

**MONITOR
OF JUDICIAL
HARASSMENT
AGAINST
JOURNALISTS
IN BRAZIL
2024**

ABR Δ JI



With the support of the
UNESCO Global Media Defence Fund (GMDf)

ABRAJI

The Brazilian Association of Investigative Journalism (Abraji) is a non-profit organization founded in 2002 by a group of professional journalists to improve the quality of Brazilian journalism. The association's pillars promote the professional training of journalists and defend freedom of the press and the right to access public information. Its primary activities involve organizing face-to-face and online courses; hosting the International Congress of Investigative Journalism; producing content through news and guides for the exercise of the profession; and fostering projects that contribute to the exercise of journalism and monitor the situation of freedom of expression and press in the country, combined with legal protection, litigation, and advocacy actions to promote the defense of these rights. For more information, visit <https://abraji.org.br/>.



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INTRODUCTION

It is well known that, in the last decade, movements to suppress democracy and fundamental rights have taken advantage of strategies that differ from authoritarianism in the past. Instead of military coups and closure of institutions, more subtle but no less dangerous forms of democratic erosion have been put into practice (LEVITSKY, STEVEN; ZIBLATT, 2019). These new forms are characterized by using the very tools of democracy to weaken it, taking, for example, the exaltation of popular sovereignty to attack the rights of minorities or the call for freedom of expression to implement disinformation campaigns or instigation of political violence. In this context, journalistic activity suffers from the same new risks that threaten democracy.

New ways of threatening free and independent journalism have also been presented with a hidden aspect. Although it may seem unthinkable to appoint state censorship agents to act within newspaper newsrooms or arbitrarily arrest reporters and editors – as was the case in dictatorial regimes in the past – we should not ignore that there are other forms of menacing the free flow of information and ideas. These forms include the improper use of democratic tools to achieve the same censorship goals.

This report presents the results of a research that conceptualized, mapped, and systematized data from one of these new forms of threat to free journalism, which we call, as other authors, **judicial harassment** (JARDIM & BARBOSA, 2023; GOULD & BLOTTA, 2022; ARTICULO19, FLIP & JFJ, 2021). The concept and its contours will be explained further in this document.¹ For now, we emphasize that judicial harassment uses judicial instruments to intimidate journalists, aiming to discourage the production or dissemination of information, criticism, and opinions.

This report results from an investigation born from the feeling that using judicial tools to intimidate and silence independent journalism has multiplied in Brazil. This feeling has been reinforced by recent scientific studies² and reports by civil

1 CFR. Item 1, below.

2 JARDIM & BARBOSA, 2023; GOULD & BLOTTA, 2022; MARTINS, 2009; ELLERY, 2022; CAMARGO, 2022.

society³ organizations that draw attention to this dangerous phenomenon, as well as by a seminal judicial debate that has already reached higher courts⁴ – albeit without uniform terminology⁵ – on the judicial persecution of journalists. Facing this worrying reality, Abraji, with the support of UNESCO⁶, decided to build a tool to collect information about abusive processes against journalists and organize them to give them visibility and facilitate their follow-up. Thus, we created the **Monitor of Judicial Harassment Against Journalists in Brazil**, a tool we disclose and share now with the public.

For months, the research team conceived concepts, collected information, and refined criteria to distinguish cases that may be considered threats to the exercise of journalism that arise from the abusive use of judicial tools. In this process, we have faced clear cases of abuse and others that required more significant effort to detail our classification parameters. This challenge has been increased because, unlike other existing compiles on judicial harassment of journalists, the **Monitor** intends not to limit itself to the notorious cases, which are more evident. The methodology of the research, explained later, also aims to identify the minor cases in which victims are journalists of small outlets or even independent professionals who suffer persecution at the local level. We believe these cases are equally important, even if they are out of the national spotlight, because they inhibit the production of public context information in places where it is already scarce (LÜDTKE; SPAGNUOLO, 2023). The permanent update of the **Monitor** will make it a perennial tool for monitoring this threat to freedom of information in Brazil.

3 APJOR, 2021. Abraji has drawn attention to the phenomenon of judicial harassment, focusing on the filing of coordinated actions in civil special courts, at least since 2020 (KLEIM, 2020).

4 STF, ADI 6792, rel. just. Rosa Weber; STF, ADI 7044, rel. just. Rosa Weber. By the time this report was finalized, none of the actions had had their trials concluded.

5 Sometimes, the term “judicial harassment,” which we prefer, is used; there is also “procedural harassment” and “abuse of the right to sue.”

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EXECUTIVE SUMMARY

This report, prepared by the Brazilian Association of Investigative Journalism (Abraji) with the support of the UNESCO Global Media Defense Fund, presents data and analyses produced by the **Monitor of Judicial Harassment Against Journalists** based on a collection now available to the public. The **Monitor** focuses on lawsuits whose target is journalistic activity on issues of public interest. It does not deal with ordinary judicial proceedings in which possible torts are discussed proportionally but with the improper use of the right to sue to constrain, frighten, and silence press freedom.

In this sense, the aim of the **Monitor of Judicial Harassment Against Journalists** is to provide a public means to monitor abusive lawsuits that weaken the rights of press freedom and access to information in Brazil, as well as to protect the rights of freedom of the press and access to information in Brazil. Thus, it gives visibility to judicial harassment and facilitates the discussion among journalists when victims, society, and authorities who can transform the current situation.

In the Brazilian context, one of the main obstacles to establishing a system for monitoring judicial harassment against journalism is the dispersion of procedural data sources and the lack of specific criteria for categorizing lawsuits of this type, which are classified generically along with other claims that do not pose a direct threat to the right to information.

Considering this scenario, the **Monitor** combined different data collection techniques, such as registering notorious cases, reports shared by journalists⁷ and partner organizations, and collecting cases through the collection of jurisprudence of the Court of Justice of Sao Paulo. Taking as a starting point the discussion the case of journalist Elvira Lobato and the trial of the Action Against the Violation of a Constitutional Fundamental Right (ADPF) 130 by the Federal Supreme Court (STF in the Brazilian acronym), the cases that occurred from 2009 to the present were recorded in a database. Their characteristics were divided into 45 quantitative variables. Then, they were summarized in 14 segments that comprise information about the plaintiffs of the lawsuits, their lawyers, the defendants, the court, the year of the lawsuit, the arguments presented in the initial motion, the requests contained in them, the content and the outlet of the journalistic publication that led to the judicial demand, the number of procedures related to the same case, and the results in each of the courts until the final and unappealable judgment.

According to the criteria formulated by the research, for a case to be considered judicial harassment, it is necessary that an individual or legal person file the lawsuit in a context that generates imbalance between the parties in disfavor of the journalist, and that the cases can bring intimidating judicial consequences to those who are sued. Moreover, it is necessary that the process is evidently unfounded or that the procedural

⁷ Reports of cases of judicial harassment can be sent to Abraji through the [link](https://www.abraji.org.br/projetos/programa-de-protacao-legal-para-jornalistas). To request legal and financial support, visit <https://www.abraji.org.br/projetos/programa-de-protacao-legal-para-jornalistas>

strategies used are abusive, causing exhaustion to the victim and prejudicing the exercise of their right of defense. After analyzing all the lawsuits collected and performing the filtering according to the proposed definition, the monitoring data gathered a total of 654 lawsuits against journalists, distributed in 84 cases from 2008 to 2024.

The research identified the mobilization of four types of powers to unbalance the relationship between author and victim in harassment lawsuits: Political, legal, economic, or associative. Of the total lawsuits against journalists, **57.4%** were due to the mobilization of associative power, **19.8 %** of political power, **13.7%** of economic power, and **8.1%** of legal power. Although members of the Judicial System file the minor part of the harassment actions, **6** of the **10** authors who obtained decisions – whether final or not – injuring the most significant damages in cases of judicial harassment against journalists belong to the category capable of mobilizing legal power.

As for the types of harassment that can be employed as a means of intimidation to the press, the **Monitor** divided the cases into four types that are sometimes combined: lawsuits that have the same journalist as the victim of coordinated cases, lawsuits filed by the same contentious author, lawsuits with outrageous claims, or lawsuits that use the criminal system. From the data analysis, the most frequent type of harassment (**450**) was that of **lawsuits with the same journalist as the victim of coordinated cases**.

Since 2020, the level of harassment against journalists has been higher than in previous years: 54 cases in 2021, 52 cases in 2022, and 49 cases in 2023. The most prolific author of the attacks was the businessman Luciano Hang (**53**), followed by Guilherme Henrique Branco de Oliveira (**47**), Associacao Nacional Movimento Pro Armas [Pro-Guns Movement National Association] (**17**), Daniel Valente Dantas (**15**), Julia Pedroso Zanatta (**12**), Medicos Pela Vida [Doctors for Life] (**12**), Kim Patroca Kataguirí (**8**), and Orlando Morando Jr (**8**).

As for the characteristics of the communication targeted for harassment, **106** lawsuits targeted journalistic content disclosed by blogs or independent websites, **164** had as the object of the lawsuit posts or texts shared on profile or personal pages, and **384** were related to content published by a media company or organization. Regarding the predominant nature of the publication (report or opinion), it is noteworthy that many cases (**49%**) of harassment happened under the pretext of predominantly informative matters, which report or investigate facts related to people of public interest. The division between facts and opinions – which should be relevant to the assignment of responsibilities in lawsuits involving defamation – seems to have no significant impact in Brazil: Even predominantly factual reports expose journalists who publish them to relevant legal risks.

The **Monitor** identified that the fate of most harassment lawsuits is a failure since most cases result as dismissal without prejudice and groundless in all instances. This reinforces that the practice of harassment is indifferent to the outcome of the process. As internationally understood in the case of SLAPPs (Strategic Lawsuit Against Public Participation), the aim of these lawsuits is not to grant a court order but the burden that the mere fact of being prosecuted will bring to the journalist.

Another important aspect is that a significant share of lawsuits against journalists in Brazil comes from coordinated litigation (89.7%). In the case of coordinated cases, the intimidating judicial consequence is directly linked to the obstacles imposed on the victims' right of defense, both when there is a need to defend themselves in various cases as when victims see themselves facing the constant mobilization of a legal apparatus through the constant threat of a new lawsuit. The **Monitor** recorded 25 cases of coordinated judicial harassment, totaling 587 proceedings

In 30% of coordinated lawsuit cases, the Small Claims Civil Courts (JECs in the Brazilian acronym) were used. Although they have been created as a mechanism for adequate access to justice and the right to sue, providing a series of conveniences for plaintiffs, JECs have been used against journalists to enable the distribution of mass lawsuits in different cities in an unburdened way to the plaintiff, but preventing the proper right of defense of the accused.

Given this scenario, Abraji recommends that:

- The taxonomy of the lawsuits adopted by the National Council of Justice (CNJ) is adjusted to ease the identification of cases that discuss freedom of the press, putting into practice a unified mechanism of procedural consultation that is accessible to the general public;
- The Judiciary adopts the possibility of bringing cases together in a single court and at the defendant's home when dealing with a series of disputes against the same target, following the arguments presented in the Direct Action for the Declaration of Unconstitutionality (ADI) 7055;
- The Brazilian State ensures that the members of the Judiciary are aware of the freedom of the press, so that their decisions are under the jurisprudence and international human rights standards, recognizing judicial harassment against journalists as a threat to democratic freedoms.
- There is a standardization of the parameters adopted by the jurisprudence about freedom of expression in the country to avoid legal uncertainty in cases of judicial harassment against journalists, ensuring the effectiveness of constitutional rights and international human rights standards.

1. WHAT IS JUDICIAL HARASSMENT?

DEFINITION

Journalism, like other professions, can be well or poorly executed. When wrongly executed, it may give rise to the right of response to the offended party; in some cases, it may also imply the duty of compensation for material, moral, or the image of the affected party. All this – the protection of the honor and image of people against defamation, the right of response, and the duty to compensate for moral damages⁸ – is provided for in the Constitution of the Federative Republic of Brazil (1988 Constitution), as much as the prerogatives of journalism⁹ or the prohibition of censorship¹⁰. Of course, the part that files a lawsuit against a journalist may be mistaken as to the fundamentals of their claim: They may understand, for example, that their image was damaged after being shown in a broadcast report without their consent – although the Judiciary often understands that use of images of a person for journalistic purposes, in a report of public interest without defamatory or commercial purposes, exempt their consent. Therefore, the existence of lawsuits against journalists, even when eventually groundless, cannot be considered in itself an outlier deserving to be called judicial harassment. Given the intertwined conflict between freedom of information and other fundamental rights, disputes that discuss the limits of lawfulness for exercising journalistic activity will always happen.

However, there are cases where judicial tools against journalists show more than a simple search for a single and proportional reparation for alleged damage resulting from lousy reporting. These are situations in which the possibility of leading to Judiciary discussions about the limits of journalism is used in an improper and abusive manner, with the purpose, or the probable effect, of exhausting the journalist sued – financial, psychological, or even physically – and intimidate the free exercise of the production and dissemination

8 Constitution of 1988, Art. 5, Item V: “the right of reply equivalent to the grievance is ensured, in addition to compensation for pecuniary loss, emotional distress or damages to reputation”; and item: “X – personal intimacy, private life, honor, and reputation are inviolable; the right to compensation for pecuniary loss or emotional distress due to their breach is ensured.”

9 Constitution of 1988, Art. 220: The manifestation of thought, the creation, the expression and the information, in any form, process, or medium shall not be subject to any restriction, with due regard to the provisions of this Constitution. Paragraph 1: No law shall contain any provision that may represent a hindrance to full freedom of the press in any medium of social communication, with due regard to the provisions of Article 5, items IV, V, X, XIII, and XIV.

10 Constitution of 1988, Art. 5, Item IX and Art. 220, Paragraph 2: Any kind of censorship of a political, ideological and artistic nature is forbidden.

of information of public interest. In these cases, people or groups with different types of power mobilize resources and time to generate financial, emotional, and professional burdens against journalists in retaliation for their professional performance. These actions result in journalists who are sued for damages far more significant than those arising from a judicial discussion conducted in reasonable parameters and ordinary circumstances. There are cases where journalists have to face multiple lawsuits for a single report. In some instances, the place of filing the cases is chosen to unbalance the dispute against the journalist; in others, economic and legally powerful defendants mobilize resources (material and symbolic) that transform judicial processes into unjustly unequal disputes. Finally, there are cases in which journalists are threatened with indemnities capable of reducing them to civil insolvency, sometimes with the risk of imprisonment¹¹.

Often, these actions seek to reach journalists and writers because of reports and critical comments made to public people (businesspeople known nationwide), some of them occupying public positions (political actors or from the Justice system, for example), or to entities of undeniable public interest (churches, large companies, or government corporations). In such cases, we are not facing ordinary judicial processes in which any unlawful acts are ascertained and adjoined with reasonableness but the improper use of judicial tools to embarrass, intimidate, and silence journalists. These are the situations we treat as judicial harassment against journalists.



We define judicial harassment as *the use of judicial measures of intimidating effects against journalism in a disproportional reaction to lawful journalistic work on issues of public interest.*

The term was initially coined in Brazil by lawyer Tais Gasparian based on the discussions provoked by the Elvira Lobato case, which is detailed later. Gasparian says that “on the pretext of exercising a right, the author of the proceedings, using a prerogative that is assured to them, overcomes the regular for the abusive exercise, aiming at harming others” (Gasparian, 2020).

They are illegitimate measures in theory because they aim to prohibit information about entities, people, or issues of public interest, often through abusive procedural tactics that produce disparity to the detriment of the journalists sued, with the potential to bring severe consequences to them and produce intimidating effects on the production of relevant information. For better conceptualization, we highlight each element of our definition below.

LEGAL REMEDIES

The scope of this research is a specific modality of legal coercion of journalism, characterized by *legal or judicial* instruments. Nevertheless, it does not mean that there are no other forms of coercion to journalists, including the use of legal tools: the sending of out-of-court notifications, for example, requiring the suspension of an

¹¹ Although in none of the cases analyzed here imprisonment has been consummated, this scenario, as a latent threat in criminal proceedings, should be considered, especially if the journalist intends to continue publishing articles about the same events or people.

ongoing investigation under penalty of the prosecution of civil and criminal actions is undoubtedly an attempt to intimidate journalists using the law. However, it should not be mistaken for the intimidation carried out through judicial means.

We believe the focus on specifically judicial harassment is justified for three reasons. Firstly, the judicialization (or court approach) of harassment represents, in itself, a leap in the intensity of the intimidating potential of the attack. From the judicialization, journalists who are sued need to spend time, energy, and financial resources to defend themselves. The problem that has to be faced becomes concrete and pressing from there on. Unlike phone calls or notifications, a court summons or subpoena cannot be ignored under the penalties of the law. The question is no longer *whether* a lawsuit will come and become others; it is much more distressing: *When* will I be judged? *For how long* will I be a defendant? *How much* will I spend to defend myself? *How* will I pay what they are asking me if I am convicted? If we seek to understand how law can be used to constrain the exercise of free journalism, the use of specifically judicial harassment seems to be an objective starting point to focus on this practice.

