Vera Magalhães v. Douglas Garcia Bispo dos Santos

**Case Analysis**

***Meta-Data*:**

* **Case Number**: 1108993-48.2022.8.26.0100
* **Date of decision**: October 6, 2022
* **Featured case**: N/A
* **Region**: Brazil, Latin-America and Caribbean
* **Country**: Brazil
* **Type of expression**: Electronic / Internet-based Communication
* **Judicial Body**: First Instance Court
* **Type of law**: Constitutional Law
* **Main Themes**: Content Moderation, Defamation / Reputation / Press Freedom
* **Outcome**: Motion Granted
* **Status**: In Progress
* **Tags**: Press freedom; Honor and Reputation

***Analysis:***

* **Summary and Outcome**:

A Brazilian court ordered the removal of false social media content and prohibited further similar posts about journalist Vera Magalhães. After an electoral debate, Magalhães was falsely accused by Douglas Garcia Bispo dos Santos, then a state representative, of receiving money to criticize a presidential candidate, with the aim of discrediting her journalism. Santos made posts on his then Twitter account to the same effect. The Court emphasized that while free speech is a fundamental right, it must be balanced with the protection of honor and free press. Given the harmful and untrue nature of the posts, in a preliminary decision, the Court ruled that they should be removed and prohibited further similar posts.

* **Facts**:

[On September 13, 2022](https://www.youtube.com/watch?v=XfTg8yQdf7k&ab_channel=UOL), following the electoral debate hosted by TV Cultura, Folha de São Paulo, and Uol with the candidates for the Governorship of São Paulo, Douglas Garcia Bispo dos Santos, then a state representative in São Paulo, approached journalist Vera Magalhães while filming with his cellphone and claimed that she had "signed a half-million reais contract with the Fundação Padre Anchieta" to "criticize the President of the Republic" (at that time, Jair Bolsonaro) and that she was "a disgrace to Brazilian journalism". A heated discussion ensued between Magalhães and Santos, which was broken up by security. During the situation, another journalist intervened on Magalhães' behalf, grabbed Santos' cellphone, and threw it. Santos left the scene repeatedly shouting that Magalhães was a disgrace to journalism.

Moments before the electoral debate began, Santos made a provocative [post](https://x.com/DouglasGarcia/status/1569843274185162753) on his then Twitter account, saying, "I'm already here at the TV Cultura debate waiting for Tarcísio's [candidate for Governor of São Paulo, supported by Santos] arrival. Will Vera Magalhães come today?". He had made similar posts over the past two years, always casting doubt on the source of the journalist's salary and her professional conduct.

After the incident, journalists and other Brazilian authorities condemned what they considered an attack by Santos on the journalist. Even Tarcísio de Freitas, the candidate for Governor of São Paulo supported by Santos, [expressed regret over the situation](https://oglobo.globo.com/politica/eleicoes-2022/noticia/2022/09/apos-ataque-a-jornalista-vera-magalhaes-deputado-bolsonarista-pede-desculpas-a-tarcisio.ghtml) and strongly condemned "the aggression suffered by journalist Vera Magalhães while she was performing her duties during today's debate", adding that "[t]his is an attitude incompatible with democracy and does not align with our stance on the work of the press”.

Arguing that she has been subjected to unfair attacks and false news from Santos since 2020, especially through posts on the X, then Twitter, culminating in a nationally publicized episode, journalist Vera Magalhães filed a lawsuit requesting the immediate removal of publications containing offensive content to her honor, as well as a prohibition against Santos from disseminating false and dishonorable information. Magalhães also asked the Court to require a retraction from Santos.

* **Decision Overview**:

On October 6, 2022, Judge Cinara Palhares of the 15th Civil Court of São Paulo issued a preliminary ruling. The central issue before the Court was whether Bispo had the right to speak and publish false information about the journalist and whether his freedom of expression would be limited by the right to honor.

Quoting Articles 5, IV (freedom of thought), 5, IX (freedom of communication without censorship), 220 (press freedom), and 5, X (protection of honor and personal image), all from the Brazilian Constitution, Judge Palhares found that free speech and the protection of honor and personal image are fundamental rights that must be weighed in each case. She stated that, although public figures like journalist Vera Magalhães are subject to criticism, "such criticism cannot constitute a direct offense to their honor, nor can the dissemination of false information be tolerated, especially with the intent of discrediting the plaintiff’s statements to the extent of limiting her role as a journalist". [p. 114] The Judge noted that, in addition to the journalist's honor, Santos' actions also violated press freedom, another fundamental right enshrined in Article 220 of the Constitution ("The manifestation of thought, creation, expression, and information, in any form, process, or medium, shall not be subject to any restriction, as provided in this Constitution"). [p. 114]

Accordingly, given the evidence that Santos had falsely accused the journalist of receiving money specifically to criticize or spread false news about one of the presidential candidates, with the intent of discrediting her, the Judge ordered Santos to immediately remove any publications referencing the alleged payments received by the plaintiff from TV Cultura or the Fundação Padre Anchieta. [p. 115] The Judge also prohibited Santos from making any further publications of this nature. Judge Palhares denied the request for retraction, considering it an irreversible measure, incompatible with a preliminary decision. [p. 115]

The case is ongoing, and Santos has not yet presented his version.

***Direction:***

**Expands expression**

Although the Court's decision to remove content may restrict freedom of expression, it was made to protect both honor and free press. The journalist, Vera Magalhães, was falsely accused of receiving money to criticize the president, with the intent of discrediting her work. In this context, the Court's measures aimed to ensure that the integrity of journalism and individual honor were upheld, balancing the right to free expression with the need to prevent the spread of harmful and untrue information.

Santos is the same individual behind the [Case of the Anti-Fascist Dossiers](https://globalfreedomofexpression.columbia.edu/cases/the-case-of-the-anti-fascist-dossiers/), when he used his Twitter account to ask his followers to send him information on the full names and "corroborating evidence" of people who were "antifascists."

***Perspective***:

National standards, law or jurisprudence

Braz., Constitution of Brazil (1988), art. 5, IV;

Braz., Constitution of Brazil (1988), art. 5, IX;

Braz., Constitution of Brazil (1988), art. 5, X;

Braz., Constitution of Brazil (1988), art. 220;

***Significance***:

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

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

***Docs***: