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The Right to Be Forgotten in Conflict with Freedom of Information: An Analysis of the Aída Curi Case and the STF's Rejection

O Direito ao Esquecimento em Confronto com a Liberdade de Informação: Uma Análise do Caso Aída Curi e a Negativa do STF

El derecho al olvido frente a la libertad de información: un análisis del Caso Aída Curi y la negativa del STF

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Abstract: This article analyzes the Federal Supreme Court's judgment of the Aída Curi case and examines the arguments that led to the rejection of the right to be forgotten as an autonomous legal figure. The theoretical framework addresses the conflict between fundamental rights - freedom of expression versus human dignity and personality rights - using Alexy's balancing theory and examining the General Data Protection Law (LGPD) as a regulatory instrument. This qualitative study analyzed the case's procedural history from the first-instance decision (2009) to the final judgment by the Federal Supreme Court (2020), focusing on the Justices' opinions. The results identified three positions in the Court: the majority, which denied the right because of the risk it posed to freedom of information and the sufficiency of existing legal mechanisms; the minority, which recognized its autonomous existence; and the intermediate position, which proposed a case-by-case solution without creating a new category. The study concludes that, by prioritizing legal certainty and a robust view of freedom of expression, the Federal Supreme Court's decision represented a setback for the protection of human dignity in the digital age and left ordinary citizens with a protection gap. The case's legacy redirects the debate toward the LGPD as a more appropriate instrument for balancing collective memory and individual rights.

Keywords: Right to Be Forgotten. Freedom of Expression. Federal Supreme Court. Constitutional Case Law. Balancing of Rights. LGPD. Human Dignity.

Resumo: Este artigo analisa o julgamento do Caso Aída Curi pelo Supremo Tribunal Federal (STF), objetivando examinar os argumentos que levaram à rejeição do direito ao esquecimento como figura autônoma. A fundamentação teórica aborda o conflito entre direitos fundamentais - liberdade de expressão versus dignidade da pessoa humana e direitos da personalidade -, utilizando a teoria da ponderação de Alexy e examinando a Lei Geral de Proteção de Dados (LGPD) como instrumento regulador. A pesquisa, de natureza qualitativa, analisou a trajetória processual do caso desde a primeira instância (2009) até o julgamento final pelo Supremo Tribunal Federal (2020), com foco nos votos dos Ministros. Os resultados identificaram três correntes no tribunal: a majoritária, que negou o direito por entender seu risco à liberdade de informação e a suficiência dos mecanismos legais existentes; a minoritária, que reconheceu sua existência autônoma; e a intermediária, que propôs solução caso a caso sem criar nova categoria. Concluiu-se que a decisão do Supremo Tribunal Federal, ao priorizar a segurança jurídica e uma visão robusta da liberdade de expressão, representou um retrocesso na proteção da dignidade humana na era digital, deixando um vácuo de proteção para cidadãos comuns. O legado do caso redireciona o debate para a LGPD como instrumento mais adequado para equilibrar a memória coletiva e direitos individuais.

Palavras-chave: Direito ao Esquecimento. Liberdade de Expressão. STF. Jurisprudência Constitucional. Ponderação de Direitos. LGPD. Dignidade Humana.

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Resumen: Este artículo analiza el juicio del Caso Aída Curi por el Supremo Tribunal Federal (STF) y examina los argumentos que llevaron al rechazo del derecho al olvido como figura autónoma. La fundamentación teórica aborda el conflicto entre derechos fundamentales - libertad de expresión frente a dignidad humana y derechos de la personalidad -, utilizando la teoría de la ponderación de Alexy y examinando la Ley General de Protección de Datos (LGPD) como instrumento regulador. La investigación, de naturaleza cualitativa, analizó la trayectoria procesal del caso desde la primera instancia (2009) hasta el juicio final por el Supremo Tribunal Federal (2020), centrándose en los votos de los magistrados. Los resultados identificaron tres corrientes en el tribunal: la mayoritaria, que negó el derecho por considerar el riesgo que suponía para la libertad de información y la suficiencia de los mecanismos legales existentes; la minoritaria, que reconoció su existencia autónoma; y la intermedia, que propuso una solución caso por caso sin crear una nueva categoría. Se concluyó que la decisión del Supremo Tribunal Federal, al priorizar la seguridad jurídica y una visión robusta de la libertad de expresión, representó un retroceso en la protección de la dignidad humana en la era digital y dejó un vacío de protección para los ciudadanos comunes. El legado del caso redirige el debate hacia la LGPD como instrumento más adecuado para equilibrar la memoria colectiva y los derechos individuales.

Palabras clave: Derecho al Olvido. Libertad de Expresión. Supremo Tribunal Federal. Jurisprudencia Constitucional. Ponderación de Derechos. LGPD. Dignidad Humana.

INTRODUCTION

The advent of the information society and the emergence of the internet as a universal repository of memories have brought to light a complex dilemma in contemporary law: the conflict between preserving human dignity and guaranteeing freedom of information.

This scenario gave rise to an intense debate in Brazil about the right to be forgotten, judicially catalyzed by the Aída Curi case, which followed a remarkable procedural path until its landmark judgment by the Federal Supreme Court.

The central question guiding this investigation is how the Federal Supreme Court's judgment of the Aída Curi case, by rejecting recognition of an autonomous right to be forgotten, affected the resolution of conflicts among human dignity, personality rights, and freedom of expression and information in Brazil, especially in the digital age. The case, involving a television reenactment decades later of the young woman's brutal murder, became emblematic of the debate over the limits of information disclosure and the protection of individual memory in the face of the public interest.

The central hypothesis guiding this investigation is that, in deciding RE 1.010.606/RJ, the Federal Supreme Court prioritized legal certainty and the absolute protection of freedom of expression and information, choosing a solution that denies the autonomy of the right to be

forgotten. Thus, the Court held that traditional legal instruments - such as liability for moral damages and, subsequently, the General Data Protection Law (LGPD) - are sufficient to resolve these conflicts, rejecting the creation of a new right that, in its view, could threaten the prohibition of prior censorship and the right to collective memory.

The general objective of this research is to analyze the Federal Supreme Court's judgment of the Aída Curi case, identifying the arguments that led it to reject the right to be forgotten as an autonomous legal figure. The specific objectives are to examine the case's procedural history; identify and analyze the different schools of thought expressed in the Supreme Court's judgment; investigate how the LGPD may be used as an alternative instrument to operationalize claims based on the right to be forgotten in the digital sphere; assess the Supreme Court's arguments that the Brazilian legal system is sufficient to resolve the conflicts; and analyze the legal consequences of the decision and its implications for future cases.

With regard to methodology, this research adopts a qualitative approach, emphasizing doctrinal legal analysis and the interpretation of legal concepts and rules. The deductive method is used, beginning with the general principles of fundamental rights and balancing theory and then proceeding to analyze the specific case and the Supreme Court's decision.

The investigation is conducted through bibliographic and documentary research, using as primary sources the Supreme Court's decision in RE 1.010.606/RJ, with emphasis on the reasoning of each opinion, and as secondary sources specialized Brazilian scholarship and academic literature on the topic, in addition to the relevant legislation.

1 THE RIGHT TO BE FORGOTTEN

Forgetting, generally speaking, has always been present in human beings and society; it is something intrinsic and naturally related to the capacity of human memory.

However, as society evolved, we began to record significant and interesting events on paper, in newspapers, videos, audio recordings, media, and now on the worldwide web (the internet) and the global network of remote information-storage servers (the cloud).

As Mayer-Schönberger recalls (2009, p. 256), “forgetting is not only an individual behavior, but also a behavior of an entire society.”

In light of discussions on the subject, and in order to prevent people from reliving painful situations, even after a long period, that cause them harm and distress in every sphere, especially in criminal matters, the so-called “right to be forgotten” was developed, linked to the principle of human dignity and the right to individual privacy.

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It is a subjective form of individual protection, since there is no objective way to determine what each individual regards as embarrassing.

One must ask: why should information about an individual with no public prominence be retained when that person suffers the humiliation of having part of his or her life revived on the internet? Attentive to questions of this nature, Consalter characterizes the right to be forgotten as:

> (...) a subjective, individually held and non-absolute right resulting from the unfolding of the fundamental right to intimacy, through which the interested party, in exercising individual freedom, autonomy, and self-determination, controls whether facts belonging to his or her past may be revisited in the present, as a means of safeguarding emotional, psychological, professional, and social integrity, as well as effectively protecting private life (2016, p. 204 apud FUJITA; JUNIOR, 2020, p. 14).

Thus, this right may be understood as the possibility that an individual not suffer because of past acts that have no public interest, which becomes one of the requirements for its admissibility (DOTTI, RENÉ ARIEL, 1980, p. 299).

It should be emphasized that, since its inception, the right to be forgotten has been related to criminal law, because it arose as a means of protecting the rehabilitation of former inmates, a guarantee provided for in article 5, item XLVII, subitem b, of the 1988 Federal Constitution.

It therefore follows that forgetting prevents perpetual punishment through the dissemination of information (FUJITA; JUNIOR, 2020, p. 15).

In this context, the importance of this right for protecting individuals is evident, even in cases of criminal convictions in which, after serving the sentence, the citizen should not later be punished for something already resolved and paid for in the past.

Similarly, Frajhof (2019, p. 59), in The Right to Be Forgotten on the Internet, discusses the institution's origins in criminal law and emphasizes that serving the sentence means there is no longer any reason to revive the crime, thereby allowing the individual's reintegration into society.

To examine the subject more deeply, it is necessary to understand the role the internet plays in today's society and how the worldwide web relates to the right to be forgotten. It is therefore important to address the Brazilian Internet Civil Rights Framework and its regulation in Law No. 12,965 of April 23, which establishes principles, guarantees, rights, and duties for internet use in Brazil and sets guidelines for action by the Federal Government, the States, the Federal District, and the Municipalities on the matter.

The Internet Civil Rights Framework was an important law for guaranteeing rights and prerogatives in internet use, since previously the internet was addressed only in connection with defamatory or slanderous content (PIMENTEL; CARDOSO, 2015, p. 55).

Article 2 of Law No. 12,965 of April 23, 2014, establishes that the regulation of internet use in Brazil is founded on respect for freedom of expression, as well as:

> I - recognition of the worldwide scale of the network;
> II - human rights, the development of personality, and the exercise of citizenship in digital media;
> III - plurality and diversity;
> IV - openness and collaboration;
> V - free enterprise, free competition, and consumer protection; and
> VI - the social purpose of the network (BRAZIL, 2014).

Article 3, in turn, provides that the regulation of internet use in Brazil is governed, among other principles, by the guarantee of freedom of expression, communication, and manifestation of thought under the Federal Constitution; the protection of privacy; and the protection of personal data as provided by law, thereby guaranteeing the rights and prerogatives involved in using the worldwide web.

It further provides that the principles expressed in that law do not exclude others set forth in the Brazilian legal system that relate to the matter or in international treaties to which the Federative Republic of Brazil is a party. Its interpretation must take into account, in addition to the established foundations, principles, and objectives, the nature of the internet, its particular uses and customs, and its importance in promoting human, economic, social, and cultural development, which is relevant to the right to be forgotten addressed in this study.

In civil law, the right to be forgotten appears as a means of controlling past information. In the past, the passage of time was the main contributor to forgetting; with the internet, however, time has had no such effect because everything remains recorded online. It therefore became necessary to create rules to control information about individuals, a task that is fundamental (ROSSI, ALINA, 2021, p. 1).

According to Araújo (2023, p. 21), in its classical meaning, the right to be forgotten seeks to contextualize, update, or remove events that occurred in the past so that they do not hinder personal development, thereby protecting citizens' privacy. The temporal element is therefore intrinsically linked to this concept.

Once the right to be forgotten has been established, it must be confronted with its principal antagonist in the constitutional system, the subject of the third chapter: “Freedom of Expression and Information.”

