



UNITED NATIONS

E/NL.2007/17  
27 March 2007  
English only\*

## 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 text / texts*

#### CHILE

Communicated by the Government of Chile

##### NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

#### **LAW No.2000. Supersedes Law N19.366, which Punishes the Illicit Trafficking of Narcotic Drugs and Psychotropic Substances**

\*Note by the Secretariat: These documents are a direct reproduction of the text / texts communicated to the Secretariat.



**MINISTRY OF THE INTERIOR  
UNDERSECRETARIAT OF THE INTERIOR**

**LAW No. 20000**

**SUPERSEDES LAW N19.366<sup>1</sup> WHICH PUNISHES THE ILLICIT TRAFFICKING OF  
NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES**

Whereas the Honorable National Congress has granted its approval to the following Bill:

**TITLE I  
Offenses and penalties  
Part 1  
Serious and Minor Offenses**

**Article 1.-** Any person who, without the proper authorization, manufactures, produces, transforms, prepares or extracts substances or narcotic or psychotropic drugs which create physiological or psychological dependence and are capable of causing a substantial and detrimental effect on health shall be punished by a term of imprisonment ranging between not less than 5 years one day to 10 years and not longer than 10 years one day to 15 years as well as by a fine of 40 to 400 monthly tax units.

In the event of other drugs or substances of a similar nature but which do not cause the effects mentioned in the previous paragraph, the penalty may be reduced by up to one degree.

Any person having or holding items, instruments, materials or equipment normally destined to the manufacture, production, preparation, transformation or extraction of the substances or drugs referred to in the preceding paragraphs shall be deemed to be committing an offense punishable under this Article.

**Article 2.-** Any person who produces, manufactures, prepares, distributes, transports, markets, imports, exports, possesses or holds precursors or essential chemical substances, with the purpose of applying them to the manufacture of narcotic drugs or psychotropic substances with a view to the perpetration, whether inside or outside the country, of any of the acts regarded as offenses under this Law, shall be punished by a term of imprisonment ranging between not less than 3 years one day to 5 years and not longer than 5 years one day to 10 years as well as by a fine of 40 to 400 monthly tax units.

Should any person carry out one of the actions described in the preceding paragraph without knowing the application of the precursors or essential chemical substances by reason of inexcusable negligence, he or she shall be punished by a term of imprisonment ranging between not less than 61 to 540 days and not longer than 541 days to 3 years.

**Article 3.-** The penalties set forth in Article 1 shall also apply to all those persons who, in any capacity, traffic in the substances referred to therein or in the raw materials used to produce them as well as to all persons who, by any means, induce, promote or facilitate the use or consumption of such substances.

Any person shall be deemed a trafficker who, without the proper authorization, imports, exports, transports, acquires, transfers, removes, possesses, supplies, keeps or carries such substances or raw materials.

---

<sup>1</sup> Note by the Secretariat: E/NL.1996/5, 2003/48.

**Article 4.-** Any person who, without the proper authorization, possesses, transports, keeps or carries on him/herself small amounts of substances or narcotic or psychotropic drugs which create physiological or psychological dependence or raw materials used to produce them, whether the ones mentioned in paragraph 1 or 2 of Article 1, shall be punished by a term of imprisonment ranging between not less than 541 days to 3 years and not longer than 3 years one day to 5 years as well as by a fine of 10 to 40 monthly tax units except that such person can justify that they were intended for medical treatment or exclusive personal use or consumption in the near future.

All the persons who, in any manner, acquire, transfer or supply small amounts of these substances, drugs or raw materials for, or facilitate, the use or consumption of such substances by other people shall be subject to like punishment.

It shall not be deemed that drugs or substances are for exclusive personal use or consumption in the near future whenever from the quality or purity of the drugs possessed, transported, kept or carried it cannot be reasonably inferred whether they will be applied to such use or consumption, or whenever the circumstances surrounding such possession, transportation, keeping or carrying indicate the purpose of illicit trafficking in any manner whatsoever.

**Article 5.-** Any person who, in whatever capacity, supplies aromatic hydrocarbon, such as benzene, toluene or other similar substances to minors under 18 years of age shall be punished by a term of imprisonment ranging between not less than 541 days to 3 years and not longer than 3 years one day to 5 years as well as by a fine of 40 to 200 monthly tax units.

According to the circumstances surrounding the offense, punishment may also include the closure referred to in Article 7.

**Article 6.-** Should a surgeon, dentist or veterinarian prescribe any of the substances or drugs referred to in Article 1 or the raw materials necessary to manufacture them without medical or therapeutic need, he or she shall be punished by a term of imprisonment ranging between not less than 5 years one day to 10 years and not longer than 10 years [and] one day to 15 years as well as by a fine of 40 to 400 monthly tax units.

**Article 7.-** Any person who, being duly authorized to supply, in any capacity whatsoever, the substances or drugs referred to in Article 1 or the raw materials used to produce them does so in violation of laws or regulations governing the matter, shall be liable to a term of imprisonment ranging between not less than 5 years [and] one day to 10 years and not longer than 10 years [and] one day to 15 years and to a fine of 40 to 400 monthly tax units. Taking into account the circumstances of the offense, the court may also order the establishment in question to be temporarily closed for a period of not less than 60 days and not longer than 120 days, even when the perpetrator is an employee or assistant in such establishment. Should the offense be repeated, the court may order such establishment to be permanently closed and prohibit the perpetrator from participating in another establishment of like nature.

**Article 8.-** Sowing, planting, cultivating or harvesting, without proper authorization, plants of any species of the genus *Cannabis* or other plants from which narcotic or psychotropic substances can be produced shall be punished by a term of imprisonment ranging between not less than 3 years [and] one day to 5 years and not longer than 5 years [and] one day to 10 years as well as by a fine of 40 to 400 monthly tax units except that the person performing those actions can justify that such plants were intended for exclusive personal use or consumption in the near future, in which case only those sanctions set forth in Article 50 *et seq.* shall be imposed.

According to the gravity of the offense and the personal circumstances of the offender, the penalty may be reduced by one degree.

**Article 9.-** The authorization referred to in the preceding Article shall be given by the Agricultural and Livestock Service. Such authorization shall not be granted to natural persons charged with or convicted of any of the offenses under this Law or under Laws No. 19366 and 19913 nor to individuals in respect of whom the conditional suspension of proceedings set forth in Article 237 of the Code of Criminal Procedure has been ordered. Neither shall it be granted to legal persons whenever any of their legal representatives or administrators, or partners or associates in the event of companies other than corporations, is placed in any of the situations described herein.

By mere operation of law, an authorization so granted shall be suspended if, subsequent to being so granted, charges are filed as a result of the commission of any of the offenses mentioned hereinbefore or definitively cancelled as from the time when the corresponding judgment of conviction becomes final.

The court shall notify the Agricultural and Livestock Service of the decisions mentioned in the preceding paragraphs as soon as they become final so that it can issue the pertaining declaratory resolution and notify it to the interested parties.

**Article 10.-** Any person who, being duly authorized to engage in sowing, planting, cultivating or harvesting in accordance with the previous Article, causes any of the plant species referred to therein or their stubble, flowers, seeds or other active parts to be diverted or applied to illicit traffic shall be punished by a term of imprisonment ranging between not less than 5 years one day to 10 years and not longer than 10 years one day to 15 years as well as by a fine of 40 to 400 monthly tax units.

If, owing to lack of due care or culpable negligence, such person abandons plants, their stubble, flowers, seeds or other active parts in places easily accessible to the public or fails to comply with provisions set forth in the rules and regulations on perimeter fencing and the destruction of such species, he/she shall be punished by a term of imprisonment or internal exile of 61 to 540 days and fined 20 to 200 monthly tax units.

