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THE CONSTITUTIONAL COURT OF COLOMBIA IMPOSES LIMITS ON THE USE OF INTERNET JAMMERS DURING SOCIAL PROTESTS

Carolina Botero and Lina Paola Velásquez

ABSTRACT

The Constitutional Court of Colombia has issued an important ruling regarding the use of the Internet as the main tool to guarantee the fundamental rights to freedom of speech and access to information during social protests. This ruling marks an important precedent in the matter because it imposed new obligations on the State and the government to guarantee the "maximum level of information". Likewise, the Court ordered the regulation of the use of signal jammers during social protests. This article will analyze the ruling and its effects in Colombia.

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A CONTEXT

In the month of April 2021, [a social protest originated in Colombia](#) against the tax reform of then-president Iván Duque. During those days, the Internet became the main tool for disseminating information and expressing ideas. It contributed to the calls to attend the national strike and meet at specific points in the city. It also made visible the abuses by state agents against protesters and journalists, fulfilling a fundamental role of independent

and also public communication. However, during the demonstration, [connectivity problems began to arise in specific sectors](#) such as Aguablanca and Siloé in the city of Santiago de Cali, as well as failures in mobile devices, generating a feeling of censorship.

The feeling that the law enforcement made selective internet and energy cuts during the 2021 protest was denounced by social organizations and media -especially alternatives- that were on the street. However, the State did not seriously investigate it. A recent ruling by the Constitutional Court analyzed this situation, determined that there was a violation of rights and also ordered the use of signal jammers to be regulated by applying the standards of freedom of expression and the duty to investigate what happened.

The [ruling T-372 of 2023](#) closes [the “tutela” process](#). The “tutela action” is a judicial defense mechanism conceived by article 86 of the Constitution of Colombia to provide an efficient solution to all factual situations generated by the action or omission of public authorities and/or private individual, which entail the threat or violation of fundamental rights (in this case, freedom of speech, access to information and freedom of assembly and association).

This mechanism was initiated by the FLIP, the Veinte, the ISUR Center of the Universidad del Rosario and the Karisma Foundation and its text raises the limits that human rights impose on the use of technology by the State to control people's communications, especially in times of social uprising. This text is the English translation of the article [published by CELE](#) that expands and gives context to the first reading of this sentence [published in El Espectador](#).

First of all, it should be stated that this case was not the typical and already debated “internet blackout” – suspension of service by order of a State– as happened during the military coup in Burma (2015) or in an election in Venezuela (2013). In this case there were interruptions in different places and times with the common denominator of the presence of law enforcement. There was also no evidence that could demonstrate that the government gave the order to interrupt the internet or that the law enforcement had used equipment to block the signal on those days. What there was was a lack of transparency and access to information. With the legal action, the organizations sought to show that people experienced a feeling of censorship and silencing due to selective and intentional internet cuts that affected their rights; that they could not know why they happened and that because of the experience they lived. They suspected that it came from the law enforcement that has signal jammers. Therefore, as the Court well perceived, [the case was about lack of information and opacity](#) as a barrier to deciphering what happened.

With that in mind, this analysis of the sentence is done through five axes.

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First, the recognition that there were selective internet cuts. Second, the recognition that as a consequence of them, fundamental rights were affected. Third, the Court reiterates that Internet access allows the exercise of other human rights, and constitutes a right in itself that the State cannot interfere with. Fourth, the Court establishes that the current regulation of signal jammers and their use in Colombia do not comply with international standards. And fifth and last, the Court indicates that in times of social uprising the state has the obligation to provide “the highest level of information.” As a result of these findings, the Court concludes that the Colombian government in this case failed to comply with its obligations when it did not offer information that would clarify what was happening, nor did it investigate it. Let's see:

I. THE COURT VERIFIED THAT THERE WERE SELECTIVE INTERNET CUTS
DURING THE PROTEST SOMETHING OLD

In the month of May 2021, internet connectivity difficulties occurred in the city of Santiago de Cali. Faced with the failures and complaints by the protesters, there was not much clarity. Some journalists [denounced](#) the possible use of jammers by the law enforcements possibly located near the ESMAD vehicles -as the riot police were then called in Colombia-. These assumptions were based on the fact that they stated that they had recovered the signal and the live transmissions at the time they left said vehicles. The testimonies thus describe the experience of the people and the way in which they perceived the use of these devices as we explain in Karisma's report: [“Guns versus cell phones.”](#) This hindered and reduced the possibilities of receiving information as well as delivering it and sharing opinions regarding what happened during the protest.

