



Uruguay

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Country Summary

Despite a generally amenable environment to freedom of expression, three restrictive laws were passed in Uruguay between 2015 and 2022: one law approved during Covid allows an administrative authority to request the removal of illegal online transmissions of live sporting events without the intervention of judicial authorities and without guarantees for potential affected parties, compromising the right to due process, one Anti-Terrorism law uses overly broad and vague definitions of “acts of a terrorist nature” which could affect civic space and limit the right to freedom of expression, leaving room for discretion that allows for the arrest, imprisonment, and prosecution of peaceful members of civil society organizations and human rights defenders, one law on processing of automated data grants the rights of data subjects to be informed of the criteria for data evaluation and processing but uses conflicting language on the type of information that should be provided to data subjects, while not adequately

safeguarding trade secrets and industrial secrets, a common requirement in international regulations on data protection.

Introduction

Uruguay is one of the most stable democracies in Latin America.⁷⁴⁰ In the Freedom House index, the country consistently scored 97-98 in the period 2015-2022. While it suffered from a military dictatorship between 1973 and 1985, the return of democracy came with a resilient political system, even amidst the economic turmoil often caused by crises in its northern neighbor (Brazil) and towards the south of the Río de la Plata (Argentina). While the Frente Amplio (a left-of-center coalition) ruled the country for three consecutive presidential terms between 2010 and 2020, a right-of-center party won the elections of 2020 and took over. The country's political life changed very little. Generally speaking, it is difficult to find laws that are obviously problematic from a freedom of expression standpoint. But, two pieces of legislation stand out.

I. Legislation

Law 20.075 – Accountability and Balance of Budget Execution

First, the Law 20.075 on Accountability and Balance of Budget Execution for the year 2021⁷⁴¹ was approved on October 18, 2022. The law consists of 530 articles and was a massive political investment by the right-of-center governing coalition. The law introduced new regulations in various areas. On freedom of expression, the regulation on blocking illegal online broadcasting of sporting events is especially noteworthy. Indeed, the law establishes that the Regulatory Unit of Communication Services (URSEC) may request Internet Service Providers (ISPs) to disable real-time access to those illegal transmissions. For this purpose, the rights holders or their representatives must submit a reasoned request to URSEC. Once it is submitted, URSEC may issue precautionary measures to protect the rights, ordering the disabling of access to the illegal online transmissions of live sporting events for the duration of the respective event. Once the precautionary measure is issued, it will be communicated to the ISPs and the rights holders or their representatives.

This is a typical notice and take down system, based on strong deference towards copyright holders. The law clarifies that URSEC should not promote, nor should ISPs execute, the complete blocking of access to a server or website that hosts legal services and content, but only the temporary disabling of access to illegal online transmissions of live sporting events. While the initial bill included a provision limiting liability of ISPs, the guarantees were sacked during the drafting process. What remained was Article 233 of the law, which allows an Administrative Authority to request the removal of content from the Internet without the

⁷⁴⁰ <https://freedomhouse.org/country/uruguay/freedom-world/2022>

⁷⁴¹ <https://infolegislativa.parlamento.gub.uy/htmlstat/pl/leyes/ley20075.pdf>

intervention of judicial authorities and without guarantees for potential affected parties, compromising the right to due process. It also requires ISPs to disable access or remove illegal live online sports streams within 30 minutes of receiving a notification of non-compliance with the precautionary measure provided by URSEC. The article does not indicate what evidence rights holders must present, what factors will be considered for a decision, the possibility for an affected website to present evidence in its favor, or whether these orders are subject to judicial review.

Freedom of expression is protected in Uruguay's Constitution. Specifically, article 29 states that the communication of thoughts by words, private writings or publishing in the press or in any other form of dissemination are free and shall not be subject to prior censorship. The author, printer or issuer will be responsible for the abuses they commit as established by law. While freedom of expression is not an absolute right and may be subject to certain limitations, according to Inter-American jurisprudence, these limitations must adhere to the standards set by the tripartite test to be permissible.⁷⁴² Firstly, the limitation must be clearly and precisely defined through a formal and substantive law. Secondly, the limitation must be aimed at achieving compelling objectives authorized by the American Convention. Finally, the limitation must be necessary in a democratic society to achieve the compelling purposes being pursued, strictly proportional to the intended aim, and suitable to achieve its objective. These conditions must be met simultaneously for the limitations to be legitimate.

