Congress of the Republic

LAW PARTIALLY AMENDING THE ORGANIC LAW ON NARCOTIC AND PSYCHOTROPIC SUBSTANCES

CONGRESS OF THE REPUBLIC

CONGRESS OF THE REPUBLIC OF VENEZUELA

EXPLANATORY INTRODUCTION TO THE ORGANIC LAW ON NARCOTIC AND PSYCHOTROPIC SUBSTANCES

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

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

TITLE I GENERAL PROVISIONS

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

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

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

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

TITLE II ADMINISTRATIVE ORDER

CHAPTER I IMPORT AND EXPORT OF THE SUBSTANCES REFERRED TO IN THIS LAW

On the basis of the experience of and the views expressed by the pharmaceutical industry to the Drugs and Cosmetics Directorate of the Ministry of Health and

Social Welfare, the Maritime Customs Service is included amongst the customs services duly empowered, pursuant to article 4, given the high cost of air transport in the case of large quantities, such as those required in the case of phenobarbital.

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

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

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

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

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

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

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

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

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

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

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

CHAPTER IV SUPERVISION AND CONTROL OF THE SUBSTANCES REFERRED TO IN THIS LAW

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

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

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

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

TITLE III OFFENCES

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

CHAPTER I COMMON AND MILITARY OFFENCES AND SANCTIONS

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

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

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

Consequently, the limit fixed in defining possession is 2 grams of cocaine or its derivatives, compounds or mixtures with one or more ingredients, and 20 grams of *Cannabis sativa*. If other narcotic or psychotropic substances are involved, the judge will give consideration to similar quantities, depending on the nature and the usual presentation of the substances, that is to say the presentation established by the pharmaceutical laboratories, or the quantity established per dosage unit or to prevent overdosing. No reference is made to seized drugs, but rather to the reference point that the judge will have to determine whether the seized drug comes within the parameters of possession and *in none of such cases shall the degree of purity of the drugs be considered*, since it is not possible to accept the defence of a *non-suit* by alleging that there is no offence because the impurity is such as to make the substance innocuous.

This innovation is based on the legal nature of the offence of possession, which is merely an action or a danger. The lawmaker does not want there to be quantities of illicit drugs in society but, since not everyone who does have them is a trafficker or dealer, and since it is impossible to avoid this in reality, he cites this theoretical margin, so as to specify a quantity involving less social risk, should it fall in the hands of third persons, and to be able to grant the benefits of freedom

by means of the legal definitions of committed for trial or conditional suspension of the sanction, provided that there is no other offence, that the offence is not a repeated offence and that the individual concerned is not a foreigner with tourist status, so that Venezuela does not become a paradise for tourists who take advantage of this provision and then flee the country. This is the only offence in respect of which the concept of objective responsibility is retained, notwithstanding the modern trend in penal law to eliminate the concept, although it remains in Venezuela's penal system, in article 61 of the Penal Code.

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

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

generis" for the purpose of applying to legal entities certain *measures* that cannot be called penalties in the strict sense, and whose nature is not to penalize; this relates essentially to the area of economic and fiscal offences, in which legal entities are generally subject to fines and other measures of an administrative, rather than penal, nature (Alberto Arteaga).

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

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

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

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

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

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

The aim of article 48, which applies to a sentry who consumes drugs, is to remove possible discrimination, by not considering it to be an offence against the security of the national armed forces; for this purpose, on the basis of article 503 of the Code of Military Justice and for the purposes of the application of that article, others who are also on sentry duty are included, such as military police, those in

charge of the telegraph or telephone service, or any other communications service, the reserve guard, orderlies, couriers and those carrying orders.

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

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

CHAPTER II OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE IN THE APPLICATION OF THIS LAW

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

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

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

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

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

CHAPTER III PROVISIONS COMMON TO THE PRECEDING CHAPTERS

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

Article 58 reiterates the denial of release on bail, except in cases in which the court of first instance has issued a verdict of not guilty, in order to conform to the

new Law governing the Benefits of Penal Procedure and there is a general indication of the offences in which the benefit of committal for trial applies, including the offence of possession.

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

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

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

Article 66 was amended to remove the direct assignment of all confiscated assets to the Ministry of Health and Social Welfare. The aim of the 1984 Law was to make available to the Ministry the substances confiscated, which could then be used to manufacture medicines, as well as laboratory apparatus, equipment and instruments. This wording has been changed and a really important innovation introduced, with the aim of speeding up the allocation of the seized assets stemming from the " *iter criminis*" for drugs. It is laid down that, in the event of a final verdict of guilty, the assets shall be placed at the disposal of the Ministry of Finance, *without auction*, so that the Ministry may, in turn, allocate them to public or private bodies engaged in prevention, control, supervision, treatment, rehabilitation, social reintegration and law enforcement. The purpose of this provision is to ensure that the assets go directly to the State authorities concerned with the relevant activities and do not fall into the hands of private persons who fulfil the "highest bidder" requirements.

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

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

The " *opinion of the judge*" is eliminated so that the assessment of the evidence should not lean towards the method of *free conviction* that may be arbitrary and dangerous by establishing the method of assessment of evidence as applicable in this Law, with the express exceptions of *rational or critical assessment*, the so-called "healthy criticism"; this is scientific in nature and obliges the judge to reason and determine with greater accuracy the grounds on which he accepts or rejects an item or element of evidence. This is very different from subjective assessment or free personal interpretation, in that rigour shall be applied in the assessment. Article 68 also includes the phrase " *other than those already*

involved in the case" in conjunction with the revelation of perpetrators, accomplices or accessories, which was taken from Colombian law, to help the investigation as a whole in order to reduce further the criminal organization's capacity for production.

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

The annulled article 69 of the LOSEP established drug-related financial activity, designed to show who benefits from that illegal trade, as well as the physical person or legal entity acting as intermediary or middleman, for the purpose of disguising or concealing assets presumed stemming from such activities, and also established the steps that could be taken by the criminal court judge, on his own account or at the behest of the Public Prosecutor's Office, for the purpose of securing such assets, in which connection the drafters of the 1984 Law envisaged this form of criminal conduct which, at that time, did not have the range of recourse that it has today. Hence, on the basis of experience which indicates that drug traffickers, in their efforts to gain total and absolute control of the vast financial power generated by the illicit transnational industry, create new forms and make use of new systems to try to legitimize the capital acquired at the different stages or in the different activities of drug trafficking, this provision has been amended and broadened in the new articles 71 and 72 in order to tailor it to the current situation.

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

The new article 74 authorizes monitored delivery, as distinct from the controlled delivery of drugs, which is expressly prohibited because, even though it is an expeditious procedure for catching traffickers in the act, in our criminal law system this ingenious police practice is a flagrant violation of the rule of law,

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

TITLE IV CONSUMPTION

CHAPTER I CONSUMPTION AND SAFETY MEASURES

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

In recent years the preferred solution has not been in step with the attitude adopted by our judges and, what is more, the National Executive has not provided the political, economic, institutional/organizational or informational resources to apply the safety measures to consumers, as indicated by the " *mens legislatoris*". In Barquisimeto, for example, some judges have opted not to apply the safety measures because of the lack of institutions, whose creation is the responsibility of the State. Sebastian Soler, supported by the 1984 LOSEP, advocated in each

concrete case, determination of the immediate personal dosage level, depending on the particular characteristics of the patient, as well as the patient's tolerance, clinical history and physical configuration, in order to prevent injustice, which generated no practical results and necessitated, as in the case of possession, a return to the approach based on a table or catalogue, which gives the judges and consumers greater certainty that its application is as close as possible to the exact observation of the Law. In the greater good of social security and the protection of the individual rights and guarantees of the consumer, which should be safeguarded, the decision was taken to sacrifice the lesser good of endeavouring to prevent the circulation of small quantities of drugs, on the grounds of consumption. This is a question of relative values and approaches.

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

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

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

CHAPTER II PROVISIONS COMMON TO THE PRECEDING CHAPTER

This new Chapter represented a transfer of the provisions on consumption that used to be mixed in with the provisions relating to offences, thus keeping them separate and in line with the subject of consumption and the safety measures. Two new articles were incorporated in this way. They were based on the Law governing the Metropolitan Transport Systems, promulgated in the Official Gazette No. 3.155 of 29 April 1983. Articles 22 and 26 of that Law establish employment and penal provisions for workers who are under the influence of drugs in the exercise of their functions, by which they

may be dismissed from their jobs or subject to penal sanctions if they risk the safety of passengers or when, as a result, there is a disaster or accident. This corrects an omission in the 1984 Law, since the Law governing the Metropolitan Transport Systems was omitted from the systematic survey of relevant laws.

The two new articles (articles 89 and 90) seem to create a conflict with article 367 of the Organic Labour Law that prohibits members of aircraft crews from consuming alcohol or using drugs on or off duty. It is useful to point out in this connection that the Organic Labour Law established the prohibition but did not expressly envisage any penalty for a worker who fails to comply, and obliges reference to be made to serious negligence or dismissal, as indicated in article 102 of the Law in question, with the ensuing problem of whether the negligence relates to grounds A, D, E, G or I; this is settled in the single paragraph of article 89 of the LOSEP, which absolutely prohibits workers from exercising their functions under the influence of medicines that may contain narcotic or psychotropic substances, or other substances that might interfere with their physical or mental capabilities, including medicines prescribed by a doctor, thus complying with the provisions of the International Civil Aviation Convention, signed by Venezuela in Chicago in 1944, and the subsequent conventions. The LOSEP thus complements the Organic Label Law when it specifically indicates the penalty and requires the worker to comply with his or her obligations, as set out in the contract of employment, when the worker is under the influence of such medicines, issued on medical prescription. The apparent conflict is resolved by application of the LOSEP provision, since it is organic and specific on this subject and because it embodies an express provision that removes the ambiguity of the Organic Labour Law.

TITLE V INTEGRAL SOCIAL PREVENTION

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

CHAPTER I GENERAL PROVISIONS

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

CHAPTER II INTEGRAL SOCIAL PREVENTION WITH REGARD TO NARCOTIC AND PSYCHOTROPIC SUBSTANCES

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

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

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

Article 104 has been amended to specify the responsibility of the Ministry of Transport and Communications, since experience has shown that wrong publicity and propaganda play a considerable role in debasing, falsifying and undermining our values and, despite the fact there is a standard that penalizes the forms used by various communication media, the latter always find ways of evading responsibility, for which reason the concept of independent producers has been included. There is a fine equivalent to a number of days' urban minimum wage for legal entities and it is clearly indicated that failure to comply with this provision amounts to an *incitement* to consume and an *instigation* to trafficking. Another new feature is that administrative proceedings may be set in motion on the initiative of the Ministry of Transport and Communications or at the request of the National Commission on Drug Abuse.

Article 105 establishes a fine equivalent to a number of days' urban minimum wage for anyone who infringes the ban on publication of the names and

photographs of the persons involved in special proceedings for illicit consumption.

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

TITLE VI PROCEEDINGS

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

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

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

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

Article 113 lays down that, within eight days of receiving the file, the judge shall decide whether to ratify the measure granting parole if the toxicological and biochemical analysis of the substances and other elements attest that the individual is a consumer or whether to revoke it because the individual is not a consumer (possession, distribution, etc.) in order to begin the criminal proceedings. An individual who is a consumer will be ordered to undergo the analyses referred to in article 114, which are of a medical, psychiatric, psychological and forensic nature, and, if necessary, a new toxicological analysis. This analysis may be postponed to a later date if the individual has already been granted parole. It is currently impossible to carry out all these analyses since there are not enough physicians, and none in the interior of the country; this makes the article a dead letter, for which reason it is envisaged that, in areas that have no physicians, the judge may appoint doctors in private practice as recognized experts, subject to article 145 of the Code of Criminal Procedure. He may also appoint them whenever he thinks fit (for instance, if there are not sufficient physicians).

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

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

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

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

CHAPTER II PROCEDURE IN CASES OF FINES AND CLOSURE OF PREMISES

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

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

CHAPTER III CRIMINAL PROCEEDINGS IN CASES INVOLVING THE OFFENCES SET OUT IN THIS LAW

SECTION 1 COMPETENCE

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

Article 142 includes military tribunals alongside criminal court judges of first instance, as being competent to preside in the cases that relate to them. It sets out who is competent to hear summary proceedings, thus including military tribunals, filling the gap in the general provision that used to include only officials who are

placed in that category by the Law governing Criminal Investigation Police and including those indicated in article 100 of the Code of Military Justice.

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

SECTION 2 INVESTIGATION

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

Article 13l, whose content is doctrinaire, is revoked.

As in the Code of Criminal Procedure, article 145 separates again the forms of evidence to prove the commission of an offence and to demonstrate culpability. The confession is again only for the purposes of culpability and "criminal responsibility". The latter phrase was removed, since "criminal responsibility" and "criminal culpability" are distinct concepts. *Criminal responsibility* is a declaration resulting from all features of the punishable act (action, type, non-juridical nature, culpability, punishability and, in certain cases adjective conditions of punishability), whereas *criminal culpability* is a characteristic feature of the offence: it is normative in nature and, so that the individual may be

declared criminally responsible, it is necessary to prove in advance all the elements of the offence (Roberto Y6pez Boscán). Item 5 of this article has been changed from "visual inspections" to "police or judicial inspections".

