

RIGHT TO BE FORGOTTEN, RELOADED: normative and theoretical inconsistencies in its application in the digital environment

DIREITO AO ESQUECIMENTO *RELOADED*: inconsistências normativas e teóricas de sua aplicação no ambiente digital

EL DERECHO AL OLVIDO RECARGADO: inconsistencias normativas y teóricas de su aplicación en el entorno digital

Lucas Catib de Laurentiis

PhD in constitutional law from the University of São Paulo. Master in constitutional law from the University of São Paulo. Law degree from the Pontifical Catholic University of São Paulo. Researcher and coordinator of the postgraduate Law Program at the Pontifical Catholic University of Campinas. lucas.laurentiis@gmail.com.



0000-0001-5596-6695

Felipe Grizotto Ferreira

Master in Human Rights and Social Development from the Pontifical Catholic University of Campinas, as a scholarship holder from the São Paulo State Research Support Foundation - FAPESP. Graduated in Law from the Pontifical Catholic University of Campinas, with a sandwich period at the University of Coimbra (Portugal). Professor of Constitutional Law and Tax Law at the Faculty of Law of the Pontifical Catholic University of Campinas. felipe.grizotto@puc-campinas.edu.br.



0000-0002-4204-8569

Carlo José Napolitano

Associate Professor in Communication Law, Post-Doctorate from the Department of State Law, Faculty of Law, University of São Paulo, PhD in Sociology from the Postgraduate Program in Sociology, Faculty of Sciences and Letters, UNESP/Araraquara, member of the Media and Society/CNPq research group, coordinator of the Right to Communication research line. Associate Professor at Universidade Estadual Paulista – UNESP, Department of Human Sciences and the Postgraduate Program in Communication, Faculty of Architecture, Arts, Communication and Design, Bauru/SP. carlo.napolitano@unesp.br.



0000-0002-6328-6398

Mailing address: Rua Professor Doutor Euryclides de Jesus Zerbini, 1516 | Pq. Rural Fazenda Santa Cândida | Campinas – SP | CEP: 13087-571

Av. Eng. Luiz Edmundo Carrijo Coube, n. 14-01, Vargem Limpa/Bauru/SP, CEP 17033-360.

Received: 09.16.2023.

Accepted: 11.19.2023.

Published: 12.20.2023.

ABSTRACT:

The work investigates the legal possibility of categorizing search engine providers as recipients of the right to be forgotten, imposing on them the obligation to establish filters or mechanisms capable of removing certain results related to personal data. Already widely discussed in Europe, the issue gained relevance in Brazil with the judgments of Special Appeal 1,660,168, by the Superior Court of Justice (STJ), and Extraordinary Appeal 1,010,606, by the Brazilian Federal Supreme Court (STF). The work, in a juridical-dogmatic approach, describes and critically analyzes the judgments, identifying inconsistencies in the use of the STJ's decision as a valid precedent, difficulties for its implementation, conflicts between decisions, and uncritical use of European precedent.

KEYWORDS: Intermediate liability; Special Appeal No. 1,660,168/RJ; Regulation of digital platforms; Search engine providers; Extraordinary Appeal No. 1,010,606/RJ.

Introduction

"We live naked on the Internet ... in a brave new world where our data lives forever" (Hendel, 2011, s/p). This statement succinctly summarizes the impact of the virtual world on society. While new means of communication and the internet have revolutionized relationships, the dynamics of the workforce, the economy, and even politics, they have also presented significant challenges to humanity (Edwards, 2015).

One of the greatest tensions, as illustrated by this opening phrase, undoubtedly lies between this information society and individuals' privacy. The digital storage capacity for data and information is nearly infinite, and its reach is global.

Faced with the magnitude of informational perpetuation, moral and philosophical constructs regarding a "virtue of forgetting" were intensified and spilled over into public debate. Thus, fearing the shadow of the past, people began to seek a technical and legal way to promote the removal of content from the digital world. The ancient notion of a right to be forgotten was, therefore, revitalized and took center stage in political and legal discussions in the context of the information society.

Embedded in the protective realm of privacy, the right to be forgotten is, in broad terms, a legal prerogative of the individual to erase or conceal certain personal information or even demand from third parties not to share it, with the aim of ensuring their informational autonomy and self-governance of their own memory (Ambrose; Ausloos, 2013; Sarlet, 2018).

Among the numerous international and domestic reflections on the topic (Lima, 2013), this present work investigates the legal possibility of classifying search engine providers as recipients of the right to be forgotten, imposing on them the burden of establishing filters or other mechanisms capable of suppressing certain search results related to the personal data of the data subject.¹

This issue gained legal relevance in 2014 with the decision of the Court of Justice of the European Union in the case *Google Spain v. González* (CJEU, 2014), in which the legal and technical possibility of de-indexing certain web pages based on searches for specific personal data of the data subject was recognized. The issue was legally strengthened and took on new contours in Brazil with the judgment of Special Appeal (Resp) No. 1,660,168/RJ in the Superior Court of Justice (STJ).

Inspired by the European precedent, the STJ sentenced three search engine providers to de-index search results related to the applicant's name and her alleged involvement in a public tender fraud. However, these conclusions were overturned by the judgment of Extraordinary Appeal (RE) No. 1,010,606/RJ, heard by the full bench of the Supreme Federal Court (STF) and reported by Justice Dias Toffoli.²

¹ The assignment of monitoring obligations and liability for third-party harm to intermediaries is complex but is a global trend in internet governance. However, reflections should be individualized, and the regulatory peculiarities of each legal system need to be considered. This is what is intended in this work, as per (Frossio, 2018).

² For any reader who is not familiar with the organization of the Brazilian judiciary, a clarification note is necessary. In broad terms, the Supreme Federal Court (STF) is the highest court in the judicial system and has the authority to make final decisions on constitutional matters, although it also has jurisdiction over other areas, including criminal matters. This means that the STF has

The specific objective of this article is to describe and critically analyze what happened in these judgments. As the general objective, the article seeks, within the national context, to outline solutions to existing problems and, in the context of comparative law, to inform the foreign literature in a qualified manner about what happened in Brazil.

These objectives will be achieved through a legal-dogmatic approach (or "doctrinal," as the term is commonly used in Anglo-Saxon literature) to these judgments and their possible normative consequences. In the classic categorization of dogmatic investigation, there are three perspectives of work: analytical (identifying and analyzing the provisions and texts of existing norms), hermeneutical (analyzing the interpretation of norms), and argumentation or decision (analyzing the application of norms).³ This work is developed within the realms of legal interpretation and application, evaluating the consistency, internal coherence, and normative effects of the decisions under analysis.

The exposition is divided into five parts. The first part describes both the factual context that led to the legal dispute and the grounds for the STJ's decision. Next, a legal analysis of the judgment is carried out, presenting its normative inconsistencies based on jurisprudence, normative texts, and specialized literature

Then, a comparative analysis is conducted between the European and Brazilian scenarios, demonstrating the inconsistencies and limitations of importing the European precedent into the Brazilian normative context.

Then, difficulties in implementing the STJ decision and its use as a valid precedent are pointed out, concluding that in addressing the challenges inherent to data protection claims, in which the right to be forgotten is included, judicial control has proven to be fragile and inefficient.

the "last word" on the interpretation of the Federal Constitution. On the other hand, the Superior Court of Justice (STJ), created only in 1988 with the current Federal Constitution, is responsible for harmonizing the interpretation of federal law in Brazil. In other words, it is responsible for reconciling interpretations of non-constitutional law. However, in terms of constitutional review, Brazil adopts a model classified as "mixed" because there is the possibility of abstract and direct control, which is only carried out by the STF, and the possibility of concrete and incidental ("diffuse") control, which can be carried out by any court in the country, including the STJ and the STF itself. Therefore, as in the cases analyzed in this paper, it is common for arguments and parameters of fundamental rights to be used for cases decided by the STJ, which can lead to conflicts in the interpretation and application of the same norms between these two courts. For a detailed explanation and critical analysis of the Brazilian control model please refer to (Ramos, 1994,2010; Dimoulis, Lunardi, 2013).

³ In Brazil, these categories of description, analysis, and critique have been systematized and disseminated in (Ferraz Jr., 2015). For a reconstruction of constitutional dogmatics, see Laurentiis, 2017.

Finally, the paper addresses the implications of RE n. 1.010.606/RJ for the topic and the normative conflict between the decisions of the Superior Court of Justice and the Federal Supreme Court.

1 - The Special Appeal No. 1,660,168/RJ: factual context and the grounds of the decision

Brazilian public contests are socially stigmatized as a tough path to a stable, well-paid, and prestigious career. However, some of them become marked for other reasons. This is the case of the 41st Public Exam for Judiciary of the Court of Justice of Rio de Janeiro. Indications of irregularities, such as a possible leak of answers, almost led to the annulment of the process by the National Council of Justice (Brazil, 2008).

Denise Pieri Nunes was directly involved in the discussion of fraud because the leaked answer key was allegedly reproduced in her exam. However, even after the inconclusive case was closed, online searches for Denise, who is now a prosecutor, still yielded results linking her directly to the exam fraud allegations (Brazil, 2022). This prompted her to file a legal action seeking the delisting of news articles connecting her name to the incident from search results on Google, Yahoo, and Bing platforms.

In the first instance, the request was dismissed based on the understanding that search engine applications on the internet are not responsible for content published by third parties.

In the second instance, this understanding was reversed, and the companies were sentenced to filter search results that mentioned the author. With the filing of the Special Appeal, the STJ understood, by majority, that it was an exceptional circumstance, and therefore, search engine providers should cease the link created in their databases between the name of the interested party and the search results when the exclusive criterion of the search is their personal information (Brazil, 2022).

The deindexation of certain personal data from search engine results was understood as an exceptional measure in the context of internet regulation. Its legal possibility, according to the judgment's own wording, is conditioned on the absence of relevance to the public interest of the information constituted from this data, giving rise to the application of the right to be forgotten.

Beyond the theoretical scope, Brazilian jurisprudence has recognized the mentioned right on other occasions. Its conceptual contours were outlined broadly, mainly through cases that deal with the offline environment, in which it was stated that its content involves the "right not to be remembered against one's will, specifically

regarding discrediting facts of a criminal nature in which they were involved, but were subsequently exonerated" (Brazil, 2002b, p. 12).

Even without explicit normative recognition (Sarlet, 2018), this jurisprudential development of the right to be forgotten was based on a broad interpretation of the fundamental right to privacy, with an impact on private relationships through provisions of infraconstitutional legislation, especially in civil law (Brazil, 2012).

The jurisprudence of the STJ has considered that the protection of privacy prevails over informational freedom, but the existence of a public interest in accessing information is a limitation to the application of the right to be forgotten.

Broad and imprecise, the term creates numerous difficulties in legal work, and there are virtually no solid parameters to guide such a task. The STJ rulings simply resort to the rhetoric of balancing in the face of the specific case to solve the problem, which is equivalent to not deciding (Böckenförde, 1991). However, in the circumstances of the case analyzed, two disqualifying hypotheses of public interest were asserted: the predominantly private content and the passage of time.

Promoting only expectations, the hypotheses were recorded in the judgment's summary but failed as means of legal guidance as they were merely mentioned in the ministers' voting rationale, without specifying their meaning and scope, as well as criteria that would allow their determination in the specific case.

The main effort of the winning votes was to justify the legal basis of the request and its technical feasibility of implementation.

Contrary to the application of the right to be forgotten in the offline sphere, which can lead to the duty to compensate under the traditional liability regime, its implementation in the digital environment entails certain delicate legal consequences, such as the imposition of an obligation to act in the virtual environment, which is not clearly regulated in Brazilian law. Hence the Herculean effort of the winning votes. Two were the evoked grounds.

The first one is extracted from Article 11 of the Marco Civil da Internet (MCI), which deals with the protection of data and communications in the digital sphere, as well as from item X of Article 7 of the same statute, which in turn ensures the right to delete personal data provided for a particular application on the network (Brazil, 2014). Since the third paragraph of Article 11 expressly prescribes the duty to respect privacy in the treatment of data, the obligation to de-index as a means of enforcing the right to be forgotten on the internet would be legally supported. Minister Paulo de Tarso Sanseverino, in his final vote, even goes so far as to state that the "legislator also

addressed the right to be forgotten itself" (Brazil, 2022b, p. 85) by enshrining in the aforementioned item of Article 7 the possibility of permanent deletion of personal data.

The second foundation is drawn from comparative law and not only served to demonstrate the legal possibility of the request but also ratified its technical feasibility. This is the case of *Google Spain v. González*, decided by the Court of Justice of the European Union in 2010 (CJEU, 2014), which will be analyzed in this work. For now, it is enough to emphasize that this precedent was mainly used to reject the thesis of technical impossibility of the request in the case under analysis (Brazil, 2022b).

2 - Inconsistencies in the interpretation and application of regulatory provisions

The decision, from both a jurisprudential and theoretical perspective, presents normative inconsistencies that raise doubts about its potential as a valid precedent on the subject. Many of the issues were addressed by the dissenting opinions themselves. Specialized literature also helps clarify some points for the legal treatment of the matter, as well as reaffirming those already established by jurisprudence.

2.1 - Jurisprudential parameters

In the vast information landscape of the internet, locating and accessing content is only possible in a simple and practical way through search engines. Due to the nature of this service and its dimensions, search engine providers have a great potential for control and manipulation of communicative activity. Aware of this, and in line with international guidelines (Article 19, 2016), the STJ (Superior Court of Justice) recognized that the practice of filtering and monitoring content, even if illegal, by search engine providers constitutes a form of censorship. It acknowledged that the application of the right to be forgotten in the digital sphere does not include the possibility of imposing an obligation to monitor on these providers (Brazil, 2012).

This understanding was endorsed by legislation with the promulgation of the Brazilian Civil Rights Framework for the Internet (MCI). Article 19 of this legislation, especially its paragraph one, as well as the Sole Paragraph of article 21, require specific identification of the infringing content that will be held responsible or taken down (Brazil, 2014). These norms aim to prohibit the autonomous practice of surveillance and filtering by content providers. This prevents an obligation with this content from being imposed by judges and requires clarity and timeliness of any court order under penalty of nullity.

Based on these guidelines, the jurisprudence of the Superior Court of Justice (STJ) specified these prescriptions. It was understood that it is not the responsibility of the

blog hosting provider to locate the content deemed offensive as it is a subjective matter, requiring a clear and precise indication of the URL by the complainant (Brazil, 2015).

It was also established that, in addition to individualized location, a court order is required to remove allegedly infringing content from the provider (Brazil, 2016a). It was found that the formal requirements set by the MCI also serve as a secure criterion for verifying compliance with court decisions that determine the removal of content on the internet and still protect freedom of expression, as per Article 19 of the MCI (Brazil, 2014). Specifically regarding search engine providers, the limitation on imposing responsibility was even greater. The STJ absolves these providers from eliminating from their system the results derived from the insertion of a certain term or expression, nor those that point to a specific photo or text, regardless of the indication of the page where it is inserted (Brazil, 2016b).

The analyzed judgment departs from the consolidated jurisprudential guidance of the STJ itself, a point emphasized by Minister Andriahi in her vote. Since the content subject to delisting is not illegal, this is not an exceptional circumstance, and the factual context is very similar to many others already analyzed by the STJ (Brazil, 2022b).

2.2 - Analysis of normative texts, their parameters, and concepts

If, on one hand, the provisions mentioned in the STJ judgment, such as the first paragraph of article 19 of the MCI, prescribe the individualized identification of defamatory content, specifically guiding the extent of the duties and responsibilities of providers, on the other hand, even those provisions that mention broad protection of privacy, although they have a very open semantic constitution, do not allow for an operationalization of the right to be forgotten in the manner outlined by the STJ decision. Some conceptual notes and distinctions are necessary.

While one of the means for the protection of data and, therefore, related to the legal protection of privacy, the right to be forgotten is closely linked to the possibility of individuals freely developing their personality (Martins, 2016). Specifically, its object of protection involves the idea of controlling the past and not being confronted with it (Koops, 2011). These elements are, in turn, directly related to the right to individual and informational self-determination, as the power to erase the past also means the possibility of creating a new future (Buchholtz, 2015).

This right encompasses two conceptions, which are used indiscriminately both by the STJ and by national literature (Diniz, 2017). The first is treated as the right to be forgotten in the strict sense ("right to oblivion"), that is, the dissociation of the individual from an illicit, criminal past. The second conception is the right to erasure ("right to

erasure"), which indicates the person's ability to permanently erase information about themselves from a database (Ambrose; Ausloos, 2013).

This latter concept gains relevance and attention with information technology and the virtual environment because they allow indiscriminate collection, eternal maintenance, and countless possibilities for processing personal data (Mendes, 2014). Therefore, current trends in data protection regulation in the context of the internet are practically concerned with this conception.

Furthermore, this digital, technological, and social context in which the law operates consists of the accumulation of two types of data (Koops, 2011). The first type refers to the data that the individual produces about themselves while using virtual services and interacting on the network.

These are the "digital footprints" generated by the network user. The "data shadows," on the other hand, refer to data about the user that are created by other individuals, including other individuals who also have related data – just think of the case of someone sharing a photo or information generated by an individual – or by the navigation system itself, which collects information from visited websites (cache memory) to optimize access speed.⁴

Both categories constitute the scope of the right to be forgotten and have different legal consequences, as the request to erase data generated by the user themselves is quite different from erasing data created and shared by third parties that relate to them (Sarmiento, 2016; Koops, 2011).

The normative provisions that regulate data protection in a particular legal system may recognize some of the conceptions of the right to be forgotten. But it is not necessary for them to regulate all of them because there is not only one way to configure them normatively (Rodotà, 2008).

The recipient of the right is the controller and holder of personal data. However, it is possible, for example, to qualify both a public and private organization as a controller, or even an individual as such, as well as determine different degrees of responsibility among the controllers in a chain of services (application providers, content providers, users).

The same range of possibilities applies to the other legal-dogmatic dimensions of the law: when, for what motivation, and in what manner can the right to be forgotten be

⁴ Based on this observation, it has already been stated that the full realization of the right to be forgotten in a digital environment is materially impossible because the deletion of user-generated footprints from browsing would make the search system slow and, ultimately, non-operational (Jandt; Kieselmann; Wacker, 2013).

exercised? Faced with these variables and the legal complexity they generate, it is not acceptable, let alone merely a generic recognition through judicial means, of the right to be forgotten in a given legal system and then apply it on a case-by-case basis. The peculiarities of the normative provisions and their hypotheses of incidence must be considered.

The item X of article 7 of the MCI recognizes the right to permanently delete personal data that the user "has provided to a certain internet application, at his request, at the end of the relationship between the parties, except for the mandatory record-keeping cases provided for in this Law" (Brazil, 2014). As subject right, and in the absence of specific regulation by the MCI or other legislation on mandatory deletion over time, the right will be exercised when the data subject so wishes, as explicitly stated by the phrase "at his request" in the text, and provided that the relationship between the parties that prompted the data collection has ended. The legal exception will apply when the specific circumstances of the case require mandatory storage as legally specified. The implementation will involve the permanent deletion of personal data from the database and its associated systems.⁵

The provision refers to the deletion of data that the user "has provided to a specific internet application," as well as the "relationship between the parties." The regulation applies to a virtual bilateral service provision relationship between the content or application provider and the user.

Therefore, the recipient of the legal duty is the service provider that collected the user's personal data and had control over it. This is the case when providing data for an email service and the subsequent desire to delete it due to contract termination. This situation is very different from a right to be forgotten realized as a specific duty of delisting by search platforms (such as Google), which did not establish any bilateral relationship with the data subject. Therefore, the aforementioned provision does not apply to the case analyzed by the STJ.

Minister Andrichi seems to be aware of this, and rightly pointed out the nature of the subjective right conveyed by the norm, but argued that its application "only covers information that the individual himself has provided to a specific Internet application provider" (Brazil, 2022b, p. 37).

⁵ Unlike the scenario in the case analyzed, the application of the provision is clear in the case of apps like Snapchat. The logic of the app is to allow the exchange of ephemeral photos and videos, meaning that the records last until they are viewed or for a specified period, after which they become unavailable. However, due to a breach in its system, it was discovered that all media files are actually saved. This would be a case in which, after the termination of the desired service, the data should be deleted (Gonçalves, 2017).

The same reasoning and the same conclusions are applicable to Article 11 of the MCI. The provision states that in "any operation of collecting, storing, keeping, and processing records, personal data, or communications by internet connection providers and internet application providers," in addition to relevant Brazilian legislation, the "rights to privacy, personal data protection, and the confidentiality of private communications and records" must be observed (Brazil, 2014). This indicates that the scope of protection of such a norm encompasses the qualified categories in the text, especially privacy, considered as a broader concept. The recipients of this directive are those who process personal data.

The interpretations of these processing actions have been broad and, in general, appear to provide a basis for the inclusion of search engine providers because they are defined as any action of "managing information, relating and reworking data with the purpose of obtaining conclusions through the application of criteria" (Mendes, 2014, p. 58).

With its nature as a public and objective norm, the duty to protect and respect the mentioned categories applies to each of the personal data processing operations and communicative activities. The reason for this protection, more than a legislative discretionary choice, lies in the promotion of the fundamental right to privacy.

The significant challenge in applying the norm conveyed by Article 11 of the MCI lies in identifying both the violation of one of the protected categories and the legal sanction that follows. Considering the explicit reference to privacy in the normative text, as well as the recognition of the horizontal effect of fundamental rights by legal theory and, especially, jurisprudence, the correct application of the provision should be guided by the norms of the fundamental right to privacy.⁶

With modern roots, the right to privacy gains significance in safeguarding interactions between the dichotomy of society and the individual, where the principle of exclusivity predominates (Ferraz Jr, 1993). Its foundation involves the ability to rest without being harassed by the State and other members of society (right to be let alone). (Warren; Brandeis, 1890).

⁶ The recognition of the horizontal effectiveness of fundamental rights and its legal consequences is a controversial topic in the literature. In summary, it is possible to attribute direct or indirect horizontal effectiveness, with the former being more problematic and mostly rejected in the legal field. The hypothesis discussed in this case is that of indirect horizontal effectiveness, which occurs when legal practitioners are faced with imprecise legal concepts found in subconstitutional provisions. In this case, normative texts must be interpreted in light of constitutional norms and fundamental rights. The authors have serious criticisms of this legal category, but they continue with the argument because, in the case under analysis, jurisprudence itself recognizes the said effect and uses constitutional parameters to interpret Article 11 (Dimoulis; Martins, 2014).

Indeed, the scope of privacy protection consists of the possibility to resist violations of vital situations that the individual wishes to keep to themselves, "under the shelter of their sole and discretionary decision" (Ferraz Jr, 1993, p. 440). It is the possibility of freely developing one's personality through self-determination, self-preservation, and self-exposure (Martins, 2016). Thus, especially considering the last category within the right to personality, the individual could determine their mode of presentation in society, which would include the possibility of keeping certain facts private, even against lawful intrusions by third parties.⁷

More controversial is the possibility of imposing a "right to be forgotten" duty on facts that have already been disclosed, especially when they are lawful. Without delving into the philosophical aspects of this deeper issue, and therefore considering the doctrinal recognition of this possibility already made by the Brazilian tradition, it is certain that the protection of privacy in its various aspects has limits.

Among the legal-doctrinal contours of privacy, the voluntary transmission of personal data to the public implies its exclusion from the scope of protection of the right (Warren; Brandeis, 1890), a limitation that becomes stronger when considering the right to access information. In the analyzed case - Resp n. 1.660.168/RJ - the interested party not only participated in a collective event with a purely private nature. Her actions took place in a public procedure for appointment to an important, also public, position. From this, it follows the recognition of an absence of violation of the privacy of the party concerned (Warren; Brandeis, 1890).

Even when considering the right to be forgotten specifically, the conclusion remains the same. This is because one of the limitations of its application is precisely the public interest in access to information, which, although it constitutes an indeterminate term, can be assessed by some criteria that are widely accepted (Diniz, 2017; Sarlet, 2018). One of these criteria is the public nature of the position held by the individual. In such cases, even if the facts subject to the exercise of the right occurred before assuming the position, or even when the data involved are not directly related to the role of the position, the right to be forgotten should not be recognized (Article 19, 2016).

⁷ Ferraz Jr (1993, p. 447) uses an example that clarifies this aspect in the following terms: "When someone intercepts a message from someone else, for example, opens a letter that was not addressed to them, they commit an act of violence against the ability to maintain secrecy and violate the freedom of denial. It doesn't matter if the letter contains only a reproduction of a newspaper article published the day before. The right will have been violated in any case because the protection is not for the content of the message (technically, the so-called communicated report), but for the act of sending and, receiving it".

From all of this, it follows that there can be no violation of privacy and the duty to protect data by the companies sued in the case under consideration, and consequently, there was no disregard for the guidelines of Article 11 of the MCI. It is worth noting that the interested party herself does not allege harm or even the existence of an unlawful act; her interest is solely in suppressing search results that link the alleged fraud to her name, which is not supported by the guidelines of the mentioned provision. Even if there were a violation, it is not clear that the order for deindexation is an appropriate legal remedy. The appropriate measures are provided for in Article 12 of the MCI, but they are generic and abstract commands. On the other hand, Article 19 of the MCI requires an individualized and direct order to the direct holder of the data, which makes it impossible to include monitoring and filtering as a sanction (Brazil, 2014).

