

司法院及所屬各機關出國報告

(出國類別：會議及交流)

第四屆「世界法官論壇」會議報告

報告人：臺灣高雄地方法院庭長楊富強

臺灣臺北地方法院法官汪漢卿

司法院少年及家事廳代科長郭明傳

出國地區：巴西

出國期間：94年1月21日至1月28日

報告日期：94年3月

第四屆「世界法官論壇」會議報告

報告人：楊富強、汪漢卿、郭明傳

一、前言

民國 91 年至 92 年間，吳憶樺監護權爭議事件不但造成國人的震撼，亦引起巴西人民的關注，更讓巴西法官肅然起敬，因為中華民國的法官在審理裁判及執行該事件時均展現一個民主法治先進國家應有的審判獨立及司法自主風範。

為此，巴西法官協會轉請該國駐臺商務辦事處向司法院邀請承審該事件之法官出席於 2005 年 1 月 23 日至 25 日在巴西南大河州愉港市 (Porto Alegre) 舉行之第四屆「世界法官論壇」會議發表專題演講，介紹我國司法制度及法官承審該事件之心得。緣因該論壇係衍生自「世界社會論壇」(World Social Forum)，乃一年一度非政府組織之國際盛事，司法院經審慎評估，有鑑於此次國際性會議可使世界各國瞭解我國司法制度與近年來司法改革的成果，遂指派承審之臺灣高雄地方法院楊富強庭長，會同臺灣臺北地方法院汪漢卿法官及司法院少年及家事廳郭明傳代科長等三人組團前往。

二、行前準備

此行原擬與亞太公共事務論壇 - 臺灣志願服務國際交流協會籌組參與「世界社會論壇」會議人員併同組團前往，後因鑑於兩會議之時間、性質迥異，遂由司法院與中華民國法官協會負責「世界法官論壇」會議部分，期間經多次與巴西駐臺商務辦事處及我國駐聖保羅辦事處聯繫協調全盤行程及會議議程，尤其議程部分，再三確認我國代表團在大會有發表演說之機會，演說之內容則著重於吳憶樺案與我國近年司法改革之努力與成果。司法院 翁院長、范秘書長並約見代表團成員，交付此行任務並予鼓勵，足見司法院對此行之重視。

三、與會過程

代表團等三人於 94 年 1 月 21 日由臺灣啟程，經東京、洛杉磯、聖保羅等地三次轉機，近 30 小時之長途飛行，於翌（22）日抵達位於巴西南部的愉港市機場，受到主辦此次「世界法官論壇」的 Umberto 法官及巴西當地承審吳憶樺事件的 Jannie 法官熱情迎接，並引領代表團成員至舉行會議的聖拉法艾飯店（Hotel Plaza Sao Rafael）安頓。中午並安排與來自巴西各州的法官餐會，交流兩國司法制度與辦案心得，透過華裔之廖國賓律師的翻譯，瞭解巴西的司法制度，該國司法權屬於聯邦法院，分為聯邦地方法院、聯邦高等法院及聯邦最高法院三級制。聯邦最高法院法官由總統提名經參議院同意後任命，該院法官有法令審查權，審查法令之合憲性問題；至於法官案件量過多問題，巴西亦不例外，聯邦高等法院法官每月約新收四百餘件案件，其中又以勞工案件佔最大比例。

我國與巴西雖無正式邦交，惟「世界法官論壇」大會仍將中華民國國旗與各與會國之國旗併排懸掛飄揚於會場內，23 日代表團進入會場時，大會立即安排代表團接受當地主要新聞媒體 ZERO HORA 報社及多家電視台的專訪，由楊庭長詳細說明我國法院如何審理吳憶樺事件、法官形成心證的過程、執行交付子女之程序暨我國司法制度及改革方向等問題，該報於翌日即以半版之篇幅刊出臺灣代表團出席此

次會議之消息及相關專訪的談話內容，足見巴西人民、法官及大會對於我國代表團之重視與禮遇。

謹將訪談問答內容摘要如下：

(一) 問：中華民國如何處理吳憶樺案？

答(楊庭長，以下同)：我們知道貴國的 Jannie 法官對本案也

作出判決，因我國對於本案有充分的管轄權，並且審理上是

以未成年子女的最佳利益為監護權酌定的最終考量，雖然兩

國的法律規定或有不同，但就本點而言是不謀而合的。本代

表團很榮幸有這次參與「世界法官論壇」會議的機會就此案

予以說明。

(二) 問：本案為何延宕許久才作出裁判？

答：本案自受理到裁判約二年。我們合議庭因基於兒童最佳利

益之考量，花了很多時間在雙方的調解上，雖然很遺憾調解

最後沒有合致，但是在我國的裁判下小朋友能平安順利的回

到巴西，我們也感到很欣慰。

(三) 問：為何會作出監護權歸巴西祖母的判決？

答：吳憶樺的生父和生母並無正式的婚姻關係，依據我國民法

第 1094 條第 1 項有關法定監護權人順序之規定，其祖母羅

莎為第三順位，叔父吳火眼先生並非法定之監護權人。經過

合議庭詳細調查後，吳憶樺對於巴西的國旗、足球、兄弟等等印象深刻，基於兒童最佳利益的保護，我們認定羅莎祖母具有監護之能力，所以將監護權判給她。

(四) 問：在審判期間有很多的民意代表及新聞媒體給予關切，合議庭有無感受到壓力？

答：完全沒有壓力。在臺灣所有的法官都和我一樣，審理案件都是本諸事證超然獨立為裁判，臺灣是一個司法獨立的國家，即使是其他更重大、更受矚目的案件，也不會受壓力之影響。

(五) 問：有沒有受到巴西方面的壓力？

答：一樣是沒有壓力。我們知道兩國的司法都是基於對兒童保護的立場來處理此案，很欣慰能有這次機會讓貴國人民知道我國司法是超然獨立的。

(六) 問：審判之中有沒有想過吳憶樺可能會留在臺灣？

答：身為一個審判者，沒有任何預設的立場。

(七) 問：臺灣的法院事後有沒有和羅莎祖母連絡過？有沒有向本地法院提出申請？

答：沒有連繫。此行主要目的是參與「世界法官論壇」會議，已到此地兩日，發現這個城市人民和善，環境良好，應該是

很好的成長環境。如果有機會且貴國法官准許的話，我們也希望能藉此機會順道關心一下，但是也囿於我們並沒有提出申請的資格，基於承審本案審判長的立場，如果能有機會見到吳憶樺，也是此行的另外收穫。

(八) 問：吳火眼先生有沒有再和吳憶樺見面過？

答：據我所知應該沒有，基於對貴國司法的尊重，如有必要時應要向貴國法院提出申請。我也要重申，雙方家人應是基於對兒童愛護的立場來監護小孩，而不是任何一方片面的獨占，我國審判期間吳火眼先生不願共同監護的立場，在經過這一段時間後應該也不再堅持了。

(九) 問：因為巴西對臺灣比較陌生，臺灣和中國在政治、經濟及司法制度上有何差異？

答（楊庭長、汪法官）：我國為三權分立國家，中國是共產制度，政治制度完全不同，雙方自 1949 年分隔後，政治、社會及司法完全沒有任何隸屬關係，雖然同屬大陸法系，但臺灣的司法制度完全不會受其干擾。另外臺灣的法官審判的獨立性遠高於中國的法官，惟自 1997 年起，臺灣和中國已互相承認其司法判決，這種司法上的互相承認已有相當之進展。

(十) 問：在吳憶樺案發生前，臺灣與巴西兩國的司法交流如何？

答：臺灣和巴西的法制都源自歐陸法系，只是兩國的司法交流較少，藉由此次「世界法官論壇」會議，希望能促進兩國的司法交流。

24 日下午 6 時，楊庭長依會議議程安排，在大會會場以英語發表專題演說，主題為「In Pursuit of Justice, Recent Judicial Issue In Taiwan - From Taiwan- Brazil Civil Case」，代表團以 power point 投影方式，配合大會的葡語同步翻譯，詳細介紹我國司法制度及近年來司法改革努力的成果，並舉吳憶樺事件說明我國審判獨立之精神不容質疑。長達 40 分鐘的專題演說，台下座無虛席，演說結束時，聽眾均起立鼓掌，久久不歇，隨後多位與會之巴西及其他各國法官、檢察官紛就我國司法制度、法官之產生及吳憶樺事件等相關問題提問，楊庭長逐一翔實說明，內容摘要如下：

