



# 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.*

SPAIN

Communicated by the Government of Spain

### 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 [...].

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OFFICE OF THE HEAD OF STATE

CONSTITUTIONAL LAW 1/1988, of 24 March, amending the Criminal Code  
with respect to Illicit Trafficking in Drugs

JUAN CARLOS I  
KING OF SPAIN

To all those who may see or hear these presents,

Know: that the Cortes Generales (Parliament) have passed and We hereby give our assent to the following Constitutional Law:

PREAMBLE

As stated in the Explanatory Memorandum to Constitutional Law 8/1983, of 25 June, on Urgent Revision of Part of the Criminal Code, the amendments then introduced into article 344 of that body of law were restricted in scope, since they arose "solely from the wish to correct the most serious defects" in the only instrument in our legislation dealing with the problems of illicit trafficking in drugs. It should also be remembered that this legislative reform was part of a far broader and more ambitious framework, namely the far-reaching revision, modernization and adaptation to the Constitution of our old Criminal Code effected by the said Law.

It is, however, now necessary to modify a penal provision which has, for various reasons, become inadequate in the face of the diverse and multifarious forms of criminal conduct surrounding the complex world of drugs.

This new revision of article 344 of the Criminal Code is not an isolated instrument standing alone in the fight against drug addiction. In fulfilment of a motion passed by the Congreso de los Diputados (Lower House of Parliament), in July 1985 the Government adopted the National Drugs Plan. This now constitutes a political project based on recognition of the varied nature of the problems arising from this phenomenon and, therefore, of the need to use all possible resources to overcome the problems entailed. The Plan thus provides for co-ordinated activities by different social instances, both public and private, not only to prevent and treat drug addiction, but also with a view to more effective control of illicit trafficking in drugs.

This Constitutional Law is intended to attain that objective: firstly, so as to enhance the general preventive function inherent in penal provisions, it calls for a significant increase in custodial sentences used as a deterrent against unlawful conduct. This increase in penal severity is, however, associated with the elementary principle of justice according to which different activities should be treated in different ways. The new penal provisions affecting these activities are thus intended to have a pyramidal structure: penalties for actions that may be considered as simple trafficking are at the base, with at the top those imposed for the actions which, undoubtedly, can do the greatest harm to what the penal legislation is intended to protect: the actions of persons operating drug-trafficking organizations.

This structure is completed by an intermediate stage, covering activities considered to be aggravated offences because they involve some particularly reprehensible aspect. Over and above those already included in article 344, paragraph 2, these include three new categories: where the offender is an official

or in a position of authority; where the psychoactive substances have been adulterated, increasing their harmful effects on health; and, finally, where they are supplied to persons undergoing detoxication.

One of the major new aspects introduced by this Constitutional Law is, undoubtedly, the inclusion of specific legal and penal provisions on a form of behaviour with characteristics of its own within the realm of criminology: drug addicts who commit an offence so as to meet the needs of their addiction. On the basis of the belief that in some of these cases the specifically preventive orientation of criminal sanctions should be given priority, the court authorities are empowered to impose only a suspended sentence on the offender, providing that he has been detoxicated or is under detoxication treatment. This alternative is regulated in such a way as, on the one hand, to safeguard the fulfilment of the general preventive purposes which are the essence of all penal provisions and, on the other hand, to prevent any abuse of this legal provision by its application to cases other than those intended by the legislator.

There can be no doubt that the international community has become aware that transactions involving large sums of money lie behind offences committed in the world of drugs. Steps to reduce and eliminate the profits made from these criminal activities should yield the greatest successes in the difficult struggle against drug trafficking.

Similarly, the conviction reigns in the community of nations that no effective progress in this field can be made without close and flexible international co-operation. The organizational structure of the criminal associations involved and the transnational nature of their activities, indeed, render such co-operation indispensable.

An effort must be made in national legislations, however, to identify ways of bringing the struggle against drugs closer to the undoubted magnitude of the financial dealings involved. In this regard, this Constitutional Law sets out three mechanisms aimed at intercepting the profits arising from this criminal traffic. Provision is made, firstly, for the imposition of very high fines. The terms of article 63 of the aforementioned text are also partially amended, so that when establishing the amount of fines, the courts shall take preferential account of the profits obtained, or which could have been obtained, as a result of the criminal behaviour in question.

Secondly, the concept of confiscation is extended, with the stipulation that assets of whatsoever kind used in, or arising from, criminal activities may be confiscated. In order to ensure the effectiveness of this measure, furthermore, the court authorities are empowered to seize such assets at any stage of the proceedings.

