



JUDGES AND SOCIAL NETWORKS

Juízes e redes sociais

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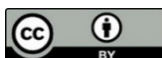
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ABSTRACT

The use of social media by judges is an issue that complicates their common political and civil rights. In which their freedom to use them for private purposes or to implement them for a public purpose is not discussed or denied, but a kind of censorship (own or external) is created for the use of their networks. This paper presents, analyzes and examines related issues regarding the use of social networks by judges, and the effects of their publications.

Keywords: Judges, Social networks, ethics, Professionalism, Public image.

RESUMO

A utilização das redes sociais pelos juízes é uma questão que complexifica os seus direitos políticos e civis comuns. Não se discute nem se nega a sua liberdade de as utilizar para fins privados ou de as implementar para um fim público, mas cria-se uma espécie de censura (própria ou externa) para a utilização das suas redes. Este artigo apresenta, analisa e examina questões relacionadas à utilização das redes sociais pelos juízes e os efeitos de suas publicações.

Palavras-chave: Juízes, Redes sociais, Ética, Profissionalismo, Imagem pública.

INTRODUCTION

Communication has evolved over time, passing from conversation, printing, the internet, social networks, among many forms that have generated new social and personal interactions. This has allowed us to have another dimension of the public space, in which social networks provide a place to learn, have fun, contact, spread knowledge, among so many uses that can be exercised. Many companies are dedicated to providing and facilitating a space on the internet, so that their users can radiate, locate, trade, entertain, externalize, discuss, propose, discuss their ideas, feelings, thoughts; in which they impose a series of guidelines of conduct and responsibility of content of their affiliates (who accepted their terms of use).

Being a public space, anyone can request and possess an identity to exercise some social network, but subject to the adhesive requirements of the provider.

Among users of social networks, judges can also participate either for advertising their work, give personal opinions, post private information, use for family issues, disseminate knowledge, upload news, etc. But there is room for the dissertation of certain aspects when using social networks by members of the judiciary, is the judge, a citizen who can manage the networks under his free will without limitation? Is the internet part of the public res? Should judges self-censor themselves in the content of their cyber interaction? Should their publications be monitored and sanctioned by the networks of magistrates? Should guidelines be established for the implementation and use of networks for judges? Does it create a link with contacts, enough to excuse yourself or request an impediment to knowing and/or resolving a matter you are resolving? Would it be appropriate to criticize the work of their judicial peers? Should a personal or professional opinion of the judge made on their social networks by the Council of the Judiciary be sanctioned? Could a liberal system be left, and self-censorship be the limit to the judge's publications and interaction with his cyberfriends and network contacts?¹

Our research will first review the rights and freedoms of judges that unravel their responsibilities, their guarantees and the ethics of their service. It must be understood that, when dealing with their freedoms, their rights as individuals, public servants and members of the judiciary become concentric, and with that, the appropriate considerations of their public and private conduct. In the second section, we will analyze what social networks are, what they serve, functions, responsibility of companies and control in the issues that circulate. To continue with this proposal, the rights and freedoms of judges will be combined in the use of networks, in which we will expose the possibilities for this exercise (regulated, liberal and invisible look). It will end with a series of conclusions and proposals, not in the spirit of provoking a position in the reader, but to possess the elements to debate and/or generate ideas on this topic.

The power of social media transcends the personal acts of its users. But the way and extent to which it happens depends on the content and importance your operator makes. In the case we present, we must meditate on the private space of the judge, his behaviors on social networks, the judgment of his personal opinions, the regulation of electronic acts that could be considered "improper" (unethical), the sanctions that could be imposed on him for his personal posts, the due honour of his investiture, and the care of the public portrait of the Judiciary.

¹<https://judicature.duke.edu/articles/the-troubles-of-the-social-judge/>

It is indubitable that judges have a special mandate in a State, since justice is one of the objects that allow its creation and validity of existence; therefore, the personal representation of the judiciary must be safeguarded and protected, and we're talking about the judge's public profile.

But on the other hand, judges enjoy their fundamental rights like other citizens. However, in their exercise, they must observe the institutionality, consider that they are the representation of public power and that they must maintain an immaculate conduct and image, almost as a model of life.

This text shows the different edges of justice providers and social networks, as this may be a possible producer of wrongdoing, the possible existence of a soft surveillance to the judiciary or should be allowed to manage their cyber freedom diligently (with self-imposed limits), in which he respects his institution, his work, his investiture and his person.

I. CONDUCT GUIDELINES FOR THE JUDICIARY

The Bangalore Principles on Judicial Conduct call upon judges to refrain from compromising the requirements of their office by providing that²: "A judge, like any other citizen, has the right to freedom of expression, [...], but when exercising the aforementioned rights and freedoms, they will always behave in a manner that preserves the dignity of jurisdictional functions and the impartiality and independence of the judiciary".³

The same declaration addresses the issue of the independence of the judiciary "shall be guaranteed by the State and proclaimed by the Constitution or legislation of the country. All governmental and other institutions shall respect and abide by the independence of the judiciary". The importance of the constitutional structure of the judiciary is noted.⁴

With regard to the rights and freedoms of judges, the following was considered in this document:

In accordance with the Universal Declaration of Human Rights and like other citizens, members of the judiciary shall enjoy freedom of expression, beliefs, association and assembly, except that, in the exercise of these rights, judges shall conduct themselves at all times in a manner that preserves the dignity of their duties and the impartiality and independence of the judiciary.⁵

Thus, it can be deduced that judges have their rights, but that they must exercise them without damaging the integrity of the judiciary and showing that their arguments are professional and attached to regulations.

