



For immediate release – 14 December 2009

PRESS RELEASE

**Brazil: Supreme Court Upholds Gag on Leading Newspaper**

**On 11 December 2009, the Brazilian Supreme Court refused to lift a ban that has prevented a major Brazilian daily newspaper from publishing reliable information about a corruption case involving businessman Fernando Sarney, son of the President of the Senate, for 132 days. The courts have attempted to justify this prior censorship on the basis of protecting Sarney's reputation. Protection of reputation should not be achieved through prior censorship. ARTICLE 19 calls on the Brazilian authorities to reverse this ban; any question of legality should be addressed post publication.**

Since 31 July 2009, a preliminary injunction issued by a magistrate has prohibited both the daily, *O Estado de S. Paulo*, and its website, Estadão, from reporting on a Federal Police operation involving Fernando Sarney. The gagging order was justified on the basis that disclosure of the information would violate the honour of Fernando Sarney, who is under investigation for racketeering, irregular financial management, money laundering and misrepresentation.

The 11 December decision was in response to an appeal filed by the newspaper's lawyers, based on a Supreme Court decision of April 2009 and revoking the 1967 Press Law on the basis that it breached the constitutional right to freedom of expression. The Supreme Court rejected the appeal on procedural grounds. In the earlier challenge against the 1967 Press Law, in which ARTICLE 19 filed an *amicus curiae* brief, the Supreme Court ruled that "there is no press freedom in half or under the arms of prior censorship, including from the Judiciary". The 1967 Press Law was fully repealed by the Supreme Court on 30 April 2009.

ARTICLE 19 is of the view that preliminary injunctions before publication, a clear example of prior censorship, are never justified to protect reputation. Instead, the newspaper should be allowed to publish and risk the legality of this being challenged afterwards in court. The importance of allowing publication is particularly high in cases involving matters of public interest, such as the exposure of official wrongdoing or corruption.

In terms of post publication liability, international law places a significant burden on the plaintiff in a case like this to justify any sanction, due to the fact that he is a public figure and the case involves allegations of important public interest. In such cases, ARTICLE 19's standards call on the plaintiff to prove not only that the statements are false but that publication was unreasonable in all of the circumstances.

ARTICLE 19 calls on the Brazilian judiciary to abide by international and constitutional guarantees of freedom of expression by refusing to impose prior censorship in defamation cases. We also call on the Supreme Court to reconsider its ruling in this case.

**NOTES TO EDITORS:**

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- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.