference to "*halfway houses*" has been added, in view of the administrative decentralization, giving responsibility to the State governors.

The new article 231 sets out that competence may be conferred on substitute Ministries, in the case of a reform of the Organic Law on the Central Administration.

Finally, there has been no change to article 232, which excludes from the sphere of application of the Law those national indigenous groups which traditionally use *yopo* or *ñopo* (the scientific names are *Piptadenia peregrina* and *Acacia niopo*, of which bufotenin is the active ingredient) in their mystical and religious ceremonies, as in the case of the indigenous peoples in the Macizo Guayanés. This is designed to protect those small indigenous groups whose ancestral social practices differ from the socio-cultural reality of the urban and rural centres in Venezuela, in accordance with article 32 of the Law approving the Convention on Psychotropic Substances, dated 20 January 1972.

E/NL.1995/2

**THE CONGRESS OF THE REPUBLIC OF VENEZUELA**

**HEREBY DECREES**
**the following**
**ORGANIC LAW ON NARCOTIC AND PSYCHOTROPIC SUBSTANCES**

## TITLE I

## GENERAL PROVISIONS

### ARTICLE 1

This Law contains the provisions which shall be applied in the area of trading in, retailing, industrial application, manufacture, refining, processing, extraction, preparation, production, import, export, prescription, possession, supply, storage, transport, brokering and any form of distribution; as well as the control, monitoring and use of the narcotic drugs and psychotropic substances referred to in this Law, their derivatives, salts, preparations and pharmaceutical specialities, such as *Cannabis sativa*, cocaine and its derivatives, inhalable products and other substances contained in the schedules listed in the international conventions signed by the Republic, as well as the control of raw materials, inputs, essential chemicals, solvents, precursors and products of any other type, which may be diverted for use in the production of narcotic drugs and psychotropic substances. The provisions also refer to the consumption of the substances and any of the offences referred to in this Law, penalties relating thereto and social safety measures, and social prevention and procedures, without detracting from compliance with measures on the same subject, in the laws approving the "1961 Single Convention on Narcotic Drugs" of 16 December 1968, the "Convention on Psychotropic Substances" of 20 January 1972, the Protocol Amending the 1961 Single Convention, of 20 June 1985, and the "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", of 19 December 1988, ratified by Venezuela, published in the Official Gazette of 21 June 1991, as well as the Organic Customs Law and relevant special laws.

### ARTICLE 2

For the purposes of this Law, the following shall be considered to be narcotic and psychotropic substances:

1. The drugs, preparations, pharmaceutical specialities and salts included in the schedules appended to the laws approving the "1961 Single Convention on Narcotic Drugs" and the "Convention on Psychotropic Substances"; similarly, for the purposes of this Law, all those substances indicated in table I and table II of the "United Nations Convention against Illicit Traffic in Narcotic Drugs and

Psychotropic Substances" shall be considered to be raw materials, inputs, chemical products, solvents and precursors;

2. Any other substances which, by decision of the Ministry of Health and Social Welfare, may be considered as such, shall be identified by the common name adopted by the World Health Organization, in that their consumption may engender a state of dependence, stimulation or depression of the central nervous system, or bring about hallucinations or disturbed motor functions, judgement, behaviour, perception or state of mind, or whose illicit consumption may produce effects similar to those produced by consumption of one of the substances in the schedule referred to in paragraph 1 of this article.

The Ministry of Health and Social Welfare may resolve to place under control substances used in the production of medicines that may be diverted to the illicit manufacture of narcotic and psychotropic substances, which are not included in tables I and II of the "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", identifying them by the common name adopted by the World Health Organization.

The Ministry of Development may resolve to place under control the raw materials, inputs, chemical products, solvents, precursors and any other substance, not destined for the preparation of medicines that may be diverted for use in the illicit production of narcotic and psychotropic substances, not included in tables I and II of the "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances".

The definitions set out in the laws approving the "1961 Single Convention on Narcotic Drugs", dated 16 December 1968, the "Convention on Psychotropic Substances", dated 20 January 1972, and the "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", dated 21 June 1991, shall be adopted in all respects.

**SINGLE PARAGRAPH:** For the purposes of this Law, a raw material shall be one which the illicit industry of trafficking in narcotic and psychotropic substances needs to use, at the manufacture, preparation or processing stages, to produce narcotic and psychotropic substances, even if it stems from other industrial operations by illicit industries.

**ARTICLE 3**

The trading, retailing, industrial use, manufacture, refining, processing, extraction, preparation, production, import, export, prescription, possession, supply, storage, distribution, stocking and use of the narcotic and psychotropic substances referred to in this Law, and their derivatives, salts, preparations and pharmaceutical specialities, shall be strictly limited to the quantities needed for medical treatment, the licit production of medicines or scientific research, and only legally-authorized persons may take part in any activity relating thereto. Any other end use to which such substances may be put shall be considered illicit.

**SINGLE PARAGRAPH:** It shall be considered illegal to divert raw materials, inputs, precursors, chemical products and solvents for use in the unauthorized manufacture of narcotic and psychotropic substances, such as acetone, anthralytic acid, phenylacetic acid, acetic anhydride, ethyl ether, piperidine and its salts, lysergic acid, ephedrine, ergometrine, ergotamine, 1-phenyl-2-propanone, pseudo-ephedrine and its salts, as well as the substances that may be controlled pursuant to article 2 of this Law.

**TITLE II**

## ADMINISTRATIVE ORDER

### Chapter I
### The import and export of the substances referred to in this Law

**ARTICLE 4**

The import and export of the substances referred to in this Law shall be subject to the legal conditions established in the Organic Customs Law and its Regulation, in the scale of customs tariffs and the provisions of this Law.

The substances mentioned above may not be the subject of any customs operation involving transit through Venezuelan territory and shall be seized.

**SINGLE PARAGRAPH:** The Ministry of Finance and the Ministry of Health and Social Welfare shall set up the air and maritime customs services empowered to carry out customs operations by joint resolution.

**ARTICLE 5**

Customs operations relating to the import or export of the narcotic and psychotropic substances referred to in this Law shall be conducted by pharmaceutical laboratories, drug manufacturers, representational offices and pharmacies that have been legally established, as well as by non-pharmaceutical industries that have been legally established, which carry out import or export operations for any substance not used in the manufacture of medicines that is included in tables I and II of the "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", provided that they have obtained prior registration, if applicable, and the relevant licence by fulfilling the relevant provisions.

The registration and the licence mentioned above shall be requested by the senior pharmacist or the legal representative of the non-pharmaceutical industry and the relevant registration and licence shall be issued in their names.

For the purposes of the granting or cancellation of the registration and licence, the Ministry of Health and Social Welfare and the Ministry of Development shall order any inspection and control procedures that they deem fit.

**ARTICLE 6**

The senior pharmacist or legal representative of the non-pharmaceutical industry seeking to obtain the registration mentioned in the previous article shall, in each case, submit an application to the Ministry of Health and Social Welfare or to the Ministry of Development, setting out the following:

1. The identity of the senior pharmacist or legal representative of the enterprise.

2. The identification of the establishment.

3. The register used to record the legal personality of the establishment.

4. The quantity of the substances to be imported or exported during the year.

5. The name and address of the importer or exporter and, if applicable, the consignee of the non-pharmaceutical industry.

6. The name of the substance to be imported or exported, using the common name adopted by the World Health Organization.

7. A declaration, signed by the legal representative of the establishment, certifying that the applicant is the senior pharmacist and, in the case of an authorized industrialist, the articles of association setting out the legal capacity in which he acts.

8. The customs office empowered to deal with the relevant import or export.

9. Any other information that the ministries may require.

Responsibility for failure to comply with these requirements shall be borne by the establishment involved and, without prejudice to the aforesaid principal responsibility, it shall be borne individually by the legal representative, the senior pharmacist and the managing industrialist.

The Drugs and Cosmetics Division of the Ministry of Health and Social Welfare and the Ministry of Development shall be empowered to grant or refuse registration and to cancel it, after it has been issued, by a decision setting out the grounds therefor.

**SINGLE PARAGRAPH**: For the purposes of granting the registration referred to in this article, the applicant shall pay the National Treasury, using the appropriate form, the amount fixed by the Ministry of Health and Social Welfare and the Ministry of Development, by a joint decision, up to the limit laid down in the regulations relating to this Law.

**ARTICLE 7**

The registration referred to in article 5 of this Law shall be valid until 31 December each year. The registration shall be requested during the first fifteen (15) days of the month of December.

**ARTICLE 8**

A senior pharmacist who wishes to import or export the narcotic and psychotropic substances referred to in this Law, or an industrialist who conducts import or export operations relating to any substance not usable in the pharmaceutical industry, included in tables I and II of the "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", once the requirements set out in the preceding articles have been fulfilled, shall obtain an export or import licence relating thereto from the Ministry of Health and Social Welfare or the Ministry of Development, in each individual case, prior to the arrival of the goods in the country or their departure from the country. Any contravention of this provision shall give rise to the penalties set out in article 114 of the Organic Customs Law. The ministries shall take the appropriate steps, in accordance with the relevant laws and regulations.

**ARTICLE 9**

When issuing an import or export licence for the substances referred to in this Law, the Ministry of Health and Social Welfare and the Ministry of Development shall be guided by the relevant provisions, in accordance with the procedure established in article 31 of the law approving the "1961 Single Convention on Narcotic

Drugs", dated 16 December 1968, article 12 of the law approving the "Convention on Psychotropic Substances", dated 20 January 1972, article 23 of said law, and article 16 of the "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", dated 21 June 1991.

**SINGLE PARAGRAPH**: The Ministry of Health and Social Welfare or the Ministry of Development, as applicable, shall be empowered to refuse an import licence and limit the application for substances referred to in this Law, if it thinks fit; it may also refuse requests to change the customs office. Both the application and the administrative order granting or refusing permission shall indicate the grounds therefor.

**ARTICLE 10**

The licences referred to in this Title shall expire as set out below, starting from the date of issue:

1. An import licence, after one hundred and eighty (180) days.

2. An export or re-export licence, after ninety (90) days.

**ARTICLE 11**

The imported substance shall be declared within five (5) working days of the date of arrival at the customs office empowered and the importer is obliged to withdraw them within thirty (30) consecutive days following the declaration. Without prejudice to compliance with the legal formalities, in order for customs authorities to release the narcotic or psychotropic substances to the importer or to a legally authorized representative, the latter shall submit a duplicate of the import licence. The importer or his representative shall acknowledge, on the licence, the receipt of the narcotic and psychotropic substances released to him and may make any comments that he deems to be appropriate. The narcotic and psychotropic substances imported shall be released in the presence of the importer or his representative and an official of the Ministry of Health and Social Welfare or, in the absence of the latter, on presentation of the original of the appropriate certificate, drawn up by the Ministry official. The goods shall be withdrawn in the presence of the persons mentioned above or in the established manner. Any infringement of this provision shall be punishable by a fine of between two hundred (200) and three hundred (300) days' urban minimum wage. If the period indicated for withdrawal has expired or if the substances referred to in this article have been voluntarily abandoned, pursuant to the Organic Customs Law, the customs administrator empowered to conduct the customs operation shall notify the head of the Drugs and Cosmetics Division of the Ministry of Health and Social Welfare accordingly and, within five (5) working days, send him the substances involved.

**SINGLE PARAGRAPH**: For the purposes of compliance with the above provision, the customs administrator shall issue a certificate, in triplicate, indicating the following:

1. Class and weight of the substance, as indicated in the export licence or corresponding guide, or an indication of dispatch from the country of origin.

2. Type of packaging, state and brand thereof.

3. Grounds for the certificate indicated by the relevant official.

The head of the Drugs and Cosmetics Division of the Ministry of Health and Social Welfare shall issue a certificate acknowledging receipt, stating that the substances shipped comply with the specifications on the shipment certificate.

The transfer from the customs office to the office of the Drugs and Cosmetics Division of the Ministry of Health and Social Welfare shall be monitored by officials of the national Customs Service or, failing that, by officials appointed by the customs office. The export of the substances referred to in this Law shall comply with the procedure established in the Organic Customs Law and shall be subject to prior licensing by the Ministry of Health and Social Welfare. The import or export of raw materials, inputs, chemical products, solvents and precursors shall be governed by the procedure established in the Organic Customs Law and be subject to prior licensing by the competent body.

**ARTICLE 12**

If the corresponding import or export licence has been cancelled or has not been processed by the date of entry or departure of the substances referred to in this Law, the provisions of article 114 of the Organic Customs Law shall apply and the substances shall be sent to the competent authority, in compliance with article 11 of this Law.

**ARTICLE 13**

On the basis of the import or export certificate for the substances referred to in this Law, the customs office shall verify compliance with the obligations set out herein, as well as in the Organic Customs Law and the relevant regulations. Failure to fulfil all licensing requirements shall result in seizure of the substances and implementation of the provisions of article 11 of this Law.

**ARTICLE 14**

The customs operations relating to the substances referred to in this Law shall be conducted on a single consignment and separately, away from all other goods.

**ARTICLE 15**

Anyone who imports or exports narcotic drugs and psychotropic substances, whether in pure form or contained in pharmaceutical specialities, referred to in this Law, in postal packages, postal parcels or correspondence sent to a bank, or sent to a customs warehouse, a specially-authorized warehouse, a general storage warehouse, a free zone or a free port, shall be sanctioned by the seizure of the goods and the provisions of article 11 of the Organic Customs Law and article 11 of this Law shall be applied.

## Chapter II

## Production, manufacture, refining, processing, extraction and preparation of the substances referred to in this Law

**ARTICLE 16**

The production, manufacture, refining, processing, extraction and preparation, or any other treatment of the substances, or preparations thereof, referred to in this Law, shall be subject to the authorization and control procedures set out in this Law.

**ARTICLE 17**

Duly authorized laboratories wishing to produce, manufacture, extract, prepare, process or refine narcotic or psychotropic substances intended for use in making pharmaceutical products shall apply, in writing, to the Ministry of Health and Social Welfare for the appropriate authorization to fabricate each batch of their products which, once made, shall be controlled by the relevant health authority. The licence to fabricate each batch shall be valid for a period of one (1) year, from the date of issue. Any infringement of this article shall be punishable by a fine of between two hundred (200) and three hundred (300) days' urban minimum wage.

**ARTICLE 18**

Anyone involved in the cultivation of plants with dependence-producing or hallucinogenic active ingredients, unless it is done for the purpose of scientific research by persons duly authorized and controlled by the Ministry of Health and Social Welfare, shall be sanctioned as provided for in Title III, Chapter I, article 35 of this Law. Duly authorized persons who contravene the limits and conditions of the licence shall be sanctioned by a fine of between two hundred (200) and three hundred (300) days' urban minimum wage. If there is refusal to pay the fine, the amount deriving from the said fine shall be convertible, according to article 228 of this Law and, to that end, the file shall be sent to the competent judicial authority. A researcher who fails to fulfil the terms of the authorization or does not have an authorization shall be sanctioned by the competent court, pursuant to this Law, after it has legally examined the matter. In any event, the plants, their parts and their derivatives shall be seized immediately.

**ARTICLE 19**

Pharmaceutical laboratories, pharmacies and representational firms shall not distribute samples of medicines that contain the narcotic and psychotropic substances referred to in this Law. Contravention of this provision shall be sanctioned by seizure of the medical samples and a fine of between one hundred (100) and two hundred (200) days' urban minimum wage. In the event of a repeated contravention, the Ministry of Health and Social Welfare is empowered to double the fine fixed on the first occasion.

## Chapter III

## Retailing, trading in and distribution of the narcotic and psychotropic substances referred to in this Law

**ARTICLE 20**

The retailing, trading in and distribution of the narcotic and psychotropic substances, and their derivatives, salts, preparations and pharmaceutical specialities referred to in this Law shall be subject to prior authorization, granted only to pharmacies, pharmaceutical laboratories and representational firms for pharmaceutical products that comply with the relevant standards in the view of the Ministry of Health and Social Welfare. The authorization may be cancelled by the Ministry in a ruling indicating the grounds for the decision.

**ARTICLE 21**

The narcotic and psychotropic substances referred to in this Law may only be transferred, for whatever purpose, subject to the relevant conditions established for the purpose by the Ministry of Health and Social Welfare, without prejudice to the fulfilment of any other applicable legal provisions.

**ARTICLE 22**

Medicines containing narcotic or psychotropic substances shall be sold to the public only by pharmacies, on the basis of prescriptions written out as indicated in article 23.

The counterfoil pad may be used only by the physician to whom it is issued and not by any other physician.

Pharmaceutical products whose composition contains substances in List IV of the law approving the "Convention on Psychotropic Substances", as well as any other product that the Ministry of Health and Social Welfare may decide to include in this group, may be dispensed on presentation of a personal prescription issued by a physician or the hospital establishment in which he works.

**ARTICLE 23**

Any prescription for the narcotic or psychotropic substances referred to in this Law, if it is to be filled, shall be written on a special numbered form, of a specific colour, contained in two (2) counterfoil pads issued by the Ministry of Health and Social Welfare and shall indicate the following details in legible handwriting:

1. First and family names, address, identify card number and health department registration number of the physician;

2. Name of the medicine;

3. Amount of each medicine, in figures and words, without any changes;

4. First and family names, address and identity card number of the patient and identification of the purchaser; and

5. Signature of the physician and date of issue.

**SINGLE PARAGRAPH**: The value of the special counterfoil prescription pads shall be decided by the Ministry of Health and Social Welfare. The amount paid shall be received by the Ministry, which shall credit it to the Drugs and Cosmetics Division, for the sole purpose of manufacturing more counterfoil pads.

When submitting a new request, the physician shall attach a used pad to his application. If a counterfoil pad is stolen, lost or mislaid, the occurrence shall be reported to the Criminal Investigation Police, which is then obliged to acknowledge receipt and investigate the matter. The Ministry of Health and Social Welfare is permitted to refuse to issue a new counterfoil pad if there is evidence that a pad may have been misused by the requesting physician.

**ARTICLE 24**

Doctors' prescriptions for medicines containing narcotic and psychotropic substances shall be valid for a period of five (5) consecutive days, from the date of issue. After this period, a prescription may no longer be filled by authorized establishments. Contravention of the provisions of this article shall be sanctioned by a fine between one hundred (100) and two hundred (200) days' urban minimum wage.

**ARTICLE 25**

In no circumstances may any medicine containing the narcotic and psychotropic substances referred to in this Law be sold to minors. Failure to comply with this provision shall be sanctioned by a fine of between one

hundred (100) and two hundred (200) days' urban minimum wage. A repeated offence shall be sanctioned in accordance with article 226 of this Law and by closure of the establishment that filled the prescription, according to the procedure set out in Title VI, Chapter II of this Law.

**ARTICLE 26**

Physicians may not prescribe medicines containing narcotic or psychotropic substances or preparations in doses greater than those strictly required, in accordance with the official dosage rates. Nevertheless, a physician who is of the opinion that extended treatment or treatment at a dosage rate higher than officially indicated is necessary shall inform the Ministry of Health and Social Welfare accordingly in writing. The Ministry may grant a special limited and renewable licence to enable a specific pharmaceutical establishment to dispense the medicines, under the conditions and in the amounts indicated in each individual case.

In an emergency, a physician may indicate a dosage of narcotic medicines that he considers necessary to deal with the emergency situation, in which event he is obliged to record all treatment using narcotic medicines in the appropriate clinical register or, if no such register exists, to report such treatment to the competent health authority, within seven (7) working days of the treatment referred to herein. The Ministry of Health and Social Welfare may cancel this licence whenever it sees fit. The official dosage rates shall be established by ruling of the Ministry.

A physician who infringes the official dosage rate requirement when making out a prescription, or a physician who issues more than one prescription to the same person on the same date, in respect of the narcotic or psychotropic substances referred to in this Law, even if they contain the dosage indicated in the official dosage rates, shall be liable to a fine of between two hundred (200) and three hundred (300) days' urban minimum wage. A repeated offence shall be punishable by suspension of the physician's licence for a period of between six (6) and twelve (12) months. A pharmacist who supplies any of these substances, or preparations containing them, in an amount greater than that indicated in the official dosage rates, shall also be sanctioned in accordance with this article. A pharmacist who carries on his professional activities after being suspended shall be sanctioned as set forth in Title III, Chapter I, article 41 of this Law.

**ARTICLE 27**

Dental surgeons may only prescribe the medicines containing narcotic and psychotropic substances that have been authorized by the Ministry of Health and Social Welfare for use in dentistry. Veterinarians may prescribe the medicines containing the substances referred to in this Law, for use only in veterinary medicine and, to this end, the prescriptions shall indicate, in addition to the information laid down in article 23, the name and domicile of the owner of the animal and identification thereof, together with the date and dosage, based on the official dosage rates, for the species of animal involved.

## Chapter IV

## Monitoring and control of the substances referred to in this Law

**ARTICLE 28**

The National Executive, through the Ministries of Finance, Defence, Development, Health and Social Welfare and Justice, shall determine the methods to be used to monitor, supervise and control the substances referred to in this Law, or any solution, mixture or physical state in which they are to be found. This control shall also be extended to all substances that, by simple chemical methods, may be the source of any of the psychotropic or narcotic substances included in this Law, as well as the salts, preparations and pharmaceutical specialities, and

the raw materials, inputs, chemical products, solvents and other chemical precursors, which could be diverted for use in the production of narcotic and psychotropic substances. The aforesaid ministries shall inform the National Commission on Drug Abuse of the monitoring, supervisory and control methods referred to in this article, within a period of not less than five (5) working days, for their approval and implementation, in accordance with article 209 of this Law.

**ARTICLE 29**

The Ministry of Health and Social Welfare shall administer the system to be used to control and monitor psychotropic and narcotic substances in hospital establishments in the private and public sectors.

**ARTICLE 30**

Custody of and accounting for the narcotic and psychotropic substances referred to in this Law shall be the responsibility of the senior pharmacist of the establishment concerned. Any contravention of this responsibility shall be sanctioned by a fine of between one hundred (100) and two hundred (200) days' urban minimum wage. The establishment may be closed in the event of a repeated offence.

Custody of and accounting for the raw materials, inputs, chemical products, solvents and other chemical precursors referred to in this Law shall be the responsibility of the industrialist, who shall keep a register, in accordance with the rules that may be established, by joint decision, by the ministries of Finance and Development. Contravention of this responsibility shall be punished by a fine of between one hundred (100) and two hundred (200) days' urban minimum wage.

**ARTICLE 31**

The senior pharmacist of the establishments mentioned in this Law shall keep a special ledger, sealed and numbered by the competent authority of the Ministry of Health and Social Welfare, in which details of stocks of the narcotic and psychotropic substances referred to in this Law shall be recorded. The initial entry in the ledger shall be made by the competent authority.

A ledger shall also be used to keep a monthly record of all movements of stocks of narcotic and psychotropic substances. The senior pharmacist shall make an inventory of the stock recorded in the ledger and send a copy to the Ministry of Health and Social Welfare, within the first ten (10) days of the following month, attaching a copy of authorizations and licences, as well as duplicates of special prescriptions, forms, customs charge payment schedules and other supporting documents relating to sales or purchases. The originals of the reports, and any other items accompanying them, shall be filed for a minimum period of two (2) years at the establishment concerned, together with the current prescriptions referred to in article 22. Failure to comply with this provision is punishable by a fine of between one hundred (100) and two hundred (200) days' urban minimum wage. A repeated offence shall be penalized by temporary or permanent closure of the establishment, in compliance with the procedure set out in Title VI, Chapter II of this Law.

**SINGLE PARAGRAPH**: If a pharmaceutical establishment is closed as a consequence of a civil or commercial precautionary legal measure, the Ministry of health and Social Welfare shall retain possession of the substances referred to in this Law and may dispose of them, after six (6) months, if the senior pharmacist of the establishment has failed to comply with the provisions of this article.

**ARTICLE 32**

On taking charge of a pharmaceutical establishment, the pharmacist shall straight away make an inventory of the narcotic and psychotropic substances in stock at the time and note any irregularities in the accounting ledger referred to in the preceding article. A copy of this inventory, signed by both senior pharmacists, shall be sent to the Ministry of Health and Social Welfare within five (5) days from the date of hand-over. Failure to meet this requirement shall be penalized by a fine of between one hundred (100) and two hundred (200) days' urban minimum wage.

**ARTICLE 33**

The Ministry of Health and Social Welfare shall be empowered to apply administrative penalties to anyone who contravenes the articles in Title II of this Law, and it may, in turn, authorize the head of the Drugs and Cosmetics Division and the regional directors of the National Health System in each federal unit to apply these penalties. Likewise, the Ministry of Development is empowered to apply administrative penalties in cases of infringement of the articles in Title II of this Law, within its sphere of competence, in line with its powers and functions.

## TITLE III

## OFFENCES

### Chapter I

### Common law and military offences and penalties

**ARTICLE 34**

Anyone who illicitly deals in, distributes, conceals, manufactures, produces, refines, processes, extracts, prepares, transports, stores or brokers or who administers or finances the above operations and traffics in the substances or their raw materials, precursors, solvents and essential chemicals, diverted to produce the narcotic and psychotropic substances referred to in this Law shall be punished by imprisonment for a term of between ten (10) and twenty (20) years.

**ARTICLE 35**

Anyone who illicitly sows, cultivates, harvests, preserves, produces, stores or brokers or who administers or finances such operations, or traffics in, transports and distributes seeds, resins or plants that contain or reproduce any of the substances referred to in this Law, shall be punished by imprisonment for a term of between ten (10) and twenty (20) years.

**ARTICLE 36**

Anyone who illicitly possesses the substances, raw materials, seeds, resins or plants referred to in this Law, for purposes other than those envisaged in articles 3, 34 and 35 and other than personal use, as established in article 75, shall be punished by imprisonment for a term of between four (4) and six (6) years. The following amounts are considered in cases of possession: up to two (2) grams, for possession of cocaine or its derivatives, compounds or mixtures with one or more ingredients; up to twenty (20) grams, for possession of *Cannabis sativa*. When ruling on possession of other narcotic or psychotropic substances, the judge shall take into account amounts, depending on the nature and usual form of the substances. In no case shall the degree of purity of the substances be given consideration.

The judges shall assess the circumstances of the offender and the amount of substance seized when imposing a sentence, at the lower or higher limit, in accordance with the rules set out in article 37 of the Penal Code.

A person charged with an offence pursuant to this Law may be granted the benefit of committal for trial or suspended sentence, provided that he has committed no other offence, that it is not a question of recidivism, and that he is not a foreigner visiting the country as a tourist.

**ARTICLE 37**

Anyone who, personally or through an intermediary, whether an individual or a corporation, uses mechanical, telegraphic, radio-electric, electronic or any other means to transfer capital or profits that derive from:

1. Direct or indirect involvement or joint involvement in the illicit trafficking, distribution, supply, production, refining, processing, extraction, preparation, manufacture, transport, storage, brokering, administration, financing or any other activity, measure or step to facilitate the illicit traffic in narcotic or psychotropic substances, or raw materials, precursors, solvents or essential products destined for or used in the processing of the substances referred to in this Law;

2. Direct or indirect involvement or joint involvement in the sowing, cultivation, harvesting, preservation, storage, transport, distribution, administration or financing, or deriving from the commission of any illicit activity connected with the trafficking, purchase or brokering of seeds, plants or parts thereof and resins that contain narcotic or psychotropic substances,

shall be sentenced to imprisonment for a term of between fifteen (15) and twenty-five (25) years. The same sanction shall apply to anyone who conceals or disguises the origin, nature, location, movement or destination of capital or surplus capital, whether liquid or fixed assets, in the knowledge that such capital has been generated by the stages or activities of the illicit traffic in narcotic or psychotropic substances mentioned in paragraphs 1 and 2 of this article. The same sentence shall be imposed on anyone involved in the disposal, movement or ownership of goods or capital, or rights thereto, in the knowledge that they have been generated by the illicit stages or activities mentioned in paragraphs 1 and 2, and on anyone who converts proceeds in cash, titles, shares, securities, real or personal rights, fixed or movable assets that may have been acquired from the illicit stages or activities set out in paragraphs 1 and 2.

**SINGLE PARAGRAPH**: Individuals with directorial, managerial or administrative functions, such as president, vice-president, director, manager, secretary, administrator, officials, executives or employees, or anyone acting as their representative, with direct responsibility in the offices of institutions or organizations, such as commercial banks, mortgage banks, industrial banks, mining banks, agricultural credit banks and others established for special purposes; financial societies and rental firms, capitalization companies, money market funds and other forms of intermediation; credit institutes, insurance companies or insurance brokers, stock exchanges, exchange houses, branches and offices representing foreign banks, as well as enterprises or individuals concerned with real estate and rental property who, in any manner, participate in, control, receive, maintain custody of or administer credits, securities, sundry goods or proceeds generated by any of the illicit actions or activities mentioned in paragraphs 1 and 2 of this article, shall be considered as direct accomplices and shall incur the penalty corresponding to the offence committed, as set out in this article.

Legal entities shall be punished by fines of as much as the value of their entire capital, property and credits, and may not be less than the value of the capital, property or credits in the money-laundering operations carried out. The capital, property or credits coming under the offence shall be confiscated.

**ARTICLE 38**

Anyone who purveys, applies or supplies the substances referred to in this Law to a minor, to a person with physical or mental disability or to a native belonging to a clearly-defined tribe, located on territory that is remote or difficult to reach from populated centres, shall be sanctioned by imprisonment for a term of between fourteen (14) and twenty (20) years; if, on top of this, he uses a minor, a disabled person or a native to commit the offences set out in articles 34 and 35 of this Law, he shall be sentenced to imprisonment for a term of between fifteen (15) and twenty five (25) years.

**ARTICLE 39**

If anyone has committed any of the offences envisaged in Chapter I of this Title, in connection with the exercise of a profession or office, subject to authorization or supervision for reasons of public health, the sentence shall be increased by one sixth to one quarter.

**ARTICLE 40**

Anyone who, without committing an offence indicated in the preceding articles, uses or permits the use of a vehicle, premises or meeting-place for persons to consume the substances referred to in this Law shall be sentenced to imprisonment for a term of between three (3) and six (6) years.

If the place or premises are open to the public or are intended for official activities, or if the vehicle is intended for official or public use, the sentence shall be imprisonment for a term of between four (4) and eight (8) years.

Anyone who permits the presence of minors in such places, premises or vehicles shall be sanctioned by imprisonment for a term of between eight (8) and twelve (12) years.

Whoever derives benefit of any kind from the illicit activities referred to in this article, the sentence shall be increased by one quarter to one half.

**ARTICLE 41**

Anyone who incites or promotes the consumption of, donates, offers or supplies for immediate consumption any of the substances referred to in this Law shall be sentenced to imprisonment for a term of between six (6) and ten (10) years.

If the incitement, promotion or offer referred to in this article is made using audio, printed or visual media or by means of drawings, recordings, photographic prints or banners, or any other form of symbolic expression, the maximum sentence shall be imposed.

**ARTICLE 42**

Anyone who publicly incites one or more other people, by any means, to commit an offence defined in this Law shall be punished for the act of incitement alone by:

1. Imprisonment for between ten (10) and thirty (30) months, if the offence to which the incitement relates is punishable by a maximum term of imprisonment of more than twenty (20) years;

2. Imprisonment for between ten (10) and twenty (20) months, if the offence to which the incitement relates is punishable by imprisonment for a term ranging from a maximum of twenty (20) years to a minimum of six (6) years;

3. Imprisonment for a term of between eight (8) and ten (10) months, if the offence to which the incitement relates is punishable by a term of imprisonment of up to ten (10) years;

4. Imprisonment for a term of three (3) to six (6) months, in the case of incitement not to comply with the provisions of Title II, "Administrative order", of this Law, contravention of which is punishable by a fine imposed by the competent ministry or authority or by court judgement.

**ARTICLE 43**

The following shall be deemed to be aggravating circumstances in respect of the offence of trafficking, in all its forms, as set out in articles 34 and 35 of this Law:

If these offenses are committed:

1. In the home or at educational, welfare, cultural or sporting establishments or in churches of any denomination;

2. At places of public entertainment or performance, social centres or premises used for public catering;

3. At places of detention, prison or police custody;

4. Areas within three hundred (300) metres of such places, establishments or institutions;

5. Vessels, aircraft and any other vehicle used for military transport, or in military barracks, premises or installations;

6. Public offices and installations of the national, regional or municipal government.

In the cases mentioned above, the sentence shall be increased by one third to one half.

When the offences mentioned in this article are committed in the locations indicated in paragraph 5 above, the offenders shall be tried by military tribunals and the procedure set out in the Code of Military Justice shall apply, with the means of evidence and the system of assessment laid down in that Law.

If the perpetrator of the offences indicated above is a public official or is not a public official, but has the use of documents or credentials or performs services in the above-mentioned institutions, churches, establishments or places, the sentence shall be increased by one half.

**ARTICLE 44**

Anyone who derives benefit from or causes damage at a sports contest or event, incites or induces a sportsman, whether professional or amateur, to consume the substances referred to in this Law, or supplies them with such shall be sentenced to imprisonment for a term of between four (4) and six (6) years.

If the offence has been committed under duress or by deception, or in a surreptitious manner, the sentence shall be increased by one half.

**ARTICLE 45**

Anyone who supplies or administers to any animal the substances referred to in this Law shall be sentenced to imprisonment for a term of between two (2) and four (4) years. If the animals concerned are used for competitive purposes, the sentence shall be increased by one third.

Specialists or scientists who use such substances for research purposes are excluded from this provision.