As far as our subject of investigation is concerned, the Bangalore statement confirms that judges shall be bound by professional secrecy with regard to their deliberations and confidential information obtained in the performance of their duties, unless they are public hearings, and they shall not be required to testify on such matters.

²<https://www.ohchr.org/sp/professionalinterest/pages/independencejudiciary.aspx>

³ UNODC, *Comentario relativo a los Principios de Bangalore sobre la conducta judicial*. Naciones Unidas, New York, 2013, p.17.

⁴ Ídem, p.21.

⁵ Ídem, p.43.

With regard to the right to information of the parties and of society, the Bangalore declaration states that:

An obligation to respond to other persons, especially to whom he may feel aggrieved by the action of the judge, contradicts the independence of the judiciary. With the exception of the expression of judicial grounds or other legally provided procedures, a judge is not obliged to report on the merits of a case, even to other members of the judiciary. If a decision revealed so much incompetence as to constitute a violation worthy of a disciplinary process, in the face of such a remote situation the judge would not be "informing" but answering a charge or responding to an official investigation carried out in accordance with the law.⁶

Also, as far as the freedom of expression of the judge is concerned, outside the court, a judge must avoid the deliberate use of words or conduct that might reasonably create a perception of lack of impartiality. Therefore, it no longer enjoys the same freedom as the rest of the citizens, but rather a freedom that is limited, on the one hand, but that guarantees certain rights to society.

By definition, partisan activities and statements lead a judge to publicly choose one side of the debate over another. The appearance of bias will be accentuated if, as is almost inevitable, the activities of the judge generate criticism or rejection. In short, the judge who uses the privileged platform of jurisdictional functions to enter the party political arena endangers public confidence in the impartiality of the judiciary. There are some exceptions, including the comments of a judge on an appropriate occasion in defense of the judicial institution or its expressions to explain specific legal issues or certain decisions to the community or to a specialized hearing, or the defence of fundamental human rights and the rule of law. Even in such cases, however, the judge must take care to avoid, to the extent possible, engaging in topical polemics that might reasonably be seen as politically partisan.⁷

In the performance of his duties, he enjoys absolute freedom as long as he is professional, impartial and objective:

The prohibition in question does not extend to public statements made by a judge during the exercise of his jurisdictional obligations, nor the explanation he has given regarding the proceedings of the court, nor the academic presentation made for purposes of legal education. Nor is a judge prohibited from commenting on proceedings in which he is a litigant in a personal capacity. However, in judicial review proceedings in which the judge is a litigant in his or her official capacity, the judge shall not issue comments outside the trial.

But what role a judge could or should play in the media:

The media have the role and the right to gather and disseminate information to the public and comment on the actions of the administration of justice, including court cases before, during and after the trial, without violating the presumption of innocence. This principle should be set aside only in the circumstances provided for in the International Covenant on Civil and Political Rights. If the media or interested

⁶ Idem, p.81.

⁷ Idem, p.57.

members of the public criticize a decision, the judge must refrain from responding to such criticism by letters to the press or in occasional comments while in office. A judge should only speak on the basis of his or her judgements when considering his or her case. It is generally inappropriate for a judge to publicly defend his judicial decisions.⁸

It should be noted that it can be reported without disseminating information on the case being tried. Here, restraint is the key to controlling what information is being provided to society.

Thus, the conduct and conduct of a judge should reaffirm public confidence in the integrity of the judiciary. Justice must not only be done; it must also be seen to be done.⁹

As an object of constant public scrutiny, a judge must accept personal restrictions that may be considered a burden on ordinary citizens and must do so freely and voluntarily. In particular, a judge shall behave in a manner consistent with the dignity of jurisdictional functions.¹⁰

Every judge must expect to be subjected to constant scrutiny and public comment, and must therefore accept personal restrictions that ordinary citizens may consider a burden. The judge must act in this way freely and voluntarily even if these activities are not viewed negatively when exercised by other members of the community or profession. This applies to both the professional conduct and the personal conduct of the judge. The legality of the conduct of the judge, although important, is not the full measure of its correctness.¹¹

Returning to the issue of the rights and freedoms of judges, the Bangalore declaration states that:

A judge, when appointed, does not waive the rights of freedom of expression, association and assembly enjoyed by other members of the community, neither abandons his previous political ideas nor ceases to have an interest in political issues. However, restraint is needed to maintain public confidence in the impartiality and independence of the judiciary. In defining the appropriate degree of participation of judges in the public debate, there are two fundamental considerations. The first is whether the judge's involvement can predictably undermine confidence in his or her impartiality. The second is whether such participation may unnecessarily expose the judge to public attacks or be incompatible with the dignity of the jurisdictional functions. If any of these cases arise, the judge must avoid such participation.¹²

A limit is then set on the public proceedings and their statements as a judge, this guarantees integrity and impartiality, on the understanding that their independence is not absolute, since they are the image and materialization of the judiciary.

⁸ Idem, p.60.

⁹ Idem, p.61.

¹⁰ Idem, p.67.

¹¹ Idem, p.69.

¹² Idem, p.88.

A judge should not inappropriately take part in public polemics. The reason is obvious. The very essence of the quality of the judge is the ability to view controversial issues objectively and fairly. It is equally important for the public to see that the judge displays detachment, lack of predisposition, absence of prejudice, impartiality, mental openness and the balanced approach that is the hallmark of a judge. If a judge enters the political arena and participates in public debates - opining on controversial issues, participating in disputes with public figures in the community or openly criticizing the government- will not give the impression of acting fairly when serving as a judge in court. The judge will also not be considered impartial when adjudicating disputes relating to matters on which he has expressed opinions in public; nor will he be considered impartial, and that is perhaps most important, when public figures or ministries that the judge has previously publicly criticized act as parties, litigants or even witnesses in the cases for which it is incumbent.¹³

A judge who has declared himself homophobic, who has expressed his political preference, who is inclined towards poor people, who supports evangelicals, among others, are expressions that would make one think about his impartiality. For the same reason, it has been shown that it is best to refrain from making public these hobbies, predilections, preferences or tastes.

Now, the Ibero-American Code for Judges will be analyzed. But with one consideration, only certain principles and rights of the judiciary will be addressed in relation to the subject of this work.

IBERO-AMERICAN CODE FOR JUDGES

This document declares as principles of action the independence, professionalism and impartiality with which the dicasteries of justice should address themselves. As far as our subject is concerned, it considers that "judicial ethics must be proposed and applied from a weighty logic that seeks a reasonable balance between these values: if you will, between the values of the judge as a citizen and as a holder of a power of attorney, the exercise of which has an impact on the property and interests of individual individuals and society in general".¹⁴

So it places the judge in a stadium, which does not allow him the same rights as any civilian, but constrains his performance, by the role he plays. Such judicial discretion entails undeniable risks that cannot be solved simply by legal regulations, but require the assistance of ethics.¹⁵

This document points out that "the Code can also be seen as an instrument to strengthen the will of the judge, as it determines conduct and establishes possible ethical responsibilities for its violation".¹⁶¹⁷

It should be mentioned that the Venice Commission currently exists, which aims to advise on issues such as the duties and obligations of the judiciary, as well as judges: "The role of the Venice Commission is to provide legal advice to its member states and, in particular, to help states wishing to

¹³ Idem, p.89.

¹⁴ http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_57.pdf

¹⁵ Idem, p.4.

¹⁶ Idem, p.5.

¹⁷ *Cfr.* Gray, Cynthia, *When judges speak up: ethics, the public, and the media*, American Judicature Society, Chicago, 1998, pp.7-22.

bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law".¹⁸

In the case of private information disclosure, we have several regulations worldwide. For example, in the US and Canada there is an ethical statute for judges, in which they warn about the limitations of the judge in terms of freedom of expression in their work. The European Charter on the Status of Judges also sets out the restrictions on the professional expression of judges outside the courts:

¹⁹

However, this right is not absolute, but is subject to certain limitations inherent in the judicial function. In the case of judges, the unrestricted exercise of the right to freedom of expression may compromise their independence or impartiality, for example, if they disclose information about a specific case to one of the parties or the media. Judges should therefore refrain from undermining the right to a fair trial, including the presumption of innocence, especially in sub judice cases. Accordingly, the European Charter on the Status of Judges stipulates that "Judges must refrain from any conduct, action or expression that affects confidence in their impartiality and independence".²⁰

Below are several journalistic notes that we have left intact, so that the reader can exercise his opinion without any particular indication.

II. CASES OF STUDY

MAGISTRATE LGBT PROTEST

Two years ago, when she was in a strategic dispute over electoral political rights, she discovered her gender identity and now Ociel Baena Saucedo is conceived as the first non-binary electoral magistrate in Latin America.

On October 1, 2022, along with the gay flag, he protested at the Electoral Tribunal of the State of Aguascalientes, in a designation that breaks paradigms, not only in the Electoral Right of the Judiciary, but also for LGBT+ populations.

Baena says that due to discrimination she left her house and was forging a character that made her have expressions while she was the general secretary of agreements: she wore skirts, wore heels and combined male and female accessories. "And that was my second outing because that's where I changed my gender expression".

"When I assume myself as a non-binary person, I also dare and break that personal limit and use feminine clothes combined with masculine, And it is precisely when I transition to non-binary gender and it was the same people from the Tribunal who lived this transition together with me, then I have an impressive support from the magistracy and all the staff," he says.

¹⁸https://www.venice.coe.int/WebForms/pages/?p=01_Presentation 11 de julio de 2022.

¹⁹ Dijkstra, Sietske, *The Freedom of the Judge to Express his Personal Opinions and Convictions under the ECHR*, Utrecht Law Review, Volume 13, Issue 1, Netherlands, 2017.

²⁰ CIJ, *Principios Internacionales sobre la Independencia y Responsabilidad de Jueces, Abogados y Fiscales – Guía para Profesionales*, Ginebra, 2005, pp.39 y 40.

He adds that being recognized as the first non-binary electoral magistrate in Latin America, he seeks to send the message that LGBT+ populations "can be in all spaces, public and private, and we can empower and occupy them".

With a JD in Electoral Law, "with all the desire to move forward", heels, makeup, skirts and accessories and masculine, Ociel Baena says ready to serve as electoral magistrate in Aguascalientes. "Dignity, pride and resistance. From wherever we are, we can see the LGBTIQ+," he says in social networks.²¹

JUDGE IN AWKWARD POSES

Vivian Polania doesn't go unnoticed on social media. When she hangs her judge dress in the closet she starts taking selfies and recording very suggestive videos, which she then posts on her Instagram account. "Before I'm a judge, I'm a person," she told CNN from her apartment in Cúcuta, a city on the border with Venezuela. In the digital world -where she poses in a swimsuit, short miniskirts and deep necklines, in addition to performing workouts and workouts in the gym- she had more than 150,000 followers on Instagram. Although he has already had his accounts hacked twice, and has lost followers for that reason, he says he has no problem starting from scratch and continuing his controversial publications to recover them.

The guarantee control judge is now at the centre of the debate on the limits to freedom of expression for state officials. This, after a strong reprimand from the Superior Council of the Judiciary and a disciplinary investigation by its superiors. She maintains, however, that one thing is her daily work imparting justice, and another her right to publish what she wants about her private life.

