



Examining Internet Freedom in Latin America (EXLILA)

Country report: Costa Rica

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1. Executive summary

Costa Rica has laws that recognise and protect the following rights: privacy, freedom of expression, honour, freedom of conscience, religion, association and assembly, and non-discrimination. The laws are backed up by national doctrine and jurisprudence, that is, judicial literature and sentences that recognise and mould an environment for the protection of these rights.

Most of these rights are regulated by general norms, that is, laws or regulations that modulate the scope and limitations of these rights in general terms, independently of the medium used. For the present report what is of interest is the “medium of the internet” or the protection of these rights on the internet. Costa Rican laws are sufficiently flexible to allow judges and other members of the legal profession to apply them in the digital context. However, there are also rules that have been specifically created to regulate some aspects of interactions on the net.

The state currently has specific initiatives under way to promote respect for some of these rights, through programmes, institutions or legislative initiatives.

Costa Rica has signed and ratified international instruments important for the protection of all these rights in general terms. Protection on the internet is not specifically regulated, but the treaties can be applied to the internet. Furthermore, the Organization of American States (OAS) has produced Joint Declarations¹ on the internet and protection of fundamental rights such as freedom of speech, opinion and thought, and there are also United Nations resolutions on the subject. These non-binding instruments are known as “soft law”.

Although there is legal protection for these rights, it is also true that there are norms that modulate them in certain limiting situations, and these modulations must be specifically authorised by law. Such situations usually arise when there is a conflict between two rights, a classical example being freedom of expression versus the right to honour.

There are no known examples of illegal practices by public or private organisations that infringe these rights online. Neither are there known examples of surveillance by the state in contravention of these rights.

2. Introduction

The protection and recognition of the rights to privacy, honour, religion, association, assembly and non-discrimination, and to freedom of expression and conscience, were established many years ago, before the proliferation of technology and the creation of the internet.

The speed of advances in technology has meant that the law has not been able to keep up, because making laws requires extensive, detailed and careful debate. Thus there are situations that, while relevant to the legal system, have not been fully or satisfactorily regulated.

However, in spite of these difficulties, the general regulations and the protection of these rights in the digital environment have filled the existing legal vacuum, with the aid of interpretations by judges in their resolutions as well as the creativity and advocacy of lawyers.

¹www.oas.org/en/iachr/expression/topics/internet.asp

2.1. Country context

Costa Rica is a country known for its freedoms and for not having an army. It is an independent and democratic country. In order to explain how the laws are enforced, we must give a description of its system of democratic government, which is made up of three branches.

2.1.1. Executive branch

The executive branch is made up of the President of the Republic, the vice-presidents and the government ministers. Article 130 of the Constitution of 1949 makes it clear that the executive is *pluripersonal*, that is, made up several members. The president and vice-presidents are elected simultaneously by a majority of votes, in excess of 40% of the total valid ballots. If this majority is not achieved, a run-off election is held on the first Sunday in April in the same year, between the two candidates with the most votes, the winner being the one obtaining a majority.

The cabinet is composed of 19 ministries.

2.1.2. Legislative branch

The legislature comprises a single chamber. The power to legislate resides in the people, who delegate this power by means of suffrage to the Legislative Assembly (formerly called the Constitutional Congress).

The Legislative Assembly is made up of 57 representatives designated for four years to represent the seven provinces of the country. They are elected on the same day as the presidential elections. Representatives may be re-elected, but not in successive terms.

Some of the functions of the Legislative Assembly are to enact, reform and repeal laws (this is what concerns the present report); determine the budget of the republic; impose taxes; approve international conventions and public treaties; appoint the Assembly president and directorate for one year; appoint Supreme Court justices; and give or withhold consent for the entry of foreign troops into the national territory.

2.1.3. Judicial branch

The judicial branch has the mission of punishing offenders against the laws and to administer justice among citizens. The Supreme Court is the highest court of the judicial branch and is made up of 22 justices, elected by the Legislative Assembly for an eight-year term. Its functions are completely independent from the other powers. The Judicial Police (OIJ), the Office of the Public Prosecutor and the Supreme Court are accountable to the judicial branch, as are other courts, officials and employees of the justice system.

The judicial branch is organised in three areas that depend on the Supreme Court, from the administration of justice to the work of all its employees. These areas are: judicial, auxiliary and administrative.

The different courts, known as chambers, administer justice on certain specific problems. Only issues of major importance reach them, and they make the final decisions. Chambers I, II and III have five judges each and the Constitutional Court has seven.