(一) 問：貴國法官的產生方式為何？

答（楊庭長，以下同）：我國目前法官產生之方式，是考試並經訓練合格後任用。但是新的任用辦法即將實施，必須是已擔任十年以上的律師或檢察官才有資格被遴選為法官，這也是臺灣近年來司法改革的成果。

(二) 問：吳憶樺的叔父吳火眼先生似乎不願意讓他返回巴西？

答：在我國，孩童如果父母雙亡，通常由他的叔、伯來負起教養之責任，這是傳統的習慣，吳先生也是基於保護的心態要替亡故的兄長照顧遺下的孩童，並非如各位誤解的「綁架者」的角色。

(三) 問：在貴國，法院如何分案？有沒有可能受到影響而指定承辦之法官？

答：我國法院的案件均是經由電腦分案，並非可以人為指定或用金錢、政治力得以影響。至於少年或家事此類專業案件，則由專業的少年及家事法院（庭）的法官審理。

(四) 問：既然貴國如此重視兒童的基本人權，為何沒有簽署「國際兒童挾持民事公約」(1980年海牙國際私法會議通過，簡稱海牙公約)？

答：臺灣是一個自由、民主、法治的國家，即便是因為中國在外交上的阻撓等因素致目前尚無法參與許多國際事務或簽署公約，但我國對於兒童及成人的各項基本人權予以尊重及保障，是無庸置疑的。

結束上開演講後，當地多位司法首長、法官及檢察官驅前向代表團致意並合影留念，顯示與會各國人員對於我國法官落實審判獨立精神之敬意。

25 日上午 Jannie 法官載一行人至市區繞行，行進間經其一一介紹南大河州州政府、議會、主教大教堂、聯邦地方法院、聯邦高等法院等建築物，對於該國之政府運作有更深一層認識。隨後前往其任職之聯邦高等法院家庭法庭參觀，因巴西正值年節假期，法院僅有二位法官與少部分行政人員值日，無法安排正式之參訪，一行人遂前往 Jannie 法官辦公室參觀，經其介紹其一位法官配置有十餘名書記官、打字人員、助理等以團體運作模式處理案件，顯與我國有別。於拜訪另一名國際領養組法官 Breno 時，其電腦桌面上已存有楊庭長與巴西駐臺商務辦事處處長保羅、培瑞拉先生的合照，經介紹，得知該家庭法庭內設有領養、少年、收容等三組法官，其後帶往參觀開庭室、證人保護室，其中開庭室設有單面鏡以供被害人指認被告，證人保護室則擺設兒童遊戲組合、布偶等，並有錄影設備用以錄製心理學家或社會工作人員與被侵害兒童的談話過程，供法庭審理之用，減少被害人於各審級的重覆陳述與二度傷害等作法，則與我國類似。Breno 法官與 Jannie 法官表示吳憶樺案在該法院受理時，當地法官、檢察官與律師曾組成「吳憶樺返巴特別小組」，數度召開會議研商管轄權及相關問題，決議由該法院涉外領養組法官(即 Jannie)審理，惟兩人均表示假使本案為相反之事實，即吳憶樺案係由我國籍人民跨海訴訟，以巴西當地之各界壓力下，其可能作不出相同考量的判決，間接表示了對

於我國司法獨立自主的推崇，參訪結束後代表團獲贈該法院處理家庭及收養事件流程光碟、司法雜誌及書籍等資料，代表團亦回贈我國司法制度簡介（英文版）與紀念品，雙方並合影留念。會議結束隔日，代表團隨即依原定行程整裝，經 30 小時飛行後返國。

四、結語

本次會議除由我國代表團之楊庭長專題演講外，並有法國、西班牙、葡萄牙、義大利、阿根廷等國法官、法學教授發表演說或報告各國司法、人權制度及追求和平環境之努力成果，原訂發表演說的 2003 年諾貝爾和平獎得主 Shirin Ebadi 女士因家中變故無法出席，改由巴西憲法學者報告基本人權之議題。楊庭長及汪法官英語流利，輔以廖國賓律師充任葡語翻譯，在會場內外均能與各國與會代表順暢溝通交流。返國後，國內新聞媒體亦報導此行的豐碩成果，藉由參與此次國際會議，已成功地將我國司法改革的成果向世界發聲，同時達到與各國法官司法交流的目的，具有深遠的意義。

備註

附件一：楊富強庭長演講稿

附件二：議程

附件三：ZERO HORA 報導

附件四：2004 巴西南大河州人權獎狀

附件五：94.2.17 聯合報報導

附件六：94.2.17 司法周刊報導

附件七：94.2.17 自由時報報導

附件八：與會成果照片

In Pursuit of Justice, Recent Judicial Issue In Taiwan
--From Taiwan-Brazil Civil Case

IN SUMMARY

In modern society, the judiciary functions as the last, and most authoritative, resort of the protection of human rights and dispute resolution. Without a functional judiciary, social justice and fairness cannot be asserted and preserved. As the worldwide keeps pursuing democratized judicial system, Taiwan ROC, our country also makes every effort toward the accomplishment of the goals on the protection of human rights, the improvement of judicial efficiency, accessibility and transparency, and the promotion of fairness and judicial integrity. Judicial independence and well-functioning judicial system embody with the doctrine of adjudicative neutrality. Judicial independence establishes that judges shall be based on their conscience, hold trials and make judgments in accordance with laws. Well-functioning judicial system guarantees the right to sue in accordance with legal proceedings and the right to fair and efficient trials.

In the case of Taiwan-Brazil custody dispute, the court defines the territorial jurisdiction first, and decides the applicable law, and chooses a suitable guardianship for the best interest of the ward. The court rules that the plaintiff, the grandmother, is the sole and legitimate guardian of the ward and it is legally reasonable for the plaintiff to ask the respondent to turn over the ward to her guardianship. The judicial dispute over the guardianship with foreign matters has been settled since then.

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INTRODUCTION

In a democratic society, a functional judiciary is of great importance not only to everyday life of the people but also to the community as a whole. In Taiwan, the judiciary includes the civil, criminal and administrative litigation, as well as our constitutional interpretations. Even the power to discipline public functionaries is part of our judicial functions. In modern society, the judiciary functions as the last, and most authoritative, resort of the protection of human rights and dispute resolution. Without a functional judiciary, social justice cannot be asserted and preserved.

With the global expansion of constitutionalism and human rights, one of the goals of our judiciary today is to raise the standard of human rights protection to the same level as the international community. As the world becomes more democratized, another important goal that we must pursue is the democratization of our judiciary. The judicial system must aim to serve people and become as accessible and neutral as possible. The goals of our judicial reforms emphasize on the protection of human rights, the improvement of judicial efficiency, accessibility and transparency, and, finally, the promotion of fairness and judicial integrity. Thus far we have worked for years towards the accomplishment of these goals.

I .THE INTERPRETATION OF THE CONSTITUTIONAL RIGHT

Article 16 of the Constitution guarantees people's right to sue and to institute legal proceedings. To guarantee such right, it is barely enough for a state to provide merely for court houses and judges. It must have a

functional and effective judicial system. Whenever people's rights are infringed, the judicial system must act promptly and effectively. There is a saying that belated justice is justice denied. Justice delayed is not only costly to the litigants financially and emotionally but also a great loss of credibility to the integrity of the judiciary. Therefore, the Supreme Court, high courts and their branches, and district courts, so called "three-level system", are established to adjudicate both civil and criminal cases in Taiwan. The "three-level and three-instance system" is the rule, with the "three-level and two-instance system" as the exception. Both the first and the second instances decide issues of fact, while the third instance decides on issues of law matters. While courts may not control the number of cases brought before them, they are certainly in full command of the proceedings involved once the cases are filed. Despite a desirable goal, the expedition of litigation proceedings should not be done at the expenses of equity, fairness and most importantly, the integrity of the judiciary.

