José Eduardo Terraf Filho v. TV Tem

**Date of decision:** april 20th, 2017

**Outcome:** denial of the claim

**Case number:** 1049780-51.2016.8.26.0576

**Region and country:** South America, Brazil

**Judicial body:** 5º civil claims court of the Courthouse São José do Rio Preto

**Type of law:** constitutional law, civil law, media law

**Themes:** right to be forgotten, image rights

**Summary and Outcome**

The 5º civil claims court of the Courthouse São José do Rio Preto, Brazil, rejected the request for compensation to José Eduardo Terraf Filho, who claimed damages resulting from the alleged illicit use of his image in the exhibition of a report that recapitulated coverage of emblematic cases, such as the kidnapping of the applicant. Judge Lincoln Augusto Casconi justified his decision by explaining that there was no abuse of journalistic activity, in addition, the magistrate stressed the need for freedom of information for the rules-based democracy. The plaintiff had lodged an appeal against the judgment, however the Court did not uphold the appeal.

This analysis was written by Marco Antonio Costa Sabino, Diogo Rais and Rachel da Mota.

**Facts**

In 1991, José Eduardo Tarraf Filho, a 12-year-old boy, was kidnapped. With the end of the kidnapping, the four criminals involved were taken to prison. In 2016, broadcaster TV Tem, an affiliate of Globo TV, major Brazilian broadcaster, published an article that mentioned its coverage of the old case.

The article displeased the author, who proposed the lawsuit alleging the unauthorized use of his image and violation of the law. The applicant sought damages for his mental distress and the exclusion of the article that addressed the kidnapping of José Eduardo Terraf Filho hosted on the broadcaster's news website.

The requests made by the author were rejected. Judge Lincoln Augusto Casconi understood that the publication of the article mentioning the kidnapping did not meet the necessary requirements for the occurrence of damage for mental distress. In addition, the judge considered that the facts described in the newspaper were of public interest and that they complied with the principles established in the Federal Constitution.

Thus, the plaintiff appealed against the sentence. The appellate decision handed down by the 8th Chamber of Private Law of the Court of Appeals of São Paulo resulted in the the maintenance of the appealed decision, since the appeal filed by the appellant (previously the applicant) only restated the arguments of the initial petition, not rebutting or pointing sentence errors.

**Decision Overview**

The appellate judge Alexandre Coelho did not hear the appeal, on the grounds that the appellant reproduced the same arguments of the complaint, instead of pointing out errors in the judgment. Still, the judge stated that the decision had been well-founded.

The main question for the court was to assess whether the publication constituted an illicit act that could be damaged for moral distress.

In 2016, the Globo affiliate published a journalistic article in which it mentioned the case of the kidnapping of José Eduardo Tarraf Filho. In view of this, José Eduardo Tarraf Filho filed a lawsuit alleging unauthorized use of his image and, therefore, damages for his mental distress. The initial petition was accompanied by an injunction that was dismissed.

Judge Lincoln Augusto Casconi states that there are three requirements to constitute civil liability for an illicit act: conduct by the agent contrary to the law, damage or harmful result to the offended party and causal connection. For the judge, the broadcaster's conduct did not meet any of these requirements. There was no fault in the conduct of the broadcaster when publishing the article mentioning the case, there was no damage to the author, understanding that the content of the article “did not unduly affront the author's right to privacy, honor and image”. Thus, the action was denied.

The plaintiff, unhappy with the outcome, appealed the decision. Thus, the 8th Chamber of Private Law of the Court of Justice of São Paulo decided not to hear the appeal, since the author only repeated the arguments of the complaint and did not indicate errors in the judgment.

The process had its access restricted. In this way, the analysis was limited only to public papers. Thus, we were unable to address the arguments of the parties.

**Decision Direction**

**Expands Expression**

The decision is in line with the rights provided for in the Federal Constitution. It defends freedom of expression and freedom of information. Although not mentioned in the public documents of the process, the author's request is related to the right to be forgotten, which was not recognized by the STF. Since the author wanted an event from the past not to be picked up by the media, even if there was public interest.

**Global perspective**

**Table of Authorities**

**National Standards, law or jurisprudence**

* [**Braz., Constituição Federal (1988), Art. 220, para. 1 and 2;**](https://www.oas.org/es/sla/ddi/docs/acceso_informacion_base_dc_leyes_pais_b_1_en.pdf)

**Case significance**

The decision establishes a binding or persuasive precedent within its jurisdiction.

**Official case documents**

**Official case documents**

* [**Public papers**](https://www.jusbrasil.com.br/processos/129268275/processo-n-104XXXX-5120168260576)