

Federal Supreme Court (STF) decides that the right to be forgotten is incompatible with the Brazilian Constitution

20.04.2021 2 min read

Authors

Jose Humberto Deveza
Assola

Topics

Intellectual Property STF

Decisions José Humberto Deveza

The Federal Supreme Court (STF) issued a ruling, by a majority of 9 to 1 Justices, in the sense that the idea of the “right to be forgotten” **is not compatible** with the Brazilian Constitution. The right to be forgotten is usually raised in court to censor the publicizing of facts and data relating to events that took place some time ago. According to the theory consolidated by the STF, *“the idea of a right to be forgotten is incompatible with the Federal Constitution, being such right understood as the power to prevent, due to the time elapsed, the publicizing of truthful and lawfully obtained facts or data published in the media – either analogically or digitally”*.

The specific case that made the STF establish the above theory of general repercussion concerned an Extraordinary Appeal¹ filed by the brothers of Aída Curi, a young woman who was sexually abused and killed in 1958 in Rio de Janeiro, in a crime that moved the country and had great repercussion at the time. The Plaintiffs sought damages against Globo Network, which had broadcasted, in the show *“Linha Direta”*, the story of the crime, with the publicizing of the victim’s name and real photos, which, according to her relatives, brought back the memory of the crime and all the suffering that surrounds it. The STF rejected the appeal, acknowledging the incompatibility of the right to be forgotten with the Brazilian legal system, based on the argument that in this case the facts are notorious and have become part of the public domain.

According to Justice Carmen Lúcia, in the Brazilian legal system it is not possible to find support to a right that limits freedom of expression and the collective memory of society. *“In a country of sad unremembering like ours, to discuss the right to be forgotten as a fundamental right, meaning someone being able to impose silence or secrecy on a fact or act that may be of public interest, would be a legal insult to my generation. My generation fought for the right to remember.”*, the Justice pointed out.

The theory set forth by the STF also provides that possible excesses in the publicizing and representation of the fact by the media should be evaluated on a case-by-case basis. According to the STF’s decision, *“possible excesses or abuses in the exercise of freedom of expression and of information should be analyzed on a case-by-case basis, based on constitutional parameters - especially those related to the protection of honor, image, privacy and personality in general - and the express and specific legal provisions in the criminal and civil spheres”*.

NOTES:

¹ Extraordinary Appeal 1.010.606/RJ.

› PROFESSIONALS

Professionals who combine legal insight and market perspective



Jose Humberto Deveza Assola