II .THE IMPROVEMENT OF CIVIL PROCEEDINGS

1.The Concentration of Trials

In order to tackle the problems of often delayed proceedings in civil litigation, it has been reformed that both plaintiff and defendant now have to review one another's litigation files prior to trial to determine the contended issues that are critical to the decisions. Issues that fail to be raised in preparatory proceedings cannot be argued in the succeeding proceedings in the courts. Judges must review these contended issues and make certain clarifications prior to trial. The purpose of concentration of trials is to save significantly time spent in the trials as well as to improve judicial efficiency.

2.Alternative Dispute Resolution: Mediation

At the level of District Court, mediation has been employed as one means of alternative dispute resolutions. Mediation works well when arbitrators chosen from the communities are trusted and skilled. Therefore, the efforts have been put into the training of qualified arbitrators as well as the encouragement of the employment of mediation in resolving disputes.

3.Contracting Out Auction and Other Legal Enforcements

In order to reduce significant the caseloads in the court, one of the innovative measures is to contract out legal enforcements such as auctions, which have been initially carried out by the courts, to the third parties. Currently, Paragraph 3, Article 15 of the Statue Governing Mergers of Financial Organizations allows private parties to undertake measures concerning legal enforcement in certain merger cases. The Judicial Yuan in Taiwan is now considering the possibility of extending such a privatization of legal enforcement to other areas of civil proceedings in an attempt at a significant reduction of judicial caseloads.

III.SPECIALIZATION OF CIVIL COURTS

1.The meaning of the leading judge

There are three judicial levels established to adjudicate civil cases carried by the courts. The leading judge assigned a civil case of each judicial level shall be assumed by a judge of that level, except for the one assumed by a dean of the court. A leading judge is mainly responsible for supervising the ministerial business of the court. A leading judge may also act as a presiding judge and form a panel with other judges to try a case. The leading judge plays an active role in facilitating civil, criminal, judgment enforcement proceedings. When a judge is elected to the office of leading judge through appropriate processes based on

erudition, competence, and comprehensive trial experience, it certainly contributes to the upgrade of trial quality.

2.Establishment of the Department for the Legal Affairs of Teens and Family

On March 18, 2002, the Judicial Yuan established a new department for the legal affairs of teens and family. This newly established bureau is vested with the power to provide legal protections for children, teens and women. As resolving the issues related to children, teens and family often demands interdisciplinary knowledge combined with sociology, psychology and medicine, traditional judicial approaches have been insufficient. Thus, this bureau has aimed to integrate and coordinate the efforts of various disciplines to provide more effectively protections for women and children concerning domestic matters.

3.Establishment of Specialized Courts

In 1999, establishment of the Kaohsiung Juvenile District Court marks the start of specialization of courts. In the future, divisions governing intellectual property rights, economic matters, and labor matters etc. will be established under the auspices of district courts. Under the administrative court, fair trade agreement, property repossession, tax, and environmental protection arms will be formed.

4.Establishment of Specialized Judges

From 2002, judges will become specialized as well into civil or criminal courts under a new regulation set forth by the Judicial Yuan. Judges will further specialize in areas under civil or criminal law.

IV.THE DOCTRINE OF ADJUDICATIVE NEUTRLITY

1. The principle of judicial independence

Article 80 of the Constitution provides : “Judges must remain non-partisan and neutrally adjudicate a case according to the laws, free from any influence. “ This provision announces judicial independence and calls for the state to set up a well-functioning judicial system embodies with the doctrine of adjudicative neutrality. Judicial independence is one of the fundamental principles regarding the separation of powers in the constitutional structure of free democracy. To realize the principle of judicial independence, the judiciary shall preserve judicial autonomy. Furthermore, in order to guarantee the right to sue in accordance with legal proceedings and the right to fair and efficient trials, the highest judicial organ shall have the supervisory power of judicial administration for the purpose of guaranteeing the beneficiary right to judicial access. Both the preservation of judicial autonomy and the exercise of judicial supervisory powers shall aim at safeguarding judicial independence.

2. The mechanism of making judgment

The principle of judicial independence implies judges’ independence both in making judgments and in holding their offices. The former means that judges shall be bounded on by laws and free from any other forms of interference ; the latter entails that judges holding their offices shall not be affected by their judgments. Judicial independence, one of the most important mechanisms regarding the separation of powers and checks and balances in the constitutional structure of free democracy, establishes that judges shall be based on their conscience, hold trials and make judgments in accordance with laws. To realize the principle of judicial independence, the judiciary shall preserve judicial autonomy, entailing independence of judges, judicial administration, and judicial rule making.

V .JUDICIAL REFORM WITH INPUT FROM THE PEOPLE

Prior judicial reforms have stemmed from internal review. As the purpose of the judiciary is to serve people, current reforms have been undergoing review sessions attended by leaders and representatives from all walks of society. Such review sessions and meetings have been held consistently since March 2000. Various interest groups that attended these review sessions included media, business sector, technology group, various professional associations, as well as public interest advocates for women and youths. From these conferences, courts have received valuable feedback and advice about judicial improvement such as the readability of court decisions, on-the-job training of judges, shift of the proving burden from judges to prosecutors, and the efficiency of trials. The Judicial Yuan also subsequently set up a web site to familiarize people with the justice system.

VI. THE IMPROVEMENT OF JUDICIAL TRANSPARENCY

1. The Digitalization of Court Decisions

In an effort to improve people's access to the courts and judicial decisions, currently, all of the court decisions have been digitalized and made available in the web. This measure has been appraised as an important step towards the facilitation of legal research, the satisfaction of people's right to know, and the enhancement of judicial oversight.

2. The Selection of Judges by Litigating Parties in Civil Proceedings

The integrity and professional skills of a judge is of utmost importance to the litigating parties in a trial proceeding. If the litigating parties are allowed to select judges, they will be more likely to put their trust on their chosen judges and abide by the court decisions. A significant increase of settlements as well as an equally significant decrease of appeals will thus be more likely in such a proceeding commanded by a consented

judge. To adopt such a mechanism, the Judicial Yuan has put forth an amendment to the Code of Civil Procedure, currently under consideration in the Legislative Yuan. Under the new design, the records of judges in civil courts will become accessible by the public, unveiling bureaucratic secrets of judges and enhancing judicial transparency.

3.The Establishment of the Overseeing Committee for Judicial Reform

In 1999, the National Conference for Judicial reform reached some important consensuses for further judicial reform. To carry out those consensuses in the succeeding judicial reforms, the national overseeing committee was established to include judges, prosecutors, law professors, as well as a number of representatives from the community to oversee the actualization of the resolutions reached in the 1999 conference. Since then, this overseeing committee has held meetings more than twenty times and supervised effectively the relevant measures taken to fulfill judicial reforms. It is pleasure to represent all judges in Taiwan to be here joining today's conference.

VI.THE CONCERN OF TAIWAN-BRAZIL CUSTODY BATTLE

The civil trial between Taiwan and Brazil was basically an international judicial issue, and been resolved through Taiwan's judicial procedures. The fact is that Iruan Wu Ergui, the Taiwan-Brazilian boy who was at the center of the bitter three-year custody battle in which ended with his return to Brazil in last February 2004. Taiwan-Brazil civil trial began in 2001 after Iruan's, better known as Wu Yu-hua in Taiwan, his uncle in Taiwan refused to let his grandmother take him back to Brazil. The boy's Brazilian grandmother, Rosa Leocadia Silva Ergui, filed a lawsuit to regain her custody right as legal guardian of the child since. The boy 's uncle, name of Wu Huo-yen, also declares he has the right to hold the boy's guardianship.

This custody dispute over a Taiwan-Brazilian orphan became an international judicial issue, and been resolved through legal procedures. The grandmother won this case when Taiwan's Supreme Court rejected an appeal by the Wu's family last year. How did the Judges make the final decision? The following procedures could be explained all results.

BASE OF LITIGATION AND PROCEEDINGS OF TRIAL

◎ Plaintiff's Claim of being the Sole Legitimate Guardian of the Ward

1、 Notarized document of the father of the ward

The parents of the ward do not have the legal marriage. The father, Dong-Shu Wu, went through the process of notarization to claim the ward as his natural child at the First Instruments Notarization Office in Porto Alegre, Rio Grande do Sul, Brazil on October 31th, 2000 and changed the Brazilian name of the ward from "Iruan Wu Ergui Tavares" to "Iruan Ergui Wu". Furthermore, he went through the process of notarization again to authorize the guardianship to the plaintiff at the above Notarization Office on November 1st, 2000. This above notarized documents have been legalized at Embassy of Republic of China, Paraguay and certified to be true. The notarized documents clearly state that the guardian of Iruan Ergui Wu is his grandmother, Rosa Leocadia Silva Ergui.

2、 Article 1094(1) of the Civil Code

Under Article 1094(1) of the Civil Code, where both parents can not exercise the rights nor assume the duties in regard to a minor child, or where the parents die without appointing any guardian by a will, grandparents living in the same household with the minor are guardian in the first order.

3、 The ward was born in Brazil and has been living with the plaintiff there. He adapted himself to the local life, culture, and education of Brazil for a long term and already got used to the local environments, which is favorable to his psychological growth and adaptation of life.

◎ **Defendant's Claims**

- 1、 The notarized documents the plaintiff provided are of guardianship by entrustment rather than appointed guardianship by a will.
- 2、 Weighing up by best interests of the ward

Under Article 1094(2) of the Civil Code, the court may select or change the guardian upon the application of the other privies to fit the best interests of the ward. That is where the parents die without appointing any guardian by a will, the legal guardian does not necessarily take the guardianship. The court may select or change the guardian provided that the other privies file the application.

- 3、 The father of the ward intended the ward to be educated in Taiwan and took the ward back to Taiwan for naturalization.

◎ **Proceedings of Trial**

On the grounds that the case involves the dispute of civil rights as well as foreign elements, the court shall ascertain whether our country has the international jurisdiction over this case. After that, the court shall define this case to decide whether the court has the territorial jurisdiction and to decide which countries' laws to apply, and then decide whether the plaintiff's petition is of reasoning.

FORMAL EXAMINATION

◎ **Jurisdiction over Foreign Matters**

- 1、 In the case, the defendant is the citizen of our country. The ward possesses both nationalities of Brazil and Republic of China. The plaintiff is the citizen of Brazil. The ward currently lives in our country. Therefore, our country is more proper than Brazil for exercising jurisdiction over this case in terms of significant connections such as nationality or domicile, etc.
- 2、 The plaintiff also authorized Attorney Wen-Bin Hsu, the citizen of our country, to handle this case as agent ad litem. Thus, our court as to the plaintiff is not forum non conveniens. Therefore, our court has the international jurisdiction over this case.

◎ **Definition of Cause of Action and Applicable Law**

- 1、 The case shall be defined as guardianship matter under the law of the court (the law of our country).
- 2、 With respect to guardianship, the law of the country of the ward shall apply; Where the law of the nation of the party concerned shall be applied under this law and the party concerned has several nationalities acquired at different time, the law of the nation of the party concerned shall be decided according to the nationality he last acquired; if the nationalities were acquired simultaneously, the law of the nation which is closest in relationship with the party concerned shall apply, provided that if the party concerned is to be considered as a national of the Republic of China in accordance with law of nationality of the Republic of China, the law of the Republic of China shall apply. The above are enacted in Articles 20 and 26 of the Law Governing the Application of Laws to Civil Matters Involving Foreign Elements.
- 3、 Article 2(2) of the Nationality Law provides that an alien whose father

is a Chinese national and who has been legitimated by him acquires the nationality of the Republic of China. The ward , as a non-marital child, was claimed by Dong-Shu Wu who is the citizen of our country. He has the nationality of our country through naturalization after returning to Taiwan and therefore possesses the dual nationalities. Thus, the law of the Republic of China is the law of the ward and is the law applicable to this case.

◎ **Territorial Jurisdiction**

- 1、 The Code of Civil Procedure does not specifically provide for the jurisdiction over the matter of handing over the child or the ward . However, under Article 1(1) of the Code of Civil Procedure, this case shall be subject to the jurisdiction of the court at the place where the defendant has his domicile. The defendant, Huo-Yen Wu, who is a citizen of our country, lives in Kaohsiung County within the jurisdiction of Kaohsiung District Court. Therefore, our court has the territorial jurisdiction over this case.

SUBSTANTIVE EXAMINATION

◎ **Resources of Law**

- 1、 Where both parents can not exercise the rights nor assume the duties in regard to a minor child, or where the parents die without appointing any guardian by a will, the guardian is determined by the following order : 1. Grandparents living in the same household with the minor ; 2. Brothers and sisters living in the same household with the minor ; 3. Grandparents not living in the same household with the minor. If the court is unable to specify the guardian based on the above orders or the best interests of the ward, the court shall, on the ground of the application filed by minors, prosecutors, local social welfare authorities or other privies, select or change a

guardian from collateral elderly relative with 3 levels, social welfare authorities, social welfare institutions or other proper people, and direct the method of guardianship. The court shall order the competent authorities or other social welfare institutions to make a visit and put forward a report or recommendation before making the selection or change in accordance with the above section. The applicants or privies may also put forward the relevant report or recommendation in order for the court to consider it. The above are enacted in Articles 1094(1)(2)(3) of the Civil Code.

- 2、 It is found that the bio-parents of the ward were dead and left no will to designate a guardian. Furthermore, the parents of the ward's bio-father, Dong-Shu Wu, and the ward's bio-mother, Marisa Tatiani, also died. Among lineal kinship is alive only the plaintiff. Therefore, the court has ascertained that the plaintiff is the legal guardian of the ward.

◎ **Best Interests**

- 1、 The court shall choose a guardian for minors in the best interests of the ward. However, the other provisions fail to specify how to deliberate on the best interests as stipulated in Article 1094 of the Civil Code. Despite so, the court shall consider the suggestive provisions of the best interests stipulated in Article 1055-1 of the Civil Code and other parts with which the above is compatible as well as the investigation report or recommendation of the competent authorities and social welfare institutions.
- 2 In terms of Yi-Hua Wu, the ward, possessing nationalities of Brazil and Republic of China with one being his domicile of origin (place of birth), the other his current domicile and the guardian and uncle filing for a change having different places of birth and domicile, the case is transnational one associated with determination and interpretation of

the best interests of the ward. Therefore, the court shall invoke international treaties as reference for adjudication.

- 3、 Since the case is about the dispute of the guardianship over the ward and the need to change the guardianship, the court shall focus on whether the legal guardian, the plaintiff, is inept for the guardianship in order to determine changing the respondent as the guardian is in the best interests of the ward. After undergoing the pains of losing his bio-parents, the ward has only his grandmother and elderly half brother left as his closest lineal relatives. They played an indispensable role in the ward's growing up period going through the prenatal, fetus, and childhood stage. In consideration of the ward's memory produced during the key period having been part of the ward's life, and the ward expressing his miss of his grandmother, half brother, and a puppy raised and wanting to come back to Brazil to play football with them during the trial, the court opined that the ward strongly attached himself to his born family.
4. The grandmother, Rosa Leocadia Silva Ergui, in terms of kinship and exercise of the guardianship, came to Taiwan for delivery of the ward. Her motive is quite normal, her desire is very strong and there is no finding that she is improper for guardianship.

RESULT OF THE TRIAL

To avoid the situations where the ward feels not being loved or respected due to the respondent's guardianship, gets hurt due to the misunderstanding of the deprivation of the respondent and his wife's care and love for his joining another family and insists on the plaintiff as his guardian, the court, upon examining the relevant circumstances and the entire files in relation to this case, ruled that the plaintiff is the sole and legitimate guardian of the ward and it is legally reasonable for the plaintiff to ask the respondent to turn over the ward to her guardianship.

