

URUGUAY: MOVING BACK AND FORTH

Executive Summary

The score obtained by Uruguay for this period in the Chapultepec Index is 78.9 out of 100 points. Despite being third in the overall index, this figure represents a decline of 5.2 points compared to the previous study (84.10), as well as a change of category in the rating scale, from being a country with full [freedom of] expression to a country with low restriction on freedom of expression.

Freedom of expression and the press is guaranteed by law and there is a favorable climate for the exercise of this right, with certain partial restrictions associated by experts with a slight influence of the legislative environment. The non-compliance of government bodies with the right to access information remains with respect to previous editions. There is an increase in the number of minor threats to the practice of journalists that may result –in the medium term– in a restriction on the right to freedom of expression.

Introduction

The period covered by this new edition finds the politically diverse coalition headed by the representative of the National Party (*Partido Nacional*) and current president, Luis Lacalle Pou, Esq., in power for almost two years. In the previous report, we indicated that, in April 2020, the current government had introduced a bill to Parliament with the purpose of replacing the Media Law (*Ley de Medios*), Act No. 19307, enacted in 2014 during the administration of the Frente Amplio, under the presidential term of José Mujica. In August of this year 2022 and after almost two years of parliamentary discussion, the lower house voted in favor of not repealing it. Instead, it was approved to remain in force with an amendment that will be explained below.

Uruguay leads the Americas Barometer [or Latin American Public Opinion Project] (LAPOP, 2021) regarding support of democracy with 80%, as well as trust in elections, and shows the lowest perception of corruption on the continent, 34%. In turn, data from the *Latinobarómetro* indicate that, in the region, Uruguayans are the ones who most believe that freedom of expression is guaranteed in their country (72%) and boast the highest level of interpersonal trust (21%) (*Latinobarómetro*, 2021).

The post-pandemic economic situation brought about a deterioration of the exercise of socio-economic rights which took different forms in the countries of the region (IDEA, 2021). In this adverse scenario, Uruguay's economy, contrary to the trend, grew by 4.4% in 2021, recovering from a fall of 6.1% the previous year. By 2022, it is expected to grow by 4.8% driven mainly by the opening of borders to foreign tourism last summer and an increase in agricultural production (World Bank, 2022).

This explains why Uruguay shows –across the region– the lowest level of negative perception regarding its current economic conditions compared to past ones; only 46% consider

that it is worse than before the pandemic. Despite this, internally, this percentage represents an increase of 12 percentage points against the previous study.

Regarding the exercise of freedom of expression, we can state that Uruguay has a highly performing democratic regime where freedom of expression is guaranteed by its legal framework, and journalists exercise their practice in a climate of freedom. Despite this, it is "... the only democracy in Latin America and the Caribbean that, despite achieving high performance standards, has experienced a decline in the media integrity indicator", a situation that translates into an increase in attacks on them (IDEA, 2021: Ch.2). Reporters Without Borders (2021) points to a drop of 26 posts for Uruguay this year compared to the previous year – from No. 26 (72.03) to No. 44 (83.62). The Office of the Special Rapporteur for Freedom of Expression (SRFOE) of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) reports having received complaints of harassment and accusations against journalists and critical media, which would constrain guarantees to Freedom of Expression (RELE, 2021).

The eighth national threat report of the Center for Archives and Access to Public Information (*Centro de Archivo y Acceso a la Información Pública, CAInfo*, 2022) put on record 69 cases of threats against journalists from March 2021 to April 2022, which represented an increase of 20 cases in 2022 compared to 49 in 2021. The largest number of cases is concentrated in restrictions on access to public information and the rest are stigmatizing speeches, aggressions, and attacks, as well as civil and criminal proceedings.

Background

For this year 2022, Uruguay descends from the first place of the Chapultepec Index achieved in 2021 (84.10 points out of a total of 100) to third place with 78.9 points. This decrease of 5.2 percentage points also means a change of category in the rating scale of the Index, from a country with full freedom to a country with low restriction.

The realm of the index that explains this variation, according to the experts' rating, is C: Violence and Impunity. This realm encompasses government actions aimed at protecting journalists, preventing attacks and aggressions against newsmen and the media, as well as harsher penalties conducive to avoiding impunity in the case of crimes against journalists.

Uruguay shares these traits with Canada (80.42) and Jamaica (80.40), holding higher positions and that, despite reaching high levels in the overall index, they decline significantly in this realm.

In the analysis of the Legislative, Judicial and Executive environments, these appear on record with a slight influence since, in none of the cases, the score assigned by the experts exceeds 1.29 points on a scale of zero to 10 maximum points. Despite this, it should be noted that the previous report did not show numbers higher than 0.29 in any of the three environments; in this edition, on the other hand, a slight increase in score is viewed in the Legislative and Executive environments, specifically in Realm C, without a change of category in the [rating] scale, since it is still at a slight influence.

Regarding the realms reviewed, according to the experts inquired, the environment influencing to the greatest degree on restrictions is the Legislative, specifically in connection with government actions to protect journalists from persecution, intimidation, harassment, hate speech, as well as encompassing mechanisms for protection and prevention of attacks on

journalists and media. It also reviews the existence of measures to increase penalties for cases of murders of journalists.

It worth noting that there are no serious threats in the country such as homicides, kidnappings, and forced disappearance of journalists in the exercise of their professional practice. In the Eighth CAinfo Monitoring and Threats Report (*8° informe de Monitoreo y Amenazas*) of 2021, 69 instances of threats or restrictions on freedom of expression went on record. It should be noted that the study of the report covers the period from April 1, 2021 to March 31, 2022.

Due to the time frame of this report, only those between August 1, 2021 and August 1, 2022 have been included from the national report; the cases not surveyed by the national report were retrieved from search results in the press with a representative sample of national mainstream and digital media until the end of the period, ultimately amounting to 36 cases.

Of the total number of cases on record, 22 correspond to government agencies for non-compliance with active and passive transparency or for refusal, partial, incomplete disclosure, or omission. Of the remaining 12 cases, there are three Internet restrictions where freedom of expression and press was limited in online availability to publish and inform; nine were lawsuits against journalists –six brought by government officials and three by private citizens– a complaint to the IACHR by the Uruguayan Press Association (*Asociación de la Prensa Uruguaya*) for harassment by a senator of the republic, and a death threat to a journalist made by a private person on their personal Facebook account.

The SRFOE of the IACHR of the OAS 2021 Report, warns that it has received complaints claiming a growing climate of harassment and allegations against journalists and critical outlets, especially on social media, that would be restricting freedom of expression (RELE, 2021: 271).

The second environment with the greatest influence on levels of restriction on freedom of expression, according to experts, is the Executive, again in Realm C described above. As we have anticipated, in April 2020, the Executive introduced a draft bill on the Service of Audiovisual Content Dissemination (*Servicio de Difusión de Contenido Audiovisual*) that would modify the current Media Law, Act No. 19307, amendments viewed by some sectors as restrictive to freedom of expression. After floor debate for over a year and a half, the coalition failed to gain support from any of its members and preserved the law in force, only amending Article 56.

Environment Analysis

Executive Environment

The Executive environment shows a slight influence on all realms. The highest level reached is 0.52 on a scale of 0.1 to 10 as a maximum value for Realm C, Violence and Impunity. The main cause of obstruction to freedom of expression in the country for a number of instances on record continues to be –as in previous reports– access to official sources in reason of significant numbers of non-compliance of the offices bound by Law 18381 on the right of access to public information in both active transparency (released information) and passive transparency (responses to requests for access). The new finding in this period is that it increasingly consists of lawsuits and harassment of journalists by some government officials.

Legislative Environment

The legislative environment shows a slight influence on all realms. The highest level reached is 1.29 on a scale of 0.1 to 10 as a maximum value involving Realm C, Violence and Impunity, especially in the Protection and Impunity sub-realms, and 0.50 in Realm A, sub-realm of Information Flow.

During the long process of congressional floor debate on the new Media Law, some civil society organizations described the draft bill in April 2020 as restrictive of freedom of expression in the following aspects: It would promote media concentration to the extent that it raised the cap of radio and TV frequencies from three to eight; it would limit citizens' participation in decision making regarding communication policy since it eliminated public audiences and the Honorary Advisory Commission of Audiovisual Communication Services (*Comisión Honoraria Asesora de Servicios de Comunicación Audiovisual*, Chasca), among other issues.

In September this year, with the vote of the Executive Accountability Project (*Proyecto del Poder Ejecutivo de Rendición de Cuentas*), in favor of preserving the current Media Law with the sole amendment of Article 56, pay TV providers in the interior of the country are authorized to offer Internet services. This initiative was proposed by *Cabildo Abierto* (a party within the ruling coalition).

Judicial Environment

The Judicial environment shows a slight influence on all realms. The highest level achieved is 0.33 in Realm C, on a scale of 0.1 to 10 as the maximum value to be achieved, especially in the Protection and Impunity sub-realms. Within the period reviewed by this study, nine lawsuits against journalists, which have so far been closed, went on record; they were favorable as they did not involve monetary penalties or arrests. These lawsuits are primarily for slander and defamation. CAinfo and the Uruguayan Press Association expressed concern not only about the increase in the number of cases –only three cases had gone on record the previous year– but also because most of these lawsuits are brought by senior state-level officials or legislators, and undermine freedom of the press and the information flow. This report warns of the need to monitor this trend in the next edition.

Realm A: Informed Citizens Free to Express Themselves

The experts' assessment for this realm was 21.6 points (1.4 points below the theoretical maximum). Of the sub-realms that compose it, Information Flow was rated at 10.1 of 11 maximum points (9.86 in the last edition) and 11.4 (keeping the previous one) of 12 possible points in Free Speech. It is one of the realms best rated by experts.

The limitations on access to public information by citizens are mostly attributed to different problems of government agencies to fulfill this duty. The report to March 2021 of the Access to Public Information Unit (*Unidad de Acceso a la Información Pública*, UAIP), indicates that the legally bound agencies received 5,230 requests for information (3,288 more than in the previous year); of this total, 4,678 were replied and 69 expired without a reply. Of the 5,230 requests, 3,600 were replied within the period established by law (20 days) and 167 were denied for reasons of lack of information, the rest denied as secret, confidential, or classified items. It should be noted that, during the COVID-19 pandemic period (March 2019 to April 2020), government agencies only provided services online, which may explain this large change in the number of requests. On the other hand, the data collected by the regulatory body shows the increase in difficulties to deliver faced by agencies amid a higher demand.

Similarly, the results of the Active Transparency Index Online (*Transparencia Activa en Línea*, ITAeL) Report 2021 point to a break in the overall upward trend compared to the last report in 2017; we notice that the level of overall compliance is low, which means that 56% of bodies bound by law fail to publish more than 40% of the information on their websites, and only 2% of them perform at high levels of compliance, demonstrating the country's inability to assert the right of access to public information 14 years after the enactment of the law.

The previous edition underscored the mobilization of some civil society organizations towards the call for a referendum aimed at repealing the 135 articles of the Law for Urgent Consideration (*Ley de Urgente Consideración*, LUC), Act No. 19899, an [omnibus] bill introduced by the Executive in April 2020 and passed in July that same year, whereby the Criminal Code (*Código Penal*) was amended and established a prison term between three and 18 months for anyone who "offends", "attempts against" or "threatens" a police officer on duty in connection therewith (Article 11). On the other hand, it declares unlawful "... pickets that prevent the free mobility of persons, goods, or services, in public or private spaces for public use" (Article 468) and vests law enforcement bodies with authority to use force when "... it must dissolve assemblies or demonstrations that seriously disrupt public order, or that are not peaceful, provided that they involve persons who carry their weapons of their property or not or who display violent conduct" (Article 45 F). In a letter sent to the government, the SRFOE 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 March this year, 2022, the affirmative choice of the referendum obtained 48.7% of valid votes, below the majority necessary to repeal the law. Therefore, it is currently in force.

Realm B Exercise of journalism

The assessment of the experts consulted for this realm gave Uruguay 9.1 points out of 10, it was the best rated realm for the period. In the Uruguayan outlook, there are few mechanisms for self-regulation of the profession of journalism or the media. It is worth mentioning the existence of the National Council of Advertising Self-Regulation (*Consejo Nacional de Autorregulación Publicitaria*, Conarp), a non-profit organization aimed at ensuring free and responsible commercial communications. Within the Association of Advertising of Uruguay (*Asociación de la Publicidad del Uruguay*, Audap) the Uruguayan Code of Ethics for Advertising (*Código de Ética de la Publicidad Uruguaya*) stands out. Regarding the professional exercise of journalism, the existence of a Code of Journalistic Ethics (*Código de Ética Periodística*) with guidelines seeking to strengthen quality journalism as a mechanism of self-regulation, on a voluntary basis, as well as regarding guild affiliation. This code is the product of a consensus in the Uruguayan Press Association (*Asociación de Prensa Uruguaya*, APU) that involves workers in this field such as journalists, camera operators, photographers, producers, presenters, drivers, broadcasters, media professionals, and civil society organizations linked to this sector since 2012. The complex composition of this association makes it unique in the continent as it houses all trades in the ecosystem. Currently, the APU holds the presidency of the Federation of Journalists of Latin America and the Caribbean (*Federación de Periodistas de América Latina y El Caribe*, FEPALC).