Regarding the first requirement, it is important to highlight that it requires the law's text to be as clear and precise as possible in order to prevent legal uncertainty for citizens. In this case, the article has unclear and confusing definitions, and it encompasses too many services, disregarding the diverse nature of internet platforms.⁷⁴³ As the tripartite test establishes, the restriction must 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. When faced with various possible measures, the one that imposes the least restriction on the protected right should be chosen, aiming to ensure the exercise of the right to freedom of expression. The measures taken must also be strictly proportional to the legitimate purpose pursued. However, the proposed text poses a significant risk of blocking incorrect content. It introduces important risks of censoring legal content, affecting rights, and generating possibilities of content blocking in different ways across different networks, resulting in Internet fragmentation. Any request addressed to intermediaries for content moderation must be preceded by an order issued by a court or competent authority that is independent of any undue influence, whether political, commercial, or otherwise. Therefore, the possibility for an Administrative Authority such as the

⁷⁴²http://www.oas.org/es/cidh/expresion/docs/cd/sistema_interamericano_de_derechos_humanos/index_MJIAS.html

⁷⁴³http://www.oas.org/es/cidh/expresion/docs/cd/sistema_interamericano_de_derechos_humanos/index_MJIAS.html

URSEC to request the removal of content from the Internet without the intervention of judicial authorities and without guarantees for potential affected parties, compromising the right to due process, is very problematic.

On the other hand, Law No. 20.075⁷⁴⁴ also modified Law No. 18.331.⁷⁴⁵ It established that, in the case of automated data processing regulated by Article 16 of the law, the criteria for evaluation, applied processes, and technological solution or program used must be disclosed to the affected individuals. The new wording of Article 13 also establishes that when personal data is not collected directly from the data subjects, the relevant information must be provided to them within a period of five business days from the receipt of the request by the data controllers. Failure to comply enables the data subject to take actions. The supervisory authority may establish specific conditions for the permanent advertisement of the information indicated in this article. On the other hand, Article 16 addresses the right to challenge personal assessments and establishes that individuals have the right not to be subjected to a decision with legal effects that significantly affects them, based on automated or non-automated data processing intended to evaluate certain aspects of their personality, such as their work performance, credit, reliability, behavior, among others. According to Article 16, the affected individual has the right to obtain information from the database controller regarding the evaluation criteria and the program used in the processing that led to the decision expressed in the act.

It can be observed that there are discrepancies between the type of information that should be provided according to the two articles, creating legal uncertainty regarding how to interpret both provisions harmoniously. On the other hand, in the wording of Article 13, the protection of trade secrets and industrial secrets is not adequately safeguarded, which is also a common requirement in international regulations on data protection and is extremely relevant for promoting innovation at the national level.

Law No. 19.749 – The Comprehensive Anti-Terrorism Law

Finally, Law No. 19.749⁷⁴⁶ (the Comprehensive Anti-Terrorism Law) was enacted by the Uruguayan Parliament in May 2019. As stated in its first article, its purpose is to implement financial sanctions on individuals or legal entities related to terrorism, the financing of terrorism, and the proliferation of weapons of mass destruction, in accordance with the Resolutions of the United Nations Security Council. As in many countries in the Americas, these types of laws pose risks in terms of the potential to abuse some of the powers these laws codify in ways that restrict freedom of expression.

