

PANAMA

FREEDOMS UNDER JUDICIAL CONTROL

Executive Summary

The Republic of Panama remains in 9th place among the 22 countries the Chapultepec Freedom of Expression and Press Index surveyed, scoring 65.15 points out of a possible hundred. As a result of the consultation to the experts, freedom of expression and the press are complied with, but there were serious restrictions coming from a legal framework not in accordance with the guarantees safeguarded by the Inter-American Human Rights System. The Penal Code contemplates crimes against honor, which when wielded by figures linked to the authorities create undue pressure on journalists and the media.

Introduction

The period this report surveys takes place during Mr. Laurentino Cortizo Cohen's administration third year. At the end of June he announced to have a health issue forcing him to pursue a more accurate diagnosis in the United States (CNN, 2022). After the presentation of his State of the Nation, during the inauguration of the fourth period of the National Assembly ordinary sessions on the first of July, the Head of State traveled to Houston. In his absence, a cycle of popular demonstrations, considered the most important since the installation of democracy in 1989, began.

Although with recurring but nearly weightless events, Panama had been outside the rounds of protests in Latin America. These multitudinary rallies were interpreted as the result of a series of accumulated factors aggravated by the pandemic and external factors such as the war in Ukraine, which triggered the prices of fuel, medicine and food (Araúz-Reyes, 2022). The demonstrations, which took place across the country and lasted for about a month, led to national rounds of talks in which the mobilized sectors presented their demands to the government with the Catholic Church as mediators.

Faced with the complaints of social unrest, which put the private media into question for not adequately covering their demands, the Church, in its role as facilitator, asked the Executive to broadcast the discussions live through the State television station (Candanedo, 2022). This occurred without interruptions. Overall, both journalists and the media not only in that conflict, but throughout the surveyed period, worked under wide freedom to inform citizens. However, some initiatives of the Legislative and Executive caused alarm among the press unions. Lawsuits involving journalists and the media are ongoing and efforts to make government data publicly available are not moving fast.

Development

From the analysis of the experts for this report, none of the surveyed environments shows strong or very strong influence in situations unfavorable to freedom of expression and the press. The Legislative and the Executive present a moderate influence, scoring 3.51 and 3.26 respectively. On the other hand, the Judiciary's influence (2.24) is slight. The Executive and the Legislative get the most outstanding scores, both in Exercise-of-Journalism related realm B, with 7 and 6.57 points, respectively, out of the possible ten. In realm A, corresponding to Informed Citizens Free To Express Themselves, scoring 5.36 points, it is revealed a strong influence by the Legislative in these situations. In the Violence and Impunity realm C, the branches of the State were assessed as very slightly influential: the Legislative scored the highest (2.10). The Control Over The Media realm D appears as de-influenced, scoring zero (0) points for all environments.

Threats to the free exercise of journalism

The Executive

The Executive environment scores 3.26 in total and stands out as that showing the strongest influence in situations unfavorable to freedom of expression with respect to the Exercise of Journalism realm B, with seven points. However, it does not report any kind of influence on the Control Over The Media realm D. Its influence on the Informed Citizens Free To Express Themselves realm A is moderate, scoring 4.57, while it is slight on C (Violence and Impunity), with only 1.48 points.

This period is remarkable for the passing by the Ministry of the Presidency of Resolution No. 71 which states that the minutes, notes, files and other records or files from discussions or activities of the Cabinet Council, the President or Vice President of the Republic and the Secretary of the Cabinet Council, are restricted access information. The statement excludes those corresponding to discussions or activities related to contract approvals for a ten-year-long term (Republic of Panama, 2021).

During the period there was also a significant event considered abusive by observers from of the Vice President of the Republic's end, who used the State TV station to broadcast pronouncement from his party in the context of the ruling party's primary elections. The Solicitor's Office referred the case to the Electoral Attorney General's Office to determine whether the action violated the Electoral Law. Although the matter had not been processed, the electoral attorney in charge advanced his opinion in a television program, stating that the fact would not constitute any offense (Pichel, 2022a).

The Legislative

In total, the Legislative environment scores 3.51 points, recording a strong influence on situations unfavorable to freedom of expression corresponding to the Informed Citizens Free To Express Themselves realm A with 5.36 points, and the Exercise of Journalism realm B. The latter scored 6.57 points, the highest for this environment and the second highest in the whole report.

In March 2022, unions gathering media companies and press workers alerted about the discussion within the National Assembly of a bill that amended the provisions on the right to reply in the country's media. This amendment was considered unfortunate when important hearings on corruption cases were on the verge of taking place, just two years before May 2024 general elections (Reyes, 2022). For the time being, the process shows no progress within the legislative body.