At the regulatory level, Law 19307 governing broadcast media acknowledges, in its Article 42, conscientious objection, a protection to which a journalist can appeal in case of abuse by a media outlet against them as a subject of law. In turn, this law reconciles the articles of the former Press Law of the Constitution of the Republic (*Ley de Prensa de la Constitución de la República*) of 1989, Act No. 16099, which guarantees the non-disclosure of journalistic sources and freedom

of expression as enshrined in the Declaration and the Convention on Human Rights, as well as in Act No. 18515, whereby the promotion of journalistic activity is recognized as a matter of general interest. However, intellectual property provisions to protect journalistic content from plagiarism and misuse are not codified into the law, although it is established in Code of Ethics for Journalists Article 18:

Journalists shall respect intellectual property. Copying or reproducing parts of existing works without referencing them in the form of citations constitutes plagiarism and is a serious offense, so is failure to state that a news event was made known by another journalist or to report the event as if it were an own finding.

Realm C Violence and Impunity

In the realm Violence and Impunity, the rating obtained by Uruguay was 25.2 out of a maximum of 42 (4.6 points below the previous edition) presenting the lowest figures with respect to the other realms. The sub-realms that most contribute to this rating are Protection with 1.5 points out of a total 5, and Impunity with a score at 1.4 of 8.5 maximum points.

It is important to note that there are no serious threats in the country, such as homicide, kidnapping, forced disappearance, or torture of journalists in the exercise of their professional duties. The total level of threats issued against journalists can be described as mild. In this section, some of the 36 cases of minor threats on record for the period covered by this report are described in greater depth, by responsible party and type.

To give examples of infringement of active and passive transparency by government agencies making up most the threats (22) in the country, two complaints are referenced based on CAinfo Report 2021 as source. In August 2021, the National Bureau of Telecommunications and Audiovisual Communication Services (*Dirección Nacional de Telecomunicaciones y Servicios de Comunicación Audiovisual*) did not respond to an information access request filed by journalist Carlos Dárdano, seeking data regarding community radio stations that had incurred in irregularities. Once the deadline for replying to the request expired, on September 9, Dárdano filed the request again, which was not replied one more time. In September 2021, the Communication Services Regulatory Unit (*Unidad Reguladora de Servicios de Comunicación, Ursec*) did not reply to an information access request filed by journalist Carlos Dárdano, who requested all and any information available on commercial radio stations that do not comply with current legislation or with ownership in an irregular situation. The Ursec required that the request be filed through its website.

Another type of mild threat on record in the country is regarding Internet restrictions. In November 2021, investigations by Sudestada (news website in Uruguay) were removed from Google search engine. The involvement of Uruguayan law firms in international money laundering schemes was the subject of such reports. In March 2022, news shows were censored on the social media YouTube. One was an entire episode on Ukraine's "Self-Defense" program that, without prior notice, was entirely taken down by this social media on claims of "disinformation". In the same month, a video of Uy.press, by journalist Gabriel Pereira regarding police abuse of young people was deleted from said social media.

Lawsuits experienced a significant increase from August 2021. As an example, here are some of the complaints filed in courts during this period: In August 2021, former municipal councilman from Maldonado, Pablo Gallo (*Partido Colorado*), sued media outlets *La Diaria*, Canal 10, *La República*, *Caras y Caretas*, *FM Gente* and Radio Piriápolis for moral damages and loss of profits. He demands compensatory damages for USD 300,000 because the media released

some news that the above former municipal councilman had been sent to prison for land fraud, in 1997 for smuggling crimes, and in 1990 for the crime of domestic violence. This lawsuit is still underway.

The same month, a complaint was filed against journalist Eduardo Mérica of *Diario Uruguay* by former advisor of the Provincial Soccer Organization (*Organización del Fútbol del Interior*, OFI), Andrea Valiente, for slander and defamation because the journalist had reported on the departure of Valiente from the OFI, the lawsuit was shelved after the journalist agreed to a rectification statement [by the plaintiff]. In another case from the same period, Congressman César Vega (Uncompromising Radical Ecologist Party [*Partido Ecologista Radical Intransigente*, PERI]), filed a criminal complaint against journalist Leandro Grille, host of *Legítima Defensa* TV show.