**Article 11.-** The owner, possessor, mere holder or administrator, in any capacity whatsoever, of real or personal property who, even without prior cooperation, makes such property available to other people in the knowledge that it will be applied to the commission of any of the offenses set forth in Articles 1, 2, 3 or 8 shall be liable to like punishment as the one carried by the offense committed.

**Article 12.-** A person who, in any capacity, is in charge of a commercial establishment, cinema, hotel, restaurant, bar, place for dancing or listening to music, sports center, educational institution at any and all levels of education or other places open to the public and tolerates or permits trafficking in or consumption of any of the substances mentioned in Article 1 shall be punished by a term of imprisonment ranging between not less than 541 days to 3 years and not longer than 3 years one day to 5 years as well as by a fine of 40 to 200 monthly tax units, except that a greater penalty applies for his/her participation in the act.

In addition, the court may impose the closure of the place in question, as set forth in Article 7.

**Article 13.-** A civil servant who, on account of his public position, becomes aware of any of the offenses hereunder and fails to report them to the Office of the Public Prosecutor, to the Carabineros, uniformed national police, to the Chilean Policía de Investigaciones detective force or to the Prison Guard Service, in those cases where the offenses were committed within a penitentiary, or to any competent court of criminal jurisdiction shall be punished by a term of imprisonment ranging between not less than 541 days to 3 years and not longer than 3 years one day to 5 years as well as by a fine of 40 to 400 monthly tax units.

**Article 14.-** The military personnel referred to in Article 6 of the Code of Military Justice, with the exception of conscripts, the personnel of the Chilean Policía de Investigaciones detective force, that of

the Prison Guard Service and Aeronautics personnel who consume any of the substances mentioned in Articles 1 and 5 hereunder shall be punished by a term of imprisonment ranging between not less than 61 to 540 days and not longer than 541 days to 3 years.

Nevertheless, if such substances were consumed in the places or circumstances mentioned in Article 5, No. 3 of the Code of Military Justice, the punishment shall be a term of imprisonment ranging between not less than 541 days to 3 years and not longer than 3 years one day to 5 years.

Conscripts who consume any of the substances mentioned in Articles 1 and 5 hereunder, in the places or circumstances mentioned in Article 5, No. 3 of the Code of Military Justice, shall be imprisoned for a term of 61 to 540 days.

The penalties described in the preceding paragraphs shall be applied to the relevant members of personnel who keep or carry such substances, even when they are intended for their exclusive personal use or consumption in the near future.

However, the foregoing penalty shall not be applied to those individuals who can justify that such use, consumption, transport or possession were intended for medical treatment.

The highest authority in each agency shall take the necessary measures to prevent the unlawful use of narcotic drugs or psychotropic substances and order the personnel under his/ her care to undergo periodic drug consumption controls in compliance with the provisions of regulations that will be issued to this end.

**Article 15.-** Officers and Seamen who are crew members of merchant navy ships, special vessels and naval craft who, either on board or while carrying out their duties, carry for their exclusive personal use in the near future or consume any of the substances mentioned in Articles 1 and 5 shall be punished by a term of imprisonment ranging between not less than 541 days to 3 years and not longer than 3 years one day to 5 years as well as by a fine of 10 to 100 monthly tax units.

The foregoing penalty shall not be applied to those individuals who can justify that such use, consumption, transport or possession were intended for medical treatment.

**Article 16.-** Any persons forming associations or organizations with the intent to commit any of the offenses described in this law shall be punished, for that sole reason, in accordance with the following provisions:

1. by a term of imprisonment ranging between not less than 10 years one day up to 15 years and not longer than 15 years one day up to 20 years, if such person has contributed its capital in any way or amount, exercised power in the organization or planned the offense or offenses to be committed;
2. by a term of imprisonment ranging between not less than 5 years one day to 10 years and not longer than 10 years one day to 15 years, if such person has supplied its members with vehicles, weapons, ammunition, equipment, accommodation, a hiding or meeting place or any other type of collaboration necessary for achieving the organization's criminal purposes.

The provisions set forth in Article 74 of the Penal Code regarding sanctions shall be followed in the event that the perpetrator, accomplice or accessory after the fact of the offense described herein also committed any of the offenses under this Law.

**Article 17.-** Conspiracy to commit the offenses punishable hereunder shall carry the same penalty as the actual offense, reduced by one degree.

**Article 18.-** Whenever a substantial step towards the consummation of any of the offenses hereunder is performed, it shall be punished as a completed offense.

## Part 2

### **Aggravating Circumstances**

**Article 19.-** Upon the commission of the offenses previously described, the penalty shall be increased by one degree if any of the following circumstances take place:

- a) the accused is a member of a group or band of criminals, which does not amount to the offense of forming a criminal organization, set forth in Article 16.
- b) violence, weapons or deceit are used to commit the offense.
- c) narcotic drugs or psychotropic substances are supplied or their use or consumption is promoted, induced or facilitated to minors under the age of 18 or to persons of unsound mind or mental weakness.
- d) civil servants, by taking advantage of their office or by abuse of power, commit the offense in question.
- e) the offense is committed by means of persons not subject to criminal liability.
- f) the offense is committed within an educational institution or in the area surrounding it or in places where pupils and students take part in educational, sporting or social activities.
- g) the offense is committed within an institution that provides sporting, cultural or social activities, while these are in progress, or in places where public shows, recreational, cultural or social activities are staged.
- h) the offense is committed in medical institutions, clinics, detention or confinement facilities, military or police bases.

The court may increase the penalty by two degrees upon the occurrence of two or more of the preceding circumstances in the commission of an offense.

**Article 20.-** The mitigating circumstances regarding criminal liability set forth in Article 11, No. 7 of the Penal Code shall not be of application to the offenses hereunder.

**Article 21.-** In order to determine whether there is repetition of an offense punishable hereunder, all final judgments issued in a foreign state shall be considered, even if the sentence imposed is not served.

## Part 3

### **Effective Cooperation**

**Article 22.-** Effective cooperation leading to the clarification of the facts under investigation or allowing to identify the persons accountable for them, or serving to prevent or hinder the perpetration or completion of other equally or more serious offenses in violation of this Law shall constitute a mitigating circumstance in regard to criminal liability. In such cases, the court may reduce the penalty by up to two degrees.

Nevertheless, upon the occurrence of the offense punishable under Article 16, the court may reduce the penalty by up to three degrees.

Effective cooperation entails providing accurate, true and verifiable information or data that will contribute to serving the purposes stated in paragraph 1.

When filing charges, or drawing up a formal writ of accusation or information the Office of the Public Prosecutor shall state whether the accused has effectively cooperated to serving the purposes of paragraph 1.

If, on account of the investigation of another offense, the relevant prosecutor needs to access the information provided by an effective cooperator, he/she shall present a substantiated request to the prosecutor who received such information, who shall decide on the convenience of disclosing it. The information is to be checked in his/her presence by the requesting prosecutor and, should difficulties regarding such request or its fulfillment arise, they shall be solved by their common superior official.

Prior to determining a reduction in the penalty, punishment shall be decided by considering and weighing all of the facts in the light of mitigating or aggravating circumstances, pursuant to general rules.

TITLE II  
**Investigative Techniques**  
Part 1  
**Controlled Deliveries or Deliveries Under Surveillance**

**Article 23.-** The Office of the Public Prosecutor may authorize illegal or suspicious shipments of the substances referred to in Articles 1 and 2, or the substances used to replace, in all or in part, those previously mentioned, the instruments that were used or may be used to commit any of the offenses in violation of this law and the property resulting from those crimes to be transported, kept, intercepted or moved within the national territory. It may also authorize their departure or entry into the country under the surveillance of the competent authority with the aim of identifying the participants in such acts, ascertain their plans, prevent the unlawful use of the substances aforementioned and prevent or prove the commission of any such offenses.