Among the actions related to the Legislative environment, it is noteworthy the conduct of congresspersons who, making use of their appointment, try to prevent journalistic coverage, exercise judicial harassment actions against reporters who investigate their performance, and stigmatize them (IACHR-RELE 2021). In this line, public comments on the infiltration of drug trafficking in the media without the filing of complaints to courts along with the corresponding evidence, are remarkable (Lasso, 2021).

The Judicial

The Judicial environment shows the lowest unfavorable influence on freedom of the press. It totaled 2.24, with a moderate influence. Numerically, its impact is reflected in a range ranging from zero (0) points, in relation to control over the media, to 4.14 points, indicating a moderate influence on the exercise of journalism. Another moderate influence is recorded in the Informed Citizens Free To Express Themselves realm A, scoring 3.86 points.

What is relevant of this environment has to do with the criminalization of libel and slander as crimes against honor, which are considered aggravated cases when committed through an oral or written social media, or by using a computer system. The penalty for insults is 6 to 12 months in prison or its equivalent in its days-fine, while for slander is 12 to 18 months of imprisonment or its equivalent in days-fines. (Public Ministry, 2016). Although there is no penalty when it comes to public servants, civil liability is not excluded, so the sanctions provided for are pecuniary in nature and civil lawsuits's amounts are not capped (Botero Marino *et al.*, 2017).

Within this context, there are reports and complaints of considerable amounts such as those filed by former President Ricardo Martinelli against newspaper *La Prensa's* publisher, alleging offenses against honor. According to the Attorney General's Office statistics, 586 files for offenses against honor are open. Out of these, 81 involve social media. As for the civil jurisdiction, 40 cases against media workers and companies are in being processed, with lawsuits that exceed 13 million dollars in claims (Attorney General's Office, 2022).

In January 2022, the Supreme Court of Justice ruled inadmissible an appeal submitted by newspaper *La Prensa's* publisher was inadmissible. The appeal requested the suspension of the seizure of bank accounts upon the 1.13 million dollars lawsuit filed by former President Ernesto Pérez Balladares. The ruling, which also affects tabloid *Mi Diario*, remains current (Palm, 2022a). Also, a higher court confirmed the ruling against this company for moral damages but reduced the amount to be compensated from one million to three thousand dollars (Palm, 2022 b).

For observers is also questionable whether in the face of a trial for damages, without a favorable ruling having been issued, the plaintiff can ask for the freezing of media assets (IAPA, 2022). Likewise, it is put into question the fact that judicial operators do not file claims that seek to prevent the free exercise of journalism. The media and press guilds have joined forces to draft a bill decriminalizing the offenses of slander and libel, while incorporating the concept of actual malice (Gordon, 2022).

REALM A: open data public policy awaiting action

From a 23-point theoretical maximum, the Informed Citizens Free To Express Themselves realm scored 10.60 points, practically half of the possible points, with 5.70 of them to information flow and 4.90 points to freedom of expression. According to those consulted, this realm is strongly influenced by the Legislative environment (5.36 points), and moderately influenced by the Executive and the Judiciary (4.57 and 3.86 points, respectively).

Certain events have undermined the perception that there is full freedom of expression and information in Panama. Here we include actions by the Executive aimed at restricting access to public information such as the aforementioned Decree No. 71 Likewise, we observe the conduct of some officials such as the director of the Institute for the Training and Use of Human Resources (*Instituto para la Formación y Aprovechamiento de Recursos Humanos*, IFARHU), who refused to provide information in a timely manner about the money allotted by his office for scholarships and grants (Morales, 2022).

In June 2022, the National Authority for Transparency and Access to Information (*Autoridad Nacional de Transparencia y Acceso a la Información*, ANTAI) fined a news website for disclosing a marriage certificate, claiming that the Act On Protection of Personal Data was violated. Facing the response of the media workers' unions, which warned of a possible restriction on investigative journalism, ANTAI stated that the website should have obtained an informed consent by those mentioned in the document or introduce those who had not given it as anonymous. Finally, ANTAI granted the portal an appeal for reconsideration with suspensive effect (Díaz, 2022). As for open government data, although ANTAI maintains a policy of constant civil servant training so that institutions focus on being open, the level of compliance barely gets to 34% (Santamaría, 2022).

Realm B: Executive measures and threats from the Legislature cause alarm

From the assessment by the experts consulted while this report was being drafted, this realm scored 6.30 out of ten possible points, the lowest mark among the analyzed four. It is the realm that records the strongest influence of all environments, with strength from the Executive and the Legislative, which scored 7 and 6.57 points, respectively, while moderate that of the Judicial environment (4.14 points).

During such a sensitive period as the pandemic, when the Executive had to make accelerated purchasing and hiring decisions, measures (like Decree 71) were issued to limit access to public information. On the other hand, there are no complaints of obstruction to access to official sources by the media or journalists critical of government management.

