

BY ANY OTHER NAME: FACT-CHECKING AND THE RIGHT TO FORGET THE PAST

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Abstract: This paper explores the evolving legal landscape surrounding the Right to Be Forgotten in the context of the digital age, where the persistence of online information poses significant challenges to the balance between freedom of expression and privacy rights. While traditional media and fact-checking mechanisms aim to ensure the accuracy and integrity of public information, they often fall short in addressing the long-term harm caused by the enduring availability of personal data online. Drawing on European jurisprudence, particularly the decisions of the Court of Justice of the European Union (CJEU), and contrasting it with the Brazilian legal approach, this paper highlights the need for robust legal frameworks that allow individuals to reclaim control over outdated or harmful information. The study underscores the role of the Right to Be Forgotten as a fundamental legal tool in protecting personal dignity in digital environments, advocating for its recognition as an essential component of modern data protection laws.

Keywords: Right to Be Forgotten; Privacy Rights; Digital Permanence.

INTRODUCTION

With the recent changes regarding fact-checking introduced by Meta — the parent company of Facebook, Instagram, and WhatsApp — relying on community validation, similar to the approach already implemented by X (formerly Twitter), the global debate on freedom of expression and access to information resurfaces.

Adding to this is the recent ruling by the São Paulo State Court of Justice in Brazil, which upheld the "right to be forgotten" for a former participant of the reality show *Big Brother Brasil*, allowing her to dissociate herself from the public memory of being eliminated with overwhelming rejection by the audience.

Furthermore, decisions emerging in Portugal and across Europe increasingly show that past events or publications lacking social relevance do not need to outweigh the rights to privacy, image, reputation, and good name.

These principles, initially discussed by Warren and Brandeis in 1890,¹ reemerge to question the unrestrained impulse encouraged by the internet to publish every aspect of our lives. As Stefano Rodotà aptly noted, technology

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¹ Warren, Samuel D., and Louis D. Brandeis. "The Right to Privacy." *Harvard Law Review* IV (December 15, 1890).

often places each of us in a position to find a virtual space to satisfy our own interests.² This raises an essential ethical and practical dilemma: how far can we go in sharing information about ourselves, only to regret it later, or in publishing information about others without crossing ethical boundaries?

I. FREEDOM OF EXPRESSION

The conflict between fundamental rights involves, on one hand, the so-called freedom of expression—a concept that appears under different terminologies. In this article, a broad definition is adopted, encompassing the fundamental right of every individual to freely express their thoughts, ideas, and opinions through speech, writing, images, or any other form of dissemination, as well as the right to communicate or receive truthful information without barriers or discrimination.³

In this sense, freedom of expression serves as a foundational right, incorporating the principles of freedom of information and freedom of the press. This set of rights is also frequently referred to as communication freedoms.⁴

Freedom of expression constitutes a fundamental pillar of the democratic rule of law, essential for the self-governance of the political community, the peaceful transformation of society, and individual self-fulfillment. It extends beyond a self-centered dimension as merely an individual or collective right to express oneself.⁵

In an altruistic sense, freedom of expression also serves as a protector of other rights, freedoms, and guarantees enshrined in constitutional law, as well as human rights recognized in international legal instruments. This dual role is evident in situations such as exposing violence against children or the elderly—where exercising the right to free expression simultaneously contributes to safeguarding the physical and moral integrity of particularly

² Rodotà, Stefano. *A Vida na Sociedade da Vigilância: A Privacidade Hoje*. Rio de Janeiro: Renovar, 2008, 116-117.

³ Soares, Felipe Ramos Ribas, and Rafalel Mansur. “A Tese da Posição Preferencial da Liberdade de Expressão Frente aos Direitos de Personalidade: Análise Crítica à Luz da Legalidade Constitucional.” In *Direito e Mídia: Tecnologia e Liberdade de Expressão*, 2nd ed., edited by Anderson Schreiber, Bruno Terra de Moraes, and Chiara Spadaccini de Teffê, Indaiatuba, SP: Editora Foco, 2021.

⁴ Soares, Felipe Ramos Ribas, and Rafalel Mansur. “A Tese da Posição Preferencial da Liberdade de Expressão Frente aos Direitos de Personalidade: Análise Crítica à Luz da Legalidade Constitucional.” In *Direito e Mídia: Tecnologia e Liberdade de Expressão*, 2nd ed., edited by Anderson Schreiber, Bruno Terra de Moraes, and Chiara Spadaccini de Teffê, Indaiatuba, SP: Editora Foco, 2021.

⁵ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. “Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse.” *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 43.

vulnerable individuals.⁶

In the regular functioning of a democratic rule of law, conflicts between legal rights are inevitable. A common example is the ongoing tension between freedom of expression and the right to honor, particularly concerning public figures. When it is impossible to fully realize both rights simultaneously, it becomes legitimate to prioritize one over the other in specific cases, provided this is done proportionally and the essential core of the subordinated right remains protected.⁷

However, practical experience has shown that in these conflict zones, where legal rights compete for precedence, there often exists a gray area. Navigating this space requires careful discernment to precisely identify the elements of speech that should be protected under the right to freedom of expression or, conversely, safeguarded by the legal protections afforded to honor. This delicate balancing act demands a nuanced understanding to ensure that neither right is unjustly compromised.⁸

The study of the jurisprudence of the European Court of Human Rights (ECHR) reveals a notably broad view of the effective guarantee of freedom of expression and a parallel restrictive conception of the effective guarantee of the right to a good name and reputation. This, in fact, is somewhat reflected in the very way these rights are enshrined in the European Convention on Human Rights: while Article 10 is entirely dedicated to freedom of expression, the right to a good name and reputation does not seem to have received the same treatment, apparently relegated to the status of a possible limitation on freedom of expression, as suggested by paragraph 2 of Article 10.⁹

In relation to the right to respect for private life, recognized in Article 8 of the Convention, the ECHR shows greater sensitivity regarding its need for protection, without a pre-established understanding of the issue. In other words, in this context, the Court does not assume the primacy of freedom of expression, and it is not legitimate to claim that freedom of expression a priori enjoys a broader guarantee than the right to privacy. Only the balancing of interests in each specific case will determine the appropriate solution for the

⁶ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. "Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse." *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 43.

⁷ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. "Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse." *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 43.

⁸ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. "Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse." *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 43.

⁹ Sequeira, Elsa Vaz. "Responsabilidade Civil e Liberdade de Expressão." *Responsibility Law Magazine*, Coimbra, Year 3 (2021): 63–89, 67.

case sub judice. It is worth noting, however, that when the content or effects of a communication impact someone else's privacy or intimacy, the ECHR often invokes Article 8 to protect the right to a good name and reputation.¹⁰

In analyzing such cases, the Court typically applies the so-called three-step test: legality, legitimacy, and necessity. This means determining to what extent the restriction on freedom of expression is prescribed by national law, assessing the existence of a substantive basis for such a restriction, and, finally, seeking the least restrictive measure to achieve the intended goal.¹¹

Freedom of expression, when exercised within its constitutional boundaries, is grounded in the right to express oneself without state interference or prior approval. This principle manifests in the prohibition of censorship and the duty of neutrality, ensuring that no form of discrimination arises from the expression of thoughts or opinions.¹²

However, the broad scope of this freedom, while empowering media outlets and individuals alike, inherently entails responsibilities. These responsibilities stem from the need to respect clear and balanced limits and the understanding that, in a legal system striving for harmony, no right is entirely exempt from regulation or restriction.¹³

Like all other rights, freedom of expression is neither absolute nor unlimited. It must coexist with other rights related to personal dignity and human personality, ensuring that these rights also have the space to be realized.¹⁴

According to Maria Celina Bodin de Moraes, there cannot be a closed set of protected cases: what is protected is the intrinsic value of the individual, subject only to limits that serve the interest of the person or the interest of others. No specific legal provision can be exhaustive, as it would inevitably overlook new forms of personal expression and demands that arise as society progresses, requiring positive recognition. This concept extends beyond situations of harm and reparation; it is dedicated to the protection and promotion of human dignity in all aspects of life.¹⁵

The right to freedom of expression is often regarded as a "parent right"

¹⁰ Sequeira, Elsa Vaz. "Responsabilidade Civil e Liberdade de Expressão." *Responsibility Law Magazine*, Coimbra, Year 3 (2021): 63–89, 67–68.

¹¹ Sequeira, Elsa Vaz. "Responsabilidade Civil e Liberdade de Expressão." *Responsibility Law Magazine*, Coimbra, Year 3 (2021): 63–89, 68.

¹² Bezerra Junior, Luis Martius Holanda. *Direito ao Esquecimento*. São Paulo: Série IDP, Editora Saraiva, 2018. Kindle edition. Location 1653-1654.

¹³ Bezerra Junior, Luis Martius Holanda. *Direito ao Esquecimento*. São Paulo: Série IDP, Editora Saraiva, 2018. Kindle edition. Location 1670-1673.

¹⁴ Bezerra Junior, Luis Martius Holanda. *Direito ao Esquecimento*. São Paulo: Série IDP, Editora Saraiva, 2018. Kindle edition. Location 1677.

¹⁵ Bodin de Moraes, Maria Celina. *Danos à pessoa humana: uma leitura civil constitucional dos danos morais*. Rio de Janeiro: Renovar, 2003.

(*Mütterrecht*) that encompasses communicative freedoms and extends its influence across all structures of social communication within a free, democratic, and pluralistic society. Far from being limited to communicators and recipients, it also aims to protect the networks of communication and the distribution of informational content, along with the corresponding economic infrastructures that support these activities. For this reason, freedom of expression breaks down into multiple fundamental communicative rights. In a broad and substantive sense, it includes freedom of expression in the strict sense, freedom of information, the principle of the prohibition of censorship, freedom of the press, journalists' rights, freedom of broadcasting, and freedom of communication on social media platforms. This comprehensive framework highlights the essential role of freedom of expression in safeguarding not only individual speech but also the systems and infrastructures that facilitate public discourse and information exchange in democratic societies.¹⁶

The absence of the Right to Be Forgotten from the list of personality rights explicitly outlined in the Civil Code does not invalidate its existence. The prevailing legal doctrine asserts that personality rights are safeguarded more broadly under the general clause of human dignity. Thus, any expression of personal identity deserves protection, regardless of specific legal provisions.¹⁷

Indeed, in a free and egalitarian society, no right is absolute, and no freedom can be exercised without restrictions or detached from the interests and limits naturally imposed by the need to preserve the rights of other individuals.¹⁸

In a free and equal society, no rights are absolute, and no freedom can be exercised without considering the rights and limits that safeguard the interests of others. Furthermore, freedom of expression is not an end in itself. It serves a human interest, primarily aimed at ensuring the development of a free and conscious individual personality. Particularly in the case of the press, it is inconceivable that freedom of expression could be invoked as a blanket justification to undermine the core content of personality rights.¹⁹

In 1890, Brandeis and Warren stated that the right of an individual who

¹⁶ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. "Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse." *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 49.

¹⁷ Branco, Sérgio. *Memória e esquecimento na internet (Pautas em Direito)*. Porto Alegre: Arquipélago Editorial, 2017, 124.

¹⁸ Bezerra Junior, Luis Martius Holanda. *Direito ao Esquecimento*. São Paulo: Série IDP, Editora Saraiva, 2018. Kindle Edition. Location 1765-1772.

¹⁹ Tavares, André Ramos. "Liberdade de Expressão-Comunicação em Face do Direito à Privacidade." In *Direito à Privacidade*, edited by Ives Gandra da Silva Martins and Antônio Jorge Pereira Júnior, 223–228. Aparecida: Ideias & Letras, 2005, 223-228.

remains a private citizen to prevent their public portrayal presents the simplest case for such an extension; the right to protect oneself from written portrayals or media discussions about private matters would be even more important and far-reaching. If casual, insignificant statements in a letter, if handcrafted works—no matter how unartistic or worthless—if personal property of all kinds are protected not only from reproduction but also from description and listing, how much more should a person's social actions and domestic relationships be protected from relentless publicity. If a woman's face cannot be reproduced photographically without her consent, even less should it be tolerated to reproduce her face, form, and actions through vivid descriptions tailored to suit a coarse and depraved imagination.²⁰

They also stated that the right to privacy must necessarily be limited, a concept already expressed in French law. It remains to consider what the limitations of this right to privacy are and what remedies may be granted for its enforcement. It would be a difficult task to determine in advance the exact line where the dignity and convenience of the individual must yield to the demands of public welfare or private justice; but general rules are provided by legal analogies already developed in libel and defamation law and in the law of literary and artistic property.²¹

When considering technological advancements, Stefano Rodotà speaks of a global information society, information highways, and a national information infrastructure. We are creating local networks, experimenting with forms of citizen consultation, and building a new social space — cyberspace. All these forms of expression testify to an irresistible trend toward establishing electronic communication infrastructures at all levels. These infrastructures are expected to form a true "nervous system" for society in the near future, with interconnected networks linking the entire planet. We are told that the transformation process is already underway, as international telematic networks, led by the Internet, have existed for a long time and have developed significantly using modest telephone technology, without needing "information highways."²²

Communication, therefore, has already surpassed traditional mass media—newspapers, radio, and generalist television. The combination of television, computers, and telephones is the common denominator of the new media. The fundamental difference between old and new media lies in digitization and interactivity, replacing the passivity that characterized

²⁰ Warren, Samuel D., and Louis D. Brandeis. "The Right to Privacy." *Harvard Law Review* IV (December 15, 1890), 213-214.

²¹ Warren, Samuel D., and Louis D. Brandeis. "The Right to Privacy." *Harvard Law Review* IV (December 15, 1890), 214.

²² Rodotà, Stéfano. *La Démocratie Électronique: De nouveaux concepts et expériences politiques*. Rennes: Éditions Apogée, 1999, 43.

newspaper readers, radio listeners, and TV viewers. It is true that certain rudimentary forms of interactivity were achieved by combining the telephone with radio and television, allowing listeners and viewers to participate in programs. But only the advent of new media offers real possibilities for dialogue and independent intervention by an engaged audience.²³

New media are finally expanding horizons. We can overcome programming restrictions. They allow the combination of images, sounds, and documents from diverse sources to create a unique program, a kind of direct creation by its author. Thus, we are witnessing a possible shift from passivity to autonomy, as evidenced by telematic networks where interactivity has greater chances of developing. Here, indeed, personalization and autonomy facilitate continuous exchange with other individuals, the construction of new individual and collective subjectivities, and the overcoming of the old distinction between producers and consumers of information. This latter possibility is certainly the great novelty. In networks, traditional logics and hierarchies are not reproduced, and it is possible to go beyond interactivity. The supply does not expand merely through a process that implies dependence on the provider of products and services, maintaining a position of superiority and a vertical communication model.²⁴

Each individual becomes an information producer, breaking monopolies or privileges and overcoming what seemed to be an insurmountable condition of exclusion. We move from the dialogue characteristic of interactivity to discourse directed at a fundamentally undetermined and undefined audience. All these considerations lead to the conclusion that the intelligence of computational systems will shift from the sender to the receiver, with a strong redistribution of power in all communication sectors. Television, previously a passive reception tool, becomes a "home terminal," the basis of a complex multimedia system (information, entertainment, services) that simultaneously multiplies users' possibilities for participation and control over communication. In this way, technical conditions are also created for greater citizen involvement in political processes, understood in the broad sense of the term. Thus, the "mass" character that used to define the entire information system begins to fade, or at least lose importance. In many cases, we are witnessing the return of more "editorial" logics, in the sense of a more organized diversification of products and individual choice possibilities, as symbolized by "thematic" television.²⁵

²³ Rodotà, Stéfano. *La Démocratie Électronique: De nouveaux concepts et expériences politiques*. Rennes: Éditions Apogée, 1999, 43.

²⁴ Rodotà, Stéfano. *La Démocratie Électronique: De nouveaux concepts et expériences politiques*. Rennes: Éditions Apogée, 1999, 44.

²⁵ Rodotà, Stéfano. *La Démocratie Électronique: De nouveaux concepts et expériences politiques*. Rennes: Éditions Apogée, 1999, 44.

The law also gives every man the right to the security of his reputation. Perhaps a more precise statement would be that it gives him the right to be protected in acquiring and then maintaining a good reputation. Even this does not fully capture the point, as one may gain a good reputation while deserving a bad one; and for a reputation to which one is not entitled, there is no greater right to protection than there would be for anything else to which the right is fictitious.²⁶

The matter can be illustrated by supposing the case of someone entering a community as a complete stranger. Upon arrival, they can have no reputation, neither good nor bad; but they have the right, through good conduct, to acquire a good reputation, and there is a moral obligation upon them to do so, as it is their duty to observe rules of good conduct, which will likely bring them a good reputation. If, therefore, malicious or thoughtless individuals, through inventions or insinuations to their discredit, prevent them from acquiring a good reputation, they infringe upon their right, and due compensation should be granted. Referring now to what has been said about the law's reluctance to make mere words a basis for action, and postponing explanations for another occasion, it will suffice for our present purpose to say that interference may exist, provided the following elements appear: (1) A false accusation or insinuation that (2) is made with malice, and (3) causes harm through its effect on the author's reputation. Now, it may be that in the supposed case, it is impractical to demonstrate, through positive evidence, the existence of any elements of harm.²⁷

First, evidence of falsity may be lacking because the accusation may relate to something in the plaintiff's past about which information is not accessible. Second, it may appear that the defendant, in making the accusation, did so based on suspicions that, for them, were grounds for condemnation and, consequently, acted without malice. Third, being the plaintiff still a stranger, it may be argued that, so far, they have not acquired any position or reputation that the accusation could damage. For these reasons, it may be argued that grounds for legal action are absent in such a case. But if this were the law, it would clearly not be a just law and would fall far short of achieving proper justice. It would allow a suspicious person to exclude another from the good opinion of the world when their motives and efforts deserve general esteem. The difficulty of the case is overcome by a series of legal presumptions.²⁸

²⁶ Cooley, Thomas M. *A Treatise on the Law of Torts, or the Wrongs Which Arise Independent of Contract*. Chicago: Callaghan and Company, 1879, 30.

²⁷ Cooley, Thomas M. *A Treatise on the Law of Torts, or the Wrongs Which Arise Independent of Contract*. Chicago: Callaghan and Company, 1879, 30.

²⁸ Cooley, Thomas M. *A Treatise on the Law of Torts, or the Wrongs Which Arise Independent of Contract*. Chicago: Callaghan and Company, 1879, 30-31.

These can be stated as follows: First, every man is presumed to have a good reputation until proven otherwise. Second, any defamatory accusation against them is presumed to be false. Third, being false, it is presumed to have been made maliciously. Fourth, if its natural and legitimate effect is to cause harm, it is presumed to have done so in this case. Thus, one fact—the publication—and four legal presumptions support the action. The exception to this is cases where the accusation is one that, in the contemplation of the law, is not necessarily accompanied by harm, in which case the law will not presume harm but will leave the author to allege and prove it. These presumptions may, in some cases, seem somewhat forceful, but they are nonetheless reasonable. They must be so unless human nature, conduct, and reputation are presumed to be bad, justifying a legal assumption that an injurious accusation is true and not false.²⁹

Perhaps if this were assumed, it would still be reasonable to place the burden of proof on the accuser, because if they assert facts, they should know where their evidence lies and be able to produce it; whereas proving a negative, in the case of a false accusation, is notoriously difficult, and the more utterly unfounded the accusation, the harder the demonstration becomes. In general, however, the law deals with cases of those who have acquired some sort of reputation. Among these, there may be various classes: those who deservedly have a good reputation; those who deservedly have a bad reputation; those who undeservedly have a good reputation, and those who undeservedly have a bad reputation.³⁰

In the case of the person who is justly in good standing, we need not dwell. The person with undeserved bad fame has the right to overcome it and is harmed by anyone who places obstacles in their way, even if these consist of mere repetitions of accusations that made their reputation what it is. What remains, then, are the cases of people who deserve a bad reputation, whether they have it or not. A person whose reputation is justifiably not good can be wronged just as much as anyone else by having falsehoods said about them. A worthless vagabond suffers legal harm if called a thief when they are not. A certain individual may be justly despised in general; but if they are kind and gentle in their family, they may rightly bring an action if accused of treating them with cruelty³¹

But if the accusation is true, they have no legal grounds for complaint. The law has never granted anyone the right to be protected against the

²⁹ Cooley, Thomas M. *A Treatise on the Law of Torts, or the Wrongs Which Arise Independent of Contract*. Chicago: Callaghan and Company, 1879, 31.

³⁰ Cooley, Thomas M. *A Treatise on the Law of Torts, or the Wrongs Which Arise Independent of Contract*. Chicago: Callaghan and Company, 1879, 32.

³¹ Cooley, Thomas M. *A Treatise on the Law of Torts, or the Wrongs Which Arise Independent of Contract*. Chicago: Callaghan and Company, 1879, 32.

harmful effect of the truth on their character. If they have managed to maintain a good appearance by covering themselves with the cloak of hypocrisy, it is not unlawful for public inquiry and scorn to tear it away.³²

A dishonest person is not wronged when their good reputation is destroyed by exposure. But at this point, it may be necessary to distinguish between the rights of the political community and the rights of the individual. For reasons of public order, a duty of silence may sometimes be imposed for the public good when such a duty is not imposed for the protection of the individual. The individual cannot complain if only the truth is said about them; but an offensive truth may be published without occasion and may then be harmful. If it brings to light facts whose publication cannot benefit anyone, whether through admonition or warning, correction of abuses, or punishment of offenders, the likely tendency of the publication will be towards immorality, disorder, or violence.³³

Thus, it becomes a public offense; the duty to refrain from actions that may harm public morals or disturb public peace has been violated. And here, the very truth of the accusation may make it even more harmful to public order; since a truthful accusation that subjects someone to ridicule or scorn, or that exposes gross immorality or indecency, if made out of mere wantonness and without justifiable occasion, is more likely to corrupt public morals and incite the assaulted party to acts of violence than it would be if its falsehood could be demonstrated. In the latter case, the party may rely on their innocence or their civil recourse for justification; in the former, they may feel that only violence offers any form of reparation.³⁴

Today, the right to privacy goes beyond merely protecting an individual's intimate life, also encompassing the safeguarding of their personal data. In other words, the right to privacy today is broader than the simple right to intimacy. It is not limited to the right to be left alone or to the prevention of intrusions into private and intimate life. The concept extends to any environment where an individual's personal data circulates, including physical characteristics, genetic code, health status, religious beliefs, and other relevant personal information. Privacy, therefore, can be summarized as the right to control the collection and use of one's personal data.

The guarantee of freedom of expression plays a vital role in identifying truthful propositions and rejecting falsehoods, thereby contributing to the advancement of knowledge and the progress of society. While the open

³² Cooley, Thomas M. *A Treatise on the Law of Torts, or the Wrongs Which Arise Independent of Contract*. Chicago: Callaghan and Company, 1879, 32.

³³ Cooley, Thomas M. *A Treatise on the Law of Torts, or the Wrongs Which Arise Independent of Contract*. Chicago: Callaghan and Company, 1879, 32.

³⁴ Cooley, Thomas M. *A Treatise on the Law of Torts, or the Wrongs Which Arise Independent of Contract*. Chicago: Callaghan and Company, 1879, 32-33.

exchange of ideas may inevitably allow space for errors, it remains the most effective method for distinguishing truth from falsehood.³⁵

Although lies and disinformation have existed for centuries, postmodern philosophies have introduced a form of epistemic relativism, challenging the existence of objective truth. In this framework, truth is viewed as relative, contextual, and subjective, rejecting traditional epistemological dichotomies such as truth vs. falsehood and rationality vs. irrationality. The neo-Marxist interpretation of postmodernism argues that language constructs reality, rather than merely describing it, suggesting that reality itself is shaped by social power structures.³⁶

This perspective has paved the way for the manipulation of information and the proliferation of alternative facts, particularly through social media. In such environments, truth and lies are often treated as equally valid tools for achieving political, legal, or social goals. This undermines the foundations of democratic deliberation, where rational debate depends on a shared commitment to factual accuracy.³⁷

The political and legal risks of this relativistic approach are evident. If truth loses its value, fundamental democratic processes—such as elections, judicial decisions, and public discourse—become vulnerable to manipulation and disinformation. While postmodernism asserts that reality is a construct of language, this argument is both absurd and self-contradictory. For instance, legal consequences such as wrongful imprisonment or unjust taxation remain concrete, regardless of linguistic interpretations. Furthermore, claiming that objective truth does not exist while expecting such claims to be accepted as valid exposes the inherent contradictions of this philosophy.³⁸

However, truth should not be viewed as an absolute good that justifies all forms of expression. There are legitimate circumstances where truth may be withheld, such as protecting privacy, maintaining professional confidentiality, or ensuring public order. Nonetheless, the pursuit of truth—defined as the alignment between statements and political, economic, or

³⁵ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. “Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse.” *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 62–65.

³⁶ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. “Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse.” *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 62–65.

³⁷ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. “Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse.” *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 62–65.

³⁸ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. “Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse.” *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 62–65.

social realities—remains a cornerstone of democratic societies. This pursuit is essential for fostering informed public debate, combating disinformation, and promoting critical thinking within the public sphere.³⁹

To preserve the integrity of freedom of expression and democratic discourse, the erosion of truth must be actively resisted. Legal frameworks and constitutional law should not accept the decline of truth as inevitable but instead promote a robust defense of factual accuracy as fundamental to the functioning of democracy and human rights.⁴⁰

II. BETWEEN FACTS AND ETERNAL MEMORY

Just like freedom of expression, personality rights share an intrinsic yet often overlooked connection with the democratic principle. While the notion of a "free marketplace of ideas" is frequently invoked, the information that fuels public debate does not exist in a vacuum, moving autonomously into some metaphysical realm. On the contrary, it is both generated by and directed toward individuals within a political community.⁴¹

From this perspective, any violation of an individual's personal sphere can directly hinder their ability to participate in deliberative processes. Such harm may manifest in two primary ways: first, by impairing a person's capacity to reflect on matters under discussion due to the severe psychological distress that may result from such violations; second, by damaging their credibility within the community in cases involving harm to their reputation, ultimately leading to social exclusion or rejection. This dynamic is widely acknowledged in discussions on hate speech, given its corrosive effects on democracy—not only by harming its direct victims but also by indirectly undermining the broader public sphere.⁴²

However, these harmful effects are not limited to attacks on minority

³⁹ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. "Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse." *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 62–65.

⁴⁰ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. "Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse." *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 62–65.

⁴¹ Soares, Felipe Ramos Ribas, and Rafalel Mansur. "A Tese da Posição Preferencial da Liberdade de Expressão Frente aos Direitos de Personalidade: Análise Crítica à Luz da Legalidade Constitucional." In *Direito e Mídia: Tecnologia e Liberdade de Expressão*, 2nd ed., edited by Anderson Schreiber, Bruno Terra de Moraes, and Chiara Spadaccini de Teffê, Indaiatuba, SP: Editora Foco, 2021.

⁴² Soares, Felipe Ramos Ribas, and Rafalel Mansur. "A Tese da Posição Preferencial da Liberdade de Expressão Frente aos Direitos de Personalidade: Análise Crítica à Luz da Legalidade Constitucional." In *Direito e Mídia: Tecnologia e Liberdade de Expressão*, 2nd ed., edited by Anderson Schreiber, Bruno Terra de Moraes, and Chiara Spadaccini de Teffê, Indaiatuba, SP: Editora Foco, 2021.

groups; they also occur at the individual level. Under this lens, the difference between these scenarios is more a matter of scale than of nature. It is unrealistic to assume that a space characterized by widespread disregard for psychological integrity, reputation, and privacy could serve as a fertile ground for democratic debate.⁴³

Moreover, the instrumental role of personality rights extends beyond ensuring meaningful participation in the democratic process. The same personal violations that obstruct engagement in public discourse can also interfere with the exercise of other fundamental rights. A person's ability to integrate into society presupposes the integrity of their personal sphere, and its disruption can negatively impact family relationships, employment, and contractual engagements, among other aspects of life.⁴⁴

Consider, for example, the unauthorized release of an intimate video, triggering a severe depressive episode for the victim, which leads to divorce, job loss, and, consequently, eviction from their rented home. While this scenario may seem extreme, it is becoming increasingly common with the widespread use of smartphones and digital communication tools.⁴⁵

The increasing presence of misinformation and disinformation online further complicates the quality of public discourse. While false information has always existed, the expansion of the internet and rapid advancements in digital technology have significantly amplified its speed, reach, and influence. People now rely more on online sources for news, where credible reporting competes with misleading content. Many individuals express concern about their ability to discern truth from falsehood, particularly in political discussions, highlighting the broader challenge of maintaining trust in accurate information.⁴⁶

⁴³ Soares, Felipe Ramos Ribas, and Rafalel Mansur. "A Tese da Posição Preferencial da Liberdade de Expressão Frente aos Direitos de Personalidade: Análise Crítica à Luz da Legalidade Constitucional." In *Direito e Mídia: Tecnologia e Liberdade de Expressão*, 2nd ed., edited by Anderson Schreiber, Bruno Terra de Moraes, and Chiara Spadaccini de Teffê, Indaiatuba, SP: Editora Foco, 2021.

⁴⁴ Soares, Felipe Ramos Ribas, and Rafalel Mansur. "A Tese da Posição Preferencial da Liberdade de Expressão Frente aos Direitos de Personalidade: Análise Crítica à Luz da Legalidade Constitucional." In *Direito e Mídia: Tecnologia e Liberdade de Expressão*, 2nd ed., edited by Anderson Schreiber, Bruno Terra de Moraes, and Chiara Spadaccini de Teffê, Indaiatuba, SP: Editora Foco, 2021.

⁴⁵ Soares, Felipe Ramos Ribas, and Rafalel Mansur. "A Tese da Posição Preferencial da Liberdade de Expressão Frente aos Direitos de Personalidade: Análise Crítica à Luz da Legalidade Constitucional." In *Direito e Mídia: Tecnologia e Liberdade de Expressão*, 2nd ed., edited by Anderson Schreiber, Bruno Terra de Moraes, and Chiara Spadaccini de Teffê, Indaiatuba, SP: Editora Foco, 2021.

⁴⁶ Carson, A., A. Gibbons, A. Martin, and J. B. Phillips. "Does Third-Party Fact-Checking Increase Trust in News Stories? An Australian Case Study Using the 'Sports Rorts' Affair." *Digital Journalism* 10, no. 5 (2022): 801–822, 802.

One approach to addressing this issue is active journalistic adjudication, where reporters go beyond simply presenting information and take an active role in verifying claims, evaluating evidence, and clarifying the accuracy of conflicting narratives. This method enhances democratic accountability by ensuring that misinformation is addressed with factual analysis. However, traditional journalistic norms that emphasize neutrality may discourage reporters from taking such a stance.⁴⁷

Additionally, fact-checking can sometimes have unintended consequences, leading audiences to perceive journalists as biased, which may ultimately reduce trust in their reporting. In some cases, attempts to correct misinformation can even reinforce belief in the false claims being debunked. As a result, while efforts to combat misinformation are essential, they must be carefully designed to strengthen public confidence rather than inadvertently erode it.⁴⁸

In today's digital landscape, headlines and breaking news are continuously updated throughout the day, appearing and disappearing within minutes—unlike the traditional printed newspapers, which maintained their front pages for a full 24-hour cycle. This dynamic has led to the dematerialization of online front pages. While digital headlines are fluid and in constant flux, the links leading to these reports remain permanent, indexed by search engines and archived in news databases. As a result, the mechanisms that fuel social memory continue to operate, albeit in a transformed manner.⁴⁹

However, in the networked journalism era, this memory has become more fragmented. While digital newspaper archives allow users to retrieve past front pages—some of which have left a lasting impact—online journalism does not preserve a single homepage for each day. Instead, multiple versions exist throughout the course of unfolding events, none of which are permanently archived.⁵⁰

It is undeniable that individuals hold both rights: the right to express themselves and the right to protect their image, honor, privacy, and personal

⁴⁷ Carson, A., A. Gibbons, A. Martin, and J. B. Phillips. "Does Third-Party Fact-Checking Increase Trust in News Stories? An Australian Case Study Using the 'Sports Rorts' Affair." *Digital Journalism* 10, no. 5 (2022): 801–822, 802.

⁴⁸ Carson, A., A. Gibbons, A. Martin, and J. B. Phillips. "Does Third-Party Fact-Checking Increase Trust in News Stories? An Australian Case Study Using the 'Sports Rorts' Affair." *Digital Journalism* 10, no. 5 (2022): 801–822, 802.

⁴⁹ Barsotti, Adriana. "Memória e esquecimento no jornalismo: Do papel à desmaterialização digital." *ALCEU – Revista de Comunicação, Cultura e Política* 20, no. 40 (2020): 10–26, 19.