Thirdly, with a view to allowing criminal law to intervene in all stages of economic activity surrounding drug trafficking, a new provision is added to book II, title XIII, chapter VII of the Code, making possible the indictment of profiting from the results of this traffic; in other words, this provision is intended to render criminal the activities which have become known as "laundering" money from illicit sources.

It should, finally, be placed on record that the struggle against the complex world of drugs cannot be limited to efforts towards the suppression of activities involving illicit traffic and financial profit. Drug addiction prevention and treatment programmes also need to be developed by the various Public

Administrations, each within its own field of competence. The promotion of such programmes requires considerable planning efforts and financial expenditure, which must be reflected in the relevant budgets.

#### Article 1

Article 344 of the Criminal Code is revised as follows:

"Any person who grows, processes, traffics in, or otherwise promotes, encourages or facilitates the illicit consumption of toxic drugs, narcotics or psychotropic substances, or possesses them for such purposes, shall be sentenced to a term of imprisonment between the mid degree of prisión menor and the minimum degree of prisión mayor <sup>1/</sup> and a fine of between 1 million and 100 million pesetas if the substances or products involved cause serious damage to health; to a term of imprisonment between the maximum degree of arresto mayor and the mid degree of prisión menor <sup>1/</sup> and a fine of between 500,000 and 50 million pesetas in other cases."

#### Article 2

The following articles are added to the Criminal Code:

"Article 344 bis (a) Sentences more severe than those indicated respectively in the previous article shall be imposed:

1. When the toxic drugs, narcotics or psychotropic substances are supplied to persons under 18 years of age or to mentally handicapped persons, or are introduced into or circulated in teaching institutions, military institutions, establishments or units, or prisons.
2. When the activities described in article 344 are carried out, in establishments open to the public, by those in charge of them or employed therein.
3. Whenever the toxic drugs, narcotics or psychotropic substances involved in the activities referred to in the previous article are flagrantly large in quantity.
4. When the aforementioned substances or products are supplied to persons undergoing detoxication or rehabilitation treatment.
5. When these substances or products are adulterated, manipulated or mixed one with another or with other substances in such a way that the potential harm to health is increased.
6. If the offender belongs to an organization, even of a temporary nature, engaged in the circulation of such substances or products, even if such circulation is occasional.

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1/ Editorial note:

Arresto menor: imprisonment for 1 to 30 days

Arresto mayor: imprisonment for 1 to 6 months

Prisión menor: imprisonment for 6 months to 6 years

Prisión mayor: imprisonment for more than 6 years.

7. If the offender occupies a position of authority or is a medical professional, public official, social worker, teacher or educator."

"Article 344 bis (b) The Courts shall impose sentences one grade higher than those indicated in the previous article when the offences defined therein are extremely serious, and when adjudicating on the cases of the managers, administrators or employees of the organizations specified in sub-section 6. In the latter case, as also when the circumstances specified in sub-section 2 of the previous article obtain, the court authorities may furthermore order one of the following measures:

(a) Liquidation of the organization or permanent closure of its premises or of the establishments open to the public.

(b) Suspension of the organization's activities or closure of the establishments open to the public for a period of between six months and three years.

(c) Prohibition of the organization from carrying out the activities or commercial or business transactions used to facilitate or conceal the offence, for a period of between two months and two years."

"Article 344 bis (c) If the offences referred to in articles 344 and 344 bis (a) are committed by a medical professional, public official, social worker, teacher or educator in the exercise of his employment, profession or trade, he shall be punished, over and above the corresponding sentence, by special disqualification. A sentence of absolute disqualification shall be imposed in cases where these activities are carried out by an entity in a position of authority or an agent thereof.

'Medical professionals' shall for these purposes be understood to mean physicians, psychologists, paramedical staff, veterinarians, pharmacists and their employees."

"Article 344 bis (d) When establishing the amount of fines imposed pursuant to the articles above, the Court shall take preferential account of the products' ultimate financial value or, where applicable, of the profits obtained, or which could have been obtained, by the offender."

"Article 344 bis (e) Vehicles, ships, aircraft and any assets or property of whatsoever nature which have been used in the commission of any of the offences defined in articles 344-344 bis (b) or which originate from such offences shall, unless they belong to a third party not responsible for the offence, be liable to confiscation, as shall also the profits arising from such offences, irrespective of any processing or conversion to which they may have been subjected.