In July, the above congressman held a press conference at the Legislative Palace and showed on camera women with metal items attached to their bodies, attributing the occurrence to COVID-19 vaccines. During an installment of the show *Legítima Defensa*, journalist Grille questioned the conduct of the legislator, which he described as "defamatory and insulting statements". Vega's lawsuit was dismissed at trial court.

In August, this type of complaints amounted to six. In September, Pilar Silvestre, a member of *Cabildo Abierto* party (making up the ruling coalition), filed a lawsuit against *La Diaria* and *Caras y Caretas* for slander and defamation based on a news item published in March 2020, following her failed [nomination towards] appointment as National Director of Social Economy and Labor Integration at the Ministry of Social Development (*Ministerio de Desarrollo Social*).

Media reported that Silvestre had been investigated after paying invoices for services rendered at a family party with funds from the Ministry of Industry. The case still pending.

The same month, the APU denounced at the IACHR the "permanent hostile attitude against journalists" on social media –namely Twitter– by National Party Senator Graciela Bianchi, requesting a public hearing in Montevideo. Also in August 2021, a death threat on Facebook against journalist Silvia Techera of AM 1340 *La voz de Melo* radio station (interior of the country) for reporting on a crime went on record.

Realm D: Control over the Media

The assessment for the realm of Control over the Media, according to the experts consulted, showed a slight influence by yielding 23 points out of 25 possible. The sub-realm that explains this difference is that of Direct Control, with a score of 14 out of 16 possible. This realm reviews whether the government has applied restrictions or direct blocks on different digital media, or applies pressure on technological intermediaries to prevent the dissemination of certain content.

The last report mentioned the approval, under the Budget Law of the Executive (*Ley de Presupuesto del Poder Ejecutivo*) of December 2020, of authority vested in Ursec to block and remove audiovisual content from the Internet without a court order. Following a statement by the SRFOE and a demonstration by civil society organizations at the Senate, Article 712 of Act No. 19924 was amended, restricting the above authority to internet TV streaming services for subscribers, and only for holders of these [subscription] services, not for all natural or legal persons.

In April this year, under Accountability Law (*Ley de Rendición de Cuentas*) Article 181, Decree No. 132/022 was approved, thereby regulating the National No Call Registry under the authority of the Ursec, with the aim of protecting users and holders of telecommunications services from being contacted for advertising, offer, sale, and gifts of goods or services not previously requested.

By joining this Registry, users opt out of being contacted for such purposes. Telecommunications service operators failing to comply with the decree may be subject to fines, confiscation, or suspension. There are currently no fines or penalties imposed on these grounds. This provision is being implemented across the country recently; as of June this year (2022), 50,000 users had registered. These processes are relevant to monitor in future reports to assess their impact on users and the [communications] ecosystem.

Conclusions

The overall result of the Chapultepec index for Uruguay 2022 shows a decrease of five points against the previous study. This removes the nation from the top position it held in 2021 compared to the other countries reviewed, and a change of category in the rating scale for this country from one with full freedom to one with low restriction.

Therefore, Uruguay is described as a highly performing democracy, leading in variables such as citizen support for its democracy, low perception of corruption, high perception of guarantees of freedom of expression, economic growth amid an adverse regional landscape, and as a country where freedom of expression is guaranteed by law, also one where journalists can exercise their activity in freedom. Despite these positive items, there is a change in trend for Realm C of the index, that of Violence and Impunity, owing to an increase in threats to a mild extent such as harassment, lawsuits against journalists, especially by officials in top-tanking government positions, and –if this trend continues– they could constitute a restriction on freedom of expression and thereby on the quality of democracy.

As for Realm A, Citizens Free to Express Themselves, the continuing extent of non-compliance by public bodies with access to official sources is egregious, which results in less information for citizens, as well as a hurdle to investigative journalism. Within Realm D, Control over the Media, some powers of Ursec to block and remove audiovisual content from the Internet have gone on record, so have those to administer the No Call Registry. These items, albeit at an early stage, should be monitored in future editions to assess their impact on the rights of subscribers and freedom of expression, as both provide fines and forfeitures for companies failing to comply with regulation.

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