

POSSIBLE DISTORTIONS OF LAW 5777/16



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Study of 6 legal cases that use the law
«Against all forms of violence against
women» in cases of public interest that
negatively impact democracy in Paraguay

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POSSIBLE DISTORTIONS OF LAW 5777/19

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SUMMARY

This study focuses on the application and possible distortions of Law 5777/16 in Paraguay, which addresses integral protection to women against all forms of violence, and the use of its precautionary measures for public interest cases that may have a negative impact on freedom of speech. The first part of the investigation analyzes the National Constitution of Paraguay in relation to the protection of freedom of speech, as well as the international standards established by the inter-american human rights system, including jurisprudence of the Inter-American Court of Human Rights (IACHR). This section has a special approach to prior censorship, the protection threshold applicable to public officials and public persons in the exercise of their freedom of speech, and how this can be compromised by erroneous interpretations of Law 5777/16 by the national courts. In addition, there is an analysis of six legal cases in Paraguay that illustrate the challenges and risks associated with the application of this law, highlighting the need for a balanced approach that protects both the rights of women and freedom of speech and due legal process in a democratic society.

Keywords: *freedom of speech and press, prior censorship, comprehensive protection of women, violence towards women, human rights.*

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1. INTRODUCTION

In the context of Paraguay, the intersection between humor, journalism, opinions in social media to public persons and public officials and freedom of speech is challenged by law 5777/16, which, in its implementation for political and public interest purposes, has generated controversies about possible cases of prior censorship and undue limitations to protected speech. The legal regulation, while seeking to protect against violence and discrimination against women, raises questions about possible prior censorship and undue restrictions on freedom of speech, especially in the context of journalistic activity and critical online opinions against public officials and public persons. In this analysis, six current cases in Paraguay will be explored where the possible distortion of Law 5777/16 to restrict the exercise of freedom of speech in cases of public interest is evident. Through an analysis of these cases, we seek to understand how legal regulations can be interpreted in a restrictive manner, thus affecting the diversity of opinions, humorous creativity and freedom of the press in the country.

2. FREEDOM OF SPEECH IN INTERNATIONAL LAW

Freedom of speech is a fundamental right that implies the ability of every person to express his or her ideas, opinions and beliefs without fear of reprisal or censorship by government, institutions or society in general. This principle is fundamental in democratic societies, as it promotes the open exchange of information, public debate and social progress. However, this right is not absolute and there may be legitimate limits in cases of hate speech, defamation or incitement to violence. Freedom of speech protects not only popular opinions, but also controversial or minority ideas, as it fosters diversity of thought and tolerance of plurality of points of view.

Freedom of speech is a fundamental human right recognized in several international treaties, which Paraguay has signed, such as the Universal Declaration of Human Rights (Article 19) and the American Convention on Human Rights (Article 13):

Everyone has the right to freedom of speech; this right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (OAS, 1969).

This right has been endorsed by the International Covenant on Civil and Political Rights:

Everyone shall have the right to express and hold opinions, or to receive and seek information and the opinion of others regardless of the location of the sources and there shall be freedom of expression either orally, in writing, in the press, in books or in visual, auditory or any other means. There shall be equal access to the channels of communication (OHCHR, 1976).

In other words, the right to freedom of speech is broad and inclusive, and encompasses the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers and by any means of expression, including on and off the Internet¹.

And it also receives prominent treatment within the Inter-American Human Rights System (IAHRS). The Inter-American Court of Human Rights (IACHR) has underscored the fundamental importance of freedom of speech, stating that it is the foundation of democratic societies and that ensures that they are adequately informed:

the guarantees of freedom of speech contained in the (IACHR) were designed to be the most generous and to minimize restrictions on the free flow of ideas²

1 Human Rights Committee, general comment No. 34 (2011) and Human Rights Council, resolution 20/8.

2 IACHR. Compulsory Membership of Journalists (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985.

As a result, the restrictions of other systems, such as the European system, cannot be directly applied in the Inter-American context. The Inter-American Commission on Human Rights and the Inter-American Court have played a fundamental role in developing and defining the scope of freedom of speech in the region. A particularly significant contribution of the Inter-American doctrine is the recognition of the dual dimension, both individual and collective, of the right to freedom of speech. This approach recognizes that freedom of speech not only protects individual rights of expression, but is also fundamental to the democratic functioning of society as a whole³.

The dual dimension: it requires, on the one hand, for no one to be arbitrarily undermined or prevented from expressing his or her own thoughts and therefore represents a right of each individual; but it also implies, on the other hand, a collective right to receive any information and to know the expression of the thoughts of others⁴.

This implies that all persons have the right to express their opinions and to hear and understand the opinions of others⁵. Therefore, if a State action affects or restricts the individual aspect of the sender's right of expression, it also affects in a similar way and to the same extent the social aspect of the receiver's right⁶.

3 IACHR, Office of the Special Rapporteur for Freedom of Speech. Inter-American Legal Framework on the Right to Freedom of Speech. OAS/Ser.L/V/II IACHR/RELE/INF.2/09, December 30, 2009.

4 IAHR Court. Case of Ivcher Bronstein v. Peru. Reparations and Costs. Sentence of February 6, 2001. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Sentence of July 2, 2004. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Sentence of August 31, 2004.

5 IAHR Court, Advisory Opinion OC-5/85. Compulsory Membership of Journalists (arts. 13 and 29 American Convention on Human Rights). November 13, 1985; IACHR, Office of the Special Rapporteur for Freedom of Speech. Inter-American Legal Framework on the Right to Freedom of Speech. OAS/Ser.L/V/II IACHR/RELE/INF. 2/09, December 30, 2009; IAHR Court, Case of Kimel v. Argentina. Merits, Reparations and Costs. Sentence of May 2, 2008; IAHR Court, Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Sentence of September 19, 2006; IAHR Court, Case of López Álvarez v. Honduras. Merits, Reparations and Costs. Sentence of February 1, 2006; IAHR Court, Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Sentence of July 2, 2004; IAHR Court, case Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Sentence of February 6, 2001; IAHR Court, Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Sentence of August 31, 2004; IAHR Court, Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs. Sentence of February 5, 2001; IACHR, Report No. 130/99, case No. 11.740, Víctor Manuel Oropeza, Mexico, November 19, 1999; IACHR, Report No. 11/96, case No. 11.230, Francisco Martorell, Chile, May 3, 1996.

6 IAHR Court, Advisory Opinion OC-5/85. Compulsory Membership of Journalists (arts. 13 and 29 American Convention on Human Rights). November 13, 1985; IACHR, Office of the Special Rapporteur for Freedom of Speech. Inter-American Legal Framework on the Right to Freedom of Speech. OAS/Ser.L/V/II IACHR/RELE/INF. 2/09, December 30, 2009; IAHR Court, case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Sentence of November 22, 2005; IAHR Court, case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Sentence of August 31, 2004; IACHR, pleadings before the IAHR Court in the case of Herrera Ulloa v. Costa Rica, transcribed in: IAHR Court, case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Sentence of July 2, 2004. 107; IACHR, Merits Report No. 90/05, case No. 12.142, Alejandra Marcela Matus Acuña, Chile, October 24, 2005.

2.1. Legal considerations and subsequent liabilities

In the digital environment, resolving conflicts of rights involves applying criteria of legitimacy and weighing various factors. Freedom of speech, being a fundamental pillar in a democratic society, is essential to protect and guarantee other human rights. However, this right is not absolute and may be subject to certain limitations. These restrictions must meet specific requirements, established by the bodies of the inter-American human rights protection system, in order to be considered legitimate.

Inter-American jurisprudence has established a tripartite test to determine the legitimacy of limitations to freedom of speech under the American Convention. Specifically, it is found in Article 13.2 of the American Convention, which establishes the tripartite test,⁷ has interpreted as fundamental conditions for a limitation on the right to freedom of speech to be admissible. These are: (1) the limitation must be clearly and precisely defined through a formal and material law, (2) it must be directed toward the attainment of compelling objectives authorized by the American Convention, and (3) it must be necessary in a democratic society to achieve those ends, in addition to being strictly proportional and adequate to attain the desired objective. The authority imposing the limitations must demonstrate that these conditions have been met. All conditions must be met simultaneously for the limitations to be legitimate under the American Convention⁸.

The fundamental requirements that any restriction to the right to freedom of speech must meet are detailed in Articles 13, 8 and 25 of the American Convention. These requirements, when applied to measures involving the Internet, must be analyzed from a comprehensive digital perspective⁹.

In its 2009 annual report, the Office of the Special Rapporteur on Freedom of Speech (RELE) sets out several points to be taken into account when restricting the right to freedom of speech. First, any restrictions, whether online or in other contexts, must be clearly defined by both formal and substantive laws. Substantive restrictions established by administrative provisions or vague and ambiguous regulations that do not clearly delimit the scope of the protected right are incompatible with the American Convention. These ambiguous regulations can result in arbitrary decisions that unfairly compromise the right to freedom of speech, especially for individual users who participate in public debate solely with the strength of their arguments. Ambiguous laws can have a significant impact on this growing group of people, whose inclusion in the public debate is one of the main advantages of the Internet as a global communication space.

Second, restrictions must be aimed at achieving compelling objectives authorized by the American Convention, such as the protection of the rights of others, national security, public order, or public health and morals. It is important to highlight that States are not free to interpret these objectives in any way to justify a limitation on freedom of speech. Instead, these concepts must be interpreted in accordance with the principles of a democratic society.

7 OAS/Ser.L/V/II IACHR/RELE/INF. 2/09 December 30, 2009. Inter-American Juridical Manual (2009) paragraph 67 and 68.

8 IACHR, Office of the Special Rapporteur for Freedom of Speech. Inter-American Legal Framework on Freedom of Speech. OAS/Ser.L/V/II. CIDH/RELE/INF.2/09. December 30, 2009.

9 IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Speech. Chapter III (Inter-American Legal Framework of the Right to Freedom of Speech). OAS/Ser.L/V/II. Doc. 51. December 30, 2009.

Likewise, the Rapporteur has faced important challenges in the application of international standards to the digital environment, especially in situations involving conflicts between the right to freedom of speech and other rights, such as the right to honor, privacy, copyright or the best interests of children and adolescents and issues of violence against vulnerable and minority groups. Below are some examples of how these standards can be adapted to the specific conditions of the Internet.

The protection of honor and reputation, when an affectation is alleged through the Internet, generally follows weighting criteria similar to those used in other media. Specifically, as the IACHR has repeatedly stated, the use of criminal law is disproportionate in cases involving specially protected speech, such as information or expressions on matters of public interest, public officials or persons who voluntarily involve themselves in matters of public interest¹⁰.

It is important to bear in mind that correcting incorrect information is the least invasive way from the perspective of freedom of speech to address the harm associated with it. In this sense, the Rapporteur has emphasized that only when rectification is insufficient to repair the harm caused, is it justified to impose more severe legal responsibilities on those who abused their right to freedom of speech, causing serious and evident harm to the rights of other persons or to property protected by the American Convention. From this point of view, it is suggested that rectification should exempt from other forms of liability, especially when it comes to specially protected speech, which can only generate liability if it is proven that the issuer acted with “real malice” in disseminating false information that resulted in harm. Furthermore, it is relevant to recall the standards established by the IACHR, which discourage the use of criminal law as a response to damages caused in the exercise of freedom of speech, and instead recommend resorting to appropriate civil liability in the event that rectification is not sufficient¹¹.

In short, all forms of speech, whether oral, written, artistic, etc., have protection, which implies that there is a presumption that they are protected, even if they may be considered controversial, offensive or disruptive. In general, this right is subject to a very restricted set of exceptions, which are clearly defined in international law by specific and concrete prohibitions.

10 United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Speech, Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), Organization of American States (OAS) Special Rapporteur on Freedom of Speech, and Special Rapporteur on Freedom of Speech and Access to Information of the African Commission on Human and Peoples’ Rights (ACHPR). June 1, 2011. Joint Declaration on Freedom of Speech and the Internet. Point 4 (c).

11 IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Speech. Chapter III (Inter-American Legal Framework on the Right to Freedom of Speech). OAS/Ser.L/V/II. Doc. 51. December 30, 2009.

2.2. Speech on public officials or public persons

The American Convention on Human Rights and its main interpretive body, the Inter-American Court of Human Rights, recognize broad protection for speech. This means that States have an obligation not to impose strict limits on freedom of speech. However, this protection is not unlimited; it also implies that persons participating in public debates must be willing to tolerate criticism and diverse opinions. In short, while States must guarantee freedom of speech, individuals must also be prepared to listen to and accept opinions different from their own, even if they are critical of themselves¹².

The Inter-American Court ruled in the Herrera Ulloa case (2004):

In a democratic society, public officials are more exposed to public criticism and scrutiny. Their activities transcend their private lives and become subjects of public debate. This standard is not defined by the subjective qualities of the individual, but considers the public interest arising from their activities¹³.

When individuals' expressions are addressed to public officials, persons voluntarily involved in public affairs or candidates for public office, a higher threshold of tolerance for criticism is established¹⁴. This means that these individuals are subject to more intense public scrutiny¹⁵, and that the State also has an obligation to refrain from imposing restrictions or limitations on the exercise of the right of expression in this context.

These groups of people, which include officials, candidates and individuals involved in public affairs, voluntarily participate in a regime of robust public scrutiny. In this regime, public criticism of their actions functions as an accountability mechanism, which is an integral part of the broader idea of democratic control. These democratic controls are justified to keep the exercise of public power under scrutiny, and are backed by the obligation of transparency and maximum publicity in all State actions¹⁶.

12 IAHR Court, Case of Palamara Iribarne v. Chile. Sentence of November 22, 2005; IAHR Court, Case of Herrera Ulloa v. Costa Rica. Sentence of July 2, 2004; IACHR. Arguments before the Inter-American Court in the case of Herrera Ulloa v. Costa Rica. Transcripts in: IAHR Court, Case of Herrera Ulloa v. Costa Rica. Sentence of July 2, 2004.

13 Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Sentence of July 2, 2004.

14 IAHR Court, Case of Kimel v. Argentina. Sentence of May 2, 2008; IAHR Court, Case of Palamara Iribarne v. Chile. Sentence of November 22, 2005.

15 IAHR Court, Case of Kimel v. Argentina. Sentence of May 2, 2008; IAHR Court, Case of Palamara Iribarne v. Chile. Sentence of November 22, 2005; IAHR Court, Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Sentence of February 5, 2001; IAHR Court, Case of Ivcher Bronstein v. Peru. Sentence of February 6, 2001; IAHR Court, Case of Ricardo Canese. Sentence of August 31, 2004; IAHR Court, Case of Herrera Ulloa v. Costa Rica. Sentence of July 2, 2004; IAHR Court, Case of Claude Reyes et al. Sentence of September 19, 2006.

16 IAHR Court, Case of Kimel v. Argentina. Sentence of May 2, 2008; IAHR Court, Case of Palamara Iribarne v. Chile. Sentence of November 22, 2005; IAHR Court, Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Sentence of February 5, 2001. IAHR Court, Case of Ivcher Bronstein v. Peru. Sentence of February 6, 2001; IAHR Court, Case of Ricardo Canese. Sentence of August 31, 2004; IAHR Court, Case of Herrera Ulloa v. Costa Rica. Sentence of July 2, 2004; IAHR Court, Case of Claude Reyes et al. Sentence of September 19, 2006.

