***Case Title: Dulcimar Vilela de Queiroz v. Google Brasil Internet Ltda.***

**Case Analysis**

***Meta-Data*:**

* **Case Number**: 0004144-77.2015.8.26.0297
* **Date of decision**: 04-25-2016
* **Featured case**:
* **Region**: Latin America and Caribbean
* **Country**: Brazil
* **Type of expression**: Electronic / Internet-based Communication; Public Documents
* **Judicial Body**: State Court of Appeals of São Paulo (TJSP)
* **Type of law**: Constitutional law.
* **Main Themes**: Access to public information
* **Outcome**: Affirmed Lower Court; Right to be forgotten affirmed;
* **Status**: Closed
* **Tags**: Right to be forgotten, Deindexation; search engines.

**Case Tracking**

[**https://esaj.tjsp.jus.br/cposg/search.do;jsessionid=02EE0D6A6D126823AEAA0812581A91A8.cposg4?conversationId=&paginaConsulta=0&cbPesquisa=NUMPROC&numeroDigitoAnoUnificado=0004144-77.2015&foroNumeroUnificado=0297&dePesquisaNuUnificado=0004144-77.2015.8.26.0297&dePesquisaNuUnificado=UNIFICADO&dePesquisa=&tipoNuProcesso=UNIFICADO#?cdDocumento=24**](https://esaj.tjsp.jus.br/cposg/search.do;jsessionid=02EE0D6A6D126823AEAA0812581A91A8.cposg4?conversationId=&paginaConsulta=0&cbPesquisa=NUMPROC&numeroDigitoAnoUnificado=0004144-77.2015&foroNumeroUnificado=0297&dePesquisaNuUnificado=0004144-77.2015.8.26.0297&dePesquisaNuUnificado=UNIFICADO&dePesquisa=&tipoNuProcesso=UNIFICADO#?cdDocumento=24)

***Analysis:***

* **Summary and Outcome**:
* **a. Summary.** Dulcimar Vilela de Queiroz was criminally convicted in 1993 and obtained criminal rehabilitation in 2014. However, Google search results on his name directed to data on the criminal proceedings. He then filed a lawsuit in the Trial Court of the County of Jales, State of São Paulo, Brazil, claiming the de-indexation of his name in Google search from all information related to criminal proceedings in which he was involved, on the grounds of the right to be forgotten.
* **b. Outcome.** The TrialCourt ruled thatDulcimar Vilela de Queiroz partially deferred his request. The trial judge considered that the right to be forgotten should prevail since there is no public interest in maintaining search results linked with the plaintiff's criminal records. However, he stressed that Google was only obliged to remove the URLs indicated in the plaintiff’s pleading based on article 19 §1º of the Brazilian Civil Rights Framework for the Internet, which states that the judicial order of removal should be specific.
* **Facts**:

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

The plaintiff was criminally convicted in 1993, and had all his penalties extinguished in 2006. The plaintiff obtained criminal rehabilitation in 2014, since he fulfilled all legal requirements for it. However, the plaintiff’s name remained linked to information related to the criminal proceedings on the Google search engine. He contended that such circumstances caused him damages, especially in the job market.

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

Plaintiff alleged that he is entitled to a "right to be forgotten", since he had duly served his sentence and been criminally rehabilitated. The judge was asked to decide if Google was accountable and liable for the dissemination of information that could violate the plaintiff’s personality rights of honor, privacy and dignity established in the Constitution. The judge cited the Internet Civil Framework, which states that internet platforms are not liable for third-party publications unless they explicitly violate a court order determining the deletion or de-indexation of the content.

1. **Procedural history**

The plaintiff had filed a preliminary interlocutory injunction requesting the deindexation, which was denied. The plaintiff filed an interlocutory appeal against this decision, and the preliminary interlocutory injunction was granted on appeal.

The trial judge then addressed the merit of the claim, in which Dulcimar Vilela de Queiroz claimed that he had a right to be forgotten. The claim was partially granted, demanding the deindexation of all URLs specifically indicated by the plaintiff.

Google appealed to the State Court of Appeals of Sao Paulo.

* **Decision Overview**: **Deciding judge & type of opinion**

The Trial Court of the County of Jales, State of São Paulo ruled in favor of plaintiff’s request for deindexation, but restricted the order only to the URLs indicated by the plaintiff. He also cited legislation explaining that platforms are not liable for third-party publications unless judicially ordered to remove the content.

The Appellate Court maintained this decision based on the affirmation of a right to be forgotten, as established in enunciation 531 of the VI Journey of Civil Law of the CJF/STJ, which stated: “The protection of human dignity in the information society includes the right be forgotten”. He also mentioned that the right to manifestation of thought, creation, expression, and information established by article 220 of the Brazilian Constitution was not excessively or inappropriately restricted by a judicial balancing of freedom of expression ver

1. **Issue statement**

The trial judge and appellate Court had to decide whether or not the plaintiff had a right to be forgotten. Courts granted the de-indexation of information about his previous criminal activity (for which he had been rehabilitated) from his name on a private search engine. They also had to decide if Google was liable for moral damages caused by the dissemination of third-party publications on its platform.