Accordingly, the robust system of protection that the 1988 Constitution grants to the free circulation of ideas and information will be outlined, showing why this right is frequently placed in a position of primacy. The analysis demonstrates that freedom of expression, although not absolute, is a pillar of the Democratic Rule of Law and forms the first side of a conflict that is essentially between constitutional goods of equal rank.

2 FREEDOM OF EXPRESSION AND INFORMATION IN THE BRAZILIAN CONSTITUTIONAL SYSTEM

The 1988 Federal Constitution elevated freedom of expression and information to fundamental pillars of the Democratic Rule of Law, establishing a multidimensional system for protecting these rights. According to Torres (2013, apud BRYAN, 2022, p. 23), the protection of freedom of expression encompasses other rights connected to the expression of ideas, such as the right to be informed and religious freedom, thus guaranteeing a plurality of voices in society.

Article 5, IV, guarantees everyone “freedom of expression of thought, anonymity being prohibited,” thereby establishing from the outset that this right is not absolute, since identifying the speaker is a condition of its legitimate exercise (BRAZIL, 1988). Item V of the same constitutional provision guarantees “the right of reply, proportionate to the offense, in addition to compensation for material, moral, or image-related damage,” demonstrating that the legal system provides ex post liability mechanisms for possible abuses. Item IX, by prohibiting “prior censorship in shows and public entertainment,” reinforces the framers' choice of a system of subsequent accountability, in contrast to preventive models that would constitute impermissible restrictions on the free circulation of ideas.

This body of rules reveals the delicate balance between protecting communicative freedoms and safeguarding other constitutionally protected legal interests.

Item XIV complements this framework by guaranteeing “everyone access to information and protecting the confidentiality of sources when necessary for professional activity,” an essential guarantee for the full development of journalism and the operation of a free press.

It is important to emphasize that constitutional protection does not extend to abusive conduct or statements made in disregard of the truth. This limitation is crucial to prevent the fundamental guarantee of freedom of expression from becoming an instrument for spreading falsehoods or malicious attacks on the honor and image of others.

Ano VII, v.1 2026 | submissão: 04/07/2026 | aceito: 07/07/2026 | publicação: 10/07/2026

In summary, Brazil's constitutional system adopts a model of responsible freedom of expression that combines broad protection for expressions of thought with mechanisms of subsequent liability for possible excesses. This normative structure reflects the necessary balance between exercising communicative freedoms and protecting other fundamental rights, such as human dignity, honor, image, and privacy, thus creating a legal regime suited to the demands of a democratic and pluralistic society.

The right to information, in turn, is a corollary of freedom of expression and guarantees the public access to matters of public interest. Yet this right is not unlimited either and must be exercised within the bounds of lawfulness and the social relevance of the information disclosed.

The direct collision between these two fundamental rights - the right to be forgotten and freedom of expression - lies at the heart of the fourth chapter, Conflict Between Fundamental Rights. The isolated analysis of the institutions is abandoned in favor of the complex technique of balancing. The principle of proportionality is introduced here as the hermeneutic tool needed to resolve such impasses while avoiding the complete sacrifice of one right in favor of the other. The analysis lays the groundwork for evaluating the specific case and suggests that the ideal solution lies not in denying either side, but in carefully weighing the particular circumstances of each situation.

3 CONFLICT BETWEEN FUNDAMENTAL RIGHTS

Analysis of the right to be forgotten requires a prior understanding of the concept of fundamental rights.

As Ferrajoli teaches:

> “[...] ‘fundamental rights’ as rights universally attributed to all as persons (as are all ‘human rights’), all those subjective rights that universally belong to ‘all’ human beings insofar as they possess the status of persons, citizens, or persons capable of acting; ‘subjective right’ being understood as any positive expectation (of performance) or negative expectation (of not suffering injury) connected to an individual by a legal rule” (2011, p. 9).

The foregoing definition reveals the claim-based nature of the right to be forgotten as a negative expectation of not suffering harm to dignity through the unnecessary revival of past events.

According to Alexy (2006, p. 94), when valid principles collide, giving preference to a given principle in the specific case does not invalidate the other; the matter is therefore decided through balancing.

The two fundamental rights therefore have the same status, and neither can be said to hold absolute preponderance. The solution to such collisions lies in applying the principle of proportionality, derived from due process of law (article 5, LIV, of the 1988 Federal Constitution). According to Alexy's theory (2006, p. 96), “the solution to this collision consists in establishing a relation of conditional precedence between the principles, based on the circumstances of the specific case.”

In a collision of principles, proportionality must follow Alexy's three sub-principles (2006, p. 131): proportionality in the strict sense, necessity, and suitability.

According to Alexy (2006, pp. 588-589), the means used to achieve the intended end must be suitable, understood as a means that affects the competing principle as little as possible. Under the necessity requirement, the means must be the least restrictive among all equally effective alternatives for achieving the end. Finally, proportionality in the strict sense, Alexy (2006, p. 593) requires a proportional justification for interference with the principle. In other words, for the sacrifice of one principle in favor of another to be justified, the reasons for that sacrifice must correspond to the weight, or importance, of the sacrifice. This is known as balancing.

Applying the principle of proportionality directs the conflict toward a balanced solution and avoids completely sacrificing one principle for the benefit of another.

This approach thus makes it possible to determine, in each specific case, which right should prevail without invalidating the right that gives way, but rather recognizing that, under those particular circumstances, one of the conflicting principles carries greater legal weight.

In this context, the right to be forgotten limits factual instances in which the exercise of freedom of expression violates human dignity and personality rights.

The right to be forgotten is therefore not an absolute right that simply erases the past. It conflicts with other fundamental rights, such as freedom of expression and the right to information. Resolving the conflict requires case-by-case balancing that considers a series of factors in deciding which right should prevail in the particular situation, including the present relevance of the event, the public interest in disclosure, the loss of context due to the passage of time, the affront to human dignity, the intimacy of the information, and appropriate mechanisms.

Against this theoretical background of conflict and balancing, the fifth chapter - The General Data Protection Law and the Right to Be Forgotten (LGPD) - emerges as a potential legislative avenue for a solution. As analyzed in this chapter, the LGPD offers concrete instruments - such as correction, anonymization, and deletion of data - that partially

operationalize the substantive claims of the right to be forgotten in the digital sphere. It implicitly challenges the argument that the legal system is sufficient by showing that the legislature created a specific and modern framework for protecting privacy and informational self-determination, which could be applied to mitigate the conflict.

