

COLOMBIA

SUSTAINABLE MEDIA FOR POST-PANDEMIC AND DEMOCRACY

Executive Summary

The pandemic and the public order situation in Colombia accentuated the deep crisis of the business model of the media, which threatens not only their business existence, but the exercise of freedoms of expression and press, employment for workers in the sector and, consequently, the spaces to guarantee the rights to expression and information of citizens. In addition, the factors of violence and impunity against media and journalists have increased.

Introduction

The study period runs between July 31, 2020 and August 1st, 2021. The journalistic activity and the media business faced the effects of the global pandemic due to COVID-19 and the effects of public order of the "National Strike". They also highlight the attacks against journalists and communicators by different sectors and the judicial decisions related to the exercise of press freedom and the right to information.

The citizen and institutional practice of resorting to judicial channels with complaints, tutela actions and non-contractual civil liability claims against the media and journalists with the purpose of mitigating their activity is maintained. The so-called "Right to be forgotten" continues to be used in order to remove news information from the digital files of the media.

Analysis of results

The measurement carried out by the Chapultepec Index showed that Colombia is classified as a country in which there is a *partial restriction* on the exercise of freedom of expression and freedom, by virtue of the moderate influence (57.23) that, in the face of situations unfavorable to freedom of expression, exercise powers: Legislative (1.89), Executive (2.05) and Judicial (1.74).

The results of the Index constitute an alert for all those involved to analyze this report under the perspective of the imperative need to review regulatory asymmetry, and the possibility of creating laws that contribute to the survival of journalistic companies. All this to claim the guarantees to the full enjoyment and permanence in time of the exercise of the fundamental right to give and receive information.

On the other hand, although Colombia has a protection scheme for journalists that has served as an example to several countries in the region, there is still much to be done so that its operation and results guarantee the life and safety of communicators in the country.

Executive Environment

The general result of the Executive environment shows that it has a slight degree of influence on situations unfavorable to freedom of expression.

However, some aspects such as those related to informed citizens who are free to express themselves, to activities in favor of the information flow, to actions associated to the exercise of journalism and against the persecution of journalists and communicators, reflects a strong influence of the Executive on situations unfavorable to freedom of expression.

This influence is particularly reflected in the difficulty of accessing information (public contracts, information on tenders, among others) of the different entities of the executive power at national and local level; this prevents obtaining essential data for journalists and communicators to exercise one of the main reasons for their role: to exercise as an organ of social control of the actions of the authorities.

Regulatory asymmetries between the media (print, digital, television, radio) continue, as the State has not intervened to deal with the crisis of the media business, and there are still no tax exemptions, official incentives, or support policies for the media. Although the Government initiated the regulation for the Single Fund for Information and Communications Technologies to finance projects of digital transformation of the media, to support the economic recovery of journalistic companies affected by the pandemic, the results of it are not yet seen. The Ministry of Communications opened a call to deliver resources to the media for the "Digital Transformation" and it was terminated early because –strangely– "none of the 354 proposals presented met all the enabling requirements previously defined in the Call". Thus, the financial situation of media companies continues to deteriorate seriously with the full knowledge of the Colombian State. The Government remains unperturbed by this reality despite the threat it implies to the fundamental right to information and to democracy.

With regard to free and informed citizens, the exercise of journalism, and the control of the media, the Executive Branch has a slight influence on environments related to situations unfavorable to freedom of expression.

Finally, actions related to violence and impunity presented a moderate influence on the exercise of journalism by the Executive Realm. This is due to some actions or omissions of the public force against journalists and communicators in the framework of the National Strike and the protests that have occurred in the country in recent months.

Legislative Environment

As for the legislative environment, the general result shows that it has a slight degree of influence in situations unfavorable to freedom of expression.

The influence of this environment was moderate, particularly in relation to actions for informed and free citizens, the flow of information and free expression. This is reflected in the existence of several legislative initiatives that seek to establish measures to protect the fundamental right to honor, honor, good name, personal, family and image privacy, creating new rules when these rights collide with freedom of opinion. There is also a bill declaring access to the Internet as a fundamental right, amending article 20 of the Constitution; the concern is that it establishes the protection of rights that already have an autonomous article that regulates them. On the other hand, there is a project that aims to regulate advertising on social networks by prohibiting certain messages that could affect freedom of expression and a niche of income. Of these initiatives, in addition, it is worrying that they continue to impose disproportionate burdens on media companies.

