

## Press Freedom: Brazilian Judge Sets Penalty So High Newspaper Is Forced to Close

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The "Debate," a newspaper based in the town of Santa Cruz do Rio Pardo, in the interior of São Paulo state, was ordered to pay 593,000 Brazilian reais (US\$ 306,000) as a result of a lawsuit for defamation filed against it in 1995 by Judge Antônio José Magdalena.

According to Sérgio Fleury Moraes, the publication's owner, the ruling means that the paper, which has been in business for 32 years, will have to close. The value of the judgement against the newspaper is equivalent to two and a half years of the company's sales, as it collects US\$ 10,000 per month.

In 1995, the newspaper reported that Judge Magdalena lived in a house rented by the municipality, where he also had a telephone line that was paid for by the local administration. The paper was charged with "moral damages" in a lawsuit filed the offended judge.

Cézar Britto, the president of the OAB (Brazilian Bar Association) said, noting that he doesn't know all the facts in the case, that the value set for compensation is worrisome. "This can be seen as an assault against freedom of expression." He added that legal compensations cannot be used as a deceptive way to hinder the press.

Brazil's National Association of Newspapers (ANJ) handed out copies of press reports on the case to all its associates. The entity's Freedom of Expression Committee issued note stating that "it's closely following the case and is sure that the constitutional principle of unrestricted freedom of expression will prevail at the end."

The group reminded that any eventual compensation should correspond to the damage inflicted and should take into account the defendant's ability to pay it.

"O Debate" reported that Magdalena, of the Civil Courts, lived in a luxurious home paid for by public funds while the judiciary's official residence went unoccupied. The newspaper later revealed that Magdalena installed a public telephone line for his personal use, at a time when the government was going through a critical economic situation and had refused the Fire Department a telephone line.

One year later, the newspaper criticised the judge's conduct and his sentence against another newspaper that, according to Magdalena, had violated the press law. "O Debate" director Sérgio Fleury Moraes assured Periodistas, an Association for the Defence of Independent Journalism, that "all the information is based on authentic documentation."

Nevertheless, the judge accused the newspaper of invading his privacy and endangering his family by publishing a photo of his home and the number of the telephone line in question, and demanded a payment of 300,000 reais in damages.

In first instance the weekly was sentenced to pay an amount equivalent to 1,800 minimum salaries (at that time equivalent to US\$ 100,000). The local judge presiding was Osny Bueno de Camargo, a Civil Courts magistrate who worked in the office adjacent to Magdalena's.

The São Paulo State Tribunal upheld the sentence but reduced the fine to 1,000 salaries. Moraes appealed the decision before the STJ and the Third Chamber judge admitted the appeal, bringing it forward to the entire Chamber for its consideration.

The tribunal decided that the weekly should pay the fine. Of the Chamber's five judges, only three voted and they were unanimous.

The defense argued that the first instance court's ruling was invalid, because in contrast to what the court stated, "an examination into the allegedly offensive content against the judge's honour was necessary." The defense also noted that the Brazilian Press Law (# 5250) stipulates a maximum fine of 200 minimum salaries.

The Third Chamber rejected these arguments and decided that "the only proof needed is the presentation of the issues in which the offensive articles appear - the articles that, according to the judge [Magdalena], impacted on his honour, reputation, privacy and private life."

As regards the amount of the fine, the judges supported the opinion of reporting Judge Ari Pargendler. In his report, Pargendler had noted that "there are few media companies, based out of cities in the country's interior, that have a head office similar to that of 'O Debate'".

Finally, the Third Chamber judges concluded that it befalls the Federal Supreme Court, and not the STJ, to establish if Press Law 5250 is still valid or if it was revoked by the 1988 Constitution.

Moraes says that for the past ten years the newspaper has been the target of "legal persecution," pursued by an "extremely corporatist" faction of the São Paulo judiciary. The case got the attention of the national press to such an extent that prestigious newspapers like "O Estado" and "A Folha", both based in São Paulo, have expressed their concern and organizations such as the National Journalists' Federation (Federacion Nacional de Periodistas, Fenaj) and the Inter-American Press Association (Sociedad Interamericana de Prensa, SIP) have included it in their annual reports.

Even Senator José Sarney (PMDB, Party of the Brazilian Democratic Movement) felt that "legal actions based on moral damages do not address the harm done, but rather serve as a source of illicit enrichment."

The journalist stated that the judge and the public prosecutor had lodged a number of complaints against him. While Magdalena was electoral judge, there was one case that resulted in Moraes being imprisoned for seven months in 1996, for having published an article in the São Paulo newspaper "A Folha" on the questionable background of one of the candidates.

"Judge Magdalena ordered that the Municipal Lodge, which had been used for years as a kennel, be reopened specifically so that I could be detained there, whereas other prisoners in my situation were put under house arrest," Moraes noted.

"We protested to the state's Electoral Tribunal that Magdalena had lodged a complaint against me and therefore he was not fit to try my case. However, our appeal entered a slow process and only after journalist Clovis Rossi condemned the situation in his column in "A Folha" was I permitted to serve my sentence under house arrest," Moraes concluded.