

STATEMENT

Ecuador: Writers sentenced to pay \$1 million indemnification to President Correa

ARTICLE 19

08 Feb 2012

Quito 08.02.12: ARTICLE 19 is extremely concerned about the decision of the Ecuador court, issued on 7 February 2012, in a defamation case initiated by the Ecuadorian President Rafael Corre against two journalists, Juan Carlos Calderón and Christian Zurita. They were each ordered to pay the President \$1 million in damages and \$100,000 to cover his legal costs. The journalists co-authored a book, *EL Gran Hermano*, in which they refer to alleged corruption schemes and contend that government contracts were awarded to businesses linked to the President's brother.

President Correa originally filed the lawsuit in February 2011, requesting \$10 million in compensation for moral damages, arguing that the book contained unauthorized pictures of the two brothers and false facts that tarnished his dignity and good name.

ARTICLE 19 finds the decision problematic for a number of reasons. First, the decision states that the journalists exercised the rights to freedom of expression and information in an “*unconstitutional manner*,” failing to recognize that under international standards on freedom of expression, public officials are required to tolerate a greater amount of criticism. In particular, the Inter-American Court repeatedly declared that public officials, especially electoral candidates, voluntarily submit to public scrutiny

and, therefore, that their positions and actions should be subject to open debate. This statement does not mean that civil servants do not have the right to the protection of their reputation, rather that this protection should take place in accordance with the principles of democratic pluralism.

The book in question exposed alleged corruption and mishandling of government contracts, which are issues of public interest. As the Inter-American Court previously affirmed, “*broad debate regarding matters of public interest is fundamental for the functioning of a truly democratic system*” and the ability to engage in such debate “*fosters transparency of government activities and encourages the accountability of government officials for their public administration.*” Further, ARTICLE 19 points out that in defamation cases, assessment of the public interest in the disputed expression requires the court to consider the defendant’s intentions when determining whether and to what extent moral damage was caused. However, in yesterday’s decision, the court failed to take into account the journalists’ intent when assessing damages.

ARTICLE 19 also notes that unduly harsh sanctions, even for statements found to be defamatory, breach the guarantee of freedom of expression. Under international freedom of expression standards, sanctions must bear a “reasonable relationship of proportionality to the injury to reputation suffered”. The court completely disregarded this requirement in the present case. Instead, the court stated that “*the proof of damages ... is at times unnecessary and at times impossible or very difficult to prove;*” and that “*moral damages and their intensity may not have an external manifestation because they rest in the deepest of the being, of the soul, and don’t even require demonstration*”.

The case against Calderón and Zurita is not the only defamation case initiated by the President against journalists and media, but is a part of a broader practice. ARTICLE 19 is deeply concerned about the interpretation given to defamation by Ecuadorian courts, as well as with the use of defamation lawsuits by the highest authority in the country, specifically on issues in the public interest, such as corruption. These decisions, and the disproportionate damages assessed, intimidate and silence criticism,

opposition or dissent and have a chilling effect on the free flow of information in the country, particularly during pre-electoral periods.

ARTICLE 19 therefore calls on President Correa and other public officials to refrain from using this type of lawsuits. We also urge Ecuadorian courts to enforce the international human rights obligations assumed by Ecuador and interpret cases involving freedom of expression and defamation accordingly. In particular, we call on the appeals court to reverse the decision against Calderón and Zurita.

FOR MORE INFORMATION:

- Contact: Paula Martins, ARTICLE 19 Director for South America, paula@article19.org +55 (11) 3057 0042.