- Chamber I deals with all issues related to goods of economic value (houses, land, loans, etc.)
- Chamber II deals with labour conflicts (dismissals, vacations, etc.) and also family issues (marriages, divorces, etc.)
- Chamber III rules on all criminal matters (fraud, robbery, homicide, assault, etc.)
- The Constitutional Court safeguards strict respect for the Constitution.

The ranking order in the Judicial Branch is as follows:

- Supreme Court
- Chambers I, II and III and the Constitutional Court
- Appeals Court
- Higher Courts
- Mayor's offices.

2.1.4. Office of the Comptroller General of the Republic

The Office of the Comptroller General is an auxiliary institution of the Legislative Assembly for the oversight of public finances. Its work is completely independent.

The General Law on Telecommunications No. 8660 establishes mechanisms for the regulation of telecommunications and associated services. The Law creates the telecommunications sector and sets forth the three roles of the state, as governing body, regulator and operator.

The Ministry of Science, Technology and Telecommunications (MICITT) is made up of two vice-ministries: the Vice-Ministry of Science and Technology, covering the promotion of research, use of digital technology and application of innovations among the academic, government and business sectors; and the Vice-Ministry of Telecommunications, in charge of proposing telecommunications policies and the country's digital agenda. It also manages the radio-electric spectrum, coordinates the development of the National Telecommunications Development Plan, and has the mission of "ensuring that telecommunications shall be a central force for fostering sustainable human development in an environment of inclusion and solidarity in accordance with the declarations of the World Summit on the Information Society."

In addition to the state, the Vice-Ministry of Telecommunications involves the Ministry of Environment, Energy and Telecommunications (MINAET), the Superintendency of Telecommunications (SUTEL) and public and private operators.

The Constitution, the Criminal Code, Civil Code and Codes of Criminal Procedure, the Law on Search, Seizure and Examination of Private Documents and Interception of Communications, the Law on Transparency and Access to Public Information, and the Law of Constitutional Jurisdiction, as well as the ratification of international treaties like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man provide the general regulatory framework for these issues, without prejudice to the later regulations created to deal with the new needs arising from technological advances.

2.1.5. Gag law

The Law on Cyber Crimes No. 9048, a bill presented to the Legislative Branch in 2012, was in violation of Article 13 of the American Convention and of the freedom of expression guaranteed under the Constitution.

The bill proposed prison sentences for publication, on any medium, of “secret political information,” for unauthorised alteration of images, and for storage of information about physical or juridical persons on computer systems or networks, online, or in electronic, optical or magnetic formats.

The government of Costa Rica faced harsh criticism of the so-called “gag law” which, in the framework of the fight against cyber crime, provided prison sentences for “wrongfully” obtaining confidential political information, affecting not only the media but also any citizen wishing to make a political denunciation.

The reforms to the Law on Cyber Crime in the Criminal Code were a threat to persons in the media exercising oversight of government transparency.

3. General regulatory framework

The most important regulations on the internet in the country are given below, related to the rights indicated in the sections above.

3.1. Right to privacy

The right to privacy on the internet and legal protection of personal data is supported by the following regulations:

- Constitution of Costa Rica
- Law of Protection of Individuals with regard to the Processing of Personal Data
- Regulations of the above law
- Criminal Code
- Regulations on the Regime of Protection of the Final User of Telecommunications Services
- General Law on Telecommunications
- Regulations on Measures for the Protection of Privacy of Communications
- General Law on Public Administration.

In addition, bills are being prepared to promote the right to privacy.

It is important to stress that the processing of personal data revealing racial or ethnic origin, political opinions, or religious, philosophical or spiritual convictions is prohibited, as well as data on health and sexual orientation. However, Article 9 of Law No. 8986 (Protection of Individuals with regard to the Processing of Personal Data) mentions four exceptions to the prohibition against processing sensitive information.

Internet service providers (ISPs) have the duty to ensure data is safeguarded in accordance with the Regulations on Measures to Protect the Privacy of Communications. According to these regulations all data must be treated as confidential and may not be made public or handed over to any physical or juridical person without the express authorisation of the subscriber or their representative; or under a

warrant complying with current legislation. They must be saved only for the necessary time period and then processed to make them anonymous.

3.2. Right to freedom of expression

Costa Rican legislation lacks specific laws on freedom of expression on the internet, but the general legislation on freedom of expression is completely applicable to freedom of expression on the internet.

There are no concrete regulations restricting freedom of expression; however, under the general legislation, the exercise of freedom of expression must respect the rights of third parties, and may come into conflict with the right to privacy and the protection of honour of other persons.

The bill called the "gag law", promoted by MICITT, was one of the legislative initiatives with a negative impact on freedom of expression. The strong opposition it aroused led to its eventually being discarded. The text of the new draft of the bill is not yet known.

Later on, the Law on Cyber Crime was also called a gag law by some sectors. This law was approved, and contained provisions that infringed freedom of information, expression and the press. The Constitutional Court ruled it unconstitutional and these provisions were eliminated. Although the original law contained some articles that the press interpreted as violating the right of access to information, in fact these concepts already existed in the national legislation. The reform was approved, which is why we have articles that protect us from cases of cyber crime. What is clear is that none of the cyber crimes included in the reformed Criminal Code violate constitutional rights.

One of the legal and/or administrative regulations on filtering of content by ISPs in Costa Rica is linked to the Law on Protection of Children and Adolescents from Harmful Content on the Internet and other Electronic Media.

Meanwhile, the government does not promote cyber attacks or illegal or extrajudicial practices against individuals expressing themselves online, as far as is publicly known to civil society.

3.3. Right to honour

At the national level there is a law regulating the right to honour in terms of the internet, the so-called Law on Examination of Private Documents and Interception of Communications. This is applied to any violation of electronic communications, such as: revealing secrets or violating someone's privacy, or without their consent to take possession of, access, modify, alter, suppress, interfere with, intercept, distribute, use or misdirect messages, data and images contained in electronic, digital, magnetic and telematic formats.

On defamation, Article 146 of the Criminal Code states the following:

The person who dishonours another or who spreads rumours or news of a kind that will affect his reputation, shall be punished with a fine equivalent to 20 to 60 days. This is applicable equally to the digital environment as to the physical.

Meanwhile, Article 196 refers to violations of communications and correspondence, and 196bis to violations of personal data.

3.4. Right to freedom of conscience and religion

Article 75 of the Constitution establishes the Roman Catholic apostolic faith as the state religion, to which the state contributes support, without preventing the free exercise in the country of other religions that are not opposed to universal morality and good customs. These general regulations are entirely applicable to freedom of conscience and religion on the internet.

In the last five years no prohibitions of free expression of a religion on the internet have come to public knowledge, either through the closing of social network profiles or persecution of events organised on the internet. Neither have any legal or illegal practices come to light that have affected the exercise of this right.

3.5. Right of association

Article 25 of the Constitution enshrines freedom of association for legal purposes. There is no law that specifically regulates the right to association on the internet. There have been no known examples of legal or illegal practices that have affected the exercise of this right on the internet.

3.6. Right to assembly

According to Article 26 of the Constitution, all persons have the right to peaceful assembly. There are no specific regulations for the exercise of this right on the internet. In the last five years, there have been no cases of repression or prevention of the exercise of freedom of assembly through the internet.

3.7. Right to non-discrimination

At present the country is considering bills to declare the right to the internet a fundamental right. Programmes exist to open free points of access to the internet in public spaces.

The National Telecommunications Fund (FONATEL) has as its aim the expansion of coverage of telephone and internet services to areas and communities that still lack services, and so to promote universal access. FONATEL provides free internet services to Integrated Basic Health Care Teams (EBAIS), community centres, and public schools and colleges. It also makes available to residents of these communities the services they wish to use and have not been able to before because there were no local companies offering them.

There are plans to increase free points of access to the internet for the community through the Radiografía Costarricense S.A. (RACSA) programme for free internet access, providing free internet in over 50 locations in the country: parks, schools, libraries, shopping malls, and others. The programme has been in progress since 2007, and the aim is to expand it to the entire national territory.

National legislation has a law on telecommunications and an agency – the Superintendency of Telecommunications (SUTEL) – in charge of regulating internet service tariffs.

In the last five years there have been judicial verdicts that have declared access to the internet essential for the enjoyment of other rights, however, not for economic reasons but for lack of service provision or coverage.

Linked to ICT in the educational environment, the Law to promote Scientific and Technological Development seeks to promote innovation, development and training in technologies at the national level.

4. Problematic cases

4.1. Relevant news stories

- Torres, J. (2015, 18 September). NIC.cr advierte "doble moral" si Gobierno bloquea Uber. *CRHoy.com*. www.crhoy.com/nic-cr-advierte-doble-moral-si-gobierno-bloquea-uber
- Entorno inteligente. (2015, 18 September). Costa Rica: CCSS instala controles para bloquear ataques cibernéticos y hackeos. *Entorno inteligente*. www.entornointeligente.com/articulo/6989395/COSTA-RICA-CCSS-instala-controles-para-bloquear-ataques-ciberneacute;ticos-y-hackeos-17092015
- Chacón, K. (2015, 14 July). Detienen a universitario buscado por el FBI por delitos informáticos. *La Nación*. www.nacion.com/m/sucesos/poder-judicial/Universitario-FBI-informaticos-detenido-Heredia_0_1499650090.html

No further information was found on the internet about news stories on non-judicial problematic cases.