**ARTICLE 46**

Anyone who employs deception, threats or violence to make a person consume the substances referred to in this Law shall be punished by imprisonment for a term of between fifteen (15) and twenty (20) years.

**ARTICLE 47**

Whoever commits any of the offences indicated in articles 34 and 35 of this Law, with a view to undermining the sovereignty, independence or security of the Venezuelan State, its territorial integrity, its public authorities or State bodies, or to undermining the economic and social development of the Nation and the National Armed Forces, shall be punished by imprisonment for a term between twenty-five (25) and thirty (30) years.

Public officials, members of the National Armed Forces, police forces or security services of the State and persons employed by the public authorities who, in whatever manner, are involved in, conceal or assist the commission of an offence shall be liable to the same punishment.

The offence shall be deemed a military offence, even in the case of non-military personnel, when professional military personnel are involved or if it is initiated, supported or assisted by national or foreign military forces. In this case, the procedure set out in the Code of Military Justice shall apply, with the means of evidence and the system of appraisal laid down in that Law.

**ARTICLE 48**

Soldiers on sentry duty who consume narcotic or psychotropic substances shall be liable to the following penalty:

1. If the offence is committed in face of the enemy, or in face of rebels or insurgents, imprisonment for a term of between two (2) and six (6) years and, if the offences result in harm to the service, imprisonment for a term of between eight (8) and sixteen (16) years;

2. If the offence is committed on active duty, but not in the face of the enemy, imprisonment for a term of between one (1) year and five (5) years, but, if the aggravating circumstance mentioned in 1 above applies, imprisonment for a term of between six (6) and ten (10) years;

3. If the offence is committed in any other circumstances, imprisonment for a term of between one (1) year and three (3) years.

Soldiers on sentry duty are understood as being those on watch: soldiers belonging to the guard service, officers or non-commissioned officers in charge, orderly officer, commander of the watch, sergeant of the guard, relief corporal, soldier of the guard, sentry on watch, guard orderly and patrols and rounds, as well as those responsible for telegraph, telephone or any other military communications service, reserve guards or orderlies on vessels or in barracks or other military establishments, and couriers or carriers of orders and other military communications. The above-mentioned offence lies within military jurisdiction. The procedure set out in the Code of Military Justice shall apply, with the means of evidence and the system of appraisal laid down in that Law.

**ARTICLE 49**

Anyone who contaminates water, beverages or foodstuffs that are or may be used by the National Armed Forces with narcotic or psychotropic substances shall be punished by imprisonment for a term of between ten (10) and eighteen (18) years.

This offence lies within military jurisdiction and the procedure set out in the Code of Military Justice shall apply, with the means of evidence and the system of appraisal laid down in that Law.

Similarly, anyone who contaminates drinking water for public use or items for use in public catering with narcotic or psychotropic substances shall be punished by imprisonment for a term of between ten (10) and eighteen (18) years. In this case, the offence lies within ordinary jurisdiction.

**ARTICLE 50**

A regular officer, non-commissioned officer or regular serviceman who, in the performance of their duties, illegally consumes narcotic or psychotropic substances shall be sentenced to imprisonment for a term of between two (2) and six (6) years. If the same offence is committed on active service, the sentence shall be doubled.

The above-mentioned offence lies within military jurisdiction and the procedure set out in the Code of Military Justice shall apply, with the means of evidence and the system of appraisal laid down in that Law.

**ARTICLE 51**

If a regular soldier, regardless of rank and military position, commits the common offences mentioned in this Law, the sentence shall be increased by one sixth to one third.

He shall also be liable to the additional penalties established in section 3 of article 60 and be sentenced by the competent military courts, in accordance with the procedure set out in the Code of Military Justice, with the means of evidence and the system of appraisal laid down in that Law.

If a common offence has been committed by regular soldiers, whatever their rank and military position, jointly with civilians or non-regular soldiers, as the main perpetrators or as accomplices and abetters, all those involved shall be subject to military jurisdiction, in the manner indicated above.

## Chapter II

## Offences against the administration of justice in the application of this Law

**ARTICLE 52**

A judge who fails to or refuses to pass judgement, under the pretext of its obscurity, insufficiency, contradictory nature or silence of this Law, shall be liable to a term of imprisonment of between one (1) and two (2) years. If the judge acts out of private interest, the sentence shall be doubled.

A judge who contravenes this Law or uses his power for the benefit or to the detriment of the accused, shall be punished by a term of imprisonment from three (3) to six (6) years.

**SINGLE PARAGRAPH**: The Council of the Judiciary shall take all necessary steps to remove him from office, on the understanding that the person concerned may return to the bar after a period of twenty (20) years has elapsed, starting from completion of the sentence, provided that his conduct has been untarnished during that time.

**ARTICLE 53**

A judge who delays the proceedings, in order to prolong the detention of the accused or so that the relevant penal activity lapses, shall be liable to a term of imprisonment of between two (2) and four (4) years. The same punishment shall apply to persons who have been involved in the offence as direct accomplices. Similarly, any examining official or criminal investigation official who, in the performance of his duties, becomes aware of any act for which he is ordered by the Law *ex officio* to proceed, but fails to report it, or unduly delays in issuing an order to proceed and report to the competent authority, shall be liable to suspension from office for six (6) months, without remuneration and, in a serious case or a repeated offence, to removal from office, after a disciplinary procedure, in both cases, by the Council of the Judiciary, if the official is a judicial employee, or by the competent authority, if the official is employed by the police.

**SINGLE PARAGRAPH**: A judge who causes recovered or seized assets to be put to a use different from that set out in this Law shall be liable to a term of imprisonment of between one (1) and five (5) years. If the diversion was for the judge's own benefit, the term of imprisonment shall be between two (2) and seven (7) years, without prejudice to any criminal responsibility that he may have incurred in the commission of another offence.

**ARTICLE 54**

Attorneys or representatives of the Public Prosecutor's Office who fail to apply the legal recourse or fail to pursue the proceedings designed to uncover the truth, to ensure the propriety of the proceedings, to comply with the procedural time-limits and to afford the accused proper protection shall be liable to a term of imprisonment of between two (2) and four (4) years and disqualification from the exercise of their functions for the same period, after the sentence has been carried out.

**ARTICLE 55**

Any forensic experts referred to in this Law who issue false reports on the examinations or analyses they are called upon to submit to the judicial authority shall be liable to a term of imprisonment of between two (2) and four (4) years.

If the false analysis or report has formed the basis of a conviction, the penalty shall be imprisonment for a term of between four (4) and six (6) years. In both cases, the person concerned shall be disqualified from carrying on any professional activities for a period equal to the penalty imposed, once the sentence has been carried out.

**ARTICLE 56**

Officials of the Criminal Investigation Police, experts, directors of detention centres, prisons, penitentiaries and correctional establishments, as well as any law officers who, wilfully or negligently, contravene the time-limits set out in this Law for remission of the detainee and the file, the required surveys and reports, or who delay the transfer of the accused to the court, or for the purpose of tests, or delay the hand-over of certificates and summonses, in each case, depending on their functions, or who refrain from sending them to the competent authority, thereby infringing legal or statutory provisions, or who fail to comply with or delay in carrying out their functions or abuse the power conferred on them by their office, without fully justified grounds, shall be liable to the following penalties:

1. An official warning, on the first occasion.

2. Suspension from duty, without remuneration, for a period of two (2) months, for a repeated occurrence.

3. Imprisonment for a term of two (2) years and removal or disqualification for the same time, after the deprivation of liberty has been completed.

In the first two cases, the procedure shall be of a disciplinary nature. In the third case, it shall be of a jurisdictional nature.

A senior official responsible for opening, initiating or adjudicating the disciplinary procedure who fails to do so wilfully or by negligence shall be subject to disciplinary procedure and liable to a penalty involving suspension from duty for two (2) months, without remuneration, if culpability is proven.

## Chapter III

## Provisions common to the preceding chapters

**ARTICLE 57**

The penalties indicated in this Title shall be applied in accordance with the relevant rules fixed in the Penal Code.

The concept of an attempted offence or a frustrated offence shall not be acceptable in relation to the offences set out in articles 34, 35, 36, 37 and 47.

**ARTICLE 58**

None of the offences set out in this Title shall enjoy the benefit of release from a secure prison on bail, unless there is acquittal in the first instance, nor shall the provisions set out in Book III, Title III of Chapter III of the Code of Criminal Procedure apply. The benefits of committal for trial and conditional suspension of the sentence may apply only to those accused of or sentenced for any of the offences described in articles 36 and 40, unless there is a possibility of juveniles being involved, or in articles 42, 44, 45 and 48, paragraphs 1 and 2, when the duty is not harmed and the situation indicated in section 3 of said article applies. Similarly, the aforesaid benefits may be granted to persons who are involved in the commission of the offence indicated in article 50.

**ARTICLE 59**

If the court is to issue an order for committal for trial and suspension of the sentence, it is necessary, in addition to the requirements set out in the Law on Benefits of Penal Procedure, for the following to apply:

1. There shall be no other offence.

2. It shall not be a repeated offence.

3. The person concerned should not be a foreigner with tourist status.

4. The punishable act allegedly committed shall entail a sentence of imprisonment for not more than eight (8) years.

In the application of these benefits no consideration shall be given to the maximum limits fixed in the Law on Benefits of Penal Procedure.

**ARTICLE 60**

The following penalties shall be additional to those indicated in this Title:

1. Expulsion from Venezuelan territory, in the case of a foreigner, after completion of the sentence.

2. Loss of Venezuelan nationality acquired by naturalization, when the person concerned has demonstrably been directly involved in the commission of the offence indicated in article 34.

3. Loss of retirement pension, to which the person concerned may be entitled or which he may have been enjoying, in the case of a public official or ex-official, for a period of ten (10) years after the sentence is put into effect.

4. Loss of retirement pension or long-service allowance, to which the person concerned may be entitled or which he may have been enjoying, in accordance with the Organic Law on Social Security in the Armed Forces, for a period of ten (10) years, after completion of the sentence, as well as loss of seniority, if he is a regular officer or non-commissioned officer, regardless of his military position or rank. Similarly, loss of seniority and loss of the aforesaid long-service allowance, for a period of ten (10) years, after completion of the sentence, and expulsion from the professional corps concerned, in cases involving the offences described in articles 34, 35, 37, 41, 46, 47, 48, 49 and 50 of this Law.

5. Disqualification from carrying on a profession or activity, in the case of the professionals referred to in article 39 of this Law, for a period equal to that of the sentence, after completion of the sanction. This disqualification shall be published in the Official Gazette of the Republic of Venezuela and a national newspaper.

6. A necessary addition to another principal penalty is the loss of movable property and real estate, instruments, appliances, equipment, arms, vehicles, capital and proceeds thereof, in whatever form, which may have been used to commit the offences indicated in this Law, as well as the proceeds and income therefrom, by means of confiscation, in accordance with the provisions of article 66 of this Law.

**ARTICLE 61**

During the summary investigation into any of the offences set out in this Law, the examining official shall order the freezing or immobilization of bank accounts and the preventive closure of any hotel, guest house, establishment for the retail sale or consumption of alcoholic beverages, restaurant, club, association, night-club, concert hall or annexes thereto, or any other premises open to the public, in which this Law may have been violated.

Once the freezing or immobilization of bank accounts and the preventive closure measures have been imposed by the examining official, the judge of first instance shall have the task of ruling, during the summary proceedings relating thereto, on the basis of the information submitted by the party concerned or his legal representative.

**ARTICLE 62**

If the person who commits an offence set out in this Law is a public official responsible for the prevention or prosecution thereof, the sentence for the offence committed shall be increased by one half.

**ARTICLE 63**

If the offences referred to in articles 34, 35, 40 and 47 are committed on vessels, aircraft, railway trains or on other self-propelled means of transport, the latter shall be seized in accordance with this Law. This measure shall not be applied if circumstances indicate that the owner did not intend them to be used for that purpose. In any event, proceedings shall be initiated and a court decision made.

**ARTICLE 64**

If punishable acts are carried out under the influence of any narcotic or psychotropic substance, the following rules shall apply:

1. If it is found that the perpetrator took the drug so that it would help him carry out the punishable act or give him justification for it, the corresponding penalties shall be increased by one third to one half.

2. If it is found that the perpetrator has lost his faculty of understanding or volition through the use of any of these substances, due to an act of God or *force majeure*, he shall be exempt from punishment.

3. If the circumstances referred to in the preceding two (2) rules are not found to be the case and the disturbance is demonstrably caused by the consumption of the substances referred to in this article, the penalties for the offence committed shall be applied without extenuation.

4. A drug addict (chronic user) may not be punished if his compulsive dependence has the same effect as a mental illness that deprives him of the capacity of understanding or volition.

5. If a person's mental state severely diminishes his sense of responsibility, without eliminating it entirely, the penalty fixed for the offence of misdemeanour shall be reduced according to the rules established in article 63 of the Penal Code.

**ARTICLE 65**

Whoever commits any of the offences in this Law while under the age of eighteen (18) years shall undergo treatment in a closed rehabilitation establishment, as set forth in the legislation governing minors. The case shall be heard by a judge competent in this area.

If he is over the age of eighteen (18), but under the age of twenty-one (21), the judge shall always take into account the amount of the substances referred to in this Law, so as to reduce the sentence to the minimum period set for the cases covered by the articles in question.

**ARTICLE 66**

Fixed and movable assets, capital, vehicles, vessels or aircraft, appliances, equipment, instruments and other objects used to commit the offences referred to in the preceding articles, as well as any property that is strongly suspected of stemming from the offences or from the proceeds of the offences set out in this Law, shall automatically be seized and, in the event of a final verdict of guilty, shall be placed at the disposal, without auction, of the Ministry of Finance, which shall use them in order to allocate resources for implementation of the programmes being carried out by the public institutions concerned with prevention, control, monitoring, treatment, rehabilitation, social reintegration and law enforcement, in accordance with the plans prepared jointly by that Ministry and the National Commission on Drug Abuse. The Commission shall in turn ensure that the seized property is allotted fairly to the organizations involved in the aforesaid activities.

In this allocation process, the Ministry of Finance, together with the National Commission on Drug Abuse, shall follow the order of priority, pursuant to the requests made or the urgency of the needs of the requesting organization.

The National Commission on Drug Abuse shall notify the Ministry of Finance of the allocations made, for purposes of supervision and control.

In making these allocations, the National Commission on Drug Abuse shall follow the order of priority, pursuant to the requests made to its office or the urgency of the needs of the requesting organization.

The Ministry of Finance may assign the property to private individuals or legal entities, with the prior agreement of the National Commission on Drug Abuse.

If the judge hearing the case assigns an item of property to the care or custody of the Criminal Investigation Police, such care or custody does not imply any entitlement to a definitive assignment. The judge may not authorize the use of such property, for service missions or other purposes, while it is in storage.

Anyone acting as a judicial depositary, authorized by the Criminal Investigation Police, shall be deemed equivalent to a public official, for the purpose of the care, custody and preservation of the property, and shall be answerable for the condition thereof, in civil and criminal proceedings, to the State and to the injured party.

**ARTICLE 67**

The narcotic and psychotropic substances referred to in this Law that are seized by the military, police or customs authorities or by the competent courts shall have no exchange value quantifiable in terms of money, nor shall the value be made public. The final destination of the substances shall be decided in compliance with article 146. These informants and those taking charge of the narcotic or psychotropic substances referred to in this Law and the seized property, whether or not they are public officials, shall not be entitled to any form of remuneration or perquisite indicated in the relevant laws.

**ARTICLE 68**

If, during the preliminary examination, a person investigated and indicted for any of the offences set out in this Law reveals the identity of perpetrators, accomplices or accessories other than those already involved in the case, provided he gives sufficient and appropriate information for their prosecution for the offence under investigation, shall be exempted from the penalty.

If that person provides sufficient information for the impounding or seizure of appreciable quantities of the illicit narcotic and psychotropic substances, or the raw materials, precursors, essential products or solvents, referred to in this Law, the penalty shall be reduced by one third to one half. If both circumstances apply, the Judge shall grant full exemption from liability.

In both cases, the statement shall remain confidential, if the defendant so wishes. The justifying circumstance shall be indicated by the person under investigation or on trial in his statement or in the ratification thereof before the court.

**SINGLE PARAGRAPH**:

1. In the case covered by the first paragraph or in the second, if both circumstances referred to in this article apply, the judge shall free the individual on completion of the summary proceedings, even if a prison sentence had been imposed.

2. Statements made, in the summary proceedings, by the persons referred to in this article shall be accepted as conclusive evidence by the judge, during those proceedings and during the plenary proceedings.

3. While the defendant is detained, the judge, Public Prosecutor and director of the penal establishment shall see to and be responsible for the defendant's personal safety, and shall take appropriate preventive and protective steps on the defendant's behalf in each specific instance.

**ARTICLE 69**

In the case of offences referred to in this Law, the so-called special or judicial, procedural limitation shall not apply, but solely the ordinary one.