The Office of the Public Prosecutor may apply this investigative technique where it has reasonable grounds to presume that it will facilitate the identification of other direct participants, either in Chile or abroad, as well as the achievement of any of the aims described in the preceding paragraph.

Whenever the substances, instruments, or property deriving from those offenses are within areas falling under the jurisdiction of the customs authorities, the National Customs Service shall follow the instructions issued by the Office of the Public Prosecutor regarding the implementation of this investigative technique.

The Office of the Public Prosecutor may, at any time, order the suspension of controlled deliveries and require the Guarantee Court to order the arrest of direct participants and the seizure of the substances and other instruments if the proceedings were to jeopardize the life or integrity of the officers, undercover agents or informants taking part in the operation; the gathering of records that are material to the investigation; or the arrest of such participants. The foregoing notwithstanding, in the event any of these were in jeopardy, the police officers in charge of the controlled delivery may apply the rules on arrest in *flagrante delicto*.

The Office of the Public Prosecutor shall take all the necessary steps to keep watch over the substances and instruments referred to in paragraph 1 herein and also to protect all persons taking part in the operation. In international operations, controlled deliveries shall conform to existing international conventions and treaties.

Without prejudice to the powers conferred by Articles 47 *et seq.*, the Office of the Public Prosecutor, directly and irrespective of the provisions set forth in subarticles 1 and 2 of Article 76 of the Code of Civil Procedure, foreign police and judicial authorities may be asked to send all evidence necessary to prove the commission of an offense and the corresponding criminal liabilities, investigated in the country, pursuant to international conventions and treaties in force. Such evidence or information may also be sent to foreign police and judicial authorities.

The consummation of offenses under investigation shall not be hindered by the fact that, when conducting controlled deliveries, the substances referred to in Articles 1 and 2 hereunder have been replaced, or that officers, undercover agents, data supplying agents or informants have taken part in such operations. Participation by the latter shall not be deemed to constitute entrapment or encouragement to commit an offense.

## Part 2

### **Restrictions on communications and other technical means of investigation**

**Article 24.-** Any measures for withholding and seizing correspondence, obtaining copies of communications or transmissions, intercepting telephone conversations and using other technical means of investigation may be ordered in respect of any and all offenses hereunder, irrespective of the penalty they carry, in accordance with relevant provisions of the Code of Criminal Procedure.

Notwithstanding the foregoing, the provisions set forth in Article 222, subarticle 4 of such code shall not apply as regards the detailed indication of name and domicile of the person affected by those measures since a reference to the circumstances that identify him/her shall suffice.

In addition, the provisions set forth in Article 167 of such code notwithstanding, if the measures ordered prove unsuccessful, the prosecutor may temporarily discontinue proceedings until more significant and recent findings are available.

## Part 3

### **Undercover agents, data supplying agents and informants**

**Article 25.-** The Office of the Public Prosecutor may authorize law enforcement officers to act as undercover agents or as data supplying agents and, upon request by such officers, it may authorize certain informants to those Services to act in any of the two capacities previously mentioned.

An undercover agent is a law enforcement officer who conceals his official identity and enters into or infiltrates criminal organizations or mere felonious associations or gangs with a view toward identifying their participants, obtaining information or gathering evidence for the investigation.

The undercover agent may have a fictitious identity and the National Directorate of the Civil Registry and Identification shall provide all the necessary means for such identity to materialize in due time and manner.

A data supplying agent is a law enforcement officer who poses as a buyer or purchaser, for his own use or for that of third parties, of narcotic drugs or psychotropic substances for the purpose of achieving detection or seizure of drugs.

An informant is a person who supplies information to law enforcement bodies on the preparation or commission of offenses or on those who have participated in them, or someone who participates in them in any of the capacities referred to in the preceding paragraphs, without intending to do so but with awareness of his/her acts by those law enforcement bodies.

When posing as undercover agents or data supplying agents, the undercover agent, the data supplying agent and the informant shall not be held criminally liable for those offenses they had to commit or could not prevent from happening, as long as those acts were a necessary consequence of the investigation and in proportion to its goals.



TITLE III  
**Jurisdiction of the Office of the Public Prosecutor**  
Part 1  
**The investigation**

**Article 26.-** The Office of the Public Prosecutor may carry out inquiries and proceedings abroad aimed at gathering evidence of acts regarded as offenses hereunder and it may also request assistance of the Chilean diplomatic and consular offices directly.

**Article 27.-** The Office of the Public Prosecutor may request that the Guarantee Court order the following preventive measures without prior notification to the person affected and prior to the commencement of the formal investigation:

a) measures to prevent any persons against whom there are reasonable grounds to suspect their involvement in any of the offenses hereunder from leaving the country, for a period not longer than 60 days. To that end, the Office of the Public Prosecutor shall inform of the imposition of this prohibition and its release to the Chilean Policía de Investigaciones detective force and to Carabineros, uniformed national police. In all cases, upon expiration of that term, the preventive measure shall lapse by operation of law, and the aforementioned agencies shall, on their own initiative, take notice thereof; and

b) measures against real property that are necessary to prevent the use, exploitation, benefit or application of any type of property, valuables, securities or moneys derived from the offenses under investigation. For such purposes, and without prejudice to any other powers conferred by law, the court may issue, among others, writs to prohibit the performance of certain acts or the execution of certain agreements and their annotation in registries of any kind; writs to withhold all type of deposits in banks or other financial institutions; writs to forbid transactions involving shares, bonds or debentures; and, in general, writs to forbid any and all acts or transactions aimed at applying illegal gains to activities designed to conceal or disguise their criminal origin.

With prior authorization by the Guarantee Court, given in full compliance with Article 236 of the Code of Criminal Procedure, the Office of the Public Prosecutor, without previously notifying the person affected, may also gather and seize any and all documents and records necessary to carry out an investigation of the facts, should serious indications exist that this may lead to the discovery or verification of any fact or circumstance material to such investigation. Toward that end, the provisions set forth in Articles 216 and 221 of the Code of Criminal Procedure shall apply.

**Article 28.-** Notaries, registrars and recorders shall furnish the Office of the Public Prosecutor with the reports, documents, copies of instruments and data requested of them, both expeditiously and promptly.

Furnishing any type of record or document mentioned in this Article shall be free of charge and not subject to duties or taxes of any kind.

**Article 29.-** Unjustified resistance or refusal to furnish the Office of the Public Prosecutor with the reports, documents and other evidence requested pursuant to the preceding Article shall be punished by a term of imprisonment ranging between not less than 541 days to 3 years and not longer than 3 years one day to 5 years.

Part 2

**Measures for the protection of witnesses, expert witnesses, undercover agents, data supplying agents, informants and effective cooperators**

**Article 30.-** Notwithstanding general rules on the protection of witnesses set forth in the Code of Criminal Procedure, the Office of the Public Prosecutor, at any stage of proceedings and on its own initiative or upon request by any interested party, may order that appropriate special protection measures be adopted whenever it deems that there exists serious risk or danger to the life or physical integrity of a witness, expert witness, informant, undercover agent, data supplying agent, and, in general, any person who has effectively cooperated in the proceedings, pursuant to Article 22. These measures may also include their spouses, ascendants, descendants, siblings or any other close relationships.