3 - Inconsistencies in the incorporation of European precedents

In the case of Google Spain, the search platform was challenged by Costeja González and the Spanish Data Protection Authority. The dispute originated because among the search results displayed by Google when the individual's name was searched, there were mentions of two pages from the La Vanguardia newspaper dated back to 1998, which contained information about a tax issue with the Spanish authorities. González requested the delisting of these search results when his name was entered into the search engine, as the news had become outdated.

As there were questions about the scope of European Union legislation, the case was referred to the European Court of Justice. In summary, it was decided that under European law, the search engine provider should be considered responsible for personal data and obliged to remove from the list of search results, displayed following a search conducted using a person's name, links to other web pages published by third parties containing information about that individual, even if the information is lawful and also in the public domain (CJEU, 2014).

Three considerations regarding its use in the Brazilian context are relevant. Firstly, the decision of the European Court was based on specific data protection legislation (Directive 95/46/EC of the European Parliament). Nevertheless, the decision received significant normative criticism, such as regarding the classification of search engine providers as data controllers under the existing legislation. In contrast, the Brazilian MCI does not specifically address data protection, and its provisions establish a relative immunity for intermediaries, requiring in any case a clear and precise order regarding which measures to take and which content to delist. This leads to the second consideration.

Furthermore, in the Google Spain case, the delisting order was specific and pointed out exactly which pages should be delisted. Therefore, it does not require a generic monitoring of possible search results but only the delisting of personal data of the individuals from a list of web addresses. It is worth noting that after the judgment and considering the specific duty of delisting, Google has maintained a significant workforce dealing specifically with delisting requests (Kulk; Borgesius, 2018). Lastly, the European precedent makes it clear that any public office held by the individual is a limit to the recognition of the right to delisting (CJEU, 2014). These are fundamental points in the sensitive context of the analyzed issue, but they were disregarded in the Brazilian case, which either demonstrates a lack of skill in handling comparative law or a selective approach to importation.

4 - Inconsistências na implementação e limitações do controle jurisdicional

It's also necessary to consider the difficulties in implementing the decision of the STJ. The decision runs the risk of being ineffective due to the imprecision of the contours of judicial prescription. By not indicating specific addresses for de-indexation, the Court may end up creating a general duty for search providers to monitor based on certain criteria. As well as creating a situation that is highly dangerous to freedom of expression and contrary to the Brazilian legal system, there is a difficulty in defining what the appropriate parameters will be to allow the platforms' algorithms to identify vetoed content.

In accordance with the judgment, the association between the author's full name and the news about the alleged fraud in the competition was prohibited. This could potentially make the decision ineffective due to the extreme rigidity of the parameters, as not every search will necessarily include the full name. Any other variation will lead to the association the plaintiff wants. If the parameters were different, such as various combinations of the interested party's nominal elements, the decision could lead to the censorship of other information relating to other people with similar nominative signs, seriously interfering with the right to access information (Sarlet, 2018).

Finally, the right to be forgotten does not have a single legal conception and configuration; it can be addressed, as already emphasized, in various ways in different areas. But not only that, this notion is part of a broader field, which is data protection, and it is one of the ways to promote such protection, especially in a repressive manner, after the collection and use of certain data.

However, the context of data protection is extremely complex and presents particular challenges for the law (Albers, 2016; Rodotà, 2008). In the face of the nature of

the digital age, regulating the collection, storage, processing, and use of personal data requires the updating and adaptability of legal instruments and state institutions. It is necessary to deal with new concepts and objects, typical of information and computer systems, and often the implications and results of a given political or legal measure cannot be foreseen within a short or medium term, sometimes they can never be precisely evaluated (Koops, 2011).

As Albers (2016, p. 29) states, the "patterns of thinking and description used in data protection legislation need to be critically reflected upon and reconceptualized." Given these peculiarities and the difficulty of restoring the situation to its pre-violation state, the author compares the field of data protection to environmental law because the main idea should be the regulation of risks (Albers, 2016). The correct question would be: Is the Judiciary prepared to face these challenges of the online world through normatively creative action?

The answer is likely negative. The interpretative boundaries of the norms and the correct analysis of the factual aspects they will impact can only be accurately assessed by considering the institutional capacities of the courts (Sunstein; Vermeule, 2002).

Given the specificities of the issues related to new technologies and the dynamic nature of the environment in which the concept of data protection is embedded, courts appear to have limited aptitude to address these challenges. This is especially true when considering that even technical and legislative institutions in developed countries face difficulties in dealing with the inherent challenges of the subject matter.

The institutional limitations of the Judiciary have become evident on other occasions, such as when attempting to protect individuals' right to image and privacy, which resulted in blocking access to the YouTube platform for almost all Brazilians.⁸ On that occasion, it was recognized that the judicial decisions were technically mistaken, ineffective, and resulted in serious violations of freedom of expression and the right to access information. One response was the approval of specific legislation regulating the peculiarities of the internet (Souza; Moniz; Vieira Junior, 2007). Today, this same legislation (MCI) is being ignored.

All of this indicates that judicial control in this area has serious limitations. Therefore, it should adhere as closely as possible to the textual elements of the laws, as well as the doctrinal parameters established by its own jurisprudence. This provides a legally sound and democratically viable path for addressing disputes in the context of data protection. At the same time, it does not imply a lack of commitment to the

⁸ This is the case of Daniela Cicarelli, in which the model was filmed in intimate scenes with her boyfriend on the beach in Cádiz, Spain (Souza; Moniz; Vieira Junior, 2007).

protection and promotion of the right to privacy. The legal protection of privacy in the information society entails state duties to safeguard privacy. However, these duties require appropriate and specific measures, balancing them with the parameters of other fundamental rights, which must be promoted in the political field and at the discretion of the legislator (Martins, 2016). In its decision, the STJ deviates from these parameters because, in addition to breaking with its own jurisprudence, it made interpretations of doubtful compatibility with the MCI and decided contrary to some international criteria on the subject (Article 19, 2016).

5 - Right to be Forgotten and Search Providers in Brazil: A Case of Infinite Recalcitrance

Many of the doctrinal and practical deficiencies addressed in this article appeared to have been resolved with the decision of the Brazilian Supreme Federal Court (STF) on the matter. In the context of Extraordinary Appeal No. 1,010,606/RJ, with General Repercussion, Theme 786 (Brazil, 2021), the Supreme Court ruled out the possibility of applying this right in civil cases, adopting the following thesis:

The idea of a right to be forgotten, understood as the power to prevent, due to the passage of time, the disclosure of true and lawfully obtained facts or data published in analog or digital media, is incompatible with the Constitution.

Any excesses or abuses in the exercise of freedom of expression and information must 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, as well as the express and specific legal provisions in the criminal and civil domains (Brazil, 2021, p. 3-4).

Despite some problems and points open to criticism, this STF ruling represented a strong response to various weaknesses and inconsistencies that surround the notion of the right to be forgotten.

First and foremost, the decision provided clarity in defining the right to be forgotten. Because it is an "unwritten" right in the Brazilian legal system, national and even international doctrine and jurisprudence were hesitant when it came to identifying the prerequisites, parameters, and limits of its application to specific cases.⁹ Even if it had been recognized by the Supreme Court, a precise and sufficient definition to enable

⁹ An example of such uncertainty can be found in two recent and contradictory judgments, both of which were handed down by the German Constitutional Court and went in completely opposite directions (Alemanha, 2019a, 2019b).

its doctrinal and practical operation would be necessary, which unfortunately was not satisfactorily achieved by the STJ, as explained in this work.

Another serious problem that pervades the doctrinal aspects of the right to be forgotten, and which arises, to some extent, from its conceptual inconsistency, is the indeterminacy of the restriction resulting from the recognition of the right to be forgotten in the context of the protection of other fundamental rights.

At this point, the rights affected are freedom of expression and information, which become less clear-cut due to the recognition of the right to be forgotten (Ferreira, 2021). To methodically assess restrictions on fundamental rights, measures must be sufficiently clear and precise to ensure a minimum level of predictability for the holders of these rights (principle of determination).

Clarity and precision are fundamental in the doctrine of fundamental rights because, without these elements, there may be more interventions than necessary to achieve the restrictive purpose. Recognizing a generic and indeterminate right like the right to be forgotten represents a severe violation of the principle of determination.

The Brazilian Supreme Court recognized this fragility in various passages of the Justices' votes in Extraordinary Appeal No. 1,010,606/RJ and stated, in item number 5 of the ruling, that the restriction on the disclosure of true information over time must have a legal basis, "in a specific, clear-sighted manner, without nullifying freedom of expression" (Brazil, 2021, p. 3). In opposition to a generic and undetermined right to be forgotten, the Brazilian Supreme Court established that cases of data and information suppression should be assessed in their specific circumstances, through specific and detailed regulations, as is the case with the provisions for data blocking and deletion in Law No. 13,709/2018 (General Data Protection Law) and in the MCI.

This last point, despite being a healthy realization for the doctrine of fundamental rights related to social communication (Post, 2019), was seen as a "normative gap" by the Third Chamber of the STJ to maintain its understanding of the subject. In fact, due to the new orientation set by the Supreme Court, the merits of Resp. No. 1,660,168/RJ (duty of deindexation by search platforms) were reevaluated for possible retraction.

In this task, the STJ understood that the registered judgement did not determine the deletion of news but only their deindexing, from which it follows that such a decision was grounded in light of the fundamental rights to intimacy and privacy, as well as the protection of personal data. The STJ avoids using the term "right to be forgotten," aiming to make the reader forget that the practical and doctrinal consequences of the judgment were maintained. Finally, considering that the issue of de-indexing opinions and information was not the subject of the Supreme Court's decision, even contrary to the

explicit meaning of the STF Rapporteur's vote, the Third Panel of the STJ ratified the entirety of its ruling in the Special Appeal.

In doing so, besides circumventing the Supreme Court's precedent and maintaining its decision-making authority on a complex and controversial issue, in just over a year, the STJ resurrected the right to be forgotten, now nicknamed by one of its effects (deindexation).

But there are problems in this attempt to forget the right to be forgotten. In his vote, Minister Dias Toffoli stated that the issue of deindexing would not be specifically addressed because, among other reasons, it is a broader issue than the right to be forgotten itself, and there are "numerous grounds and interests that can foster a request for deindexing of online content, many of which are completely unrelated to a supposed right to be forgotten" (Brazil, 2021, p. 19). In fact, deindexation is only one of the possible effects of the right to be forgotten (Frajhof, 2019), especially as outlined in the judgment of the Extraordinary Appeal, and can be based on rules that combat the illicit use of information, as in the disclosure of trade secret or an incident of personal data

But this was not the context of the STJ's decision. As analyzed in this work, the deindexed news involved a true fact (reported the involvement, but did not point to guilt itself) and was lawfully obtained by media institutions. Furthermore, the thesis established by the Supreme Court regulates the claim to "prevent" the "disclosure," not to delete or destroy information or opinion.

Online search platforms, besides being essential for the construction of the contemporary public space (Post, 2018), are necessary to enable the proper use of the internet. Without them, the internet is simply a jumble of meaningless information. Therefore, by requiring the deindexing of information by search platforms, the STJ's decision will indeed "prevent" its effective "disclosure." It contradicts the content and meaning of the Supreme Court's decision.

It is worth remembering, finally, that contrary to what was stated in the judgment's heading in the context of the retrial, the STJ based a significant part of its decision in Resp. n. 1.660.168/RJ on the right to be forgotten, a fact that has also been explored here.

Instead of challenging the authority of the STF and reviving a topic that has already been extensively debated, the STJ could have taken the opportunity to address some of the problems pointed out in this work (precision of the terms to be deindexed, doctrinal effects of qualifying the petitioner as a public figure, uncritical importation of foreign decisions, among others) and, at the very least, improve its decision. The right to be

forgotten, therefore, seems to suffer from the same ailment it aims to combat, actually being a "right that will never be forgotten."

Final considerations

This work investigated the legal possibility of categorizing search engine providers as recipients of the right to be forgotten, imposing on them the burden of implementing filters or other mechanisms capable of suppressing certain results related to the personal data of the individual concerned.

In order to understand the outlines of the digital application of the right to be forgotten in Brazil, the decision of the Superior Court of Justice in the case Special Appeal No. 1,660,168 was analyzed, comparing this decision with the current legislation (especially the MCI) and with the recent precedent of the STF on the matter (RE 1,010,606/RJ). The results are discouraging.

It was found not only that the STJ disrespects the standards defined in its own jurisprudence but also ignores the dogmatic limits of Brazilian legislation. Moreover, by maintaining its already questionable and problematic understanding, the STJ also confronts the jurisprudence of the STF, as well as theoretical parameters and international precedents. At the end of the journey, what is observed is a recalcitrant court that judges without a normative basis or dogmatic parameters.