CONCLUSION

One famous Australian legal scholar named Ehrlich has said that in the long run, justice cannot be guaranteed except by the integrity of judges. In a country without a jury system like Taiwan, judges must take to heart the genuine meaning of this saying. In the past, people have not always put their trust on the judiciary. There was an old saying that those rich walk free, while those without money get punished. I have put a peculiar emphasis on a high ethical standard to be observed by all judges. Judges must behave in a manner befitting their profession. They must not be interfered, not to mention taking bribes.

Judges are the final announcer of the laws and protectors of social justice. Thus, the characteristics of a judge must be neutral, objective, persistent, intelligent and fair. Judges need not be a hero. These ideal characteristics to be possessed by a judge are easy said than done. Yet, once one chooses to pursue a career as a judge, she or he must strive towards achieving these ideal personalities. Judges must observe a high ethical standard and develop self-discipline between their colleagues. Only when judges observe such a high ethical standard can the judiciary earn the trust of the people and the judiciary be appreciated.

Programa Oficial

23 de janeiro de 2005 – Domingo

- 18h Credenciamento
- 19h Palestra de abertura: Intolerância
• Flávia Piovesan – Brasil - Jurista
- 20h Coquetel de Confraternização

24 de janeiro de 2005 – Segunda-feira

- 10h Exibição do Filme Justiça – Local: Sala Itapema
- 14h Conferência: Liberdade de Imprensa
COORDENADOR: José Fernando Ehlers de Moura – Brasil - Juiz do TRT 4º Região
CONFERENCISTA: Ignácio Ramonet – França - Jornalista do Le Mond Diplomatique
- 15h30 Assinatura do Protocolo da Campanha "O Direito do Trabalhador Pede Carona"
- 15h45 Intervalo
- 16h Painel: Sistemas Judiciais e Direitos Humanos
COORDENADOR: Mário Elffman – Argentina
PAINELISTAS: • Fernando Salinas Molina – Espanha - Vice-presidente do Conselho Geral do Poder Judicial da Espanha
• Boaventura de Sousa Santos – Portugal - Sociólogo
• Eugênio Facchini Neto – Brasil - Diretor da Escola Superior da Magistratura
- 18h Conferência: Autonomia Judicial em Taiwan
COORDENADOR: Mauro Caum – Brasil - Juiz de Direito
CONFERENCISTA: Yang Fu-Chiang – Taiwan - Juiz Presidente do Tribunal de Kaohsiung
- 21h Jantar por Adesão
LOCAL: Vitrine Gaúcha (Av. Frederico Mentz, 1561 - SC DC Navegantes)

25 de janeiro de 2005 – Terça-feira

- 14h Conferência: Investigações sobre a Corrupção e Crime Organizado
COORDENADOR: Gerónimo Sansó – Argentina - Juiz
CONFERENCISTA: Gherardo Colombo – Itália - Juiz
- 15h30 Intervalo
- 16h Painel: Direito Ambiental
COORDENADOR: Daniel Utrutia Laubreaux – Chile - Juiz de Garantia
PAINELISTAS: • Vladimir Passos de Freitas – Brasil - Presidente do TRF4
• Jacqueline Morand-Deviller – França - Professora da Univ. de Paris
- 18h Depoimentos
• União Internacional de Magistrados - UIM - Sidnei Beneti - Desembargador SP
• Federação Latinoamericana de Magistrados - FLAM - Günther Spode - Desembargador RS
• Instituto de Acesso à Justiça - IAJ
• Rede Iberoamericana de Juizes - RIJ
• Rede Brasileira Juizes
• Juizes

Programação Paralela | 25 de janeiro de 2005 – Terça-feira

- 9h30 I Encontro Latinoamericano de Juizes Internautas
Democracia Digital e Magistratura
LOCAL: Sede AMATRA IV (Rua Rafael Saadi, 127 - Bairro Menino Deus)

4º Fórum Mundial de Juizes

23 A 25 DE JANEIRO DE 2005

PORTO ALEGRE - RS - BRASIL

CENTRO DE EVENTOS
DO HOTEL PLAZA SÃO RAFAEL

www.forumjuizes.net

Local
Centro de Eventos do Hotel Plaza São Rafael
Avenida Alberto Bins, 514
Porto Alegre - RS - Brasil

Promoção



Patrocínio Diamante



Patrocínio Ouro



Patrocínio Prata



Agência de Turismo



Secretaria Executiva





IV Fórum Mundial de Juizes

Porto Alegre - Janeiro 2005

Pré - Programação

23/01 - Domingo (星期日)

18h - Credenciamento 報到

19h - Palestra de abertura: Intolerância 諾貝爾和平獎得主

Shirin Ebadi (Irã - Prémio Nobel da Paz 2003) Confirmada

21h - Coquetel de confraternização 聯誼酒會

24/01 - Segunda-feira (星期一)

14h - Painel: Liberdade de Imprensa "媒體自由"

Ignácio Ramonet (França - Jornalista do Le Monde Diplomatique) 法國

Representante da Al Jazeera (Arábia Saudita) 沙烏地阿拉伯

16h - Painel: Sistemas Judiciais e Direitos Humanos "司法制度及人權"

Fernando Salinas (Espanha - Vice-presidente do Conselho 西班牙

Geral do Poder Judicial da Espanha) Confirmado

Boaventura de Sousa Santos (Portugal) Confirmado 葡萄牙

Eugênio Facchini Neto (Brasil) Confirmado 巴西

18h - Painel: Autonomia Judicial em Taiwan 台灣

Delegação taiwanesa - Confirmada

21h - Jantar por Adesão 自費晚餐

25/01 - Terça-feira (星期二)

14h - Painel: As investigações sobre a corrupção na Itália

Gherardo Colombo (Itália) Confirmado

義大利

16h - Painel: Direito Ambiental

"環境之權利"

Vladimir Passos de Freitas (Brasil - Presidente do TRF4) Confirmado

巴西

Jacqueline Morand-Deviller (França - Professora da Universidade de Paris) Confirmada

法國

巴黎大學教授

18h - Depoimentos

Instituto de Acesso à Justiça - IAJ

Rede Iberoamericana de Juizes - RIJ

Rede Brasileira de Juizes

Juizes

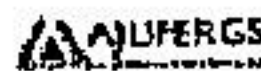
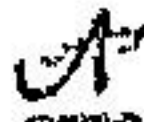
其他法官

地址:

Local: Centro de Eventos do Hotel Plaza São Rafael - Porto Alegre - RS - Brasil

- Av. Alberto Bins, 509

Patrocinado



会場地址: AV. Alberto Bins, 509

巴西南大河州愉港市

聖拉法艾飯店會議中心

Entrevista: Fu-Chiang Yang, juiz taiwanês que participou do caso Iruan

“Iruan tinha forte memória em relação ao futebol”

LEANDRO FONTOURA

O juiz taiwanês Fu-Chiang Yang está pela primeira vez no Brasil. Sua ligação com o país, entretanto, é forte: Yang foi um dos três juizes de Taiwan que decidiram o destino do menino Iruan, devolvido à família brasileira em fevereiro passado. Leia a seguir trechos da entrevista concedida ontem a Zero Hora pelo taiwanês que participa do Fórum Mundial de Juizes, na Capital:

ZH – Por que a decisão sobre o destino de Iruan demorou dois anos?

Yang – Os procedimentos deste caso não são dos mais longos em Taiwan. No começo, queríamos que as duas famílias, que tinham um grande amor pelo menino, tivessem guarda compartilhada. Gastamos bastante tempo para que houvesse um acordo, mas o tio taiwanês não concordou com a guarda compartilhada. Assim, pudemos sentenciar o retorno da criança ao Brasil, e Iruan ficou muito alegre.

ZH – Quais argumentos influenciaram a decisão?



