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L'APPLICATION DES REGLES DE CONCURRENCE AUX FOURNITURES D'ENERGIE*

* Thèse de maîtrise en droit européen, présentée sous l'orientation du Prof. Michel WAELBROECK, à l'Université Libre de Bruxelles.

SOMMAIRE

REMARQUES PRELIMINAIRES

Le présent travail est consacré au problème de l'application des règles de concurrence aux fournitures d'énergie. Il s'appuie principalement sur l'analyse de deux décisions de la Commission des Communautés européennes: la décision Ijsselcentrale du 16 janvier 1991[1] et la décision Scottish Nuclear du 30 avril 1991[2].

En raison de la spécificité du domaine traité, il a paru judicieux de situer d'abord l'approche communautaire dans le contexte plus général du marché intérieur de l'énergie et, notamment, sous l'aspect également politique que revêt sa mise en place;

Il faut à ce propos relever que les deux décisions que nous examinerons sont les premières intervenues, sur le fondement des articles 85 ss du traité CEE, dans le secteur de l'électricité. Elles inaugurent une tendance nouvelle de la Commission en matière énergétique, tendance qui ne repose, à ce stade, ni sur une jurisprudence particulière bien établie, ni même sur une réflexion approfondie de la doctrine. A notre connaissance, celle-ci n'a d'ailleurs pas (encore) examiné pour lui-même ce champ d'application des règles de concurrence.

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[1] Décision Ijsselcentrale (IJC) et autres, du 16 janvier 1991, 91/50/CEE, JOCE 1991 N° L 28/32 (cité Décision IJC).

[2] Décision Scottish Nuclear, accord sur l'énergie nucléaire, du 30 avril 1991, 91/329/CEE, JOCE 1991 N° L 178/31 (cité: Décision Scottish Nuclear).

Pour ce qui concerne l'appréciation juridique proprement dite des décisions en question, nous nous attacherons, après leur exposé, à mettre en relief et à discuter les singularités de la motivation.

Finalement, nous tenterons d'esquisser les développements possibles de la matière dans le court et le moyen terme.

I. INTRODUCTION

1. Cadre général

Il est admis de manière unanime que l'on ne pourra parler d'achèvement du marché intérieur communautaire si le secteur de l'énergie n'est pas inclus, notamment le secteur du gaz et de l'électricité[3]. Toutefois, on constate actuellement que plusieurs Etats membres conservent en la matière des monopoles d'importation et d'exportation ainsi que, pour le gaz et l'électricite, des monopoles de production, de transport et de distribution[4]. Il faut dire que la politique énergétique est longtemps restée de la compétence des Etats membres[5], que d'ailleurs le Livre Blanc de la Commission de 1985 ne traite pas du secteur énergétique et le traité de Maastricht même ne contient pas de chapitre consacré spécialement à l'énergie.

De sorte que le secteur de la fourniture d'énergie, plus particulièrement en matière électrique, se caractérise par l'absence presque totale de concurrence, avec pour conséquences, notamment, de fortes variations de prix et un choix des consommateurs très limité[6].

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[3] Cf. CE: – Parlement européen, *Le marché unique de l'énergie: propositions de la Commission en vue d'une plus forte concurrence dans le domaine du gaz et de l'électricité,* Luxembourg 1992, p. 8 ss. (cité: PE., Le marché unique de l'énergie).

[4] Cf. N. COMMEAU-YANNOUSIS. Le marché intérieur de l'énergie, in *Energies en Europe,* 17/1991, p. 120 ss.

[5] Si l'on excepte le secteur du charbon et de l'acier, visé par le traité CEEA.

[6] PE, Le marché unique de l'énergie, p. 8 ss.

Le constat qui vient d'etre évoqué a conduit la Commission à la fin des années quatre-vingt, à se saisir du problème: elle a ainsi adopté une "approche globale et progressive" en matière énergétique, approuvée par le Conseil en novembre 1988[7]. Le but poursuivi est de réaliser l'intégration des marchés nationaux de l'énergie dans un vaste marché communautaire, par le biais, notamment, des échanges transfrontaliers. Pour atteindre l'objectif, il s'agit de travailler dans deux directions: d'une part, l'adoption d'instruments législatifs appropriés, et d'autre part, le renforcement de l'application des règles de concurrence.

Il convient toutefois de faire preuve de retenue pour ne pas entamer les deux priorités complémentaires du secteur de l'énergie: la garantie de la sécurité de l'approvisionnement et l'assurance d'un approvisionnement universel et ininterrompu.

2. Marché intérieur de l'énergie (M.I.E.) et règles de concurrence

D'une manière générale, les règles de la concurrence du traité CEE doivent être respectées par les politiques menées par la Communauté et sont destinées à encadrer le libre jeu du marché afin d'en limiter les effets nocifs. Dans le contexte du M.I.E., au contraire – et cela particulièrement dans les secteurs du gaz et de l'électricité –, il est nécessaire de promouvoir la concurrence, qui est actuellement pratiquement inexistante[8]. Afin de tenir compte des contraintes de ce secteur, la Commission est toutefois d'avis que, d'une part, une concurrence "à outrance" n'est pas souhaitable et que, d'autre part, la libéralisation de ce marché très protégé et cloisonné doit intervenir progressivement.

En bref, elle entend faire sien le mot d'ordre *"pragmatisme et détermination"* et faire preuve de doigté dans le maniement des instruments à sa disposition, notamment les règles des art. 85 ss[9].

Pour ce qui touche au secteur de l'électricité, duquel relèvent les deux affaires que nous examinerons, le but recherché est de garantir qu'à terme, aucun fournisseur d'énergie électrique moins chère ne puisse être empêché de desservir le marché européen en vertu de quelconques entraves institutionnelles et administratives[10].

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[7] COM (88) 238.

[8] COMMEAU-YANNOUSIS, p. 123.

[9] Concurrence: Sir Leon Brittan met les bouchées doubles pour la libéralisation du secteur énergétique, in *Europe Energie,* N° 355/1991, p. 75.

[10] Ibidem.

Malgré les particularités reconnues du secteur de l'énergie, notamment celle de la nécessité de garantir en tout temps la sécurité de l'approvisionnement, doivent ainsi être déclarés illicites au regard des règles de concurrence, et donc combattus: le fait que les entreprises (privées ou publiques) se concertent sur les prix, se répartissent les marchés, s'entendent pour ne fournir que certains utilisateurs ou pour ne les fournir que d'une certaine façon, à moins de dérogations dûment motivées; la conclusion de contrats à long terme d'approvisionnement exclusif; l'établissement de prix non concurrentiels; le refus de fournir des biens et des services.[11]

II. DECISION IJSSELCENTRALE (IJC) ET AUTRES, DU 16 JANVIER 1991

A. FAITS

L'affaire fait suite à une plainte déposée par une Commune et plusieurs sociétés locales de distribution d'électricité des Pays-Bas contre l'entreprise régionale de distribution Ijsselcentrale, au sujet de l'application par cette dernière d'un accord entre producteurs d'électricité prévoyant l'obligation d'imposer une interdiction à l'importation et à l'exportation d'électricité, combinée à une obligation d'achat exclusif.

En raison de la relative complexité, et de la situation de fait, et de son exposé dans la décision du 16 janvier 1991, il a semblé nécessaire de rappeler brièvement la structure du marché de l'électricité aux Pays-Bas, le cadre conventionnel et le cadre législatif, enfin le problème posé en cette affaire.

1. Structure du marché de l'électricité aux Pays-Bas[12]

A l'époque des faits, il existe aux Pays-Bas quatre entreprises productrices d'électricité et trente-huit entreprises qui distribuent l'électricité soit au niveau régional, soit au niveau local. Ces sociétés, qui constituent donc une structure pyramidale à la base de laquelle se situent les

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[11] L. BRITTAN, La concurrence sur les marchés du gaz et de l'électricité, in *Objectif 92*, N° 6/juin 1991, p. 1.

[12] Décision IJC, att. 2 s.

consommateurs finals, sont toutes détenues, directement ou indirectement, par des collectivités locales, provinces ou communes.

En 1949, les producteurs ou leurs prédécesseurs ont constitué une société nouvelle, la NV Samenwerkende Elektriciteitsproduktiebedrijven (la SEP). Celle-ci est une société anonyme qui a pour but de structurer la collaboration entre les producteurs d'électricité. Parmi ses taches statutaires consistent celles de:

- fixer un plan "électricité" commun;
- gérer – principalement en qualité de propriétaire – le réseau haute tension, notamment les interconnexions avec l'étranger;
- conclure des accords avec des entreprises d'électricité étrangères au sujet de l'importation et de l'exportation d'énergie électrique d'une part et de l'utilisation des liaisons internationales du réseau d'interconnexion d'autre part.

2. Cadre conventionnel

Diverses relations juridiques unissent les intervenants au marché de l'électricité dont on vient de résumer la structure:

a. *Accords entre la SEP et les producteurs d'électricité* [13]

Le 22 mai 1986, la SEP et les quatre sociétés productrices ont passé un accord de coopération (Overeenkomst van Samenwerking, OVS), qui a remplacé l'accord général SEP du ler février 1971.

Pour ce qui concerne l'importation et l'exportation d'énergie électrique, il ressort de l'article 21 de l'accord OVS que d'une part la SEP est seule autorisée à passer des contrats en la matière avec des compagnies d'électricité étrangères et que d'autre part les accords de fournitures passés entre les parties et des entreprises de distribution aux Pays-Bas doivent également stipuler l'interdiction pour ces dernières de conclure des contrats dans ce domaine avec des compagnies d'électricité étrangères.

Ainsi, l'accord met en place une interdiction générale d'importation ou d'exportation directes par les producteurs et une obligation de report de cette interdiction, dans les contrats de fourniture aux distributeurs.

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[13] Id., att. 4 s.

Au surplus l'article 10 §4 de l'accord prévoit l'obligation de stipuler dans les accords de livraison que les sociétés de distribution revendent à la SEP l'énergie qu'elles produisent éventuellement, au travers du réseau du participant à l'accord où l'installation productrice est localisée.

De cette manière, la puissance produite au niveau régional ne peut être fournie directement aux clients des distributeurs.

b. *Accords entre le distributeur régional IJC et les communes de sa zone concédée avant leur propre entreprise de distribution* [14]

Les conditions générales de livraison d'énergie aux communes ayant leur propre entreprise de distribution dans la zone concédée à IJC, en vigueur depuis le ler avril 1965, prévoient en leur article 2 §2 l'engagement de la commune de s'approvisionner exclusivement auprès d'IJC pour la distribution d'électricité sur le territoire communal et de n'utiliser cette énergie que pour l'usage propre ou pour la livraison à des tiers en vue de la consommation sur son territoire.

De la sorte, les conditions générales imposent aux communes une obligation d'achat exclusif auprès d'IJC et une interdiction de revente à des tiers sis hors de leurs territoires respectifs.

c. *Accords entre les entreprises de distribution des communes et les consommateurs finals* [15]

Les entreprises de distribution locales, clientes d'IJC, appliquent elles aussi, par le biais des contrats d'abonnement ou des conditions générales applicables aux gros consommateurs, une obligation d'achat exclusif et l'interdiction de revente.

Les consommateurs finals n'ont ainsi d'autre choix que de s'approvisionner en énergie électrique auprès de leur distributeur local.

d. *Autres liens juridiques* [16]

Par Arrêté royal du 13 juin 1918, IJC s'est vu octroyer une concession l'autorisant à produire, transformer, transporter, distribuer et fournir de

[14] Id., att. 6.
[15] Ibidem.
[16] Id., att. 7 s.

l'électricité. La concession comporte une obligation de fourniture, mais pas de droit d'exclusivité dans le territoire concédé.

L'activité d'autres distributeurs et des producteurs d'électricité aux Pay-Bas repose sur des concessions du même type.

Un accord (le "Convenant") a été conclu le 5 juin 1975 entre l'Etat néerlandais, la SEP et tous les producteurs d'électricité. Il prévoit notamment l'obligation, pour la SEP, de présenter à l'approbation du Ministre des affaires économiques le plan "électricité" qu'elle est chargée d'établir.

3. Cadre légal [17]

La loi néerlandaise sur l'électricité du 22 octobre 1938, dont seule une partie était entrée en vigueur, ne réglementait que partiellement le marché de l'électricité aux Pays-Bas.

Le 8 décembre 1989, une nouvelle loi sur l'électricité est entrée en vigueur. Ses dispositions finales prévoient l'abrogation des articles en vigueur de la loi de 1938, l'abrogation d'une autre loi, de 1936, qui règlementait les importations d'énergie électrique et l'entrée en vigueur différée au ler juillet 1990 de certaines dispositions, notamment les articles 11 et 34.

La loi de 1989 marque un pas important vers un marché de l'électricité plus ouvert aux Pays-Bas. Si elle fait désormais office de base légale pour le régime de l'accord de coopération OVS, il importe toutefois de noter d'emblée que sur différents points, elle est plus large et plus ouverte que cet accord ne le prévoit.

Les caractéristiques à relever de cette législation sont les suivantes:

- **obligations de livraison** des producteurs à l'égard des distributeurs et des distributeurs à l'égard des consommateurs finals (art. 12);
- **compétence exclusive de la SEP** pour **l'importation** d'énergie électrique destinée à la **distribution publique;** en revanche, **l'exportation** n'est **pas réglementée** et **l'importation** par **des consommateurs finals** par leur **propre consommation** est autorisée (découle de l'art. 34);
- **pas d'obligation d'achat exclusif** aux distributeurs locaux pour les gros consommateurs privés (art. 13);

[17] Id., att. 9.

- possibilité pour les distributeurs et pour les gros consommateurs de s'adresser à d'autres fournisseurs sis aux Pays-Bas (**possibilité "d'achats horizontaux"**);
- possibilité pour les consommateurs de produire leur propre énergie électrique (**possibilité d'autoproduction**) et d'en redistribuer les excédents aux entreprises de distribution (art. 41);
- **obligation de transport** à charge de tout exploitant de lignes du reseau public, mais uniquement pour les **"achats horizontaux" ou l'importation** autorisée d'énergie électrique, à l'exclusion de l'exportation (art. 47).

4. Problème posé [18]

Le 26 mai 1988, plusieurs compagnies de distribution et une commune saisissent la Commission d'une plainte dirigée contre l'entreprise de distribution régionale IJC, avec laquelle elles avaient passé des accords de fourniture d'électricité. Les griefs des plaignants portent sur:

- l'interdiction d'importation et d'exportation qui figure explicitement à l'article 21 de l'accord de coopération OVS de 1986;
- l'obligation d'achat exclusif que stipulent les accords de fourniture d'électricité passés avec IJC, obligation qui comporte implicitement une interdiction d'importer, laquelle découle des dispositions de l'accord OVS en la matière[19].

B. APPRECIATION JURIDIQUE

Il convient de relever à titre préliminaire que si la plainte est antérieure à l'adoption de la loi néerlandaise sur l'électricité de 1989, la décision de la Commission intervient toutefois après l'entrée en vigueur de cette législation.

Par ailleurs, la Commission s'est concentrée uniquement sur les restrictions de concurrence qui découlent de l'accord OVS et qui

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[18] Id., att. 1.

[19] Un troisième grief concernait l'imposition d'un supplément de péréquation des coûts décidé par le Conseil de surveillance d'IJC. L'application de cette charge n'étant toutefois pas en cause dans la procédure devant la Commission, le grief n'a pas été examiné pour lui-même, cf. Décision IJC, att. 1, in fine.

simultanément constituent un obstacle à la libéralisation mise en place par la loi sur l'électricité de 1989. Plus précisément, la Commission a entendu se limiter à examiner la compatibilité avec les règles de concurrence du traité CEE de l'article 21 OVS pour seule mesure où celui-ci a pour effet ou pour objet d'entraver d'une part les **importations** effectuées **par des consommateurs industriels privés,** d'autre part les **exportations** effectuées par des **sociétés de distribution** ou par des **consommateurs industriels privés,** notamment des autoproducteurs.

Après avoir dit quelques mots du champ d'application matériel des règles de concurrence, nous examinerons successivement l'existence d'une entente restrictive de concurrence au sens de l'article 85 §1, l'absence de justification découlant de l'article 90 §2 et l'impossibilité d'exemption au sens de l'article 85 §3.

1. Champ d'application matériel des règles de concurrence

Les règles de concurrence du traité CEE s'appliquent à tous les domaines économiques et activités, pour autant que le droit commun ne prévoit pas expressément d'exception[20]. Si le secteur de la fourniture d'énergie n'échappe pas, en principe, au domaine d'application des articles 85 ss, il faut toutefois noter que l'énergie nucléaire fait, elle, l'objet d'une réglementation spécifique, par le biais du traité Euratom, du 25 mars 1957. En son article 232 §2, le traité CEE prévoit que ses dispositions ne dérogent pas aux stipulations du traité CEEA. Cependant, comme ce dernier ne possède pas ses propres règles de concurrence, les articles 85 ss du traité CEE restent applicables au secteur de l'énergie nucléaire[21].

Il ne fait donc pas de doute que l'affaire dont il est question relève bien du champ d'application des règles de concurrence du traité CEE.

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[20] V. KORAH, *An Introductory Guide to EEC Competition Law and Practice,* 4th ed., Oxford 1990, p. 4. GRABITZ, *Kommentar zum EWG-Vertrag,* ad vor Art. 85, n° 19.

[21] C'est sous réserve de dispositions spécifiques relatives à la constitution d'entreprises communes et aux prix des matières nucléaires (cf. art. 45 ss et 67 ss traité CEEA), qui ne s'appliquent toutefois dans aucune des deux décisions sur lesquelles se fonde le présent travail.

2. Entente restrictive de concurrence au sens de l'article 85 §1

Pour juger de la licéité du comportement d'IJC au regard de l'article 85 §1 analysons successivement la nature de l'accord de coopération OVS de 1986, les restrictions de concurrence qui découlent de ce dernier et son influence sur le commerce entre Etats membres, avant de mesurer les effets de la loi néerlandaise sur l'électricité de 1989 sur l'infraction éventuelle reprochée.

a. *Nature de l'accord de coopération OVS de 1986*

C'est à juste titre que la Commission retient que l'accord OVS est bien un *"accord entre entreprises"*, qui tombe dans le champ d'application de l'article 85 §1[22].

Relevons que la SEP est une société anonyme de droit néerlandais dont les actionnaires sont les sociétés productrices d'électricité, mais que ces dernières subsistent à son côté à parts entières et de façon indépendantes sur le plan économique. On ne saurait donc parler de concentration[23]. Il faut plutôt qualifier l'opération intervenue de création d'une entreprise commune chargée de coordonner la collaboration entre les producteurs.

Un doute serait justifié de savoir si l'accord OVS relève strictement du droit privé ou également du droit public, ce qui serait éventuellement de nature à tenir en échec l'application de l'article 85, en raison de l'intervention de l'autorité étatique[24]. Mais bien que les producteurs soient des sociétés détenues par des collectivités locales et que les pouvoirs publics interviennent de diverses façons dans le système de la production et de la distribution d'électricité, on doit admettre que pour ce qui est de l'accord OVS, celui-ci relève exclusivement du droit privé. En effet, l'Etat néerlandais n'est pas partie à l'accord et ne l'a même pas favorisé; les concessions octroyées aux distributeurs – tels IJC – comme aux producteurs ne concernent pas la SEP en tant que telle et d'ailleurs n'imposent qu'une obligation de fourniture; quant au Convenant de 1975, il se borne à prévoir l'approbation, par le ministre compétent, du plan électricité, ce qui d'une

[22] Décision IJC, att. 21 ss.

[23] Cf. I. VAN BAEL/J. F. BELLIS, *Droit de la concurrence de la Communauté économique européenne,* Bruxelles 1990, n° 604 ss et les réf. citées.

[24] Cf. KORAH, p. 44 ss; VAN BAEL/BELLIS, n° 213.

part ne concerne pas l'accord OVS dans son ensemble, et d'autre part et quoiqu'il en soit, ne suffirait pas à "blanchir" les contrariétés de l'accord à l'article 85 §1[25].

Plus pertinent pourrait paraître l'argument de la SEP qui consiste à dire que l'objet de l'OVS n'est que de mettre en oeuvre une répartition des taches à l'intérieur d'une seule unité économique que formeraient les quatre producteurs d'électricité, au motif qu'ils font partie du "système unique et indivisible de la distribution publique d'électricité". La SEP invoque nommément l'affaire Hydrotherm c/ Compact[26] pour affirmer que, dans la présente espèce, il n'y a aucune virtualité de concurrence entre les participants et donc que l'article 85 est inapplicable.

L'argument doit toutefois être écarté, ce que fait la Commission après avoir rappelé de manière plus adéquate la jurisprudence de la Cour de Justice rendue à propos de l'affaire Bodson c/ SA des Pompes Funèbres[27], qui a confirmé l'analyse de l'arrêt Centrafarm c/ Sterling Drug[28]: ce n'est qu'à deux conditions, cumulatives, que l'article 85 §1 ne sera pas applicable à des accords entre sociétés d'un même groupe, à savoir, d'une part, que l'accord intervient à l'intérieur d'une **même entité économique,** ce qui présuppose d'examiner si, indépendamment de la personnalité juridique, une fillale jouit de l'autonomie économique par rapport à la société mère, et d'autre part, que l'accord a pour seul objet la **répartition interne des tâches entre entreprises**[29].

En l'espèce, point n'est besoin même de se prononcer sur l'opportunité critiquée en doctrine – de la seconde condition pour reconnaître que le raisonnement de la SEP est erroné. Les quatre compagnies de production sont des personnes morales ayant des organisations distinctes et ne sont pas contrôlées par une même personne physique ou morale; chacune organise sa gestion de façon autonome, ce qui est d'ailleurs confirmé par les différences de prix entre les entreprises. Le fait d'appartenir au même "système unique et indivisible de la distribution publique d'électricité" aux Pays-Bas n'y change rien. D'autres intervenants, les sociétés

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[25] Ibidem.

[26] Arrêt de la CJ du 12 juillet 1984, Hydrotherm c/ Compact, aff. 170/83, Rec. 1984, p. 2999.

[27] Arrêt de la CJ du 4 mai 1988, C. Bodson e/ SA Pompes Funèbres, aff. 30/87, Rec. 1988, p. 2479.

[28] Arrêt de la CJ du 31 octobre 1974, Centrafarm c/ Sterling Drug, aff. 15/74, Rec. 1974, p. 1147.

[29] Cf. KORAH, p. 26; VAN BAEL/BELLIS, n° 208.

distributrices, appartiennent au même système et, pourtant, il ne viendrait pas à l'idée de prétendre qu'ils constituent une unité économique avec les producteurs et la SEP. En fait, il y a confusion entre l'hypothèse où une société mère passe un accord avec ses différentes filiales et la situation présente d'une entreprise commune ou joint-venture, la SEP, contrôlée conjointement par quatre sociétés-mères. Dans ce cas, et dans la mesure où, comme nous l'avons relevé, l'on n'est pas en présence d'une concentration[30], l'article 85 §1 demeure applicable.

b. *Restrictions de la concurrence*

L'article 21 de l'accord de coopération OVS contient une **restriction horizontale** de concurrence (art. 21 §1 OVS): les producteurs ont l'interdiction d'importer ou d'exporter de l'énergie électrique, **et une restriction verticale** (art. 21 §2 OVS): les producteurs ont l'obligation de répercuter cette interdiction vers le bas, c'est-à-dire d'imposer aux distributeurs régionaux avec lesquels ils passent des accords de fourniture d'électricité la même interdiction d'importation et d'exportation[31].

La SEP a tenté, au cours de la procédure, de réduire la portée verticale de l'OVS en prétendant que la restriction ne concerne que les producteurs et les distributeurs principaux qui leurs sont liés, mais pas d'autres éventuels producteurs, les distributeurs locaux ou les consommateurs finals. Cela revenait à dire que si les plaignants souffraient de limitations de concurrence, celles-ci découlaient directement et exclusivement du comportement – isolé – d'IJC, mais non de l'accord OVS.

On peut déjà douter que cette circonstance aurait pu suffire a dénier un effet restrictif de concurrence à l'article 21 OVS, mais il est vrai que celui-ci n'aurait alors pas concerné les plaignants.

Mais l'argument, bien qu'à première vue soutenable sur le plan juridique, doit être écarté dans la mesure où, **en fait,** l'article 21 OVS permet un **contrôle absolu des importations et exportations,** dans l'intérêt des actionnaires, et rend impossible en pratique la possibilité théorique d'importation ou d'exportation par d'autres que les producteurs ou les distributeurs principaux. Cet effet découle des considérations suivantes[32]:

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[30] Qui entraînerait alors l'application du Règlement 4064/89 du Conseil du 21 décembre 1989, JOCE N° L 395/1 du 30.12.1989.

[31] Décision IJC, att. 25.

[32] Id., att. 26 ss.

- L'art. 10 §4 OVS – qui impose aux producteurs de stipuler que l'énergie produite par les distributeurs qui se fournissent pour le reste auprès d'eux doit être revendue, indirectement, à la SEP – interdit toute fourniture d'électricité produite au niveau **local en faveur des clients des compagnies de distribution** et renforce l'effet **restrictif de l'article 21 OVS.**
- L'article 21 OVS est appliqué de façon telle qu'en pratique il met la SEP en situation d'exercer un contrôle total sur les importations et exportations puisque les producteurs imposent en fait aux distributeurs principaux une obligation d'achat exclusif et que ceux-ci font de même avec les communes ou les compagnies locales de distribution, lesquelles font aussi de même avec les gros consommateurs. Les obligations d'achats exclusifs découlent donc toutes de la répercussion en aval de l'interdiction d'importer qui figure dans l'OVS, avec pour conséquence que les consommateurs ont l'impossibilité pratique d'importer parallèlement.
- En sa qualité de propriétaire de six des sept réseaux néerlandais d'interconnexion internationaux et de gérante du septième, si l'on accepte le fait que des lignes privées appartenant aux clients ne constituent pas une véritable alternative, la SEP possède la mainmise technique lui permettant de s'opposer aux importations ou exportations par des tiers. Bien que l'on puisse imaginer une mise à disposition des réseaux moyennant rémunération, le passé a démontré qu'une telle possibilité n'a jamais été utilisée et que la SEP a toujours réussi à conserver le monopole des importations d'électricité[33].

Ainsi, en examinant l'accord non pour lui-même mais dans le cadre des effets, ici cumulatifs, restrictifs de concurrence qu'il entraîne, on doit constater l'impossibilité, pour tous les intervenants en aval de la SEP, d'accès à d'autre source d'approvisionnement[34].

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[33] A ce propos, voir les développements de la Commission au sujet de l'achat d'électricité à l'étranger par l'entreprise ESD; Décision IJC att. 14 ss et 29.

[34] Cf. la théorie de l'effet cumulatif, énoncée la première fois dans l'arrêt de la CJ du 12 décembre 1967, Brasserie de Haecht I, aff. 23/67, Rec. 1967, p. 525.

c. *Influence sur le commerce entre Etats membres*

Il n'est pas douteux qu'une interdiction absolue d'importer et d'exporter telle qu'elle figure dans l'accord OVS est "susceptible d'affecter le commerce entre Etats membres"[35].

On peut au demeurant relever la longue durée (vingt-cinq ans) pour laquelle il a été conclu, son application à l'ensemble du territoire des Pays-Bas, sa contrariété flagrante au concept de M.I.E. et l'affectation sensible de commerce qu'il est susceptible d'entraîner[36].

d. *Absence d'effet de la loi néerlandaise sur l'électricité de 1989 sur l'application des règles de concurrence*

Depuis l'entrée en vigueur de la nouvelle loi néerlandaise sur l'électricité du 16 novembre 1989, des dispositions légales spécifiques réglementent les situations visées par l'accord OVS, tout les en les libéralisant. La nouvelle loi est en effet moins restrictive que l'OVS ou, plus précisément, elle n'a pas repris tout le contenu de l'accord de coopération. En particulier, la loi de 1989 n'a pas fait sienne l'entier de l'interdiction d'importer et d'exporter combinée à l'obligation d'achat exclusif, prévus par le système de l'article 21 OVS. Au contraire, la nouvelle loi:

- libère les importations par des consommateurs finals si elles sont destinées à la propre consommation (art. 34);
- introduit une obligation de transport pour toute importation d'énergie (art. 47);
- ne réglemente pas les exportations[37].

Certes, il reste que d'une part les importations d'électricité destinées à la distribution publique sont interdites par d'autres entités que la SEP, et d'autre part, la dépendance technique à l'égard de la SEP subsiste pour les importations autorisées. Mais, en tout cas, l'article 21 OVS est plus

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[35] V. à ce sujet l'abondante jurisprudence citée par VAN BAEL/BELLIS, n° 308.

[36] A titre d'exemple, on peut relever que les prix d'achat de l'électricité par les consommateurs fnals varient, en raison notamment des distorsions de concurrence, du simple au double selon les Etats membres, et citer le cas de l'usine BASF sise en République Fédérale sur la rive droite du Rhin, qui, si elle avait l'autorisation de s'approvisionner côté français, réaliserait des économies de l'ordre de 6 mio DM par an.

[37] Décision IJC, att. 34 s.

restrictif et garde toute sa portée par rapport à la loi. Or la SEP a déclaré lors de la procédure qu'elle entendait continuer d'appliquer cette disposition, considérant que l'entrée en vigueur de la nouvelle loi sur l'électricité était sans influence sur ce point[38].

La Commission en conclut que l'article 21 OVS est appliqué d'une manière qui outrepasse la loi. Pour toutes les restrictions de concurrence de l'accord qui excèdent celles (encore) admises par la nouvelle loi, il n'y a pas lieu d'examiner ainsi la problématique d'une restriction de concurrence par l'autorité publique par le biais de la loi. C'est pour des motifs de pure opportunité – sur lequel nous reviendrons au terme de notre étude – que la Commission renonce à entrer en matière sur le point de savoir si la nouvelle loi sur l'électricité constituerait une contrainte réelle susceptible de soustraire des dispositions restrictives de concurrence du domaine d'application de l'article 85 ou même d'entraîner une procédure contre les Pays-Bas fondée sur la violation de l'article 5 §2 du traité CEE.

3. Absence de justification découlant de l'article 90 §2

Pour soustraire les dispositions restrictives de concurrence de l'accord OVS de l'application de l'article 85, la SEP s'est prévalue de l'exception admise par l'article 90 §2, à savoir que les entreprises publiques, bien qu'en principe soumises aux règles de concurrence (art. 90 §1), peuvent en être exclues si l'application de ces règles ferait échec à l'accomplissement, en droit ou en fait, de la mission particulière qui leur a été impartie, si le développement des échanges n'est pas affecté dans une mesure contraire à l'intérêt de la Communauté et si elles sont expressément chargées de la gestion de services d'intérêt économique général.

Dans la mesure où l'art. 34 de la loi sur l'électricité de 1989 distingue les importations d'électricité destinées à la **distribution publique** (interdites) de celles, par des consommateurs finals, destinées à la **distribution non publique,** c'est-à-dire en fait à la propre consommation (autorisées), il importe d'examiner séparément l'exception de l'article 90 §2 en fonction de la nature publique[39] ou non[40] de la distribution.

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[38] Id., att. 20.
[39] Id., att. 49 ss.
[40] Id., att. 39 ss.

a. *Distribution non publique*

Considérant la mission des producteurs d'électricité telle qu'elle figure à l'article 2 de la loi de 1989 [41] et l'obligation de livraison qui leur est imposée, découlant tant de la loi de 1989 (art. 12) que des concessions octroyées, c'est à bon droit que la SEP et les producteurs qui la composent se sont vus reconnaître la qualité de gérants de services d'intérêt économique général.

Par contre, la Commission a considéré que l'article 90 §2 n'était pas applicable car un contrôle absolu des importations et exportations n'est pas indispensable à l'accomplissement de leur mission. Cette opinion est conforme à l'exigence de nécessité des restrictions de concurrence et au principe général d'application stricte des exceptions à un régime de droit commun [42]. Les motifs retenus en l'espèce sont les suivants [43]:

- eu égard à la nécessité de "planning" et de coordination des importations, on ne saurait s'opposer à la possibilité d'importer pour les consommateurs finals alors que l'on admet sans restriction l'autoproduction[44] avec possibilité de revente des excédents à la SEP, tout aussi difficile à intégrer dans la gestion des importations;
- le législateur néerlandais de 1989 est du même avis que la Commission, puisque la nouvelle loi libère expressément importations ou exportations par les consommateurs finals;
- le droit de propriété de la SEP sur la plupart des liaisons de connexion internationales ne justifie pas une interdiction absolue, dans la mesure où il est tout à fait possible de prévoir une mise à disposition du réseau moyennant des conditions raisonnables (argument de proportionnalité).

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[41] "(Les producteurs et la SEP) doivent (...) veiller en commun au fonctionnement fiable et efficace de la distribution publique d'électricité dans des zones rurales aux coûts les plus bas possibles et de manière responsable du point de vue de l'intérêt commun"; cf. Décision IJC, att. 9.

[42] GRABITZ, ad art. 90, n° 51 ss, 54 et les réf. citées.

[43] Décision IJC, att. 44 s.

[44] Pour l'année 1988, 15,6% de la production totale d'électricité aux Pays-Bas était le fait d'autoproducters.

b. *Distribution publique*

Préalablement, la Commission refuse explicitement de se prononcer sur la compatibilité de la législation avec le traité CEE [45].

Cette position, bien que critiquable sur le plan strictement juridique[46], est toutefois compréhensible à plusieurs égards: d'abord, l'éventuelle nécessité pour la Commission d'agir par le biais d'un recours contre les Pays-Bas pour manquement à l'obligation de fidélité prévu à l'article 5 §2 du traité est lourde et la Commission a toujours fait preuve de la plus grande retenue à son égard; ensuite et surtout, il aurait été tout le moins maladroit que la Commision intente une procédure à l'encontre du Royaume des Pays-Bas alors que celui-ci venait, avec la nouvelle loi de 1989, d'effectuer un premier pas important vers la libéralisation de son marché national de l'électricité.

Reste alors un seul cas non "couvert" par la législation de 1989, un seul cas où l'OVS est plus restrictif que la loi: l'interdiction d'exporter faite aux sociétés de distribution[47].

Ici aussi, il faut admettre que cette interdiction n'est pas indispensable à l'accomplissement de la mission impartie aux producteurs. Ceux-ci ne sont en effet que responsables de faire en sorte que la fourniture d'énergie électrique aux Pays-Bas se déroule correctement. Si les distributeurs sont aptes à respecter leurs obligations de fourniture, il n'y a pas de raison de leur imposer une interdiction d'exporter [48].

4. Impossibilité d'exemption au sens de l'article 85 §3

Pour le seul motif qu'un accord doit être notifié à la Commission s'il prétend bénéficier d'une exemption individuelle au titre de l'article 85 §3 [49], il faut, en l'absence d'une telle notification, constater ad liminem l'impossibilité d'exemption. Au surplus, il est constant qu'un accord, tel

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[45] Vide att. 50 et 51 de la Décision IJC.

[46] Ce point de la décision de IJC a d'ailleurs fait l'objet d'un recours au TPI; à ce propos, cf. infra note 52.

[47] Bien que la Commission juge "douteux" que les parties à l'OVS puissent maintenir et appliquer cette interdiction d'exporter, puisqu'elle va à l'encontre de l'économie de la nouvelle loi, qui libère précisément les exportations; cf. Décision IJC, att. 51.

[48] Décision IJC, att. 51.

[49] Cf. 4 §1 du Règlement N° 17.

l'OVS, qui entraîne une interdiction pure et simple d'importer et d'exporter, et donc une restriction territoriale absolue, n'est pas apte à remplir les conditions d'exemption de l'article 85 §3 [50].

C. DECISION DE LA COMMISSION

La Commission constate que l'article 21 de l'accord de coopération OVS passé entre la SEP et les quatre sociétés de production d'électricité constitue une infraction à l'article 85 §1 du traité CEE mais dans la seule mesure "où ledit article 21 a pour objet ou pour effet d'entraver les importations effectuées par des consommateurs industriels privés et les exportations de la production en dehors du domaine de l'approvisionnement public effectuées par des sociétés de distribution et des consommateurs industriels privés, et notamment des autoproducteurs" [51].

Faisant montre d'une grande retenue, la Commission n'a pas infligé d'amende. Elle se contente d'ordonner que les destinaires lui soumettent, dans un délai de trois mois, des propositions visant à mettre fin à l'infraction [52].

C'est le lieu de préciser que la décision a fait l'objet d'un recours au TPI, motivé principalement par le défaut de jugement sur l'application de l'article 21 de l'OVS aux opérations d'importation et d'exportation effectuées par des entreprises de distribution **dans le cadre de l'approvisionnement public** et par la privation d'effet utile de l'article 85 découlant des mesures étatiques prises en l'espèce, soit la favorisation par un Etat membre (le Royaume des Pays-Bas) de l'élaboration de réglementations de la concurrence incompatibles avec le traité [53].

Le recours a été rejeté par arrêt du TPI du 18 novembre 1992 [54]. Nous n'avons pas connaissance d'une poursuite de cette procédure.

Par ailleurs, signalons qu'un recours, daté du 17 janvier 1992, est actuellement pendant par devant le TPI [55]. Il a pour objet une décision de la Commission du 20 novembre 1991 de rejet d'une plainte introduite pour

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[50] Cf. notamment l'arrêt de la CJ du 13 juillet 1966, Grundig-Consten, aff. 56 et 58/64, Rec. 1966, p. 429.
[51] Décision IJC, article premier.
[52] Id., art. 2.
[53] Recours au TPI du 14 mars 1991, aff. T-16/91, JOCE 1991, N° C 101/10.
[54] Arrêt du TPI du 18 novembre 1992, Rendo et autres/Commission, Rec. 1992/9 – II p. 2417-2458, aff. T-16/91.
[55] Recours au TPI du 17 janvier 1992, aff. T-2/92, JOCE 1992, N° C 37/29.

illicéité du comportement qui a consisté à ne pas examiner les dispositions de l'OVS "couvertes" par la loi néerlandaise sur les fournitures d'électricité de 1989.

III. DECISION SCOTTISH NUCLEAR, ACCORD SUR L'ENERGIE NUCLEAIRE, DU 30 AVRIL 1991

A. FAITS

La décision fait suite à la notification par Scottish Nuclear Limited d'un accord sur l'énergie nucléaire en Ecosse, passé entre elle-même et deux entreprises écossaises d'électricité, suite à la privatisation du secteur britannique de l'électricité.

Avant de discuter l'appréciation juridique de la décision, rappelons brièvement la structure du marché de l'électricité en Ecosse et l'accord sur l'énergie nucléaire qui est en cause.

1. Structure du marché de l'électricité en Ecosse [56]

Jusqu'au 31 mars 1990, la production, le transport et la distribution d'énergie électrique en Ecosse s'opérait par le biais de deux entreprises publiques, ou "boards", qui se répartissaient les zones du nord et du sud de cette région de Grande-Bretagne: le North of Scotland Hydro-Electric Board et le South of Scotland Electricity Board.

A la fin des années quatre-vingt, le Royaume-Uni a décidé de réorganiser l'ensemble de son marché électrique et de le privatiser [57].

Pour ce qui concerne l'Ecosse on a tenté de mettre en place une nouvelle structure, conçue pour permettre l'introduction progressive de la concurrence, tant au niveau de la production qu'à celui de la fourniture d'énergie électrique. Les traits principaux de la réforme sont les suivants:

- maintien d'une concentration verticale, mieux adaptée pour fournir de l'électricité dans des zones faiblement peuplées;

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[56] Décision Scottish Nuclear, att. 3 ss.

[57] A ce propos, v. Sally HUNT, Concurrence et Privatisation: Le Marché de l'Electricité en Angleterre et au Pays de Galles, in *Revue de l'Energie,* année 43, N° 436, Paris 1992, p. 27 ss.

- création, à partie des deux "boards" existant, de deux compagnies **séparées, indépendantes, concurrentes et concentrées verticalement:** la Scottish Power plc reprend les activités non nucléaires du "board" sud et la Scottish HydroElectric reprend les activités du "board" nord;
- pour ce qui concerne la production d'énergie nucléaire, création d'une entreprise séparée: la Scottish Nuclear Limited; celle-ci reste dans le domaine public, devient propriétaire et exploite les deux centrales nucléaires qui se trouvent au sud; elle n'approvisionne pas directement les consommateurs, mais vend sous contrat toute sa production à Scottish Power et à Scottish HydroElectric.

La réorganisation du système d'exploitation de l'industrie électrique en Ecosse s'est opérée juridiquement par l'adoption d'une loi sur l'électricité de 1989 et ses règlements d'application. Les grandes lignes que prévoit cette législation peuvent être résumées comme suit:

- obligation d'obtenir une **licence** pour produire, transporter ou fournir de l'électricité; les licences octroyées à Scottish Power et Scottish Hydro-Electric prévoient le **droit et l'obligation de transport et de fourniture** d'électricité dans leurs régions respectives ainsi que le **droit de production autonome,** sans restriction; la licence de Scottish Nuclear ne couvre que l'activité de production;
- droit **non exclusif** de fournir les consommateurs: au-delà d'un seuil de consommation fixé et dégressif jusqu'à zéro huit ans après l'entrée en vigueur de la loi le consommateur individuel a le **choix du fournisseur;**
- possibilité pour tout fournisseur (du Royaume-Uni ou de communautaire) d'obtenir une "licence de second niveau" qui octroie le **droit d'approvisionner les consommateurs des autres régions de Grande-Bretagne,** Angleterre et Pays de Galles;
- **interdiction de discrimination** des consommateurs équivalents, dont découle l'obligation d'éviter les subventions croisées et l'obligation d'offrir l'accès au système de transport et de distribution aux autres usagers à des conditions transparentes et non discriminatoires.

2. Accord sur l'énergie nucléaire [58]

L'accord notifié à la Commission lie Scottish Nuclear d'un côté et Scottish Power et Scottish Hydro-Electric de l'autre. Destiné à encourager la concurrence et l'efficacité sur le marché de la fourniture d'énergie électrique en Ecosse et au Royaume-Uni, sa validité s'étend jusqu'au 31 mars 2005. L'accord laisse subsister une concurrence d'une part entre Scottish Power et Scottish Hydro-Electric, d'autre part entre le nucléaire et les autres combustibles énergétiques[59]. Ses principales caractéristiques sont les suivantes:

- obligation pour Scottish Power et Scottish Hydro-Electric d'acquérir, par le biais de contrats d'achat fermes, l'entier de la production de Scottish Nuclear, selon des quotas fixes d'environ 75% et 25% respectivement;
- obligation pour Scottish Nuclear d'exploiter ses deux centrales nucléaires au maximum de leurs capacités;
- interdiction pour Scottish Nuclear de livrer à des tiers sans l'accord des deux autres parties;
- fixation d'un barème pour les prix à payer pour la fourniture d'énergie produite par Scottish Nuclear;
- pas de réglementation quant aux prix de vente ou quant aux prix d'achat à des tiers pratiqués par Scottish Power et Scottish Hydro-Electric.

B. APPRECIATION JURIDIQUE

Pour ce qui a trait au champ d'application matériel des règles de concurrence, nous nous permettons de renvoyer à ce qui a été dit plus haut dans le cadre de la décision Ijsselcentrale et qui s'applique également en l'espèce[60].

Nous suivrons la structure de la motivation de la Commission pour examiner successivement l'existence d'une entente restrictive de concurrence au sens de l'article 85 §1 et la possibilité d'une exemption selon l'article 85 §3 du traité CEE.

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[58] Décision Scottish Nuclear, att. 19 ss.

[59] Le nucléaire représente environ 44% de la production d'électricité en Ecosse.

[60] Cf. supra, II. B.1.

1. Entente restrictive de concurrence au sens de l'article 85 §1

On admettra une entente restrictive de concurrence si l'accord sur l'énergie nucléaire relève du domaine d'application de l'article 85 §1, s'il est susceptible de restreindre la concurrence et d'influencer le commerce entre Etats membres.

a. *Nature de l'accord*

Pour la Commission, il ne fait aucun doute que l'accord en question constitue "un accord entre entreprises au sens de l'article 85 §1 du traité CEE[61]".

Cette appréciation doit-elle être approuvée? Il faut tout de même relever que l'autorité publique, qui est intervenue activement – et pour cause – dans le processus de privatisation du secteur de l'électricité, a à tout le moins favorisé, si ce n'est imposé, l'accord passé entre les deux entreprises privatisées et la compagnie qui est restée dans le domaine public. Dans la mesure où l'appui et l'encouragement de l'autorité ne suffisent pas à soustraire un accord au domaine d'application de l'article 85[62], et considérant que les restrictions à la concurrence relèvent du seul accord et non des dispositions de la loi de 1989, il est admissible de statuer dans le sens de la Commission.

Toutefois, il ne serait sans doute pas téméraire de plaider que l'intervention étatique est telle que l'accord échappe au domaine d'application de l'article 85 §1. En tout cas, le défaut de motivation de la décision sur ce point laisse à penser que l'objectif poursuivi est bien de saisir l'opportunité d'appliquer les règles de concurrence à l'accord en question.

b. *Restrictions de la concurrence*

Il n'est pas contestable que l'accord sur l'énergie nucléaire est restrictif de concurrence. Avec les auteurs de la décision, on peut relever trois restrictions essentielles[63]:

– la **limitation de ses débouchés** par Scottish Nuclear, qui s'engage à fournir exclusivement Scottish Power et Scottish Hydro-Electric, sauf à obtenir leur accord pour approvisionner des tiers;

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[61] Décision Scottish Nuclear, att. 28.
[62] cf. VAN BAEL/BELLIS, n° 213, p. 53.
[63] Décision Scottish Nuclear, att. 29.

- la **limitation des sources d'approvisionnement** de Scottish Power et Scottish Hydro-Electric, qui ont l'obligation d'acheter l'énergie produite par Scottish Nuclear, au surplus selon des quotas fixes, ce qui fige, sur ce point, la possibilité de concurrence entre les deux sociétés privatisées;
- la fixation par l'accord du prix d'achat de l'électricité à Scottish Nuclear, identique pour les deux acquéreurs.

c. *Influence sur le commerce entre Etats membres*

C'est sur ce point sans doute que la motivation de la décision paraît le plus discutable, ou, en tous les cas, qu'une argumentation contraire aurait été tout aussi soutenable.

Il apparaît en effet que les échanges d'énergie électrique intracommunautaires du Royaume-Uni ne se déroulent qu'avec la France, à travers l'interconnecteur qui relie le réseau français au réseau installé en Angleterre et au Pays de Galles. Le réseau écossais **n'est pas relié directement** au réseau international.

La Commission est toutefois d'avis que "la réorganisation de la production d'électricité en Ecosse et les perspectives d'augmentation à moyen terme de la capacité de l'interconnecteur (...) [devrait] permettre de réduire le relatif isolement du marché écossais, d'arriver à une plus grande interdépendance entre les marchés et d'accroître les échanges entre Etats membres. Etant donné l'interdépendance des réseaux entre l'Ecosse et l'Angleterre, d'une part, et le développement prévu de ces interconnecteurs, **l'accord est dès lors potentiellement susceptible d'affecter le commerce entre Etats membres**[64]".

Si la motivation qui vient d'être citée est conforme à la pratique de la Commission et à la jurisprudence de la Cour en la matière, qui admettent une affectation du commerce entre Etats membres sur la base d'éléments de preuve très réduit[65], il n'empêche que, là aussi, elle paraît guidée par des préoccupations plus politiques que juridiques[66].

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[64] Id., att. 31.

[65] A ce propos, cf. VAN BAEL/BELLIS, n° 220 ss, 253 ss.

[66] D'autant qu'un raisonnement par le biais de la règle "de minimis" pouvait, tout en reconnaisant l'affectation potentielle du commerce entre Etats membres, l'estimer suffisamment insignifiante pour que l'accord échappe à la prohibition de l'article 85 §1.

2. Exemption de l'interdiction selon l'article 85 §3

Après s'être attachée à démontrer le caractère restrictif de concurrence de l'accord sur l'énergie nucléaire, la Commission constate qu'il remplit les quatre conditions nécessaires à une exemption individuelle au sens de l'article 85 §3: amélioration de la production ou de la distribution, participation équitable des utilisateurs au profit, nécessité des restrictions et absence d'élimination de la concurrence.

a. *Amélioration de la production ou de la distribution*

L'amélioration de la production ou de la distribution se révèle déjà dans le fait que l'accord s'inscrit dans le cadre de la réorganisation et la privatisation de l'électricité en Ecosse, qui a précisément pour objet une telle amélioration.

L'objectif poursuivi conduit Scottish Nuclear à se voir garantir des débouchés sûrs[67], lui permettant d'optimiser sa production. Les effets reconnus positifs sont de trois ordres:

- l'accord permet la planification à long terme d'une production fiable qui assure la sécurité d'approvisionnement et l'indépendance énergétique;
- il permet le fonctionnement des centrales à leur pleine capacité, ce que favorise encore la structure des prix mise en place[68], qui incite aux économies d'échelle;
- il est nécessaire pour assurer la transition entre la structure du secteur de l'électricité en place jusqu'en 1990 et celle, régulée par le marché, qui est souhaitée.

On relèvera la prise en compte, au titre d'amélioration de la production ou de la distribution, d'arguments plus politiques qu'objectifs[69].

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[67] L'accord se place dans la ligne des considérants qui ont conduit la Commission à exempter des catégories d'accords de distribution exclusive et d'achat exclusif: cf. les Règlements 1983/83, JOCE 1983 N° L 173/1, et 1984/83, JOCE 1983 N° L 173/5, par ailleurs inapplicables en l'espèce.

[68] Jusqu'à un niveau de production fixé [5000 GWh], le prix à payer pour l'électricité produite par Scottish Nuclear correspond au prix normal d'une production électrique nucléaire. Au-delà, le prix s'aligne sur celui – plus élevé – d'une production électrique classique (centrale thermique alimentée au charbon), ce qui a pour effet d'inciter Scottish Nuclear à produire.

[69] L'indépendance énergétique n'est pas en soi garante d'une meilleure production ou distribution; elle a au contraire souvent son prix.

b. *Participation équitable des utilisateurs au profit*

L'avantage pour les utilisateurs doit résulter de l'introduction progressive de la concurrence. En particulier, la liberté de choix du fournisseur pour les utilisateurs finals, liberté dont le seuil de consommation minimal pour en bénéficier est amené à disparaître, doit assurer une pression concurrentielle sur les prix qu'ils devront payer pour leur approvisionnement.

c. *Nécessité des restrictions*

L'appréciation du caractère indispensable de la restriction de concurrence relève bien évidemment d'une pondération où interviennent souvent des éléments d'opportunité. En l'espèce, on constate:

– que si Scottish Power et Scottish Hydro-Electric doivent acheter la production de Scottish Nuclear à un prix identique, elles restent cependant concurrentes vis-à-vis des tiers, fournisseurs ou clients [70];

– que les quotas fixés ne concernent que l'achat de la production nucléaire, mais que, pour le reste, Scottish Power et Scottish Hydro-Electric doivent s'adapter individuellement à la demande;

– que la durée de validité de l'accord, initialement projetée à 30 ans, a été ramenée, sur demande de la Commission, à 15 ans.

Enfin, la Commission mentionne déjà que si jamais les prix fixés pour l'achat d'électricité nucléaire devaient servir à faire pression sur ceux de vente des autres fournisseurs de Scottish Power et Hydro-Electric, on se trouverait en présence d'une utilisation abusive de l'exemption [71].

d. *Absence d'élimination de la concurrence*

L'accord maintient des possibilités de concurrence entre Scottish Power et Scottish Hydro-Electric puisque le marché de l'électricité d'origine

[70] L'accord ne prévoit rien au sujet des prix auxquels les deux sociétés privatisées doivent acheter le reste de leur électricité. Elles sont également seules juges des tarifs à adopter pour la vente à leurs clients.

[71] Un tel abus peut justifier une révocation de l'exemption, conformément à l'art. 8, ch. 3 lit. d) du Règlement N° 17.

non nucléaire écossais reste libre. Il existe ainsi de réelles alternatives d'approvisionnement.

C. DECISION DE LA COMMISSION

Scottish Nuclear Limited demandait pour l'accord principalement une attestation négative et, à titre subsidiaire, l'exemption individuelle au titre de l'article 85 §3. La Commission accorde l'exemption et déclare inapplicables à l'accord les dispositions de l'article 85 §1, pour la période comprise jusqu'au 31 mars 2005[72].

IV. CONCLUSION

1. Appréciation critique

Juridiquement, les deux décisions examinées ne prêtent pas particulièrement le flanc à la critique. Certes, les solutions apportées par la Commission aux quelques points contestables que nous avons soulevés semblent parfois relever plus de l'induction que de la déduction; elles ne sont pas pour autant en contradiction avec sa pratique habituelle ou avec quelque jurisprudence de la Cour.

On garde l'impression que la Commission, bien que soucieuse de retenue, entend enfoncer des coins pour favoriser au maximum l'ouverture à la concurrence du marché communautaire très cloisonné de l'énergie, particulièrement dans le domaine de l'électricité. Aussi profite-t-elle par exemple du début de libéralisation entamé par les Etats membres pour renforcer son application des règles de concurrence, tout en prenant garde de ne pas entraver ou mettre en question cette première étape. Dans l'affaire Ijsselcentrale, la Commission relève que la loi sur l'électricité de 1989 n'est pas parfait mais, pour des motifs de politique, se refuse à sanctionner ou même examiner ces manquements, de façon à ne pas compromettre son approche globale. Dans la décision Scottish Nuclear, la Commission use de toutes les marges de manoeuvre que lui offrent les règles de concurrence pour – dans la droite ligne d'ailleurs de la technique

[72] Décision Scottish Nuclear, art. premier.

juridique qu'elle suit habituellement – privilégier l'application de l'article 85 §3 consécutif à une application rigide de l'article 85 §1.

2. Développements possibles

L'application des règles de concurrence aux fournitures d'énergie est sans doute appelée à se renforcer, concurremment d'ailleurs au développement d'instruments législatifs plus efficace [73]. La Commission semble déterminée à recourir aux instruments du traité à sa disposition pour ouvrir les monopoles d'Etat de l'énergie. L'arme la plus efficace est l'article 90, qui permet la pleine application des règles communautaires, y compris en matière de concurrence et de libre-circulation, aux entreprises publiques au sens large, sauf exception restrictive où ces règles risqueraient de les entraver dans le respect d'obligations de service public. A propos de l'application de cette disposition, l'arrêt sur la Directive relative aux terminaux de télécommunication[74] devrait servir encore de fil conducteur à la Commission pour la mise en place du marché intérieur de l'énergie.

[73] La Commission a notamment soumis au Conseil des propositions de Directives concernant des règles communes pour le marché intérieur du gaz naturel et de l'électricité, propositions qui intègrent, entre autres, l'obligation des entreprises de distribution d'ouvrir leurs réseaux aux tiers (Accès des Tiers aux Réseaux – ATR). En raison de vives ppositions, notamment au sein du lobby européen des fournisseurs d'électricité – EURELECTRIC –, le Conseil énergie du 30 novembre 1992 a retourné la copie à la Commission en l'invitation à tenir compte de toutes les particularités et contraintes du marché de ces produits.

[74] Arrêt de la CJ du 19 mars 1991, France c/ Commission, aff. 202/88, Rec. 1991, p. 1259.

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ESTUDOS

DIREITOS DO HOMEM

NICOLAS VALTICOS *

A PROPOS DE LA MISE EN OEUVRE DES CONVENTIONS INTERNATIONALES SUR LES DROITS DE L'HOMME

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OBSERVATIONS SUR LA DIVERSITE DES METHODES DE CONTROLE

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Les vues exprimées sont naturellement celles de l'auteur.

On a beaucoup écrit – et d'excellentes choses – au sujet des méthodes de contrôle de l'application des textes internationaux sur les droits de l'homme! Et cela dès le début de la mise sur pied de formules et de mécanismes[1] qui ont introduit des concepts nouveaux et des formules audacieuses dans les notions jusque-là prudentes et respectueuses des souverainetés nationales.

La notion des droits de l'homme et l'adoption de textes internationaux visant à les protéger ont fait de l'homme un nouvel objet, puis même un sujet du droit international. L'Etat, auparavant souverain incontesté, a pu être mis en question au sujet du respect des normes internationales visant la protection des droits de l'homme. La communauté internationale et les communautés régionales se sont vu accorder le droit d'examiner et d'apprécier la conduite des Etats à cet égard. Un nouveau et grand domaine du droit international s'est ainsi ouvert et il s'est développé de manière remarquable au cours des dernières décennies.

Ce développement ne s'est cependant fait ni de manière parallèle ni de manière uniforme. Certes, de plus ou moins grandes similitudes et des influences réciproques ont marqué les développements survenus et les méthodes utilisées. Les différences n'en ont pas moins été sensibles,

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[1] N. Kaasik, *Le contrôle en droit international*, Paris, 1933, L. Kopelmanas, "Le contrôle international", *Recueil de cours de l'Académie de droit international*, 1950, vol. II, pp. 59-149; Marcel Merle, "Le contrôle exercé par les organisations internationales sur les activités des Etats Membres", *Annuaire français de droit international*, 1959, pp. 411-431; H. Golsong, "Implementation of International Protection of Human Rights", *RCADI*, 1963, vol. III, pp. 1-151; N. Valticos, "Aperçu de certains grands problèmes du droit international", *Mélanges Maridakis*, 1964, vol. III, pp. 543-586.

parfois considérables. Il est certainement instructif d'en relever les principales et d'en rechercher les raisons. On a, assurément, parfois traité de ce problème, mais il n'est pas superflu d'y revenir, car la question évolue et les données du phénomène se modifient sensiblement au cours des ans.

Avant, cependant, de passer en revue les principaux aspects de ce type de contrôle international, il serait utile de mentionner, tels des fils d'Ariane, divers facteurs qui ont été à l'origine des particularités, des différences même, que présentent les méthodes utilisées et qui, du moins jusqu'à un certain point, peuvent expliquer certaines disparités.

Facteurs des différences entre les méthodes

Des facteurs de types très divers ont été à l'origine des différences que présentent les méthodes du contrôle de l'observation des normes internationales relatives aux droits de l'homme.

On peut ainsi signaler: les conceptions plus ou moins extensives quant aux possibilités d'exercer un droit de regard sur les activités des Etats (et on sait qu'une évolution sensible s'est faite sur ce point ces dernières décennies), le type d'organisation internationale (universelle ou régionale, principalement politique ou technique, purement intergouvernementale ou comportant des éléments non gouvernementaux, bref plus ou moins homogènes, etc.), la nature des droits considérés (droits civils ou politiques et droits économiques et sociaux), l'objet du contrôle exercé (questions de droit ou questions de fait), encore que cette distinction n'ait pas un caractère absolu. A ces raisons, propres à chaque type de situation, il faut ajouter un élément normal d'imitation, qui a fait que des systèmes nouveaux se sont inspirés dans une plus ou moins grande mesure de systèmes antérieurs, et enfin un souci fréquent d'efficacité, parfois même d'expansion qui a entraîné des développements et des améliorations, souvent discrètes et d'ordre pratique.

Dans le jeu de ces différents facteurs, le temps, l'entente – ou du moins une certaine coopération nationale –, les opinions publiques ont également joué un rôle et les conceptions (p. ex. sur la souveraineté nationale, sur le contenu et l'universalité des droits de l'homme, etc.) ont évolué au cours des années, réduisant certaines craintes, relativisant certains "tabous", et aussi soulignant certaines valeurs. Tout ceci a eu ses effets sur l'évolution du contrôle international, dont nous examinerons maintenant les principales modalités.

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Les différences que présentent les diverses méthodes de contrôle peuvent être classées sous quelques grandes catégories ou selon certains critères essentiels. Pour ne signaler que les principaux points sur lesquels des différences se sont manifestées, on peut relever notamment la technique générale du contrôle, son mode de déclenchement, l'organe chargé d'effectuer le contrôle, le caractère politique, administratif ou juridictionnel du contrôle, le genre de droit mis en cause, le type des conclusions et le caractère, obligatoire ou non, de la décision à laquelle aboutit le contrôle. Ces distinctions comportent naturellement des interférences: ainsi, la technique suivie dépend dans une certaine mesure du caractère du contrôle aussi bien que du genre de droit considéré, mais tout exposé appelle des distinctions, même si celles-ci ne peuvent pas avoir un caractère absolu. La logique ou l'esprit de méthode aurait du reste voulu que l'on commence par examiner le caractère (politique, technique, etc.) des différents types de contrôle, mais il apparaîtra sans doute plus clair d'exposer en premier lieu les grandes lignes et la technique générale du contrôle, ce qui sera de nature à éclairer davantage les principaux traits qui sont en cause.

La technique générale du contrôle

A travers la diversité des méthodes utilisées, les systèmes de contrôle en vigueur se rattachent, dans l'ensemble, à une des deux grandes méthodes (parfois même aux deux grandes méthodes à la fois) qui ont constitué, dès l'origine, la *summa divisio* du contrôle international: il s'agit, d'une part, du contrôle fondé sur la présentation périodique de rapports par les gouvernements et, d'autre part, du contrôle fondé sur la présentation de plaintes. Depuis, la pratique a progressivement atténué les différences et parfois établi des ponts ou introduit des emprunts ou des combinaisons entre ces deux voies, mais l'essentiel de la distinction demeure.

Certes, la technique du contrôle international est, pour une large part, liée à sa nature, mais le rapport est plus complexe qu'il ne paraît au premier abord. Disons ici, pour simplifier les choses, que le premier véritable système de contrôle international sur des textes concernant les droits de l'homme, qui a été celui établi en 1919, par les Traités de Paix, à l'intention de l'Organisation internationale du Travail (OIT) qui a été

créée par les traités en question, a été significatif pour trois raisons: d'abord, parce qu'il a été établi dans ce qui est devenu la Constitution même de l'OIT, et qu'il s'est donc imposé à tous les Etats Membres de l'Organisation comme pour tous les textes établis par celle-ci; deuxièmement, parce que le nombre des textes et des engagements auxquels il est applicable a été très important [2], et troisièmement – et nous touchons ici directement à la question de la méthode – parce qu'il combine le système fondé sur l'examen de rapports périodiques – le plus courant – et le système fondé sur la présentation de plaintes qui, il est vrai, fut, à l'origine, le plus exceptionnel [3].

Par la suite, c'est surtout après la Deuxième Guerre mondiale qu'avec le souci, devenu universel, de protéger les droits de l'homme par une action internationale, se multiplièrent les textes internationaux et les systèmes visant à en contrôler l'application. Rappelons ainsi qu'une première forme de contrôle établie par les Nations Unies en 1956 a constitué à demander aux Etats Membres de fournir, tous les six ans, en trois étapes, des rapports sur l'évolution et les progrès accomplis dans le domaine des droits de l'homme. Il a été mis fin au système en 1981 à la suite du développement du système de contrôle établi au sujet des Pactes internationaux relatifs aux droits de l'homme de 1966. Ce système a été fondé essentiellement sur la présentation par les Etats Parties de rapports périodiques au sujet de leur mise en oeuvre. Les rapports en question diffèrent très sensiblement selon qu'il s'agit de l'un ou de l'autre Pacte, notamment quant aux organes chargés d'étudier ces rapports et quant à la possibilité d'examen, en outre, d'allégations.

Pour le Pacte relatif aux droits civils et politiques, dont le système de contrôle est le plus développé, il a été établi un Comité composé de dix-huit "personnalités de haute moralité possédant une compétence reconnue dans le domaine des droits de l'homme". Ce Pacte prévoit aussi l'examen d'allégations par un Etat Partie, contre un autre, à condition que celui-ci ait reconnu la compétence du Comité, ce qui n'a été fait jusqu'ici que par un nombre relativement limité d'Etats. Enfin, en vertu d'un protocole facultatif, le Comité peut aussi examiner des communications de particuliers qui prétendent être victimes d'une violation de Pacte.

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[2] Plus de 150 conventions, qui ont fait l'objet au total de plus de 5.500 ratifications, sans compter les recommandations adoptées.

[3] V. N. Valticos, "Les Commissions d'enquête de l'OIT", *Revue générale de droit international public,* 1987-3, pp. 847-879.

C'est également sur la base de rapports périodiques, à l'image du plus courant des systèmes de contrôle de l'OIT, qu'a été fondé celui de la Charte sociale européenne du Conseil de l'Europe de 1961.

Par contre, dès 1950, la Convention européenne des droits de l'homme du Conseil de l'Europe, qui a eu un très grand retentissement [4], a été fondée sur la base de la présentation de requêtes par des Etats ou par des groupes ou des individus – cette dernière possibilité étant de loin la plus fréquente – les plus importantes de ces affaires étant finalement soumises à l'organe judiciaire européen compétent en la matière, c'est-à-dire à la Cour européenne des droits de l'homme.

Avantages et inconvénients des différentes méthodes

On a souvent comparé les différentes méthodes de contrôle. La comparaison peut se faire à partir de deux types d'éléments: d'une part, la méthodologie même du contrôle et, d'autre part, la nature de son objet.

Du point de vue méthodologique, on peut, en dégageant l'essentiel, dire que l'avantage principal du système des rapports périodiques est que tous les Etats liés par un texte – ou même membres d'une organisation internationale y sont soumis, ce qui permet parfois de déceler des transgressions non apparentes et qui, pour une raison ou une autre, n'ont pas fait l'objet de plaintes.

Pour être vraiment efficace, ce système est parfois complété par deux types de garanties: en premier lieu, il est demandé aux gouvernements de communiquer copie de leurs rapports à certaines organisations nationales (notamment celles des employeurs et des travailleurs, pour les organisations relatives au travail), de sorte que ces organisations peuvent formuler leurs commentaires éventuels.

Une deuxième garantie consiste à équiper l'organe de contrôle d'un secrétariat qualifié qui puisse, sous sa direction, procéder aux recherches appropriées pour vérifier l'état de la législation et de la pratique des pays intéressés dans le domaine couvert par la Convention.

Si l'on se tourne maintenant vers le système fondé sur la présentation de plaintes, on constate, inversement, que, tant qu'une plainte n'est pas présentée, et diverses raisons – comme, parfois, la crainte de représailles,

[4] La Convention européenne a été ratifiée par tous les Etats Membres du Conseil de l'Europe (23); elle a fait l'objet de milliers de requêtes et la Cour européenne rend chaque année un nombre croissant d'arrêts.

ou des préoccupations diplomatiques, ou encore, lorsqu'il s'agit d'un national ou d'une organisation nationale, le souci de régler les problèmes sur le plan national ou simplement l'ignorance de la procédure internationale – peuvent expliquer ce fait, un Etat ne peut pas faire l'objet d'une procédure de contrôle.

Dans ces conditions, la combinaison de ces deux types de méthodes a souvent paru la meilleure solution et l'on a donc établi des systèmes dans lesquels, comme pour l'OIT, ces deux formules ont été combinées et sont utilisées dans une proportion variable et qui a d'ailleurs évolué sensiblement au cours des années.

