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Chile:
Bill on Environmental Crimes and Damage

The bill that, among others, seeks to criminally punish conducts that seriously threaten the environment, entered the National Congress on January 22 of this year.

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Chile:
Proyecto de Ley sobre Delitos y Daños Ambientales

El 22 de enero del año en curso, ingresó al Congreso Nacional el proyecto de ley que, entre otros, busca sancionar penalmente las conductas que atentan gravemente contra el medioambiente.

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Chile:
Bill on Environmental Crimes and Damage

Estudio Jurídico Otero
Chile

The bill that, among others, seeks to criminally punish conducts that seriously threaten the environment, entered the National Congress on January 22 of this year.

Currently, our legal system has opted to punish or sanction administratively the conducts that affect and harm the environment, without contemplating a general legislation criminalizing this kind of conduct, without prejudice to some laws that consider some specific types such as, for instance, the Nuclear Safety Law, Hunting Law, the Law on Extended Producer Responsibility, Law on National Monuments, etc.

It is for that reason that the government deemed necessary to have legislation that criminalizes certain serious conducts that damage or may damage the environment and, at the same time, reinforces compliance with administrative rules in environmental matters.

The main objectives of this bill are:

- Strengthening the prevention of situations that may seriously affect our environment

  To strengthen the prevention of actions that may seriously affect the environment, the bill criminalizes certain conducts that cause damage to it.

  In this regard and in order to enhance the role of the environmental courts, the bill sets as a requirement to exercise environmental criminal action that the environmental court has to determine in a final judgment the existence and nature of the damage caused and decree the measures necessary for its reparation.

  Once the aforementioned judgment determining the damage and the measures necessary for its reparation, it is the exclusive responsibility of the Superintendence of the Environment (Superintendencia de Medioambiente -SMA) to exercise the criminal action. If it does not exercise such action, it must justify its failure to exercise it.

  Corporal punishment is established in the bill for those who have committed some environmental crime,

  - Ordinary imprisonment of a minimum to medium term and a fine of 501 to 700 Monthly Tax Units (approximately between US $36,200 and US $50,600) when a significant loss, decrease, detriment or impairment of the environment has been intentionally caused.
  - If the same damage has been caused only due to imprudence, the penalty will be of ordinary imprisonment of a minimum term and a fine of 100 to 500 Monthly Tax Units (approximately between US $ 7,200 and US $36,100).

    Special mention should be made of the penalties provided for in the case that the object of protection of a national reserve, a national park, a natural monument, a forest reserve, a marine park, a marine reserve, a

protected coastal marine area or a sanctuary of nature are seriously and intentionally affected, ranging from ordinary imprisonment of a medium to maximum term and a fine of 801 to 1000 Monthly Tax Units (approximately between US$ 58,000 and US$ 72,300). If it is only due to an imprudent conduct, the penalty will be of ordinary imprisonment of a medium term and a fine of 701 to 800 Monthly Tax Units (approximately between US$ 50,700 and US$ 57,800).

- **Incorporation of environmental crimes to Law Nº 20.393 on Criminal Liability of Legal Entities**

Environmental crimes are added to Law Nº 20.993 on Criminal Liability of Legal Entities, with the purpose of incorporating to their model of crime prevention, at least, the following aspects:

- Appointment of a prevention manager with autonomy of the administration of legal entity.
- Definition of means and powers of the prevention manager.
- Establishment of a crime prevention system.
- Supervision and certification of a crime prevention system.

In the case of SMEs, whose annual income does not exceed UF 100,000, the owner, or controlling shareholder, may personally assume the tasks of the prevention manager.

- **Strengthening the environmental institutionality**

Individuals and municipalities that have suffered environmental damage will continue to be the plaintiffs of the actions for environmental damage before environmental courts. In the case that the action is exercised by any State organ other than Municipalities, it will not be represented by the State Defense Council which is the general rule, but by the Superintendence of the Environment. Therefore, the latter will be the one in charge of collecting all the background for the presentation of the action of environmental damage, and it will be able, in serious and qualified cases, to request the Minister of the Court of Appeals of Santiago authorization to enter public or private facilities, with the different police bodies and under the direction of the Superintendence, with the power to search and unlock, to register and seize all kind of objects and documents that will allow to prove the existence of the environmental damage and authorize the interception of all kind of communications, among other measures.

Regarding the above, it is worth mentioning that such powers have been questioned by our Supreme Court, given the fact that the Public Prosecutor's Office, the agency responsible for conducting criminal investigations in general and to exercise public criminal actions, would be left in

a disadvantaged position.

The bill in question includes sanctions for conducts that hinder the work of the Superintendence of the Environment, such as the presentation of false information or acts that unjustifiably prevent oversight by the SMA, for which the bill proposes a criminal sanction.

It is very likely that, before this bill becomes a law of the Republic, it will undergo some changes resulting from its processing in Congress.

