Federal Supreme Court of Brazil v. Elon Musk and X

**Case Analysis**

***Meta-Data*:**

* **Case Number**: Inq. 4.874
* **Date of decision**: April 7, 2024
* **Featured case**: N/A
* **Region**: Brazil, Latin-America and Caribbean
* **Country**: Brazil
* **Type of expression**: Eletronic/ Internet-based Communication
* **Judicial Body**: Supreme
* **Type of law**: Constitutional Law
* **Main Themes**: Content Moderation
* **Outcome**: Other
* **Status**: In Progress
* **Tags**: Judicial Censorship, Disinformation

***Analysis:***

* **Summary and Outcome**:

The Federal Supreme Court (STF) of Brazil ruled that Elon Musk, CEO of the social network X (formerly Twitter), should be included as a suspect in the “Digital Militias Inquiry” (Inq. 4.874). The Court also initiated an inquiry to investigate Musk's conduct regarding crimes of obstruction of justice, organized crime, and incitement to crime, and ordered X to refrain from disobeying judicial orders already issued. Between April 6 and 7, 2024, Elon Musk made several posts on his X profile accusing Justice of the Supreme Court of Brazil Alexandre de Moraes of censoring freedom of expression and violating Brazilian law, stating that X would not comply with the STF's decisions. Asserting that "social networks are not lawless lands", the Court found evidence that Musk used X to conduct a disinformation campaign about the Brazilian Supreme Court and Superior Electoral Court, exacerbating the risks to the security of the members of the STF and of the Rule of Law, while also contributing to the "criminal instrumentalization" being investigated across various inquiries by the Supreme Court.

* **Facts**:

On April 6, 2024, Elon Musk, CEO of the social network “X”, formerly known as “Twitter”, [responded to a post](https://x.com/elonmusk/status/1776475718383534148) by Justice of the Federal Supreme Court of Brazil (STF), Alexandre de Moraes, asking: “[w]hy are you demanding so much censorship in Brazil?”. The post in question, dated January 11, 2024, had no relation to the topic raised by Musk; it was a message in which Moraes congratulated a former Supreme Court Justice who had been appointed as Minister of Justice.

On the same day, Musk also shared a post by American journalist Michael Shellenberger criticizing Moraes, [adding the following comment](https://x.com/elonmusk/status/1776732561202696575): "[t]his aggressive censorship seems to violate the law & will of the people of Brazil". [In response to a follower's comment](https://x.com/elonmusk/status/1776739518240170254), Musk added, “[w]e are lifting all restrictions. This judge has applied massive fines, threatened to arrest our employees, and cut off access to X in Brazil. As a result, we will probably lose all revenue in Brazil and have to shut down our office there. But principles matter more than profit”. [In the same post](https://x.com/ElonMuskAOC/status/1776733560952725573), he said “[s]omeone save Brazil!”.

On the following day, April 7, Musk [posted](https://x.com/elonmusk/status/1776989005848207503?t=REO5vn-TRUu_Pk5ljnUMBQ&s=08) on his social network that soon "X will publish everything demanded by @Alexandre [de Moraes] and how those requests violate Brazilian law”. “This judge has brazenly and repeatedly betrayed the constitution and the people of Brazil. He should resign or be impeached", he further argued.

Hours later, Justice Alexandre de Moraes ordered Elon Musk to be included among the suspects investigated in the so-called “Digital Militias Inquiry” (Inq. 4.874), which investigates suspected criminal activities of groups spreading fake news on social media to influence political processes.

**[Some context: (which can be kept for accuracy and clarification, or removed if the editor considers it deviates from the focus of the inquiry investigating Musk's actions). I thought it best to provide this context because the decision was made within it, and interpreting the decision in isolation could lead to different conclusions.**

**This ruling was delivered in a context where the Federal Supreme Court of Brazil has initiated several inquiries to investigate alleged illegal activities in the digital realm, including fake news and digital militias.**

**The first inquiry was the 4.781/DF, known as the "**[**Fake News Inquiry**](https://globalfreedomofexpression.columbia.edu/cases/the-case-of-the-brazil-fake-news-inquiry/)**", initiated in March 2019 to investigate alleged dissemination of fraudulent news, false reports of crimes, malicious accusations, threats, and other purportedly illegal activities impacting the honor and security of the Federal Supreme Court, its members, and their families. The investigation also focused on financing schemes and mass dissemination on social media platforms aimed at undermining or jeopardizing the independence of the Judiciary and the Rule of Law. In this inquiry, among other measures, the Supreme** **Court ordered Facebook and Twitter to suspend the accounts of individuals under investigation for “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”.**

**Subsequently, several other inquiries related to this matter were initiated by the STF. Among them is Inq. 4.828/DF, which was initiated based on a request from the Prosecutor General (PGR) to investigate events that occurred on April 19, 2020, and their antecedents, due to reported gatherings of individuals in front of Brazilian Army barracks, calling for military intervention and the return of the dictatorship in Brazil.**

**In July 2021, within Inq. 4.828/DF, another investigation, Inq. 4.874/DF ("Digital Militias Inquiry"), was launched based on evidence and indications suggesting the presence of a digital criminal organization involved in the production, dissemination, financing, and political activities like those identified in Inq. 4.781 ("Fake News Inquiry"). The Court found that these activities were allegedly aimed at undermining democracy and the rule of law in Brazil.**

**Following an** [**attempted coup on January 8, 2023**](https://www.nytimes.com/live/2023/01/09/world/brazil-congress-riots-bolsonaro)**, when a crowd of supporters of former President Bolsonaro invaded the Praça dos Três Poderes in Brasília, the capital of Brazil, and vandalized the buildings of the National Congress, the Federal Supreme Court, and the Palácio do Planalto (Presidential office), the Supreme Court ordered the initiation of additional inquiries at the request of the Office of the Prosecutor General. These include Inq. 4.920/DF, concerning the financiers of the acts, who allegedly provided financial support for the attempted coup; Inq. 4.921/DF, concerning the instigation participants, who in some way encouraged the acts; Inq. 4.922/DF, concerning the intellectual authors and executors, who entered prohibited areas and committed acts of vandalism and destruction of public property; and Inq. 4.923/DF, concerning the state authorities responsible for improper omission.**

**Thus, the inquiry initiated to investigate Musk's conduct is related to all these inquiries. In Musk’s case, the Federal Supreme Court (STF) aims to investigate crimes such as obstruction of justice, including involvement in organized crime, and incitement to crime.]**

* **Decision Overview**:

On April 7, 2024, Justice Alexandre de Moraes delivered the decision. The central issue for the Court was whether Elon Musk engaged in illicit conduct through his posts on X, particularly by questioning the institutions of the Brazilian Republic and declaring his refusal to comply with judicial orders.

Justice Alexandre de Moraes found that activities conducted on the internet in Brazil are regulated by Law 12.965/14 ("Marco Civil da Internet") and are subject to the judicial review (Art. 5, XXXV, of the Constitution). This includes cases of breach of data or communication confidentiality (Art. 7, II and III, and Art. 10), the removal of illegal content generated by third parties (Arts. 19 and 20) and obtaining evidence in judicial proceedings (Art. 22).

Accordingly, de Moraes emphasized that Brazilian law requires companies providing internet services to "comply with all court orders and decisions, including those that mandate the provision of personal data or other information that can help identify the user or device, as well as those that order the cessation of illegal activities, including the blocking of profiles". [p. 1] In capital letters, Justice de Moraes added: "SOCIAL NETWORKS ARE NOT LAWLESS LANDS! SOCIAL NETWORKS ARE NOT NO MAN'S LAND!". [p. 2]

Asserting that social network providers and private messaging services "must absolutely respect the Federal Constitution, the Law, and Brazilian Jurisdiction", he stated that "the dignity of the human person, the protection of the lives of children and adolescents, and the maintenance of the Democratic Rule of Law are above the financial interests of social network providers and private messaging services". [p. 2]

