**Case Information**

1. **Case Title:** Fake news inquiry global takedown orders

1. **Meta Data**

1. **Case Number**: Inq 4781
2. **Corresponding Law Reference**: Brazil, Federal Supreme Court, Inquiry (Inq) nº 4781. Rapporteur: Alexandre de Moraes
3. **Date of Decision**: 05-26-2020
4. **Featured Case**: n/a
5. **Region**: Latin-America and Caribbean
6. **Country**: Brazil
7. **Mode of Expression**: Electronic / Internet-based Communication; Public Documents
8. **Judicial Body**: Federal Supreme Court (Constitutional Court);
9. **Type of Law**: Criminal Law
10. **Main Theme**: Defamation / Reputation, National Security, Violence against Speakers
11. **Outcome**: libel, defamation and slander affirmed;
12. **Status**: open
13. **Tags**: Freedom of expression, Disinformation, National Security, Criminal Defamation, Public Officials.
14. **Excerpt**:

**Case Tracking -**

http://portal.stf.jus.br/processos/detalhe.asp?incidente=5651823

**Case Analysis**

1. **Summary and Outcome**
	1. **Summary**: In March 2019, Chief Justice Dias Toffoli, of the Supreme Court, ordered a criminal inquiry into "the dissemination of fake news, false accusations, threats" and other illegal conduct, "affecting the honorability and security of the Supreme Court, as well as that of its members and their families". Justice Alexandre de Moraes was assigned as rapporteur by the Chief Justice, to preside over the inquiry. Moraes J. found that initial investigations pointed to the “coordinated use organized of computer tools, such as accounts on social networks, to create, disclose and disseminate false information or capable of harming institutions of the rule of law, notably the Supreme Court”.
	2. **Outcome**: Moraes J. ordered Facebook and Twitter to suspend the accounts of individuals under investigation. After reports the social media companies had only geoblocked content from those accounts in Brazil, the rapporteur directed them to make the content unavailable globally.

1. **Facts**
	1. **Facts giving rise to cause of action**

In March 2019, after months of growing criticism of the Supreme Court, as well as insults direct at its members, particularly by President Jair Bolsonaro's supporters, Chief Justice Dias Toffoli ordered the start of a criminal inquiry, The Chief Justice cited article 43 of the Rules the Court, which provides that “In case of a violation of criminal law at the premises of the Court, the President will start an investigation, if it involves an authority or person subject to his jurisdiction, or delegate this assignment to another Justice.” The order described the remit of the investigation as "dissemination of 'fake news' and the financing scheme related to it, slanderous denunciations, threats and other illegal conduct affecting the honorability and security of the Supreme Federal Court, its members and their families.

As part of its efforts to identify the authors of the social media posts with insults against the Court and its members, the police concluded that seizure of devices and inspection by forensic experts and questioning hearing of the individuals under investigation would be required.

1. **Cause of action or law at issue**
	1. **Procedural history**
2. **Decision Overview**
	1. **Deciding judge & type of opinion**
	2. **Issue statement**
	3. **Court’s rulings & legal grounds**

The Court's decision and the opinion of the rapporteur

On 26 May 2020, Moraes J reviewed the report by the rapporteur-appointed special master (a trial court judge) on the progress of the investigation. On the basis of testimony by members of the House of Representatives, as well of content gathered by the police, the report was that the record showed "reiterated postings in social media of messages containing serious insults to this Court and its members," that indicia pointed to the use of bots to reach substantial audience, and that such "mechanism, apparently, is being funded by a group of businessmen who, according to indicia on record, operated by providing (through all sorts of ways) resources to the participants of the organisation". As such, he corroborated the request submitted by the police for the seizure of devices used by individuals under investigation, to establish the extent of the involvement of the businessmen, as well as questioning by the police. In his submission, the Prosecutor-General was of the opinion the Court should limit itself to ordering the police to formally question individuals under investigation and providers to preserve posts and produce subscriber data on three Twitter accounts.On his ruling, Moraes J found that the evidence on record pointed to "the real possibility of the existence of a criminal conspiracy – referred to in testimony by members of the House of Representatives as 'Hate Cabinet' – devoted to the dissemination of fake news, offensive attacks on various individuals, to the authorities and to the institutions, among them the Federal Supreme Court, with patent content of hatred, subversion of the order and incentive to breach institutional and democratic normality". He relied on testimony and a report showing that 11 Twitter accounts followed each other and describing how the "those accounts started to post negative content and attacks on the [Supreme Court], from 7 November 2019. Initially, not using hashtags, or using the hashtag #STFVergonhaNacional [ie Supreme Court national disgrace]." The police also reported that the accounts had posted content "stating that the [Supreme Court] is a disgrace and calling for impeachment proceedings against its Members".

On the basis of those findings, Moraes J ordered a number of measures against the individuals under investigation, including obtaining bank records, searches and seizures. He also ordered the accounts of individuals under investigation on Facebook, Twitter and Instagram, which he added was "necessary to halt the speeches with hateful content, subversion of the order and incentive to break institutional and democratic normality."

On 18 June 2020, the Supreme Court decided on a related constitutional challenge case ([ADPF 572](https://www.internetlab.org.br/wp-content/uploads/2021/04/paginador.jsp-8.pdf)), brought against the provision on the Rules of the Court used as a basis for the criminal inquiry, and against the inquiry itself. In seriatim opinions filed by each Justice, it can said the Court reasoned the inquiry was a necessary institutional response against attacks from those seeking to displace it, to undermine judicial independence, publishing threats to its members on social media and deliberately spreading disinformation as a strategy to break with the established constitutional order. Moraes J, like the Chief Justice, took part in the deliberation after the Court rejected an *amicus curiae* petition, raised during oral argument, for their recusal on the ground their acts were on review.

The justice presiding over the inquiry transcribed posts which he saw as falling outside of constitutionally protected speech, including "Rape and kill the daughters of the menial Justices of the Supreme Court", "How much is it to shoot at close range each [expletive] Justice of the Supreme Court that would want to end with criminal sentences being served once upheld by an appeals court? If they [do so], we are left with throwing gasoline and igniting a fire at the plenary session room of the Supreme Court, with the Barbie Justices inside" [NB: The Court had recently decided on a case reversing its 2018 precedent permitting judges to order defendants to serve sentences after an appeals court upheld the conviction and even while other appeals against the conviction were pending.] Moraes J also reported that in March 2019 prosecutors in São Paulo had foiled an assassination plan against a sitting Justice, after infiltrating a dark web forum, and that the prosecutors were also conducting an investigation after a device was thrown and exploded on the pavement in front of the home of one of the justices. By 10 votes to 1, the Court rejected the constitutional challenge, although, in statements the Justices themselves classified as *dicta, it said the inquiry should adhere to certain constraints, which were included in the headnotes by the rapporteur, including that remit of the inquiry should be limited to speech which 'exhibiting actual risk to the independence of the judiciary [...], through threats to members of the Supreme Court and their family members, engage in assaults against established political power, against the rule of law and against democracy' and that it should also 'abide by the protection of freedom of expression and of the press as provided by the Constitution, excluding from the scope of the inquiry journalistic articles as well as posts, shares or other kinds of speech (including personal) on the internet, either anonymous or not, as long as they are not part of mechanisms for funding and en masse disseminating on social media."*

After that decision, on 22 July 2020, the rapporteur entered a new order. Quoting from a news article which reported the accounts were still available, he noted Twitter had submitted it was unable to comply with an order generically directing accounts suspended given it could not determine the accounts which should be suspended from the information (names and taxpayer identification) included in the notice it was served. The new order listed account handles for each of the individuals and gave 24 hours for compliance.

 A subsequent police report was entered into the record stating that Twitter and Facebook accounts were still accessible by those outside Brazil or those in Brazil using virtual private networks with servers abroad, and that, on Twitter, users were able to access the accounts by just changing their location to anything other than Brazil in their preferences. On 28 July 2020, Moraes reviewed that report and found that Twitter and Facebook had not fully complied with the order, imposing a BRL20,000 fine for noncompliance, and directing them to block content from the accounts "irrespective of the means used to access the posts, or the IP [address] used, be it from Brazil or elsewhere".

Twitter and Facebook have stated they appealed the order, but the record is sealed and the are appeals are thought to be pending.

* 1. **Concluding statement**
	2. **Dissenting or Concurring opinions**

**Direction**

1. **Decision Direction**: limits expression;
2. **Information**: Part of a criminal inquiry for which the Court has been condemned as lacking in authority to preside over and as conflating the roles of police, prosecution and courts —and which the Court has defended as a necessary institutional response to democracy-destabilizing attacks—, the orders do not provide an analysis of offending content, and are instead limited to quoting illustratively from posts. The Court also placed a prior restraint on any posts by individuals under investigation before any other lesser restrictions were imposed on them. It also did not address questions to its authority to enforce an account takedown globally.

**Perspective**

1. **Global Perspective:**
2. **International, Regional, and National Laws or Cases**
3. **Other National Standards, Law or Jurisprudence**
4. **General Notes**:

**Significance**

1. **Case significance**

The case marks an extraordinary exercise in what the Court essentially described as democratic self-defence of judicial independence.

 is important as because the court opened an investigation to verify whatever attack and disinformation against itself based on fragile legal grounds.

2. Precedential Effect

1. **Persuasive Effect**

A ruling by the Federal Supreme Court can be influential for lower courts (state and federal) throughout Brazil.

1. Related Cases
2. Additional Citations

**Documents**

1. **Official Case Documents**

**Orders:**

[**https://www.conjur.com.br/dl/decisao-alexandre-moraes-twitter.pdf**](https://www.conjur.com.br/dl/decisao-alexandre-moraes-twitter.pdf)

[**https://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2020/07/decisao-bloqueio\_240720202617.pdf**](https://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2020/07/decisao-bloqueio_240720202617.pdf)

[**https://www.conjur.com.br/dl/inq-4781.pdf**](https://www.conjur.com.br/dl/inq-4781.pdf)

**Ordinance No. 69/2019:**

[**https://www.conjur.com.br/dl/comunicado-supremo-tribunal-federal1.pdf**](https://www.conjur.com.br/dl/comunicado-supremo-tribunal-federal1.pdf)

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