Lei: Yang diz que avós com quem a criança vive têm preferência na guarda

Yang – O primeiro elemento foi um documento brasileiro assinado pelo pai do Iruan, Teng-Shu Wu, no qual ele dava preferência à permanência do menino no Brasil. Na legislação de Taiwan, com a morte dos pais, há uma seqüência de responsáveis pela guarda. Primeiro estão os avós com os quais a criança vive, depois o irmão e, por último, avós que não vivem com o órfão. O tio não consta nesta classificação. O terceiro elemento foi o melhor benefício para o menino. Descobrimos que ele tinha uma forte memória em relação ao futebol e à bandeira brasileira. Por fim, verificamos que a avó materna,

Rosa Leocádia tinha possibilidade econômica de ter a guarda.

ZH – A Justiça de Taiwan mantém hoje algum contato com a família brasileira de Iruan?

Yang – Não há contato direto com a criança pelo respeito à legislação brasileira. O que talvez falte seja uma autorização do Judiciário do Brasil que possibilite este contato. Ficaria muito grato se houvesse a possibilidade de visitar a criança, pois poderíamos contar aos tios como está Iruan. Os tios não têm contato com o menino, para não ter nenhuma interferência psicológica.

Ficaria muito grato se houvesse a possibilidade de visitar a criança, pois poderíamos contar aos tios como está Iruan.

ZH – E no futuro?

Yang – A Justiça de Taiwan ficaria muito grata se pudesse interferir para um contato entre as famílias. Se um dia Iruan puder visitar os tios, seria muito bom.

ZH – A guarda compartilhada depende de as duas famílias chegarem a um acordo?

Yang – Depois de um ano, o tio pode ter mudado seu pensamento. Se o Brasil puder abrir essa possibilidade, isso seria muito bom para a criança. O tio não pode solicitar a guarda compartilhada. Isso teria que ser feito no Brasil, com autorização da Justiça daqui.

Entenda o caso

■ Depois de uma polêmica que durou três anos, Iruan voltou ao Brasil em fevereiro. Hoje ele mora com a avó, Rosa Leocádia Ergui, em Canoas.
 ■ O caso começou em 1998 quando o menino perdeu a mãe brasileira. Em março de 2001, aos cinco anos, ele foi levado pelo pai, um marinheiro taiwanês. O pai morreu e o menino foi retido por um tio em Taiwan, que obteve a cidadania taiwanesa para o sobrinho. Depois de uma longa briga jurídica, a Justiça de Taiwan entregou o menino a Rosa.

A programação de hoje

- 14h – Liberdade de Imprensa: Ignácio Ramonet (Jornalista do La Monde Diplomatique, França)
- 16h – Sistemas Judiciais e Direitos Humanos: Fernando Salinas (vice-presidente do Conselho-Geral do Poder Judicial da Espanha), Boaventura de Sousa Santos (Portugal) e Eugênio Facchini Neto (Brasil)
- 18h – Autonomia Judicial em Taiwan: Fu-Chiang Yang
 Local: Centro de Eventos do Hotel Plaza São Rafael
 Informações: www.forumjuizes.net

Juízes de Direito pregam rebeldia contra o Supremo Tribunal Federal.

RS
Porto Alegre

4º Fórum Mundial de Juízes 第四屆法官論壇 主席 ✓ GUILHERME HORNOS/O SUL

O Manifesto Sobre as Súmulas Vinculantes, divulgado ontem, no encerramento do 4º FMJ (Fórum Mundial de Juízes), pelo NEC (Núcleo de Estudos Críticos de Direito), um grupo de juízes gaúchos que estuda questões jurídicas sob a ótica das demandas sociais, sugere o descumprimento das determinações do STF (Supremo Tribunal Federal). "Propomos, desde já, no exercício da autonomia que ainda não nos foi subtraída, a declaração expressa e pública de que não nos curvaremos às vinculações que o STF venha a estabelecer," diz o texto.

A súmula de efeito vinculante está prevista na reforma do Judiciário, aprovada pelo Congresso no ano passado e promulgada no dia 8 de dezem-



JOÃO RICARDO COSTA: STF não tem legitimidade para alterar Constituição.

bro. Trata-se de um mecanismo pelo qual os juízes das instâncias inferiores ficam obrigados a seguir as orientações firmadas pelo STF, o que reduziria o número de recursos.

RETROCESSO – O manifesto classifica a alteração como um "inaceitável retrocesso na forma de soluções dos conflitos porque agrega inquestionável crise de legitimidade à atividade jurisdicional" e afirma que ela "põe por terra a independência do Poder Judiciário garantida no artigo 2º da Constituição Federal" e "desrespeita o princípio do pluralismo político, contido nos fundamentos do Estado brasileiro, ao impor à sociedade o pensamento único em matéria de interpretação legislativa".

Para o coordenador do FMJ, juiz João Ricardo Costa, integrante do NEC, a súmula vinculante causa impacto não só no Poder Judiciário, mas em toda a sociedade. "É um instrumento de fragilização da democracia e de desvalorização do Poder Judiciário", afirma. Ele diz que o repúdio à medida é dominante entre os juízes de todo o país, pois todas as associações de magistrados se posicionaram contra a reforma.

"O cargo de ministro do Supremo é uma indicação política, atendendo sobretudo a interesses econômicos, nunca foi submetido ao voto popular, e o STF está fazendo mudanças na Constituição através das súmulas", denuncia Costa. "Não vamos cumprir a determinação", finaliza. (WPM)

Vôos fretados.

ÍNDICE DE DESEMPREGO NO PAÍS FECHA 2004 ABAIXO DE 10%.

Orçamento.

Decorado com móveis antigos e imponentes, o gabinete do prefeito, no Paço Municipal, será usado por José Fogaça apenas para receber visitas.

Para trabalhar no dia-a-dia, Fogaça optou pela ante-sala como forma de preservar o mobiliário.

Trabalho voluntário

Sem vocação para o assistencialismo, Hilda de Souza, mulher do prefeito de Pelotas, será uma primeira-dama com trabalho diferente da maioria.

Procuradora aposentada da Assembleia, Hilda é titular de uma coordenadoria para a eficiência e a qualificação dos serviços.

O projeto enviado à Câmara previa que na eventualidade de o titular da coordenadoria ser cônjuge do prefeito, a função não seria remunerada. Como a Câmara suprimiu a norma, Hilda vai devolver aos cofres públicos o valor integral da remuneração.

Os tempos mudam

Anunciado como um dos ministros que marcariam presença no Fórum Social Mundial, o chefe da Casa Civil cancelou a vinda a Porto Alegre quando soube que acompanharia o presidente Lula na viagem a Davos.

Dirceu vai explicar as Parcerias Público-Privadas no Fórum Econômico Mundial.

do Estado com o nome dos deputados que votaram a favor do aumento, é

empresas que estão questionando judicialmente os débitos.

Começa o Fórum de Juizes



Já que a organização do 5º Fórum Social Mundial suprimiu a sessão de abertura, o governador Germano Rigotto fez uma espécie de inauguração pessoal, ontem, no Centro de Eventos do Plaza São Rafael.

Ao abrir o Fórum Mundial de Juizes, um dos eventos paralelos, o governador disse que considerava o encontro dos magistrados como a abertura do Fórum Social Mundial.

Rigotto defendeu a volta do Fórum a Porto Alegre em 2007.

– Porto Alegre é sinônimo de Fórum Social Mundial – discursou para uma platéia de magistrados do Brasil e do Exterior.

O governador também anunciou que na quarta-feira a entrega da medalha da Ordem do Ponche Verde ao juiz italiano Gerardo Colombo, que combate o crime organizado no seu país.

Aliás

Com o calor de Porto Alegre e a carência de alternativas, será difícil boicotar as multinacionais de cervejas e refrigerantes no território do Fórum.

naoof ANTONIO MONTEIRO fez mais do que uma visita protocolar na noite de sábado na quadra da Praiana.

Vestindo a camiseta da escola, beijou a bandeira da Praiana, fez discurso e caiu no samba.

Os funcionários do Palacinho formaram até uma ala para desfilar na escola.

Isto é incrível

Leitor da Página 10 recebeu na semana passada carta do Detran-RS comunicando o vencimento de sua carteira de habilitação. Na carta constavam os locais para maiores informações, o Disque Detran e o site (www.detran.rs.gov.br).

