



UNITED NATIONS

E/NL.1986/34
22 August 1988
ENGLISH AND SPANISH
ONLY
Original: SPANISH

LAWS AND REGULATIONS

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

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

CHILE

Communicated by the Government of Chile

NOTE BY THE SECRETARIAT

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

E/NL.1986/34

Ministry of Justice

ACT NO. 18.403

PUNISHING THE ILLICIT TRAFFIC IN NARCOTIC DRUGS
AND REPEALING ACT NO. 17.934 1/

(Diario Oficial de la República de Chile, No. 32.112
of 4 March 1985)

The Governing Council of the Republic of Chile has given its approval to the following

Draft Law:

Article 1. Persons who, without the proper authorization, produce, manufacture, transform, transport, prepare or extract narcotic or psychotropic drugs or substances that cause physical or psychic dependence and produce serious toxic effects or substantially endanger public health, shall be punished by long-term imprisonment, minimum or medium grade, and a fine of 20 to 100 minimum monthly wages.

1/ Note by the Secretariat: E/NL.1974/12.

If other drugs or substances of this kind are involved that do not produce the effects described in the preceding paragraph, the Court may reduce the penalty by two grades.

Article 2. Persons who, without the proper authorization, sow, grow, harvest or possess vegetable or synthetic species of the genus cannabis, or other species from which narcotic or psychotropic substances can be produced, under circumstances giving rise to the presumption of intended illicit traffic in any of them, shall be liable to the penalty of short-term imprisonment, maximum grade, or long-term imprisonment, minimum grade, and a fine of 20 to 100 times the maximum monthly wage.

Article 3. Persons who leave behind in public or easily accessible places plants from among those mentioned in article 2, or their stubble, flowers, seeds or other active parts capable of producing the effects indicated in article 1, paragraph 1, under circumstances giving rise to the presumption that their consumption is intended, shall be punished by short-term imprisonment at its minimum grade and a fine of 10 to 20 times the minimum monthly wage.

If the act of leaving behind these plants or their parts is due to negligence or carelessness, the punishment shall be imprisonment, medium or maximum grade, and a fine of one to 10 times the minimum monthly wage.

Article 4. The repetition of any of the activities referred to in article 2 shall result in the prohibition of the cultivation in question, without prejudice to the corresponding sanctions.

Article 5. The penalties prescribed in article 1 shall apply also to persons who, without the proper authorization, traffic in any capacity in the substances referred to in that article, or in the raw materials used to produce them, as well as to persons who, in any manner, encourage, promote or facilitate the use or consumption of such substances.

Persons who, without the proper authorization, import, export, transport, acquire, transfer, misappropriate, possess, supply, keep or carry with them such substances or raw materials shall be regarded as traffickers unless they can prove, or it is known, that these substances are intended for use in medical treatment or exclusively for their own personal use.

Article 6. Persons who are authorized to supply the substances or drugs referred to in article 1 of this Act, or the raw materials used to produce them, and who do so in contravention of the relevant legal provisions, shall be punished by short-term imprisonment, maximum grade, or long-term imprisonment, minimum grade, and a fine of 10 to 100 times the minimum monthly wage. In addition, the Court may, having regard to the circumstances of the offence, order the establishment in question to be temporarily closed for a period of not less than 30 and not more than 90 days and, in the event of a repetition of the offence, it may order the establishment to be permanently closed and prohibit permanent participation, in any capacity whatsoever, in another establishment of like nature.

Article 7. If a physician, dentist, midwife or veterinarian, through malpractice in the exercise of his or her profession, prescribes any of the substances referred to in article 1 when there is no medical or therapeutic need for it, he or she shall be punished by long-term imprisonment, minimum or medium grade, and a fine of 10 to 100 times the minimum monthly wage.

For the purpose of determining the circumstances referred to in this article, the Court shall, in every case, request an expert report.

Article 8. Any person who owns, rents, administers or holds in any capacity whatsoever any immovable property and who places it at the disposal of another person, in the knowledge that that other person is using it or will use it to manufacture, store or dispense the substances indicated in article 1, or to permit their consumption, or to sow or plant vegetable species from which these substances can be produced in contravention of the legal prohibitions or restrictions, shall be punished by short-term imprisonment, medium or maximum grade, and a fine of five to 50 times the minimum monthly wage. The furnishings, implements and equipment that are part of the property in question shall be confiscated.