⁵⁰ Barsotti, Adriana. "Memória e esquecimento no jornalismo: Do papel à desmaterialização digital." *ALCEU – Revista de Comunicação, Cultura e Política* 20, no. 40 (2020): 10–26, 19.

life. However, when these rights come into conflict — when one person exercises their right to free expression while another seeks to safeguard their privacy — which should prevail? In the past, a misstep or controversy might have been forgotten with time. Yet, in the contemporary digital world, the prospect of disappearing from the public record is no longer as simple as it once was.⁵¹

In constitutional doctrine, the concept of a free marketplace of ideas has gained prominence, drawing an analogy between the public sphere and the economic market, characterized by openness, competition, decentralized authority, and state neutrality. This framework aims to benefit not only consumers, businesses, and the state, but also fosters individual autonomy, equality, creativity, innovation, and technological progress.⁵²

In a democratic society, these same principles underlie the confrontation of ideas and opinions. A diverse and robust free marketplace of ideas constitutes one of the fundamental pillars of democracy, enabling the broad dissemination of information, viewpoints, and opinions from varied and often opposing sources. This diversity is essential to the well-being of the population, ensuring that citizens are exposed to multiple perspectives.⁵³

The presence of different voices, the free flow of ideas, and the competition of opinions promote individual freedom, communicative equality, and the generation of new information and ideas. It also contributes to the quantity and quality of communication operators and fosters technological innovation. In this environment, all arguments presented in any controversy can be tested through comparative confrontation with corresponding counterarguments, reinforcing the principles of autonomy and decentralization of authority. This process emphasizes the sovereignty of both the speaker and the audience, resisting monolithic thinking, communicative totalitarianism, and political correctness, thereby enhancing freedom of expression and information across all domains, with clear benefits for both individuals and the public interest.⁵⁴

However, the possibility and necessity of state intervention cannot be ignored. Legislative measures must be in place to provide legal protections

⁵¹ Branco, Sérgio. *Memória e esquecimento na internet (Pautas em Direito)*. Porto Alegre: Arquipélago Editorial, 2017, 115-117

⁵² Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. “Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse.” *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 59-60.

⁵³ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. “Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse.” *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 59-60.

⁵⁴ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. “Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse.” *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 59-60.

enforced by the judiciary to correct market failures. This is particularly critical when the public discourse is contaminated with substantially false content intended to manipulate democratic institutions and misinform public opinion. In such cases, the state's role becomes essential in safeguarding the integrity of democratic processes while maintaining a balance with freedom of expression.⁵⁵

In the modern era, individuals have unprecedented access to a vast array of information on the internet, accessible anytime and from virtually anywhere in the world. The internet serves as a valuable repository of data for international corporations, offering essential resources for business operations, information dissemination, and home delivery services. Furthermore, it has become a powerful platform for individuals to freely express their opinions across diverse digital spaces, significantly enhancing opportunities for freedom of speech and expression.⁵⁶

People are now empowered to share their perspectives on a wide range of topics, from politics and the arts to entertainment, sports, and philosophy, provided their expressions do not harm the mental or physical well-being of others. However, this expansive freedom also necessitates the implementation of effective internet regulations to address cases where content may be deemed offensive, inappropriate, harmful, or otherwise objectionable.⁵⁷

The challenge lies in monitoring and regulating such content due to the sheer volume of data being generated and shared online every second. Balancing the right to free expression with the need to protect individuals from harmful content remains a complex and ongoing issue in the digital landscape.⁵⁸

The principle that individuals should have full personal and property protection is as old as the legal system itself. However, it has become evident that, from time to time, it is necessary to redefine the exact nature and scope of this protection. Political, social, and economic changes demand the recognition of new rights, and the legal system, in its perpetual evolution, expands to meet society's ever-changing needs.⁵⁹

⁵⁵ Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. "Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse." *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96, 59–60.

⁵⁶ Rasool, Mahewash. "The Abuse of Freedom of Speech and Expression through Internet Censorship." *Jus Corpus Law Journal* 4, no. 3 (2024): 633–645.

⁵⁷ Rasool, Mahewash. "The Abuse of Freedom of Speech and Expression through Internet Censorship." *Jus Corpus Law Journal* 4, no. 3 (2024): 633–645.

⁵⁸ Rasool, Mahewash. "The Abuse of Freedom of Speech and Expression through Internet Censorship." *Jus Corpus Law Journal* 4, no. 3 (2024): 633–645.

⁵⁹ Warren, Samuel D., and Louis D. Brandeis. "The Right to Privacy." *Harvard Law Review* IV (December 15, 1890), 193.

What is the future of democracy in an era where information and communication technologies are reshaping the very arenas where politics unfolds? These technologies transcend borders, dissolve spatial and temporal constraints, erase historical narratives, and foster new forms of subjectivity. When such shifts occur, it is not merely a specific political model that is at stake, but society as a whole finds itself in continuous transformation.

With these changes, both rights and the language used to articulate them evolve, just as the ways in which personal identity is constructed are redefined. These technologies, deeply engaged in the process of transforming reality, create a fertile ground for both utopian possibilities and dystopian threats. The legal and political frameworks must adapt to this dynamic landscape, ensuring that fundamental rights remain protected while addressing the challenges posed by rapid technological advancements.⁶⁰

An alternative to direct journalistic adjudication is the use of independent fact-checking organizations to help audiences identify unreliable information. The first initiative of this kind emerged in 2003 as a nonpartisan effort to verify political claims. Unlike internal fact-checking within traditional newsrooms, these independent entities align with the broader objective of quality journalism: informing the public and fostering fact-based discussions. Their implicit goal is to enhance trust in news by identifying and correcting misinformation, thereby contributing to a more informed public discourse.⁶¹

Over the years, third-party fact-checking has expanded beyond politics to areas such as advertising, consumer affairs, and health information. This growth is partly a response to financial struggles within traditional media, which have led to staff reductions and fewer resources for in-depth verification of claims. In several countries, including Australia, major fact-checking organizations have emerged with government support, aiming to scrutinize statements made by politicians and public figures. Their role is not only to minimize misinformation but also to serve the media industry by reinforcing public trust in news, correcting misperceptions, and holding political figures accountable for false claims.⁶²

As the fact-checking industry has expanded, scholars have taken various approaches to evaluating its impact. One area of research focuses on its effectiveness in correcting public misconceptions about both political and

⁶⁰ Rodotà, Stéfano. *La Démocratie Électronique: De nouveaux concepts et expériences politiques*. Rennes: Éditions Apogée, 1999, 11.

⁶¹ Carson, A., A. Gibbons, A. Martin, and J. B. Phillips. "Does Third-Party Fact-Checking Increase Trust in News Stories? An Australian Case Study Using the 'Sports Rorts' Affair." *Digital Journalism* 10, no. 5 (2022): 801–822, 805–806.

⁶² Carson, A., A. Gibbons, A. Martin, and J. B. Phillips. "Does Third-Party Fact-Checking Increase Trust in News Stories? An Australian Case Study Using the 'Sports Rorts' Affair." *Digital Journalism* 10, no. 5 (2022): 801–822, 805–806.

non-political issues, as well as its influence on changing audience perceptions. Other studies analyze its role in shaping trust in media and enhancing readers' ability to distinguish truthful reporting. Some research examines fact-checking within the context of social media, particularly during election periods.⁶³

Despite widespread recognition of fact-checking as a tool to improve audience perception of news quality, studies indicate that its impact on trust in journalism is not always straightforward. While some research suggests that fact-checking can increase trust when combined with editorials defending journalistic integrity, other findings indicate that its influence may be limited. In certain cases, fact-checking may even have unintended consequences, such as reinforcing false beliefs by repeating misinformation in an attempt to correct it. This phenomenon, known as the "backfire effect," has been debated, with some researchers advising caution when refuting political claims that may ultimately benefit the individuals spreading misinformation.⁶⁴

Overall, while fact-checking remains a crucial mechanism in the fight against misinformation, its effectiveness depends on how it is presented and the context in which it is received. The challenge lies in ensuring that corrective measures genuinely enhance public confidence in news rather than inadvertently reinforcing skepticism or distrust.⁶⁵

In the network society, as a recent organizational structure, individuals and their personal rights—such as honor, image, and privacy—are increasingly at risk. This vulnerability arises from the widespread sharing of personal information, often leading to hundreds of comments that violate moral integrity, as initially highlighted by Samuel Warren and Louis Brandeis. In this context, the ontological realization of the Right to Be Forgotten becomes more necessary than ever.⁶⁶

⁶³ Carson, A., A. Gibbons, A. Martin, and J. B. Phillips. "Does Third-Party Fact-Checking Increase Trust in News Stories? An Australian Case Study Using the 'Sports Rorts' Affair." *Digital Journalism* 10, no. 5 (2022): 801–822, 805–806.

⁶⁴ Carson, A., A. Gibbons, A. Martin, and J. B. Phillips. "Does Third-Party Fact-Checking Increase Trust in News Stories? An Australian Case Study Using the 'Sports Rorts' Affair." *Digital Journalism* 10, no. 5 (2022): 801–822, 805–806.

⁶⁵ Carson, A., A. Gibbons, A. Martin, and J. B. Phillips. "Does Third-Party Fact-Checking Increase Trust in News Stories? An Australian Case Study Using the 'Sports Rorts' Affair." *Digital Journalism* 10, no. 5 (2022): 801–822, 805–806.

⁶⁶ In the view of Warren and Brandeis, individuals have the right to control which of their personal information can be shared, rather than leaving this power in the hands of third parties, such as newspapers or other media outlets. This control becomes even more crucial when the dissemination of such information poses risks to a person's private life, honor, and image, potentially leading to significant harm to their moral integrity. Warren, Samuel D., and Louis D. Brandeis. "The Right to Privacy." *Harvard Law Review* IV (December 15, 1890), 195.

According to Manuel Castells, the network society emerged from technological developments in information transmission, particularly advancements in microelectronics and the internet. After the 1970s, the invention of microprocessors enabled the creation of more powerful computers, routers, and switches, leading to significant progress in telecommunications.⁶⁷

In the digital environment, once personal information is posted, it becomes nearly impossible to erase it completely, especially since such data can be downloaded and stored on physical or digital media. The Right to Be Forgotten addresses the desire of individuals not to be perpetually associated with embarrassing, defamatory, or mistaken actions from their private lives. Even if these events are factually accurate, the continued exposure of such information can cause harmful—and potentially irreparable—damage to essential moral rights like privacy, intimacy, honor, and personal image.⁶⁸

III. TO FORGET OR BE FORGOTTEN? NAMING AN ESSENTIAL RIGHT

The Right to Be Forgotten has undoubtedly become a global topic of debate, particularly concerning its definition and the boundaries of its application. While the discussion extends across Europe and Brazil, it takes on different perspectives and conceptual frameworks in each context.

