The case of judicial harassment against journalists in Brazil

**Case Analysis**

***Meta-Data*:**

* **Case Number**: ADI 6792/DF and ADI 7055/DF
* **Date of decision**: May 22, 2024
* **Featured case**: N/A
* **Region**: Brazil, Latin-America and Caribbean
* **Country**: Brazil
* **Type of expression**: Press / Newspapers
* **Judicial Body**: Supreme
* **Type of law**: Constitutional Law
* **Main Themes**: Press Freedom
* **Outcome**: Motion Granted/ Judgment in Favor of Petitioner
* **Status**: Decision Pending
* **Tags**: Press freedom

***Analysis:***

* **Summary and Outcome**:

The Federal Supreme Court of Brazil (STF) acted to prevent Strategic Lawsuits Against Public Participation (SLAPPs) and ruled that cases of judicial harassment targeting freedom of expression should be centralized in the defendant's local jurisdiction. The court also limited civil liability for journalists and media outlets to situations involving deliberate misconduct or gross negligence. The Brazilian Press Association (ABI) and the Brazilian Association of Investigative Journalism (ABRAJI) filed Direct Actions for the Declaration of Unconstitutionality (ADI) before the STF to combat judicial harassment against journalists and media outlets, where multiple compensatory lawsuits are filed in different cities over the same news report or story. This practice was deemed an abusive use of legal action, burdening journalists with the need to defend themselves in various locations for the same incident. Recognizing the SLAPP aspects of such cases, the Court provided a constitutional interpretation of the Brazilian Civil Code and Civil Procedure Code, stipulating that cases of judicial harassment against freedom of expression and the press — characterized by multiple lawsuits across different jurisdictions aimed at obstructing the defense rights of journalists or media outlets — must be consolidated for unified adjudication in the defendant's local jurisdiction. The Court also found that civil liability for journalists or media outlets would only be established in cases involving deliberate misconduct and gross negligence.

* **Facts**:

On April 8, 2021, the Brazilian Press Association (ABI) filed a Direct Action for the Declaration of Unconstitutionality (ADI 6792/DF) with the Supreme Federal Court (STF), arguing that lawsuits seeking compensation for damages against news and reports made by journalists and media outlets are being used to suppress the work of journalists and press organizations. ABI emphasized that journalists should not face legal repercussions for reporting in good faith on issues like corruption or misconduct that are not definitively proven. They underscored that legal consequences should only arise from intentional or grossly negligent dissemination of false information and urged the STF to recognize that judicial harassment inflicts collective harm, which warrants compensation, and requested constitutional interpretations of laws such as the Civil Procedure Code and Civil Code to uphold freedom of expression, journalistic freedom, and the right to information. Additionally, ABI advocated for consolidating related lawsuits in the defendant's jurisdiction to prevent intimidation tactics against journalists and smaller media outlets.

On December 17, 2021, the Brazilian Association of Investigative Journalism (ABRAJI) filed another Direct Action for the Declaration of Unconstitutionality (ADI 7055/DF) with the STF, requesting constitutional interpretations of key provisions in the Code of Civil Procedure and Law No. 9.099/1995 (Small Claims Court Law). They argued that cases of judicial harassment should be tried in the jurisdiction of the journalist or media outlet involved, advocating for the consolidation of repetitive cases. ABRAJI also emphasized that this approach would uphold due process, broad defense, and timely proceedings, while protecting freedom of the press, communication, and expression of thought under the Brazilian Constitution.

Due to their shared thematic focus, the STF reviewed both cases together.

* **Decision Overview**:

The central issue before the Court was whether filing multiple lawsuits in different jurisdictions against the same news report or story constituted an abuse of legal process (or judicial harassment), representing a violation of freedom of expression and press freedom. The Court also had to consider whether there should be a constitutional interpretation of the Civil Procedure Code and Small Claims Law to centralize these lawsuits in the defendant's domicile, rather than the plaintiff's, as stipulated by law. Moreover, the Court deliberated on the circumstances under which journalists or media outlets could be held civilly liable, providing a constitutional interpretation of the Brazilian Civil Code respecting freedom of expression and press freedom.

