

COSTA RICA: Speech subject to Executive Power

Executive Summary

Costa Rica ranks sixth in the Chapultepec Index of Freedom of Expression and the Press with 73.16 points. The law of the land maintains the protectionist standard of previous years. Consequently, citizens do not face unlawful restrictions on the exercise of freedom of expression. Despite the strong influence of the Executive, journalists can exercise their profession without restrictions, freedom of the press is protected, and the impunity rate in cases of violence against the media and journalists remains low.

Introduction

Costa Rica remains one of the best countries in the region for the exercise of freedom of the press and freedom of expression. With 73.21 points out of a maximum possible 100, Costa Rica holds the sixth position in the ranking, with low restrictions on freedom of expression. Overall, among the categories reviewed, the good assessment of Realm D, regarding control over the media, stands out. The Government refrains from meddling directly or indirectly with the activity of mainstream and social media, thereby guaranteeing access to public information, media plurality, and content.

The coverage of the COVID-19 pandemic remained on the country's media agenda, which increased their importance during the period surveyed in this study (July 2020 - August 2021). In this regard, research conducted in October 2020 by the University of Costa Rica (Universidad de Costa Rica, UCR) revealed that citizens use up to three media outlets to get news about the pandemic, and 70% indicated having "much or some confidence" in them, thereby contributing to the favorable perception regarding the exercise of freedom of expression in the country (Bonilla, M., 2021, February 5).

Nonetheless, the economic issues relating to the management of the pandemic continue to pose myriad of challenges. A study conducted by the National University's Institute of Social Studies in Population (Instituto de Estudios Sociales en Población de la Universidad Nacional, IDESPO-UNA) revealed that citizens perceive the economic situation as the most pressing crisis. Indeed, it is noteworthy that 51% of those surveyed stated that their income decreased because of the pandemic (IDESPO-UNA, 2020, p. 11). This decrease in the income of the population impacts the income of the media, especially independent and online media relying on their audiences to survive.

Results Analysis

In Costa Rica, the environment exerting the most influence on freedom of the press is the Executive. Since 2019, we have noticed the relevance of this branch of government, and the results obtained in this index show that its influence has increased in all the areas reviewed. One of the reasons for this situation is related to the role that the Office of the President (Casa Presidencial) has had in the release of information regarding the management of the pandemic, including the number of cases, the procurement of vaccines, the devising of the vaccination rollout, and other actions necessary to prevent the spread of the virus.

For their part, the Judicial and Legislative environments exert little influence on the protection of freedom of expression. However, the performance of the Legislative has been limited by COVID-19. In October 2020, the Legislative Assembly building was closed following the contagion of 50 people (Díaz, 2020, October 22); in April 2021, sessions were cancelled for fear of another massive infection (Arrieta, 2021a, April 21); and in August 2021 a similar measure was taken to avoid contact of representatives with infected people (Delfino, 2021, August 9).

The Judiciary has played a more active role in protecting journalists, granting access to public information, and guaranteeing the exercise of freedom of the press in general. The Constitutional Chamber [Judiciary] is portrayed as the main guardian of the exercise of this right in Costa Rica. Its influence is moderate; however, this should not be perceived negatively. Judicial control is effective thanks to the independence of powers and adherence to the constitutional and international regulations in force in the country.

Environments: The Executive, the top influencer

The Executive obtained 2.07 points out of 10 in this index, which means that it has a slight influence on the exercise of freedom of expression in the country. It is of concern that, in the period under study, the impact of the Executive on the exercise of journalism was moderate, with a score of 5.00 points. Therefore, the change in this year's index shows a considerable deterioration in the relations between the Executive, journalists, and the media.

The communication strategy followed by the Office of the President has not been successful. In fact, the Report to the Mid-Year Meeting of the Inter-American Press Association (IAPA) noted:

[...] no efforts have been made by the national government in favor of speedy processes of transparency and accountability - which resulted in a series of complaints to the Office of the President by journalists from different media due to the lack of a free-flowing relationship with the press. (IAPA, 2021, April 20-23).

Issues with access to public information are not limited to the management of the pandemic, but also include those relating to data on refugee applications, restrictions on vehicles, health and economic measures (particularly on the *Bono Proteger* [Protection Bonus], financial aid for those affected by COVID-19). Likewise, the Executive has not taken any measures seeking to financially support media outlets that have been affected by the pandemic, nor has it released information regarding those media that have benefited from advertising time buys (IAPA, 2021, April 20-23).