In order to ensure the effectiveness of confiscation measures, the assets, property and instruments referred to in the previous paragraph may be seized and impounded by the court authority at any stage of the proceedings."

"Article 344 bis (f) Sentences imposed by foreign Courts for offences of the same nature as those defined in articles 344-344 bis (c) shall have the same effect in Spanish Courts as sentences passed by other national Courts, pursuant to the provisions of article 10, sub-section 15 of this Code."

### Article 3

A new article, numbered 93 bis, is hereby added to the Criminal Code, drafted as follows:

"Even where the conditions established in the previous article are not met, the Judge or Court may grant a suspended sentence (remisión condicional) to offenders sentenced to terms of deprivation of liberty not exceeding two years who committed the offence as a result of their dependence on toxic drugs, narcotics or psychotropic substances, subject to the following conditions:

1. That the sentence states that the individual has been proved to be a drug addict and that the offence was committed as a result of this situation.
2. That a duly accredited or authorized establishment or department provides adequate certification that the offender has been detoxicated or is undergoing detoxication treatment at the time when the suspended sentence is allowed.
3. That the individual is not a recidivist, and has not previously benefited from a suspended sentence.

The Court authority shall require the offender or the establishments or departments taking part in his detoxication treatment to provide adequate proof that the treatment has commenced and has continued, together with data permitting the monitoring of the progress of treatment and any changes required.

The suspension of execution of the sentence shall be dependent upon the offender committing no further offence over the period of time stipulated and upon his not breaking off the treatment.

Once the above conditions have been fulfilled, the period of suspension concluded, and the detoxication of the offender demonstrated, the Judge or Court shall remit the sentence. If not, the judicial authority shall order its execution."

### Article 4

A new article, numbered 546 bis (f), is hereby added to the Criminal Code (the present article 546 bis (f) becomes article 546 bis (g)), drafted as follows:

"Any person who, knowing that any of the offences defined in articles 344 to 344 bis (b) of this Code has been committed, receives, acquires or in any other ways benefits from, or enables a third party to benefit from, the profits of the said offence, shall be sentenced to prisión menor 1/ and a fine of between 1 million and 100 million pesetas.

Any person who commits this offence habitually or belongs to an organization engaged in the activities specified in the said article shall receive the higher degrees of sentence.

In cases described in the previous paragraph, or where the Court deems the infringements of this article to be particularly serious, the offender shall, over and above the relevant sentence, be disqualified from exercising his profession or business and the establishment shall be closed for a period of between six months and six years, or permanently.

The provisions of article 344 bis (e) of this Code shall be applicable to the cases referred to under the present heading."

Article 5

The present article 344 bis of the Criminal Code shall become article 344 ter.

Now therefore,

We order all Spanish persons and authorities to observe and ensure observance of this Constitutional Law.

La Zarzuela Palace, Madrid, 24 March 1988.

JUAN CARLOS R.

The Prime Minister (Presidente del Gobierno)  
FELIPE GONZALEZ MARQUEZ

E/NL.1988/4

OFFICE OF THE HEAD OF STATE

LAW 5/1988, of 24 March, establishing the Special Office  
of the Public Prosecutor for the Prevention and  
Repression of Illicit Trafficking in Drugs

JUAN CARLOS I  
KING OF SPAIN

To all those who may see or hear these presents,

Know: that the Cortes Generales (Parliament) have passed and We hereby give our assent to the following Law:

PREAMBLE

On 24 July 1985 the Government adopted the National Drugs Plan, in fulfilment of a motion passed by the Congreso de los Diputados (Lower House of Parliament) at its session of 27 October 1984. The Plan envisages a multidisciplinary approach to the complex phenomenon of drugs, establishing a coherent policy to co-ordinate the various bodies responsible in this field. To this end, one of the priority measures under the Plan is the establishment of the Special Office of the Public Prosecutor for the Suppression of Illicit Trafficking in Drugs (Fiscalía Especial para la Represión del Tráfico Ilegal de Drogas). To render this measure truly effective, it is necessary to define the Special Office's functions and endow it with the human resources required for their application.