"I have something I don't agree with: you see my Instagram and I don't speak anything legal. Because a social network is a social network, precisely to meet people. The right to privacy, the right to the free development of personality is not the same. Because people say that I have said that it is my privacy, no. My privacy not because my site is public, it can be seen by everyone. I'll see what I raise and what I don't raise," says Judge Polania. This judicial official is 40 years old and has 37 tattoos. She is passionate about the practice of varied exercises known as crossfit, and also lifts almost 159 kg in weights.

The judge says there are people who tend to stigmatize others because of the way someone dresses or their personal appearance. And she has reason to defend her argument: she is a lawyer specialized in Constitutional Law and she is studying a master's degree in Human Rights.

"Well, about my clothes and my way of dressing, that's my free personality development. And I do not agree, because not all officials, people and judges are equal. And I cannot subject a person to what is ethical for me and morally good for me.

That's what makes us individuals," the judge told CNN. The controversy of the judge's photos with the Superior Council of the Judiciary

But his superiors don't think so. The Superior Council of the Judiciary of Colombia made a strong appeal to him and initiated a disciplinary investigation for his photos and videos published on Instagram. Through two communiqués, the magistrates have reminded him that there are duties and prohibitions for officials of the judicial branch. Among them, they explain, "to perform in the service or in social life

²¹<https://www.eluniversal.com.mx/nacion/ociel-baena-primer-magistrado-electoral-no-binario-en-al-tacones-derecho-electoral-y-orgullo>

activities that may affect the public's confidence or observe conduct that may compromise the administration of justice".

Article 14 of the Statute of Justice in Colombia is very clear when it says that officials at their level "must take care of their personal presentation according to the decorum of their investiture".

The judge maintains her position and says that she is willing to go to the necessary instances to defend her right to the one she affirms, the free development of her personality.²²

JUDGE ACCUSED VIA SOCIAL MEDIA

The Federal Judiciary Council (CJF) reported that it analyzes the complaints made on social networks by workers of the Fourth District Court on Administrative Matters in Jalisco about acts of abuse and harassment by judge Alejandro Castro Peña.

The judge was shown in several videos broadcast on social networks in which he is heard intimidating and shouting at one of the clerks of the court.

The Council reported that it analyzes the complaints made on social networks by workers of the Fourth District Court in administrative matters in Jalisco about acts of abuse and harassment by Judge Alejandro Castro Peña.

The judge was shown in several videos broadcast on social networks in which he is heard intimidating and shouting at one of the clerks of the court. "The function of guaranteeing the human rights of all persons is based on the unrestricted recognition of their dignity. Workplace harassment does not and will not be tolerated in federal justice," the CJF said in a statement.²³

JUDGE DISMISSED FOR PERSONAL RELATIONS

Before the decision of the country's highest court, Judge Atala decided to send her case to the Inter-American Commission on Human Rights (IACHR), where the petition was declared admissible in 2010, submitting the case to the jurisdiction of the Inter-American Court of Human Rights, for the discriminatory treatment and arbitrary interference in the private and family life that Atala would have suffered due to her sexual orientation in the judicial process that resulted in the withdrawal of the care and custody of her daughters M., V. and R," as the IACHR Report states.

On February 24, 2012, the Inter-American Court of Human Rights condemned the Chilean State in the "Atala Riffo y Niñas vs. Chile" case. In the judgement, special emphasis was placed on the recognition of sexual orientation and gender identity as categories protected by the Convention, stating that in order to establish the existence of a difference in treatment in a particular decision it is not necessary to base it "fundamental and only" in the sexual orientation of the person, but it is sufficient that to some extent it has been taken into account, either implicitly or explicitly. In addition, it indicated that, since it was an act of discrimination based on sexual orientation, an analysis test was necessary. This means that the restriction of a right based on a suspect or prohibited category of discrimination requires a rigorous

²²<https://cnnespanol.cnn.com/2020/10/14/la-jueza-colombiana-que-es-toda-una-celebridad-en-instagram-por-sus-fotos-sensuales/>

²³<https://www.eluniversal.com.mx/nacion/cjf-analiza-denuncias-contra-juez-por-hostigamiento-laboral>

substantiation and such weight that it can reverse the burden of proof and give the authority the responsibility to prove that the decision lacked a discriminatory purpose or outcome.²⁴

PERSONAL OPINIONS OF A JUDGE

The recent STEDH of 1/3/2022 (Kozan vs Turkey case) declares that the disciplinary sanction of reprimand imposed on a magistrate for sharing in a private Facebook group a press article written by a third party criticising the lack of independence of the Turkish High Council of Judges and Prosecutors (CJP) in respect of the Turkish Government is an infringement of the right to freedom of expression recognised by art. 10 of the European Convention on Human Rights.

According to the ECHR article "expressed value judgements according to which certain decisions of the CJP could constitute a favor to the political power in the sense that the judges who had intervened in the process from 17 to 25 December 2013 when accusing suspects belonging to circles close to the government had been sanctioned, while the judges who had acquitted those suspects had been rewarded with the acquittal of the disciplinary charges against them for the disciplinary offences they were charged with".

The judgment first recalls that "...in a democratic society, questions concerning the separation of powers and the need to preserve the independence of the judiciary may concern very important matters of general interest (Morice v. France [GC], n° 29369/10, § 128, ECHR 2015). Debates on matters of general interest generally benefit from a high level of protection under Article 10, combined with a particularly restricted margin of appreciation for the authorities (see Morice, cited above, §§ 125 and 153, July and SARL Liberation v. France, No. 20893/03, § 67, ECHR 2008 (excerpts)). Even if a question giving rise to a debate on the judiciary has political implications, this simple fact is not in itself sufficient to prevent a judge from ruling on the matter (Wille v. Liechtenstein [GC], no. 28396/95, § 67, ECHR 1999-VII)".

