

### Uruguay: Going back and forth on media regulation

#### Executive Summary

With a rating of 74.4 points out of a total of 100 for the Chapultepec Index, Uruguay can be considered a country with a favorable climate for freedom of expression albeit certain partial restrictions, associated by experts with the moderate influence of the Executive's environment in view of the lack of clear rules for the allocation of government advertising, some obstacles regarding compliance with access to public information, tax provisions that disregard differences between the realities faced by the media in the capital city and across inland regions of the country, and a draft bill for a new Media Law, currently under discussion in the General Assembly, that promises changes in aspects related to freedom of expression are detailed herein.

#### Introduction

The period of this study practically includes the inauguration of a new government in Uruguay. The results of the November 2019 national elections, with a very narrow margin of votes (48.8%; 47.3%), granted the presidency of the Republic to Nationalist candidate Luis Lacalle Pou, a result that marked the alternation in power from the leftist government represented by the *Frente Amplio* (Broad Front) party that was in its third consecutive term in office<sup>1</sup>. This alternation occurs in the country amidst greater confidence from citizens in the General Assembly [Legislative], the judicial branch and the political parties as the main institutions of democracy, in a context where overall approval ratings for democratic institutions are between 21% and 24% of 100 possible throughout the continent, the lowest levels of the last decade (Latinobarómetro, 2018).

In March 2020, the Office of the President declared a health emergency, as in most countries in the region, in response to the COVID-19 pandemic entailing a voluntary restriction of mobility under the responsibility of society (Centro de Información Oficial, 2020). In general, the media and journalists work in a climate of freedom in Uruguay, a country which strongly supports democracy as a political regime (LAPOP, 2018), with positive economic growth at an annual rate of 4.1% from 2003 to 2018 (IDB, 2019), a reduction of this rate to 1.6% as of 2018, albeit allowing 16 years of positive growth, a record in the history of the country (ECLAC, 2019), with a score of 70 points out of a possible 100, ranks 23<sup>rd</sup> in the Corruption

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<sup>1</sup> 1<sup>st</sup> term of President Tabaré Vázquez (2005-2010); José Mujica's term (2010-2015); 2<sup>nd</sup> term of President Tabaré Vázquez (2015-2020)

Perceptions Index, three positions behind the United States and Canada (Índice de Percepción de la Corrupción, 2018).

The outgoing administration has achieved recognition for an improvement in institutional guarantees to freedom of expression (IACHR-RFOE, UN) by means of the establishment of a new institutional framework for regulating broadcasting services. In general, it has had a good relationship with the press, which has encouraged the exercise of journalism.

In spite of these advances, in 2018, the Organization of American States (OAS) Inter-American Commission on Human Rights (IACHR) Office of the Special Rapporteur for Freedom of Expression (RFOE) kept a record of reports from journalists' unions on continued layoffs and breach of agreements by various media outlets, a situation that was exacerbated in the wake of the COVID-19 pandemic. According to such reports, as of April 2020, over 300 media workers were on total or partial unemployment insurance.

At the statutory level, in April 2020, the new government introduced to the General Assembly a draft bill in order to repeal articles in the current law governing the media. If enacted, it could be conducive to situations discouraging free speech regarding the granting of licenses, access to public telecommunications networks, and allocation of airtime for electoral campaigns, among others, to be further detailed in this report.

## **Analysis of results**

### **Overall rating**

Uruguay ranks third in the Chapultepec Index 2020 among 22 countries from the hemisphere. With a rating of 74.4 points out of a total of 100, it boasts 22.98 points above the regional average (51.42). With this score, it can be considered a country providing a favorable climate for freedom of expression albeit with certain partial restrictions. This situation is similar to that of other Southern Cone countries, which are found among top positions: Chile (80 points), Argentina (77.2 points).

In the analysis of the environments, the Legislative, the Judiciary, and the Executive, appear as exerting a slight influence that in none of the cases exceeds 2.5 points. Regarding the realms reviewed, according to the experts surveyed, the environment that has the greatest influence on these restrictions is the Executive (4.09 points), namely on access to information for journalists on the part of the government as well as actions preventing direct control over the media.

Some academic research in the country (Universidad Católica del Uruguay, 2015) indicates that the Law of Access to Public Information (Ley de derecho de Acceso a la Información Pública) continues to be an instrument mostly for journalists and members of the General Assembly, still denoting an elitist nature in its use that

has not been widened to the citizenry in general. Furthermore, only 60% of the information generated by the agencies under this law is currently of public access.

Some civil society organizations and international bodies underscore that it is essential for the country to have a regulatory framework for the allocation of government advertising. These resources significantly disrupt the dynamics of the media ecosystem as government authority might be used to reward or punish the media for their editorial policies, especially the outlets across inland regions of the country that receive a tiny proportion of the total allocated. This action could be detrimental to the plurality of the media ecosystem and to freedom of expression.

## **Analysis of environments**

### **Executive**

The executive environment shows a moderate influence on Realm A, informed citizens free to express themselves, and D, control over the media.

The respondents indicate that the main obstacles to free speech are access to official sources, poor regulation on the allocation of government advertising, non-existent regulation of the Internet under the law in force, and the use of databases containing personal information under market rules. Other obstacles include weak institutional autonomy of the agencies tasked with enforcing the regulatory framework for communication services, and the levying of penalties on media outlets for not complying with restrictions on advertising for amounts sometimes placing them in an extremely vulnerable situation, especially across inland regions of the country.

### **Legislative**

For its part, the legislative environment exerts a slight influence on all realms. However, Realm A, sub-realm of free speech and Realm C, sub-realm of persecution, are rated over 2 points, moving towards a point in which they influence negatively on the average.

A possible reason for this score is the introduction to the General Assembly, on executive initiative, of a new media regulation bill this year, 2020. The proposal may change key provisions of the current law regarding the right to freedom of expression, such as license permits, mandatory percentage of national content produced by the media, distribution of frequencies for subscribers, airtime allocated to parties for electoral campaigns, regulation of discriminatory content, and those pursuant to the rights of children and adolescents.

## **Judicial**

The environment of the Uruguayan Judiciary was rated on average as having a slight influence. In spite of this, once again, the two sub-realms regarding information flow (2.25) and persecution (2.50) achieved the highest figures, which may represent a more unfavorable influence on freedom of expression.

Uruguay has experienced a slight increase in cases of minor threats to journalists' freedom of expression. On the other hand, the COVID-19 health emergency set a negative trend that the media ecosystem had been showing since 2018, namely a continuous loss of jobs. This makes journalists' professional practice more difficult, directly impairing the quality of the information circulating among and accessed by the citizens.

Finally, the levying of fines by the Communication Services Regulatory Unit (Unidad Reguladora de Servicios de Comunicaciones, URSEC) on media outlets found non-compliant with the provisions regarding advertising time allowed in broadcast media has fostered conditions conducive to high vulnerability for outlets, especially across inland regions of the country. This opens the possibility for media closures, which compromises the plurality of voices in the production and handling of information.

### **Realm A: Informed citizens free to express themselves**

The experts' assessment for this realm in Uruguay totaled 19 points out of 23 possible, obtaining high ratings for its two sub-realms, information flow, with 8 out of 11 points possible, and 11 out of 12 points possible for free speech.

Restrictions on citizen access to public information mostly stem from different problems posed by government agencies for providing public information. In 2017, the Unit for Access to Public Information (Unidad de Acceso a la Información Pública, UAIP), the law-enforcing regulatory body, received and processed 60 complaints for non-compliance by relevant entities; this figure rose to 75 in 2018 (unidad de acceso a la información pública, 2020). Similarly, such organizations as the Center for Records and Access to Public Information (Centro de Archivos y Acceso a la Información Pública, CAINFO) reviewed the use of this law in 2018, ten years after its enactment, and questioned the excessive amount of rulings based on Articles 9 and 10 thereof by the agencies, in exercise of their authority to declare the information requested confidential (Centro de Archivos y Acceso a la Información Pública, 2018). These two instances detailed above influence on discouraging free speech insofar as they hinder investigative journalism and the possibility for citizens to make informed decisions based on access to quality information.

With respect to Internet access by citizens, (Act No. 19307) Law on Audiovisual Communication Services (IMPO, 2014) ([Ley N.º 19307] Ley de Servicios de Comunicación Audiovisual, LSCA), enacted and regulated in 2014, is not binding on

the Internet. In this sense, the purchase and sale of databases containing personal information is not yet regulated and is conducted under free market laws (Larronda, 2019).

### **Realm B: Exercise of journalism**

In their assessment of this realm, the experts surveyed gave Uruguay 9 points out of 10 for this item, that is, almost full freedom.

In Uruguay's context, there are not many mechanisms for self-regulation of the journalists' profession and / or the media. It is worth mentioning the National Council for Advertising Self-regulation (Consejo Nacional de Autorregulación Publicitaria, CONARP), a non-profit organization whose objective is to ensure free and responsible communication in commercials (Consejo Nacional de Autorregulación Publicitaria, sf). With respect to the professional practice of journalism in the country, there is a Code of Ethics for Journalists with guidelines aimed at strengthening quality journalism as a voluntary self-regulation mechanism. This code is the product of a consensus between the Uruguayan Press Association (Asociación de Prensa Uruguaya, APU) that includes such workers linked to this field as journalists, camera operators, photographers, producers, presenters, hosts, announcers, and newsmen, and concerned civil society organizations in 2012. The LSCA currently in force incorporated the novelty of journalists' conscientious objection in its article 42 as suggested in the above code. It further recognized the provisions of the former (Act No. 16099) Press Law ([Ley N.º 16099] Ley de Prensa) (IMPO, 1989) of 1989, which guarantees the non-disclosure of the journalist's sources and the freedom of expression enshrined in the Declaration of Human Rights, as well as Act No. 18515 (Ley N.º 18515), which recognizes fostering journalists' activity as a matter of public interest. However, the law does not include any provisions regarding intellectual property to protect news content from plagiarism and improper use. It should be noted that the new government's draft media bill, currently under discussion in the General Assembly, proposes repealing Article 42.

### **Realm C: Violence and impunity**

In the realm of violence and impunity, the rating achieved by Uruguay was 25.60 out of a maximum of 42, showing, in this regard, a decline compared to other realms. With respect to the sub-realms of protection, persecution, and impunity, the scores were favorable for the first two – 6.40 out of 10; 13.60 out of 15 – and rather moderate for the third at 5.60 out of 17, resulting in a relatively low rating in terms of institutional action against impunity.

The sixth CAINFO report on Monitoring and Threats to Journalism and Freedom of Expression (Monitoreo y Amenazas de Periodismo y Libertad de Expresión) documented 18 complaints and instances of whistleblowing on free speech

violations from April 2018 to March 2019. These cases were clustered in the country's capital and the top categories concentrating the most complaints were "threats"<sup>2</sup> and "denial of requests for access to public information". Most cases of threats occurred in government offices, and the responsibility rested with officials or agencies. In the last three years, from April 2016 to March 2019, the number of cases documented in the above report decreased from 28 to 18, which also represented a progress in guarantees for the professional exercise of journalism.

No cases of murder, forced disappearance, arbitrary detention, kidnapping, torture, and abuse of government power went on record in the country, nor were any episodes reported to the police or justice system. Two cases of civil or criminal proceedings against journalists or media outlets, which were found for the respondent media or journalist, were documented in said report.

On the other hand, the same report highlights another relevant fact: Although Uruguay has had some problems regarding deterioration of the professional practice of journalism since 2018, such situation has worsened this year in the midst of the COVID-19 pandemic and consequential health emergency, where the figures of loss of jobs have risen exponentially. In April this year, the Uruguayan Press Association reported the loss of over 300 jobs – layoffs or unemployment insurance remittals, a phenomenon that directly affects the conditions of the exercise of journalism, the quality of information accessed by citizens, and freedom of expression.

#### **Realm D: Control over the media**

The assessment for the realm of control over the media in the nation showed a low restriction, achieving 20.80 points out of a possible 25. In the sub-realm of direct control, Uruguay scored 11.80 out of a theoretical maximum of 16 points, while no questionable action was reported in the realm of indirect control, scoring the maximum 9 points possible.

LSCA Article 139, still in force, sets an advertising time limit of fifteen minutes for broadcast services. Failure to comply with this article, as well as those related to ownership, be it misdemeanors or serious offenses, are punishable by a monetary fine that could reach a maximum of 10,000 UR ([Unidades Reajustables] Constant Value Units, currently equivalent to \$30 per unit)<sup>3</sup>. In view of the fact that enforcing agency URSEC has levied some fines to broadcast TV outlets for non-compliance with advertising time regulation, the National Association of Uruguayan Broadcasters (Asociación Nacional de Broadcasters Uruguayos, ANDEBU) points to the risks of high amounts of fines for media across the interior of the country, since payment thereof might result in their definitive closure (Banerrece, 2019).

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<sup>2</sup> According to the report, this category comprises intimidation to journalists and their families, as well as to media outlets, aimed at preventing the release of contents.

<sup>3</sup> UR rate, as of September 2019, at 1,167 Uruguayan Pesos or \$32.