Quoting a decision delivered in Inq. 4.781/DF ("[Fake News Inquiry](https://globalfreedomofexpression.columbia.edu/cases/the-case-of-the-brazil-fake-news-inquiry/)"), Justice Alexandre de Moraes argued that "the real, evident, and dangerous CRIMINAL INSTRUMENTALIZATION of social network providers and private messaging services for the broadest practice of criminal activities on social networks, including actions against the Brazilian democratic regime, could lead to civil and administrative liability for the companies, as well as criminal liability for their administrators for inciting and participating in the investigated conduct". [p. 2]

He went on to explain that criminal actions allegedly committed by social network providers and private messaging services are also under investigation in inquiries 4.920, 4.921, 4.922, and 4.923, which respectively investigate financiers, instigators, authors, perpetrators, and authorities allegedly involved in the invasion on January 8, 2023. De Moraes mentioned that in Inq. 4.923 and PET 12.100 the Police uncovered activities that were allegedly "attempted coup d'état and violent abolition of the Democratic Rule of Law" aimed at spreading the narrative of electoral fraud in the presidential elections, "to enable and potentially legitimize intervention by the Armed Forces, with violent abolition of the Democratic Rule of Law, in a dynamic resembling a true digital militia". [p. 3]

In this context, he found it "unacceptable that any representatives of social network providers and private messaging services, especially the former Twitter now 'X', are unaware of the CRIMINAL INSTRUMENTALIZATION being carried out by so-called digital militias in the dissemination, propagation, organization, and amplification of numerous illicit practices on social networks, particularly in the grave assault on the Democratic Rule of Law and the attempted destruction of the SUPREME FEDERAL COURT, National Congress, and Palácio do Planalto, in other words, of the Brazilian Republic itself". [p. 3]

He added that after the January 8 invasions, the issue was discussed in a meeting chaired by him, then President of the Superior Electoral Court (TSE), in the presence of major providers, including Twitter (X). According to De Moraes, in these meetings, it was discussed "the real danger of this CRIMINAL INSTRUMENTALIZATION - and its use for the crimes committed - by social network providers and private messaging services, and the need to establish a working group to propose self-regulation and legislative regulation, aiming to prevent, in constitutional and legal terms, the persistence of repeated illicit behaviors on various platforms through incitement to crime, discriminatory content, hate speech, speech undermining the Judiciary, and actions against the fairness of elections and the Rule of Law". [p. 4]

Justice Alexandre de Moraes continued to explain that after that, throughout the year 2023, many other meetings were held between the TSE and internet service providers, once again including X, which led to the establishment of a Working Group under [TSE Ordinance 173/2023](https://www.tse.jus.br/legislacao/compilada/prt/2023/portaria-no-173-de-10-de-marco-de-2023). De Moraes added that in 2024, social network providers and private messaging services were also invited to collaborate with CIEDDE (Integrated Center for Combating Disinformation and Defending Democracy), with their legal representatives, including those from the X, participating in various meetings with the Secretary General and Director General of the TSE. [p. 4]

De Moraes stated that, until then, there were indications of criminal instrumentalization by the social network providers and private messaging services themselves, "for the commission of numerous and very serious criminal offenses", although intentional conduct was not yet clear. However, he continued, this changed with Musk's posts. [pp. 4-5]

Referring specifically to Elon Musk, De Moraes argued that starting on April 6, 2024, "the owner and CEO (Chief Executive Officer) of the social network provider 'X' - formerly 'Twitter' - [...] began a disinformation campaign about the actions of the SUPREME FEDERAL COURT and the SUPERIOR ELECTORAL COURT". He added that this campaign was reiterated the following day when Musk allegedly instigated "disobedience and obstruction of justice, including in relation to criminal organizations [...] further declaring that the platform will terminate compliance with orders issued by Brazilian courts related to the blocking of criminal profiles spreading fraudulent news, under investigation in this SUPREME COURT". [pp. 4-5]

