

Costa Rica

Accelerated decline of the freedom of the press

Executive Summary

Costa Rica attained the 10th position in the Index with 55.23 points. The most affected realm for this period was Citizens Free to Express Themselves, which, with 11.86 points, shows the presence of high restriction. The Executive Environment had a strong influence on this realm, which ultimately impacted the exercise of freedom of expression, and accelerated the country's decline that we appreciate in this Index. Having stated so, the Judicial and Legislative Environments favored the protection of journalists and access to public information through the implementation of different processes and decisions aimed at guaranteeing freedom of the press.

Introduction

In 2024, Costa Rica became a country with restrictions when reaching the 10th position in the Index with a total of 55.23 points. This variation represents a decline of three positions below compared to the results of the index carried out in 2023, and five points lower compared to those of 2022, which demonstrates an accelerated deterioration on the protection of freedom of expression and the press. During this period, the most affected realm was Citizens Free to Express Themselves, which, for the period covering from August 2, 2023 to August 1, 2024, became a realm with high restriction.

One of the factors that affected the drop in the Index -with respect to that of 2023- was the increase in verbal, physical and digital attacks against journalists and the media (Garrido V. and Garrido, 2024). In fact, trolls were used to influence the country's media panorama, the political debate and, ultimately, the Costa Rican democratic debate (Chavarría, 2024).

Another issue that impacted Costa Rica's ranking was the distribution of public airwaves. In 2024, media licenses expired and, despite the fact that they had been granted a fifteen-month extension to continue operating (May Grosser, 2024), some deliberations took place related to the bidding process for the use of such space and the payment of taxes for the use of the assigned airwaves.

Additionally, the financing of political parties partaking in the 2022 general elections remained as a topic of discussion which generated confrontations among the different political players in the country. Particularly, the Legislative Assembly began some investigation processes to assess the performance of the Executive Branch regarding the allocation of public resources and, specifically, the Legislative initiated an important debate on contracting media and the democratization of advertising (Asamblea Legislativa de Costa Rica, 2024).

Amidst this panorama, the Judicial Branch continued to act as guarantor of freedom of expression and the press. It decided in favor of the protection of journalists, access to public information, data protection -cases detailed below- and thanks to that, it became the environment with the slightest influence.

Result Analysis

The Executive Environment showed the greatest impact on the result obtained by Costa Rica, having an overall unfavorable influence on the Exercise of Freedom of Expression and the Press (score of 4.25). Although the moderate incidence has been maintained since 2023, the Citizens Free to Express Themselves realm was the most impacted by the actions of the executive branch. In fact, the Index shows that it exerted a strong influence with a score of 6.10 out of 10 in this realm. As for Violence against Journalists and Control over the Media, the Executive Environment had a moderate influence on these realms, with 3.76 points and 2.90 points, respectively.

In this line, the refusal of different representatives of the public power to provide information to journalists stands out. The case of journalist Vilma Ibarra against the National Roads Council (Consejo Nacional de Vialidad, Conavi) was remarkable. Conavi refused to provide her with a copy of a report used to indicate that the journalist had received an important contract for communication services. In view of this situation, Ibarra filed an injunction at the Constitutional Chamber, which ruled in her favor and ordered Conavi to surrender the report to the journalist (Madrigal, 2023).

On the other hand, the Legislative Environment had a slight overall influence over the promotion and respect of freedom of expression making it keep the degree of influence it had in 2023. However, in the realm Violence and Impunity against Journalists and the Media it displayed a moderate influence (2.67 points).

It is worth noting that the Legislative Branch had a slight influence over the Control over the Media and Journalism (1.10 points), however, the inaction by the Legislative Assembly in respect to the revision of the regulatory framework does not favor the creation of a plural media environment. For example, Congressman Gilberto Campos Cruz presented a bill to eliminate prison sentences for libel or slander committed by journalists and the media, which as of September 2024, is still pending approval (May Grosser, PLP Congressman proposes to eliminate prison sentences for libel or slander, 2024).

However, among the actions taken by the Legislative Environment, it is noteworthy to mention the creation of the investigation committee for the case of the National System of Radio and Television (Sistema Nacional de Radio y Televisión, Sinart), that favored transparency regarding the contracting of advertising guidelines and allowed to know the guidelines given by the Executive Environment to restrict contracting of particular media (Asamblea Legislativa de Costa Rica, 2024).

Finally, following the trend observed in 2023, the Judicial Environment had a slight influence during this period, and, in general, favored the protection of freedom of expression and the press in the country. In fact, the Index shows that in terms of Control over the Media and Journalism the influence was minimal (0.95 points).