The first judgment took place on September 22, 2023, when the Rapporteur, Justice Rosa Weber, delivered her opinion. Justice Weber partially granted the requests to define that the establishment of an illicit act giving rise to the obligation to repair moral damage resulting from the publication or dissemination of opinions, news, information, or ideas in the press or social media “requires the factual presupposition that the content corresponds to a threat, intimidation, incitement, or command to discrimination, hostility, or violence, including psychological or moral violence; the deliberate spread of misinformation; manipulation of vulnerable groups; malicious attack on someone's reputation; negligent fact-checking; risk to national security, public order, health, or morality; or when it constitutes propaganda in favor of war, civil war, armed or violent insurrection, or incitement to national, racial, or religious hatred”.

Subsequently, the judgment was suspended at the request of Justice Luis Roberto Barroso.

The second judgment took place on May 16, 2024. Justice Luís Roberto Barroso delivered his opinion, fully accepting the requests of ABI and ABRAJI, and establishing the following definition of judicial harassment: "[j]udicial harassment compromising freedom of expression constitutes the filing of numerous lawsuits regarding the same facts, in different jurisdictions, with the intention or effect of constraining a journalist or media outlet, making their defense difficult or excessively burdensome". Justice Barroso also stated that once judicial harassment is established, "the defendant may request the consolidation of all actions in their domicile's jurisdiction". He further defined that "the civil liability of journalists or media outlets will only be established in unequivocal cases of malice or gross negligence". This opinion was supported by Justices Cristiano Zanin and André Mendonça.

The judgment was suspended again.

During the final judgment on May 22, 2024, the Brazilian Supreme Court, by a majority of opinions, decided to provide a constitutional interpretation of Article 53 of the Code of Civil Procedure, stating that “in cases of judicial harassment against freedom of expression, characterized by the filing of multiple lawsuits regarding the same facts in different jurisdictions with the clear intent to undermine the defense rights of journalists or media outlets, the cases must be consolidated for joint judgment in the defendant’s domicile”. The STF also decided to give a constitutional interpretation to Articles 186 and 927, caput, of the Civil Code, establishing that “the civil liability of journalists, in the case of news dissemination involving public figures or matters of social interest, depends on the journalist having acted with malice or gross negligence, excluding the possibility of liability in cases of mere value judgments, opinions, or criticisms, or the dissemination of true information on matters of public interest”.

By a majority of opinions, the judgment thesis proposed by Justice Luis Roberto Barroso was accepted, with the addition of the definition of malice or gross negligence:

“Judicial harassment compromising freedom of expression constitutes the filing of numerous lawsuits regarding the same facts, in different jurisdictions, with the intention or effect of constraining a journalist or media outlet, making their defense difficult or excessively burdensome. Once judicial harassment is established, the defendant may request the consolidation of all actions in their domicile's jurisdiction. The civil liability of journalists or media outlets will only be established in unequivocal cases of deliberate misconduct or gross negligence, which involve the deliberate dissemination of false information, intentional harm, or severe misconduct”.

The full opinions have not been officially released, and once the Brazilian Supreme Court makes them available, we will update this page.

***Direction:***

**Expands expression**

This decision expands freedom of expression by recognizing and acting to prevent Strategic Lawsuits Against Public Participation (SLAPPs), clarifying the conditions under which journalists and media outlets can be held legally liable. By consolidating cases of judicial harassment in the defendant's domicile and requiring proof of malice or gross negligence for civil liability, the Brazilian Supreme Court strengthens protections for journalistic activities and promotes a more robust environment for free speech and press.

***Perspective***:

National standards, law or jurisprudence

**Additional citations:**

Brazil’s top court acts to protect journalists from judicial harassment - <https://cpj.org/2024/05/brazils-top-court-acts-to-protect-journalists-from-judicial-harassment/>

***Significance***:

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

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

***Docs***: