

XIV. EL SALVADOR⁴⁹

1. PENAL CODE

Decree No. 280

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Amendments to the Penal Code

Article 1. An article 22-A shall be added as follows:

Organized crime

Article 22-A. Organized crime shall mean the form of criminality engaged in by a group of persons who deliberately maintain a hierarchical structure for the purpose of planning and executing unlawful acts in order to enrich themselves with illegal goods and services or to carry out terrorist activities.

Organized crime shall also mean actions which, in and of themselves or in combination with others, committed by two or more persons, have as their aim or result the perpetration of the offences of homicide, aggravated homicide, deprivation of liberty, kidnapping, theft, aggravated theft, extortion, unlawful association, counterfeiting or alteration of currency, acts of terrorism, trafficking in persons, smuggling, money and asset laundering, trafficking in and illegal manufacture and sale of firearms and the offences mentioned in chapter IV of the Act governing drug-related activities.”

Article 2. The following subparagraphs (17) and (18) shall be added to article 30:

Violating public trust

(17) If the person committing the offence is a public official, a public authority or an agent of authority;

Disrespect for public officials, a public authority or an agent of authority

(18) If the offence is committed against a public official, a public authority or an agent of authority in his or her capacity as a public servant, whether or not he or she is discharging those functions at the time.”

⁴⁹ Transmitted to the Secretariat by that Government on 5 June 2000 and 30 May 2001.

Article 3. Article 7 shall be amended, as follows:

Penalties for a series of offences

Article 71. In the case of a series of offences, all the penalties corresponding to the offences committed shall be imposed on the guilty party, to be served successively in order of seriousness, beginning with the most severe penalty; however, the combination of penalties imposed may in no circumstances exceed 35 years' imprisonment."

Article 4. An article 129-A shall be added as follows:

Solicitation and conspiracy in relation to the offence of aggravated homicide

Article 129-A. Solicitation and conspiracy in cases of aggravated homicide shall be punishable by the corresponding penalty established in the preceding article."

Article 5. Article 148 shall be amended as follows:

Deprivation of liberty

Article 148. Any person who deprives another of his or her personal liberty shall be subject to a penalty of three to six years' imprisonment."

Article 6. Article 149 shall be amended as follows:

Kidnapping

Article 149. Any person who deprives another of his or her personal liberty for the purpose of obtaining a ransom or compliance with a particular condition or to make the authorities perform or refrain from a particular action shall be subject to a penalty of 20 to 30 years' imprisonment."

Article 7. An article 149-A shall be added as follows:

Solicitation and conspiracy in relation to the offences of deprivation of liberty and kidnapping

Article 149-A. Solicitation and conspiracy to commit any of the actions described in the two preceding articles shall be punishable, in the case of deprivation of liberty, by one to three years' imprisonment and, in the case of kidnapping, by 10 to 20 years' imprisonment."

Article 8. An article 214-C shall be added as follows:

Solicitation and conspiracy

Article 214-C. Solicitation and conspiracy to commit any of the offences mentioned in this chapter, with the exception of the offence of receiving stolen property, shall be punishable by the same penalties as apply to the corresponding offences.”

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Article 13. Article 345 shall be amended as follows:

Unlawful association

Article 345. When two or more persons organize or agree to organize for the purpose of carrying out actions which, in and of themselves or in combination with others, have as their aim or result the perpetuation of offences, they shall, solely by virtue of that fact, be subject to a penalty of two to eight years’ imprisonment. The leaders or instigators shall be subject to a penalty of five to 10 years’ imprisonment.

In the case of a group, organization or association whose purpose is to commit the offences of homicide, aggravated homicide or kidnapping, any person who takes part in the group shall be subject to a penalty of five to 10 years’ imprisonment; for theft, extortion or the offences mentioned in chapter IV of the Act governing drug-related activities, the penalty shall be three to eight years’ imprisonment.

In the cases provided for in the foregoing paragraphs, if the offence is actually carried out, the penalty corresponding to the offence shall be added to the penalties stipulated above.

The penalties stipulated in the first paragraph shall also be imposed on those who, in the company of one or more persons and without any justification, prowl, lurk or lie in wait, equipped with balaclavas or ski masks, devices with telescopic or night sights, gun clips or firearms, registered or otherwise, on highways or rural roads or in urban places that are dark or otherwise favourable to the commission of offences.”

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2. OFFICIAL GAZETTE, SAN SALVADOR, 10 JUNE 1997, VOL.
NO. 335

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Sedition

Article 341. A penalty of 10 to 15 years' imprisonment shall be imposed on those who, while recognizing the authority of the constitutional Government, engage in a public and disorderly uprising in order to achieve any of the following objectives by violent means:

- (1) Prevent by direct action the enactment or enforcement of laws or the holding of an election or ballot;
- (2) Prevent the authorities from discharging their functions freely or from enforcing administrative or judicial orders;
- (3) Remove a public official from office or prevent duly elected or appointed officials from taking office; and
- (4) Engage for political or social ends, in any act of coercion against property of the State or of a local authority.