Interventions by the Judiciary left a minor influence on the Citizens Free to Express Themselves realm, with a score of 2.24. Proof of this was the injunctions ruling to protect the personal data of the population. In a case decided in October 2023, the Constitutional Chamber indicated that banking institutions cannot share personal data with third parties without authorization (Lara

Salas, 2023). Also, through an amparo, the Constitutional Chamber established the difference between the protection of data provided by the public sector or by the private sector, while condemning the Social Security Fund (Caja del Seguro Social, CCSS) for providing salary information from the private sector (Lara Salas, CCSS disclosed data of the spouse of an official during a judicial proceeding, 2023).

Another case that had a favorable impact on the protection of journalists was the decision adopted by the Constitutional Chamber in the case of Jason Ureña. The journalist of the media *CRHoy* filed an appeal for protection due to the insults he received from the Executive Branch during a press conference in January 2023. The court ruled that “the use of disrespectful and offensive language against journalists represents a grievance to the freedom of the press” (Sequeira, 2024).

Realm Citizens Free to Express Themselves

This realm was the most affected during the period under study; it had a high restriction (11.86 points out of thirty), which indicates that both the free flow of information and the possibility of exercising freedom of expression were highly affected. For example, the Social Protection Board (Junta de Protección Social, JPS), a decentralized entity of the public administration, following instructions from the Executive Branch, decided to transfer the program “Rueda de la Fortuna” from Channel 7 to Channel 13 of Sinart, which meant a decrease in the revenues of the former by 6% (Cambroner, 2024). This situation not only affected the contracting of advertising for Channel 7, but also the access to information on the sweepstakes and activities implemented by JPS.

Regarding access to public information, there were several situations in which the Judicial Branch had to intervene. In this regard, it is worth mentioning the case of Congressman Ariel Robles, who requested information from the Presidential House on the contracting of advertising. Faced with the refusal by the Executive Branch to provide such information, Robles went to the Constitutional Chamber, which ruled in his favor. However, the document provided featured illegible sections (Bolaños Vargas, 2024).

Regarding communication on digital platforms, there are some facts to underscore. Firstly, the discussions regarding the allocation of radio and television airwaves stand out. There are 126 licenses that will expire in the next three years (Jiménez Alvarado, 2023), however, the criteria for bidding the available airwaves have not yet been established. Secondly, the amount that concessionaires pay for the use of broadcasting airwaves was also discussed. These payments are set in accordance with the Radio Law of 1954 (Ley de Radio) and the General Telecommunications Law of 2008 (Ley General de Telecomunicaciones), and different sectors have requested their updating as “the 25 television companies that have a government license allocation for the use television airwaves only pay CRC ₡60,000 per semester for such use” (Pomareda García, 2023). Finally, discussions around the use of the 5G network to improve internet access stand out. The government is expected to publish a bidding ad that will allow the development of mobile services operations in the country (Tellez Tejada, 2023).

Finally, the case of journalist Marlon Mora, related to the commission of crimes against the honor of former presidential candidate Juan Diego Castro, has demonstrated the need to decriminalize crimes against honor and review the proportion of the penalties imposed since the journalist was sentenced, in first instance, to pay “a 30-day fine, for a total of ₡600,000, as well as the payment of ₡15 million for the civil action for compensation and ₡3 million for personal costs” (Oviedo and Bravo, 2024). As of September 2024, the case is still pending resolution and the journalist's assets are under confiscation.

Realm Violence and Impunity against Journalists and the Media

In this realm Costa Rica obtained 11.05 points out of 20, which indicates that it is a realm in restriction due to the attacks experienced by journalists and the media, especially those involving the use of discriminatory and offensive speech. These expressions of hate speech have the potential of turning into physical attacks: In September 2023 journalists from *NC Once* were verbally attacked when leaving the Legislative Assembly, the vehicle they were boarding was beaten by citizens who were demonstrating their rejection of the media. Witness to these actions, the police did not intervene to protect the journalists (Repretel, 2023).

Similarly, in March 2024, journalists from *Diario Extra* were assaulted by five women “for taking photos of a group of women who were vandalizing a wall of the National Museum at the culmination of the march for International Women’s Day, known as 8M, which was held in San José” (Astorga, 2024).

Attacks against female journalists have been commonplace, and are no longer limited to insults and offenses through social media, but also involve the use of artificial intelligence to harm their reputation and work. An example of this is the case of journalist Vilma Ibarra, who received death threats by a troll (Sandí, 2023).

Finally, the use of defamation speeches against the media was observed. As an example, COES and the United Nations mentioned the increase of such speech against journalists, especially against women, mostly issued by men located in the central valley (UN Costa Rica, COES, 2024).