On the other hand, the influence of the Legislative environment is also slight. In this study, Costa Rica obtained 0.77 points out of 10, which shows that its activity has little effect on the

exercise of freedom of expression. In fact, of the three environments covered in this Index, it is the one that has the least impact on communication in the country.

However, it should be noted that there are situations demanding attention from the legislative branch. The Radio Act (Wireless Services ([Ley de Radio – Servicios Inalámbricos]) No. 1758 was enacted in 1954 (Republic of Costa Rica). Out of 27 its articles, only 14 are in force, which have also been amended by different regulations in order to adapt them to the current needs of society. This outdated statute gives rise to legal loopholes and issues that must be addressed by the Legislative to avoid violations of the right to free speech.

The transition of broadcast TV to digital will have an impact on freedom of the press. Therefore, the Legislative should take special care of this situation. In this regard, it is noteworthy that the law regulating the granting of concessions for the use of airwaves is the Telecommunications Act ([Ley de Telecomunicaciones] No. 8642). However, this statute does not contain specific provisions on the rights or duties of the media. This situation generally affects the exercise of freedom of expression and may have a negative impact on the exercise of freedom of the press in the near future.

Finally, the Judiciary obtained a score of 0.86 out of 10, meaning that it exerts a slight influence on the exercise of freedom of expression and the press in Costa Rica. The highest court of Costa Rica has been known for being respectful of national and international laws protecting the exercise of freedom of expression, particularly in terms of access to public information.

However, during the pandemic, judicial backlog in the country increased. The situation varies among courts, but Constitutional Chamber Justice Luis Fernando Salazar indicated in May 2021 that there is a three-year backlog approximately (Ugarte Jiménez, 2021). This fact affects citizens in general; but it should be reminded that compliance with procedural terms is essential to guarantee the protection of journalists and the media.

The Constitutional Chamber has been expeditious in ruling on cases involving journalists when filed under the figure of constitutional injunctive relief. This mechanism has been effective in guaranteeing access to public information and in protecting journalists who have been attacked for fulfilling their duties. Likewise, the performance of the Criminal Chamber when it ruled for acquittal in a defamation suit brought by the former head of Institutional Relations of Banco Nacional against journalists of La Nación (Vizcaíno, 2020) is also worth noting.

Realm A: Plurality and access guaranteed

During the pandemic, the branches of government have encouraged access to public information and the dissemination of information relevant to the population. For their part, the media have had few restrictions, which has favored the exercise of freedom of the press. Hence, in this environment, Costa Rica obtained a score of 13.86 out of 23, implying that there are low restrictions on the right of citizens to be informed and be able to express themselves freely. Nevertheless, the Executive exerts a strong influence on this realm.

In general, the Government has guaranteed access to press conferences and public information, especially in connection with the management of the pandemic and the economic measures taken to mitigate its negative impact. There are those who have faced some restrictions in terms of obtaining accurate and timely information; but these difficulties have been resolved.

The Government has made positive use of the existing media ecosystem in the country to allow the flow of information disseminated through them. Furthermore, it has refrained from penalizing or censoring those critical of the actions of, or the measures taken by, public officials.

It is important to underscore that Internet access has been guaranteed; it has even expanded. The organization We Are Social reported a 10.6% growth of Internet users in 2021, which implies that 81.2% of the population has Internet access. Similarly, there was a 5.4% increase in social media users, indicating that approximately 3.9 million Costa Ricans actively use them (Kemp, 2021, February 5). Additionally, there are few restrictions on the use of these platforms to search, receive, and disseminate information. In fact, the UCR study published in 2021 showed that 58.5% of the population, especially those between 18-29 years old, use them to get news.

Realm B: Freedom of the press guaranteed

Restrictions on the exercise of journalism in Costa Rica are few. The country has been renowned for being a guardian of the freedom of the press. However, compared to 2020, the rating decreased from 8 points to 6.29, out of a total 10. In fact, in 2020, the influence of the Executive was moderate; but in 2021 it was very strong.

One of the reasons for this change is government communications on the pandemic. The actions of the Ministry of Health and the Office of the President in this regard have been prominent. Consequently, the media rely on the information provided by spokespersons of these offices to do their work. In this regard, the vice president of the IAPA indicated in April 2021 that "[t]he response times established for the different ministries are not being met, and the media and journalists do not get the answers within the time established by law".

It is worth noting that there have been no changes regarding mandatory membership or requirement of a university degree for the exercise of journalism. Therefore, any person can freely practice the profession. In the period under study, there are no reports of denials of access to official sources, or requests to reveal journalistic sources, or measures that condition the exercise of freedom of the press in the country. Consequently, it can be stated that the exercise of the profession has been guaranteed with the independence and plurality typical of the Costa Rican media ecosystem.