In Brazil, the controversy intensified following the Supreme Federal Court's (STF) ruling in *Theme 786 of General Repercussion*, where the court declared that the Right to Be Forgotten is incompatible with the Brazilian Constitution. This decision contrasts with approaches seen in other jurisdictions, especially in Europe, where the right has been recognized and applied within specific limits, particularly in the digital environment.⁶⁹

Despite the Brazilian court's stance, recent rulings from other courts have reignited discussions around this issue, especially as it relates to digital contexts — a dimension not fully addressed in the *Aída Cury* case, which focused on a television program rather than online data. These new developments highlight the ongoing challenge of balancing privacy rights with freedom of expression in an era where information is permanent and easily accessible online.⁷⁰

⁶⁷ Castells, Manuel. *Sociedade em rede*. Translated by Roneide Venâncio Majer. 6th ed. São Paulo: Paz e Terra, 1999, 76-82.

⁶⁸ Ferriani, Luciana D. P. A. "The Right to Be Forgotten as a Personality Right." PhD diss., Pontifical Catholic University of São Paulo, 2016, 54.

⁶⁹ Brazil. Supreme Federal Court. Theme 786 – Applicability of the Right to Be Forgotten in the Civil Sphere When Invoked by the Victim or Their Family Members. Brasília, 2021.

⁷⁰ Brazil. Supreme Federal Court. Theme 786 – Applicability of the Right to Be

The Superior Court of Justice (STJ), Brazil's highest authority on civil matters, has addressed the concept of *deindexation* — the removal of information from search engines — in three significant rulings. This concept aligns with provisions in Brazil's General Data Protection Law (LGPD), particularly Article 18, and distinguishes deindexation from the broader *Right to Be Forgotten*.⁷¹

Case No. 1774425/RJ, ruled on March 14, 2022, the STJ's Third Panel reaffirmed the nonexistence of the Right to Be Forgotten within Brazilian law, as previously established by the Supreme Federal Court (STF) in *RE 1010606* under the general repercussion procedure. The case involved an individual requesting Google to deindex search results linking his name to archived investigations published by *O Globo* newspaper.⁷²

The STJ ruled that since the facts were true, lawfully obtained, and published, there was no legal basis for deindexation, even if the continued availability of this information caused the plaintiff discomfort. The court emphasized that any abuse in the exercise of freedom of expression must be evaluated on a case-by-case basis, considering constitutional protections for honor, image, privacy, and personal rights. However, the mere passage of time was deemed insufficient to justify suppressing truthful information. Consequently, the court denied the appeal, maintaining the stance that the Right to Be Forgotten is incompatible with the Brazilian Constitution.⁷³

Case No. 1.771.911/SP, decided on March 16, 2021, the STJ addressed whether internet search providers could be compelled to deindex content alleged to be offensive to a person's image and honor. The court ruled that the removal of search results requires the precise identification of the URLs containing the disputed content.⁷⁴

The STJ clarified that search engines do not manage or control the content of the pages they index; they merely display links based on the search terms provided by users. Therefore, search providers cannot be held liable for failing to remove results without the clear specification of the links, in line with Article 19, §1 of the Brazilian Internet Bill of Rights (Marco Civil da

Forgotten in the Civil Sphere When Invoked by the Victim or Their Family Members. Brasília, 2021.

⁷¹ Brazil. *Law No. 13,709* (August 14, 2018). General Personal Data Protection Law (LGPD). Brasília: Presidency of the Republic, 2020.

⁷² Brazil. Superior Court of Justice. Internal Appeal in Special Appeal No. 1,774,425/RJ, reporting justice Paulo de Tarso Sanseverino. Brasília, DF, March 14, 2022. *Electronic Justice Gazette*, March 18, 2022.

⁷³ Brazil. Superior Court of Justice. Internal Appeal in Special Appeal No. 1,774,425/RJ, reporting justice Paulo de Tarso Sanseverino. Brasília, DF, March 14, 2022. *Electronic Justice Gazette*, March 18, 2022.

⁷⁴ Brazil. Superior Court of Justice. Special Appeal No. 1,771,911/SP, reporting justice Nancy Andrichi. Brasília, DF, March 16, 2021. *Electronic Justice Gazette*, April 26, 2021.

Internet), which mandates clear identification of the material to be removed.⁷⁵

The court also rejected the application of the Right to Be Forgotten, reaffirming the STF's recent decision in *Theme 786*, which ruled the right unconstitutional. Ultimately, the STJ upheld the appeal, finding that the absence of specific URLs invalidated the judicial order for content removal.⁷⁶

Case No. *1.660.168/RJ*, decided on June 21, 2022, the STJ examined a request to deindex search results related to an alleged fraud in a public examination. The plaintiff sought to dissociate her name from news reports about the case, citing violations of her privacy and intimacy.⁷⁷

While reaffirming the nonexistence of the Right to Be Forgotten under Brazilian law, as determined by the STF in *Theme 786*, the STJ highlighted that this case did not involve removing journalistic content but merely deindexing the plaintiff's name as a unique search criterion. The court found that deindexation did not infringe upon the right to information since the content would remain accessible through other search parameters.⁷⁸

The STJ concluded that deindexation represented a proportional measure to protect the plaintiff's rights to privacy and intimacy without compromising the public's right to information. The ruling upheld the order to dissociate the plaintiff's name from the news articles while preserving the original content. Additionally, the daily fine initially imposed was reduced, as it was deemed excessive.⁷⁹

Another ruling from the Superior Court of Justice (STJ) brought the Right to Be Forgotten into focus within the criminal sphere. In Habeas Corpus No. 872.281/SP, decided on February 29, 2024, the court addressed the application of this right in the context of criminal sentencing, particularly concerning the assessment of prior convictions during the determination of penalties.⁸⁰

The petitioner, convicted of involvement in a criminal organization and

⁷⁵ Brazil. Superior Court of Justice. Special Appeal No. 1,771,911/SP, reporting justice Nancy Andrighi. Brasília, DF, March 16, 2021. *Electronic Justice Gazette*, April 26, 2021.

⁷⁶ Brazil. Superior Court of Justice. Special Appeal No. 1,771,911/SP, reporting justice Nancy Andrighi. Brasília, DF, March 16, 2021. *Electronic Justice Gazette*, April 26, 2021.

⁷⁷ Brazil. Superior Court of Justice. Special Appeal No. 1,660,168/RJ, reporting justice Marco Aurélio Bellizze. Brasília, DF, June 21, 2022. *Electronic Justice Gazette*, June 30, 2022.

⁷⁸ Brazil. Superior Court of Justice. Special Appeal No. 1,660,168/RJ, reporting justice Marco Aurélio Bellizze. Brasília, DF, June 21, 2022. *Electronic Justice Gazette*, June 30, 2022.

⁷⁹ Brazil. Superior Court of Justice. Special Appeal No. 1,660,168/RJ, reporting justice Marco Aurélio Bellizze. Brasília, DF, June 21, 2022. *Electronic Justice Gazette*, June 30, 2022.

⁸⁰ Brazil. Superior Court of Justice. Habeas Corpus No. 872,281/SP, reporting justice Antonio Saldanha Palheiro. Brasília, DF, February 29, 2024. *Electronic Justice Gazette*, March 4, 2024.

illegal possession of firearms, faced an increased sentence due to prior criminal records, which included older convictions.⁸¹

The STJ, aligning with previous case law, acknowledged that the negative weighting of significantly old criminal records could be reconsidered under the framework of the Right to Be Forgotten. The court emphasized that the passage of time should prevent the indefinite perpetuation of a criminal stigma when calculating sentences. This approach reflects the principle that temporal factors must be considered in evaluating a defendant's criminal history.⁸²

Consequently, the STJ ruled out the use of outdated prior convictions in determining the sentence. However, it upheld the sentence enhancement based on the defendant's culpability, citing the severity of the crimes and the large quantity of firearms seized.⁸³

This decision illustrates how the Right to Be Forgotten can be applied in the criminal justice system to prevent disproportionate punishments rooted in outdated criminal records, promoting a more balanced and fair sentencing process.⁸⁴

The resurgence of the Right to Be Forgotten in Brazilian news media was marked by the conclusion of the legal case involving a former *Big Brother Brasil* contestant. Case No. 1024293-40.2016.8.26.0007, judged by the 5th Civil Court of the Regional Forum VII – Itaquera, concerned a lawsuit for moral damages filed by Aline Cristina Tertuliano da Silva against Globo Comunicação e Participações S/A and other media outlets. The plaintiff claimed that after participating in *Big Brother Brasil* in 2005, her private life was exposed without consent in articles published on the defendants' websites, including photos taken from her Facebook account. She argued that the coverage was not only false but also placed her in a humiliating and degrading situation, violating her right to privacy.⁸⁵

The defendants countered by asserting that the published information was truthful and of public interest, as the plaintiff had become a public figure

⁸¹ Brazil. Superior Court of Justice. Habeas Corpus No. 872,281/SP, reporting justice Antonio Saldanha Palheiro. Brasília, DF, February 29, 2024. *Electronic Justice Gazette*, March 4, 2024.

⁸² Brazil. Superior Court of Justice. Habeas Corpus No. 872,281/SP, reporting justice Antonio Saldanha Palheiro. Brasília, DF, February 29, 2024. *Electronic Justice Gazette*, March 4, 2024.

⁸³ Brazil. Superior Court of Justice. Habeas Corpus No. 872,281/SP, reporting justice Antonio Saldanha Palheiro. Brasília, DF, February 29, 2024. *Electronic Justice Gazette*, March 4, 2024.

⁸⁴ Brazil. Superior Court of Justice. Habeas Corpus No. 872,281/SP, reporting justice Antonio Saldanha Palheiro. Brasília, DF, February 29, 2024. *Electronic Justice Gazette*, March 4, 2024.

⁸⁵ Brazil. São Paulo State Court of Justice. Civil Lawsuit No. 1024293-40.2016.8.26.0007, Judge Daniel Fabretti. São Paulo, SP, July 11, 2017.

through her participation in the show. They also claimed that the photos were already publicly available, either during the reality show or through the plaintiff's own posts on social media. Citing the right to information and freedom of expression, the defendants maintained that there was no excess or defamatory intent in their reporting.⁸⁶

Judge Daniel Fabretti dismissed the case, concluding that the plaintiff's rights had not been violated since the information was factual and the photos were already in the public domain. The judge emphasized the balance between privacy rights and press freedom, ruling that the defendants had acted within the legal bounds of freedom of expression and the right to information, and thus no unlawful act warranting compensation had occurred.⁸⁷

However, upon appeal, the 2nd Panel of Private Law of the São Paulo State Court of Justice (TJSP) ruled differently in Civil Appeal No. 1024293-40.2016.8.26.0007, decided on January 11, 2018. The appeal addressed the unauthorized exposure of Aline Cristina Tertuliano da Silva's private life after she declined invitations to return to the show. She argued that subsequent news articles published by Globo Comunicação e Participações S/A, Empresa Baiana de Jornalismo S/A, RBS – Zero Hora Editora Jornalística S/A, and Universo Online S/A disclosed personal details, including her employment at the Brazilian postal service (*Correios*), along with unauthorized photos from her Facebook.⁸⁸

The court recognized that, although the plaintiff was briefly a public figure, she had since withdrawn from public life, and there was no current journalistic interest justifying the invasion of her privacy. The court ruled that the media outlets had violated her personality rights, as protected by Article 5, items V and X of the Brazilian Federal Constitution and Articles 186, 187, and 927 of the Civil Code, constituting moral damage.⁸⁹

Globo, Empresa Baiana de Jornalismo, and RBS were jointly ordered to remove the articles from their websites upon receiving the URLs from the plaintiff, under a daily penalty of R\$ 1,000, capped at R\$ 20,000. Additionally, they were ordered to pay R\$ 20,000 in moral damages. Universo Online was only held responsible for the obligation to remove the content, as it served as a hosting provider rather than the direct publisher.⁹⁰

⁸⁶ Brazil. São Paulo State Court of Justice. Civil Lawsuit No. 1024293-40.2016.8.26.0007, Judge Daniel Fabretti. São Paulo, SP, July 11, 2017.

