**Torres Palacios v. Vice President of the Republic**

The Colombian Constitutional Court decided to order the Vice President of the Republic to avoid linking her personal opinions and specially expressions of her faith to the institution which she represents, as she must respect the principle of secularism and the guarantee of the fundamental rights to freedom of religion and worship and freedom of conscience from the citizens. This decision was taken after the Vice President decided to publish a post in her Facebook and Twitter accounts, in which she consecrated the country to the Lady of Fátima. According to the Court, those actions were not respectful to the State principle of secularism. Regarding freedom of expression of public officials, the Court asserted that "they have a very limited range of autonomy and must be oriented to the defense of (...) the fundamental rights of all persons living in the territory" (p. 15).

**Facts**

On May 13, 2020, Colombian Vice President Marta Lucía Ramírez published the following message in her Facebook and Twitter account: "Today we consecrate our country to Our Lady of Fatima raising prayers for Colombia so that she may help us to stop the advance of this pandemic and that God may mitigate the suffering of the sick, the pain of those who lost loved ones and allow us to repower our economy to generate millions of jobs to end poverty." The message was accompanied by an image of The Lady of Fatima and the logo of the national government.

César Enrique Torres Palacios, a Colombian citizen, filed a *Tutela* (an application for the protection of constitutional rights) against the Vice President as he believed that the posts published by her violated his rights to freedom of conscience, freedom of worship, equality, as well as it infringed the principle of neutrality of the State in religious matters.

On June 1, 2020, the Court of first instance decided to protect the fundamental rights claimed as violated and to order the Vice President to issue a statement from her Twitter account rectifying her statement by recognizing that as a public official she cannot privilege any religious creed, without ignoring the principles of separation of church and state, secularism, and freedom of worship. According to this first instance Court, the message did not belong to her personal sphere, because the expressions were accompanied with official logos and symbols, which clearly pointed out to an official act. Finally, the Court considered that there was not a lack of purpose in the action because even when the Vice President deleted the disputed posts and published a new one claiming that she was respectful to secularism, she did not accompany those new expressions with official logos as she did the first time.

The Vice President appealed that decision restating that there was a lack of purpose in the action because the posts had been deleted.

On July 30, 2020, the Council of State overturned the first instance decision and, instead, recognized that there was a lack of purpose in the action because the claimed violations to the fundamental rights ceased at the moment in which the defendant deleted the questioned posts. The Council also considered that the new publication made by the Vice President in social media regarding the acknowledgement of secularism and respect for every religion, contributed to overcome the initial conflict.

**Decision**

Judge Diana Fajardo Rivera delivered the judgement for the Constitutional Court. The main issue before the Court was determining whether the Vice President of the Republic violated citizens’ right to freedom of religion and worship and the principle of secularism by publishing in her social networks a message through which she consecrates the country to a figure of a particular religion, or not.

The plaintiff claimed that the consecration violated his fundamental rights to freedom of conscience, freedom of worship, equality, as well as it infringed the principle of neutrality of the State in religious matters. He argued that the messages posted constituted an official act, as the Vice President published the message in social media using the official logos of the national government. Mr. Torres requested to the judge to order the Vice President to remove the disputed message from her social media accounts and to publish instead a message in which she expresses that she respects the principle of secularism and that the State has no preference for any specific religion.

Conversely, the Vice President argued that the controverted message was protected by her right to freedom of expression, since she did not publish it as an official statement, but as a personal and individual act. Besides that, she also claimed that the application lacked purpose as the conflict was overcome when she deleted her posts and published the following message: "I am a person respectful of liberties, and of course of creeds and religions. As a person of faith, I pray to God from my personal sphere for Colombians’ life and health, without this meaning to benefit, disregard, or offend any creed, or those who do not profess".

The Constitutional Court began by analyzing procedural requirements for the constitutional action and concluded that there was a lack of purpose of the action, since the controverted messages were deleted. The Court also highlighted that Mss. Ramírez had published a new message claiming that she respected the principle of secularity, as well as religious freedoms. However, the Court decided to issue a substantive ruling in order to study the Vice President’s actions and to adopt preventive measures useful for future controversies.

The Court recognized that even though the Political Constitution did not contain any specific provision regarding state secularity, this principle derived from a systematic interpretation of the values, principles and rights enshrined in it. Then, the court asserted that secularity was integrated by other rights and principles such as the rights to freedom of religion and worship and to freedom of conscience (ICCPR, art. 19 and ACHR, art. 12), and principles of neutrality of the State in religious matters and separation of the State and churches. Subsequently, the Court indicated that those rights admitted limitations, exclusively for reasons of: “(i) public safety, order, morality and health; (ii) the exercise of the constitutional rights and freedoms of others” (p. 11).

The Court stated that public officials had the legitimate right to religious freedom. Nonetheless, those people and especially high state officials, should act with particular caution when dealing with matters involving religious issues. This is because as public officials they have the duty to guarantee and respect secularity principle in order to respect the right to equality of citizens.

This action guidelines of caution and prudence, which lead to a very limited range of autonomy, represent a limitation in public officials’ right to freedom of expression that is justified by the need to protect life, honor, beliefs, and other rights and freedoms from Colombian citizens. Certainly, “The fact that they hold a position of guarantor with respect to the prerogatives of the associates, requires that they act by the criterion of maximum prudence at the moment of issuing statements that put at risk or constitute harmful interference with such rights" (p. 15).

This argument is reinforced by the fact that when public officials issue an opinion, they are not only exercising their right to freedom of expression, but also exercising a power-duty of permanent communication with citizens. This means that their public statements do not belong exclusively to the scope of freedom of expression, but also  to the way in which they fulfill their duties towards the citizens. According to this, their expressions are covered by the burdens of truthfulness and impartiality, except when they are defending their management, responding to critics, or expressing their opinion on a political issue. In the last cases, “personal and subjective appraisal is possible, and strict objectivity is not required. However, in order to guarantee the formation of a truly free public opinion, these opinions can only be formulated on the basis of a minimum of real factual justification and criteria of reasonableness” (p. 16)

Considering the above, the Court presented some criteria that should be used in order to identify if statements made by public officials through social media are official information or a personal opinion. The first thing that should be analyzed concerns the particularities of the public official's personal account on the respective social network. At that point, the judges need to review: i) the account privacy level in each social network, ii) the account description, iii) the personal use given to the account. Besides that, it is necessary to examine the message that gives rise to the controversy. In this sense, the following should be considered: i) how the message is communicated, and ii) its content.

When applying these criteria to the concrete case, the Court found first that the Vice Presidents’ Twitter and Facebook accounts were public, which means that her posts could be seen by everybody. Second, the description of both accounts included at least one reference to her official position and lacked a warn indicating that the information published was personal and did not represent the views of the entity. Finally, the content of her publications in both social networks accounts was mostly related to her work as Vice President of the Republic. Thereby, it was concluded that that the Vice President's personal Twitter account, @mluciaramirez, and her public Facebook profile, disseminated information and opinions of an official nature and not exclusively personal and private matters. According to the Court, this implied that she voluntarily decided to remove from the private sphere the publications made on these social networks and transfer them to the public sphere.

Regarding the content of the posts the Court considered that it had a clear official character, not only because it was accompanied by official logos, but also because the messages were written in plural and consecrated the whole country to the Lady of Fátima. In the Court’s opinion, if the consecration had been done towards a specific person or a family member the situation and the ruling would have been different.

For the previous reasons, the Court decided that Vice President of the Republic, Martha Lucía Ramírez, violated the principle of secularism on which the Colombian State is based and the right to freedom of religion and worship of the plaintiff, when publishing the disputed messages. Therefore, even when it found that there was a lack of purpose of the action, the Court warned the Vice President of the Republic to refrain from linking her manifestations of faith to the institution she represents. Likewise, the Court ordered the Vice President of the Republic to disseminate the constitutional decision in the same social network accounts of Facebook and Twitter that she used to communicate the message that gave rise to this tutela action. Finally, the Presidential Advisor for Communications was ordered, in accordance with the judgment, to train national government officials on the proper management and use of social networks.

The Decree 2591/91, which regulates *tutela*, establishes that once the regular proceeding is concluded every *tutela* file should be send to the Constitutional Court, which may decide to select it for a special review or not. This case was chosen by the Constitutional Court for its review.

**Decision Direction**

Mixed outcome. The Constitutional Court established clear limits to public officials’ freedom of expression. Nevertheless, the reasoning of the Court on how public official’s social media accounts have a public nature is aligned with the comparative experience of *Knight First Amendment Institute v. Donald J. Trump.* This reasoning, in the end, is helpful for cases in which public officials block access to their social media account undermining access to information and, to some extent, newsgathering.