4 THE GENERAL DATA PROTECTION LAW (LAW NO. 13,709 OF AUGUST 14, 2018) AND THE RIGHT TO BE FORGOTTEN

The virtual world is increasingly present, and personal data have become a commodity and a source of capitalization.

According to Araujo (2023, p. 21), in the information economy data have acquired economic as well as social value, becoming a powerful monetary engine capable of moving markets and driving companies.

Faced with this reality, large companies, states, and hackers seek access to this information, often illegally. The General Data Protection Law was enacted to regulate and protect not only the data but also their owners (ROQUE, 2019, p. 2).

Thus, on August 14, 2018, the General Data Protection Law (LGPD) was enacted, providing in article 1:

> "This Law provides for the processing of personal data, including in digital media, by a natural person or a legal entity governed by public or private law, with the purpose of protecting the fundamental rights of freedom and privacy and the free development of the personality of the natural person."

In addition to protection, the relationship between personal data and fundamental rights is apparent: data are connected to human beings and may negatively affect their lives.

To make its objectives effective, article 18 of the law provides mechanisms such as anonymization, updating, and deletion of data, which consequently resemble the right to be forgotten. The legislature thus enables citizens to protect their data through possible updating, anonymization, or deletion in order to avoid violations of the foundations set forth in article 2, directly protecting the citizen.

The provision therefore states:

> Art. 18. The personal data subject has the right to obtain from the controller, with respect to the subject's data processed by the controller, at any time and upon request:
> I - confirmation that processing exists;
> II - access to the data;
> III - correction of incomplete, inaccurate, or outdated data;

> IV - anonymization, blocking, or deletion of unnecessary or excessive data or data processed in violation of this Law;
> V - portability of the data to another service or product provider, upon express request, in accordance with regulations of the national authority and subject to commercial and industrial secrets;
> VI - deletion of personal data processed with the subject's consent, except in the circumstances provided for in article 16 of this Law;
> VII - information on the public and private entities with which the controller shared data;
> VIII - information on the possibility of withholding consent and on the consequences of refusal;
> IX - withdrawal of consent under article 8, paragraph 5, of this Law.

The instruments in items III, IV, and VI deserve particular emphasis because they may play an important role in the conflict between the right to be forgotten and freedom of expression. They allow materials and information concerning a particular person to be published in updated form and without identifying the names and private data of those involved, thereby preventing alleged harm. These are conciliatory measures that permit freedom of expression to be exercised without sacrificing the right to be forgotten. Through anonymization, for example, data or a fact of public interest may be disclosed while preserving the complainant's identity.

Item VI, concerning deletion, entails a greater sacrifice and cost to freedom of expression in favor of protecting the citizen's development, based on an analysis of balancing.

Thus, although the LGPD does not expressly address the right to be forgotten, its foundations and mechanisms make its exercise possible.

It is precisely the application, or non-application, of these instruments and the way the Federal Supreme Court conducted the balancing that are examined through the practical case in the sixth chapter. That chapter recounts the emblematic case's judicial journey from its initial rejection at trial, through recognition of the legal figure by the Superior Court of Justice, to the final rupture in the Federal Supreme Court.

This trajectory reveals the lack of uniformity in the judiciary and catalyzes the debate, taking the reader directly to the epicenter of the analysis: the judgment by the Federal Supreme Court.

5 THE PROCEDURAL HISTORY OF THE AÍDA CURI CASE

In 1958, the young Aída Curi was brutally murdered. After an attempted rape, she was beaten and thrown, while still alive, from the twelfth floor of a building. The case was reported by the media at the time.

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In 2004, the case was documented by the television program LINHA DIRETA, which led Aída Curi's four siblings to file an ordinary civil action.

By examining the case's judicial path, one can see the dynamics of the debate over the right to be forgotten in Brazil, passing through phases of non-recognition, theoretical consolidation, and, finally, rupture.

5.1 THE PROCEDURAL HISTORY OF THE AÍDA CURI CASE: INITIAL REJECTION (RIO DE JANEIRO CIVIL COURT)

At first instance, in the 47th Civil Court of the District of the Capital of Rio de Janeiro, the judge dismissed the claimants' request.

The court held that there had been no violation of personality rights, such as the rights to image, honor, and privacy, among others, and that the facts, in addition to being public, were also of public interest.

It therefore rejected the right-to-be-forgotten argument (BRAZIL, 47th Civil Court of Rio de Janeiro, No. 2004.001.125166-5, 2009).

5.2 THE PROCEDURAL HISTORY OF THE AÍDA CURI CASE: CONSOLIDATION OF THE THEORY (STJ)

The next stage represented a moment of conceptual sophistication and recognition of the right to be forgotten before the Superior Court of Justice.

In reviewing Special Appeal 1.335.153-RJ, Justice-Rapporteur Luis Felipe Salomão recognized the right to be forgotten as a legitimate legal category. When balancing it against freedom of expression, he established criteria for its application and found that the specific case involved a historical and social interest, thus rejecting the claimants' request. The position denying the appeal prevailed.

In dissent, Justices Maria Isabel Galloti and Marco Buzzi applied parameters and criteria such as current relevance, public interest, whether the person was an ordinary citizen, and historical or journalistic purpose. They found that the event lacked necessary current relevance; that it was not of public interest; that the victim, Aída, was an ordinary person rather than a public figure; and that the content served a commercial rather than journalistic or historical purpose.

They therefore voted to grant the appeal.

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In summary, this was the high point in recognizing the right to be forgotten: all the justices recognized it and established balancing parameters, including historicity, public interest, and notoriety, even though the final vote of three to two declined to apply it to the case before the court.

5.3 THE PROCEDURAL HISTORY OF THE AÍDA CURI CASE: THE RUPTURE (STF)

The rupture occurred when the case reached the Federal Supreme Court. In deciding RE 1.010.606/RJ, with general repercussion recognized as Theme 786, the Court questioned the constitutional existence of the right to be forgotten.

