



COSTA RICA

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Country Summary

While ranking well in global human rights indexes, Costa Rica has issued several speech restrictive laws between 2015 and 2022: one law issued during Covid punishes defiling and disrespecting the flag, coat of arms, or national symbols. One law sought to prevent, sanction, and eradicate violence against women in politics, and used extremely broad and vague terms to criminalize speech that would harm “the reputation, prestige, and public image to hinder the free exercise of political rights” and actions carried out “with the aim of undermining the political exercise of a woman or group of women by disqualifying them or reducing them to a subordinate condition based on gender.” Another law amending the Labor Code toughens the requirements to consider strikes legal and limits the right to strike in “essential” public services and restricts possibilities for workers to protest labor policies.

Introduction

Costa Rica is one of the most stable democracies in Latin America. Praised for its institutional culture, the country often ranks well in democracy and rule-of-law indexes around the globe.¹⁵¹ In the Freedom House index, Costa Rica has consistently scored 90-91 between 2015 and 2022, making it one of the top-ranked countries in Latin America. It does, however, have a handful of laws that can be found problematic from a freedom of expression standpoint. Freedom of expression is protected in Costa Rica's Political Constitution. Specifically, Article 29 states that everyone can communicate their thoughts orally or in writing and publish them without prior censorship; but they will be responsible for the abuses they commit in the exercise of this right, in the cases and in the manner established by law.

I. Legislation

Law No. 10178 – The Flag

Law No. 10.178¹⁵² regulates the use of the *pabellón* or *bandera* (both synonyms of flag), and coat of arms of the Republic. Enacted on April 25, 2022, the law is a typical example of national regulations seeking to defend national symbols from being defaced. In its first paragraph, the law states that the flag “will always be used with respect towards the country and should never be defiled, disparaged, trampled, mistreated, or in any other way disrespected.” It may not have slogans placed on it, be dragged on the ground, or even touch the ground. According to the regulation, when it is used, it will always occupy a prominent, visible, and honorable place. Article 20 prohibits the display of national symbols in poor conditions or with any other sign that shows contempt for these patriotic symbols. Article 21 also prohibits their use as a trademark or political badge. Article 22 of the Criminal Code¹⁵³ was reformed, imposing a penalty of imprisonment for one month to two years and a fine of thirty to ninety days on anyone who publicly disparages or vilifies the *pabellón*, the *bandera*, coat of arms, or national anthem.

Law. No 10.236 – Women

Law No. 10.236¹⁵⁴ was sanctioned by the Legislative Assembly of Costa Rica on May 3, 2022. According to its first article, the law seeks to prevent, address, sanction, and eradicate violence

¹⁵¹ <https://freedomhouse.org/country/costa-rica>

¹⁵² http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC¶m2=12&nValor1=1&nValor2=96896&nValor3=130039&strTipM=TC&lResultado=117&nValor4=1&strSelect=sel&cmd=redirect&arubalp=12345

¹⁵³ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=5027

¹⁵⁴ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC¶m2=11&nValor1=1&nValor2=96947&nValor3=130207&strTipM=TC&lResultado=106&nValor4=1&strSelect=sel

against women in politics as a discriminatory practice based on gender, which is contrary to the effective exercise of women's political rights.

The law defines violence against women in politics in several ways. These include disclosing or revealing private information that "undermine ... her credibility or political capacity based on her gender, through insults, shouting, threats, humiliating epithets, and mockery in private or in public," attack women based on their gender, through comments, gestures, epithets, or other sexual connotations, in private or in public, including virtual media, that affect the exercise of their political rights; use language, images, symbols, or electoral propaganda that reproduce stereotypes and traditional roles with the aim of undermining the political exercise of a woman or group of women by disqualifying them or reducing them to a subordinate condition based on gender. Chapter VIII establishes various political, ethical, and administrative sanctions for those who perpetrate violence against women in politics. And, finally, Chapter VII introduces a series of reforms to other laws. In the case of the Electoral Code, a third paragraph is added to Article 136 concerning propaganda. It is stated that all propaganda against the political rights of women and any promotion of hatred based on gender or sex that incites violence against women in political life, or any similar illegal action against women or a group of women participating in political life, on the grounds of sex or gender, is prohibited.

This is an important topic that deserves careful consideration. Violence against women in social media is worrisome in and of itself,¹⁵⁵ but also because of the chilling effect it may have on a collective that has been traditionally discriminated against. However, legislatures seeking to fight online violence against women in politics should do so in ways that are respectful of human rights standards.

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has acknowledged that as misogyny spreads on social media platforms, there is a growing demand to ban or criminalize hate speech based on gender and other harmful and offensive discourses. But the topic must be approached cautiously to avoid the risk of censoring legitimate speech.¹⁵⁶ In that sense, protecting women who participate in politics from vitriolic attacks clashes with the principle according to which expression, information, ideas, and opinions about public officials in the performance of their duties and about candidates for public office enjoy a special level of protection under the American Convention.

One of the most problematic sides of the law is its use of broad and vague language that fails to pass the legality analysis of the three-prong test. This is the case for Article 4.a.4., as it talks about the act of "harming the reputation, prestige, and public image to hinder the free exercise of political rights" as being a form of violence against women, as well as Article 5, sections h,

¹⁵⁵ https://www.unwomen.org/sites/default/files/2022-10/Accelerating-efforts-to-tackle-online-and-technology-facilitated-violence-against-women-and-girls-en_0.pdf

¹⁵⁶ <http://www.cidh.org/pdf%20files/marco%20juridico%20interamericano%20estandares.pdf>

j, k and m. Furthermore, the incorporation of the assessment of a subjective element in the legislation is problematic. For example, in Article 2, subsections *h* and *m*, the law reproaches actions carried out “in order to limit or nullify their political rights by damaging their reputation, prestige, or public image” or “with the aim of undermining the political exercise of a woman or group of women by disqualifying them or reducing them to a subordinate condition based on gender”. It is easy to imagine different examples that would show that these broad and vague definitions will be hard to administer. To distinguish acts that constitute valid criticism from illegal discrimination will be hard, and the law—through its broad wording—will not help enforcers in that task.

Law 9808 - Unions

Through Law No. 9808,¹⁵⁷ Congress modified the Labor Code in ways that include various direct and indirect restrictions on the rights of unions and their members to exercise their rights to association, freedom of peaceful assembly, and expression through the exercise of their labor rights, particularly the right to strike. The law strengthens the requirements to consider strikes legal and limits the possibilities of workers protesting public policies. The law also limits the right to strike in “essential” public services (Article 376).

This law presents problematic elements in light of international standards on freedom of expression, freedom of association, and freedom of peaceful assembly, with regards to labor rights. The relationship between these rights is evident, as the protection of those who participate in peaceful assemblies is only possible when their rights related to political freedoms, particularly freedom of expression, are protected. In this sense, a strike is a form of peaceful assembly, and without proper protection of their rights to assembly and association, workers have little power to change the conditions that perpetuate poverty, fuel inequality, and limit democracy.¹⁵⁸

The law suffers from some ambiguities. For instance, Article 371 does not clarify what is meant by a ‘political strike,’ which the law deems illegal. Additionally, the law, in Article 661 bis, imposes temporal limitations on the right to strike in the context of non-essential services when it causes “severe damage to the public that is difficult or impossible to repair.” However, this concept is not specified, allowing for significant judicial discretion to declare the suspension of the strike.

As the tripartite test establishes, the restriction must also be necessary to achieve the compelling purposes being pursued. This means that there must be a clear and compelling necessity to impose the limitation, without any other less restrictive means available. The law makes a handful of strict distinctions that fail to allow for the kind of nuance the international

¹⁵⁷http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC¶m2=49&nValor1=1&nValor2=90459&nValor3=119158&strTipM=TC&lResultado=489&nValor4=1&strSelect=sel

¹⁵⁸ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24888>

standards demand. For instance, the prohibition of “political strikes”, or of conducting strikes for the same reasons as a previous strike, impose absolute prohibitions without considering the reasonableness or proportionality of the strike in a specific case. The sacrifice to freedom of expression resulting from the legislative policy on the matter is disproportionate to the benefits obtained through it, thus failing to meet the proportionality criterion established in the tripartite test.

Bill No. 23.184 – Online Content

Finally, Bill No. 23.184¹⁵⁹ was presented in Costa Rica’s Congress in June 2022. The bill shares significant similarities with the European Union Digital Services Act (DSA), which was approved on July 5, 2022. As the bill presented in Chile,¹⁶⁰ it shows an emerging trend of copying European regulation, that may be emerging as a model that Latin American countries will follow. This is problematic for two reasons. First, the DSA is a regional regulation that will change in the process of being implemented by nation states, but in Latin America the DSA is being imitated in ready-to-be-enforced national laws. This is a significant and consequential difference. Second, the DSA was drafted against a backdrop of certain institutional infrastructure of participation and accountability, that in many Latin American countries is lacking.

II. Non-Legislative Developments

From 2015 to 2022 there were no major non-legislative developments concerning freedom of expression.

III. Enforcement

No case-law

Conclusion

Laws that protect national symbols are problematic from a freedom of expression standpoint, especially when they include criminal sanctions. These laws limit freedom of expression by isolating certain symbols from critical readings and usages. On the other hand, the other laws discussed in this report are newer but also usual in many Latin American countries: laws that aim to fight violence against women or those that restrict the right to protest (including to strike in the context of labor and industrial relations) must be subjected to a careful freedom of expression scrutiny, because of the potential for abuse they present. Whilst no legislative or non-legislative developments occurred in the sphere of the press or journalism during the

¹⁵⁹ <https://d1qqtien6gys07.cloudfront.net/wp-content/uploads/2022/06/23184.pdf>

¹⁶⁰ https://www.senado.cl/appsenado/index.php?mo=tramitacion&ac=getDocto&iddocto=15047&tipodoc=mensaje_mocion

time period, it should also be noted that in the case of *Moya Chacón v. Costa Rica*,¹⁶¹ the Inter-American Court of Human Rights found that a civil penalty imposed by Costa Rican judges on two journalists for publishing “inaccurate” information was disproportionate and unnecessary in a democratic society. The case is interesting because it limits civil liability in a way that follows the Court’s long case-law on limiting criminal liability.

¹⁶¹ <https://globalfreedomofexpression.columbia.edu/cases/moya-chacon-v-costa-rica/>