**Case Information**

1. **Case Title:** Wilker Aparecido Mendes Fernandes v. Google Brazil Internet Ltda. and Goshme Internet Solutions Ltda.;
2. **Meta Data:**
3. **Case Number**: Apelação Cível (Civil Appeal) nº 1013949-46.2015.8.26.0003;
4. **Corresponding Law Reference**: Brazil, Appellate Court of São Paulo (TJSP), Civil Appeal nº 1013949-46.2015.8.26.0003. Justice Rapporteur: Alcides Leopoldo e Silva Júnior. Federal Online Gazette (DJe) publication on 11-29-2016;
5. **Date of Decision**: 11-22-2016;
6. **Featured Case**: n/a;
7. **Region**: Latin-America and Caribbean;
8. **Country**: Brazil;
9. **Mode of Expression**: Electronic/Internet-based communication;
10. **Judicial Body**: Appellate Court of São Paulo (TJSP);
11. **Type of Law**: Civil Law; Constitutional Law;
12. **Main Theme**: Privacy, Data Protection and Retention; Content Regulation/Censorship;
13. **Outcome**: Affirmed Lower Court; Right to be forgotten not affirmed;
14. **Status**: Closed;
15. **Tags**: Right to be forgotten; Search engines;
16. **Excerpt**:

**Case Tracking - url?**

<https://esaj.tjsp.jus.br/cposg/search.do;jsessionid=C2AC2FA93029CE7352463DD1B17176A1.cposg6?conversationId=&paginaConsulta=0&cbPesquisa=NUMPROC&numeroDigitoAnoUnificado=1013949-46.2015&foroNumeroUnificado=0003&dePesquisaNuUnificado=1013949-46.2015.8.26.0003&dePesquisaNuUnificado=UNIFICADO&dePesquisa=&tipoNuProcesso=UNIFICADO>

**Case Analysis**

1. **Summary and Outcome**
   1. **Summary**: Wilker Fernandes filed a lawsuit against Google Brazil Internet Ltda. and Goshme Internet Solutions Ltda. to request (i) the suppression of search results related to a labor suit he filed and (ii) the suppression of the information of the lawsuit in the legal website (*JusBrasil*) itself. Wilker brought the suit to the Lower Court of São Paulo, claiming damages, on the basis that the information about the labor suit on the Internet was making it hard for him to be hired by other companies. The Lower Court denied the suit, on the grounds that search engines do not have the duty of previously monitoring content that is inserted on the internet and that there was nothing illegal on the information displayed on the legal website (*JusBrasil*) about the labor suit. The plaintiff appealed to the Appellate Court of São Paulo (TJSP). The controversy before the court is whether search engine providers are liable for the search results content and whether users are protected by the right to be forgotten.
   2. **Outcome**: The first chamber of civil procedure of the Appellate Court of São Paulo (TJSP) denied the Appeal filed by Wilker Fernandes. The Court stated that Google is a mere search engine that does not have control over the content of the information to which it provides access. Regarding the website where the information was published, the court reasoned that, except in cases that affect the private life, honor, image or other personality rights of the parties, judicial decisions are based on the constitutional Brazilian principles of publicity and transparency and, therefore, are public. The appellate court did not apply the right to be forgotten.
2. **Facts**
   1. **Facts giving rise to cause of action**

Wilker filed a labor suit against the Brazilian telecommunications company where he was employed after being dismissed. Information on the lawsuit could be found on the Internet through the *JusBrasil* website page and through search on Google. He claimed that he had not been able to get another job since then.

Wilker, then, filed a lawsuit to require Google and the legal website *JusBrasil*, owned by the Goshme Internet Solutions Ltda., to block any results associated with the labor suit and pay damages.

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

Wilker argued that the legal website (*JusBrasil*) and the search engine Google violated his right to image and privacy by providing information about the labor suit to which he was a party, and harmed his chances to get a new job.

* 1. **Procedural history**

After analyzing the case, the first chamber of civil procedure of the Appellate Court of São Paulo (TJSP) denied the Appeal filed by Wilker Fernandes and maintained the first instance ruling, according to the vote of the Justice Rapporteur Alcides Leopoldo e Silva Júnior.

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

In the Lower Court, the claim was rejected on the grounds that neither companies committed any unlawful act, since the information was public and could be found on the website of the court where the lawsuit was filed itself. In addition, the Court also stated that search engines are not responsible for monitoring all the content on the Internet. As a result, the plaintiff appealed to the Appellate Court of São Paulo (TJSP).

The Appeal was analyzed by Justice Rapporteur Alcides Leopoldo e Silva Júnior within the first chamber of civil procedure of the Appellate Court of São Paulo (TJSP), who based his decision on the analysis of the Brazilian Constitution, especially articles 5, XXXIII and LX, and 93, IX.