"45. It is true that the particular role of the judiciary in society imposes a duty of discretion on judges. However, the latter pursues a particular purpose: the word of the magistrate, unlike that of the lawyer, is received as an expression of an objective assessment that commits not only those who express themselves but also, through it, the entire institution of justice. (Morice, quoted above, §§ 128 and 168).

46. It may therefore be necessary to protect justice from destructive attacks without serious grounds, especially when the duty of discretion prohibits the judges concerned from reacting (Prager and Oberschlick v. Austria, 26 April 1995, § 34, Series A no 313, Kudechkina v Russia, n.° 29492/05, § 86, 26 February 2009, and Di Giovanni v. Italy, n Judicial officials can be expected to use their freedom of expression sparingly as long as the authority and impartiality of the judiciary can be questioned (Wille, cited above, § 64) and, also, when expressing criticism of their peers. civil servants, in particular other judges (Eminağaoğlu, cited above, § 136)".²⁵

²⁴<https://iguales.cl/incidencia-politica/fallo-atala/>

²⁵ <https://www.derechoadministrativoyurbanismo.es/post/libertad-de-expresi%C3%B3n-de-jueces-y-redes-sociales-stedh-1-3-2022>

It is clear that the deontological norms of the judiciary on the use of social networks by judges and magistrates will affect him from now on, but, as he commented before, the newspaper library and the digital heritage is not only something that is used against politicians, but all public office in general. A good time for future judges to make a critical review of their digital past and, also, adapt it to one of the recommendations of the Judicial Ethics Commission, which in its opinion of 14 January 2021 recommended that "The interventions of judges in interviews, colloquiums, public participation and social networks must conform to the concept of political neutrality that permeates the principles of impartiality, independence and integrity."

"Prudence and moderation are the two attitudes on which the freedom of expression of the judge or magistrate pivots" says the Judicial Ethics Commission in its opinion. In the same sense, the non-binding guidelines on the use of social networks by judges, approved in November 2018 within the framework of the United Nations, indicate the following: "It is important that judges, both as citizens and in the exercise of their jurisdictional functions, become involved in the communities in which they serve. In an era in which such participation increasingly includes online activities, judges should not be barred from engaging adequately in social media. However, the public benefit of such involvement and virtual participation must be balanced with the need to maintain the population's trust in the judiciary, the right to a fair trial, as well as impartiality, integrity and independence of the judicial system as a whole".²⁶

AN OPINION ON MACHISMO IN TIK TOK

The Supreme Court of Justice (SCJ) will make a request for reports to the gender judge, Ada Siré, who was suspended because the judge took medical leave. Finally, the judge was transferred and will no longer be dedicated to specialized family cases.

On the other hand, the highest organ of the Judiciary separated from office and initiated a summary of Florence Ferreyra, justice of the peace of Thirty-Three for his publications in favor of the government and the Police, as reported Capital Report (TV City) and confirmed The Observer from the Judiciary.

The Uruguayan Bar Association expressed in a statement its rejection of "any deviation or violation by any member of the judiciary" of the principles of independence, impartiality, transparency and rectitude that govern these officials.

The use of social networks has become widespread in today's society. In fact, almost 60% of Uruguayans consider that they have a significant or total dependence on these platforms, according to a survey by the Radar Group reported by Búsqueda.

For this reason, it seems difficult for society to stay away from them. And judges are no exception. Siré explained that the video did so with the aim of showing that men generate gender violence in their daily talks. "I made the video as a citizen and not as a judge," she said.²⁷

²⁶<https://www.unodc.org/ji/es/knowledge-products/social-media-use.html#:~:text=Las%20Directrices%20no%20vinculantes%20sobre%20el%20uso%20de%20las%20redes%20sociales%20por%20parte%20de%20los%20jueces%20%2C>

²⁷<https://www.elobservador.com.uy/nota/jueces-uruguayos-cuanto-pueden-usar-las-redes-sociales--20222517240>

A HOMOFOBA RESPONSE

A tweet by Judge Carlos Viader Castro has gone viral due to the controversy it has raised when responding to the homophobic comment of his own aunt. Viader uploaded several photographs of a wedding she had attended on Sunday, when she received a rebuke from this relative.

In the photo in question criticized by the aunt appear nine adults and two children posing to immortalize the happy moment of the wedding. An image that the woman has not hesitated to censor her nephew saying that it was "too explicit".

According to Viader, not understanding what his aunt meant by "too explicit", he ventured to ask why, without waiting for the answer he gave: "In the photo you can guess that you are gay and that the boy on your side is your partner".

Something that the judge has not hesitated to denounce through social networks and has answered with the following message: "Come on, that being a sissy better in secret. What we have to endure".²⁸

III. GUIDELINES FOR THE COMMUNICATION OF JUDGES

Ethical standards can also be used for this function, but in the ethical "prosecution" there is no reason that the accused can use for a misconduct that is outside the deliberation; In other words, an Ethics Committee may accept reasons that would be unacceptable if it acted as a legal tribunal.²⁹

Because it is not the subject of this investigation, a series of guidelines are proposed that would qualify whether a judge should be responsible for communications made by him or by a third party in his name.³⁰

The guidelines for judging that the judge did not keep due secrecy, violating the rights of privacy and privacy, and that, therefore, must be submitted to a trial by an ethics committee. These guidelines should indicate their Objective, Governing Principles, Parties (rights and obligations), Actions and defenses, Precautionary measures (dismissal of the holder of the case exposed), the integration and selection of the Committee to judge possible violations, the characteristics of this Process (legitimation, demand, defense, evidence, conclusions, resolution), and the type of sanctions. Also, inform the plaintiff of his or her judicial rights to reparation for civil or administrative damage in his or her case.

