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**COMMISSION OF CONSTITUTION AND JUSTICE AND CITIZENSHIP
SUBSTITUTE ADOPTED BY THE CCJC
TO THE DRAFT BILLS No. 215, 1,547 AND 1,589 OF 2015**

Establishes causes for the increase of penalty in connection with crimes against one’s honor committed with the usage of equipment, machine, device or other necessary means for enabling telecommunications, or by Internet application, regardless of means used, and sets forth other rules.

The National Congress declares:

Article 1. This law establishes causes for the increase of penalty in connection with crimes against one’s honor committed with the usage of equipment, machinery, device or other necessary means for enabling telecommunications, or by Internet application, regardless of means used.

Article 2. Article 141 of Decree-law no. 2,848, of December 7th 1940, from now on is enforced with the added paragraph 2, renumbering the current sole paragraph to paragraph 1:

“Article 141.

.....
Paragraph 2. The penalty shall be reclusion and double enforced if the crime leads to events that cause the death of the victim.” (NW)

Article 3. Article 145 of Decree-law no. 2,848, of December 7th 1940, from now on is enforced with the following wording:

“Article 145. Proceedings regarding the crimes mentioned in this chapter are only taken upon complaint, except pursuant to article 141, paragraph 2 or if, pursuant to article 140, paragraph 2, bodily injury arises.
.....”
(NW)

Article 4. Article 6 of Decree-law no. 3,689, of October 3rd 1941, from now on is enforced with the added item X:

“Article 6.

.....
X - To access, in the presence of someone legitimated to file a criminal complaint, the application used for the commitment of the crime, as well as to print the offensive content, in the hypothesis of a crime against the honor practised with the usage of equipment, machinery, device or other necessary mean for enabling telecommunications, or by Internet application, regardless of means used.” (NW)

Article 5. Article 323 of Decree-law no. 3,689, of October 3rd 1941, from now on is enforced with the added item IV:

“Article 323.

.....
VI - Crime against the honor that leads to events that cause the death of the victim.”

Article 6. Item IV of article 387 of Decree-law no. 3,689, of October 3rd 1941, from now on is enforced with the following wording:

“Article 387.

.....
IV - the minimum amount for the compensation of moral and material damages caused by the violation will be established considering the losses suffered by the offended;

.....”
(NW)

Article 7. Paragraph 3 of article 10 of Law no. 12,965, of April 23rd 2014, from now on is enforced with the following wording:

“Article 10.

.....
Paragraph 3. The rule established in the main section of this article does not prevent the access to registration data, such as personal qualification, parentage, complete address, telephone, tax payer’s number, e-mail account, in accordance with the law, by authorities with legal competence for its requisition. The internet service providers are compelled to adopt measures regarding the collection, obtaining, organization and availability of the aforementioned registration data as means to comply to what is established here, if and when requested by the authorities.

.....”
(NW)

Article 8. Paragraph 5 of article 13, of Law 12,965, of April 23rd of 2014, from now on is enforced with the following wording:

“Article 13.

.....
Paragraph 5. With exception of the rule set forth in article 23-A, the providing of the records mentioned in this article to the applicant requires judicial authorization.

.....”
(NW)”

Article 9. Paragraph 3 of article 15, of Law 12,965, of April 23rd of 2014, from now is enforced with the following wording:

“Article 15.

.....
Paragraph 3. With exception of the rule set forth in article 23-A, the providing of the records mentioned in this article to the applicant requires judicial authorization.

.....”
(NW)”

Article 10. Article 19, of Law 12,965, of April 23rd of 2014, from now is enforced with the added paragraphs 3-A and 4 with the following wording:

“Article 19.

.....
Paragraph 3-A. The interested party or her\his legal representative may judicially request, at any moment, the removal of content that links her\his name or image to crimes from which she\he was definitely acquitted, or to libelous, defamatory or offensive facts.

Paragraph 4. The judge, including during the proceedings mentioned in paragraphs 3 and 3-A, may anticipate, totally or partially, the effects of the requested injunction on the initial request, in case there is unequivocal evidence regarding the fact and considering the public interest in accessing the content on the Internet, provided that the likelihood of the claim of the plaintiff is well-grounded and there is a well-founded fear of irreparable or hard-to-repair damage” (NW)

Article 11. Law no. 12,965, of April 23rd 2014, from now is enforced with the added article 21-A:

“Article 21-A. The Internet application providers, including the ones with content generated by third parties, that do not take the measures to remove content referred to in article 19 will be subjected to fine. The amount of such fine will be established considering the nature and the gravity of infraction, the damage which resulted from it in connection with the service and the users, the advantage obtained by the infractor, the aggravating circumstances, the precedents of the infractor and recidivism, without prejudice of the other civil or eventually appropriate criminal sanctions.

Sole Paragraph. Recidivism may be understood as the repetition of a breach of law of the same nature after the delivery of a previous judicial decision.

Article 12. Section IV, of Chapter III, “Providing Connection and Internet Applications” of Law no. 12,965, of April 23rd 2014, is now named “Records Requiring”.

Article 13. Law no. 12,965, of April 23rd 2014, from now is enforced with the following added articles 23-A and 23-B:

“Article 23-A. The police authority or the Public Attorney’s Office, pursuant to this article, may request, to the one responsible for keeping it, registration data, restricted to the investigation, in order to conduct an enquiry or investigative procedure initiated to ascertain the practice of crimes against the honor committed with the usage of equipment, machinery, device or other necessary means for enabling telecommunications, or by Internet application, regardless of means used, if the aforementioned request is based on information published or made available to the general public by the individual accused or under investigation, or by any other user.

Paragraph 1. The request will be presented only if grounded on evidence of the occurrence of the crime and when the proof cannot be collected through other available means, under penalty of invalidity of such proof.

Paragraph 2. The police enquiry mentioned in the main section of this article will be concluded within thirty days, if the accused is under arrest, and ninety days, when she\he is free.

Paragraph 3. It is incumbent to the requesting authority to take the necessary measures to guarantee the seal of received information and to preserve the intimacy, private life, honor and image of the user.

Article 23-B. To request or provide connection records or records regarding the access to Internet applications outside of the hypothesis authorized by law constitutes crime.

Penalty: reclusion, of two to four years, and fine.”

Article 14. This law is valid from the time of its publication.

Commission Room, October 6th 2015.

Congressman ARTHUR LIRA
President