**ARTICLE 70**

In proceedings relating to the offence of money laundering, as set out in article 37 of this Law, the judge of the criminal court shall, *ex officio* or at the behest of the Public Prosecutor's Office rule on the involvement of individuals or legal entities who appear to be the owners or possessors of money, goods, titles, shares, securities, real property, personal property or fixed and movable assets, when there is a grave suspicion that such items have been acquired with the proceeds of the illicit marketing of the substances referred to in this Law, as well as the raw materials or precursors, or essential chemical products destined for or used in their manufacture or stemming from any of the stages or activities set out in paragraphs 1 and 2 of article 37.

**ARTICLE 71**

The main authorities of the Criminal Investigation Police *ex officio* or at the behest of the Public Prosecutor's Office shall take without delay all the measures required to secure property, such as capital, securities, titles, fixed or movable assets and goods, if there is grave suspicion that they originate from the illicit activities referred to in article 37 of this Law.

Individuals or legal entities, such as commercial banks, mortgage banks, industrial banks, mining banks, agricultural credit banks, and other such that are set up for special purposes, finance companies, capitalization companies, money market funds and other forms of intermediation, branches, agencies and offices representing foreign banks and other credit institutions, brokerage offices and real estate offices that control, receive, hold or administer capital or act as brokers for money, securities, assets and goods, may not plead client secrecy or confidentiality in order to hinder judicial investigations, and shall be obliged to provide the information needed by an investigating authority within a period of twelve (12) hours.

Contravention of this provision shall incur a fine, for a legal entity, equivalent to between eight hundred and thirty-five (835) and one thousand (1,000) days' urban minimum wage and, for an individual, a fine equivalent to between one hundred and seventy (170) and three hundred and thirty-five (335) days' urban minimum wage, without prejudice to any penal or civil actions that may be brought.

**ARTICLE 72**

The criminal court judge may order preventive measures, *ex officio*, or ratify measures adopted by the Criminal Investigation Police authorities and institute any judicial proceedings that he thinks fit. The individuals concerned, whether or not they have been charged, may show, in the examination of the evidence during the penal proceedings, that the property in question originated from lawful business dealings unconnected with the conduct covered by this Law.

Individuals or legal entities who are, in any manner, the holders, custodians or administrators of assets, such as money, goods, securities, titles or any fixed or movable property, deemed to originate from the activities or pursuits referred to in article 37, may also show, in the examination of the evidence, that they comply with the requirements set by the State or, failing this, with requirements established by themselves, beforehand and in proper form in contracts, in order to make the client check the lawful provenance of the capital, property, goods, securities or titles in the portfolio or negotiation between them. If the State has not established any measures, the parties are obliged to comply with and impose their own measures for control.

If the final verdict is an acquittal, the judge shall suspend any judicial measures or instructions that have been issued and order the return of the property in question. Any improvements to the property, upgrading or gains, as well as the costs of maintaining it, shall pass to the acquitted individual. If the verdict is a conviction, the judge shall confirm the measures and the confiscation of the property, without the need for judicial auction, as set out in article 66 of this Law. The proceeds shall be paid into the funds earmarked by the State for control, monitoring, prevention, rehabilitation, social reintegration and law enforcement activities under the supervision and protection of the State.

If the seizure, or any other precautionary measure, was implemented through an abuse of power or contrary to the Law, the official shall bear criminal and civil administrative liability.

**ARTICLE 73**

The criminal court judge, *ex officio* or at the behest of the main investigating authorities, with the consent of the Public Prosecutor's Office, when there is grave suspicion that the offences covered by articles 34, 35, 37 and 47 of this Law have been committed, may authorize telephone interception, filming or voice recording.

This authorization shall indicate the period during which the interception is permitted. It may not exceed six (6) months, even including an extension. An extension shall be granted by the judge, *ex officio* or at the request of a party, if sufficient information has not been collected.

Everything unconnected with the case shall be kept confidential and shall not appear in the records of the trial.

Anyone who fails to comply with this provision shall be sentenced to a term of imprisonment of three (3) to five (5) years.

**ARTICLE 74**

The controlled ("*vigilada*") delivery of drugs, as distinct from the supervised ("*controlada*") delivery of drugs, is permitted with the prior authorization of the judge of first instance, in criminal court matters, provided the Public Prosecutor's Office is notified accordingly.

Prior authorization is essential if the information gathered or the procedure of controlled delivery is to be accepted by the main investigating authorities.

Failure to comply with this article shall be sanctioned by a term of imprisonment of four (4) to six (6) years, without prejudice to any administrative, civil or penal liability that may be incurred.

## TITLE IV

## CONSUMPTION

### Chapter I

### Consumption and safety measures

**ARTICLE 75**

The safety measures set out in this Law shall be applicable to the following:

1. Anyone who consumes the substances referred to in this legal text.

2. Anyone who, as a consumer, possesses such substances, in an amount equivalent to a personal dose, for the purpose of consumption. The amount equivalent to a personal dose is deemed to be a maximum of two (2) grams, in the case of cocaine or the derivatives, compounds or mixtures thereof, with one or more ingredients, and up to a maximum of twenty (20) grams in the case of *Cannabis sativa*. In cases of possession of other narcotic or psychotropic substances for the purpose of consumption, the judge shall consider similar amounts, depending on the nature and usual presentation of the substance and the effects noted, bearing in mind the degree of purity. In this instance, the judge shall rule on the basis of the report by the forensic experts indicated in article 114 of this Law.

**ARTICLE 76**

The following safety measures shall be applicable in the cases set out in the preceding article:

1. Confinement in a rehabilitation or specialized treatment centre.

2. Cure or detoxication.

3. Social reintegration of the consumer.

4. Parole or follow-up.

5. Expulsion of a non-resident foreign consumer from the territory of the Republic.

**ARTICLE 77**

Confinement in a rehabilitation or specialized treatment centre means that the addict shall reside in an appropriate establishment for his treatment.

A cure or detoxication refers to a set of therapeutic procedures designed to bring about the recovery of the addict's physical and mental health, with or without confinement in an establishment.

**ARTICLE 78**

Social reintegration involves the use of scientific methods to restore adequate capacity on the part of the consumer with the aim of reintegrating him in his social environment so as to promote normal development within the community.

Social reintegration includes the teaching of a skill or occupation to those individuals who so wish.

**ARTICLE 79**

Parole or follow-up involves recommending an occasional consumer to one or more specialists so as to guide his conduct and forestall possible recidivism. This follow-up also entails a routine check-up, with a toxicological examination by forensic experts.

**ARTICLE 80**

The expulsion of a foreign consumer from the territory of the Republic is a measure imposing the obligation never to return to the Republic.

This measure shall be applicable only to foreigners who are in the Republic illegally, who are in transit or who are tourists.

**ARTICLE 81**

Application of the safety measures envisaged in this Chapter shall be based on the official definition of drug addiction in the Sixteenth Report of the World Health Organization (1969), and amendments thereto made officially by that Organisation, which shall, together with the definitions set out in articles 82 and 83 of this Law, guide the judge in applying the safety measures.

**ARTICLE 82**

A drug addict is understood to be a heavy consumer, whose level of consumption is at least a daily dose, generally motivated by the need to relieve stress. Consumption is regular, reaching consumption patterns that may be defined as dependence, in such a way that consumption becomes part of daily life, even when the individual is integrated into the community. A compulsive consumer is characterized by high levels of consumption, in

terms of frequency and intensity, with physiological and psychological dependence, as a result of which individual and social functioning is reduced to a minimum.

**ARTICLE 83**

For the purposes of this text, an occasional consumer is someone who is an experimental consumer, generally motivated by curiosity on a low-frequency short-term trial basis. A recreational consumer is characterized by a voluntary act that does not usually escalate in frequency or intensity. This cannot be deemed dependence. A circumstantial consumer is characterized by motivation to achieve an anticipated effect, to cope with a situation or state of a personal or vocational nature.

**ARTICLE 84**

The Public Prosecutor's Office and the Ministry of Health and Social Welfare shall, within their sphere of competence, supervise and control the operation of the rehabilitation, treatment, detoxication and social reintegration centres, to ensure that they fulfil their purpose.

**ARTICLE 85**

If consumers subjected to this procedure, or their parents or legal representatives, have sufficient financial means, the judge may, having in mind the report submitted by the social worker, demand payment of a sum of money to cover the cost of the treatment prescribed. The payment shall be made to the Ministry of Health and Social Welfare, which shall decide the amount and the procedure for the administration of the money, which shall be utilized solely to support the operation and maintenance of the rehabilitation centres.

**SINGLE PARAGRAPH**: In any event, the parents, representatives or family of the consumer shall accept the guidance and treatment prescribed by the specialists, in order to assist with the person's rehabilitation. Failure to comply with the obligation embodied in this article shall be punishable by a fine of twenty (20) to thirty-five (35) days' urban minimum wage.

## Chapter II

### Provisions common to the preceding chapter

**ARTICLE 86**

The father or mother, as the case may be, shall lose their right to parental authority:

1. When, as a result of the habitual consumption of the substances referred to in this Law, they may compromise the health, safety or morality of their children.

2. When they exploit them for any of the offences set out in this Law.

3. When open knowledge of the criminal conduct covered by this Law extends beyond the home and influences the upbringing of the children.

4. When they allow the children to consume any of the substances referred to in this Law, unless they can prove the contrary.

Furthermore, those persons involved in the acts or omissions described in this article may not be appointed as regular or interim guardians, or as supervisor or administrator, or be a member of the Board of Guardians, and shall be deemed incapable of performing those functions and shall be removed from them.

**ARTICLE 87**

If he thinks fit, the judge hearing the criminal proceedings shall send the file on consumption to the civil court, for the purposes of the interdiction or disqualification of the addict, as appropriate, in accordance with the relevant civil legislation.

**ARTICLE 88**

Anyone operating vehicles, vessels or aircraft of any kind under the influence of the substances referred to in this Law, shall be penalized, without prejudice to the penalties set out in other laws, by suspension of his licence for a period of not less than one (1) year, and the penalty shall be made known to the competent authority issuing the licence for the vehicle, vessel or aircraft. If he wishes to have this decision revoked, the indicated person shall demonstrate his rehabilitation to the competent judge, after undergoing the forensic examination indicated in this Law. No one who is subject to the safety measures set out in this Law may operate vehicles, vessels or aircraft.

**ARTICLE 89**

A worker who is under the influence of the substances referred to in this Law, in the performance of his duties, shall be deemed to have committed a serious contravention of the obligations imposed by his contract of employment; he shall be punished by summary dismissal and shall be subject to the safety measures established in this Law.

**SINGLE PARAGRAPH**: A worker who, according to national law or international convention, is prohibited, for reasons of occupational safety and hygiene, from taking medicines that contain narcotic or psychotropic substances or substances of another kind that may influence his physical or mental capability, may not work under the influence of those medicines, since it would be deemed to be a serious contravention of obligations set out in the contract of employment, and shall be punished by summary dismissal. Consequently, if a worker is obliged to consume such medicines on medical prescription, a medical certificate to that effect shall be obtained, so that he is released from his obligations under the contract of employment, in order to enable the employer to arrange for a replacement.

**ARTICLE 90**

Any worker employed in land, air or sea transportation, or in safety functions, who is under the influence of the substances referred to in this Law, and endangers the safety or protection of users during service, shall be penalized by imprisonment for a term of three (3) to fifteen (15) months. If the worker's actions result in the death of one or more persons and injury to one or more persons, with the consequences set out in article 416 of the Penal Code, the sanction shall be a term of imprisonment of a maximum of eight (8) years.

## TITLE V

## INTEGRAL SOCIAL PREVENTION

### Chapter I

## General provisions

### ARTICLE 91

The prevention, supervision, inspection and control of the narcotic and psychotropic substances referred to in this Law are in the public interest. It is the responsibility of the State to adopt the measures it thinks necessary to forestall, control and prevent the traffic in and illicit consumption of such substances.

The State shall prepare and implement plans and activities in the area of prediction, estimation and prevention, with a view to reducing and controlling the traffic in and consumption of the substances referred to in this Law.

### ARTICLE 92

It shall be the duty of the State to ensure the treatment, for purposes of the rehabilitation, education and social reintegration, of persons affected by the abuse of narcotic and psychotropic substances. Similarly, the State shall provide for training in a skill or occupation for those individuals who so wish.

## Chapter II

## Integral social prevention with regard to narcotic and psychotropic substances

### ARTICLE 93

It is the duty of every citizen and legal entity to collaborate in preventing crime and the illicit consumption of the substances referred to in this Law.

### ARTICLE 94

Donations by individuals or legal entities for the benefit of the plans and programmes established by the State, and approved by the National Commission on Drug Abuse, for the prevention of crime and the illicit consumption of the substances referred to in this Law, shall be tax-deductible, if so attested by a duly notarized document.

**SINGLE PARAGRAPH**: Of any donation received by the Venezuelan State, for the benefit of a public body, subject to authorization by the Senate, as set out in the Constitution, twenty-five per cent (25 per cent) of the total amount shall be used for prevention. This sum shall be paid to the Ministry of Education, pursuant to the provisions of article 102 of this Law.

### ARTICLE 95

State and private enterprises may not reject individuals who have been rehabilitated and socially reintegrated when they apply for employment with them, provided that they meet the requirements set by the employer in the offer of a post.

**ARTICLE 96**

The State shall provide protection and assistance to those individuals who, as consumers of the narcotic and psychotropic substances referred to in this Law, voluntarily attend rehabilitation centres for treatment and follow the instructions given by the centres. Such individuals shall remain anonymous for the period of treatment.

The State shall set up halfway houses for consumers who voluntarily seek rehabilitation and reintegration treatment as set out in this Law. While they are attending the centres created for such purposes, these halfway houses shall provide accommodation and board for consumers before their admission, and also for rehabilitated individuals at the intermediate adaptation stage. The time an individual spends in these houses shall depend on the requirements of each case.

**ARTICLE 97**

The establishment of civil corporations, associations and foundations, on a non-profit-making basis, for prevention, rehabilitation and scientific research in the area covered by this Law, shall be deemed a service for the benefit of the community and of public utility, but they shall be placed under the supervision, control and inspection of the Ministry of Health and Social Welfare and the National Commission on Drug Abuse.

**ARTICLE 98**

The National Executive shall develop plans and programmes to predict, estimate and prevent, to be used by the competent ministries, duly coordinated by the National Commission on Drug Abuse, to prevent the consumption and illicit trafficking in the substances referred to in this Law.

**ARTICLE 99**

The National Armed Forces, police force and customs services shall include among the subjects studied in their training schools, academies and barracks, awareness programmes and training in the prevention, control, monitoring and prosecution of the offences referred to in this Law.

**ARTICLE 100**

The National Armed Forces and the customs services responsible for border surveillance shall set up bodies for supervision and control and train personnel who can effectively deal with the offences referred to in this Law.

**ARTICLE 101**

The State shall arrange for compulsory guidance and information programmes, coordinated by the National Commission on Drug Abuse, on trafficking in illicit consumption of the substances referred to in this Law, for the staff of ministries, independent institutes, State enterprises and other bodies. It shall also arrange on a half-yearly basis, similar compulsory toxicological tests, without exception, for officials of the Executive, Legislature and Judiciary, and for inspectors of traditional State authorities, independent institutes, State enterprises and municipalities.

**SINGLE PARAGRAPH**: Private enterprises that employ two hundred (200) workers or more shall devote one per cent (1 per cent) of their net annual revenue to programmes for the integral social prevention of the trafficking in and consumption of drugs, for their employees. The Ministry of Labour shall supervise the implementation of this provision and any employer who contravenes it shall be penalized by a fine equivalent to between one hundred and seventy (170) and three hundred and thirty-five (335) days' urban minimum wage,

which shall be imposed by the competent inspectorate, in accordance with the procedure set forth in Title XI, articles 647, 648, 649, 650, 651 and 652 of the Organic Labour Law. If the case involves an individual, the penalty shall be converted into imprisonment under article 228 of this Law.

**ARTICLE 102**

The Ministry of Education and the Ministry of the Family shall prepare and implement integral social prevention programmes, designed to train educators and counsellors by which, within the academic sphere, to put into effect everything connected with drug use and abuse. To this end, they shall establish:

1. Information and training programmes in basic, secondary and technical education.

2. Education, research and extension programmes on the subject, in universities and university institutes, through the National Universities Council and coordinated by the National Commission on Drug Abuse. The Ministry of Education, in conjunction with the Ministry of Health and Social Welfare, the Ministry of the Family and the Ministry of Labour, coordinated by the National Commission on Drug Abuse, shall prepare and implement systematic programmes for the general public and for those who are unable to attend basic, secondary and further education programmes, as well as for parents and representatives of the students.

**ARTICLE 103**

The State, through its competent agencies, shall promote international cooperation by means of conventions, treaties, agreements and unilateral and multilateral acts, and shall establish the links it deems fit with other countries and international bodies on the subject of information systems in operational activities to combat the illicit trafficking in and consumption of the substances referred to in this Law.

**ARTICLE 104**

If any audiovisual, radioelectric or printed media is used to publish, publicize or compile propaganda or programmes that contain subliminal, aural, printed or audiovisual messages or stimuli, or permit independent producers to do so, with the aim of encouraging the consumption of or illicit trafficking in narcotic and psychotropic substances, the said media shall be penalized by a fine equivalent to between one thousand six hundred and seventy (1,670) and three thousand three hundred and thirty-five (3,335) days' urban minimum wage, imposed by the Ministry of Transport and Communications, or by open proceeding, at the behest of the National Commission on Drug Abuse. The material used to commit the offence shall be seized, without prejudice to the application of the penalty for the offences of incitement to consume and instigation, as set out in articles 41 and 42 of this Law. In the case of individuals, a criminal judge of first instance shall hear this proceeding.

**SINGLE PARAGRAPH**: The competent authority shall double the fine or enforce temporary closure of the enterprise, if a repeated offence is proven.

For the purposes of the examination of the material in question, the Ministry of Transport and Communications shall consult the National Commission on Drug Abuse.

**ARTICLE 105**

Publication of names and photographs of persons against whom there are proceedings for the illicit consumption of the substances referred to in this Law shall be prohibited. Infringement of this provision shall be

punished by a fine equivalent to between three hundred and thirty-five (335) and six hundred and seventy (670) days' urban minimum wage.

**ARTICLE 106**

The State, through the Ministry of Justice, shall set up rehabilitation centres for consumers, to provide treatment for prisoners who so wish.

**ARTICLE 107**

The National Executive, through the Offices of the Governors of the Provinces, Federal Territory and Federal District, shall set up, on Venezuelan territory, guidance and rehabilitation centres for consumers of the substances referred to in this Law, under the aegis of the Ministry of Health and Social Welfare, and supervised by the National Commission on Drug Abuse.

**ARTICLE 108**

The Ministry of Justice, through the corresponding directorate, shall inform the General Customs Directorate and the Directorate for Identification and Aliens of the date of final release of citizens who have served their sentences for the offences set out in this Law, so as to keep track of their movement into and out of the country.

**ARTICLE 109**

The General Customs Directorate and the Combined Armed Forces shall assign special personnel to points where there is passenger exit from and entry into the country, to control the illicit traffic in the substances referred to in this Law by means of the inspection of persons, baggage and transport vehicles.

## TITLE VI

## PROCEEDINGS

### Chapter I

### Proceedings in cases involving the illicit consumption of the substances referred to in this Law

**ARTICLE 110**

A person found illicitly consuming the substances referred to in this Law, or who acquires or possesses such substances in quantities not exceeding the daily dose established in article 75 for personal consumption, shall be placed in a special non-penitentiary prevention centre and shall be subject to proceedings which shall be initiated in accordance with the rules in this Chapter.

**ARTICLE 111**

The proceedings shall be initiated by a committal order. Once they have begun, the person under investigation shall have the right to be assisted by a lawyer of his choice and the records shall be confidential, except for the person under investigation, the assisting lawyer and the representative of the Public Prosecutor's Office.

**ARTICLE 112**

If the summary investigation is initiated by the Criminal Investigation Police or the Combined Armed Forces, they shall notify, within twenty-four (24) hours, the criminal court judge of first instance and the Public Prosecutor's representative of the proceedings that have been instituted. Within the same period of time, they shall order a toxicological analysis of urine, blood and other body fluids taken from the alleged consumer, as well as a botanical and chemical analysis of the substance seized. Once the alleged consumer has undergone the examinations, he shall be released on probation, with the obligation to report on two (2) occasions to the police agency that initiated the proceedings, until the end of the police investigation, which may not exceed eight (8) days, from the date on which the alleged consumer was arrested. After this period, the Criminal Investigation Police shall be obliged to send the file, together with the test results, to the appropriate criminal court of first instance, and the alleged consumer shall continue to report at least twice (2) to the court dealing with the case during the time set for reaching a decision, which may not exceed eight (8) days. If the arrest is made by the auxiliary Criminal Investigation Police, it shall hand the individual over to the Criminal Investigation Police, within twenty-four (24) hours of the arrest, with the relevant notification of proceedings.

**ARTICLE 113**

The Criminal Court judge of first instance shall decide, on the basis of the evidence and within a period of eight (8) days from the date on which he received the file, whether to ratify or revoke the granting of probation, depending whether or not the toxicological analysis of the individual indicates substances and elements attesting to consumption, with a view to initiating criminal proceedings pursuant to this Law for the offence committed.

If the indication is that the individual is a consumer, the judge shall order the latter to undergo the tests referred to in article 114, with a view to applying the safety measures recommended by the specialists and the social reintegration procedure. During this period, the court may extend the prior police investigations and order whichever measures it thinks fit.

**ARTICLE 114**

The consumer shall undergo a forensic psychological, psychiatric and medical examination and, if necessary, at the behest of the judge, a new toxicological examination. At least two (2) forensic experts shall be appointed for this purpose. If there are no such experts attached to the Court, the judge may call on private practitioners who reside within the district and appoint them as experts. They shall be sworn in and they shall fulfil the other requirements established in article 145 of the Code of Criminal Procedure. The judge may also call on and appoint experts in cases in which he thinks it necessary for the better administration of justice, giving his reasons in an explanatory document.

**ARTICLE 115**

A consumer who is found to be an addict shall undergo the compulsory treatment recommended by the specialists. If the investigation and the forensic tests indicate that the person concerned is an occasional consumer, the judge shall order his release and place him under the supervision of specialists appointed for that purpose, for the period of time they indicate. The specialists shall periodically inform the judge in question, of the condition of the consumer. On the basis of the report in both cases, the judge shall order the continuation or suspension of the safety measure.

**ARTICLE 116**

In conjunction with the safety measure applied, the judge in question shall suspend the licence to operate a vehicle, vessel or aircraft, as well as the permit to bear arms and the passport, or its equivalent, for the period during which the safety measure is applied. The judge may revoke the decision to suspend the passport if the addict or consumer can reliably demonstrate that he will be treated in a therapeutic establishment abroad, and, on conclusion of the treatment, he shall submit the relevant medical report so that the other measures may be revoked.

If the consumer is a non-resident foreigner, the judge shall order his expulsion from the territory of the Republic and the expulsion shall be carried out by the Ministry of Internal Affairs.

**ARTICLE 117**

The ruling shall be referred to a higher authority and may be appealed against, once only, within two (2) days of the date of notification to the person concerned or to his lawyer.

The higher authority shall rule within five (5) working days from the date on which the documentation was received.

**ARTICLE 118**

If the consumer is under eighteen (18) years of age, this proceeding shall be applied and heard by a juvenile court in the appropriate tribunal.

During the proceedings, the minor shall be released on parole or placed with a family, as set out in the child protection acts, for the time taken to investigate the matter. In no case may an under age consumer who has not been involved in activities punishable under the criminal laws and police ordinances be detained along with under age offenders, during the proceedings, medical treatment or treatment aimed at social reintegration.

**ARTICLE 119**

If it is found that a consumer who has undergone rehabilitation, pursuant to article 76, has relapsed into illicit consumption of the substances referred to in this Law, that person shall be detained in a rehabilitation centre for a period of not more than one (1) year and shall be obliged to undergo the treatment recommended by the specialists. In this case the matter shall be dealt with in a single instance.

**ARTICLE 120**

Anyone who, by whatever means, evades or eludes the treatment, rehabilitation, social reintegration or follow-up imposed as a compulsory measure by judicial order, or during probation, as set out in articles 112 and 113, shall be detained in a rehabilitation centre for a period of not less than six (6) months. If the offence is repeated, the individual shall be detained for the remaining period plus six (6) months.

**ARTICLE 121**

Action in respect of punishable activities, whether special or ordinary, shall not prevent the application of these proceedings if the person under investigation is a consumer of any of the substances referred to in this Law. In such cases, the proceeding relating to consumption shall be conducted and ruled on in a separate document by the judge competent to hear the case, without thereby sabotaging the trial.

An individual who is found to be a consumer shall undergo treatment within the penal establishment in which he is detained in connection with the criminal action against him.

**ARTICLE 122**

This procedure shall not apply to those consumers who voluntarily seek treatment in social welfare establishments which provide care or guidance, whether they are State-run or private, and undergo the treatment prescribed.

**ARTICLE 123**

The substances referred to in this Law that have been confiscated from the consumer shall be handled in accordance with article 146.

**ARTICLE 124**

The special prevention centres are non-penitentiary protective custody centres for alleged consumers who have not committed any punishable act. Consequently, no alleged consumer may be detained in protective custody by the criminal investigation authorities with other prisoners who are on trial for the commission of an offence, while the investigation is proceeding and toxicological analyses are being made. If there is no special prevention centre in a judicial district, the judge dealing with the case and the local Public Prosecutor's representative shall take the necessary steps to house alleged consumers in a police station, prefecture or other ad hoc premises.

## Chapter II

## Procedure in cases of fines and closure of premises

**ARTICLE 125**

In cases relating to offences set out in article 18, if there is refusal to pay, and in article 25, for a repeated offence, or in other cases of refusal to pay any fine at all, closure for administrative offenses imposed by the competent ministries or organizations, or a repeated offence, the provisions of this Chapter shall apply. The provisions of articles 228 and 229 of this Law shall govern the conversion of the sentence from a fine into detention. The penalties applicable to persons who contravene the administrative provisions on customs, established in Title II of this Law, shall be governed by the procedures set out in the Organic Customs Law and its Regulations or in the special laws connected therewith.

**SINGLE PARAGRAPH**: If the fines are accessory to the main penalty, in connection with the offences indicated in this Law, they shall be imposed on the basis of ordinary proceedings established in Chapter III of Title VI of this Law. The fine shall be paid to the corresponding Treasury Department in accordance with the rules set out in article 30 of the Penal Code.

**ARTICLE 126**

The proceedings shall be heard by the criminal court judge of first instance in the appropriate jurisdiction.

**ARTICLE 127**

The trial shall be initiated by a committal order that may be issued *ex officio* or at the behest of the competent agency, following a complaint by the Public Prosecutor or by individual citizens.

**ARTICLE 128**

Within three (3) consecutive days of the closure, the judge shall issue a personal summons to the alleged offender, or to the legal representative of a legal entity, to appear at the second hearing after the summons. If the personal summons is without effect, the next step is notification, within two (2) consecutive days following the end of the period of summons.

For notification purposes, a notice shall be fixed to the door of the closed establishment, the action being recorded in documents. The Public Prosecutor shall be informed of all steps taken.

**ARTICLE 129**

After the summons, the alleged offender or his legal representative shall be informed of the reason for which he has to appear and the case for the defence shall be heard.

**ARTICLE 130**

The hearing following the appearance shall, without the need for prior ruling, mark the beginning of a period of eight (8) working days for the calling for and furnishing of proof. At the end of the period set aside for the adduction of evidence, a second hearing shall be fixed to hear the submissions of the parties.

**ARTICLE 132**

The judge shall rule within three (3) hearings of the presentation of submissions.

**ARTICLE 133**

The sentence may be appealed by both sides, within the three (3) hearings following its announcement.

**ARTICLE 134**

Once the higher court judge has received the file, he shall fix the third following hearing to consider the submissions of the parties.

**ARTICLE 135**

Once the submissions have been heard, the higher court judge shall rule on the appeal within the three (3) following hearings.

**ARTICLE 136**

There shall be no appeal against the decision of the higher court judge.

**ARTICLE 137**

In cases of contempt, the judicial authorities may call on the forces of law and order to ensure compliance with this procedure.

**ARTICLE 138**

If the verdict is one of guilty, the penalty shall be applied within fifteen (15) days from the date on which the verdict is finally confirmed.

**ARTICLE 139**

In the event of the closure of the premises, the judge may opt for permanent or temporary closure. If the closure is temporary, the minimum period shall be six (6) months.

**ARTICLE 140**

Any matters not envisaged in this Chapter shall be governed by the relevant provisions of the Code of Civil Procedure for summary proceedings.

## Penal proceedings in cases involving the offences set out in this Law

### Section 1

### Competence

**ARTICLE 141**

Any criminal court judge of first instance in the judicial district in which the punishable act was committed, as well as military judges, in cases within their jurisdiction, shall be competent to adjudicate the offences set out in Title III of this Law.

If the place where the punishable act was committed is not specified, the following shall be competent to hear the case, in order of precedence:

1. The court of the district in which the person under suspicion or under investigation was arrested;

2. The court in whose district the person under suspicion or under investigation resides;

3. The court of the district in which material evidence of the act has been discovered; and

4. Any court that has been notified of the punishable act and called upon by the Public Prosecutor's representative.

The competence of the courts to hear cases of this kind shall be determined principally by the place in which the punishable act is alleged to have been committed, unless there is a specific location for the action.

If the same case comes before two (2) competent judicial authorities, with equivalent precedents, the criminal court judge of first instance who was notified first shall have preference in hearing the case or continuing the police investigation.

**ARTICLE 142**

The following are competent to initiate preliminary examination:

1. Criminal courts of first instance or courts of military justice, in matters that lie within their competence;

2. The principal bodies of the Criminal Investigation Police:

   (a) The Technical Section of the Criminal Investigation Police;

   (b) The competent bodies of the Combined Armed Forces; and

3. As auxiliary bodies of the Criminal Investigation Police:

   (a) Officials of the State Directorate for intelligence and prevention services;

   (b) The State and municipal police authorities;

   (c) Officials of the Directorate for National and Alien Identification;

   (d) Other officials having appropriate competence pursuant to the Criminal Investigation Police Law and the Code of Military Justice.

The rule established in the preceding article shall be used to establish the precedents of the police agencies competent to initiate the investigation.

**ARTICLE 143**

If an auxiliary Criminal Investigation Police authority is involved, in any circumstance, it shall send the police technical section the file, within forty-eight (48) hours, together with the individual arrested, if there is one, for the purposes of further preliminary proceedings or investigation.

If the auxiliary police investigating body is located in towns or places that are remote from the cities and towns in which the police technical section is based, the period allowed shall be seventy-two (72) hours.

If the procedure is conducted by a body of the Combined Armed Forces, it shall send the file and the person arrested, if there is one, direct to the court that is competent to hear the case, within a period of not more than eight (8) days from the date on which the person under investigation or under supervision is arrested, for further preliminary proceedings.

The principal bodies of the Criminal Investigation Police shall immediately inform the competent criminal court of first instance of the beginning of the preliminary proceedings and the police technical section shall in turn immediately make known any information received from the auxiliary Criminal Investigation Police.

## Section 2

## Investigation

### ARTICLE 144

The offences set out in this Law may be adjudicated, either *ex officio* or by denunciation, by any of the authorities indicated in article 142 of the Law, or by the Public Prosecutor's representative, who shall notify the criminal court judge of first instance or the military judge, if relevant, so that the denunciation may be ratified under oath. The fact that *ex officio* official inquiries have been initiated does not prevent the addition thereto of a denunciation by any citizen. Only these two (2) forms of procedure are admissible.

The penal proceedings are started by an order to proceed issued by the competent official, instructing those concerned to take all steps that are considered to be useful and necessary without delay.

The date on which the penal proceedings begin is that indicated in the order to proceed or, failing that, the date indicated in the *ex officio* official proceeding or denunciation. If the date is omitted from the *ex officio* order to proceed or denunciation, the date shall be taken as that of the acceptance of the denunciation or of the initial proceedings, in the case of *ex officio* proceedings.

**SINGLE PARAGRAPH**: The provisions embodied in Book III, Title III, Chapter III of the Code of Criminal Procedure shall not apply.

### ARTICLE 145

The commission of the offence and the culpability of the individual shall be established or proven using the following forms of evidence:

1. Circumstantial evidence or clues.

2. Statements by witnesses.

3. Findings of experts.

4. Statements by experts, including medical experts and specialists, whose testimony shall be taken as authoritative.

5. Police or judicial inspections.

6. Public or private documents, or photocopies, shall be certified by the competent official, the official in charge of the investigation or the official in charge of the criminal case.

7. Results of laboratory tests, evidence supplied by the Criminal Investigation Police, fingerprints, photographs, films, plans, voice recordings and any other evidence which is based on scientific and technological criminal investigation.

**SINGLE PARAGRAPH**: Consideration shall be given to the following in order to prove the culpability of the accused:

1. A statement by the alleged perpetrator of the offence, given freely and not under oath, once he has been apprised of the constitutional right exempting him from giving evidence against himself, his spouse or the partner with whom he lives, or against his relatives up to fourth removed by blood or second removed by marriage, and the provisions set out in article 68 of this Law. If the statement is to be valid, it shall be signed jointly by the Public Prosecutor's representative and a lawyer chosen by the alleged perpetrator of the offence or, failing this, a public defender. Failure to comply with one of these requirements shall be cause for *ex officio* reversal.

   A statement made before the principal criminal investigation authorities, in the form indicated, shall follow between seven (7) o'clock in the morning and six (6) o'clock at night. Witnesses thereto shall sign the statement, together with the arrested person, and may make brief comments if they so wish. The other documents shall remain confidential between the arrested person, lawyer or public defender, until such time as a warrant for detention or committal for trial is issued or the individual concerned is legally released unconditionally.

2. Examination of the person under investigation or under suspicion, by a group of people, in the presence, apart from the person under investigation, of a competent judge, a secretary and a representative of the Public Prosecutor's Office.

**ARTICLE 146**

Immediately after the arrest of the individual, in the notification of proceedings, the examining official shall also indicate the seizure of any substance, setting out the quantity, colour, type of packaging or wrapping, state or consistency of the substance, and a suspicion of the substance involved, along with any other information that might be considered necessary for complete identification thereof. He shall also arrange, without delay, for the performance of an expert analysis, to indicate the quantity, exact weight, identity of the substance, class, type, quality, effects on human beings or animals, as applicable, consequences that follow and whether it has known therapeutic use.

Within thirty (30) consecutive days of the seizure, following the expert analysis indicated in the notification before ordering the destruction of the substances, the court shall notify the Drugs and Cosmetics Division of the Ministry of Health and Social Welfare, so that the latter can ascertain whether it wishes to retain all or part of the substances, for the purposes of treatment or research, and indicating, to that end, the quantity, class, quality and name of the substances seized; it shall also indicate the final date of the end of the thirty (30) days within which the aforesaid Ministry shall indicate whether or not it requires the substances.

If the substances have no known therapeutic use, according to the results of the expert analysis that was ordered, the court need not send notification to the aforesaid Ministry.

Once the expert analysis has been conducted, the judge shall order the substances to be deposited in a safe place and, within the period of thirty (30) days, he shall order, as applicable, the hand-over to the Ministry of Health and Social Welfare or the destruction of the substances seized, once they have been identified by experts appointed for that purpose.

Destruction shall be by incineration or other appropriate means, in the presence of the judge dealing with the case or a judge appointed for the purpose, a representative of the Public Prosecutor's Office and a representative of the Criminal Investigation Police, who shall sign the report or reports relating to the procedure.

The criminal courts of first instance in the same judicial district may agree among themselves to appoint, in rotation, one of the judges of the various courts in the district to oversee the destruction of the substances.

## Section 3

## Warrant of arrest

**ARTICLE 147**

The officials of the main criminal investigation authorities, as expressly indicated in article 142 of this Law, shall place the prisoner, along with records of all action taken, at the disposal of the criminal court judge of first instance, within eight (8) days of the remand in custody of the person under investigation. This period shall include the hours set out in article 143 of this Law.

**SINGLE PARAGRAPH**: Officials of the criminal investigation authorities and experts who fail to comply with the times set forth in this Law for the hand-over of the prisoner and the relevant proceedings, or the expert analyses and reports that have been produced, fail to send them to the competent authority; who contravene the legal or statutory provisions, or fail to carry out or delay in carrying out a task forming part of their functions shall be subject to disciplinary sanction by the presiding judge, by application of a fine of between ten (10) and seventy (70) days' urban minimum wage.

**ARTICLE 148**

Within eight (8) consecutive days of receipt of the documents and the remission of the prisoner, the criminal court judge of first instance shall submit a report, explaining the reasons after examining the evidence and the *corpus delicti*, on whether the individual concerned should be detained or freed, whether he should be committed for trial, instead of a warrant for his arrest, or whether the warrants set out in articles 99, 206 and 208 of the Code of Criminal Procedure have been issued, as applicable.

Depending on the circumstances which shall be indicated, the same document may bar the accused from leaving the jurisdiction of the court and the country, and also require the payment of a bond, the amount of which shall be fixed at a reasonable level, taking into account the nature of the case. In order to ratify remand in custody by the police, the report shall indicate the expert analysis, as required by article 146, to demonstrate the existence and identification of the substance seized.

**SINGLE PARAGRAPH**: The principal authorities of the Criminal Investigation Police, as set out in this Law, may reject the *noticia criminis* or report, by virtue of the powers conferred on them under article 99 of the Code of Criminal Procedure, without prejudice to any disciplinary, penal and civil liability that may be incurred. This decision shall be subject to consultation and claim.

**ARTICLE 149**

On the day on which the warrant for arrest is issued, if the individual concerned is arrested, the judge shall communicate, in writing or by any other secure means, with the director of the penal establishment in which the prisoner is detained, so that the prisoner may appoint his defence counsel within forty-eight (48) hours.

The director shall issue a document confirming this and signed personally, which shall be sent to the judge dealing with the case within twenty-four (24) hours of the appointment of counsel.

**SINGLE PARAGRAPH**: Any delay or omission in the execution of this procedure shall be subject to a disciplinary sanction by the judge dealing with the case, with a fine of between ten (10) and thirty-five (35) days' urban minimum wage.

**ARTICLE 150**

Within twenty-four (24) hours of receipt by the court dealing with the case of notification of the appointment or selection of a defence counsel, the defence counsel shall be notified so that he may accept or refuse the defence and swear the legal oath, if he is a private lawyer. If the defence counsel so wishes, he may shorten this period. Once acceptance has been confirmed, in the case of a public defender, or once the oath has been sworn, in the case of a private lawyer, the defence counsel shall have access to the documents pertaining to the case.

**ARTICLE 151**

Once the judge has received the notification mentioned above, he shall contact the director of the penitentiary establishment, so that the accused may be transferred, within the next forty-eight (48) hours, to the building housing the relevant court, so that he may make his preliminary statement, assisted by the chosen defence counsel.

**ARTICLE 152**

The preliminary statement by the defendant may not last longer than forty-eight (48) hours. The prisoner shall first make his statement without consulting any text, paper or document. The official shall transcribe his statement word for word. In no event may his defence counsel make the statement for him. Subsequently, the defence may intervene, without thereby extending the time fixed for this stage in the proceedings.

**ARTICLE 153**

On the same day or on the following day, when the preliminary statement made by the prisoner is heard, he or his defence counsel may exercise the right of appeal. No appeal by proxy shall be accepted.

**ARTICLE 154**

If the defence counsel or the accused renounces appeal, the summary proceedings shall be declared closed. Conversely, recourse to appeal shall be heard within twenty-four (24) hours of filing the appeal.

The warrant granting the defendant his freedom shall be discussed with a higher court. Such discussion shall be noted in the same text and records.

The decisions or warrants issued during the summary proceedings that deal merely with substantiation may not be subject to appeal, and there shall be no review by a higher court.

## Section 4

## General provisions

**ARTICLE 155**

All proceedings during the initial investigation or summary stage shall be in writing and, whenever applicable, the entire file or any measure may be replaced by photocopies that have been duly certified by the competent official.

The parties may either participate personally in the court proceedings or submit original documents addressed to the court. If they prefer, they may make a copy that shall be signed by the Secretary, bearing the date of submission, in line with the original appended to the documents.

**ARTICLE 156**

For the purposes of the pre-trial proceedings, all days and times shall be considered to be working hours. The same shall apply to any other periods or time-limits set at this stage of the proceedings, except for recourse to appeal by the accused or by his defence counsel, in which case Saturdays and Sundays, Maundy Thursday or Good Friday and non-working feast-days fixed by law shall not be included.

The times of hearings from Monday to Friday shall be fixed by the court and posted on a notice-board at the entrance to the chambers, the lower part of which shall indicate the office hours.

The same means shall be used to indicate if there is no early hearing on a particular day.

**ARTICLE 157**

Once the warrant for arrest has been issued, summary proceedings may not last more than thirty (30) days. During that time, without the judge dealing with the case or the higher court relinquishing the file, either may instruct the main criminal investigation authority to initiate the summary inquiry or to carry out or extend the scope of specific investigations or procedures, the results of which shall be provided within the time-limit fixed for this purpose by the court.

If, in the report of the summary proceedings initiated by any of the police agencies, no one has been arrested within thirty (30) days, the Office of the Public Prosecutor may, if considered necessary, request the continuation of the examining stage in the criminal court of first instance or in a competent court, if there has been no notification. This request shall be communicated to the Office of the Attorney-General of the Republic.

## Section 5

## Plenary proceedings

**ARTICLE 158**

The criminal court of first instance shall declare the summary proceedings closed. By the third subsequent hearing at the latest, the representative of the Public Prosecutor's Office shall submit a written summary of the essential features of the prosecution's indictment or charges. The same document shall set a time for the third subsequent hearing for the case to be heard and the accused shall be summoned to appear, provided he is not under arrest.

**ARTICLE 159**

On the date and at the time set, as indicated in the preceding article, the accused shall be required to appear in person at an open hearing, free from any pressure, detention or coercion. The representative of the Public Prosecutor's Office and the accused's defence counsel shall also appear.

The representative of the Public Prosecutor's Office shall make an oral statement of the charges against the accused, setting out the act or acts which are imputed to him, and indicating the facts relating thereto, as set out in the warrants, and the legal interpretation that, in his view, should be placed on the act or acts involved, with

mention of the relevant articles, all of which shall be set out in a summary, as indicated in the preceding article, or else he shall state that he is dropping the case since there are no grounds for bringing charges.

When the charges have been read, the accused shall, without oath or his defence counsel, make a statement in his defence, with regard to each of the counts against him in the summary of charges or in the decision to drop the case, as appropriate. The defence shall also give a written summary of the essential features of its statement.

Silence shall be taken as a negative response. The document shall be signed by all who have taken part in the proceedings. A party that declines to sign shall give reasons.

The hearing of the accused shall last no longer than three (3) working days.

**ARTICLE 160**

Dilatory exceptions or pleas for inadmissibility may be put forward during the public hearing of the accused. At the same hearing, or at the subsequent hearing, such exceptions or pleas shall be answered by the party concerned and shall be dealt with at the same time as the merits of the defence so that they may be decided as a preliminary to the final resolution of the case.

**ARTICLE 161**

A plea to the jurisdiction in respect of incompetence of the court, *litis pendens* or for the matter to be examined at another trial, for reasons of connection or unity of proceedings, shall be settled, in any event, as a prior incidental condition.

**ARTICLE 162**

If, at any stage or level in the case, the court observes that there are grounds for suspension, as indicated in the first paragraph of article 310 of the Code of Criminal Procedure, or grounds that may give rise to a compulsory reallocation of the case, as set out in articles 68 and 69 of the same Code, or if the person under investigation has not been assisted by a private or public defender when making his statement, or if the document has not been signed, it shall order, on its own initiative or at the request of the defence or the Public Prosecutor's representative, suspension of the proceedings or reconsideration.

**ARTICLE 163**

On the day on which the hearing of the accused ends or on which the counterpleas are answered and, provided that there is no plea to the jurisdiction of the court, *lis alibi pendens*, or accumulation of grounds for connection or unity of proceedings, without the need for a prior ruling, the evidence in the case shall be heard over a period of five (5) hearings to call for evidence, and ten (10) hearings to furnish the evidence. No evidence that is outside the jurisdiction of the court or outside the boundaries of the Republic of Venezuela shall be admitted, except in the form of authorized documents or texts, if applicable.

**ARTICLE 164**

The court is obliged to order the furnishing of evidence that may not have been furnished in the summary proceedings. *Ex officio* it shall also order the furnishing of evidence that the accused may have put forward during his hearing, even if such evidence was not reproduced in the trial brief.

Similarly, it shall order *ex officio* the furnishing of all evidence that it believes would be useful in ascertaining the truth, even when such evidence was not called for by the parties.

**ARTICLE 165**

The parties may make use of any other means of evidence that is not expressly prohibited by law and which they consider useful in demonstrating their claims. Such means shall be proposed or utilized pursuant to the provisions and time-limits set out in this Law or, by analogy, pursuant to the provisions relating to similar means of evidence in the Code of Criminal Procedure, the Code of Civil Procedure and the Civil Code.

The hearings for furnishing evidence shall not last more than four (4) hours.

**ARTICLE 166**

If the parties call for or furnish their evidence before the end of the set period and there is no evidence outstanding from the summary proceedings or evidence ordered *ex officio*, or if that called for by the parties has already been furnished in documentary form, the judge shall rule, in writing, that the time allowed for hearing the evidence has expired. In order to ascertain the truth after the evidentiary stage, the judge may order, *ex officio* or at the request of one party, an extension of five (5) consecutive hearings to gather such evidence as he deems necessary.

**ARTICLE 167**

A refusal to sanction an extension, as indicated in the preceding article, may not be subject to appeal or consultation.

**ARTICLE 168**

Rejection of evidence may be subject to appeal within two (2) hearings, but the case shall continue and the higher court shall deal with the appeal as a special issue that is to be disposed of before adjudicating the merits of the case. An appeal shall always be heard as a matter of law.

If the higher court considers that an item of evidence was rejected improperly, it shall order the evidence to be furnished within a specified time, not exceeding ten (10) hearings, and shall take account of it in its ruling, which shall not be given before the end of the aforesaid period.

**ARTICLE 169**

Within the two (2) hearings following admission of the evidence, the parties may contest or challenge the evidence or oppose its admission. This does not deprive them of the right to do so again during the pleadings. Prior to the ruling on the merits, the court shall settle all points concerning evidentiary material.

Within the time set, the parties may also decide not to furnish the evidence called for during the summary proceedings, in which event the court shall set a time to hear the oral statements of the parties, as set out in article 171 of this Law.

The parties' silence on the above provisions shall be taken as opposition to the facts.

**ARTICLE 170**

When any time-limit not provided for in this Law is applicable in any connection, the limit applied shall be that established in the Codes of Criminal Procedure or of Civil Procedure, reduced by half. If the reduction gives rise to a fraction, the fraction shall be rounded off to the next whole number.

**ARTICLE 171**

After the evidentiary stage, a time shall be fixed at the following hearing to enable the parties to make any oral statements they wish. The prosecutor from the Attorney-General's Office shall make the first statement, followed by the defence. An oral statement by the parties is optional and may not exceed thirty (30) minutes. They may then submit a written summary of what they have said.

**ARTICLE 172**

During this procedure there may be no appointment of associates nor any consultation with advisers, but the parties may submit the opinions or views that they think fit.

**ARTICLE 173**

The court shall reach a decision within five (5) hearings following the procedure set out in article 171. There may be no more than two (2) deferments.

**ARTICLE 174**

The verdict of first instance may be appealed and all cases shall be referred to a higher court. The period allowed for this shall be three (3) hearings, from the date on which the verdict was given. This referral shall be equivalent to an appeal for the accused and for the prosecutor of the Attorney-General's Office. Once referral has been ordered or an appeal heard, the file shall be sent to the court of second instance within twenty-four (24) hours.

**ARTICLE 175**

The higher court shall fix a time in the second hearing after receiving the file, so that the prosecutor of the Attorney-General's Office and the defence, if they think fit, may make their oral pleas and submit their written submissions. Each party may make a submission lasting not more than half an hour. There should be no replication or counter-replication.

The higher court shall pass sentence within five (5) hearings.

**ARTICLE 176**

The parties may announce recourse to judicial review within five (5) hearings of the date of the sentence handed down by the higher court.

## Section 6

## Judgement

**ARTICLE 177**

The judgement or verdict shall refer to exposition, motivation and disposition. The first part shall contain the following:

1. Identification of the parties.

2. Identification of the proceeding or case.

3. Summary of the arguments put forward by the prosecutor of the Attorney-General's Office and the arguments put forward by the defence.

4. Summary of the evidence submitted and recorded.

Depending on the findings of the proceedings and the substantive and procedural legal provisions applicable to the case in point, which shall be cited, the second part shall contain the following:

1. Determination of the facts deemed to have been proven.

2. Examination and appraisal of the evidence provided.

3. Consideration of aggravating or extenuating circumstances or circumstances that remove criminal liability, if applicable.

The third part shall contain the de facto and *de jure* bases of the acquittal or conviction of the accused, with an exact indication, in the latter case, of the sanctions that are applied.

The operative part shall be headed by the words "Administering justice in the name of the Republic and by the authority provided by law" and, at the end of the verdict, the date and place of issue shall be indicated.

**SINGLE PARAGRAPH**: If the higher court considers the preamble of the verdict of the court of first instance to be in conformity with the bases of the documents in the file, it may merely indicate this, without the need to reproduce it, in which case it shall be considered an integral part of the verdict of the court of second instance.

**ARTICLE 178**

A judgement shall be a conviction when there is full proof of a punishable act and of the culpability of the accused.

It shall be an acquittal when there is no proof of any or only some of the details indicated in the introduction to this article and the court shall order stay of execution or reconsideration, as applicable. In no case shall there be acquittal at this level of jurisdiction.

## Section 7

## Appeal for judicial review

**ARTICLE 179**

Appeal for judicial review against a verdict that acquits or condemns the accused may be made if the Public Prosecutor's Office has conversely sought in the indictment the imposition of a penalty that, at the maximum,

should be six (6) or more years, or against a verdict that imposes a penalty for a longer period, if the imposition of a penalty milder than that had been requested.