Article 9. Persons who, through a communications medium or in public acts, defend or propagandize the use or consumption of the substances referred to in article 1 shall be punished by short-term imprisonment, minimum or medium grade, and a fine of 10 to 40 times the minimum monthly wage. When a public communications medium is used for this purpose, the Court may, in addition, suspend the publication in question for up to six editions or suspend transmissions or showings for up to six days, as the case may be. A repetition of the offence in the case of a public communications medium shall result in its being shut down for a period of 30 days.

Article 10. Any attempt to produce the substances or drugs indicated in article 1, or to traffic in them, shall be punished by the penalty provided for the offence as actually consummated, with the possibility of reducing this penalty by one or two grades.

The offence if frustrated shall be punished as if it had been consummated.

Article 11. Persons who form an association or organization for the purpose of producing, or trafficking in, the substances indicated in article 1, in contravention of the prohibitions or restrictions under the legislation or regulations, shall be punished, for this offence alone, in the following ways:

(1) By long-term imprisonment, medium grade, in the case of persons who have exercised authority in the organization or supplied funds for the production of, or traffic in, the substances in question;

(2) By long-term imprisonment, minimum grade, in the case of any other person who has taken part in the association or who has voluntarily and knowingly supplied any of its members with vehicles, weapons, ammunition, equipment, lodging, shelter or a meeting place for the commission of such offences.

Article 12. A person who is discovered in the act of consuming any of the substances indicated in article 1, paragraph 1, or in circumstances giving rise to the presumption that he has just consumed such a substance, shall be placed at the disposal of the criminal justice authorities in order that they may order an examination by a medical practitioner, authorized for that purpose by the National Health Service, who shall determine whether or not the person is dependent on these substances, as well as the degree of his drug dependence. The judge shall order the same measure in the case of a person discovered in the act of carrying these substances if the evidence indicates that he was doing so for his personal use. If the examination indicates that the person is a habitual consumer of these drugs, the judge shall order his immediate confinement in an establishment authorized by the National Health Service for the purpose of his rehabilitation or, if he considers it advisable, having regard to the circumstances of the offence and the personal circumstances of the offender, the judge may authorize such treatment without confinement, but subject to the medical supervision of the National Health Service.

Following a report from the Ministry of Health, the Ministry of Justice shall annually provide the appropriate Appeals Court with a list of the medical practitioners who are authorized to make the reports or carry out the examinations referred to in this article.

If the evidence in the case shows that the narcotic substances or raw materials in the possession of the person concerned are not intended for his own personal use, he shall be liable to the penalties applicable under the provisions of article 1 of this Act.

Article 13. If the offences to which this Act refers are committed by persons under the age of 18 years, the Court, having regard for the circumstances of the offence and the personal circumstances of the offender, may impose the corresponding penalty, or the penalty of forced residence in any of its grades, or that of home detention for up to two years.

The penalty of home detention consists of the restriction of freedom for a specific term and shall be served in the residence of the offender or in a place decided upon by the Court.

For the purpose of this penalty, the judge shall, on the basis of the report of the Social Welfare Officer of the Juvenile Court, if there is one, or of the municipality, in other cases, determine the home in which the minor shall serve the penalty, which may be that of his parents, that of relatives, or that of some other person who fulfills the appropriate conditions.

If an appropriate home cannot be found or there is evidence that the home detention will be violated in the above-mentioned places, the minor shall serve the sentence, or what remains of it, as the case may be, in an institution to be decided upon by the National Council for Juveniles.

For the application of this penalty, the Court shall order that the head of the household or institution, as the case may be, shall be notified in person of the decision, and that person shall be obliged to ensure that it is strictly complied with and to report promptly to the Court. Any person may report to the Court any case of non-compliance with the obligations prescribed by this paragraph.