Realm C: Costa Rica is a safe place for journalists

The country has been known as one of the safest in the Central American region for the exercise of journalism. Violence against journalists is minimal and impunity rates are low. Out of 42 points, Costa Rica scored 29.87, reflecting a good performance by the Government in protecting journalists.

Although the Index reflects a strong influence of the Executive in this environment, there are no reported cases of persecution of journalists, nor the use of smear or stigmatization campaigns against journalists or media outlets by officers of the Executive. In fact, one of the instances of aggression reported was on the part of society. In August 2020, those protesting "against sanitary measures to contain the spread of covid-19 [sic], assaulted the news teams of Columbia, Teletica, and Repretel that were covering the events" (Chinchilla, 2020).

Regarding impunity, it is important to underscore the work of the Judiciary. The Constitutional Chamber has issued several decisions that guarantee access to public information and punish those responsible for aggressions. For example, on November 13, 2020, the Chamber issued Ruling No. 2020-021939 whereby:

[... It] found that journalist Chinchilla was arbitrarily and unwarrantedly apprehended by the Police [...] This obstruction, as detailed in the judgment, occurred not only because of the unjustified apprehension of the person involved, but also when Law Enforcement officers directed a light towards the journalist's camera, impairing, with such reflection, the capture of images she was trying to make (Sala Constitucional Costa Rica, 2020).

Realm D: Media free of unlawful controls

This was the top-scoring realm at 23.14 out of 25, so it can be said that there is full media freedom in Costa Rica. The Government refrains from taking measures that directly or indirectly affect the activities of mainstream or online media. On record, there are no expropriations, seizures, use of tax procedures to privilege some media over others, or the establishment of discriminatory criteria in the allocation of public funds or government advertising.

Since 2008, when the Government authorized the participation of private and foreign companies in the information technology sector, Costa Rica's digital realm has grown steadily. Service providers face no limitations from the Government, platforms and content are freely accessible to Internet users. Even during the pandemic, e-commerce increased by 48% in 2020, underscoring the importance of digital media not only for the dissemination of information, but also for the supply of goods and services (Martínez, 2021, June 30).

Finally, some progress has been made regarding the transition from analog to digital television. This project was affected by the pandemic. However, the Executive decided to resume it in July 2021. The transition is scheduled by regions. Notwithstanding, there is little information on the effects that this change will have on the public and on the access to technology that will enable community and independent media outlets to join this realm (Castro, 2021, May 14).

Conclusions

Freedom of expression and the press in Costa Rica is protected by law and guaranteed by the Judiciary, but affected by the Executive. Although no cases of direct interference of the Executive in the exercise of this right have been reported, the influence that the Office of the President has exerted on communication between 2020 and 2021 is very strong. Spokespersons of the Executive have become the main sources of information, so their actions have a negative impact on the exercise of freedom of the press.

Since 2019, we have noticed an increase in the influence of the Executive in communicational processes, and we can expect this trend to continue next year due to the general elections to be held in February 2022. An outstanding fact is that, beginning the second semester of 2021, there were over 20 candidates for the presidency of the Republic. This situation is unprecedented in the history of Costa Rica and will pose countless challenges for the media and the public authorities in charge of the electoral process (Arrieta, 2021b, August 17).

It should be reminded that, during the 2018 elections, we noticed an increase in the polarization of political discourse and, consequently, in journalism. The 2022 general elections pose a similar challenge. The dissatisfaction of the population with the economic measures taken and the handling of the pandemic will be issues that all candidates will address, and the way the media report on this will have an impact on the exercise of freedom of expression by the citizenry and freedom of the press in general.

Likewise, it is important to follow up on the digital transition of broadcast television and radio. The Executive decided to resume this project in July 2021 and it is expected to be completed by July 2022 (Castro, 2021, May 14). The transition will be conducted progressively, which means that certain areas of the country will face the "digital blackout" in the middle of the electoral process. This situation may have a negative impact on the exercise of freedom of the press that should be monitored, especially due to the lack of a law regulating this situation.

The influence of the Judiciary and Legislative in 2021 was moderate. However, we can expect that the situation will change in 2022. As sessions are resumed, the Legislative Assembly should take special care of passing laws that adequately regulate digital television and radio in accordance with international agreements. Regarding the Judiciary, hearing cases filed by journalists and the media within the established procedural terms will be essential to guarantee access to public information and respect for fundamental freedoms.

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