When individuals choose to participate in the public sphere, it is not only understandable, but also to be expected, that they will be subject to more rigorous scrutiny and a higher level of criticism. This is because these individuals have a greater capacity to respond due to their public presence, their social influence or their access to the media. The IAHR Court, in cases such as *Tristán Donoso v. Panama*, has recognized this dynamic as part of the democratic exercise¹⁷. In short, public scrutiny and criticism are essential elements to ensure transparency, accountability and democratic control in the public sphere.

The emphasis on this different threshold of protection is not on the quality of the subject, but on the public interest nature of a given person's activities or actions. Those who influence matters of public interest have voluntarily exposed themselves to more demanding public scrutiny and, consequently, are exposed to a greater risk of criticism, since their activities leave the domain of the private sphere to enter the sphere of public debate. - The IAHR Court¹⁸

Report 22/94 provides important guidelines for applying the principle of subsequent liability for speech in the inter-American system¹⁹. It emphasizes that contempt rules are not compatible with the Convention, as they can be used to silence unpopular opinions and restrict an essential debate for democratic functioning. Furthermore, these rules provide public officials with greater protection than private persons, which contradicts the democratic principle of accountability. The right of citizens to criticize and scrutinize the actions of public officials in relation to their function is stressed²⁰. It is argued that contempt laws restrict critical speech by exposing individuals to sanctions such as imprisonment or fines, even if they offer defenses such as *exceptio veritatis*.

The Court considers that this requirement:

Constitutes an excessive restriction on freedom of speech, contradicting the provisions of Article 13.2 of the Convention. This is because it “generates a dissuasive and frightening effect on journalists, which in turn hinders public debate on issues of social interest”²¹.

Less restrictive alternatives are suggested to protect the reputation of public officials, such as the right to reply in the media or civil actions for defamation and libel. The Court therefore urges States to repeal contempt laws, as they are incompatible with democratic principles and the rights protected by the Convention.

17 IAHR Court, *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Sentence of January 27, 2009.

18 *Case of Herrera Ulloa v. Costa Rica*. Sentence of July 2, 2004.

19 Case 11.012, Report No. 22/94, *Argentina, Horacio Verbitsky*, September 20, 1994 (Friendly settlement).

20 Report on the Compatibility between Contempt Laws and the American Convention on Human Rights, OAS/Ser. L/V/II.88, doc. 9 rev., February 17, 1995.

21 *Case of Herrera Ulloa v. Costa Rica*. Sentence of July 2, 2004.

2.3. Protected speech of public interest

Inter-American doctrine has identified three main types of specially protected speech: political speech, speech on matters of public interest, and speech on public figures. In a democratic society, public discussion related to political and general interest issues limits the scope for imposing legitimate restrictions on political criticism and expressions related to matters of public interest. Both the IACHR and the Inter-American Court have endorsed this doctrine, arguing that the effective functioning of democracy requires a high level of public debate on the functioning of society and the State in all its facets, including issues of public interest. Therefore, for democracy to function properly, it is necessary to encourage the wide circulation of reports, opinions and ideas on these matters. In short, freedom of speech in the political arena and on matters of public interest is fundamental to the healthy functioning of a democratic society²².

2.4. Parody and satire as forms of expression

Political humor, as a form of expression, has traditionally been used to denounce and criticize social aspects through various media such as journalism, literature, television, cinema, music and theater. The definition of humor is complex and can vary according to time periods, theoretical currents and authors who study it, involving concepts such as irony, comedy, satire and parody, all aimed at generating laughter. However, these manifestations can be interpreted differently depending on the subject and the context, and may cause discomfort in some people. The growth of humorous discourse in recent decades, largely driven by the internet, raises questions about the limits of tolerance towards certain expressions. (Del Campo, 2019).

However, the standards of freedom of speech set clear limits as set out above, such as respect for the rights and reputations of others, the protection of national security, the maintenance of public order, the preservation of public health and morals. Legal restrictions on freedom of speech must be necessary and proportionate to avoid conflict with international human rights standards.

Particularly, humor, through satire, parody, caricature, and pastiche, is considered a protected form of expression because it can effectively disseminate information and allow people to express their ideas. (David Kaye, 2015)

For Agustina Del Campo, despite the constitutional and legal guarantees existing in the region, including Paraguay, the legal framework does not clearly specify that humor is considered an integral facet of freedom of speech. This leaves the interpretation on this issue to the discretion of national courts. Although the IAHR Court has not yet dealt with specific cases related to humor, its sentence in the case of “The Last Temptation of Christ v. Chile”²³ evidences a fundamental understanding: freedom of speech is the pillar of a democratic society and protects expressions that may be considered controversial or shocking. This includes humorous or satirical expressions.

22 IAHR Court, Case of Kimel v. Argentina. Sentence of May 2, 2008; IAHR Court, Case of Claude Reyes et al. v. Chile. Sentence of September 19, 2006; IAHR Court, Case of Palamara Iribarne v. Chile. Sentence of November 22, 2005; IAHR Court, Case of Herrera Ulloa v. Costa Rica. Sentence of July 2, 2004.

23 IAHR Court, case of “The Last Temptation of Christ (Olmedo Bustos et al.) v. Chile”, sentence of February 5, 2001.

In addition to the aforementioned case, the Inter-American Court has addressed various situations related to honor and reputation as possible restrictions on freedom of speech. In these cases, the Court has adopted a doctrine that differentiates between public and private figures, as well as between information of public and private interest. This doctrine follows the line established by the main Supreme Courts of Latin America²⁴.

Parody, as a form of expression, consists of a humorous imitation of a work or even a registered trademark, which is considered legitimate when the person transforms the original idea into a new and original work, independent to the original. Its essence lies in imitation for the purpose of commenting or criticizing, which results in the creation of a new piece.

Parody involves the recreation of any work, using comic elements for purposes of mockery or homage, and results in the generation of a new work that, although clearly differentiated, retains certain identifiable features of the original work. (Tobar, 2014)

The satire, like the cartoon, is presented as a legitimate means to express criticism, but is distinguished by its style of exaggeration and burlesque humor, designed to cause a smile in the public. This type of criticism, when resorting to exaggeration, seeks to generate a perception of the people receiving the message that differs from reality.

According to author Carolina Tobar, satire is defined as follows:

Although it has an obvious comic effect, it does not require previous artistic texts or materials that imitate or distort. In case of using them, it does not depend on them, but uses them as a tool to ridicule something different from themselves.

Unlike parody, which focuses on imitating and making a point related to the original work, satire uses the original work as a starting point to criticize something completely different.

The premise that humor, in all its forms, is protected by freedom of speech and —with the condition that it does not incur in non-protected speeches— is essential to understand the intersection between humorous creativity and fundamental rights. This section highlights the importance of safeguarding freedom of speech even in the context of humor, where social criticism and satire can flourish. However, this protection is not unlimited and does not protect expressions that encourage violence, discrimination or intolerance. Ultimately, this premise underlines the crucial role of humor as a tool of criticism and reflection in a democratic society, as long as it is exercised responsibly and respectfully of the rights and dignity of others.

24 IAHR Court, “Herrera Ulloa v. Costa Rica”, sentence of July 2, 2004, Preliminary Objections, Merits, Reparations and Costs; IAHR Court, “Ricardo Canese v. Paraguay”, sentence of August 31, 2004, Merits, Reparations and Costs; IAHR Court, “Kimel v. Argentina”, sentence of May 2, 2008; among others.

2.5. Limitations for prior censorship

The right to freedom of opinion covers two aspects: an internal, closely linked to private life and freedom of thought, and another external, related to freedom of speech. Although the second dimension has been the subject of frequent study, the first has begun to receive more attention due to the growing knowledge about manipulation techniques used on the Internet by various entities to influence people, potentially violating their freedom of opinion.

Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights protect the right of every person not to be disturbed by their opinions, a right that is considered absolute and without exceptions. However, in practice, our opinions can be influenced by various sources, and the ability to receive a wide range of influences is an integral part of our autonomy.

Freedom of speech can only be restricted in accordance with article 13.2 of CADH, which establishes that any restriction must be provided by law and be necessary to respect the rights and reputation of others, as well as to protect national security, public order or public health and morals. Given the fundamental importance of freedom of speech for the enjoyment of other human rights, restrictions must be exceptional and their interpretation must be strict.

The principle of legality requires that laws that limit freedom of speech be clear, precise and of public knowledge, avoiding excessive discretion that can lead to arbitrary decisions. In addition, any restriction must be necessary and proportional to achieve the legitimate objective, using the least restrictive means possible. Criminal sanctions, in particular, constitute a serious interference in freedom of speech and are only justifiable in extreme cases²⁵.

According to the IAHR Court, all restrictions on the right of freedom of speech must meet certain requirements not to violate the Inter-American human rights framework. First, a restriction must be appropriate, which means that it must be effective to solve the problem in question, without worsening or maintaining it. That is, the measure must be adequate for its purpose and not simply a convenient option.

Second, the restriction must be necessary. This implies that the measure adopted could not be achieved in a less restrictive manner. It is an imperative need that justifies the limitation of freedom of speech, but that in turn should not go beyond the indispensable.

Finally, the restriction must be proportional. This means that there must be a balanced relationship between the objective that is intended to protect and the cost it implies for the right to freedom of speech. The measure should not excessively sacrifice freedom of speech in relation to the good that is sought to protect.

25 A/HRC/47/25: misinformation and freedom of opinion and speech report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and speech, Irene Khan.

It is important to note that the need for a measure should not be interpreted in terms of utility or opportunity, but as an imperative requirement that cannot be achieved in a less restrictive manner. In addition, once it is established that the measure is necessary, it should be limited to the maximum possible so as not to violate more than necessary in the exercise of the right to freedom of speech²⁶.

Prior censorship is a practice that consists in restricting the dissemination of information or expressions before they are published or transmitted. In the context of the Latin American human rights system, prior censorship is strictly prohibited and is considered a serious violation of the right to freedom of speech, protected both nationally and internationally.

In Latin America, the CADH establishes in its article 13 the protection of the right to freedom of thought and speech and specifically prohibits prior censorship, except in very specific cases, such as the protection of childhood and adolescence in public shows, according to what is established in article 13.4²⁷.

The IAHR Court has reiterated on numerous occasions the importance of prohibiting prior censorship. It has pointed out that this practice radically violates the right to freedom of speech and negatively affects democracy as a whole²⁸. In addition, the Court has emphasized that the list of exceptions in article 13.4 of the CADH is not exhaustive, which means that those indirect forms of censorship that may have the same effects should also be evaluated²⁹.

26 IAHR Court, Case Kimel v. Argentina. Sentence of May 2, 2008; IAHR Court, Case of Palamara Iribarne v. Chile. Sentence of November 22, 2005; IAHR Court, Case Herrera Ulloa v. Costa Rica. Sentence of July 2, 2004.

27 IAHR Court, Case Kimel v. Argentina. Sentence of May 2, 2008; IAHR Court, Case of Palamara Iribarne v. Chile. Sentence of November 22, 2005, IAHR Court, Case Herrera Ulloa v. Costa Rica. Sentence of July 2, 2004.

28 IAHR Court, Case of Palamara Iribarne v. Chile. Sentence of November 22, 2005; IAHR Court, Compulsory Membership of Journalists (arts. 13 and 29 American Convention on Human Rights). OC-5/85 Advisory Opinion of November 13, 1985.

29 IAHR Court, Case Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Sentence of January 28, 2009.; IAHR Court Case Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Sentence of January 28, 2009.

3. FREEDOM OF SPEECH IN PARAGUAY

Freedom of speech is a fundamental pillar of democracy, essential for the free movement of ideas and vital for the development of free and open societies. In Paraguay, this principle is rooted in constitutional article number 26, which establishes the following:

Free speech and freedom of the press are guaranteed, as well as the dissemination of thought and opinion, without any censorship, without further limitations than those provided in this Constitution; consequently, no law will be issued that makes them impossible or restricted. There will be no press crimes, but common crimes committed through the press.

Every person has the right to generate, process or disseminate information, as well as the use of any lawful instrument and suitable for such purposes.

As it can be seen, Paraguayan legislation also explicitly prohibits prior censorship and emphasizes the importance of guaranteeing full freedom of speech as a fundamental element for the democratic functioning of the country. (National Constitution, 1992)

3.1. Law 5777/16 of comprehensive protection of women against all forms of violence

Law 5777/16, known as the “Comprehensive Law for the Protection of Women against all forms of violence”³⁰, represented a significant advance when addressing gender violence in Paraguay. Among its most outstanding provisions, the explicit prohibition of mediation in cases of violence, the typification of femicide as a crime, the establishment of a unified and standardized system of registration of violence against women, and the definition of responsibilities for various state institutions in the prevention and attention of gender violence are included. (National Congress, 2016)

However, despite these legislative advances, challenges persist in the effective implementation of the law. For example, Justice of the Peace Courts, who have acquired competence to intervene in cases of violence, face criticism due to the lack of adequate infrastructure and sufficient personnel, which hinders the protection of women during their statements and limits the comprehensive support necessary for the victims. (Bareiro & Walder, 2023)

30 Law 1600/00 “Against domestic violence.” Available: <https://www.bacn.gov.py/conoce-tu-ley/8916/violencia-domestica-ley-n-160000->

Author’s comment: The law is considered part of the procedural legislation of Law 5777/16 of protection of women against all forms of violence, with the main purpose of guaranteeing the departure of the violent person of the domicile as an extreme measure. However, subsection F of article 2 of this law grants Judges of the Peace Courts a broad discretion by allowing them to apply “any other measure that they consider pertinent.” Complexity arises when a woman claims to be a victim of telematic or media violence, that is, through means such as social media. In these cases, Judges of the Peace Courts can use subsection F to apply any measure that they consider necessary to prevent a woman from being subject to offenses or verbal aggressions by another person. The great challenge here will be to seek the balance of the objective of this rule with the right to freedom of speech.

In addition, in the legal field, many law professionals lack training in a gender perspective and human rights, which can negatively affect women's defense and contribute to mistrust towards their testimonies. This lack of preparation can also lead to a poor application of international standards ratified by Paraguay in terms of gender violence.

As for protection measures, these are fundamental to guarantee the safety of victims. However, its application faces challenges, such as the standardization of these measures without taking into account the individual needs of each case. This can result in inappropriate measures that do not address the particularities of each situation, which could put the safety of women and their children at risk. It is crucial that protection measures adapt to the specific circumstances of each case to guarantee an effective response to gender violence. (Bareiro & Walder, 2023)

A critical aspect in the processes of denouncing violence against women lies in the lack of consideration of their needs and expectations. It is essential to recognize that the majority of women who denounce violence do so with the main objective of ending the situation of violence they are experiencing. In this sense, protection measures play a crucial role, since they are destined to guarantee the safety of victims and prevent the escalation of violence.

However, for researchers Bareiro and Walder, in practice many women who denounce violence do not receive adequate protection. Often, after submitting their complaint in the Court, they are not immediately granted the necessary protection measures to safeguard their safety. In addition, the duration of these measures is not clearly defined in the law, which can generate uncertainty and lack of effective protection for victims.

The law establishes that the duration of precautionary measures must be evaluated based on the risk for the victim, the profile of the aggressor and other relevant evidence. However, the lack of clarity in this aspect can result in an inconsistent application of protection measures and a lack of attention to the specific needs of each case.

In practice, it is evident that the Justice of the Peace Courts resort to procedural legislation 1600/00 of Law 5777/16 with the main objective of ensuring the departure of the violent person from the home as an extreme measure. Mostly, they make use of subsection F of article 2 of Law 1600/00, which gives the Peace Court Judges a broad discretion by allowing them to apply "any other measure that they consider pertinent." Complexity arises when the women involved are public officials or public persons and claim to be victims of telematic violence (article 6, section I), that is, through platforms such as social media and text messaging services. In these instances, it is found that judges of Peace Courts use subsection F to apply that criterion of "any measure they consider necessary" in order to prevent these women from being subject to insults or verbal aggressions by journalists and other people.

For cases when the press becomes the alleged aggressor, the question of public figures is introduced due to the nature of their media exposure. Public figures, such as celebrities, politicians or prominent people in society, are subject to broader scrutiny and greater attention by the media and the general public. This means that the speech protection threshold tends to be broader for public figures compared to private individuals.

It is crucial that a coherent and effective application of protection measures is guaranteed, with an exhaustive evaluation of each individual situation and special attention to the needs and expectations of the victims. This requires greater clarity and consistency in the legislation, as well as adequate training for professionals responsible for applying these measures in balance to the public interest and freedom of speech. Only in this way can it be ensured that women who denounce violence receive the necessary protection to get out of danger situations and rebuild their lives safely and dignified.

A tendency is currently observed in the application of the precautionary measures established by Law 5777/16 in cases of violence against women, where a restriction to disseminate information by the alleged aggressor in social media is requested. This practice raises important questions in relation to constitutional and international precepts of freedom of speech, since it can be interpreted as a form of prior censorship. While these measures aim to protect the victims and prevent the escalation of violence immediately, their application must be made in a balanced way and respecting the fundamental rights of all parties involved.

It is essential that judges who issue this type of measures take into account a series of considerations. First, they must analyze carefully if these measures are strictly necessary to meet the objectives of the law. This implies evaluating whether there are other actions that are less restrictive of the right to freedom of speech that could achieve the same desired result.

In addition, it is essential that judges consider whether the degree of affectation of the right to freedom of speech is proportional given the specific circumstances of the case. This implies carefully weighing interests at stake and determining whether the limitation of the right to freedom of speech is justified by the severity of the harm it seeks to prevent.

In this context, the nature of “public interest” involved in the conflict under analysis must have a decisive weight. Judges must recognize that public interest may vary significantly from one case to another and that their relative importance can influence the decision on the application of restrictive measures of the right to freedom of speech.

On the other hand, it is important to emphasize that precautionary protection measures should not be considered as part of the criminal investigation process. Its main purpose is to guarantee the security and well-being of the victims, however, its implementation can be complex, especially when it comes to public persons or public officials. In these cases, not only the protection of the victim must be taken into account, but also the right to freedom of speech and the due process of the alleged aggressors. In the following section, several cases will be analyzed in which Law 5777/16 was used and in which the use of it was questioned for cases of public persons and public officials.

4. SIX CASES OF STUDIES

In this section, a detailed analysis of six cases of study will be carried out, which are related to the use of Law 5777/16 to apply prior censorship on speeches of public interest on the Internet. Some of these cases are of public knowledge and were published in the media, while others have not received so much media attention, but most of them were identified and documented by the Paraguayan Journalists' Safety Committee³¹. In addition, it has been possible to access the sentences of some of these cases thanks to the collaboration of the journalists who were subject to censorship.

This analysis will provide a broader and detailed vision of the situation of freedom of speech on the Internet in Paraguay, highlighting the various ways in which prior censorship and precautionary measures of Law 5777/16 have been applied against speeches of public interest on the Internet. In addition, the legal and ethical implications of these actions will be examined, as well as their impact on freedom of speech and the right to information in the country.

Through these studies, the objective is to identify patterns and trends in the misrepresented application of Law 5777/16 as a form of prior censorship, as well as to highlight the importance of protecting women and defending freedom of speech and press as a fundamental pillar of democracy.

4.1. Case of the journalist Mabel Portillo

Mabel Portillo is a journalist who has been subject of harassment and persecution³² by the mayor of Yataity del Guairá, Gloria Duarte. The journalist is known for her work in disseminating critical information of public interest. As a consequence of a publication criticizing the management of municipal funds, specifically related to the reconstruction of a retaining wall that had been destroyed by the rains, on February 7, 2023 the mayor filed a complaint against the journalist for violence against women, claiming that the publication constituted psychological violence according to Law 5777/16. The ruling of the Court in favor of the mayor generated an act of censorship against the journalist, and even forbid her to call the mayor on the phone, a fundamental task for any journalist.

“I will not go back. I will continue publishing the truth and I will not allow anyone to silence me for revealing it. I have evidence of what I say”, Portillo said during a press conference³³.

In August 2023, the mayor filed a new complaint against the journalist who was present covering the event, for alleged acts of coercion and resistance during citizen protests against the municipal authority due to her poor administrative management.

31 Paraguayan Journalists' Safety Committee. Official page: <https://seguridadperiodistas.org.py/>

32 ABC. February 2023. Shamelessly censorship to a journalist from Guairá after a complaint filed by the mayor of Yataity del Guairá. <https://www.abc.com.py/nacionales/2023/02/08/censura-sin-pudor-a-periodista-guairana-tra-traduncia-de-la-intendente-de-yataity-del-guaira/>

33 ULTIMA HORA. February 2023. Journalist describes the justice order as censorship. Available at <https://www.ultimahora.com/periodista-califica-censura-la-orden-judicial-su-contra-n3047879>

Months later, prosecutor Martín Escalada charged the journalist Mabel Portillo Vázquez for allegedly using “nonverbal language” (sign) to incite people who were protesting against the alleged irregular management of the municipality³⁴. This resulted in restrictive measures, such as prohibition to leave the country and mandatory monthly appearances before the Court. Portillo considers that these measures are a form of censorship and an attempt to silence her for her journalistic work.

The main idea is that, by virtue of her position as a public official and the political importance of her post, the mayor is subject to a higher level of scrutiny than that of citizenship in general. This means that her behavior and decisions are expected to be subject to a higher level of attention and criticism by society and the media. This scrutiny is legitimate due to the public interest in understanding and evaluating the actions of those who occupy roles of power and representation in society.

In addition, it is essential to understand that in order for the Court to apply censorship, there must be a rigorous scrutiny, complying with the criteria of the tripartite test, which evaluates the legality, the legitimacy of the purpose pursued and the need and proportionality of the restrictive measure. Only in this way can it be analyzed whether the publication is a violation of this fundamental right, thus ensuring the integrity of the journalistic exercise and fully guaranteeing respect for fundamental rights in a democratic society.

4.2. Case of businessman Christian Chena and digital media “Resumen de Noticias” (RDN)

In this case, Justice has determined that businessman Cristian Chena is responsible for committing violence against women, in line with the provisions of Law 5777/16, against the alleged victim Gisele Zuni Mousques³⁵. Resolution AI No. 2 of January 12, 2024, signed by Judge Gloria Machuca, imposes a series of restrictions on Chena, prohibiting him from publishing or referring to Mousques in his social media or other digital media owned him, which the complainant is supposed to be “Resumen de Noticias” (RDN), either directly or indirectly, for a period of 365 days, that is, one year³⁶.

The case was taken before the Justice of the Peace Court of Santísima Trinidad, under File No. 1371 of 2023, and belongs to the Peace Court of Villa Morra, in the Judicial circumscription of the capital.

The resolution of Judge Machuca highlights the prohibition of using denigrating, aggravating, discriminatory or insulting terms that undermine the dignity and integrity of Mousques as a person and woman, in accordance with the provisions of Law 5777/16. The judge argues that although freedom of opinion and criticism is protected, the expressions used by Chena are not framed in a legitimate criticism, and

34 Esquivel, Borja at. 2023. Serious threats and great obstacles in a complex and worrying context. CODEHUPY, Paragraph 346

35 This case acquires notoriety because Mousques is the wife of Darío Filártiga, who has had important posts in the political sphere within the public sector, and is close to former president Horacio Cartes. In 1999, Filártiga was denounced for alleged acts of corruption and embezzlement during his management at the Social Security Institute (IPS), which led to his dismissal due to the accusations against him. There is also a previous case with Chena. Mousques left her job for 8 years in the Teledifusora Paraguaya S.A channel that was owned by Chena in 2000 and reappears in 2008 and Mousques makes a lawsuit for compensation against the channel and the ruling of the Supreme Court was in favor of Mousques with a compensation of 2000 million Guarani (270,000 USD to today’s exchange rate). <https://www.rdn.com.py/2017/06/07/Obligacion-a-propietario-de-aam-a-pagar-millones-a-esposa-de-asesor-cartista/>. It is also important to note that this company had the journalistic program “AAM, Algo Anda mal.” This program was dedicated to investigating high-level corruption cases and disseminating complaints of abuse of power by the government. <https://www.rdn.com.py/2021/01/27/madame-20-recerdan-antecedentes-de-gisele-mousques-y-dario-filartiga-en-ips/>

36 Ultima Hora. January 2024. Gisela Mousques Case: Chena is sentenced for violence against women. Available at: <https://www.ultimahora.com/caso-gisela-mousques-condenan-a-chena-por-violencia-contra-la-mujer>

could be considered injurious and unnecessary for being old³⁷, especially when are spread in social media and can reach a large audience³⁸.

In addition, in part of the sentence the following is established:

... to hold others responsible for the opinion published a long time ago, this publication is a responsibility of the one who republishes, because in other words and in journalistic terms is like rehashing (putting back into social consideration) an old information that caused a repercussion at a time and having followers that cannot be identified to be held responsible for the comments that motivated the rehash of the old news. So, whoever brings to a new debate about a publication is and must be especially responsible for the attributes and nicknames of discredit that are applied to the dignity of a person protected by Law 5777/16 ...

As seen in the judge's ruling, it did not properly apply the tripartite test to evaluate the legitimacy of restrictions on freedom of speech. This test, which includes the evaluation of legality, the legitimacy of the objectives pursued and the proportionality of the measures imposed, does not seem to have been fully considered in this case.

The judge's arguments in the sentence suggest that the right to freedom of speech does not cover the act of bringing past opinions or information to the present. In other words, it is not supported by a formal and material law, which means that it has not been established clearly and precisely in the legal framework. This goes against the principle of legality, which guarantees that people know in advance the limits that the State can impose on their actions.

In addition, this restriction is disproportionate in relation to the objective that it allegedly pursues, which is to protect the honor or reputation of the people affected by the past information. That is, this solution is not adequate to achieve that goal, since simply restricting the expression of past information does not necessarily guarantee the protection of honor or reputation. In addition, even if it were appropriate, the restriction would be excessively broad and would not be properly adapted to achieve its goal. Finally, the restriction is disproportionate in itself, which means that the degree of limitation imposed on freedom of speech is greater than necessary to achieve the objective pursued. The ruling does not comply with the legitimacy criteria of this principle and its application is counterproductive in terms of protection of fundamental rights.

Also, the resolution of Judge Machuca highlights the prohibition of using denigrating, aggravating, discriminatory or insulting terms that undermine the dignity and integrity of Mousques as a person and woman, in accordance with the provisions of Law 5777/16. However, the application of this law is questioned in the specific case, as the judicial decisions do not clarify how the concepts of violence defined in the law are applied. In addition, there is a problematic link between expressions considered critical or questioning towards women and forms of symbolic violence, without an accurate or substantiated analysis on the matter.

37 Ultima Hora. January 2018. Anibal Filártiga to Darío Filártiga: relatives are not chosen. The complaint against Chena is derived from a series of revelations published by the Ultima Hora newspaper in 2018, where it was reported that Darío Filártiga, politician and husband of Giselle Mousques, was in charge of 14 military personnel, a situation that the law does not allow. In addition, it was revealed that the politician's wife, Giselle Mousques, was using members of the Armed Forces as domestic employees. Available at: <https://www.ultimahora.com/anibal-filartiga-dario-filartiga-los-partientes-No-se-eligen-n11292999>

38 1000Noticias. January 2024. Judge who failed against freedom of speech would be investigated. Available at: <https://www.1000noticias.com.py/2024/01/15/jueza-que-fallo-contra-la-libertad-de-expression-seria-investigada/>

This broad and dogmatic interpretation of Law 5777/16 makes it incompatible with the American Convention and the Paraguayan National Constitution, which is unfortunate given the importance of the problem that the law seeks to address. Consequently, there is a concern that the judge is distorting Law 5777/16, which may have serious implications regarding fundamental rights and freedom of speech in the country.

In addition, it is important to keep in mind that Gisele Zuni Mousques, being involved in public matters and being a public figure, is subject to a broader protection threshold. This different protection threshold is not based on the quality of the subject, but on the public interest nature of the activities or actions of a given person. These groups of people, who include officials, candidates and individuals involved in public matters, voluntarily participate in a robust public scrutiny regime, which implies greater exposure to criticism and public debate.

These ruling sets, like the other cases analyzed, a worrying precedent that uses law 5777/16 to justify restrictions on freedom of speech in the country.

4.3. Case of the journalist Alfredo Guachiré

In 2022, the journalist Alfredo Guachiré³⁹ brought to light an article that revealed a complaint for alleged appropriation and fraud against the then president of the State Company of Sanitary Services of Paraguay S.A (ESSAP), Natalicio Chase, and his wife, Celia Galli⁴⁰.

Guachiré's publication did not go unnoticed. In response, Celia Galli decided to take legal actions against the journalist and the media "El Independiente"⁴¹, accusing them of violence against women. The complaint was filed before the Justice of the Peace Court of the Cathedral of the First Shift, Secretariat 1, Judicial Capital Circumscription under the jurisdiction of Judge Gustavo Villalba, and was entitled "Celia María Galli c/Alfredo Guachiré Medina and Enrique Rafael Rodriguez Duartes/Violence against Women file 11222. Year 2023. Secretariat No. 2".

As a result of this legal action, the media was forced to delete Guachiré's article from their platform, thus marking a delicate moment in the exercise of journalism and freedom of speech in the country. This case has generated a debate about the scope of freedom of speech and the protection of fundamental rights in the context of political criticism and journalistic exercise.

At first glance it is observed that the condition of Galli as public figure is inserted in the political sphere. That raises the threshold of protection of her reputation and honor, demanding a broader and more contextualized public scrutiny of the criticism against her.

39 The journalist also denounces a case not yet prosecuted for alleged threat against Judge Gloria Machuca's sister via email of the judge's lawyer. In that alleged email, the threat of invoking Law 5777/16 against the journalist is observed. Twitter (X) February 2024. Available at: <https://twitter.com/guachirem/status/1756998376661369120>

40 Twitter (X). August 2022. Link of the publication of Alfredo Guachiré available at: <https://twitter.com/guachirem/status/1554085454835859458>

41 El Independiente. Oficial page: <https://independiente.com.py/>

The case of Guachiré not only shows the importance of protecting freedom of speech and press, but also the need to rigorously apply the tripartite test in similar cases. Judges should carefully consider the legality, legitimacy of the objectives pursued and the proportionality of the measures imposed when addressing situations that imply public criticism of politicians.

