

Argentina: turbulence and judicial persecution in electoral times

Executive summary

During 2019 in Argentina, the judicial environment, particularly some judges, have notoriously prosecuted journalists on questionable and scarce evidence, while the Executive has not been able to vigorously oppose this type of abuse. A period marked by elections and a pandemic, the Legislative has lingered in a slumber that has made it drift away from any significant role.

Introduction

2019 was an election year in Argentina, marking the end of Mauricio Macri's term and the return of a ticked with Cristina Fernández de Kirchner as vice president and Alberto Fernández as president. This revived the so-called "gap" (divide between *kirchneristas* and anti-*kirchneristas*) in Argentina – which was never really closed – and journalism noticed its massive impact.

The electoral campaign was not free from verbal attacks against several journalists on grounds of their job and the Judiciary was dragged into this game since it was an unprecedented year regarding court cases targeting journalists, among them, the landmark case of Daniel Santoro, charged with "involvement necessary to commit the crimes of coercion and extortion".

Consequently, it is noteworthy that, with 77.2 points out of a possible 100 in the overall Index, Argentina appears as a country with a low level of restriction in the exercise of journalism. Mauricio Macri's administration continued to allow an unencumbered activity of the media; but some statements from the *kirchnerista* faction, which emerged victorious from the elections, fueled fears of revenge against the media and journalists.

In addition, the unique circumstances arising from the pandemic and one of the strictest quarantines worldwide, significantly impact on media revenue that was already very compromised by the recession, making it difficult for them to fully exercise their democratic role.

Data analysis

Between May 1, 2019 and April 30, 2020, the exercise of journalism could be performed without major institutionalized obstacles, reprisals, or systematic harassment from the government (IAPA, 2019).

Although the presidential elections held in 2019 heightened political tensions, which took the form of verbal and physical attacks on many journalists, the Judiciary gave the greatest reasons for concern with the prosecution of investigative journalist Daniel Santoro.

The issue of greatest concern point surfacing from this report is the direct or indirect control over the media by the Executive. While this is a phenomenon witnessed on a national scale, it is evident and very significant in some provinces.

Executive environment

Of the three environments in this Index, the Executive is the one with the best performance (3.74) regarding ensuring freedom of expression.

Mauricio Macri's term in office (2015-2019) as the head of the national executive branch had a positive balance in regards to freedom of the press: "Press conferences of government officials resumed, information flows were restored, state-owned media were depoliticized, the law on access to public information was signed into law, and the allocation of government advertising was regulated" (ADEPA, 2019).

However, with the electoral campaign kickoff and the end of Macri's term in office, intolerant behavior from certain groups started. A milestone was marked by the verbal attacks sustained by journalist María Eugenia Duffard on May 9, 2019 at the Buenos Aires Book Fair during the presentation of Cristina Fernández de Kirchner's book, in what would be one of her initial public appearances as candidate for vice president (Perfil, 2019).

As the victory of the *Frente de Todos* (Front for Everyone) ticket became clearer, certain groups became increasingly vocal until the establishment of a Conadep (National Commission on the Disappearance of Persons [Comisión Nacional de Desaparición sobre la Personas]) of sorts to judge journalists was proposed (Filo.news, 2019).

The truth is that, regarding both situations, the then candidate for president expressed his total rejection. However, it should be pointed out that certain groups very close to his vice presidential running mate continued to give free rein to this type of initiative (Clarín, 2019). However, it is worth noting the outburst of the then president-elect when, on social media, he described a journalistic speculation by Hugo Alconada Mon as "despicable" (La Nación, 2019).

Even more seriously, posts describing a piece published in La Nación newspaper and another in Clarín as intended "in bad faith" or to "deceive" were posted on the official Twitter account of the Senate of the Nation, headed by the Vice President of the Nation, Cristina Fernández de Kirchner, and no retraction was issued (FOPEA, 2020).

To this ambivalent attitude is added the crisis caused by COVID-19, which put on hold many of the initiatives that would reportedly be promoted by the new president of the nation, especially after, in the fourth month of the new administration, "there had partially

dissipated the fears of attacks on press freedom that existed during the previous Kirchner government" (IAPA, 2020).

Among these measures, the then-candidate proposed to sponsor a law regulating the use of social media for content created by the [mainstream] media. "This is the debate in the European Union: How to regulate these communication channels on which many times the social conscience is defamed and manipulated, with an enormous damage to societies" said Fernández (Cantando, 2019).

The presidential initiative to reform the justice system is causing more concern among certain groups because its only purpose is suspected be the closing of criminal investigations involving the vice president and her inner circle.

Judicial environment

Based on this study, it is clear that the exercise of journalism in Argentina was greatly affected by the role of the Judiciary (3.09).

As mentioned above, the most concerning fact is the prosecution of journalist Daniel Santoro, which took place in August 2019. The federal judge in Dolores (Province of Buenos Aires), Alejo Ramos Padilla, found Santoro guilty of the counts on coercion and attempted extortion against Gonzalo Brusa Dovat and Mario Víctor Cifuentes, and imposed a fine of 3 million Argentine Pesos on him. Santoro is accused of being complicit with a false lawyer, Marcelo D'Alessio, closely tied to different business, judicial and political groups, to extort money from businesspersons. According to Santoro (as quoted in FOPEA, 2020), D'Alessio was just another source for his journalistic work who fell victim to a snare set up by *kirchnerismo*.

Additionally, in that case, Santoro was requested to turn in his cell phone; but this journalist, unlike other journalists mentioned, refused to do so, as guaranteed by Argentine Constitution Article 43, in order to protect his sources.

In another unprecedented ruling, on June 29, 2019, María Edith Rodríguez, a judge from the province of Salta, demanded that local and national media desist from publishing images of musical group *Los Nocheros* or its individual members, in the wake of news coverage of a court case for which the son of one of the band members was being held.

Likewise, in October 2019, a case was reopened against journalists Gerardo Young and Rodis Recalt, indicted for releasing secret information and revealing the name of an intelligence agent. In November 2018, Federal Judge Sebastián Casanello had shelved the complaint on grounds that it might violate the right to freedom of expression. On October 6, 2019, Judges Bruglia, Betuzzi, and Llorens, of the State Appeals Court 1st Chamber (Sala I de la Cámara Federal), ordered that it be reopened (FOPEA, 2020).

But the list of judicial attacks against free information flow is extensive, including attempts at prior censorship of a video of a traffic accident (La Voz, 2019), lawsuits

seeking large award amounts admitted by judges departing from the doctrine of punishable intent and putting at risk the survival of a media outlet (Tiempo del Este, 2019).

All these actions evidently harm the free flow of information since, after witnessing the experience of other colleagues, journalists may feel intimidated and choose not to cover certain issues, thereby adversely affecting society.

Legislative environment

The period under analysis largely covered an electoral season and then the quarantine that has spanned over almost a quarter of the timeline reviewed. These two factors have contributed to inaction from the Legislative (2.92) to the extent that, during the period under study (May 1, 2019 to April 30, 2020), the House Committee on Freedom of Expression (Comisión de Libertad de Expresión de la Cámara de Diputados) did not admit a single draft bill for debate. However, there are several draft bills of a similar nature to regulate government advertising whose authors did not deem important to submit through the above committee.

A similar situation occurred in the Senate, where no decisions on bills were announced by its Committee on ICT, Media, and Freedom of Expression (Comisión de Sistemas, Medios de Comunicación y Libertad de Expresión) during the whole period.

A draft bill presented in February this year by *Frente de Todos* senators María Catalfamo, Ana Ianni, Nancy González, Ana Almirón and María Inés Pilatti Vergara, seeking to waive pre-emptive detention in corruption cases by means of limiting freedom of the press is certainly of concern. This is because the project considers "the publication of content by one or more media outlets, which could have affected the public perception on the presumption of innocence regarding a person to whom a ruling is issued" (Infobae, 2020), as grounds for exemption from pre-trial detention.

Realm A: Informed citizens free to express themselves

In this realm, the experts inquired agree that, in Argentina, citizens can obtain information and express themselves freely.

However, the Executive, along with the Legislative environment, does not make an effort to enforce its own laws, seeking ways to avoid providing public information to petitioners and making transparency processes cumbersome.

Although 19 of the 24 jurisdictions currently have statutes on access to public information – with the provinces of Formosa, La Pampa, La Rioja, San Juan, and Tucumán still lacking a legal framework – among those that do have regulations, there is a great disparity in statutory quality and implementation (World Bank Group, 2019).

This fact highlights unwillingness and sometimes inability to enforce policies of transparency and access to information in order to reduce corruption, protect rights, and improve the quality of utilities. The lack of political commitment can be witnessed largely in the inaction of parliaments (as mentioned above) merely in reason of an electoral cycle underway.

Realm B: Exercise of journalism

The free exercise of journalism implies that the authorities must allow journalists to work in a context of freedom, with the ability to protect their information sources as guaranteed by National Constitution Article 43. Unfortunately, the branch of government supposed to be most concerned with the enforcement of the Magna Carta, the judicial environment, is pointed out as the one putting the most obstacles in the way of journalists' work, for instance, the interest of such judges as Alejo Ramos Padilla in knowing the sources used by journalists. "Based on the wiretapping [admitted] in the D'Alessio case, the judge charged Santoro with alleged crimes; and, although he decided to strike the transcripts obtained by that means, he did so based on the right to privacy and not on the confidentiality of sources" (La Nación, 2019).

These actions have thrived, to say the least, on the impassive attitude of the Executive environment that has not counteracted with the resolve necessary to ensure the free exercise of journalism.

Realm C: Violence and impunity

Comparatively, in the realm of violence and impunity against journalism, Argentina shows a good [low] record. Although there are unfortunate acts of violence and abuse in the country, as pointed out above, we do not have any deaths to regret, and physical violence against journalists is very infrequent.

According to the report prepared annually by FOPEA, in 2019, the cases of assault against journalists were among the lowest since this organization keeps records. Additionally, it can be stated that physical aggression against journalists represents a quarter of the attacks reported in that document. Intimidation is the most common form of threat against journalists (FOPEA, 2020).

Realm D: Control over the media

The discretionary use of resources allocated for government advertising remains a tool to control opinion and information in large portions of the country. Nationwide, there are several draft bills seeking to regulate the way that government advertising is allocated; but they are still far from being debated, especially in the current quarantine context.

Only two of the country's 24 districts have a law regulating the allocation of government advertising and eight have an executive order to that end. Even in the case of those that do report, such information is incomplete, since they do not disclose which campaigns have been funded with public resources.

Not only does the province of Buenos Aires, the most important in the country, not report in this regard but also has not replied to access to public information petitions (Maradeo, 2019).

This authority for regulation and information rests with the legislative and executive branches, respectively, hence the rating of this Index.

Conclusion

After the 12 years in which Argentina was under *kirchnerismo* (first Nestor Kirchner and then his wife), Mauricio Macri's rise to power in 2015 brought about a major change in the relationship between government institutions and journalism.

Macri's accession meant the return of press conferences, easier access to government sources, and a less confrontational relationship with journalists. Some argue that this is because President Macri was business-friendly and helped ease the enforcement of the so-called media law (Infobae, 2016).

Nevertheless, the truth is that, at least in words, the government of Mauricio Macri, which ended in December 2019, had a better relationship with the press and allowed journalists to work more freely.

The current government headed by Alberto Fernández and Cristina Fernández de Kirchner took office in December and was in charge a few months before the advent of the COVID-19 pandemic and subsequent lockdown. Dissenting journalists and media see in the vice president a person who is not greatly fond of critical journalism and the free exercise of freedom of the press, and fears of returning to old times further raise the stakes.

For his part, according to Casullo (as quoted in Smink, 1029), during the electoral campaign, President Fernandez tried to detach himself from the confrontational image towards the media of his running mate, and there are those who even held that the candidate for vice president was hardly seen throughout the campaign.

So far in 2020, little has been known of what the relationship between the National Executive and journalism will be like; but fears lurk behind a judicial reform that could endanger not only the exercise of freedom of the press but also the functioning of the democratic republic as a whole (Infobae, 2020).

The pandemic and one of the strictest quarantines in the world have not helped diffuse concerns; but it is yet to be seen whether the current Argentine government will choose

the path of hindering the free exercise of journalism or it will continue on the path of openness and transparency that the previous government seemed to have initiated.

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