

Can Yeginsu on media freedom

2 November 2020

By William Horsley

The Speaker at the AEJ's Meeting via Zoom on 2 November was leading human rights lawyer Can Yeginsu, a member of the High Level Panel of Legal Experts on Media Freedom set up last year as part of an international campaign to turn back the worsening trend of attacks on press freedom worldwide. The Panel's core goal is to bring about a better level of compliance by state authorities with the framework of international legal protections for journalists that is recognised by most governments in theory but is often disregarded in practice.

At 39 years of age, UK-based lawyer Can Yeginsu is one of the more youthful members of the panel of leading international lawyers appointed last year in a much-publicised bid by the governments of the UK and Canada to counter what they termed a "global assault on media freedom". He spoke to the gathering of AEJ members and other international journalists on the theme of "Media Freedom and the rule of law: What's the connection?"

The theme echoes a key concept at the heart of the international campaign launched with much fanfare in London in July, 2019: that media freedom and the rule of law are inextricably linked and inter-dependent as the twin pillars needed for rules-based and democratic societies.

Can Yeginsu has taken important press freedom and human rights cases to courts all over the world and is currently defending the award-winning Philippino journalist Maria Ressa against libel and other criminal charges that have been widely denounced as politically-motivated. He said many governments had used the Coronavirus pandemic as a pretext to silence critical media voices and suppress embarrassing truths.

For Yeginsu, the media stands at a crossroads. He has links with RSF (Reporters Without Borders), and cited RSF's latest annual Press Freedom Index report which identified five "crises" for the world's media: the suppression and jailing of critical journalists by aggressive authoritarian regimes; the spread of state propaganda, disinformation and trolling on the Internet and social media; politicians' incitement of hatred and labelling of critical media as "foreign agents"; a crisis of public trust in the credibility of news media; and an economic crisis caused by the collapse of old business models based on sales, advertising and a free market in news.

Can Yeginsu demonstrated what he called the "symbiosis" between media freedom and the rule of law by recalling the historical examples of totalitarian governments -- those of Nazi-era Germany and the repressive communist regime of the Soviet Union. In Nazi Germany, judges enforced the racist Nuremberg laws on the basis that they were legitimately adopted. For authoritarian leaders, Yeginsu said, the "rule of law" means rigid obedience to the law even if those laws are arbitrary. By that way of thinking even the mass transport of Jews to concentration camps was legal because it was the law. And under the constitution of the Soviet Union a range of civil and political rights were protected; but in reality basic rights can be violated at will if they are not protected by judicial independence and independent oversight bodies.

So, the true meaning of a state being “governed by the rule of law”, Can Yeginsu said, is that justice for wrongs against individuals can be accessed by all who seek it. It must be based on laws that are publicly made and proclaimed, as well as guarantees of judicial independence and mechanisms which are capable of testing the legality of government actions. And only a genuinely free press can fulfil that essential condition. Only when writers and journalists are free to comment on public affairs in the interests of informing the wider public can miscarriages of justice be exposed and corrected.

One prominent example of a free press playing that role in recent times was the actions of NGOs and journalists in challenging the legality of the UK’s mass data collection programmes. Details of those secret programmes were published in the Washington Post and Guardian newspapers, and in the end the European Court of Human Rights ruled that they were unlawful because they lacked the necessary oversight mechanisms and safeguards to protect privacy rights.

Thus the role of independent judges and lawyers can be the same as that of a free, independent press: both are necessary to enable people to assert their rights and hold the powerful to account. Thus governments may seek to increase their grip on power by controlling the media and other independent institutions, and by taking action against independent lawyers and judges. The rule of law and media freedom are in effect the two pillars that give effect to the protection of fundamental rights and both are indispensable, he concluded.

Can Yeginsu then outlined the work of the 15-member High Level Panel of Experts on Media Freedom. The Panel has undertaken to publish authoritative reports on six topics or themes, with advice and recommendations for governments which are intended to prevent and reverse abuses of media freedom. He stressed that the Panel is working in coordination with an extraordinary inter-governmental campaign in support of the same goals, in the form of a Global Media Freedom Coalition of (so far) 38 UN member states, which was established on the initiative of the UK and Canada.

Yeginsu is taking a lead in writing the Panel’s Report on Providing Safe Refuge to Journalists at Risk, which is to be published later this month. The issue is critical, he said, because for many journalist the framework of protection for them that exists in international law “doesn’t work”. Many journalists face real threats to their safety because of their work but face huge obstacles and so are unable to escape to a place of safety. The report would seek to put in place an effective system to provide that safe refuge. It would also promote a more effective “investigative tool” to address abuses against journalists in their home countries.

Underpinning all the Panel’s work, he said, was the recognition that addressing threats to media freedom must also entail addressing threats to the rule of law – because no media can be totally free in a country where there is no respect for the rule of law; and in turn the rule of law can’t operate for long in a country where the media is no longer free.

Finally, Can Yeginsu remarked that the Panel’s in-depth analysis of the issues had found a marked deterioration in compliance with international standards on protecting media freedom, even among states which had traditionally enjoyed a strong reputation regarding media freedom. In view of that, he said, the Panel’s work could only be meaningful if it results in concrete changes in the actions of

states. And it was important that enough states are seen to act on the Panel's concrete recommendations.

"We need to incentivise other states to follow good practice", Yeginsu concluded, "and for that we need to find leader states: that is why compliant states have to show leadership".

For more information on the work of the High Level Legal Panel, and its plans for publishing its Reports and Recommendations, see the website of the International Bar Association's Human Rights Institute (IBAHRI), which acts as the Secretariat to the High Level Panel of Legal Experts on Media Freedom: <https://www.ibanet.org/IBAHRISecretariat.aspx>