In March 2022, the unions gathering media companies and press workers alerted about the discussion within the National Assembly of a bill that amended the provisions on the right to reply in the media (*TVN Media*, 2022), although, for the moment, discussions have seen no progress within the legislative body. In the period, the pronouncement of one of the candidates for the presidential candidacy for the free candidacy stands out, who prohibited a media outlet from disseminating images or news related to his person, after a journalist consulted him about a conviction against him for the crime of fraud (Vásquez, 2022).

The Political Constitution of Panama guarantees freedom of association. Journalists are not mandated to join a guild, and there are different guilds and associations in operation. Journalism as a profession is not controlled or regulated, while a university degree is not required for its exercise. However, professional suitability, issued by the National Association of Journalists or by the Union of Journalists of Panama, is requested to work in public administration agencies.

Realm C: A decrease in cases of physical violence decrease

Out of a possible total of 42, the experts assigned a 27.20 score to this realm. All environments show a slight influence. Acts of violence totaled 20.50 points, followed by 4.60 points in the line Persecution; the score was 1.90 points in Impunity, and 0.2 points in Protection. The highest score is recorded by the Legislative (2.10), followed by the Executive and the Judicial with (1.48 and 0.95, respectively).

During the period under review, there were no acts of physical violence against journalists, as observed in the past period. In the social demonstrations that took place during the month of July, one of the journalists' unions from the country's inland issued a statement that pointed out "confusing situations" and reported intimidation events (Castillo, 2022). However, no specific or individual cases could be pointed out.

On the case of the journalist indicted for gender violence after a complaint from the Legislative Assembly's vicepresident, the Attorney General's Office requested a provisional dismissal in favor of the press worker as there were no grounds for conviction. According to the judge, the reporter's publications alluded the congresswoman as a public figure, not her being a woman (Lopera, 2022). However, for it to be final, it must be ratified by a judge responsible for procedural safeguards.

Realm D: The media is not facing direct controls

Out of a possible total of 25, this realm scored 22.1 points, the best outcome Panama's case. When it comes to Direct Control Over The Media, the total was 13.10 points, while indirect control scored 9. None of the environments turned out to be influential in this realm. All of them scored zero (0) points.

In Panama, there is no record of media outlet shutdowns or seizures, nor evidence of the existence of systems to control or block digital platforms, nor pressure on technological brokers or suppliers of materials necessary for the collection, preparation or dissemination of journalistic information. What falls into questioning about the control over the media is the selective allocation of advertising guidelines, specifically by entities from the Executive (Coalition for Panama, 2022; *Libertad Panama*, 2022).

When collecting complaints from citizens, the Inter-American Commission on Human Rights' (IACHR) Special Rapporteur on Freedom of Expression (*Relatoria Especial para la Libertad de Expresión*, RELE) (2021) expressed its concern about the gap in digital media existing between urban and rural areas, and about the poor quality of the Internet. In the online sphere, and with a view to the upcoming elections in 2024, the use of fake-news factories devoted to tarnishing and obscuring the public discussion on social media looms as a risk (Urribarri, 2020; Correa, 2022).

Conclusions

In an event convened by the National Council of Journalism of Panama, special rapporteur for the Chair of the IACHR Pedro Vaca argued that freedom of expression and the press requires an Executive respectful of freedom of expression, a Legislative with deeply rooted convictions of pluralism, and a Judiciary that stands for the defense freedom of expression and the press (Pichel, 2022 b).

Although in general it can be trusted that in Panama there are overall broad freedoms of expression and the press are overall broad, some facts including those listed in this report enable us to state that restrictions (especially those related to the exercise of journalism that has appeared to be the most affected by actions sourcing from the Executive environment) are, according to the experts consulted, a reality as well.

Actions from the Legislative, especially those aiming at the ammendment of the act on the right of reply, also made evident a strong influence. Likewise, the actions of some congresspersons trying to arbitrarily limit the work of reporters through tactics classified as judicial harassment are listed among the facts that harm the exercise of journalism.

Although the Judicial environment presents a slight influence, experts question whether operators from that branch pursue claims that only seek to prevent the free exercise of journalism. The lawsuits arising from the application of Criminal Code Article 185 on crimes against honor bring about pecuniary claims on non-limited amounts and make for a kind of harassment and judicial harassment that restricts freedom of expression and the press in the isthmus country.

In the near future, toward the Odebrecht lawsuit's preliminary hearing and 2024 general elections, within the so-called post-pandemic crisis, observers anticipate stronger controls and pressuring actions to silence journalists and the media who are dedicated to investigating high-profile cases linked to officials and influential people in the public sphere. Likewise, an increase in social media smearing campaigns aimed at undermining the credibility of press media and workers through the activation of what in Panama is known as call centers or fake-news labs.

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