In addition, judicial decisions that limit the ability of journalists to inform about matters of public interest directly impact the freedom of the press and the right of the public to access truthful and relevant information. Therefore, it is essential that the Courts protect and foster an environment conducive to the independent exercise of journalism, avoiding any form of legal intimidation that may undermine this fundamental right.

Ultimately, the responsibility of the judges goes beyond resolving legal conflicts; it also implies guaranteeing full respect for the fundamental rights of all citizens.

This requires a balanced approach that considers both individual interests and public interest in a democratic society, avoiding restrictive interpretations that may compromise the protection of fundamental rights and the integrity of the journalistic exercise in the country.

4.4. Case of journalist Letizia Medina

Senator Norma Aquino, also known as Yami Nal, has proposed to apply precautionary measures to remove the publication in social media of journalist Letizia Medina against her, based on Law 5.777/16⁴². This comes after a video was shared from radio ABC FM 98.5 account, where journalist Letizia Medina parodies the senator, using a pig filter on her face and an audio that suggests, “Oh, we have gone too far with the filters after the expulsion of Kattyta Gonzalez from the Senate! Would the corral be free of bullying?”⁴³

Initially, the case was assigned to the Cathedral Peace Court of the Second Shift, judicial district of the capital, under the direction of Judge Carmen Cibils, who recused herself because the lawyer representing the senator, Claudio Rubén Martínez, had a history of complaints against her. The case has file number No. 2526 of the year 2024, under the title “Norma Aquino c/María Adelaida Zucolillo and/or Leticia Medina s/Violence against women”⁴⁴.

It is crucial to recognize that forms of expression such as satire, parody and caricature are legally protected as explained in the special section on humor. These forms of expression use humor to convey criticism and generate reflection, often exaggerating aspects to make a statement. The jurisprudence has established that political criticism and satirical or parodic expressions directed at public officials are covered by the freedom of speech of the National Constitution, as long as certain legal limits are not crossed, such as incitement to hatred or any unprotected speech recognized by the Convention.

42 ABC. February 2024. Attempted censorship of Yami Nal: Judge inhibits herself due to history of violence by the legislator’s lawyer. Available at: <https://www.abc.com.py/nacionales/2024/02/21/intento-de-censura-de-yami-nal-jueza-se-inhibe-por-antecedente-de-violencia-de-abogado-de-la-legisladora/>

43 Twitter (X). February 2024. Official link to the parodied video. Available at: <https://twitter.com/ABCFM985/status/1758200114361852085>

44 Report of the Paraguayan Journalists’ Safety Committee. Official website: <https://seguridadperiodistas.org.py/>

In the context of this particular case, senator Norma Aquino, being a public official and holding a position of political relevance, is subject to a different threshold of protection compared to the general citizens. As a public figure, she is exposed to greater scrutiny and criticism by society and the media. This scrutiny derives from the public's legitimate interest in knowing and evaluating the actions and decisions of those in positions of power and representation.

The sentence was issued on March 11, the Peace Court Judge Gustavo Villalba decided not to grant the request for the precautionary measure filed by the senator and alleged the following:

The humorous imitation made by the journalist Letizia Medina, is a form of expression protected by freedom of the press and freedom of speech, and as a journalist, imitation can be considered an acceptable political form in the context of freedom of speech⁴⁵.

It is important to highlight that the sentence was in favor of the journalist and freedom of speech. This verdict confirms the importance of properly applying the tripartite test in similar cases. This approach, which evaluates the legality, the legitimacy of the objectives pursued and the proportionality of the proposed measures, has been fundamental to establish a solid and just precedent in the field of freedom of speech and press in Paraguay. By comprehensively considering this legal criterion, the Court has laid the foundations for future similar cases, ensuring an adequate balance between the protection of fundamental rights and the safeguard of other legitimate interests in a democratic society. Therefore, this case not only represents a victory for the journalist in question, but also offers an opportunity to generate a positive precedent and contribute to the strengthening of the rule of law in the country.

4.5. Case of Congressman Rodrigo Gamarra

Senator Kattya González of the Encuentro Nacional Party⁴⁶ has denounced a series of attacks and defamations directed towards her and her team, allegedly driven by Congressman Rodrigo Gamarra Krayacich. These attacks go beyond regular political criticisms, focusing on personal and working aspects, said senator González. She also emphasizes that her complaint does not seek to censor Gamarra, but to respond to a defamatory campaign that includes accusations about her mental health and personal attacks⁴⁷. Her concern focused on the negative impact in the environment of the National Congress and in her work team, seeking protection measures to safeguard her integrity and that of her team, without limiting freedom of speech⁴⁸.

This case, supposedly involves tests that address the mental health of the senator. The evidence to which she refers includes the comparison of old videos with more recent ones of her, with the aim of questioning the coherence of the senator's speeches⁴⁹. However, it is important to note that this video in question, although it may be uncomfortable or even annoying, has a parodic approach, which unfor-

45 El Observador. March 2024. Judge rejects complaint for violence in imitation of senator Norma Aquino. Available at: <https://www.observador.com.py/jueza-rechaza-denuncia-por-violencia-en-imitacion-a-la-senadora-norma-aquino/>

46 On February 14, 2024, Kattya Gonzales was unfairly dismissed and lost her seat as a senator for issues of political persecution of the Colorado Party mainly. More information available at: <https://www.abc.com.py/politica/2024/02/13/perdida-de-investigacion-de-kattya-gonzalez-en-vivo-cartistas-presenon-pedido-al-congreso/>

47 Ultima Hora. February 2024. Senator Kattya González files a complaint against Congressman for violence and asks for protection. Available at: <https://www.ultimahora.com/senadora-kattya-gonzalez-denuncia-a-diputa-por-violencia-y-pide-proteccion>

48 ABC. February 2024. Kattya appeals and reiterates request for protection measures against Rodrigo Gamarra. Available at: <https://www.abc.com.py/politica/2024/02/06/kattya-presa-pelacion-y-reitera-pedido-de-medidas-de-proteccion-contra-rodrigo-gamarra/>

49 Twitter (X) Publication of Congressman Rodrigo Gamarra. January 2024. Video available at: <https://twitter.com/rodrigamark/status/1751078980763967615>

tunately does not constitute violence as established by Law 5777/16, but for this case the tripartite test of freedom of speech should be applied and analyzed from the approach of speeches against public officials and their protection threshold.

In addition, the dimension of freedom of speech is extended when considering the protection of the speeches of legislators. Article 191 of the National Constitution on parliamentary immunity establishes that members of the Congress cannot be legally accused for their opinions while in the exercise of their functions.

It is crucial to understand that the threshold of protection against criticism is high in these cases. Although criticisms can be intense and even exasperating, as observed in similar cases analyzed in this research, a high level of tolerance is established. This implies that public figures such as the senator are subject to a more rigorous scrutiny by the public and that the State has the obligation not to impose restrictions on the exercise of the right of expression in this context.

The resolution of the case was remarkably curious because the Judge Analía Cibils Miñarro rejected the request⁵⁰ not because she would evaluate whether the right to freedom of speech was being violated by requesting precautionary measures seeking prior censorship, but because the congressman had parliamentary immunity. She did not take into account that the precautionary measures established by Law 5777/16 are not criminal sanctions and therefore can be applied regardless of immunity. Judge Cibils did not consider that the video in question was a parody, so she should have rejected the request for the fact that it was a possible violation of freedom of speech. She justifies that, during the process of applying the precautionary measure, she does not have the power to require the defendant to testify due to his parliamentary immunity.