The sentence of home detention shall not be deemed to be violated by the fact that the person concerned attends the establishment in which he is receiving or is going to receive his education, or the place where he exercises or is going to exercise his lawful occupation or employment. Nor shall the sentence of home detention be deemed to be violated if it cannot be served for reasons of force majeure not attributable to the offender; in this case, the person concerned or the persons referred to in the preceding paragraph shall, within 24 hours, report this fact to the Court, which shall take the appropriate decision.

In the case of the penalty of home detention, the parents or the heads of the household or designated institution shall be required to report to the Court every 30 days on the execution of the measure and on its results.

Failure to comply with this obligation or with that provided for in the fifth and sixth paragraphs of this article renders the person who fails to comply liable to a fine, payable to the Treasury, of three to five times the minimum monthly wage.

Article 14. Persons under the age of 18 years who, under this Act, have been serving a non-custodial sentence and who commit one of the offences referred to in the Act shall serve the rest of the sentence in prison, without prejudice to the penalty applicable to them by reason of the further offence.

Article 15. For the purpose of determining whether there has been a repetition of the offences punishable under this Act, account shall also be taken of the definitive judgements pronounced in other countries.

Article 16. The provision of article 72, paragraph 1, of the Penal Code shall not apply with respect to minors who, under the provisions of this Act, receive a non-custodial sentence.

Article 17. Vehicles intended by the offender to be used in the commission of any of the offences punishable under this Act shall be confiscated, as shall vehicles belonging to a third party that have been used with that party's consent and knowledge for such a purpose.

When the substances indicated in article 1, and the raw materials used to produce them, are seized by the Courts or by the police, they shall be delivered to, and deposited with, the appropriate Health Service within 24 hours. However, when special circumstances make it advisable and at the request of the officials who have seized these substances or raw materials, the Court may extend this period to 48 hours. Any officials responsible for any delay in the fulfilment of this requirement shall be punished, for each day of delay, by a fine payable to the Treasury and equal to five per cent of their taxable monthly remuneration, whereby this fine may not exceed their total remuneration.

The substances and raw materials referred to in the preceding paragraph may be kept or destroyed by the appropriate Health Service, subject to verification by that Service that they have not been obtained under a medical prescription or by some other means authorized by the legislation or regulations. Before the substances are destroyed, the afore-mentioned Service shall issue an analysis report identifying the substance and its characteristics and indicating its approximate weight or quantity. In any case, a quantity of the substance that is considered technically sufficient for a further analysis by the Service or by some other body or expert shall remain in storage, if the Court should so direct. This sample shall be kept for a maximum period of two years, after which it shall be destroyed. Any such action as aforesaid shall be described in a report, a copy of which shall be communicated to the Court together with the analysis report.

Article 18. If the offender does not pay the fine imposed, he shall instead be punished by imprisonment and shall serve one day for every twentieth part of his minimum monthly wage. The term of imprisonment may not in any case exceed six months.

Article 19. The Director-General of Health personally or his representative shall be a party to criminal proceedings instituted for offences referred to in the preceding articles and shall have, by virtue of his appearance before the Court, all the rights of a party, without having to lodge a complaint. He may also obtain particulars of the evidence collected against the accused, unless the Court, in a substantiated ruling designed to ensure the success of the investigation, decides otherwise.

Without prejudice to the provisions of the preceding paragraph, the State Defence Council shall be responsible for bringing criminal proceedings in respect of any of the offences referred to in this Act when, in the Council's opinion, the offences in question may cause serious harm to society.

For the purposes described in the preceding paragraphs, the police services shall send a copy of the relevant judicial reports to the appropriate Health Service within 24 hours.

In criminal proceedings for offences under this Act that were not initiated as a result of a complaint or accusation by the appropriate Health Service, the Court shall request a technical report from the appropriate ministerial department concerning, in particular, the danger to public health caused by the offences under investigation. The value as evidence of this report shall be determined in conformity with article 472 of the Code of Criminal Procedure.

Article 20. When conducting proceedings and pronouncing judgement in trials for the offences referred to in this Act, the courts shall not, in weighing the evidence, be bound by strict rules.

The courts may admit as evidence motion picture films, photographs, sound recordings, video and audio reproduction systems and, in general, any suitable means that may be regarded as authentic.