Finally, it was found that with regard to the exercise of journalism, violence and impunity and media control, the actions of the Legislative Council related to avoiding direct and indirect control of the media had a slight influence on situations unfavorable to freedom of expression. Although the Legislative Authority has no direct influence on decisions related to these aspects, many of the laws regulating these issues are not sufficient to guarantee the protection of communicators and there is still a serious regulatory asymmetry between the different communication actors. The economic crisis is exacerbated by the lack of a State policy for this sector, being the responsibility of legislators to protect the journalistic exercise, ensure the application of existing laws through the exercise of the controls that the Constitution grants them and guarantee the permanence of companies that allow throughout the country the exercise of the activity of informing.

Judicial Environment

The general result of the Judicial environment shows that it has a slight degree of influence on situations unfavorable to freedom of expression.

The Judiciary had a slight influence in some situations unfavorable to freedom of expression in the evaluation of actions related to informed and free to express citizens, actions in favor of the flow of information, those aimed at free expression, those related to the exercise of journalism and those related to the protection and persecution of journalists and communicators. The previous results correspond mainly to judicial rulings of the administrators of justice in Colombia, many in the framework of constitutional actions of tutela, such as that of the Sixth Criminal Court of the Specialized Circuit of Bogotá that ordered the channel “Las Igualadas”, Fidel Cano and “El Espectador”, the rectification of an opinion issued on the channel, after complaints made of gender violence against José Francisco Jamocó Ángel, senior pastor of the religious congregation El Shaddai. On the other hand, Gustavo Rugeles, director of “El Expediente”, was notified of an arrest warrant and was sentenced to pay a fine for the breach of a guardianship that required him to delete and rectify a publication disseminated on social networks and on his portal. In another order of ideas, the First Criminal Court of the Specialized Circuit of Tumaco sentenced Jesús Vargas Cuajiboy, to 28 years and 8 months in prison, for the murder in March 2018 of journalists Javier Ortega, Paúl Rivas and Efraín Segarra, of the newspaper El Comercio, of Ecuador, on the Colombian-Ecuadorian border.

The decision of the second instance of the Labor Chamber of the Supreme Court of Justice which denied the injunction requested by the journalist Vicky Dávila and Radio Cadena Nacional SAS (La FM) is worrisome; the decision leaves in firm the sentence imposed by the Superior

Court of Bogotá in October 2020. It is a civil lawsuit filed by the former commander of the police department Jorge Hilario Estupiñán and his family, for the allegations of corruption published in relation to the irregular purchases for several police detachments when he was the commander in Casanare. As a consequence, they were ordered to pay a large financial compensation. It also caused concern that on March 16, 2021, the Superior Court of the Judicial District of Florencia, Caquetá, overturned the historic conviction against the hitman who murdered journalist Luis Antonio Peralta and his wife Sofía Quintero and reduced 13 years of the sentence, alleging unjustified ignorance of the relationship of Peralta's journalistic profession with his murder.

It was found that the judicial environment had, according to the evaluation of the experts, a slight influence on unfavorable situations in terms of issues related to violence and impunity; actions that avoid direct and indirect control, as well as those linked to protection and against impunity. The actions of the Judiciary are aimed at dispensing justice on crimes committed against the life and integrity of journalists and also because they must know the processes for libel and slander that are carried out against communicators. At this point it is worth remembering that Colombia is one of the few countries that still has consecrated the previous behaviors as punishable against those who exercise the journalistic profession.

The four realms valued

Valued the realms of "*Citizens free to express themselves*", "*Exercise of Journalism*", "*Violence and Impunity*" and "*Control over the media*", Colombia obtained 57.23 out of 100 points in the Chapultepec Index, being classified as a country in which it exists *partial restriction* on the exercise of freedom of expression and freedom of the press.

REALM A. "Citizens free to express themselves"

The assessment of the realm "*Citizens free to express themselves*" collects, on one hand, considerations related to the "*timely and plural information flow to citizens*", a factor in which Colombia was valued with 12.43 out of 23 points.