The British organization Netblocks confirmed that in its connectivity monitoring exercises they detected interruptions in the service that corresponded mainly to the Movistar network. Movistar reported that the failures were the result of fiber optic cabling cuts due to a theft that affected the Aguablanca sector. Likewise, the Ministry of Information and Communications Technologies (MinTic) repeated what Movistar said and stated that the cuts occurred as a result of an “act of vandalism” or a possible “act of terrorism” as a result of the social protest.

The Court analyzed the state action and echoed the concern of the applicants, maintaining that the government effectively limited itself to repeating the operator's explanation. The State neither corroborated itself nor investigated the discrepancies that were reported to it with this version, including complaints that detailed how the cuts did not correspond to the geographic sector affected by the theft of cables or occurred on other dates, for example. With the testimonies of journalists, the report of the IACHR visit to Colombia and with the communication from the MinTic about the

interruptions, the Court was able to prove that (i) there was an interruption of the internet service in Cali during the 4th and 5th of May 2021 and; (ii) that there were internet signal problems for live broadcasts from places of journalistic interest close to ESMAD vehicles. To date, it has not been possible to determine who was responsible for said cuts and the National Spectrum Agency (ANE) did not show any willingness to make a statement or investigate in depth.

II. FREEDOM OF EXPRESSION AND SPECIFICALLY ACCESS TO INFORMATION WAS AFFECTED

The Court sees in this case the opportunity to reinforce the collective nature of freedom of expression. We usually deal with freedom of expression as the right to communicate what one wants, but there is also the right that we all have to seek and receive information and ideas of all kinds. In this regard, jurisprudence highlights the role of freedom of expression in a democratic society in an increasingly digital era (ruling SU-420 of 2019). The Court reiterated in this ruling that information pluralism guarantees the existence of alternative and independent media, since pluralism allows audiences to choose freely. In this case, the internet contributes to the plurality of voices.

In this way, the Court highlighted that the Internet is a valuable democratization tool to communicate opinions and information in digital environments due to its role as an alternative means of acquiring information. Constitutional jurisprudence had already established that public debate and discourse “have ceased to be in the exclusive hands of public figures or the traditional media, since citizens have used this powerful tool to express themselves, denounce, organize and mobilize” ([ruling T-155 of 2019](#)). Hence the importance of paying attention to the protection of these rights in the digital ecosystem.

III. THE RIGHT TO THE INTERNET AND THE IMPACT ON THE RIGHT OF ASSEMBLY AND ASSOCIATION HE RESULT OF COMBINING I + II

In its ruling, the Court recognizes that the Internet is a right and that governments cannot block it. Rather, they must actively seek to ensure that people can receive and offer information and in this framework the democratizing nature of the Internet stands out. It also stressed that the Internet -as a technological advance- is a fundamental tool for the materialization of other fundamental rights - including the right to assembly and association - ([ruling T-030 of 2020](#)). Social networks allow an alternative space for complaints and demands for rights that are part of social movements to exercise their right to social protest ([ruling T-061 of 2022](#)).

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The Court concludes that the Internet cannot be considered a mere instrument to materialize other rights nor can it be considered a simple public service, but rather that from constitutional jurisprudence it must be considered in itself as a right because its access constitutes a true right on its own.

Recognizing that in this case reasons of “national security” or “public order” were not invoked and therefore did not stop in its analysis, in any case, the court studied soft law to conclude that Internet cuts and the use jammers cannot be used as a method to silence voices in digital environments for reasons of “national security” or “public order.” Therefore, the national security argument must be studied in advance depending on the scope of the concept itself, which must be established in the law with the criteria of necessity and proportionality. Situation that was not reflected in the specific case.

In this case, the Court delved into its concerns about the interruptions of internet service in the context of the protests, while the exercise of the rights to assembly and association in the context of public and peaceful demonstrations was hindered.

IV. THE CURRENT USE OF SIGNAL JAMMERS DOES NOT MEET
INTERNATIONAL STANDARDS

There has been a Resolution since 2013 (MinTic 2774) modified in 2018 (MinTic 1823) that authorizes law enforcements to use signal jammers without having to request permission from the regulatory body “in cases related to public safety”. The Court accepts the arguments of the applicants and explains that a restriction of this nature must meet the standards of legality, necessity and proportionality.

Notably, the use of signal jammers had also previously been addressed by the court in the 2017, case T-276 on prison communications. This ruling addressed the right of people in prison to communicate and how it should be reconciled with the use of jammers, something that has not yet happened.

Since in this case there is no evidence that allows us to assign responsibility for Internet outages related to the use of signal jammers by law enforcements, the Court does not dwell on this issue. Of course, it orders that MinTIC, MinDefensa and the National Spectrum Agency (ANE) promote the necessary regulatory adjustments (6 months) and that Congress legislate on the use of jammers.