Article 21. The penalties provided for in this Act shall be increased by one grade:

1. If the offence is committed with the complicity of persons not subject to criminal accountability, in accordance with the provisions of article 10, paragraphs 1, 2 and 3, of the Penal Code;
2. If the offence is committed in a way involving violence or deception;
3. If the offence is committed for the purpose of creating or maintaining a state of drug dependence;
4. If the offence is committed by someone who is a physician, dentist, pharmaceutical chemist, veterinarian or member of some other profession implying specialized or related knowledge in this area;
5. If the offence is committed in the immediate vicinity of, or within, an educational establishment, welfare centre, place of confinement, institution devoted to sporting events or to cultural or social activities, or places where public shows or entertainments are staged;
6. If narcotic or psychotropic drugs or substances capable of producing physical or psychic dependence are supplied to persons below the age of 18 years, or when the use or consumption of these substances by such minors is promoted or facilitated;
7. If the offence is committed by public officials taking advantage of their office and acting for reasons, or on the occasion, of the performance of their duties;
8. If the offence is committed by persons who work or are employed at any kind of establishment engaged in the comprehensive development of juveniles; and
9. If the offender encourages, promotes or facilitates the use or consumption of narcotic drugs, psychotropic substances or other drugs or substances capable of producing dependence by persons who are under his charge or care.

Article 22. In the event of the investigation of offences that are provided for in this Act and in other criminal laws and that, although unconnected, have been committed by the same offender, the trials shall be held separately before the appropriate Court.

Similarly, there shall be no consolidation of proceedings when there are several cases being heard by different courts for offences provided for in this Act, unless the common higher Court orders, for justifiable and substantiated reasons, that these proceedings should be consolidated before the Court that in its opinion is the appropriate one.

If the application of the norms indicated in the preceding paragraphs give rise to delays or difficulties in the processing of measures or in proceedings in connection with the untried prisoner, preference shall be given to the norms required by the Court examining the offences provided for in this Act, without prejudice to the provisions of article 12, paragraph 1, of the Code of Military Justice.

The courts shall be required to send each other copies of the pleas and proceedings and of the judgements pronounced in their respective cases, and these are to be attached to the proceedings.

The Court pronouncing the final ruling may not consider those circumstances with a modifying effect on criminal accountability that, had the proceedings been consolidated, could not have been taken into account.

Within one year from the pronouncement of the final ruling, the offender may request of the common higher Court the consolidation of his sentences when this is to his advantage.

Article 23. For the purposes of article 8 of Act No. 17.155 and article 6, No. 3, of the Code of the Judiciary, the provisions of this Act shall be deemed to form part of Title VI, paragraph 14, of the Penal Code.

Article 24. Every reference, legal or regulatory, to Act No. 17.934 must be understood as referring to the present Act.

Article 25. The narcotic or psychotropic substances or drugs referred to in the two paragraphs of article 1 shall be indicated in a separate regulation.

Article 26. Act No. 17.934 is repealed.

This repeal shall not affect current proceedings or the serving of sentences pronounced in conformity with the afore-mentioned Act.

Transitional article. The existing regulation shall remain in force until the new regulation is promulgated.

José T. Merino Castro, Admiral, Commander-in-Chief of the Navy, Member of the Governing Council; Fernando Matthei Aubel, Air General, Commander-in-Chief of the Airforce, Member of the Governing Council; César Mendoza Durán, Director-General of the Carabineros, Member of the Governing Council; César Raúl Benavides Escobar, Lieutenant General of the Army, Member of the Governing Council.

Whereas I consider it appropriate to approve this Act, I hereby sign it and direct that it be published and carried into effect as a law of the Republic.

To be recorded in the Office of the Controller-General of the Republic, published in the Official Gazette, and included in the Official List of the Office of the Controller-General.

Santiago, 14 February 1985. Augusto Pinochet Ugarte, General of the Army, President of the Republic; Hugo Rosende Subiabre, Minister of Justice; Patricio Carvajal Prado, Vice-Admiral, Minister of National Defence; Horacio Aránguiz Donoso, Minister of Public Education; Winston Chinchón Bunting, Minister of Public Health.

Communicated for information: Alicia Cantarero Aparicio, Under-Secretary, Ministry of Justice.