It is important to note that, while it is necessary to address situations where there is “actual malice” in the congressman’s publication, it would be prudent to avoid criminal prosecutions and instead resort to appropriate civil liabilities in the event that a rectification is not sufficient. This discourages the use of criminal law or precautionary measures affecting the public interest that enable prior censorship as a response to the harm caused in the exercise of freedom of speech, thus promoting a balance between the protection of individual rights and the freedom of speech as suggested by the IAHR Court in the sections above.

On the other hand, it is important to highlight a similar case that occurred in the Congress in October 2023, congressman Yamil Esgaib was suspended for 30 days in the National Congress due to his violent attitudes towards his female colleagues⁵¹. This measure was taken by his peers from the Legislative Power due to the verbal violence that the deputy showed towards them during the sessions. The key distinction between this example and the analyzed case is that the resolution was carried out through an administrative summary of the institution. In the case of the suspended congressman, the cause was the use of forbidden speeches that represented a threat to the integrity of the female parliamentarians, and not through the request to restrict parody comments or opinions on social media.

50 ABC TV. February 2024. Interview with Judge Analía Cibils Miñarro. Available at <https://www.youtube.com/watch?v=7qnywrHB7be>

51 Ultima Hora. October 2023. Yamil Esgaib, the controversial Colorado congressman who likes to threaten. Available at: <https://www.ultimahora.com/yamil-esgaib-el-polmico-diputado-codo-que-le-gusta-amezar>

4.6. Case of the journalist Fredy Chamorro

According to the report of the Paraguay Journalists Security Committee⁵², the journalist Fredy Chamorro, of the city of Encarnación, along with his colleagues Hernán Núñez and Álvaro Báez, reporter and cameraman, were subject to a judicial complaint in the framework of Law 5777/16.

The journalist conducted investigations that revealed irregularities in the management of the District Hospital of Encarnación. As a result, the director of the hospital, Claudia Vega, filed a complaint for harassment and threats, invoking the corresponding legislation. Judge Vilma Saucedo Cardozo admitted the complaint and ordered precautionary censorship measures against three workers of the media by means of interlocutory Order number 50, issued on February 13, 2024.

On March 4, sentence 77/2024 was issued against the journalist, ruling as follows:

“2 - Prohibit Mr. Fredy Chamorro, to disseminate or publish messages, photographs, audios, videos or others that affect the dignity or intimacy of Mrs. Claudia Teresita Vega Arguello through the current information and communication technologies.

3 -Prohibit making any type of publication and/or referring to Mrs. Claudia Teresita Vega Arguello through social media, in writing, radial or related in a direct or indirect manner that affects the dignity or intimacy of her person.

4 - Warn Mr. Fredy Chamorro, that in the case of non-compliance with the preceding measure, the records will be sent to the Public Ministry, for contempt of a Court order...”⁵³

As can be seen, the same thing that was done against other journalists in the other cases mentioned is repeated here, confirming that there is a consistent trend in the distortion of Law 5777/16 to apply precautionary measures as a form of censorship against journalists who play a role of control and denunciation. The lack of analysis by the Courts from a human rights perspective, especially with regard to freedom of speech and the application of the tripartite test to evaluate whether the case justifies the removal of journalists’ publications, establishes a worrying precedent. This use of Law 5777/16 as an instrument to justify restrictions on freedom of speech in the country raises serious concerns about the respect for this fundamental right.

52 Paraguayan Journalists’ Safety Committee. Official page: <https://seguridadperiodistas.org.py/>

53 Excerpt from sentence 77/2024.JP/TRP. Paraguayan Journalists’ Safety Committee. <https://twitter.com/msperiodistaspy/status/1765040737752674741>

5. CONCLUSION

The critical analysis of the studied and reviewed cases reveals a central problem: the imposition of a prior restriction on the exercise of the right to freedom of speech for cases of public interest, which directly contravenes the spirit of article 13 of the American Convention of Human Rights and article 26 of the National Constitution. This provision clearly establishes that said right cannot be subject to prior censorship, but only to subsequent liabilities. The Court rulings analyzed in this research force the defendants to refrain from exercising their freedom of speech in relation to the plaintiff, which constitutes a form of prior censorship expressly prohibited by the Convention and the Constitution.

As it could be analyzed in the four of the six legal cases studied, it can be affirmed that there is a misapplication of Law 5777/16 by the Judges, either due to ignorance, negligence or even bad faith, and this leads to serious problems in the exercise of freedom of speech as one of the pillars of democracy.

In the same line, it is important to distinguish between the acts of harassment that take place through expressive means and the expressions that -although they can be shocking and disturbing- are protected by the right to freedom of speech. This distinction must be made in detail in each case, as contexts and circumstances may vary significantly.

The cases studied are valuable examples to highlight a common pattern: the misuse of Law 5777 in matters of public interest. In principle, this type of use goes against the fundamental principles of freedom of speech. However, it is important to recognize that there are legitimate situations in which similar measures may be necessary, such as when a person with a history of violence is prohibited from mentioning or addressing their ex-partner through text messages and social media. This approach makes it possible to find a balance between the protection of freedom of speech and the prevention of abuse. By recognizing the importance of distinguishing between acts of harassment and protected expressions, it can be guaranteed that Law 5777/16 is used in a fair and proportionate manner, without compromising the fundamental rights of people.

It is also concluded that it is the responsibility of Judges to maintain order and guarantee respect for fundamental rights, such as freedom of speech. This lack of adequate application of the law can generate an environment of uncertainty and vulnerability for journalists and society in general. It is essential that judges be duly informed and trained to apply the law fairly and equitably, thus avoiding the violation of rights and protecting democracy.

In the same line, it is worrying that Law 5777/16, aimed at combating violence against women, is being used as a basis for imposing restrictions on the exercise of freedom of speech in this case. This not only jeopardizes a regulation designed to address an urgent social problem, but also raises questions about the interpretation of said law in relation to the standards of the American Convention and the Paraguayan Constitution.

An adequate interpretation of Law 5777/16 in line with the American Convention and the Constitution would require a detailed and contextualized analysis of each case, considering aspects such as the nature of the expressions, their authorship and responsibility, as well as the remedies provided by the Convention. The lack of this critical approach in the decisions reviewed and analyzed makes it susceptible to being questioned and revoked in higher instances.

Law 5777/16 defines various types of violence, but the Court decisions that could be accessed for this research does not clarify how these concepts are applied to the specific case. In addition, it problematically links critical or questioning expressions towards women with forms of symbolic violence, without a precise or substantiated analysis on the matter. This broad and dogmatic interpretation of Law 5777/16 makes it incompatible with the American Convention and the Paraguayan National Constitution, which is worrying given the importance of the problem that the law seeks to address.

It is crucial that public policies aimed at combating discrimination against women be developed in line with the full exercise of freedom of speech. This raises a complex but essential challenge for all legal and social actors in the country, as it involves balancing the protection of individual rights with the promotion of gender equality and respect for the diversity of opinions.

6. RECOMMENDATIONS

1. It is recommended that the Paraguayan State regulate in a precise and detailed manner the application of Law 5777/16 to avoid possible abuses by Courts and to guarantee effective protection for victims of violence. It is essential that clear and transparent procedures can be established for the request, evaluation and application of the law, especially the precautionary measures contemplated in this law, ensuring that constitutional and international precepts of freedom of speech are fully respected.
2. In addition, it is suggested that adequate training be provided to the professionals responsible for applying these measures, including judges, prosecutors, lawyers, and police personnel, in matters related to gender-based violence, human rights and freedom of speech. This training should include a gender approach and sensitivity to the specific needs of the victims, as well as a clear understanding of the international principles and standards applicable in the field.
3. Likewise, the Paraguayan State is urged to establish effective monitoring and supervision mechanisms to guarantee the proper compliance of the law and prevent possible abuses in the application of precautionary measures. This could include the creation of independent control bodies and the implementation of systems for the periodic follow-up and evaluation of cases.

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