In short, the STJ speaks and decides on its own, without limits or regulations. As a result, the Court only creates uncertainties, doubts, and a lot of confusion. This decision should be forgotten from every perspective.

References

- Albers, Marion. (2016). A complexidade da proteção de dados. *Direitos Fundamentais & Justiça*, (35), 19-45.
- Alemanha. (2019a). Tribunal Constitucional Federal. Primeiro senado. 1 BvR 16/13 - Direito ao esquecimento I. https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/11/rs20191106_1bvr001613en.htm. Accessed on November, 2023.
- Alemanha. (2019b). Tribunal Constitucional Federal. Primeiro senado. 1 BvR 276/17 - Direito ao esquecimento II. http://www.bverfg.de/e/rs20191106_1bvr027617en.html. Accessed on November, 2023.
- Ambrose, Meg Leta, & Ausloos, Jef. (2013). The right to be forgotten across the pond. *Journal of Information Policy*, 3, 1-23.
- Artigo 19. (2016). "Direito ao esquecimento: Lembrando da Liberdade de Expressão". https://www.article19.org/data/files/medialibrary/38318/The_right_to_be_forgotten_A5_44pp_report_portuguse-pdf.pdf. Accessed on November, 2023.
- Artigo 19. (2016). Freedom of Expression Unfiltered: How blocking and filtering affect free speech.

- https://www.article19.org/data/files/medialibrary/38586/Blocking_and_filtering_final.pdf. Accessed on November, 2023.
- Brazil. Conselho Nacional de Justiça. (2008). CNJ decide pela manutenção do 41º concurso para a magistratura do TJ/RJ, 11 de março de 2008. <https://www.cnj.jus.br/cnj-decide-pela-manuten-do-41o-concurso-para-magistratura-do-tjrj/>. Accessed on November, 2023.
- Brazil. Superior Tribunal de Justiça. (2012). Resp 1.316.921/RJ, de 29 de junho de 2012. Chrome-extension://efaidnbmnnnibpcajpcgiclfefindmkaj/https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201103079096&dt_publicacao=29/06/2012. Accessed on November, 2023.
- Brazil. Superior Tribunal de Justiça. (2013). Resp 1.335.153/RJ, de 10 de setembro de 2013. chrome-extension://efaidnbmnnnibpcajpcgiclfefindmkaj/https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201100574280&dt_publicacao=10/09/2013. Accessed on November, 2023.
- Brazil. Lei nº 12.965, de 23 de abril de 2014. (2014). Estabelece princípios, garantias, direitos e deveres para o uso da Internet no Brasil. http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm. Accessed on November, 2023.
- Brazil. Superior Tribunal de Justiça. (2015). Resp 1.274.971/RS, de 26 de março de 2015. chrome-extension://efaidnbmnnnibpcajpcgiclfefindmkaj/https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201102075972&dt_publicacao=26/03/2015. Accessed on November, 2023.
- Brazil. Superior Tribunal de Justiça. (2016a). Resp 1.568.935/RJ, de 13 de abril de 2016a. chrome-extension://efaidnbmnnnibpcajpcgiclfefindmkaj/https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201501011370&dt_publicacao=13/04/2016. Accessed on November, 2023.
- Brazil. Superior Tribunal de Justiça. (2016b). Resp 1.593.873/SP, de 17 de novembro de 2016b. chrome-extension://efaidnbmnnnibpcajpcgiclfefindmkaj/https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201600796181&dt_publicacao=17/11/2016. Accessed on November, 2023.
- Brazil. Supremo Tribunal Federal. (2021). RE 1.101.606/RJ, de 11 de fevereiro de 2021. <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=755910773>. Accessed on November, 2023.
- Brazil. Superior Tribunal de Justiça. (2022a). Resp 1.334.097/RJ, de 01 de fevereiro de 2022a. chrome-extension://efaidnbmnnnibpcajpcgiclfefindmkaj/https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201201449107&dt_publicacao=01/02/2022. Accessed on November, 2023.
- Brazil. Superior Tribunal de Justiça. Resp 1.660.168/RJ, 30 de junho de 2022b. chrome-extension://efaidnbmnnnibpcajpcgiclfefindmkaj/https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201402917771&dt_publicacao=30/06/2022. Accessed on November, 2023.
- Böckenförde, Ernst-Wolfgang. (1991). Grundrechtstheorie und Grundrechtsinterpretation In Böckenförde, Ernst-Wolfgang. Staat, Verfassung, Demokratie. Frankfurt am Main, Surkamp.
- Buchholtz, Gabriele. (2015). Das recht auf Vergessen im Internet – eine Herausforderung für den demokratischen Rechtsstaat. AÖR 140, 121-153.