The confession is left as evidence of culpability. Also retained is the *requirement of validity* of the signatures of the defender and of the representative of the Public Prosecutor's Office, since the current Code of Civil Procedure so requires, and the judge will therefore understand that it is an essential procedural requirement to guarantee the authenticity of the document. There shall also be *cause for ex officio reconsideration*, a detail that is necessary because it does not exist in articles 68 and 69 of the Code of Criminal Procedure, since this requirement for the presence of the defender in the information statement only appears on the LOSEP. Section 1 of article 69 of the Code of Criminal Procedure indicates that the procedure may be reconsidered *ex officio* if the defender was not present during the examination or the charging procedure, on which basis it is doctrinally valid to extend it to the information statement, pursuant to the LOSEP, on the basis of the Miranda Law in Anglo-Saxon procedure, in order to guarantee the defence as from that procedure. The indication of a timetable for the taking of information statements by judicial authorities is restored, in that it helps to avoid early-morning statement sessions, using "third degree" methods.

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

SECTION 3 WARRANT OF ARREST

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

Article 148 clarifies the doubt regarding the problems that have occurred in practice, such as failure to include the records relating to a completed open inquiry or when there is no reason for summary proceedings, on which the higher criminal court judges have different views and penalize the judges of first instance

when they include or exclude these articles of the Code of Criminal Procedure (articles 99, 206 and 208) when drafting their conclusions. This resolves the serious polemic whereby the examining officials are barred from applying the provisions of article 99 of the Code of Criminal Procedure, when the LOSEP does not revoke that provision, and article 148 does not contradict it.

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

The pre-draft of the Supreme Court of Justice starts with a fundamental objective: to eliminate *Section 4* of the 1984 LOSEP on " *revision*" (revoked articles 143 and 144), which had the effect of delaying the trial, infringing the time-limit set by the Chamber of Criminal Appeal and accumulating work. There is a marked trend to return to the provisions of the Code of Criminal Procedure. The new systems create new problems and uncertainty for those who apply them.

SECTION 4 GENERAL PROVISIONS

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

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

SECTION 5 PLENARY PROCEEDINGS

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

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

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

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

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

Articles 166, 167, 168, 169, 170 and 171 have been slightly amended. The new article 172 states that no associates may be appointed and no advisers may be consulted. Articles 173, 174, 175 and 176 remain essentially the same as those in

the previous Law, apart from some corrections, such as that made to article 173 in respect of deferment in order to reach a decision.

SECTION 6 JUDGEMENT

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

SECTION 7 APPEAL FOR JUDICIAL REVIEW

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

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

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

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

SECTION 8 GENERAL PROVISIONS

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

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

SECTION 9 EXTRADITION

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

TITLE VII NATIONAL COMMISSION ON DRUG ABUSE

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

to setting up regional offices. Article 209 specifies the functions of the Commission, developed in the light of experience.

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

TITLE VIII

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

CHAPTER I PREVENTION, CONTROL AND MONITORING TO DEAL WITH MONEY LAUNDERING

This new Chapter lays down for the National Executive, through the Ministry of Finance, the Ministry of Development, the Venezuelan Central Bank, the Office of the Superintendent of Banks, the Bank Protection and Deposit Guarantee Fund, the National Securities Commission, the Records and Notaries Directorate of the Ministry of Justice, the Technical Corps of the Criminal Investigation Police, the Combined Armed Forces, the Office of the Superintendent of Insurance, the Office of the Superintendent of the Savings and Loan System, and other competent agencies, coordinated by the National Commission on Drug Abuse, the duty of drawing up and developing an operational plan covering preventive measures to avoid, nationwide, the use of the banking and financial system for the purpose of laundering capital (money and financial assets) from the transnational illicit drugs industry. This Chapter is necessary because the amendment of Title III "Offences" defines the offence of legitimizing capital (known as " *money laundering*"), but without a preventive system for the banks and financial institutions as well as all institutions or individuals connected with professions, offices, industries or businesses that may be used by the transnational illicit drugs industry to launder capital, the activity of the State would be ineffectual.

Consequently, account has been taken of the relevant provisions of the Vienna Convention, and the very extensive document produced by the Heads of State or Government of the seven major industrialized countries and the President of the European Economic Community in Paris, in July 1989, establishing the basic recommendations to be adopted by countries when developing measures against money laundering. These documents form the basis for provisions that shall be fulfilled by banks

and financial institutions in the identification of customers, registration, restrictions on bank secrecy and the obligation to provide information, protection of employees and those institutions' internal programmes, as well as the responsibility of the Venezuelan Central Bank to design and develop a system of information on international transfers of currency and bearer instruments, that are equivalent to cash, with sufficient security measures to ensure the proper use of information, without in any way prejudicing the free movement of capital.

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

CHAPTER II SUPREME ELECTORAL COUNCIL, POLITICAL PARTIES AND ELECTORAL GROUPS

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

TITLE IX FINAL AND TRANSITORY PROVISIONS

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

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

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

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

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