The Court indicates that when complying with this order in the specific case, regulators must apply international criteria and to do so they must comply with four minimum standards:

1. The effective enjoyment of freedom of expression in the field of the

Internet, which is closely related to the fundamental rights to assembly and association, does not admit, in principle, restrictions on access to this service, even for reasons of public order. .

2. At a general level, there is no room for prior control or censorship in this digital environment. However, when national security is exceptionally invoked as a limitation on Internet access that impacts the exercise of freedom of expression, the law must specify the scope of any restriction.

3. In any case, for a limitation to be in accordance with the Constitution and the constitutional block, it must correspond to an imperative, legitimate, necessary and proportional purpose.

4. Finally, the State's guarantee of access to the Internet service leads to the avoidance of intentional disruption to access to online information by the entire population or a segment of it and, in addition, a reinforced duty to make a timely statement. on complaints of blockages, based on technical, updated and accessible information.

V. THE PRINCIPLE OF “MAXIMUM LEVEL OF INFORMATION” REINFORCED

This is perhaps the most important part of this ruling: The Court recognized the difficulty for a person to prove Internet interruptions or that the law enforcement used signal jammers, but that should not undermine the right to information. For this reason, the Court indicates that what corresponds is for the authorities to “speak out in a timely manner on the complaints of blockades, based on technical, updated and accessible information”, the ruling speaks of maximizing transparency so that citizens can scrutinize and question possible improper uses of technology and for this the Court focuses on the principle of “maximum level of information” reinforced in a context of social protest -derived from article 20 of the Colombian Constitution.

By virtue of this principle, the government is obliged to investigate and respond to questions about the use of this technology with truthful and comprehensive information; They had to explain the cuts to the internet service and the possible use of signal jammers during the protest. The [Inter-American Commission on Human Rights](#) had also requested this on the occasion of its report on its visit to the country in 2021 and it is in the [follow-up instrument](#) for the recommendations, without it having been addressed to date.

The lack of information was what caused the applicants entities, in the opinion of the Court, to violate the rights to freedom of expression, association and assembly and that is why it ordered that MinTIC and MinDefensa respond to the questions (5 days) and These, plus the ANE, investigate and publish a report (6 months) on the subject.

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CONCLUSION

In complying with the investigation order, the government faces a significant challenge. The ANE, in charge of monitoring everything that has to do with the spectrum, is the one that must verify what has happened with the signal jammers, it must establish if, how, where and when there was interference to the signal through the spectrum as they suspect. who were at those protest sites. This goes beyond what the ANE usually does -which, for example, monitors and sanctions stations that operate without a license- it will have to analyze whether these cuts occurred and whether they came from equipment in the hands of the law enforcements present at the site, which will do by being an agency attached to the MinTIC. That is an issue because, in line with international standards, it is the Communications Regulatory Commission (CRC) that should have these functions to seek independence from the government. However, with the current legal design, the ANE will not only have the challenge of carrying out an investigation with all the restrictions of the passage of time (more than two years have passed) but it [may not be perceived as a neutral investigator](#).

In relation to the order to adjust the legal framework for signal jammers, it is important to highlight that it is not enough to incorporate transparency obligations. In order to use jammers in a protest, an analysis of international human rights standards must be carried out and mechanisms created to guarantee the corresponding human rights standards. In light of the standards on jammers and the standards around protest, these devices could hardly be used legitimately in this context.

This ruling comes at a very important time in Colombia in terms of technology regulation. The [opacity and silence](#) surrounding the acquisition and use of surveillance technologies has been denounced and must be addressed, especially now that police reform is being discussed in the country. This reform includes reviewing the use of technologies in social protest and a bill that was recently presented to reform the intelligence law. These are opportunities to integrate transparency provisions, the highest level of information, and considerations regarding international human rights standards. It is clear that in order for both people and authorities to be able to control and punish improper uses of technology, it is necessary to incorporate into the new regulations mechanisms of maximum transparency in its acquisition and use. This is what guarantees the exercise of rights such as freedom of expression, access to information, assembly and association in the twenty-first century.

The ruling is also about the right to research. The Colombian court does not mention it explicitly, but it protects the right to research. This analysis is based on the impediments that internet outages represent for journalism, as it hindered optimal investigative coverage of the events that occurred in the

social protest, jointly affecting the right to access information and dissemination of opinions. That is why it is relevant to guarantee the free exercise of research as it is linked to access to information, taking into account that we have the fundamental right to understand what is happening in our lives. In the 21st century this has a new dimension because when it comes to technology there is a black box and we must be able to open it and decipher it.