

Uruguay

I. Brief Introduction to the Legal System of Uruguay

Uruguay is a civil law country. It has a written Constitution which may not be modified except through special proceedings; statutes, which cannot modify the Constitution, and are enacted by the legislature and require a final intervention of the executive to be in force; and execution decrees which are enacted by the executive to develop the general provisions contained in the statutes but cannot dispose on the contrary.

Moreover, although not a federal country, since it is divided in nineteen jurisdictions it also has nineteen local governments which can enact local statutes through their local parliaments. These local statutes are in turn developed by decrees of the local executive branch. These local statutes can only address local issues as defined in the Constitution and the statutes enacted by the legislature. These local governments do not have any judicial authorities.

The Constitution expressly recognizes the right of individuals to due process; provides that only statutes can determine judicial proceedings; forbids any judicial proceedings to be carried out by a court created for the specific case (ad hoc); forbids criminal proceedings to be held in absence of the accused; and moreover specially emphasizes the responsibility of judges for any damage caused to the rights of individuals and their liability for any deviation from the course of actions provided by law. Pursuant to these principles, judges have the obligation to decide any legal matter submitted to them without being able to excuse themselves in the absence of a specific rule of law applying to the case that needs to be solved. In the absence of specific rules applying to any case, judges should try to resolve the matter based on analogy. In case analogy is not enough, judges should apply the general principles and secondarily the most relevant doctrines. Court decisions do not create any mandatory precedents and are only valid and binding on the parties involved in the case. Notwithstanding, court decisions usually take into account other previous court decisions, and although not legally binding, the opinion of legal doctrines is particularly relevant in our system and it is common to find quotations of legal doctrines in almost any judicial writ.

The judiciary is independent. The Supreme Court of Justice is the head of the judiciary and its decisions are final. The Supreme Court's jurisdiction is basically limited to i) the

examination of the files brought to it by means of extraordinary appeals (*Recurso de Casación*); ii) judicial review of statutes; and iii) those cases referred to diplomats. Below the Supreme Court are Courts of Appeals which specialize in labor, criminal, civil, and family issues. These courts examine the files brought to them by means of appeal from the Courts of First Instance with specializations in such matters as criminal, labor, family, civil, commercial, customs, administrative, and bankruptcy. At the lowest level there are other courts which address issues arising from lease agreements, and civil and administrative cases of lower amounts in controversy.

II. Uruguay's Anticorruption Law

Corruption practices have been criminalized in Uruguay for a very long time. Ever since 1889, in the first Uruguayan Criminal Code, certain corrupt conducts were made criminal offenses. This is true today in the Criminal Code currently in force (dated 1934) notwithstanding that some corrupt conduct is the subject of other laws as well.

Bribery law

To enact responsibilities imposed by the UN Convention and the Inter-American Convention, both of which Uruguay is a party to, Uruguay enacted the UY Anti-Bribery Act – Act N° 17.060, which entered into force in January 1999. This law amends certain criminal offenses which were already incorporated in the Uruguayan Criminal Code, mainly increasing penalties and making a few new offenses crimes. Decree 30/003, which developed the Act established rules of conduct for public officials and set out procedural aspects related to how public officials can gain information regarding their expected conduct as well as how to report wrongful conducts. The Decree expressly states which conduct is expected from or permitted to public officials as well as which prohibitions they are subject to.

Definition of public official and corruption

Public officials are broadly defined by the Criminal Code as every person occupying a public position or performing a public law function. The UY Anti-Bribery Act defines “corruption” as the “wrongful use of public power or of the public function in order to obtain an economic profit for the agent of the conduct or for someone else, regardless of whether the State suffers any damage or not.”¹ Therefore, according to Uruguayan legislation, there would only be corruption, and anti-bribery laws would only apply, when dealing with the public sector. Nevertheless, in many cases the responsibility for bribery offenses will be bilateral: both the public official and the individual paying or promising to pay the bribe will have criminal liability for their participation, which necessarily requires someone offering or paying and the public official accepting such proposal.

Bribery of public officials

The main provisions on bribery offenses are included in the Uruguayan Criminal Code in the Section of Offenses against the Public Administration (Section 153 to 176 Uruguayan Criminal Code) and these include actions in relation to public officials such as:

- The acceptance by a public official of an undue pecuniary advantage or the acceptance of the promise of such pecuniary advantage to perform an act of his employment or for an act of his employment which has already been performed. (Simple bribery)
- The acceptance by a public official of a payment or another type of pecuniary advantage or the acceptance of the promise of such pecuniary advantage to delay or omit an act of its employment or to perform an act contrary to its duties. (Qualified bribery)
- Section 29 of the UY Anti-bribery Act expressly applies extraterritorially for the offense of “transnational bribery,” criminalizing the conduct of offering or granting money or another economic advantage to a foreign public official whether made in Uruguay or abroad.

Bribery in the private sector

Even if there are no bribery provisions for the private sector per se many actions seen for public officials as bribery offenses, if committed by an individual, would also constitute a criminal offense under general criminal provisions; for example, scam. And, actions, which if performed in the public sector would imply the commission of a bribery offense, in the private sector will not be considered to be a criminal offense even if it could be considered to be wrong from an ethical point of view and basis for a termination of the labor relationship with cause.

Legal persons

Under the Uruguayan legal system, criminal responsibility is strictly personal; legal persons may not be found liable for a criminal conduct.

Sanctions

Sanctions are: imprisonment (which may go up to 6 years of jail), economic penalty, and the prohibition of holding a public position.

III. Assessment

Uruguay has always been considered to be quite a transparent country with respect to corruption and corrupt practices. According to Transparency International and its Corruption Perceptions Index (2012) Uruguay is ranked 20th among 176 countries and 4th in Latin America.

As a result of the judiciary's independence, judges in Uruguay have been quite firm and strict in laying down the law in cases in which corruption has been found to have occurred, even when those cases have been discovered within the judiciary. As a general comment it must be said that Uruguay has a long tradition of prosecuting corruption and that if discovered it is not tolerated but rather it is judges harshly and swiftly by our judicial system.

Uruguay is not a member of GRECO or a signatory to the IACA.

IV. Texts

A. Uruguayan Anti-Bribery Act – Act N° 17.060

<http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=17060&Anchor=>

B. Regulatory Decree – Decree N° 30/003

http://www.ain.gub.uy/noticias/decreto_302003.htm

C. Uruguayan Criminal Code

http://www.parlamento.gub.uy/Codigos/CodigoPenal/Cod_Pen.htm

ⁱ Section 3, Act 17.060 <http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=17060&Anchor=>