In this sub-realm, the experts assessed the limitations of access to public information and to the rights linked to freedom of expression and the press; the convenient use of the rights to reply and oblivion done by the government, as well as the use of public and private media to favor the governmental vision; In addition, the limitations for citizens to have a good quality, accessible and reliable Internet service.

Here it is also assessed whether the censorship of negative content favored the branches of government, the oppressive regulations and sanctions for expressions of public interest in the digital space, as well as the existence of criminal provisions on defamation, slander and contempt.

REALM B. "Exercise of Journalism"

The second realm of the Chapultepec Index explores whether the State guarantees the exercise of journalism, to do so, it values the protection of the intellectual property of journalistic

content against plagiarism or improper use; the obligation to join schools and associations of journalists; the requirement of the academic degree for the exercise of the activity; and the restriction or denial of access to official sources; as well as the impact on disclosure on journalistic sources and the establishment of punitive actions. In this item, the experts assigned Colombia 7.43 out of 10 points, which translates into a low restriction.

In this realm, aspects such as the fact that Colombia has signed international treaties and has internal laws aimed at protecting copyright and related rights over journalistic content are considered; there is also a specialized agency (National Directorate of Copyright) in the protection of this rights, exercising the administrative and jurisdictional actions necessary to recognize and verify what is related to intellectual property. As for the practice of journalism, this is considered a profession for which no academic degree or compulsory tuition is required, although, as already pointed out before, bills aimed at establishing regulations to require a professional card from communicators do not cease to emerge in Congress. Access to public information and official sources are restricted despite the existence of a law on access to public information. In many cases it is necessary to look for the petition rights, as well as to guardianship actions to obtain documents that public due to their nature.

In a major ruling, Colombia's Constitutional Court protected the fundamental right to freedom of information and expression by determining that a traffic accident can be, in itself, a news event of interest to society. This decision was made after reviewing a legal action of a citizen who wanted the newspaper El País de Cali to remove from its digital edition the video of his car accident. The ruling affirms that jurisprudence does not consider that good name is affected when an image is exposed to disseminate this type of news facts, and that the media can use the images without the need to ask for authorization from those involved.

A plan of illegal interceptions against journalists was known, so in August 2020 the four United Nations Special Rapporteurs and the Office of the Rapporteur on Freedom of Expression of the IACHR to the Colombian Government their concern about the surveillance and profiling activities by the Army, considering that these activities bring journalists under a high risk and interfere with the development of their work. On the other hand, journalists Vicky Dávila and Claudia Gurisatti received threats from Jesús Santrich, a member of the dissidents of the Revolutionary Armed Forces of Colombia (FARC), through Telegram dissemination groups. On March 9, General Jorge Luis Vargas, director of the National Police, confirmed the threats to the journalists through messages and videos.

During the mobilizations of the called National Strike that took place between April and June 2021, there was an increase in complaints of excessive use of force (aggressions and arbitrary detentions) by the Public Force against media and journalists.

REALM C. “Violence and impunity”

In this third realm, the experts evaluated Colombia with 17 52 out of 42 points, taking into account the examination of three sub-realms:

One:

Actions against persecution. In which the index estimated whether the State favors the persecution of journalists and media whose expressions may be considered as potentially

offensive to officials, or if agents of the State issue speeches of intimidation, stigmatization or hatred against journalists and media.

Here Colombia got 3.21 out of 7.5.

Two. Actions for protection:

In this sub-realm, the index measures whether the State contemplates mechanisms for the protection of journalists or acts aimed at preventing threats, attacks and aggressions on journalists and the media; in addition to providing training to judges to address the investigation and punishment of aggressions, murders and crimes against journalists and the media.

In this item Colombia was rated 2.79 out of 5.0 points.

Three. Actions against Impunity:

In this area, the experts consulted assessed whether there are legislations or sentences to aggravate the penalties for homicides or to avoid the prescription of homicides, aggressions and threats against journalists and the media; It also examines whether the State complies with international rulings or rulings so that it accepts responsibility for crimes against journalists and the media, and repairs damages to the victims.

The rating assigned to Colombia was 1.5 out of 8.0 points.