- Dimoulis, Dimitri, & Martins, Leonardo. (2014). *Teoria geral dos Direitos Fundamentais*. 5ª ed. São Paulo: Atlas.
- Dimoulis, Dimitri, & Lunardi, Soraya. (2013). *Curso de processo constitucional*. São Paulo: Atlas.
- Diniz, Maria Helena. (2017). Uma visão constitucional e civil do novo paradigma da privacidade: o direito a ser esquecido. *Revista Brasileira de Direito*, 13(2), 7-25.
- Edwards, Andrew V. (2015). *Digital is destroying everything: what the tech giants won't tell you about how robots, big data, and algorithms are radically remaking your future*. Lanham: Rowman & Littlefield.
- Ferraz, Tércio Sampaio. (2015). *A Função Social da Dogmática Jurídica*. 2.ed. São Paulo: Atlas.
- Ferraz, Tércio Sampaio. (1993). *Sigilo de dados: o direito à privacidade e os limites à função fiscalizadora do Estado*. *Revista da Faculdade de Direito da Universidade de São Paulo*, (88), 439-459.
- Ferreira, Felipe Grizotto. (2021). *Liberdade de expressão na era digital: desafios, perspectivas e aplicações*. 225 f. Dissertação (Mestrado em Direito) – Centro de Ciências Humanas e Sociais Aplicadas, Pontifícia Universidade Católica de Campinas, Campinas, São Paulo.
- Frajhof, Isabella Z. (2019). *O direito ao esquecimento na internet: conceito, aplicação e controvérsias*. São Paulo: Almedina.
- Frossio, Giancarlo. (2018). Why keep a dog and bark yourself? From intermediary liability to responsibility. *International Journal of Law and Information Technology*, (26), 1-33.
- Gonçalves, Victor Hugo Pereira. (2017). *Marco civil da internet comentado*. São Paulo: Atlas.
- Hendel, John. In Europe, a Right to Be Forgotten Trumps the Memory of the Internet. <https://www.theatlantic.com/technology/archive/2011/02/in-europe-a-right-to-be-forgotten-trumps-the-memory-of-the-internet/70643/>. Accessed on November, 2023.
- Jandt, Silke, Kieselmann, Olga, & Wacker, Arno. (2013). Recht auf Vergessen im internet, DuD (*Datenschutz und Datensicherheit*), (4), 235-241.
- Koops, Bert-Jaap. (2011). Forgetting Footprints, Shunning Shadows. A Critical Analysis of the "Right to Be Forgotten" in Big Data Practice. *Tilburg Law School Legal Studies Research Paper Series*, 8(3), 1-28.
- Kulk, S., & Borgesius, F. (2018). Privacy, Freedom of Expression, and the Right to Be Forgotten in Europe. In E. Selinger, J. Polonetsky, & O. Tene (Eds.). *The Cambridge Handbook of Consumer Privacy*. Cambridge: Cambridge University Press.
- Laurentiis, Lucas Catib de. (2017). *A proporcionalidade no direito constitucional: conceito, técnicas e efeitos*. São Paulo: Malheiros.
- Lima, Erik Noleta Kirk Palma Lima. (2013). Direito ao esquecimento: discussão europeia e sua repercussão no Brasil. *Revista de Informação Legislativa*, (199), 271-283.
- Martins, Leonardo. (2016). Direitos Fundamentais à intimidade, à vida privada, à honra e à imagem (art 5º, X da CF): alcance e substrato fático da norma constitucional (intervenção estatal potencialmente violadora). *Ius Gentium*, 7(1), 105-132.
- Mayer-Schönberger, Viktor. (2009). *Delete: The virtue of forgetting in the digital age*. Princeton: Princeton University Press.
- Mendes, Laura Schertel. (2014). *Privacidade, proteção de dados e defesa do consumidor: linhas gerais de um novo direito fundamental*. São Paulo: Saraiva.
- Post, Robert C. (2018). Data Privacy and Dignitary Privacy: Google Spain, the Right To Be Forgotten, and the Construction of the Public Sphere. *Duke Law Journal*, 67, 981-1072.

- Post, Robert C., (2019). Privacy, Speech, and the Digital Imagination. In Susan J. Brison and Katharine Gelber. (Ed.). *Free Speech in the Digital Age*. New York: Oxford University Press.
- Ramos, Elival da Silva. (1994). *A inconstitucionalidade das leis: vício e sanção*. São Paulo: Saraiva.
- Ramos, Elival da Silva. (2010). *Controle de constitucionalidade no Brasil: perspectivas de evolução*. São Paulo: Saraiva.
- Rodotà, Stefano. (2008). *A vida na sociedade da vigilância: a privacidade hoje*. Trad. Danilo Doneda e Luciana Cabral Doneda. Rio de Janeiro: Renovar.
- Sarlet, Ingo Wolfgang. (2018). Proteção da personalidade no ambiente digital: uma análise à luz do caso do assim chamado direito ao esquecimento no Brasil. *Espaço Jurídico Journal of Law*, 19(2), 491-530.
- Sarmiento, Daniel. (2016). Liberdades Comunicativas e "Direito ao Esquecimento" na ordem constitucional brasileira, parecer consultivo. *Revista Brasileira de Direito Civil*, 7, 190-232.
- Souza, Carlos Affonso Pereira de, Moniz, Pedro de Paranaguá, Vieira Junior, & Sérgio Branco. (2007). Neutralidade da Rede, Filtragem de Conteúdo e Interesse Público: Reflexões sobre o Bloqueio do Site YouTube no Brasil. *Revista de Direito Administrativo*, 246, 50-78.
- Sunstein, Cass R., & Vermeule, Adrian. Interpretation and Institutions. In John M. Olin. Program in Law and Economics Working Paper, nº. 156.
- Tribunal de Justiça da União Europeia – TJUE. (2014). Google Spain v. Gonzáles, 13 de maio de 2014. <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:62012CJ0131>. Accessed on November, 2023.
- Warren, Samuel D., & Brandeis, Louis D. (1890). The right to privacy. *Harvard Law Review*, 4(5), 193-220.

RESUMO:

O trabalho investiga a possibilidade jurídica de enquadrar os provedores de busca como destinatários do direito ao esquecimento, imputando-lhes o ônus de instituir filtros ou mecanismos capazes de suprimir determinados resultados relacionados a dados pessoais. Já amplamente discutido na Europa, a questão ganhou relevância no Brasil com os julgamentos do Recurso Especial 1.660.168, pelo Superior Tribunal de Justiça (STJ) e do Recurso Extraordinário 1.010.606, pelo Supremo Tribunal Federal (STF). O trabalho, em uma abordagem jurídico-dogmática, descreve e analisa criticamente os julgados, identificando inconsistências para utilização da decisão do STJ como precedente válido, dificuldades para a sua implementação, conflitos entre as decisões e uso acrítico do precedente europeu.

PALAVRAS-CHAVE: Responsabilização intermediária; Recurso Especial n. 1.660.168/RJ; Regulação de plataformas digitais; Provedores de busca; Recurso Extraordinário n. 1.010.606/RJ.

RESUMEN:

Este texto investiga la posibilidad jurídica y legal de clasificar a los proveedores de búsquedas como destinatarios del derecho al olvido, atribuyéndoles la responsabilidad de establecer filtros o mecanismos capaces de suprimir determinados resultados relacionados con datos personales. La cuestión, ya ampliamente debatida en Europa, ha ganado relevancia en Brasil con las sentencias del Recurso Especial 1.660.168 del Tribunal Supremo (TS) y del Recurso Extraordinario 1.010.606 del Tribunal Federal (TF). El trabajo, con enfoque jurídico-dogmático, describe y analiza críticamente las sentencias ya proferidas, identificando inconsistencias en la decisión del TS como precedente válido, resultando en dificultades en su aplicación, conflictos entre las decisiones y en el uso acrítico del precedente europeo.

PALABRAS CLAVE: Responsabilidad intermedia Recurso especial n. 1.660.168/RJ; Regulación de plataformas digitales; Provedores de búsqueda; Recurso extraordinario n. 1.010.606/RJ.