**ARTICLE 180**

Appeal for judicial review shall be automatically admitted on behalf of the accused, unless the accused expressly renounces it, against a sentence of last instance imposing a term of imprisonment of ten (10) years or longer.

**ARTICLE 181**

Appeal for judicial review shall be granted if the judgement infringes any provision of substantive law, if the infringement of the substantive provision is the result of an error regarding the content and scope of an express provision in law; if a legal provision or a provision relating to the assessment of evidence has been falsely applied; if a provision that is not in force has been invoked or the application and effect of one that is has been denied; or if an established principle has been infringed. In the following cases:

1. If the error is a de facto error, this shall be indicated in the record of the proceedings; when the provisions relating to evidence have been infringed, these shall be indicated, with an explanation of the infringement. In such cases, the infringement shall have had a determining impact on the verdict.

2. When the verdict or ruling is not in conformity with the charges formulated by the representative of the Public Prosecutor's Office, or, if applicable, any text which modifies it.

3. When the verdict is given in a judgement that is annulled.

**ARTICLE 182**

There is deemed to be an infringement of substantive provisions or a defect of activity if, during the trial, substantive provisions were violated or omitted, to the detriment to the right of defence, or if the verdict or ruling does not meet the requirements of article 178, on the grounds that the proceedings had been suspended for lack of evidence or that the verdict is therefore adversarial, if it cannot be executed or the ruling cannot be perceived, or if there are grounds for nullity pursuant to the Code of Criminal Procedure that are not in contradiction to this Law.

**ARTICLE 183**

The Supreme Court of Justice may, in the interests of the law and justice, *ex officio* annul the verdict against the accused, if it finds, from its examination of the records, that there has been a breach of public order and constitutional infringement, even when they have not been reported.

**ARTICLE 184**

The Supreme Court of Justice may annul the verdict, without remand:

1. If its decision on recourse leaves no judicial matter, such as when the matter is deemed not to be an offence or criminal action is barred or in the case of an amnesty or pardon.

2. If the infringement committed by the verdict affects only the type or scale of the penalty imposed as a result of an error in denomination or the rules for determining the length thereof, the Supreme Court of Justice shall make the appropriate correction.

3. The Supreme Court of Justice may decide to do without remand if the facts sovereignly established by the trial judges or those which the Court itself correctly establishes in cases of violation of the rules on the merit of evidence, as set out in articles 186, 187, 188 and 190, enable it to apply the approved rule of law.

**ARTICLE 185**

In all aspects of the appeal for judicial review that are not indicated in this Law, the provisions of the Code of Criminal Procedure that do not contradict the provisions set out in this Section shall apply.

## Section 8

## General provisions

**ARTICLE 186**

In this proceeding judicial certainty shall be based on the evidence in the records of the case, using free and reasoned judgement, subject to the rules of a healthy critique of it by the judge, unless there is an express rule for evaluating the merits of evidence in this Law.

**ARTICLE 187**

The judges shall examine and appraise all evidence that is put forward, even that which, in their view, could offer no degree of conviction, in each instance with an indication of the opinion of the judge in respect thereof, according the rules of a healthy critique, which are those relating to psychology, common experience and logic, since the thinking of the judge dealing with the case shall be logically structured within the context of the laws of identity, reversal, third-party exclusion and adequate reason.

The maxims of experience are standards of general value and are understood as a set of opinions based on the observation of what commonly occurs, which may be formulated in the abstract by any person of average mental capability.

**ARTICLE 188**

In order to assess the evidence of witnesses, the judge shall examine whether their statements tally and whether they tally with the other evidence, and carefully weigh the motives for the statements and the reliance that may be placed on the witnesses, by virtue of their age, life-style and habits, the profession pursued and other circumstances, dismissing any statement by an unfit witness or bad witness who appears not to have told the truth, either because of contradictions that may be apparent or any other reason, even if the witness has not been challenged, and setting out the grounds for his decision.

**ARTICLE 189**

The evidence presented during the investigation or summary proceedings shall remain valid unless it is overturned in the plenary proceedings. A statement by a public official shall have no value unless it is ratified

before the trial court in question, if the case being tried is one of possession as set out in article 36 of this Law, for the purposes of issuing a ruling.

**ARTICLE 190**

The judges shall assess the circumstantial evidence set out in the records of the proceedings, bearing in mind the gravity, agreement and convergence between the items and in relation to the other evidence submitted.

**ARTICLE 191**

If a person accused of one of the offences that is punished under this Law also commits a punishable act that is expressly envisaged and sanctioned by the Penal Code, the Code of Military Justice or any other special law, there shall be a single trial. This trial shall be governed, in all its phases or stages, by the uniform procedure set out in Title VI, Chapter II of this Law. The only exception, depending on the nature of the offence not covered by this Law, is a private accusation by the injured party, who may also jointly initiate the relevant civil action.

**ARTICLE 192**

A written summary of the oral statements made during the proceedings shall be added to the file. Any written summaries ordered by the judge, as well as specifications referred to in the previous articles, shall be retained. The courts may, however, keep tape recordings of the different phases or stages of the trial that are thought to be of greatest interest. Failure to keep such tapes, for whatever reason, or to use any other system of recording the human voice, shall in no way affect the legality or validity of the trial.

**ARTICLE 193**

In addition to the grounds envisaged by this Law, the grounds for *ex officio* reversal set out in the Code of Criminal Procedure shall apply and shall be decided in the manner set out in the said Code.

**ARTICLE 194**

If officials of the examining police force initiate summary proceedings or if they are replaced by other authorities, no court shall be permitted to hear the trial, and no special examining court shall be designated, until the end of the legal period set for the preliminary police investigation and examination.

**ARTICLE 195**

Any delays or omissions, or any failure to comply with the standards for such proceedings, shall be deemed to contravene the need for the swift and correct application of this Law and the proper administration of justice. The Public Prosecutor shall be obliged to notify the competent body of any contravention.

They shall have no effect on the acts that may constitute an offence, which shall be examined by the competent jurisdiction, according to the relevant procedure.

**ARTICLE 196**

The time allowed for long-distance travel shall be fixed by the judge in each case, according to the provisions of article 15 of the Code of Criminal Procedure. However, in no case shall it be calculated at less than two hundred (200) kilometres or more than four hundred (400) kilometres per day.

**ARTICLE 197**

The provisions of this Law shall fix the requirements to be met in order to sanction the offences set out herein and allied offences. These requirements shall be given preferential application.

In matters not covered by this Law, the provisions applied shall be, in the first instance, those of the Code of Criminal Procedure, relating to ordinary adjudication, except with reference to an appeal for judicial review, which shall only apply if the sentence sets a term of imprisonment of six (6) years or more or acquits the accused, and recourse relating to form, which shall apply in all cases. In descending order, the articles of the Code of Civil Procedure and those of the other laws which are not in contradiction to that procedure shall apply.

## Section 9

## Extradition

**ARTICLE 198**

At any stage or level in the trial, if the court has written information provided by any of the main criminal investigation authorities, to the effect that the individual who is under investigation has been tried or has been convicted is to be found in a foreign country, it shall notify the Supreme Court of Justice accordingly, attaching a copy of the pertinent information, so that the Chamber of Judicial Review may declare whether or not extradition should be sought and, if so, whether in accordance with national law, international treaties and international law. A copy of the proceedings shall be sent to the National Executive so that the appropriate request may be made.

**ARTICLE 199**

The extradition of a Venezuelan citizen may not be granted for any reason, and the case shall be adjudicated in Venezuela, at the behest of the requesting State or of the Public Prosecutor's Office, if the alleged offence is punishable under this Law.

The extradition of a foreign citizen may not be granted when any of the offences covered by this Law are connected with political offences, with other activities which are controlled for political ends, or with actions or omissions that are not deemed to be offences under this Law.

The extradition of a foreign citizen for offences that are covered by this Law may be agreed to only by the competent authority, in accordance with the procedures and requirements established for that purpose in the international agreements in force that have been signed by Venezuela.

**ARTICLE 200**

The extradition of a foreign citizen may not be granted if the penalty fixed for the offence committed by the person whose extradition is sought is death, life imprisonment or cumulated penalties that exceed the normal lifetime of an individual. Hand-over shall be subject to the condition that such penalties be replaced by those established in Venezuelan law, or the rule set out in the Penal Code for adjusting the penalty where there is a multiple offence or series of offences and, in no case, shall it exceed the maximum fixed in the Constitution of the Republic for a sentence involving loss of liberty imposed in accordance with this Law. Extradition shall not be granted in the case of an attempt to commit an offence or a frustrated offence.

**ARTICLE 201**

The extradition of a foreign citizen shall be suspended until the penalty imposed for another offence committed in Venezuela is carried out, regardless of whether it was committed before or after the request for extradition or before an acquittal is decided on. Re-extradition to a third country shall not be granted in any circumstances. If the request for extradition is granted, the individual concerned shall be handed over to those on whose territory the offence was committed and, all other things being equal, preference shall be accorded to the State that submits the first extradition request.

**ARTICLE 202**

A person who, having committed an offence connected with the subject of this Law, on Venezuelan territory or in another State, obtains naturalization for the purpose of avoiding extradition, shall not be able to claim to be Venezuelan for the purposes of evading extradition.

**ARTICLE 203**

The extradition of a foreign citizen shall be granted if he has been the principal perpetrator, accomplice or abettor, provided that the circumstances set out in article 200 of this Law do not apply.

**ARTICLE 204**

Extradition for the purposes of applying security measures shall not be granted if the individual is under age or insane, or when it is for an indefinite time or in order to send the individual concerned to a special area for an undetermined period.

## TITLE VII

## NATIONAL COMMISSION ON DRUG ABUSE

**ARTICLE 205**

Under the aegis of the Office of the President of the Republic, a National Commission on Drug Abuse shall hereby be created with the following powers: to plan, organize, execute, direct, control, coordinate and supervise, on Venezuelan territory, all matters connected with control, monitoring, prevention, treatment, rehabilitation, social reintegration and international relations, in the area of the production, trafficking in and illicit consumption of narcotic and psychotropic substances. This permanent and ministerial-level national commission shall be the governing body for the planning of public policies and State strategies against the production, trafficking in and illicit consumption of drugs, and it shall advise the President of the Republic on such matters. It shall be chaired by a minister of State or special commissioner, appointed by the President of the Republic, and shall be composed of the general directors and their respective alternates from the Ministries of Internal Affairs, Foreign Affairs, Finance, Defence, Education, Health and Social Welfare, Labour, Transport and Communications and Justice and the Family, as well as the Central Coordination and Planning Office of the Office of the President of the Republic, the Central Statistics and Data Processing Office and the Public Prosecutor's Office.

**ARTICLE 206**

The ministries making up the National Commission on Drug Abuse shall take the necessary steps to create, within each ministry, an internal commission to carry out its respective functions.

**ARTICLE 207**

The National Commission on Drug Abuse is empowered to co-opt other official bodies for the length of time it deems fit and for the purposes it deems fit.

**ARTICLE 208**

The National Commission on Drug Abuse, in collaboration with the offices of the governors of the states, the federal district and the federal dependencies, shall establish regional offices and shall direct, control and supervise their operation.

**ARTICLE 209**

The National Commission on Drug Abuse shall have the following functions:

1. To plan public policies and national government strategies in the areas of control, monitoring, law enforcement, prevention, treatment, rehabilitation, social reintegration and international relations.

2. To study questions connected with the offences and the abuse of the substances referred to in this Law and to prepare operational programmes in the areas of research, control, monitoring, law enforcement, prevention, treatment, rehabilitation, social reintegration, international relations, evaluation, statistics and any other area it deems fit.

3. To liaise with the statistical information agencies, the drugs information centre, the data bank and the intelligence centre. The agencies involved in law enforcement, prevention, treatment, rehabilitation and social reintegration, whether public or private, shall provide the National Commission on Drug Abuse with the information requested by it.

4. To promote and advise on the implementation of training programmes for specialized staff.

5. To join forces with associations of entrepreneurs, unions and churches of any denomination in the preparation of social prevention programmes.

6. To establish any working groups or committees that it thinks fit in order to meet its objectives. Such working groups or committees shall operate under the direction and supervision of the National Commission on Drug Abuse, to which end it shall seek the assistance of public and private or specialist sectors.

7. To request the collaboration of other public and private organizations as regards the provision of staff and use of offices and equipment.

8. To develop, with the National Universities Council, social prevention plans and programmes to control illicit drug trafficking, at civil, public or private, or military higher education centres, at institutes promoting culture and sport, and in any other social development institution.

9. To advise the Ministry of Foreign Affairs on the relevant international relations and also, in conjunction with that Ministry, to represent the national Government abroad, to which end it shall promote international cooperation against the illicit consumption of and trafficking in the substances covered by this Law, and above all, strive to bring about regional unification against this illicit

transnational industry. Together with the Ministry of Foreign Affairs, it shall promote agreements, treaties, conventions and pacts.

10. To coordinate the strategy of police and military agencies involved in the control of the production of and trafficking in drugs, and to supervise their functions.

11. To coordinate with the competent control and monitoring agencies, the health-related financial areas and those concerned with the control and monitoring of the laundering of capital and other financial assets.

**ARTICLE 210**

The public and private centres, institutions and bodies working in the treatment, rehabilitation and social reintegration of drug addicts and consumers shall comply with the regulations, resolutions and directives on all operational matters issued by the National Commission on Drug Abuse and the Mental Health Division of the Ministry of Health and Social Welfare. They shall also provide the Commission and the Ministry of Health and Social Welfare with all information, data and assistance that they may request. Failure to comply with this provision shall lead to the temporary closure of the offending establishment and, in the case of a repeated offence, the permanent closure thereof.

**ARTICLE 211**

Pursuant to the provisions of article 104, the Ministry of Transport and Communications shall consult the National Commission on Drug Abuse before applying the relevant administrative procedure and the seizure of the material in question, as appropriate.

**ARTICLE 212**

The National Executive shall take the necessary steps, within one year of the promulgation of this Law, to cover the budgetary requirements for the establishment of infrastructures and the assignment of appropriate personnel. It shall also implement the necessary financial and negotiation procedures.

## TITLE VIII

### Chapter I

### Prevention, control and monitoring to deal with money laundering

**ARTICLE 213**

The National Executive, through the Ministry of Finance, the Ministry of Development, the Venezuela Central Bank, the Office of the Superintendent of Banks, the Bank Protection and Deposit Guarantee Fund, the National Securities Commission, the Registry and Notary Directorate of the Ministry of Justice, the Technical Section of the Criminal Investigation Police, the Combined Armed Forces, the Office of the Superintendent of Insurance, the Office of the Superintendent of the Savings and Loans System and other competent agencies, coordinated by the National Commission on Drug Abuse, shall design and develop an operational plan containing preventive measures to deal, on a nationwide level, with the exploitation of the banking system and finance institutions for the purpose of laundering capital and financial assets from the commission of the offences set forth in this Law or the activities related thereto.

**ARTICLE 214**

The bodies governed by the General Law on Banks and Other Credit Institutes, by the General Law on Insurance and Reinsurance, by the Law on Capital Markets and other banking or financial laws shall be obliged to collaborate with the National Executive in the control and monitoring of sums of money and other proceeds that are presumed to originate, directly or indirectly, from the offences set out in this Law, or associated activities, in conformity with the provisions of the Law.

This obligation also covers enterprises engaged, in whatever manner, in the construction or marketing of real estate, the purchase or sale of livestock, as well as automotive vehicles, vessels or aircraft of any type and of any origin, in operations to exchange or transfer currency or securities of any kind, in granting credit to consumers, in mining or marketing of gold and other metals or precious stones, or in operating games of chance.

The obligations and responsibilities incumbent on the enterprises mentioned shall be limited to those that are inherent in or directly related to acts or business transactions that fall under their social or economic object.

Failure to comply with this obligation shall be punished by a fine equivalent to between three hundred and thirty-five (335) and six hundred and seventy (670) days' urban minimum wage, in the case of an individual, and between one thousand six hundred and seventy (1,670) and three thousand three hundred and thirty-five (3,335) days' urban minimum wage, in the case of a legal entity. These fines shall be cumulative if the party concerned repeatedly refuses to comply with its obligations, notwithstanding a request by the competent authority.

**ARTICLE 215**

For the purposes of implementing the operational plan to prevent the use of the banking system and financial institutions for the purpose of laundering capital and other financial assets resulting from the commission of the offences set out in this Law, or activities related thereto, the National Executive shall establish general standards for the identification of customers, registration, restrictions on bank secrecy and the obligation to provide information, protection of the employees and institutions and internal programmes, on the basis of the following provisions:

1. No anonymous account or account under a false name may be opened or maintained. Occasional or regular customers shall be identified by means of the official identity card, in the case of an individual, or by documents issued by the Mercantile Register or Civil Register, in the case of a legal entity. Aliens shall be identified by authorized official documents issued by the consulate of the country of origin, when they open or seek to open business contacts or carry out transactions of any kind, such as the opening of accounts, fiduciary transactions, contracting of safety deposit boxes or transactions in cash.

