



Taiwan

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Country Summary: Taiwan has maintained a stable environment for freedom of speech; however, a series of legislative and non-legislative developments that occurred between 2015 and 2022 are drawing concern. Apart from increasing the upper limit of fines for existing speech-related criminal laws, the Taiwanese Congress adopted five restrictive legal amendments to the "Combatting Disinformation Action" in 2019-2020: one law on spreading false information that affects living necessity transaction prices, one on spreading false information in situations of disasters, one on spreading false information on food safety, one on spreading false information on the military and one on spreading false information on the Covid-19 pandemic. Another legislative trend to restrict speech for the purpose of national security is reflected in a special criminal law prohibiting political donations, directly or indirectly, from "foreign hostile forces", and campaign speech or lobbying based on instructions and financing from foreign hostile forces. While Taiwan has not implemented any law on online speech, content removal requests made by the government to social media platforms are noteworthy: 95 removal requests to Twitter from January 2021 to December 2021, with an average compliance rate of 27.4%. Since 2011, Taiwan's government and courts have filed 1,067 removal requests against Google, mostly for reasons of privacy, defamation, election law, control of goods and services, and copyright.

Introduction

According to the Freedom House index (2017-2022),⁶⁸⁴ Taiwan has consistently been rated as "free" and received a perfect score of 16/16 in the freedom of expression and belief category. In Article 19's Global Expression Report 2022, Taiwan is ranked 38 out of 161 countries.⁶⁸⁵ In Justitia's Free Speech Index, Taiwan is ranked 17th out of 33 countries with medium approval of free speech.⁶⁸⁶ Therefore, it is fair to conclude that Taiwan has maintained an enabling and stable environment for freedom of speech. However, it is worth observing and analyzing the specific actions taken by Taiwan's legislative, executive, and judicial branches regarding freedom of speech from 2015 to 2022, particularly in response to major events.

Several events have impacted Taiwan's freedom of speech between 2015 and 2022. These include the 2014 Sunflower Movement, which protested against economic policies that are overly reliant on China and resulted in university students occupying the Congress building. Additionally, the rise of online media, particularly social media, has become the main channel for people to access information. The spread of disinformation during the 2018 local elections and referendums also played a role, as did the COVID-19 pandemic since 2020. These events have compelled legislative, executive, and judicial authorities to continually address issues related to protests, online speech (including rumors and conspiracy theories), defamation during elections, dissemination of public health misinformation, and regulation of internet intermediaries.

This report introduces the actions taken by Taiwan's legislative, executive, and judicial branches regarding freedom of speech from 2015 to 2022. The legislative developments during this period include several legislative procedures. These include the 2019 criminal amendments that increased penalties for existing speech crimes such as incitement, defamation, public insult, and obscene speech. In 2020, criminal amendments were introduced to tackle disinformation. The 2020 Anti-Infiltration Act was enacted to counter foreign influences, including increased punishment for acts that assist foreign hostile forces in influencing Taiwan's elections and political procedures. In addition, the 2023 amendment draft of the National Mobilization Preparation Act allows for necessary media control during wartime or emergency situations. The 2022 Digital Intermediary Services Act draft is modeled on the EU Digital Services Act, and the 2023 criminal amendment punishes deepfaked sexual images.

Several major events have occurred in non-legislative developments, including regulating television media, and banning Chinese publications and apps. In terms of enforcement, significant aspects include the Taiwan Constitutional Court's (TCC) rulings (formerly

⁶⁸⁴ <https://freedomhouse.org/country/taiwan/freedom-world/2022>

⁶⁸⁵ <https://www.article19.org/wp-content/uploads/2022/06/A19-GxR-Report-22.pdf>

⁶⁸⁶ <https://futurefreespeech.com/interactive%20map/>

Interpretations of the Judicial Yuan before 2022) on illegal billboards, censorship of cosmetic advertisements, prisoners' speech, real-name sponsorship of tobacco companies, prior restraints of street performance, and mandatory apologies. Additionally, relevant court rulings at all levels of the judiciary on speech control during COVID-19 are also noteworthy.

I. Legislation

For a long time, Taiwan has had provisions for criminal punishment of speech. The Criminal Code stipulates that acts such as insulting public officials (§140), incitement (§153), defamation (§310), public insult (§309), and obscene speech (§235) should be subject to criminal responsibility. The Grand Justices of the Judicial Yuan (now the TCC) declared the criminal punishment for defamation and obscene speech constitutional in the Judicial Yuan Interpretations No. 407, 509 (regarding defamatory speech), and 617 (regarding obscene speech). Even high-value political speech may be subject to criminal punishment. For example, §104 of the Civil Servants Election and Recall Act includes a specific criminal provision to penalize false campaign speech.

In 2016 and 2019, the Taiwanese Congress amended the Criminal Code and the Civil Servants Election and Recall Act to increase the maximum fines for existing speech crimes. Apart from increasing the upper limit of fines for existing speech-related criminal laws, the Taiwanese Congress adopted a set of criminal and administrative legal amendments for the "Combatting Disinformation Action" in 2019-2020.

Regarding criminal law amendments, the Taiwanese Congress has increased fines and maximum imprisonment for spreading false information that affects living necessity transaction prices in the Criminal Code §251 amendment of 2020. The Congress has also intensified punishment for spreading false information in special criminal laws, such as those related to disasters (§53 Disaster Prevention and Protection Act), food safety (§46-1 Act Governing Food Safety and Sanitation), military (§72 Criminal Code of the Armed Forces), and the COVID-19 pandemic (§14 Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens). Furthermore, the amendment drafts for disinformation regarding nuclear accidents (§31-1 Nuclear Emergency Response Act) and state actions of collecting equipment during the preparation before wartime (§§15, 31 National Mobilization Preparation Act) have not yet passed the legislative process.

The §63 Social Order Maintenance Act, in existence since 1991, is the most commonly used administrative law by government agencies to restrict false speech that could disrupt public order and peace. In addition, the 2019-2020 campaign of the Taiwanese Congress to combat disinformation raised administrative penalties for spreading false information about infectious diseases (§63 Communicable Disease Control Act), food trade (§§15-1, 18-3 Food

Administration Act), and agricultural products (§§6, 35 Agricultural Products Market Transaction Act, §27 Agricultural Production and Certification Act).

In addition, there has been a legislative trend in Taiwan's Congress between 2015-2022 to restrict speech for the purpose of national security. One notable example is the Anti-Infiltration Act of 2020. This special criminal law prohibits political donations (§3), directly or indirectly, from "foreign hostile forces" (§2), and campaign speech (§4) or lobbying (§5) based on instructions and financing from foreign hostile forces. There are also enhanced penalties for offenses directed or financed by foreign enemies (§§6-7).

Another example is the draft amendment to the National Mobilization Preparation Act proposed by the Department of Defense in 2023. The Act allows the executive branch to regulate the dissemination of news in print, broadcast, and online media (§33), and increases the penalties for inaccurate information (§61) when the President issues an emergency order and conducts a national or localized mobilization (i.e., the Mobilization Implementation Phase). The Bill is currently on hold due to opposition from the opposition party.

The Taiwanese Congress also adopted speech-restrictive laws such as the new Article 319-4 of the Criminal Code in 2023 and the draft Digital Intermediary Services Act proposed in 2022 in response to the damage caused or enhanced by digital and information technology. According to the former, a person who creates, distributes, publicly displays, or sells false images of another person using deep-fake technology sufficient to cause damage to another person shall be punished by a fine or imprisonment of not more than five years. The latter is a step in Taiwan's long history of attempting to regulate online media.

