10-14-2011

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Ecuador Examines Freedom of Speech

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Category/Department: Ecuador

Published: Friday, October 14, 2011

The sentencing of an editorial writer and three directors of the Guayaquil daily El Universo has opened the debate on freedom of speech in Ecuador. Some question how certain national media have acted above the law; others uncompromisingly defend freedom of the press and freedom of speech, accusing the government of trying to control information.

In Ecuador, media ownership has been largely tied to economic and political powers. The Catholic Church has also owned a significant percentage of radio stations, especially in the provinces and rural areas; and, a smaller percentage of media ownership has been tied to social organizations, especially indigenous organizations.

This media-ownership distribution directly affected the amount of coverage the various social actors received. An investigation by the Fundación Regional de Asesoría en Derechos Humanos (INREDH) in 2005 showed that grassroots social leaders appeared in only 6.5% of television interviews. The rest of the interviews were with spokespersons of rightist political parties, business-chamber representatives, and celebrities.

"Sectors without political or economic power are only subjects of the sensationalist press," Mónica Chuji, the first press secretary in the administration of President Rafael Correa, said in 2007, in expressing the need to create public media and strengthen the presence of community media. The proposal of Chuji, who, as an indigenous communicator, had been linked to alternative media, caused the first confrontation between the Correa administration and the private media.

What followed was the government's unending criticism of a series of media inaccuracies and of news based more on speculation than on fact. The government's criticism, for the first time in Ecuadoran history, put the media in the dock. Rather than looking critically at their role in society, they assumed the role of victims of a government clampdown on freedom of the press and freedom of speech, giving the government's criticism even more justification.

As businesses, the media maintain a precarious contract system with journalists, who, despite working every day for one media outlet, generally are paid only for articles published. They are not part of the social security system nor do they have private insurance. Correa used that system to criticize "so-called freedom of the press," saying that it was related to the need to generate profits for media owners, at a cost of labor exploitation, and not to the right to open new media outlets.

In the same way, according to the government's criticism, the right of freedom of speech became the right to freely attack a person's reputation, without the obligation to correct published information.

The same INREDH investigation found that it was practically impossible to obtain a retraction of false information disseminated by the media, especially when those affected were people of scarce economic resources. Libel and defamation cases were sent to an ethics tribunal made up of the same media organizations and were not dealt with in the ordinary justice system.
When a criminal-defamation case prospered in the tribunals, the directors of the media outlet, and the business as such, evaded their responsibility, blaming everything on the journalist who had written the article.

"Big Brother" and the "Universo Case"

Amid this confrontation, two paradigmatic criminal-defamation cases arose, which directly affected President Correa.

The first case involves the publication of an investigative report titled "El Gran Hermano" (Big Brother), published in August 2010 and written by journalists Juan Carlos Calderón and Cristian Zurita, in which they examine government contracts obtained by the president's brother Fabricio Correa. In the report, Calderón and Zurita said that the president knew about the contracts. The president claimed that the allegation damaged his reputation, for which he sued the authors for US $10 million in damages.

The trial of Calderón and Zurita is moving forward very slowly, primarily because the authors have produced evidence proving that the information had been divulged by the president's brother in various media outlets prior to the publication of their investigation.

Nevertheless, the president considered it necessary to set a precedent for cases of criminal defamation, related to information produced by the media, and to hold directors responsible and not just the journalists who worked at the media outlets.

On Feb. 6, 2011, Emilio Palacio, editorial writer for the Guayaquil daily El Universo, published an opinion piece titled "No More Lies." Analyzing the Policía Nacional uprising on Sept. 30, 2010 (NotiSur, Oct. 15, 2010), he said that President Correa could be tried internationally for "having ordered [soldiers] to fire at will and without warning against a hospital filled with civilians and innocent people."

Correa reacted by suing Palacio and the directors of the paper, asking for US$80 million in compensation and prison terms for the accused. After a summary process, acting Judge Juan Paredes of the Juzgado Décimo Quinto de Garantías Penales de Guayaquil, sentenced Emilio Palacio and the owners of El Universo, Carlos, César, and Nicolás Pérez, to three years in prison and to pay US$40 million (US$10 million each) in damages.

The defendants appealed, claiming that the government had manipulated the entire process. "Judge Paredes, in approximately 33 hours, accepted the case, adjusted the hearings schedule, studied the more than 5,000-page file, wrote the 156-page sentence, notified the parties, and closed the case," said the paper. However, on Sept. 20, the Segunda Sala de Garantías Penales upheld the sentence. From criticism to the abuse of power

From criticism to the abuse of power

Although Palacio can be held responsible for his statements, and although the directors of the paper can also be considered co-responsible as they set the editorial line and thus approved what Palacio wrote, the speed of the trial and the disproportionality of the sentence make clear that government sectors pressured the judiciary.
It is noteworthy that an acting judge reviewed a voluminous case file and reached a verdict in record time. The sentence's disproportionality is also noteworthy, since, more than an award of monetary damages, the measure seems intended to bankrupt a newspaper and silence it.

While the major media many times have acted outside the law and have criminally defamed persons, the government's attitude does not seem to be rooted in justice but in a desire to persecute the opposition press, which, in itself, is an abuse of power and a violation of the right to free speech.

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