Secondly, the focus on the judicial sphere is relevant because it draws attention to the fact that, while judges do not necessarily practice harassment – although sometimes they do, as some of the cases detected show – it has used judicial tools to achieve its intimidating intent, without the courts being able to prevent this practice satisfactorily. In other words, judicial harassment is (at least in part) effective because, even without this intention, the rites of judicial bureaucracy and understanding the proper conditions of exercising procedural rights allow it to thrive. By turning the spotlight on the situations in which the gears of Justice are successfully used to intimidate journalists and silence the production and flow of information of public interest, the **Monitor** intends to provide reflections capable of changing this reality.

Finally, identifying the large number of cases of judicial harassment presented in this survey shows how easy it is to use the courts to attack journalists, with low cost, and relative ease of success for the persecutor agent. One of the tasks of a legal system committed to protecting the freedom of the press – this task not only of judges but also of lawyers, academics, and all professionals who work in this system and contribute to the definition and limits of the freedoms it protects – it is to give adequate legal protection to those who produce information of public interest, ensuring that punishments to journalists, when practicing illicit acts, be not only proportionate and reasonable, but mainly limited to the most severe cases, of acting in bad faith to cause grave harm to the victims.

The portrait the **Monitor** drew shows this is far from the Brazilian reality. In our country, journalists are easily reached by court proceedings, brought by public authorities, because of legitimate content. Sometimes, they are swallowed up in exhausted procedural ordeals, which force them to travel long distances to respond to serial proceedings because of unfounded demands. Even when they are ultimately judged groundless, the threat of these actions thrives as they last. In other cases, journalists and outlets choose to recant or reach agreements to avoid facing the lottery of court understandings on these issues. A legal system that gives so many facilities for the prosecution of groundless lawsuits against journalists on matters of evident public interest – leaving press professionals all the legal, economic, and emotional risks of suffering several cases – provides authorities and influential individuals, who file lawsuits, all the advantages of an abusive use of the right of access to justice. At the same time, it creates excessive legal contingencies for the exercise of journalism. Thus, it stimulates baseless aggressions to the freedom of production and consumption of information.

INTIMIDATING EFFECTS

The damage to journalism stems not only from the burden it brings to those who are prosecuted but also from the adverse diffuse effects it brings to all journalism. The so-called *chilling effect*, the push of restraint, arises from the perception that new reports on the same facts or people may cause negative consequences (lawsuits, damages claims, threats of imprisonment) for those who are sued.

It is essential to highlight here that, to characterize harassment, what matters is the *intimidating effect* that the measure may have, and not the purpose of the agent that promotes it. Although the identification of the subjective intentions of the agent may be legally and morally relevant to the interpretation of conduct – including in discussions about the limits of freedom of expression (GROSS 2017, p. 229) – we understand that for this **Monitor**, the determining criterion is the negative effect that the measure is expected to have on professionals in their practice of journalism. Therefore, the **Monitor** starts from the assumption that, regardless of the subjective intentions of its author, an action filed, in a context in which the intimidating effects resulting from it are presumably large, amounts to judicial harassment, due to the damage that may lead to the exercise of free journalism.

The literature on the use of judicial tools to silence journalists and activists worldwide, along with some instances in Brazil, suggests how this intimidating effect can be obtained. Among the most common strategies used to do so are:

- *The option for complex, long, and expensive procedures suggests that the sued party must spend a lot of time, resources, and energy to defend itself.* In Brazil, civil litigation on illicit allegedly practiced by journalists is ruled by Special Courts, provided that the compensation claimed is less than 40 minimum wages and there is no need for complex production of evidence. However, there are cases where the plaintiff subverts the use of Special Courts, using techniques explained below, which make the processes more complex and the defense more costly.
- *Accumulated requests that make the eventual conviction too expensive, humiliating, and with censorship characteristics.* Instead of prosecuting claims for the right of response and award of damages in usual value, certain lawsuits accumulate exorbitant claims. There was at least one recent case in which a reporter had to have a “whip-round” to pay a conviction of excessive value for the benefit of a top judicial authority (NEXO, 2022). There are also situations in which the author requires, in addition to compensation, additional convictions that degrade the journalist and their work, preventing, in practice, the maintenance of their publication, such as the compulsory publication of alternative interpretations of the facts narrated, more favorable to the author of the demand.
- *Coordinated Repetitive Disputes.* There are cases where, although the rite chosen for action is the most straightforward and usual, reasonably organized entities or groups coordinate the filing of multiple concurrent lawsuits, forcing the defendants to defend themselves in numerous courts. In addition to making defense physically difficult, this strategy forces journalists to spend more resources on their defense. In the event of successive convictions or even agreements concluded, the sums to be paid may reach values incompatible with the average income of a journalist.

- *Strategic Choice of Jurisdiction.* There are cases in which people of national relevance choose to sue journalists in remote locations, which are difficult to access, but remain under their area of political and economic influence. The so-called *forum shopping*, a recognized form of litigation against actions of public interest practiced especially in Europe, also occurs in a large country such as Brazil.
- *Threats of Arrest.* Human rights entities worldwide wage a well-known battle against using criminal law to punish journalists. In an era in which it is consensus that prison threats should be limited to severe cases – in which the freedom of the accused person endangers the security and integrity of others – it seems absurd that people are still threatened with imprisonment by news, reports, and opinions. This threat exists in many countries, including Brazil. If it is true that a single defamation lawsuit is not able to bring the defendant to prison, it is also true that the existence of more than one proceeding makes this risk plausible. In fact, there have been recent cases of journalists arrested in Brazil after convictions for defamation¹².
- *Lawsuits Filed by Very Powerful People or Entities.* Being a defendant in a lawsuit is a nuisance and a worrying thing for anyone. However, these negative sensations are enhanced when the other party is a powerful plaintiff with a broad capacity to invest material resources (hiring costly and excellent lawyers) and symbolic (using political and judicial connections, for example) to win the case. Even if these resources, especially symbolic ones, are not actually used, the mere fact that they are known to be available to the plaintiff enhances the intimidating effects of judicial investigations against journalists in these cases.

JOURNALISM

Despite the decision of the Supreme Federal Court of 2009,¹³ that overthrew the obligation of the specific degree for exercising journalism, the **Monitor** works with a substantive concept of “journalism”. In line with the United Nations Special Report on the Promotion of the Right of Freedom of Expression and Opinion of the Year 2011,

Journalism should be considered an activity and a profession that constitutes a necessary service to any society since it provides everyone and society with the information necessary to form their own ideas and opinions and freely draw their conclusions. [...] In this context and due to their role and the service they provide, journalists are people who observe, describe, document, and analyze events, and document and analyze statements, policies, and any proposals that may affect society to systematize this information and collect facts and analyzes to inform sectors of society or society as a whole. [...] Journalism [...] is characterized by a journalistic exercise of calculation, investigation, and research of documents, among others, which has as its ultimate objective the communication and information of society (LA RUE, 2012, p. 3).

12 As an example, we quote the recent case of journalist Paulo Cezar de Andrade Prado, responsible for the “Blog do Paulinho,” for successive defamation convictions. Cfr. ABRAJI, 2021.

13 STF, RE 511.961-SP, rel. just. Gilmar Mendes, j. 17/06/2009. The appeal judged unconstitutional Decree-Law 972/1969, which required a degree in Journalism for the exercise of the profession, understanding it was not accepted by the Constitution of 1988.

The distinctive benchmark of this concept is not the possession of a degree – which is why we do not disagree with the current orientation in the STF – but the observance of specific ethical, epistemological, and professional parameters that we understand as constitutive of journalism. Thus, someone without a degree may practice journalism in their own sense, as it is also possible that someone with a diploma will act in a way incompatible with journalism, even if they say a journalist.

This distinction is important to us because the **Monitor** will not include cases of alleged journalists or supposedly journalistic programs that only mimic the profession to produce content that does not inform or educate and reveal that they are deeply not committed to truth and human dignity. Examples of this are television shows that emulate news broadcasts to produce reports to expose the intimacy and suffering of people, degrading and humiliating them in front of the cameras. We understand that these shows are built on values away from those inherent to journalism and that they base their work not only on the social esteem of the profession, but also on the increased legal protections it has. In this way, we do not include them among the cases discussed in this report.

For the same reasons, our concept of journalism includes manifestations of people and entities imbued to produce information and opinions about relevant facts on any platform without limiting ourselves to traditional media outlets (newspapers, magazines, radio, and television broadcasts). We understand that this amplitude is relevant given that much of the social communication of public interest today exists through blogs, vlogs, social media profiles, and channels. However, our target has always been defined by the practice of journalism and the figure of journalists. Thus, although we recognize the importance of activists and activism and know that there are also forms of harassment aimed at intimidating and silencing them, these situations do not enter the **Monitor**.

DISPROPORTIONATE REACTION

The disproportionate reaction is another element that helps to distinguish non-abusive lawsuits filed against journalists – even if eventually without prejudice – from judicial harassment itself. To judicial harassment, the idea of disproportion or imbalance of the legal threat to disfavor the defense (the journalist) is central. The core cases of harassment reveal a relationship in which there is, on the plaintiff's side, someone who intimidates a journalist through a lawsuit that will be able to bring them a serious burden to make it inadvisable and reckless to the continuity of journalistic production regarding that person or subject. This burden may come from severe penalties, but simply from having to respond to successive lawsuits. No formal established yardstick differentiates an ordinary lawsuit from a practice of judicial harassment: the final judgment is always qualitative, done on a case-by-case basis. The element of disproportion or imbalance is the main point at which this distinction operates, especially because this element is sensitive to the personal characteristics of the journalist sued – the reaction can be excessive for a small independent journalist, but not for the professional who has the legal and economic support of a powerful outlet.

In layperson's terms, judicial harassment is a form of abuse of power: The author party has enough resources, contacts, structure, strategic action capacity, and influence to make it clear that the judicial dispute that it will promote will be long, costly, complex, and risky for the other party (the journalist). It is crucial to make it clear that the issue does not necessarily have to do with winning or losing the case or having or not having the

right to sue: the very condition of being sued, in these conditions of disproportion or imbalance, is capable of projecting a significant threat on the sued person in such a way that, even if it comes out victorious at the end, the experience will discourage them and others from taking the same risk in the future.

If an unbalanced dispute characterizes judicial harassment, it is necessary to indicate which factors can lead to this imbalance. We highlight four typical situations below.

POLITICAL IMBALANCE

There is a political imbalance when the author has an enormous capacity to mobilize people and prominent institutions in the structure of the State, which can be perceived as facilitators for it to reach its judicial claims. In the context of lawsuits, political power can be exercised through hearings, phone calls, requests, or even public pressure made by relevant political actors (senators, congresspeople, ministers, secretaries, officials,) to achieve a particular objective in the course of the action.

A high authority of the federal government who has easy access to ministers of higher courts, in official or private events, is an example of someone with high political power. The same applies to top businesspeople with access to the same courts and authorities, either personally or from associations or pressure groups in which they participate. Given that the research is restricted to situations in which a lawsuit was filed against journalists, we are talking here not only of people with high political status but who, having this condition, take active measures to rebuke those who produced journalistic content that displeases them. It is important to remember that, in the Direct Action for the Declaration of Unconstitutionality (ADI) 4815-DF, there were votes¹⁴ of justices (called ministers in the Brazilian system) of the Federal Supreme Court who said explicitly that public people are more exposed to literary and news publications, with the risks of errors (except those of evident bad faith) inherent in the work of investigation – and this reinforces the inaccuracy of these actions.

ECONOMIC IMBALANCE

The economic imbalance stems from the author's high material capacity to bear the costs of multiple lawsuits, even at the higher courts, led by qualified lawyers. This situation is often the opposite of journalists who become defendants. One of the ways to use the courts to intimidate journalists is to propagate the willingness to file as many lawsuits as necessary, taking them to the highest court with the support of the capable lawyers. This strategy makes public the willingness of economically powerful people to bring justice at any cost against journalists who bother them. Although the journalist trusts that they will win in the end, the prospect of publishing a report that, in practice, will amount to the order of a judicial process against them, with all the inherent risks, has evident inhibitory potential. It is worth noting that this legal risk multiplies several times if a professional signs more than one report involving the author party – which is not uncommon when the facts treated are complex.

14 In this sense the manifestation of justice Luis Roberto Barroso: "Freedom of expression is not a guarantee of truth, nor is it a guarantee of justice; it is a guarantee of democracy, and therefore defending freedom of expression can mean having to live with injustice, eventually having to live with the untruth. This is especially true for public people; let them be public agents, be them be artists" (STF, ADI 4815-DF, rel. just. Carmen Lucia, j. 10/06/2015, p. 169).

LEGAL IMBALANCE

The legal imbalance occurs when the plaintiff occupies a prominent position within the justice system: judges or Public Prosecutor's Office members. An appellate judge who sues a journalist who has critically reported on their stance will spread the fear that other magistrates will be more empathetic to the plaintiff. It is worth noting that, in many cases, the lawsuits are possibly judged by the same court where the plaintiff acts, which will enhance its intimidating effect.

It is essential to point out that the fear of a biased judgment when it comes to lawsuits brought by magistrates against whom they criticize is empirically supported: research conducted in the State of Rio de Janeiro, for example, proves that the chances of the validity of the claim of these lawsuits, when the author party is a judge, are significantly higher compared to lawsuits filed by other public agents in trial and appellate courts (LEITE *et al.*, 2020, p. 31-32). Judges have a widely favorable history of indemnifying lawsuits in defamation cases that they adjudicate against lawyers. However, they enjoy legal immunity for acts and words they employ in their professional performance (ANDRADE; LEITE, 2022, p. 247). The same research also shows that the values of sentences are significantly higher when the beneficiary party (i.e., the plaintiff) are magistrates.

ASSOCIATIVE IMBALANCE

Finally, a kind of power stems from the ability to engage multiple people in judicial harassment of journalists. Churches, professional associations, and other cohesive and well-organized groups of people can combine procedural strategies to, for example, file multiple lawsuits in various locations against the same journalist or outlet, making the exercise of judicial defense costly and tiresome. It is a case of judicial harassment when a plurality of authors, in any manner related to each other, file lawsuits against journalists or outlets in a coordinated manner – transforming the defense into an ordeal that requires responding to dozens of simultaneous procedures.

LEGAL JOURNALISTIC PERFORMANCE

Judicial harassment must not be confused with any lawsuit filed against a journalist. The lawsuit must be (i) directly linked to the performance of the person as a journalist (e.g., a criminal or civil action seeking conviction with defamation claims or moral damages due to reports or opinions) or (ii) directed to the person because of their performance as a journalist, even if they were sued on another pretext.

So if a person takes drastic legal action against a journalist because, such as, a dispute relating to neighborhood law, these measures, however severe they may be, do not constitute judicial harassment. If, on the contrary, a journalist who often reports about organization A is disproportionately prosecuted by that organization or by people connected with it because of a social media post, this will be worth as harassment against them. Even though the posting is not necessarily journalistic activity, it is evident that it is merely a pretext for intimidation motivated by the reports they write.

The use of the word “licit” or “legal,” although it seems pleonastic – as journalism is essentially licit activity – serves to define that cases of judicial harassment are those in which the reaction returns to reports at first sight unsuspected of excess, abuse, or any other illegality. However, on the contrary, when there are reasonable doubts about the lawfulness of the report or opinion that motivates the lawsuit – for example, a case of false attribution of crime to an innocent person – we choose not to include these situations in the **Monitor** base. This cannot be confused with situations in which the publication’s tone is critical or harsh, a hypothesis guaranteed to the exercise of journalism by the STF in the Action Against the Violation of a Constitutional Fundamental Right (ADPF) 130 trial.

PUBLIC INTEREST ISSUES

Finally, the requirement of the “public interest issue” demarcates that the object that triggers the harassing lawsuit is a type of information or opinion that has, in principle, news value and social relevance. This criterion allows us to exclude from the **Monitor** the lawsuits motivated by possibly undue exposures of the intimacy and private life of the person who authored the action. For example, a lawsuit against the purely sensationalist disclosure of images or details of someone’s sexual intimacy without any public interest should not be considered judicial harassment. Judicial harassment is characterized by the use of legal threats to suppress public information on topics of relevant news value, so it seems inappropriate to us to include cases in which the information that gave rise to the judicial measure does not meet this requirement.

2. HARASSMENT OF JOURNALISTS AS A GLOBAL PHENOMENON

The **Monitor of Judicial Harassment Against Journalists in Brazil** identifies the practice, in our country, of a global danger. Research and reports have shown how much the use of legal tools to intimidate and silence independent journalism is present in several locations, especially in countries of relatively recent democratization.

EUROPE

In a recent global analysis of legal threats to freedom of expression, a report produced by UNESCO (SORAIDE, 2022) draws attention to – alongside older and known legal threats, such as the permanence of criminalization of defamation and the increase of judicialization of litigation related to freedom of expression online – the increasingly frequent use of “abusive practices” and “strategic judicial remedies” that aim to threaten journalists. Using the terminology created in the 1980s in the US, the report calls such initiatives “strategic litigation against public participation (SLAPPs),” which are defined as “lawsuits normally initiated by a powerful participant (a state/official body, individual or highly visible company) to intimidate and silence the weaker parties who criticize or disclose unfavorable public interest messages to such participants” (cit., p. 11).

The UNESCO report is related mainly to the European scenario. It clarifies that such actions may be civil or criminal and have national or international dimensions (multiple actions in the same country or other jurisdictions). In any case, complex and exhaustive (financial, psychological, and even physical) legal procedures are on the path for those who must respond to them. It is noteworthy that the harassing strategy often involves the choice of courts that are the most unfavorable for the defendant, either due to the perspective of judicial defeat or because of the difficulty, even physical, of attending the procedures.

A 2022 Report produced by the European Council and the Safety of Journalists Platform coalition (COUNCIL OF EUROPE, 2022, p. 47-8) reported strategic legal action against journalism in countries such as Poland, Croatia, Romania, Serbia, Russia, Czech Republic, Slovakia, and the United Kingdom. The tactics listed by the report included the following: Filing of sequential compensation lawsuits against the same news outlet (one Polish and Croatian newspaper suffered 65 claims each); requests for “unreasonably high” damages against journalists, around 500,000 euros per lawsuit; requests for remedies that humiliate professional reputation or

imply prior censorship, such as posts of denials, rectifications, or apology, as well as promises not to re-publish on the same subject; outrageous judicial requests filed in jurisdictions where the plaintiff sees greater chances of victory; criminal charges for matters addressing moral or politically sensitive issues such as drug policy and national security issues.

Still in the European context, other recent reports indicate that Irish, Hungarian, and Polish lawyers have identified that the use of European personal data protection legislation (GDPR) has served as a pretext to threaten journalists with lawsuits for violating the privacy and intimacy of authorities and other people of public interest (MHAINÍN, 2020; MHAINÍN; FRARY, 2020). Faced with the prospect of being sued and having to defend themselves against the payment of expensive fines, news companies have simply automatically complied with requests to delete personal data, mutilating their collections and bringing damages to the record of information with potential public interest.

The reports in question point to the need for re-education of judges and journalists for human rights issues linked to press freedom but also suggest the need for legislative reforms in Europe to create laws similar to California's Anti-SLAPP. In response to these demands, the European Commission approved¹⁵ a directive on 19 March 2024 to adopt laws protecting people from judicial harassment¹⁶. The Daphne's Law suggests a "mechanism for early extinction of manifestly unfounded cases," along with a high financial burden that will fall "on the author if the case is deemed abusive" (SORAIDE, 2022, p. 12).

LATIN AMERICA

Judicial harassment against journalists has also been present in other Latin American countries, according to reports of surveys by civil society organizations dedicated to the defense of freedom of expression and information in the region. Indeed, a 2021 document produced jointly by the Fundación para la Libertad de Prensa (FLIP), the Justice for Journalists Foundation, and the office of the organization Article 19 for Mexico and Central America has documented in detail the practice of judicial harassment against journalists in two countries of the region, Mexico and Colombia.

After defining judicial harassment as "the abuse of judicial mechanisms to censor and intimidate people who disclose information of public interest" (ARTICULO19; FLIP; JFJ, 2021, p. 7), the document explains that such harassment can occur through criminal charges, civil damages claims, administrative procedures, and constitutional actions, under the pretext of protection of honor and intimacy of public officials or private persons linked to matters of public interest. For the reporting organizations, judicial harassment is characterized by four elements: (i) the judicialization of conflicts related to freedom of information, (ii) the appearance of unfounded demand, (iii) the imbalance of the conflict, and (iv) the purpose of silencing on a topic of social interest (cit., p. 7).

15 Anti-SLAPP: Final green light for EU law protecting journalists and human rights defenders. Available on: <https://www.consilium.europa.eu/en/press/press-releases/2024/03/19/anti-slapp-final-green-light-for-eu-law-protecting-journalists-and-human-rights-defenders/>

16 EUROPEAN COMMISSION. Proposal for a Directive of the European Parliament and the Council on safeguarding persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"). 27 apr. 2022. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0177>.

After fixing these premises, the document reports that the trend of cases of judicial harassment in the region is increasing. In Colombia, cases went from 14 in 2017 to 66 in 2019 and 36 in 2020. In Mexico, there was only one case in 2015; in 2017, there were 13; and in 2020, 39 cases were registered (ARTICULO19; FLIP; JFJ, 2021, p. 8).

The legal provisions used to promote harassment range from constitutional and criminal law to intellectual property protection laws and through civil, criminal, and administrative legislation. The perpetrators of the harassment are, as a rule, public agents and private agents (businesspeople) related to politicians. The issues sought to suppress through harassment involve corruption, misuse of public money, influence peddling, and organized crime. There are also cases involving religious figures: Ecclesiastical authorities who seek to suppress news about the sexual life of priests, using not only the symbolic prestige of the Catholic Church but also the networks of action and influence it has.

It is worth noting that the report points out that, both in Mexico and Colombia, the state power adds to the harassers in the attempt to silence journalists. Despite the existence of laws that protect journalistic activity and put into force the right to free expression and information, state mechanisms (police, administrative, judicial) have been more susceptible to mobilization for the threat to journalists than for their protection.

3.OBJECTIVES AND CHALLENGES OF THE MONITOR OF JUDICIAL HARASSMENT IN BRAZIL

As already mentioned, judicial harassment against journalism is a mechanism of weakening democracy through the suppression of reports and debates of public interest, as it intimidates the activity of the press and violates the right of access to information. In this sense, identifying and monitoring these attacks are essential to formulating strategies to protect press freedom and promote a democratic culture. In addition, initiatives to monitor lawsuits against journalists are crucial to point out which actors have mobilized the right to sue to unfairly attack journalistic activity and evaluate how the Judiciary has positioned itself before this reality. By identifying and monitoring judicial harassment actions against journalists, we learn whether the country's judges have aligned themselves with international standards of protection of freedom of expression, especially concerning reports and opinions about people of public interest, or if they have supported violations of freedom of the press.

Important initiatives to monitor the practice of judicial harassment against journalists, as presented in item 2, have gathered efforts to provide greater clarity to the phenomenon on a global scale. In the Brazilian context, one of the significant challenges for creating a mapping system of judicial harassment against journalistic activity is the decentralization of procedural databases, combined with the lack of specifications in the classification of lawsuits of this type. Despite their differences due to their intimidating effects, lawsuits of judicial harassment against journalists are currently classified generically. Therefore, they are confused with other lawsuits that do not constitute potential threats to the right to information because they deal only with common conflicts between individuals.

In addition to being dispersed, we found difficulty accessing some electronic case systems in some courts, making it impossible to search and consult the cases for registration in the database. Lawsuits that have not been digitized or classified lawsuits may explain part of them. In the latter case, in which secrecy was decreed for the whole lawsuit, only cases in which sufficient information was disclosed in the press were included in the **Monitor** to assess whether or not the process set up an episode of harassment according to the

methodology. On the other hand, we observed that there are situations in which procedural secrecy was used to minimize public scrutiny of judicial harassment strategies, making information unavailable by the rule of publicity and transparency.

Another relevant aspect of the assembly of the bank from the data scraping of the Justice Court of Sao Paulo State (TJSP) is the limitation of the degree of jurisdiction. The data extraction code allowed access to cases that had been judged in an appellate court. For these lawsuits, once a case of harassment has been identified, we proceed with the search for the number of cases in the trial court, registering the information about all the trial procedures in the spreadsheet. This means that judicial harassment lawsuits against journalists who were only prosecuted in the trial court of the TJSP were not identified by the collection. This implies that, considering the sub-notification, there may be even more cases of judicial harassment against journalists in the state of Sao Paulo that could not be collected.

In 2023, the Forum for Monitoring Violations of Press Freedom and Judicial Harassment created by the Federal Public Prosecution Office in the state of Rio de Janeiro (MPF-RJ), of which Abraji is a member, highlighted the problem and formulated recommendations to the National Council of Justice (CNJ) to improve the classification of lawsuits related to judicial harassment.¹⁷ Also within the CNJ, the reactivation of the National Forum of the Judiciary and Press Freedom brought the debate of the issue in an event held open to the public¹⁸ and has a Working Group tasked with presenting proposals to combat predatory litigation. Also in 2023, the Ministry of Justice of the Federal Government created the Observatory of Violence against Journalists and Social Communicators. It has a working group dedicated to the issue of judicial harassment¹⁹, although it is still incipient.²⁰

Considering the opacity on the subject, the main objective of the **Monitor of Judicial Harassment Against Journalists** is to offer a public means for monitoring abusive lawsuits targeting the Brazilian press, giving visibility to the phenomenon of judicial harassment and facilitating discussion among the journalists who are victims, the society and the authorities that have the power to transform the current situation. We expect that the availability of the database will be the first step in understanding the scenario of judicial harassment in Brazil and formulating advocacy strategies for preventing these violations and promoting press freedom.

As detailed in the methodological explanation of the database assembly, at the current stage, the **Monitor** offers an extensive but not yet exhaustive overview of cases of judicial harassment against journalists in Brazil. A future challenge, therefore, is to map more regionally, allowing more accurate comparisons about the mobilization of the harassment technique in different regions and comparative assessments of the legal responses offered by courts in various locations of the country.

17 Ofício/PRRJ/PRDC n.º 7218/2023. Available on: <https://www.mpf.mp.br/rj/sala-de-imprensa/docs/OficioCNJ.PDF>. Access on: 12/03/2024.

18 More information available on <https://www.cnj.jus.br/assedio-judicial-e-desinformacao-desafiam-atuacao-dos-profissionais-de-imprensa/>

19 Observatory of Violence against Journalists and Social Communicators closes new partnerships and will be composed of representatives of 15 civil society entities. Available on: <https://www.gov.br/mj/pt-br/assuntos/noticias/observatorio-da-violencia-contra-jornalistas-e-comunicadores-sociais-fecha-novas-parcerias-e-sera-composto-por-representantes-de-15-entidades-da-sociedade-civil>

20 One year after being created, the National Observatory of Violence Against Journalists 'has a long way to go' to be effective, organizations say. Available on <https://latamjournalismreview.org/pt-br/articles/um-ano-apos-ser-criado-observatorio-nacional-da-violencia-contra-jornalistas-tem-longo-caminho-a-percorrer-para-ser-efetivo-dizem-organizacoes/>

4. ASSEMBLY OF THE DATABASE

The preliminary step of creating the **Monitor of Judicial Harassment Against Journalists in Brazil** was formulating an umbrella concept whose theoretical criteria allowed it to respond, according to the analysis of a concrete case, if a given situation can be classified as judicial harassment against the press. After defining the concept of judicial harassment against journalists, adopted by the research, we outlined the data collection techniques that supplied the **Monitor**.

Considering the challenges already presented for identifying cases of judicial harassment and the limitations related to the volume of cases in Brazil, the duration of the project, and the number of researchers in the team, the monitoring combined different techniques of case collection to get the closest picture of the reality of judicial harassment against journalists in the country using the time frame from 2009 to the present (March 2024). The initial milestone from 2009 was due to the Elvira Lobato case at the end of 2008, presented ahead. The episode opened the debate on judicial harassment against journalists in the country for setting up the first notorious coordinated and serial procedural attack motivated by the publication of news reports. The case also boosted the trial of the Action Against the Violation of a Constitutional Fundamental (ADPF) in 2009, which led the Supreme Court (STF) to lay the foundations for the constitutional regime of protection of freedom of expression more connected to the spirit of the Constitution of the Federative Republic of Brazil

COLLECTION

Initially, notorious cases were collected, as well as cases registered by Abraji in its reporting channel or shared by journalists and partner organizations that collaborated with the project²¹. In the second moment, an active search was carried out through automated scraping of data²² from the jurisprudence database of the Court of

21 Tornavoz, Ajour, FMMSA, Instituto Palavra Aberta, Reporters Without Borders (RSF), Jeduca and Instituto Vladimir Herzog (IVH).

22 The collection of processes in the TJSP was done with the library “tjsp” for programming language R. To find the documents that were interested in the research, a scraping was applied from keywords present in the menus of the processes, with Boolean operators – `jornalis* E Honra E (crime or “dano* moral* or abuso)`, which means `jornalis* AND Honour AND (Crime or damage* moral* or abuse)` – to delimit the findings. The results consider the appellate court’s decisions. José de Jesus Filho created the script used, which is available on his [Github page](#).

Justice of Sao Paulo (TJSP).²³ Finally, analyzing these actions allowed for the identification of similar cases that were sometimes cited in petitions or decisions. These cases were then included in the bank through manual jurisprudential research in the electronic system of the corresponding court²⁴.

An essential aspect of the construction of the **Monitor** is that its research path was not always linear. The preliminary definition of judicial harassment and the parameters that compose it were constantly revisited and improved as the bank was being built, and the research came across less explicit cases, that is, those borderline circumstances in which the various nuances make grading work more complex. During this process, we have the valuable help of Abraji partners, such as researchers on the subject, representatives of civil society organizations, and lawyers who defend journalists who are harassment victims.

VARIABLES AND INDICATORS

After the formulation of the concept adopted by the research, the classification criteria were disaggregated into a spreadsheet and spread into different variables, which, read together, allowed us to conclude if the lawsuits analyzed were harassment cases. Each case, therefore, constituted a unit of analysis of the study. From it, details were recorded about the plaintiffs, their lawyers, the defendants, the court, the year of the lawsuit, the arguments presented in the initial petitions, the requests contained in them, the content and outlet of the journalistic publication that led to the judicial demand, the number of litigations related to the same case, as well as the results in each of the courts until the final sentence. In all, the research worked with 45 variables summarized in 14 segments:

1. Case name
2. Case number
3. Court
4. Year
5. Number of related processes
6. Occupation of the plaintiff
7. Nature of the lawsuit
8. Mobilized powers
9. Result
10. Requests
11. Amount requested in moral damages
12. Condemnation of moral damages until the last update
13. 13. Grounds for harassment
14. 14. Summary of the case

The spreadsheet with the research microdata is public and can be accessed [here](#).

MOBILIZED POWERS AND FOUNDATIONS OF HARASSMENT

For a judicial process against journalistic activity to be classified as harassment, it is necessary, according to the concept presented, to be judged by a person or institution, or in context, that generates imbalance between the parties, in disfavor of the journalist, and that the cases can bring intimidating judicial

23 Considering the limitations already presented and the need to delimit a forum in Brazil to serve as the initial source of the active search for cases by Monitor, the TJSP was chosen as the pilot court of the project for two main reasons: (i) because the state of Sao Paulo concentrates a large number of news outlets of different sizes, being, therefore, a place conducive to the object of investigation and (ii) because the TJSP is the largest Court of Justice in the country, this directly impacted the number of processes available for collection.

24 Data collection made through scraping data from the Court of Justice of Sao Paulo (read more [here](#)), for example, resulted in a total universe of 356 cases. By eliminating lawsuits that had no relation to journalism, those filed before 2009, and those we could not access, we reached the universe of 145 lawsuits effectively analyzed. Of these, 38% (55 cases) were considered cases of harassment, according to the project's methodology.

consequences to those who are sued. In addition, it is still necessary that the case is evidently groundless or that the procedural strategies used are abusive, causing exhaustion to the victim and damaging their right of defense.

To analyze the first pair of criteria, it was necessary to verify whether each database case showed some power mobilized before the victim, implying imbalance. This evaluation was made comparatively, considering the circumstances of the plaintiff and the defendant in each case. For example, a councilor in a small municipality in the North region may be unable to mobilize intimidating political power against a news broadcast from Brazil's largest communication company, whose legal defense will be simple for its legal department. On the other hand, by filing a moral damages lawsuit, the same councilor may silence a local journalist who maintains an independent news blog due to their fear of suffering new lawsuits filed by a politically well-related and legally well-supported actor. Thus, the research grouped the authors of harassment lawsuits into four types of mobilized powers, according to their occupation.

- **Political Power.** Government officials, party leaders, or individuals with notorious political influence, such as lobbyists, family members of politicians with active positions, and former electoral office holders, at local and national levels;
- **Economic Power.** Entrepreneurs or companies that gather significant economic assets;
- **Associative power.** Churches, police corporations, professional associations, and other numerous and well-articulated groups that can articulate themselves to act together against journalists, notably from the filing of coordinated actions;
- **Legal power.** Professionals of the justice system and other law professionals well articulated in the Justice system, perceived as able to trigger the judiciary to assert their interests successfully.

TYPES OF HARASSMENT AND EMBLEMATIC CASES

After checking the context of imbalance, the verification of the following criterion was based on analyzing each case's capacity to bring intimidating judicial consequences to those sued. These judicial consequences relate to the types of harassment, as exemplified in the following sub-item. In the case of coordinated processes, the intimidating result is directly linked to the obstacles imposed on the right of defense, both when there is a need to defend oneself in several cases, as in the situation in which the victim is faced with the constant mobilization of a legal apparatus reflected in the constant threat of a new lawsuit. In cases where there is a request for excessive compensation, the intimidating judicial consequence arises from the fear of a financial penalty that cannot be borne and compromises the journalist's personal and professional life, as well as the uncertainty regarding the understanding adopted by the magistrates and their consequent sentencing. Finally, using the criminal system brings as an intimidating consequence the risk of criminalizing the press activity, having as maximum expression the threat of imprisonment. Next, emblematic cases are presented for each of the hypotheses listed above.

JOURNALISTS VICTIMS OF SERIAL CASES: THE ELVIRA LOBATO CASE



Managing abusive procedural strategies against journalists in 2008 led the lawyer Tais Gasparian to call the famous case of lawsuits filed by different members of the Universal Church against journalist Elvira Lobato and the daily *Folha de S. Paulo* *judicial harassment* (VASCONCELOS, 2022). The publication of the report “The Universal Reaches 30 Years with Business Empire” in December 2007 led her to be sued 111 times²⁵ by pastors and followers of the Universal Church of the Kingdom of God. The plaintiff filed similar lawsuits throughout the country, in which they filed compensation for moral damages on the claim that the article had attacked their faith. None of the lawsuits were prosecuted in medium or large cities, not even the states’ capital cities. They were filed in Special Civil Claim Courts (JECs) of remote

towns, with difficult access, which made Lobato’s defense more difficult. Lobato found herself unable to attend simultaneously to so many hearings in a time of physical procedural proceedings, in which judicial procedures were forcibly carried out through the presence of the parties, under penalty of trial in absentia.

Using the Small Claims Civil Courts (JECs) in Lobato’s case was not by chance. This mechanism proved particularly central in complicating a procedural strategy that was already tremendously abusive because it relied on a massive number of identical cases against the same victim. At first, the JECs were idealized by the legislator with a series of procedural benefits to serve as a mechanism for adequate access to justice in small causes, especially in situations where there is a presumed imbalance in disfavor of the plaintiff, such as the case of a consumer dealing with large companies. Among such benefits or facilitations, there is the exemption from the payment of procedural costs for the lawsuits in the trial court, the non-requirement of a lawyer for the filing of lawsuits related to up to 20 minimum wages as compensation, and the possibility of choosing, by the plaintiff, a court other than that of residence of the defendant.²⁶

In this sense, when coordinating identical lawsuits filed in Small Claims Civil Courts (JECs) in the most diverse localities in inland Brazil, the plaintiffs of the Elvira Lobato case subverted in an unprecedented way an instrument for adequate access to Justice in the country. Given the impossibility of unifying them, they transformed it into a barrier to the right of defense of the journalist who needed to follow more than a hundred lawsuits.

Recalling the episode in an interview given to Abraj in 2022, Lobato emphasized that the harassment she suffered was a violent act to silence her. Although she received favorable decisions in over a hundred lawsuits against the Universal Church, she considered that her journalistic activity was partly defeated since, at the time, orchestrated attacks pushed her away from themes she had covered for more than 20 years, since it became impossible for her to write impartially about the religious institution that had persecuted her. Lobato also highlighted the fact that, as part of the staff of a prominent news outlet, she counted on a qualified

25 The project database compiles 98 of these lawsuits in order to limit the consultation of all procedures. The data of 111 lawsuits is based on initial petitions and surveys made by the case lawyers.

26 Law 9.099 of September 26, 1995.

defense. At the same time, the burden of censorship caused by judicial harassment against journalists may fall more perverse on independent professionals without contractual guarantees or support from a legal team (Abraji, 2022).

In a more recent conversation, on the occasion of writing this report, we questioned Lobato if, at the time, she had calculated the total amount of compensation if the proceedings were judged against her. In her response, she said that factors other than indemnity seemed more central to the case.



The relevant amount was not even the amount of compensation requested, which was actually small, considering each lawsuit individually. Their goal was not to make money but to generate a lot of expense and embarrassment. In other words, what we spent to defend ourselves, going countless times to the courts scattered in distant regions, does not compare with the value demanded in compensation. [...] The goal was not to make cash, but to give a lot of expense to *Folha [de S. Paulo]*, very high expenses with airfares, accommodation, the number of people that had to travel representing me and representing the newspaper – an incalculable expense. [...] The most serious thing was to take the reporter out of her daily work – because I was defending myself, rather than look at other issues, including the church itself [Universal] – and create total destabilization, intimidating and emotionally weakening journalists.

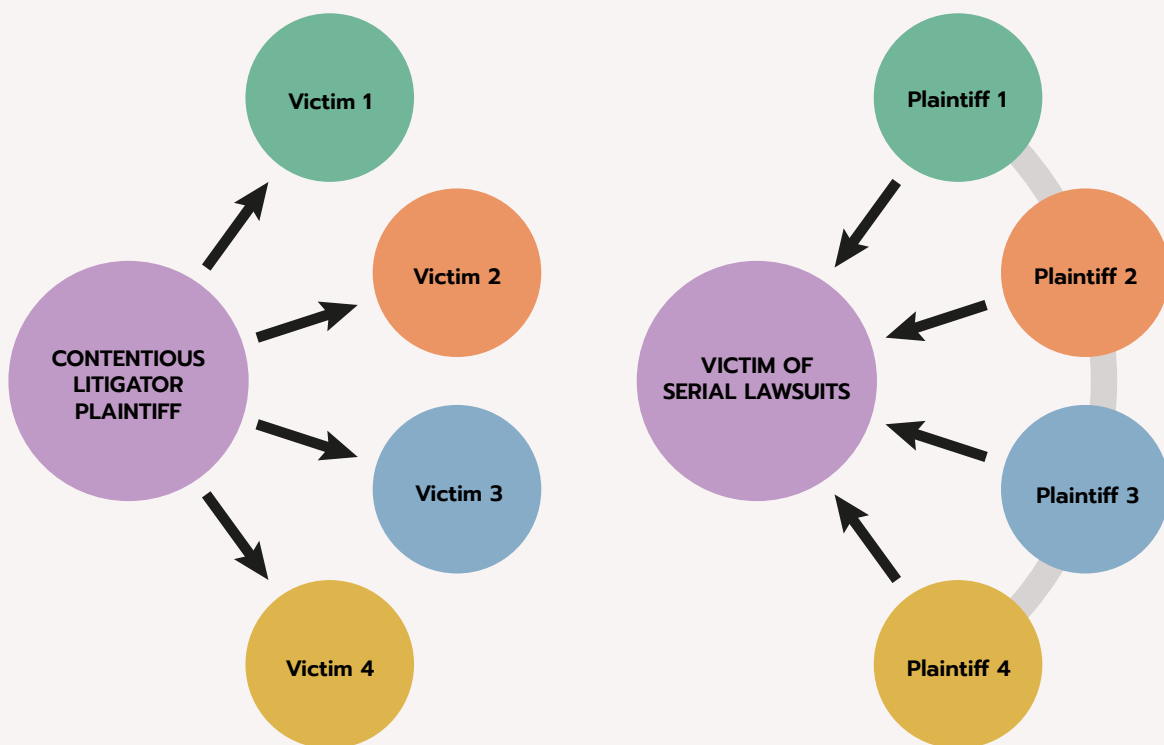
The Elvira Lobato case has brought a warning to the new ways the attempt to censor the press can be taken by using the abuse of democratic instruments such as the right to sue. After more than ten years, the Brazilian scenario shows that other actors have learned and replicated this *modus operandi*, as other episodes of a series of lawsuits against journalists have been recorded. One of the most recent cases is targeted at the then-columnist of *Deutsche Welle*, J. P. Cuenca, who was sued 145 times in 2020 by evangelical pastors in identical actions, also in Small Claims Civil Courts (JECs) from different locations in the country.

Seeking alternatives undermining the consequences suffered by journalists victims of serial proceedings, in December 2021, Abraji proposed a Direct Action for the Declaration of Unconstitutionality (ADI) to readjust the constitutional interpretation given to the cases judged in the JECs. The ADI asks the Supreme Court (STF) to establish that the defendant's place of domicile is the competent court for processing damages actions in which a case of judicial harassment occurs. In addition, all related processes are also requested to be brought together for joint processing and judgment. The action is still ongoing in the STF.²⁷

27 ADI 7055

CONTENTIOUS PLAINTIFF: THE LUCIANO HANG CASE

Over time, the technique of judicial harassment against journalists has been diverse, and coordinating identical lawsuits of different plaintiffs facing the same victim is not the only abusive procedural strategy to intimidate the press. It is currently possible to identify another type of harassment that also happens through serial lawsuits, but it differs by reaching different victims and having the same person as the plaintiff in all of them. In such cases, intimidation of the press diffusely takes place through the action of a contentious plaintiff. For example, when a powerful politician is known to file several lawsuits against those who make publications about them, a general climate of fear is created, causing other professionals to question whether it is worth reporting facts about this political actor, considering the high probability of litigation.



One of the most emblematic cases of harassment resulting from the activity of a contentious plaintiff is that of entrepreneur Luciano Hang, owner of the Havan department store network. In addition to joining the list of the most prominent billionaires in the retail sector in Brazil (FORBES, 2023), Hang also gained notoriety in the national political debate for being one of the closest supporters of former President Jair Bolsonaro (PL). He often used his communication and financial platform to promote the former president's agenda. Although the contentious litigation by Hang is also directed at his critics, politicians, and other actors not involved in the journalistic activity (HERDY; DACAU, 2021), the survey of this **Monitor** shows that the entrepreneur's preferred target is the press.

The **Monitor** recorded 53 lawsuits filed by Hang against the journalistic activity from 2018 to 2022. Together, the lawsuits amount to 13,150,000.00 reais (around 2,6 million USD) in requests for moral damages and target outlets and communication companies of different sizes, in addition to the journalists who authored the

disputed publications. The lawsuits usually claim that the published content affected the plaintiff's honor – he is always qualified as an honest and reputable entrepreneur in his petitions. Among the publications considered defamation by Hang, there are, for example, cartoons that criticize his public positions about the COVID-19 pandemic, reports dealing with tax and labor lawsuits to which he responded, and news about his financial involvement in the 2018 electoral campaign.

The judicial harassment based on the activity of a contentious litigant plaintiff presents, as one of its main characteristics, an emphasis on disparities in the abuse of the right to sue. Hang's case illustrates well how, for someone with billions in assets, the cost of filing an action against a journalist is insignificant, so this element is also used as part of intimidation, creating a "machine" of judicial proceedings capable of spreading fear among those who consider exercising their right to freedom of information.

EXCESSIVE CLAIMS FOR COMPENSATION: GILMAR MENDES VS. RUBENS VALENTE

In 2014, journalist Rubens Valente published the book *Operação Banqueiro* (freely translated as 'Banker Operation'), the result of an extensive investigation into a Federal Police operation launched in 2008 and widely reported by the press. In the book, Valente narrates the backstage of Operation Satyagraha, which found alleged corruption and money laundering crimes and had banker Daniel Dantas as the central figure. One of the striking episodes of the operation was the order of temporary arrest of Dantas, which, however, had its freedom guaranteed by decisions of minister of the Supreme Court (STF) Gilmar Mendes, who met the request for habeas corpus from the Dantas' lawyers.

Although Valente received a negative response to the request for an interview by both Daniel Dantas and Gilmar Mendes, the minister sued the journalist and the publisher Generation Editorial Ltda., claiming that the book portrayed in a malicious and ill-intended manner his performance in STF actions that benefited Dantas. In the lawsuit against Valente, Mendes called for compensation of 200,000 reais for moral damages and the obligation to make the sentence's content and its initial petition appear in future book editions.

Mendes' argument was defeated in the trial court, the Court of Justice of the Federal District (TJDF). Judge Valter André de Lima Bueno Araujo, from the 15th Civil Court of Brasilia, understood in his sentence that Valente's report was protected by the fundamental right to press freedom because it is information of public interest about a public personality.

However, as the lawsuit went up to the higher courts of Brasilia, minister Mendes started accumulating victories. In the appellate court, in 2015, a suspension motion presented by the journalist's defense was denied as a preliminary matter, showing that the reporter's judge of the case at the Courts and Judges of the States, the Federal District, and the Territories (TJDFT) was part of the faculty of the higher education center founded by Mendes. In 2016, the 6th TJDFT Chamber reversed the judgment given in the trial court to condemn Rubens Valente to pay **100,000** reais for moral damages.

In the Superior Court of Justice (STJ), the conviction was raised to force the publisher to print in the following editions of the book the judgment of TJDFT favorable to Mendes. Finally, in 2021, the STF judged the last appeal available to Valente. It maintained the conviction for moral damages and accepted Mendes' previous request, which had not yet been accepted: to include the petition that initiated the case in future editions. In practice, the decisions led to a **30%** increase in the book's total pages, which made it impossible to re-edit it.

CENSORSHIP, EXECUTION INTEREST, AND RISK OF INSOLVENCY

After all the corrections and the sum of the procedural costs, the conviction in the case *Gilmar Mendes vs. Rubens Valente* totaled approximately 310,000 reais. Since the Editorial Generation group did not pay its share in the execution of the sentence, Valente was obliged to, alone, disburse all the sum. Valente only managed to gather the amount necessary not to be civilly insolvent thanks to the realization of an online whip-round, which counted on friends, professionals, and other people who sympathized with him. In addition to the financial impact resulting from the demands for excessive amounts for a professional who depends on his activity, the case still generated intense emotional and mental wear to the reporter due to the legal battle in which he was defeated. There was no reprint of the book.

The precedent of the Rubens Valente case was unknown. It represented an alarming situation in the Brazilian legal context since it established a dangerous standard for the already fragile press freedom in the country. The consequences of decisions are highly harmful and can already be felt. In December 2021 – the same year that the case was definitely tried – Abraji found that four cases filed in the STJ and 10 cases from other courts in the country already included the citation of the case law of Valente's conviction as a parameter.²⁸

Thus, the history of a conviction such as the case of Valente reinforces that outrageous claims made in the context of a “judicial lottery” constitute a situation with the potential for serious and intimidating judicial consequences (risk of being condemned to pay an amount that cannot be endured) and, therefore, when combined with a situation of disparity between the parties, they constitute a clear situation of harassment against journalists.

Driven by concern for the precedent and the consequent threat to the scenario of press freedom in Brazil, Abraji, in partnership with the international organizations Media Defence and Robert F. Kennedy Human Rights, and the lawyer of the journalist, Cesar Klori, brought the Rubens Valente case to the Inter-American Commission on Human Rights (IACHR). The Commission is still evaluating the case.

DISPUTES IN UNFAVORABLE COURTS

Although it does not constitute a type of harassment in itself, the choice of litigation in unfavorable courts is an addition to abusive conduct in cases of judicial harassment against journalists. In the examples presented, it is possible to identify this element in some lawsuits filed by Luciano Hang in the city of Brusque, in Santa Catarina, as well as in the case of Elvira Lobato, with the scattering of litigations in JECs of different judicial districts.

In the case of Hang, his notorious influence on the social and political circles of his small hometown can be considered an attraction for the filing of shares in the judicial district. Of the **53** lawsuits against journalists filed by Hang, **36** were prosecuted in Brusque. Of the **27** that have already been tried, **20** were judged proceeding in this court, which means that, from the cases already tried, approximately **4** out of **5** cases filed by Hang in Brusque are accepted, against approximately **1** out of every **5** in the trial court of other judicial districts.

28 Available on: <https://www.abraji.org.br/noticias/abraji-leva-caso-de-rubens-valente-a-comissao-interamericana-de-direitos-humanos>

LAWSUITS IN OTHER COURTS



- **5,9%** - Awaiting trial
- **29,4%** - Accepted in the trial court
- **64,7%** - Not accepted in the trial court

LAWSUITS IN BRUSQUE



- **25%** - Awaiting trial
- **55,6%** - Accepted in the trial court
- **19,4%** - Not accepted in the trial court

The Lobato case shows that the procedural strategy was based not only on the spread of many identical lawsuits but on the choice of filing in small judicial districts to make the right of defense as difficult as possible.

Although it is not an example of *forum shopping* – which assumes the power to choose an unfavorable location for the initial filing of a lawsuit – the case *Gilmar Mendes vs. Rubens Valente* also reveals how different degrees of jurisdiction can constitute more or less favorable forums for authors to depend on the power they mobilize. The fact that the trial court decision was judged groundless and Justice Mendes’ victories increased as the process went to higher courts – including the trial by his peers in the STF – seems to align with the hypothesis that a justice from the highest court has greater chances of victory as the cases go up closest to their universe of professional activity and sphere of social coexistence (higher courts and the high legal elite of Brazil). However, it is impossible to conclude this from the analysis of only one case.

USE OF THE CRIMINAL SYSTEM: THE SCHIRLEI ALVES CASE

In November 2023, journalist Schirlei Alves was sentenced to a one-year prison sentence and a fine of **400,000** reais for defamation. The sentence of the 5th Criminal Court of Florianopolis judge, Andrea Cristina Rodrigues Studer, arose from the publication of a report related to the case of digital influencer Mariana Ferrer (Abraji, 2023; Conjur, 2023). Ferrer was subjected to humiliation during her testimony as a victim at the trial of the man accused of having raped her in 2018. In an article published in 2020 by *The Intercept Brasil*, Schirlei Alves detailed Ferrer’s embarrassment and re-victimization throughout the trial. The incident generated national commotion and culminated in the promulgation of Law 14245/2021, which aims to punish acts that violate the dignity of victims of sexual violence and witnesses during trials.

The criminal proceedings that resulted in the conviction of Alves were initiated by judge Rudson Marcos and prosecutor Thiago Carrico de Oliveira, both involved in the trial of the Mariana Ferrer case. Claudius Gastao da Rosa Filho, the defendant’s lawyer who addressed Ferrer vexatiously during the hearing, also sued the journalist criminally in a case awaiting trial in the trial court.

The lawsuits filed against Schirlei Alves claim that the plaintiffs’ honor was offended by the report that exposed the audio of the trial. In the final allegations of the Mariana Ferrer case, the prosecutor argued that the defendant had no intention to rape, arguing that there was no way he knew if Ferrer was unable to consent to the sexual act. The report by Alves referred to the Public Prosecutor’s thesis as “culpable rape”. On the same

day of publication, the *Intercept* website included a note to readers to clarify that the expression was used “to summarize the case and explain it to the lay audience”. However, the judge who condemned the journalist understood that by referring to the thesis as “culpable rape”, Schirlei committed the crime of defamation against a public official.

In addition to criminal proceedings, Rudson Marcos, Thiago Carrico de Oliveira, and Claudio Gastao da Rosa Filho also sued the reporter in the civil circuit in cases that asked for the removal of the report, in addition to reparation for moral damages, in which the outlet is also cited. The humiliation faced by influencer Mariana Ferrer and exposed by Schirlei Alves’ report resulted in a sanction by the National Council of Justice (CNJ), which considered that the judge was negligent in conducting the hearing.

The Schirlei Alves case is only one of the several occasions identified by the **Monitor** in which criminal instruments are mobilized to criminalize journalistic activity. From analyzing the database, it is possible to understand how, in recent years, the practice has been used not only in defamation cases but also in those of police inquiries that investigate journalists and threaten the right to secrecy of the source, as well as the use of criminal prosecution as a means of intimidation.

All these cases highlight how criminal law is an inadequate and disproportionate instrument to deal with the limits between freedom of the press and defamation within a democracy. The imposition of criminal proceedings and possible conviction, even if it does not result in imprisonment, is excessively severe and severely impacts freedom of information. This is because the risk of having their name listed among the list of culprits has a devastating impact on the affected journalists, who see their work criminalized and self-censor themselves for fear of going through the same experience again, which can even lead to imprisonment if repeated. Cases such as Schirlei Alves’ demonstrate how mobilizing the State’s punitive power to silence journalists combines more with authoritarian regimes than with democracies committed to press freedom.

BORDERLINE CASES

The construction of the **Monitor of Judicial Harassment against Journalists** recorded many emblematic cases, such as those pointed out above. Other cases demanded a more cautious analysis for presenting nuances that made their classification more complex. Therefore, when they did not meet all the criteria of *judicial harassment*, these borderline cases were not included in the **Monitor** database.

During the classification of the bank, we came across, for example, several lawsuits filed by police officers against independent outlets and their journalists. Despite the context suggesting the mobilization of an associative power in these cases, some of these lawsuits did not have unreasonable claims for damages or deal with the same facts or reports of the same period, so they could not be classified as coordinated lawsuits. Other cases that combined these characteristics, such as the *Military Officers vs. César Tralli, TV Globo, and Record* were classified as harassment.

The cases of police officers prosecuting journalists, even with small claims for damages, are cause for concern²⁹ for representing potential attacks on press activity and, therefore, the subject of other monitoring carried out by Abraji.³⁰ For Abraji, the proposition of a lawsuit against press activity, seeking the removal or limitation of contents of public interest, is an alarm to the guarantee of a free press. In addition to weakening access to information, these lawsuits imply legal costs that may hinder journalistic activity. However, the concept of judicial harassment proposed here demands an incremental factor beyond the mere proposition of a lawsuit. In the first example of police officers who sued journalists in actions without correlation or exorbitant compensation, therefore, the criterion of “ability to bring intimidating judicial consequences to those who are sued” did not reflect the typology in any of the techniques of harassment presented (coordinated lawsuits, litigation, unreasonable indemnification, or use of the criminal system), which is why cases of this kind were not included in the **Monitor**.

29 Often, lawsuits of this type, even when individually filed by a police officer, use similar arguments to claim that critical reports of police action hurt a supposed “honor of the corporation” and that, therefore, would give the right to reparation.

30 For example: <https://abraji.org.br/projetos/monitoramento-de-ataques-a-jornalistas>; <https://violenciagenerojornalismo.org.br/>; <https://abraji.org.br/projetos/programa-de-protacao-legal-para-jornalistas>

5. RESULTS

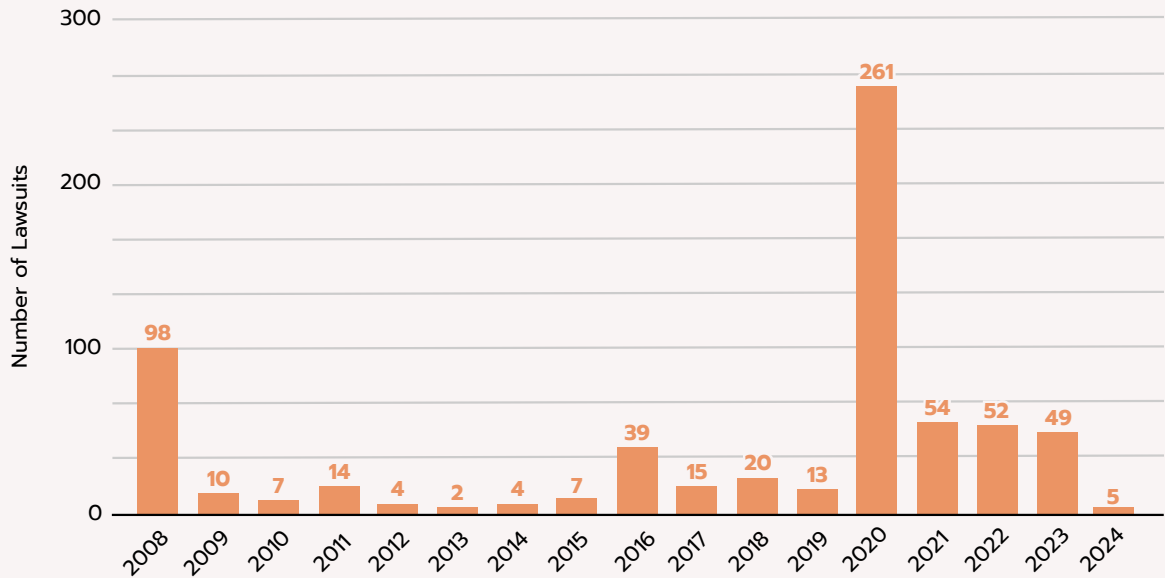
This chapter presents the most relevant quantitative data extracted from the database generated by the research. All the data below refer to cases we consider as judicial harassment and – unless otherwise noted – their procedural unit will always be the amount of lawsuits. Thus, depending on the situation, the same case of harassment may have many linked lawsuits, mainly as the harassment occurs through the procedural tactic of disputes coordinated in Small Claims Civil Courts(JECs).

DISTRIBUTION OF JUDICIAL HARASSMENT IN TIME AND SPACE

YEAR

Observing the distribution of lawsuits characterized as harassment over time, we have the following findings.

NUMBER OF LAWSUITS PER YEAR



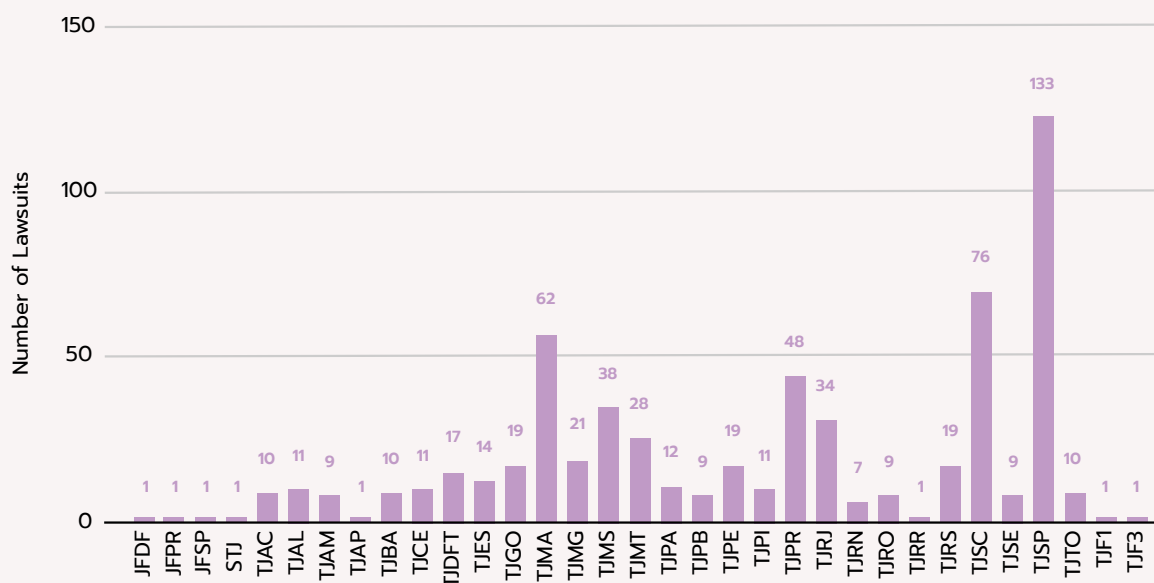
The three peak years – 2008, 2016, and 2020 – have contextual explanations. In 2008, there was a coordinated litigation campaign against journalist Elvira Lobato, who was mentioned above. In 2020, there was another similar campaign of coordinated litigation, this time against journalist J. P. Cuenca, promoted by people linked to the same entity responsible for the 2008 attack on Lobato: The Universal Church of the Kingdom of God. Also in 2020, businessman Luciano Hang, who we considered a harasser because of his use of contentious litigation, filed dozens of lawsuits against reports and articles that criticized him for his action during the pandemic in support of the health policy of the government of Jair Bolsonaro. As for the year 2016, the high number is also due to a campaign of harassment through coordinated litigation, this time practiced by members of the Public Prosecution Office of Parana against professionals of the newspaper *Gazeta do Povo* who published reports on “superwages” of justice officials.

Regardless of these specific situations, it is possible to observe that, since 2020, the level of harassment against journalists has been constantly higher than in previous years: **54** cases in 2021, **52** in 2022, and **49** in 2023.

JUSTICE/COURT

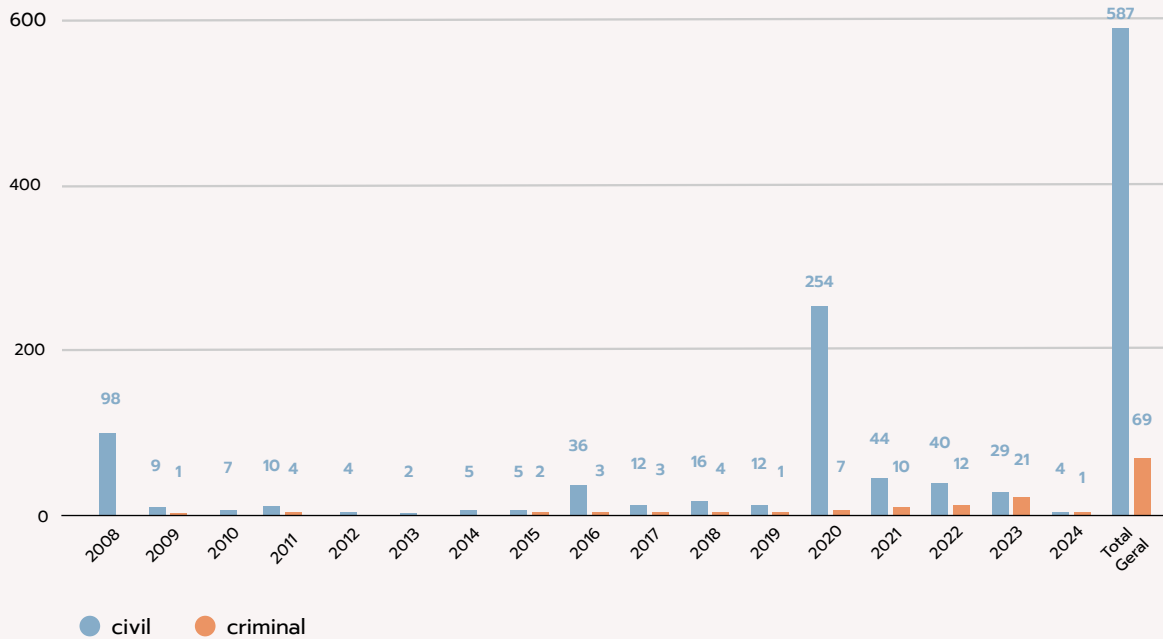
The analysis by branches of Justice or Court reveals a large number of cases in the Judiciary of states where there was a concentration of contentious litigants: Sao Paulo, with Ricardo Sennes; Santa Catarina, with businessman Luciano Hang; Maranhao, with Guilherme Oliveira; and Parana, with prosecutors who harassed *Gazeta do Povo* professionals. It is worth noting that the exploratory study in the Court of Justice of Sao Paulo (TJSP) increased the number of cases registered in this court.

NUMBER OF LAWSUITS PER COURT



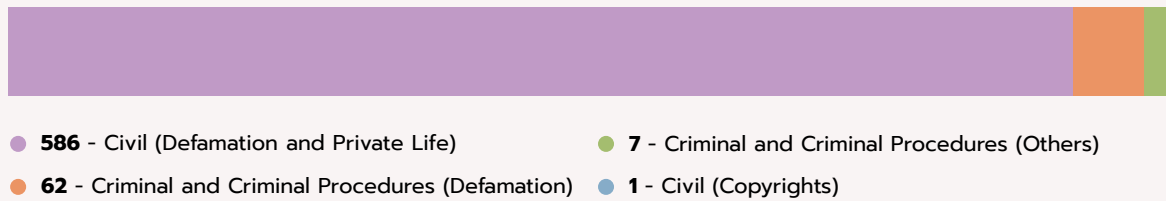
The following chart shows the distribution of actions, year by year, by area of law (civil or criminal).

DISTRIBUTION PER AREA AND YEAR



The data show that, apart from the peak years explained by cases of coordinated litigation and contentious litigation (2008 and 2020), there has been a visible increase in the level, both in civil and criminal cases, from 2020. Observing the total distribution of areas and subjects, we have the following table:

DISTRIBUTION PER AREA AND YEAR



Both graphs confirm the absolute predominance of civil instruments as tools for the practice of judicial harassment. They can explain this phenomenon: The civil nature of cases for removing content, much targeted by perpetrators, and the greater ease, regarding procedures and legal requirements, for prosecuting civil actions compared to criminal ones. The simplified character of civil instruments is reinforced as an explanatory hypothesis for its predominance when we consider that, of the **587** civil lawsuits, **403 (68.7%)** of them were filed in the Small Claims Civil Courts (JECs).

CHARACTERISTICS OF HARASSMENT AUTHORS

IDENTITY AND OCCUPATION

When we identify the authors who most filed lawsuits³¹ against journalists and which were classified as judicial harassment, we have the following results:

Author	Occupation / Occupation	Number of lawsuits
Luciano Hang	Businessman	53
Guilherme Henrique Branco de Oliveira	Lawyer and political agent	47
Associação Nacional Movimento Pró Armas	NGO	17
Daniel Valente Dantas	Businessman	15
Julia Pedroso Zanatta	Political Agent	12
Médicos Pela Vida	NGO	12
Kim Patroca Kataguri	Political Agent	8
Orlando Morando Jr.	Political Agent	8

As expected, this analysis puts in the top positions harassment practitioners who are contentious litigants, such as businessman Luciano Hang, who filed several lawsuits against his critics during Jair Bolsonaro's government, and pension lawyer and politician³² Guilherme Oliveira, who filed serial lawsuits against journalists mainly from his area of work, Codo (MA), following the publication of news of his arrest in operation of the Federal Police investigating fraud against the National Institute of Social Security (INSS) in 2022.

Among political agents or people who held politically commissioned positions, Julia Zanatta (PL-SC) stood out. She is currently a federal congressperson and was Coordinator of Embratur (Brazilian Tourist Board) for the South of Brazil; Orlando Morando Jr. (PSDB-SP), current mayor of Sao Bernardo do Campo; and federal congressperson Kim Kataguri (Uniao-SP), showing the highest incidence of people close to the ideological field that is usually identified as right wing.

Among citizens without political action, such ideological affinity is repeated: The most common names were those of a pro-gun NGO (Associação Nacional Movimento Pro Armas [Pro Armas Movement National Association]), and an NGO that campaigned against compulsory vaccination in children and in favor of the so-called "early treatment" during the Covid-19 pandemic, guidelines notoriously associated with the health policy of the government of Jair Bolsonaro³³.

31 To establish a court for inclusion in this table, we selected only those authors who filed eight or more actions considered judicial harassment. They may have filed even more actions than they appear in the table, but we do not count those that have not been regarded as judicial harassment under the terms set forth herein.

32 We consider Guilherme Oliveira a politician because he ran for Federal Congress in the 2018 elections.

33 For an appreciation of the NGO's performance, v. FERRARI et al., 2022.

The fact draws attention because this same field advocates for freedom of expression as one of its political and ideological flags, and its higher incidence among harassers suggests that its practices are – at least in these situations – contradictory to the principles it defends in their words.

MOBILIZED POWER

As we have already pointed out, the concept of judicial harassment assumes managing the justice system to result in an unbalanced struggle against the journalist: The harasser wants to show and exercise power against the outlet or the professional that annoys them with news and opinions that are uncomfortable or critical. That is why it is essential to point out what kind of power is mobilized by harassers when harassing journalists.

The analysis of the cases allowed us to group the mobilized powers into four major categories: Political Power (political agents and people related to them), Economic Power (companies or businesspeople with abundant resources for protracted and expensive litigation), Legal Power (officials of the justice system, for which thematic familiarity and legal and judicial contacts make judicial actions something more correct and with chances of success), and Associative Power, of which there are organized and cohesive professional groups and entities, with high power of mobilization among its members to, for example, file lawsuits in series (such as police officers or people connected to a church). The results are as follows:

TYPE OF MOBILIZED POWER



The predominance of Associative Power is explained by the fact that the harassment technique usually used in these cases is that of coordinated litigation, which increases the number of occurrences associated with it. It is also essential to highlight the high number of actors endowed with political power, who, as a rule, are agents with elective mandates or holders of positions in the government, who are unequivocally subjected to greater demands of transparency and subject to greater scrutiny in their performance, but who, nevertheless, have repeatedly filed lawsuits against journalists.

CHARACTERISTICS OF COMMUNICATION TARGETED FOR HARASSMENT

When we grouped the cases of harassment by the media and outlet characteristics that were targeted by judicial investigations, we have the following results:

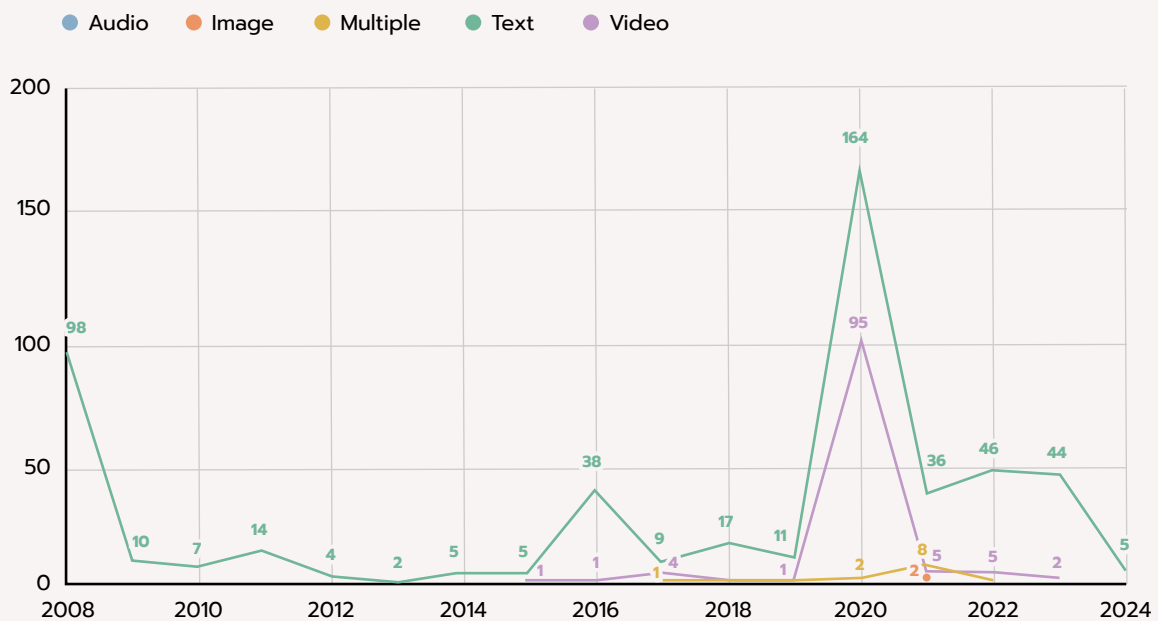
Outlet Type	# of Lawsuits
Blog or independent website	106
Profile or personal page	164
Communication company or organization	384
Overall total	654

Media Type	# of Lawsuits
Audio	9
Image	2
Multimedia	14
Video	115
Text	514
Overall total	654

The combination of both data shows that although news media, especially videos, have significant importance in the universe of harassment cases (audio, video, and multimedia represent **138** occurrences, **115** of them video), personal communications (posts and personal pages) and independent (blogs and similar) also have some prominence in the total universe (**270** combined occurrences), harassment cases focus on a type of publication and a type of outlet that we can consider characteristic of so-called traditional media: written texts (reports and opinion columns, with **514** occurrences) published by companies or communication organizations (**384** occurrences).

Although these outlets and texts are naturally shared on the internet, their profile is that of traditional media. This data shows how this type of media, which represents the most traditional journalism, remains the one that generates the most significant nuisance in powerful actors who mobilize resources to retaliate public interest publications on issues that annoy them. On the other hand, the impact that a case of judicial harassment can have on a robust journalistic company and a smaller blog or website, independent or native digital, is very different. This reinforces that the silencing effect caused by judicial harassment directly affects the plurality of voices within journalism. The chart below shows how the predominance of written media is resilient year by year, even with the growing participation of other media, notably videos and audios, in public communication.

TYPE OF MEDIA, PER YEAR

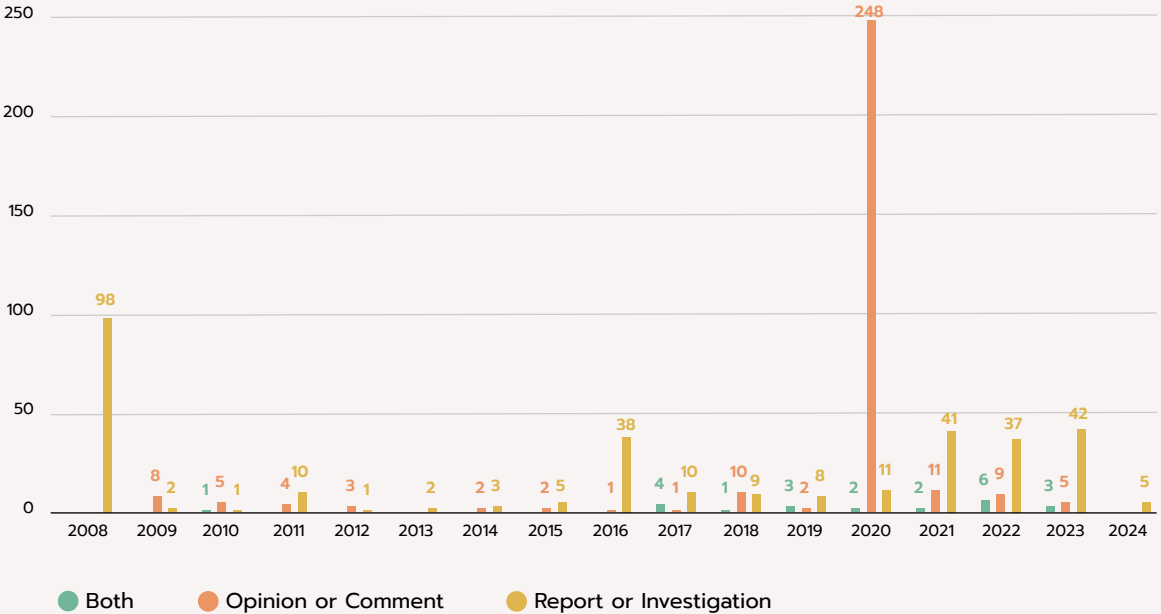


Regarding the prevailing nature of the publication (report or opinion) and its distribution in time between the cases that we consider judicial harassment, we obtained the following findings:

Nature of the Publication	Ocorrências
Opinion or comment	311
Reporting or investigation	321
Both	22
Overall total	654

It is worth noting that many harassment cases occurred under the assumption of predominantly informative pieces that report or investigate facts relating to people of public interest. The traditional division between facts and opinions, which in theory would be relevant to the attribution of responsibilities in defamation claims, seems irrelevant in Brazil: Even predominantly factual reports expose journalists who publish them to relevant legal risks. As shown in the chart below, this is a trend that has steeped in recent years, with reports and surveys being the consistently most frequent target of harassment.

PREVAILING NATURE OF PUBLICATIONS, PER YEAR



PROCEDURAL CHARACTERISTICS OF HARASSMENT LAWSUITS

Data collection also identified the legal grounds invoked by cases characterized as harassment. Often, especially in civil actions (claims for compensation for moral damages, requests for removal of content) – all those with no criminal nature – there is more than one ground invoked. The same indemnification action may invoke, for example, damage to the image and privacy of the plaintiff. For this reason, the total number of grounds invoked is greater than the number of total cases.

LEGAL GROUNDS INVOKED IN THE LAWSUITS

Criminal	Defamation	45
	Criminal investigation or prevention	6
	Violation of legal or procedural secrecy	2
Civil	Defamation	600
	Image protection	227
	Protection of privacy	6
Total		886

As you can see, although criminal investigations are an obvious way of acting to try to intimidate journalists, civil proceedings are by far more used for this purpose. We understand that this can be explained by the fact that the indemnification actions, significantly when the amount filed does not exceed the Small Claims Civil Courts ' limits, are easier to prosecute. Private criminal actions for defamation crimes have stricter rules of time and formalities for filing, which may lead to a preference for civil actions.

We were also interested to know how often interlocutory relieves of a preliminary nature are invoked and successful in lawsuits characterized as harassment. The question matters not only because these decisions require a summary check of the apparent basis of the request (the likelihood of success on the merit of the case, or *fumus boni iuris*), which will hardly be present in lawsuits that call for punishment or removal of content on topics of public interest, on public persons, produced by journalists. It also happens because, in the case of injunctions, these emergency measures are ordered before the opposite party is heard (in this case, journalists or news outlets). The results were as follows.

Interlocutory Relief	Ocorrências
Not required / no information	526
Requested and rejected	82
Required but not appreciated	15
Required and deferred	31
Overall total	654

As it turns out, getting an early decision in cases of judicial harassment is rare: Only in **31** of the **654** cases did this happen. It is essential to ask, therefore, who the actors are who succeeded in achieving such a problematic procedural achievement. The data of the parties that obtained interlocutory reliefs are presented in the following table.

AUTHORS WHO OBTAINED INJUNCTIONS AND INTERLOCUTORY RELIEFS IN THEIR FAVOR:

FLÁVIO NANTES BOLSONARO (1)	JOSÉ PERRELLA DE OLIVEIRA COSTA (ZEZÉ PERRELLA) (1)
SAMEL SERVIÇOS DE ASSISTÊNCIA MÉDICO HOSPITALAR LTDA.; LUÍS ALBERTO SALDANHA NICOLAU (2)	
THIAGO CARRIÇO DE OLIVEIRA (1)	CLÁUDIO GASTÃO DA ROSA FILHO (1)
	ERIKA MIALIK MARENA (1)
AETIO PAPALEOS LANÇA (2)	CONSTRUTORA CAXE LTDA - EPP, GUSTAVO MACEDO COSTA (1)
RUDSON MARCOS (1)	LUCIANO HANG (3)
	MAURO MENDES FERREIRA (1)
	POLÍCIA FEDERAL (2)
RUDSON MARCOS (1)	DANIEL VALENTE DANTAS (1)
	JOÃO DORIA (2)
	CARLA REITA FARIA LEAL (1)
ASMMP - ASSOCIAÇÃO SUL MATO GROSSENSE DOS MEMBROS DO MINISTÉRIO PÚBLICO (1)	
MARCELA TEMER (1)	JULIA PEDROSO ZANATTA (3)
	MARCOS RIBEIRO DO VAL (1)
PINUSCAM - INDÚSTRIA E COMÉRCIO DE MADEIRAS LTDA (1)	LEILA MEJDALANI PEREIRA (1)
A&D WEB LTDA - MEU TIMÃO (2)	PAULO VIEIRA DE SOUZA (1)

The data shows three main groups that have obtained early decisions in their favor in cases of judicial harassment:

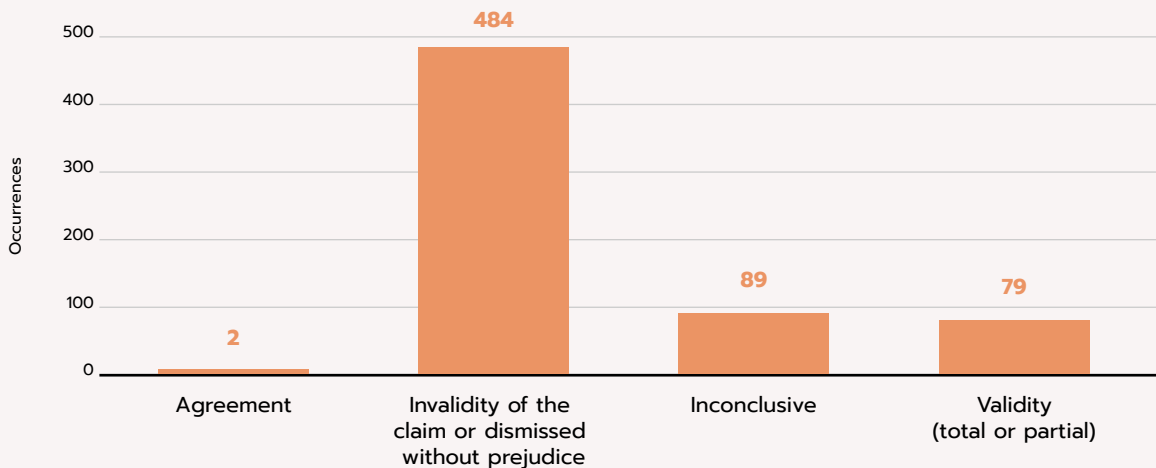
- **Political agents, people in paid positions of a political nature or directly related to them**³⁴. This group includes the following names: Flavio Nantes Bolsonaro, Jose Perrella de Oliveira Costa (Zeze Perella), Marcela Temer, Marcos Ribeiro do Val, Aetio Papaleos Lanca and Julia Pedroso Zanatta, Joao Doria, Paulo Vieira de Souza and Mauro Mendes Ferreira.
- **Companies and businesspeople**. This group includes: Construtora Caxe LTDA – EPP and its partner Gustavo Macedo Costa, Luciano Hang, Daniel Dantas, company Pinuscam Industria e Comercio de Madeiras Ltda., company Samel Serviços de Assistencia Medico Hospitalar LTDA and its president Luis Alberto Saldanha Nicolau, entrepreneur Leila Pereira and the company Leila Mejdalani Pereira A & D Web Ltda – Meu Timao.
- **Professionals of public legal careers and legal entities related to them**. This group includes the Federal Police and ASMMP (Associação Sul Mato Grossense dos Membros do Ministerio Publico); the former delegate of the Carwash Task Force at the Federal Police Erika Mialik Marena; the judge, the prosecutor, and the lawyer of the Mariana Ferrer case (i.e., Rudson Marcos, Thiago Carrico de Oliveira, and Claudio Gastao da Rosa Filho); and the retired judge Carla Reita Faria Leal.

³⁴ In cases of people who could also be considered in another category, such as Joao Doria or Zeze Perella (also a businessman), we classify them as political agents.

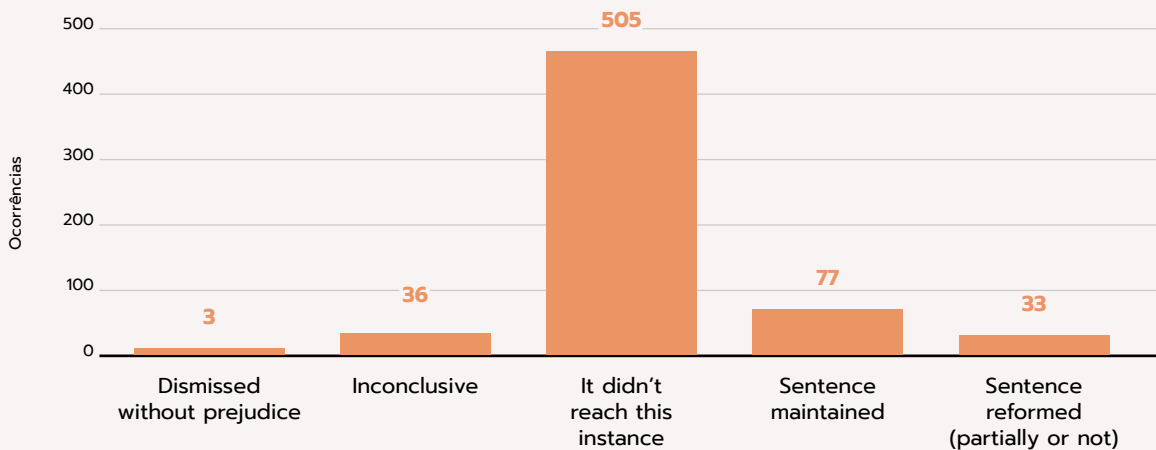
RESULTS OBTAINED BY HARASSMENT LAWSUITS

We also analyzed the dynamics of decisions or denials of lawsuits between courts, from the trial court to the Supreme Federal Court, passing through the appellate courts and the Superior Court of Justice. The most relevant results are as follows.

RESULT IN THE TRIAL COURT



RESULT IN THE APPELLATE COURT

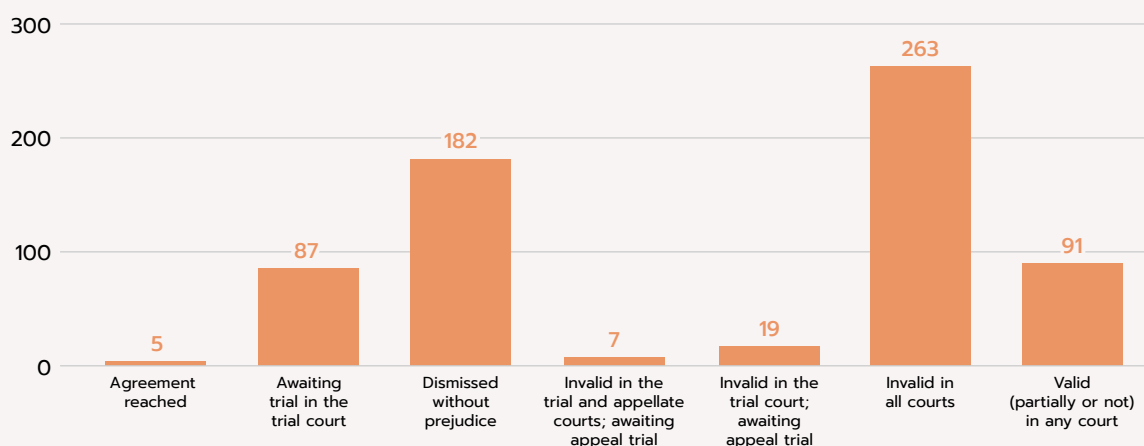


Two points stand out: First, only a small number of harassment lawsuits are judged entirely or partially invalid or groundless in the trial court: **79 of 654**. When they rise to the appellate court, it is also a minor part of the first decisions that are reformed: only **33 of 149**³⁵. In the STJ and STF, the rates of change in this framework

35 This number is the sum of actions extinguished in an appellate court without prejudice; inconclusive cases; cases in which the sentence was maintained; and cases in which the sentence was reformed.

are practically negligible: Between the two upper courts, only seven cases of the total sample had some change in result. The chart below confirms that the fate of most harassment actions is a failure, as shown by the predominance of the results “dismissed without prejudice” and “invalid in all courts.”

RESULTS OF HARASSMENT LAWSUITS



The data show how harassment is practiced with relative indifference to the prospects of legal success of the demands. This is a characteristic that the literature points to harassment and similar actions, such as the strategic litigation against public participation (SLAPP): What matters to those who file the case is less the provision of the request and more the burden that the mere fact of being sued will bring to the journalist. That is, the violation of press freedom is set up, even if the result is the invalidity of the claim.

However, there are cases where harassers succeed and can make decisions that are favorable to them. We analyzed the different types of providence requested and who were the plaintiffs who obtained favorable decisions from the court concerning each type of request.

INTERVENTIONS IN THE CONTENT OF THE PUBLICATION

In **nine** cases, plaintiffs requested and were granted orders that characterize intervention in the publication’s content, such as the obligation to include specific information or version of the facts. We highlight that, of these **nine** cases, five were obtained by law professionals: **Two** magistrates (the Federal Supreme Court Justice Gilmar Mendes and the Santa Catarina judge Rudson Marcos); **one** member of the Public Prosecutor Office (the prosecutor of the state of Santa Catarina Thiago Carrico de Oliveira); and **two** lawyers, one of them Claudius Gastao da Rosa Filho, who worked together with Marcos and Carrico de Oliveira in the controversial trial of the Mari Ferrer case. The other cases involved **one** physician and, on **three** occasions, political agent Julia Pedroso Zanatta. We highlight the remarkable presence of law professionals from the group of select people who have succeeded in obtaining intervention orders in the content of publications.

DUTY TO PUBLISH

In **six** cases there was an order to publish a document, note, or text in favor of the plaintiff. These cases are not confused with the interventions since the order referred to the subsequent publication of an element separated from the original text without interference with the integrity of the original publication.

ABSTENTION OF NEW PUBLICATIONS

Also in **six** cases, there was a request made for the outlet or journalist to abstain from new publications on the same persons or subjects. The measure draws attention because the Constitution explicitly prevents prior censorship, which seems to us to be characterized when it is forbidden, in advance, to publish on a particular individual or subject. In these cases, most of the authors of the lawsuits were composed of companies or businesspeople.

VIOLATION OF SOURCE SECRECY

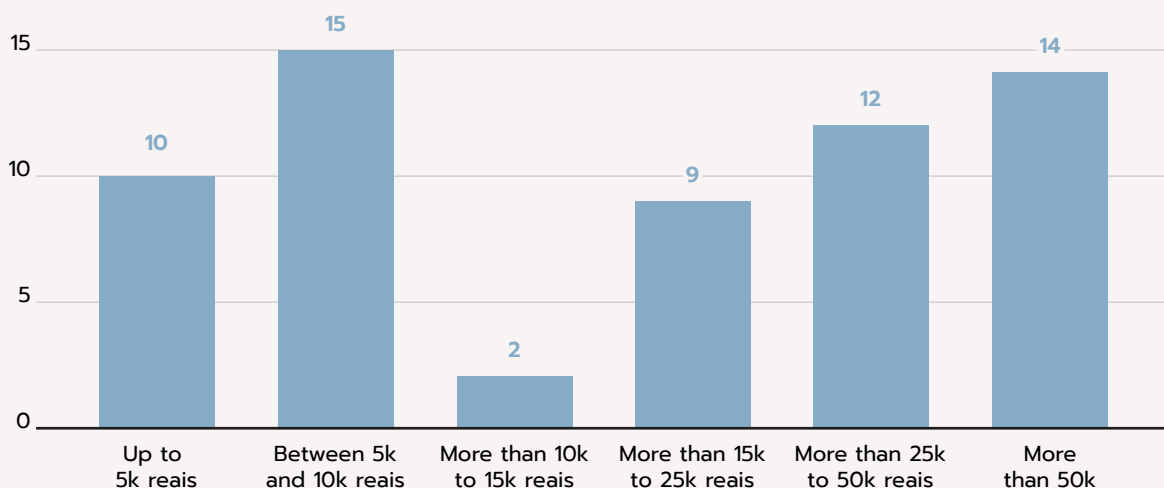
Although good journalistic practice in democratic countries and the 1988 Constitution explicitly assure press professionals the right to keep secrecy about the identities of their sources, there have been two cases in which the plaintiff has requested, and it has been granted in a judicial order that forced the journalist to reveal sources of their report. Both cases were based on law enforcement authorities who claimed it was necessary to reveal the identities of journalists' sources in reports related to organized crime. The measure, if implemented, would entail risk not only to law enforcement coverage but, in that particular case, to the physical integrity of the journalist, which their source could see as a traitor to their trust and thus suffer retaliation. In higher courts, the source identity reveal order has been reversed.

PAYMENT OF COMPENSATION.

The most common request on a claim against a journalist or journalistic outlet was the payment of compensation. This occurred in **62** cases (which may or may not have been dismissed in higher courts). The number shows that, even in the case of the most common remedy, the number of deferrals is low, which suggests that harassment is consumed more by procedural importance than by the seriousness of the legal consequences it brings.

As for compensation, evaluating the value they reach when they are paid is also essential.

AMOUNT OF DEFAMATION SENTENCES PER COMPENSATION RANGE



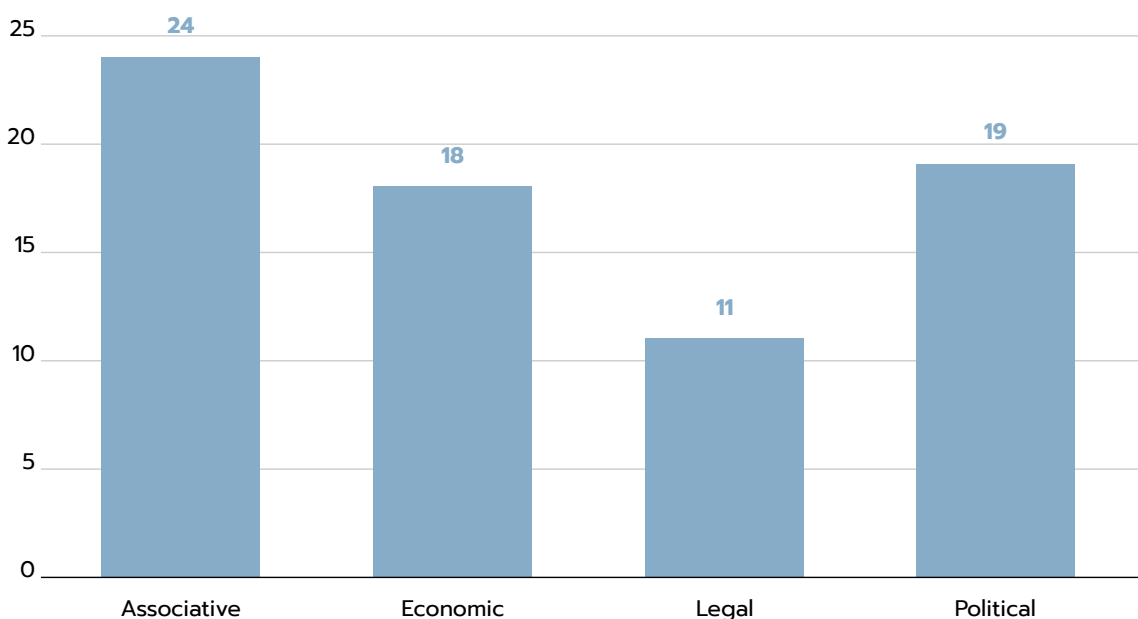
Notably, most of the convictions, when there was one, did not exceed **15,000** reais. At the same time, the graph does not follow the bell pattern, as expected: On the contrary, there are many high-value convictions. The explanation for this is twofold: In some cases, the value of convictions is too high. Journalist Shirlei Alves, for example, was ordered to pay compensation of **400,000** reais for the benefit of the judge and prosecutor of the Mari Ferrer case (**200,000** each); Gilmar Mendes, Daniel Dantas, Luciano Hang, and Leila Pereira each obtained compensation **100,000** reais against the defendants they sued. In other cases, the final amount of the compensation paid has become high due to the incidence of interest, which runs during the appeal processing. This is how the conviction of journalist Rubens Valente exceeded **300,000** reais at the time of payment.

DISPUTES WITH EXCESSIVE CONVICTIONS

The power mobilized in cases of judicial harassment against journalists does not only impact the intensity of intimidation caused to the victim because of the disparity between the parties. It also affects the level of power judges perceive when judging a case and highlights legal uncertainty regarding the parameters used by the Brazilian justice system to interpret the right to freedom of expression.

Of the total of **654** cases classified by the **Monitor** as judicial harassment against journalists, **72** filed a request for excessive compensation as one of the grounds of harassment. The chart below shows the powers mobilized to unbalance the dispute in these cases within this scope.

POWER MOBILIZED IN LAWSUITS WITH UNREASONABLE COMPENSATION CLAIMS



The analysis of the **Monitor** database identified, in addition to cases with unreasonable claims, the convictions that received these requests imposing on victims the obligation to pay excessively onerous amounts. Within the cut of **57** cases with unreasonable requests that have been filed, in **22** cases (**38%**), the compensation claim

was partially or not deferred, even if subsequently revoked. Below is a list of the 10 cases that were granted decisions, whether definitive or not, deferring the highest compensation in cases of judicial harassment against journalists.

Cases	Occupation of the plaintiff at the time of filing	Decisions that have established unreasonable compensations
Daniel Dantas vs. Paulo Henrique Amorim	Banker	Several cases with decisions of 250k, 200k, 100k, and 80k reais.
Rudson Marcos vs. Schirlei Alves	Judge	200,000 in the trial court
Thiago Carriço de Oliveira vs. Schirlei Alves	Public Prosecutor	200,000 in the trial court
Luciano Hang vs. Ricardo Pereira de Melo e Folha de S. Paulo	Businessman	100,000 in the trial court
Gilmar Mendes vs. Rubens Valente	Justice of the Supreme Court (STF)	100,000 in the appellate court
Therezinha Astolphi Cazerta vs. Abril Comunicações	Appellate Judge	100,000 in the trial and appellate courts
Leila Pereira vs. Paulinho	Businesswoman	100,000 in the trial court
João Doria vs. Rui Marin Daher e GGN	Governor	100,000 in the trial court
José Carlos de Oliveira vs. Jornal Comércio de Franca	Delegate	80,000 in the trial court
Nelson Wilians Fratoni Rodrigues e Nelson Wilians Advogados & Associados vs Paulo Henrique Amorim	Lawyer	60,000 in the trial and appellate courts

It is noteworthy that, although the minor part of the harassment lawsuits are filed by members of the justice system (**8.1%**), **6** of the **10** plaintiffs who obtained decisions, whether definitive or not, deferring the most significant compensation in cases of judicial harassment against journalists are part of the category capable of mobilizing legal power.

Although having power mobilized in a defamation lawsuit against a journalist does not necessarily lead to a significant condemnation, it is important to observe which actors can obtain the right to receive unreasonable amounts as reparation for baseless lawsuits and which directly contradict the right to press freedom and jurisprudence on journalistic matters about public personalities.³⁶

Although the research has not done the exhaustive treatment of processes discarded as harassment cases because they do not meet any of the necessary categories of the concept, the analysis of some cases allows illustrative comparisons. The assembly of the **Monitor** database from the collection on the Court of Justice of Sao Paulo (TJSP) website revealed the existence of repair actions that were filed against shows and outlets exploring police and violence issues³⁷.

As a rule, these lawsuits are filed by ordinary people, exposed in the media, who cannot mobilize any of the powers present in harassment situations. Moreover, they are not unfounded demands because they deal with severe violations of the plaintiff's personality rights caused by media "coverage" that is scandalous and

36 ADI 4451 DF. rel. just. Alexandre de Moraes

37 In 2016, the monitoring guide "Violations of Rights in the Brazilian Media" framed the conduct of violence and police as anti-humanist, anti-democratic, and unethical. The survey found that, in 30 days, these shows violated 4,500 rights, infringed 15,761 Brazilian and multilateral laws, and disrespected 1,962 self-regulatory rules. The categories of violations explored by the research were about improper exposure of people, disregard for the presumption of innocence, violation of the right to silence, improper exposure of families, incitement to disobedience to laws or judicial decisions, incitement to crime and violence, identification of adolescents in conflict with the law, hate speech or psychological prejudices and torture or inhuman and degrading treatment perpetuated by the shows or outlets. Due to repeated practices of human rights violations, the Monitor did not consider actions against police programs as judicial harassment.

humiliating. Of the **45** such cases identified by the research, **27** had decisions to grant the request for moral damages. However, even because of the seriousness of the violations, only **3** of these cases had decisions that gave compensation equal to or greater than **50,000** reais.

This fact is quite worrying in contrast to the injuries of excessive reparations, which are also unfair because they deal with facts of public interest about public personalities. According to widespread understanding (HDI Court, 2022; STF, 2018; SCOTUS, 1964), in democratic circumstances, there should be no obligation to repair when the question demanded includes speeches protected by their public interest, as in the case of news that addresses the conduct of public agents in the exercise of their functions. In fact, if there is no intention of causing harm to people affected by the news, the burden of tolerance on public personalities must be much more significant, including small misconceptions or inaccurate information in what was reported.

It is well known that Brazilian jurisprudence on freedom of expression, often called “judicial roulette,” is permeated by the lack of parameters that result in arbitrary chicanery, which aggravates legal uncertainty on the subject (MACEDO, 2017; LEITE, 2018; MELLO, 2021). Several diagnoses show how judgments of similar cases that deal with the collision between freedom of the press and defamation are decided in a very varied way by the various instances of the Judiciary (LEITE, 2018; MACHADO, LOCATELLI, 2019). The **Monitor** identified, for example, that in the case *Guilherme Oliveira vs. Codo Journalists*, the same author filed two lawsuits against two independent journalists from the city of Codo, in the state of Maranhao, in the same court, about reports dealing with the same facts. While the lawsuit against journalist Marcos Borges was dismissed, the same judge validated the case against journalist Ramyria Santiago. This context of insecurity causes an even more serious concern when we analyze the existence of lawsuits with unreasonable claims against journalists since the misfortune of the condemnatory roulette can fall on anyone, causing widespread intimidation.

PRISON

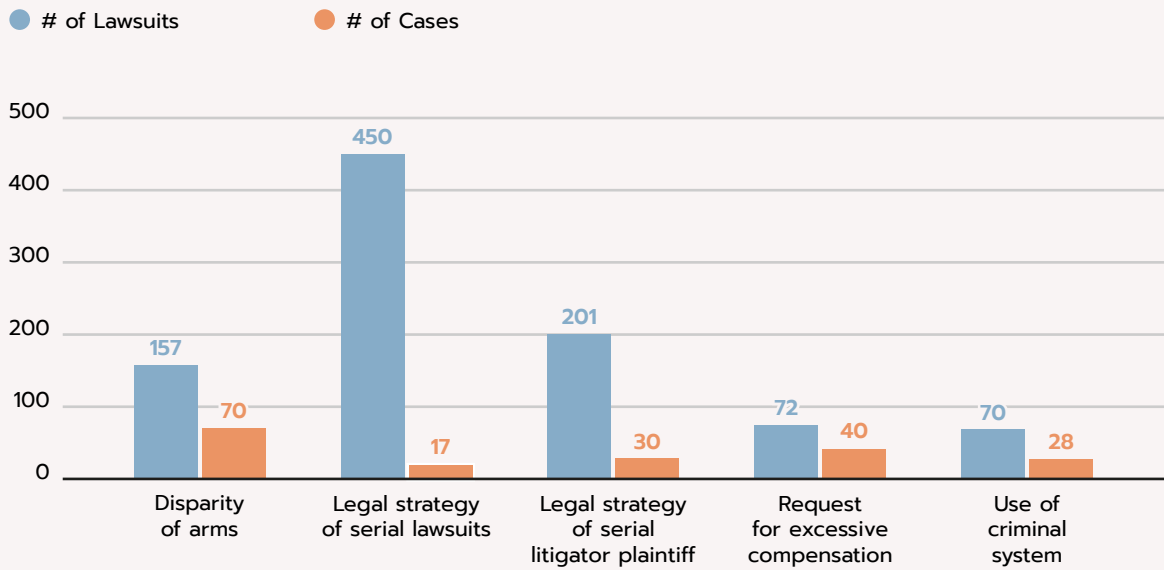
None of the cases we consider judicial harassment resulted in the arrest of the journalist prosecuted. Although none of the cases recorded by the **Monitor** present arrest orders, the database contains some actions of the *Paulinho* case that deal with coordinated lawsuits against journalist Paulo Cezar de Andrade Prado, author of *Blog do Paulinho*. Although it was not registered in the database for available public information gaps, one of the cases in which the journalist is a victim has already resulted in Prado jail for more than a month. In another lawsuit also filed against him, there was a definitive decision to convict the prison that was not fulfilled because of an appeal by habeas corpus.³⁸

38 <https://abraji.org.br/blogueiro-esta-presos-ha-quase-1-mes-condenado-por-difamacao>

GROUNDS FOR JUDICIAL HARASSMENT

As already detailed in the database construction, some variables were established related to the grounds used to characterize a judicial process as a case of judicial harassment. The same lawsuit may bring together more than one reason to be understood as a case of harassment, and in some cases, this is necessary, which is why the total number does not correspond to the number of cases or cases. The summary of this data is shown below:

GROUNDS FOR HARRASSMENT



Fundamentação AJ

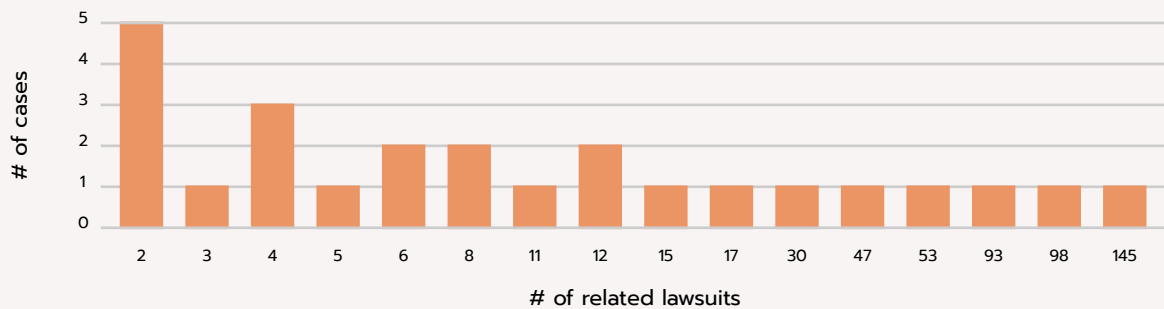
In the number of cases, we verified that the primary motivation is the cases of coordinated lawsuits against the same person or entity (target of serial lawsuits). On the other hand, when we observe the number of cases, the disparity of arms is the predominant motivation (70 cases), which is combined with different grounds, such as the requests for excessive compensation (40 cases) or the use of the criminal system (28 cases).

Cases called more broadly coordinated litigation aggregate cases and lawsuits in which there is an application of some procedural or targeted strategy of serial proceedings or a contentious disputing author will be detailed in the following topic.

QUALITATIVE ANALYSIS OF HARASSMENT PRACTICED THROUGH COORDINATED LITIGATION IN SMALL CLAIMS CIVIL COURTS (JECS)

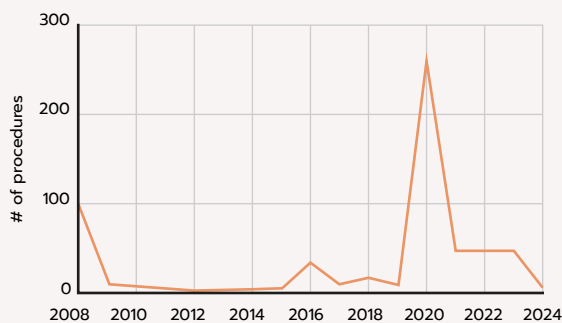
The lawsuits that relate to each other were considered coordinated disputes because they present some characteristics in common in a given context, such as the same plaintiff, same victim, or same journalistic content object of the demand. Therefore, not all coordinated lawsuits are serial lawsuits. There are cases in which only two lawsuits are treated as coordinated procedures; for example, when the same author filed an indemnity lawsuit for moral damages and a criminal complaint against the same victim about the same facts. The series of cases, however, are the types of coordinated litigation cases whose abusive procedural strategy causes the most significant concern. Cases such as that of journalist J. P. Cuenca (**145** cases), that of the candidate for federal congress Guilherme Oliveira against independent journalists from the city of Codo (**47** cases), and the Pro-Guns Movement (**17** cases), for example, stand out for the greater volume of intimidating actions. In this sense, **25** cases of coordinated litigations were identified, totaling **587** cases.

AMOUNT OF LAWSUITS PER COORDINATED CASES



TIME ANALYSIS

NUMBER OF COORDINATED LAWSUIT PROCEDURES THROUGHOUT THE YEARS



NUMBER OF COORDINATED LAWSUIT PROCEDURES THROUGHOUT THE YEARS



During the first ten years of the period analyzed by the **Monitor** (2009-2019), we found an average of **9** processes per year. Throughout this period, the electoral years of 2016 and 2018 stand out with the highest number of coordinated disputes against journalists. In 2016, **30** coordinated lawsuits were filed against *Gazeta do Povo* due to a report dealing with the salary of public officials. The case's resolution came only in 2023 when the Supreme Federal Court (STF) judged Constitutional Claim 23899, and the procedures were terminated without resolution of merit and archived.

In 2020, there was an exponential increase in cases of judicial harassment compared to previous years. This year alone, **254** abusive actions against journalists were recorded. There are some possible explanations for such a phenomenon. The first concerns the trend that, in electoral years, there is usually an increase in the number of lawsuits filed against journalists³⁹, including requests to the Electoral Justice. Then, there were coordinated disputes against J.P. Cuenca (**145**) and Ricardo Sennes (**98**), which accumulated 243 cases and increased numbers.

From 2021 to 2023, an average of approximately 46 cases per year was recorded, which shows an increase of **411%** compared to the average of the first ten years (2009-2019). In 2021, the Pro-Guns Movement filed **17** lawsuits against different media outlets, claiming that its associates were offended by reports that related public expenditures for injuries with firearms to the carrying of weapons.

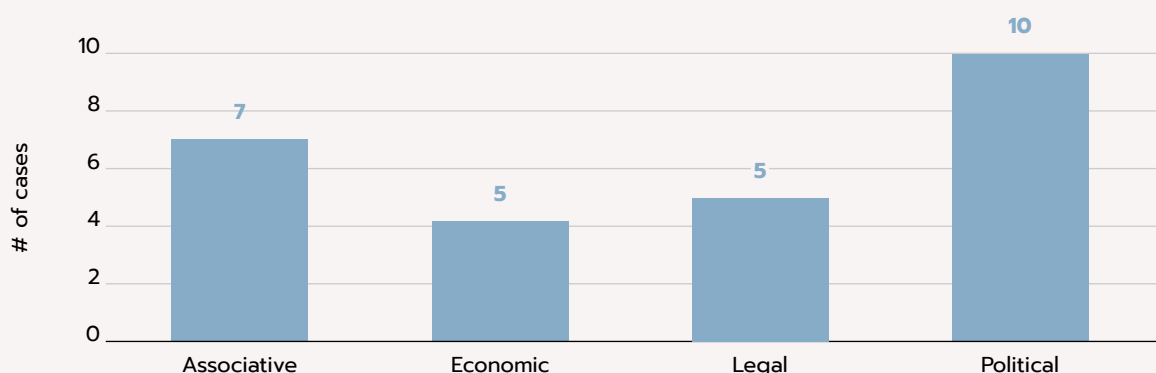
Finally, in 2024, until March, the Monitor recorded only **5** cases. In the case of the lawsuits filed by Guilherme Oliveira, a candidate for a seat in Congress by the state of Maranhao, against a group of journalists from the city of Codo, the reports portrayed the arrest of the politician, as a result of the “Exodo Operation,” commanded by the Federal Police to investigate fraud at the National Institute of Social Security (INSS).

CHARACTERISTICS OF THE CASES

The emblematic cases of coordinated disputes, such as those who victimized journalist Elvira Lobato, journalist and writer J.P. Cuenca, or even the *Gazeta do Povo*, are characterized by serial lawsuits strategies that use the associativity of tens or more than a hundred articulated authors to attack the same target. Other powers, in addition to the associative, are used to cause a disparity of arms that, coupled with the contentious litigation, help identify as a case of judicial harassment. The graph below shows that most cases of this type were based on political power (**10**), followed by associative power (**7**).

39 The report warns of the trend that, in electoral years, the number of lawsuits against journalists increases, as occurred in 2016, 2018, and 2020. Commenting on judicial censorship against journalists, Leticia Kleim reported: “We have observed higher numbers of lawsuits in electoral years, that is, the trend is to have many procedures also [in 2024]. I think that discussions about misinformation and the use of artificial intelligence may appear in these cases, which each year will become more complex.” Available on: <https://latamjournalismreview.org/pt-br/articles/candidatos-e-partidos-politicos-recorrem-a-acoas-judiciais-para-silenciar-jornalistas-durante-as-eleicoes-uma-tendencia-crescente-no-brasil/>

POWERS MOBILIZED IN COORDINATED LAWSUITS



One of the most commonly used procedural tools to enable these types of cases in series against the same target is the use of Small Claims Civil Courts. Although they represent **30%** of cases of coordinated litigation, in case numbers, this proportion is inverse and results in severe violations of press freedom because it prevents journalists from adequately defending themselves in all cases.

COORDINATED LAWSUITS INVOLVING JECS



Another process coordination strategy that has gained prominence is the combination of civil lawsuits with criminal demands regarding the same fact and against the same target. In all the cases analyzed, at least one civil process was involved, but **11 (44%)** criminal lawsuits were also part of the coordinated harassment strategy. In the state of Mato Grosso, the political group linked to Governor Mauro Mendes has adopted a strategy of judicial persecution against local journalists working in different outlets who have published reports investigating irregular conduct by the government, allies within the Judiciary, and even relatives of the governor. The judicial harassment strategy adopted in this case stands out for civil demands regarding the same publication, in addition to criminal complaints that seek to combine complaints of honor crimes with other criminal types, such as criminal association and persecution, to justify the opening of an investigation by the Public Prosecutor and the Civil Police, rather than a private criminal lawsuit, as is the rule for defamation⁴⁰.

Area	# of cases
Civil	25
Criminal	11
Overall total	25

⁴⁰ In an interview, the journalist's lawyer told *LTR*: "Crimes against one's honor [defamation] have not been investigated in police stations since 1995" (...) "But they [Mauro Mendes and his lawyers] are putting other criminal types to justify going to the Department of Assets Recovery and International Legal Cooperation (DRCI) and increasing gravity, such as criminal association and stalking. But writing a story doesn't set up stalking." Available on <https://latamjournalismreview.org/pt-br/articles/processos-investigacoes-jornalistas-mato-grosso/>

The coordinated litigation episodes stand out because they use a strategy of suffocation and wear of victims that seeks to affect the right of defense and the continuity of journalistic work while complying with the judicial determinations, as reported by Elvira Lobato (read more [here](#)). This means that the negative effect they can cause, such as the censorship of journalistic work and the economic impact to bear with judicial defense, is already characterized from the beginning. As shown below, most coordinated disputes were judged unfounded in all instances (40%) or even extinguished without prejudice (30.3%), but this does not mean that they have not effectively caused serious harm to the specific professional and to journalism collectively.

RESULTS PER PROCEDURES IN COORDINATED LAWSUITS



- **40,0%** - Judged unfounded in all instances
- **10,9%** - Valid (partially or not) in any instance
- **13,8%** - Awaiting trial in trial court
- **30,3%** - Extinguished without prejudice
- **3,2%** - Judged unfounded in trial court - awaiting appeal judge.
- **1%** - Judged unfounded in first and second instances - awaiting appeal judge
- **0,7%** - Agreement finalized

FINAL CONSIDERATIONS

The report gathered and compiled the discussions, activities, and analyses developed by the team that worked on constructing the **Monitor of Judicial Harassment Against Journalists**. In its first year of operation, the project reflected on the practice of judicial harassment in Brazil to establish definitions and parameters that would serve the exercise of research and monitoring of the phenomenon of judicial persecution against press professionals in the country. It aims to give visibility to the problem through data, analysis, and findings that allow decision-making in public policies and individual cases to combat the practice of judicial harassment against press freedom.

The term *judicial harassment* is already known and shared since it was mentioned by Tais Gasparian (a lawyer expert in freedom of expression) while discussing the case against journalist Elvira Lobato. Then, it began to be discussed in forums, observatories, and working groups created within the government with the participation of organized civil society. Still, the country lacks a systematic view of the problem that, due to its complexity, has different forms of manifestation: serial lawsuits against the same target, contentious litigants who distribute proceedings against any publication portraying them, authors who use powers mobilized to unbalance the dispute, requests for excessive compensation and, finally, the use of the criminal system to intimidate the disclosure of information of public interest.

The data presented here possibly represent only a fraction of the cases of harassment in the country. These cases show a concern with the guarantee and protection of the freedom to inform and comment, exercised by communicators and journalists in Brazil: The insecurity and lack of clear protection mechanisms within the judiciary that avoid serious consequences of these abusive intentions. On the contrary, only the fact that a journalist has to respond to a judicial harassment process already brings embarrassment and fears that result in the suppression of press freedom through the financial, professional, emotional, and even physical effects it causes on the victim.

The use of judicial measures of intimidating effects against journalism, in a disproportionate reaction to the legal journalistic performance on issues of public interest, as defined by the project, although it is not new, is a strategy increasingly used as a form of democratic erosion using the very structure of democracy and affecting one of its pillars: freedom of the press.

Given the data and analysis brought by the **Monitor**, Abraji recommends that:

- The taxonomy of the cases adopted by the National Council of Justice (CNJ) is adjusted to facilitate the identification of cases that discuss press freedom, putting into practice a unified mechanism of procedural consultation that is accessible to the general public;

- The Judiciary adopts the possibility of bringing cases together in a single court and at the defendant's home when dealing with a series of disputes against the same target, following the arguments presented in the Direct Action for the Declaration of Unconstitutionality (ADI) 7055;
- The Brazilian State ensures that the members of the Judiciary are aware of the freedom of the press so that their decisions follow the jurisprudence and international standards of human rights to recognize judicial harassment against journalists as a threat to democratic freedoms.
- There is a standardization of the parameters adopted by the jurisprudence about freedom of expression in the country to avoid legal uncertainty in cases of judicial harassment against journalists, ensuring the effectiveness of constitutional rights and international human rights standards.

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