

URUGUAY: TOWARDS A NEW MEDIA LAW

Executive Summary

Uruguay leads the ranking in the Chapultepec Index with a value of 84.10 points out of 100 point of the global index.

It can be considered as a country with a favorable climate for freedom of expression, with certain partial restrictions associated by experts with the slight influence of the legislative environment..

There is little clarity in the rules for the allocation of official advertising; some obstacles in the level of compliance with access to public information; and a new draft of the guidelines, subject to parliamentary discussion at the moment, which promises changes in aspects related to freedom of expression developed in this report.

Introduction

The report comprising this 2021 edition of the Chapultepec Index covers the discussion in the lower house of the bill presented by the Executive Branch –chaired by the President of the Republic Luis Lacalle Pou– before the General Assembly, and which includes modifications to Law No. 19307, Media Law: Regulation of the Provision of Radio, Television and Other Audiovisual Communication Services, still valid. The project, which was presented in April 2020, in the second week of September 2021, does not achieve consensus among the party forces with parliamentary representation after a year and a half of discussion.

This debate is framed in a country where the support of its citizens to democracy as a political regime leads at the end of the 2020 pandemic; it does not present great complaints regarding democracy and how it works. There is a perception that freedom of expression is guaranteed; it presents the highest level of trust towards the Congress, the political parties and the Judicial branch as institutions of democracy (Latinobarómetro, 2020).

By August 2020, six months after the beginning of the pandemic and the inauguration of President Luis Lacalle Pou, in general the media and journalists work in a climate of freedom. The arrival of the pandemic recorded the first annual fall (-5.9%) since the 2002 crisis (-7.7%) with negative growth rates. While the contribution of the country's social protection system is valued internationally as one of the measures in response to the pandemic, the national poverty rate increased from 8.8% in 2019 to 11.6% in 2020 (World Bank, 2021). With a score of 71 out of 100, Uruguay is perceived as the most transparent country in Latin America (Corruption Perception Index, 2020).

Despite these favorable indicators regarding freedom of expression as a human right, the Office of the Special Rapporteur for Freedom of Expression (RELE) of the Inter-American

Commission on Human Rights (IACHR) of the Organization of American States (OAS) has indicated some concerns about the approval of some recent normative provisions, as well as about the economic vulnerability that the pandemic represented for the media. This vulnerability resulted in significant increases in layoffs or in sending workers to collect full or partial unemployment insurance. All this is perceived as a situation that can have an unfavorable impact on the theme of this index.

Analysis of results

General classification

For this year 2021, Uruguay rises from third place in the previous measurement to lead the list of the 22 countries studied by the Chapultepec Index. With a value of 84.10 points out of a total of 100, it exhibits numbers of 28.49 points above the regional average (55.61). With this score, the scales of the instrument qualify Uruguay as a country with full freedom of expression with the exception of realm C "Violence and impunity", where it presents certain partial restrictions. This situation is shared with Chile, which scores similarly –82.06 percentage points– and which, like Uruguay, exhibits an increase in the index from one year to the next. However, it moves away from its neighbor Argentina by 30.87 percentage points, with whom it also shared position in past measurements. In the analysis of the Legislative, Judicial and Executive environments, these appear with a record of "slight" influence that in none of the cases exceeds 0.29 points. In relation to the realms analyzed, according to the experts consulted, the environment that influences the restrictions to a greater degree is the Legislative, specifically regarding the actions of the State to hinder, or on the contrary favor the plural and timely information flow to the citizenship and if it generates possibilities for citizens to express in the public space.

About the right of access to public information, the need to extend the use of the law, which continues to be an instrument mostly for journalists and parliamentarians, is maintained. This demonstrates an elitist nature of its use. With regards to the Governments' compliance on active transparency, there is a worsening of the situation with respect to the last measurement of 2017 according to the report (CAINFO_UCU, 2021). By 2021, 57% of the entities covered by the access law, publish less than 40% of the information required by law, demonstrating a loss of the citizens to almost 20 percent points in the right of access to public information.

The 2020 report of the Office of the Special Rapporteur for Freedom of Expression (RELE) of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS), makes some warnings about the Law of Urgent Consideration (LUC), approved in July 2020, which may mean a restriction on freedom of expression.

The second environment of greater influence in levels of restriction on freedom of expression, according to the experts, is the Executive, specifically with regard to actions to hinder or favor the flow of plural and timely information to citizens. In April 2020, the Executive Branch presented the draft to the Bill on Audiovisual Content Dissemination Services that would modify the current law, approved in 2014. Some of the modifications proposed by this new project are seen as restrictive for freedom of expression by some human rights organizations in the country.

Environment analysis

Executive Environment

The Executive environment shows a slight influence on realm A, Citizens free to express themselves, and C, Violence and impunity. The sources interviewed point out the main cause of obstruction to freedom of expression: access to official sources, lack of regulation in the allocation of official propaganda, non-regulation of Internet by the current law, the draft of the bill of media in current discussion and the use of personal database under the rules of the market. The discussion regarding the influence of the Executive has focused on the debate on the advances and setbacks that the new media law could imply – if approved this year – in terms of media concentration, freedom of expression and citizen participation.

Legislative Environment

The Legislative environment shows a slight influence. It appreciates some objections in realm A, sub-realm information flow, and within the realm C, the sub dimension protection of journalists and impunity. Some civil society organizations point out that the new bill on media control presented to the chamber in 2020 could have a negative impact on media concentration, citizen participation in frequency assignment processes and monitoring spectrum use. The numbers in realm C can be explained by the increase in the precariousness of journalistic work from March 2020 with the arrival of the pandemic and the crisis that it implied in the media. By May 2020, more than 300 media workers were counted in total or partial unemployment insurance.

Judicial Environment

The environment of the Uruguayan Judiciary was rated with a slight influence on realm A, Information flow, and realm C, Violence and impunity. Uruguay has registered, according to the national monitoring report on threats to freedom of expression, a new increase in cases of mild threats. From 26 cases in 2020 to 49 in 2021 and 30 of them represent a restriction of access to public information by the Government. From March 2020 to March 2021, the report records three cases of civil and/or criminal proceedings against journalists, two of them ending in favor of the media or the journalist and the third is still ongoing.

REALM A. Informed citizens free to express themselves

The experts' rating for this realm was 21.29 points out of 23 (2 points above the past measurement), the sub-realms, "information flow", with 9.86 out of 11 possible points and 11.43 out of 12 possible points in "free expression".

Access to public information by citizens are mostly attributed to different problems of Government agencies to provide this service. In 2019, according to the regulatory body "Unidad de Acceso a la Información Pública" (UAIP), the subjects obliged by law received a total of 1.942 requests for access to public information (less than 1% of the country's total population); the entity

recorded a high level of response (1.882); 129 were denied on grounds of confidentiality or confidentiality (UAIP, 2019). With regard to active transparency compliance levels, the ITAeL 2021 report points to a break in the overall upward trend with respect to the last report of 2017; we see that the level of global compliance is *low*, representing that 56% of law-bound bodies fail to publish more than 40% of the information on their websites, and only 2% of them are at high levels of compliance (ITAeL, 2021). The country's inability to give effect to the right of access to public information twelve years after its regulatory framework was approved, generates an unfavorable circumstance for freedom of expression to the extent that investigative journalism is hindered and the possibility of citizens to make their decisions based on access to quality information.

With regard to access to the Internet by citizens, Law 19,307 (IMPO, 2014) on the Regulation of Audiovisual Services (LSCA) approved and regulated in 2014, is not binding on the Internet, as is the draft law of the new government still under discussion in the chambers. In this sense, the purchase and sale of personal databases remains no-regulated and responds to free market laws (Larronda, 2019).

Law No. 19,899 on Urgent Consideration (LUC) presented in April 2020 by the Executive Branch and approved in July of the same year, amended the Criminal Code and established a penalty of three to eighteen months in prison for anyone who "aggravates", "attempts", "threatens" or "insults" the police in the exercise of its functions or on the occasion of these (article 11). On the other hand, it declares illegitimate "pickets that impede the free movement of persons, goods or services, in public or private spaces of public use" (article 468) and empowers the police to use force when "they must dissolve meetings or demonstrations that seriously disturb public order, or that are not peaceful, insofar as they involve persons who have their own or improper weapons or who externalize violent behavior" (article 45 F). The Office of the Special Rapporteur for Freedom of Expression, through the sending of a letter to the State, requested information on the provisions of the LUC stating that it could affect the guarantees for the exercise of freedom of expression (RELE, 2020). In August 2020, different social organizations and unions from various sectors demonstrated in favor of the realization of a referendum to repeal the 135 articles of the LUC. In the month of July 2021, as established by the Constitution, the Pro Referendum Commission delivered the signatures to the Electoral Court to be controlled. As of the date of delivery of this report, the signatures are still in the process of verification by the Electoral Court.