1. **Parties’ arguments**

Dulcimar Vilela de Queiroz claimed he had been harmed for years by the Internet search tool provided by the defendant, which showed criminal proceedings for which he had already obtained criminal rehabilitation as results for a search for his name. He also claimed moral and material damages, mentioning that he had several missed job opportunities due to this fact. The plaintiff argued that he was entitled to a right to be forgotten encompassed in his right to intimacy and honor.

Google claimed that the case did not involve a right to be forgotten and asserted that the intended removal was inappropriate, unnecessary and disproportionate, thus asking for the dismissal of the action.

Furthermore, in its appeal to an appellate court, Google argued that the unwanted content is located on public internet pages which can be accessed by anyone regardless of their indexation in the Google search engine. They also argued that the removal would threaten the collective right to information provided in article 220 of the Federal Constitution. Finally, they claimed the "right to be forgotten" was not applicable to the case, since the fundamental constitutional rights of freedom of expression of thought, inviolability of belief, free expression of intellectual, artistic, scientific and communication activities, regardless of censorship or license, and of access to information by all of society (Brazilian Constitution, art. 5, IV, VI, IX and XIV) should prevail over the right to intimacy (Brazilian Constitution, art. 5, X) invoked by the plaintiff.

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

Judge Marcos Takaoka of the County of Jales, São Paulo, Brazil, cited a precedent of the STJ establishing the right to be forgotten in the context of the “Massacre of Candelaria”. In the precedent, judges were called upon to decide over a news piece which revived the discussion about the violent assassination of 8 young boys by the Rio de Janeiro militia (composed of military policemen) thirteen years after the incident. Justices had decided for the right to be forgotten of convicted persons who had served their sentences, imposing a limitation on freedom of press in view of the constitutional protection of the dignity and constitutional presumption of re-socialization. He concluded that this reasoning was applicable to the case and that it was “unreasonable” that the plaintiff’s name continues to be associated with criminal activity in the Google platform.

However, he contended that the defendant should not be required to remove all search results related to the plaintiff's name, but only those explicitly mentioned in the initial pleading. Judge Takaoka cited the Internet Civil Framework (Federal Law 12,968/2014), which states that internet service providers are not accountable or liable for third-party publications unless in violation of an explicit court order demanding them to remove content. He also mentioned that, even before the Framework, the identification of the URLs of desired pages to be removed was required for the determination of deindexation obligations.

In the Appellate Court, the judge considered that the fact that the unwanted pages remain accessible on other sites did not concern Google, and that the plaintiff had the right to sue other website providers if he so chose to at a later moment. He also disagreed that the trial court decision violated Article 220 of the Brazilian Constitution, since the principle did not exclude the possibility of balancing with respect to the personality rights of the plaintiff, such as his honor, dignity, privacy and intimacy.

1. **Concluding statement**

The judge and the appellate Court concluded that the request should be partially granted, demanding that the defendant deindex the valid URLs indicated by the plaintiff in the initial pleading, removing such results from its search engine.

He stressed that Google was not obliged to remove “all availability or linkage of the plaintiff's name on sites, links or search engines”, since “the defendant owns only one single search engine, Google (it is not the owner of any site, link or search engine)”.

In view of all this, and after careful and individual analysis of each of the arguments brought by the appellant, the Court concluded that none of them is robust enough to invalidate the trial court decision. He stressed that the institutional policies of the appellant company could not overlap, on national territory, the law and the Federal Constitution in force in Brazil. This is even more important when it comes to fundamental rights.

* **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.**

Brazilian legislation, by force of the Internet Civil Framework, states that platforms are not liable for third-party publications unless receiving a specific court order for content removal. That being so, the Brazilian system conceives of mechanisms of protection to one’s personality rights via judicial evaluation. In the present case, both judges agreed with the plaintiff’s reasonable request for protection of his personality rights, whilst not unduly expanding the responsibility of the company in producing any damages or losses before a court order mandated them to remove content. Such a decision maintains a stable mechanism for content regulation, assuring companies that they may keep up any published content unless judicially requested to remove it with guaranteed due process.

***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).

Brazilian Internet Civil Framework, art 19, §1 (Federal Law 12.968/2014).

**Other national law or jurisprudence**:

REsp Nº 1.334.097 - RJ(2012/0144910-7) RELATOR : MINISTRO LUIS FELIPE SALOMÃO, j. 15/08/2013)

REsp Nº 1.396.417 - MG(2013/0251751-0) RELATORA : MINISTRA NANCY ANDRIGHI j. 07 de novembro de 2013

***Significance***:

1. **Case significance**

This is a first instance decision and other judges are not bound to comply with it.

1. **Precedential Effect**
2. **Persuasive Effect**

The decision is persuasive, but does not directly address what criteria should be used to determine that content be removed by platforms.

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

***Docs***:

* **Official Case Documents**:
* https://esaj.tjsp.jus.br/cposg/search.do;jsessionid=02EE0D6A6D126823AEAA0812581A91A8.cposg4?conversationId=&paginaConsulta=0&cbPesquisa=NUMPROC&numeroDigitoAnoUnificado=0004144-77.2015&foroNumeroUnificado=0297&dePesquisaNuUnificado=0004144-77.2015.8.26.0297&dePesquisaNuUnificado=UNIFICADO&dePesquisa=&tipoNuProcesso=UNIFICADO#?cdDocumento=24
* **Amicus Briefs and Other Legal Authorities**

N/A

* **Reports, Analysis and News Articles**

N/A

* **Relevant Materials in Foreign Language**