In order to protect the identity, address, profession and workplace of those persons involved in the proceedings, the prosecutor may adopt any of the following measures:

a) expunge their name, surname, profession or occupation, address, workplace or any other identifying information from the records of proceedings. To that end, a code word or any other mechanism may be used;

b) establish their legal domicile at the courthouse or prosecutor's office so that the intervening body forwards any notices or subpoenas to them in strict secrecy; and

c) order that any proceedings where the protected witness or expert witness has to appear be held at a site, other than the prosecutor's office, whose location shall not be included in the relevant record.

**Article 31.-** Once an appropriate measure for the protection of a person's identity has been taken pursuant to the preceding Article, and without hearing the interested parties, the court shall forbid, in any manner whatsoever, disclosure of the identity of protected witnesses or expert witnesses or of any information that may lead to their identification or that their image be captured by cameras or any other means.

Any person who discloses information in violation of any of these provisions shall be punished by a term of imprisonment ranging between not less than 541 days to 3 years and not longer than 3 years one day to 5 years. If such information were disseminated through the mass media an additional fine ranging from 10 to 50 monthly tax units shall be imposed on the corresponding director.

**Article 32.-** Statements by effective cooperators, undercover agents, data supplying agents, informants and expert witnesses or testimony by witnesses may be taken in advance, pursuant to Article 191 of the Code of Criminal Procedure, where it is deemed necessary to provide for their security and welfare. If this were the case, the Guarantee Court may order that any of the foregoing give testimony by any proper means that will impede their physical identification. Protective methods akin to the foregoing may be ordered by the criminal Oral Trial Court, where appropriate.

In the event statements or testimony were to be provided in accordance with the preceding paragraph, the court shall verify in advance the identity of the witness or expert witness and, especially, the record containing his/her name, surname, age, place of birth, marital status, profession or occupation, industry or job and place of abode or domicile. Upon stating such verification in the record, the court may order that any reference regarding the identity of such witness or expert witness be excluded from arguments if his/her security may be endangered.

In no event may the testimony provided by protected witnesses or expert witnesses be taken and included in the case file without affording the defendant the right to cross examine him/her. Nevertheless, the protective methods set forth in the preceding paragraphs must be observed.

If during the investigation a prosecutor orders the protection of the identity of witnesses, the Trial Court shall keep such protection, without prejudice to any other rights conferred on other persons in the process.

**Article 33.-** While the trial is in progress or even after it has concluded, the prosecutor or Trial Court, on its own initiative or upon request by an interested party, may order that any person be put under police protection if there is compelling need to do so, pursuant to Article 308 of the Code of Criminal Procedure.

**Article 34.-** The protective measures previously described may be accompanied with other supplementary measures, if necessary, such as the provision of sufficient funds to ease the person's reinsertion into society or any other measure that may be deemed convenient in the light of circumstances.

**Article 35.-** The court may authorize any of these persons to change their identity after the trial has concluded in case it proves necessary for their security.

The National Directorate of the Civil Registry and Identification shall take all the necessary steps to ensure the confidential nature of these measures, pursuant to regulations issued to that effect.

All judicial and administrative proceedings resulting from such measures shall be confidential. Any civil servant who violates said confidentiality shall be punished by a term of imprisonment ranging between not less than 541 days to 3 years and not longer than 3 years one day to 5 years.

Any persons authorized to use a new identity may do so in the future only. Malicious use of their original identity shall be punished by a term of imprisonment ranging between 61 to 540 days.

**Article 36.-** If, when investigating offenses under this law, the Office of the Public Prosecutor believes that the life or security of undercover agents, data supplying agents, informants, witnesses, expert witnesses and, in general, any person who has effectively cooperated in the proceedings is in jeopardy, it may order that certain proceedings, records or documents be confidential in respect of one or more persons in the case.

The provisions set forth in Article 182 of the Code of Criminal Procedure shall be applied but the Office of the Public Prosecutor may impose secrecy provisions until investigations are concluded. In addition, it shall take all the necessary steps to ensure that lifting such secrecy provisions will not pose a threat to the security of the persons referred to in the preceding paragraph.

**Article 37.-** Violations of secrecy provisions concerning an investigation or the identity of the persons referred to in the preceding Articles shall be punished by a term of imprisonment ranging between not less than 541 days to 3 years and not longer than 3 years one day to 5 years.

### Part 3

#### **Measures to ensure the best outcome of investigations**

**Article 38.-** Notwithstanding the provisions in Article 36, any investigation of offenses hereunder shall be kept secret from third parties to the case and from third parties under preliminary investigation by the Office of the Public Prosecutor. As regards the accused and any other persons in the case, the investigation shall be kept secret whenever said Office so orders, for a term not longer than 120 days, which, upon authorization by the Guarantee Court, may be extended for consecutive periods of 60 days at most.

The provisions set forth in Article 186 of the Code of Criminal Procedure shall not apply to these investigations when secrecy provisions have been imposed pursuant to the terms of the preceding paragraph.

All the persons who, in any manner whatsoever, disclose or disseminate information concerning a secret investigation, or even the fact that such an investigation is being conducted, shall be imprisoned for a term ranging between not less than 541 days to 3 years and not longer than 3 years one day to 5 years.

**Article 39.-** In the investigation of offenses hereunder, the Guarantee Court may extend by up to 5 days the period set forth in Article 132 of the Code of Criminal Procedure upon request by the prosecutor to ensure the successful outcome of proceedings. The court shall render an immediate decision on such petition, which may be presented and decided upon pursuant to Article 9 of the Code of Criminal Procedure.

**Article 40.-** Upon request by the Office of the Public Prosecutor and on the counsel of the Executive Secretariat of the National Drug Control Council, the Guarantee Court may allocate any instruments, objects of any kind and proceeds seized from any offenses hereunder and referred to in Articles 187 and 188 of the Code of Criminal Procedure to a state institution or, subject to a surety bond, to a non-profit private institution whose purpose is drug abuse prevention, treatment and rehabilitation or controlling illicit drug trafficking. Such property shall be applied to the achievement of the goals of the receiving institution, which in turn shall prove that it has sufficient funds to bear maintenance costs.

The seizure of weapons shall be governed by Law 17798 on Weapons Control. Moneys shall be deposited with the Banco del Estado de Chile Bank, into interest-bearing accounts or indexed securities.

Upon request by the Office of the Public Prosecutor, the Guarantee Court may appoint a provisional administrator if the seizure involves commercial or industrial establishments, sown or planted fields or standing crops in general. Said administrator shall present such Office with at least a quarterly report on his/her management of the foregoing. Seizure of real property includes rents, issues and profits.

If the Guarantee Court, upon request by the Office of the Public Prosecutor, deems it convenient to dispose of any of the items of property mentioned in this Article, he/she shall state the grounds for such decision. The court shall dispose of any items subject to corrosion or of rapid decay or which require high or onerous maintenance. Such disposal shall be effected by the General Directorate of Pledge-backed Loans at public auction, unless said court orders their direct sale, also upon request by the Office of the Public Prosecutor.

In the latter case, and provided that the judgment does not order the confiscation of the items so disposed of, the proceeds of the sale, including adjustments and interest, shall be paid to the person involved. This procedure also applies to the moneys referred to in paragraph 2.

The Office of the Public Prosecutor shall present the Ministry of the Interior with a quarterly report on the moneys, valuables and property seized pursuant to this law.

**Article 41.-** Notwithstanding the provisions in Article 23, the substances and plants of any species referred to in Articles 1, 2, 5 and 8 and, where applicable, the raw materials used to produce them that are seized in conformity with this law, shall be handed in to the corresponding Health Service within the following 24 hours.

However, should special circumstances make it advisable, the Guarantee Court, prior petition by the Office of the Public Prosecutor, may extend this period up to 48 hours, at the request of the officials who seized such substances or raw materials.