REALM B. Exercise of journalism

The assessment of the experts consulted for this dimension, gave Uruguay 9.43 points out of 10, meaning almost the top of freedoms for the line.

In the Uruguayan reality, there are not many mechanisms of self-regulation of the profession of journalism or the media. It is worth mentioning the existence of the National Council of Advertising Self-Regulation (CONARP), a non-profit organization whose objective is to ensure free and responsible commercial communication. With regard to the professional practice of journalism, the existence of a Code of Journalistic Ethics stands out, whose recommendations aim to strengthen quality journalism as a voluntary self-regulation mechanism. This code is the product of a consensus in the Uruguayan Press Association (APU) that involves workers linked to the sector such as journalists, cameramen, photographers, producers, presenters, drivers, broadcasters, communicators and civil society organizations linked to the sector since 2012.

The current media law incorporated in 2014, as a novelty in its article 42, the conscientious objection of journalists suggested in the code of ethics. This article was intended to be eliminated in the original draft of the new media law of the present government and, after parliamentary discussion, was maintained. The current law also recognizes the articles of the former Press Law of the Constitution of the Republic, Law 16.099 (IMPO, 1989) of 1989, which guarantees the non-dissemination of the journalist's sources and the freedom of expression enshrined in the Human Rights Declaration and the Convention, as well as Law 18,515, which recognizes the promotion of journalistic activity as of general interest. However, intellectual property measures to protect journalistic content from plagiarism and misuse are not incorporated into the law.

REALM C. Violence and impunity

In dimension Violence and impunity, the valuation obtained by Uruguay was 29.81 out of a maximum of 42, presenting the lowest figures with respect to the other dimensions. The subdimensions that contribute the most to this rating are "Protection" 1.57 points in a total of 5 and "Impunity" with a score of 1.43 in 8.5 maximum points.

CaINFO's seventh report on Monitoring and Threats to Journalism and Freedom of Expression 2021, recorded from April 2020 to March 2021, 49 cases of threats to the freedom of expression of journalists, 23 cases more than the 2019 measurement. In the distribution of cases, 30 represent "rejections of requests for access to public information" There were no cases of murder, enforced disappearance, arbitrary detention, kidnapping and torture or restrictions on the Internet. There were eight attacks and attacks on journalists and three civil and criminal proceedings had rulings in favor of the media or the journalist denounced. (CAINFO,2021)

On the other hand, the same report highlights another important fact: although Uruguay dragged some problems of precariousness in the professional practice of journalists since 2018, these deepened in the context of the COVID-19 pandemic and the health emergency. The number of job losses rose exponentially. In April 2020, the Uruguayan Press Association reported the loss of more than 300 jobs with dismissal or sending to total or partial unemployment insurance. For the current year 2021, the situation of journalists of the National Audiovisual Communication Service (SECAN) is added with the non-renewal of 40 contracts on Channel 5 and 49 on public radios as of December 2020. The director of SECAN, Gerardo Sotelo, said that this measure responded to the fact that there was an "imbalance in the assignment of functions and some dramatic operational situations, he said that of 220 contracts there were about 150 doing radio, just over forty doing television and 8 on digital platforms"

REALM D. Control over the media

The assessment for the Control over the media realm, according to the experts consulted, expressed a slight influence by yielding 23.57 points out of 25 possible. The sub-dimension that could be understood as some objection to the current situation for presenting a lower rating is that of "Indirect Control", a realm that includes knowing if the Government has incurred in restrictions or direct blockades of the different digital platforms or applies pressures to technological intermediaries in order to avoid the dissemination of certain contents.

In the 2020 report of the Office of the Special Rapporteur for Freedom of Expression (RELE) of the Inter-American Commission on Human Rights (IACHR) of the Organization of

American States (OAS), it is stated that in December 2020, within the Budget Law proposed by the Executive Branch and approved in Congress in the same month, a provision was included where it enabled the Communications Services Regulatory Unit (URSEC) to block and download audiovisual content on the Internet without a court order. Understanding that the defense of copyright with disproportionate measures that penalize users without appropriate judicial guarantees adversely impacts freedom of expression, a group of more than 20 organizations dedicated to the study of Internet public policies and the defense of fundamental rights sent a letter to the Senate warning of their concern. Although the provision was voted on and approved (artículo 712 of the law N° 19924 of the National Budget), it included some modifications. While the original article established the blocking of audiovisual content in an extended way, the final article limits television services for subscribers through Internet; secondly, while the original text enabled any natural or legal person to make the complaint, the final wording limited it to owners of television services for subscribers licensed to operate in Uruguay and, finally, the notification of the URSEC to the denounced before carrying out a blockade was established.