Any accusation or complaint against a judge for his or her judicial and professional conduct shall be dealt with promptly and impartially in accordance with the relevant procedure. The judge shall have the right to be heard impartially. At that initial stage, consideration of the matter would be confidential, unless the judge requested otherwise.³¹

²⁸https://www.ondacero.es/noticias/sociedad/viral-respuesta-juez-comentario-homofobo-que-arrasa-redes-sociales_20211019616e727c46689800013f012d.html

²⁹ Código iberoamericano para los jueces, op. Cit., p.3.

³⁰ Vid, Moran, Jasmin, *Courting controversy: the problems caused by extrajudicial speech and writing*. Victoria University of Wellington Law Review, N. 46, USA, 2015.

³¹ UNODC, op. Cit., p.45.

JUDGES AND SOCIAL NETWORKS

The judge must be considered a citizen, and a public servant. Therefore, we have three areas of action and therefore of behaviour, with their respective rights and obligations. Then there is a concentric space, in which these forms of action of civil and political rights are reduced by their public office. I mean, a justice giver should be impartial, so he might not be able to practice as a private lawyer or promote someone's vote, which he thinks is a good political offer. Or think, in a magistrate dressed as Drag Queen in a bar, some would say that he is a citizen like everyone else and that it is his life, and others would talk about the decorum and the good image he should project; but does this act affect his honorability? Does this disturb your driving and resolve your causes? Should your private space be judged? Let's look at another scenario, a judge uploading photos of her half-naked, but should the council of the magistracy reprimand her and request a more appropriate conduct to the jurisdictional function? Can or should a labor judge attend a union meeting or party? In all this a matter stands out, what kind of conduct a judge should perform, when he is not in his judicial function.

There are already several cases in which the impartiality of the judge has been questioned precisely by the content, followers, friends and comments posted on electronic networks. They are paradigmatic, among others, the following: (i) the recusal of a criminal judge in whose office proceedings were being processed for the crime of animal abuse, because, according to the profile of the official's Facebook, she presented herself as a fervent militant animalist; (ii) disciplinary investigation of a colleague who, in addition to her work of administering justice, was a recognized "influencer" of the fitness world on Twitter; (iii) Youtube videos of a Caribbean judge, preaching his religious faith, etc.³²

In the case of social networks, administrators have membership rules that are accepted at the time of registration and when using the same, and thus, conditions of use are imposed as to the content that can be published, there are penalties for inflicting these guidelines. Now, if we think of a judge and his publications, they must be done with care, because it could present a personal problem, generate a bad image to the Judiciary, or be criticized by the social conglomerate.

Now, We will present a classification of the different types of control that exist in the issue of judges and social networks.

SURVEILLANCE MODELS

- No controller/self-censorship³³

In this type of surveillance, the judiciary does not intervene in any way on the private activities of the judge. The jurisdictional work and the administration of its judicial body are the elements used for the qualification of its work and the preservation of its office. His personal actions have no impact on his status as a judge; his stability and permanence are exclusively related to his performance as a judge. This model is liberal in terms of its statements, being administratively responsible before the judiciary, in criminal matters for violating some protected property, or being sued for damages in civil courts.

³²https://www.ambitojuridico.com/noticias/ambito-del-lector/penal/es-conveniente-que-los-jueces-tengan-redes-sociales#_ftn1

³³ Elster, Jon, *Constitutionalism and democracy*, Ed. Cambridge University Press, USA, 2028, pp.1-18.



To conclude on the topic of communication models, a set of guidelines can be established that the judge must take care of when making a public statement or using the mass or electronic media.

- Invisible Gaze (official surveillance and observation of users)

In this model there is an area of the Judicial Council that observes in a public and permanent way, the publications in social networks of judges. An alert system is used in the event that a post violates the judge's conduct, his or her institutional image, or the value of his or her judicial work. In this type, the magistrate may be asked to withdraw his publication (censoring, but without repercussions), or an administrative sanctioning process may be initiated for violating the ethics of the Judiciary.

This model functions as a panopticon,³⁴ surveillance and supervision is conceptualized as follows: "the ability to see, with a glance, everything that happens there"³⁵. This means, that you see little and feel much the observation of the publications of the judges, and it becomes noticeable when a post or opinion attacks another user, generates social annoyance, disqualifies a public good or denosts a person.

- Regulatory

This model establishes a catalogue of the values to be protected by judges on the basis of the ethical principles of the judiciary, the exercise of public service and private conduct in accordance with norms, morals and morals.

This builds and shapes a type of institutional and personal behavior that limits the publications and opinions of judges. At the same time, there must be a process for the defendants to be able to argue and defend their guarantees, their freedoms, their privacy and their personal opinions.

- Public guidelines for private use

This model is implemented by means of a circular of the Council of the Magistracy, which indicates certain non-binding guidelines for the use of social networks. This should not be seen as recommendations to the servants of the judiciary, but as limitations, on the goods to be cared for and observed, and that in case of violating jurisdictional ethics or the judiciary, it is the Council which is responsible for imposing the sanctions warranting the matter in question.³⁶

These guidelines are intended to guide both judges and judicial authorities (as well as to other judicial officials and court personnel, as appropriate, since their conduct may also have an impact on judicial integrity and public confidence in the judiciary) and outline a broader framework on how to guide and train judges in the use of different social media platforms, in line with international and regional standards of judicial conduct and ethics and existing codes of conduct.

³⁴*Vid.* Bentham, Jeremy, *El panóptico*, Ed. La Piqueta, Madrid, 1976.

³⁵http://www.terras.edu.ar/biblioteca/16/16TUT_Bentham_Unidad_2.pdf

³⁶https://www.unodc.org/ji/resdb/data/2019/non-binding_guidelines_on_the_use_of_social_media_by_judges.html?lng=en&match=social%20media%20guidelines

SPECIAL REMARKS

A number of related ideas will be presented below, which are indispensable in an analysis of the issue of the use of social networks by judges.

- Personal responsibility

Understand the extent of the judge's responsibility as a user of their social networks. This implies that there should be a diligent and appropriate administration, and that it should only be reviewed in case there is harm to his person, the institution or the administration of justice.

A panopticon system is generated, in which the surveillance is of everyone, is what guarantees the correct administration and safety of users. In relation to our subject, the good name of a judge must be a measure of his performance and his social impact. Likewise, it must protect its public reputation, because its image and work materializes the Judiciary, and this leads to live and act under certain principles and parameters that provoke a spirit of trust and that is legitimized through their sentences. But we must not suffocate, censor or be so apprehensive with the judges, but neither should we allow a libertinism in which there are no limits/sanctions in cases such as harassment, discrimination, violence, among other pernicious opinions or information that would damage the effigy of a judge.

- Is there a true friendship or empathy between cyberfriends?

This topic is very subjective, because it is not enough to accept, talk or exchange opinions to consider that there is a personal relationship or friendship. I believe that friendship involves more than likes, placing a couple of coincident opinions (or mode) or exchanging information. However, it is a very subjective issue, because some people think they are friends of social networks, and this implies another category of fraternity, one in which people do not know each other physically, and in which images and opinions are the axes that provoke a kind of personalized relationship.

These relationships must be seen here as an additional product of new communication technologies. And I do not think it is correct to estimate if someone loves to have an entourage of followers, to criticize, to expose, or provoke other people, but it should be noted that the use of social networks passes through a filter of good use or misuse of them.

- Are you intimate with network contacts?

The type of relationship that is generated between people who have in common through social networks depends on users. In this matter, we move to a scenario of immediacy, which replaces time, interaction and recognition of the other person. Being a related user and considering him a "friend" will depend on very particular factors, which will have a type of privacy biased by their interests. But in the case of judges who have entered into a personal relationship, it must be assessed whether such contact could interfere with their professionalism, independence and impartiality.

- Independence, impartiality and objectivity with the virtual friends

Several principles of the jurisdictional function were presented before, which undoubtedly are those that allow an efficient and optimal administration of justice. Undoubtedly, social networks originate a relationship between users, but in the case of people who are judges must put the responsibility for their role. For if there is a conflict of interest, it must be shown to be mutual or it must



be demonstrated that its relationship with the jurisdictional matter would be contaminated and resolved on the basis of prior contact between the judge and the justiciable.

But at what point it could be requested or demanded that, as a friend of some social network, the matter should not be heard, and with it, safeguard the pristine, immaculate and pristine imparting of justice.

• EXCUSE OR REQUEST IMPEDIMENT IN CASE OF CONTACT ON SOCIAL NETWORKS

Would a judge's relationship in a matter, in which one of the parties is his contact/friend of a social network really be affected? A general answer cannot be given, because it would demerit the debate; what I consider correct, it is better not to know or resolve this matter, so as not to generate doubts and/or suspicions that affect the jurisdiction. There is no need to expose, cause a mess or create a misunderstanding, because as my mentor said: "problems come alone, do not seek them".

• PUBLICATIONS DURING WORKING HOURS

It should be considered that any publication on social networks is not a complication, but the kind of content or message that could affect the image of the judge, the judiciary or corrupt their impartiality. But there is a subject that must also be reviewed, in which schedules these publications are made, because there will be an inconvenience if it is carried out in working hours or if this post is made through the computers of the court; this would involve a misuse of computers, and a type of liability for the executor.

• PENALTIES

Another point that emerges from an incorrect use of social networks, are the sanctions that the judge merits, all depending on the damaged good. Administrative consequences may range from a reprimand, suspension, non-payment of assets, or disqualification from their judicial function. These depend on the case, the circumstances and the defence of the accused judge.

IV. CONCLUSIONS

- The right to information is one of the guiding principles of democracy, since it allows the free exchange of ideas. But in the case of judges, certain considerations must be taken to avoid affecting a case or the image of the judiciary. It was therefore proposed that a special regime of communication should not violate their right to expression, but should also guarantee the good image of judges and protect the rights of persons subject to the rule of jurisdiction.

- Information and sharing is a fundamental right in modern democracies: "The right to information contributes significantly to the construction of social reality or, more specifically, to that form of social reality that is democratic society".³⁷ This prerogative allows us to express our views and

³⁷ Vid, Morales Campos, Estela, *Derecho a la información, bien público y bien privado: acceso comunitario y acceso individual*. Universidad Nacional Autónoma de México, México, 2011.

to know that of others. However, this right to information is not an absolute right, but has some limitations such as the right to privacy, public morals, etc.

- It is useful to mention that judicial independence is also seen as a human right. This institutional principle is therefore regarded as the basis for the judicial task, and consequently for justiciable persons to be able to count on an effective and honest administration of justice.³⁸

- Independence is not an absolute right. In the case of judges' communication about the work they or third parties do, a set of rights must be safeguarded through an ethical paradigm that establishes the ways to exercise or carry out a communication in the exercise of their duties.

- Two formal and two informal models of the judicial communication system can be identified. In the first scenario, the judge has full freedom to express themselves are restricted, but assuming full responsibility for the handling of the disclosed information, safeguarding information such as personal data or witness protection, for example, and in the second case, the judge may give an opinion but with limits established in a code of ethics or in the norm as to its powers, to safeguard the rights of third parties, guarantee the impartiality of the business, the good repute of the Judiciary. In the case of the informals, the hearings are closed, in which the debate continues if any interview should be granted to the parties, and if it takes place, take it with the counterpart or keep a record of those acts. Another medium in which information is given is through leaks to the media, which, although some authorities consider them illegal, many people believe that if it is public information should be disclosed, as was the case with Pentagon papers in the US.

- With the foregoing, it can be said that it would be opportune to regulate certain types of communication to protect the image of the Judiciary, and with them to safeguard its social legitimacy.

- Freedom of expression is a human right, which everyone possesses, but it is not absolute. In the case of judges, they do not enjoy this prerogative in the same way as citizenship, since their assignment is subject to a special order (right of association, assembly, expression, privacy, among others). His investiture and decisions should leave no bias that he is not independent or impartial, that legality is his governing principle, and that his personal affairs should not transcend his private sphere. Their prudence and good judgment should not only be part of their resolutions, but also as part of their public acts.

- One should reflect on the weight of publications, especially when they are produced by a judge. But what is the impact of them, and when an act of censorship, investigation and sanction must be carried out by the administrators of the Judiciary. It must be placed first, that the judge must have a conduct appropriate to his jurisdictional commission, because his actions are part of his personality, and therefore, his publications must show a serious person, responsible, professional and with good mental and emotional health.

- The personal decorum of the judge must be key not only for his publications on social networks, but as a life axis in his personal ethics. And here, an important issue is discovered. Is the judge a person subject to his charge 24 hours a day? The answer is in the affirmative, because his responsibility is not only in his commission to impart justice, but his behavior must show a behavior that is immaculate, or that, of reasons to doubt the judge, For the same reason, it must behave with the ethics issued by the Judiciary.

³⁸ *Vid*, CIDH, *Garantías para la independencia de las y los operadores de la justicia*, Costa Rica, 2013.

- The cyberconduct of the magistrate is an unexplored topic, but it has its background in the ethics with which it must act outside its jurisdictional body, and this is ancient. The principles contained in their actions and behaviour are the basis of having a professional and responsible judge, and that the measure of their acts are not only the applied norm, but the tie of their acts with their social works.

- As can be seen, the judge's personal responsibility is not only for his judicial functions, but his external acts must be included. In the case of social media, the judge is responsible for your posts and the kind of content you disclose. And it is not being proposed that the use of networks be denied to them, but that there be a control (own or external) that protects the magistrate, the jurisdiction and the Judiciary.

- The judge's ethics in using social media should be the guide for the content of your posts. This jurisdictional ethic, as stated, establishes a type of leadership not only institutional, but personal. For the same reason, they represent what the judiciary considers and imposes, and are the guidelines that the members of the judiciary must possess and carry out in all their actions.

- Sanctions against the judge for unethical advertising on social networks is a matter that will use as a basis the ethical principles of the Judiciary. These resolutions will be secondary, a type of pseudo-regulation by generating a deontology for the use of social networks by judges.

- The image of the judiciary is a reflection of its performance and is rated by society. The citizenry expects to have institutions that are properly administered, this means that they are managed efficiently and professionally, in which the performance of public servants will be the measure to express opinions and judge their governments. In our case, the physical representation of the judiciary is the personnel who work there, imparting justice and administering the judiciary. This group of professionals must carry out their duties on the basis of the rules, ethics and administrative requirements established by the Council of the Judiciary, in order to have a good judiciary.

- Soft surveillance is the mechanism most used by the judicial powers of the world, to be aware of the posts of judges on social networks. Such supervision would appear to be innocuous, but it is not; its purpose is to protect the interests of the judiciary, while waiting and being able to punish the offender, if any. Here we are concerned, the issue of the resources used for this unofficial supervision, in which the publication is qualified and classified under the canon of professional and personal ethics of the judge.

- The pan-optical model of social networks allows everyone to be watched, users being the first to know of a publication, and logically, they will know and will say if there is a folly, a recognition, a repudiable post, or any act in social networks that produces a shame, a fault, or a scandal.

- This investigation is not an attempt to curb the freedom of expression of judges or to impose a gag, or to restrict, the right of information of judges and society. It is a question of exercising a responsible communication, which proposes a guideline that directs, controls and protects the judge, and consequently benefits the jurisdiction and the justiciable.

- In July 2006, the United Nations Economic and Social Council adopted a resolution recognizing the Bangalore Principles: We are interested in paragraph 4.6: "A judge, like any other citizen, has the right to freedom of expression and belief, the right of association and the right of assembly but, when exercising the above rights and freedoms, shall always behave in such a way as to preserve the dignity of the judicial functions and the impartiality and independence of the judiciary".

- The current use of social media has given birth to Judges influencers. In which their jurisdiction, opinions, news, deferences, public and private activities are disseminated through their networks; but to what extent this is convenient, what kind of sobriety and decorum should be kept in their publications. Undoubtedly, a magistrate can maintain a relationship not close to his friends and contacts in cyberspace, thus protecting his independence, impartiality and objectivity, and, where appropriate, excuse yourself from hearing a matter in which you have a conflict by dealing closely with a contact. So it is expected an appropriate socialization with their network contacts and due decorum in their publications on the internet; protecting a proper conduct and image worthy of his professional and institutional investiture.

- There is a theme around this work, occupying by third parties our social media information. I explain, on occasions, employers investigate the profiles of networks of applicants to a vacancy to discover their activities, tastes, political positions, character, etc., This will definitely influence the decision of the company to hire that person. In the case of public servants it is not very different, because they seek an individual who corresponds to certain characteristics, an institutional subject.

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