Cependant, l'efficacité de l'un ou de l'autre système de contrôle est aussi fonction du type de droit qui en est l'objet. On a parfois soutenu que, s'agissant des droits civils et politiques, qui s'analysent généralement en une obligation simple de l'Etat, souvent même en une obligation de s'abstenir (droit de réunion, liberté de parole, etc.), le système fondé sur les plaintes serait le plus approprié, alors que, pour les droits économiques et sociaux, qui comportent généralement l'obligation pour l'Etat de mener une action parfois complexe et prolongée et même l'établissement de programmes (droit à la sécurité sociale, égalité de rémunération, protection des enfants au travail, etc.), un système fondé sur des rapports détaillés et périodiques permet de mieux apprécier les mesures prises et de suivre les progrès accomplis au cours des ans. Cela est, dans une large mesure, exact, mais la règle n'en a pas pour cela un caractère absolu. Il y a, en effet, des droits civils et politiques qui s'analysent en une action positive et systématique (p. ex. droit de participer à la vie politique des pays) comme il y a des droits économiques et sociaux parmi les plus importants, qui ne consistent qu'en une obligation pour l'Etat de s'abstenir de prendre certaines mesures restrictives (liberté syndicale, interdiction du travail forcé, abolition de la discrimination). De ce point de vue donc aussi, la combinaison des deux systèmes constitue la solution la plus appropriée.

Mode de déclenchement du contrôle

Ce qui vient d'être dit permet déjà de se rendre compte de la différence qui existe entre les deux types de contrôle pour ce qui est de leur mode de déclenchement.

Pour les systèmes fondés sur la présentation périodique de rapports, c'est automatiquement que tous les Etats liés par le texte concerné sont

appelés à fournir, à certains intervalles, des rapports sur les mesures qu'ils ont prises ou qui existaient déjà et qui ont pour but de donner effet au texte en question.

Le problème est celui de la périodicité des rapports ainsi demandés. Celle-ci ne doit en effet être ni trop espacée – pour que le contrôle soit efficace, surtout si des transgressions ont été constatées ou des mesures nouvelles adoptées par l'Etat considéré –, ni trop fréquente – pour ne pas trop encombrer les services gouvernementaux et engorger le système de contrôle. La périodicité des rapports a ainsi varié au cours des ans. Au début, en 1919, elle a été d'un an à l'OIT, puis, à partir de 1959, de deux ans dans la plupart des cas, et, l'accroissement des rapports reçus se poursuivant, la périodicité a été encore davantage espacée et différenciée, selon l'importance des cas, à partir de 1976. La périodicité peut ainsi aller d'un à quatre ans selon l'existence ou non de problèmes plus ou moins sérieux de mise en oeuvre.

Pour les systèmes fondés sur la présentation de plaintes, c'est naturellement à partir de cette présentation que le contrôle intervient.

Ici la principale question est celle de savoir qui sera autorisé à présenter des plaintes. Entre les seuls Etats (ce qui limite les possibilités compte tenu des problèmes diplomatiques et même politiques évidents que pose la présentation d'une plainte par un Etat contre un autre Etat) et les individus (ce qui a été plus difficile à faire admettre étant donné que, pendant longtemps, les individus ne se voyaient pas reconnaître de rôle en droit international), les formules ont varié. Dans le système de plaintes et de réclamations qui complète le système fondé sur des rapports de l'OIT, la possibilité de présenter de telles plaintes ou réclamations est accordée tant aux Etats qu'aux organisations professionnelles (nationales ou internationales) d'employeurs ou de travailleurs et aux délégués (gouvernementaux, employeurs ou travailleurs) à la Conférence internationale du Travail.

Sur le plan universel, on sait que le Pacte international relatif aux droits civils et politiques des Nations Unies prévoit l'examen de communications de particuliers qui prétendent être victimes d'une violation du Pacte, et cela en vertu d'un protocole accepté par la moitié environ des Etats parties.

Le système le plus ouvert est manifestement celui de la Convention européenne des droits de l'homme dans lequel tout individu ou groupement (en plus des Etats) peut présenter des requêtes. Le seul inconvénient de ce système est le risque d'engorgement et de retards et par conséquent la

nécessité d'établir une formule de tri (comme au travers de l'examen préliminaire par la Commission européenne des droits de l'homme).

On pourrait aussi penser à des formules intermédiaires, comme par exemple à la possibilité de permettre la présentation de plaintes à des organisations non gouvernementales attachées à la protection des droits de l'homme et à des organisations représentatives des groupes concernés [5].

L'organe chargé du contrôle

1. *Sa composition*

On ne peut parler véritablement de contrôle que si l'organe qui en est chargé est un organe objectif et indépendant. Les tout premiers systèmes de contrôle étaient confiés à des organes diplomatiques ou politiques dont la crédibilité était de ce fait nécessairement limitée, ce qui, en réduisant la confiance placée en eux, portait de ce fait atteinte à leur efficacité. C'est avec la Commission des mandats de la SDN et la Commission d'experts pour l'application des conventions de l'OIT[6] qu'a été établi et reconnu le principe d'organes de contrôle composés de personnes indépendantes, choisies non par les Etats, mais par les organes de l'organisation internationale concernée, sur proposition de son Directeur général. Divers systèmes ont été établis depuis, et celui de la Cour européenne des droits de l'homme, instauré en 1950, doit être particulièrement signalé du fait que cet organe est composé de personnalités indépendantes, présentées certes par les gouvernements, mais élues, parmi plusieurs candidats, par l'Assemblée parlementaire du Conseil de l'Europe. On doit aussi signaler la commission d'experts indépendants de la Charte sociale européenne, inspirée de celle de l'OIT.

Au cours des dernières décennies, la notion d'organes de contrôle indépendants a fait d'incontestables progrès, mais elle tend parfois à être érodée, notamment par l'action de certains gouvernements, de différents bords, qui souhaitent que les organes de contrôle comprennent des personnes qui leur soient dans l'ensemble favorables. Précisons, du reste, que la présence d'un national dans un organe de contrôle ayant à examiner la

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[5] V. en ce sens N. Valticos, communication écrite sur "Egalité et discrimination", *7ème colloque international sur la Convention européenne des droits de l'homme,* Strasbourg, 1990 (H. Coll. (90) 13), pp. 6-7.

[6] V. P. Juvigny, "L'OIT et les droits de l'homme", *Revue française des affaires sociales,* avril-juin 1969, p. 94.

situation d'un pays ne signifie nullement que celui-ci fera preuve de partialité. Au contraire, la plupart du temps, les nationaux sont soucieux de témoigner une objectivité parfois sourcilleuse. La règle a cependant connu quelques exceptions tenant à diverses causes. De toute manière, l'action tendant à assurer l'objectivité des membres des organes de contrôle doit être une constante préoccupation des membres et des dirigeants des organisations internationales. Il y va de l'efficacité de l'action pour la protection des droits de l'homme.

2. *Le rôle de l'organe de contrôle*

Ceci dit, il faut encore définir le rôle de l'organe de contrôle. Il faut en effet souvent distinguer, dans le contrôle qui s'exerce dans le cadre d'institutions ou en tout cas de procédures internationales, car ce contrôle passe généralement par diverses phases: la phase juridiquement importante est celle au cours de laquelle il est apprécié si l'Etat concerné respecte ou non la norme juridique internationale, et c'est cette phase qu'il est essentiel de confier à un organe indépendant et de caractère juridictionnel. En plus de cette phase, cependant, il en est d'autres où des organes administratifs ou politiques de l'institution concernée discutent des conséquences à tirer des conclusions de l'organe indépendant. Ce qui importe, en l'occurrence, c'est que ces organes ne remettent pas en cause les conclusions de l'organe indépendant, mais considèrent, au contraire, les moyens les plus appropriés de leur donner effet.

Une importante exception – ou modalité – d'une telle situation est la Cour européenne des droits de l'homme, dont les arrêts sont immédiatement obligatoires. Toutefois, les limitations peuvent exister, dans son cas, en amont plutôt qu'en aval, les requêtes étant triées dans une très large mesure par la Commission européenne des droits de l'homme et pouvant aussi se trouver bloquées au niveau du Comité des ministres.

3. *Le type des conclusions de l'organe de contrôle*

L'objet du contrôle est de vérifier si la règle de droit énoncée dans le texte international considéré est respectée dans les pays concernés. Il est donc normal que les conclusions de l'organe de contrôle indiquent, après examen de la situation, s'il y a conformité ou violation en relation avec la norme internationale. C'est généralement ainsi qu'ils concluent.

Parfois, cependant, il en est autrement. Cela peut se produire dans des cas ou la règle de droit considérée comporte une norme dont l'application peut être progressive et ne peut être toujours évaluée dans un sens nettement positif ou négatif. Dans de tels cas, l'appréciation devra naturellement être nuancée, les progrès accomplis devant être relevés autant que ceux qui restent à faire. Sans qu'il s'agisse ici d'obligations de "moyens" à proprement parler, une politique de main-d'oeuvre visant le plein emploi ou une action visant à assurer l'égalité de traitement entre les hommes et les femmes appelle souvent des commentaires de ce type.

Il en est tout autrement dans des cas où l'organe de contrôle se limite généralement à des échanges de vues entre ses membres et le représentant des gouvernements intéressés sans aboutir à une conclusion véritable sur le degré d'observation de l'obligation internationale. Ici, on ne peut plus guère parler de contrôle et, même si ce type d'échanges de vues peut avoir un effet stimulateur, on n'est plus dans le domaine de l'action juridictionnelle.

4. *Le caractère, obligatoire ou non, des décisions des organes de contrôle*

Il n'est pas fréquent, il faut bien le constater, que les décisions des organes de contrôle soient juridiquement obligatoires pour les Etats concernés. C'est le cas, comme on l'a déjà dit, pour les arrêts de la Cour européenne des droits de l'homme[7] et les gouvernements observent en règle générale leurs conclusions[8].

Pour les autres cas cependant, l'effet n'est pas d'ordre uniquement moral[9]. Il comporte un élément juridictionnel plus ou moins certain et, du

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[7] V. p. ex. G. Cohen-Jonathan, *La Convention européenne des droits de l'homme,* Economica, Paris, 1989, p. 255.

[8] V. M. A. Eissen, "La Cour européenne des droits de l'homme", *Revue du droit public et de la science politique en France et à l'étranger,* 1986, pp. 1587 et s.

[9] Dans le cas de l'OIT, il est une situation où les conclusions d'un organe de contrôle ont un caractère nettement obligatoire: il s'agit des Commissions d'enquête de l'art. 26 de la Constitution de l'OIT dont les conclusions peuvent faire l'objet d'un recours devant la Cour internationale de Justice, la décision de celle-ci ayant alors un caractère obligatoire, alors que, si un gouvernement s'abstient de procéder à un tel recours, les conclusions de la Commission d'enquête ne peuvent que s'imposer à lui, bien que cela ait été contesté par un gouvernement en cause.

reste, comme on a pu le constater pour des organes comme ceux de l'OIT, les Etats eux-mêmes s'y soumettent dans une large mesure, mais la conclusion doit souvent faire l'objet d'une discussion au sein d'un organe administratif dans lequel sont notamment représentés une certaine proportion de représentants gouvernementaux, notamment des gouvernements intéressés par les conclusions en question. Dans de tels cas, cependant, les conclusions de l'organe indépendant du contrôle ne sont pas remises en cause – du moins en principe – et c'est essentiellement leur mise en oeuvre par le gouvernement concerné qui est parfois en discussion. Il est vrai que, si une forte proportion des gouvernements se soumettent finalement aux suggestions des organes de contrôle, c'est souvent avec un certain retard et à la suite de rappels. D'où l'avantage, à cet égard, de systèmes qui comportent des rapports périodiques et où les questions non résolues sont reprises d'une session à l'autre ou au bout d'une certaine période.

Même, du reste, pour les systèmes qui ne comportent pas une telle répétition, les conclusions des organes de contrôle ont parfois un effet indirect et peut-être à plus long terme, mais certain, du fait qu'elles sont relevées sur le plan interne et qu'en cas de changement – notamment politique – de la situation, elles inspirent les nouveaux gouvernants et aboutissent ainsi finalement à des résultats positifs. Ce fut le cas, pour les conventions de l'OIT, dans les années 70, après les changements des régimes existant en Espagne et en Grèce et, tout récemment, pour les pays de l'Europe de l'Est.

Le caractère politique, administratif ou juridictionnel du contrôle

Ce qui vient d'être dit indique suffisamment que le contrôle international peut avoir un caractère dans une plus ou moins large mesure politique, administratif ou juridictionnel. En réalité, il est rare que ces éléments ne coexistent pas dans une certaine mesure, mais ce qui importe est de savoir quel est l'élément prédominant en matière de contrôle. Le critère le plus important reste le caractère indépendant de l'organe qui procède à l'évaluation juridique du respect, par les Etats, de leurs obligations internationales et l'acceptation de ce principe par les autres organes de l'institution internationale aussi bien que par les Etats concernés.

Le système le plus courant de nos jours est le contrôle qu'on qualifie parfois d'administratif parce qu'il est confié à des organes établis par l'institution internationale concernée et dépourvus de caractère judiciaire.

Cependant, comme ces organes sont parfois revêtus des caractéristiques de l'indépendance et s'attachent à suivre les principes des organes judiciaires, ils sont fréquemment qualifiés de "quasi judiciaires". Les organes judiciaires proprement dits chargés de veiller au respect des droits de l'homme ne sont, il faut bien le constater, pas fréquents, les Etats ne montrant pas un attachement particulier à ce type de restriction de leur souveraineté. C'est dans le cadre régional, où les affinités entre Etats sont plus grandes et les limitations de souveraineté plus acceptables, que l'on rencontre des organes de ce type: la Cour européenne des droits de l'homme et la Cour interaméricaine des droits de l'homme en sont les exemples les plus célèbres.

Comme on l'a dit, du reste, les institutions internationales sont un domaine où il est rare que les genres ne coexistent pas dans une certaine mesure. Une certaine proportion d'élément diplomatique[10], une importante dose d'élément administratif coexistent et même sont souhaitables dans l'opération complexe que constitue le contrôle international. Il y a rarement des systèmes à l'état pur et l'on peut douter que ceci soit finalement souhaitable. L'essentiel est d'éviter le mélange des genres et d'assurer la prépondérance du juridictionnel.

Diversité du point de vue des conceptions, des méthodes, de la composition des organes, du fonctionnement, de la nature, des effets, il n'est pas douteux que la diversité caractérise effectivement le contrôle de l'observation des conventions internationales en matière de droits de l'homme. Chaque système dépend, dans une large mesure, de la nature et du contenu des conventions dont il traite, ainsi que du cadre institutionnel et politique dans lequel le contrôle a été organisé. Il faut d'ailleurs envisager la mise en oeuvre des normes internationales sur les droits de l'homme, comme la nature même de ces normes, dans des termes particulièrement larges et sans excès de formalisme[11]. La variété des méthodes, aussi bien que celle des textes (et l'Acte final d'Helsinki en est l'illustration la plus nette) sont significatives de l'action internationale en matière de droits de l'homme. Il n'en reste pas moins qu'il existe quelques méthodes fondamentales qui ont, *mutatis mutandis,* montré leur utilité.

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[10] V. N. Valticos, "Une nouvelle forme d'action internationale: les contacts directs de l'OIT en matière d'application des conventions et de liberté syndicale", *Annuaire français de droit international public,* 1981, pp. 477-489.

[11] V. Rosalyn Kiggins, "Réflexions sur la mise en oeuvre des droits de l'homme", *Bulletin des droits de l'homme,* 1989-1, Nations Unies, Genève, pp. 62-69.

Leur mise au point a beaucoup dépendu de l'imagination et du courage des hommes politiques et autres dirigeants qui ont eu la vision d'un monde dans lequel le droit serait l'instrument fondamental de la protection effective des droits de l'homme. Ce rôle varie, on l'a vu, selon les cas, mais l'idée, à l'origine révolutionnaire, d'un contrôle international, est maintenant généralement reconnue. Encore faut-il ne pas laisser s'éroder les systèmes établis et renforcer ceux dont les méthodes sont encore insuffisantes ou fragiles.

A TUTELA DOS DIREITOS HUMANOS RECONHECIDOS PELA CONVENÇÃO EUROPEIA DOS DIREITOS DO HOMEM NO INTERIOR DO ORDENAMENTO JURÍDICO ITALIANO

SENTENÇA DA CORTE SUPREMA DI CASSAZIONE, DE 12 DE MAIO DE 1993

NOTA

O presente acórdão acolhe, na íntegra, as considerações de doutrina sustentadas nas alegações de recurso do Ministério Público, representado pelo Dr. Vitaliano Esposito.

Desse ilustre magistrado, foi já possível publicar, noutro número do Boletim, *a contribuição prestada para sentença anterior da Cassação italiana, de 1984, de que foi juiz relator. A sentença encontra-se anotada pelo Senhor Conselheiro Lopes Rocha, à data Procurador-Geral Adjunto (cfr. n.º 35/36, 1988, pág. 189 e segs.).*

Ulteriormente, por sentença de 23 de Novembro de 1988, proferida em sede de uniformização de jurisprudência de 1988, a Cassação italiana decidiu definitivamente no sentido daquele acórdão anterior, estabelecendo que as normas da Convenção são de aplicação imediata e devem ser apreciadas em concreto na sua incidência sobre o sistema normativo mais vasto, que veio a determinar-se em consequência da sua integração no ordenamento italiano.

Desse aresto extraiu a presente sentença, como consequência, a tutela dos direitos humanos reconhecidos pela Convenção no interior do próprio ordenamento italiano, cabendo ao juiz nacional, na sua actividade jurisdicional, tomar em conta também os princípios gerais do direito, consagrados na convenção, ainda que não se encontrassem esgotadas as

vias internas de recurso e a decisão do juiz nacional não pudesse ser considerada definitiva.

Na presente decisão está em causa, por um lado, a questão de saber se o direito de não ser expulso, direito que não é garantido, como tal, por nenhuma disposição da CEDH, deve, ainda assim, ser tutelado, com base no princípio da protecção reflexa (par ricochet), *elaborado pela jurisprudência das instâncias de Estrasburgo, no sentido de que cabe verificar, em cada caso, se a afectação de um direito não garantido ou reconhecido pode resultar numa violação de outras disposições da Convenção (no caso relativas à protecção da vida familiar).*

Por outro lado, aprecia-se a questão da relação entre a norma de origem convencional – da CEDH –, a que o Tribunal Constitucional italiano tem reconhecido o valor de lei ordinária, e a norma ordinária posterior, do mesmo grau e de igual competência, reconhecendo-se à primeira uma ***força especial de resistência*** *em relação à segunda, devido à natureza de princípios gerais do ordenamento que revestem as disposições da Convenção, em consequência da sua integração no ordenamento italiano.*

Teresa Alves Martins

Assessora do Gabinete de Documentação e Direito Comparado

REPÚBLICA ITALIANA

EM NOME DO POVO ITALIANO

A CORTE SUPREMA DI CASSAZIONE
(Audiência na Câmara do Conselho em 12.5.1993 – Sentença n.º 2194
Registo geral n.º 15.399/92)

1.ª Secção (Penal)

Formada pelos Exm.os Senhores:

Dr. Stanislao SIBILIA, Presidente
1. Dr. Pasquale LA CAVA, Conselheiro
2. Dr. Gilberto BARBARITO, Conselheiro
3. Dr. Bruno SACCUCCI, Conselheiro
4. Dr. Giovanni LUBRANO DI RICCO, Conselheiro

pronunciou a seguinte

SENTENÇA

no recurso interposto por JUAN CARLOS MEDRANO nascido em Rosario (Argentina) em 18 de Abril de 1954 contra a decisão[1] de 27 de Abril

[1] **Ordinanza,** no original.

de 1992, do Tribunal de Execução de Penas de Trento, confirmando a decisão[2] de 18 de Fevereiro de 1992 do juiz de execução de penas competente que impôs a execução, após o cumprimento da pena, da medida de segurança de expulsão do território do Estado.

Ouvido o relatório elaborado pelo Conselheiro Dr. Bruno Saccucci.

Lidas as conclusões do Ministério Público, Dr. Vitaliano Esposito, em que se pede a anulação e reenvio da decisão impugnada.

DE FACTO E DE DIREITO

Por decisão de 27 de Abril de 1992, o Tribunal de Execução de Penas de Trento rejeitou o recurso interposto por Juan Carlos Medrano contra a decisão de 18 de Fevereiro de 1992 do competente juiz de execução que impôs ao referido Medrano a execução – após cumprimento de pena – da medida de segurança de expulsão do território do Estado que fora decretada por sentença do Tribunal de Roma em 9 de Novembro de 1990.

Contra o referido despacho, Medrano interpôs recurso "de cassação" arguindo a nulidade e ilegitimidade do mesmo.

Observa o Procurador-Geral da República junto deste Tribunal nas alegações que a seguir se apresentam:

«O PROCURADOR-GERAL

Visto o que antecede,

OBSERVA

1. O cidadão argentino Juan Carlos Medrano interpôs recurso "de cassação" contra a decisão de 27 de Abril de 1992 do Tribunal de Execução de Penas de Trento que, rejeitando o recurso pelo mesmo interposto, confirmou a sentença do competente juiz de Execução de Penas

[2] **Provvedimento,** no original. De acordo com o artigo 125.º do Código de Processo Penal italiano de 1988, a decisão do juiz – provvedimento – pode revestir a forma de sentenza, ordinanza ou decreto, nos casos indicados na lei (n.º 1). As duas primeiras são sempre fundamentadas, sob pena de nulidade (n.º 3).

de 18 de Fevereiro de 1992 que impunha a execução – após o cumprimento da pena – da medida de segurança de expulsão do território do Estado, decretada por sentença do Tribunal de Roma em 9 de Novembro de 1990.

No seu único e complexo fundamento de recurso o recorrente arguiu a nulidade do despacho impugnado, por falta de motivação e por violação da lei, baseando-se no facto de que, no caso concreto, a sentença de expulsão viria a afectar direitos fundamentais e irrenunciáveis (não apenas seus, mas também da mulher e do filho de quatro anos) – reconhecidos pela Constituição e pelos tratados internacionais relativos aos Direitos do Homem ratificados pela Itália – respeitantes à protecção da família e educação dos filhos.

2. O recurso merece acolhimento, ainda que por motivos parcialmente diversos dos apresentados pelo recorrente.

3. Sublinhe-se preliminarmente – como este mesmo Tribunal já o declarou – que, no que respeita à expulsão ou afastamento do estrangeiro do território nacional, nenhum limite é colocado ao Estado pelo direito internacional consuetudinário, vigorando plenamente nesta matéria a norma relativa à soberania nacional, a qual comporta, concretamente, a plena liberdade do Estado, tanto de admitir, quanto de expulsar os estrangeiros do seu território (Cass., sec. I, Maio de 1987, *Sabit*, in Cass. pen. 1988, p. 1725). A própria Convenção Europeia dos Direitos do Homem, implicitamente invocada pelo recorrente, não garante directamente ao estrangeiro qualquer direito de não ser expulso. De facto, esse estrangeiro tem apenas direito – hipótese que não se verifica no caso em apreço – ao controlo jurisdicional da legitimidade da sua detenção para efeito de expulsão (artigo 5.°, n.° 4, com relação à alínea *f)* do n.° 1 da Convenção). O artigo 4.° do Protocolo n.° 4 limita-se a proibir a expulsão colectiva de estrangeiros e o artigo 1.° do Protocolo n.° 7 prevê algumas garantias processuais a favor do estrangeiro que seja visado por uma medida de expulsão.

4. Todavia, se o direito de não ser expulso não é garantido, como tal, directamente por força de uma disposição convencional, a jurisprudência dos órgãos de tutela de Estrasburgo elaborou o que se define como uma *protection par ricochet* [3], no sentido de que cabe verificar, em cada caso,

[3] Em francês no original.

se a afectação de um direito não garantido ou reconhecido pode resultar numa violação de outras disposições da Convenção.

4.1. Nesta perspectiva, tanto a Comissão quanto o Tribunal Europeu têm constantemente declarado que a expulsão de um estrangeiro pode, em determinadas circunstâncias, resultar numa violação do artigo 3.° da Convenção, quando existam razões sérias para considerar que a pessoa será submetida, no Estado para que for enviada, a tratamentos desumanos ou degradantes ou outras violações dos direitos fundamentais (decisão de 3 de Maio de 1983, *Altun* contra a R. F. A.; Tribunal Europeu, 7 de Julho de 1989, *Soering),* ou quando a expulsão for efectuada de forma humilhante para a pessoa ou ocultar uma verdadeira extradição (cfr. Tribunal Europeu, sentença de 18 de Abril de 1986, *Bozano).*

4.2. Em particular – e na parte que importa nesta sede – os órgãos de tutela de Estrasburgo têm considerado de forma constante que, quando um estrangeiro possui família num determinado país, a decisão de o expulsar é susceptível de comprometer a unidade familiar, suscitando problemas graves, nos termos do artigo 8.° da Convenção, que, como é sabido, procura essencialmente proteger o indivíduo de ingerências *arbitrárias* por parte dos poderes públicos (Comissão, decisão de 24 de Abril de 1965; Relatório de 7 de Outubro de 1986; Tribunal, sentença de 13 de Junho de 1979, *Marckx* contra a Bélgica, § 31; etc.), sendo legítima apenas a ingerência nas hipóteses e nas condições previstas no § 2 do artigo citado.

A este respeito, o Tribunal Europeu, embora reconhecendo que *Il*[4] *incombe aux Etats contractants d'assurer l'ordre public, en particulier dans l'exercice de leur droit de contrôler, en vertu d'un principe de droit international bien établi et sans préjudice des engagements découlant pour eux de traités, l'entrée, le séjour et l'éloignement des non-nationaux,* declarou que *toutefois, leurs décisions en la matière, dans la mesure où elles porteraient atteinte à un droit protégé par le paragraphe 1 de l'article 8, doivent se révéler nécessaires dans une société démocratique, c'est-à-dire justifiées par un besoin social impérieux et, notamment, proportionnées au but légitime poursuivi* (sentença de 26 de Março de 1992, *Beldjoudi* contra a França, p. 27, § 74; cfr., entre outras, a sentença de 18 de Fevereiro de 1991, *Moustaqui* contra a Bélgica, p. 19, § 43; sentença de 21 de Junho de 1988, *Berrehab* contra a Holanda, pp. 15-16,

[4] Em francês no original.

§§ 28-29; sentença de 28 de Maio de 1985, *Abdulaziz, Cabales* e *Balkandali* contra o Reino Unido, p. 34, § 67).

5. Ora, no caso em apreço, sendo pacífico que a execução da medida de expulsão constitui uma ingerência da autoridade pública no exercício do direito do recorrente respeitante à sua vida familiar, tal como garantido pelo § 1 do artigo 8.º da Convenção, é de salientar que o recorrente não contestou a legitimidade de tal ingerência, que está certamente prevista na lei por motivos de ordem pública e com vista a prevenir a comissão de novos crimes, mas sublinhou repetidamente que essa ingerência vinha *afectar, de modo irreversível e definitivo, os direitos que a carta constitucional e as convenções internacionais (Convenção Europeia e ONU) reconhecem a todos os homens, cidadãos ou não,* e contestou a afirmação – em que, bem se vê, se esgota a fundamentação do juiz de recurso – de acordo com a qual *o exercício dos direitos e o cumprimento dos deveres respeitantes à família, tal como previstos nos artigos 29.º e 30.º da Constituição, invocados pelo condenado, devem mesmo assim ceder, como constitucionalmente subordinados, ao princípio da iniludibilidade da justiça penal.* Na verdade, segundo o recorrente, a tutela constitucional da família e da educação dos filhos, consagrada nos artigos 29.º e 30.º da Constituição, não se refere de modo algum a direitos subordinados mas a direitos fundamentais e, por esse facto, irrenunciáveis.

6. A queixa do recorrente põe em evidência os limites da fundamentação do juiz da causa, que considerou a expulsão obrigatória e automática (com base numa interpretação da disposição do artigo 86.º do T. U. n.º 309, de 1990, que, ainda que considerada fundada, não fugiria decerto a fundadas suspeitas de inconstitucionalidade e que, de qualquer modo, contradiz o artigo 31.º da Lei n.º 663, de 1986, que, como se sabe, revogando o artigo 204.º do Código Penal, estabeleceu que todas as medidas de segurança são decretadas após prévia determinação de que aquele que cometeu o crime é uma pessoa socialmente perigosa), sem proceder a uma determinação em concreto da perigosidade do sujeito, através da avaliação dos critérios fornecidos pelo artigo 133.º do Código Penal (que compreendem, como se sabe, as condições de vida individual, familiar e social do sujeito) tendo em vista alcançar uma solução de justo equilíbrio entre as considerações de ordem pública subjacentes à expulsão e aqueloutras não menos importantes, relativas à protecção da vida familiar do interessado.

Este é o sentido da jurisprudência dos órgãos de Estrasburgo segundo os quais, como se viu, para se considerar justificada a violação do direito tutelado pelo § 1 do artigo 8.° da Convenção, a medida de expulsão deve resultar *necessária numa sociedade democrática.*

Com a alusão ao carácter de necessidade, quer-se sublinhar – como o Tribunal repetidamente esclareceu – a exigência de uma *necessidade social imperiosa* que obrigue a fazer recurso à ingerência em apreço; exigência que deve ser avaliada caso a caso pelas autoridades nacionais, cuja margem de decisão depende da natureza das actividades em jogo, de tal forma que para se considerar legítima a ingerência dos poderes públicos, devem, na opinião do Tribunal, subsistir razões particularmente graves (sentença de 22 de Outubro de 1981, *Dudgeon* contra o Reino Unido, § 52).

Por outro lado, ligando o conceito de *necessidade* ao de *sociedade democrática*, o Tribunal sublinhou o carácter restritivo da interpretação do § 2, no sentido de que, em tal caso na Europa, a derrogação de um direito garantido pela Convenção pode revelar-se *necessária* numa sociedade democrática, desde que a mesma seja *proporcional ao fim legítimo prosseguido* (que neste caso particular, repetimos, é o da defesa da ordem pública e da prevenção de crimes), ou seja, como ficou esclarecido pelo mesmo Tribunal noutras decisões, desde que essa derrogação seja *estritamente necessária para a salvaguarda das instituições democráticas* (Tribunal Europeu, 6 de Setembro de 1978, *Klass* e outros, § 42).

De tais princípios os órgãos de Estrasburgo fizeram repetidas aplicações nos casos em que a expulsão de um estrangeiro era susceptível de determinar ruptura da unidade da vida familiar, sublinhando a necessidade de tomar em consideração as circunstâncias do caso concreto (gravidade do crime determinante da expulsão, possibilidade de os familiares acompanharem o interessado, idade e situação pessoal e jurídica dos filhos e dos familiares em geral, etc.), com o fim de se chegar a uma decisão de justo equilíbrio entre os diversos interesses em jogo (cfr., além das sentenças do Tribunal acima indicadas, as decisões da Comissão de 14 de Julho de 1982, processo n.° 9492/81; de 3 de Outubro de 1972, processo n.° 5301/71; de 19 de Maio de 1977, processo n.° 7671/76; de 2 de Maio de 1979, processo n.° 8244/78; etc).

7. A circunstância de a disposição da lei que regula a expulsão (artigo 86.° do T. U. sobre os estupefacientes, originariamente prevista pelo artigo 23.° da Lei n.° 162, de 1990) ser posterior à entrada em vigor, no

nosso ordenamento, da disposição de origem convencional (26 de Outubro de 1955) não cria nenhuma situação conflitual recondutível à temática da eficácia da lei no tempo.

7.1. Como se sabe, o plenário das secções penais deste Tribunal – resolvendo uma contradição de jurisprudência que surgira no âmbito interno de uma mesma secção (a primeira) e aderindo a uma orientação minoritária emergente a partir de 1981 (Cass., sec. I, 17 de Dezembro de 1981, *Iaglietti* e Cass., sec. I, 27 de Outubro de 1984, *Venditti)* – esclareceu há algum tempo que as normas da Convenção são de aplicação imediata no nosso país e devem ser apreciadas em concreto na sua incidência sobre o sistema normativo mais vasto, que veio a determinar-se em consequência da sua integração no ordenamento italiano (Cass., sec. I, 23 de Novembro de 1988, *Polo Castro).*

A esperada intervenção do plenário das secções da **Corte di Cassazione** tem, pois, o mérito de, *no momento da aplicação da lei,* realinhar o nosso ordenamento pelo nível de civilização jurídica já assinalado e querido pelos autores da nossa Constituição para o juízo incidental de legitimidade constitucional da norma a aplicar. Em suma, em virtude da Convenção, em Itália o juiz nacional não é hoje apenas chamado a verificar – *no momento abstracto da sua formulação* – a conformidade constitucional do sistema normativo a aplicar, mas deve, à luz dos princípios consagrados na Convenção europeia, apreciar esse sistema no momento operativo da sua concreta e efectiva aplicação, para evitar que o mesmo, distorcidamente interpretado, possa resultar na violação dos fundamentais direitos da pessoa, por ela reconhecidos e tutelados.

7.2. Deve, porém, sublinhar-se que o plenário das secções do Tribunal – embora reafirmando, em conformidade com a orientação repetidamente expressa a este propósito pelo Tribunal Constitucional, o valor de lei ordinária que às disposições da Convenção deve ser reconhecido – não apreciou a temática, que era estranha ao caso concreto em apreço, das relações entre tais disposições e a norma ordinária (do mesmo grau e de igual competência) posterior a tais disposições, mesmo que parte da doutrina considere, após a referida intervenção do plenário das secções e após a evolução jurisprudencial traçada – a partir da sentença n.° 170, de 1984 – pelo Tribunal Constitucional, sobre o valor dos regulamentos comunitários e sobre outras disposições da C. E. E. de aplicação imediata, que a prevalência das disposições da Conven-

ção sobre a lei ordinária, mesmo posterior, já não possa ser posta em causa.

Na realidade, segundo a orientação do Tribunal Constitucional – delineada, além da referida na sentença n.º 170, de 1984, nas sucessivas decisões n.os 47, 48 e 113, de 1985 – o critério da prevalência do regulamento comunitário, das sentenças do Tribunal de Justiça e das directivas com eficácia directa, constitui o corolário necessário do princípio segundo o qual, o ordenamento da C. E. E. e o do Estado, embora distintos e autónomos, estão, todavia, interligados e essa interligação deriva da circunstância de a lei de execução do Tratado de Roma ter transferido para os órgãos comunitários – em conformidade com o artigo 11.º da Constituição e nas matérias que lhes estão reservadas – as competências que lhes foram atribuídas pelo Tratado.

Diferente é a situação da Convenção de Roma pela qual, mais que prevalência no sentido acima indicado, é correcto falar da *força especial de resistência* da norma de origem convencional, em relação à norma ordinária posterior. Tal força especial de resistência – que a doutrina geralmente liga ora ao critério *lex generalis non derrogat priori speciali* ora à garantia constitucional ligada ao princípio *pacta recepta sunt servanda* – é devida à natureza de princípios gerais do ordenamento que às disposições da Convenção deve ser reconhecida, em consequência da sua integração no ordenamento italiano. Tal conclusão, que se impunha há muito nos termos do artigo 2.º da Constituição, encontrou um reconhecimento explícito na jurisprudência do Tribunal de Justiça das Comunidades (sentença *Nold*, de 14 de Maio de 1974, sentença *Hauer*, de 13 de Dezembro de 1979; etc.). Afirmando, porém, dever tomar em conta, na sua actividade jurisdicional, também os *princípios gerais do direito*, consagrados na Convenção europeia, o Tribunal esclareceu efectivamente que tais princípios deveriam já ter sido tomados em conta pelos juízes nacionais (e isto também na hipótese em que não estivessem esgotadas as vias internas de recurso e a decisão do juiz nacional não pudesse ser considerada definitiva).

E tal conclusão encontrou agora a sua consagração no artigo *F* do tratado de Maastricht segundo o qual a *União respeita os direitos fundamentais tal como os garante a Convenção europeia de salvaguarda dos direitos do homem e das liberdades fundamentais.*

Neste caso em apreço, a força especial de resistência da regra de origem convencional implica que a disposição da lei sobre estupefacientes deve ser interpretada no sentido de que a aplicação prática desta

última não pode resultar infundadamente na violação do princípio consagrado na norma convencional. Em suma, a regra convencional reduz-se, bem vistas as coisas, a um critério hermenêutico – relevante também nos termos do artigo 133.º do Código Penal – para a correcta aplicação da medida de segurança.

8. Somente para completar a exposição, deve sublinhar-se que o pretendido automatismo de aplicação (ou o referido *princípio de iniludibilidade da justiça penal)* a que se refere o juiz de recurso não subsiste no nosso sistema, se é verdade que – como repetidamente afirmou a **Corte di Cassazione** – a medida de segurança de expulsão do estrangeiro do território do Estado prevista no artigo 86.º do T. U. das leis sobre estupefacientes, não é aplicável na hipótese de pena aplicada a pedido das partes. Na verdade, segundo o Tribunal, na hipótese de sentença pronunciada nos termos do artigo 444.º do Código de Processo Penal, ao juiz estaria precludido o poder de ordenar a expulsão do estrangeiro do Estado, dado que a norma de carácter substantivo do artigo 86.º do T.U., n.º 309, de 1990, não pode considerar-se especial relativamente à norma processual do artigo 445.º do Código de Processo Penal (Cass., sec. VI, 18 de Março de 1991, *Nwachwu*; Cass., sec. IV, 25 de Maio de 1991, P. M. no c. Snoussi; Cass., sec. VI, 9 de Março de 1992, P. M. no c. *Ogene Martin;* Cass., sec. IV, 3 de Junho de 1991, *Mondou Touré).*

Na realidade, a disciplina das medidas de segurança delineada no código Rocco, depois de ter sido reiteradamente modificada pelos juízes da Consulta (sentenças n.º 1, de 1971, n.º 139, de 1982, n.º 249, de 1983), foi radicalmente renovada pelo artigo 31.º da Lei n.º 663, de 1986, que, como se disse, procedeu à abolição de todas as formas de presunção legal de perigosidade, impondo, em cada caso, ao juiz a determinação em concreto da perigosidade do sujeito, resultante de um juízo de prognose sobre a probabilidade de reincidência. Como base desse prognóstico, no nosso ordenamento, o órgão julgador é obrigado, por força do artigo 203.º do Código Penal, a utilizar sempre os critérios fornecidos pelo artigo 133.º do Código Penal, entre os quais, como se viu, devem ser, no caso em apreço, apreciados – na óptica e para os fins também prosseguidos pela disposição de origem convencional – os relativos às condições de vida familiar do sujeito em causa.

9. Impõe-se, por isso, a anulação da decisão impugnada com reenvio ao mesmo juiz para que proceda à determinação em concreto da

perigosidade do sujeito, no respeito do princípio consagrado no artigo 8.° da Convenção Europeia dos Direitos do Homem.

POR ESTE MOTIVO

pede ao Tribunal a anulação da sentença impugnada com reenvio dos autos ao mesmo juiz para nova deliberação.

Roma, 18 de Março de 1993.

O PROCURADOR-GERAL SUBSTITUTO
Vitaliano Esposito»

Dada a exactidão das alegações, cujas deduções e conclusões são integralmente partilhadas e subscritas por este Tribunal, a decisão impugnada deve ser anulada e os autos reenviados, para nova deliberação, ao Tribunal de Execução de Penas de Trento.

POR ESTE MOTIVO

O Tribunal, vistos os artigos 611.° e 623.°, alínea *a)*, do Código de Processo Penal, anula a decisão impugnada e reenvia-a, para nova deliberação, ao Tribunal de Execução de Penas de Trento.

Foi assim decidido em Roma, em 12 de Maio de 1993.

O CONSELHEIRO RELATOR — **O PRESIDENTE**

(Dr. Bruno Saccucci) — *(Ex.mo Dr. Stanislao Sibilia)*

Tradução: Mário Santos
Revisão: Teresa Alves Martins

DIREITOS DA CRIANÇA

MARTA SANTOS PAIS
Relatora do Comité dos Direitos da Criança

QUELLE PROTECTION POUR LES ENFANTS REFUGIES?

Les enfants réfugiés et la Convention des Droits de l'Enfant

Le Séminaire d'aujourd'hui constitue une occasion privilégiée de réflexion, dans un domaine qui est devenu **clairement prioritaire pour la communauté internationale. Un domaine** qui, de par sa nature, a renforcé le caractère urgent de l'appel à la **solidarité** des Etats. Mais qui constitue **surtout un défi permanent à la capacité et la créativité** de nous tous, dans la recherche de solutions pour assurer une protection claire et efficace aux enfants réfugiés.

Les différentes perspectives à aborder au long de la rencontre, aussi bien que la présentation des expériences entreprises sur le terrain, souligneront sans doute la complexité de cette réalité. Mais elles permettront aussi de recommander des orientations à suivre afin **d'améliorer le sort** des enfants réfugiés et de **briser la passivité, le conformisme et le silence** qui traditionnellement deviennent la réponse facile devant **l'extension et la persistence** de ce problème. A la fin de ces deux jours de débats, l'on aura indéniablement élargi le mouvement de défenseurs des droits des enfants réfugiés!

C'est aussi dans cet esprit que je me réjouis de l'opportunité qui m'est accordée de placer au sein de vos réflexions la Convention relative aux droits de l'enfant. Je suis convaincue qu'elle a, en effet, un rôle très important à jouer dans la promotion et la protection des enfants réfugiés. Pourquoi?

* Tout d'abord parce qu'il s'agit de l'instrument des Nations Unies qui bénéficie du **plus large nombre d'Etats parties**, unis dans un

mouvement de consensus autour des enfants. 166 Etats se sont en effet volontairement engagés à protéger et à garantir les droits reconnus par la Convention à *tout enfant soumis à leur juridiction*, y inclu les enfants qui cherchent à obtenir le statut de réfugié ou qui sont considérés comme tels en vertu du droit international ou national applicable.

Ce **compromis politique** pour mettre en oeuvre les droits de l'enfant coïncide de ce fait avec un **espace géographique sans précédents** dans l'histoire de l'Organisation, plus large encore que celui découlant de la Convention de 1951 et de son Protocole de 1967 relatif au Statut des réfugiés. La Convention relative aux Droits de l'Enfant permet donc d'élargir le nombre d'enfants protégés.

* Deuxièmement parce que, surtout après la Conférence Mondiale des Droits de l'Homme réalisée, il y a un an à Vienne, **la coopération et solidarité internationales** ont gagné un nouvel élan dans le domaine des politiques de l'enfance. Comme le document final de la Conférence le signale clairement, la situation et les droits de l'enfant doivent dorénavant faire l'objet d'une **révision et évaluation périodiques** de la part de tout organisme et mécanisme des Nations Unies. Par ailleurs, la mise en oeuvre de la Convention doit constituer une priorité pour leur action.

La Convention relative aux droits de l'enfant est ainsi devenu un point de repère obligatoire et le cadre inspirateur pour toute action individuelle ou conjointe déployée au sein du système des Nations Unies.

C'est justement dans cet esprit qu'il s'impose de signaler l'importante publication éditée par le Haut Commissariat des Nations pour les Réfugiés, contenant des principes directeurs pour l'action dans ce domaine, une publication qui s'est ouvertement inspirée de la philosophie de la Convention.

* Troisièmement, la Convention présente une **perspective innovatrice de l'enfant**. Elle abandonne la traditionnelle considération de l'enfant-objet, vulnérable et invitant simplement à l'adoption de mesures de protection et d'assistance, pour mettre en évidence la capacité de l'enfant **à participer dans la prise de décisions** l'affectant, à exprimer ses opinions, à être informé et consulté, à se voir reconnaître le statut de citoyen actif d'aujourd'hui, eu égard à sa maturité et à son âge, et non simplement l'apprenti en phase de préparation pour intervenir demain.

* En outre, la Convention a introduit une **approche globale des droits de l'enfant et des politiques adoptées à leur encontre**. Elle ne se fonde

donc pas sur une catégorisation d'enfants, par exemple en raison des situations de risque qui pourraient les affecter, en insistant plutôt sur le caractère **indivisible et interdépendant de tous les droits fondamentaux,** inhérents à la dignité humaine de tout enfant.

Or, à première vue nous pourrions croire que la situation des enfants réfugiés serait justement une exception, devant être exclusivement considérée dans le cadre de l'article 22 de la Convention. Pourtant, cette même disposition invite les Etats, non seulement à assurer à ces enfants toute la *protection et assistance humanitaire* voulues, mais aussi **à adopter toute autre mesure nécessaire pour leur permettre de jouir des droits reconnus** par la Convention dans son ensemble.

En effet, la Convention s'applique **à tout enfant relevant de la juridiction de l'Etat partie,** tout en interdisant **toute forme de discrimination,** y inclu en raison de l'origine nationale ou ethnique, de la race ou de la couleur, ou de toute autre situation, comme ce serait celle de demandeur d'asile.

Une telle interprétation ne peut d'aillleurs que se renforcer devant les *travaux préparatoires* de la Convention et, en particulier, en ce qui concerne la rédaction de son article 22. En effet, l'une des solutions proposées au Groupe de rédaction, allait dans le sens de restreindre la protection de l'enfant à des domaines spécifiques, tels que la santé et l'éducation. Le débat a permis de conclure que l'action des Etats et des organisations internationales compétentes ne pourrait se limiter simplement à de telles activités, et qu'il n'y avait par ailleurs aucun motif pour justifier que les enfants réfugiés ou demandeurs d'asile se voient par définition rétirer la titularité et la capacité d'exercice de leurs droits fondamentaux.

Le champ matériel de la Convention est de ce fait large et profondément exigeant. Ce qui explique la raison pour laquelle on reconnaît souvent à la Convention relative aux droits de l'enfant un caractère subsidiaire par rapport à d'autres textes dans le domaine des droits de l'enfant, et en particulier des enfants réfugiés.

* Quatrièmement, la Convention a permis de considérer, définir et appliquer des politiques et stratégies à l'égard des enfants réfugiés selon une **philosophie qui assure de la cohérence** à toute action entreprise. Une philosophie qui se fonde sur la considération de trois principes fondamentaux – la non discrimination, l'intérêt supérieur de l'enfant et la participation de l'enfant aux décisions l'intéressant.

a) Le principe de la **non discrimination** implique qu'aucun enfant ne sera privilégié, puni ou privé d'un droit ou d'une garantie en raison de sa race, couleur, sexe, religion, origine nationale ou ethnique, situation de fortune, naissance ou toute autre situation.

Il s'agit d'une considération qui devra primer, par exemple, lors de la **présentation d'une demande d'asile,** de façon à assurer la *pleine égalité d'accès aux procédures* applicables, y inclu dans le cas d'enfants non accompagnés. Qui s'imposera aussi lors de l'examen **des demandes d'asile,** pour garantir une *procédure juste, équitable et efficace.* Ou encore lors de la **définition des mesures de protection** à assurer aux enfants réfugiés – visant, par exemple, à garantir que dans les camps de réfugiés garçons et filles auront le même accès à l'éducation, ou à empêcher que certains enfants ne deviennent stigmatisés et moins protégés en raison de leur appartenance à un groupe ethnique ou religieux.

b) Le principe de **l'intérêt supérieur de l'enfant** devra être une considération primordiale dans toute action concernant l'enfant, qu'elle soit prise par les organes législatifs, des autorités administratives ou par des institutions de protection sociale.

Une valeur qui doit aider à *toujours trouver la meilleure solution pour l'enfant*, y inclu lorsqu'il y aurait un conflit d'intérêts entre l'enfant et quelqu'un d'autre, ou un conflit entre différents droits de l'enfant.

Par conséquent, il faudra garantir la pleine protection de l'enfant dans des conditions de sécurité au *pays d'accueil*, au lieu de donner suite à une décision de *rapatriement* vers son pays d'origine, toujours en guerre. Il faudra aussi s'en inspirer pour décider toute demande d'entrée dans un pays en vue de *réunification familiale*, y inclu dans le cas où elle aurait été déposée par un enfant non accompagné – tout en assurant par ailleurs que la demande soit considérée dans un **esprit positif, avec humanité et diligence**, comme l'affirme la Convention relative aux droits de l'enfant. Pendant que l'on essaie de retrouver les membres de la famille de l'enfant réfugié ou demandeur d'asile, ce même principe de l'intérêt supérieur de l'enfant invite à envisager des solutions de **placement temporaire**, ayant trait à son origine ethnique, religieuse, culturelle et linguistique, au lieu de faire place à une mesure d'adoption, surtout de nature internationale, – qui, de par sa nature, déclencherait la rupture des liens juridiques avec la famille d'origine, à un moment où, en raison de la persistence d'une situation de guerre ou d'instabilité, il s'avère d'autant plus difficile d'obtenir des renseignements sûrs, fiables ou complets à son égard.

c) Le troisième principe est celui de la **participation** de l'enfant. Il signifie que le *regard sur l'enfant* réfugié ou demandeur d'asile, y inclu le regard intéressé, sensible et désireux d'aider de tous ceux qui leur dévouent leur vie et leur travail, doit évoluer de façon à donner place aussi à la **perspective de l'enfant même sur la réalité qui l'entoure** – l'espoir, la crainte, l'hésitation, surtout lorsqu'il s'est vu involontairement séparé de sa famille, comme c'est tellement souvent le cas de l'enfant non accompagné.

L'enfant doit ainsi être en mesure d'**exprimer ses points de vue** par rapport à toute activité, procédure ou décision l'intéressant. Ce qui implique, à son tour, qu'il soit informé sur les options possibles, les conséquences en découlant, le poids qui jouera son opinion.

La participation peut se révéler essentielle lors de l'organisation des activités où l'enfant intervient au sein d'un camp de réfugiés – dans le domaine de l'éducation, des loisirs ou de la santé. L'enfant doit en effet être en mesure d'établir un dialogue visant à mieux comprendre et à se faire comprendre, à formuler des suggestions, à se sentir partie prenante du processus qui l'entoure et qui affecte sa vie d'une façon si décisive.

Mais cette participation peut aussi se révéler déterminante pour connaître le nom, l'âge ou la nationalité de l'enfant – surtout lorsque l'on envisage des solutions de *placement*, de *regroupement familial ou de rapatriement* – des réalités où, eu égard à son degré de maturité, le consentement de l'enfant peut s'avérer essentiel.

* * *

Voilà, en traits généraux, le système défini par la Convention relative aux Droits de l'enfant pour assurer la protection des enfants réfugiés ou demandeurs d'asile. Un cadre juridique qui se fonde sur l'universalité des droits de l'homme aussi bien que sur les principes de la coopération internationale et de l'assistance humanitaire.

Le quotidien de ces enfants gagne naturellement une toute autre dimension. Un regard marqué par la souffrance et pourtant inondé d'espoir, un sourire timide cachant une profonde détermination par rapport au future, et sans arrêt, la considération d'une réalité fondamentale pour leur vies – le **sentiment d'appartenance**. Appartenance à une famille, involontairement dispersée et déchirée, à une école, à un groupe d'amis.

Seraient-ils en fin de compte très différents de tout autre enfant? ... Si ce n'était qu'en raison de la dureté et de l'incertitude de leur existence ...

Appartenance ... Cherchée dans l'absence de références, détruites par la guerre, la persécution, la peur. Et pourtant gardée au fond de leurs esprits, aidant à faire face à l'indéfinition de leur avenir. Le retour à leur famille, à leur village, à la sérénité de leurs jeux d'enfants se révele le rêve encourageant pour faire face aux défis de chaque jour.

Un rôle que l'école est en mesure de jouer au camp de réfugiés ou dans une situation de placement. Un rôle d'**intégration dans le vide** qui est leur vie. Où le simple uniforme d'étudiant accorde un statut social privilégié, leur assurant en même temps le sens de préparation responsable vers leur action future, la paix venue.

L'école, enceinte unique pour bâtir un mouvement de sensibilisation vers les valeurs de la **tolérance, de la compréhension, de l'acceptation** à l'égard de ceux qui sont différents – de par leur langue, religion, race ou culture!

* * *

Ce qui me ramène à réaffirmer l'importance décisive de faire respecter et garantir les droits fondamentaux à tout enfant réfugié ou demandeur d'asile, dans le cadre de la Convention relative aux Droits de l'Enfant.

Et pourtant, la question prioritaire restera-t-elle encore sans réponse – A quand la prise de mesures appropriées et efficaces pour *prévenir des situations qui mènent à ce fléau*? A quel moment **l'intérêt supérieur de l'enfant deviendra-t-il aussi la valeur politique obligatoire**, imposant la considération de solutions de **médiation et de conciliation** visant à prévenir les guerres, les conflits, les tensions qui sont la source de la réalité des enfants réfugiés?

Ce serait probablement la seule façon de faire écouter la voix de ces enfants qui répètent sans arrêt "parlez-nous de la paix; la guerre on aimerait l'oublier!" Et en même temps d'assurer que les conflits ne se voient réduits à une décision stratégique inspirée de simples critères politiques ou militaires.

Il faut enfin donner voix et faire respecter cet appel partagé par la conscience universelle "Plus jamais comme ça!"

DOCUMENTAÇÃO

ANTI-DRUG LEGISLATION

- **DECREE-LAW No. 15/93**
- **REGULATIVE DECREE No. 61/94**

DECREE-LAW No. 15/93, OF 22 JANUARY

The approval of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed by Portugal and now ratified – Assembly of the Republic Resolution No. 29/91 and Decree of the President of the Republic No. 45/91, as published in the *Diário da República* dated 6 September 1991 – is the determining reason for this document.

The above-mentioned instrument of public international law has three basic objectives:

Firstly, to deprive those who engage in trafficking in narcotic drugs of the proceeds of their criminal activities, thus eliminating their main incentive for so doing and, at the same time, preventing the use of wealth that has been illicitly accumulated from enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business and society at all its levels;

Secondly, to adopt measures to monitor certain substances, precursors, chemicals and solvents that are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine manufacture of such drugs and substances;

Thirdly, to reinforce and supplement the measures provided in the 1961 Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the 1971 Convention on Psychotropic Substances, thereby closing loopholes and enhancing the legal means of international cooperation in criminal matters.

The incorporation in internal law of the objectives and rules which, with the passage of time, are being acquired by the international community is necessary for their practical functioning since the most significant provisions of

the above-mentioned United Nations Convention are not enforceable without legislative measures.

In the international sphere, account should also be taken of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, drawn up within by the Council of Europe and signed by Portugal on 8 November 1990, and the directive on the prevention of use of the financial system for the purpose of money laundering, issued by the Council of the European Communities on 10 June 1991.

Attention should also be paid to the proposed Council directive regarding the production and marketing of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances, which is designed to establish the control measures for «precursors» required by article 12 of the 1988 United Nations Convention, signed independently by the European Community, and also to remove distortions of competition in licit manufacture and in the placing of such chemical products on the Community market, supplementing their control outside the European Communities.

After the publication of Decree-Law No. 430/83 of 13 December, now being amended, a new Code of Criminal Procedure came into force, with the effect that some special and innovative features, such as the principle of opportunity, established in that text are now embodied, in general terms, in the new system of criminal procedure.

A text on international cooperation, Decree-Law No. 43/91 of 22 January*, also came into force and proposed the regulation, in a single text, of different forms of cooperation, ranging from extradition, transmission of penal proceedings, enforcement of judgements in penal proceedings, transfer of sentenced persons and supervision of individuals under sentence or on conditional release to a broad gamut of measures for legal assistance in the criminal sector.

As reflected in the preamble, this internal law was prompted by the 1988 United Nations Convention, with regard to «legal assistance, extradition and enforcement of decisions relating to forfeiture of the proceeds of crime».

This text, in line with the terminology and the new rules of criminal procedure, already contains some new principles reflected in the reform of the Penal Code, still under way, as in the case of the fine as an alternative to (and not as well as) a custodial sentence.

This last aspect must be given special importance in view of the priority currently being accorded to ways of depriving traffickers of their illicit fortunes.

Now that it is not possible to impose a fine levied on assets in combination with a custodial sentence in the most serious legal cases, greater attention must be paid to an inventory of measures designed to dispossess traffickers of property and proceeds derived, directly or indirectly, from their criminal activity.

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* Decree-Law No. 43/91, of 22 January, on International Judicial Co-operation in Criminal Matters has been published in *Boletim* No. 51/52.

With regard to dosage, the current penalties will have to be further harmonized with the rest of the legal system, particularly the Penal Code. It is also well known that an abstract provision for severe punishments, as emphasized in the preamble of Decree-Law No. 430/83, has little or no deterrent effect unless it is accompanied by a progressive improvement in the technical resources available for criminal investigation and in the training and dynamism of those involved in it.

Taking into account the reluctance in some quarters to accept a criminal and procedural law full of special provisions to combat certain forms of criminal behaviour and, let it also be said, the fact that the new Code of Criminal Procedure already embodies modern provisions regarding criminal investigation, everything indicates that the specific features in this field should be reduced to the minimum, but without ignoring the need for the most serious crimes connected with drug trafficking to be treated as severely as violent or highly organized crime or terrorism.

Although the primary objective is to adapt national law as necessary to make the above-mentioned 1988 United Nations Convention effective in Portugal, this did not rule out the consideration of other changes deemed to be important.

The organization of the tables annexed to the main text was one of the areas of preoccupation.

It would not have been difficult to add to the existing tables the two lists relating to precursors in the 1988 Convention, taking the opportunity to include the substances that had been incorporated in the meantime by regulations pursuant to the 1961 and 1971 Conventions.

However, it seemed that a further step could be taken by grading the substances on the basis of danger and placing them in new tables taking into account the appropriate type of sanction.

Already today, the substances in table IV annexed to Decree-Law No. 430/83 are treated differently from the rest, specifically in the chapter concerning penalties for trafficking, encouragement of the use of drugs and personal consumption.

The graduation of the penalties for trafficking offences taking into account the true danger of the drugs involved seems to be the approach most compatible with the idea of proportionality. This does not necessarily imply acceptance of the distinction between hard and soft drugs, far less the conclusions drawn by some countries in the area of the decriminalization or depenalization of consumption.

However, the decision on a more appropriate graduation must be based on a rigorous scientific assessment of the danger posed by the drugs from various points of view, and considerations must be included that go beyond the scientific sphere and concern socio-cultural factors that cannot be minimized.

All this indicates that the question of the (re)organization of the tables deserves further consideration in future at an appropriate time and place.

The same seemed to apply to trafficking on the high seas. Notwithstanding its growing importance as the preferred method for drug circulation, with traffickers taking advantage of the diminished intervention capability of States in international waters, no formulas were found that would make it possible to intensify control, in the first place owing to the reductionist position implied by article 17 of the 1988 Convention.

Thus the predominance conferred on the flag State, even when there is a serious suspicion that a vessel is abusing the freedom of navigation guaranteed by international law for the purpose of illicit traffic, the flag State having rights that can only be limited by treaty, agreement or protocol, is a signal of the prevalence of certain interests, that is to say commercial interests, as expressly recognized in paragraph 5 of article 17, over the interests of the health and well-being of people all over the world.

This matter is of particular concern to the countries of the Council of Europe (Pompidou Group).

Portugal should continue to examine this question, whether in connection with bilateral treaties to be concluded with neighbouring maritime countries, or in view of the country's special position with its extensive exclusive economic zone.

In spite of the acknowledged importance of prevention in the areas of information, training and education, it was understood that, since this is a rapidly evolving area where things should not stagnate, and which could be the subject of a separate text, it should not be given special treatment here.

For a number of reasons, provisions of the type concerning the organization of services were withdrawn.

Related to this is the call for greater linkage between the role of the judiciary and of the public health services and agencies, specifically as regards the prevention and treatment of drug-dependent persons, not just in terms of quality, but also in terms of quantity, with consequences at the level of territorial dispersion. This is the only conceivable way of raising a barrier against the extension of a phenomenon with cultural roots but with immediate and clearly visible effects on the health of the individual.

A necessary point for consideration in a revision on any scale will be the way in which the legal system should deal with drug consumption.

A radical change in legislative policy in such a field will have to be based not only on a thorough knowledge of the latest scientific findings concerning the effect of these drugs on the human personality, but also on a painstaking investigation of the sensitivity of the social strata that are most involved (young people, parents, families in general and teachers, given their cultural influence), without which this measure will necessarily turn into an intervention without further consideration.

Although this re-evaluation was not for the time being attempted, an assessment was made of the position taken in recent years, compared with other countries that are geographically and culturally close.

In 1983, the preamble to Decree-Law No. 430/83 included the following comments:

«The consumption of narcotic drugs and psychotropic substances is to be disapproved in the first place because of the breach of the individual responsibility of each citizen towards society.

«But this does not mean that the drug addict should not be considered in the first instance as someone in need of medical assistance. All efforts must be made to give him or her treatment, for his or her own sake and also to protect the whole society."

In line with such an approach, the drugs consumer is sanctioned by current law in a quasi-symbolic manner, in which the contact with the formal justice system is designed to encourage him or her to seek treatment, on the assumption that he or she is affected by drug dependence.

This position is gaining support in countries such as Italy and Spain, for example.

The position that is most at odds with the rest of Europe is that of the Netherlands, where drug consumption is not prohibited in practice. The claim is that a pragmatic solution that is neither emotional nor dogmatic is being adopted, and the focus is said to be on the consumer's health, with more stress on social control than on legislation.

This attitude is being criticized as being too lax, particularly in the Nordic countries which also experimented with a softer line before gradually abandoning it.

It may be said that most of the countries represented in the United Nations are concerned that a so-called pragmatism of the Netherlands type may weaken defences in a battle whose negative impact on health, particularly that of young people, is proving to be so serious, in the current situation, that it might become impossible to stem the tide, in view of the traffickers' well-known ability to exploit new situations and markets.

This is also the view being taken by the Council of Europe: cf. points 9, 10 and 17 of Recommendation No. 1141(1991), adopted on 31 January 1991 by the Parliamentary Assembly.

One certainly cannot disregard the important economic component of the phenomenon, but it would seem very dangerous to make a strategy change that is fundamentally based on the rules of supply and demand and their effect on prices, even with the addition of ingredients that could ensure essential control of the «market» by public bodies – particularly if this change were made in an abrupt way.

Although the discussion of this controversial subject is very far from being closed, no reasons are seen for altering the position of current legislation

concerning the way in which the criminal law system should act with regard to drug consumption.

The element of disapproval implicit in this action, albeit reduced to a minimum, will be the consistent complement of the remaining message, whether in the area of prevention or of therapeutic contact with the addict, reflecting a constant appeal to his sense of responsibility in harmony with the rest of society, with which his destiny is irretrievably interwoven.

As a consequence, the basis of the changes introduced in this area should be to mould the legal framework to enable it to contribute, to the extent possible, to helping drug addicts or habitual users to free themselves from their bondage, by giving them suitable incentives to undergo medical treatment and rehabilitation, thus returning them to a useful and, if possible, happy life in the bosom of the community.

As to occasional users, they should, above all, not be labelled or marginalized or forced by their fellows into a blind alley or a situation in which the only way out seems to be drugs.

The variety of alternatives, depending on individual cases, and the flexibility of the system are basic factors, in close collaboration with the health authorities.

In addition to the varied composition of the working group that carried out the study on which this text is based with representatives of the justice, health, education, youth, finance, trade and tourism sectors, the Bank of Portugal and the Bar Association the views of the Superior Council of the Magistrature, the Office of the Attorney-General, the Medical Society and other bodies were sought, through the National Council for the VIDA Project.

The governing bodies of the Autonomous Regions of the Azores and Madeira were also involved.

For the foregoing reasons:

The Government, by virtue of the legislative authorization granted by Law No. 27/92 of 31 August, and pursuant to article 201, paragraph 1, subparagraphs (a) and (b), of the Constitution, decrees the following:

CHAPTER I
GENERAL PROVISIONS

Article 1
Purpose

The purpose of this text is to define the legal regime applicable to trafficking in and consumption of narcotic drugs and psychotropic substances.

Article 2
General rules and schedules

1. The plants, substances and preparations covered by the regime established in this decree-law are set out in six tables annexed hereto.

2. The updating of tables I to IV shall be obligatory, in accordance with the changes approved by the organs of the United Nations, pursuant to the rules embodied in the conventions ratified by Portugal.

3. The updating of tables V and VI shall be obligatory, in accordance with the changes approved by the organs of the United Nations, pursuant to the rules embodied in the conventions ratified by Portugal or a text issued by the European Communities.

4. The cultivation, production, manufacture or employment of, trade in or distribution, import, export, dispatch in transit, transport, possession for any purpose or use of plants, substances and preparations indicated above shall be subject to the conditions defined in this text.

5. The rules required to ensure the proper implementation of this text, with regard to the activities set out in paragraph 4 above, shall be established by a decree, which shall also specify the crop surplus margin, the manufacturing quotas, the entities and enterprises authorized to purchase plants, substances and preparations, the conditions of delivery, the records to be kept, the communications and information to be provided, the reports to be supplied, the characteristics of the packages and labels, the charges levied for granting authorizations and the penalties for infringement of the regulations.

Article 3
Scope of control

All the plants, substances and preparations mentioned in the conventions on narcotic drugs and psychotropic substances ratified by Portugal, and amendments thereto, as well as other substances indicated in the tables annexed hereto, shall be subject to control.

CHAPTER II
AUTHORIZATIONS, CONTROL AND MEDICAL PRESCRIPTIONS

Article 4
Licensing, conditions and authorizations

1. The National Institute of Pharmacy and Medicine shall be the competent national authority to establish conditions and issue authorizations for the activities set out in paragraph 2 of article 2 involving the substances and preparations in tables I to IV, within the strict limits of the needs of the country, giving priority to medical, veterinary, scientific and teaching interests.

2. The Directorate-General of Foreign Trade shall be the competent national authority to issue import declarations and export authorizations for substances listed in tables V and VI.

3. The Directorate-General of Industry shall be the competent national entity to authorize the production and manufacture of substances in tables V and VI.

4. Before assessing any request for authorization, the National Institute of Pharmacy and Medicine shall send a copy of the request to the Office for Drug Control of the Ministry of Justice, which shall make its views known within 30 days and, if need be, consult the relevant departments of the Ministries of Agriculture, of Industry and Energy and of Trade and Tourism.

5. The authorization decision of the President of the National Institute of Pharmacy and Medicine shall be published in the Diário da República and shall establish the conditions to be fulfilled by the applicant, who shall have the right of immediate appeal; in the event of an optional hierarchical appeal, it shall have a merely devolutive effect.

6. Each generic authorization granted by the National Institute of Pharmacy and Medicine shall be valid for only one year, renewable.

7. The provisions of this article shall not prejudice the specific competence of the Ministries of Trade and Tourism and of Industry and Energy with regard to the licensing of foreign trade operations or the licensing of installations and laboratories at industrial establishments used to manufacture the products in tables I to VI respectively.

Article 5
Supervisory responsibilities of the National Institute of Pharmacy and Medicine

1. The National Institute of Pharmacy and Medicine shall be responsible for supervising the authorized cultivation, production, manufacture and employment of, wholesale trading in and distribution, import, export, dispatch in transit, purchase, sale, delivery and possession of plants, substances and preparations listed in tables I to IV.

2. As part of the supervision of the authorized activities mentioned in paragraph 1 above, spot checks may be carried out in enterprises or establishments or on premises, and presentation of the relevant documents or records may be requested.

3. Infractions detected shall be reported to the competent authorities for criminal investigation or for administrative investigation and examination.

4. By a joint directive of the Ministers of Justice, Agriculture and Health, the cultivation of plants or bushes from which narcotic substances can be extracted shall be prohibited, if this measure is deemed the best way to protect public health and to prevent drug trafficking.

5. The same measure may be adopted with reference to the manufacture, preparation or marketing of narcotic substances or preparations.

Article 6
Nature of the authorizations

1. The authorizations shall not be transferable and may not be made over to or used by anyone else for any purpose.

2. If an enterprise has branches or warehouses, an authorization shall be required for each of them.

3. Requests for authorization must indicate who is responsible for preparing and updating the records and for compliance with other legal obligations.

Article 7
Subjective requirements

1. Authorizations may only be granted to entities whose owners or legal representatives offer sufficient guarantees of moral and professional suitability.