* 1. **Issue statement**

The main issue before the court was whether internet users’ right to be forgotten should be protected and search engine providers and websites should be held liable for the content of search results containing the plaintiff's name.

* 1. **Parties’ arguments**

Wilker pleaded that the legal website (*JusBrasil*) and the search engine Google violated his right to image and privacy by providing information about the labor suit to which he was party. He argued that the publication of the labor suit data on the internet harmed his opportunities in the marketplace.

Google argued that (i) blocking search results would not prevent the access to the content, since it could be accessed directly on the website that hosts it - in this case the Court website where the lawsuit was filed; (ii) Brazil’s Internet Bill of Rights (Law n° 12.965/2014 - “Marco Civil da Internet”) does not allow the removal of content through generic requests, according to Article 19 § 1º and (iii) there was no unlawful act committed by the company since information on lawsuits are public and can be accessed on the courts' own websites.

Goshme is the company responsible for the site where Wilker's information was found (*JusBrasil*). Goshme claimed in the first place, that it acts only as an information search engine, by locating information from lawsuits all over Brazil and making it available to users on the Internet. It argued, therefore, that (i) did not insert and maintain the content on the Internet, and, thus, cannot be held liable for the content it locates; (ii) it had already removed from its website the content involving the labor lawsuit to which Wilker was party at his request and (iii) the information was still available on the labor court website, over which Goshme had no control and it would be unable to remove the content.

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

In his opinion in 2016, Justice rapporteur Alcides Leopoldo e Silva Júnior held that the information found in the legal content website *JusBrasil* could be also obtained from the site of the labor court where the lawsuit was filed. Therefore, it would not be possible to hold Goshme liable, since it only gathered information about trials in the country, nor Google, which was merely a search engine, with no control over the content of the information to which it provided access.

According to the rapporteur, it would not be possible also to apply the right to be forgotten in the concrete case. Judicial decisions, except in cases in which secrecy is granted, must respect the constitutional principles of publicity and transparency (articles 5, subparagraphs XXXIII and LX, and 93, subparagraph IX). He stated that a decision will only not be fully accessible to the public, in Brazil, in cases where it is necessary to preserve the right to intimacy of a party involved in the lawsuit. In any other case, the public interest in information will prevail over the privacy of individuals.

To emphasize his reasoning, the rapporteur mentioned the *M. Costeja González vs. La Vanguardia Ediciones SL, Google Spain and Google Inc.* case. Justice Alcides stated that the European Court established the understanding that data may be deleted if it is "inaccurate, but in particular if they are inappropriate, irrelevant or excessive in relation to the purposes of processing, if they are not up to date or if they have been stored for longer than necessary, unless their storage is required for historical, statistical or scientific purposes”. And such understanding, according to the rapporteur, could not be applied to Wilker’s case, because the information on the labor lawsuit he filed did not offend his private life, honor, image or any other right of personality.

* 1. **Concluding statement**

Given the arguments presented, the Appellate Court of São Paulo did not grant the Appeal filed by Wilker Fernandes and affirmed the first instance decision. The court based its decision on the fact that Google and Goshme did not store the information that the plaintiff intended to have deleted, which could be easily accessed on the labor court’s website where the lawsuit was filed. Moreover, it argued that the precedent from the European Court could not be applied to the present case, since it established that information should be deleted only if it was inaccurate and inappropriate. In this way, the Court concluded that the right to be forgotten could not be applied to Wilker’s case since the information was related to the constitutional principles of publicity and transparency.

* 1. **Dissenting or Concurring opinions**

N/A

**Direction**

1. **Decision Direction**: Expands expression
2. **Information**: The Court’s decision expands freedom of expression by establishing that information related to judicial decisions is guided by the principles of publicity and transparency. Although it recognizes that, depending on the circumstances, the right to privacy may prevail over publicity and freedom of information, in the case in question, nothing indicated that this is the case. Thus, the Court established an important requirement for the application of the right to be forgotten: the data related to the individual must be harmful to his image, his honor, or another right of personality.

**Perspective**

1. **Global Perspective:**
2. **International, Regional, and National Laws or Cases**

Braz., Federal Constitution of 1988, Articles 5, subparagraphs XXXIII and LX; 93, subparagraph IX.

EU, Google Spain v. AEPD and M. Costeja González, C-131/12, ECLI:EU:C:2014:317, quoted at 4-6.

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

**Significance**

1. **Case significance**

The case is important because it establishes that the right to be forgotten can only be applied when the data related to the person is harmful to their honor, their image or another personality right.

1. **Precedential Effect**

The decision establishes a persuasive precedent within its jurisdiction.

1. Persuasive Effect
2. Related Cases
3. Additional Citations

**Documents**

1. Official Case Documents

<https://juristas.com.br/wp-content/uploads/2018/01/20160000850899.pdf>

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