The corresponding Health Service shall destroy, within a period of 15 days, narcotic drugs or psychotropic substances and their raw materials as well as substances containing aromatic hydrocarbons after keeping an amount technically sufficient to run the tests referred to in Article 43, provided that the lawful ownership or simple possession of such substances is not disputed by third parties.

**Article 42.-** Officials accountable for any delay in the fulfillment of the duties prescribed in the preceding Article shall be punished by a fine amounting to 5 percent of their taxable monthly remuneration for each day of delay, payable to the Treasury. Nevertheless, such fine shall not be in excess of their total remuneration.

**Article 43.-** At the earliest opportunity, the Health Service shall provide the Office of the Public Prosecutor with a chemical analysis protocol identifying the substance and stating its approximate weight or quantity, nature, content, composition and purity as well as with a report on its toxic components and psychoactive compounds, the effects it exerts and its danger to public health.

The Health Service shall preserve a certain quantity of such substance in case further analyses thereof are requested, pursuant to Article 188, subarticle 3 and Article 320 of the Code of Criminal Procedure.

This sample shall be kept for a period not longer than two years, after which time it shall be destroyed. All administrative procedures connected to such destruction shall be recorded and a copy of that entry shall be forwarded to the Office of the Public Prosecutor within five days of being made.

Essential chemical substances and precursors shall be disposed of in the manner set out in paragraph 4 of Article 40 after the analysis referred to in paragraph 1 herein has been performed.

**Article 44.-** The Guarantee Court, upon request by the Office of the Public Prosecutor, shall order the incineration or destruction of seized narcotic drugs or psychotropic substances, plants or raw materials, with the exception of precursors and essential chemical substances, in the place where they were found on account of their quantity, location or other circumstances, difficulty to transport or store, in full compliance with all the other provisions set forth in Articles 40 to 43.

**Article 45.-** General rules notwithstanding, the following items in particular shall be subject to confiscation: real estate, movable property such as motorized land vehicles, vessels and aircraft, money, commercial paper and securities, any instrument used or intended to be used in the commission of any of the offenses hereunder; any proceeds derived or profits made from them, regardless of their legal nature or of any changes they may have undergone, as well as all property that third parties provided or acquired with full knowledge of their intended purpose or origin.

The same penalty shall be applied in respect of the substances mentioned in Article 2, paragraph 1, and of raw materials, elements, materials, equipment and instruments used or intended to be used, in any manner, to commit any of the offenses hereunder.

**Article 46.-** The General Directorate of Pledge-backed Loans shall dispose of all property confiscated pursuant to this Law at public auction and if such property were worthless, it may order its destruction. The proceeds from the disposal of confiscated property, securities or moneys shall be paid into a special fund of the Ministry of the Interior to be used in programs for the prevention of drug abuse and rehabilitation of drug addicts. Regulations will be issued to determine the manner of distribution of such funds as well as effective mechanisms to ensure transparency in their transfer.

Money collected from fines imposed hereunder and proceeds from auctions of the property referred to in Article 470 of the Code of Criminal Procedure shall also be allocated to the programs above-mentioned. Firearms and other elements mentioned in Law 17798 on Weapons Control shall be excluded from the scope of this Article.

The court shall inform the Executive Secretariat of the National Drug Control Council on the property it has confiscated and on the fines it has imposed pursuant to this Law, within a period of 15 working days following the date when the judgment so ordering becomes final. The general rules prescribed in Part 2, Title VIII, Book IV, of the Code of Criminal Procedure shall apply to any matters not provided for by this Law.

The fund referred to herein shall be the successor fund to that one set forth in Article 28 of Law 19366.

#### Part 4

### **International Cooperation**

**Article 47.-** The Office of the Public Prosecutor may, directly and not subject to the provisions set forth in Article 76, paragraphs 1 and 2 of the Code of Civil Procedure, request and provide international cooperation aimed at the successful outcome of investigations concerning offenses in violation of this law, pursuant to international treaties and conventions. It may provide specific information, even when such information is governed by the provisions in paragraph 3 of Article 182 of the Code of Criminal Procedure.

Likewise, upon request of a foreign agency, the Office of the Public Prosecutor may provide information on transactions subject to secrecy or confidentiality to which it had access on account of applicable national legislation, so that it is used in the investigation of offenses in violation of this Law which may have taken place within or without Chile. In order to so proceed, the Office of the Public Prosecutor shall first make sure that such information will not be applied to other purposes and that it will be kept confidential.

Particulars, documents and other means of evidence obtained in conformity with this Article and with the provisions set forth in international treaties and conventions shall be deemed produced pursuant to law, regardless of whether they are later admitted at trial or the probative value the court gives them.

**Article 48.-** Extradition, both active and passive, shall be granted for all offenses hereunder, even in the absence of a reciprocity agreement or extradition treaty.

**Article 49.-** Pursuant to extradition treaties in force or reciprocity agreements, the Minister of Justice may order that foreigners convicted of any of the offenses hereunder serve their corporal penalties in the country of which they are nationals.

#### TITLE IV

### **Infractions**

#### Part 1

### **Common Infractions**

**Article 50.-** Persons taking any of the narcotic drugs or psychotropic substances mentioned in Article 1 in public places or places open to the public, such as streets, paths, parks, theatres, cinemas,

hotels, cafes, restaurants, bars, sports centers, places for dancing or listening to music, educational institutions or training academies, shall be subject to any of the following penalties:

- a) a fine ranging from 1 to 10 monthly tax units;
- b) compulsory attendance at prevention programs, for up to 60 days, or at treatment or rehabilitation programs, as the case may be, for a period not exceeding 80 days in institutions duly authorized by the competent Health Service. To that end, the Ministry of Health or the Ministry of the Interior shall allocate the necessary funds.
- c) participation in activities for the benefit of the community, with the violator's consent and upon proposal of the corresponding municipal social department, for not longer than 30 hours, or in training courses for a period of hours long enough to acquire the technical or artistic skills subject matter of the course. To serve this purpose, every year each municipality shall inform the relevant Guarantee Court(s) of the available community benefit programs. The court shall indicate the type of activity, the venue and the entity or authority in charge of supervision thereof. Compliance with this measure shall, in no way, affect the violator's work or school routine.

An additional penalty, where applicable, of suspension of license to drive motor vehicles for up to 6 months shall be applied. In the event of relapse, such suspension shall last 1 year and, upon further relapse, suspension may be extended for up to 2 years. The court shall not suspend this measure, not even by making use of the power conferred by Article 398 of the Code of Criminal Procedure.

The same penalties shall apply to any persons possessing or carrying the above-mentioned drugs in such places for their exclusive personal use or consumption in the near future.

Likewise, said penalties shall apply to any persons who consume such drugs in private places if they have assembled for that purpose.

Use, consumption, transport or possession of drugs intended for medical treatment shall not be punished.

## Part 2

### Special Infractions

**Article 51.-** Should the offense described in the preceding Article be committed in detention, military or police facilities by any person not connected thereto or in educational or health institutions by teachers or employees, the maximum monetary penalty shall be applied.

## Part 3

### Imposition of penalties

**Article 52.-** Should the person convicted fail to pay the fine imposed he/she shall, by way of substitution, be sentenced to a term of imprisonment of up to 6 months, one day imprisonment for every half monthly tax unit.

Notwithstanding the foregoing, only in certain specific cases may the Court exempt the person convicted from payment of fine or else impose a fine lower than the minimum statutory amount hereunder, providing the court expressly states the grounds for such ruling.