2. At the behest of the National Institute of Pharmacy and Medicine, the Office for Drug Control of the Ministry of Justice shall verify the information attesting to the circumstances mentioned in paragraph 1 above, with the collaboration, if need be, of the entities making up the Coordination Group for the Control of Drug Traffic, without prejudice to citizens rights, liberties and guarantees.

Article 8

Maintenance of validity and expiration of authorizations

1. In the event of the death or substitution of the authorized representative or of a change of signature, the request for maintenance of the validity of the authorization must be submitted to the National Institute of Pharmacy and Medicine within 60 days.

2. Maintenance of the authorization's validity shall depend on verification of fulfilment of the requirements of moral and professional suitability.

3. An authorization shall lapse if the activities to which it refers end or, in the instances mentioned in paragraph 1 above, if maintenance of its validity is not requested within the period established.

Article 9

Revocation or suspension of authorizations

1. The National Institute of Pharmacy and Medicine shall revoke the authorization as soon as the requirements for it to be granted are no longer fulfilled.

2. The authorization may be revoked or suspended for a period of up to six months, depending on the seriousness of the matter, in the event of a technical accident, theft, deterioration of substances and preparations or any other irregularity presenting a significant risk to health or of illicit supply of the market, or if the obligations incumbent on the beneficiary of the authorization are not fulfilled.

3. Revocations or suspensions shall be published in the Diário da República.

Article 10

Effects of revocation of an authorization

1. In the event of the revocation of an authorization, the National Institute of Pharmacy and Medicine may authorize, at the request of the party concerned,

the return of the stocks of substances and preparations listed in tables I to IV to their original suppliers or their cession to other entities, authorized enterprises or pharmacies.

2. Return or cession must be requested within 30 days of the date of publication of the revocation, of communication of the confirming ministerial decision or of passage of a confirmatory judicial decision.

3. In the course of the period mentioned in paragraph 2 above, the stocks shall be inventoried and stored in a sealed location by the enterprise, by order of the President of the National Institute of Pharmacy and Medicine, who may order sale or destruction, if there is a risk of deterioration or illicit supply of the market, handing over the proceeds of the sale to the owner, after deduction of the costs incurred by the State.

Article 11
Import and export of substances included in the annexed tables

1. The import and placing on the market of substances listed in tables V and VI shall be subject to prior statistical monitoring, and exports shall be subject to licensing, under the terms of Decree-Law No. 126/90 of 16 April, and Directive No. 628/90 of 7 August, as well as relevant Community regulations.

2. Whenever there are indications that the import or export of substances listed in tables V and VI is intended for the illicit production or manufacture of narcotic drugs or psychotropic substances, the monitoring and licensing agencies shall immediately notify the competent authority for purposes of investigation.

3. The Directorate-General of Foreign Trade shall send copies of import declarations and export licences for substances listed in tables V and VI to the Office for Drug Control of the Ministry of Justice.

4. The Directorate-General of Industry, within the limits of its competence for the granting of authorizations to manufacture or produce substances in tables V and VI, may adopt appropriate measures to monitor the operations involved.

5. In the exercise of their competence, the entities mentioned in the preceding sections may obtain information from the Office for Drug Control of the Ministry of Justice.

6. Manufacturers, importers, exporters, wholesalers and retailers licensed or authorized to manufacture or market substances in tables V and VI who become aware of suspicious occurrences or operations and fail to inform the national

control authorities may have their licence withdrawn or their authorization revoked, without prejudice to the application of any criminal sanction or fine.

7. By a joint directive of the Ministers of Finance, Justice, Agriculture, Industry and Energy and Trade and Tourism, the production, manufacture or employment of, trade in or distribution, import, export, dispatch in transit, transport, possession for any purpose or use of the substances in tables V and VI may be prohibited, if this measure is deemed the best way to protect public health and to prevent illicit trafficking in narcotic drugs and psychotropic substances.

8. The control, monitoring and regulation activities referred to in this article shall not prejudice any stricter measures arising from Community law.

Article 12

Supervisory responsibilities of the Inspectorate-General for Economic Activities and the Directorate-General of Customs

1. Without prejudice to the competence of the police and administrative authorities and to prevent diversion for illicit purposes, the Inspectorate-General for Economic Activities shall be responsible for supervising, among other things, authorized activities connected with wholesale trading in and distribution, purchase, sale, transport, delivery and possession of substances listed in tables V and VI, and the Directorate-General of Customs shall be responsible for supervising activities connected with import, export and transit.

2. As part of the supervision of the activities mentioned in paragraph 1 above, spot checks may be carried out in enterprises or establishments or on premises, and presentation of the relevant documentation may be requested.

3. Infractions detected shall be reported to the competent authority for investigation.

4. The Directorate-General of Customs shall notify the Inspectorate-General for Economic Activities of customs clearance operations involving substances listed in tables V and VI, indicating the importer, exporter and consignee, if known.

5. The Office for Drug Control of the Ministry of Justice shall be informed of the seizure of substances listed in tables V and VI.

Article 13
International circulation of persons

Persons who cross Portugal's borders may carry, for their own use, substances and preparations listet in tables I-A, II-B, II-C, III and IV, in quantities not exceeding what is required for 30 days' treatment, subject to presentation of a medical document attesting to the need for their use.

Article 14
Provisions applicable to means of transport

1. The international transport, in ships, aircraft or other means of international public transport, of small quantities of substances and preparations listed in tables I-A, II-B, II-C, III and IV which may be necessary during the journey to provide first aid shall be permitted.

2. The substances and preparations must be carried under secure conditions in order to prevent theft or diversion.

3. The substances and preparations carried pursuant to paragraph 1 above shall be subject to the laws, regulations and licences of the country of registration, without prejudice to the right of the competent Portuguese authorities to carry out such checks, inspections or other control operations as prove necessary on board the means of transport concerned.

Article 15
Medical prescription

1. The substances and preparations listed in tables I and II shall be supplied to the public only for treatment purposes, on presentation of a medical prescription in line with the provisions of the following paragraphs.

2. The National Institute of Pharmacy and Medicine, in collaboration with Directorate-General of Health, and after consulting the Medical Society and the Association of Pharmacists, shall approve a model counterfoil prescription book.

3. The prescriptions shall bear the name and address of the prescribing physician, his or her membership number in the Medical Society, and, in indelible characters, the name, domicile, sex, age and number of the identity card or personal certificate of the patient or of the owner of the animal to be treated, as well as the common or trade name of the medicine, the dosage, the total quantity, the posology and period of treatment, the date and the signature of the physician.

4. Without prejudice to the provisions of paragraph 5 below, the remaining substances and preparations listed in tables III and IV shall require a medical prescription under the terms of general legislation.

5. By a joint directive of the Ministers of Justice and Health, substances and preparations listed in table IV may be made subject to a special prescription requirement and to other control measures laid down in the text regulating substances and preparations listed in tables I and II, if such measures are deemed appropriate to protect public health.

Article 16
Special obligations of pharmacists

1. Only a pharmacist, or his or her replacement in the event of absence or impediment, may make up prescriptions relating to substances and preparations listed in tables I and II, after verifying the identity of the buyer and noting in the margin of the relevant prescription the name, number and date of issue of the identity card or any other reliable means of identification, such as a driver's licence or, in the case of a foreigner, a passport, noting also the date on which the substances are supplied, and signing.

2. The pharmacist shall refuse to make up a prescription that does not comply with the conditions laid down in the previous article.

3. A prescription may be made up only within 10 days of the date of issue, and may be used only once to obtain substances or preparations listed in the tables annexed hereto.

4. Pharmacies shall be obliged to maintain regular stocks of the substances or preparations mentioned in paragraph 1 above and to keep the prescriptions on file for a period of not more than five years, under conditions to be laid down by regulatory decree.

Article 17
Urgent cases

In an urgent case, a pharmacist may, on his or her own responsibility and for immediate use, supply substances and preparations listed in tables I and II without medical prescription, provided that the total amount of the drug does not exceed the maximum dose that may be taken at one time.

Article 18
Monitoring of prescription books

1. The National Institute of Pharmacy and Medicine, in conjunction with the Directorate-General of Health, shall monitor used prescription books with the aid of a computerized system, all persons having access to the information being bound by professional confidentiality.

2. The State and private health services shall send the National Institute of Pharmacy and Medicine every quarter a list of the narcotic drugs used in medical treatment.

Article 19
Prohibition of supply to persons with mental illness or to minors

1. The supply of substances and preparations listed in tables I to IV to individuals with obvious mental illness is prohibited.

2. The supply of substances and preparations listed in tables I-A, II-B and II-C to minors is prohibited.

3. If a minor has nobody to represent him or her, supply may be made to the person carring for the minor or responsible for his or her education or supervision.

Article 20
Urgent notification

1. The theft or disappearance of substances and preparations listed in tables I to IV shall be communicated, as soon as it is discovered, to the local police authority and to the National Institute of Pharmacy and Medicine by the entity that had custody thereof, with a statement of the facts and an indication of the precise quantities and characteristics of the substances and preparations that have disappeared, providing any available evidence.

2. The same procedure shall be followed in the event of theft, destruction or disappearance of records required pursuant to this text and its corresponding regulations or of forms for medical prescription.

CHAPTER III
TRAFFICKING, LAUNDERING AND OTHER OFFENCES

Article 21
Trafficking and other illicit activities

1. Anyone who, without authorization, cultivates, produces, manufactures, extracts, prepares, offers, places on sale, sells, distributes, purchases, transfers or receives in any circumstances, supplies to others, transports, imports, exports, dispatches in transit or illicitly possesses, except in the cases provided for in article 40, plants, substances or preparations listed in tables I to III shall be punished by a term of imprisonment of between 4 and 12 years.

2. Anyone who, acting in contravention of the terms of an authorization issued pursuant to chapter II, illicitly transfers, places on the market or persuades another to place on the market the plants, substances or preparations mentioned in paragraph 1 above shall be punished by a term of imprisonment of between 5 and 15 years.

3. The punishment indicated in paragraph 2 above shall be incurred by cultivating plants or producing or manufacturing substances or preparations different from those mentioned in the heading of the authorization.

4. In the case of substances or preparations listed in table IV, the punishment shall be a term of imprisonment of between 1 and 5 years.

Article 22
Precursors

1. Anyone who, without authorization, manufactures, imports, exports, transports or distributes any equipment, material or substance in tables V and VI, in the knowledge that it is or will be used in the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances shall be punished by a term of imprisonment of between 2 and 10 years.

2. Anyone who, without authorization, possesses any equipment, material or substance in tables V and VI, for whatever purpose, in the knowledge that it is or will be used in the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances shall be punished by a term of imprisonment of between 1 and 5 years.

3. If the individual holds an authorization pursuant to chapter II, the penalty shall be :

(a) In cases referred to in paragraph 1 above, a term of imprisonment of between 3 and 12 years;
(b) In cases referred to in paragraph 2 above, a term of imprisonment of between 2 and 8 years.

Article 23
Conversion, transfer or disguising of goods or products

1. Anyone who, in the knowledge that goods or products are the result of the perpetration, in any form of participation, of an offence referred to in articles 21, 22, 24 and 25:

(a) Converts, transfers or aids or abets any attempt to convert or transfer such goods or products, in all or in part, whether directly or indirectly, for the purpose of concealing or disguising their illicit origin, or of assisting a person involved in the commission of any of the said offences to evade the legal consequences of his or her actions shall be punished by a term of imprisonment of between 4 and 12 years;
(b) Conceals or disguises the true nature, source, location, disposition, movement or ownership of such goods or of products or of rights with respect thereto shall be punished by a term of imprisonment of between 2 and 10 years;
(c) Acquires or receives in any circumstances, uses, possesses, or keeps such goods or products shall be punished by a term of imprisonment of between 1 and 5 years.

2. The punishment for the crimes referred to in paragraph 1 above shall not exceed that applicable to the corresponding offences under articles 21, 22, 24 and 25.

3. The punishment for the crimes referred to in paragraph 1 above shall apply even if the actions referred to in articles 21, 22, 24 and 25 took place outside Portuguese territory.

Article 24
Aggravating circumstances

The minimum and maximum limits of the penalties provided for in articles 21, 22 and 23 shall be increased by one quarter if:

(a) The substances or preparations are supplied to or intended for minors or mentally deficient persons;

(b) The substances or preparations are distributed by a large number of persons;
(c) The perpetrator obtains or attempts to obtain substantial remuneration;
(d) The perpetrator is an official responsible for the prevention or repression of such offences;
(e) The perpetrator is a physician, pharmacist or any other health specialist, an official of the prison service or of social reintegration services, a worker in the post, telegraph, telephone or telecommunications service, a teacher, educator or worker in an educational establishment, or a worker in the social welfare service or institutions, and the offence is committed in the exercise of his or her profession;
(f) The perpetrator participates in other international organized criminal activities;
(g) The perpetrator participates in other illegal activities facilitated by commission of the offence;
(h) The offence was committed on premises used for the treatment of drug users or for social reintegration, on the premises of social welfare services or agencies, in a prison, a military unit or an educational institution or in another place where schoolchildren or students engage in educational, sports or social activities, or in the immediate vicinity of such a place;
(i) The perpetrator uses the collaboration, in whatever manner, of minors or mentally deficient persons;
(j) The perpetrator acts as a member of a gang formed for the repeated commission of the crimes referred to in articles 21 and 22, with the cooperation of at least one other gang member;
(k) The substances or preparations involved are corrupted, changed or adulterated, by manipulation or mixing, in a manner increasing the risk to the life or physical integrity of others.

Article 25
Minor trafficking offences

If, in the cases referred to in articles 21 and 22, the illicit nature of the activity is substantially reduced, particularly considering the means used, the modality or the circumstances, and the quality or quantity of the plants, substances or preparations, the penalty shall be:

(a) Imprisonment for between 1 and 5 years, if the offence involves plants, substances or preparations listed in tables I to III, V and VI;
(b) Imprisonment for up to two years or a fine of up to 240 days, in the case of substances or preparations listed in table IV.

Article 26
Trafficker-consumers

1. If the perpetrator's exclusive aim, in carrying out any of the activities referred to in article 21, is to obtain plants, substances or preparations for personal use, the penalty shall be imprisonment for up to three years, if the offence involves plants, substances or preparations listed in tables I to III, or imprisonment for up to one year or a fine of up to 120 days if it involves plants, substances or preparations listed in table IV.

2. Any attempt to commit such acts shall be punishable.

3. The provisions of paragraph 1 above shall not apply if the perpetrator possesses plants, substances or preparations in a quantity exceeding that required for average individual consumption for a five-day period.

Article 27
Abuse of professional functions

1. The penalties provided for in articles 21, paragraphs 2 and 4, and 25 shall be applicable to a physician who issues prescriptions or administers or supplies substances or preparations indicated therein for non-therapeutic purposes.

2. The same penalties shall be applicable to a pharmacist, or whoever substitutes for a pharmacist in the event of absence or impediment, who sells or supplies such substances or preparations for non-therapeutic purposes.

3. If an individual is found guilty pursuant to the preceding paragraphs, the court shall make the decision known to the Medical Society or the Association of Pharmacists.

4. The supply of substances or preparations to a person suffering from obvious mental illness or to a minor, contrary to article 19, shall be punished by a term of imprisonment of up to one year or a fine of up to 120 days.

5. Any attempt to carry out such activities shall be punishable.

Article 28
Criminal associations

1. Anyone who promotes, establishes or finances a group, organization or association of two or more persons who, acting together, set out to commit any

of the crimes referred to in articles 21 and 22 shall be punished by a term of imprisonment of between 10 and 20 years.

2. Anyone who collaborates directly or indirectly with, joins or supports a group, organization or association referred to in paragraph 1 above shall be punished by a term of imprisonment of between 5 and 15 years.

3. Anyone who heads or leads a group, organization or association referred to in paragraph 1 above shall be punished by a term of imprisonment of between 12 and 20 years.

4. If the purpose or activity of the group, organization or association is to convert, transfer, disguise or receive goods or products deriving from the crimes indicated in articles 21 and 22, the perpetrator shall be punished:

(a) In the cases referred to in paragraphs 1 and 3 above, by a term of imprisonment of between 2 and 10 years;

(b) In the case referred to in paragraph 2 above, by a term of imprisonment of between 1 and 8 years.

Article 29

Incitement to use narcotic drugs or psychotropic substances

1. Anyone who induces, incites or instigates another person, in private or in public, to make illicit use of plants, substances or preparations listed in tables I to III or facilitates, by any means, the illicit use of such plants, substances or preparations shall be punished by a term of imprisonment of up to three years or a fine.

2. In the case of substances or preparations listed in table IV, the punishment shall be imprisonment for up to one year or a fine of up to 120 days.

3. The minimum and maximum limits of the penalties shall be increased by one third if:

(a) The activities were carried out to the detriment of a minor, a mentally deficient person or a person in the care of the perpetrator of the crime for treatment, education, instruction, supervision or custody purposes;

(b) Any of the circumstances referred to in paragraphs (d), (e) or (h) of article 24 apply.

Article 30
Trafficking and consumption in public or meeting places

1. Anyone who, being the owner, manager or director of or in any other capacity running a hotel, restaurant, café, tavern or club or premises used for meetings, performances or entertainment, permits the premises to be used for illicit trafficking in or use of plants, substances or preparations listed in tables I to IV shall be punished by a term of imprisonment of between 1 and 8 years.

2. Anyone who, having a building, an enclosed area or vehicle at his or her disposal, allows it to be habitually used for illicit trafficking in or use of plants, substances or preparations listed in tables I to IV shall be punished by a term of imprisonment of between 1 and 5 years.

3. Without prejudice to the provisions of the preceding paragraphs, anyone who, after being notified as set out in paragraph 4 below, fails to take adequate measures to ensure that the places mentioned above are not used for illicit trafficking in or use of plants, substances or preparations listed in tables I to IV shall be punished by a term of imprisonment of up to 5 years.

4. The provisions of paragraph 3 above shall apply only after there have been two seizures of plants, substances or preparations listed in tables I to IV by the legal authority or by the criminal police, duly made known to the responsible person referred to in paragraphs 1 and 2 above, within a period not greater than one year, even if the possessors have not been identified.

5. If the conditions referred to in paragraphs 3 and 4 above are fulfilled, the competent investigating authority shall report the situation to the relevant civil district governor or to the administrative authority that authorized the opening of the establishment, for a decision on its closure.

Article 31
Reduction or remission of penalty

If, in the cases referred to in articles 21, 22, 23 and 28, the perpetrator voluntarily gives up his or her activity, removes or considerably diminishes the danger caused by the conduct, prevents or seriously endeavours to prevent the effects that the law is seeking to avoid, or gives the authorities concrete assistance in gathering decisive evidence leading to the identification or capture of others involved, especially in the case of groups, organizations or associations, there may be a special reduction or a remission of the penalty.

Article 32
Abandonment of syringes

Anyone who, in a public place or a place that is open to the public, or in a private place that is in common use, abandons a syringe or other instrument used in the illicit consumption of narcotic drugs or psychotropic substances, thus creating a danger to the life or physical integrity of others, shall be punished by a term of imprisonment of up to one year or a fine of up to 120 days, provided that no more severe punishment is applicable under another legal provision.

Article 33
Qualified disobedience

1. Anyone who obstructs control measures or refuses to provide the documents required by this text, having been warned of the criminal consequences of such an action, shall be liable to the penalty corresponding to the office of qualified disobedience.

2. Anyone who does not comply with the obligations set out in article 20 in due time shall incur the same penalty.

Article 34
Expulsion of foreigners and closure of establishments

1. Without prejudice to the provisions of article 48, in case of sentencing for a crime referred to in this text, if the individual concerned is a foreigner, the court may order the individual's expulsion from the country, for a period not exceeding 10 years, subject to Community rules relating to nationals of member States of the European Community.

2. In case of sentencing for the crime referred to in article 30, independently of any prohibition on pursuing a profession or activity, the court may order the closure of the establishment or public place where the offence occurred, for a period of between 1 and 5 years.

3. In the event of prior legal or administrative closure, the period shall be taken into account in the sentence.

4. If the defendant is acquitted, any administrative closure shall cease immediately.

Article 35
Forfeiting of objects

1. The objects used or intended for use in committing an offence referred to in this text or produced for that purpose shall be declared forfeited to the State if, because of their nature or the circumstances of the case, they represent a danger to the safety of persons or public order, or if there is a serious risk that they may be used in further illicit activities.

2. The plants, substances and preparations listed in tables I to IV shall in all cases be declared forfeited to the State.

3. The provisions of the preceding paragraphs shall apply even if no specific person can be punished for the activity in question.

Article 36
Loss of articles or rights connected with the offence

1. Any recompense given or promised to the perpetrators of an offence referred to in this text for themselves or for others, shall be forfeited to the State.

2. Without prejudice to the rights of *bona fide* third parties, the objects, rights and advantages directly acquired by the perpetrators, for themselves or for others, through the offence, shall also be declared forfeited to the State.

3. The provisions of the preceding paragraphs shall apply to the rights, objects or advantages obtained by transaction or exchange of the rights, objects or advantages directly derived from the offence.

4. If the recompense, rights, objects or advantages referred to in the preceding paragraphs cannot be appropriated in kind, forfeiture shall be replaced by payment of their value to the State.

5. This article includes, in particular, movables, immovables, aircraft, vessels, vehicles, bank deposits, securities or any other property.

Article 37
Transformed, converted or intermingled property

1. If the recompense, objects, rights or advantages to which the previous article refers have been transformed or converted into other property, such property shall be forfeited to the State in their stead.

2. If the recompense, objects, rights or advantages to which the previous article refers have been intermingled with property acquired legitimately, such property shall be forfeited to the State up to the estimated value of the intermingled property.

Article 38
Profits and other incomes

The provisions of articles 35 to 37 also apply to interest, profits and other benefits derived from the property indicated therein.

Article 39
Use of property declared forfeited to the State

1. The recompense, objects, rights or advantages that are declared forfeited to the State, by virtue of articles 35 to 37, shall be allocated as follows:

(a) 30 per cent to the coordinating agency for the National Drug Control Programme, to support drug prevention initiatives, measures and programmes;

(b) 50 per cent to the Ministry of Health, to establish a system to provide for contact with and the treatment and reintegration of drug addicts;

(c) 20 per cent to the agencies of the Ministry of Justice, subject to the legal provisions applicable to the use of income from the sale of objects seized in criminal proceedings, to provide for the treatment and social reintegration of drug addicts subject to penal or supervision measures.

2. The conveying of automotive vehicles shall require the prior assent of the Directorate-General for State Property, without prejudice to the provisions of article 156 of Decree-Law No. 295-A/90 of 21 September.

3. Property, objects or instruments declared forfeited to the State which, by their nature or characteristics, may be used again to commit other offences shall not be conveyed and shall be destroyed unless they are of interest for criminalistic, scientific or educational purposes.

4. In the absence of an international convention, property or proceeds from offences that are seized at the request of an authority of a foreign State or funds generated by sale shall be shared equally between the requesting State and the requested State.

CHAPTER IV
CONSUMPTION AND TREATMENT

Article 40
Consumption

1. Anyone who consumes or, for consumption purposes, cultivates, purchases or possesses plants, substances or preparations listed in tables I to IV shall be punished by a term of imprisonment of up to three months or a fine of up to 30 days.

2. If the quantity of plants, substances or preparations cultivated, possessed or purchased by the perpetrator exceeds that necessary for average individual consumption for a three-day period, the term of imprisonment shall be of up to one year and the fine of up to 120 days.

3. In the case of paragraph 1 above, if the perpetrator is an occasional user the penalty may be remitted.

Article 41
Spontaneous requests for treatment

1. Anyone who uses illicitly, for personal consumption, plants, substances or preparations listed in tables I to IV and seeks the assistance of the State or private health services shall be guaranteed anonymity.

2. In the case of a minor, a person under judicial restraint or an unfit person, the assistance sought by his or her legal representative shall be provided under the same conditions.

3. The physicians, technical staff and other institutional personnel assisting the patient shall be subject to the rules of professional secrecy and shall not be obliged to testify in court or to give information to the police concerning the nature or progress of the treatment.

4. Without prejudice to the provisions of paragraph 3 above, any physician may notify the State health services of cases of abuse of narcotic or psychotropic substances or plants noted in the course of his or her professional duties, if he or she feels that treatment or assistance may be justified, in the interest of the patient, the patient's family or the community for which the patient does not have the necessary resources.

Article 42

Care for and treatment of consumers

1. The Ministry of Health shall, through the appropriate departments, take the necessary steps to provide care for drug addicts or other consumers who seek such care voluntarily.

2. The Ministry of Health shall issue directives to establish the conditions under which private bodies may care for and treat drug addicts, as well as the type of control applicable to them.

Article 43

Medical examination of habitual users

1. If there are signs that a person is a habitual user of plants, substances or preparations in tables I to IV, thus placing his or her own health in grave danger or presenting a risk to society, the Prosecution Service in the person's district of residence may order the person to undergo an appropriate medical examination.

2. The examination may take place at the initiative of the Prosecution Service, or may be requested by the legal representative, spouse, health authority or police, and in any event shall be directed towards verifying the signs referred to in paragraph 1 above.

3. The examination shall be conducted by a physician or specialized health service, whether public or private, and shall be carried out within 30 days, in compliance, subject to the necessary adaptations, with the rules applicable to criminal proceedings, particularly as regards the obligation to appear, the experts being permitted to undertake to intervene in more than one examination or proceeding.

4. The person examined may be required to undergo analyses of blood or urine or any other analyses found necessary.

5. If the examination reveals that the person concerned is suffering from drug addiction, the prosecution officer shall propose that the person should accept voluntary treatment which, if the person accepts it, shall be provided under the responsibility of a public or private specialized health service.

6. If the treatment is interrupted without justification or if the person refuses to undergo treatment, the officer shall report the situation to the Institute for Social Rehabilitation and, if applicable, to the health services, so that appropriate support measures may be adopted.

Article 44

Suspension of sentence and obligation to undergo treatment

1. If a person has been sentenced for a crime referred to in article 40, or for another crime directly connected therewith, and has been deemed to be drug-dependent under the terms of article 52, the court may suspend execution of the sentence in accordance with general law, provided that, apart from other duties or rules of conduct, the individual voluntarily agrees to treatment or admission to an appropriate establishment, to be confirmed in the manner and at the time determined by the court.

2. If, during the period of suspension of execution of the sentence, the drug addict culpably fails to submit himself or herself to treatment or internment or fails to comply with any other obligation or rule of conduct imposed by the court, the provisions of criminal law regarding failure to comply with such obligations or rules of conduct shall apply.

3. If the suspension of sentence is revoked, the sentence shall be served in an appropriate section of the prison establishment.

4. The drug addict shall be assisted by the custodial establishment's own medical service or, if necessary, by the services of the Ministry of Health, in circumstances to be agreed with the Ministry of Justice.

5. The rules governing assistance for prisoners through private bodies or the provision of forms of treatment with implications for prison regulations shall be determined by directive of the Minister for Justice.

Article 45

Suspended sentence with probation

1. In the case referred to in the previous article, the court may decide, pursuant to general law, that suspension of the sentence should be accompanied by a system of probation, if the court considers this expedient and appropriate to facilitate the drug addict's recovery and reintegration in society.

2. The individual recovery and reintegration plan shall be prepared and monitored by the health services, in conjunction with the Institute for Social Rehabilitation, under the responsibility of the former or the latter, as deemed advisable by the court in each instance, with the agreement, whenever possible, of the person involved.

3. The court's decision may be taken before submission of the individual plan, in which case a reasonable time-limit shall be fixed for submission thereof.

4. The provisions of paragraphs 2 to 4 of the preceding article shall apply, as appropriate.

Article 46
Drug addicts in preventive custody or serving prison sentences

If drug addiction is detected when a person is detained, in preventive custody or serving a sentence, the police or prison services shall report the fact to the Prosecution Service, so that suitable measures may be adopted, without prejudice to any measures dictated by the urgency of the situation.

Article 47
Treatment in the context of pending proceedings

1. Whenever the treatment, in any of the approaches adopted, takes place in the context of pending court proceedings, the physician or the establishment shall report every three months, if no other interval has been fixed, on progress in the condition of the person undergoing treatment, subject to respect for the confidentiality of the treatment relationship, and may suggest any measures it considers desirable.

2. The Institute for Social Rehabilitation shall act in the same manner in the areas within its scope.

3. After receiving the information mentioned in the preceding paragraphs, the court shall take a decision, if it deems necessary, on the person's situation with regard to court proceedings.

4. The provisions of this text shall prevail over those relating to confinement in a closed institution in the legal texts concerning mental health.

CHAPTER V
SUBSIDIARY LEGISLATION

Article 48
Criminal legislation

With regard to the content of this text, the provisions of the general part of the Penal Code and the corresponding complementary legislation shall have subsidiary application.

Article 49
Application of Portuguese criminal law

For the purposes of this text, Portuguese criminal law shall also apply to acts committed outside the national territory:

(a) By a foreigner, provided that the perpetrator is in Portugal and not extradited;

(b) Aboard a vessel against which Portugal has been authorized to adopt the measures provided for in article 17 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Article 50
Measures concerning minors

It is the responsibility of the courts with jurisdiction to deal with minors to apply the measures prescribed in this text, with the necessary adaptations, if the person involved is a minor, under the terms of the special legislation for minors, without prejudice to the application by the ordinary courts of the legislation respecting young people aged between 16 and 21 years.

Article 51
Legislation on criminal procedure

1. For the purposes of the provisions of the Code of Criminal Procedure, and in conformity with paragraph 2 of article 1 thereof, the behaviour constituting the crimes indicated in articles 21 to 24 and 28 of this text shall be treated in the same way as cases of terrorism or violent or highly organized criminalities.

2. In the absence of a specific provision in this text, the provisions of the Code of Criminal Procedure and complementary legislation shall have subsidiary application.

Article 52
Medico-legal expertise

1. If, in the course of the investigation or examination, there is information that the accused was dependent on drugs when he or she allegedly committed the offence in question, an urgent expert examination shall be ordered to establish the accused condition.

2. As far as possible, the expert must determine the nature of the products consumed by the accused, his or her condition when the examination is conducted and any repercussions of the consumption of the products concerned on his or her ability to recognize the illicit nature of his or her actions or to take decisions in accordance with such recognition.

3. If deemed necessary, the analyses referred to in paragraph 4 of article 43 may be ordered.

Article 53
Search and examination

1. If there are indications that someone is concealing or transporting narcotic drugs or psychotropic substances in his or her body, a search shall be ordered and, if necessary, an examination shall be conducted.

2. The person concerned may be taken to a hospital unit or other suitable establishment and kept there for the time strictly necessary for carrying out the examination.

3. If the person concerned refuses consent, but without prejudice to the provisions of paragraph 1 of the preceding article, the search or examination may be conducted only with the prior authorization of the competent judicial authority, which shall, whenever possible, supervise the procedure.

4. Anyone who, after being duly advised of the penal consequences of his or her action, refuses to submit to the search or examination authorized pursuant to paragraph 3 above shall be punished by a term of imprisonment of up to 2 years or a fine of up to 240 days.

Article 54
Preventive custody

1. Whenever the alleged crime relates to drug trafficking, diversion of precursors, money laundering or criminal association, the provisions of paragraph 1 of article 209 of the Code of Criminal Procedure shall apply, and the judge shall also take special account of the accused's financial resources that could be used to help the accused jump bail and the danger of continued criminal activity, both nationally and internationally.

2. Before deciding on the continued existence of the circumstances requiring preventive custody in accordance with article 213 of the Code of Criminal Procedure, the Prosecution Service shall receive from the competent department

of the Criminal Police any up-to-date information that may have a bearing on the reappraisal of the circumstances.

3. If the proceeding relates to one of the crimes referred to in paragraph 1 above, the provisions of paragraph 3 of article 215 of the Code of Criminal Procedure shall apply.

Article 55
Compulsion

1. If the alleged crime is punishable by a maximum term of imprisonment of more than three years and the accused is deemed to be drug-dependent, pursuant to article 52, the judge may rule, without prejudice to the provisions of the Code of Criminal Procedure, that the accused be treated in a suitable establishment, to which he or she must report within the period fixed.

2. The obligation to undergo treatment shall be communicated to the establishment in question and the judge may request the support of the services of the Institute for Social Rehabilitation for the drug-dependent offender.

3. The accused shall confirm to the court his or her fulfilment of the obligation, in the manner and at the time fixed.

4. Preventive custody may not be imposed if the accused is undergoing a treatment programme for drug-dependence, unless there are particular needs for precautions.

5. If preventive custody is ordered, the individual shall be held in an appropriate part of the prison establishment.

6. The rules indicated in paragraph 5 of article 44 shall apply.

Article 56
Provisional suspension of proceedings

1. If the alleged crime is that referred to in article 40, or another directly related thereto, punishable by a term of imprisonment of not more than three years or a sanction of a different nature, the Prosecution Service may, with the agreement of the examining magistrate, decide to suspend the proceedings, with the accused's consent, subject to the conditions indicated in subparagraphs (d) and (e) of article 281 of the Code of Criminal Procedure.

2. When the proceedings are suspended, in addition to the rules of conduct referred to in paragraph 2 of article 281 of the Code of Criminal Procedure, the

accused shall be required, if drug-dependence is confirmed, to undergo treatment or be admitted to a suitable establishment, the provisions of article 47 being applicable.

3. The substances and preparations that were used in or were intended for use in committing the crimes shall be seized and declared forfeited to the State.

CHAPTER VI
SPECIAL RULES

Article 57
Criminal investigation

The investigation of illicit trafficking in plants, substances and preparations listed in the tables annexed to this text shall be the exclusive responsibility of the Criminal Police.

Article 58
International cooperation

In compliance with the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in relation to extradition, mutual legal assistance, enforcement of foreign judgements in penal proceedings and transfer of proceedings, the provisions of Decree-Law No. 43/91, dated 22 January, shall have subsidiary application.

Article 59
Non-punishable conduct

1. If an investigating officer, for investigation purposes and without revealing his or her identity and the capacity in which he or she is acting, accepts, directly or through a third party, narcotic drugs or psychotropic substances, his or her conduct shall not be punishable.

2. Such an occurrence shall be reported in the file within 24 hours.

Article 60
Provision of information and presentation of documents

1. Individuals suspected or accused of committing crimes indicated in articles 21 to 23, 25 and 28 may be requested to provide information or to present documents regarding property, deposits or any other securities, with a view to their seizure and forfeiture to the State.

2. The provision of such information or the presentation of such documents, whether in manual or electronic form, may not be refused by any public or private entity, in particular by banking, financing or similar institutions, by civil societies or commercial companies or by any registration or fiscal office, on condition that the request refers to an individual and is made in sufficiently concrete form.

3. The request referred to in the preceding paragraphs shall be made by the competent judicial authority.

Article 61
Controlled delivery

1. On a case-by-case basis, the Prosecution Service may authorize the Criminal Police not to act against carriers of narcotic or psychotropic substances in transit through Portugal, in order to collaborate with the country or countries of destination and any other transit countries in the identification and charging of as many people as possible participating in the various operations of trafficking and distribution, but without prejudice to the exercise of criminal action in respect of activities to which Portuguese law applies.

2. Such an authorization shall be granted only at the request of the country of destination, provided that:

(a) There is detailed knowledge of the probable itinerary of the carriers and sufficient information about their identity;
(b) The competent authorities in the countries of destination and the transit countries guarantee the security of the substances concerned against risks of theft or diversion;
(c) The competent authorities in the countries of destination or transit ensure that their legislation provides for adequate criminal sanctions against the accused and that criminal action will be taken;
(d) The competent judicial authorities in the countries of destination or transit undertake to communicate, without delay, detailed information regarding the outcome of the operation and details of the acts of each person involved in the crimes, particularly those acting in Portugal.

3. Even after the authorization mentioned above has been granted, the Criminal Police shall intervene if there is an appreciable reduction in security margins or if there is an unexpected change of itinerary or any other circumstance that may jeopardize the future seizure of the substances and the arrest of the perpetrators; if such an intervention has not been made known in advance to the entity that granted the authorization, it shall be reported in writing within the next 24 hours.

4. In agreement with the country of destination, the substances in transit may be partly replaced by innocuous substances, an official report of this being drawn up.

5. Non-fulfilment of the obligations assumed by the countries of destination or transit may constitute grounds for refusal of an authorization on future occasions.

6. International contacts shall be established through the Criminal Police, by the National Interpol Office.

7. Any other entity that receives requests for controlled delivery, in particular the Directorate-General of Customs, through the Customs Cooperation Council, or its foreign counterparts, without prejudice to the handling of customs information, shall pass on such requests immediately to the Criminal Police for execution.

8. Requests for controlled delivery shall be submitted to the competent prosecution officer of the Lisbon district.

Article 62
Examination and destruction of substances

1. The plants, substances and preparations seized shall be examined, by order of the competent judicial authority, in the shortest time possible.

2. After the laboratory examination, the responsible expert shall proceed with the collection, identification, weighing, both gross and liquid, packing and sealing of a sample, if the quantity of drug permits, and of the remainder, if any.

3. The sample shall be kept in a safe at the office carrying out the investigation, until a final decision is reached.

4. Within five days of receipt of the report on the laboratory examination, the competent judicial authority shall order the destruction of the remainder of the drug, which shall be carried out within 30 days, the drug being kept in a safe until its destruction.

5. The drug shall be destroyed by incineration, in the presence of a judge, an official appointed for the purpose and a laboratory technician, and an official report shall be made; drugs seized in different cases may be incinerated in the same operation.

6. Once a final decision has been issued, the court shall order the destruction of the sample kept in the safe, and the said destruction shall comply with the provisions of paragraph 5 above, with a corresponding official report.

7. The judge responsible for the case may be asked, through the Office for Drug Control of the Ministry of Justice, for the transfer of the seized substances, for teaching, training or criminal investigation purposes, especially for dog training.

8. A period may be fixed for the devolution of the transferred drug or the assignee agency may be authorized to destroy it as soon as it ceases to be necessary or useful, with a report thereof for the file.

Article 63
Samples requested by foreign agencies

1. Samples of substances and preparations that have been seized may be sent, at the request of foreign public services, for scientific or investigation purposes, even during the hearing.

2. The request shall be transmitted to the competent judicial authority, which shall decide whether to comply with it.

3. The request and its fulfilment shall be submitted through the Office for Drug Control of the Ministry of Justice or the Criminal Police.

Article 64
Communication of decisions

1. The Office for Drug Control of the Ministry of Justice shall be notified of all seizures of plants, substances and preparations listed in tables I to IV.

2. The courts shall send to the Office for Drug Control of the Ministry of Justice a copy of the decisions made in trials regarding offences referred to in this text.

CHAPTER VII
ADMINISTRATIVE OFFENCES AND FINES

Article 65
General rule

1. Infringements of the conditions and obligations set out in paragraphs 4 and 5 of article 2 shall be considered administrative offences and punished by fines, in accordance with the provisions of a regulatory decree.

2. Decree-Law No. 433/82, dated 27 October, shall apply to any matter not specifically provided for in this decree-law or the relevant supplementary texts.

Article 66
Amount of the fines

1. The amount of the fines shall range from 10,000$ to 5,000,000$.

2. In the case of negligence, the amount of the fine may not exceed half of the maximum amount laid down for the corresponding administrative offence.

3. The fines applicable to corporate bodies and similar entities may be up to the maximum amounts of 10,000,000$, in case of malice, or 5,000,000$, in case of negligence.

Article 67
Seizure and accessory sanctions

1. In proceedings relating to an administrative offence, the seizure of objects used in its commission may be ordered and the following accessory measures may be imposed:

(a) Revocation or suspension of the authorization to engage in the activity involved;
(b) Prohibition on the exercise of a profession or activity for a period of not more than three years.

2. If the act is also a criminal offence, the perpetrator shall be punished for that offence, without prejudice to the application of the accessory sanctions laid down for the administrative offence.

Article 68
Competent entity and registry

1. The President of the National Institute of Pharmacy and Medicine and the Commission for the Application of Fines in Economic Matters shall be competent to apply the fines and accessory sanctions fixed in the regulatory decree.

2. The National Institute of Pharmacy and Medicine shall organize the registration of individuals or corporate bodies authorized to carry on activities mentioned in paragraph 4 of article 2, and all the sanctions imposed shall be recorded in the register.

CHAPTER VIII
FINAL PROVISIONS

Article 69
International representation

The coordinating agency for the National Drug Control Programme shall be responsible for ensuring, in conjunction with the Ministry of Foreign Affairs, the representation of Portugal at the international level so that matters of cooperation are dealt with and delegations are made up of representatives indicated by the relevant bodies, on the basis of their specific competence.

Article 70
Primary prevention activities

1. The Ministries of Justice, Education and Health, together with the government department supervising youth affairs, in conjunction with the coordinating agency for the National Drug Control Programme, shall be responsible for planning, executing and evaluating specific actions, measures and programmes to prevent drug consumption, taking into account their multidisciplinary nature.

2. Without prejudice to the responsibilities conferred or to be conferred on the departments of the ministries mentioned in paragraph 1 above by virtue of the relevant organic texts, the Ministry of Education shall be responsible for:

(a) Inclusion of basic health education, focusing on drug use prevention, in school curricula;
(b) Promotion of basic and further training for teachers to enable them to participate in and develop such education;

(c) Development of specific programmes for primary drug-dependence prevention in schools.

Article 71
Diagnosis and quantification of substances

1. The Ministers of Justice and Health, in consultation with the Higher Council for Forensic Medicine, shall establish the following by a directive:

(a) Procedures for diagnosis and expert examination required to assess the level of drug dependence;
(b) How the specialized health services should support the police and judicial authorities;
(c) Maximum quantitative active ingredient limits for each average individual daily dosage of the most widely used substances or preparations in tables I to IV.

2. The directive referred to in paragraph 1 above shall be updated if scientific progress so requires.

3. The probatory value of the expert examinations and the limits referred to in paragraph 1 above shall be evaluated pursuant to article 163 of the Code of Criminal Procedure.

Article 72
Information for health care specialists

Publications for the exclusive use of physicians and other health care specialists concerning pharmaceutical products shall mark with the letter E [narcotic drug *(estupefaciente)*] all substances or preparations listed in tables I-A and III and with the letter P (psychotropic substance) those listed in tables II-B, II-C and IV.

Article 73
Technical concepts and rules

The technical concepts and rules contained in this text shall be understood in the light of the international conventions on narcotic drugs and psychotropic substances ratified by Portugal.

Article 74
Office for Drug Control of the Ministry of Justice

The references herein to the Office for Drug Control of the Ministry of Justice relate to the Planning and Coordination Office for Drug Control, until such time as it is restructured and given the first-mentioned name.

Article 75
Provisions repealed by this text

The following are hereby repealed:
(a) Decree-Law No. 430/83 of 13 December;
(b) Paragraph 1 of article 130 of Decree-Law No. 48 547, dated 27 August 1968, in the wording embodied in Decree-Law No. 214/90 of 28 June;
(c) Decree-Law No. 209/91 of 8 June.

Article 76
Entry into force

1. This text shall come into force 30 days after it is published.

2. Regulation of implementation of the provisions of paragraphs 4 and 5 of article 2, articles 4 to 20 and article 65 shall take place within 60 days of publication thereof.

Seen and approved by the Council of Ministers on 12 November 1992.

Aníbal António Cavaco Silva – Mário Fernando de Campos Pinto – Artur Aurélio Teixeira Rodrigues Consolado – Jorge Braga de Macedo – Álvaro José Brilhante Laborinho Lúcio – Arlindo Marques da Cunha – Luís Fernando Mira Amaral – António Fernando Couto dos Santos – Arlindo Gomes de Carvalho – Fernando Manuel Barbosa Faria de Oliveira – Luís Manuel Gonçalves Marques Mendes.

Promulgated on 21 December 1992.

May it be published.

MÁRIO SOARES, President of the Republic,
Countersigned on 23 December 1992,

Aníbal António Cavaco Silva, Prime Minister.

Tables of controlled plants, substances and preparations
(Articles 2, 3 and 4 of Decree-Law No. 15/93)

TABLE I-A

Acetorphine – 3-0-acetyltetra-hydro-7-α(1-hydroxy-1-methylbutyl)-6,14-*endo*--etheno-oripavine.

Acetyl-*alpha*-methylfentanyl – *N*-[1-(α-methylphenethyl)-4-piperidyl]-acetanilide.

Acetyldihydrocodeine – 3-methoxy-4,5-epoxy-6-acetoxy-17-methylmorphinan.

Acetylmethadol – 3-acetoxy-6-dimethylamino-4,4-diphenylheptane.

Alfentanil – N-[1-[2-(4-ethyl-4,5-dihydro-5-oxo-1*H*-tetrazol-1-yl)ethyl]-4-(methoxymethyl)-4-piperidinyl]-*N*-phenylpropanamide monohydrochloride.

Allylprodine – 3-allyl-1-methyl-4-phenyl-4-propionoxypiperidine.

Alphacetylmethadol – *alpha*-3-acetoxy-6-dimethylamino-4,4-diphenylheptane.

Alphameprodine – *alpha*-3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine.

Alphamethadol – *alpha*-6-dimethylamino-4,4-diphenyl-3-heptanol.

Alpha-methylfentanyl – *N*-[1(α-methylphenethyl)-4-piperidyl] propionanilide.

Alpha-methylthiofentanyl – α*N*-[1-[1-methyl-2-(2-thienyl) ethyl-4-piperidyl] propionanilide.

Alphaprodine – *alpha*-1,3-dimethyl-4-phenyl-4-propionoxypiperidine.

Anileridine – 1-*para*-aminophenethyl-4-phenylpiperidine-4-carboxylic acid ethyl ester.

Benzethidine – 1-(2-benzyloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester.

Benzylmorphine – 3-benzyloxy-4,5-epoxy-*N*-methyl-7-morphinen-6-ol; 3-benzylmorphine.

Betacetylmethadol – *beta*-3-acetoxy-6-dimethylamino-4,4-diphenyl-heptane.

Beta-hydroxyfentanyl – *N*-[1-(*beta*-hydroxyphenethyl)-4-piperidyl] propio--nanilide.

Beta-hydroxy – 3-methylfentanyl *N*-1-(*beta*-hydroxyphenethyl)-3-methyl-4--piperidyl propionanilide.

Betameprodine – *beta*-3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine.

Betamethadol – *beta*-6-dimethylamino-4,4-diphenyl-3-heptanol.

Betaprodine – *beta*-1,3-dimethyl-4-phenyl-4-propionoxy-piperidine.

Bezitramide – 1-(3-cyano-3,3-diphenylpropyl)-4-(2-oxo-3-propionyl-1-benzimidazolinyl)-piperidine.

Clonitazene – 2-*para*-chlorbenzyl-1-diethylaminoethyl-5-nitrobenzimidazole.

Codeine – 3-methoxy-4,5-epoxy-6-hydroxy-17-methyl-7-morphinene; 3-methylmorphine.

Codeine – *N*-oxide 3-methoxy-4,5-epoxy-6-hydroxy-17-methyl-7-morphinene-17-oxy-ol.

Codoxime – dihydrocodeinone-6-carboxymethyloxime.

Concentrate of poppy straw – the material arising when poppy straw has entered into a process for the concentration of its alkaloids, when such material is made available in trade.

Desomorphine – 3-hydroxy-4,5-epoxy-17-methylmorphinan; dihydro-deoxy--morphine.

Dextromoramide – (+)-4-[2-methyl-4-oxo-3,3-diphenyl-4 (1-pyrrolidinyl)-butyl]-morpholine.

Dextropropoxyphene – α-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-butanolpropionate.

Diampromide – *N*-2-(methylphenethylamino)-propyl propionanilide.

Diethylthiambutene – 3-diethylamino-1,1-di-(2'-thienyl)-1-butene.

Difenoxin – 1-(3-cyano-3,3-diphenylpropyl)-4-phenylisonipecotic acid.

Dihydrocodeine – 6-hydroxy-3-methoxy-17-methyl-4,5-epoxymorphinan.

Dihydromorphine – 3,6-dihydroxy-4,5-epoxy-17-methylmorphinan.

Dimenoxadol – 2-dimethylaminoethyl-1-ethoxy-1,1-diphenylacetate.

Dimepheptanol – 6-dimethylamino-4,4-diphenyl-3-heptanol.

Dimethylthiambutene – 3-dimethylamino-1,1-di-(2'-thienyl)-1-butene.

Dioxaphetyl butyrate – ethyl-4-morpholino-2,2-diphenylbutyrate.

Diphenoxylate – 1-(3-cyano-3,3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester.

Dipipanone – 4,4-diphenyl-6-piperidine-3-heptanone.

Drotebanol – 3,4-dimethoxy-17-methylmorphinan-6-β14diol.

Ethylmethylthiambutene – 3-ethylmethylamino-1,1-di-(2'-thienyl)-1-butene.

Ethylmorphine 3-ethoxy-4,5-epoxy-6-hydroxy-17-methyl-7-morphinene; 3-ethylmorphine.

Etonitazene – 1-diethylam inoethyl-2-*para*-ethoxybenzyl-5-nitrobenzimidazole

Etorphine – tetrahydro-7-α-(1-hydroxy-1-methylbutyl)-6,14-*endo*etheno-oripavine.

Etoxeridine – 1-[2-(2-hydroxyethoxy)-ethyl-4-phenylpiperidine-4-carboxylic acid ethyl ester.

Fentanyl – 1-phenethyl-4-*N*-propionylanilinopiperidine.

Furethidine – 1-(2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester.

Heroin – 3,6-diacetoxy-4,5-epoxy-17-methyl-7-morphinene; diacetylmorphine.

Hydrocodone – 3-methoxy-4,5-epoxy-6-oxo-17-methylmorphine; dihydrocodeinone.

Hydromorphinol – 3,6,14-trihydroxy-4,5-epoxy-17-methylmorphinan; 14--hydroxy dihydromorphine.

Hydromorphone – 3-hydroxy-4,5-epoxy-6-oxo-17-methylmorphinan; dihydromorphinone.

Hydroxypethidine – 4-*meta*-hydroxyphenyl-1-methylpiperidine-4-carboxylic acid ethyl ester.

Isomethadone – 6-dimethylamino-5-methyl-4,4-diphenyl-3-hexanone.

Ketobemidone – 4-*meta*-hydroxyphenyl-1-methyl-4-propionylpiperidine.

Levomethorphan – (–)-3-methoxy-*N*-methylmorphinan[1].

Levomoramide – (–)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl)-butyl] --morpholine.

Levophenacylmorphan – (–)-3-hydroxy-*N*-phenacylmorphinan.

Levorphanol – (–)-3-hydroxy-*N*-methylmorphinan[2].

Metazocine – 2'-hydroxy-2,5,9-trimethyl-6,7-benzomorphan.

Methadone – 6-dimethylamino-4,4-diphenyl-3-heptanone.

Methadone intermediate – 4-cyano-2-dimethylamino-4,4-diphenylbutane.

Methyldesorphine – 6-methyl-*delta*-6-deoxymorphine; 3-hydroxy-4,5-epoxy-6,17-dimethyl-6-morphinene.

Methyldihydromorphine – 6-methyldihydromorphine; 3,6-dihydroxy-4,5--epoxy-6,17-dimethylmorphinan.

3-methylfentanyl – *N*-(3-methyl-1-phenethyl-4-piperidyl)-propionanilide (and its *cis* and *trans* isomers).

Metopon – 5-methyldihydromorphinone; 3-hydroxy-4,5-epoxy-6-oxo-5,17--dimethylmorphinan.

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[1] Decree-Law No. 43/91, of 22 January, on International Judicial Co-operation in Criminal Matters has been published in *Boletim* No. 51/52.

[2] Dextromethorphan ((+)-3-methoxy-*N*-methylmorphinan) and dextrorphan((+)-3- hydroxy--N-methylmorphinan) are specifically excluded from this table.

Moramide intermediate – 2-methyl-3-morpholino-1,1-diphenylpropane carboxylic acid.

Morpheridine – 1-(2-morpholinoethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester.

Morphine – 3,6-dihydroxy-4,5-epoxy-17-methyl-7-morphinene.

Morphine methylbromide and other pentavalent nitrogen morphine derivatives.

Morphine-*N*-oxide – 3,6-dihydroxy-4,5-epoxy-17-methyl-7-morphinene-*N*-oxide.

MPPP – 1-methyl-4-phenyl-4-piperidinol propionate.

Myrophine – myristylbenzylmorphine; 3 - benzyloxy - 4,5-epoxy- 17- methyl--7- morphinene - 6- yl tetradecanoate.

Nicocodine – 3-piridinocarboxylic acid codeine ester; 6-nicotinylcodeine.

Nicodicodine – 3-piridinocarboxylic acid dihydrocodeine ester; 6-nicotinyl--dihydrocodeine.

Nicomorphine – 3,6-dinicotinylmorphine.

Noracymethadol – (±)-*alpha*-3-acetoxy-6-methylamino-4,4-diphenylheptane.

Norcodeine – 3-methoxy-4,5-epoxy-6-hydroxy-7-morphinene; *N*-demethylcodeine.

Norlevorphanol – (–)-3-hydroxymorphinan.

Normethadone – 6-dimethylamino-4,4-diphenyl-3-hexanone.

Normorphine – 3,6-dihydroxy-4,5-epoxy-7-morphinene; demethylmorphine.

Norpipanone – 4,4-diphenyl-6-piperidino-3-hexanone.

Opium – the coagulated juice spontaneously generated by the seed pod of *Papaver somniferum L.* which has undergone only the operations necessary for its packaging and transport, regardless of its morphine content.

Opium – mixture of alkaloids in the form of hydrochlorides and bromides.

Oxycodone – 3-methoxy-4,5-epoxy-6-oxo-14-hydroxy-17-methylmorphinan; 14--hydroxydihydrocodeinone.

Oxymorphone – 3,14-dihydroxy-4,5-epoxy-6-oxo-17-methylmorphinan; 14--hydroxy dihydromorphinone.

Para – fluorofentanyl-4'-fluoro-*N*-(1-phenethyl-4-piperidyl) propionanilide.

PEPAP – 1-phenethyl-4-phenyl-4-piperidinol acetate.

Pethidine – l-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester.

Pethidine intermediate A – 4-cyano-1-methyl-4-phenylpiperidine.

Pethidine intermediate B – 4-phenylpiperidine-4-carboxylic acid ethyl ester.

Pethidine intermediate C – 1-methyl-4-phenylpiperidine-4-carboxylic acid.

Phenadoxone – 6-morpholino-4,4-diphenyl-3-heptanone.

Phenampromide – *N*-(*1*-methyl-2-piperidinoethyl)-propionanilide.

Phenazocine – 2'-hydroxy-5,9-dimethyl-2-phenethyl-6,7-benzomorphan.

Phenomorphan – 3-hydroxy-*N*-phenethylmorphinan.

Phenoperidine – 1-(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester.

Pholcodine – 3-(2-morpholino-ethoxy)-6-hydroxy-4,5-epoxy-17-methyl-7-morphinene; morpholinylethylmorphine.

Piminodine – 4-phenyl-1-(3-phenylaminopropyl)-piperidine-4-carboxylic acid ethyl ester.

Piritramide – 1-(3-cyano-3,3-diphenylpropyl)-4-(1-piperidino)-piperidine-4--carboxylic acid amide.

Proheptazine – 1,3-dimethyl-4-phenyl-4-propionoxyazacycloheptane.

Properidine – l-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester.

Propiram – *N*-(1-methyl-2- piperidinoethyl)-*N*-2-pyridylpropionamide.

Racemethorphan – (±)-3-methoxy-*N*-methylmorphinan.

Racemoramide – (±)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl)-butyl]--morpholine.

Racemorphan – (±)-3-hydroxy-*N*-methylmorphinan.

Sufentanil – *N*-[4-(methoxymethyl)-1-2-(2-thienyl)ethyl]-4-piperidyl]-propionanilide.

Thebacon – 3-methoxy-4,5-epoxy-6-acetoxy-17-methylmorphinan; acetyldihydrocodeinone.

Thebaine – 3,6-dimethoxy-4,5-epoxy-17-methyl-6,8-morphinadiene.

Thiofentanyl – *N*-[1-[2-(2-thienyl)ethyl]-4-piperidyl] propionanilide.

Tilidine – (±)-ethyl-*trans*-2-(dimethylamino)-1-phenyl-3-cyclohexene-1-carbo--xylate.

Trimeperidine – 1,2,5-trimethyl-4-phenyl-4-propionoxypiperidine.

The isomers, unless specifically excepted, of the drugs in this table whenever the existence of such isomers is possible within the specific chemical designation.

The esters and ethers, unless appearing in another table, of the drugs in this table whenever the existence of such esters or ethers is possible.

The salts of the drugs listed in this table, including the salts of esters, ethers and isomers as provided above, whenever the existence of such salts is possible.

TABLE I-B

Coca leaf – the leaves of *Erythroxylon coca* (Lamark), *Erythroxylon nova granatense* (Morris) Hieronymus and varieties thereof, the Erythroxylaceae family and their leaves, other species of this genus, from which it is possible to extract cocaine directly or to obtain it by chemical conversions; the leaves of the coca bush, with the exception of those from which all the ecgonine, cocaine and any other alkaloid that may be derived from ecgonine have been extracted.

Cocaine – (-)-8-methyl-3-benzoyloxy-8-aza-bicyclo-(1,2,3)-octane-2-carboxylic acid methyl ester; methyl ester of benzoylecgonine.

Cocaine-D – dextro-isomer of cocaine.

Ecgonine – (–)-3-hydroxy-8-methyl-8-aza-bicyclo-(1,2,3)-octane-2-carboxylic acid, and its esters and derivatives which are convertible to ecgonine and cocaine.

The salts of the compounds listed in this table are deemed to be included in this table, whenever the existence of such salts is possible.

TABLE I-C

Cannabis – the leaves and flowering or fruiting tops of the plant *Cannabis sativa L.* from which the resin has not been extracted, by whatever name they may be designated.

Cannabis resin – separated resin, whether crude or purified, obtained from the cannabis plant.

Cannabis oil – separated oil, whether crude or purified, obtained from the cannabis plant.

The salts of the compounds listed in this table are deemed to be included in this table, whenever the existence of such salts is possible.

TABLE II-A

Bufotenine – 5-hydroxy-*N*-*N*-dimethyltryptamine.

Cathinone – (–)-α-aminopropiophenone.

DET – *N*-*N*-diethyltryptamine.

DMA – (±)-2,5-dimethoxy-methylphenethylamine.

DMHP – 3-(1,2-dimethylheptyl)-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl--6*H*-dibenzo-[*b*,*d*]yran.

DMT – *N-N*-dimethyltryptamine.

DOB – 2,5-timethoxy-4-bromoamphetamine.

DOET – (±)-4-ethyl-2,5-dimethoxy-α-methylphenethylamine.

DOM, STP – 2-amino-1-(2,5-dimethoxy-4-methyl)phenylpropane.

DPT – dipropyltryptamine.

Eticyclidine, PCE – *N*-ethyl-1-phenylcyclohexylamine.

Lysergite, LSD, LSD-25 – (±)-*N,N*-diethyllysergamide; dextro-lysergic acid diethylamide.

MDMA – 3,4-methylenedioxyamphetamine.

Mescaline – 3,4,5-trimethoxyphenethylamine.

4-methylaminorex – (±)-*cis*-2-amino-4-methyl-5-phenyl-2-oxazoline.

MMDA – (±)-5-methoxy-3,4-methylenedioxy-α-methylphenyle-thylamine.

Parahexyl – 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo(*b,d)* pyran.

Phencyclidine, PCP – 1-(1-phenylcyclohexyl)piperidine.

PMA – 4 methoxy-α-methylphenylethylamine.

Psilocybine – 3-(2-dimethylaminoethyl)indol-4-yl dihydrogen phosphate.

Psilocine – 3-(2-dimethylaminoethyl)-4-hydroxyindole.

Rolicyclidine, PHP, PCPY – 1-(1-phenylcyclohexyl) pyrrolidine.

Tenamphetamine-MDA – (±)-3,4 *N*-methylenedioxy, α-dimethylphenethylamine.

Tenocyclidine, TCP – 1-1-(2-thienyl) cyclohe-xyl] piperidine.

TMA – (±)-3,4,5-trimethoxy-α-methylphenylethylamine.

The salts of the substances listed in this table, whenever the existence of such salts is possible.

TABLE II-B

Amphetamine – (±)-2-amino-1-phenylpropane.

Cathine – *d-threo*-2-amino-1-hydroxy-1-phenylpropane.

Dexamphetamine – (±)-2-amino-1-phenylpropane.

Fenetylline – (±)-3,7-dihydro-1,3-dimethyl-7-[2-[(1-methyl-2-phenylethyl)--amino] ethyl]-1*H*-purine-2,6-dione.

Levamphetamine – (–)-2-amino-1-phenylpropane.

Levomethamphetamine – (-)-*N-alpha*-dimethylphenethylamine.

Methamphetamine – (+)-2-methylamino-1-phenylpropane.

Methamphetamine racemate – (±)-2-methylamino-1-phenylpropane.

Methylphenidate – 2-phenyl-2-(2-piperidyl) acetic acid methyl ester.

Phendimetrazine – (+)-3,4-dimethyl-2-phenylmorpholine.

Phenmetrazine – 3-methyl-2-phenylmorpholine.

Phentermine – α-α-dimethylphenethylamine.

Tetrahydrocannabinol – the following isomers: Δ 6a (10a), Δ 6a (7), Δ 7, Δ 8, Δ 9, Δ 10, Δ (11).

The derivatives and salts of the substances listed in this table, whenever the existence of such derivatives and salts is possible, as well as all preparations in which these substances are associated with other compounds, regardless of their action.

TABLE II-C

Amobarbital – 5-ethyl-5-(3-methylbutyl) barbituric acid.

Buprenorphine – 21-cyclopropyl-7-*alpha*-[*(S)*-1-hydroxy-1,2,2-trimethylpropyl]-6,14-*endo* ethano-6,7,8,14-tetrahydrooripavine.

Butalbital – 5-allyl-5-isobutylbarbituric acid.

Cyclobarbital – 5-(1-cyclohexen-1-yl)-5-ethylbarbituric acid.

Glutethimide – 2-ethyl-2-phenylglutarimide.

Mecloqualon – 3-(*O*-chlorophenyl)-2-methyl-4(3*H*)-quinazolinone.

Methaqualone – 2-methyl-3-*O*-tolyl-4(3*H*)-quinazolinone.

Pentazocine – 1,2,3,4,5,6-hexahydro-6,11-dimethyl-3-(3-methyl-2-butenyl)--2,6-methano-3-benzazocin-8-ol.

Pentobarbital – 5-ethyl-5-(1-methylbutyl) barbituric acid.

Secobarbital – 5-allyl-5-(1-methylbutyl) barbituric acid.

The salts of the substances listed in this table, whenever the existence of such salts is possible.

TABLE III

1. Preparations whose quantitative composition, notwithstanding the fact that they are derived from narcotic drugs, presents no serious risk of use or abuse.

2. Preparations of acetyldihydrocodeine, codeine, dihydrocodeine, ethyl-morphine, pholcodine, nicocodine, nicodicodine and norcodeine, when compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit, with a concentration of not more than 2.5 per cent in undivided preparations.

3. Preparations of cocaine containing not more than 0.1 per cent of cocaine, calculated as cocaine base, and preparations of opium or morphine containing not more than 0.2 per cent of morphine, calculated as anhydrous morphine base, and compounded with one or more other ingredients, whether active or inert, and in such a way that the drug cannot be recovered by readily applicable means or in a yield which would constitute a risk to public health.

4. Preparations of difenoxin containing, per dosage unit, not more than 0.5 milligram of difenoxin, calculated as base, and a quantity of atropine sulphate equivalent to at least 5 per cent of the dose of difenoxin.

5. Preparations of diphenoxylate containing, per dosage unit, not more than 2.5 milligrams of diphenoxylate, calculated as base, and a quantity of atropine sulphate equivalent to at least 1 per cent of the diphenoxylate.

6. *Pulvis ipecacuanhae et opii compositus:* 10 per cent opium in powder; 10 per cent ipecacuanha root, in powder; 80 per cent of any other inert powdered ingredient containing no controlled drug.

7. Preparations of propiram containing not more than 100 milligrams of propiram per dosage unit and compounded with at least the same amount of methylcellulose.

8. Preparations for oral use containing not more than 135 milligrams of salts of dextropropoxyphene base per dosage unit, or with a concentration of not more than 2.5 per cent in undivided preparations, provided that such preparations contain no substance controlled under the 1971 Convention on Psychotropic Substances.

9. Preparations conforming to any of the formulations listed in this table and mixtures of the same preparations with any ingredient that is not a controlled drug.

TABLE IV

Allobarbital – 5,5-diallylbarbituric acid.

Alprazolam – 8-chloro-1-methyl-6-phenyl-4*H*-s-triazolo[4,3-a1,4]benzodiazepine.

Amfepramone – 2 -(diethylamino)propiophenone.

Barbital – 5,5-diethylbarbituric acid.

Benzphetamine – *N*-benzyl-*N*,-dimethylphenethylamine.

Bromazepam – 7-bromo-1,3-dihydro-5-(2-pyridyl)-2*H*-1,4-benzodiazepin-2--one.

Butobarbital – 5-butyl-5-ethylbarbituric acid.

Camazepam – 7-chloro-1,3-dihydro-3-hydroxy-1-methyl-5-phenyl-2*H*-1,4--benzodiazepin 2-one dimethylcarbamate (ester).

Chlordesmethyldiazepam – 7-chloro-5-(2-chlorophenyl)-1,3-dihydro-2*H*-1,4--benzodiazepin-2-one.

Chlordiazepoxide – 7-chloro-2-(methylamino)-5-phenyl-3*H*-1,4-benzodiazepin-4-oxide.

Clobazam – 7-chloro-1-methyl-5-phenyl-1*H*-1,5-benzodiazepine-2,4(3*H*,5*H*)--dione.

Clobenzorex – (+)-*N*-(*o*-chlorobenzyl)--methylphenethylamine.

Clonazepam – 5-(*o*-chlorophenyl)-1,3-dihydro-7-nitro-2*H*-1,4-benzodiazepin--2-one.

Clorazepate – 7-chloro-2,3-dihydro-2-oxo-5-phenyl-1H-1,4-benzodiazepine-3--carboxylic acid.

Clotiazepam – 5-(*o*-chlorophenyl)-7-ethyl-1,3-dihydro-1-methyl-2*H*-thieno--[2,3-*e*]-1,4-diazepin-2-one.

Cloxazolam – 10-chloro-11b-(*o*-chlorophenyl)-2,3,7,11b-tetrahydrooxazolo--[3,2-*d*]-1,4-benzodiazepin-*6(5H)*-one.

Delorazepam – 7-chloro-5-(2-chlorophenyl)-1,3-dihydro-2*H*-1,4-benzodiazepin-2-one.

Diazepam – 7-chloro-1,3-dihydro-1-methyl-5-phenyl-2*H*-1,4-benzodiazepin--2-one.

Estazolam – 8-chloro-6-phenyl-4*H*-*s*-triazolo[4,3-a][1,4]benzodiazepine.

Ethchlorvynol – ethyl-2-chlorovinylethynylcarbinol.

Ethinamate – 1-ethynylcyclohexanol carbamate.

Ethylamphetamine – (±)-*N*-ethyl-α-methylphenylethylamine.

Ethyl loflazepate – 7-chloro-5-(*o*-fluorophenyl)-2,3-dihydro-2-oxo-1*H*--1,4-benzodiazepine-3-carboxylate.

Fencan famin – (±)-*N*-ethyl-3-phenylbicyclo(2,2,1)-heptan-2-amine.

Fenproporex – (±)-3-[(-methylphenethyl)amino]propionitrile.

Fludiazepam – 7-chloro-5-(*o*-fluorophenyl)-1,3-dihydro-1-methyl-2*H*-1,4-benzodiazepin-2-one.

Flunitrazepam – 5-(*o*-fluorophenyl)-1,3-dihydro-1-methyl-7-nitro-2*H*-1,4-benzodiazepin-2-one.

Flurazepam – 7-chloro-1-[2-(tiethylamino)ethyl]-5-(*o*-fluorophenyl)-1,3-dihydro-2*H*-1,4-benzodiazepin-2-one.

Halazepam – 7-chloro-1,3-dihydro-5-phenyl-1-(2,2,2-trifluoroethyl)-2*H*-1,4--benzodiazepin-2-one.

Haloxazolam – 10-bromo-11b-(o-fluorophenyl)-2,3,7,11b-tetrahydrooxazolo--3,2-d][1,4]-benzodiazepin-6(5*H*)-one.

Ketazolam – 11-chloro-8,12b-dihydro-2,8-dimethyl-12b-phenyl-4*H*-[1,3]-oxazino-3,2-d] [1,4]bezodiazapine-4,7(6*H*)-dione.

Loprazolam – 6-(*o*-chlorophenyl)-2,4-dihydro-2-[(4-methyl-1-piperazinyl)--methylene-8-nitro-1*H*-imidazo[1,2-*a*] [1,4]benzodiazepin-1-one.

Lorazepam – 7-chloro-5-(*o*-chlorophenyl)-1,3-dihydro-3-hydroxy-2*H*-1,4-benzodiazepin-2-one.

Lormetazepam – 7-chloro-5-(*o*-chlorophenyl)-1,3-dihydro-3-hydroxy-1-methyl-2*H*-1,4-benzodiazepin-2-one.

Mazindol – 5-(*p*-chlorophenyl)-2,5-dihydro-3*H*-imidazo (2,1-α)-isoindol-5-ol.

Medazepam – 7-chloro-2,3-dihydro-1-methyl-5-phenyl-1*H*-1,4-benzodiazepine.

Mefenorex – (±)-*N*-(3-chloropropyl)-α-methylphenethylamine.

Meprobamate – 2-methyl-2-propyl-1,3- propanediol dicarbamate.

Methylphenobarbital – 5-ethyl-1-methyl-5-phenylbarbituric acid.

Methyprylon – 3,3-diethyl-5-methyl-2,4-piperidine-dione.

Midazolam – 8-chloro-6-(*o*-fluorophenyl)-1-methyl-4*H*-imidazo1,5-α][1,4]--benzodiazepine.

Nimetazepam – 1,3-dihydro-1-methyl-7-nitro-5-phenyl-2*H*-1,4-benzodiazepin-2--one.

Nitrazepam – 1,3-dihydro-7-nitro-5-phenyl-2*H*-1,4-benzodiazepin-2-one.

Nordazepam – 7-chloro-1,3-dihydro-5-phenyl-2*H*-1,4-benzodiazepin-2-one.

Oxazepam – 7-chloro-1,3-dihydro-3-hydroxy-5-phenyl-2*H*-1,4-benzodiazepin--2-one.

Oxazolam – 10-chloro-2,3,7,11b-tetrahydro-2-methyl-11b-phenyloxazolo-[3,2-*d*] [1,4] benzodiazepin-6 (5*H*)-one.

Pemoline – 2-amino-5-phenyl-2-oxazolin-4-one(=2-imino-5-phenyl-4-oxazolidinone).

Phenobarbita – l-5-ethyl-5-phenylbarbituric acid.

Pinazepam – 7-chloro-1,3-dihydro-5-phenyl-1-(2-propynyl)-2*H*-1,4-benzodiazepin-2-one.

Pipradrol – 1,1-diphenyl-1-(2-piperidyl)-methanol.

Prazepam – 7-chloro-1-(cyclopropylmethyl)-1,3-dihydro-5-phenyl-2*H*-1,4--benzodiazepin-2-one.

Propylhexedrine – (±)-1-cyclohexyl-2-methylaminopropane.

Pyrovalerone – (±)-1-(4-methylphenyl)-2-(1-pyrrolidinyl)-1-pentanone.

Quazepam – 7-chloro-5-(2-fluorophenyl)-1,3-dihydro-1-(2,2,2-trifluoroethyl)--2*H*-1,4-benzodiazepine-2-thione.

Secbutabarbital – 5 -*sec*-butyl-5-ethylbarbituric acid.

SPA, Lefetamine – (-)-1-dimethylamino-1,2-diphenylethane.

Temazepam – 7-chloro-1,3-dihydro-3-hydroxy-1-methyl-5-phenyl-2*H*-1,4-benzodiazepin-2-one.

Tetrazepam – 7-chloro-5-(cyclohexen-1-yl)-1,3-dihydro-1-methyl-2*H*-1,4-benzodiazepin-2-one.

Triazolam – 8-chloro-6-(*o*-chlorophenyl)-1-methyl-4*H*-*s*-triazolo[4,3-α][1,4]--benzodiazepine.

Vinylbital – 5-(1-methylbutyl)-5-vinylbarbituric acid.

The salts of the substances listed in this table, whenever the existence of such salts is possible.

TABLE V

Ephedrine.

Ergometrine.

Ergotamine.

Isosafrole.

Lysergic acid.

3,4-methylenedioxypheny-2-propanone.

N-acetylanthranilic acid.

1-phenyl-2-propanone.

Piperonal.

Pseudoephedrine.

Safrole.

The salts of the substances listed in this table, whenever the existence of such salts is possible.

TABLE VI

Acetic anhydride.

Acetone.

Anthranilic acid.

Ethyl ether.

Hydrochloric acid.

Methylethyl ketone.

Phenylacetic acid.

Piperidine.

Potassium permanganate.

Sulphuric acid.

Toluene.

The salts of the substances listet in this table, whenever the existence of such salts is possible.

Secretariat-General, Office of the Chairman of the Council of Ministers, 20 February 1993. – *França Martins,* Secretary-General.

REGULATIVE DECREE No. 61/94, OF 12 OCTOBER[1]

Following the publication of Decree-Law No. 15/93, of 22 January, that revised the anti-drug legislation, it is now question of laying down rules for the application of the provisions of Article 2, paragraphs 4 and 5, Articles 4 to 20 and Articles 65 to 68 of that Decree-Law.

The control of precursors and other chemical products that are instrumental in producing drugs substances listed in Tables V and VI appended to that Decree-Law but may be diverted towards the illegal market, presents some difficulties to the extent that a certain number of such substances is currently used in commercial, industrial and social activities.

Such control must be carried out both in conformity with the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and with reference to Community law subscribed by Portugal; it will be possible only if it results from concerted and efficient action of the different departments and entities with powers in this field.

Indeed, with respect to narcotic drugs and psychotropic substances listed in Tables I to IV appended to that Decree-Law the legislation presently in force requires only few adaptations resulting mainly from the practical application of Regulative Decree No. 71/84, of 7 September, and also from the wish to bring more efficiency to control measures; however, with respect to precursors and other substances used in the production of drugs, new rules must be provided for that take into account international treaty law and Community law.

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[1] Hereinafter "this act".

This opportunity was seized to transpose into the domestic legal system Council Directive No. 92/109/EEC, of 14 December 1992, on the production and marketing of certain substances used in the illicit production of narcotic drugs and psychotropic substances, amended by Commission Directive No. 93/46/EEC, of 22 June 1993.

At the same time, account is being taken of Community regulations concerning the control of such substances with respect to the trade between the Community and third countries, in particular Council Regulation (EEC) No. 3677/90, of 13 December 1990, amended by Council Regulation (EEC) No. 900/92, of 31 March 1992, and Commission Regulation (EEC) No. 3769/92, of 21 December 1992.

Aware of the fact that both international and Community requirements, in particular in the field of controlling the illicit drugs' market, are more and more important and pressing, this act fixes the specific role of each public entity, without prejudice to the necessary global coordination.

For the same reason, the solutions adopted take care in a harmonious and global way of the procedures that should be followed by other entities called upon to intervene in the application of this act.

The *Ordem dos Médicos*[2], the *Ordem dos Médicos Veterinários*[3] and the *Ordem dos Farmacêuticos*[4] were heard.

The self-governing bodies of the Autonomous Regions of the Azores and Madeira were heard.

Thus:

In conformity with the provisions of Article 76, paragraph 2, of Decree-Law No. 15/93, of 22 January, and under the terms of Article 202, paragraph c), of the Constitution, the Government decides as follows:

CHAPTER I
GENERAL PROVISIONS

Article 1
Purpose and definitions

1. This act lays down the rules concerning the control of the licit market of narcotic drugs, psychotropic substances, precursors and other chemical products that may be used for the preparation of drugs listed in Tables I to VI appended to Decree-Law No. 15/93, of 22 January, hereinafter mentioned by the word "Tables".

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[2] The national professional association of medical doctors.

[3] The national professional association of veterinary surgeons.

[4] The national professional association of pharmacists.

2. For the purposes of this act and without prejudice neither to the definitions incorporated in the conventions concerning narcotic drugs, psychotropic substances and precursors that were ratified by Portugal, nor to the Regulations of the European Community, the following shall be interpreted to mean:

a) Production: obtaining narcotic drugs, psychotropic substances or drug precursors, from natural organisms, either by way of collecting or by way of extracting;

b) Manufacture: operations, including purification and transformation of a given product into a different product, by way of which narcotic drugs, psychotropic substances, precursors and other chemical products that may be diverted for the purpose of obtaining drugs, can be obtained;

c) Manipulation: operations by way of which narcotic drugs, psychotropic substances, precursors and other chemical products that may be diverted for the purpose of obtaining drugs, can be transformed through physical or chemical procedures;

d) Import: material introduction into the national territory of narcotic drugs, psychotropic substances, precursors and other chemical products that may be diverted for the purpose of obtaining drugs, coming from non-Community countries;

e) Export: material flow out of the national territory of narcotic drugs, psychotropic substances, precursors and other chemical products that may be diverted for the purpose of obtaining drugs, towards non-Community countries; re-exports shall be taken for exports;

f) Transit: passage through, or transfer from vessel to vessel within the national territory, of narcotic drugs, psychotropic substances, precursors and other chemical products that may be diverted for the purpose of obtaining drugs, coming from or going to non-Community countries;

g) Introduction: material introduction into the national territory of narcotic drugs, psychotropic substances, precursors and other chemical products that may be diverted for the purpose of obtaining drugs, coming from another Community country;

h) Dispatch: material flow out of the national territory of narcotic drugs, psychotropic substances, precursors and other chemical products that may be diverted for the purpose of obtaining drugs, towards another Community country;

i) Wholesale trade: purchase of narcotic drugs, psychotropic substances, precursors and other chemical products that may be diverted for the purpose of obtaining drugs, in the purchaser's name and on his own account, followed by resale to other tradesmen, wholesalers, retail dealers, transformers, professional users or big users;

j) Classified substance: any substance listed in Tables V and VI, save Chloridric acid salts and Sulphuric acid salts, including any mixture containing such substances, except for medicinal drugs and other preparations from which it is not easy to use or recuperate such substances;

l) Marketing: offer to third parties, free of charge or against a price, of any classified substances produced or introduced in the Community;

m) Operator: physical or legal person who is engaged in manufacturing, transforming, trading in or distributing classified substances in the Community, or other activities with the same aim.

Article 2
Scope

1. The cultivation, production, manufacture, employment, trade in, distribution, import, export, introduction, dispatch, transit, possession regardless of title, as well as the use of any plants, substances and preparations listed in Tables I to IV shall be made subject to requirements, authorizations and supervision, as provided for in Decree-Law No. 15/93, of 22 January, and in this act.

2. The production, manufacture, import, export, marketing, transit and possession regardless of title of any substances listed in Tables V and VI shall be made subject to licences, authorizations, statistic control and supervision, as provided for in Decree-Law No. 15/93, of 22 January, and in this act.

Article 3
Technical rules and concepts

The technical rules and concepts mentioned in this act shall be interpreted in consonance with the conventions concerning narcotic drugs and psychotropic substances that were ratified by Portugal.

Article 4
General duty to inform

Within the delay that will have been fixed for that purpose, all entities that are authorized to perform the activities mentioned in Article 2 shall disclose any information that is legally requested from them by any of the entities that have supervisory powers.

CHAPTER II
AUTHORIZATIONS, REQUIREMENTS AND CONTROL CONCERNING TABLES I TO IV

SECTION I
AUTHORIZATIONS

Article 5
General rules

1. The Chairman of the board of the National Institute of Pharmacy and Medicinal Drugs (INFARMED) shall be empowered to grant, revoke and suspend authorizations to perform any of the activities mentioned in Article 2, paragraph 1; he may delegate such powers on any of the other members of the board, or on any of the members of the staff with managerial functions.

2. Authorizations shall be granted only where the country's needs so require and subject to the use of the substances and preparations being limited to medical, veterinary, scientific, analytical or didactic purposes, save the exceptions provided for in the conventions mentioned in Article 3.

3. For the purposes of Article 4, paragraph 1, of Decree-Law No. 15/93, the provisions of paragraphs 4 and 5 of that Article shall apply to requests submitted for the first time by entities that are not yet authorized to carry out activities regulated in this act.

Article 6
Requests for an authorization and requests to hold on to an authorization

1. All requests for an authorization, as well as requests to hold on to an authorization to carry out any of the activities regulated in Article 2, paragraph 1, shall be addressed to the chairman of the INFARMED; such requests shall include the identification of the physical or legal person that submits the request, his, her or its identity card, as well as any other particulars provided for in other provisions.

2. Requests made under Article 5, paragraph 3, shall also include the identification of the persons responsible both for preparing and keeping up to date the records, and carrying out such other duties as may be imposed upon them; such persons must declare that they are ready and willing to assume such responsibilities.

3. A separate request must be submitted with respect to each branch or depot.

4. Requests must be accompanied by an extract of the criminal record concerning the requesting parties, the persons mentioned in paragraph 2 and, in the case of a legal person, the persons who are entitled to act on its behalf.

5. Requests to hold on to an authorization must be accompanied either by documents giving evidence of the replacement of the bearer, or the change in the name of the firm, or the removal of its premises, or by a death certificate, as the case may be.

Article 7
Subjective requirements

1. The aptitude of the requesting party shall be measured against his, her or its criminal record and record of regulatory offences, as well as the information obtained by The Ministry of Justice's Office for the Fight against Drugs (GCDMJ); in obtaining that information, the GCDMJ shall respect the rights, liberties and safeguards of the citizens and be guided exclusively by the public interest with respect both to health and the fight against traffic in narcotic drugs and psychotropic substances.

2. The requesting party shall, under the terms of the general law, enjoy the right of access to the information mentioned in the preceding paragraph; it may challenge such information and dispute the way in which it was obtained.

3. With respect to requests submitted by civil or military State hospitals, there shall be no requirements, neither to the effect that the GCDMJ be heard, nor to the effect that criminal records and records of regulatory offences be produced.

Article 8
Decisions granting or refusing authorizations and decisions granting leave to hold on to an authorization

1. Authorizations shall not be transmissible and may not be transferred to or used by any party other than their bearer, on any basis whatsoever.

2. Authorizations granted in general terms to physical or legal persons for the purpose of carrying out any of the activities mentioned in Article 2, paragraph 1, shall remain valid for a period of one year; where the INFARMED

remains silent on that subject up to 90 days before the end of that period, authorizations shall be deemed to be renewed for an equal period of time.

3. Each specific authorization shall be valid for the period of time specified therein. That period shall not be longer than one year.

4. Decisions granting authorizations that are taken upon requests made under Article 5, paragraph 3, shall be published in the *Diário da República,* series No. 2, and the period of validity shall run as from the date of publication. Such decisions shall fix the special requirements that are imposed upon the bearer.

5. Decisions refusing authorizations, that are taken by the chairman of the board of the INFARMED shall be open to an appeal.

Article 9
Lapse to authorizations

1. Requests to hold on to an authorization, in the cases provided for in Article 8, paragraph 1, of Decree-Law No. 15/93, must be submitted at the latest 60 days after the date of the change in the name of the firm, the death or the replacement of the bearer or legal representative of the enterprise or authorized entity. Requests submitted after that time-limit shall be rejected.

2. The publication of any Order that lays a ban on the cultivation of certain plants or shrubs, or the manufacture, the preparation or the trade in certain substances or preparations, under the terms of Article 5, paragraphs 4 and 5, of Decree-Law No. 15/93, shall automatically entail the lapse of any authorizations granted in order to carry out such activities.

3. The provisions of Article 10 of Decree-Law No. 15/93, modified as appropriate, shall apply to cases of lapse of authorizations.

Article 10
Authorizations cancelled or suspended

1. Authorizations shall be cancelled as soon as the requirements listed in Article 5, paragraph 2, Article 7 and Article 8, paragraph 1, no longer are met. This shall be without prejudice to the imposition of any applicable regulatory sanctions.

2. All decisions that cancel or suspend an authorization shall be published in the *Diário da República*, series No. 2.

3. Decisions, as mentioned in this Article, taken by the chairman of the board of the INFARMED shall be open to an appeal.

Article 11
Consequences of cancelation of authorizations

Requests as mentioned in Article 10 of Decree-Law No. 15/93, where the return of the existing stock of substances and preparations to the entities who had provided them, or the transfer of such stock to other entities, authorized businesses or pharmacies, is requested, must be accompanied by a declaration made by such entities, businesses or pharmacies stating their agreement in case the request is granted, as well as a detailed list of such substances and preparations.

Article 12
Communication of authorizations

1. The INFARMED shall inform the High Commissioner for the VIDA project and the GCDMJ of any authorization granted for carrying out any of the activities mentioned in Article 2, paragraph 1, as well as any decision that prolongs the validity of, or suspends or cancels an authorization.

2. The GCDMJ must inform the *Polícia Judiciária*[5], the *Polícia de Segurança Pública*[6], the *Guarda Nacional Republicana*[7] and the Directorate General of Customs (DGA) of any authorizations granted; at the same time, it must indicate which of these authorities shall be especially responsible for the control of the operations and on which terms.

SECTION II
CULTIVATION, PRODUCTION AND MANUFACTURE

Article 13
Cultivation

1. Whoever seeks to obtain an authorization to cultivate any of the vegetable species listed in Tables I or II, for medical or veterinary purposes or

[5] Criminal police.
[6] Metropolitan police.
[7] Para-military police force.

purposes of scientific investigation, must request such an authorization from the INFARMED.

2. Requests must include, other than the elements mentioned in Article 6, the following:

a) Full identification of the cultivator or cultivators, where different from that of the requesting party;
b) Location and area of the plot to be cultivated;
c) Quantity and name of the vegetable species to be sowed or planted;
d) Probable quantity of product to be collected, how and where it is going to be used;
e) Place where the product is to be stored and security conditions therein while awaiting delivery to the official entity entrusted with collecting it.

3. Where the cultivation of vegetable species is authorized and such cultivation requires special controls under the provisions of conventions ratified by Portugal, the entity or entities that shall carry out such controls shall be identified. This shall be done in accordance with the law. All the other rules provided in such conventions shall be respected.

Article 14
Surplus

1. Any surplus of crop of no more than 10% of the authorized quantity may be accepted if the INFARMED is informed within 15 days from the date of calculation of the surplus.

2. Any surplus shall be set off against quantities scheduled to be produced in the following year.

3. The INFARMED shall order the seizure of any non authorized surplus and, unless used for any lawful purposes, shall dispose of it in accordance with the provisions of Article 62 of Decree-Law No. 15/93. If necessary, it may request, directly or through the GCDMJ, the assistance of the police authorities.

4. Where a ban on cultivation, as mentioned in Article 5, paragraphs 4 and 5, of Decree-Law No. 15/93, entails the destruction of previously authorized existing cultivations, the State, in accordance with the law, shall pay compensation to the entities who carried out the cultivation, for the expenses incurred.

Article 15
Extraction and manufacture

1. Whoever for the first time seeks to obtain an authorization to extract alkaloids from any vegetable species listed in Tables I-A, I-B or I-C, or to manufacture alkaloids as a product of synthesis, in a given year, for medical or veterinary purposes or purposes of scientific investigation, must request such an authorization from the INFARMED by 31 October of the year before.

2. Whoever wishes to extract, transform or manufacture any of the substances or preparations listed in Tables I to IV, must proceed in the same way and within the same time-limit, without prejudice to the provisions of the following paragraph.

3. Authorizations to manufacture any of the substances listed in Table II-A may only be granted for purposes of scientific investigation.

4. Requests must include, other than the elements mentioned in Article 6, the following:

a) Graphic description of the site of manufacture and/or storage of substances and/or preparations, and its security conditions;
b) Identification and professional qualification of the person responsible in technical terms;
c) Nature and quantity of the raw materials necessary for manufacturing;
d) Substances and preparations that are to be manufactured, quantities to be manufactured, their destination and processes of extraction.

5. Authorizations to manufacture shall also valid for the acquisition and storage of raw materials, as well as the sale of the products obtained subject to the buyer being an authorized entity.

6. The use by the industry of any substances listed in Tables I, II-B or II-C for purposes other than medical or veterinary purposes or purposes of scientific investigation, may only be authorized if the requesting party gives evidence that it can master the appropriate technical means of transformation or any other means preventing (a) any improper use of the substances, (b) bringing about harmful effects and (c) the practical possibility of recovery of the substances.

7. Decisions granting authorizations shall fix such requirements as are necessary in order to allow the INFARMED to prevent narcotic drugs from piling up beyond the needs of the market or those relating to the normal operation of the requesting party.

Article 16
Quotas for the manufacture of substances

1. Bearing in mind any international commitments entered and in accordance with the rules laid down in conventions, the INFARMED shall in November of each year fix the quantities of substances listed in Tables I or II but not in Table II-A that may be manufactured or offered for sale by the authorized entities during the year following.

2. The quantities fixed may be raised during the year to which the authorization respects; when special circumstances so require, the INFARMED is entitled at any time to impose limits to the manufacture of certain substances and preparations.

3. Quotas fixed under the terms of paragraph 1, as well as any changes thereto, shall be published in the *Diário da República*, series No. 2.

4. The provisions of Article 14, paragraph 4, apply to any ban on manufacturing.

SECTION III
WHOLESALE TRADE

Article 17
Authorizations for wholesale trade

1. Whoever seeks to obtain an authorization for wholesale trade in any substances listed in Tables I, II or IV but not in Table II-A must request such an authorization from the INFARMED.

2. Requests must include, other than the elements mentioned in Article 6, the following:

a) Location of the establishment, depot or storehouse where trade is to be engaged;
b) Places for the reception, storage, dispatch and delivery of products;
c) Security measures already adopted or planned to be adopted;
d) Substances and preparations intended to be traded.

3. Decisions granting authorizations shall fix such requirements as are necessary in order to allow the INFARMED to prevent narcotic drugs and psychotropic substances from piling up beyond the needs of the market or those relating to the normal operation of the requesting party.

Article 18
Sale or transfer of substances and preparations

1. Without prejudice to the provisions of the following paragraph, the sale or transfer of any substances and preparations listed in Tables I to IV but not in Table II-A, to civil or military State hospitals, pharmacies or other lawfully authorized entities, may only be done by way of a written requisition, duly signed and authenticated by the person responsible; requisitions shall either be written on a standard form extracted from a book approved by the INFARMED, or produced by way of a computerised document of equivalent value.

2. The sale or transfer of any preparations listed in Table III by enterprises authorized to deal in wholesale trade, to civil or military State hospitals, or to pharmacies, shall not be subject to the formalities mentioned in the preceding paragraph.

3. Deliveries by manufacturers to medical doctors and veterinary surgeons, of samples of any preparations listed in Tables III and IV, may only be done by way of a requisition, under terms to be fixed by the INFARMED.

4. Deliveries of samples of any substances listed in Tables I and II shall be prohibited.

Article 19
Requisitions

1. Documents as mentioned in Article 18, paragraph 1, shall be drawn up in duplicate; the party that issues the requisition shall keep the original and the supplier shall keep the copy.

2. Each requisition shall be used for one kind of substance only.

Article 20
Delivery procedure

1. Deliveries of substances and preparations listed in Tables I to IV but not in Table II-A may only be made according to one of the following procedures:

a) Personally, to the bearer of the authorization, the pharmacist, or one or the other's representative, or to persons responsible as mentioned in Article 18, paragraph 1; the name of the recipient as well as the number and date of issue of his identity card or any other reliable identification document, shall be inscribed on the margin of the requisition or requisitions;

b) Through a transport agency or private courier.

2. Transport of any substances listed in Table I in quantities in excess of 1 kg. shall not be carried out without prior written notification from the supplier to the nearest police authority.

3. Notifications as mentioned in the preceding paragraph shall mention the names of the supplier and the consignee, the means of transport used, the date and hour of the transport, as well as the nature and quantity of the substances to be transported.

4. Notifications shall be drawn up in triplicate, three days in advance of the event; the police authority shall keep one copy, forward another copy to the authority with jurisdiction over the area of destination and stamp the last copy; the latter copy shall accompany the merchandise and be returned by the consignee to the supplier.

5. The supplier must keep the requisition in his files for a period of three years; where the merchandise is delivered through a transport agency or private courier, the supplier must keep the acknowledgement of receipt in his files for a period of three years; the party that issues the requisition must keep the copy thereof in his files for a period of three years.

Article 21
Supply for specific purposes

1. The INFARMED may authorize the supply of any substances and preparations listed in Tables I-A, II-B, II-C and IV:

a) To public and private organizations of recognized reputation, for investigation or teaching purposes; the supply to such organizations of any substances and preparations listed in the other Tables may also be authorized;

b) To merchant ships, aircraft and other means of international public transport, for purposes of first aid, under the terms of Article 14 of Decree-Law No. 15/93; the request must be made by the vessel's doctor or, where the vessel does not have a doctor, by the medical doctor of the respective enterprise; it must mention the ship's or aircraft's name and number, as well as the place of its registration, or other particulars that adequately identify the vessel; the applicable customs' rules shall be respected.

2. The request shall identify the person responsible for the storage and safekeeping of the substances and preparations; that person must declare that he

is ready and willing to assume such responsibilities; the request must also describe the security arrangements.

3. The quantity of substances and preparations stored shall not be in excess of what is indispensable for pursuing normally the authorized aims.

4. Provided that the general requirements are respected, the supply of substances listed in Table I-A to the Department for the Prevention and Treatment of Drug-dependents (SPTT) for purposes of treatment with alternative narcotic drugs, may be authorized.

5. Treatments with alternative narcotic drugs may only be administered subject to authorization and under the control of the SPTT.

SECTION IV
IMPORT, EXPORT, TRANSIT, INTRODUCTION AND DISPATCH

Article 22
Import, export and trade

1. Import, export, transit, introduction and dispatch of any substances or preparations listed in Tables I, II and IV may be carried out only by entities and enterprises authorized to cultivate, manufacture, manipulate or engage in wholesale trade in such substances or preparations, or use them for teaching or therapeutic purposes or purposes of scientific investigation.

2. Authorizations shall be granted for one operation at a time only, but may be used in respect of smaller quantities than those authorized.

Article 23
Requests for import or export

1. Requests for an authorization to import, export, transit, introduction or dispatch of any substances or preparations listed in Tables I, II and IV, must include, other than the elements mentioned in Article 6, the following:

a) Name and, where appropriate, common international designation of the substance or preparation;
b) Quantities to be imported, exported, introduced or dispatched;
c) Identification of the exporter or sender in cases of import or introduction and identification of consignee in cases of export or dispatch;
d) Time of import, export, transit, introduction or dispatch, means of dispatch or transport used and indication of the customs house at point of entry or exit;

e) Where alkaloids present are not pure alkaloids, or where the substances or preparations are conjunct medicinal drugs, the percentage of alkaloids components in the substances or preparations.

2. Requests for an authorization to export or dispatch must also include an authorization to import or introduce issued by the authorities of the country of destination of the merchandise.

Article 24
Notification to the DGA

Once the import or export of any substances or preparations listed in Tables I, II and IV is authorized, the INFARMED shall so notify the DGA, without prejudice to the provisions of Article 12.

Article 25
Prohibited exports and imports

1. Export or dispatch, by way of a remittance addressed to a bank or a post office box for the attention of a consignee other than the consignee who is indicated in the authorization, of any substances or preparations listed in Tables I, II and IV, shall be prohibited.

2. Export by way of a remittance addressed to a customs' warehouse shall also be prohibited, save where the government of the importing country certifies in the import authorization its agreement to that effect.

3. In cases of remittance to a customs' warehouse under the terms of the preceding paragraph, the export authorization shall mention that circumstance.

4. Whoever exports or dispatches substances or preparations mentioned in paragraph 1, must proceed in such a way as to make it impossible to open the parcel without damaging the seals.

Article 26
Request for transit authorizations

1. Requests for an authorization for the transit through the Portuguese territory of any substances or preparations listed in Tables I and II, but not listed in Tables II-A and IV, must include, other than the elements mentioned in Article 6, the export authorization issued by the authorities of the country of origin of the merchandise.

2. Any request to change the destination of the merchandise from the country initially scheduled to another country, should it be granted, shall be subject to the requirements concerning exports.

SECTION V
PRESCRIPTIONS, SUPPLY UPON PRESCRIPTION AND CONTROL

Article 27
Prescriptions

1. Substances and preparations listed in Tables I and II may be supplied to the public for treatment purposes only upon presentation of a medical or veterinary prescription containing the elements mentioned in the following paragraphs.

2. The INFARMED, in co-operation with the Directorate General for Health and the regional health administrations (ARS), after having heard the *Ordem dos Médicos*, the *Ordem dos Médicos Veterinários*, the *Ordem dos Farmacêuticos* and the National Association of Pharmacies, shall adopt a standard model book from which forms for prescriptions are extracted and where counterfoils are kept.

3. Prescriptions shall be numbered and include the references mentioned in Article 15, paragraph 3, of Decree-Law No. 15/93; prescriptions may be adapted with a view to their being processed by means of a computer.

4. Prescriptions shall be drawn up in triplicate; the counterfoil shall be kept for a period of three years in the archives, easily accessible as they must be, of the medical doctor or the veterinary surgeon as appropriate; the first copy shall be forwarded, as appropriate, either to the competent ARS or to the *Ordem dos Médicos Veterinários*; another copy shall be kept at the pharmacy; the last copy shall be forwarded to the INFARMED.

Article 28
Supply upon prescription

1. Pharmacists who supply upon a special prescription concerning narcotic drugs or psychotropic substances must (a) check the identity of the buyer, (b) inscribe on the margin of the prescription the latter's name, the number and date of issue of either his identity card, his driving license, or, in case of an alien, his passport, as well as the date of the delivery, and (c) sign in a legible way.

2. Pharmacists may identify buyers on the face of other documents provided that the latter include a photograph; in such cases the pharmacist must take down the buyer's signature and, if the latter cannot or is not able to sign, he must declare that in writing.

3. Pharmacists shall refuse to supply upon prescription medicinal drugs containing narcotic drugs or psychotropic substances:

a) Where the prescriptions are not drawn up in the model form approved by the INFARMED;
b) Where he has well founded doubts about the authenticity of the prescription;
c) Where more than ten days have passed since the date of the prescription;
d) Where the articles prescribed were already supplied.

4. In the case mentioned in sub-paragraph (b) above, the pharmacist shall, if possible, at the buyer's expense, contact the medical doctor or the veterinary surgeon who wrote out the prescription.

5. Pharmacies shall keep in their records for a period of three years a copy of all the prescriptions in chronological order according to the date of supply.

6. Pharmacists who supply upon a prescription under the terms of Article 19, paragraph 3, of Decree-Law No. 15/93, shall take down, on the back of the copy of the prescription that is kept by him, further to other indications, the signature of the person who claims to be in charge of the under-age person or of his education or supervision; if that person cannot or is not able to sign, the pharmacist shall proceed as is provided in paragraph 2.

Article 29
State and private health services

1. In both the State's and private health services, responsibility for the control of substances and preparations listed in Tables I and II shall belong to the pharmacy committees and therapeutic committees or, where such committees do not exist, to the clinical directors and pharmaceutical directors; persons on whom such responsibilities fall shall communicate to the INFARMED, under terms and periodicity to be agreed upon, such data and information as is considered indispensable.

2. Without prejudice to the provisions of the preceding paragraph, the State's and the private health services shall forward to the INFARMED every three months a list of the narcotic drugs used for purposes of medical treatment;

that list shall be drawn up according to a model approved by the INFARMED, either in manual or computer-based form.

3. The registers mentioned in Section VI shall be prepared by the services mentioned in the preceding paragraph.

Article 30
Distribution and control of prescriptions

1. The model book of prescriptions shall remain an exclusive product of the Imprensa Nacional-Casa da Moeda [8]; the latter shall supply such books only upon requisition issued by an ARS, the *Ordem dos Médicos* or the *Ordem dos Médicos Veterinários*, according to their respective areas of intervention and competence.

2. The entities mentioned in the preceding paragraph shall distribute the prescription books strictly according to the needs; they shall collect the cost thereof from users.

3. Pharmacies, as well as the State's and private health services, shall forward to the INFARMED a copy of each prescription supplied by them concerning narcotic drugs or psychotropic substances, by the eighth day of the month following the date of the supply.

4. The rules provided for in Law No. 10/91, of 29 April, shall apply to the control of prescriptions by means of computer, as mentioned in Article 18 of Decree-Law No. 15/93.

5. The INFARMED shall inform the competent health service or the *Ordem dos Médicos* or the *Ordem dos Médicos Veterinários*, depending on whether the prescription was issued in the exercise of public or private functions, of any situation that it detects when controlling prescriptions showing an abnormal individual consumption of narcotic drugs or psychotropic substances.

SECTION VI
REGISTER AND SECURITY

Article 31
General provisions

1. The register books mentioned in this Chapter shall follow the model approved by the INFARMED, shall be numbered and signed on each page by the

[8] The official printing house and stationary office.

INFARMED and shall bear formal written inscriptions in their opening and closing pages.

2. Registers shall include neither blank spaces nor non validated additional words, deleted words or corrections; they shall be done in chronological order and numbered in the same order.

3. The entities that are authorized to manufacture any substances or preparations listed in Tables I, II and IV must keep the registers for a period of five years running from the date of the last inscription.

4. In the other cases, registers must be kept for a period of three years running from the date of the last inscription.

5. Registers shall be controlled by the INFARMED.

6. The INFARMED may authorize the replacement of books and manual registers by computer-based registers under conditions such as not to bring down the level of accuracy and safety of the data.

Article 32

Register of incoming and outgoing items

1. In accordance with the provisions of the preceding Article, each incoming or outgoing item consisting of any substances or preparations listed in Tables I, II and IV, must be registered.

2. Books of register as well as the corresponding computer-based registers must be closed by 31 December of each year; the formal written inscription in the closing page must state the total amount of substances and preparations stocked and used during the year, as well as any difference, in excess or in shortage, with respect to previous corresponding registers.

Article 33

Register of incoming and outgoing items and cycle of manufacture

1. Entities authorized to manufacture any substances or preparations listed in Tables I to IV, but not listed in Table II-A, shall register in the book of register or in the corresponding computer-based register, other than incoming and outgoing items, the beginning of the process of manufacture.

2. Registers of outgoing items and registers of the beginning of the process of manufacture shall include the number of the register of incoming of the items involved.

3. Substances obtained by way of manufacture, including substances obtained by way of a synthesis, shall be registered in the register of incoming items; the register must contain elements allowing for the appropriate link to be established with the register of manufacture.

4. Registers of manufacture must include complete identification and origin of the product, the amount of raw materials used, their name and date of entry in the manufacture section, the amount of product obtained and its serial number.

5. Quantitative differences in the stock of any substances must be recorded separately, but linked with the register of the operation that led to the difference.

Article 34
Register of prescriptions in pharmacies

1. Pharmacies shall record in a special book of register, or in the corresponding computer-based register, any prescription supplied concerning any substances or preparations listed in Tables I and II but not listed in Table II-A; the register shall include the number of the prescription, the name of the medical doctor or veterinary surgeon who issued the prescription, the identification and the age of the buyer and the date of supply; the person responsible shall close the register on 31 December of each year.

2. Any supply of substances and preparations under the terms of Article 17 of Decree-Law No. 15/93 shall be registered autonomously; the register shall include the identification of the sick person, the amount of pharmaceutical product and the date of supply.

3. Pharmacists shall notify the INFARMED within a period of ten days of any supply carried out under the terms of the preceding paragraph; the notification shall include the identification of the pharmacist, the identification of the sick person, as well as the elements mentioned in Article 27, paragraph 3.

Article 35
Notification of removed and missing items

Where books of register, computer-based registers, books with requisitions or prescription books are removed or go astray, the entity responsible for their safekeeping shall, immediately or within a period of 24 hours, so inform the local police authority and the INFARMED, and describe the facts in detail, joining where possible the serial numbers of the documents.

Article 36
Technical measures of protection

1. All entities that are authorized under the terms of this Chapter to keep any substances or preparations listed in Tables I to IV must take adequate technical measures of protection against their being removed or going astray.

2. The entities mentioned in the preceding paragraph shall have the duty to adopt any technical measures of protection that the INFARMED, after having heard the GCDMJ and the respective associations, might impose upon them.

3. Where the requirements imposed are not followed, the authorizations may be revoked, without prejudice to the imposition of any applicable regulatory sanction.

SECTION VII
ADVERTISING, PACKING AND LABELLING

Article 37
Ban on advertising

Advertising any substances or preparations listed in Tables I to IV, save in technical publications or information media destined exclusively for medical doctors and other professionals of the health sector, shall be prohibited.

Article 38
Packing and labelling

1. The INFARMED may impose security requirements concerning the opening of containers used for packing any substances or preparations listed in Tables I to IV.

2. Labels fixed on containers containing any substances or preparations listed in Tables I to IV for sale must show the amount, either in terms of weight or in terms of percentage, of the substances included and their common international designation as communicated by the World Health Organisation, along with other elements provided by the law where appropriate.

3. The information leaflet that joins the container includes information concerning the composition of the product, therapeutic indications and doses and shall indicate all its counter-effects, especially whether they entail dependence.

4. Containers containing any substances or preparations listed in Tables I and II shall bear a clear mark consisting of a double red line; external packing for such containers shall not bear that mark.

SECTION VIII
MISCELLANEOUS

Article 39
Inspections

1. Inspections of any enterprise, establishment or place where any substances or preparations listed in Tables I to IV can be found may be performed at any time; on that occasion documents and registers concerning such substances and preparations shall be exhibited upon request.

2. Before proceeding with an inspection, the staff member of the INFARMED must duly identify himself, by means either of a specific card spelling out his powers of inspection, or a credential.

3. Where the inspected entity refuses to exhibit the documents or registers, the co-operation of the police force shall be requested for the purpose of obtaining such documents or registers; in the meantime measures shall be taken in order to guarantee the effectiveness of the inspection, without prejudice to the provisions of Article 33 of Decree-Law No. 15/93.

4. Within 24 hours of their being detected, offences shall be notified to the competent authorities either for criminal investigation or for proceedings under the legislation on regulatory offences.

5. A written report of each inspection shall be produced; it shall be kept in the records of the inspecting authority unless it is included in a criminal file or a file concerning regulatory offences.

Article 40
Persons in transit

Confirmation, when necessary, of the need to use any substances or preparations mentioned in Article 13 of Decree-Law No. 15/93, for medical reasons, by persons who have crossed the Portuguese border, may be made by the local *subdelegado de saúde* [9], or where he is not available, by any medical doctor who is a member of the *Ordem dos Médicos*.

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[9] Local health authority.

Article 41
Reports and lists of prescriptions

1. All entities authorized to produce, manufacture, trade in, import, introduce, export or dispatch any substances or preparations listed in Tables I, II and IV, must forward to the INFARMED each year by 31 January a report including the following:

a) Balance upon closing up the register of incoming and outgoing items;
b) Class names and amounts of raw materials used during the year for the manufacture of pharmaceutical or industrial products;
c) Names and amounts of pharmaceutical and industrial products sold during the year, specifying the buying establishments or pharmacies;
d) Amounts imported, introduced, exported or dispatched;
e) Names and amounts of the substances and preparations in stock on 31 December.

2. Enterprises authorized to manufacture any preparations listed in Table III must forward to the INFARMED at that same time the names and amounts of the raw materials used, as well as their proportion with respect to each preparation.

3. Entities and enterprises authorized to manufacture any substances or preparations listed in Tables I, II-B and II-C must also forward to the INFARMED, within a period of 15 days after the end of each trimester, a report on the nature and amounts of raw materials received or used for manufacturing purposes, the nature and amounts of substances or preparations obtained or sold during the ending trimester, as well as the balance.

4. Where the report mentioned in the preceding paragraph concerns raw opium or coca leafs, the contents in active elements must be indicated.

5. Within a period of 15 days after the end of each trimester, pharmacies must forward to the INFARMED a copy of the register mentioned in Article 34, paragraph 1.

Article 42
Other requirements

In accordance with both the international conventions ratified by Portugal and the law, other requirements and restrictions may be imposed upon the import, export, introduction, dispatch or transit of any substances or preparations listed in Tables I to IV.

SECTION IX
FEES

Article 43
Amounts of fees

1. Fees due for generic requests for an authorization concerning any activity mentioned in Article 2, paragraph 1, shall be as follows:

a) For cultivating, producing, manufacturing or engaging in wholesale trade PTE [10] 150 000;
b) For import or export PTE 200 000;
c) For transit PTE 170 000.

2. Fees applicable to specific requests for concrete operations shall be fixed in accordance with the provisions of Decree-Law No. 48 322, of 6 April 1968.
3. Emoluments or charges other than fees may not be collected.
4. Public legal persons shall be exempted from the payment of fees or any other charges.

Article 44
Recovery and allotment of fees

After approval of the request for an authorization, fees due according to the provisions of the preceding Article shall be recovered under the terms of the organic law of the INFARMED.

CHAPTER III
AUTHORIZATIONS, REQUIREMENTS AND CONTROL CONCERNING TABLES V AND VI

SECTION I
PRODUCTION AND MANUFACTURE

Article 45
Powers of the Directorate General for Industry (DGI)

1. The Director General for Industry, or the entity to whom he delegates powers to that effect, shall be empowered to authorize the production or the manufacture of any classified substances listed in Table V.

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[10] Portuguese *escudos*.

2. Decisions granting or refusing authorizations, decisions granting leave to hold on to an authorization and decisions revoking or suspending an authorization shall be notified to the requesting party, the High Commissioner for the VIDA project, the GCDMJ, the district delegation of the Office of the General Inspector of Economic Activities (IGAE), the INFARMED and the regional delegation of the Ministry for Industry and Energy with jurisdiction over the area in which the entity or enterprise is located.

3. Decisions granting an authorization and decisions revoking or suspending an authorization shall be published in the *Diário da República.*

Article 46
Requests for authorization Table V

1. Requests for an authorization to produce or manufacture any classified substance listed in Table V and requests for leave to hold on to such an authorization must include the following:

a) Identification of the requesting party by way of an identity card of a physical person or an identification card of a legal person;
b) Identification and professional qualification of the person responsible in technical terms;
c) Indication of who is responsible for preparing and keeping up to date the registers;
d) Names of the substances according to Table V;
e) Potential and methods of production or manufacture;
f) Destination of the products;
g) Whereabouts and graphic description of the factories and warehouses or depots for raw materials or products produced or manufactured.

2. Requests must be accompanied by an extract of the criminal record concerning the requesting parties, the persons mentioned in sub-paragraph (c) above and, in the case of a legal person, the persons who are entitled to act on its behalf.

3. Requests for an authorization and requests to hold on to an authorization must be submitted either to the Directorate General for Industry or to the regional delegation of the Ministry for Industry and Energy; it is incumbent upon the latter to forward requests to the former.

4. Any changes in the elements mentioned in sub-paragraphs (b), (c), (e), (f) or (g) of paragraph 1 must be notified to the DGI within a period of 30 days.

Article 47

Revoked, suspended and lapsed authorizations

1. Authorizations may be revoked or suspended:

a) Where the requirement mentioned in Article 7, paragraph 1, is not met and in case of breach of the provisions of Article 8, paragraph 1;

b) Under the circumstances provided for in Article 9, paragraph 2, and Article 11, paragraph 6, of Decree-Law No. 15/93;

c) Where the requirements and obligations set out in the decision granting the authorization are not met or complied with.

2. Authorizations lapse under the circumstances provided for in Article 8, paragraph 3, and Article 11, paragraph 7, of Decree-Law No. 15/93.

Article 48

Statistical control Tables V and VI

1. The manufacture of any classified substances listed in Table VI must be notified to the DGI within the period of 30 days from the date of the beginning of the activity.

2. The notification mentioned in the preceding paragraph must include the identification of the requesting party, the location of the premises where such substances are being manufactured, as well as the manufacture potential.

3. Manufacturers must update the information mentioned in the preceding paragraphs.

4. Manufacturers and producers of any classified substances listed in Tables V and VI must have a system for recording their activities and inform the DGI every year of the amount produced or manufactured during that period.

5. The information mentioned in the preceding paragraph shall be transmitted by the DGI to the High Commissioner for the VIDA project, the GCDMJ, the district delegation of the IGAE and the regional delegation of the Ministry for Industry and Energy.

6. The records mentioned in paragraph 4 shall be kept for a period of three years.

Article 49

Safety conditions

Manufacturers and producers of any classified substances listed in Tables V and VI must take adequate safety measures with respect both to such

substances and to the records mentioned in Article 48, paragraph 4; in case of them being removed, lost or going astray, manufacturers or producers shall inform the local police authority and the DGI, within 24 hours of having knowledge of the facts.

Article 50
Supervision

The regional delegation of the Ministry for Industry and Energy shall be empowered to supervise the observance of the provisions of both Decree-Law No. 15/93 and this act concerning the production and manufacture of any classified substances listed in Tables V and VI.

Article 51
Fees

A fee of PTE 16 000 shall be due for granting an authorization for carrying out any activity mentioned in Article 45, paragraph 1; that fee shall be collected in accordance with the provisions of Decree-Law No. 5/84, of 5 January.

SECTION II
TRADE

Sub-section I
Licensing and register of operators

Article 52
Powers of the Directorate General for Trade (DGC)

1. The DGC shall have the powers to issue licences authorizing operators involved in import, export, transit and marketing of any classified substances listed in Table V to carry out such activities.

2. A trade number shall be assigned to each operator authorized to get involved in marketing any classified substances listed in Table V.

3. Decisions granting, revoking, suspending or refusing licences, as well as trade numbers assigned by the DGC, shall be notified to the requesting party, the GCDMJ, the IGAE, the DGA and the INFARMED.

4. Decisions granting, revoking, suspending or refusing licences shall be published in the *Diário da República*.

Article 53
Requests for licences Table V

1. Requests for licences authorizing operators involved in import, export, transit and marketing of any classified substances listed in Table V to carry out such activities, must include the following:

a) Identification of the requesting party by way of an identity card of a physical person or an identification card of a legal person;
b) Indication of who is responsible for preparing and keeping up to date the registers;
c) An extract of the criminal record concerning the requesting parties, the persons mentioned in sub-paragraph (b) above and, in the case of a legal person, the persons who are entitled to act on its behalf.
d) Names of the substances according to Table V;
e) Whereabouts of the places of trade and warehouses or depots of such substances.

2. Any change in the indications referred to in the preceding paragraph shall be notified to the DGC within a period of 30 days.

Article 54
Revoked, suspended and lapsed authorizations

1. Licences may be revoked or suspended:

a) Where the requirements mentioned in Article 7, paragraph 1, and Article 8, paragraph 1, are not met;
b) Under the circumstances provided for in Article 9, paragraph 2, and Article 11, paragraph 6, of Decree-Law No. 15/93;
c) Where the requirements and obligations set out in the decision granting the authorization are not met or complied with;
d) Where the provisions of Article 53, paragraph 2, and Articles 57 and 58 are not complied with, without prejudice to the imposition of any applicable regulatory sanction.

2. Licences shall lapse in the cases provided for in Article 8, paragraph 3, and Article 11, paragraph 7, of Decree-Law No. 15/93.

Article 55
Register of operators Table VI

1. The DGC shall have the powers to register, in accordance with Community legislation, operators that are involved in import, export or transit of any classified substances listed in Table VI.

2. Operators involved in marketing any classified substances listed in Table VI named "Acetic anhydrid", "Antranilic acid", "Phenylacetic acid", or "Piperidina" shall inform the DGC of the address of the premises where they trade in such substances and of any subsequent changes.

Sub-section II
Import and export

Article 56
Powers

The DGC shall have the powers to issue import certificates and export authorizations with respect to any classified substances listed in Tables V and VI, in accordance with national and Community legislation.

Article 57
Use of general individual authorizations

1. Exporters who hold a general individual licence issued under the terms of Article 5 of Council Regulation No. 3677/90, of 13 November 1990, as amended by Council Regulation No. 900/92, of 31 March 1992, shall inform the DGC by the end of each trimester, the number of operations carried out, the countries of destination, the name and address of the importer, amount of each substance and how much it is worth, as well as other relevant information relating to the customs clearance.

2. Where any authorization as mentioned in the preceding paragraph is not used, that fact must be notified to the DGC with the same periodicity.

Sub-section III
National trade and trade within the community

Article 58
Documents and labels

1. Any marketing operations of any classified substances listed in Table V or any substances named "Acetic anhydrid", "Antranilic acid", "Phenylacetic acid", or "Piperidina" must be duly supported by documents; commercial documents, such as invoices and bills of lading, administrative documents, transport

documents and other documents concerning the dispatch must include such information as is necessary in order to recognise correctly:

a) The name of the substance as it figures in the Tables;
b) The amount and weight of the substance and, where the substance consists of a blend, the amount and weight of the substance or substances listed in the Tables that are part of the blend;
c) The name and address of the supplier, the distributor and, if known, the final consignee;
d) The trade number mentioned in Article 52, paragraph 2, where any classified substances listed in Table V are involved.

2. Operators entrusted with marketing any classified substances listed in Table V or any substances named "Acetic anhydrid", "Antranilic acid", "Phenylacetic acid", or "Piperidina" shall keep detailed registers of such activities in accordance with the provisions of paragraphs 1 and 5.

3. Documents and registers mentioned in the preceding paragraphs must be kept for a period of at least three years from the end of the calendar year during which the operation mentioned in paragraph 1 was carried out.

4. Operators must control the labels carried by any classified substances listed in Table V or any substances named "Acetic anhydrid", "Antranilic acid", "Phenylacetic acid", or "Piperidina" for the purposes of their being marketed.

5. Labels must include the names of the substances as they figure in the Tables; with respect to any substances listed in Table V, labels must also include the trade number mentioned in Article 52, paragraph 2.

6. Operators who market any classified substances listed in Table V or any substances named "Acetic anhydrid", "Antranilic acid", "Phenylacetic acid", or "Piperidina" must transmit to the DGC every year by 15 January information concerning the transactions, notably the name and address of the client, the amount of each substance and how much it is worth, as well as a declaration written by the client indicating the specific use of the substances in the year before.

7. The provisions of the preceding paragraphs shall not apply to transactions involving the following classified substances listed in Table VI provided that the amounts involved in each operation are not in excess of: "Acetic anhydrid"- 20 litres; "Antranilic acid" or its salts 1 kg; "Phenylacetic acid" or its salts 1 kg; "Piperidina" or its salts 0.5 kg.

SECTION III
SUPERVISION BY THE IGAE

Article 59
Powers

1. In co-operation with the INFARMED, the IGAE shall have the powers to supervise all authorized activities involving wholesale trade in, or distribution, acquisition, sale, transport, delivery or possession of any classified substances listed in Table V.

2. The IGAE shall especially have the powers to supervise the activities mentioned in the preceding paragraph that involve any classified substances listed in Table VI, and to investigate and organise proceedings for any regulatory offence provided for in Chapter V, Section III.

CHAPTER IV
COORDINATION AND GENERAL SUPERVISION

SECTION I
GCDMJ

Article 60
Powers

1. The GCDMJ shall have the powers :

a) To follow the application of international law and Community law instruments concerning any plants, substances and preparations listed in Tables I to VI, in such a way as to ensure that data transmitted to external entities are congruous and coherent;

b) In co-operation with the other national departments that are active in this area, to supply the competent United Nations bodies with data, information and reports as provided for in the conventions, save information concerning narcotic drugs and psychotropic substances that ought to be forwarded directly by the INFARMED to the International Narcotics Control Board.

c) To spread out at national level information and data obtained from international fora and other sources as appropriate.

2. The GCDMJ shall have such powers as are necessary in order to act as the authority responsible for taking care of any requests received under Article 7, paragraph 8, Article 12, paragraph 10, sub-paragraph (a) or Article 17,

paragraph 7, of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, channelling such requests to the competent departments and seeking to obtain timely responses thereto.

3. Any entities supplying statistical data to the United Nations, the Council of Europe, the International Criminal Police Organisation / INTERPOL or the Customs Co-operation Council relating to narcotic drugs, psychotropic substances, precursors or other chemical products instrumental in obtaining drugs, must forward a copy to the GCDMJ.

4. The powers mentioned in the preceding paragraphs shall be used without prejudice to the powers of the National Programme for Fighting Against Drugs; in particular, the GCDMJ must keep the High Commissioner for the VIDA project informed of its activities carried out under the terms of paragraphs 1 and 2 and forward to him copy of the data mentioned in paragraph 3.

SECTION II
DIRECTORATE GENERAL FOR CUSTOMS

Article 61
Powers

1. The DGA shall seek to ensure abidance to the law and customs procedures with respect to the import, export and transit of any plants, substances and preparations listed in Tables I to VI; it may designate specific points for customs clearance thereof.

2. The DGA shall implement adequate procedures for complete identification and control of the merchandise mentioned in the preceding paragraph, in accordance with the specifications included in the respective authorization; it may take samples and have the necessary tests done, in accordance with the law.

3. The DGA shall take such measures as are necessary in order to avoid the substances and preparations from being diverted to destinations other than those indicated in the copy of the authorization; where necessary, it may request the co-operation of other authorities.

Article 62
Administrative co-operation with the Community

The DGA shall be the competent authority under the terms and for the purposes of the provisions of Article 7 of Council Regulation (EEC) No. 3677/90,

of 13 December 1990, and Article 7 of Council Directive No. 92/109/EEC, of 14 December 1992.

Article 63
Customs-tax offences

Regulatory offences for the violation of any rules provided in Article 61 shall be processed according to the provisions of the *Regime Jurídico das Infracções Fiscais Aduaneiras* [11] approved by means of Decree-Law No. 376-A/89, of 25 October.

SECTION III
COMMON PROVISION

Article 64
Specific duty to co-operate

Manufacturers, importers, exporters, wholesale traders, retail dealers and other operators, including official customs clearance officers and other persons legally authorized to clear merchandise through customs, forwarding agents, carriers, who intervene in the import, export or transit of any classified substances listed in Tables V and VI, shall notify the IGAE, the DGA, the DGC or the GCDMJ as soon as they have notice of any order or transaction that they suspect can be diverted for the purpose of illegally producing narcotic drugs or psychotropic substances.

CHAPTER V
REGULATORY OFFENCES AND *COIMAS* [12]

SECTION I
GENERAL PROVISIONS

Article 65
General Rule

Any violation of the duties imposed under the provisions of this act shall be punishable with a penalty under the terms of Articles 65 and 68 of Decree-

[11] Legal rules applicable to customs-tax offences.
[12] Pecuniary sanctions specific to regulatory offences. Hereinafter "penalties".

Law No. 15/93 and its supplementary legislation, with due account to the provisions of the following Articles.

Article 66
Legal persons and the likewise

Where penalties are applied to legal persons and the likewise, their minimum and maximum limits shall be doubled.

Article 67
Powers to apply penalties

1. The Chairman of the board of the INFARMED shall be empowered to apply any penalties and ancillary sanctions provided for in Section II of this Chapter.

2. The Committee for Imposing Penalties in the Economic Field (CACME) shall be empowered to apply any penalties and ancillary sanctions provided for in Section III of this Chapter.

SECTION II
REGULATORY OFFENCES AND PENALTIES CONCERNING CHAPTER II

Article 68
Use of authorizations for purposes other than authorized purposes

1. Whoever holds an authorization to carry out any of the activities mentioned in Article 2, paragraph 1, and uses substances or preparations listed in Tables I to IV, or uses the authorization, for purposes other than the purposes for which the authorization was granted, shall be punished for a regulatory offence with a penalty of PTE 100 000 to PTE 5 000 000.

2. Any violation of any special requirement fixed in decisions granting authorizations that are taken under the terms of Article 8, paragraph 4, shall be punished likewise.

3. The ancillary sanction of disqualification to carry out a given activity for a period of one to three years, may be imposed in the cases mentioned in the preceding paragraphs.

Article 69
Carrying on with an activity without authorization

Carrying on with an activity and thus violating the provisions of Article 8 of Decree-Law No. 15/93 shall constitute a regulatory offence punishable with a penalty of PTE 10 000 to PTE 500 000.

Article 70
Supply without prescription

1. Supplying, not upon a normal or special prescription to that effect, any substances and preparations listed in Tables I to IV shall constitute a regulatory offence punishable with a penalty of PTE 50 000 to PTE 500 000.

2. The ancillary sanction of disqualification to carry out the activity of technical director of any pharmacy for a period of up to two years, may be imposed.

Article 71
Undue supply upon prescription

Any pharmacist, or any person who replaces a pharmacist during the latter's absence or while he is prevented from acting as such, who supplies upon a prescription thus violating the provisions of Article 28, paragraphs 1, 2 and 3, shall be punished for a regulatory offence with a penalty of PTE 25 000 to PTE 250 000.

Article 72
False or wrong information

1. Any person who requests an authorization to carry out any of the activities mentioned in Article 2, paragraph 1, or to hold on to an authorization as mentioned in Article 8, paragraph 1, of Decree-Law No. 15/93, and at that time gives out false or wrong information with a view to obtaining the requested authorization, shall be punished for a regulatory offence with a penalty of PTE 100 000 to PTE 1 000 000.

2. Negligence shall be punishable, in which case the minimum and maximum limits of penalties applicable shall be halved.

Article 73
Surplus: declaration missing or wrong declaration

Where surpluses are not declared in accordance with the provisions of Article 14, or are the subject of false or wrong declarations, that shall constitute a regulatory offence punishable with a penalty of PTE 50 000 to PTE 500 000.

Article 74
Requisition missing

1. Delivering, not upon a requisition as provided for in Article 18, or to persons other than the persons mentioned in Article 20, any substances and preparations listed in Tables I to IV shall constitute a regulatory offence punishable with a penalty of PTE 10 000 to PTE 500 000.

2. Forwarding, not upon a requisition, samples of any preparations listed in Tables III and IV to medical doctors or to veterinary surgeons shall constitute a regulatory offence punishable with a penalty of PTE 10 000 to PTE 100 000.

3. Forwarding samples of any substances and preparations listed in Tables I and II shall be punishable with a penalty as provided for in the preceding paragraph, aggravated by one third.

Article 75
Exports prohibited

Exporting any substances or preparations listed in Tables I, II and IV and thus violating the provisions of Article 25, paragraphs 1, 2 and 4, shall constitute a regulatory offence punishable with a penalty of PTE 50 000 to PTE 1 000 000.

Article 76
Filling in and keeping books, documents and registers

1. Where any books, documents and registers, mandatory under Chapter II, are missing or filled in a false or wrong way, that shall constitute a regulatory offence punishable with a penalty of PTE 100 000 to PTE 1 500 000.

2. Where books, documents, copies and registers are not kept according to the terms of and for the time provided in Chapter II, that shall constitute a regulatory offence punishable with a penalty of PTE 40 000 to PTE 500 000.

3. Where any books and documents mentioned in paragraph 1 are filled in an irregular way, that shall constitute a regulatory offence punishable with a penalty of PTE 10 000 to PTE 250 000.

Article 77
Documents and information not forwarded

Each of the following constitute a regulatory offence punishable with a penalty of PTE 10 000 to PTE 100 000: where prescriptions are not forwarded for purposes of control; where the provisions of Article 34, paragraph 3, are not complied with; where information required by the authorities under the provisions of Article 4 is not disclosed; where any reports or documents mentioned in Article 41 are not forwarded.

Article 78
Duties concerning security and information

1. Any person who is in charge of safekeeping or is responsible for the security of any substances or preparations listed in Tables I to IV and, for reasons of negligence or because that person did not take such measures as are mandatory under Article 36, paragraph 2, gives cause for them being removed or going astray, shall be liable for committing a regulatory offence and punished with a penalty of PTE 10 000 to PTE 500 000.

2. Where the requirements concerning packing, labelling and information that are fixed under the terms of Article 38 are not met, that constitutes a regulatory offence punishable with a penalty of PTE 10 000 to PTE 500 000.

3. Where notification to the police authority, as mentioned in Article 20, paragraphs 2, 3 and 4, is missing or is not done in good time, that constitutes a regulatory offence punishable with a penalty of PTE 10 000 to PTE 250 000.

Article 79
Advertising

Advertising any substances or preparations listed in Tables I to V, where the requirements provided for in this act are not met, constitutes a regulatory offence punishable with a penalty of PTE 100 000 to PTE 2 000 000.

SECTION III
REGULATORY OFFENCES AND PENALTIES CONCERNING CHAPTER II

Article 80
Lack of authorization

1. Whoever carries out any of the activities provided for in Article 2, paragraph 2, Article 45, paragraph 1, and Article 52, paragraph 1, without holding the necessary authorization, shall be liable for committing a regulatory offence and punished with a penalty of PTE 100 000 to PTE 4 000 000.

2. The ancillary sanction of disqualification to carry out the activity in question for a period of one to three years, may be imposed.

Article 81
Duties towards the DGI

1. Each of the following constitute a regulatory offence punishable with a penalty of PTE 50 000 to PTE 500 000: where notification of the information mentioned in Article 46, paragraphs 4, and Article 48, paragraphs 1, 2, 3 and 4, is missing; where the registers provided for in Article 48, paragraph 6, are not kept.

2. Each of the following constitute a regulatory offence punishable with a penalty of PTE 10 000 to PTE 250 000: where security measures mentioned in Article 49 are not complied with; where notification as provided for in Article 49 is missing or is not done in good time.

Article 82
Duties towards the DGC

1. Where notification of the information mentioned in Article 53, paragraph 2, Article 55, paragraph 2, Article 57, Article 58, paragraph 5, of this act, or mentioned in Article 2-A, paragraph 2 of Council Regulation (EEC) No. 3677/90, of 13 December 1990, as amended by Council Regulation (EEC) No. 900/92, of 31 March 1992 (provisions concerning addresses of premises where operators trade in any substances listed in Table VI) is missing, that constitutes a regulatory offence punishable with a penalty of PTE 50 000 to PTE 500 000.

2. Each of the following constitutes a regulatory offence punishable with a penalty of PTE 50 000 to PTE 500 000: where any document concerning

operations, as mentioned in Article 58, paragraph 1 of this act, or in Article 2, paragraph 1 of Council Regulation (EEC) No. 3677/90, of 13 December 1990, as amended by Council Regulation (EEC) No. 900/92, of 31 March 1992, is missing; where any document as mentioned above is nor correctly filled in; where the detailed registers mentioned in Article 58, paragraph 2, or in Article 2, paragraph 3, of the above-mentioned Regulation, are missing; where documents and registers are not kept or not kept as long as required in Article 58, paragraph 3, or in Article 2, paragraph 4, of the above-mentioned Regulation.

3. Any operator who disregards the rules on labelling provided for in Article 58, paragraph 4 of this act, or in Article 2, paragraph 2 of Regulation (EEC) No. 3677/90, shall be liable for committing a regulatory offence and punished with a penalty of PTE 50 000 to PTE 500 000.

Article 83
False or wrong information

1. Any person who requests an authorization or a licence to carry out any of the activities or operations mentioned in Article 2, paragraph 2, and at that time gives out false or wrong information with a view to obtaining the requested authorization or licence, shall be punished for a regulatory offence with a penalty of PTE 100 000 to PTE 1 000 000.

2. Negligence shall be punishable, in which case the minimum and maximum limits of penalties applicable shall be halved.

Article 84
Violation of the duty to co-operate Tables V and VI

Any person, as mentioned in Article 64, who under the circumstances described in that Article, does not notify – although being in a position to do so – any suspicious order or transaction concerning any classified substances listed in Tables V and VI that can be diverted towards the illegal market shall be punished for a regulatory offence with a penalty of PTE 50 000 to PTE 750 000.

SECTION IV
PROCEEDS FROM PENALTIES

Article 85
Allocation

1. Proceeds from penalties shall be allocated as follows:
a) with respect to penalties imposed by the INFARMED, 60% to the State and 40% to the INFARMED;
b) with respect to penalties imposed by the CACME, 60% to the State, 10% to the DGI, 10% to the DGC, 10% to the IGAE and 10% to the fight against drug-dependency; the DGI shall share its stake with its regional delegations according to the place where the offence was committed.

2. The allocation of the proceeds from penalties to the fight against drug-dependency shall be regulated by way of a common decision of the Minister of Justice and the member of Government responsible for the National Programme for Fighting Against Drugs.

CHAPTER VI
FINAL AND TRANSITIONAL PROVISIONS

Article 86
Special measures

1. The substances named "Anphepramone", "Benzephetamine", "Chlobenzorex", "Ethylamphetamine", "Phencamphamine", "Phemproporex", "Flunitrazepam", "Mephenorex", "Secbutabarbital", "SPA" or "Lefetamine", listed in Table IV, shall be submitted both to special prescriptions under the terms of Article 27 and to the control measures provided for in Article 15, paragraph 6, and Articles 16, 18, 28, 29 and 34, as well as Article 41, paragraph 3.

2. Pending the substance named "Chlobenzorex" being listed in the tables appended to the United Nations Conventions, the INFARMED may decide that authorizations for the import of that substance, as mentioned in Article 22, paragraph 2, are not required.

Article 87
Time-limits for implementing new measures

1. The measures provided for in Article 18, paragraph 1, and Article 19 (book with requisitions), Article 27, paragraphs 2, 3 and 5 (medical prescriptions), Article 31, paragraph 1, (book of registers), Article 36, paragraph 2, (security measures) and Article 38 (packing and labelling), shall be implemented within one year from the date of the entry into force of this act.

2. Pending the implementation of the measures mentioned in the preceding paragraph, the rules of Regulative Decree No. 71/84, of 7 September, shall apply mutatis mutandis.

3. The same time-limitation shall apply to the computerisation of the control of prescriptions.

Article 88
Application in the Autonomous Regions

Powers conferred in this act to entities of the central administration that exercise no powers in the Autonomous Regions shall be understood to be conferred upon their respective counterparts in the regional administrations.

Article 89
GCDMJ

Any references in this act to the GCDMJ shall be understood to make reference to the Office of Planning and Coordination of the Fight against Drugs, pending the latter's change in structure and name.

Article 90
Norms revoked

The following shall be revoked:
a) Regulative Decree No. 71/84, of 7 September;
b) Regulative Decree No. 7/90, of 24 March;
c) Orders No. 167/87, of 10 March, No. 217/90, of 24 March, and No. 218/90, of 24 March.

(Translation by Cândido Cunha)

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DIREITO COMUNITÁRIO

ESTUDOS

DIREITOS DO HOMEM

DIREITOS DA CRIANÇA

DOCUMENTAÇÃO

A correspondência relativa a este Boletim deverá ser enviada a
All correspondence concerning this Review should be addressed to
La correspondance concernant cette Revue devra être adressée à

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