Taiwan's media were tightly controlled during the 38-year military martial law regime (1949-1987), with the government, the then ruling party (KMT), and the military controlling the three wireless television stations. After democratization in the 1990s, the revised Radio and Television Act (1993), the Cable Radio and Television Act (1993), and the Satellite Broadcasting Act (1999) became the main legal framework for media regulation in Taiwan. The social movements of the early 2000s succeeded in pushing the state, political parties, and the military to withdraw from the mass media.

However, even though a draft Digital Communications Broadcasting Act was proposed in 2016, no law in Taiwan specifically regulates online media. In 2022, the National Communications Commission (NCC) proposed the Digital Intermediary Services Act, modeled after the European Union's Digital Services Act (DSA), which distinguishes between different types of Internet services and their regulatory intensity. However, as soon as the draft was proposed, it was criticized by the opposition party (KMT) and public opinion that the law risks restricting online speech. The ruling party (DPP) did not take this opportunity to open a public discussion on Internet governance policy, but quickly shelved the Bill's progress.

II. Non-Legislative Developments

Non-legislative developments related to freedom of expression during 2015-2022 include two events: first, in November 2020, the National Communications Commission (NCC) rejected CTi News' application to renew its broadcasting license⁶⁸⁷ on the grounds that the channel had been fined for repeated breaches of its fact-checking obligations in 2018-2019 and that its internal self-regulatory mechanism had failed. As the incident involved political speech and news channels, it triggered a heated political controversy and a legal debate on balancing journalistic ethics and commercial competition in the Internet age. CTi News became an internet TV channel, broadcasting via YouTube and OTT.

This was followed by the removal of Chinese children's books from public libraries in 2020 and the banning of Chinese apps in 2022. Due to the (verbal and diplomatic) conflict between China and Taiwan since the 1940s, Taiwanese law has adopted a prior authorization system for importing Chinese books, movies, and programs (§37 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area). Since Taiwan's democratization, this law has rarely been strictly enforced in practice. However, as Taiwan-China tensions rise, Taiwanese society has become increasingly wary of Chinese military intimidation and cultural penetration. Against this backdrop, the discovery in 2020 of a public library's display of books promoting China's COVID measures, and the Chinese military, sparked renewed debate over whether and how to restrict Chinese political propaganda. The same debate happened again as the Ministry of Digital Development announced in 2022 that TikTok and Xiaohongshu are "products that endanger national information and communication security," prohibiting civil servants and official agencies from downloading these apps.

III. Enforcement

When thinking about enforcement, it is necessary to consider both decisions of the Taiwan Constitutional Court and Taiwanese court decisions more generally. In constitutional decisions involving freedom of speech, the Judicial Yuan/TCC has repeatedly adopted the two-tracks theory originating from the U.S. in Interpretation No. 734 of 2015 (involving the placement of illegal billboards) and Interpretation No. 806 of 2021 (involving the license system and place restrictions for street performances), Grand Justices argued that content-based restrictions should be subject to strict scrutiny, while restrictions on the time, place, and manner of speech should be subject to moderate scrutiny. Notably, in Interpretation No. 794 in 2020, which deals with tobacco companies' real-name sponsorship, Grand Justices appear to be willing to reduce the level of protection for commercial speech by tobacco companies. In Judgment 111-Hsien-Pan-2, filed in 2022, the TCC partially overturned its 2009 precedent of J.Y. Interpretation No. 656, and declared court-ordered apologies unconstitutional. The TCC opined that compelled

⁶⁸⁷ <https://www.taipeitimes.com/News/front/archives/2020/11/19/2003747178>

public apologies violate the speaker's high-valued freedom of thought and freedom not to speak and cannot survive the strict scrutiny. Also, regarding prior restraint of speech, Grand Justices' 2017 Interpretation No. 744 seemed to adopt the strict "direct, immediate, and irreparable harms test"⁶⁸⁸ as the scrutiny standard on the regulation of prior restraint, but a few months later, Interpretation No. 756 (involving speech of prisoners) again relaxed the scrutiny standard for prior restraint of speech.

At the level of general court decisions, it is worth observing the decisions made during the COVID-19 pandemic. In 2020, the Taiwanese Congress passed the COVID-19 Special Act, which gives broad authorization to the Central Epidemic Command Center (CECC) to enforce pandemic control policies (§7). During the period of Level-3 Alert from May 19, 2022, to July 27, 2022, the CECC imposed a ban on outdoor social gatherings of more than ten people. However, few court cases have been related to this issue, with decisions mostly related to administrative penalties for disobeying the social gathering ban.

Regarding COVID-19-related disinformation, the government usually invokes the "Social Order Maintenance Act," "Communicable Disease Control Act," and the COVID-19 Special Act. Statistics show that when false information is related to COVID-19, the rate of being sanctioned is higher.⁶⁸⁹

Conclusion

While the Judicial Yuan/Taiwan Constitutional Court repeatedly affirmed the pro-speech two-tracks theory, the Taiwanese Congress maintained criminal and administrative speech penalties during 2015-2022. The types of speech penalized have not been increased, but the upper limits of penalties have been raised in general.

Although the 2014 Sunflower Movement directly contributed to the pro-independence Democratic Progressive Party (DPP) winning the 2016 presidential election, the parliament did not abolish the requirement for prior permission for outdoor assemblies and demonstrations. It is worth noting that since 2019, with the increasingly serious military threat from China and the outbreak of the 2022 war in Ukraine, Taiwan has increased its control over "Chinese influence" in legislative and administrative actions.

Regarding internet speech regulation, Taiwan's Congress has not created any criminal or administrative laws that solely target speech online. However, the amendments to the Criminal Code in 2019 and 2020, which increase penalties for illegal speech, apply to offline and online speech. As for the legal liability of internet intermediaries, particularly social media platforms,

⁶⁸⁸ <https://www.law.cornell.edu/supremecourt/text/403/713>

⁶⁸⁹ Chun-Yuan Lin, 'Misinformation, Disinformation and the Courts' Response in Taiwan: An Analysis of the Social Order Maintenance Act Cases from 2007 to July 2020', 31 *Academia Sinica Law Journal* 255, pp. 398-302 (2022)

the Taiwan Congress proposed a Digital Service Intermediary Law in 2022 based on the EU model. However, the law has not been passed due to social controversy. In this context, it is worth considering content removal requests made by the government to social media platforms. Meta did not provide data on content removal requests made by the Taiwan government in its transparency report.⁶⁹⁰ According to Twitter's transparency report, the Taiwan government has made 95 removal requests to Twitter from January 2021 to December 2021, with an average compliance rate of 27.4%.⁶⁹¹ Since 2011, the Taiwan government (and courts) has filed 1,067 removal requests against Google, mostly for reasons of privacy, defamation, election law, control of goods and services, and copyright.⁶⁹²

In regulating and enforcing speech controls during the COVID-19 pandemic, Congress clearly gave the executive branch a broad mandate, and administrative authorities consequently placed severe restrictions on indoor gatherings and outdoor assemblies. Notably, the courts have also been more inclined to penalize false speech about COVID-19 with fines.

In summary, Taiwan's speech restriction laws between 2015 and 2022 have generally maintained the status quo. Penalties are generally increased, but not significantly expanded. It is worth noting that "national security" and the "China factor" will likely be important issues in the coming years. In addition, online speech governance will continue to be a major point of contention based on Taiwan's authoritarian history and the rapid development of the Internet ecosystem.

⁶⁹⁰ <https://transparency.fb.com/data/content-restrictions/country/TW/>

⁶⁹¹ <https://transparency.twitter.com/en/reports/countries/tw.html>

⁶⁹² https://transparencyreport.google.com/government-removals/government-requests/TW?lu=country_breakdown&country_request_amount=group_by:requestors&country_item_amount=group_by:reasons&country_breakdown=period:2015H1