

A summary of THE

CRIMINAL CHARGES AND REQUEST OF US\$ 80,000,000 FOR DAMAGES

FILED BY THE PRESIDENT OF ECUADOR, MR. RAFAEL CORREA,

AGAINST

EMILIO PALACIO, CARLOS PEREZ, CESAR PEREZ, NICOLAS PEREZ

AND EL UNIVERSO Corp.

Judgeship No. 18 for Penal Guarantees

Judge: Mr. Ab. Oscar Sierra

Case No. 2011-0457

Palace of Justice

Ave. 9 of October and Ave. Quito

Guayaquil, Ecuador

President Correa's requests

1. President Rafael Correa has filed a criminal lawsuit against journalist Emilio Palacio, the directors of newspaper El Universo -- Carlos Pérez Barriga, Cesar Pérez Barriga and Nicolás Pérez Lapentti--, and El Universo Corporation, the commercial company that edits and prints the newspaper. They are all accused by President Correa of *defamation against an authority*, as result of an opinion piece titled "*No more lies*", written by Emilio Palacio in his column and published in El Universo on February 6, 2011.
2. In the criminal complaint, the President is asking the judge to condemn Mr. Palacio and El Universo's directors to 3 years in prison and payment of US\$ 50,000,000 for damages. He has also requested US\$ 30,000,000 in damages from El Universo Corp. His total request for damages sums up to US\$ 80,000,000.

Palacio's opinion

3. In his column Emilio Palacio expresses his views regarding the events that occurred in Ecuador on September 30, 2010, when a group of policemen revolted and the military assault on a hospital where the President remained for several hours while the situation was being resolved and he was rescued.¹
4. The article therefore deals with ideas and controversial opinions about a subject of **public interest** that has provoked a big debate in Ecuadorian society. In fact, the government has adopted a particular view of the events, while other parts of society have a different version of the events. It is, in other words, a debatable subject, where each side has its own opinion and version of the facts.
5. Palacio notes in his column that during the days he was writing his article, there have been some speculations that President Correa, whom Palacio refers in his article to as "the dictator", was considering to pardon the rebellious policemen currently being processed as conspirators of a *coup d'état*. According to Palacio, the reason for this thinking may have been the fact that the government was facing serious obstacles in proving the policemen's responsibility before the court. Palacio ended his article by suggesting that it would be better if the National Assembly passes a political amnesty resolution in favor of the detained policemen.
6. The article ends reminding "the dictator" that granting a pardon is not a good idea. Palacio warns Correa that if he grants a presidential pardon to the policemen, "*in the future, a new president, maybe an enemy of yours, may bring you to a criminal court for ordering to open fire at discretion and without warning against a hospital full of*

¹ Details about the police revolt of September 30 can be found in several websites. One of them is: http://es.wikipedia.org/wiki/Crisis_pol%C3%ADtica_en_Ecuador_de_2010

*civilians and innocent people. Do not forget, there is no statute of limitation for crimes against humanity”.*²

The charges against Palacio

7. According to President Correa, Palacio’s article “*No more lies*” contains expressions that offend his honor, reputation and dignity, not only as an individual but also as a public figure. According to the President, Palacio accused him of committing serious crimes without any proof.
8. Article 489 of the Ecuadorian Criminal Code defines *defamation* as “*false imputation of a crime*”.³ Palacio’s comment that in the future an enemy President may accuse Correa of ordering to fire at discretion against the hospital where the President remained during the police revolt, would amount to accusing Correa of undertaking a criminal conduct which is punished by Ecuadorian criminal law. Moreover, the final statement of Palacio that Correa should consider that the statute of limitation does not apply to crimes against humanity is a clear imputation of crimes since these crimes against humanity are those enlisted in the Treaty of Rome.
9. President Correa points out on his complaint that under Ecuadorian criminal law an offensive expression “*(...) uttered in discredit, dishonor, and scorn against another person (...)*” that does not amount to a crime constitutes slander.⁴ According to President Correa, when Palacio refers to him as a “dictator”, he is committing slander, because he is the constitutional President of Ecuador, not a dictator. Nevertheless, President Correa explains in his complaint that while he is not accusing Palacio for those and other offensive expression (which have offended his honor and moral integrity) they are proof of the intention to defame him.⁵ President Correa says that it is the expression found at the end of Palacio’s article the one what justify his criminal complaint.
10. According to President Correa, Palacio’s conduct is contrary to what is set forth in both Article 11 and 13 of the Inter American Convention of Human Rights, since, although the Convention protects freedom of expression, it doesn’t suppress other the rights, such as the right to protect one’s honor, dignity and prestige.
11. In his criminal complaint, President Correa asserts that the Inter American Court of Human Rights, “*in multiple occasions has established that expressing opinions about any public interest matter doesn’t mean in any way that public authorities or people’s*

² The text of Palacio’s article can be found in Annex 1.

³ Annex 2.

⁴ Annex 2.

⁵⁵ See criminal complaint page 22

*honor should not be legally protected.”*⁶ Correa recalls that article 11 of the Convention establishes *“that all people have the right to their honor and recognition of their dignity, therefore, the right to free expression, the attacks or the interferences of journalists (...) against any governmental authorities or the Chief of State, have a limit and that is why [he] is right”* in taking a legal action.

12. According to President Correa, Palacio wrote the article knowing that he is not a dictator and that on September 30 he didn't order to *“fire at discretion and without warning against the hospital”*. These statements are not only false, but also seem to *“pretend to cover up the truth of what really happened on that historical day that has remained as a painful memory for the nation”*. For President Correa, this conduct and the knowledge that the facts are false, *“shows the actual and real malice of his actions”*⁷.
13. President Correa indicates that Palacio's words are not points of views but direct imputations of false facts and that is why he has to answer before criminal justice. For President Correa, Palacio's statements violate the constitutional right to *“receive information which is truthful, verified, opportune, contextualized, and pluralistic (...)”*.⁸
14. In his complaint, President Correa asserts that Palacio's *“slanderous behavior and defamatory line”* has also offended other government officials. To support this claim, Mr. Correa recalls Camilo Samán's case. According to President Correa, Mr. Camilo Samán was another victim of Palacio's defamations in an article called *“Camilo the Killer”*, article for which Palacio was sentenced to 3 years in prison. President Correa recalls in his complaint that after Palacio's conviction he was forgiven by Samán in *“an act of benevolence and Christian faith”* but in spite of that, Palacio *“in a prepotent, arrogant and lewd manner continued with the defamations and offenses”*.⁹
15. President Correa affirms in his complaint that by making assertions without demonstrating their veracity about what happened on September 30, 2010, Palacio has not allowed *“the competent organism to clarify the facts (...) and determine the corresponding responsibilities through an investigation and a proper trial”*; instead, he has proclaimed himself as the sole owner of the truth, *“a lying, false and defamatory truth”*. President Correa says: *“The true purpose of mass media is to inform (...) about the public events in a truthful, impartial and objective way (...)”*.¹⁰

⁶ See criminal complaint, page 52.

⁷ See criminal complaint, page 53.

⁸ Article 18 of the Constitution establishes this right; this and other rules related to this case can be found on Annex 3.

⁹ See criminal complaint, page 54.

¹⁰ See criminal complaint, page 55.

16. President Correa admits he is not “*against the right of free expression, or in favor of prior censorship, but does not agree that on behalf of that ‘freedom’ his honor and dignity be affected, that is why subsequent liability must be declared, pursuant to numeral 2 of article 13 of the Convention*”.¹¹ Correa asserts that “*the Ecuadorian Constitution categorically DOESN’T RECOGNIZE THE RIGHT TO INSULT (...)*”.¹² He indicates, moreover, that in this case “*the protection of the right of free expression must yield before the protection of the right to honor, because (...) there has been an illegitimate and criminal use of free expression*”.¹³
17. In order to demonstrate Palacio’s *animus injuriandi*, President Correa reproduces more than 30 articles of Palacio which he has published in El Universo.¹⁴

The charges against newspaper El Universo’s directors, Carlos, Cesar and Nicolás Pérez.

18. President Correa accuses El Universo’s directors because, in his opinion, they collaborated in the preparation, drafting and publishing of Palacio’s article “*No more lies*”. In his complaint, President Correa mentions the fact that the directory of El Universo Corporation –which purpose is to edit and publish the newspaper– has amongst its powers, the management of the newspaper’s activities. This evidently shows, according to President Correa, that “*the newspaper’s Directory is connected and is responsible of managing such publication in all of its scopes, so they (the Perez) should be convicted for the crime of defamation*”.¹⁵
19. Moreover, President Correa points out, that pursuant to article 22 of El Universo Corporation by-laws, the Directory has the authority to recommend the name of columnist and commentators. Correa concludes from this that “*Emilio Palacio directs the informative and editorial line of newspaper EL UNIVERSO through defamations, receiving in exchange a benefit, in form of payment*”, as he held the position of Editor of Opinion.¹⁶
20. According to President Correa from the by-laws of the corporation one concludes that “*there exists ‘an informative and opinion policy of El Universo’, this means, that no columnist selected by El Universo, amongst others, the defendant Emilio Palacio, may*

¹¹ Id.

¹² See criminal complaint, page 56.

¹³ See criminal complaint, page 65.

¹⁴ See criminal complaint, pages 72-125.

¹⁵ See criminal complaint, page 37.

¹⁶ Id.

express opinions that are against the newspaper's POLICY, consequently, if Emilio Palacio is allowed to publish such defamatory article, filled with false opinions against the President, is because newspaper El Universo's Directory allowed such content and because it goes according with the 'newspaper's policy' ”¹⁷.

21. Consequently, according to President Correa, the members of the Directory *"participate as indispensable collaborators of publishing (Palacio's article) where they have the power to decide who writes and what is written as well as the editorial policies. Thus they become criminal collaborators of the accused crime, because without the approval or help of the rest of the accused (El Universo's directory, namely Carlos, Cesar y Nicolas Pérez), it wouldn't have been possible for Emilio Palacio, to publish the criminal article 'NO MORE LIES'" and the rest of the articles published against me and against other government officials"*.¹⁸
22. According to President Correa, it cannot be argued *"that there exists 'independent' opinion, when the corporation's by-laws set forth and establish the obligation that editorialists, columnists and commentators have (...), to limit themselves within the policies of the newspaper, which are evidently contrary to the universal postulates of mass media and article 18 of our Constitution"*.¹⁹
23. Correa affirms in his complaint that the Pérez, as members of the Directory, *"not only have full knowledge and control over who are part of the newspaper and the opinions therein expressed, but are directly involved in the appointment, removal, salary and the overall veto capacity set forth in the corporation's by-laws, and they were in the position to avoid that one of my enemies, an offender and slanderer, continue to defame me during the years. Not only they haven't exercised their right to veto but instead maliciously and deliberately collaborated with the publishing and spreading of the defamations (...)"*.²⁰
24. Therefore, the directors' conduct fits into the concept of article 28 of the Criminal Code, defined as the *"cooperation to perform an act, without which, the crime would not have been committed"*. The directors' cooperation has been essential (*"principal"*) in the sense of article 42 of the Criminal Code, since, without such cooperation – permitting the publication of the article–, Palacio's defamations wouldn't have been made public.²¹

¹⁷ See criminal complaint, page 32.

¹⁸ See criminal Complaint, pages 32-33.

¹⁹ See criminal Complaint, page 33.

²⁰ See criminal complaint, page 35.

²¹ See criminal complaint, page 41 and following. Articles 28 and 42 of the Criminal Code can be found on Annex 4.

The charges against El Universo Corp.

25. President Correa also accuses the corporation of being a co-participant of the defamation.²² According to President Correa *“the corporation has been used to commit the defamation, given that the newspaper EL UNIVERSO is published by such corporation”*. Therefore, since one of the corporation’s activities is to publish newspaper El Universo, without the participation of the corporation *“the crime couldn’t have been committed”*.²³

The crime of contempt

26. Even though President Correa has accused Palacio, the directors, and El Universo Corporation of committing the crime of defamation, in his final request, he asks the judge to consider him “an authority, and as such, he has been a victim of defamations”. He furthermore adds that *“consequently, the penalty for the defendants is the maximum sentence of 3 years in prison”*.²⁴

Damages

27. President Correa supports his civil compensation request on article 31 of the Criminal Procedure Code. This article grants criminal law judges the power to award damages.²⁵
28. Although President Correa does not explain in his complaint how he have reached the figure of US\$ 80 million as compensation for his damaged honor and prestige, one of his attorneys explained during a television interview, that one of the elements they have considered in assessing the damages was the newspaper’s circulation and the reach of his internet site. Issues that –according to him– will be discussed during the trial²⁶.

COMMENTARIES

29. This case is an obvious example of the use of criminal law in order to punish a person for alleged offenses against the honor of an authority (a kind of contempt). The alleged

²² See criminal complaint, page 40.

²³ See criminal complaint, page 29.

²⁴ See criminal complaint, page 145. Contempt’s legal definition can be found on Annex 2.

²⁵ See criminal complaint, pages 146-147. Article 31 of the Criminal Procedure Code can be found on Annex 5.

²⁶ The interview can be found on the following website:
http://www.ecuadorenavivo.com/2011040769975/politica/demanda_en_contra_de_newspaper_el_universo_no_es_con_el_objetivo_de_obtener_ninguna_ganancia.html

offenses in this case were made by the opinions of a journalist, printed in a national newspaper, about a controversial event of public interest.

30. Aside from that, President Correa has sued the newspaper's directors and the commercial corporation itself.
31. Besides the criminal lawsuits, the President seeks for himself illegitimate, unreasonable, irrational and disproportionate monetary compensations, for a total of 80 million dollars.
32. It is evident that considering this amount of money and other particulars the lawsuit seeks to modify the independent and critical editorial line both Emilio Palacio and El Universo. President Correa himself has agreed with this proposition. In the wake of his filing of the criminal complaint he said that he will drop the charges if the defendants admit their mistake, apologize and promise to change their behavior. Consequently, it is evident that what the intention of President Correa is to close the newspaper and harm El Universo Corporation (including the journalists, managers and shareholders) as well as the right of free expression of Ecuadorian society rather than to repair his allegedly wounded honor.