2. All necessary records of transactions, both national and international, shall be kept for five (5) years, enabling them to respond, in a timely and effective manner, to any request for information by the competent authorities, such as quantity of money, type of currency involved, customer identity, transaction date, account records, business correspondence, authorizations and other information that the competent authorities deem necessary. Such documents shall be made available to the competent authorities for the purpose of a police or judicial investigation, and banking secrecy may not be invoked in order to evade these requirements.

3. Any persons and entities affected by this Law, as set out previously, shall establish systems by which to check and monitor any complex, unusual or unconventional transaction, whether or not

they have any apparent or visible financial reason, as well as in-transit transactions or those of which the amount merits it, in the view of the institution or as established by the National Executive.

The purpose and destination of such transactions shall be examined minutely and any discovery or conclusion shall be kept in writing and be available to the supervisory and control bodies, the auditors of the Office of the Superintendent of Banks, the Ministry of Finance and the criminal investigation authorities.

The Office of the Superintendent of Banks shall impose fines of between three thousand three hundred and thirty-five (3,335) and five thousand (5,000) days' urban minimum wage on individuals who fail to fulfil the obligations established in these three (3) paragraphs. It shall initiate the corresponding proceedings, in accordance with the provisions of the Organic Law of Administrative Procedure.

4. All persons and entities affected by this Law who suspect or have evidence that the funds involved in a transaction or business operation may stem from an illicit activity, pursuant to this Law, shall inform the competent criminal investigation authorities thereof without delay. Customers, whether individuals or legal entities, may not invoke the rules of bank secrecy or the laws on privacy that may be in force, in order to bring civil or criminal charges against the officials or employees or the institutions or enterprises where they work for the revelation of any secret or information, provided that they report strong suspicions of criminal activities to the competent authorities, without any obligation to make a legal judgement of the facts and even if the presumed criminal or irregular activity has not been carried out.

   No undertaking of a contractual nature, connected with the confidentiality or secrecy of banking contracts or transactions, or any practice or custom relating thereto, may be claimed, for the purposes of bringing civil, commercial or criminal actions, when it is a question of the provision of information under the terms of this Law. The employees of institutions subject to the provisions of this Law may not warn the customer regarding the provision of information, when such has been done, or refuse him banking or financial assistance, nor break off contact with him or close his accounts, during the police or judicial proceeding, unless there is a prior authorization to do so by a competent judge. Any infringement of the provisions of this paragraph shall be dealt with as an offence under article 37 of this Law.

5. They shall design and develop programmes to prevent the laundering of capital, including, as a minimum requirement:

   (a) The development of internal controls, procedures and policies, including the appointment of officials at managerial level, as well as efficient and effective monitoring procedures to ensure high standards when taking on staff;

   (b) Ongoing training programmes for officials and employees who work in sensitive areas connected with the activities governed by this Law; and

   (c) Efficient auditing modalities to keep track of systems and activities.

The Office of the Superintendent of Banks is responsible for the fulfilment of these provisions, their implementation and their monitoring.

The Ministry of Justice shall set up within the Criminal Investigation Police (competent general division) a confidential information system from which financial and banking institutions may request information on suspicious or unusual customers; this will enable them to obtain, in an efficient, effective and timely manner, and by any means of communication that may be appropriate, data on the background of physical persons or legal entities in connection with drug trafficking or money laundering.

If the institutions mentioned fail to comply with this provision, a fine of between one thousand three hundred and thirty-five (1,335) and one thousand six hundred and seventy (1,670) days' urban minimum wage shall be imposed.

**ARTICLE 216**

The National Executive shall establish the necessary monitoring and control systems to ensure that the cash is not laundered, through the banking or financial system, by any arrangement or procedure and, in particular, shall adopt the measures necessary to prevent the remittance of money or assets, by any means, to areas or places that do not apply regulations similar to those in this Law, so that they may be repatriated securely, by cable or electronic transfer, or by any other means. To this end, the National Executive shall check that the banking and financial institutions carry out the following provisions:

1. They shall pay special attention to business contacts and transactions with individuals or legal entities in countries which do not apply banking or business regulations, or in which such regulations are inadequate. If such transactions have no apparent purpose, they shall be examined minutely and the results of the examination shall be passed on to the competent authorities immediately and in writing, to ensure compliance with this Law. The Office of the Superintendent of Banks shall impose a fine of between three thousand three hundred and thirty-five (3,335) and five thousand (5,000) days' urban minimum wage in cases of failure to carry out the provisions of this paragraph.

2. They shall ensure that these provisions are applied by branches and subsidiaries located abroad, when the laws effective or applicable abroad do not allow for the development and application of these control and prevention measures. The branches or subsidiaries shall inform the head office of the banking or financial institution in question so as to permit the establishment of a computerized system for proper tracing of money movements, in the matter referred to in this paragraph.

   The representatives of other banks or finance houses shall inform their parent offices, offices or branches that, in order to carry on their business, they shall apply these provisions in Venezuela. Failure to fulfil this provision shall be punished by a fine of between three thousand three hundred and thirty-five (3,335) and five thousand (5,000) days' urban minimum wage.

The Venezuelan Central Bank shall design and develop a system to keep track of all international transfers of currency and bearer instruments equivalent to cash, and make this information available to the criminal investigation authorities or the bodies having jurisdiction. Failure to comply with this provision shall entail, for each of the members of the Board of the Venezuelan Central Bank, a fine of between three thousand three hundred and thirty-five (3,335) and six thousand six hundred and seventy (6,670) days' urban minimum wage.

The banking and finance institutions shall be obliged to send the Venezuelan Central Bank details of daily movements of currency and bearer instruments that are equivalent to cash.

The Venezuelan Central Bank shall be obliged to impose strict security measures on the system that it establishes, and to ensure proper use of the information, without in any way prejudicing the freedom of movement of capital. Failure to comply with this provision shall be punished, in the case of a legal entity, by a fine of between three thousand three hundred and thirty-five (3,335) and five thousand (5,000) days' urban minimum wage.

The minimum sum to be reported to the Venezuelan Central Bank by the banking and finance institutions shall be established by decision of the Venezuelan Central Bank.

The Office of the Superintendent of Banks and the Venezuelan Central Bank shall be responsible for the development and application of these provisions and shall supervise and monitor their application; they shall issue directives intended to assist the banks and other financial institutions in detecting suspicious patterns of behaviour on the part of customers. Both institutions shall hold courses to train the staff of the banking and financial institutions that are responsible for these areas and to instruct them in the latest developments.

**ARTICLE 217**

The Office of the Superintendent of Banks and other authorities responsible for the regulation and supervision of banking and financial institutions shall take the necessary steps to prevent the acquisition of control or significant shareholdings in the capital of those institutions through the offences covered by this Law or activities relating thereto.

The Foreign Trade Institute shall inform the criminal investigation authorities, at their request, of export permits that may have been granted to enterprises registered in Venezuela for the purpose of export, as well as the enrolment in their registers of national or foreign enterprises that are involved in the same activity. The Foreign Trade Institute shall keep a duly updated register of exporters.

**ARTICLE 218**

The National Executive, through the Ministry of Finance, shall monitor, control and supervise trade in precious metals, collectors' items, precious stones, jewels, works of art and other similar valuables and, above all, the buying and selling of gold and its export, as well as the revenue deriving from such operations.

It shall also monitor operations by suppliers from abroad that carry a surcharge, as well as parallel or mutual support loans between the parties involved in the transactions, carried out inside or outside the country, as a means of laundering capital or when the transaction has no apparent purpose from the economic or commercial viewpoint, or is not a typical commercial operation.

**ARTICLE 219**

The National Executive, through the Ministry of Justice and the Registration and Notarial Directorate shall keep a computerized register of transactions involving the buying and selling of real estate and shares or stocks in commercial companies, in order to ensure that such transactions accord with the normal terms prevailing on the appropriate markets.

It shall also monitor cash purchases or sales, as well as purchases made by a single physical individual or legal entity, if such transactions seem to form part of a series, and sales to non-resident foreigners in the frontier areas. The registrars in the subsidiary registration and notarial offices shall inform the Registration and Notarial Directorate of the Ministry of Justice of such transactions, within a maximum of ten (10) days as from the date of the transaction. With this in mind, the officials referred to shall provide certified copies of all buying and

selling transactions registered with their offices. Failure to comply with this provision shall be punished with a fine of between one thousand six hundred and seventy (1,670) and two thousand six hundred and seventy (2,670) days' urban minimum wage, imposed on registration and notarial officials who fail to comply with these obligations and who shall also be discharged from their posts in the case of a repeated offence.

**ARTICLE 220**

In the event of a repeated offence by a bank or credit institution, the Office of the Superintendent of Banks shall suspend the service of foreign bank transfers, for a period of between one (1) and three (3) months, by those banking or financial institutions that fail to carry out the provisions of this Chapter, without prejudice to the application of any fines that may be appropriate and the civil or criminal liability that may be incurred by their employees or dependants.

## Chapter II

## Supreme Electoral Council, political parties and groups of electors

**ARTICLE 221**

The Supreme Electoral Council shall be responsible for the inspection, monitoring and supervision of the finances of the political parties and groups of electors, in order to ensure that they do not receive financial support from the commission of the offences established in this Law or activities related thereto.

**ARTICLE 222**

In the application of the provisions of the preceding article, the Supreme Electoral Council shall:

(a) Carry out audits;

(b) Check the accounting books and administrative ledgers, as well as documents relating to those activities;

(c) Check the bank accounts or deposit accounts, of whatever kind, of political parties or groups of electors; and

(d) Take any other steps pursuant to the powers conferred on it by the relevant laws and regulations.

**ARTICLE 223**

In order to discharge the functions established in this Chapter, the Supreme Electoral Council shall have the support of the necessary technical officials, with acknowledged experience in the inspection, monitoring and supervision of financial activities.

**ARTICLE 224**

If the activities mentioned in the preceding articles imply irregularities connected with the provisions of article 221 of this Chapter, it shall be the responsibility of those concerned with the administration and finances of the political party or of the group of electors, or the campaign managers, to demonstrate the origin or licit nature of the income.

If it is not possible to demonstrate the origin and the licit nature of the income, the political parties and the groups of electors shall be punished by a fine of between three thousand three hundred and thirty-five (3,335) and six thousand six hundred and seventy (6,670) days' urban minimum wage, to be imposed by the Ministry of Finance, without prejudice to the criminal liability of the persons involved.

**SINGLE PARAGRAPH:** Those responsible for administering finances, managers of electoral campaigns of political parties, groups of electors or individual candidates, shall be punished by a term of imprisonment of between one (1) and two (2) years and shall be disqualified from the exercise of their political functions for the same period, when the sentence has been served, if it is shown, by a final enforceable judgement, that the resources used in the electoral campaigns originate from the offences set out in this Law or activities relating thereto.

**ARTICLE 225**

The provisions of this Chapter or of the preceding articles do not exonerate the persons concerned from any criminal liability that may arise in connection with accusations of alleged or imaginary activities punishable under this Law, on or from the obligation to make good any damage caused to individuals or legal entities.

## TITLE IX

## FINAL AND TRANSITORY PROVISIONS

**ARTICLE 226**

Individuals who repeat the offences covered by Titles II and V of this Law shall be subject to the punishment indicated, increased by one half.

**ARTICLE 227**

Proceedings against individuals who infringe the administrative provisions and the fines imposed by this Law shall lapse after five (5) years. The time limitation shall be calculated and shall be interrupted in accordance with the provisions of the Penal Code.

**ARTICLE 228**

If a fine is not paid within the legal time period, the sanction shall be converted into detention, at a rate of one (1) day for the equivalent of two (2) days' urban minimum wage. The procedure established in Chapter II of Title VI of this Law shall apply. Infringements of this Law that are not expressly sanctioned shall be penalized by a fine of between sixty (60) and one hundred and seventy (170) days' urban minimum wage and shall be imposed by the competent organs of the National Executive, except in the case of contempt of court or recidivism, or in connection with the jurisdictional competence expressly indicated under this Law. The punishment shall not be converted if the individual is insolvent or manifestly unable to pay the fine, as ascertained by the Court.

**ARTICLE 229**

The amount of the fine imposed in respect of infringements under Title II, "Administrative Order", payable to the Ministry of Health and Social Welfare, in accordance with this Law, shall be paid to that Ministry. The amount shall be used to establish and maintain public treatment and rehabilitation centres. The Ministry shall be obliged to take the necessary steps to administer the money given to it and the Ministry of Finance shall supervise this operation.

The amount of the fines imposed in respect of other infringements under Title II, “Administrative Order”, payable to the Ministry of Development or the Ministry of Finance, or for conversion of the penalty, in accordance with the other titles of this Law, shall be paid to the Ministry of Finance, which shall place it at the disposal of the National Commission on Drug Abuse, which shall distribute it as set out in article 66 of this Law.

**ARTICLE 230**

The National Executive, in conjunction with the Governors of the Provinces, Federal District and Federal Dependencies, shall establish guidance and rehabilitation centres and halfway houses, as mentioned in this Law, within a period one (1) year as from its promulgation.

**ARTICLE 231**

In the event that the Organic Law on Central Administration is amended, thereby changing the names and functions of the ministries established under this Law, by merging them or replacing them, the new bodies shall be competent to exercise the powers and to discharge the duties assigned by this Law to the ministries or bodies that are replaced. Similarly, if another organic or special law amends the current regime applicable to the police, its functions and names, the latter shall be competent to exercise the functions and powers assigned to them under the law.

**SINGLE PARAGRAPH:** Until such time as a procedure is established for granting the licence mentioned in article 8 of this Law to industrialists who carry out import or export operations involving any of the substances not usable by the pharmaceutical industry, the current control regime shall remain in force. In any event, the corresponding licence may not be granted for a period of more than one (1) year and shall be issued for import or export volumes that have been estimated in advance and duly justified.

**ARTICLE 232**

This Law shall not apply to those small indigenous groups, clearly determined by the competent authorities, who are traditional consumers of *yopo* in mystical and religious ceremonies.

**ARTICLE 233**

All of the security measures established by this Law shall be put into effect at establishments belonging to the State.

**ARTICLE 234**

Official or private publications of this Law shall be prefaced by an explanation of the motives for it, which shall not be binding on, but shall be a guide for, the judge.

**ARTICLE 235**

The Organic Law on Narcotic and Psychotropic Substances, dated 17 July 1984, shall be hereby amended and the legal provisions that are in conflict with the present Law are hereby superseded.

**ARTICLE 236**

The National Executive shall submit for consideration by the Congress of the Republic, in the fiscal budget for the year following the promulgation of this Law, the budget needed to provide for all of the public agencies in the implementation thereof.

Issued, signed and sealed at the Federal Legislative Palace in Caracas, on the thirteenth day of August in the year nineteen hundred and ninety-three, the 183rd year of Independence and 134th year of Federation.

| | |
|---|---|
| PRESIDENT | *(Signed)* OCTAVIO LEPAGE |
| VICE-PRESIDENT | *(Signed)* LUIS ENRIQUE OBERTO G. |
| SECRETARIES | *(Signed)* LUIS AQUILES MORENO C.<br>*(Signed)* DOUGLAS ESTANGA |

Miraflores Palace, Caracas, on the thirteenth day of August nineteen hundred and ninety-three, the 183rd year of Independence and 134th year of Federation.

Approved,

RAMON J. VELASQUEZ

Countersigned:

Minister of Internal Affairs, CARLOS DELGADO CHAPELLIN

Minister for Foreign Affairs, FERNANDO OCHOA ANTICH

Minister of Finance, CARLOS RAFAEL SILVA

Minister of Defence, RADAMES E. MUÑOZ LEON

Minister of Development, GUSTAVO PEREZ MUARES

Minister of Education, ELIZABETH Y. DE CALDERA

Minister of Health and Social Welfare, PABLO PULIDO

Minister of Agriculture and Livestock, HIRAM GAVIRIA

Minister of Labour, LUIS HORACIO VIVAS P.

Minister of Transport and Communications, JOSÉ DOMINGO-SANTANDER C.

Minister of Justice, FERMIN MARMOL LEON

Minister of Energy and Mines, ALIRIO A. PARRA

Minister of Environment and Renewable Natural Resources, ADALBEPTO GABALDON A.

Minister of Urban Development, HENRY JATAR SENIOR

Minister of the Family, TERESA ALBANEZ BARNOLA

Minister for the Office of the President, RAMON ESPINOZA

Minister of State, HERNAN ANZOLA

Minister of State, FRANCISCO LAYRISSE

Minister of State, ALLAN BREWER CARIAS

Minister of State, MIGUEL RODRIGUEZ MENDOZA