

Is “The Judge Must Keep Silence” What the Latin Legal Proverb Really Means? : A Discussion on the Boundaries of a Judge’s Freedom of Speech

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Abstract

“The judge must keep silence” has been widely regarded as a Latin legal proverb in Taiwan for decades. As this proverb is construed, a judge needs not make an interpretation of a case on which he or she has ruled. This legal axiom, by extension, has become a judicial “gag rule” that a judge may not express any opinion on cases connected with his or her court. As such, it has already become a criterion for a normative nature in Taiwan for judicial behavior. Rulings handed down by judges in Taiwan for certain cases have elicited vigorous public criticism and debate, while generating intense media attention. Taiwan's freedom of speech and prevalent practice of statements to the media as the basis of social discourse puts judges in Taiwan observing this legal axiom at a disadvantage in answering questions about their rulings, and calls into question whether such silence is really appropriate for upholding judicial dignity. This article clarifies whether or not this legal axiom really has its roots in a Latin proverb, and after discussion of all relevant Latin proverbs, avers that this legal axiom does not exist. This conclusion then comprises the basis for a discussion of the boundaries of a judge's freedom of speech. Relevant stipulations in Germany's Richtergesetz, a court's verdicts and the most important indicative figures, as exemplified by the “Judicial Activism” initiated by German Judge Ulrich Vultejus in the 1970s and opposing mainstream opinions, as well as the code of judicial conduct in Germany that judges, like civil servants, should observe impartiality to uphold the so-called passive theory of maintaining judicial dignity are all examined in depth. These are then compared

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with the pertinent laws and regulations in Taiwan and its Public Functionary Disciplinary Sanction Commission, after which an authorial critique is provided.

Keywords: The judge must keep silence, freedom of speech, U.Vultejus, fair trial, judicial ethics, judicial activism