If the perpetrator is a public official or employee, an agent of authority or a public authority, he or she shall also be subject to general disqualification from holding office or employment for the same period of time.

Solicitation and conspiracy to commit and advocacy of rebellion or sedition

Article 342. Solicitation and conspiracy to commit the offences of rebellion or sedition shall be punishable by six months' to two years' imprisonment.

If the perpetrator is a public official or employee, an agent of authority or a public authority, he or she shall also be subject to general disqualification from holding office or employment for the same period of time.

Chapter II

Crimes against the public peace

Acts of terrorism

Article 343. Any person who individually or as part of a group commits acts that could provoke alarm, fear or terror through the use of explosives, flammable substances, weapons or devices normally liable to cause death or physical injury to persons shall be subject to a penalty of five to 20 years' imprisonment.

The same penalty shall be imposed on any person who, in the same circumstances and for the same ends, detains, threatens or causes the death of third persons.

The following shall be considered acts of terrorism:

- (1) Acts directed against the life, person or liberty of the President of the Republic, or the person acting for him, and other public officials, when such acts are committed because of the functions of the office discharged by such persons;
- (2) Destruction of or damage to public property or property intended for public use;
- (3) The manufacture, procurement, possession or provision of weapons, ammunition, explosives or devices for carrying out acts of terrorism;
- (4) Participation, whether individually or as part of a group, in taking over or occupying towns and cities or parts thereof, buildings and facilities in public use or intended to serve the public, diplomatic missions, workplaces, centres providing services or places of worship; and
- (5) Armed attacks against garrisons and other military installations.

Solicitation and conspiracy to commit acts of terrorism

Article 344. Solicitation and conspiracy to commit the offence defined in the preceding article shall be punishable by six months' to two years' imprisonment.

No penalties shall be imposed on conspirators who voluntarily prevent the carrying out of a terrorist plan.

Unlawful association

Article 345. Any person who takes part in a group, organization or association whose purpose is to commit offences shall be subject to a penalty of one to three years' imprisonment.

The leaders or instigators shall be subject to a penalty of two to five years' imprisonment.

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Civil disorder

Article 348. Persons who, acting in a group with the aim of disturbing the public peace, disrupt public order by obstructing public roads or access thereto or invade facilities or buildings shall be subject to a penalty of six months' to two years' imprisonment.

Advocacy of an offence

Article 349. Any person who publicly advocates a wilful offence under ordinary law shall be subject to a penalty of six months' to two years' imprisonment.

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3. DECREE NO. 1030

Part XX

Crimes of an international nature

Piracy

Article 368. A term of imprisonment of between 5 and 15 years shall be imposed on:

1. Any person who, on the high seas, the adjacent sea or the continental shelf, commits acts of depredation or violence against a vessel or against persons or things on board;
2. Any person who seizes any vessel or anything pertaining to its equipment, cargo or crew, by fraud or violence committed against its captain;
3. Any person who, on his own or another person's behalf, fits out a ship intended for piracy; and
4. Any person who, by violent means, diverts a vessel or causes it to be diverted to a place other than its destination.

Any person who knowingly has dealings with pirates or renders them assistance shall be considered a co-perpetrator.

If the above-mentioned acts of violence or hostility result in the death of any person on board a vessel that is attacked, or if the purpose of such acts is to demand a ransom, the penalty shall be increased by up to half the maximum appointed sentence.

Air piracy

Article 369. The same penalty as is provided for in the cases mentioned in subparagraphs 2 and 4 of the above article shall be imposed when the acts are committed on board aircraft, whether inside or outside the national airspace.

International criminal organizations

Article 370. Any person controlling or belonging to organizations of an international character engaged in the slave trade, the traffic in persons or the perpetration of acts of air piracy or infringing the provisions of the treaties adopted by El Salvador to protect human rights shall be punished by a term of imprisonment of between 5 and 15 years.

XV. FIJI⁵⁰

1. SUMMARY OF RELEVANT PROVISIONS OF THE PENAL CODE (CAP. 17): PART IX: OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILITY

Section 71 of Cap. 17 proscribed foreign enlistment against any friendly States, whether in military or naval capacity. Any person who breaches Section 71 of the Penal Code is guilty of misdemeanour.

Under Section 72 any person who is guilty of piracy or crime connected with, or relating or akin to piracy, shall be liable to life imprisonment.

Section 73 declares it illegal for any person to hijack any aircraft or assist any person in hijacking an aircraft, whatever his nationality or citizenship, whatever the State in which the aircraft is registered, and whether the aircraft is in Fiji or elsewhere. Any person convicted under this Section is liable to life imprisonment.

Section 74 states that any offence committed in the course of hijacking shall be declared to be an offence under the Code and any person shall be liable to be convicted of any such offence as if it is done in relation to such hijacking.

Section 76 creates an offence of aircraft sabotage as including destruction of aircraft in service or damaging an aircraft so as to render it incapable of flight or endanger its safety in flight. It is also an offence to place or cause to be placed on an aircraft in service by any means whatsoever, a device or substance which is likely to destroy that aircraft or cause damage to the same so as it is

⁵⁰ Transmitted to the Secretariat by that Government on 22 July 1997.