The next chapter analyzes the decision in detail, showing the rejection of the right to be forgotten's compatibility with the 1988 Federal Constitution and thus completely changing the debate.

6 FORMAL POSITION ON THE RIGHT TO BE FORGOTTEN

In the Federal Supreme Court, Justice Dias Toffoli served as rapporteur for RE 1.010.606/RJ and established the decision's theoretical framework through a conceptual deconstruction of the right to be forgotten.

He first presented arguments about the case's importance to modern society because it concerned a brutal crime against a woman. In hearing the case, he argued that society could reflect on its actions in light of the fact that, even after fifty years, Brazil still faced an “epidemic of femicide” (BRAZIL, 2021, p. 18).

To decide the case, Toffoli therefore posed a question:

> “There are thus two questions to be answered in conceptually delimiting the alleged right: (i) what essential elements would form the identity of the claimed right to be forgotten? and (ii) what feature would distinguish it from rights already provided for and consolidated in the Brazilian legal system?” (BRAZIL, 2021, p. 48, opinion of Justice Toffoli).

This was intended to limit the broad concept of the right to be forgotten and identify the issues presented with precision. For Toffoli, the right to be forgotten would therefore be:

> “a claim capable of preventing the disclosure, whether on traditional or virtual platforms, of truthful facts or data lawfully obtained that, because of the passage of time, have become decontextualized or devoid of relevant public interest” (BRAZIL, 2021, p. 58, opinion of Justice Toffoli).

According to the Justice, time is the predominant factor in decontextualizing information, and application of the right would prevent the perpetuation of truthful, irrelevant, and outdated information. He therefore proposes examining the real past event under the foregoing conditions.

When addressing recognition of the right to be forgotten as a fundamental right, however, Toffoli states that it appears neither expressly nor implicitly in the 1988 Federal Constitution and that no specific rule establishes it; it is therefore absent from the Brazilian legal system (BRAZIL, 2021, p. 60).

He nonetheless considers recognition unnecessary because the 1988 Constitution already provides mechanisms to protect personality rights. Enshrining a right that conflicts with freedom of expression would be dangerous because it could result in censorship and restrict the collective right to information (BRAZIL, 2021, p. 79, opinion of Justice Toffoli).

In analyzing the specific case, Justice Dias Toffoli emphasizes its importance to society because it concerns a crime against a woman and was already notorious due to the reporting at the time it occurred (BRAZIL, 2021, p. 63).

Thus, when confronted with the case, the Rapporteur discusses the meanings of the right to be forgotten and adopts a classical conceptual limitation that separates it from data and the internet (BRAZIL, 2021, p. 70).

In addressing the relationship between the right and the LGPD, he emphasized that no provision in the law refers to the right to be forgotten, more specifically to the processing of lawful data obtained in the past (BRAZIL, 2021, p. 70).

He therefore voted to deny the extraordinary appeal and reject the claim for damages. He proposed the holding approved by the majority:

> “The idea of a right to be forgotten, understood as the power to prevent, because of the passage of time, the disclosure of truthful facts or data unlawfully obtained and published in analog or digital social media, is incompatible with the Constitution. Any excesses or abuses in the exercise of freedom of expression and information must be analyzed case by case under constitutional parameters - especially those concerning protection of honor, image, privacy, and personality in general - and the express and specific statutory provisions in criminal and civil law” (BRAZIL, 2021, p. 88).

In its first paragraph, the holding delimits the right to be forgotten and considers it incompatible with the Constitution in its classical meaning. This conception, which prioritizes the temporal aspect and had been accepted by lower courts, was barred by the holding. In the following paragraph, the Justice recognizes that freedom of expression, like other fundamental rights, is not absolute and is subject to limitations and sanctions in cases of abuse or excess.

The decision, however, does not expressly define what would constitute such “abuses or excesses,” delegating their case-by-case characterization to judges (BRAZIL, 2021, p. 88).

Justice Marco Aurélio voted to deny the appeal because he considered the earlier decisions correct and believed it was not his role to reexamine the facts. He ultimately proposed no holding (BRAZIL, 2021, p. 292).

In his opinion, Justice Alexandre de Moraes aligned himself with the majority in RE 1.010.606, offering reasoning that reinforced the Federal Supreme Court's rejection of the right to be forgotten as an autonomous figure in the Brazilian legal system (BRAZIL, 2021, p. 147).

The Justice's argument is structured around four fundamental questions intended to delimit the scope of the discussion: (i) would the right to be forgotten imply erasing historical events?; (ii) is reality allowed to be altered because time has passed?; (iii) is access to information restricted to collective memory?; and (iv) would it affect past disclosures on every platform? (BRAZIL, 2021, p. 131).

These questions reflect a clear concern with legal certainty and preserving the right to information. Reading the opinion suggests that the Justice fears recognition of the right to be forgotten could create widespread uncertainty about the validity of lawful and legitimate disclosures made in the past (BRAZIL, 2021, p. 140).

In his comparative-law analysis, Alexandre de Moraes observes that “none of the important cases existing in comparative law offers clear, direct, and binding answers to all these questions” (BRAZIL, 2021, p. 132).

This conclusion supports his position in favor of maintaining the existing legal framework, on the understanding that the instruments already available in Brazilian law are sufficient to protect personality rights (BRAZIL, 2021, p. 147).

The opinion also emphasizes that several international precedents “do not even use the terminology right to be forgotten” (BRAZIL, 2021, p. 132), indicating that conflicts between privacy and freedom of expression may be resolved through traditional legal instruments without creating a new autonomous category.

The Justice understands that the cases discussed demonstrate the binomial “freedom with responsibility”: there is freedom to inform, but it carries civil and criminal liability (BRAZIL, 2021, p. 139).

In balancing the specific case, he found that the crime's national repercussions made it part of the country's history and that its disclosure therefore prevailed over the individual's rights (BRAZIL, 2021, p. 144).

