***Case Title: Roberto Borghette de Melo v. Google Brasil Internet Ltda.***

**Case Analysis**

***Meta-Data*:**

* **Case Number**: 1006757-09.2015.8.26.0344/TJSP
* **Date of decision**: 10-27-2016
* **Featured case**: N/A
* **Region**: Latin America and Caribbean
* **Country**: Brazil
* **Type of expression**: Electronic / Internet-based Communication
* **Judicial Body**: São Paulo State Court of Appeal
* **Type of law**: Constitutional law.
* **Main Themes**: Right to be forgotten, Content Regulation
* **Outcome**: Affirmed Lower Court; Right to be forgotten not affirmed;
* **Status**: Closed
* **Tags**: Right to be forgotten, Content-Based Restriction; Content Regulation; Censorship.

**Case Tracking**

[**https://esaj.tjsp.jus.br/cposg/search.do?conversationId=&paginaConsulta=0&cbPesquisa=NUMPROC&numeroDigitoAnoUnificado=1006757-09.2015&foroNumeroUnificado=0344&dePesquisaNuUnificado=1006757-09.2015.8.26.0344&dePesquisaNuUnificado=UNIFICADO&dePesquisa=&tipoNuProcesso=UNIFICADO#?cdDocumento=19**](https://esaj.tjsp.jus.br/cposg/search.do?conversationId=&paginaConsulta=0&cbPesquisa=NUMPROC&numeroDigitoAnoUnificado=1006757-09.2015&foroNumeroUnificado=0344&dePesquisaNuUnificado=1006757-09.2015.8.26.0344&dePesquisaNuUnificado=UNIFICADO&dePesquisa=&tipoNuProcesso=UNIFICADO#?cdDocumento=19)

***Analysis:***

* **Summary and Outcome**:
* **a. Summary.** Roberto Borghette de Melo was a defendant in a criminal lawsuit filed by the Federal Prosecution Service, in which he was acquitted. He filed a lawsuit to require the exclusion of his name from the Google search system related to the news of the criminal suit on the grounds of the right to be forgotten, intimacy, private life, and human dignity. He claimed Google search results related to the criminal lawsuit caused financial harm and argued the absence of public interest in the information. The first instance of the State Court of São Paulo rejected the claim, based on the public interest that criminal lawsuits hold. The plaintiff appealed.
* **b. Outcome.** The appeal was denied by the São Paulo State Court of Appeal, which considered that the dissemination of the content was lawful due to the public nature of the criminal lawsuit. They also considered that search engine platforms such as Google should not be liable for third-party publications which they display as a search result for specific terms (such as the name of the appellant). The request for deindexation was, therefore, denied along with all liability of Google.
* **Facts**:

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

Roberto Borghette de Melo filed a lawsuit against Google Brazil Internet Ltda. seeking the removal of search results for his name related to a criminal lawsuit filed against him in the 3rd Federal Court of Marilia, for which he was summarily acquitted. The criminal lawsuit was brought before the Court due to a lack of evidence of any criminal activity (Brazilian Procedure Code, art. 397, III, which states that summary acquittal is due when the fact evidently does not constitute a crime). An appeal filed by the Federal Prosecution Service was dismissed by the trial judge, and the criminal lawsuit decision had become final and unappealable on June 13, 2012. However, search results for his name continually referred to the alleged criminal activity.

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

Roberto Borghette de Melo claimed violation of his right to be forgotten within the meaning of the right to intimacy, private life, and image, established in article 5º, X of the Brazilian Constitution. In an appeal, he requested the defendant to exclude his name from all search results referring to the criminal lawsuit.

1. **Procedural history**

The request was denied by the trial judge of the Court of the County of Marília, in the 5th Civil Court, stressing that “Google acts as a mere search provider, i.e., it only enables access to the information already existing on the electronic sites, over which it has no responsibility”. An appeal was made to São Paulo State Court of Appeals, which was rejected by the Court.

* **Decision Overview**:

1. **Deciding judge & type of opinion**

Judge Natan Zelinschi de Arruda, the case rapporteur, followed by judges Hamid Bdine and Enio Zuliani in a unanimous vote, denied the appellant's request – deciding that Google was not responsible for the search engine results referring to the criminal lawsuit held against Roberto Borghette de Melo.

1. **Issue statement**

The main issue before the Court was whether the search engine platform should be held liable for removing or obscuring information of public interest (as per Brazilian legislation, a property of all and any civil and criminal lawsuits not protected by judicial confidentiality) and whether the right to be forgotten should be protected.

1. **Parties’ arguments**

The appellant argued that he was entitled to the right to be forgotten, requesting the removal of his name from Google’s search engine whenever it was associated with news reporting the criminal lawsuit for which he was summarily acquitted. He also stated that his association with the criminal lawsuit had brought him significant financial losses, and argued the absence of public interest in the information. He, then, stated that the right to be forgotten is implicit in Brazilian legislation, which ensures the protection of intimacy, public image, and private life, as well as human dignity.