4.2. Relevant verdicts with discussion of rights and freedoms on the internet

There are an enormous number of verdicts that discuss rights and freedoms on the internet, whether as the central or a tangential topic. Below are relevant extracts of sentences representative of some important issues:

Verdict: 00235 Case: 13-000052-0016-PE

Date: 13/02/2015

Issued by: Criminal Sentence Appeals Court, II Circuit, San José²

Revocation of acquittal in a case of a lawsuit for defamatory publication on the social network Facebook, due to erroneous legal argument.

Analysis in relation to the right to honour of public officials.

Doctrine of the "preferential position" of the right to information.

Verdict: 11855 Case: 14-010805-0007-CO

Date: 18/07/2014

Issued by: Constitutional Court³

- Freedom of expression: Facebook

²jurisprudencia.poder-judicial.go.cr/SCIJ_PJ/busqueda/jurisprudencia/jur_Documento.aspx?param1=Detalle_Sentencia¶m2=1&nValor1=1&nValor2=624910&nValor3=152982&tem1=Libertad%20de%20expresi%C3%B3n&strTipM=E2&lResultado=3&strTem=ReTem

³jurisprudencia.poder-judicial.go.cr/SCIJ_PJ/busqueda/jurisprudencia/jur_Documento.aspx?param1=Detalle_Sentencia¶m2=1&nValor1=1&nValor2=647534&nValor3=154368&tem1=Libertad%20de%20expresi%C3%B3n,Derecho%20a%20la%20informaci%C3%B3n&strTipM=E1&lResultad

- Electronic communications: transactions by email.

Verdict: 03876 Case: 14-002295-0007-CO

Date: 19/03/2014

Issued by: Constitutional Court⁴

- Freedom of expression: Facebook.

Verdict: 00789 Case: 10-020456-0042-PE

Date: 25/04/2012

Issued by: Criminal Sentence Appeals Court, II Circuit, San José⁵

Evaluation of criminal evidence: Impossibility of establishing the authenticity of accounts on social networks or of emails.

Electronic communications.

Verdict: 00789 Case: 10-020456-0042-PE

Date: 25/04/2012

Issued by: Criminal Sentence Appeals Court, II Circuit, San José

Impossibility of establishing the authenticity of accounts on social networks or of emails.

This evidence is rejected as it is not possible to establish its authenticity. There is no security system that guarantees that an account on the social network or an email account belongs to a given person, nor is there a way to verify that the documentation provided comes from a reliable and trustworthy source. Neither is there any way of verifying that it is the printed version of an email received from the domain of an email server, and there is no clarity about the way in which the email that was supposedly received, was sent, and who obtained it, given the institutional restrictions in the Costa Rican prison system for internet access and access to social networks and email accounts. Therefore, in the absence of guarantees of the trustworthiness of the content and its source, the evidence is deemed inadmissible.

Verdict: 00568 Case: 14-000022-1037-PJ

Date: 10/12/2014

Issued by: Juvenile Criminal Sentence Appeals Court, II Circuit, San José⁶

⁴jurisprudencia.poder-judicial.go.cr/SCIJ_PJ/busqueda/jurisprudencia/jur_Documento.aspx?param1=Detalle_Sentencia¶m2=1&nValor1=1&nValor2=605382&nValor3=154176&tem1=Libertad%20de%20expresi%C3%B3n,Derecho%20a%20la%20informaci%C3%B3n%20-%20facebook&strTi

⁵jurisprudencia.poder-judicial.go.cr/SCIJ_PJ/busqueda/jurisprudencia/jur_Documento.aspx?param1=Detalle_Sentencia¶m2=1&nValor1=1&nValor2=538866&nValor3=147089&tem1=Comunicaci%C3%B3n%20por%20medios%20electr%C3%B3nicos&strTipM=E1&lResultado=5&strTem=ReTe

⁶jurisprudencia.poder-judicial.go.cr/SCIJ_PJ/busqueda/jurisprudencia/jur_Documento.aspx?param1=Detalle_Sentencia&nValor1=1&strTipM=E1&nValor2=624427&pgn=TES&nTermino=2796&nTesouro=5&tem

- Validity of evidence obtained from a public profile on the social network Facebook.

