

Freedom of Expression of Judges

Walking on the Line

José Igreja Matos

First of all, I would like to acknowledge the importance of the present event held here in the Constitutional Court of Taiwan. The excellency of the other speakers and the immense importance and practicality of the topics to be discussed are a firm guarantee of the relevance of this Conference.

I feel very honoured to have the opportunity to address such a distinctive auditorium and, for that, I vividly thank the organization.

The International Association of Judges, the biggest organization of judges worldwide, with representatives of judge's associations in 94 countries, is proudly engaged in cooperating with Taiwanese judiciary – a robust and independent body within the structure of the State.

To be present in Taiwan, a beacon of democracy in the world of today, for our 70th anniversary is an obvious added reason to celebrate.

Furthermore, historically, Taiwan is linked to one the most important achievements in the seven decades of IAJ's history.

Almost twenty-four years ago, on November 17th, 1999, the Universal Charter of the Judge was approved precisely here in Taipei. Our Universal Charter remains one of the key soft-law regulations that define the essential world rules for the judiciary regardless of their juridical traditions or cultures.

Its relevance is today more pronounced than ever before.

One essential concept is precisely present on article 3-5 of the Universal Charter: Judges enjoy, as all other citizens, freedom of expression.

Significantly, in recent years, due to the attacks on the independence of the judiciary in several populist and autocratic countries, became of crucial significance the right for judges to freely express their views, especially when dealing with fundamental reforms of their judicial systems.

It is not necessary to name shaming the several countries involved on these attacks on judicial independence.

The disastrous state of affairs is undeniable: the new trend of decay of Rule of Law is transversal to many regions, to several continents. The level of confrontations on the

impartiality of courts is impregnated with different shades but it occurs even in consolidated democracies.

As a general background, we all know that the limitations imposed on the freedom of expression of judges are substantial; the emphasis is strongly restrictive, and this tendency is more accentuated in the new world of social media.

For us, judges, sometimes it seems we must do a difficult, almost impossible, equilibrium – walking on the line, a thin line.

However, taking into account the present condition of democracy crisis and the rise of autocratic regimes, a very cautious interpretation of this approach is required.

In our perspective, the restraints emphasized in international recommendations must be solidly counterbalanced by three decisive factors.

The first has to do with the evolution of the relationship between human beings and technology.

The metaverse and the so-called immersive reality are pointing out a future in which the distinction between the real and the digital blurs, gets mixed up, even disappears; we will then probably have to redesign new ethical norms, different from the one we are now pursuing.

The second factor, which is highly topical, has to do with the dangers that a conception averse to online intervention and social networks entails in terms of damaging the reinforcement of transparency and accountability mechanisms within the judiciary; in this logic, see the importance of judges being proactive in seeking a more immediate communication with the recipients of its work, our fellow citizens.

But there is also another dimension being this, perhaps, the main point I would like to address today.

In the current context of a deep crisis in the Rule of Law and weakness of democracies, judges' freedom of expression becomes imperative in the fight to affirm those civilizational values.

It is, not only a right, but a duty for judges to speak out using whatever platforms where their messages can have a more meaningful impact.

The European Court of Human Rights also understood it namely through its ruling on the case *Żurek versus Poland*. In this judgment, it is argued that the right to freedom of expression of judges in relation to issues concerning the justice system can be transformed into a corresponding duty to speak out in defence of the rule of law and judicial independence, whenever these fundamental values may be threatened.

In my opinion, this requirement does not match with an outright restriction on intervention on social networks. For instance, judges who speak on behalf of a judicial council or a judicial association must enjoy a wider discretion.

Be aware that, in more conflicting countries, the other State Powers, particularly the government, use intensively social media, for instance through Twitter accounts, in order to vilify the image of an independent judiciary.

Towards a conclusion, we would argue that, decidedly, the first option is to permit the intervention of judges in the virtual world, including social media.

This involvement assumes particular advantage whenever an institutional intervention is at stake, as a factor of legitimisation of justice systems. In this regard, the courts must assume a more prominent role in publicising online their activities, especially those aimed at the community to which they belong; this is an opportunity to strengthen citizens' trust in the judiciary.

The recent Opinion 25 of the Consultative Council of European Judges says it all when dealing with the freedom of speech for judges in situations where democracy, the separation of powers or the rule of law are under threat.

In these cases widely disseminated, quoting the Opinion “judges must be resilient and have a duty to speak out in defence of judicial independence, the constitutional order and the restoration of democracy, both at national and international level. This includes views and opinions on issues that are politically sensitive and extends to both internal and external independence of individual judges and the judiciary in general.”

For a brief synthesis, allow me to share some final considerations:

- Firstly, let us not fall in to the trap of disregarding judge’s participation on social media in name of a misplaced duty of restraint which should be focused on not addressing judicial cases or the questions around them;
- Secondly, in the present times, freedom of expression of judges is a valuable asset for Rule of Law and for an effective affirmation of the principle of separation of powers; it should be assumed not only as a right but, in this context, as a duty to speak out;
- Finally, the dystopic world enhanced by modern technologies, based on digital surveillance, accelerated during the pandemic years in order to impose an absolute control of our daily lives, are putting additional pressure on the necessity of having a broader protection of freedom of speech in our societies.

“If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter.” – the words are from George Washington and were written in 1783. We could not say it better for an Orwellian 2023.

This is the right place, the right time, the right circumstance to alert: due to external reasons, Democracy is under threat.

Taiwanese judiciary can always count with IAJ to protect judicial independence; to safeguard Rule of Law; to defend Democracy and our civilizational values, no matter what.

Thank you for your kind attention.