⁷⁴⁴ <https://www.impo.com.uy/bases/leyes/20075-2022>

⁷⁴⁵ <https://www.impo.com.uy/bases/leyes/18331-2008>

⁷⁴⁶ <https://www.impo.com.uy/bases/leyes/19749-2019>

Of course, the need to prevent the financing of terrorism is an essential aspect of any effective counterterrorism strategy. However, on many occasions these laws have opened the door to the adoption of repressive measures at the national level against the lawful and non-violent activities of civil society.⁷⁴⁷ In this context, many of the international and national measures adopted to combat terrorism financing and criminalize the provision of material support to terrorism have had the indirect effect of restricting the space in which humanitarian non-governmental organizations and human rights defenders can carry out their activities, limiting the right to freedom of expression, freedom of association, and freedom of assembly.

Among the problems of the law, the broad ways in which it defines terrorism poses a problem from the point of view of the Inter-American system three prong test. As highlighted by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms in the fight against terrorism: “the adoption of excessively expansive definitions of terrorism can lead to deliberate distortions of the term. For instance, they may be used to suppress Indigenous peoples’ claims and social movements, as well as unintentionally result in human rights violations. Unclear, imprecise, or overly broad definitions can be weaponized to target civil society, silence human rights defenders, bloggers, and journalists, and criminalize peaceful activities aimed at defending minority rights, religious rights, labor rights, and political rights.”

In this context, the Special Rapporteur also emphasized that “criminalizing actions such as ‘encouraging,’ ‘promoting,’ or ‘supporting’ acts of terrorism, ‘justifying’ or ‘glorifying’ terrorism, as well as ‘inciting’ to commit an act of terrorism, should be appropriately defined. The elements of the criminal offense (*actus reus* and *mens rea*) should be rigorously defined to adhere to the principles of necessity and proportionality. Similarly, the inclusion of phrases such as ‘overthrowing the constitutional order,’ ‘endangering national unity,’ ‘social peace,’ ‘disturbing public order,’ or ‘insulting the reputation of the State or its position,’ without adding other elements constituting serious crimes, such as the use of lethal violence, can have serious consequences on various human rights, including freedom of expression, freedom of association, and freedom of assembly.”

In addition to the previously mentioned standards, when the limits on freedom of expression are established by criminal laws, the inter-American Court of Human Rights has established⁷⁴⁸ that they must satisfy the principle of strict legality: “should the restrictions or limitations be of a criminal nature, it is also necessary to strictly meet the requirements of the criminal definition in order to adhere to the *nullum crimen nulla poena sine lege praevia* principle.” Laws must use strict and unequivocal terms, clearly restricting any punishable behaviors, including a clear definition of the incriminated behavior, setting its elements and defining the

⁷⁴⁷<https://www.amnesty.org/en/latest/news/2018/05/chile-autoridades-deben-dejar-de-criminalizar-personas-mapuches-a-traves-de-ley-antiterrorista/>

⁷⁴⁸ <https://globalfreedomofexpression.columbia.edu/cases/uson-ramirez-v-venezuela/>

behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures.

When analyzing Article 14 of the law, special attention should be given to the new elements added in the second part of the first paragraph to the definition of “acts of a terrorist nature”. Particularly problematic is the inclusion of the phrase “This definition also includes any act intended to provoke a state of terror or widespread fear in part of the population.” This wording is vague and ambiguous, which can lead to overreach and impact the legitimate exercise of rights such as freedom of expression, freedom of assembly and association, as well as the right to protest, under the argument that these social expressions generate “widespread fear in part of the population.”

The use of these overly broad definitions of terrorism narrows and affects civic space, as well as the right to freedom of expression, creating room for discretion that allows for the arrest, imprisonment, and prosecution of peaceful members of civil society organizations.

II. Non-Legislative Developments

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

III. Enforcements

From 2015 to 2022 there were no major enforcement developments concerning freedom of expression.

Conclusion

Any notice and take down system must be mindful of the potential of it being abused: those whose rights are *a priori* recognized in these systems have the capacity of invoking that presumption broadly, in ways not necessarily desired by the regulation. Hence, these systems must include specific safeguards that will prevent those abuses from happening. On the other hand, anti-terrorism legislation must include specific guarantees against the possibility of abuse by those in charge of enforcing. Sadly, in Latin America there are important precedents that show how this kind of legislation can be used to harass civil society.