The defendant claimed that the case brings about a conflict of constitutional principles. They argued that the information referring to the criminal lawsuit is information of public character and social relevance, under the right to publicity of State procedures and access to information established in articles 5º, LX, and 220 of the Brazilian Constitution, and in the Acces to Information Act. nº 12.527/11. Article 5º, LX states that everyone has the right to receive information of their particular interest, or of collective or general interest from public bodies, except for those whose secrecy is essential for the security of society and the State. The defendant also argued that they are not the owners of the websites where the information about the lawsuit was made public.

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

São Paulo State Court of Appeals of the State of São Paulo held that internet search engine providers are not obliged to remove content made available by third-party platforms, especially information of public interest such as criminal and civil lawsuits for which there was no declaration of judicial secrecy.

Trial judge Angela Martinez Heinrich had denied the initial request for content removal based on the fact that Google “acts as a mere search provider […] only enabl[ing] the access to information already existing in the electronic sites, over which […] it has no responsibility”.

Judge Natan Zelinschi de Arruda rejected the appellant’s request for deindexation of his name from news and general content referring to the criminal lawsuit, claiming that “the public nature of judicial proceedings must be taken into consideration”.

He considered that the information about the lawsuits has a public character, and that “therefore, [its dissemination is] far from being considered illegal”. He cited a precedent from the Superior Court of Justice stating that “the search provider is a species of the genus ‘content provider’, as it does not include, host, organize or in any other way manage the virtual pages indicated in the results, limiting itself to indicating links where the search terms provided by users can be found”.

In a very brief decision, he claimed that a “generic and superficial reference about the right to be forgotten does not provide grounds for the acceptance of the plaintiff's claim”, restating that the veracity of the events publicized and the public nature of the proceedings meant that the publicity of State procedures should prevail in the case. The judge made no considerations about when and where a right to be forgotten could give cause to the limitation of the publicity of judicial proceedings, neither did he consider the claim that the upholding of the information at stake (association to a criminal lawsuit) could violate personality rights related to privacy, image, and honor. Also absent from the considerations was the fact that the criminal lawsuit had been the result of a wrongful accusation to the plaintiff, which was immediately rejected by the Court on the grounds of evident lack of criminal activity.

1. **Concluding statement**

The judge concluded that the absence of confidentiality or secrecy in the procedure meant that the principle of publicity should prevail and that the appellant’s defense of his right to be forgotten was not sufficiently convincing of his claim.

* **Dissenting or Concurring opinions**

N/A

***Direction:***

* **Outcome**: Expands Expression
* **Explanation for why and how it contracts or expands expression or has a mixed outcome.**

The decision ruled that search engine platforms are free to maintain content related to alleged criminal activity as a result of a person’s name due to the publicity of the legal proceedings involved.. Also, the decision stressed that intermediary liability for third-party publications is not due under Brazilian legislation and case law.

***Perspective***:

* **Related International and/or regional laws**:
* **National law or jurisprudence**:

Brazilian Federal Constitution

Brazilian Code of Civil Procedures (Federal Law Nº 13.105, of March, 16 of 2015).

**Other national law or jurisprudence**:

REsp 1316921/RJ.Relatora Ministra Nancy Andrighi. Terceira Turma. J. 26-06-2012

***Significance***:

1. **Case significance**

The case was decided by a lower court. Trial judges and judges of Appellate Courts are not strictly bound to the decision. In 2021, Brazilian Federal Supreme Court ruled that the right to be forgotten is incompatible with the Federal Constitution (RE 1010606), which is binding to courts in Brazil.

1. **Precedential Effect**

The decision did not establish clear general criteria for solving cases involving themes such as the right to be forgotten involving criminal lawsuits or the limitations of freedom of search engines to uphold publications which may interfere with personality rights.

1. **Persuasive Effect**

Low

1. **Related Cases**
2. **Additional Citations**

***Docs***:

* **Official Case Documents**:
* <https://esaj.tjsp.jus.br/pastadigital/abrirDocumentoEdt.do?origemDocumento=M&nuProcesso=1006757-09.2015.8.26.0344&cdProcesso=RI003FVC90000&cdForo=990&tpOrigem=2&flOrigem=S&nmAlias=SG5TJ&cdServico=190201&ticket=7%2B1pM0KjkD8ToeFBIZkMBzbDmGLf%2FMwTyeWqRiDkbRjeBxdKdyk%2FYfy%2FDhiHd%2BmJ7gd8I3J5dtXMqUeM6AXhReOiCmnwD082Bhwt7VI69S2iUEcHmbHPc5dZDXQxN9dhSSa%2FaaSwdKVZgUo3VY5mVJXav8I0xIIxnkJKU8XBAhT1vZtkMsMoTCfZC2FQSIsd0raz0XiJ8ObWrkC7Di%2Bz4EL81nfhQe%2FCT7MZM4YD4xJAiwSG8E4VI2hXBpD4DGoZBRcr3B2VjNyFT8loyDcfiVzfeXyiKKtZpGxBKXxfzJERHEJmA1xS20jeik%2BeQqVMqPoAAoXHDZsV0hB56zqcZcfWhb0uqOdTW7WurGncICpPDobImkyGZg%2F%2BXPhqROmMkMW7YaUGseZpkZ4SBXUL%2FUVRnBWxuh4CJdKwQnxr3zc%3D>
* **Amicus Briefs and Other Legal Authorities**

N/A

* **Reports, Analysis and News Articles**
* **Relevant Materials in Foreign Language**