

Information on Legal Frameworks in El Salvador Pertaining to Privacy and Freedom of Expression

1. PROVISION OF REAL-TIME LAWFUL INTERCEPTION ASSISTANCE

1.1 Salvadoran Constitution

Article 24 of the Salvadoran Constitution states that correspondence of every kind is inviolable and that interference and intervention in telephone conversations are prohibited. However, certain exceptions to this prohibition are provided for by law, as discussed below.

1.2 Special Law for the Intervention of Telecommunications 2010 ("LEIT")

Article 1 LEIT states that the secrecy of telecommunications and the right to privacy is guaranteed. However, it provides an exception which allows for temporary interception of any type of telecommunication with written judicial approval.

Under LEIT, only the Attorney General's office (known as the 'Fiscal General de la República' ("**FGR**")) can make a written request for interception authorisation from a First Instance Court in San Salvador (Art 7 LEIT). The LEIT established the Telecommunications Interventions Centre ("**TIC**") which is the relevant division of the FGR responsible for interception of communications (Art 29 LEIT).

In order for such a request to be approved, the FGR, which leads criminal investigations in the country, must show that one of a wide range of specified crimes is being investigated and that the investigation has found evidence which indicates that either a crime has been committed, or that it is being committed or is about to be committed.

In such cases the interception can be authorised for a period of up to three months. This can be extended on request up to three times for additional three month periods if the above criteria remain satisfied (Art 12 LEIT).

Under article 51, communications service providers ("**CSPs**") are required to ensure that they have the technical capability to allow authorised interception requests to be carried out on their systems. The CSPs are also under an obligation to comply with technical orders from the Director of the TIC relating to judicially authorised interceptions under article 32. The TIC is therefore able to perform authorised interceptions directly.

Under article 40, failure by a CSP to have systems in place to accommodate authorised interception requests is a serious offence and may incur severe financial penalties.

2. DISCLOSURE OF COMMUNICATIONS DATA

2.1 Special Law for the Intervention of Telecommunications 2010 ("LEIT")

Under article 47 LEIT, prosecutors can request that CSPs provide their subscribers' communications metadata in a legible written format without prior judicial approval. CSPs are obliged to retain such communication data for a period of 10 years and must provide the data requested within specified time periods which range between 24 hours and 10 working days, depending on the nature and age of the data.

Under article 47, failure by a CSP to deliver the data requested is a serious offence and may incur severe financial penalties.

2.2 Telecommunications Law 1997 ("TL")

Under articles 42A to 42H, operators of commercial telecommunications networks must provide the FGR and criminal judges with information relating to the origin, destination, and reception of telephone calls involving numbers associated with their subscribers who are under investigation to the extent that they have been generated or received through the equipment, facilities or telecommunication services of the operator. Lack of cooperation with this process will incur a severe fine.

Operators must also establish the policies and procedures necessary to process such requests, to prevent such information being obtained without the proper authorisation and to maintain and safeguard the information retained.

3. NATIONAL SECURITY AND EMERGENCY POWERS

3.1 Salvadoran Constitution

Under article 29, the right to privacy of communication in article 24 as referred to above can be suspended by decree of the Legislature or Executive in cases of war, invasion of territory, rebellion, sedition, catastrophe, epidemic or other general disaster or serious disturbance of the public order. Such decrees are limited to 30 days but can be extended for unlimited further 30 day periods by subsequent decrees.

However, article 49 LEIT states that if such a decree is made, the offences in relation to which interception of communications can be authorised may be widened but that the principle of prior judicial authorisation and the procedures laid out in LEIT shall continue to be respected.

There is no law which enables the government to take control of a telecommunications network or to shut down a network or particular service in the event of a state of emergency or otherwise.

4. CENSORSHIP-RELATED POWERS

4.1 Special Law Against Extortion 2015 ("SLAE")

Article 13 SLAE gives the FGR the power to request that CSPs suspend all telecommunication services to a particular person who is under investigation for extortion. Such requests must be notified to a competent criminal judge within 72 hours for ratification. If the judge does not respond within the 72 hours the request will be deemed ratified.

The SLAE also prohibits CSPs from providing telecommunications services to defined areas (determined by the Superintendent of Electricity and Telecommunications with the Ministry of Justice and Public Security) where prisons, prison farms and juvenile detention centres are located. It is the CSP's duty to take all necessary technical

measures to ensure compliance with this requirement.¹ This prohibition does not extend to landlines, internet or data connections used by the administrators of such locations.

5. OVERSIGHT OF THE USE OF THESE POWERS

5.1 Interception powers

Under article 48 LEIT, the FGR must submit an annual confidential report to the Commission for Legislation and Constitutional Issues of the Legislative Assembly with details of the interception powers exercised over the preceding year. This report must contain an assessment of the use of interception, the results achieved, obstacles faced, and legislative or administrative recommendations for the improvement of the use of interception in criminal investigations.

5.2 Emergency powers

There is no established procedure for challenging decrees made pursuant to article 29 as discussed above.

6. PUBLICATION OF LAWS AND AGGREGATE DATA RELATING TO LAWFUL INTERCEPT AND COMMUNICATIONS DATA REQUESTS

6.1 Publication of laws

There is no restriction on a CSP publishing the laws or regulations to which it is subject. No law is binding in El Salvador except by virtue of its promulgation and publication. For a permanent law to be binding, at least eight days must pass after its publication.

6.2 Publication of aggregate data

Under article 19 LEIT, in addition to the contents of intercepted communications, all information relating to the procedures used to intercept them must be kept confidential. Therefore CSPs cannot publish aggregate data relating to, for example, the number of interception or metadata requests it received over a specified period.

¹ Art 14 SLAE