That is the purpose of this Law: it creates a Special Office of the Public Prosecutor for the Suppression of Illicit Trafficking in Drugs, under the supervision of the Director of Public Prosecutions (Fiscal General del Estado), within the Public Prosecution Department (Ministerio Fiscal) as a whole. This Special Office shall be made up of a Court Prosecutor (Fiscal de Sala) as its

Director, an Assistant Prosecutor (Teniente Fiscal) and the necessary staff Prosecutors (Fiscales). Its headquarters shall be in Madrid; its operations shall extend throughout the national territory. Since unity of action is a fundamental principle for the operations of the Public Prosecution Department, it follows that this unity is indispensable in the field of the suppression of illicit trafficking in drugs, as a result of both the extent of the phenomenon and its characteristic criminological features.

Various amendments are also introduced into the text of the Statute of the Public Prosecution Department currently in force in order to bring this institution's organization into line with the judicial structure established by the Constitutional Law on the Judiciary of 1 July 1985.

#### Article 1

Article 12.1 of Law 50/1981, of 30 December, regulating the Constitutional Statute (Estatuto Orgánico) of the Public Prosecution Department, shall be drafted as follows:

"The following are organs of the Public Prosecution Department:

- The Director of Public Prosecutions (Fiscal General del Estado);
- The Public Prosecution Council (Consejo Fiscal);
- The Board of Court Prosecutors (Junta de Fiscales de Sala);
- The Office of the Public Prosecutor of the Supreme Court (Fiscalía del Tribunal Supremo);
- The Office of the Public Prosecutor before the Constitutional Court (Fiscalía ante el Tribunal Constitucional);
- The Office of the Public Prosecutor of the National High Court (Fiscalía de la Audiencia Nacional);
- The Special Office of the Public Prosecutor for the Prevention and Suppression of Illicit Trafficking in Drugs (Fiscalía Especial para la Prevención y Represión del Tráfico Ilegal de Drogas);
- The Offices of the Public Prosecutor of the High Courts of Justice (Fiscalía de los Tribunales Superiores de Justicia);
- The Offices of the Public Prosecutor of the Provincial High Courts (Fiscalías de las Audiencias Provinciales).

#### Article 2

Article 18.1, paragraph 1, of the same Law shall be drafted as follows:

"In the National High Court, the High Courts of Justice and in each Provincial High Court there shall be an Office of the Public Prosecutor, each under the direct supervision of the corresponding Public Prosecutor and made up of an Assistant Prosecutor and the necessary staff Prosecutors. The Office of the Public Prosecutor before the Constitutional Court, under the supervision of the Director



of Public Prosecutions, shall be made up of a Court Prosecutor and the necessary staff Prosecutors. Similarly, the Special Office of the Public Prosecutor for the Prevention and Suppression of Illicit Trafficking in Drugs, under the supervision of the Director of Public Prosecutions, shall be made up of a Court Prosecutor, an Assistant Prosecutor Grade 2 and the necessary staff Prosecutors, who may be Grades 2 or 3."

### Article 3

A new article, numbered 18 bis, is hereby added to Law 50/1981, of 30 December, regulating the Constitutional Statute of the Office of the Public Prosecution Department, with the following text:

"1. The Special Office of the Public Prosecutor for the Prevention and Suppression of Illicit Trafficking in Drugs shall have the following functions:

(a) To intervene directly in criminal proceedings relating to offences involving trafficking in drugs, narcotics or psychotropic substances committed by organized gangs or groups, with repercussions in places within the purview of various high courts (Audiencias), and any other proceedings within the jurisdictions of the Criminal Section of the National High Court (Sala de lo Penal de la Audiencia Nacional) or the Central Courts of Criminal Investigation (Juzgados Centrales de Instrucción), in conformity with articles 65.1, (d) and (e), and 88 of the Constitutional Law on the Judiciary.

(b) To intervene directly in those criminal proceedings relating to trafficking in drugs, narcotics or psychotropic substances instituted by the Director of Public Prosecutions.

(c) To co-ordinate the activities of the various Offices of the Public Prosecutor aimed at the prevention and suppression of illicit trafficking in drugs.

When the number of proceedings is such as to make this appropriate, the Director of Public Prosecutions may appoint one or more Prosecutors from the said Offices of the Public Prosecutor to work in direct contact with the Special Office of the Public Prosecutor. With regard to the Prosecutors thus appointed, and only within his specific field of competence, the Principal Prosecutor (Fiscal Jefe) shall have the same rights and duties as those conferred upon the Principal Prosecutors of the other organs of the Public Prosecution Department. The Prosecutors thus appointed shall report on the matters covered by this Law to the Principal Prosecutor of the organ in which they work.

The Offices of the Public Prosecutor of Military Tribunals, for their part, shall co-operate with the Special Office of the Public Prosecutor for the Prevention and Suppression of Illicit Trafficking in Drugs with regard to acts committed in military centres, establishments and units.

(d) To investigate the economic and property status of, and financial and commercial transactions of any kind conducted by, persons who evidence suggests may be carrying out or taking part in operations of illicit trafficking in drugs or may belong to or be assisting organizations engaged in such trafficking; public administrations, organizations, companies and individuals may be required to provide information as deemed necessary by the Special Office.

(e) To co-operate with court authorities in monitoring treatment received by drug addicts who have been allowed suspended sentences; the Special Office shall be provided with the necessary information by the accredited establishments involved in the said treatment.

(f) To promote or, where appropriate, furnish the international judicial assistance provided for in international laws, treaties, and conventions on the prevention and suppression of illicit trafficking in drugs.

2. The Special Office of the Public Prosecutor for the Prevention and Suppression of Illicit Trafficking in Drugs may give the Criminal Investigation Police such orders and instructions as it deems appropriate for discharging its functions."

#### Article 4

In article 19 of the same Law the phrase "and Court of Auditors" is replaced by "Court of Auditors and for the Prevention and Suppression of Illicit Trafficking in Drugs".

#### Article 5

1. A new sub-section designated G, is added to article 35, paragraph 1 of Law 50/1981, of 30 December, as follows: "Principal Prosecutor of the Special Office of the Public Prosecutor for the Prevention and Suppression of Illicit Trafficking in Drugs".

2. The following is added to the same article, paragraph 3: "Assistant Prosecutor of the Special Office of the Public Prosecutor for the Prevention and Suppression of Illicit Trafficking in Drugs".

#### Article 6

Article 36, paragraph 1 of the same Law is now drafted as follows:

"1. Appointments to posts in the first category and to those of Public Prosecutors in the Supreme Court and Principal Prosecutors in High Courts of Justice and Provincial High Courts shall be made by the Government, following a report from the Director of Public Prosecutions, in conformity with the provisions of article 13 of this statute. The Assistant Prosecutors of those organs whose Principal is ranked in the first category, and those of the Special Office of the Public Prosecutor for the Prevention and Suppression of Illicit Trafficking in Drugs, shall be appointed by the same procedure."

#### ADDITIONAL PROVISIONS

First. - The staff establishment of professional Prosecutors for the financial year in which this Law comes into force is increased by 50 posts, one for a Court Prosecutor in the Supreme Court and 49 for staff Prosecutors.

Second. - 1. In article 14.1 of the Constitutional Statute of the Public Prosecution Department, the words "or Territorial High Court" are deleted.

2. In the final paragraph of article 31, the words "special leave of absence" are replaced by "special services".

3. In article 35.2 of the same Law, the words "Territorial High Courts" (Audiencias Territoriales) are deleted.

4. In article 35.3 of the same Law, the words "Assistant Prosecutors of Territorial High Courts" are deleted.

5. In article 36.2 of the same Law, the words "and Territorial High Courts" are deleted.

6. In article 42, paragraph 2 of the same Law, the words "Justice Ministry" are replaced by "State".

7. In article 45, paragraph 2 of the same text, the words "of the Territorial High Court" are replaced by "of the High Court of Justice".

Third. - A new, seventh, transitional provision is added to Law 50/1981, of 30 December, with the following text:

"For as long as the Territorial High Courts continue to exist, they shall each have an Office of the Public Prosecutor, under the direct supervision of the respective Principal Prosecutor and made up of an Assistant Prosecutor and the necessary staff Prosecutors. In order to occupy the post of Principal Prosecutor of these Territorial High Courts, prospective incumbents must be ranked in the category corresponding to that held by the respective President. Such appointments shall be made by the Government, following a report from the Director of Public Prosecutions, in conformity with the provisions of article 13 of this Law."

Fourth. - The Government is empowered to issue the regulations required for execution of the provisions of this Law.

Fifth. - The Ministry of Economy and Finance shall allocate the funds required for fulfilment of this Law.

#### FINAL PROVISION

This Law shall come into force on the day following its publication in the Official Journal (Boletín Oficial del Estado).

Now therefore,

We order all Spanish persons and authorities to observe and ensure observance of this Law.

La Zarzuela Palace, Madrid, 24 March 1988.

JUAN CARLOS R.

The Prime Minister (Presidente del Gobierno)  
FELIPE GONZALEZ MARQUEZ