Ultimately, following the Rapporteur, Justice Alexandre de Moraes voted to deny the appeal, reinforcing the primacy of freedom of expression and information under the Federal Constitution and holding that any abuses must be analyzed case by case through the mechanisms already existing in the legal system (BRAZIL, 2021, p. 147).

His contribution to the debate is characterized by an emphasis on the stability of the legal system and the preservation of spaces for informational and historical disclosure, together with a cautious approach to creating new rights that, in his view, could have unforeseen effects on access to information.

In her opinion, Justice Cármen Lúcia also aligned herself with the majority holding in RE 1.010.606, thus favoring the protection of collective rights over possible individual claims based on the right to be forgotten (BRAZIL, 2021, p. 220).

In her reasoning, the Justice chose not to enter the specific discussion about collecting and retaining data on the internet, focusing instead on the Brazilian constitutional tradition of protecting freedom of expression and information. This choice directed her analysis toward the tension between collective memory and individual claims to overcome past events regarded as traumatic (BRAZIL, 2021, p. 208).

Like Justice Rosa Weber, Cármen Lúcia argued for preserving the right to collective memory, stating in her opinion that historical events of public relevance constitute a fundamental value that is not subject to an individual's desire for forgetting, regardless of the passage of time (BRAZIL, 2021, p. 213).

In examining the Brazilian legal system, the Justice emphatically stated that the right to be forgotten is not present. Her reasoning began from the primacy of the collective interest over individual claims and established that freedom of information cannot be sacrificed in the name of privacy or dignity in cases involving historically relevant events (BRAZIL, 2021, p. 213).

This position is ultimately consistent with the Brazilian constitutional tradition of strengthening the public sphere and freedom of the press, and it reflects the Federal Supreme Court's settled case law in previous disputes involving tension between individual and collective rights. By voting to deny the appeal, Cármen Lúcia reinforced the Court's majority view that the right to be forgotten is incompatible with the Brazilian constitutional system when invoked to prevent disclosure of historically relevant public events.

Justice Rosa Weber's opinion in the extraordinary appeal under review, in turn, is fundamental to understanding the Federal Supreme Court's view of the so-called “right to be forgotten.”

Her argument, grounded in constitutional principles, moves from the event's social context to an analysis of existing legal instruments and results in the rejection of an autonomous right to be forgotten.

At the beginning of her reasoning, the Justice addresses the event's contemporary relevance, an essential element of the claimant's request, arguing that "although the event occurred more than fifty years ago, violence against women remains a current topic of public and collective relevance" (BRAZIL, 2021, p. 173).

This understanding reflects the view that the public relevance of a historical event does not simply expire with time but must be reassessed in light of current social values, highlighting the struggle against gender violence as a permanent issue in society (BRAZIL, 2021, p. 173).

The Justice thus develops a line of reasoning that connects past and present, arguing that the right to be forgotten, as invoked, takes on different contours in the digital age. She adds that a claim to suppress memories assumes another dimension in a world permeated by technology, directly relating to the right to collective memory and emphasizing the social relevance of remembering so that historical errors are not repeated. She does not ignore the dangers inherent in this new reality, however, describing the absolute memory enabled by the internet and its capacity for data manipulation as "one of the greatest contemporary challenges to the right to privacy," thereby recognizing the complexity of balancing remembrance and surveillance (BRAZIL, 2021, p. 178).

In this conflict, the opinion seeks support in positive law by turning to the General Personal Data Protection Law (Law No. 13,709/2018). It thereby creates a dialogue between legal sources, linking the discussion to "personality rights, respect for privacy, and informational self-determination, which were enacted in article 2, I and II, of Law No. 13,709/2018," and placing them alongside freedoms of expression, information, and communication (BRAZIL, 2021, p. 181).

This passage is significant because it demonstrates that protection of the person in the digital sphere is already grounded in a specialized legal framework, making judicial creation of a new autonomous right to be forgotten unnecessary (BRAZIL, 2021, p. 181).

As the Justice emphasized, the legal framework already offers the instruments needed to protect intimacy and honor without disproportionately sacrificing freedom of the press. Rosa Weber firmly maintains that restrictions on freedom of expression discourage the press from fulfilling its duty to inform and operate as a brake on freedom of expression itself. In her view, such measures are unworkable under the principle of proportionality. At this point, her choice

of a position favoring the flow of information in matters of relevant public interest becomes clear (BRAZIL, 2021, p. 199).

The synthesis of her position is presented clearly and precisely delimits the space that would theoretically remain for a form of the right to be forgotten in the Brazilian legal system. At the end of her opinion, she concludes:

> "If some form of the right to be forgotten may be inferred from the current constitutional and statutory framework, its scope of protection extends only to facts incapable of generating any public or social interest, concerning only private life and whose public disclosure causes individual harm with no corresponding benefit to the interests of others. To that extent, they already receive proper legal regulation in statutes such as the Consumer Protection Code, the Internet Civil Rights Framework, and the General Personal Data Protection Law" (BRAZIL, 2021, p. 200).

Finally, although she notes the right to delisting - citing Google data on the removal of URLs in the European Union - the Justice makes clear that the specific case did not meet the requirements for that discussion (BRAZIL, 2021, p. 201).

The Justice therefore denied the extraordinary appeal, consolidating the understanding that the right to information and collective memory must prevail for events of undeniable historical and social significance, and rejecting use of the right to be forgotten as an instrument to erase a past that still informs the present (BRAZIL, 2021, p. 201).

Justice Ricardo Lewandowski followed the Rapporteur, voting against recognition of the right to be forgotten and to deny the extraordinary appeal.

7 THE POSITION RECOGNIZING THE RIGHT TO BE FORGOTTEN

Justice Edson Fachin discusses the concepts underlying the right, explaining that "the right to be forgotten encompasses, but is reduced neither to the traditional rights to privacy and honor nor to the right to data protection. It in fact arises from a systematic reading of this set of fundamental freedoms," and is therefore autonomous (BRAZIL, 2021, p. 151).

In his opinion, the Justice recognized the existence of a right to be forgotten in the Brazilian constitutional system. In the specific case, however, he denied that it took precedence over freedom of expression and information because, in his view, the Brazilian constitutional system favors the latter (BRAZIL, 2021, p. 160).

In the case at hand, he found that the information contained in the program was publicly known, acknowledged the case's notoriety, and ultimately held that the program had not violated the personality rights of the claimants or the victim. He therefore proposed the following holding:

> "freedom of expression and the right to information take precedence over the right to be forgotten, regardless of the passage of time, and claims by victims or family members yield to this primacy where there is a transindividual interest, the information is public in nature, or there is a high degree of historical relevance or importance to memory; within these limits, that right is compatible with the Constitution, which protects human dignity (art. 1, III, CRFB/88), the rights to privacy, honor, and image (art. 5, X, CRFB/88), and the right to informational self-determination (art. 5, XII, CRFB/88)" (BRAZIL, 2021, pp. 162-163, opinion of Justice Edson Fachin).

It therefore follows that the right to be forgotten is compatible with the 1988 Federal Constitution. In a collision with freedom of expression, however, the right to information will prevail when matters of public interest or social relevance are at stake.

In his reasoning, Justice Fux adopted an intermediate position, recognizing that:

> "the right to be forgotten, which is exceptional in nature, may be derived from the 1988 Federal Constitution as a corollary of human dignity" (BRAZIL, 2021, p. 45), but he noted that it "reveals a value that stands in opposition to the list of constitutional freedoms, particularly freedom of expression and of the press" (BRAZIL, 2021, p. 301).

The Justice therefore recognizes the autonomy of the right to be forgotten, but not in absolute form, since it encounters insurmountable limits in freedom of expression (BRAZIL, 2021, p. 302).

In balancing freedom of expression against personality rights, Fux shows that the passage of time may decontextualize lawful information. In a case such as this, however, involving a "famous crime," the right to be forgotten does not apply because the event is nationally important for study and research (BRAZIL, 2021, p. 304).

Although he voted to deny the extraordinary appeal, the Justice considered the right to be forgotten applicable in exceptional situations, such as socially irrelevant events decontextualized by time (BRAZIL, 2021, p. 302).

He ultimately voted to deny the appeal, reasoning that "the right to be forgotten cannot rewrite the past or obstruct access to memory, the right to be informed, and freedom of the press" (BRAZIL, 2021, p. 314).

8 THE INTERMEDIATE POSITION

Justice Nunes Marques voted that there is no autonomous right to be forgotten, while seeking to give effect to its substantive purpose by strengthening mechanisms for controlling abuses in the exercise of freedom of information.

In his analysis, Nunes Marques begins from the same formal premise adopted by Rapporteur Dias Toffoli regarding the absence of specific legal rules on the right to be forgotten, but differs in applying that premise to the specific case. His reasoning demonstrates that the truthfulness of facts does not authorize informational practices that violate personality rights.

The opinion's primary contribution lies in its detailed characterization of the broadcaster's excesses. Nunes Marques emphasized that the victim was not a public figure but became known because of her misfortune, and that the time elapsed since the event, combined with the lack of present relevance, counseled against rebroadcasting the case (BRAZIL, 2021, p. 116).

His argument reaches a significant point when it identifies that:

> "the most flagrant excess of the program broadcast, supposedly for journalistic purposes, lies in its dramatic reenactment of the crime, using unauthorized images of the victim to cause a sensation and feed morbid curiosity" (BRAZIL, 2021, p. 116).

This perception demonstrates that the Justice understands the violation to lie not in the informational content but in the sensationalist way the information was presented.

Another relevant aspect of the opinion is its analysis of preserving the victim's identity when an informational purpose gives way to commercial exploitation. The Justice reasoned that, once the production's artistic and commercial nature was recognized, the victim's name should have been withheld (BRAZIL, 2021, p. 118).

He also highlights the asymmetrical treatment of offenders and crime victims, observing that offenders who had served their sentences could seek to disassociate their names from the episode, while victims would remain associated with the trauma (BRAZIL, 2021, p. 119).

Although Nunes Marques's proposed holding formally denies the autonomous existence of the right to be forgotten, it establishes a mechanism to give effect to its aims by controlling abuses: "Any material or moral damage caused by abuse of the right to inform or to index information must be determined ex post, in light of the empirical evidence in the specific case" (BRAZIL, 2021, p. 121).

In his opinion, Nunes Marques thus effects a meaningful reconciliation between freedom of information and protection of human dignity, choosing to strengthen mechanisms of liability for excesses rather than create a new right.

Justice Nunes Marques's opinion therefore represents an important effort at reconciliation, seeking to protect human dignity against decontextualized disclosures by strengthening controls on abusive exercise of the right to inform and offering a viable alternative within the existing legal system.

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Ano VII, v.1 2026 | submissão: 04/07/2026 | aceito: 07/07/2026 | publicação: 10/07/2026

Justice Gilmar Mendes developed his position along similar lines, reconceptualizing the debate in terms of personal data protection. Although formally denying the existence of the right to be forgotten as an autonomous figure, he constructs reasoning that recognizes its essence through the right to erasure of data:

Thus, in his initial analysis, the Justice states that:

> "Brazilian law contains no specific and direct legal rules encompassing the probable 'right to be forgotten' (the right to be let alone), this level of protection resulting from interpretations drawn from other countries - especially a seminal German decision of 1973 - combined with a reinterpretation of the protective framework existing in our legal system" (BRAZIL, 2021, p. 242).

This premise does not represent rejection of the institution, but rather recognition of its nature as a principle. The Justice continues by associating it with comparative law, observing that:

> "It can therefore be seen that the European Community codified the 'Right to erasure of data' as synonymous with the term 'right to be forgotten.' This measure forms part of a legislative framework that, in certain situations, favors the processing or 'erasure of personal data'" (BRAZIL, 2021, p. 242).

The conceptual limitation proposed by Gilmar Mendes is particularly relevant when he states:

> "[...] it is clear that the discussion involving the 'right to erasure of data' (as a corollary of article 5, X, of the Federal Constitution) cannot be associated with an attempt to erase or rewrite history itself. Rather, it concerns the way history is told: the purpose and the manner or medium used to disseminate information, together with the ethical and legal consequences surrounding disclosure of facts that date back to remote or distant circumstances people would prefer to forget" (BRAZIL, 2021, p. 262).