**Article 53.-** The provisions under this Title shall also apply to minors under the age of 18, who shall be subject to the jurisdiction of the pertaining juvenile court. Regardless of the representations by minors over the age of 16 of having acted knowingly or otherwise, the Court may, when deemed to be

in the best interest of the minor's rehabilitation, impose any of the measures under Law 16618 or any of the following:

a) compulsory attendance at rehabilitation programs for up to 60 days, or at treatment or rehabilitation programs, as the case may be, for a period not exceeding 180 days at institutions duly authorized by the competent Health Service in the city where the relevant Court of Appeals is seated. Compliance with this measure, where possible, shall not affect the violator's school or work routine.

b) participation by the minor in specific activities for the benefit of the community, with the minor's express consent, for up to 30 hours or participation in training courses for a period of hours long enough to acquire the technical or artistic skills subject matter of the course. The juvenile court shall indicate the type of activity, the venue and the entity or authority in charge of supervision thereof. Compliance with this measure shall, in no way, affect the violator's work or school routine.

**Article 54.-** The guarantee judge shall be made aware of infractions under Articles 50 and 51, pursuant to the general provisions in Title I, Book IV of the Code of Criminal Procedure.

Police officers shall serve violators under this Title with a notice to appear before the relevant Prosecutor's Office, office with which the corresponding report shall be filed.

Where the above-mentioned persons show patent lack of control over their acts and put their physical integrity or that of third parties at risk, the police officers may take them to the nearest hospital so that they receive the necessary medical attention.

The court shall determine the penalty to be applied in light of the violator's personal background and his chances of rehabilitation. For that purpose, the judge shall compel the violator to undergo medical examination by a physician duly authorized by the Health Service in order to determine whether the individual is addicted to narcotic drugs or psychotropic substances, the level of addiction and the treatment the individual should undergo. In any case, such examination may be ordered as from the commencement of the relevant proceedings.

Upon resistance or refusal by the violator to submit to said medical examination, the court shall order the relevant measures in order to enforce compliance.

Following a report by the Regional Ministerial Secretariat of Health, the Regional Ministerial Secretariat of Justice shall present to the Court of Appeals the relevant list of physicians authorized to conduct the examinations and submit the reports described herein.

The prosecutor may, prior consent by the violator, request from the Guarantee Court a conditional stay of proceedings by virtue of Articles 237 *et seq.* of the Code of Criminal Procedure. In such event, the Court may impose as a condition the mandatory attendance at prevention, treatment or rehabilitation programs for such time as may be deemed necessary pursuant to the report mentioned in paragraph 4 of this Article, at institutions duly authorized by the competent Health Service.

Where the accused holds a public office whose functions, according to law, cannot be exercised by a person addicted to narcotic drugs or psychotropic substances, the Guarantee Court shall file with the corresponding agency a copy of the final judgment convicting the violator of any of these violations or of the ruling ordering the conditional stay of proceedings, as the case may be, so that the relevant measures to enforce statutory provisions may be adopted.

## TITLE V

### **Control Measures on precursors and essential chemical substances**



**Article 55.-** All natural or legal persons that produce, manufacture, prepare, import or export precursors or essential chemical substances which, pursuant to the regulations referred to in Article 58, may be used in the unlawful manufacturing of narcotic drugs or psychotropic substances shall be registered with the special registry created for that purpose by the Ministry of the Interior.

Only those persons registered with such special registry may engage in the above-mentioned operations and activities involving precursors or essential chemical substances, as defined under such regulations. Registrations shall be renewed periodically.

**Article 56.-** In order to register with the special registry, documents allowing full identification of the applicant as well as the applicant's principal place of business shall be lodged. Legal persons shall also file all relevant incorporation documents, the tax identification number and effective powers of attorney of its duly authorized legal representative(s). In order to assess whether registration is to be denied, relevant non-criminal record certificates shall also be furnished.

Registration with the special registry may only be denied to natural persons who have been charged with an offense or who have been convicted of an offense punishable hereunder or under Laws 19366 and 19913 or in respect of whom a conditional stay of proceedings, prescribed in Article 237 of the Code of Criminal Procedure, has been ordered. Regarding legal persons, registration may be denied on the same grounds in relation to their legal representatives, administrators and partners, members or associates in the event of companies other than corporations.

Likewise, registration shall be suspended if, subsequent to it, charges are filed as a result of the commission of any of the offenses mentioned hereinbefore or definitively cancelled as from the moment when the corresponding judgment of conviction becomes final.

Notice of court judgments referred to in the preceding paragraphs shall be given to the Ministry of the Interior as soon as such judgments have become final. As promptly as possible, the Ministry shall issue the relevant declaratory resolutions and give notice thereof to all interested persons.

**Article 57.-** All persons registered as per Article 55 shall keep an inventory of stocks of the substances therein, as well as a complete and updated record of their movements, which shall be readily available to be furnished with or examined by the official in charge of the registry in such manner and as often as set forth in the regulations. Furthermore, notice of all import and export transactions shall be given to such official prior to the date of shipment or delivery of export orders, which the Ministry of the Interior shall notify to the importing country.

Pursuant to the paragraph above, any exchange of information with international entities and with other States shall be subject to international treaties and conventions, or to the principle of reciprocity, and to the condition that the recipient State shall treat all information as strictly confidential.

**Article 58.-** The regulations shall set forth the list of precursors and essential chemical substances deemed that may be used in the unlawful manufacturing of narcotic drugs or psychotropic substances, which shall be updated regularly; the features of the special registry, the term for registration renewals; the manner, terms and methods for enforcing obligations under this Title; the rules relating to control and surveillance and the coordination with the National Customs Service and other public entities authorized to control the movements of the aforementioned substances.

**Article 59.-** Non-compliance with the obligation to register, to keep an inventory and an updated report on movements which shall be made readily available upon request by the relevant authority as well as failure to report import and export transactions shall result in a fine of 40,000 monthly tax units. The money collected from fines shall be allocated to the special fund referred to in Article 46 hereunder and shall be used for the purposes set forth therein.

**Article 60.-** All persons registered as per Article 55 shall give prompt notice to the competent authorities of any transactions they are a party to, whenever they have reason to believe that the precursors or essential chemical substances as defined in the regulations may be used for the unlawful manufacturing of narcotic drugs or psychotropic substances. These persons may not engage in such transactions if prior notice thereof has not been given.

## TITLE VI

### Miscellaneous provisions

**Article 61.-** Attorneys-at-law working as officials or contract employees in any capacity whatsoever in the services of the State Administration, or in territorially or functionally decentralized institutions or services may not represent or act as proxies or agents of persons charged with felonies, crimes or misdemeanor offenses or violations set forth hereunder.

Regarding proceedings relating to felonies or criminal offenses, violation of this prohibition shall be punishable administratively with the attorney's removal from office or termination of contract. As to misdemeanors, any such violation shall be considered a serious breach of official's duties, and may be punished with up to the attorney's removal from office or termination of contract.

The ban set forth in paragraph 1 shall not apply to attorneys acting for the Office of the Criminal Defender or those rendering legal aid services, nor to attorneys acting as officials of Legal Aid Offices or to individuals hired by such offices, or to graduates from schools of law working as interns in order to obtain their degree in law, only in reference to the work done in such offices.

For the purposes herein, the Guarantee Court or the Office of the Public Prosecutor, as the case may be, shall inform the Office of the National Comptroller of the identity of all attorneys who represent or act as proxies or agents of persons charged with felonies, crimes or misdemeanor offenses hereunder.

**Article 62.-** The alternative measures set forth in Law 18216 shall not apply to persons who have not been previously convicted of any felony offense or crimes set forth in this Law or in Law 19366, by virtue of a final judgment, regardless of whether the sentence has been served, except where the mitigating circumstance under Article 22 applies.

**Article 63.-** The regulations shall set forth the substances and plant species referred to in Articles 1, 2, 5 and 8; the prerequisites, obligations and other requirements that must be met so that the authorizations mentioned in Article 9 may be granted; and the rules relating to control and surveillance of such plantations.

**Article 64.-** Notwithstanding Provisional Article 1, Law 19366 is hereby repealed. All statutory or regulatory reference made thereto shall be deemed in reference to this law.

**Article 65.-** For the purposes of the provisions in Article 6, paragraph 3 of the Organic Court Code concerning the submission to the jurisdiction of Chilean courts regarding felony and criminal offenses committed outside the national territory, the provisions hereunder shall be deemed included in paragraph 14, Title IV, Book II of the Criminal Code on felony or criminal offenses against the public health.

**Article 66.-** Article 299 *bis* of the Code of Military Justice is hereby repealed.

**Article 67.-** The following phrase, “or ngnp1033 narcotic drugs or psychotropic substances” and the comma (,) that follows are hereby deleted from Article 193 of the Aeronautics Code.

**Article 68.-** The following amendments to Organic Law 18575 on the General Bases for the Administration of the State, whose revised, coordinated and systematized text was established by Decree-Law 1-19653 issued by the General Secretariat of the Presidency of 2001 are hereby introduced:

1. The following new paragraph shall be inserted in Article 40 as paragraph 2, and the current paragraph 2 is hereby re-codified as paragraph 3:

“No person shall be a Minister of the State who is dependent on illegal narcotic drugs or psychotropic substances except that such person can justify their consumption for medical treatment. In order to take office, the interested party shall submit a sworn statement for the purpose of stating lack of incompatibility with such requirement.”

2. The following new Article 55 *bis* shall be inserted:

“Article 55 *bis*.- Persons dependent on illegal narcotic drugs or psychotropic substances, unless they can justify their consumption for medical treatment, shall not hold office as Under Secretary, Head of service or Senior Director of any agency or instrumentality of the State Administration, up to the rank of Head of Division or equivalent position.

In order to take office in any of the aforementioned positions, the interested party shall submit a sworn statement for the purpose of stating lack of incompatibility with such requirement.”

3. The following new subarticles 3 and 4 are hereby inserted into Article 61:

“It is the duty of the superior authority in the hierarchy of each agency or entity of the State Administration to prevent the unlawful consumption of narcotic drugs or psychotropic substances, in accordance with the corresponding provisions.

Said regulations shall introduce a procedure to control use by any of the persons mentioned in Article 55 *bis*. Such control procedure shall be applied to all the members of a group or sector of officials, established at random, and in a prudent manner so as to preserve their dignity and privacy, in strict compliance with Law 19628 on preservation of personal data. A medical certificate, based on the relevant tests and analyses, shall be the only admissible evidence to prove addiction.”

4. The following amendments to Article 64 are hereby introduced:

a) The following new subarticle 2 is hereby inserted:

“In the event of the incompatibility referred to in Article 55 *bis*, in addition to admitting such incompatibility to his/her superior, the official shall undergo treatment or rehabilitation programs in any of the institutions duly authorized by the regulations. Should such program be completed successfully, he/she shall undergo a clinical and toxicological use control, conducted in compliance with the safeguards set forth in Article 61, subarticle 4.”

b) In subarticle 2, which is hereby re-codified as subarticle 3, the phrase “this rule” is superseded by “any of these rules” and the following sentence is added to that paragraph: “The foregoing notwithstanding the application of rules on irrecoverable health or health incompatible to perform the duties of the office held, if any, in the event of the situation referred to in subarticle 2.”

**Article 69.-** The following amendments to Constitutional Organic Law 19175 on Government and Regional Administration, whose revised text was established by Decree 291 of 1993 issued by the Ministry of the Interior, are hereby introduced:

1. The following new subarticle 2 is hereby inserted into Article 6:

“Persons dependent on illegal narcotic drugs or psychotropic substances, unless they can justify their consumption for medical treatment, shall not hold office as Regional Governor or Provincial Governor. In order to take office as any of the aforementioned, the interested party shall submit a sworn statement for the purpose of stating lack of incompatibility with such requirement.”

2. The following new subarticle 2 is hereby inserted into Article 31:

“Persons dependent on illegal narcotic drugs or psychotropic substances, unless they can justify their consumption for medical treatment, shall not hold office as Regional Councilman.”

**Article 70.-** The following new subarticle 2 is hereby inserted into Article 73 of the Constitutional Organic Law 18695 on Municipalities, whose revised, coordinated, systematized and updated text was established by Decree-Law 1-19704 of 2002, issued by the Ministry of the Interior:

“Persons dependent on illegal narcotic drugs or psychotropic substances, unless they can justify their consumption for medical treatment, shall not hold office as Mayor or City Councilman.”

**Article 71.-** The following subarticle, the final one in Article 10 of Constitutional Organic Law 17997 on the Constitutional Tribunal is hereby inserted:

“Prior to taking the oath or affirmation of office, the President and Ministers shall submit a sworn statement for the purpose of stating lack of incompatibilities of any kind.”

**Article 72.-** The following subarticle, the final one in Article 2 of Constitutional Organic Law 18460 on the Election Certification Tribunal is hereby inserted:

“Prior to taking the oath or affirmation of office, the Ministers shall submit a sworn statement for the purpose of stating lack of incompatibilities of any kind.”

**Article 73.-** The following amendments to Constitutional Organic Law 19640 on the Office of the Public Prosecutor are hereby introduced:

1. Be the following Article 9 *bis* inserted:

“Article 9 *bis*: Likewise, the National Prosecutor, all Regional Prosecutors and Assistant Prosecutors, prior to taking office, shall submit a sworn statement indicating that they are not dependent on illegal narcotic drugs or psychotropic substances or, if they are, that their consumption is justified on account of medical treatment.”

2. The following paragraph 3 is hereby inserted into Article 50:

“However, removal from office shall not apply to the assistant prosecutor who violates the prohibition in Article 9 *bis*, provided that he/she admits to such consumption to his/her superior in the hierarchy and undergoes treatment and rehabilitation in any of the institutions authorized under the regulations. Should such treatment and rehabilitation program be completed successfully, he/she shall undergo a clinical and toxicological use control, conducted in compliance with the safeguards set forth in Article 66, paragraph 2. Failure to comply with the provisions herein shall be punished by removal

from office, notwithstanding the application of rules on irrecoverable health or health incompatible to perform the duties of the office held, if applicable.”

3. The following new subarticle 2 is hereby inserted into Article 66:

“Regulations shall include rules to prevent the unlawful consumption of narcotic drugs or psychotropic substances and introduce a procedure to monitor consumption by any of the persons mentioned in Article 9 *bis*. This control procedure shall apply to all the members of a group or sector of officials, at random, and in a prudent manner so as to preserve their dignity and privacy, in strict compliance with Law 19628 on preservation of personal data. A medical certificate, based upon the relevant tests and analyses, shall be the only admissible evidence to prove addiction.”

**Article 74.-** The following amendments to Constitutional Organic Law 18840 on the Central Bank of Chile are hereby introduced:

a) Be the following Article 14 *bis* inserted:

“Article 14 *bis*: Persons dependent on illegal narcotic drugs or psychotropic substances, unless they can justify their consumption for medical treatment, shall not hold office as members of the Board.

In order to take office, the interested party shall submit a sworn statement for the purpose of stating lack of incompatibility with such requirement.”

b) The following new Article 81 *bis* is hereby introduced:

“Article 81 *bis*: Persons dependent on illegal narcotic drugs or psychotropic substances, unless they can justify their consumption for medical treatment, shall not hold office as Senior Director or equivalent position. In order to take office as any of the aforementioned, the interested party shall submit a sworn statement for the purpose of stating lack of incompatibility with such requirement.