Realm Control over the Media and Journalism

This realm displays a low restriction (21.29 points out of 30). However, it highlights the atmosphere of uncertainty experienced by those media interested in renewing radio and television licenses due to the fact that, as of September 2024, the technical criteria necessary to start the bidding process for radio airwaves for the year 2025 have not been established.

Additionally, between 2023 and 2024 the owner of the media outlet *CRHoy*, Leonel Baruch, was involved in a series of judicial and administrative processes that kept him under public scrutiny (Garrido V. and Garrido, 2024). As a result, *CRHoy* has been queried by representatives of the Executive Branch, and although it is true that the cases of the businessman were not linked to the operation of the media, these actions can be considered as undue pressure on the use of legal mechanisms aiming at limiting the work of the media. These cases can be framed within the Strategic Lawsuits Against Public Participation (SLAPPs), which aim to “intimidate and silence weaker parties who criticize or disseminate public interest messages that are unfavorable to them” (Soraide, 2022, p. 12).

On the other hand, the case of SINART also highlighted the importance of the separation of powers and the need for regulations that establish clear criteria on the allocation of advertising guidelines. The actions of the Legislative Assembly and the Comptroller General of the Republic were essential to determine what happened, since “they compiled and published relevant information on the use of public resources, which demonstrated not only the existence of independence of powers and the strength of the rule of law in Costa Rica, but also the relevance of the existing control mechanisms” (Garrido and García, 2024, p. 58).

Finally, it is worth mentioning the case of the *Extra* group which, on June 1, 2023, closed operations due to financial reasons. (Diario Extra, 2023). The group was acquired by *Grupo Transcomer*, and resumed operations in July 2023 (Siu Lanzas, 2023). Although the closure was not influenced by the actions of the government, it shows that the economic reality of the country is having a direct impact on the operation of the media and that the revision of the allocation of advertising guidelines may favor the creation of financing opportunities for those media that need it most.

Conclusions

In 2023, the relevance of monitoring the realm Citizens Free to Express Themselves was indicated due to the decline perceived then. In 2024, the alert still remains, since circumstances that affect the free flow of information, the exercise of journalism and the freedom of the press, continue to be observed. Despite the foregoing, the actions of the Legislative and Judicial branches have favored the exercise of freedom of expression, and it is expected that they will continue having a minor influence in 2025.

One of the issues to monitor is the granting of licenses for the use of broadcasting airwaves. It is expected that the Executive Environment, specifically the Superintendence of Telecommunications (Superintendencia de Telecomunicaciones, SUTEL) and the Ministry of Science and Technology, will play an important role in the bidding of radio and television licenses. The decision on the airwaves to be used, the terms, and the rates to be established may favor the plurality of voices, thus it will be necessary that the bidding ads contain clear standards and do not allow arbitrary interpretations that may result in undue limitations to the freedom of the press.

The Legislative Environment is also expected to play a more relevant role in establishing the rates to be paid for the use of broadcasting airwaves, the decriminalization of the crimes of defamation and libel, as well as the adoption of regulations governing the use of new technologies (bots, trolls, artificial intelligence, etc.). In particular, the discussions that arise regarding the modification of the Printing Press Law (Ley de Imprenta), the Criminal Code, the Telecommunications Law (Ley de Telecomunicaciones), and the bills presented by the Supreme Electoral Tribunal should be followed up, as these are the ones that can have a positive impact on the protection of freedom of expression in the country.

Regarding the performance of the Judiciary, especially the Constitutional Chamber, this has been to ensure freedom of expression in the country. However, there is concern about the performance of the criminal courts of first instance that hear cases of defamation and libel. Those who rule on these cases must observe criteria of proportionality and the need for the sanctions as established by the Inter-American human rights system with the purpose of guaranteeing the simultaneous protection of the human rights involved. Hence, it is important to remember that the Inter-American Court in the case of *Moya Chacón vs. Costa Rica*, in 2022, indicated that:

In relation on the categorical need and the rigorous analysis of proportionality that must govern between the limitation to the right to freedom of expression and the protection of the right to honor, one must seek the kind of intervention which, being the most suitable to restore the damaged reputation, contains, in addition, a minimum degree of harm in the area of freedom of expression (para. 76).

Finally, as a result of the *Sinart* case, it is recommended to follow up on the debate initiated on the democratization of advertising and the recommendations made by the Special Commission for the Investigation of *Sinart* Contracting in its report of June 2024. The allocation of public

resources should not be used as a tool to control the media or as a reward for those who favor the image of the Executive Branch, but should be based on technical criteria that allow the public administration to achieve the previously established communication objectives.

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