Como não conseguiu informações pelo telefone, recorreu ao site do Detran para consultar os endereços dos Centros de Formação de Condutores e ficou chocado com a desatualização: ainda há telefones com sete algarismos.

A Página 10 fez o teste e constatou que pelo menos 14 telefones de CFCs da Capital estão com números desatualizados no site do Detran.

MIRANTE

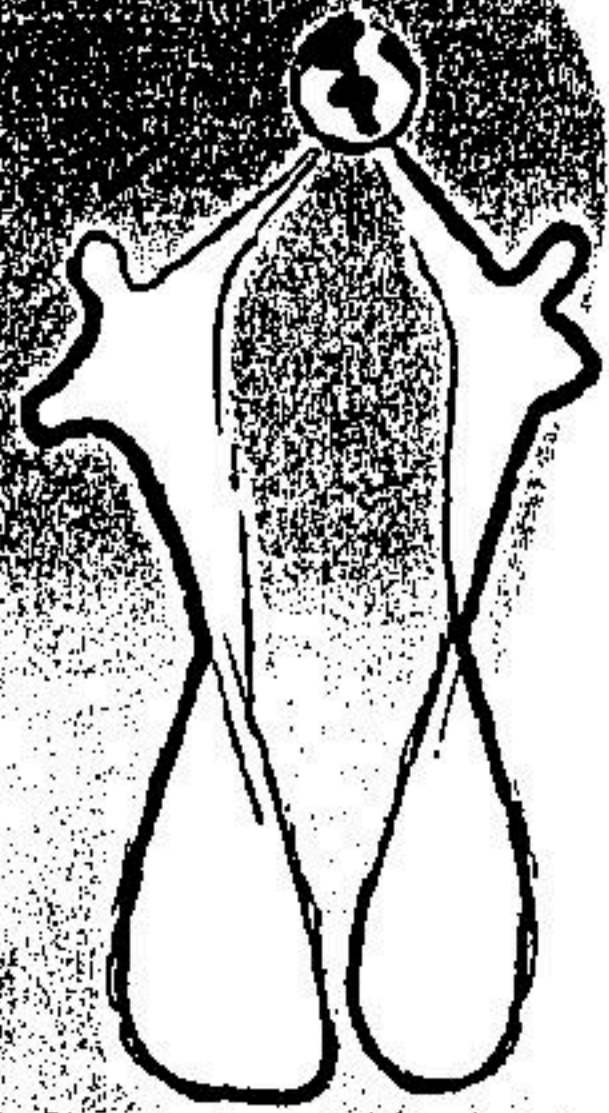
◆ Será lançado hoje, às 19h30min, o movimento “O Direito do Trabalho pede Carona”, com a presença do vice-presidente do Conselho Geral do Poder Judiciário da Espanha, Fernando Salinas Molina.

◆ A campanha é uma das atividades paralelas ao Fórum Mundial de Juizes e tem por objetivo garantir acesso fácil e direto de informações sobre direitos trabalhistas à população.

◆ Prefeitos do Litoral Norte se reúnem no dia 28, em Capão da Canoa, para discutir o desenvolvimento da região com deputados federais e senadores gaúchos.

Leia as colunas anteriores em zh.clicrbs.com.br

2004 南大河州人權獎



A Fundação Maurício Sirotsky Sobrinho, a Comissão de Cidadania e Direitos Humanos da Assembléia Legislativa do Rio Grande do Sul e a Representação da Organização das Nações Unidas para a Educação, a Ciência e a Cultura (UNESCO) no Brasil

Concedem

MENÇÃO HONROSA 榮譽提名

吳憶樺(依羅安)返巴特別小組

COMISSÃO INTERINSTITUCIONAL PELO RETORNO DE IRUAN AO BRASIL

喜南大河州保護人權之努力參與

pela contribuição na Defesa dos Direitos Humanos no Estado do Rio Grande do Sul.

Porto Alegre, 10 de dezembro de 2004.

2004年12月10日

Prêmio
Direitos
Humanos
do
Rio Grande do Sul
2004

Nelson Pacheco Sirotsky
Presidente
Fundação Maurício Sirotsky Sobrinho

西羅斯基基金會

Dep. Fabiano Pereira
Presidente
Comissão de Cidadania e Direitos Humanos
Assembléia Legislativa do Rio Grande do Sul

南大河州公民與人權立法大會

Alessandra Schneider
Coordenadora
Escritório-Antena da UNESCO
no Rio Grande do Sul

科教文組織-巴西南大河州
永久代表團



司法院剪報資料

來源：聯合報

版別：

C4 日期：94. 2. 17

吳憶樺案巴西法官 稱讚我國司法獨立

「是我就沒法這樣判」

【記者王文玲／台北報導】「若是我，就沒法這樣判決」，承審台巴之子吳憶樺事件的巴西法官Januie，對我國法官能獨立審判，依法將吳憶樺的監護權判給巴西外婆，表達崇敬。

上個月23日到25日，在巴西舉行的「世界法官論壇」會議中，審理吳憶樺監護權案的一審庭長楊富強，在會中發表專題演講，說明吳憶樺案的審判始末。楊富強40分鐘的報告，引起台下義大利、法國等國法官代表的熱烈回應，演講結束後並起立鼓掌。

司法院派員出席世界法官論壇盛會

吳憶樺事件引國際重視 我司法改革成效

【本刊訊】一年前，吳憶樺監護權爭議事件不但造成國人的震撼，亦引起巴西人的關注，更讓巴西法官肅然起敬，因為中華民國的法官在審理裁判及執行該事件時均展現一個民主法治先進國家應有的審判獨立及司法自主風範。

為比，巴西法官協會轉請巴西駐臺商務辦事處向司法院邀請承審該事件之法官出席於今(九四)年一月二十三日至二十五日在巴西西南大河州倫港市(Porto Alegre)舉行之第四屆「世界法官論壇」會議發表專題演講，介紹我國司法制度及法官承審該事件之心得。該論壇係衍生自「世界社會論壇」(World Social Forum)，乃一年一度非政府組織之國際盛事。

司法院有鑑於此次國際性會議可使世界各國瞭解我國司法制度與近年來司法改革的成果，遂指派參與該事件審理之高雄地院

楊富強庭長，會同臺北地院在漢卿法官及司法院少年及家事廳郭明傳代科長三人組團前往。

楊庭長等三人於二十二日抵達位於巴西西南部的倫港市，受到主辦此次「世界法官論壇」的 Umberto法官及巴西當地承審吳憶樺事件的 Janine 法官親臨機場熱情迎接。

我國與巴西雖無正式邦交，惟「世界法官論壇」大會仍將中華民國國旗與各與會國之國旗併排懸掛飄揚於會場內，一月二十三日代表團進入會場時，大會立即安排代表團接受當地主要新聞媒體 NERCO HORA 報社及巴西多家電視臺的專訪，由楊庭長說明我國法院如何審理吳憶樺事件、法官形成心證的過程、執行交付子女之程序暨我國司法制度及改革方向等問題，該報於翌日以半版之篇幅刊出相關消息以及專訪的談話內容，足見巴西對於我國代表團之重視與禮遇。

一月二十四日下午六時

，楊庭長在大會會場以英語發表專題演說，主題為

In Pursuit of Justice: Recent Judicial Issue

In Taiwan--From

Taiwan-Brazil Civil Case]

point 投影片方式，配合大會的葡語同步翻譯，詳細介紹我國司法制度及近年來司法改革努力的成果，並舉吳憶樺事件說明我國審判獨立之精神不容質疑。

長達四十分鐘的專題演說，臺下座無虛席，演說結束時，聽眾均起立鼓掌，久久不歇，隨後多位與會之巴西及其他各國法官、檢察官紛紛就我國司法制度、法官之產生及吳憶樺事件等相關問題提問，楊庭長逐一詳實說明，結束後當地多位司法首長、法官及檢察官聯名向代表團致意並合影留念，顯示與會各國人員對於我國法官落實審判獨立精神之敬意。

本大會除由我國代表團之楊庭長專題演講外，並有法國、西班牙、葡萄牙、義大利、阿根廷等國法官、法學教授發表演說或報告各國司法、人權制度及追求和平環境之努力成果。楊庭長及汪法官英語流利，輔以華裔之譯員，賓律師充任葡語翻譯，在會場內外均能與各國代表團順暢溝通交流，藉由此次國際會議，成功地將我國司法改革的成功向世界發聲，同時達到與各國法官司法交流的目的，具有深遠的意義。

吳憶樺案 我司法官贏得尊敬

高雄地院庭長等人赴巴西參加世界法官論壇 突破中國「封鎖」公開演講

（記者劉志原／台北報導）高雄地院庭長楊富強、台北地方法院法官汪漢卿及司法院少年及家事廳代理科長郭明傳，上個月月底代表我國赴巴西參與二〇〇五年「世界法官論壇」，台巴兩國雖然無邦交，但在駐巴代表處努力下，仍突破中國封鎖，在會場掛起我國國旗；承審吳憶樺監護權的高雄地方法院庭長楊富強，即以此案例說明我國司法獨立審判，不容質疑，楊富強演講完畢後，獲台下近八百名與會者起立鼓掌致敬。

司法院官員指出，台巴混血兒吳憶樺監護權爭奪案，在台巴兩國引發相當震撼，吳憶樺回到巴西不久後，巴西法官協會即邀請承審吳憶樺監護權歸屬案的庭長楊富強赴巴西愉港市參加一月廿三日舉行的法官論壇，司法院並派精通外語的台北地方法院法官汪漢卿陪同與會。

由於台巴兩國無正式邦交，我國代表團在出發前即擔心中國居間作梗，一度傳出我國雖可與會，但無法在大會上發表演說，司法院即向巴西表達「不在大會演說就不參加」的嚴正立場，最後在外交人員努力下，巴西保證可在大會上演講。

代表團一行三人於一月廿一日出發，經東京、洛杉磯、聖保羅等地三次轉機、近卅小時的飛行後，抵達巴西大河州愉港市，此地正是吳憶樺在巴西居住的城市，但吳憶樺已與家人外出渡假，台灣代表團並未前往探視。

楊富強則表示，抵達巴西後，巴西法院承審吳憶樺監護權案件的女法官Jaine也到場迎接，並陪同代表團至舉行會議的聖拉法艾飯店，此一飯店也正是前往巴西，欲參加另一場「世界社會論壇」會議的中國代表團下榻處，台、中兩國的不同會議代表正好下榻同一飯店，期間兩國代表曾稍作交談。

據指出，巴西當地民眾對吳憶樺案相當關注，不少巴西法官及媒體人員向代表團人員表示，巴西當地的司法仍會受外力干預，所以他們看到吳憶樺案在台引起立委及許多政治人物關心後，都不認為我國法院會依法將吳憶樺的監護權判給羅莎外婆，故在見到我國法院判決羅莎勝訴後，均感到十分「震驚」。

承審吳憶樺案的楊富強庭長，在大會中即以此案對與會的法國、西班牙、葡萄牙、義大利、阿根廷、秘魯等國法官、檢察官及法界人士演講，說明我國的司法獨立、法官依法判決，不受外力干預，演講完畢後，台下近八百名與會者起立鼓掌致敬。

會後巴西媒體也訪問楊富強及汪漢卿兩人，翌日當地報紙還以半版的篇幅刊登我國代表團到訪及台灣司法改革成就的訊息，司法院表示，相當滿意此次巴西對於我國代表團的重視與禮遇。



楊庭長與巴西司法首長、法官合影



楊庭長與巴西檢察首長合影



代表團與 Jannie 法官合影



代表團與會情形



與 Jannie 法官交流



接受 NERO HORA 報社專訪



電視臺訪問



電視臺專訪



電視臺專訪



與義大利、西班牙、巴西法官舉行聯合記者會



與葡萄牙法官交流



致贈司法院簡介(中英對照版)予 Jannie 法官



與 Jannie 法官合影於其辦公室



與 Jannie 法官及其助理合影



聯邦高等法院家庭法庭



證人保護室之兒童遊戲組



證人保護室之兒童遊戲組



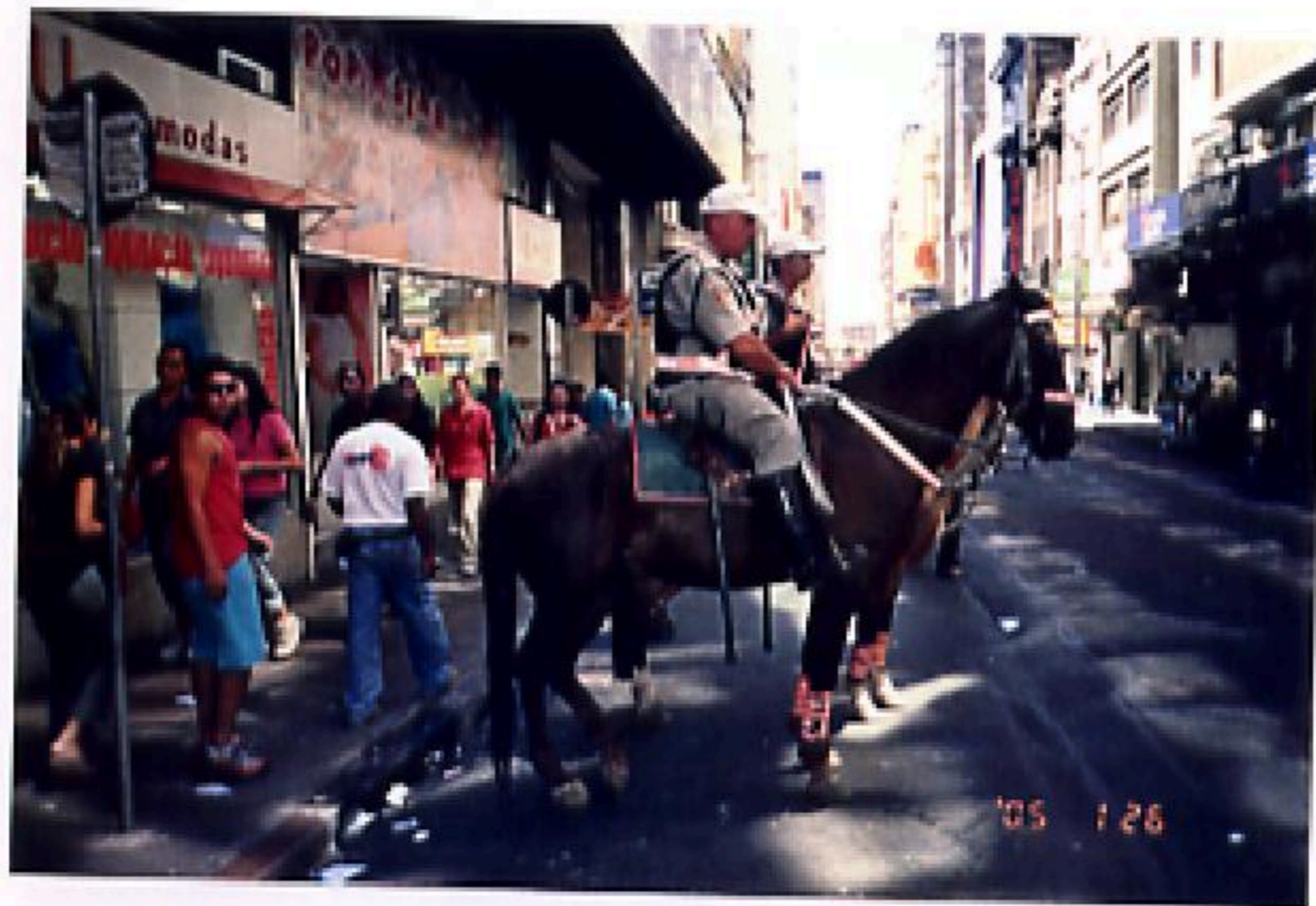
與 Breno 法官交流



與 Breno 法官、代表處許秋煌組長合影



繁榮的愉港市街道



會場附近的騎警