Staff Regulations shall establish rules to prevent the unlawful consumption of narcotic drugs or psychotropic substances.

These Regulations shall also introduce a procedure to monitor consumption by any of the persons mentioned in paragraph 1. Such monitoring procedure shall apply to all the members of a group or sector of officials, at random, and in a prudent manner so as to preserve their dignity and privacy, in strict compliance with Law 19628 on preservation of personal data. A medical certificate, based upon the relevant tests and analyses, shall be the only admissible evidence to prove addiction.

In the event of the incompatibility referred to in paragraph 1, the official in question shall admit to such consumption to his/her superior in the hierarchy and undergo treatment and rehabilitation in any of the institutions authorized under the regulations. Should such treatment and rehabilitation program be completed successfully, he/she shall undergo a clinical and toxicological use control, conducted in compliance with the safeguards set forth in the preceding paragraph. The foregoing notwithstanding the application of rules on irrecoverable health or health incompatible to perform the duties of the office held, if applicable.”

**Article 75.-** The following amendments to the Organic Court Code are hereby introduced:

1. The following new Article 100 is hereby inserted:

“Article 100: The Supreme Court, by means of an *en banc* ruling, shall issue rules to prevent the unlawful consumption of narcotic drugs or psychotropic substances by judicial officials.

Such *en banc* ruling shall also include a procedure to monitor consumption by the members of the primary rank. Such control procedure shall be applied to all the members of a group or sector of officials, at random, and in a prudent manner so as to preserve their dignity and privacy, in strict compliance with Law 19628 on preservation of personal data. A medical certificate, based upon the relevant tests and analyses, shall be the only admissible evidence to prove addiction.”

2. The following new Article 251 is hereby inserted:

“Article 251: Persons dependent on illegal narcotic drugs or psychotropic substances<sup>3082</sup> except that unless they can justify their consumption for medical treatment, shall not sit as judge.”

3. The following new Article 323 *ter* is hereby inserted:

“Article 323 *ter*: Likewise, members of the primary rank shall submit a sworn statement for the purpose of stating lack of incompatibility with Article 251.

In the event of supervening incompatibility, the official in question shall admit to such consumption to his/her superior in the hierarchy and undergo treatment and rehabilitation in any of the institutions authorized by the Supreme Court *en banc* ruling. Should such treatment and rehabilitation program be completed successfully, he/she shall undergo a clinical and toxicological use control, conducted in compliance with the safeguards set forth in Article 100, subarticle 2. Failure to comply with the provisions herein shall give rise to the pertaining removal proceedings, except that the Supreme Court orders his/her removal from office. The foregoing notwithstanding the application of rules on irrecoverable health or health incompatible to perform the duties of the office held, if applicable.”

**Article 76.-** The higher fiscal cost incurred in applying this law shall be financed against the Ministry of the Interior budget.

### **Provisional Articles**

**Article 1.-** This law shall only be applied to offenses committed after this law becomes effective. Therefore, Law 19366, Article 299 *bis* of the Code of Military Justice and Article 193 of the Aeronautics Code shall remain in full force for the purposes of punishing all offenses set forth therein that were committed before the publication of this law, without prejudice to the provisions on sentencing, in which case Article 18 of the Penal Code shall be applied. Likewise, the preceding provisions shall govern the processing of cases and the handling and weighing of evidence.

In the event of cases which, once this Law has taken effect, continue to be processed pursuant to criminal procedure laws existing prior to the Code of Criminal Procedure, the authorization mentioned in Article 9 shall not be granted to those individuals charged with an offense and shall be suspended in respect of those individuals who have been committed to trial. Furthermore, in the latter case, the special registration provided for in Title V hereunder shall be denied, or suspended if such registration had already taken place.

**Article 2.-** The current regulations shall remain in full force and effect until the regulations referred to in Article 63 are issued.

**Article 3.-** In the Metropolitan Region of Santiago, until such a time as the Criminal Procedures Reform takes effect and the Code of Criminal Procedure, pursuant to Law 19696, becomes effective, the following rules shall be applied:

a) Law 19366 shall remain in force in respect of procedural provisions of an organic and criminal nature thereunder, except for those set forth in Article 31, subarticle 3, which is hereby amended to read as follows:

“The measures shall not be ordered for a term longer than 60 days, which may be extended for periods of like duration.”

b) The State Defense Council shall retain its current powers and the structure described in Law 19366 for the exercise thereof.

c) The court judgment granting pre-trial release to those accused of any of the offenses described in Articles 1, 2, 3 and 16 hereunder shall always be referred to a higher court for an advisory opinion, who shall decide on the issue with its regular members only.

d) Criminal courts in the first instance shall exercise the powers conferred by Articles 23, 30 and 31 hereunder, concerning controlled deliveries or deliveries under surveillance and measures for the protection of witnesses, expert witnesses, undercover agents, data supplying agents, informants and effective cooperators.

e) When the Criminal Procedures Reform takes effect in the aforementioned region, the amendments introduced by Article 4 of Law 19806 into Law 19366 shall cease to be effective, since effectiveness depended on that fact, pursuant to subarticle 2 of the provisional Article of Law 19806.

**Article 4.-** The Ministry of National Property is hereby empowered to proceed, in consultation with the Ministry of the Interior and within a period of 120 days following publication hereof, to dispose at public auction of all seized items that were made available to it by virtue of Law 19366. The proceeds thereof shall be deposited into the special fund of the Ministry of the Interior, referred to in Article 46 hereunder.

In the event of moneys, commercial paper and securities, the Ministry of the Interior shall deposit the corresponding funds with the special fund referred to in the preceding paragraph.

The provisions of Article 82, No. 1 of the Constitution having been complied with, I hereby grant my approval. Therefore, be it enacted and promulgated and thus become effective as a law of the Republic.

Santiago, February 2, 2005 – RICARDO LAGOS ESCOBAR, President of the Republic; Jorge Correa Sutil, Minister of the Interior (Acting); Jaime Campos Quiroga, Minister of Justice (Acting).

Transcribed for your information.- Carlos Varas Gonzalez, Surrogate Undersecretary of the Interior.

### **Constitutional Tribunal**

#### **Bill superseding Law 19366, which punishes the illicit trafficking of narcotic drugs and psychotropic substances**

The undersigned, Secretary of the Constitutional Tribunal, certifies that the Honorable House of Representatives sent the bill set out in the heading, approved by the National Congress, for confrontation with the Constitution of the following Articles: permanent Articles 26, 27, 54, 68, 69, 70, 71, 72, 73, 74, 75 and 76 and provisional Article 3 and by means of ruling dated January 25, 2005, issued in Case File No. 433, held:

That permanent Articles 26, 27 - except for letter a) of its second paragraph-, 54, 68, 69, 70, 72, 73, 74 - without prejudice to the remarks in the second declaration-, 75 - without prejudice to the remarks in the third declaration-, and 76 and provisional Article 3 of the bill mentioned are constitutional.

That Article 74, No. 2 and No. 3, of the bill previously mentioned is also constitutional, as explained in narrative recital 49 of this ruling.

That Article 75, letter b) of the bill mentioned is also constitutional, as explained in narrative recital 54 of this ruling.

That letter a) of the second paragraph of Article 27 of the bill mentioned is not consistent with the Constitution and must be deleted from such bill.

That Article 71 of the aforementioned bill is not consistent with the Constitution and must be deleted from such bill.

That Article 63, second paragraph, of the aforementioned bill is not consistent with the Constitution either and must be deleted from such bill.

Santiago, January 26, 2005.