Civil society organizations such as CAINFO, as well as the IACHR Office of the Special Rapporteur for Freedom of Expression, and the APU note the need for the country to have a regulatory framework regarding the allocation of government advertising. In 2019, a draft regulation made it into the General Assembly but did not obtain the necessary votes for approval in the Senate. This result highlights another concerns pointed by the experts, which are the lack of constitutional autonomy of those bodies charged with enforcing the regulations regarding government advertising and their low degree of independence from the Executive. Currently, the allocation of government advertising is conducted under discretionary criteria. Its percentage is very asymmetrical between the capital and the inland regions, as the latter only receive 5% of the total (Centro de Archivos y Acceso a la Información Pública, 2019). These problems significantly disrupt the dynamics of the media ecosystem and the government has no qualms in exerting discretionary powers to reward or punish the media for their editorial policies, a situation that poses an even greater threat in the interior of the country due to the small allocation received from the total. The absence of clear rules in this regard undermines the plurality of the media ecosystem and freedom of expression insofar as government advertising may constitute a mechanism for censoring the media by encouraging self-censorship in the exercise of journalism. Although the new administration took office with the intention of changing some of the current game rules for the regulation of broadcast media, once again it withdrew this issue from its agenda.

The inauguration of the new government coalition after the October 2019 national elections brought developments in media regulation that were part of its campaign commitments. The planned changes were promptly included in the Law on Pressing Matters (Ley de Urgente Consideración, LUC) already in force, but articles related thereto were extracted from that text to prepare a standalone draft bill introduced to the General Assembly on April 24, 2020, and still under parliamentary debate (Montevideo Portal, 2020). The bill features changes in some issues with respect to the LSCA still in force. First, it raises current caps on possession of signals of the same band, which to date is two, to four (draft Article 16). Secondly, Article 28 (the LSCA's right to non-discrimination), which prevents the media from disseminating "content that incites hatred or advocates discrimination on the basis of race, religion, ethnicity, sex, gender, sexual orientation, age, disability, cultural identity, place of birth, or socio-economic status", would be removed (IMPO, 2014). So would Articles 29 and 30 thereof on the State's duty to protect the rights of all children and adolescents pursuant to the law of the land and international agreements. Thirdly, this bill would strike out current LSCA Article 142 on electoral campaigns, which establishes that "It is in the national interest to strengthen the republican democratic system to grant free advertising in broadcast radio and television services, Pay TV services for subscribers on their own signals, and television signals established in Uruguay that are broadcast or distributed by subscriber services licensed to operate in our country". The Executive initiative repeals this provision and Article 143 that governs the distribution of the minutes among the commercial breaks. Fourth, the draft bill repeals LSCA Article 40, which sets forth: "the assignment of the titleholder's rights shall authorize the National Public Radio and Television System to broadcast events of general interest free of charge." Fifth, the draft also repeals LSCA Article

55 that sets "limitations on the number of television service subscribers to 25% of the number of households" and the first paragraph of Article 56 which makes it incompatible for those who provide audiovisual services to offer phone and internet services too. Sixthly, if approved, the draft bill would extend the terms of the license for the concessionary companies in Article 33 from ten to fifteen years. Radio stations may also have a 15-year extension (previously they were 10). For television, it will also be an automatic free renewal and the new term would run from the moment that the law is enacted.

## **Conclusions**

In the sections of the report, some issues have been raised that are of concern to the experts surveyed and that may become factors discouraging the right to freedom of expression in the country:

First, the regulation of government advertising, which is a subject yet to be included in the government's agenda and greatly disrupts the dynamics within the media ecosystem, especially the reality of outlets outside the capital;

Second, the consolidation of the right of access to public information in light of the rating of security classification by government agencies that impairs the free dissemination of information to the citizenry as one of the sources of investigative journalism;

Third, in terms of institutional design in the regulation of the media ecosystem's structure, Uruguay has yet to adapt it to the digital convergence and the preponderant leverage of the Executive over the regulatory bodies since it is the president who ultimately approves the granting of frequencies, the appointment of the members of oversight bodies, and the budget earmarked for these institutions, among other critical issues.

Another important issue on institutional design to be reviewed in upcoming studies is the current tax provisions that have a different impact among media located in the capital city with respect to inland regions of the country.

Finally yet importantly, there is a need for continued monitoring on the outcome of the draft bill currently under discussion in the General Assembly. If approved, it would amend the current law and could represent favorable or unfavorable changes in major issues relating to free speech.



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