Germany:
Modernisation of the EU copyright rules inspite of the fierce oposition of US internet giants

ILP Global Mertens Thiele
Germany

Internet Portals like YOUTUBE will be obliged to control the contents they make available and pay a fair remuneration to the creators

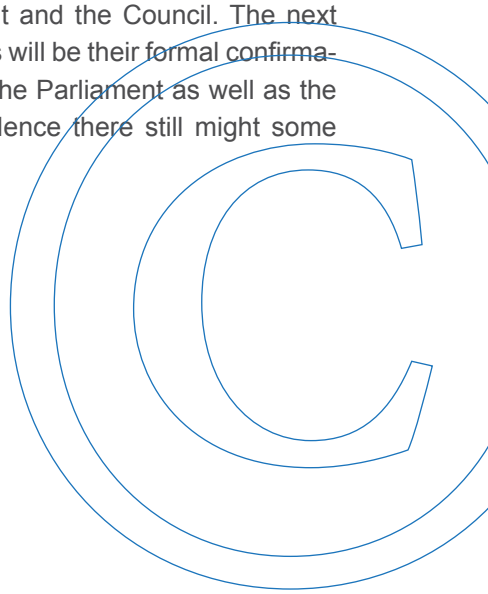
The EU is striving for modern copyright rules fit for the digital age. The European Commission, the European Council and the European Parliament agreed to that background on a new legislative proposal that is intended to make sure that especially creators get a fair share of the benefits generated in the digital world with their work.

The proposed measures aim at creating a fairer market place for online content especially for press publications, online platforms and remuneration of authors and performers. They furthermore are meant to achieve a well-functioning marketplace for copyright.

The main elements of the proposed directive are related or “neighbouring” right for press publishers, a reinforced position of right holders to negotiate and be remunerated for the online exploitation of their content of video-sharing platforms and the remuneration of authors and performers via new transparency rules.

The basic argument has been going on regarding articles 11 and 13. Supporters of the new piece of legislation outline that the current regulations were drawn back in 2001, when there were no smartphones around and technology did not have much to do with today´s digital world, where online platforms such as YouTube generate enormous income and benefits using contents produced by third persons without so far sharing any of them with the creators. Critics of the legislation however fear the „dead of the internet as we have known it so far“ and the legalization of a „preventive censorship“.

The legislative proposals for a regulation and directive on copyright in the Digital Single Market were agreed with a political deal by the European Commission, the European Parliament and the Council. The next steps for the agreed texts will be their formal confirmation by the Council and the Parliament as well as the 28 member countries. Hence there still might some obstacle down the road.



España:
Limits on freedom of expression

ILP Abogados

Spain

Freedom of expression is one of the legal concepts that most social interest arouses, because of its abstract character and the value it represents. The fundamental rights collected in the Spanish Constitution were proclaimed along with the rest of the constitutional text in 1978. Since then, Spanish society has undergone numerous changes, which have meant an adaptation of the guardianship of these rights to the current legal reality. Its protection and concretion are essential in a rule of law. The SC doctrine profiles the limits of fundamental rights through a balancing. It is especially relevant the one made between the **Freedom of expression** and the **Right to honor.**

A) Limits on freedom of expression in a context of political criticism

The SC rules demonstrate how rights are balanced depending on the context. The SC judgement of 11 October 2017 updated the doctrine in a context of political criticism. In a television debate, a journalist directs the terms “chorizo” and “mangante” to the leader of the political party Podemos. This latter leads to the interposition of a demand for protection of the right to honor of the second against the first.

First, the SC analyses the difference between freedom of expression and freedom of information. While freedom of expression comprises the issuance of valuation judgments, freedom of information refers to the communication of objective data. On the other hand, the right to honor protects against attacks on personal reputation (CC Ruling 180/1999). The application of the deliberation technique implies the prevalent position of freedom of expression and freedom of information. Both are limited by the right to honor, opposed to the dissemination of expressions that objectively discredit a person. The SC and the ECHR affirm that the acidic and hurtful criticisms are admissible, although the insults are not covered. While *“Style is part of communication as a form of expression”,* the SC determines that in the present case they resorted to insults. Political leaders must tolerate a higher level of criticism, and freedoms of expression and information reach a maximum level when exercising by professionals. However, the SC rules that, in a context of political strife, insults are not covered by freedom of expression. It is for this reason that only partially considers the cassation appeal against the appeal sentence. Thus, it appreciates the illegitimate interference in the right to honor, reducing only the amount of compensation.

B) Right to honour as a limiter of freedom of expression in a framework of political confrontation

On the other hand, the SC judgement of 8 November 2018 profiles jurisprudence in a context of political strife. In particular, the analysis focuses on the discrepancy of a group of voters in the municipality of Gaztelu regarding municipal ma-

nagement. The group of electors is sued by the mayor and two councillors for spreading a letter. According to the plaintiffs, it contained false accusations and offensive expressions that violated their right to honour. In the case of an appeal, one of the members of the group of Electors interposes an appeal. The unique motif of the appeal is the violation of the rights to freedom of expression and information. The CC rulings 216/2013 and 41/2011 determine that *"Freedom of expression can be understood as preponderant in the face of information when the idea or critical opinion that is manifested is sustained or protected in the imputation of acts of criminal appearance".* Thus, the SC carries out a judgment of counterposition of the freedom of expression and the right to honor.

The SC is inspired by the ECHR sentence of March 2011, which states that *"It is precisely when ideas offend, collide or disturb the established order, when freedom of expression is more valuable".* Based on the foregoing, the appeal considers that the criticisms were covered by freedom of expression. These are maintained in the sphere of political management, in a context of obvious strife, given the public relevance of defendants and plaintiffs.

C) Freedom of information and the right to honor. Canon of truthfulness

Finally, the SC's decision of 12 January 2018 refers to the weighting of freedom of information and the right to honour. The SC overturn the sentence determining that the canon of veracity demanded by the Provincial Court is incorrect. It does not consider the nature of the facts denounced: the denunciation of sexual abuse to gymnasts by their coach.

The SC judgement 329/2012, of 17 May, declares that *"The Commission of criminal acts, in order to be protected by the legitimate exercise of freedom of information, must fulfil the requirements of public relevance of the facts and veracity".* The SC showed its reticence against the extreme rigour in the exercise of evaluating the evidence carried out by the audience. It tightened the evidentiary rigour by denying any value to the declaration of the alleged victim, for being part of the process. The standard of proof is higher than that demanded in the criminal process to convict the accused of such crimes. In fact, in the latter, the victim's statement may be considered enough incriminating evidence. To study the veracity, we must attend to the essence of the facts, but this cannot be equal to the proof of its effective realization. Crimes against sexual freedom often occur in clandestine places, making it difficult to attend other tests. Moreover, such a requirement of proof would lead to a deterrence of public denunciation of these conducts, essential to clarifying such crimes. The SC is aware of the impact the indictment of the "abuser" can gene-

rate when it has not been proven. Nevertheless, it maintains that it is necessary to create a favorable climate for a public complaint. It believes that the complaint is credible and that there is no hint that the alleged victims have acted in bad faith. Therefore, he chooses to protect them, by encouraging them to publicly denounce the facts.

SC: Supreme Court

CC: Constitutional Court

ECHR: European Court of Human Rights

By: *Carlos Fernández Carnal*

Peru:
Perspectives of growth Peru 2019

Estudio Laos, Aguilar, Limas & Asociados

Peru

Regarding the last analysis of the previous year, the Minister of Economy and Finance (MEF) - Mr. Carlos Oliva - reported that our country has achieved in 2018 the highest rate of growth since 2015 due to greater recovery of tax revenues. Under this scenario, Peru has been the only country in the region that has maintained its credit rating with a stable outlook from the main international rating agencies such as Standard & Poor's, Moody's and Fitch.

Under this scenario, it has been stressed that private investment grew to 4.4%, representing the highest growth rate since 2013; while public investment achieved the first positive growth rate after four years. These results have been quite positive within an internal adverse political scenario and a world scenario in full slowdown. For this reason, it is expected that this rate of growth will continue to be maintained in 2019 for our country, and there will be new perspectives for economic and social development, despite the global context.

Based on this line, according to the information projected by the Institute of Economics and Business Development (IEDEP) of the Chamber of Commerce of Lima, the gross domestic product (GDP) of Peru will register a growth of around 3.7% in the year 2019, due mainly by the evolution of domestic demand.

Thus, the component of domestic demand with the highest growth for 2019 will be a private investment (5.9%), which would exceed the rate reached in 2018 (5.2%). This increase is explained due to the execution of important mining and infrastructure projects for this year.

On the detail, six new projects are waiting with an investment that together amounts to the US $ 3,441 million. Among the highlights is the expansion Pachapaqui and Tía María, copper projects with an investment amounting to the US $ 1,990 million, located in Cusco and Arequipa, respectively.

According to the precise by the Executive Director of IEDEP, Mr. César Peñaranda, the year 2019 is considered as a key year to initiate or consolidate commercial exchanges with Australia and India. This year, the Free Trade Agreement came into force between Peru and Australia, which will allow access to a market of 25.6 million people with an income per capita of US $ 57,204. On this, according to the projections of the World Bank, Perú will be the fourth country to register the highest growth in the region.

On the other hand, the minister of the MEF has set as a goal to generate an adequate management of public investment to have the infrastructure that the country really needs, which, not only economic growth, but also generate well-being and improve the quality of life of the population in Peru. For it, after the modification of the normative frame of the Invierte.pe (September, 2018), there has being offered technical assistance to the local and regional governments to strengthen the execution the public investment.

Along with this, the Central Government has shown a frontal position in the fight against Corruption, improvement in public management and greater transparency in the market, which will serve to encourage greater economic and social growth in our country, based on the premises of development and equality that President Martin Vizcarra seeks to highlight.

Fuente: *Diario Gestión*