The plaintiffs claim photographs from the Facebook profile of adult co-defendant Tony Calderón were illegally posted, in that the procedure established in the Law on Interception of Communications had not been followed. However, they are disregarding the nature of a social network like Facebook... When individuals renounce their privacy and exhibit their actions, lives, habits, thoughts and so on voluntarily and without limitations on social networks that are publicly accessible without restriction, these particular individuals renounce this particular form of protection.

Verdict: 00282 Case: 07-001258-0163-CA

Date: 24/06/2010

Issued by: Dispute Tribunal, Section II

Right to privacy:

- Scope of the principle of self-determination of information and control of personal data.
- Withdrawal of information from the internet bears no influence on the setting of moral damages.

The right to privacy has an active phase composed of the principle of self-determination of information and control of personal data, implying the legal power to exclude the activity of another person which constitutes imposition, meddling, interfering or disturbing the private affairs of an individual and to prevent the disclosure of information that is not of public interest. It is an essential right of the individual that is non-transferable, unalienable, and does not expire. In order to determine the amount of indemnity for this damage, it is irrelevant whether or not the co-defendant Aludel Limitada withdrew the information when notified of the appeal; the harm is done in one day, months or years.

Access to the internet as a fundamental right:

The Constitutional Court declared access to the internet to be a fundamental right of citizens. According to the Constitutional Court, access to technologies like the internet is a basic condition for enabling the exercise of people's fundamental rights. The Court charged the State with the duty of promoting and guaranteeing universal access of citizens to the new technologies.⁷

Company/employee emails:

Jurisprudence has determined that a company's email can be inspected by the employer, as it is a work tool that in principle should not be used for personal communications.

[4=TODO&lResultado=50&tem2=0&tem3=0&nValor3=153464&tem1=¶m7=0&str](#)

⁷Agüero, M. (2015, 9 September). Acceso a internet es un derecho fundamental. *La Nación*. wfnnode01.nacion.com/2010-09-08/EIPais/NotasSecundarias/EIPais2514038.aspx

The Prosecutor General's Office issued Legal Opinion No. OJ-169-2004 of 9 December, 2004; Verdict: 00917 Case: 10-001438-0166-LA, Date: 09/08/2013. Issued by: Chamber II of the Supreme Court; Verdict: 00485 Case: 11-300005-0217-LA, Date: 17/11/2014. Issued by: Labour Court, Section III; Verdict: 00599 Case: 10-001337-0166-LA, Date: 05/06/2013. Issued by Chamber II of the Supreme Court; Verdict: 06571 Case: 10-012160-0007-CO, Date: 20/05/2011. Issued by: Constitutional Court; Verdict: 10693 Case: 07-004269-0007-CO, Date: 27/07/2007. Issued by: Constitutional Court.

5. Conclusions and recommendations

Costa Rica has a general legislative framework that protects – in general terms – the fundamental freedoms and rights of persons, no matter where these are exercised, including of course on the internet. There is therefore a framework of protection of rights and freedoms on the internet through the enforcement and interpretation of current laws, and in recent years, through the enactment of new laws and regulations more specific to the digital environment.

This general legislative framework clearly covers the need for legal protection; however, the most important question to ask in the face of imminent technological advances is this: Is the current legislation sufficient? Does it cover every possible area? Will it protect citizens against future threats? To which the answer must be No, especially when we realise that activity in cyberspace knows no territorial borders or limits. This makes it even more urgent for countries to work together towards a common goal, with common rules that can unify procedures and regulations in different regions.

Efforts have already been made by international intergovernmental bodies. There are joint declarations by the OAS, UN resolutions, etc. However, it would be naive not to admit that these efforts create, at most, "soft law", that is, non-binding rules and principles. This is not to disparage the efforts and achievements attained, because this soft law is the first step of the way countries must travel.

Respect for human rights is the cornerstone of democracies. Therefore, it is urgent to invest resources in investigating potential vulnerabilities arising from technological advances, and to enact new laws.

The guiding principles that should shape these efforts are access, pluralism, non-discrimination, privacy, neutrality and network monitoring. Particular care should be taken in regard to "filtering and blocking of websites", as well as the powers and duties accorded to intermediaries (ISPs).

Dialogue between countries about recognition of human rights on the internet must continue, in order to eliminate the digital divide, provide needed protection, and promote education and access.

It is important to include in this report the fact that Costa Rica has been invited to join the Convention on Cybercrime (Budapest Convention), but to date this has not been approved, although it has been on several legislative agendas. Its approval would help to generate greater international cooperation on cyber crime and the protection of privacy and personal data, to the benefit of citizens of Costa Rica.

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