⁸⁷ Brazil. São Paulo State Court of Justice. Civil Lawsuit No. 1024293-40.2016.8.26.0007, Judge Daniel Fabretti. São Paulo, SP, July 11, 2017

⁸⁸ Brazil. São Paulo State Court of Justice. Appeal No. 1024293-40.2016.8.26.0007, reporting judge Alcides Leopoldo e Silva Júnior. São Paulo, SP, January 11, 2018.

⁸⁹ Brazil. São Paulo State Court of Justice. Appeal No. 1024293-40.2016.8.26.0007, reporting judge Alcides Leopoldo e Silva Júnior. São Paulo, SP, January 11, 2018.

⁹⁰ Brazil. São Paulo State Court of Justice. Appeal No. 1024293-40.2016.8.26.0007,

The ruling emphasized that public access to Facebook does not grant unrestricted rights to reproduce images, which remain protected under image rights and copyright law. Furthermore, the court clarified that sharing such articles also constitutes publication, rendering those who share the content liable for any resulting harm.⁹¹

According to news reports, the case was officially closed on January 24, 2025, following the payment of damages by Rede Globo.⁹²

Brazilian court decisions have complicated the understanding of the Right to Be Forgotten by distinguishing it from the Right to Deindexation, treating them as separate—sometimes even conflicting—rights. This approach diverges from the evolving legal interpretations in Europe.

In contrast, two landmark rulings from the Court of Justice of the European Union (CJEU) demonstrate that the Right to Be Forgotten encompasses the Right to Deindexation, framing them as a general right and its specific application, respectively. This interpretation positions deindexation as one of the primary mechanisms through which the broader Right to Be Forgotten is exercised, particularly in the digital sphere.

This interpretation is clearly reflected in the Court of Justice of the European Union (CJEU) rulings in Cases C-131/12 and C-460/20, both against Google. In Case C-131/12, the CJEU determined that search engine activities, such as those carried out by Google, constitute the processing of personal data, making the operator responsible for that processing—even when the content is hosted on third-party websites. The Court concluded that individuals have the right to request the deindexation of links associating their names with outdated or irrelevant information, even if the original content is lawful. This right is grounded in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, which protect private life and personal data.⁹³

This decision effectively established the Right to Be Forgotten within the European Union, obligating search engines to assess deindexation requests by balancing privacy rights against the public's interest in accessing information. It also clarified that the Right to Deindexation is inherently

reporting judge Alcides Leopoldo e Silva Júnior. São Paulo, SP, January 11, 2018.

⁹¹ Brazil. São Paulo State Court of Justice. Appeal No. 1024293-40.2016.8.26.0007, reporting judge Alcides Leopoldo e Silva Júnior. São Paulo, SP, January 11, 2018.

⁹² Observatório da TV. “Former Big Brother Brasil Contestant Wins Lawsuit for the Right to Be Forgotten and Will Have Articles Removed from the Internet.” *Observatório da TV*, January 23, 2018. <https://observatoriodatv.com.br/noticias/ex-bbb-vence-processo-por-direito-ao-esquecimento-e-tera-materias-retiradas-da-internet>

⁹³ European Union. Court of Justice of the European Union. Case C-131/12, Google Spain SL, Google Inc. v. Agencia de Protección de Datos (AEPD), Mario Costeja González, Grand Chamber. Luxembourg, May 13, 2014. Official Journal of the European Union C 212, July 7, 2014.

linked to the broader Right to Be Forgotten, functioning as one of its primary applications.⁹⁴

In Case C-460/20, ruled on December 8, 2022, by the Grand Chamber of the CJEU, the case of TU and RE vs. Google LLC involved a preliminary ruling request from the Bundesgerichtshof (Federal Court of Justice, Germany). The plaintiffs sought the removal of links and images displayed in Google search results, claiming that the information was inaccurate and violated their privacy rights.⁹⁵

The CJEU held that search engine operators could be required to remove links to content considered inaccurate, even if the accuracy of such information had not been judicially confirmed beforehand. The Court emphasized that in evaluating these requests, a balance must be struck between the right to privacy and personal data protection (Articles 7 and 8 of the Charter of Fundamental Rights of the European Union) and the right to freedom of expression and information (Article 11 of the Charter).⁹⁶

Additionally, the Court ruled that when it comes to images displayed as thumbnails, the informational value of these images must be considered, particularly in the context in which they appear in search results. The burden of proof lies with the claimant, who must demonstrate that the information or images infringe upon their fundamental rights. This ruling extended the Right to Be Forgotten to include images in search engine results, further solidifying the connection between deindexation and the broader right to privacy in the digital age.⁹⁷

These decisions suggest that the Right to Be Forgotten, although not explicitly included in the Data Protection Directive, was implicitly present in Article 12 of the document. While the General Data Protection Regulation (GDPR) appears to conflate the two terms in Article 17, titled “*Right to Erasure (‘Right to Be Forgotten’)*”, there is ongoing debate about whether the Right to Be Forgotten and the Right to Erasure represent the same concept.⁹⁸

⁹⁴ European Union. Court of Justice of the European Union. Case C-131/12, Google Spain SL, Google Inc. v. Agencia de Protección de Datos (AEPD), Mario Costeja González, Grand Chamber. Luxembourg, May 13, 2014. Official Journal of the European Union C 212, July 7, 2014.

⁹⁵ European Union. Court of Justice of the European Union. Case C-460/20, TU, RE v. Google LLC, Grand Chamber. Luxembourg, December 8, 2022. Official Journal of the European Union C 443, December 21, 2020.

⁹⁶ European Union. Court of Justice of the European Union. Case C-460/20, TU, RE v. Google LLC, Grand Chamber. Luxembourg, December 8, 2022. Official Journal of the European Union C 443, December 21, 2020.

⁹⁷ European Union. Court of Justice of the European Union. Case C-460/20, TU, RE v. Google LLC, Grand Chamber. Luxembourg, December 8, 2022. Official Journal of the European Union C 443, December 21, 2020.

⁹⁸ Mitchell-Rekrut, Cooper. “Search Engine Liability under the LIBE Data Regulation

Some scholars argue that the terms are interchangeable, suggesting that both rights allow individuals to have their personal data removed.⁹⁹ However, others contend that the two rights are distinct.¹⁰⁰ According to this perspective, the Right to Be Forgotten encompasses the removal of information that does not necessarily violate any legal norms. In contrast, the Right to Erasure permits data subjects to request the deletion of their personal data when its retention or processing breaches GDPR terms—particularly (but not exclusively) when the data is incomplete or inaccurate.¹⁰¹ On the other hand, the Right to Be Forgotten could lead to the deletion of personal information regardless of whether the data is harmful or has been processed unlawfully.¹⁰²

The Right to Erasure, also referred to as the Right to Be Forgotten in the GDPR, allows data subjects to request the removal of their information when specific conditions are met. Under the GDPR, erasure is required when: (1) The data is no longer necessary for the purposes for which it was collected. (2) The individual withdraws consent, and no other legal basis for processing exists. (3) The individual objects to data processing, and no overriding legitimate grounds exist. (4) The data has been processed unlawfully. (5) The data must be erased to comply with a legal obligation. (6) The data was collected in relation to the offer of information society services.¹⁰³

When any of these conditions apply, the data controller must promptly delete the data. If the data has been made public, the controller is also required to take reasonable steps to inform other data processors of the erasure request, ensuring that any links, copies, or replications of the data are removed.¹⁰⁴

Proposal: Interpreting Third Party Responsibilities as Informed by Google Spain.” *Georgetown Journal of International Law* 45 (2014), 861.

⁹⁹ Mitchell-Rekrut, Cooper. “Search Engine Liability under the LIBE Data Regulation Proposal: Interpreting Third Party Responsibilities as Informed by Google Spain.” *Georgetown Journal of International Law* 45 (2014), 861.

¹⁰⁰ Cofone, Ignacio. “Google v. Spain: A Right to Be Forgotten?” *Chicago-Kent Journal of International and Comparative Law* 15, no. 1 (2015), 8.

¹⁰¹ Cofone, Ignacio. “Google v. Spain: A Right to Be Forgotten?” *Chicago-Kent Journal of International and Comparative Law* 15, no. 1 (2015), 6.

¹⁰² Safari, Beata A. “Intangible Privacy Rights: How Europe’s GDPR Will Set a New Global Standard for Personal Data Protection.” *Seton Hall Law Review* 47 (2017): 809–848, 835.

¹⁰³ As outlined in Article 17 of the GDPR, titled “*Right to Erasure* (‘*Right to Be Forgotten*’),” the first paragraph establishes that the responsibility for deleting personal data lies with the data controller. It mandates that the erasure of such data must occur without undue delay when any of the conditions specified in points (a) to (f) of the first section are met. This immediate deletion requirement underscores the obligation of data controllers to act promptly when individuals exercise their right to have personal data erased.

¹⁰⁴ Lode, Sarah L. “‘You Have the Data’... The Writ of Habeas Data and Other Data Protection Rights: Is the United States Falling Behind?” *Indiana Law Journal & Supplement* 94 (2018): 41–63.

The Right to Be Forgotten empowers individuals to control their personal data when it is no longer necessary for its original purpose or when they wish to withdraw consent for its processing, among other reasons.¹⁰⁵

The true innovation introduced by the GDPR was not the formalization of the Right to Erasure but rather the legal recognition of the Right to Be Forgotten, as reflected in the terminology adopted. This inclusion, first proposed by the European Commission, sparked uncertainties during the legislative process and drew significant criticism. Concerns focused on the practical challenges of applying this right in the context of the internet, the unrealistic expectation that information could be freely erased at the data subject's discretion, the societal importance of maintaining access to information, and the potential competitive disadvantages this right could create in a global digital environment.¹⁰⁶

What the Court of Justice of the European Union (CJEU) recognized in the Google ruling is fundamentally distinct. The CJEU determined that the results generated by a search engine through the combination of two or more terms constitute a form of data processing. By skillfully integrating login data, cookies, and IP addresses, Google is able to link search queries to specific individuals over time with remarkable precision. This connection between the user conducting the search and the results displayed is compelling enough to direct the user to the indexed links.¹⁰⁷

For a human, accessing all these sources sequentially and compiling a comprehensive dossier would take countless hours. In contrast, integrated search engines make this process quick, simple, effortless, and cost-free. However, even if the search results are entirely accurate, they do not reflect the current essence of a person. Instead, they represent an artificial compilation of life facts, limited solely to information available in digital format, omitting the broader context of lived experiences behind those facts.¹⁰⁸

The core issue lies in the fact that these results are based on probabilistic associations. They loosely connect individuals to certain preferences or characteristics, resulting in a digitally amplified version of associative judgment. Inferences drawn from isolated, corresponding data points are used to categorize individuals and present a curated list of results. This process

¹⁰⁵ Safari, Beata A. "Intangible Privacy Rights: How Europe's GDPR Will Set a New Global Standard for Personal Data Protection." *Seton Hall Law Review* 47 (2017): 809–848, 835.