The Justice's distinction between preserving history and controlling disclosure makes a fundamental contribution to overcoming the false dilemma between remembering and forgetting. In addition, the practical operation of the right is embodied in his proposed balancing criteria:

> "1. Where rules of equal constitutional rank conflict (the right to freedom of the press and information as opposed to the rights to protection of image, honor, and private life, in addition to human dignity), the technique of practical concordance must be adopted, requiring an individual analysis of
> which fundamental right should prevail for purposes of a right of reply and/or compensation, without prejudice to other instruments to be approved by Parliament; and 2. The following must be considered predominant factors in this balancing: the time elapsed between the event and its public disclosure; the existence of a current historical, social, and public interest; the degree of public accessibility; and the possibility of anonymized disclosure of the facts without distorting the essence of the information" (BRAZIL, 2021, p. 290).

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In summary, the intermediate position represented by Justice Gilmar Mendes, in agreement with Justice Nunes Marques, may be identified as a third path in the debate, emphasizing that:

> "Although they deny the existence of an autonomous and general right to be forgotten, these Justices recognize that the Brazilian legal system already provides sufficient instruments to restrain abuses in the disclosure of past events, particularly through civil liability for moral damages and rigorous enforcement of the constitutional limits on freedom of expression" (BRAZIL, 2021, p. 295).

This understanding is supplemented by the statement that:

> "By emphasizing the need for case-by-case analysis based on criteria such as the passage of time, the present relevance of the public interest, and the form of disclosure, this doctrinal position in the Supreme Court is able, in practice, to provide protection analogous to that sought by the right to be forgotten, but without incurring the risks of prior censorship or erasure of history" (BRAZIL, 2021, p. 296).

9 RESULTS OF THE VOTES

Before the final result was presented, it was noted that Justice Luís Roberto Barroso did not participate in the vote because he had recused himself.

Analysis of the opinions shows that, alongside deciding the extraordinary appeal, the Justices discussed recognition of the right to be forgotten. The right was expressly recognized by Justices Edson Fachin and Luiz Fux, while the others did not accept it as an autonomous figure.

As to disposition of the extraordinary appeal, Justices Gilmar Mendes and Nunes Marques voted to grant it because they found abuse in the exercise of freedom of information that harmed the claimants. The other Justices voted to deny the appeal, reasoning that freedom of expression should prevail over personality rights in the specific case.

Regarding the general repercussion holding, the vote was nine to one in favor of adopting it, and the proposal by Rapporteur Dias Toffoli was approved. Justices Edson Fachin, Luiz Fux, and Marco Aurélio opposed formulation of the holding, although for different reasons.

Justice Edson Fachin questioned the propriety of establishing a holding in a case with such diverse conclusions, arguing that it would not be effective. Justice Marco Aurélio maintained that the right to be forgotten lacked objective parameters and that the absence of clear guidelines could lead lower courts to commit abuses against freedom of expression.

Justice Luiz Fux, in turn, although recognizing the right to be forgotten in his reasoning, voted against adopting the holding at the end of the debate. His justification was an interest in preserving the Court's unity.

10 CONCLUSION

The analytical path followed in this article made it possible to understand that the Federal Supreme Court's judgment of the Aída Curi case represented a definitive moment in the discussion of the right to be forgotten in Brazil, more precisely in its classical meaning.

Analysis of the opinions and the prevailing holding demonstrates that the Court chose a path of denial, favoring legal certainty and a robust conception of freedom of expression over the development of a specific legal instrument for the challenges of the digital age.

The initial hypothesis guiding this investigation was fully confirmed.

Through the majority position led by Justice Dias Toffoli, the Federal Supreme Court effectively rejected autonomous recognition of the right to be forgotten, relying on the premise that the Brazilian legal system already contains sufficient mechanisms - such as the rights to honor and image and compensation for moral damages - to protect the interests at stake.

This solution, however, is insufficient and anachronistic in view of the qualitatively different nature of violations in the digital sphere. The reactive and compensatory logic of moral damages does not adequately confront the perpetual and decontextualized nature of personal information promoted by internet algorithms.

By establishing the nearly absolute primacy of freedom of expression and information, the majority decision underestimated the weight of human dignity in its dimension of informational self-determination.

The view that the historical relevance of an event, once established, continues indefinitely ignores the power imbalance between individuals and large media and technology conglomerates, for which the past is a marketable product often revived in sensationalist form.

The judgment, however, was not monolithic - that is, it was not an indivisible and homogeneous unit. The richness of the debate was evident in the minority and intermediate positions. The opinions of Justices Luiz Fux and Edson Fachin showed that it is entirely possible to recognize the right's existence while establishing rigorous balancing criteria for its application, thereby avoiding the feared “erasure of history.”

Similarly, the reconceptualization proposed by Justice Gilmar Mendes, which frames the issue through the “right to erasure of data” and the LGPD, points to a legally sophisticated path better suited to contemporary challenges.

The legacy of the Aída Curi case is therefore ambivalent. On the one hand, it settled the issue within the Federal Supreme Court, creating certainty for the press and freedom of expression. On the other, it opened a protection gap for ordinary citizens, whose past lives may be incessantly revived against their will without a clear preventive legal instrument to stop it.

Ultimately, the necessary conclusion is that the Federal Supreme Court lost the opportunity to forge a modern and proportional legal tool for balancing collective memory more fairly against the individual's right to peace, a fresh start, and forgetting itself.

It is therefore possible to answer the following question: is the Brazilian legal system currently sufficient to resolve conflicts between the right to be forgotten and the rights to freedom and information? The answer is no.

Although application of the General Data Protection Law (LGPD), Law No. 13,709/2018, is important for protecting the fundamental rights to freedom and privacy and the free development of the natural person's personality, it is not sufficient. The persistent case-by-case search for an interpretation that does not sacrifice human dignity on the altar of a freedom of information devoid of responsibility and context must continue, and the matter could be resolved by enacting a specific rule encompassing all nuances of the right to be forgotten.

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