



The extent of moral damage on social networks: Civil liability for sharing harmful posts

A extensão do dano moral nas redes sociais: A responsabilidade civil por compartilhamento de publicações danosas

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ABSTRACT

This research aims to analyze the existence of an illegal act in the sharing of posts that contain a situation of moral damage and the extent of the damage in these cases. The research aims to answer the problem of whether it is possible to construct specific criteria for determining the quantum of compensation in cases of moral damage caused by sharing harmful posts. It is set against the problem of the lack of legislation and academic articles dealing with damage to personality rights as a result of sharing harmful posts. By choosing the inductive method, the work will be built on the analysis of judicial precedents and a bibliographic survey in order to enable discussion of the research hypothesis, which is the affirmation of the existence of moral damage due to the sharing of harmful publications and the consequent extent of the damage. The intended result is the systematization of the criteria for setting the quantum of compensation when civil liability is verified. The proposed contributions are the consolidation of the majority understanding of the higher courts on the object of study and the formulation of a thesis applicable to future court decisions on the quantum of compensation in moral damage actions for sharing harmful publications.

Keywords: Moral Damage, Social Networks, Civil Liability.

RESUMO

Trata-se de pesquisa destinada a analisar a existência de ato ilícito no compartilhamento de posts que contenham situação de dano moral e a extensão do dano nesses casos. A pesquisa visa responder o problema se é possível construir critérios específicos para a determinação do quantum indenizatório nos casos de ocorrência de dano moral pelo compartilhamento de publicações danosas. Contextualiza-se frente à problemática da ausência de legislação e artigos acadêmicos que tratem de lesão a direito da personalidade em decorrência do compartilhamento de publicações danosas. À escolha do método indutivo, o trabalho será construído com base na análise de precedentes judiciais e no levantamento bibliográfico a fim de possibilitar a discussão da hipótese da pesquisa, qual seja a afirmação da existência de dano moral pelo compartilhamento de publicação danosa e a consequente extensão do dano. O resultado pretendido é a sistematização dos critérios de fixação do quantum indenizatório quando verificada a responsabilidade civil. As contribuições propostas são a consolidação do entendimento majoritário das instâncias superiores acerca do objeto de estudo e a formulação de uma tese aplicável às futuras decisões judiciais sobre o quantum indenizatório em ações de dano moral pelo compartilhamento de publicações danosas.

Palavras-chave: Dano Moral, Redes Sociais, Responsabilidade Civil.



1 INTRODUCTION

Personality rights are powers granted by the legal system to protect the fundamental aspects of a person's development, including the biopsychosomatic, moral or spiritual integrity and intellectual integrity of the individual (LIMA NETO; SILVESTRE; HERKENHOFF, 2020, p.11). The protection of the right to life, physical integrity, honor, privacy, as well as the right to demand that society respects these rights, make up the exemplary list of personality rights (BARROSO, 2004, p. 12). All these manifestations of personality are a consequence of the value of human dignity, a constitutional principle that serves as a guideline for determining the list of personality rights in the Brazilian Civil Code. (SCHREIBER, 2014, p. 13) However, freedom of expression is a personality right that is not considered absolute because it can be invoked to justify discriminatory and harmful manifestations of other personality rights. Therefore, when the right to freedom of expression and the right to honor, for example, conflict in a lawsuit, a weighting must be made as to which of the rights in question deserves to be protected, as freedom of expression should not be considered a *prima facie* right. (BENTIVEGNA, 2019, p. 214)

Damage resulting from injury to a personality right will cause harm to the holder of the injured right, giving them the power - a subjective right - to demand reparation or compensation from the agent who caused the damage. This legal situation involves the institute of civil liability, provided for in art. 927 of the Civil Code, which states: "Whoever, through an unlawful act, causes damage to another, is obliged to repair it." Damage is the injury to a legal asset, the result of another's offense against a right, which gives rise to the offender's obligation to compensate the injured party. Damage can be patrimonial, corresponding to material losses and a reduction in the economic value of the offended party's assets, and off-balance sheet, resulting from damage that does not subtract from the offended party's assets, but rather causes them moral damage that cannot be measured economically (AMARAL, 2018, p. 649-651).

Moral damage, resulting from the violation of moral integrity, injury to honor, good fame and modesty, for example, is determined as damage resulting from any injury to personality rights which, even if there is no psychological suffering on the part of the victim, must be compensated (MARCHIORI; SILVESTRE, 2020). Thus, the holder of the injured right must receive compensation for the moral damage suffered, without prejudice to the compensation for property damage, when both are the result of the same harmful conduct.

"Compensation" is the ideal term to use for moral damages, because the injury to the off-balance sheet sphere causes losses that cannot be measured financially, so that the amount of compensation is not capable of restoring the status quo prior to the immaterial damage (SCHNEIDER; SILVA; SILVESTRE, 2017). From this, one can arrive at the subject of the criteria for setting the compensatory quantum, which are not provided for in the legal system but which are weighed up by the magistrate's action, namely in general, the extent of the damage, the possibility of repairing the damage, the financial condition of the



offended party and the offender, the conduct of the offended party and the offender, taking into account the principles of equity and reasonableness (SCHNEIDER; SILVA; SILVESTRE, 2017, p. 50).

The work investigates whether it is possible to verify the existence of civil liability from the sharing of harmful publications on social networks and, with this, aims to study and build specific criteria for determining the quantum of compensation in cases of occurrence of moral damage by the sharing of publications that originally constitute moral damage to the person in response to the research problem. Using the qualitative-quantitative method based on an analysis of judicial precedents set by the Superior Court of Justice, among other higher courts, and on a bibliographical survey, the approach will make it possible to discuss the research hypothesis, which is to affirm the existence of moral damage due to the sharing of a harmful publication and the consequent extent of the damage.

The main function of sharing on social networks is to "give visibility to the conversation or message, expanding its reach." As the publication is promoted, the legitimacy of its message is reinforced, which can be negative criticism or positive support for a given situation. (RECUERO, 2014, p. 120) It is therefore understood that the action of sharing a publication that contains a situation involving damage to personality rights is an act of valuing moral damage. Consequently, the individual who shared the message should also be treated as an agent causing moral damage, as they helped to extend the reach of the damage, so that a greater number of users see the situation of moral damage, a situation which intensifies the embarrassment of the person offended by the publication.

Thus, the research is relevant since it is not yet possible to find academic productions that deal with the lack of legislation on damage to personality rights as a result of sharing publications that contain moral damage and the divergence of judicial decisions on similar facts.

2 OBJECTIVES

Analyze the existence of an illicit act in the sharing of posts that contain a situation of moral damage; Study the criteria for fixing the quantum of compensation for moral damage as a result of the sharing of posts that contain a situation of moral damage; Construct specific criteria for fixing the quantum of compensation for moral damage caused by the sharing of posts that contain a situation of moral damage; Verify the existence of a greater extent of moral damage in injuries to personality rights on social networks due to the sharing of posts that contain a situation of moral damage.

3 METHODOLOGY

Based on the inductive method, the research's methodological strategy includes the study of cases judged by the Superior Court of Justice - in qualitative terms (content of court decisions) and quantitative terms (number of precedents) - and a bibliographical survey of national and foreign references on the object



of study. The legal provisions of the Constitution of the Republic and the Civil Code concerning personality rights, civil liability and the extent of damage will be studied.

The data will be gathered in order to draw up a relationship between the cases to prove the hypothesis of the existence of moral damage by sharing a situation that contains moral damage, in addition to making a comparison between the amounts of compensation determined in each case. This methodology will enable the objectives to be achieved and answers to be found to the problem initially presented in this research.

4 DEVELOPMENT

When analyzing the reasoning behind the decisions linked to the possible unlawfulness of sharing situations of moral damage, we can see a similarity of understanding between the judges and rapporteurs, even in the absence of a specific prior rule or case law on the matter.

For all intents and purposes, the following are the judgments in which the thesis of civil liability for sharing a harmful publication and the extent of the moral damage together was accepted, in addition to setting compensation to be paid by the user who carried out the sharing.

The first case dates back to 2013, when a public servant shared a post by another user on the social network *Facebook*, accusing a veterinarian of acting negligently with regard to the castration surgery performed on her pet. The post, which was offensive to the professional's reputation, was replicated by the civil servant who considered herself an animal protection activist, causing more people engaged in this cause to view the message and become angry about the vet's conduct, even if they were unaware of the truth of the information.¹

In view of this, the offended party sought compensation for moral damage against the author of the message and also against the civil servant, since, by amplifying the scale of the offenses initially promoted by the author of the text, the veterinarian's possibility of defending himself in the virtual and social environment was mitigated. After examining the case, the judge concluded that the defendants acted inconsequentially under the condition of the right to freedom of expression, in order to denigrate the plaintiff's image and honor, and therefore incurred joint and several liability to compensate the offended party in the *amount of* 100,000 reais, which was deemed sufficient to compensate for the moral damage suffered by the veterinarian.²

However, the author of the message challenged the sentence in a civil appeal, claiming that the content did not correspond to any untruth about the facts, and obtained a partial upholding of the appeal, with a reduction in compensation to the amount of R\$20,000 (twenty thousand reais) to be divided equally

¹ BRAZIL. Court of Justice of the State of São Paulo. Judgment. Common Civil Procedure No. 4000515-21.2013.8.26.0451-2013/000642. Compensation for Moral Damage. Piracicaba, August 2, 2013.

² Ibid.



between the defendants.³ The case then went up to the Superior Court of Justice and soon became final after an agreement was reached between the parties.⁴

According to José Roberto Neves Amorim, a judge at the São Paulo Court of Justice, by sharing a post on social networks, the user increases the "offensive potential" of the publication, while the "like" tool does not contribute to the dissemination of the message, but expresses support for its content. From this perspective, the appellant's lawyer stated in an interview that "It would be impracticable to name all [the internet users who shared or commented on the offensive publication]. Furthermore, the damage began with the first sharing and its consequences."⁵

In view of the above, it is necessary to explain the "share" function in order to demonstrate how this tool is capable of generating the extent of moral damage on social networks. In the words of Artur Daniel Ramos Modolo,

"From the first share, a given statement can follow an even wider trajectory on the social network, as it can be shared by the user's other friends on the network who, in turn, can also share it again. This makes the possibilities for a given statement to have repercussions ever wider as it is more widely disseminated by users with different friends and followers within the network." (MODOLO, p. 185, 2018)

In this context, it can be inferred that the repeated dissemination of an offensive publication contributes to the extent of the moral damage, since, when it is replicated, the offended party becomes frowned upon by people outside their own social circle as a result of the offense spread through sharing on a social network.

Another case pertinent to examining the hypothesis of the existence of a wrongful act and the subsequent duty to compensate for sharing a harmful publication occurred in the situation described below. In 2015, a councillor visited a municipal kennel accompanied by other people with the aim of getting to know the place. The visitors were accompanied by the administrator who explained the situation of the animals, especially some who were recovering from accidents and illnesses. The councillor photographed the situation at the kennel and recorded a video, focusing on the weakened animals. He then posted the recordings on his *Facebook* page, captioning them with offensive comments about the kennel's administrator, accusing her of mistreating the animals and diverting public funds intended for the kennel's maintenance to personal ends.

³ Ibid.

⁴ BRAZIL. Superior Court of Justice. DESIS nos EDcl n° AREsp 664996 (2015/0037611-5 - 02/06/2021). Brasília, May 28, 2021.

⁵ G1 PIRACICABA E REGIÃO. Piracicaba civil servant sentenced for sharing criticism on Facebook. December 05, 2013.



In this regard, other people shared and commented on the offending post on the social network, accusing her of crimes of which there was no evidence. The offended party therefore filed a lawsuit for moral damages against these users. In this regard, the judge at first instance ruled as follows:

"I would like to point out that the fact of "liking" or "sharing" the publication means that the person agreed and liked the publication and will be considered and condemned as a co-author of the publication, to a lesser extent, since they did not write the offenses, but only replicated them."

In this way, the people who shared the video became defendants in the action for compensation for moral damages, as they were considered co-authors of the offenses made by the councilman. Some of the defendants argued that there was no causal link between the conduct and the damage caused to the plaintiff; that the video was merely informative about the activities of a public body; and that the comments on the publication constituted the exercise of individual freedom of expression in a democratic and lawful manner.

However, the judge stated that just reading the negative comments about the plaintiff is enough to verify the psychological suffering presumed by any average man, so that it constitutes moral damage *in re ipsa*, without the need for further proof of a causal relationship. He also stated that the defendants had exceeded their right to freedom of expression by using it to slander the administrator and affect her dignity. Therefore, it was deemed appropriate to determine the civil liability of the co-authors of the offenses to compensate the plaintiff for the moral damage suffered and compensation of R\$1,000.00 (one thousand reais) was set for the majority of users who merely shared the video.⁶

Finally, there is another judgment in which civil liability was found to exist for the user who shared an offensive publication. In 2020, a woman posted a text on *Facebook* criticizing a military police officer who had approached her underage son while he was playing in the street. Moved by the story, another user shared the post on her personal page even though she was unaware of the facts and the target of the offenses.⁷

When he became aware of the situation, the police officer filed a lawsuit for moral damages against the woman who retweeted the post. In his ruling, the judge noted that the user's conduct exceeded the limits of constitutional freedom of expression, helping to defame the officer on social media, violating his personality rights. *In verbis*:

"Sharing a post published by a third party increases the reach of the information. In this case, as it is a rumored case in a small town, the possibility of generating effective damage is greater, based on the content of the publications and the professional condition of the author, a military police officer. (TJRS, RI No. 71009371634, Rel. Cleber Augusto Tonial, j. on 28/05/2020)"

⁶ BRAZIL. Court of Justice of the State of São Paulo. Case No. 0000928-87.2015.8.26.0595. Serra Negra, May 26, 2019.

⁷ BRAZIL. Court of Justice of Rio Grande do Sul. Judgment. Unnamed appeal No. 71009371634. Porto Alegre, May 28, 2020.



In fact, due to the extra-patrimonial damage caused to the victim and the consequent obligation to compensate (art. 927, CC), the sentence condemned the defendant to pay the compensation *amount* of R\$1,000.00 (one thousand reais).

5 FINAL CONSIDERATIONS

When researching cases of moral damage due to the repercussion of the damage on social networks, through the sharing of offensive publications, there are few judgments on the subject. This is a new situation for Brazilian courts, since, as we have seen, the first action for compensation for moral damage as a result of sharing occurred in 2013.

In the cases presented, the main reasoning used by the judges to support the thesis of civil liability for the sharing of offensive publications is the value of human dignity over the right to freedom of expression of users on the internet. In fact, based on this proposition, the judges outlined a means of curbing abuses justified by the argument that everyone is free to express their opinion in the democratic and accessible environment of the internet, in compliance with personality rights.

Furthermore, it is worth noting that of the judgments researched so far, only one reached the Superior Court of Justice, and the dispute was resolved with the ratification of an agreement between the parties.

Finally, it should be noted that it was not possible to identify objective criteria for setting the *amount of compensation* in cases of civil liability for sharing offensive posts on social networks. Nonetheless, there is a big difference between the amounts set in the first case and the others, and there is no justification in the judgments or rulings for setting such compensation amounts.



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