¹⁰⁶ Cordeiro, A. Barreto Menezes. *Direito da Proteção de Dados: À Luz do RGPD e da Lei N.º 58/2019*. Coimbra: Almedina, 2020, 277.

¹⁰⁷ Mayer-Schönberger, Viktor. *Delete: The Virtue of Forgetting in the Digital Age*. Revised Kindle ed. Princeton, NJ: Princeton University Press, 2011, 6.

¹⁰⁸ Mayer-Schönberger, Viktor. *Delete: The Virtue of Forgetting in the Digital Age*. Revised Kindle ed. Princeton, NJ: Princeton University Press, 2011, 104.

creates a fragmented and potentially misleading digital portrait, which may not accurately represent the complexity of an individual's identity or life story.¹⁰⁹

In this context, both Germany and Portugal have issued significant rulings that align with the principles established by the Court of Justice of the European Union (CJEU) in its landmark cases.

In Germany, the Bundesgerichtshof (Federal Court of Justice), in Case VI ZR 405/18, decided on July 27, 2020, emphasized that the Right to Erasure and, consequently, the Right to Deindexation are not absolute. The Court held that Article 17, paragraph 1 of the GDPR does not apply in its entirety if data processing is necessary for the exercise of freedom of expression. This reflects the broader understanding that the right to personal data protection is not an unrestricted right. As noted in Recital 4 of the GDPR, personal data protection must be considered in light of its social function and balanced against other fundamental rights, maintaining the principle of proportionality. The Court highlighted that the balancing of fundamental rights should take into account all relevant circumstances of the individual case, including the severity of the interference with the affected person's fundamental rights.¹¹⁰

In Portugal, the Porto Court of Appeal, in Case 7251/22.5T8PRT.P1 (2023), addressed issues related to image rights and privacy. The case involved the publication of photos of a young woman in a magazine without her consent. The magazine had published several images, some taken in private settings and digitally altered, linking her to political activities due to her father's role as a party leader. The court ruled in favor of the young woman, recognizing the violation of her right to privacy and image, and awarded damages, noting that she was not a public figure and had not consented to the publication of the photos.¹¹¹

In Lisbon, the Lisbon Court of Appeal, in Case 12234/21.0T8LSB.L1-7 (2023), dealt with a preliminary injunction filed by the claimant against the Wikimedia Foundation, Inc. and unidentified parties. The claimant sought the removal of specific information from his Wikipedia biography, arguing that it was offensive to his honor and image. The court partially upheld the request, ordering the removal of certain content and requiring the identification of the editors who added the disputed information.¹¹²

The issue of the Right to Be Forgotten in this case was closely tied to the possibility of an individual requesting the removal of outdated personal information that was no longer relevant or necessary for public archival

¹⁰⁹ Mayer-Schönberger, Viktor. *Delete: The Virtue of Forgetting in the Digital Age*. Revised Kindle ed. Princeton, NJ: Princeton University Press, 2011, 105.

¹¹⁰ Germany. Bundesgerichtshof. Case VI ZR 405/18, decided July 27, 2020.

¹¹¹ Portugal. Tribunal da Relação do Porto. Case 7251/22.5T8PRT.P1, 2023.

¹¹² Portugal. Tribunal da Relação de Lisboa. Case 12234/21.0T8LSB.L1-7, 2023.

purposes. The court had to balance the claimant's personality rights, such as the protection of honor and image, against the principles of freedom of expression and information. It was argued that certain information in the claimant's Wikipedia biography did not comply with the lawfulness requirements for personal data processing.¹¹³

These rulings reflect how European courts continue to navigate the delicate balance between privacy rights and freedom of information, reinforcing that while individuals have the right to protect their personal data, such rights must be carefully weighed against the public interest and the principles of free expression.

Decisions like these highlight the importance of the Right to Be Forgotten in safeguarding personality rights such as privacy, honor, and image in the online environment. These rulings demonstrate that the Right to Be Forgotten, the Right to Erasure, and Deindexation all stem from Article 17 of the GDPR and serve a common purpose.¹¹⁴

The terms "forgetting," "erasure," and "deindexation" are applied differently to address violations of rights under the GDPR, adapting to the specific realities of technological environments. It becomes clear that requesting Google — or any search engine — to delete information is unfeasible, as they do not own the content. However, it is possible to request the deindexing of search results, effectively exercising the same right outlined in Article 17.¹¹⁵

The Right to Be Forgotten can be seen as an elegant term or a broad category that encompasses other specific rights, such as the Right to Erasure and Deindexation. Despite these subdivisions, they share a single objective: to ensure that personal data is forgotten when its retention violates the GDPR, European Union law, or the laws of Member States applicable to the data controller.¹¹⁶

The Right to Be Forgotten emerges as a response to freedom of expression, particularly in its negative form. When freedom of expression

¹¹³ Portugal. Tribunal da Relação de Lisboa. Case 12234/21.0T8LSB.L1-7, 2023.

¹¹⁴ Guimarães, João Alexandre S. A. "The Right to Be Forgotten as a Fundamental Right in Germany, in Europe... and in Brazil?" *German Report Column, Migalhas*, May 10, 2023. <https://www.migalhas.com.br/coluna/german-report/386226/direito-ao-esquecimento-como-um-direito-fundamental-na-alemanha>

¹¹⁵ Guimarães, João Alexandre S. A. "The Right to Be Forgotten as a Fundamental Right in Germany, in Europe... and in Brazil?" *German Report Column, Migalhas*, May 10, 2023. <https://www.migalhas.com.br/coluna/german-report/386226/direito-ao-esquecimento-como-um-direito-fundamental-na-alemanha>

¹¹⁶ Guimarães, João Alexandre S. A. "The Right to Be Forgotten as a Fundamental Right in Germany, in Europe... and in Brazil?" *German Report Column, Migalhas*, May 10, 2023. <https://www.migalhas.com.br/coluna/german-report/386226/direito-ao-esquecimento-como-um-direito-fundamental-na-alemanha>

infringes on an individual's privacy or obstructs the free development of personal identity, the affected party, in the absence of a demonstrated collective interest, may request that the offending content be deleted and forgotten. However, recognizing that both privacy and freedom of expression are fundamental rights, though not absolute, it falls upon the courts to determine which right should prevail in each specific case. This balance allows internet users to assert control over how they are defined in the online environment, thereby exercising their right to personal development in the virtual space as well.¹¹⁷

The erasure clause in Article VI of Brazil's General Data Protection Law (LGPD) is presented in a more superficial manner when compared to the protections offered by the General Data Protection Regulation (GDPR) in the European Union. Under the GDPR, Article 17 explicitly outlines the “*Right to Erasure* (‘*Right to Be Forgotten*’).” This provision allows data subjects to request the deletion of their personal data when its retention or processing violates regulatory terms, particularly (though not exclusively) when the data is incomplete or inaccurate.¹¹⁸

The GDPR grants data subjects the right to request the erasure of their personal data, imposing a clear obligation on controllers and processors to comply promptly, ensuring that such data is erased to the extent that it becomes effectively forgotten. These specific safeguards and obligations are not as explicitly detailed in Brazil's LGPD as they are in European legislation.¹¹⁹

The Right to Be Forgotten has a broad scope, encompassing situations where facts have lost their historical relevance due to the passage of time, and their continued dissemination becomes abusive, causing more harm to individuals than benefit to society. While this right is indeed exceptional and must not be trivialized, its outright dismissal—particularly in decisions of general repercussion—could represent a significant setback in upholding the principle of human dignity, a fundamental value enshrined in Article 1, III of the Brazilian Federal Constitution. This principle encompasses privacy and personal identity, integral elements of human dignity. Requiring specific legislation, contingent on legislative will, risks fostering inaction—a stance

¹¹⁷ Guimarães, João A. S. “O direito ao esquecimento: A última chance de sermos nós mesmos?” *Migalhas de IA e Proteção de Dados*, Ribeirão Preto, September 3, 2021. <https://www.migalhas.com.br/coluna/migalhas-de-protecao-de-dados/351126/o-direito-ao-esquecimento-a-ultima-chance-de-sermos-nos-mesmos>

¹¹⁸ Guimarães, João Alexandre, and Lecio Machado. *Comentários à Lei Geral de Proteção de Dados: Lei 13.709/2018 com Alterações da MPV 869/2020*. Rio de Janeiro: Lumen Juris, 2020, 86.

¹¹⁹ Guimarães, João Alexandre, and Lecio Machado. *Comentários à Lei Geral de Proteção de Dados: Lei 13.709/2018 com Alterações da MPV 869/2020*. Rio de Janeiro: Lumen Juris, 2020, 86.

reminiscent of the Supreme Federal Court's previous reluctance to fully enforce the fundamental guarantee of the injunction writ (*mandado de injunção*).¹²⁰

Recognizing the Right to Be Forgotten may be the only viable path for individuals to define who they truly are and how they wish to be perceived. This is especially critical in an environment where individuals are constantly monitored, profiled, and subjected to algorithmic recommendations based on what is presumed to be of interest to them. In such a digital landscape, the ability to control one's personal data is not just a legal right but a profound assertion of personal autonomy and self-determination.¹²¹

CONCLUSION

In today's digitally interconnected world, where information flows freely and rapidly, the tension between freedom of expression and the right to privacy has never been more pronounced. While freedom of expression remains a cornerstone of democratic societies, enabling open debate and the dissemination of ideas, it must coexist with equally fundamental rights such as privacy, honor, and the protection of personal data. The evolution of information technologies and the proliferation of digital platforms have created environments where personal histories are not only accessible but often inescapably permanent, demanding a reevaluation of how these rights are balanced.

Fact-checking initiatives and traditional media outlets have long been tasked with safeguarding the integrity of public discourse. These mechanisms, designed to counter misinformation and uphold journalistic standards, are essential in fostering a well-informed citizenry. However, they are not without limitations. Even when facts are verified and accurately reported, the persistence of such information online can perpetuate harm, particularly when it no longer serves a legitimate public interest. This raises critical questions about the adequacy of existing frameworks in addressing the long-term implications of digital permanence.

The Right to Be Forgotten emerges as a pivotal legal tool in this context, offering individuals the ability to reclaim control over their personal narratives in the digital sphere. By allowing for the deindexation or erasure

¹²⁰ Martins, Guilherme Magalhães, and João Alexandre Silva Alves Guimarães. "Direito ao Esquecimento no STF: A Dignidade da Pessoa Humana em Risco." *Consultor Jurídico*, February 10, 2021. <https://www.conjur.com.br/2021-fev-10/martins-guimaraes-direito-esquecimento-stf> (accessed March 25, 2021).

¹²¹ Guimarães, João A. S. "O direito ao esquecimento: A última chance de sermos nós mesmos?" *Migalhas de IA e Proteção de Dados*, Ribeirão Preto, September 3, 2021. <https://www.migalhas.com.br/coluna/migalhas-de-protecao-de-dados/351126/o-direito-ao-esquecimento-a-ultima-chance-de-sermos-nos-mesmos>.

of outdated, irrelevant, or harmful information, this right addresses the inherent imbalance created by the enduring nature of online data. It recognizes that while the public's right to information is vital, it must be carefully weighed against the individual's right to privacy and the possibility of rehabilitation and personal growth.

European jurisprudence, particularly through the rulings of the Court of Justice of the European Union, has led the way in defining and implementing the Right to Be Forgotten. These decisions underscore the necessity of a nuanced approach that considers both the societal value of information and the potential for personal harm. They illustrate that the right is not about rewriting history but about ensuring that individuals are not indefinitely bound by past actions or events that no longer reflect their current identity or societal relevance.

Conversely, jurisdictions like Brazil have grappled with the complexities of this right, often distinguishing between the Right to Be Forgotten, the Right to Deindexation, and the Right to Erasure. The Brazilian Supreme Federal Court's decision to deem the Right to Be Forgotten incompatible with the Constitution highlights the challenges of integrating such protections within existing legal frameworks. However, recent rulings suggest a gradual recognition of the need for mechanisms that can address the unique harms posed by digital permanence, particularly in cases where privacy rights are disproportionately affected.

Ultimately, the Right to Be Forgotten represents more than just a legal remedy; it embodies a broader societal acknowledgment of the need for balance in the digital age. It challenges us to consider how we can protect individual dignity and autonomy while maintaining the integrity of public discourse. As technology continues to evolve, so too must our legal and ethical frameworks, ensuring that the rights to both remember and forget are preserved in harmony.

REFERENCES

- Barsotti, Adriana. "Memória e esquecimento no jornalismo: Do papel à desmaterialização digital." *ALCEU – Revista de Comunicação, Cultura e Política* 20, no. 40 (2020): 10–26.
- Bezerra Junior, Luis Martius Holanda. *Direito ao Esquecimento*. São Paulo: Série IDP, Editora Saraiva, 2018. Kindle edition.
- Bodin de Moraes, Maria Celina. *Danos à pessoa humana: uma leitura civil constitucional dos danos morais*. Rio de Janeiro: Renovar, 2003.
- Branco, Sérgio. *Memória e esquecimento na internet (Pautas em Direito)*. Porto Alegre: Arquipélago Editorial, 2017. Kindle edition, 115–117.
- Brazil. *Law No. 13,709* (August 14, 2018). General Personal Data Protection

- Law (LGPD). Brasília: Presidency of the Republic, 2020.
- Brazil. São Paulo State Court of Justice. Appeal No. 1024293-40.2016.8.26.0007, reporting judge Alcides Leopoldo e Silva Júnior. São Paulo, SP, January 11, 2018.
- Brazil. São Paulo State Court of Justice. Civil Lawsuit No. 1024293-40.2016.8.26.0007, Judge Daniel Fabretti. São Paulo, SP, July 11, 2017.
- Brazil. Superior Court of Justice. Habeas Corpus No. 872,281/SP, reporting justice Antonio Saldanha Palheiro. Brasília, DF, February 29, 2024. *Electronic Justice Gazette*, March 4, 2024.
- Brazil. Superior Court of Justice. Internal Appeal in Special Appeal No. 1,774,425/RJ, reporting justice Paulo de Tarso Sanseverino. Brasília, DF, March 14, 2022. *Electronic Justice Gazette*, March 18, 2022.
- Brazil. Superior Court of Justice. Special Appeal No. 1,660,168/RJ, reporting justice Marco Aurélio Bellizze. Brasília, DF, June 21, 2022. *Electronic Justice Gazette*, June 30, 2022.
- Brazil. Superior Court of Justice. Special Appeal No. 1,771,911/SP, reporting justice Nancy Andrichi. Brasília, DF, March 16, 2021. *Electronic Justice Gazette*, April 26, 2021.
- Brazil. Supreme Federal Court. Theme 786 – Applicability of the Right to Be Forgotten in the Civil Sphere When Invoked by the Victim or Their Family Members. Brasília, 2021.
- Carson, A., A. Gibbons, A. Martin, and J. B. Phillips. “Does Third-Party Fact-Checking Increase Trust in News Stories? An Australian Case Study Using the ‘Sports Rorts’ Affair.” *Digital Journalism* 10, no. 5 (2022): 801–822. <https://doi.org/10.1080/21670811.2022.2031240>.
- Castells, Manuel. *Sociedade em rede*. Translated by Roneide Venâncio Majer. 6th ed. São Paulo: Paz e Terra, 1999.
- Cofone, Ignacio. “Google v. Spain: A Right to Be Forgotten?” *Chicago-Kent Journal of International and Comparative Law* 15, no. 1 (2015).
- Cooley, Thomas M. *A Treatise on the Law of Torts, or the Wrongs Which Arise Independent of Contract*. Chicago: Callaghan and Company, 1879.
- Cordeiro, A. Barreto Menezes. *Direito da Proteção de Dados: À Luz do RGPD e da Lei N.º 58/2019*. Coimbra: Almedina, 2020.
- European Union. Court of Justice of the European Union. Case C-131/12, Google Spain SL, Google Inc. v. Agencia de Protección de Datos (AEPD), Mario Costeja González, Grand Chamber. Luxembourg, May 13, 2014. Official Journal of the European Union C 212, July 7, 2014.
- European Union. Court of Justice of the European Union. Case C-460/20, TU, RE v. Google LLC, Grand Chamber. Luxembourg, December 8, 2022. Official Journal of the European Union C 443, December 21, 2020.
- Ferriani, Luciana D. P. A. “The Right to Be Forgotten as a Personality Right.” PhD diss., Pontifical Catholic University of São Paulo, 2016.

- Germany. Bundesgerichtshof. Case VI ZR 405/18, decided July 27, 2020.
- Guimarães, João A. S. “O direito ao esquecimento: A última chance de sermos nós mesmos?” *Migalhas de IA e Proteção de Dados*, Ribeirão Preto, September 3, 2021. <https://www.migalhas.com.br/coluna/migalhas-de-protecao-de-dados/351126/o-direito-ao-esquecimento-a-ultima-chance-de-sermos-nos-mesmos>
- Guimarães, João Alexandre S. A. “The Right to Be Forgotten as a Fundamental Right in Germany, in Europe... and in Brazil?” *German Report Column, Migalhas*, May 10, 2023. <https://www.migalhas.com.br/coluna/german-report/386226/direito-ao-esquecimento-como-um-direito-fundamental-na-alemanha>.
- Guimarães, João Alexandre, and Lecio Machado. *Comentários à Lei Geral de Proteção de Dados: Lei 13.709/2018 com Alterações da MPV 869/2020*. Rio de Janeiro: Lumen Juris, 2020.
- Lode, Sarah L. “‘You Have the Data’... The Writ of Habeas Data and Other Data Protection Rights: Is the United States Falling Behind?” *Indiana Law Journal & Supplement* 94 (2018): 41–63.
- Machado, Jonatas E. M., and Iolanda A. S. Rodrigues de Brito. “Freedom of Speech, Fake News and Public Figures: The Danger of Manipulation of Public Discourse.” *Boletim da Faculdade de Direito da Universidade de Coimbra* 95, no. 1 (2019): 43–96.
- Martins, Guilherme Magalhães, and João Alexandre Silva Alves Guimarães. “Direito ao Esquecimento no STF: A Dignidade da Pessoa Humana em Risco.” *Consultor Jurídico*, February 10, 2021. <https://www.conjur.com.br/2021-fev-10/martins-guimaraes-direito-esquecimento-stf> (accessed March 25, 2021).
- Mayer-Schönberger, Viktor. *Delete: The Virtue of Forgetting in the Digital Age*. Revised Kindle ed. Princeton, NJ: Princeton University Press, 2011.
- Mitchell-Rekrut, Cooper. “Search Engine Liability under the LIBE Data Regulation Proposal: Interpreting Third Party Responsibilities as Informed by Google Spain.” *Georgetown Journal of International Law* 45 (2014).
- Observatório da TV. “Former Big Brother Brasil Contestant Wins Lawsuit for the Right to Be Forgotten and Will Have Articles Removed from the Internet.” *Observatório da TV*, January 23, 2018. <https://observatoriodatv.com.br/noticias/ex-bbb-vence-processo-por-direito-ao-esquecimento-e-tera-materias-retiradas-da-internet>.
- Portugal. Tribunal da Relação de Lisboa. Case 12234/21.0T8LSB.L1-7, 2023.
- Portugal. Tribunal da Relação do Porto. Case 7251/22.5T8PRT.P1, 2023.
- Rasool, Mahewash. “The Abuse of Freedom of Speech and Expression through Internet Censorship.” *Jus Corpus Law Journal* 4, no. 3 (2024):

633–645.

Rodotà, Stefano. *A Vida na Sociedade da Vigilância: A Privacidade Hoje*. Rio de Janeiro: Renovar, 2008.

Rodotà, Stéfano. *La Démocratie Électronique: De nouveaux concepts et expériences politiques*. Rennes: Éditions Apogée, 1999.

Safari, Beata A. “Intangible Privacy Rights: How Europe’s GDPR Will Set a New Global Standard for Personal Data Protection.” *Seton Hall Law Review* 47 (2017): 809–848.

Sequeira, Elsa Vaz. “Responsabilidade Civil e Liberdade de Expressão.” *Responsibility Law Magazine*, Coimbra, Year 3 (2021): 63–89.

Soares, Felipe Ramos Ribas, and Rafael Mansur. “A Tese da Posição Preferencial da Liberdade de Expressão Frente aos Direitos de Personalidade: Análise Crítica à Luz da Legalidade Constitucional.” In *Direito e Mídia: Tecnologia e Liberdade de Expressão*, 2nd ed., edited by Anderson Schreiber, Bruno Terra de Moraes, and Chiara Spadaccini de Teffé, Indaiatuba, SP: Editora Foco, 2021.

Tavares, André Ramos. “Liberdade de Expressão-Comunicação em Face do Direito à Privacidade.” In *Direito à Privacidade*, edited by Ives Gandra da Silva Martins and Antônio Jorge Pereira Júnior, 223–228. Aparecida: Ideias & Letras, 2005.

Warren, Samuel D., and Louis D. Brandeis. “The Right to Privacy.” *Harvard Law Review* IV (December 15, 1890).

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