Four. Actions of Violence registered. The rating assigned to Colombia is 10.02 out of 21.

The acts of violence against media and communicators by third parties in the framework of the National Strike were serious and constant, the attacks range from physical aggressions, destruction of work equipment and attacks on means of transport, to the detention of journalists, insults, blockades and attacks organized in social networks against the media networks for their positions towards the situation. There were also blockades that prevented the circulation of print media and, consequently, readers' access to written information. The siege of the armed groups on social leaders and people recognized for their work for the community tragically touched the press, as it compromised the lives of several communicators.

The practice of drawing upon the judicial branch to try to silence journalistic denunciations continues, forcing the media to undertake costly legal battles; the number of citizens and entities that appeal to judicial channels, complaints, legal protection actions and non-contractual civil liability claims against the media increases, and the use of the "right to be forgotten" to eliminate information in the digital archives of the media does not cease, therefore disturb the right to truth and historical memory of society.

REALM D. "Control over the Media"

Regarding the realm Control over the Media, Colombia was rated 19.86 out of 25 points. This sub-realm assesses "the incidence of actions that avoid direct control over the media, exercised through the use of resources and sanctions in a discretionary manner."

In this sense, the search focuses on:

[...] the closure, revocation of concessions, expropriation or confiscation of media with political criteria; the discriminatory use of tax provisions or tax privileges for media related to the government or if the State allows the granting of permits, the allocation of public funds and official advertising, to be done with arbitrary and discriminatory criteria, rewarding favorable media and harming those media contrary to the official position.

In this sub-realm of actions aimed at avoiding direct control of the media, experts rated Colombia with 14.43 out of 16 points.

The sub-realm related to actions that avoid indirect control of the media, assesses "whether the State allows restrictions or direct blockades to digital information platforms, considered contrary to the interests of agents of political power."

Thus, on the one hand, it is assess "whether the State applies pressures to technological intermediaries – such as subscription television systems, internet providers, and inputs– in order to avoid the dissemination of certain content by the media".

Moreover, it examines "whether the State favors the application of restrictions on suppliers of inputs (paper, raw materials, technological components, electricity, etc.) that affect the processing and dissemination of information generated by the media."

As for actions aimed at avoiding indirect control of the media, the experts who applied the Chapultepec Index assigned Colombia a rating of 5.43 out of 9 points.

With all the above, the policy and inactivity of the State continues to deepen asymmetries of a regulatory nature between the traditional or well-known media, since the Law has provided incentives, decreases in the value of economic compensation with the State, as well as the possibility of payment of financial consideration with services to the providers of connectivity networks and services and digital content, national and external.

Conclusions

Considering that the study period runs between July 31, 2020 and August 1st, 2021, the assessments made by the experts on freedom of expression and the press, allows the following conclusions to be formulated to the Colombian reality:

In this period, journalistic activity was affected by the global PANDEMIC of COVID-19, the social and economic consequences of the National Strike, adverse judicial decisions and attacks against journalists by armed groups.

The qualifications assigned to Colombia by the consulted experts suggest that, in their opinion, to varying degrees the branches of the government (Legislative, Executive, Judicial), by action or omission, have proven to be ineffective in guaranteeing Colombian citizens the full exercise of the rights to expression and information. The competent government agencies have failed to fully dispel violence against journalists, nor to punish those responsible.

The pandemic and the National Strike further aggravated the already difficult situation of the media business and, consequently, the sources of employment for journalists. The result is that citizens in the various regions of the country are affected to have access to diverse plural spaces of expression and information.

In this period, it was evident, the increase in attacks on the media and communicators, the physical and verbal violence of third parties, illegal detentions, the destruction of work equipment and means of transport were the constant during the National Strike, as well as the blockades that prevented the circulation and distribution of printed media and, therefore, readers' access to written information. There were also illegal detentions of journalists by members of the armed forces of the State as well as by third parties, in a clear breach of the constitutional mandate to guarantee the free exercise of journalistic activity.

The financial crisis and the inevitable cutting of costs and expenses within journalistic companies is a serious risk not only for media owners and communicators, but also endangers the existence of the industry and the jobs it generates; above all, it puts at risk democracy, which will be the big loser when the media disappear in the different cities, towns and regions.

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