At the same time, article 774 of the Budget Law established that 20% of the total amount of official advertising of national scope must be allocated to media based in the interior of the country, as a way of discouraging the concentration of resources in the capital's media. We had warned in the previous report that the allocation of official guidelines, in addition to responding to discretionary criteria, was very asymmetrical in the percentage between the capital and the interior of the country that only obtains 5% of the total (Center for Archives and Access to Public Information, 2019). The proposal, which has been approved, received criticism from the Uruguayan Association of Advertising Agencies (AUDAP) which called it a "Covert Subsidy" due to the lack of audience measurements in the media of the interior that would allow this allocation to be distributed more fairly. Similarly, the rector of OBSERVACOM, Gustavo Gómez, expressed the need to establish clear rules for the allocation of official advertising that are fairer and more transparent.

The allocation of official propaganda continues to be a sensitive issue in the dynamics of the media system, since discretionary mechanisms do not prevent governments from rewarding or punishing the media based on their editorial line.

The entry of the new coalition government to power, following the national elections of October 2019, brought with it novelties in terms of media regulation that were part of its campaign commitments. The planned changes were included, at first, in the Law of Urgent Consideration (LUC) that is still valid, but these articles were extracted from that text to constitute an independent project presented to the Parliament on April 24, 2020 and that is still under parliamentary discussion.

This instance of discussion in the lower house has had the participation of civil society organizations and some international organizations that have sent letters to the Parliament voicing certain concerns. The original project: a. Extended the limit of radio and television licenses that can acquire a natural or legal person from three (current) to eight, proposal that changed to four maximums in Montevideo and six in the interior; b. Eliminated the articles related to the rights of children and adolescents that currently reincorporated them; c. Eliminated the current article 42 of the right of journalists to conscientious objection that was reinstated; d. The original bill eliminated the articles of the current law on the rights of people with disabilities now also reinstated. Finally, the original project obliged public operators that own infrastructure to provide wholesale services on infrastructure and networks to cable television companies, a measure that has also now been modified and the state company ANTEL will not be forced to share infrastructure. One of the changes that has not yet been modified is the elimination of the

Honorary Advisory Commission of Audiovisual Communication Services (CHASCA), and the holding of public hearings for the assignment of frequencies.

The draft of the new Bill on Media Law has been under discussion in the lower house for a year and a half. It is important to note that the new bill indicates, like the current one, that services and the dissemination of audiovisual content that use the Internet protocol network as a platform are excluded, and also leaves out of the regulation the allocation of official advertising.

Conclusions

Despite the fact that Uruguay exhibits an improvement in the scores of all the dimensions that place it in a leading position with respect to the other countries analyzed, in the development of the report some issues have been raised that generate some concern in the experts consulted, and that may be unfavorable to the right of freedom of expression in the country in a future scenario; that is why they should be followed up in the next report.

Within Realm A "Citizens free to express themselves", the main obstacle to the exercise of freedom of expression remains access to official sources. The 2021, second year of pandemic, registers –on average– decline of 19 percentual points puntos in the levels of compliance of active transparency of the subjects obliged by law, this represents a loss of information for the citizenship, and also an obstacle to investigative journalism. In the same dimension, the need to continue monitoring the final vote on the new media law – now under discussion – to measure the favorable or unfavorable impacts with respect to freedom of expression as a right is highlighted. Also follow up on the final opinion of the Electoral Court at the end of the process of supervision of the signatures of the Pro Referendum Commission for the Referendum of the LUC.

The relevance of monitoring the laboral situation of journalists and how the laboral rights are complied in the transitional context for media to go from traditional to Information and Communication Technology (TIC) is set within Realm C "Violence and Impunity".

Within dimension D "Control of the media" the allocation, from the Budget Law, of 20% of official advertisement to media in the interior is rescued with the aim of reducing the great asymmetry of access to resources. Advertising remains a genuine way to ensure the existence of the media as companies to make effective the labor rights of their workers. Despite this, experts note the need to find efficient and effective mechanisms for the implementation of this item or allocation and also the transparency of the official advertising allocation system, since the role of the State as an advertiser alters the dynamics of the media system and its regulation remains outside the governmental agenda. A second aspect within this same dimension, with regard to the institutional design proposed by the new media law – under parliamentary discussion – leaves out of its regulation the media that use the Internet platform. The adaptation of this regulation to digital convergence is pending.

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