**Case Information**

1. **Case Title:** Jair Messias Bolsonaro / Party Coalition “Brasil acima de tudo, Deus acima de todos” (PSL/PRTB) vs. Party Coalition “O povo feliz de novo” (PT/PCdoB/PROS)
2. **Meta Data**
3. **Case Number:** 0601776-50.2018.6.00.0000
4. **Corresponding Law Reference:** Brazil, Superior Electoral Court, Complaint Nº 0601776-50.2018.6.00.0000 - Class 11541 - Brasília, Distrito Federal. Justice Rapporteur Luis Felipe Salomão. Federal Gazette publication on 10-20-2018.
5. **Date of Decision:** 10-20-2018
6. **Featured Case:** n/a
7. **Region:** Latin-America and Caribbean
8. **Country**: Brazil
9. **Mode of Expression:** Press / Newspapers; Public Speech
10. **Judicial Body:** Electoral Council or Court; Specialized Court/Tribunal
11. **Type of Law:** Election Law
12. **Main Theme**: Access to Public Information; Content Regulation / Censorship; Public Order; Defamation / Reputation; Political Expression;
13. **Outcome**: Decision - Injunction or Order Granted
14. **Status:** Closed;
15. **Tags:** Elections; Misinformation; Political Criticism
16. **Excerpt:**

**Case Tracking - n/a**

**Case Analysis**

1. **Summary and Outcome**
   1. **Summary:** A political advertisement, displayed during the election period, presented presidential candidate Jair Bolsonaro as favorable to torture practiced by the Brazilian state during the military dictatorship.
   2. **Outcome:** J. Luis Felipe Salomão considered that the advertisement was unreasonable and violated electoral law, banning its broadcasting.
2. **Facts**
   1. **Facts giving rise to cause of action**

On October 16 and 17, 2018, an advertisement produced by the Workers’ Party (*Partido dos Trabalhadores*, “PT”), which supported the candidate Fernando Haddad alongside “PCdoB” (*Partido Comunista do Brasil*) and “PROS” (*Partido Republicano da Ordem Social*), linked the Social Liberal Party (*Partido Social Liberal*, “PSL”) candidate Jair Bolsonaro to the torture practiced by the Brazilian state during the military dictatorship. The advertisement was broadcasted during the election period, which was characterized by a scenario of extreme polarization.

The publicity piece featured statements of Bolsonaro such as “Let’s shoot the ‘petralhada’ in Acre” – referring to members of the Workers’ Party (“PT”) - and “I’m in favor of torture”, as well as a tribute of the candidate to Carlos Alberto Brilhante Ustra, chief colonel of political repression bodies during the Brazilian military regime in the 70’s and declared torturer by the Brazilian courts.

The images of Bolsonaro giving these statements were mixed with scenes of the Brazilian movie “Batismo de Sangue”, showing a naked character being tortured, and with the testimony of the writer and activist Maria Amélia de Almeida Teles, tortured during the dictatorship. In Teles’ testimony, she says that the moment of greatest pain was when colonel Ustra took her two children to see her after a torture session.

* 1. **Cause of action or law at issue**

In view of the above, Bolsonaro’s party coalition “Brasil acima de tudo, Deus acima de todos”, composed by the Social Liberal Party (*Partido Social Liberal*,“PSL”) and the Brazilian Labor Renovation Party (*Partido Renovador Trabalhista Brasileiro*, “PRTB”), filed an Electoral Complaint before the Superior Electoral Court (“TSE”) requesting an injunction to ban the broadcasting of the advertisement. The Coalition alleged that the content violates art. 242 of the Brazilian Electoral Code, which sets forth that no political party can use advertising means to artificially create emotional or passionate mental states in the public.

1. **Decision Overview**
2. **Deciding judge & type of opinion**

On october 20, 2018, J. Luis Felipe Salomão, of TSE, granted the injunction requested by Bolsonaro’s Coalition, stating that the advertisement was unreasonable and violated electoral legislation. Therefore, the broadcasting of the political advertisement was suspended under a penalty of R$ 50,000.00 (for each new time it is broadcasted) in case of violation.

1. **Issue statement**

The main issue before the court was whether the advertisement would effectively violate art. 242 of the Electoral Code, which forbids the creation of extremely dangerous mental states in the public - situation that could justify imposing limits to free speech during elections, a moment of great relevance to democracy.

1. **Parties’ arguments**

Bolsonaro’s Party Coalition claimed that the advertising piece violated art. 242 of Electoral Code for causing fear in the population by suggesting that if Bolsonaro was elected, he would persecute and torture his political opponents.

1. **Court’s rulings & legal grounds**

J. Luis Felipe Salomão stated that previous TSE rulings established that art. 242 of the Electoral Code cannot hinder political criticism, since democratic processes demand diversity of opinion.

However, J. Luis Felipe Salomão argued that, in view of the conflict scenario of polarization and extremism that characterized the electoral period of 2018 in Brazil, the advertising could create passionate states in the population with potential to prompt violent behavior. Thus, Justice Salomão considered that the content violates art. 242 of Electoral Code.

Additionally, the torture scenes of the movie “Baptism of Blood”, employed by the advertisement, were also relevant for the decision. According to J. Luis Felipe Salomão, the Ministry of Justice establishes that violent content should have an indicative rating for people over 14 years old and can only be broadcasted on television after 9 pm. Since art. 42 of the Electoral Code sets forth that parties advertising period begins at 8:30 pm, Haddad’s coalition advertisement could not be broadcasted.

**Direction**

1. **Decision Direction**: Contracts expression
2. **Information**: In electoral periods, freedom of expression must be carefully protected. Even though party coalition “O Povo Feliz de Novo” advertisement was strong, criticism is central to the democratic debate. The advertisement did not distort any of Bolsonaro's speeches - it only brought up real statements.

**Perspective**

1. Global Perspective:
2. **National Law or Case**

Braz., Electoral Code, Law no. 4,737/1965, Articles 42 and 242

Braz., T.S.E, Rp. no.1211-77, PSESS (2014)

1. Other National Standards, Law or Jurisprudence
2. General Notes:

**Significance**

1. Case significance:

The decision goes against TSE’s previous ruling that established that political criticism cannot be restricted on behalf of art. 242 of the Electoral Code.

1. Precedential Effect:
2. Persuasive Effect
3. Related Cases
4. Additional Citations

**Documents**

1. Official Case Documents:

TSE Decision

<http://dissenso.org/wp-content/uploads/2019/01/tse-suspende-liminarmente-propaganda.pdf>

1. Amicus Briefs and Other Legal Authorities
2. Reports, Analysis and News Articles
3. Relevant Materials in Foreign Languages

<http://dissenso.org/casoteca/jair-bolsonaro-vs-fernando-haddad-2/>