

Grand Justices Interpretation No. 689

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Following up on the wedding of top model Flora Sun and Miao Hua-pin, the heir to the Synnex-Mitac Group, Apple Daily reporter Wang Wei-bo tailed the couple round the clock to take photographs. Miao reported Wang's acts to the police, who slapped the reporter with a NT\$1,500 fine. After Wang, who was unwilling to accept the decision, unsuccessfully filed an objection with the court, he petitioned for a constitutional interpretation of his case, arguing that freedom of the press and his right to work had been infringed.

On June 29 this year the Council of Grand Justices issued Constitutional Interpretation No. 689, laying down standards for defining the boundaries between press freedom and celebrities' right to privacy. In their interpretation the justices clearly confirmed that Article 89, Subparagraph 2 of the Social Order Maintenance Act, which stipulates that "those who follow around others without legitimate reason and do not stop after being urged to do so, can be fined up to NT\$3,000 or be reprimanded," is not unconstitutional. The interpretation also attempts to draw a clear line as to what constitutes a reasonable manner of tailing people for news coverage. "News reporters covering a story have legitimate reason to follow news subjects and shall not be punished if coverage is of public concern, is in the public interest, has news value and conforms to generally-accepted social norms."

Wang's case was the first time that a reporter in Taiwan was fined for following around news subjects and petitioned for a constitutional interpretation. It is also the first constitutional interpretation that clearly states that press freedom is guaranteed by the Constitution. Even more important is that the Grand Justices expanded the constitutional guarantees for press freedom from news organization journalists to ordinary people such as citizen journalists. As long as reporting serves to provide the general public with information that has news value or to foster debate on public affairs, it is protected.

In recent years Taiwan's electronic and print media have frequently tailed public figures as part of sensationalist gossip news coverage. Gossip news means reporting by the news media about private statements and private affairs of well known public figures such as politicians, film and entertainment stars, as well as members of the business elite. As stars from film and entertainment saw their private lives increasingly exposed in gossip news, a barrage of legal wrangling between celebrities and media was unleashed. The seesaw battle between celebrities' privacy rights and press freedom still continues today. As for politicians the most striking case of hounding was when Chen Hsing-yu, the daughter of former President Chen Shui-bian, left for New York in the evening of Jan. 31, 2009, to take her dental

examinations. Reporters from Taiwanese media followed and photographed Chen's every step round the clock from Taiwan to the United States.

In their interpretation, the Grand Justices pointed out that while protected by the Constitution, neither individual freedom nor press freedom are absolute, but may be restricted by law or authorized order. The interpretation points out that since relevant regulations of the Social Order Maintenance Act protect individual freedom of action and freedom from physical and mental harm, one can reasonably expect to enjoy freedom from interference as well as personal information autonomy in the public sphere. These rights are protected also if an individual lives in the public eye. The interpretation clarifies that the law protects the right of the individual not to be stared at, watched, eavesdropped, and approached in public settings. When individuals participate in social life, they shall mutually tolerate interference within a reasonable scope so that restrictions become only necessary when interference exceeds the tolerable scope.

This shows that Interpretation No. 689 takes a similar view as put forward by the European Court of Human Rights, which believes that when celebrity privacy collides with press freedom, the latter should take a back seat if the scope of reporting pertains to the celebrity's purely private life. In other words, when reporting news the media must also respect the news subject's personal privacy. The private life of any individual should be respected and protected even if he or she is a public figure or in a public venue.

I personally agree with the intention of the said interpretation. And I would like to further concretize what it intends to establish as standard for judging privacy issues as follows: Even when reporting about persons that are at the center of or crucial in a major news event that pertains to the public interest, full consideration must be given to whether relevant reports have information value that is in the public interest. We can also say that if the subject of a news story is not a crucial figure in a major news event, or if the reports about the crucial person and the news event as such are not much related, then the information value of such reports with regard to the public interest is low. In such cases the protection of personal privacy should take priority. The selection of news events and the content of news reports must not exclusively serve the satisfaction of the audience's curiosity, but must also take into account the relevance of a news story for the public interest and whether the reported content contributes to public debate.

Finally the constitutional interpretation also makes some very constructive suggestions given that making a judgment and weighing the pros and cons of possible punishment for tailing people in the course of news reporting is highly complex. In order to doing justice to the protection of both press freedom and the private sphere, relevant government organizations should look into amending the law or drafting a special law. It also notes that it would be appropriate to have courts make decisions on the punishment of reporters who hound news subjects and the Ministry of the Interior should study amending the law. In fact a look at the

lawmaking examples of other countries shows that stalking is regarded as infringing on various legal interests aside from freedom of action, such as freedom from physical and mental harm, freedom from interference and personal information autonomy. Regarding potential offenders these laws are not only limited to media journalists, but include ordinary third persons. Theoretically and practically criminalizing the act of following around people against their will has its legitimacy and urgency. If Taiwan truly wants to safeguard the privacy rights of its citizens and protect them from stalking, it will find it hard to achieve any results as long as it depends on Article 89 of the Social Order Maintenance Act and police for issuing fines of up to NT\$3,000. If the government truly intends to take precautions against such phenomena, it should draw up another law that provides clear definitions and complies with normal legal procedure instead of continuing to use legal articles that won't achieve actual effects and also lack procedural safeguards and due process. **BT**