In the present case, Justice de Moraes concluded that there were indications that X employed illegal mechanisms, and that Elon Musk intentionally contributed to the "criminal instrumentalization" being investigated across various inquiries. Indeed, he found that there were indications that X’s conduct may represent "not only abuse of economic power, by illegally attempting to impact public opinion, but also blatant inducement and instigation to maintain various criminal activities practiced by the digital militias investigated in Inquiry 4874, exacerbating the risks to the security of the members of the SUPREME FEDERAL COURT [...] and of the Democratic Rule of Law itself, [...] ; in addition to obstruction of justice in criminal organizations investigated in Inquiries 4923, 4933, and PET 12100, and a clear attack on the Brazilian Judiciary." [p. 5]

Accordingly, Justice Alexandre de Moraes ordered the inclusion of Elon Musk as a suspect in Inq. 4.874 for the alleged intentional criminal instrumentalization of the X, in connection with the facts investigated in Inq. 4.781, 4.923, 4.933, and PET 12.100. Additionally, he ordered the initiation of another inquiry to investigate Musk's conduct regarding crimes of obstruction of justice, including in criminal organization (Art. 359 of the Penal Code and Art. 2, §1º of Law 12.850/13), and incitement to crime (Art. 286 of the Penal Code). De Moraes also ordered X to refrain from disobeying judicial orders already issued, including any reactivation of profiles whose blocking was ordered by the STF or TSE, under penalty of a daily fine of R$ 100,000.00 (one hundred thousand Brazilian reais) per profile, and legal responsibility for disobedience to the judicial order by the company's legal representatives in Brazil. [p. 6]

The inquiry was recently extended for another 180 days and is still ongoing.

***Direction:***

**Mixed Outcome**

The ruling represents a mixed outcome, as it restricts freedom of expression while prioritizing the protection of democracy and public order, especially when the CEO of a major social network states that he will not comply with the decisions of the Supreme Court. The decision also highlights the balance between limiting harmful online behavior and upholding judicial authority against significant threats to democratic institutions. On one hand, the measures imposed on Elon Musk and the X underscore a firm stance against the dissemination of fake news and the incitement of criminal activities, reflecting the judiciary's role in safeguarding democratic processes and public safety, particularly evident during the 2022 presidential elections when social media was used to mobilize supporters amid Brazil's coup attempt risk. But, on the other hand, these actions raise serious concerns about the potential overreach of judicial power and the impact on free speech, especially given that legal frameworks for digital regulation are still under debate in Brazil. Additionally, the broad use of terms like "disinformation" can be problematic because these labels may be applied subjectively, as evidenced in this decision that characterizes Musk's actions as a "disinformation campaign”. Regardless of its accuracy, Musk's statements involve expressing an opinion to which individuals are entitled, which is not the same as the appropriate definition of disinformation.

***Perspective***:

National standards, law or jurisprudence

Braz., Constituição Federal (1988) art. 5, XXXV;

Braz., Law 12.965/14 ("Marco Civil da Internet") – art. 7, II and III; art. 10; art. 19; art. 20; art. 22;

Braz., Penal Code (1940) art. 359;

Braz., Penal Code (1940) art. 286;

Braz., Law 12.850/13 ("Organized Crime Law”), art. 2, §1º;

Braz., Superior Electoral Court, Ordinance 173 (2023);

Inq. 4.781/DF - "[Fake News Inquiry](https://globalfreedomofexpression.columbia.edu/cases/the-case-of-the-brazil-fake-news-inquiry/)";

Inq. 4.828/DF;

Inq. 4.828/DF;

Inq. 4.920/DF;

Inq. 4.921/DF;

Inq. 4.922/DF;

Inq. 4.923/DF;

PET 12.100, STF.

**Additional citations:**

https://www.thedialogue.org/analysis/are-brazils-efforts-to-rein-in-musk-curtailing-speech/

***Significance***:

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

* **Related Cases**: Self-generated
* **Date updated**: N/A

***Docs***: