

# Judicial decisions on due process in social media content moderation: how judges rule



**ipis**

INSTITUTE  
FOR RESEARCH  
ON INTERNET  
AND SOCIETY



# Judicial decisions on due process in social media content moderation: how judges rule

## **AUTHORS**

Fernanda dos Santos Rodrigues Silva  
Luiza Correa de Magalhães Dutra  
Paulo Rená da Silva Santarém

## **REVISION**

Paloma Rocillo  
Yasmin Curzi de Mendonça  
Jonas Valente

## **GRAPHIC DESIGN, COVER, LAYOUT, IMAGE EDITING AND FINALIZATION**

Felipe Duarte  
Image: Freepik

## **EDITORIAL PRODUCTION**

Institute for Research on Internet and Society

## **HOW TO REFERENCE IN ABNT**

SILVA, Fernanda dos Santos Rodrigues; DUTRA, Luiza Correa de Magalhães; SANTARÉM, Paulo Rená da Silva. **Court decisions on due process in social media content moderation: how judges rule.** Belo Horizonte: Institute for Research on Internet and Society, 2025. Available at: <https://bit.ly/4lqsmkI>. Accessed on: dd mmm yyyy.



**INSTITUTE  
FOR RESEARCH  
ON INTERNET  
AND SOCIETY**

**DIRECTORS**

Ana Bárbara Gomes

Paloma Rocillo

**MEMBERS**

Felipe Duarte | Head of Communication

Fernanda Rodrigues | Head of Research and Researcher

Luisa Melo | Research trainee

Luiza Correa de Magalhães Dutra | Researcher

Paulo Rená da Silva Santarém | Researcher

Vitória Santos | Researcher

Wilson Guilherme | Researcher

[irisbh.com](http://irisbh.com)

# Table of contents

<b>EXECUTIVE SUMMARY</b>	<b>6</b>
<b>PRESENTATION</b>	<b>7</b>
<b>INTRODUCTION</b>	<b>9</b>
<b>1. WHY RESEARCH DUE PROCESS IN CONTENT MODERATION IN JUDICIAL DECISIONS?</b>	<b>11</b>
<b>2. HOW TO COLLECT COURT DECISIONS ON CONTENT REMOVAL, ACCOUNT SUSPENSION OR BLOCKING ON SOCIAL MEDIA?</b>	<b>13</b>
2.1. How did we collect the data?	13
2.2. How did we select the data?	15
2.3. How did we analyze the data?	16
2.4. Research limitations	18
<b>3. OVERVIEW OF THE JUDICIAL DECISIONS ANALYZED</b>	<b>18</b>
3.1. Geographical location	18
3.2. Outcome of Judicial Decisions	20
3.3. Type of moderation measures	21
3.3.1. Account suspension	21
3.3.2. Permanent account blocking	24
3.3.3. Content Removal	25
<b>4. “IT’S THE REPORT. I DECIDE”: THE APPLICATION OF THE RIGHT TO DUE PROCESS IN CASES OF CONTENT REMOVAL, SUSPENSION OR BLOCKING OF ACCOUNTS</b>	<b>26</b>
4.1. What legal standards/norms are used to support decisions?	28
4.1.1. The universe of legal norms and provisions considered	28
4.1.2. Decisions without express legal basis	30
4.1.3. The Most Frequently Cited Legal Norms	32

# Table of contents

4.2. Is there any express mention of the need for a “right to due process” applied to content moderation?	37
4.3. Do decisions mention elements that can be associated with a right to due process in content moderation?	41
4.3.1. General principles for content moderation	41
4.3.2. 4.3.2. Appeals against moderation decisions	42
4.3.3. Procedural deadlines for the moderation process	43
4.3.4. Notifying users of moderation decisions	45
4.3.5. Obligation to provide reasoning for moderation decisions	47
4.3.6. Design and Accessibility of Content Moderation Tools	50
4.3.7. Others	51
<b>5. FINAL CONSIDERATIONS</b>	<b>51</b>
<b>ANNEX I – LIST OF QUESTIONS IN THE JUDICIAL DECISION ANALYSIS FORM</b>	<b>58</b>
<b>ANNEX II - LIST OF ANALYZED PROCESSES AND THEIR RESPECTIVE NICKNAMES</b>	<b>60</b>

# Executive Summary

- This report seeks to understand how the Brazilian Judiciary has acted in resolving conflicts involving content moderation on digital platforms, with an emphasis on the presence (or absence) of due process elements in moderation practices. The research is based on the understanding that content moderation is a task of shared responsibility among different sectors of internet governance: public authorities, companies, civil society and the technical-scientific community;
- To this end, we documented and analyzed a total of 191 judicial decisions (rulings, appellate decisions, and single-judge decisions) issued by Courts of Justice in five Brazilian states: Amazonas, Bahia, Goiás, Paraná, and São Paulo. The main objectives of the study were: (a) to investigate how the Judiciary has resolved content moderation cases; and (b) to understand legal gaps and judicial interpretations concerning due process in these cases;
- The findings show that 94.8% of the decisions involved account suspensions, with 80.1% of those accounts being used for professional purposes. In 84.8% of the cases, the decision favored the reinstatement of the account. Legal reasoning was explicitly present in 71.7% of the decisions, based on frameworks such as the Brazilian Civil Rights Framework for the Internet (Marco Civil da Internet), the Consumer Protection Code, and the Federal Constitution. However, 28.3% of the rulings did not present any explicit legal basis, revealing weaknesses in legal grounding;
- The research identified that only 7.9% of decisions expressly mentioned due process in content moderation. Nevertheless, even without this direct reference, 92.7% of the decisions recognized elements associated with due process, such as the requirement to justify the moderation measure (160 mentions), user notification (70 mentions), and the possibility of defense or appeal against the measure (69 mentions);
- These findings reinforce the urgency of incorporating specific rules on due process in content moderation into Brazilian legislation. The absence of objective legal standards not only harms users – who are exposed to arbitrary decisions – but also affects predictability for the Judiciary and the legal security of the platforms themselves.



## Presentation

IRIS is an independent and interdisciplinary research center dedicated to producing and communicating scientific knowledge on the Internet and society with the aim of fostering public policies that advance human rights in the digital area. For over five years, we have focused specifically on content moderation, with published scientific research on transparency,<sup>1</sup> due process<sup>2</sup> and strategies to combat disinformation.<sup>3</sup>

This document presents part of the findings from the research project ***Between Posts and Controversies: Conflict Resolution Strategies in Content Moderation on Digital Platforms***, carried out with support from Google and conducted independently, following high standards of research ethics and methodological quality. The project aims to understand the issues related to the removal of legitimate content circulating on digital platforms – especially social media. This report focuses on **how content moderation conflict resolution is being addressed through judicial intervention**, as detailed in the introduction.

It is worth highlighting that this research project has already generated three key outputs: i)

---

1 KURTZ, Lahis Pasquali; DO CARMO, Paloma Rocillo Rolim; VIEIRA, Victor Barbieri Rodrigues. **Transparência na moderação de conteúdo:** tendências regulatórias nacionais. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2021. Available at: <https://bit.ly/3xjAUka>. Accessed on: September 6, 2024.

2 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; SILVA, Rafaela Ferreira Gonçalves da. **Regulação de plataformas e devido processo na moderação de conteúdo:** perspectivas em 5 continentes. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://irisbh.com.br/publicacoes/devido-processo-na-moderacao-de-conteudo-em-5-continentes/>. Accessed on: September 6, 2024.

3 PEREIRA, Ana Bárbara Gomes. SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; SILVA, Rafaela Ferreira Gonçalves da. **Cartilha de Enfrentamento à Desinformação em Redes Sociais.** Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://irisbh.com.br/wp-content/uploads/2024/08/Cartilha-de-Enfrentamento-a-Desinformacao-em-Redes-Sociais.pdf>. Accessed on: September 6, 2024.

*The Toolbox: A Good Practices Guide for Analyzing Content Moderation*,<sup>4</sup> which presents the methodology we developed to systematize the observation of concrete cases; ii) the research report *Complaints about content moderation procedures on social networks: what users think*,<sup>5</sup> in which we analyzed user complaints on the Reclame Aqui platform about Facebook, Instagram, Twitter, TikTok, and YouTube to understand the main concerns users have about moderation practices; and iii) and our contribution to the public hearing held by the Office of the Attorney General (Advocacia Geral da União)<sup>6</sup> on January 22, 2025, regarding new content moderation policies adopted by digital platforms in Brazil.

In this report, our goal is to provide an evidence-based understanding of how judicial decisions regarding content moderation are made. We aim to understand how these rulings weigh fundamental rights, examining them in light of the ongoing debate around efficacy and transparency in Brazil's digital context. We view this research as a necessary step toward expanding online freedom of expression, user safety, and trust in digital platforms.

We would also like to express our sincere thanks for the partnership and support of JusBrasil, a legal platform that enables the search, monitoring, and publication of legal information. Based on a detailed request, JusBrasil provided us with a spreadsheet containing raw data on judicial decisions issued within the jurisdiction of each of the five selected courts – namely those of Amazonas, Bahia, Goiás, Paraná, and São Paulo. This spreadsheet served as the starting point for selecting and analyzing the cases, making JusBrasil's collaboration essential to our work.

---

4 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; SILVA, Rafaela Ferreira Gonçalves da. **Caixa de Ferramentas: Guia de Boas Práticas para Análise de Moderação de Conteúdo**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://irisbh.com.br/wp-content/uploads/2024/07/Caixa-de-Ferramentas-Guia-de-Boas-Praticas-para-Analise-de-Moderacao-de-Conteudo.pdf>. Accessed on: April 22, 2025.

5 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; DUTRA, Luiza Correa de Magalhães; SILVA, Rafaela Ferreira Gonçalves da. **Reclamações sobre o procedimento de moderação de conteúdo em redes sociais: o que pensam os usuários**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://bit.ly/4enMVKv>. Accessed on: 19 Feb 2025.

6 SILVA, Fernanda dos Santos Rodrigues. **Moderação de conteúdo, discurso de ódio e desinformação: Contribuições do IRIS à tomada de subsídios da Advocacia-Geral da União**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2025. Available at: <https://bit.ly/3Eft3MS>. Accessed on: April 22, 2024.

# Introduction

The issue of online content moderation is increasingly becoming central to the field of internet governance. The debates range from the responsibilities of the actors involved in moderation processes to the norms and rules for removing content, as well as discussions about the legal principles that must be respected – such as freedom of expression and fair moderation practices.<sup>7</sup>

In 2024, IRIS published *Complaints About Content Moderation Procedures on Social Media: What Users Think*,<sup>8</sup> a report that sought to understand users’ main concerns regarding content moderation on social media platforms. This analysis was based on complaints filed on the consumer platform Reclame Aqui, involving Facebook, Instagram, Twitter, TikTok, and YouTube.<sup>9</sup> Of the 449 complaints analyzed,<sup>10</sup> 54.34% directly addressed the research topic – that is, they concerned the removal of posts and the suspension or blocking of user accounts. This percentage highlights how the opacity of moderation processes hinders the understanding of rights violations and contributes to user distrust in the informational ecosystem.

These findings align with the broader observation that the lack of transparency in content moderation decisions on social media makes it difficult – or even impossible – to fully understand the main problems users face. Although companies publish transparency reports, these typically present only aggregate data without detailing specific cases, contexts, or the rationale behind moderation decisions. While full transparency might create vulnerabilities – for example, allowing bad-faith users to manipulate moderation systems – certain practices illustrate how knowledge of moderation mechanisms can be misused. One such example is the rise of *algospeak*, where users, aware of the platforms’ algorithmic rules, evade moderation by substituting sensitive terms with symbols, emojis, or euphemisms.<sup>11</sup> Popularized initially

---

7 MACHADO, Caio Vieira; VICENTE, Victor. Twitter e Elon Musk: da liberdade de expressão à moderação de conteúdo. **Jota Info**, 5 mai. 2022. Available at: <https://www.jota.info/opiniao-e-analise/colunas/tecnologia-cultura-digital/twitter-e-elon-musk-da-liberdade-de-expressao-a-moderacao-de-conteudo>, Accessed on: March 20, 2025.

8 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; DUTRA, Luiza Correa de Magalhães; SILVA, Rafaela Ferreira Gonçalves da. **Reclamações sobre o procedimento de moderação de conteúdo em redes sociais: o que pensam os usuários**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://bit.ly/4enMVKv>. Accessed on: February 19, 2025.

9 Specifically, the methodology and conclusions of the previous survey on complaints are detailed in the section of this report on the express mention of the need for a “right to due process” applied to content moderation.

10 To learn more about the sample of complaints analyzed, see the publication: SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; DUTRA, Luiza Correa de Magalhães; SILVA, Rafaela Ferreira Gonçalves da. **Reclamações sobre o procedimento de moderação de conteúdo em redes sociais: o que pensam os usuários**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://bit.ly/4enMVKv>. Accessed on: February 19, 2025.

11 MAGALHÃES, André Lourenti. *S3xo e m0rte: por que as pessoas estão escrevendo em “código” no Instagram?* **Canaltech**, 24 jun. 2024. Available at: <https://canaltech.com.br/redes-sociais/s3xo-e-mrte-por-que-as-pessoas-estao-escrevendo-em-codigo-no-instagram-292975/>. Accessed on: April 28, 2025.

on TikTok and later adopted across other platforms, this tactic shows that understanding moderation systems can sometimes serve to undermine safety measures rather than enhance public discourse.

However, the minimum transparency – which reveals important practical aspects about the reality of moderation practices, in order to adequately inform users – and compliance with due process are essential to balance fundamental rights. International standards recommend good practices such as notifying users about moderation actions and the definition of deadlines for appeals and responses, with the aim of ensuring legal certainty.<sup>12</sup> In practice, however, even where legal obligations exist – which will be explored in the next chapter – platforms still tend to withhold crucial information that would allow for a proper evaluation of moderation quality.

In addition to digital platform users, other actors and institutions are involved in content moderation processes: the Judiciary, the Legislative and Executive branches, as well as the platforms themselves, are all part of this ecosystem. Responsibility for managing what is published online should be shared among the various sectors of internet governance: public authorities, companies, civil society, and the technical-scientific community.

The methods and practices used in content moderation also present challenges that require attention within internet governance debates. These include a lack of justification for moderation decisions, unclear procedural timelines, platform designs that do not facilitate access to dispute resolution mechanisms, and the absence of responses to users who challenge decisions.

In this context – and building on IRIS’s previous work to analyze and propose legal standards for due process in content moderation – **this phase of the research aimed to understand how content moderation conflicts are being resolved through judicial intervention.**

Our main objectives were: **a) investigate how content moderation conflict resolution cases are being resolved from the perspective of judicial intervention; b) understand the regulatory/normative gaps and judicial interpretation of due process in content moderation.**

To address these questions, the report begins with a detailed explanation of the methodology. We then present our findings, first offering an overview of the decisions analyzed and then discussing our observations on the application of due process rights in judicial cases involving content removal and account suspension or blocking. We conclude with final considerations, followed by relevant annexes

---

12 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; SILVA, Rafaela Ferreira Gonçalves da. **Regulação de plataformas e devido processo na moderação de conteúdo:** perspectivas em 5 continentes. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://irisbh.com.br/publicacoes/devido-processo-na-moderacao-de-conteudo-em-5-continentes/>. Accessed on: March 18, 2025.

# 1. Why Research Due Process in Content Moderation in Judicial Decisions?

With the growing relevance and power of major digital platforms worldwide – particularly social media – the creation of standards for online content moderation has become a frequent topic of discussion in recent years. From the perspective of civil society, the Manila Principles<sup>13</sup> and Santa Clara Principles<sup>14</sup> were among the first major initiatives recognized for establishing minimum guidelines for digital platforms. The first document, from 2015, focused on the liability of intermediaries and already highlighted the need for both legislation and platform policies concerning content restriction to respect due process. This included ensuring the right to appeal and the right to a full defense.

The Santa Clara Principles, in turn, created in 2018 and updated in 2020, emphasized transparency and accountability in content moderation procedures, also grounding their recommendations in the right to due process. According to the document, companies should ensure that due process is integrated into all stages of moderation, publicly explaining how this is done and offering clear and accessible methods for users to seek support in cases involving content or account actions. Although such principles are non-binding, experts have stressed their importance in guiding the development of binding rules – such as regulatory frameworks – and exerting pressure on platform behavior.<sup>15</sup>

Beyond civil society, the demand for due process has also come from international bodies. UNESCO, for instance, has recommended that decisions on the legality of content should follow due process and be subject to review by an impartial and independent tribunal.<sup>16</sup> The Inter-American Commission on Human Rights, through its Special Rapporteur for Freedom of Expression, addressed the need for platform policies to comply with minimum procedural standards in moderation, such as proper user notification and accessible mechanisms for review or appeal.<sup>17</sup>

---

13 ELETRONIC FRONTIER FOUNDATION et al. **Manila Principles on Intermediary Liability**. Available at: <https://manilaprinciples.org/pt-br/principles.html>. Accessed on: April 8, 2025.

14 THE SANTA CLARA PRINCIPLES ON TRANSPARENCY AND ACCOUNTABILITY IN CONTENT MODERATION. Available at: <https://santaclaraprinciples.org/>. Accessed on: May 8, 2025.

15 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira. **Governança da moderação de conteúdo online: percepções sobre o papel dos atores e regimes**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2023. Available at: <https://irisbh.com.br/wp-content/uploads/2023/01/Governanca-da-moderacao-de-conteudo-online-IRIS-1.pdf>. Accessed on: May 8, 2025.

16 UNESCO. **Guidelines for the Governance of Digital Platforms: Safeguarding freedom of expression and access to information through a multistakeholder approach**. Paris: UNESCO, 2023. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000387339>. Accessed on: May 8, 2025.

17 INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. **Digital Inclusion and Internet Content Governance: Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights**. 2024. Available at: [https://www.oas.org/en/iachr/expression/reports/Digital\\_inclusion](https://www.oas.org/en/iachr/expression/reports/Digital_inclusion)

In Brazil, the demand for legislation to govern digital platforms has led to the inclusion of a dedicated chapter on due process in the most advanced bill on the topic, Bill No. 2,630/2020. In other countries and regions, even where regulations do not explicitly mention due process, they often contain elements that implicitly guarantee it – such as notification requirements, appeal procedures, and deadlines for moderation processes.<sup>18</sup>

However, none of these documents clearly define what due process in online content moderation entails, nor do they specify what minimum standards would constitute it. In this study, building on our prior work on the subject, we understand due process as a set of mechanisms and procedures that legitimize the very process of managing third-party content that may be displayed or made available by platforms. Its key elements would include: general principles for moderation; the possibility of appealing decisions; procedural timelines; mandatory user notification and reasoning behind moderation actions; and accessible design and usability of moderation-related tools. This interpretation is rooted in a view of moderation as a set of actions taken by digital platform providers to intervene in or curate third-party content.

Given that the Brazilian Civil Rights Framework for the Internet (Marco Civil da Internet) – the only specific civil legislation<sup>19</sup> applicable to the digital environment in Brazil – does not directly address rules for content moderation, how have judges been deciding on cases that involve this issue? Currently, the well-known Article 19 of the Marco Civil addresses only intermediary liability in cases of non-compliance with a court order to remove content – and its constitutionality is currently under review by the Federal Supreme Court.<sup>20</sup> Has the Consumer Protection Code been applied more frequently, based on the understanding that the user-platform relationship is one of consumption? Or do some courts treat this relationship as contractual, under the Civil Code?

Even if other legal frameworks are being analogically applied to resolve specific cases, the apparent lack of specific regulation on how content moderation procedures should occur leaves room for varied interpretations across State Justice Courts. In a context where research shows that over 50% of user complaints about social media platforms are related

---

[eng.pdf](#). Accessed on: May 8, 2025.

18 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; SILVA, Rafaela Ferreira Gonçalves da. **Regulação de plataformas e devido processo na moderação de conteúdo: perspectivas em 5 continentes**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://irisbh.com.br/publicacoes/devido-processo-na-moderacao-de-conteudo-em-5-continentes/>. Accessed on: September 6, 2024.

19 Understanding that the General Personal Data Protection Law (No. 13,709/2018) and the Copyright Law (No. 9,610/1998), for example, in addition to not being restricted to the digital environment, do not properly regulate the moderation of the content of online publications.

20 Regarding the judgment of *Recurso Extraordinário* No. 1037396, representing the controversy over the liability of application providers for damages resulting from content generated by third parties, the subject of General Repercussion Theme No. 987, see ROCILLO, Paloma; GOMES, Ana Bárbara; SANTARÉM, Paulo Rená da Silva. Nota técnica sobre o julgamento do tema 987 de repercussão geral: Implicações do julgamento que impactam o direito ao devido processo na moderação de conteúdo. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://irisbh.com.br/publicacoes/nota-tecnica-sobre-o-julgamento-do-tema-987-de-repercussao-geral>. Accessed on: May 9, 2025.

to moderation procedures – and these complaints often involve calls for elements of due process<sup>21</sup> – how has the Brazilian judiciary ruled on improper content removals and account suspensions?

Answering this question benefits all sectors involved in the governance of content on digital platforms. For the private sector, it helps ensure compliance with legal standards and avoid judicial liability for inappropriate actions. For the public sector, it informs the development of minimum and specific rules for content moderation procedures. For civil society, it enhances transparency and critical awareness regarding platform use, the impact of moderation on fundamental rights, and the safeguards users have. With this goal in mind, we now move on to the details of our research.

## 2. How to collect court decisions on content removal, account suspension or blocking on social media?

To conduct this research, which focuses on the analysis of judicial decisions on the merits regarding online content moderation, the methodology was divided into three stages: data collection, selection and analysis. Below, we detail how each of these stages unfolded.

### 2.1. How did we collect the data?

To begin our data collection, we selected five Brazilian Justice Courts (*Tribunais de Justiça*) for analysis. We used the population size of the respective states as a criterion, one from each of the five regions of Brazil.<sup>22</sup> Initially, the courts of Pará (north), Bahia (northeast), Goiás (central-west), São Paulo (southeast) and Paraná (south) were selected. However, as will be detailed further below, during the selection phase – when filtering for cases specifically involving content removal or account suspension – we found that none of the cases listed from Pará State Justice Court met the criteria. As a result, we turned to the court of the second most populous state in the North region: the Amazonas State Justice Court.

To determine which search terms to use on each court’s website, we conducted a preliminary search on their jurisprudence databases to test which keywords returned the most relevant

---

21 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; DUTRA, Luiza Correa de Magalhães; SILVA, Rafaela Ferreira Gonçalves da. **Reclamações sobre o procedimento de moderação de conteúdo em redes sociais: o que pensam os usuários**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://bit.ly/4enMVKv>. Accessed on: April 4, 2025.

22 TORTELLA, Tiago. Quais são os maiores e menores estados do Brasil? Veja ranking. **CNN Brasil**, 28 jun. 2023. Available at: <https://www.cnnbrasil.com.br/nacional/quais-sao-os-maiores-e-menores-estados-do-brasil-veja-ranking/>. Accessed on: March 12, 2025.

results. This revealed a lack of standardization in how the judiciary refers to content moderation cases (e.g., terms such as “take down,” “suspension,” “unavailability,” “blocking,” “removal,” “withdrawal,” etc. were all used – in their Brazilian Portuguese correspondents), leading us to opt for a variety of terms in our searches.

Additionally, we recognized that São Paulo, being the most populous state in Brazil (not just in the Southeast), would likely yield a significantly larger number of judicial decisions compared to the others. To avoid overrepresentation in the final results, we reduced the number of search terms used in São Paulo’s Court, while maintaining a full set of keywords for the other courts.

We acknowledge from the outset that the use of different sets of terms between the São Paulo State Justice Court and the other courts represents a limitation of the research, as it may affect the comparability of cases across regions and potentially exclude relevant cases. Nonetheless, we considered this the most appropriate methodological choice to avoid a scenario in which a single court might skew the sample and compromise the representativeness of the other states.

The keyword lists used in the searches were as follows:

- **Search terms for the São Paulo State Justice Court (TJSP):** “moderation” “content” “social media” “post”; “moderation” “content” “social media” “account”; “*moderação*” “*conteúdo*” “*rede social*” “*postagem*”; “*moderação*” “*conteúdo*” “*rede social*” “*conta*”;
- **Search terms for the other courts:** “moderation” “content” “social media” “post”; “moderation” “content” “social media” “account”; “content removal” “social media”; “account suspension” “social media”; “account blocking” “social media”. “*moderação*” “*conteúdo*” “*rede social*” “*postagem*”; “*moderação*” “*conteúdo*” “*rede social*” “*conta*”; “*remoção de conteúdo*” “*rede social*”; “*suspensão de conta*” “*rede social*”; “*bloqueio de conta*” “*rede social*”.

Regarding the time frame, our preliminary research showed that the period from **September 1, 2022, to August 31, 2024** – a two-year window – yielded a satisfactory number of results for analysis, based on the publication dates of the decisions.

Using the defined search terms, and through a partnership with **JusBrasil** – a legal technology company dedicated to the organization, structuring, and dissemination of public and open legal information – we received a spreadsheet containing search results from the five courts,<sup>23</sup>

---

23 Following the TIER Protocol (according to DOMINGOS, Amanda; BATISTA, Ian Rebouças. Um mapa para a transparência e replicabilidade na ciência social empírica: o Protocolo TIER. Metodologia em Ciência Política, vol. 30, nº 1, 2021. Available at: <https://periodicos.ufpe.br/revistas/politica hoje/article/view/245776>. Accessed on: May 16, 2025), we provide a folder that organizes the spreadsheets containing the raw data used in our analysis, accessible at [https://drive.google.com/drive/folders/18iDcNlMVFr9ApYV2xxvxbmkJ4MJf7j02?usp=drive\\_link](https://drive.google.com/drive/folders/18iDcNlMVFr9ApYV2xxvxbmkJ4MJf7j02?usp=drive_link).

with the following case counts: **33 from the Bahia State Justice Court (TJBA); 68 from the Goiás State Justice Court (TJGO); 4 from the Pará State Justice Court (TJPA); 816 from the São Paulo State Justice Court (TJSP); 164 from the Paraná State Justice Court (TJPR).**<sup>24</sup>

## 2.2. How did we select the data?

With the spreadsheet in hand, it was necessary to select which decisions actually corresponded to the object of the research – that is, decisions that ruled on cases of content removal or account suspension/blocking. To that end, we processed and organized the data in spreadsheets by court, with columns identifying: a) the state; b) the type of case; c) the level of jurisdiction; d) the type of document; e) the case number; f) the link to the decision; g) the case nickname (e.g., TJEEXXX, such as TJBA001 or TJSP001); h) the research team member’s evaluation on whether to include or exclude the decision; i) justification; and j) additional notes.

The criteria for determining whether to include or exclude a decision (column “h”) in the dataset to be analyzed in depth in this project were: relevance to the research subject, functionality of the URL on the JusBrasil website, and uniqueness in relation to a single case. As such, we excluded both repeated identical decisions and distinct decisions issued within the same case – for example, both a trial court judgment and an appellate decision.<sup>25</sup>

At this stage, two researchers independently conducted the initial blind review of the decisions, evaluating relevance through a general overview of the texts.<sup>26</sup> In cases of disagreement, a third researcher resolved the tie. As a result of this process, the following decisions were selected for analysis: 0 from TJPA, 11 from TJBA, 25 from TJGO, 207 from TJSP, and 51 from TJPR.

Considering the lack of relevant decisions from the Pará State Justice Court (TJPA),<sup>27</sup> we opted to seek decisions from another court that could represent the North region in the research. As previously mentioned, based on state population size, we selected the Amazonas

---

24 JUSBRASIL. **Quem somos.** Available at: <https://sobre.jusbrasil.com.br/>. Accessed on: March 20, 2025.

25 For identical decisions, we excluded the first decision listed in the spreadsheet and kept the second; in the case of different decisions from the same legal case, the exclusion was random, without any prioritization.

26 For court rulings (*acórdãos*), the review was limited to the summary (*ementa*); for judgments and single-judge decisions (*sentenças* and *decisões monocráticas*), the review consisted of a cross-sectional reading of the full text, assessing indications of relevance.

27 Based on the findings regarding the Pará Justice Court (TJPA), we reject the hypothesis that people in Pará do not face content moderation issues, and instead identify a structural inequality in access to justice. As supporting evidence, we refer to the 2019 Index of Access to Justice for State Justice Courts, published by the National Council of Justice in 2021, in which this court had the longest decision-making time – an issue directly correlated with the low number of judges. In the same vein, but on the other end of the spectrum, among the other courts we studied, those with the highest scores on the same index were the Courts of Justice of São Paulo (TJSP) and Paraná (TJPR), for which our study found the highest number of content moderation cases. See: CONSELHO NACIONAL DE JUSTIÇA. Índice de acesso à justiça. Brasília: CNJ, 2021. Available at: [https://www.cnj.jus.br/wp-content/uploads/2021/02/Relatorio\\_Indice-de-Acesso-a-Justica\\_LIODS\\_22-2-2021.pdf](https://www.cnj.jus.br/wp-content/uploads/2021/02/Relatorio_Indice-de-Acesso-a-Justica_LIODS_22-2-2021.pdf). Accessed on: April 04, 2025.

State Justice Court – the second most populous in the region – and received an additional spreadsheet of decisions from JusBrasil for analysis. After undergoing the same evaluation process, 12 decisions were selected for analysis.

Thus, a total of **306 decisions** from five State Justice Courts were initially selected for analysis. However, as we will explain in the next section, the subsequent phase revealed the need to exclude further decisions from this initial set.

## 2.3. How did we analyze the data?

To analyze the collected data, we created a Google form with a series of analysis variables (see the complete list in Appendix I) around two axes:

- I. *general identification of the decision* – including the court, type of decision, case number, state, access link, content moderation issue identified and outcome of the action; and
- II. *analysis of the decision’s content in relation to the right to due process* – including norms mentioned, arguments related to normative gaps, explicit reference to due process, and mentions of elements associated with a right to due process in content moderation, among others.

*In the second axis, we aimed to identify judicial decisions grounded in various elements that constitute a right to due process in content moderation, based on the following criteria previously compiled in our [Toolbox: Best Practices Guide for Content Moderation Review](#):*

**Table 1 - Description of the elements of a right to due process in content moderation**

ELEMENT	DESCRIPTION AND EXAMPLES
General principles for moderation	Principles that guide the content moderation procedure. Example: platforms must uphold freedom of expression, the protection of democracy, the prohibition of unlawful or abusive discrimination, etc.
Appeals mechanisms	When the court identifies the absence of a mechanism to appeal the moderation decision or lack of opportunity for the claimant to defend themselves (including explicit references to due process rights like adversarial proceedings and the right to a defense). Example: a court ordering the creation of a system for users to file complaints about improper content takedowns and/or appeal moderation decisions made by the platform.

ELEMENT	DESCRIPTION AND EXAMPLES
Procedural deadlines	Express reference to timeframes within the moderation process (unjustified delay in responding, reinstating content/account, etc.). Example: clear and specific deadlines for the user to submit an appeal against a response by the platform.
User notification	When the user was not notified or the moderation occurred without their knowledge (whether before or after the decision). Example: platforms must notify users with adequate reasoning, including the rationale for the intervention, the specific community rules violated, the nature of the action taken, and information on criteria used in automated moderation.
Reasoned decision	When the court decision indicated that the platform did not sufficiently explain the reason for the moderation decision/ did not indicate which terms of use were violated, etc. - whether it was justified when the moderation action was taken or during the course of the process. Example: the platform must respond to requests for review of moderation decisions in an objective and reasoned manner, indicating, at least, the normative basis of the decision.
Design and accessibility of moderation-related mechanisms	When the court finds that mechanisms to challenge moderation decisions were not visible or accessible. Example: a ruling requiring the platform to provide a clearly designed, easy-to-locate contact point for users to communicate directly and access instructions.
Others	Other cases that are applicable to the idea of due process in content moderation and have not yet been categorized. Example: requirement for platforms to publish moderation decisions involving content from public authorities.

Source: IRIS' elaboration.

During the analysis phase, we identified additional duplicate and non-relevant decisions. In the second group, we found cases that – although they described disputes involving the removal of posts or suspension/blocking of social media accounts – addressed only incidental procedural matters, without examining the substantive merits.

As a result of these new exclusions, the final number of documented and analyzed cases was 191, distributed as follows: 7 from TJAM; 3 from TJBA; 19 from TJGO; 34 from TJPR; and 128 from TJSP.

## 2.4. Research limitations

This study was limited to analyzing judicial decisions from five Brazilian courts, one from each region of the country. We selected the states with the largest populations in each region (with the exception of the state of Amazonas, which has the second-largest population in the North). Therefore, we cannot claim that the sample analyzed is demographically representative. For a more accurate understanding of each region's judicial landscape, we recommend that future research include decisions from other states as well. Likewise, it would be advisable to revise the time frame to cover a longer period.

The main limitation identified concerns the use of different search terms for the São Paulo State Justice Court compared to the other courts. In an effort to avoid overrepresentation of a single court, we narrowed the search terms for TJSP, which may have resulted in some data distortion. Nonetheless, São Paulo still had the highest number of analyzed decisions (128).

Finally, in analyzing the judicial decisions, we excluded from the count of substantive legal grounds those articles of law that are procedural in nature, considering only material law provisions. A follow-up study could focus specifically on procedural aspects and their corresponding legal foundations.

## 3. Overview of the judicial decisions analyzed

This chapter provides an overview of the judicial decisions analyzed in relation to the following aspects: i) number of cases per court, ii) content moderation problem identified; and iii) result of the court decision.

### 3.1. Geographical location

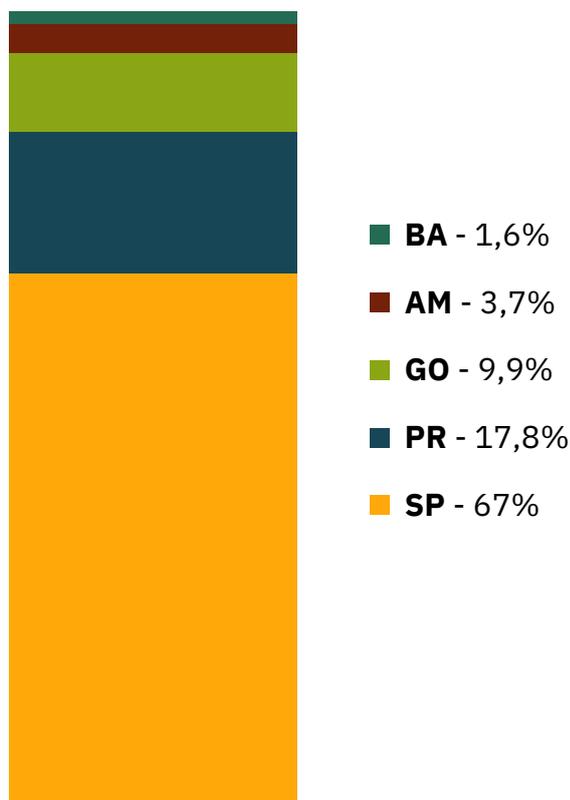
We reiterate the caveat that, despite efforts to avoid overrepresentation, the São Paulo State Justice Court ultimately accounted for a significantly larger number of analyzed decisions (128), followed at a distance by the courts of Paraná (34), Goiás (19), Amazonas (7), and Bahia (3).

The high number of lawsuits in the state of São Paulo can be explained by the following factors. First, as already mentioned, São Paulo is the Brazilian state with the largest population, with 44.41 million inhabitants, according to the 2022 census.<sup>28</sup> Therefore, it has a greater number of people able to take legal action in conflicts involving online content moderation.

---

28 INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA. **Censo 2022**. Available at: <https://www.ibge.gov.br/estatisticas/sociais/trabalho/22827-censo-demografico-2022.html>. Accessed on: March 20, 2025.

## Geographic Location of the Court of Justice (Total: 191)



Second, according to art. 46 of the Code of Civil Procedure, as a general rule, lawsuits must be filed in the defendant's place of residence. As the companies that own the platforms analyzed (Meta, X,<sup>29</sup> Google and TikTok) have headquarters in São Paulo, we can speculate the possibility that even people from other states may prefer to file lawsuits in the São Paulo State Justice Court (TJSP).<sup>30</sup> Although this research did not focus on whether such practice negatively affects access to justice, it is a relevant issue that potentially reflects a serious problem of technological development being centralized in the Southeast region – more specifically, in São Paulo.<sup>31</sup>

Related to this is the fact that we found no decision relevant to the research's subject matter in the state of Pará, which led us to replace the Pará State Justice Court (TJPA) with the Amazonas State Justice Court (TJAM) in our selection of jurisdictions. We believe the lack of results from the TJPA may be due to structural inequality in access to justice. This hypothesis is

supported by the **2019 Access to Justice Index for State Justice Courts**, published by the National Council of Justice (CNJ) in 2021, which shows that TJPA has the longest average decision time – something directly correlated with having the lowest number of judges.

29 Despite having laid off its Brazilian employees, reports indicate that X continues to have its headquarters in the city of São Paulo, in a coworking space. Learn more at: JUNQUEIRA, Caio. X Brasil mantém escritório no Brasil duas semanas após anunciar fechamento. **CNN Brasil**, Aug 29, 2024. Available at: <https://www.cnnbrasil.com.br/blogs/caio-junqueira/politica/x-brasil-mantem-escritorio-no-brasil-duas-semanas-apos-anunciar-fechamento/>. Accessed on: March 12, 2025.

30 The territorial jurisdiction for filing a civil liability lawsuit is determined, among other factors, by the location where the harm occurred (the forum of the damage) or by the domicile of the defendant legal entity, in accordance with Article 53, clauses III (a) and IV, of the Code of Civil Procedure. The most common and prioritized criterion is the place where the damage occurred, but if the repercussions extend to multiple locations, the plaintiff may choose any of them. On this matter, General Repercussion Topic No. 208 is still pending resolution by the Federal Supreme Court. Its leading case is RE 601220, an *extraordinary appeal discussing, in light of Article 220, §1 of the Federal Constitution, which forum has jurisdiction to hear a lawsuit seeking compensation for damages caused by criticism published on the internet*. See: BRASIL. Supremo Tribunal Federal. *Tema 208 – Jurisdiction to process and judge a lawsuit for damages caused by criticism published on the internet*. Rapporteur: Justice Nunes Marques. Leading Case: RE 601220. Available at: <https://portal.stf.jus.br/jurisprudenciaRepercussao/verAndamentoProcesso.asp?incidente=2688127&numeroProcesso=601220&classeProcesso=RE&numeroTema=208>. Accessed on: April 18, 2025.

31 FONSECA, Mariana. Mesmo na pandemia, empresas de tecnologia ocupam mais espaço em SP; veja regiões mais procuradas. **InfoMoney**, 21 Jun 2021. Available at: <https://www.infomoney.com.br/mercados/mesmo-na-pandemia-empresas-de-tecnologia-ocupam-mais-espaco-em-sp-veja-regioes-mais-procuradas/>. Accessed on: March 12, 2025.

This hypothesis seems more plausible than assuming that people in Pará do not face problems related to content moderation on social media. In the same vein, on the other side of the spectrum, among the other courts we analyzed, those with the highest scores on the CNJ's Access to Justice Index<sup>32</sup> – namely TJSP and TJPR – were the same ones in which our study found the highest number of content moderation cases. Future studies may seek to better understand this aspect.

## 3.2. Outcome of Judicial Decisions

We highlight that, of the 191 cases analyzed in depth in this research, **84.8% of the decisions ruled in favor of the request to restore an account or content**, whether in trial judgments, single-judge decisions, or appellate rulings. However, this does not necessarily imply recognition of an illegitimate restriction by the platforms on legitimate content, but rather a failure in how the moderation process was conducted.

In fact, **92.7% of all 191 decisions identified a failure on the part of the platform to demonstrate some element of due process in the moderation action** (a point that will be further explored in Section 3.3). Thus, it is possible to infer that, had these elements been observed, the moderation measure could potentially have been upheld by the judiciary – or might not have been challenged in court at all.

For instance, **83.76% of the decisions concluded that the platform had not adequately justified the moderation measure** (either in the administrative phase or before the court), which made it impossible to determine whether the removal of content or suspension of the account was appropriate. Therefore, following due process guidelines in content moderation may be a favorable approach for platforms, as it could result in **less civil liability**, due to the adoption of a procedure considered legitimate.

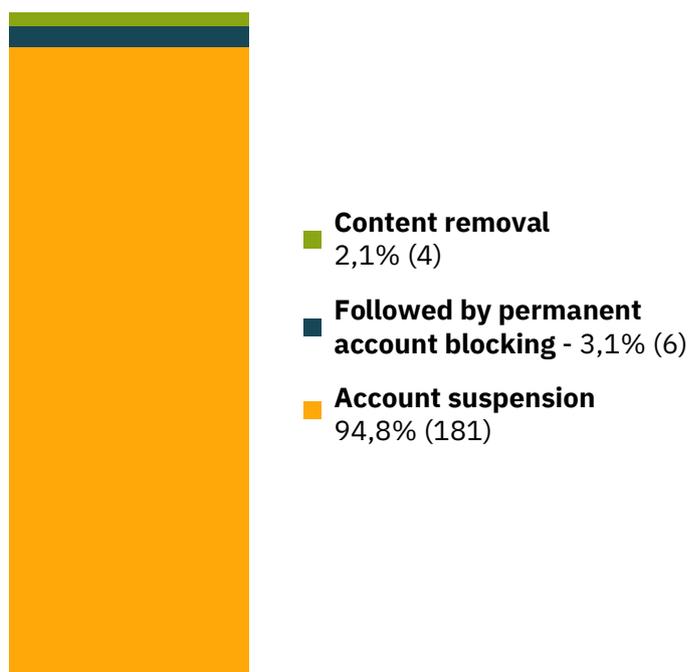
---

32 NATIONAL COUNCIL OF JUSTICE. Índice de acesso à justiça. Brasília: **CNJ**, 2021. Available at: [https://www.cnj.jus.br/wp-content/uploads/2021/02/Relatorio\\_Indice-de-Acesso-a-Justica\\_LIODS\\_22-2-2021.pdf](https://www.cnj.jus.br/wp-content/uploads/2021/02/Relatorio_Indice-de-Acesso-a-Justica_LIODS_22-2-2021.pdf). Accessed on: April 04, 2025.

### 3.3. Type of moderation measures

Regarding the types of moderation measures challenged in court, nearly all of the 191 decisions referred to cases of **account suspension** (94.8%), followed by **permanent account blocking** (3.1%) and **content removal** (2.1%). In other words, the judiciary was much more frequently mobilized in cases where individuals had their access to social media profiles affected by a moderation measure – which significantly impacts their participation in digital spaces – than in cases of content removal, which generally involve more specific issues related to individual posts.

Content moderation issue under discussion (total 191)



#### 3.3.1. Account suspension

As a possible hypothesis for the higher number of judicial actions related to account suspension cases, we consider a potential connection to the increasing use of social media as a work tool. We found that **80.1% of the 181 account suspension cases involved profiles used for professional purposes**, not only by content creators,<sup>33</sup> but also by pages belonging to educational institutions,<sup>34</sup> national franchises,<sup>35</sup> service providers,<sup>36</sup> sellers,<sup>37</sup> and others. In such cases, suspensions and blocks are especially harmful, as users suddenly lose access to a primary channel of work communication and income generation.

In this sense, some court decisions<sup>38</sup> emphasized that less severe measures could have been taken instead of a full account suspension, such as removing the specific post or content that allegedly triggered the moderation action. In one decision, the court stated that choosing the most extreme measure represented an “arbitrary restriction of the plaintiff’s right to use their social media account, which violates the rights guaranteed to internet users under Articles 7, clauses XI and XII, and 8 of Law No. 12.965/14.”<sup>39</sup> These provisions of Brazil’s **Marco Civil da**

33 See TJAM025 and TJGO001.

34 See TJGO004.

35 See TJSP233 e TJSP457.

36 See TJSP307.

37 See TJPR022 and TJBA019

38 See TJSP106, TJSP069 e TJSP194.

39 See TJSP106.

**Internet (Internet Bill of Rights)** affirm internet access as an essential means for exercising citizenship, guaranteeing users the rights to “transparency and clarity regarding the terms of use of internet service and application providers,” and to “accessibility, considering users’ physical, sensory, perceptual, intellectual, and mental characteristics, as provided by law.”<sup>40</sup>

Grounding the decision in the Marco Civil reinforces the need for platforms to provide more robust due process mechanisms in content moderation actions. This includes establishing **objective criteria** for different types of sanctions, applying **proportional responses** based on the seriousness of the content involved, and ensuring the **horizontal effectiveness** of fundamental rights such as the **right to adversarial proceedings and ample defense** for users. The example in the table below, originally developed by Eric Goldman<sup>41</sup> in the context of copyright law, shows that it is indeed possible to think in terms of a **taxonomy of remedies** applicable to the broader universe of content moderation cases.

---

40 BRAZIL. Law No. 12,965, of April 23, 2014. Establishes principles, guarantees, rights and duties for the use of the Internet in Brazil. Available at: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2014/lei/l12965.htm](https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm). Accessed on: March 15, 2025.

41 GOLDMAN, Eric. Content Moderation Remedies. **Michigan Technology Law Review**, v. 28, n. 1, autumn 2021, pp. 1-60. Free translation.

Table 2 - Adapted and freely translated version of a suggested taxonomy of remedies in content moderation cases, developed by Eric Goldman.

CONTENT REGULATION	ACCOUNT REGULATION	VISIBILITY REDUCTIONS	MONETIZATION	OTHER
Content Removal	Close account	Shadowban (reducing account reach without notification)	Loss of accumulated earnings	Educate users
Content suspension	Suspend the account	Remove from external search index	Prevent future earnings (demonetization)	Notices of strike(warnings)
Content relocation	Suspend posting rights	Add attribute <i>Nofollow</i> in user links (instructs search engines not to follow the link)	Suspend future earnings	Reveal the identity of pseudonymous users
Content editing/writing	Remove account credibility seals	Remove from internal search index	Fine for violations	Report to the Judiciary
Temporary notice	Reduce functionality (service levels)	Reduce visibility in internal search		Sharing a user's violations with other platforms
Harmful content warning caption	<i>Shaming</i> (publicly alerting a user about bad behavior)	Prevent profile auto-suggestion in internal search engine		Provision of services to the community
Add counter position		Reduce or remove internal promotion		Restorative justice (an apology from the offending user to other community members)
Disable comments		Reduce or remove navigation links		
		Reduce viralization		
		Limit minors' access to content or account		
		Show content only to logged in users		

Fonte: Eric Goldman.

It is worth noting that account suspension – which almost entirely restricts a user’s participation on a platform – could be preceded by a range of less harmful measures. Celeste also points out that suspending access to social media constitutes a new form of digital exclusion, distinct from situations where individuals have no internet access or only precarious access.<sup>42</sup> As similarly expressed in a UN Special Rapporteur’s report on the promotion and protection of the right to freedom of opinion and expression,<sup>43</sup> Edoardo argues that access to social media is more than just a means of communication: it serves as a vehicle for exercising other fundamental rights, such as freedom of expression and information, economic and religious freedom, among others, to a greater extent than would be possible without such access.<sup>44</sup>

In his analysis of German court cases on the subject, Celeste also found that traditional constitutional guarantees were being applied to the context of social media.<sup>45</sup> Indeed, although these are private spaces, courts – whether in Brazil or elsewhere – when called upon to resolve cases of content moderation, especially involving user suspensions and bans, may apply constitutional concepts in their rulings. This, in turn, encourages social media platforms to take such standards into account when setting and enforcing their community guidelines.

### 3.3.2. Permanent account blocking

We identify as cases of **permanent account blocking (3.1%)** as those in which the platform claimed it was impossible to reinstate the profile due to its definitive removal. Out of 6 cases,<sup>46</sup> only one decision upheld the user’s request and immediately converted the obligation to reinstate the account into compensation for damages. In the remaining cases, the courts ordered the reinstatement of the account, on the grounds that the platform had not proven the impossibility of complying with the measure – while noting that conversion into damages could be applied, if necessary, during the sentence enforcement phase. Consider the following excerpt:

*The claim of impossibility to fulfill the obligation of reactivating the accounts was not mentioned in the defense, especially since the defendant only became aware of the injunction granted in the aforementioned appeal after submitting its response.*

---

42 CELESTE, Edoardo. Digital punishment: social media exclusion and the constitutionalising role of national courts. **International Review of Law, Computers & Technology**, v. 35, n. 2, 2021, pp. 162-184. Available at: <https://www.tandfonline.com/doi/epdf/10.1080/13600869.2021.1885106?needAccess=true>. Accessed on: March 16, 2025.

43 KAYE, DAVID. **Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**. A/HRC/38/35. Available at: <https://docs.un.org/en/A/HRC/38/35>. Accessed on: April 22, 2025.

44 CELESTE, Edoardo. Digital punishment: social media exclusion and the constitutionalising role of national courts. **International Review of Law, Computers & Technology**, v. 35, n. 2, 2021, pp. 162-184. Available at: <https://www.tandfonline.com/doi/epdf/10.1080/13600869.2021.1885106?needAccess=true>. Accessed on: March 16, 2025.

45 Ibid

46 TJAM026, TJPR004, TJSP007, TJSP057, TJSP330, TJSP657.

(...) Moreover, **no document was presented to support the alleged impossibility of fulfilling the obligation.** Therefore, it is not possible to confirm, with the certainty required by law, the claimed technical impossibility of reactivating the accounts – **a proof that may eventually be provided during the enforcement of the judgment.**<sup>47</sup>

Finally, only in one decision involving permanent blocking was the user’s request denied, with the platform’s action deemed appropriate and no order for reinstatement of the account issued.

### 3.3.3. Content Removal

Finally, the **content removal (2.1%)** was the reason that least led users turned to the judiciary. One reason could be that filing a lawsuit for one or a few removed posts does not seem advantageous, only cases with greater impact on the user’s rights may have reached the courts. One case exemplifies this hypothesis:

*“[The plaintiff] claims to make posts related to their personal life as a member of the **LGBTQUIA+ community, but several posts were removed on the grounds of ‘Adult sexual propositions,’ ‘Nudity,’ ‘Nudity or sexual activity,’ and ‘Not eligible to use branded content tools,’ all of which were misinterpreted by the platform. The plaintiff asserts that they have never violated the platform’s rules, thus characterizing the defendant’s conduct as unlawful.**” (emphasis added)*<sup>48</sup>

According to the ruling, the plaintiff emphasized being part of a minority group, sharing personal posts that were allegedly misinterpreted by the platform. The lawsuit was filed because the removals directly impacted the expression of their identity. In this regard, prior research has shown, for instance, that transgender and Black individuals are more likely to have content wrongfully removed when expressing their lived experiences.<sup>49</sup> Although the above decision does not make clear the gender identity or sexual orientation of the party, the merits of the action indicate that it is very likely that they were victims of this type of prejudice.

The inaccuracy of automated content moderation, especially in so-called “gray areas,” is a recurring issue for vulnerable groups. Poor calibration leads both to the persistence of offensive content – such as hate speech or derogatory remarks against Black people, LGBTQIAPN+ individuals, women, and other marginalized groups – and to the arbitrary removal of lawful content created by these same communities. This undermines their freedom of expression, especially when sharing aspects of their realities or reporting violence.<sup>50</sup>

---

47 TJSP007.

48 See TJSP008.

49 HAIMSON, Oliver et al. Disproportionate Removals and Differing Content Moderation Experiences for Conservative, Transgender, and Black Social Media Users: Marginalization and Moderation Gray Areas. **Proceedings of the ACM on Human-Computer Interaction**, v. 5, n. 466pp 1–35, Oct./ 2021. Available at: <https://dl.acm.org/doi/10.1145/3479610>. Accessed on: June 16, 2024.

50 See more at: MENDONÇA, Yasmin Curzi de. Violência de gênero online: tecno-silenciamentos e

## 4. “It’s the report. I decide”: the application of the right to due process in cases of content removal, suspension or blocking of accounts

The due process in content moderation reflects a constitutionalization of the digital environment,<sup>51</sup> focusing on the protection of fundamental human rights, such as access to justice, adversarial proceedings and broad defense. In other words, it emerges in the debate on whether and how digital platforms – even those belonging to private actors – should be required to adopt transparent mechanisms and grounded justifications for their content moderation measures, in order to ensure greater legitimacy and generate users’ trust.

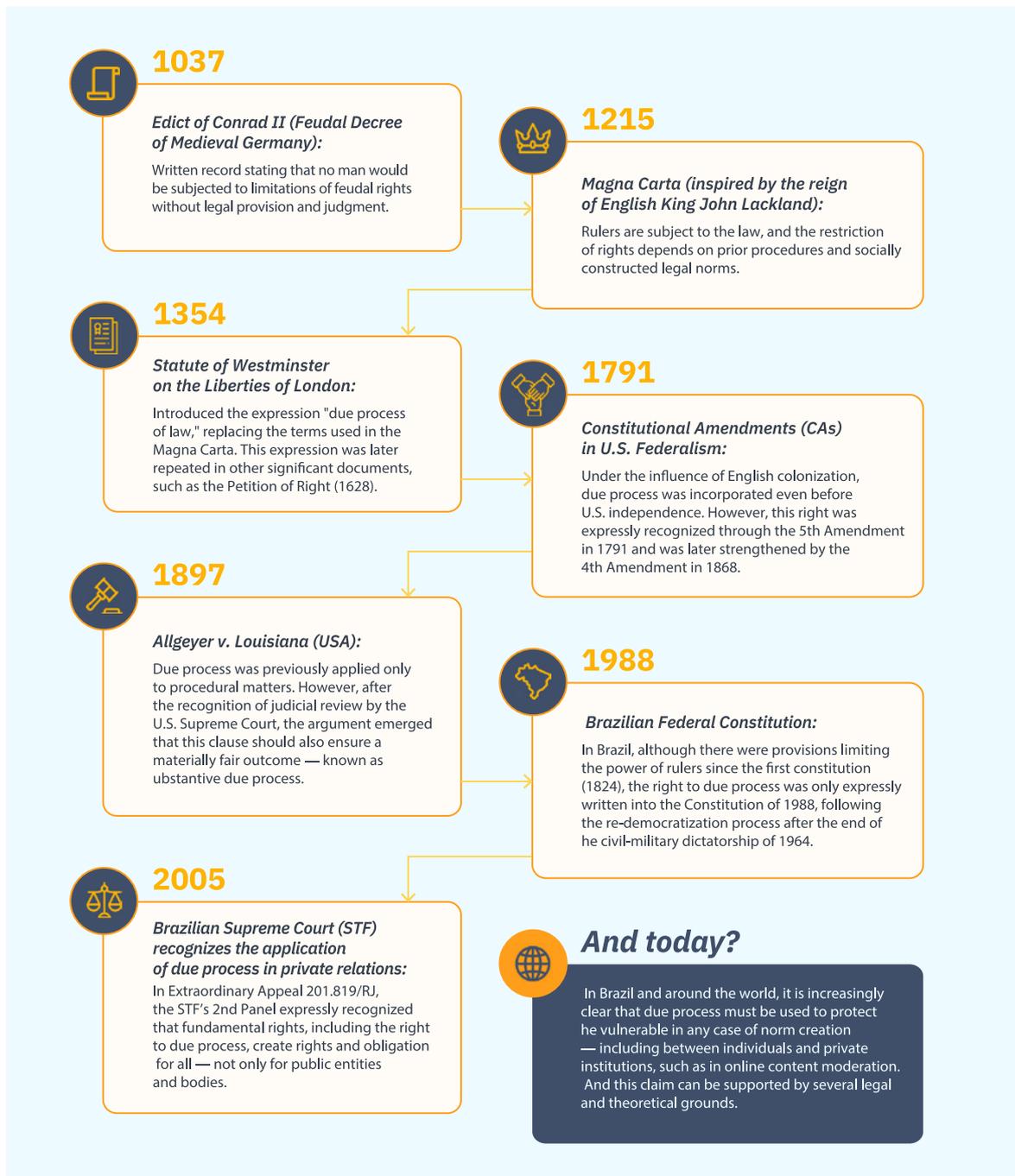
Historically, the right to due process of law has roots that trace back to the 10th century, with particular emphasis on its establishment in the English Magna Carta of 1215. However, its principles began to develop earlier within European legal traditions, including Germanic law.

---

resistências nas redes sociais no Brasil (2010-2022). Tese (Doutorado em Sociologia) – Instituto de Estudos Sociais e Políticos, Universidade do Estado do Rio de Janeiro, Rio de Janeiro, 2023. Available at: <http://www.bdt.d.uerj.br/handle/1/22956>. Accessed on: April 25, 2025; OLIVA, Thiago Dias; ANTONIALLI, Dennys Marcelo; GOMES, Alessandra. Fighting hate speech, silencing drag queens? artificial intelligence in content moderation and risks to LGBTQ voices online. **Sexuality & Culture**, No. 25, Nov. 6, 2021 Pp. 700-732. Available at: [https://www.researchgate.net/publication/379661783\\_Fighting\\_Hate\\_Speech\\_Silencing\\_Drag\\_Queens\\_Artificial\\_Intelligence\\_in\\_Content\\_Moderation\\_and\\_Risks\\_to\\_LGBTQ\\_Voices\\_Online](https://www.researchgate.net/publication/379661783_Fighting_Hate_Speech_Silencing_Drag_Queens_Artificial_Intelligence_in_Content_Moderation_and_Risks_to_LGBTQ_Voices_Online). Accessed on: April 25, 2025.

51 CELESTE, Edoardo; SANTARÉM, Paulo Rená da Silva. Constitucionalismo digital: mapeando a resposta constitucional aos desafios da tecnologia digital. **Revista Brasileira de Direitos Fundamentais & Justiça**, v. 15, n. 45, 2021. Available at: <https://dfj.emnuvens.com.br/dfj/article/view/1219>. Accessed on: March 21, 2025.

## Image 1 - Due Process Timeline



Source: Silva et al.<sup>52</sup>

It was created to protect aristocratic groups against potential abuses by monarchs. In the modern state, this right was further developed, alongside checks and balances mechanisms, to provide broader protection for individuals against the potential concentration of power and arbitrary influence of institutions over private actors. With the sophistication of democratic institutions in the 20th century, this right expanded to also protect individuals against potential

52 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; DUTRA, Luiza Correa de Magalhães; SILVA, Rafaela Ferreira Gonçalves da. **Guia informativo: Devido Processo na regulação da moderação de conteúdo ao redor do mundo.** Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2023. Available at: <https://bit.ly/3smC0i0>. Accessed on: March 16, 2025.

abuses by other private actors – a phenomenon also known as “horizontal effectiveness of fundamental rights.”<sup>53</sup> Thus, as in other constitutional democracies, Brazil understands that the application of fundamental rights do not only apply to the State vs. citizen, but also encompasses relations between private parties,<sup>54</sup> such as digital platforms and users. This protection has become crucial with the rise of social networks as relevant spaces for the exercise of fundamental rights and as powerful tools that impact the Democratic Rule of Law.<sup>55</sup>

In this context, we understand **the right to due process as applied to content moderation to consist of a set of procedures and mechanisms intended to legitimize the management of third-party content made available (or not) by digital platforms, as well as how such content is displayed.**<sup>56</sup> Therefore, despite legal variations across countries and ongoing debates about its definition and effectiveness, we consider due process in online content moderation essential for protecting users in a digital environment marked by significant power asymmetry – representing an evolutionary advancement in the protection of human rights in the information society

This chapter of the report, then, analyzes the references to due process in the judicial decisions we selected. We will explore which legal norms are used as grounds; whether due process is expressly considered necessary; and which of its elements are highlighted in the decisions, always presenting our reflections for each point of analysis.

## 4.1. What legal standards/norms are used to support decisions?

We assessed the legal reasoning adopted in the 191 court decisions regarding the conduct of social networks in removing content and suspending or blocking accounts. We sought to list references to articles of laws currently in force within the Brazilian legal system, as well as general mentions without citing any specific articles.

### 4.1.1. The universe of legal norms and provisions considered

---

53 SARLET, Ingo Wolfgang. Direitos fundamentais e direito privado: algumas considerações em torno da vinculação dos particulares aos direitos fundamentais. *Boletim Científico da Escola Superior do Ministério Público da União*, ano 4, n. 16, pp. 193-259, jul./set. 2005. Available at: <https://escola.mpu.mp.br/publicacoespesquisas/periodicos/boletim-cientifico/edicoes-do-boletim/boletim-cientifico-n-16-julho-setembro-de-2005/direitos-fundamentais-e-direito-privado-algumas-consideracoes-em-torno-da-vinculacao-dos-particulares-aos-direitos-fundamentais>. Accessed on: Mar. 16, 2025.

54 Ibidem

55 EMPOLI, Giuliano. **Os engenheiros do caos**: Como as fake news, as teorias da conspiração e os algoritmos estão sendo utilizados para disseminar ódio, medo e influenciar eleições. Belo Horizonte: Vestígio, 2019.

56 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Julia Maria Caldeira; SILVA, Rafaela Ferreira Gonçalves da. **Regulação de plataformas e devido processo na moderação de conteúdo**: perspectivas em 5 continentes. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://irisbh.com.br/wp-content/uploads/2024/04/Regulacao-de-plataformas-e-devido-processo-na-moderacao-de-conteudo-perspectivas-em-5-continentes.pdf>. Accessed on: March 16, 2025.

Our count did not include procedural provisions (which address aspects such as the adequacy of the initial petition, suitability of the chosen legal avenue, direction of the proceedings by the judge, granting of urgent relief, admissibility of appeals, and burden of proof allocation); nor did it include substantive provisions cited in the analysis of claims for moral or material damages; nor references to case law.

We considered the following set of legal provisions cited in the decisions on online content moderation that we analyzed:

**Table 3 - List of legal norms and provisions cited in the decisions analyzed**

LEGAL NORM	PROVISIONS CITED
Federal Constitution	General reference and citation of Articles 5 (clauses IV, IX, X, LV, LXXIX) and Article 220
Brazilian Internet Civil Rights Framework (Law No. 12,965/2014)	General reference and citation of Articles 3, 7, 8, 9, 11, 13, 15, 16, 18, 19, 20, 21, and 22
Consumer Defense Code (Lei nº 8,078/1990)	General reference and citation of Articles 2, 3, 4, 6, 7, 14, 18, 20, 27, 28, 39, 47, 51 and 54
Civil Code (Law No. 10,406/2002)	Citation of Articles 186, 187, 188, 421, 422, 423, 474, 475 and 927
General Law on Personal Data Protection (Law No. 13,709/2018)	Citation of Article 20
Penal Code	Generic reference
Federal Law No. 9,099/1995 (Special Civil and Criminal Courts)	Citation of Articles 5 and 6
Federal Law No. 13,756/2018 (regarding sports betting)	Generic reference
American Convention on Human Rights, or Pact of San José, Costa Rica (Decree No. 678/1992)	Citation of Article 8
ANATEL Regulation 632/2014 (General Regulation on Consumer Rights for Telecommunications Services – RGC)	Citation of Articles 3 and 17

Source: own elaboration

## 4.1.2. Decisions without express legal basis

Of the 191 decisions in our total sample, 137 (71.7%)<sup>57</sup> cited some legal provision, while 54 decisions (28.3%)<sup>58</sup> made no reference to any legal norm as the basis for resolving the merits of the dispute involving online content moderation.

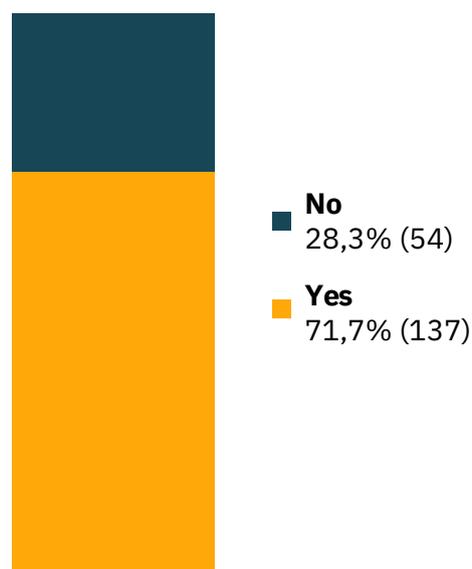
Among the decisions that did not cite any legal provision in their reasoning when ruling on the specific merits of the content moderation dispute, the following excerpt is illustrative:

*“The case must be judged as it stands, since, once the parties were given the opportunity to comment on the possibility of further evidence, both opted to request an early judgment of the case.*

*And once the above premise is established, there can be no other outcome than the partial granting of the claims made in the initial petition, in this case, solely with respect to the obligation to act.*

*Indeed, as stated in the decision that granted the request for preliminary relief, the defendant, upon suspending the plaintiff’s accounts on the social network, merely provided the laconic explanation that the account or its activities did not comply with community standards, without deigning to show, after all, which behaviors triggered the suspension.*

The decision refers to a legal provision (total 191)



57 TJAM013, TJAM016, TJAM023, TJAM031, TJAM035, TJBA006, TJBA024, TJBA028, TJGO001, TJGO002, TJGO004, TJGO013, TJGO017, TJGO041, TJGO044, TJGO047, TJGO051, TJGO054, TJGO055, TJPR004, TJPR011, TJPR012, TJPR014, TJPR022, TJPR024, TJPR025, TJPR051, TJPR074, TJPR088, TJPR096, TJPR097, TJPR100, TJPR105, TJPR107, TJPR113, TJPR117, TJPR118, TJPR124, TJPR125, TJPR128, TJPR131, TJPR135, TJPR144, TJPR145, TJPR146, TJPR157, TSJP001, TJSP007, TJSP008, TJSP009, TJSP011, TJSP014, TJSP022, TJSP033, TJSP045, TJSP059, TJSP060, TJSP081, TJSP087, TJSP088, TJSP099, TJSP103, TJSP106, TJSP109, TJSP110, TJSP111, TJSP119, TJSP121, TJSP123, TJSP124, TJSP126, TJSP130, TJSP133, TJSP137, TJSP138, TJSP139, TJSP144, TJSP155, TJSP157, TJSP159, TJSP160, TJSP165, TJSP168, TJSP169, TJSP177, TJSP194, TJSP198, TJSP205, TJSP208, TJSP209, TJSP213, TJSP216, TJSP223, TJSP230, TJSP233, TJSP236, TJSP239, TJSP242, TJSP243, TJSP246, TJSP264, TJSP275, TJSP289, TJSP307, TJSP311, TJSP315, TJSP329, TJSP330, TJSP357, TJSP369, TJSP383, TJSP393, TJSP398, TJSP399, TJSP402, TJSP444, TJSP457, TJSP504, TJSP536, TJSP556, TJSP583, TJSP595, TJSP602, TJSP614, TJSP624, TJSP627, TJSP657, TJSP679, TJSP695, TJSP716, TJSP722, TJSP740, TJSP748, TJSP752, TJSP770, TJSP799, TJSP816.

58 TJAM025, TJAM026, TJGO042, TJGO048, TJGO049, TJGO056, TJGO057, TJGO062, TJGO063, TJGO066, TJPR104, TJPR108, TJPR110, TJPR133, TJPR151, TJPR153, TJPR164, TJSP023, TJSP042, TJSP043, TJSP057, TJSP069, TJSP142, TJSP226, TJSP238, TJSP254, TJSP257, TJSP277, TJSP293, TJSP349, TJSP381, TJSP386, TJSP416, TJSP417, TJSP432, TJSP433, TJSP459, TJSP489, TJSP500, TJSP505, TJSP515, TJSP568, TJSP581, TJSP601, TJSP668, TJSP677, TJSP686, TJSP733, TJSP793, TJSP796, TJSP807, TJSP813, TJSP814, TJSP815.

*The defense presented, similarly, made merely generic remarks about the alleged violation of the social network's terms of use, without specifying what conduct by the plaintiff might have justified the suspension of the accounts.*

*Thus, it must be concluded that the defendant's conduct, in suspending the accounts, was indeed arbitrary, thereby justifying the filing of this claim (hence the defendant's liability for the legal costs in this matter)”<sup>59</sup>*

This is not a decision lacking logic or coherence, but it is notable that no legal provision is cited as the basis for the judgment.<sup>60</sup> There are mentions of legal provisions regarding jurisdiction, burden of proof, and other procedural matters, but not concerning the core issue. Perhaps the absence of a specific law on the matter in question explains the choice to construct a legal solution solely based on legal reasoning, without reference to any current statutory text.

However, it is worth highlighting that only one judicial decision expressed the absence of a specific legal framework addressing the limits of content moderation by social networks:

*“Without a law governing this issue – which today holds a relevant place in society – the diffuse search for decisions that regulate each case represents an attempt to interfere in private sector business freedom and contractual liberty, something not provided for in the Codes with the necessary robustness to securely and indefinitely ensure the plaintiff's presence in the defendant's digital environment.”<sup>61</sup>*

Even in this single case, we identified a certain contradiction in the decision, which, in an earlier section, cites existing legal rules applicable to consumer relations to affirm an ‘absolute right’ of companies to terminate a legal relationship without justification, yet ultimately concludes that the abrupt removal of content violated consumer protection norms, which it considered applicable based on clause XIII of article 7 of the Brazilian Civil Rights Framework for the Internet (Marco Civil da Internet).

Thus, 190 rulings, single-judge decisions, and appellate judgments (99.47%) did not assert the absence of legal norms regulating online content moderation, meaning that the existence of a normative vacuum on the contested issue is not a defining feature of the decisions. As a possible explanation, the first factor that emerges is the prohibition of the legal concept of *non liquet*, as established in article 140 of the Brazilian Code of Civil Procedure (Law No. 13.105/2015), which states that a judge cannot refuse to decide a case on the grounds of a gap or ambiguity in the legal system.

---

59 TJPR153.

60 Ivar Hartmann reached a similar conclusion regarding the weakness of Brazil's Supreme Federal Court precedents, including the lack of due justification, which would allow, for example, extrapolating the decision to other rules on the same subject. See HARTMANN, Ivar. Crise dos precedentes no Supremo: o caso dos precedentes sobre liberdade de expressão. **REI - Revista Estudos Institucionais**, [S. l.], v. 6, n° 1, p. 109–128, 2020. Available at: <https://www.estudosinstitucionais.com/REI/article/view/462>. Accessed on: May 5, 2025.

61 TJGO044.

Furthermore, we can speculate that stating the lack of a specific rule for the matter would not strengthen the decision-making basis, and could be pointed out as a vulnerability in a possible appeal by the losing party.

Another hypothesis, of a cognitive nature, is that judges may not know the topic well enough and may fall into a Dunning-Kruger effect:<sup>62</sup> a combination of ignorance and overconfidence that prevents recognition of the limits of one's own knowledge. A consistent grasp of the topic would be required to support the conviction that there is no specific legal rule, to the extent that such a claim could justify resolving the case through legal hermeneutics – by analogy, custom, or general principles of law – in line with article 4 of the Law of Introduction to the Rules of Brazilian Law (Decree-Law No. 4.657/1942)

### 4.1.3. The Most Frequently Cited Legal Norms

Adding up specific articles and general references, we found that the four most frequently cited laws were: the Consumer Protection Code (Law No. 8.078/1990), in 83 decisions (43.45%); the Civil Rights Framework for the Internet – *Marco Civil da Internet* (Law No. 12.965/2014), in 78 decisions (40.83%); the Federal Constitution, in 29 decisions (15.18%); and the Civil Code (Law No. 10.406/2002), in 18 decisions (9.42%).

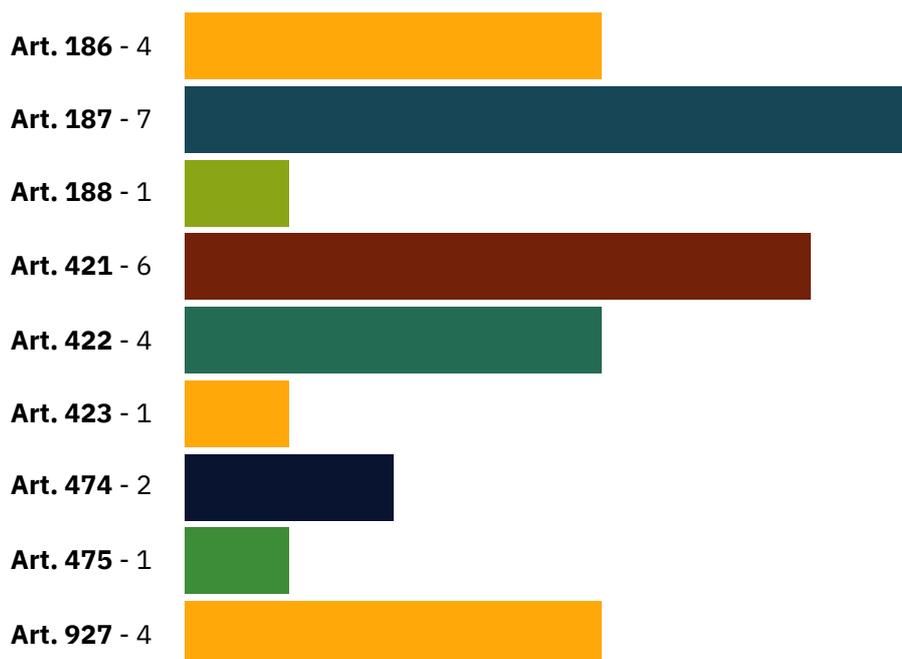
Given the lack of specific legal provisions on the matter, the normative content of these laws gains relevance in relation to online content moderation, which may make this outcome seem obvious: the matter involves consumer relations over the internet and engages constitutional guarantees and civil rights. However, we reiterate that 28.3% of the decisions (almost a third) did not cite any legal norm, and among those that did, there was significant variation in the provisions referenced.

Among the 18 references to the **Civil Code**, the articles cited concern the definition of unlawful acts, the social function of contracts, and the requirement of good faith in contractual relations: 7 times Article 187; 6 times Article 421; 4 times Article 186, Article 422 and Article 927; 2 times Article 474; and 1 time Articles 188, 423, 475.

---

62 GALVÃO, Julia. O que é o efeito Dunning-Kruger?. **Jornal da USP no AR**, 1ª edition. 14 jun. 2023. Available at: <https://jornal.usp.br/?p=647791>. Accessed on March 7, 2025.

## References to specific articles of the Civil Code (18 decisions)



Of the 29 decisions that mentioned the **Federal Constitution**, 23 decisions<sup>63</sup> cited only Article 5 (main list of individual human rights in the Brazilian legal system); 3 decisions<sup>64</sup> cited Article 5 and Article 220 (which stipulates rules on the constitutional guarantee of freedom of expression); and 3 decisions<sup>65</sup> only made generic mention, without citing any device.

## Mentions of specific articles of the 1988 Federal Constitution (29 decisions)



Specifically regarding Article 5, we noted a predominance of references to clause LV (19 decisions), which addresses the right to adversarial proceedings and full defense. Other references were to clause IV (1), concerning freedom of thought and expression; IX (6), on freedom of expression and communication; X (6), on personality rights; and LXXIX (1), on the protection of personal data. This point will be further explored below, when we discuss the right to appeal moderation measures as an element of due process.

Among the 78 decisions that cited the **Brazilian Civil Rights Framework for the Internet (Marco Civil da Internet)**, Article 19 stands out with 41 mentions, which regulates the civil

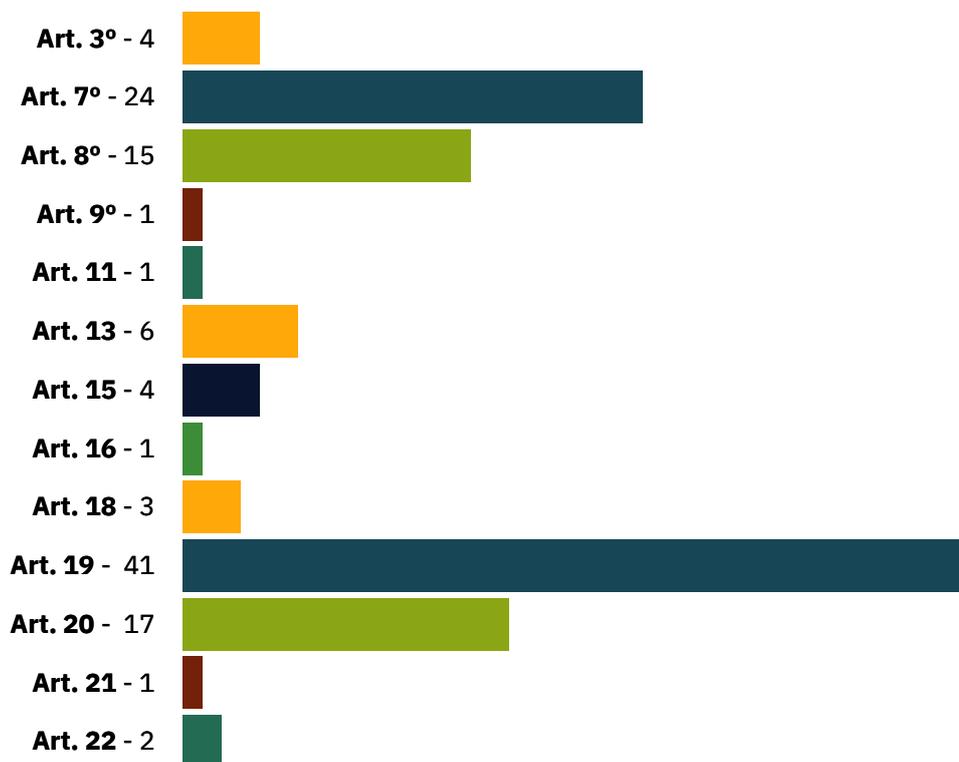
63 TJSP307, TJSP329, TJSP398, TJSP099, TJSP457, TJPR131, TJSP716, TJBA024, TJSP246, TJSP369, TJAM016, TJPR074, TJSP121, TJSP124, TJSP103, TJSP109, TJSP111, TJSP123, TJSP198, TJSP205, TJSP110, TJSP133, e TJSP679.

64 TJGO047, TJSP059, e TJSP060.

65 TJPR117, TJPR128, e TJSP216.

liability of application providers for damages resulting from third-party content; Article 7, cited 24 times, which lists users' rights; Article 20, with 17 citations, which establishes the platform's duty to inform users about the reason for content moderation; and Article 8, cited 15 times, which links the full exercise of the right to internet access to the guarantee of privacy and freedom of expression.

### Mentions of specific articles of the Brazilian Civil Rights Framework for the Internet (Marco Civil da Internet) (78 decisions)



The prevalence of references to Article 19 of the Marco Civil da Internet (MCI) was expected, considering that this provision is the one most closely related to a specific rule on online content moderation in the Brazilian legal framework. However, it was surprising to find that among the 41 decisions that cited it,<sup>66</sup> there was a group of **11 decisions (26.83%) in which Article 19 of the MCI was applied incorrectly**. In these cases, judges adopted the mistaken interpretation that, according to this law, application providers could only moderate content after a court ruling had been issued:

*“In addition, the arbitrary exclusion of the profile implies a violation of the provisions of art. 19 of the Internet Civil Rights Framework, according to which a platform can only make third-party content unavailable after a specific court order, in order to ensure freedom of expression and prevent censorship.”<sup>67</sup>*

66 TJAM016, TJPR011, TJPR014, TJPR051, TJPR145, TSJP001, TJSP014, TJSP081, TJSP087, TJSP103, TJSP106, TJSP109, TJSP110, TJSP111, TJSP119, TJSP121, TJSP123, TJSP124, TJSP126, TJSP133, TJSP138, TJSP139, TJSP144, TJSP155, TJSP159, TJSP160, TJSP165, TJSP168, TJSP169, TJSP177, TJSP194, TJSP198, TJSP205, TJSP208, TJSP209, TJSP223, TJSP239, TJSP242, TJSP289, TJSP311, TJSP627.

67 The cases TJSP081, TJSP138, TJSP139, TJSP144, TJSP155, TJSP159, TJSP160, TJSP169, TJSP177, and TJSP209 adopt exactly the same text.

*“Consequently, it is concluded that the defendant failed to comply with the provisions of the Internet Civil Rights Framework (articles 19 and 20), since, in addition to suspending the account without an order from the Judiciary, it failed to inform the user of the reasons for the penalty”.*<sup>68</sup>

Article 19 of the Marco Civil da Internet (MCI), contrary to the reasoning mentioned above, provides that internet application providers, such as social networks, **may only be held civilly liable for damages resulting from third-party content if, after receiving a specific court order, they fail to take action to make the infringing content unavailable.** In this sense, the provision does not prevent content moderation from being carried out in the absence of a judicial decision.<sup>69</sup> And, even if it could be interpreted by analogy, using it as a legal basis to hold social networks accountable would only be appropriate in the specific situation – reiterating – where there is a failure to comply with a prior court order requiring the removal of content that violates rights.

Given the significant number of judicial decisions based on a misinterpretation, it is **important to highlight that Article 19 of the Marco Civil da Internet (MCI) does not impose a categorical obligation, nor does it establish a complete prohibition on digital platforms moderating content.** Instead, it leaves open a “lawful space for companies to autonomously decide on content removal through internal rules and terms of use.”<sup>70</sup> Thus, within this scope of freedom – and based on instruments such as the Consumer Protection Code or the Civil Code, for instance – individuals can seek compensation in court for damages resulting from a platform’s breach of its own terms of service. Article 19 of the MCI, by requiring a court order, merely sets a boundary for indirect liability for damages caused by third parties; in the case of social networks, this refers to content published by their users. In any case, it does not prevent the platform from moderating content based on any legitimate reason.

The 83 decisions that cited the **Consumer Protection Code (CDC)** placed it at the top of the list of legal norms most frequently used as the basis for judicial rulings. Among the CDC’s provisions, there were 29 references to Article 6, which defines consumer rights; 25 to Article 14, which establishes the strict liability of service providers for damages caused to consumers; 17 to Article 3, which defines the concept of supplier; and 13 to Article 2, which defines the concept of consumer. Additionally, there were 25 general mentions of the CDC without specifying any particular article. To a lesser extent, Articles 4, 7, 18, 20, 39, 47, 51, and 54 were also cited.

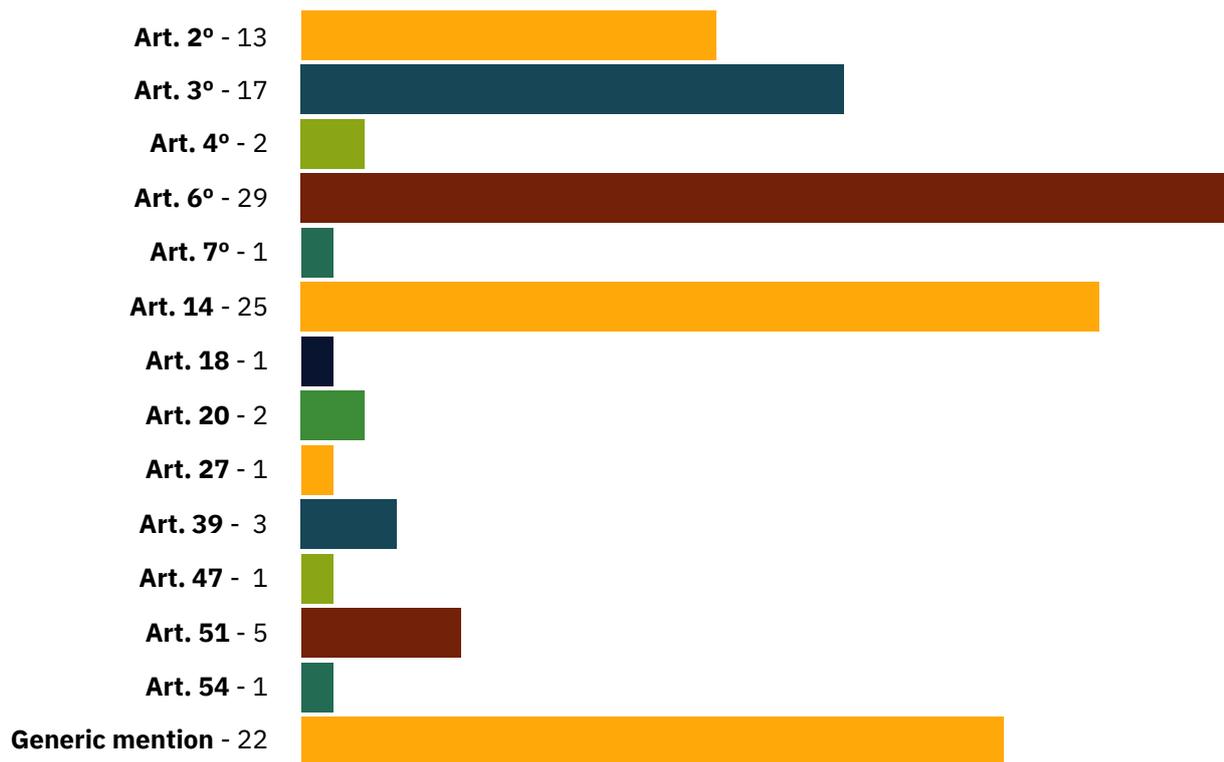
---

68 TJPR145.

69 SANTOS, Bruna Martins dos. **Uma avaliação do Modelo de Responsabilidade de Intermediários do Marco Civil para o desenvolvimento da Internet no Brasil.** Internet Society - Brazil Chapter, Aug. 2020. Available at: <https://www.isoc.org.br/noticia/estudo-sobre-avaliacao-do-modelo-de-responsabilidade-de-intermediarios-do-marco-civil-da-internet>. Accessed on: March 23, 2025.

70 SANTARÉM, Paulo Rená da Silva. A Internet expõe a necessidade geral de um amadurecimento do regime jurídico brasileiro de responsabilidade civil. In DA SILVA, Alexandre Pacheco; CAMELO, Ana Paula; CANABARRO, Diego Rafael; WAGNER, Flávio Rech (orgs.). **Estrutura e funcionamento da internet: aspectos técnicos, políticos e regulatórios.** São Paulo (SP), Brasil: CEPI FGV Direito; ISOC Brasil, 2021. pp. 58-65. Available at: [https://www.academia.edu/48266173/Curso\\_livre\\_Estrutura\\_e\\_funcionamento\\_da\\_Internet\\_aspectos\\_t%C3%A9cnicos\\_pol%C3%ADticos\\_e\\_regulat%C3%B3rios\\_2020](https://www.academia.edu/48266173/Curso_livre_Estrutura_e_funcionamento_da_Internet_aspectos_t%C3%A9cnicos_pol%C3%ADticos_e_regulat%C3%B3rios_2020). Accessed on: March 23, 2025.

## Mentions of specific articles of the Consumer Protection Code (83 decisions)



The fact that nearly half of the decisions cited the Consumer Protection Code (CDC) may indicate a need for judges to rely on non-specific legal provisions to apply to the context of content moderation on social media platforms. Although the CDC contains no explicit provision guaranteeing user rights in cases of content removal, it does offer parameters regarding consumer rights that can be recognized for users in relation to application providers – such as the right to information established in Article 6. In turn, **the frequent citation of Article 14 highlights the search for a legal basis to hold social media platforms strictly liable in cases where a failure in service provision causes harm to the user.**

Along the same lines, the decisions identify the consumer-based nature of the legal relationship between social media platforms and their users, both through citations of Articles 2 and 3 and through general references to the Consumer Protection Code (CDC). This consumer-based nature has already been recognized by the Superior Court of Justice, as evidenced in the summary of the recent decision below:

*AgInt in SPECIAL APPEAL N° 2774439 - DF (2024/0395621-5) DECISION. This is an internal appeal filed against a ruling by the Presidency, which, based on Article 21-E, clause V, of the Internal Rules of the Superior Court of Justice, did not admit the appeal due to the application of STJ Summary No. 182. The appellant failed to specifically challenge the application of STJ Summary No. 7, which had been used as grounds for rejecting the special appeal. The appealed decision was summarized as follows (p. 84): CIVIL APPEAL. CIVIL PROCEDURE LAW. CONSTITUTIONAL LAW. CIVIL LAW. CONSUMER LAW. SOCIAL NETWORK. TERMS OF USE. APPLICATION PROVIDER. FREEDOM OF EXPRESSION. MATERIAL IMMUNITY. VIOLATIONS. NOT*

CHARACTERIZED. MORAL DAMAGES. NOT CONFIGURED. APPEAL HEARD AND DENIED. (...) **3. The rules of Consumer Law apply to the present case, as the application provider fits the definition of a supplier of products and services, and the user fits that of a consumer, as established in Articles 2 and 3 of the Consumer Protection Code (CDC).** However, the fact that the CDC allows the judge to shift the burden of proof (Article 6, clause VIII) does not override the general rule that the burden lies with the party making the claim to prove the constitutive fact of their right, as stated in Article 373 of the Code of Civil Procedure. (...) (emphasis added).<sup>71</sup>

In a context where one third of the 191 decisions do not adopt an explicit legal basis regarding the specific merits of the controversy, and with high variability among the legal grounds cited by those that do, it becomes evident that a wide range of interpretations is currently admissible. Existing case law does not indicate a consistent path for resolving disputes concerning content moderation. In light of this multiplicity of approaches leading to judicial decisions, the creation of a specific legal norm by the National Congress becomes increasingly relevant, one that establishes clear parameters for the Judiciary – particularly to enable the recognition of the right to due process in content moderation.

## 4.2. Is there any express mention of the need for a “right to due process” applied to content moderation?

Due to the centrality of content moderation in current discursive practices, the absence of specific legislation that establishes a right to due process may lead to economic, social, cultural and emotional harms for users, as previously pointed out in IRIS research on user complaints on the platform Reclame Aqui.<sup>72</sup>

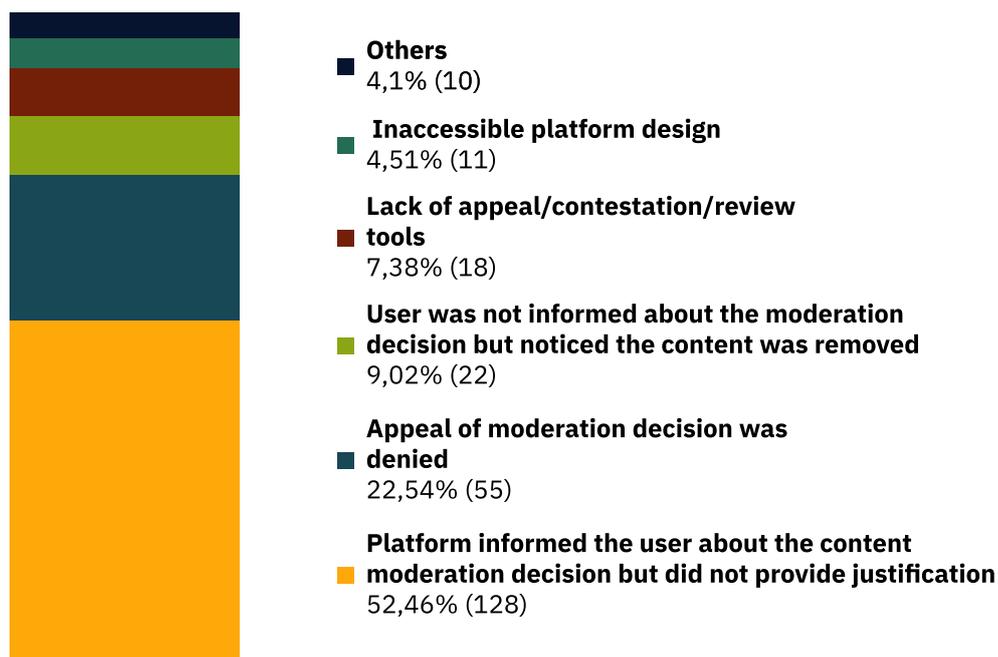
According to the same study, which analyzed 449 complaints regarding content moderation, the main issues with moderation on social media platforms include the lack of justification for the moderation measures applied by the platforms, as well as the absence of responses to user appeals.

---

71 BRASIL. Superior Tribunal de Justiça. **Agravo de Instrumento no Recurso Especial nº 2201885.** Agravante: Carla Zambelli Salgado de Oliveira. Agravado: Facebook Serviços Online do Brasil LTDA. Relator: Min. João Otávio de Noronha, 7 mar. 2025. Available at: [https://processo.stj.jus.br/processo/dj/documento/mediado/?tipo\\_documento=documento&componente=MON&sequencial=299631327&num\\_registro=202403956215&data=20250312&tipo=0](https://processo.stj.jus.br/processo/dj/documento/mediado/?tipo_documento=documento&componente=MON&sequencial=299631327&num_registro=202403956215&data=20250312&tipo=0). Accessed on: March 18, 2025.

72 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Julia Maria Caldeira; DUTRA, Luiza Correa de Magalhães; SILVA, Rafaela Ferreira Gonçalves da. **Reclamações sobre o procedimento de moderação de conteúdo em redes sociais:** o que pensam os usuários. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://bit.ly/4enMVKv>. Accessed on: February 19, 2025.

## Complaints about content moderation involving account suspension/blocking or post removal (244 complaints)



Source: IRIS.<sup>73</sup>

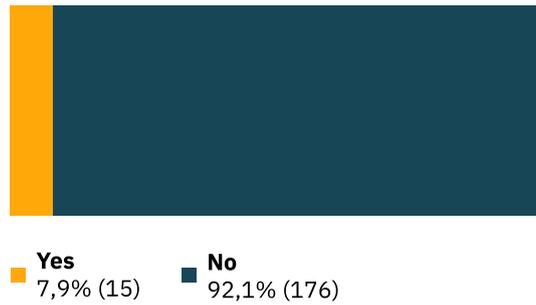
This scenario reinforces a series of users' complaints about the lack of transparency in the way social networks justify their content moderation measures. This raises questions such as which content is allowed or not, what the rules are for moderation procedures, and which clauses of community policies have actually been violated.

All the existing disputes and the lack of transparency in the field of content moderation cause some platform users to seek the Judiciary to seek redress in cases that they consider to be unfair. All existing disputes and the lack of transparency in content moderation lead some platform users to seek judicial relief in cases they consider unjust. Therefore, we consider it important to evaluate the existence of court decisions that explicitly mention due process in content moderation, or a narrative framework regarding categories and actions that fit our understanding of the concept of due process.

On the one hand, we find that **no decision cited clause LIV of Article 5, which guarantees the constitutional right to due process.**

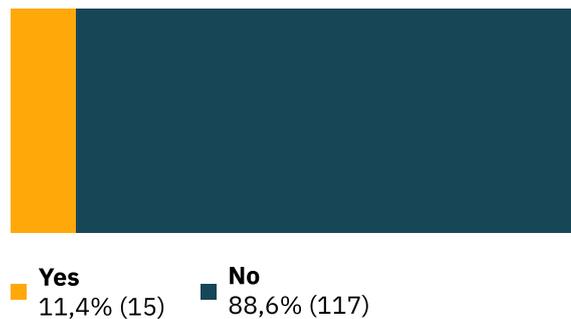
Still, we investigated **whether the decisions explicitly mentioned the need for due process in content moderation.** Of all the 191 decisions analyzed, only **7,9% (15 decisions)** expressly mentioned the need for social networks to observe due process, while **92,1% (176 decisions)** did not make this mention.

## Was there an explicit mention of the need for due process in content moderation?



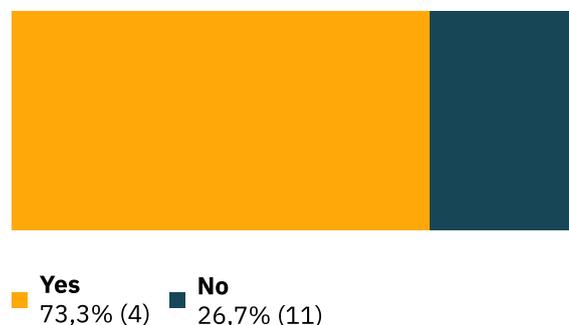
All of these 15 decisions were issued within the scope of the São Paulo State Justice Court (TJSP), where they represent 11% of the 132 decisions.<sup>74</sup> Consequently, none of the other four courts surveyed issued any decision expressly mentioning the need to respect due process.

## Was there an explicit mention of the need for due process in content moderation? (132 decisions of the Court of Justice of the State of São Paulo)



We highlight that, among these 15 decisions, in 11 cases (73%) the mention of due process was combined with the requirement that the principles of adversarial proceedings and broad defense also be observed, citing clause LV of article 5 of the Federal Constitution:

## When mentioning due process, it cites Article 5, item LV, of the 1988 Federal Constitution



<sup>74</sup> TJSP087, TJSP103, TJSP106, TJSP109, TJSP110, TJSP111, TJSP121, TJSP124, TJSP123, TJSP126, TJSP133, TJSP198, TJSP205, TJSP416, TJSP679.

This number increases a little if we add the 8 decisions (7 from the São Paulo Court of Justice and 1 from the Paraná Court of Justice)<sup>75</sup> which did not mention due process, but cited article 5, LV, of the Federal Constitution, a provision that guarantees the right to adversarial proceedings and broad defense.

### Without mentioning due process, it cites Article 5, item LV, of the 1988 Federal Constitution (Total: 176)



■ **Yes**  
8% (14)   ■ **No**  
92% (162)

Such an association is absolutely relevant, insofar as the right to adversarial proceedings and broad defense are at the core of due process of law. It is fundamental for a fair and legitimate process to ensure that the parties have the possibility, within a reasonable timeframe, to defend themselves against any accusation.

*The guarantee of adversarial proceedings and broad defense – along with the means and resources inherent thereto – secured in article 5, clause LV, of the Federal Constitution, applies both to judicial and administrative processes, and its observance is mandatory. **In this sense, compliance with due process of law, understood as the fundamental right to adversarial proceedings and broad defense, is imposed in the private sphere due to the horizontal effect of fundamental rights and requires the participation of the interested party in the punitive claim, which was not observed by the defendant in this case.** (emphasis added)<sup>76</sup>*

Cases like the one in the decision above demonstrate that the idea of due process in content moderation has indeed been raised by judges, including the reasoning based on the horizontal applicability of fundamental rights to private relations (as already shown in Table 1 of this publication).

75 TJSP099, TJSP307, TJSP329, TJSP398, TJSP457, TJSP716 e TJPR131.

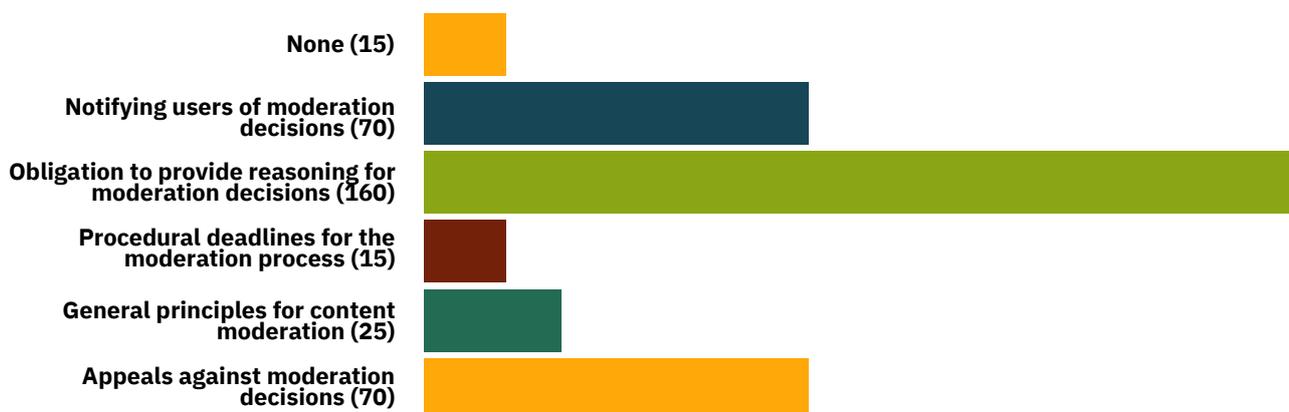
76 See TJSP106.

## 4.3. Do decisions mention elements that can be associated with a right to due process in content moderation?

We observed that in the reasoning of 177 analyzed decisions (92.7% of the total 191), there was mention of the importance for the social network provider to observe at least one of the elements we identified as essential to due process in content moderation (see Table 1).

Specifically regarding each element: there were 160 mentions of the obligation to provide justification in moderation decisions; 70 mentions of the lack of the user receiving any notice or notification, either prior or subsequent, about the moderation measure carried out without their consent; 69 mentions of the absence of mechanisms for the user to defend themselves or appeal against the content moderation measure; 24 mentions of general principles for content moderation; and 14 mentions of the lack of procedural deadlines or delays by the social network in responding to the user. No mention was made of design and accessibility issues. It is important to highlight that some decisions mentioned more than one element of due process.

### What elements of due process in content moderation were observed? (Total of 191 decisions)



Next, we will analyze in detail the mentions of each of these elements.

#### 4.3.1. General principles for content moderation

As previously mentioned, 24 decisions<sup>77</sup> (12.56%) out of the 191 analyzed were guided by principles that underpin or inform the content moderation procedure, resolving the dispute in light of the right to freedom of expression, the defense of democracy, and the prohibition of unlawful or abusive discrimination.

It is important to highlight that **70.83%** of these 24 decisions referenced the Brazilian Civil

77 TJBA028, TJGO001, TJGO054, TJPR011, TJPR125, TJSP008, TJSP009, TJSP059, TJSP060, TJSP088, TJSP099, TJSP103, TJSP106, TJSP119, TJSP126, TJSP137, TJSP138, TJSP144, TJSP155, TJSP159, TJSP198, TJSP223, TJSP457 e TJSP716.

Rights Framework for the Internet (Marco Civil da Internet) as the legal norm used to support the ruling on the merits:

*“By removing the responsibility of the application provider for the content of posts made by third parties, article 19 of Law No. 12,965/14 makes a clear choice to protect freedom of expression and prohibit any measure that may represent prior censorship on social networks and, in return, obliges Internet content providers to make their services available universally and with the primacy of these user rights.”<sup>78</sup>*

*“By removing the responsibility of the application provider for the content of posts made by third parties, article 19 of Law No. 12,965/14 makes a clear choice to protect freedom of expression and prohibit any measure that may represent prior censorship on social networks and, in return, obliges Internet content providers to make their services available universally and with the primacy of these user rights.”<sup>79</sup>*

The decisions point to a lack of explanation and evidentiary support from platforms in their content moderation decisions, which, in the judges’ interpretation, would constitute a violation of the norms and principles established by the Brazilian Civil Rights Framework for the Internet (Law No. 12.965/14). In such cases, this law is invoked to affirm that the internet should be an environment governed by freedom, plurality, diversity, free enterprise, and competition, while also ensuring freedom of expression and communication, as well as network neutrality and business model freedom. As previously explained, judges interpret these legal provisions as requiring social media providers to offer users transparent and clear information about their policies.

These decisions underscore the need to hold the various actors accountable when it comes to online content moderation, with clear rules to justify their actions. When platforms fail to explain measures such as content removal or account suspension, they risk abuses of power and a loss of user trust.

#### 4.3.2. 4.3.2. Appeals against moderation decisions

Among the references to the requirements of due process, we found that **69 decisions (36.12% of the total 191)<sup>80</sup>** were based on the absence of an appeals mechanism for content moderation decisions – that is, on the failure to guarantee a means by which users could contest the moderation measures implemented by the social media platform.

---

78 See TJSP103.

79 See TJSP106.

80 TJAM016, TJAM025, TJGO002, TJGO017, TJGO042, TJGO047, TJGO055, TJGO063, TJPR004, TJPR014, TJPR074, TJPR117, TJPR128, TJPR131, TJPR135, TJPR145, TJSP001, TJSP011, TJSP014, TJSP022, TJSP033, TJSP043, TJSP081, TJSP099, TJSP103, TJSP106, TJSP109, TJSP110, TJSP111, TJSP119, TJSP121, TJSP123, TJSP124, TJSP126, TJSP133, TJSP138, TJSP142, TJSP155, TJSP198, TJSP205, TJSP213, TJSP216, TJSP223, TJSP230, TJSP233, TJSP238, TJSP246, TJSP257, TJSP277, TJSP329, TJSP357, TJSP383, TJSP386, TJSP398, TJSP399, TJSP417, TJSP457, TJSP459, TJSP568, TJSP581, TJSP614, TJSP627, TJSP631, TJSP679, TJSP695, TJSP716, TJSP733, TJSP748, e TJSP770.

This category includes decisions that explicitly referenced the lack of an appeals mechanism against moderation, as well as those that cited violations of the constitutional principles of the right to a defense and the adversarial process. It also includes decisions that required proof of this procedural element both in the legal relationship between the parties and in the course of the judicial process, particularly in relation to the burden of proof for demonstrating the justification for the moderation. Some examples include:

*“Finally, it should not be forgotten that the author’s profile was summarily deleted without her being able to demonstrate that the accusation made against her was not true.”<sup>81</sup>*

*“It is unlawful to ban a user’s account on an app based on reports or suspicion of copyright infringement without notifying the user and ensuring the right to an adversarial process and full defense, allowing them to provide justification or comply with the platform’s own terms of use.”<sup>82</sup>*

*“It does not seem reasonable to allow the banning of the profile without prior notice or the opportunity for a full defense and adversarial proceedings, which are constitutionally guaranteed principles.”<sup>83</sup>*

It is also worth recalling that, among the 26 decisions that cited Article 5 of the Federal Constitution, we observed a prevalence of references to clause LV (18 decisions),<sup>84</sup> which addresses the right to adversarial proceedings and full defense. This figure indicates a trend -or at least a path- towards judicial recognition that users have the right to defend themselves and appeal against moderation measures.

### 4.3.3. Procedural deadlines for the moderation process

**14 decisions<sup>85</sup>** (7.1% of the total 191) fell into this category, as they referred either to the lack of an established timeframe for users to respond or for the company to reply, or considered that there was an excessive delay in the social network’s response to the user’s challenge to the moderation procedure – whether to explain the reason for the measure or to restore the content or account.

We identified that some judges considered the excessive time taken to resolve moderation cases by the platform as a violation of the user’s rights.

---

81 Excerpt from case TJPR004.

82 Excerpt from case TJGO017.

83 Excerpt from case TJSP238.

84 TJPR131, TJSP099, TJSP307, TJSP329, TJSP398, TJSP457, TJSP716, TJSP103, TJSP109, TJSP110, TJSP111, TJSP121, TJSP123, TJSP124, TJSP133, TJSP198, TJSP205, and TJSP679.

85 TJAM016, TJAM035, TJBA006, TJBA028, TJGO001, TJGO042, TJGO044, TJGO051, TJGO054, TJPR074, TJPR088, TJSP144, TJSP383, e TJSP614.

*“Instagram is required to grant the right to a defense and the right to be heard – in other words, **the user has the right to a deadline to present their defense and their side of the story.**” (our emphasis).<sup>86</sup>*

*“(…) **the unjustified delay in blocking or restoring the profile** constitutes negligent conduct by the defendant and a disregard for consumer rights protected under the legal framework.” (our emphasis).<sup>87</sup>*

We found that there is a reasonable expectation for the duration of this procedure, from the moment the person is notified about the moderation decision, submits their appeal, and awaits the platform’s response. Exacerbated difficulties in resolving the problem in question are seen as a form of restriction on the user’s rights.<sup>88</sup>

In another case from the São Paulo Court of Justice (TJSP), the ruling emphasized the profits the platform earns from advertising, which are directly tied to user activity – making delays in the moderation process even more objectionable.

*“In this regard, the plaintiff’s sincere request deserves to be highlighted, which, unfortunately, was utterly ignored by the defendant, **who seems to forget the tremendous indirect profits it gains from advertising and promotion at the expense of its users’ posts.**” (emphasis added).” (our emphasis).<sup>89</sup>*

Cases like these demonstrate that **the lack of commitment by digital platforms to maximum timeframes for carrying out content moderation procedures has led to accountability**, including court-ordered compensation. In this sense, it is possible to conclude that the idea of a reasonable duration for the moderation procedure – with defined deadlines for actions by platforms and users – is supported by the constitutional right to the reasonable duration of administrative and judicial proceedings, as established in Article 5, clause LXXVIII, of the Federal Constitution.

This is a guarantee intrinsically linked not only to the right to due process of law but also to the right of access to justice, insofar as this right includes the provision of a judicial process that proceeds efficiently and within a reasonable timeframe.<sup>90</sup> Unreasonable delays, therefore, can themselves be considered a violation of citizens’ rights – a perspective that treats time as a measure of justice, as well stated by Adorno and Pasinato:

*“Time is a measure of justice. If lengthy, it becomes increasingly unlikely to correct*

---

86 See TJAM016.

87 See TJBA006.

88 See TJBA028.

89 See TJSP583.

90 SIRAVEGNA JUNIOR, Eduardo Eugenio. **Razoável duração do processo e controle de convencionalidade:** uma análise à luz do Sistema Interamericano de Direitos Humanos. 2024. Dissertation (Master in Law) – Faculty of Law, Federal University of Mato Grosso do Sul, Campo Grande, 2022.

*procedural errors in administrative proceedings or to locate witnesses, potential victims, or possible offenders. If too short, there is a risk of undermining rights enshrined in the Constitution and in procedural criminal laws, replacing justice with injustice.”<sup>91</sup>*

Returning to the context of digital platforms, delays in content moderation procedures worsen the situation of users who have had content removed or their accounts suspended or blocked. In addition to being deprived of their right to freedom of expression and information, individuals are further wronged when they appeal a platform’s decision and are either summarily ignored or do not receive a timely response. Therefore, establishing a reasonable timeframe for the stages of content moderation may benefit the platform itself, helping to avoid potential future losses from judicial rulings. For users, such predictability has the potential to provide greater security and trust in both the procedure and the platform.

Finally, it is important to note that deadlines for content moderation procedures are already mandated in various proposed initiatives around the world, whether currently in force or not, which demonstrates a relevant and growing international movement on the subject.<sup>92</sup>

#### 4.3.4. Notifying users of moderation decisions

**70 decisions**<sup>93</sup> (36.64% of 191) explicitly mentioned the failure of social media platforms to notify users about content moderation measures. In most of these cases (95.6%), the courts emphasized the platform’s duty to inform the user after a moderation action – such as content removal, account suspension, or permanent blocking – had already been taken. The expectation is that this notification should also include a clear and specific justification, explaining which community guidelines were allegedly violated and how the user’s behavior or content failed to comply.

Even more protective, a minority (4.4%) adopted the view that such notification should occur prior to the actual moderation action. In other words, we observed a minority understanding that, in the case of account suspension, it would be important for the platform to notify the individual about the possible violation, granting a reasonable amount of time for a defense,

---

91 ADORNO, Sérgio; PASINATO, Wânia. A justiça no tempo, o tempo da justiça. **Tempo Social**, v. 19, n. 2, p. 131-155, 2007. Available at: <https://nev.prp.usp.br/publicacao/ajustia-no-tempo-o-tempo-da-justia/>. Accessed on: March 19, 2025.

92 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Julia Maria Caldeira; SILVA, Rafaela Ferreira Gonçalves da. **Regulação de plataformas e devido processo na moderação de conteúdo: perspectivas em 5 continentes**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://irisbh.com.br/publicacoes/devido-processo-na-moderacao-de-conteudo-em-5-continentes/>. Accessed on: March 20, 2025.

93 TJAM025, TJGO001, TJGO002, TJGO004, TJGO017, TJGO041, TJGO042, TJGO044, TJGO051, TJGO055, TJGO056, TJGO057, TJGO063, TJPR012, TJPR022, TJPR024, TJPR025, TJPR051, TJPR096, TJPR097, TJPR100, TJPR105, TJPR113, TJPR117, TJPR118, TJPR128, TJPR131, TJSP001, TJSP007, TJSP023, TJSP043, TJSP069, TJSP106, TJSP109, TJSP110, TJSP111, TJSP121, TJSP123, TJSP124, TJSP133, TJSP139, TJSP157, TJSP159, TJSP160, TJSP165, TJSP169, TJSP177, TJSP194, TJSP205, TJSP209, TJSP230, TJSP233, TJSP236, TJSP238, TJSP243, TJSP254, TJSP257, TJSP289, TJSP311, TJSP349, TJSP357, TJSP369, TJSP459, TJSP504, TJSP568, TJSP595, TJSP624, TJSP722, TJSP752, e TJSP816.

and only then proceed with the measure against the account, as illustrated in the example below:

*“I consider it an absolute right that the defendant may terminate its contract with any consumer, without any justification, simply because it no longer wishes to maintain the business relationship, which is of a private nature.*

*However, **the defendant must provide prior notification with a reasonable timeframe so that the user can remove or transfer their content, thereby avoiding material and moral damages.***

*As an example, financial institutions, which operate under state concessions, have the prerogative to refuse clients and may even terminate relationships with them regardless of credit history, account activity, etc., **provided they notify in advance – within the legal timeframe – so that the client can organize themselves in light of the service interruption. This procedure should or could be followed by the defendant to legitimize the termination of the consumer relationship.*** <sup>94</sup> *(our emphasis).*

In this case, the judge draws a parallel with what happens with banking institutions when they decide to interrupt services provided to a client, granting time for the client to organize themselves before the complete interruption. In the case of commercial account suspensions, such an analogy seems appropriate, as the abrupt deactivation of a profile can cause not only financial losses but also reputational harm, since the public will not have access to the reasons behind the removal. The referenced decision further states:

***“In the absence of a law governing a matter that today holds significant relevance in society, the diffuse pursuit of decisions to regulate each individual case becomes an attempt to interfere with business freedom and private contracting – something not foreseen in the legal codes with the necessary robustness to ensure the plaintiff’s continued and indefinite presence within the defendant’s private platform. Thus, even while recognizing the private nature of the relationship, given that it is of indefinite duration, default here does not follow an ex re nature, but rather an ex persona one. Therefore, the legal maxim dies interpellat pro homine does not automatically apply, and the defendant must formally place the plaintiff in default before, after a reasonable period, proceeding with exclusion – without prejudice, in my view, to the removal of improper content published during the time leading up to the final interruption of the service.”*** <sup>95</sup> *(emphasis added)*

In fact, the judge notes the effort that he and his colleagues need to make around a legal-argumentative construction that is capable of offering protection to users, in a scenario of total absence of specific applicable legislation. Thus, the approval of a regulation of digital

---

94 See TJGO044.

95 See TJGO044.

platforms in Brazil becomes even more relevant, both to facilitate the work of the Judiciary in cases like this and to ensure people's rights against large corporations.

Another notable example comes from a decision of the São Paulo Court of Justice, which states that account suspension *“must be preceded by communication to the profile owner, indicating the reason for such penalty, as provided in Article 22 of the Marco Civil da Internet.”*<sup>96</sup> Besides reinforcing the idea of prior notification, it is possible to identify a potential misapplication of Article 22 of the Marco Civil da Internet. This provision deals with judicial requests for records, establishing that the interested party may request from the judge an order to preserve the supply of connection or internet application access records to a platform. In other words, it does not relate as a justification for the need to notify the user when they are subject to content moderation actions, which further supports the argument for the necessity of specific regulation to address this issue.

#### 4.3.5. Obligation to provide reasoning for moderation decisions

We found that **160 decisions** (83.76% of the total 191)<sup>97</sup> reported the lack of adequate reasoning or the complete absence of reasoning by social media platforms when taking content moderation measures. Within this category, we considered both judicial decisions that pointed out the absence of grounds during the moderation process itself, as well as those based on the lack of explanation during the judicial proceeding – i.e., due to the absence of proof in court justifying the moderation measure.

This classification encompassed the largest number of decisions analyzed, in line with our finding in a previous publication regarding complaints on the Reclame Aqui platform - of the 449 complaints analyzed in that research, 128 related to lack of reasoning concerning moderation decisions<sup>98</sup> In other words, **poorly reasoned decisions appear to be the biggest**

---

96 See TJSP230.

97 TJAM013, TJAM016, TJAM023, TJAM025, TJAM026, TJAM031, TJBA024, TJBA028, TJGO001, TJGO004, TJGO013, TJGO041, TJGO047, TJGO049, TJGO051, TJGO054, TJGO055, TJGO056, TJGO057, TJGO062, TJGO063, TJGO066, TJPR011, TJPR012, TJPR022, TJPR024, TJPR025, TJPR051, TJPR088, TJPR096, TJPR097, TJPR100, TJPR104, TJPR105, TJPR107, TJPR108, TJPR113, TJPR117, TJPR118, TJPR125, TJPR128, TJPR133, TJPR135, TJPR144, TJPR145, TJPR146, TJPR151, TJPR153, TJPR164, TJSP001, TJSP007, TJSP008, TJSP009, TJSP011, TJSP014, TJSP022, TJSP023, TJSP033, TJSP043, TJSP045, TJSP057, TJSP059, TJSP060, TJSP069, TJSP081, TJSP087, TJSP099, TJSP103, TJSP106, TJSP109, TJSP110, TJSP111, TJSP119, TJSP121, TJSP123, TJSP124, TJSP126, TJSP133, TJSP137, TJSP138, TJSP139, TJSP142, TJSP144, TJSP155, TJSP159, TJSP160, TJSP165, TJSP168, TJSP169, TJSP177, TJSP194, TJSP205, TJSP208, TJSP209, TJSP213, TJSP216, TJSP223, TJSP226, TJSP230, TJSP233, TJSP236, TJSP238, TJSP239, TJSP242, TJSP243, TJSP246, TJSP254, TJSP257, TJSP275, TJSP277, TJSP289, TJSP307, TJSP311, TJSP315, TJSP329, TJSP330, TJSP349, TJSP357, TJSP369, TJSP383, TJSP393, TJSP399, TJSP416, TJSP417, TJSP433, TJSP444, TJSP457, TJSP459, TJSP489, TJSP500, TJSP515, TJSP556, TJSP568, TJSP581, TJSP595, TJSP602, TJSP614, TJSP624, TJSP627, TJSP631, TJSP657, TJSP668, TJSP677, TJSP679, TJSP686, TJSP695, TJSP716, TJSP722, TJSP733, TJSP740, TJSP748, TJSP752, TJSP770, TJSP793, TJSP796, TJSP799, TJSP807, TJSP813, TJSP814, e TJSP815.

98 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Julia Maria Caldeira; DUTRA, Luiza Correa de Magalhães; SILVA, Rafaela Ferreira Gonçalves da. **Reclamações sobre o procedimento de moderação de conteúdo em redes sociais: o que pensam os usuários.** Belo Horizonte: Instituto de Referência em Internet

**problem in content moderation by social media platforms, both from the perspective of users of these digital platforms – as highlighted in our earlier study – and in the judicial reasoning supporting court decisions.**

As decisions are made regarding what is allowed or not, some issues raised in these decisions were which rules guide moderation measures, which points of community policies were violated, which specific post was infringing, etc. Thus, social media platforms were often judicially condemned for failing to demonstrate, through evidence or even arguments, the reasons that led them to take moderation measures. See the examples below:

*“Despite this, the defendant failed to prove his allegations, especially with regard to **unequivocal demonstration that the plaintiff violated the Terms of Use of the platform as alleged**, making the irregular conduct of the Defendant evident.” (our emphasis)<sup>99</sup>*

*“At this point, **it is clear that the Defendant did not include, in its defense, any documents proving the alleged improper use of the system by the Plaintiff**. As correctly noted by the lower court, the Defendant failed to demonstrate any fact that would prevent, modify, or extinguish the Plaintiff’s right, nor did it present any grounds for excluding its liability, since it did not provide even minimal evidence to support its claims, a burden which was its responsibility. **Although the Defendant claims that the Plaintiff’s account was suspended due to a breach of contractual rules, it did not submit any evidence to support its allegations.**” (emphasis added)<sup>100</sup>*

*“I acknowledge that the appellant company has the right to monitor the content posted on users’ accounts in order to prevent violations of third party rights. However, **it is essential to ensure that the user has the right to know which specific posts led to the alleged violation**, without this being construed as censorship or a breach of their contractual rights. This is merely intended to preserve transparency and the user’s right to defend themselves against complaints, which may also be unfounded. (...) **And even after the present legal proceedings were initiated, the appellant failed to provide a convincing explanation for the immediate deactivation of the account in question. Its claims (motions 21 and 40) merely stated that the deactivation was for the purpose of investigating a possible breach of the terms of service, without even indicating which actions or posts had prompted the adoption of such a measure**”. (our emphasis)<sup>101</sup>*

*“In the specific case at hand, even if the plaintiff may have exercised some form of extrajudicial defense, it is noted from the messages on page 02 of the case files of both*

---

e Sociedade, 2024. Available at: <https://bit.ly/4enMVKv>. Accessed on: March 20, 2025.

99 See TJAM023.

100 See TJBA024.

101 See TJGO001.

*proceedings that the defendant was vague and merely stated that the Facebook page had been taken down and the Instagram account suspended, **without providing any concrete details regarding the allegedly illegal actions committed by the plaintiff.** Furthermore, the defendant, **besides failing to prove facts that would prevent, modify, or extinguish the plaintiff's right, brought nothing to the case file to support the claim of lawful conduct (Art. 373, II, of the Civil Procedure Code), nor did it specify what the so-called 'inappropriate conduct' committed by the plaintiff was, which confirms that the account suspensions were neither lawful nor contractually based**". (our emphasis)<sup>102</sup>*

*"Thus, the failure in the service provision by the Defendant company is clearly evidenced, **as it deactivated the Appellee's account in an abusive and arbitrary manner, without observing the most basic rights of the adhering party (plaintiff), who was not even informed in advance of the reasons for the cancellation or which rights had allegedly been violated.** (our emphasis)<sup>103</sup>*

Indeed, the process of online content moderation is not limited to the mere decision to remove or retain a specific piece of content. It encompasses the entire context of the relationship between the user and the platform, including the rules and norms established to ensure greater legal certainty.<sup>104</sup> Moreover, it involves a political and social construction of moderation actions, which incorporate subjectivities, discourses, and freedoms. The way these issues are addressed directly impacts communication and social interaction. The absence of fundamental elements for proper and well-grounded moderation – such as transparency, notification, and consistency – can lead to the perception of censorship.<sup>105</sup>

And here, transparency appears as a central point, once again. By making information more accessible, it seeks to improve the performance of organizations and individuals, whether by rationalizing social actions or by discouraging behaviors that are harmful to interaction between social actors. In this sense, it is often seen as a crucial factor in maintaining trust between institutional and private entities and civil society.<sup>106</sup> This act of making things understandable and visible goes beyond merely opening up data or showing what was done: transparency enables the processing of what has been done (the moderation action) and the

---

102 See TJSP457.

103 See TJSP515.

104 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Julia Maria Caldeira; DUTRA, Luiza Correa de Magalhães; SILVA, Rafaela Ferreira Gonçalves da. **Reclamações sobre o procedimento de moderação de conteúdo em redes sociais: o que pensam os usuários.** Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://bit.ly/4enMVKv>. Accessed on: March 20, 2025.

105 Ibidem

106 KURTZ, Lahis Pasquali; DO CARMO, Paloma Rocillo Rolim; VIEIRA, Victor Barbieri Rodrigues. **Transparência na moderação de conteúdo: tendências regulatórias nacionais.** Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2021. Available at: <https://bit.ly/3xjAUka>. Accessed on: March 21, 2025.

MEIJER, Albert. Understanding modern transparency. *International Review of Administrative Sciences*. v. 75, p. 255-269, 2009.

contestation of the actions taken by social networks (user appeals).

As the distance between those who transmit and those who receive information increases, the importance of transparency mechanisms grows.<sup>107</sup> In the case of content moderation, the disclosure of basic measures of what would be accepted, or not, in a given digital environment can reduce the asymmetry of knowledge and information, and ensure trust in the relationship between individuals and platforms.<sup>108</sup> With greater transparency, the parties begin to more clearly perceive the missing information, which generates a constant demand for more data and keeps the transparency cycle in motion.<sup>109</sup> When there is a break in this cycle, the pendulum of trust between the parties shifts and can trigger an opposite movement: a cycle of opacity and continuous disinformation.

Furthermore, due process and transparency become even more relevant today, especially in relation to non-state entities, due to societal changes. In many cases, due process requires greater transparency from platforms, while in others, transparency helps ensure that content restrictions follow previously established rules and safeguards.<sup>110</sup>

#### 4.3.6. Design and Accessibility of Content Moderation Tools

The category of design and accessibility related to content moderation refers to judicial decisions that highlight the problem users face in locating mechanisms to appeal moderation decisions, or instances where accessibility was lacking. This stems from the notion that platforms have an obligation to provide a point of contact for direct communication with accessible design – meaning easily located within their virtual environment and accompanied by clear access instructions.

Contrary to our hypothesis that this element of due process would appear in the reasoning of judicial decisions involving content moderation, not a single decision cited the lack of user-friendly design or accessibility in the tools for contesting moderation actions taken by social networks.

This does not diminish the relevance of the category as a subject for critical reflection, as

---

107 KURTZ, Lahis Pasquali; DO CARMO, Paloma Rocillo Rolim; VIEIRA, Victor Barbieri Rodrigues. **Transparência na moderação de conteúdo: tendências regulatórias nacionais**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2021. Available at: <https://bit.ly/3xjAUka>. Accessed on: March 21, 2025.

108 SUZOR, Nicolas P. et al. What do we mean when we talk about transparency? Toward meaningful transparency in commercial content moderation. **International Journal of Communication**, v. 13, p. 18, 2019.

109 KURTZ, Lahis Pasquali; DO CARMO, Paloma Rocillo Rolim; VIEIRA, Victor Barbieri Rodrigues. **Transparência na moderação de conteúdo: tendências regulatórias nacionais**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2021. Available at: <https://bit.ly/3xjAUka>. Accessed on: March 21, 2025.

110 Ibidem.

shown in our previous report on complaints on *Reclame Aqui*:<sup>111</sup> a specific percentage – 4.51% – of user complaints dealt explicitly with this issue.

The absence of this factor in judicial decisions raises several hypotheses that may be explored in the future. For instance, it could be due to a lack of judicial awareness of this aspect, possibly stemming from limited technical knowledge of social media platforms; or the notion that there is a hierarchy of “problems,” where the issue of platform design and accessibility is seen as more sophisticated and removed from the controversies typically brought to court or from what judges deem sufficient for ruling on a case.

It is also plausible that problems related to design and accessibility of tools for challenging content moderation decisions by social networks persist within the judicial system itself. Given the barriers to accessing justice – especially for individuals marked by social inequalities and vulnerability – such difficulties might prevent cases related to poor design and accessibility from ever reaching the courts in the first place.

Considering these asymmetries, and in order to address the violation of rights resulting from content moderation on social networks, the inequality of access to justice emerges as a reason to recommend the creation of more efficient and decentralized mechanisms for conflict resolution. Such mechanisms could reduce the need for judicial intervention – often characterized by the reproduction of inequalities, including regional disparities in Brazil – and increase the likelihood that vulnerable groups will have their rights respected without bearing the high costs of legal action.

#### 4.3.7. Others

The “Other” category aims to encompass elements of due process that differ from those already discussed but might still be mentioned in court decisions – for example, the obligation for social media platforms to disclose the reason behind a content moderation measure when it involves court orders or content from public authorities. However, this category was not used in any of the selected decisions, indicating that the previously listed elements of due process were sufficient.

## 5. Final considerations

The growing power of digital platforms – especially social media, whose current profits rival the GDP of some countries<sup>112</sup> – has heightened the importance of online content moderation

---

111 SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Julia Maria Caldeira; DUTRA, Luiza Correa de Magalhães; SILVA, Rafaela Ferreira Gonçalves da. **Reclamações sobre o procedimento de moderação de conteúdo em redes sociais: o que pensam os usuários**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://bit.ly/4enMVKv>. Accessed on: April 4, 2025.

112 TRINDADE, Rodrigo. Essas 7 empresas de tec têm receita anual maior do que PIB de alguns países. **UOL**, 18 ago. 2018. Available at: <https://www.uol.com.br/tilt/noticias/redacao/2018/08/18/essas-7-empresas-de-tec-tem-receita-anual-maior-do-que-pib-de-alguns-paises.htm>. Accessed on: July 04, 2025.

measures. When a platform decides to keep or remove content, or to suspend or permanently block an account, it directly impacts users' fundamental rights.

With this in mind, the present report aimed to (a) investigate how conflict resolution cases involving content moderation are being addressed from the perspective of judicial intervention, and (b) understand existing regulatory gaps and how courts interpret due process in content moderation. To this end, we selected and analyzed 191 judicial decisions (rulings, single-judge decisions, and appellate decisions) from the Courts of Justice in five Brazilian states: Amazonas, Bahia, Goiás, Paraná, and São Paulo.

We found that nearly all the decisions analyzed involved account suspensions (94.8%), with only a few concerning permanent account bans (3.1%) or content removal (2.1%). Among the suspension cases, 80.1% involved accounts used for professional purposes. In most cases (84.8%), the right to have the account reinstated was recognized.

Examining the reasoning behind the 191 judicial decisions on content moderation, 137 (71.7%) were based on existing legal norms, while a significant number – 54 decisions (28.3%) – were not grounded in any legal provision.

The Judiciary has not shied away from resolving the cases it receives, even in the absence of specific regulation – not only due to its legal duty to provide a resolution but also because of the possibility of constructing legal arguments based on Brazil's current legislation. The Consumer Protection Code, the Federal Constitution, the Marco Civil da Internet, and the Civil Code were the main legal instruments used by judges to justify their decisions. However, none of these texts contain provisions specifically addressing online content moderation, and the article most related to the subject (Article 19 of the Marco Civil) was often misinterpreted by a number of rulings, which incorrectly assumed it prohibits content removal without prior judicial authorization.

Still, only one out of the 191 decisions explicitly pointed to the lack of a specific legal norm on content moderation, opting instead to rely on general private consumer contract rules to settle the dispute. In this normative vacuum – lacking both specific legal provisions and solid jurisprudential trends – judges are, in practice, forced to build their reasoning from scratch in each case. This raises concerns over whether users' rights are being effectively protected, even when judicial remedies are pursued.

It is worth noting that the two ongoing diffuse constitutional control cases before the Brazilian Supreme Federal Court also revolve around the need for procedural guarantees to validate social media platforms' moderation actions. In this context, this report once again underscores IRIS's argument for the urgent need for the National Congress to establish a legal provision explicitly ensuring due process in online content moderation.

Of all the analyzed decisions, only 7.9% (15 decisions) explicitly referred to the need for due process in moderation procedures, while 92.1% (176 decisions) did not. However, even

in the absence of this express mention, most rulings referenced components identified by our team as key elements of due process. Specifically, 177 decisions (92.7%) mentioned at least one of these elements, with the most common being the requirement for platforms to justify moderation actions (160 mentions), notify users (70 mentions), and provide a means for defense or appeal (69 mentions). Additional references included general principles of moderation (24) and concerns about deadlines or delays in platform responses (14).

This finding strongly supports ongoing research showing the central role of due process in guiding fair and transparent moderation practices. Given that most decisions ruled in favor of users, the consistent application of due process elements might have prevented several platform convictions. In this unregulated landscape, all parties lose – some more than others.

Introducing a legal provision for due process, as a specific innovation within a broader digital platform regulatory framework, could benefit everyone involved: a) users would gain greater legal protection against the power and information asymmetry in their relationships with major tech companies, particularly social media providers; b) digital platforms would achieve greater legal certainty about the required investments and operational standards necessary to ensure fairness and legitimacy in their moderation practices – thus avoiding losses from lawsuits and penalties; c) judges would gain clarity on the legal standards applicable to such cases, allowing the jurisprudence to evolve toward more complex debates on human rights and power balance in the digital sphere.

# Bibliographic references

ADORNO, Sérgio; PASINATO, Wânia. A justiça no tempo, o tempo da justiça. **Tempo Social**, v. 19, n. 2, p. 131-155, 2007. Available at: <https://nev.prp.usp.br/publicacao/ajustia-no-tempo-o-tempo-da-justia/>. Accessed on: March 19, 2025.

BRASIL. **Lei nº 12.965, de 23 de abril de 2014**. Estabelece princípios, garantias, direitos e deveres para o uso da Internet no Brasil. Available at: [https://www.planalto.gov.br/ccivil\\_03/ato2011-2014/2014/lei/l12965.htm](https://www.planalto.gov.br/ccivil_03/ato2011-2014/2014/lei/l12965.htm). Accessed on: March 18, 2025.

BRASIL. Superior Tribunal de Justiça. **Agravo de Instrumento no Recurso Especial nº 2201885**. Agravante: Carla Zambelli Salgado de Oliveira. Agravado: Facebook Serviços Online do Brasil LTDA. Relator: Min. João Otávio de Noronha, 7 mar. 2025. Available at: [https://processo.stj.jus.br/processo/dj/documento/mediado/?tipo\\_documento=documento&componente=MON&sequencial=299631327&num\\_registro=202403956215&data=20250312&tipo=0](https://processo.stj.jus.br/processo/dj/documento/mediado/?tipo_documento=documento&componente=MON&sequencial=299631327&num_registro=202403956215&data=20250312&tipo=0). Accessed on: March 18, 2025.

CAMELO, Ana Paula; CANABARRO, Diego Rafael; WAGNER, Flávio Rech (orgs.). **Estrutura e funcionamento da internet: aspectos técnicos, políticos e regulatórios**. São Paulo (SP), Brasil: CEPI FGV Direito; ISOC Brasil, 2021. pp. 58-65. Available at: [https://www.academia.edu/48266173/Curso\\_livre\\_Estrutura\\_e\\_funcionamento\\_da\\_Internet\\_aspectos\\_t%C3%A9cnicos\\_pol%C3%ADticos\\_e\\_regulat%C3%B3rios\\_2020](https://www.academia.edu/48266173/Curso_livre_Estrutura_e_funcionamento_da_Internet_aspectos_t%C3%A9cnicos_pol%C3%ADticos_e_regulat%C3%B3rios_2020). Accessed on: March 23, 2025.

CELESTE, Edoardo; SANTARÉM, Paulo Rená da Silva. Constitucionalismo digital: mapeando a resposta constitucional aos desafios da tecnologia digital. **Revista Brasileira de Direitos Fundamentais & Justiça**, v. 15, n. 45, 2021. Disponível em <https://dfj.emnuvens.com.br/dfj/article/view/1219>. Accessed on: March 21, 2025.

CELESTE, Edoardo. Digital punishment: social media exclusion and the constitutionalising role of national courts. **International Review of Law, Computers & Technology**, v. 35, n. 2, 2021, pp. 162-184. Available at: <https://www.tandfonline.com/doi/epdf/10.1080/13600869.2021.1885106?needAccess=true>. Accessed on: March 16, 2025.

EMPOLI, Giuliano da. **Os engenheiros do caos**: Como as fake news, as teorias da conspiração e os algoritmos estão sendo utilizados para disseminar ódio, medo e influenciar eleições. Belo Horizonte: Vestígio, 2019.

OMINGOS, Amanda; BATISTA, Ian Rebouças. Um mapa para a transparência e replicabilidade na ciência social empírica: o Protocolo TIER. **Metodologia em Ciência Política**, vol. 30, nº 1, 2021. Available at: <https://periodicos.ufpe.br/revistas/politicohoje/article/view/245776>. Accessed on: May 16, 2025.

FONSECA, Mariana. Mesmo na pandemia, empresas de tecnologia ocupam mais espaço em SP; veja regiões mais procuradas. **InfoMoney**, 21 jun. 2021. Available at: <https://www.infomoney.com.br/mercados/mesmo-na-pandemia-empresas-de-tecnologia-ocupam-mais-espaco-em-sp-veja-regioes-mais-procuradas/>. Accessed on: March 12, 2025.

GALVÃO, Julia. O que é o efeito Dunning-Kruger?. **Jornal da USP no AR**, 1ª edição. 14 jun. 2023. Disponível em <https://jornal.usp.br/?p=647791>. Accessed on: March 7, 2025.

GOLDMAN, Eric. Content Moderation Remedies. **Michigan Technology Law Review**, v. 28, n. 1, outono 2021, pp. 1-60.

HAIMSON, Oliver et al. Disproportionate Removals and Differing Content Moderation Experiences for Conservative, Transgender, and Black Social Media Users: Marginalization and Moderation Gray Areas. **Proceedings of the ACM on Human-Computer Interaction**, v. 5, n. 466pp 1–35, out./ 2021. Available at: <https://dl.acm.org/doi/10.1145/3479610>. Accessed on: June 16, 2024.

INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA. **Censo 2022**. Available at: <https://www.ibge.gov.br/estatisticas/sociais/trabalho/22827-censo-demografico-2022.html>. Accessed on: March 20, 2025.

JUNQUEIRA, Caio. X Brasil mantém escritório no Brasil duas semanas após anunciar fechamento. **CNN Brasil**, 29 ago. 2024. Available at: <https://www.cnnbrasil.com.br/blogs/caio-junqueira/politica/x-brasil-mantem-escritorio-no-brasil-duas-semanas-apos-anunciar-fechamento/>. Accessed on: March 12, 2025.

JUSBRASIL. **Quem somos**. Available at: <https://sobre.jusbrasil.com.br/>. Accessed on: March 20, 2025.

KAYE, David. **Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**. A/HRC/38/35. Available at: <https://docs.un.org/en/A/HRC/38/35>. Accessed on: April 22, 2024.

KURTZ, Lahis Pasquali; DO CARMO, Paloma Rocillo Rolim; VIEIRA, Victor Barbieri Rodrigues. **Transparência na moderação de conteúdo: tendências regulatórias nacionais**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2021. Available at: <https://bit.ly/3xjAUka>. Accessed on: September 6, 2024.

MACHADO, Caio Vieira; VICENTE, Victor. Twitter e Elon Musk: da liberdade de expressão à moderação de conteúdo. **Jota Info**, 5 mai. 2022. Available at: <https://www.jota.info/opiniao-e-analise/colunas/tecnologia-cultura-digital/twitter-e-elon-musk-da-liberdade-de-expressao-a-moderacao-de-conteudo>, Accessed on: March 20, 2025.

PEREIRA, Ana Bárbara Gomes. SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; SILVA, Rafaela Ferreira Gonçalves da. **Cartilha de Enfrentamento à Desinformação em Redes Sociais**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://irisbh.com.br/wp-content/uploads/2024/08/Cartilha-de-Enfrentamento-a-Desinformacao-em-Redes-Sociais.pdf>. September 6, 2024.

SANTARÉM, Paulo Rená da Silva. A Internet expõe a necessidade geral de um amadurecimento do regime jurídico brasileiro de responsabilidade civil. In DA SILVA, Alexandre Pacheco; SANTOS, Bruna Martins dos. **Uma avaliação do Modelo de Responsabilidade de Intermediários do Marco Civil para o desenvolvimento da Internet no Brasil**. Internet Society - Capítulo Brasil, ago. 2020. Available at: <https://www.isoc.org.br/noticia/estudo-sobre-avaliacao-do-modelo-de-responsabilidade-de-intermediarios-do-marco-civil-da-internet>. Accessed on: March 23, 2025.

SARLET, Ingo Wolfgang. Direitos fundamentais e direito privado: algumas considerações em torno da vinculação dos particulares aos direitos fundamentais. **Boletim Científico da Escola Superior do Ministério Público da União**, ano 4, n. 16, pp. 193-259, jul./set. 2005. Available at: <https://escola.mpu.mp.br/publicacoespesquisas/periodicos/boletim-cientifico/edicoes-do-boletim/boletim-cientifico-n-16-julho-setembro-de-2005/direitos-fundamentais-e-direito-privado-algumas-consideracoes-em-torno-da-vinculacao-dos-particulares-aos-direitos-fundamentais>. Accessed on: March 16, 2025.

SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; DUTRA, Luiza Correa de Magalhães; SILVA, Rafaela Ferreira Gonçalves da. **Guia informativo: Devido Processo na regulação da moderação de conteúdo ao redor do mundo**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2023. Available at: <https://bit.ly/3smC0i0>. Accessed on: March 16, 2025.

SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; DUTRA, Luiza Correa de Magalhães; SILVA, Rafaela Ferreira Gonçalves da. **Reclamações sobre o procedimento de moderação de conteúdo em redes sociais: o que pensam os usuários**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://bit.ly/4enMVKv>. Accessed on: February 19, 2025.

SILVA, Fernanda dos Santos Rodrigues; GERTRUDES, Júlia Maria Caldeira; SILVA, Rafaela Ferreira Gonçalves da. **Regulação de plataformas e devido processo na moderação de conteúdo: perspectivas em 5 continentes**. Belo Horizonte: Instituto de Referência em Internet e Sociedade, 2024. Available at: <https://irisbh.com.br/publicacoes/devido-processo-na-moderacao-de-conteudo-em-5-continentes/>. Accessed on: September 6, 2024.

SIRAVEGNA JUNIOR, Eduardo Eugênio. **Razoável duração do processo e controle de convencionalidade: uma análise à luz do Sistema Interamericano de Direitos Humanos**. 2024. Dissertação (Mestrado em Direito) – Faculdade de Direito, Fundação Universidade Federal de Mato Grosso do Sul, Campo Grande, 2022.

TORTELLA, Tiago. Quais são os maiores e menores estados do Brasil? Veja ranking. **CNN Brasil**, 28 jun. 2023. Available at: <https://www.cnnbrasil.com.br/nacional/quais-sao-os-maiores-e-menores-estados-do-brasil-veja-ranking/>. Accessed on: March 12, 2025.

TRINDADE, Rodrigo. Essas 7 empresas de tec têm receita anual maior do que PIB de alguns países. **UOL**, 18 ago. 2018. Available at: <https://www.uol.com.br/tilt/noticias/redacao/2018/08/18/essas-7-empresas-de-tec-tem-receita-anual-maior-do-que-pib-de-alguns-paises.htm>. Accessed on: April 07, 2025.

# Annex I – List of Questions in the Judicial Decision Analysis Form

1. *Who is the researcher?*
2. *What is the case number?*
3. *What is the link to the full text of the decision?*
4. *In what year was the decision rendered?*
5. *Which state (UF) issued the decision?*
6. *What type of decision is it?*
7. *What content-moderation issue is being discussed?*
  - Content removal*
  - Account suspension*
  - Permanent account ban*
  - Procedural matters*
  - Other*
8. *If you answered “Procedural matters” above, please specify which.*
9. *Which legal norms were mentioned as the basis for the decision on the merits?*
  - Please cite the law (name and number) and, if possible, the specific article or provision.*
10. *Did the court identify any normative gap in order to decide the case?*
  - Yes*
  - No*

*Not applicable*

11. If “Yes,” please explain or transcribe the passage where the gap was noted (enclose any direct quotes in quotation marks).

12. Was there an express mention of the need for a “right to due process” in content moderation?

Yes

No

*Not applicable*

13. If “Yes,” please explain or transcribe the passage where it was mentioned (enclose any direct quotes in quotation marks).

14. Was any element of due process in content moderation mentioned?

Yes

No

*Not applicable*

15. If “Yes,” which element(s) of due process in content moderation were identified? (Refer to the parameters in the project’s Toolkit)

*General principles for content moderation*

*Appeals mechanisms*

*Procedural timeframes*

*User notification of moderation decisions*

*Requirement to provide reasoning for moderation decisions*

*Design and accessibility of moderation tools*

*Not applicable*

*Other*

16. If you selected any due-process element above, please transcribe the exact passages from the judicial

decision where they appear.

17. What was the final outcome of the decision?

- In favor of the plaintiff
- Dismissed
- Not applicable

18. Additional observations:

## Annex II - List of analyzed processes and their respective nicknames

PROCESS NICKNAME	PROCESS NUMBER	PROCESS NICKNAME	PROCESS NUMBER
TJAM013	0626813-58.2022.8.04.0001	TJBA006	0009894-98.2022.8.05.0103
TJAM016	0402865-37.2023.8.04.0001	TJBA024	0129350-91.2021.8.05.0001
TJAM023	0021643-96.2024.8.04.1000	TJBA028	0039956-39.2022.8.05.0001
TJAM025	0622271-94.2022.8.04.0001	TJGO001	5291814-73.2022.8.09.0051
TJAM026	0679552-08.2022.8.04.0001	TJGO002	5294042-44.2022.8.09.0011
TJAM031	0421342-74.2024.8.04.0001	TJGO004	5230649-25.2022.8.09.0051
TJAM035	0408630-52.2024.8.04.0001	TJGO013	5297418-30.2021.8.09.0025

PROCESS NICKNAME	PROCESS NUMBER
TJGO017	5143518-46.2021.8.09.0051
TJGO041	5571703-49.2022.8.09.0130
TJGO042	5335033-68.2024.8.09.0051
TJGO044	5614512-29.2024.8.09.0051
TJGO047	5568287-82.2023.8.09.0051
TJGO048	5034089-13.2022.8.09.0051
TJGO049	5855218-07.2023.8.09.0051
TJGO051	5107505-49.2022.8.09.0007
TJGO054	5640714-12.2021.8.09.0160
TJGO055	5202226-75.2022.8.09.0012
TJGO056	5022827-66.2022.8.09.0051
TJGO057	5066545-16.2022.8.09.0051
TJGO062	5332193-57.2023.8.09.0007
TJGO063	5731390-71.2023.8.09.0051

PROCESS NICKNAME	PROCESS NUMBER
TJGO066	5304091-87.2023.8.09.0051
TJPR004	0005200-35.2021.8.16.0194
TJPR011	0078443-38.2019.8.16.0014
TJPR012	0000027-59.2023.8.16.0000
TJPR014	0017286-74.2023.8.16.0030
TJPR022	0005212-15.2021.8.16.0173
TJPR024	0056325-63.2022.8.16.0014
TJPR025	0005373-51.2024.8.16.0001
TJPR051	0011969-59.2021.8.16.0194
TJPR074	0002167-75.2022.8.16.0170
TJPR088	0015685-66.2023.8.16.0019
TJPR096	0003540-44.2024.8.16.0018
TJPR097	0003246-26.2023.8.16.0018
TJPR100	0012651-23.2022.8.16.0018

PROCESS NICKNAME	PROCESS NUMBER
TJPR104	0022446-65.2023.8.16.0035
TJPR105	0020160-68.2023.8.16.0018
TJPR107	0000429-86.2023.8.16.0018
TJPR108	0005485-37.2022.8.16.0018
TJPR110	0029431-60.2020.8.16.0001
TJPR113	0014183-32.2022.8.16.0018
TJPR117	0023110-43.2019.8.16.0001
TJPR118	0010018-39.2022.8.16.0018
TJPR124	0018551-41.2023.8.16.0021
TJPR125	0075249-88.2023.8.16.0014
TJPR128	0006260-72.2022.8.16.0173
TJPR131	0004657-90.2024.8.16.0173
TJPR133	0003196-69.2021.8.16.0050
TJPR135	0032003-89.2021.8.16.0021

PROCESS NICKNAME	PROCESS NUMBER
TJPR144	0001484-53.2022.8.16.0068
TJPR145	0016276-65.2022.8.16.0018
TJPR146	0002573-26.2023.8.16.0182
TJPR151	0015173-57.2021.8.16.0018
TJPR153	0001437-96.2023.8.16.0148
TJPR157	0004369-52.2023.8.16.0182
TJPR164	0008345-11.2022.8.16.0018
TJSP001	1000219-96.2023.8.26.0484
TJSP007	1090555-37.2023.8.26.0100
TJSP008	1025653-75.2023.8.26.0100
TJSP009	1090394-27.2023.8.26.0100
TJSP011	1121535-64.2023.8.26.0100
TJSP014	1003336-40.2023.8.26.0664
TJSP022	1005305-89.2024.8.26.0071

PROCESS NICKNAME	PROCESS NUMBER
TJSP023	1002603-95.2022.8.26.0248
TJSP033	1107493-10.2023.8.26.0100
TJSP042	2141903-86.2023.8.26.0000
TJSP043	1002831-91.2022.8.26.0338
TJSP045	1124495-27.2022.8.26.0100
TJSP057	1124834-20.2021.8.26.0100
TJSP059	1048932-27.2022.8.26.0100
TJSP060	1027972-22.2023.8.26.0001
TJSP069	1001181-64.2023.8.26.0664
TJSP081	1167842-76.2023.8.26.0100
TJSP087	1007587-52.2023.8.26.0066
TJSP088	1004859-52.2021.8.26.0084
TJSP099	1000752-77.2023.8.26.0218
TJSP103	1089064-32.2022.8.26.0002

PROCESS NICKNAME	PROCESS NUMBER
TJSP106	1008841-65.2022.8.26.0011
TJSP109	1078712-12.2022.8.26.0100
TJSP110	1010124-16.2023.8.26.0100
TJSP111	1005134-79.2023.8.26.0100
TJSP119	009420-37.2022.8.26.0100
TJSP121	1151624-70.2023.8.26.0100
TJSP123	1007812-67.2023.8.26.0100
TJSP124	1135645-05.2022.8.26.0100
TJSP126	1166601-67.2023.8.26.0100
TJSP130	1060428-19.2023.8.26.0100
TJSP133	076661-91.2023.8.26.0100
TJSP137	1038212-70.2023.8.26.0001
TJSP138	1054662-48.2024.8.26.0100
TJSP139	1163980-97.2023.8.26.0100

PROCESS NICKNAME	PROCESS NUMBER
TJSP142	1086249-25.2023.8.26.0100
TJSP144	1170718-04.2023.8.26.0100
TJSP155	1133086-75.2022.8.26.0100
TJSP157	1002452-30.2023.8.26.0011
TJSP159	1037244-97.2024.8.26.0100
TJSP160	1028103-54.2024.8.26.0100
TJSP165	1165273-05.2023.8.26.0100
TJSP168	1030805-41.2021.8.26.0564
TJSP169	1000852-95.2023.8.26.0100
TJSP177	1169844-19.2023.8.26.0100
TJSP194	1033445-94.2021.8.26.0506
TJSP198	1001182-67.2023.8.26.0270
TJSP205	1002374-69.2022.8.26.0270
TJSP208	1000719-13.2023.8.26.0081

PROCESS NICKNAME	PROCESS NUMBER
TJSP209	1005783-10.2024.8.26.0100
TJSP213	1003877-14.2023.8.26.0619
TJSP216	1033890-35.2022.8.26.0100
TJSP223	1172475-33.2023.8.26.0100
TJSP226	1175164-50.2023.8.26.0100
TJSP230	1034566-12.2024.8.26.0100
TJSP233	1001951-07.2023.8.26.0228
TJSP236	1007810-06.2023.8.26.0292
TJSP238	1090095-84.2022.8.26.0100
TJSP239	1015035-85.2021.8.26.0506
TJSP242	1008821-44.2022.8.26.0506
TJSP243	1001271-42.2023.8.26.0189
TJSP246	1012370-31.2023.8.26.0020
TJSP254	1005511-53.2023.8.26.0002

PROCESS NICKNAME	PROCESS NUMBER
TJSP257	1003605-39.2022.8.26.0236
TJSP264	1010633-30.2022.8.26.0019
TJSP275	1021527-16.2022.8.26.0100
TJSP277	1137582-84.2021.8.26.0100
TJSP289	1018098-65.2023.8.26.0016
TJSP293	1034716-27.2023.8.26.0100
TJSP307	1004072-86.2024.8.26.0223
TJSP311	1029541-13.2023.8.26.0016
TJSP315	1000958-18.2023.8.26.0016
TJSP329	1028852-95.2023.8.26.0071
TJSP330	1013159-18.2022.8.26.0100
TJSP349	1010657-69.2023.8.26.0004
TJSP357	1021311-24.2023.8.26.0196
TJSP369	1001208-31.2023.8.26.0346

PROCESS NICKNAME	PROCESS NUMBER
TJSP381	2278441-11.2022.8.26.0000
TJSP383	1032677-94.2022.8.26.0196
TJSP386	1098219-22.2023.8.26.0100
TJSP393	1003239-80.2023.8.26.0101
TJSP398	1040736-89.2023.8.26.0114
TJSP399	0000751-33.2023.8.26.0405
TJSP402	1017127-56.2022.8.26.0100
TJSP416	1000568-48.2024.8.26.0619
TJSP417	1001713-80.2022.8.26.0435
TJSP432	2155098-41.2023.8.26.0000
TJSP433	1087812-54.2023.8.26.0100
TJSP444	1119561-26.2022.8.26.0100
TJSP457	1033582-26.2022.8.26.0576
TJSP459	1032511-25.2023.8.26.0100

PROCESS NICKNAME	PROCESS NUMBER
TJSP489	1125409-91.2022.8.26.0100
TJSP500	2009200-94.2023.8.26.0000
TJSP504	1082837-86.2023.8.26.0100
TJSP505	009200-94.2023.8.26.0000
TJSP515	1122398-20.2023.8.26.0100
TJSP536	1077666-51.2023.8.26.0100
TJSP556	1029142-13.2023.8.26.0071
TJSP568	1048822-78.2021.8.26.0224
TJSP581	1001505-56.2024.8.26.0361
TJSP595	1008275-95.2022.8.26.0309
TJSP601	1005500-62.2023.8.26.0248
TJSP602	1072945-56.2023.8.26.0100
TJSP614	1009867-88.2023.8.26.0100
TJSP624	1056831-42.2023.8.26.0100

PROCESS NICKNAME	PROCESS NUMBER
TJSP627	1009815-98.2022.8.26.0077
TJSP631	002923-58.2022.8.26.0568
TJSP657	1003032-15.2022.8.26.0005
TJSP668	1129080-88.2023.8.26.0100
TJSP677	1011438-66.2023.8.26.0562
TJSP679	1014750-71.2023.8.26.0361
TJSP686	1020671-55.2022.8.26.0196
TJSP695	1024172-23.2023.8.26.0506
TJSP716	1087233-43.2022.8.26.0100
TJSP722	1095991-74.2023.8.26.0100
TJSP733	1016246-22.2023.8.26.0625
TJSP740	1021907-68.2024.8.26.0100
TJSP748	1026254-61.2022.8.26.0506
TJSP752	1020093-49.2023.8.26.0005

PROCESS NICKNAME	PROCESS NUMBER
TJSP770	1004498-30.2022.8.26.0236
TJSP793	1002166-93.2023.8.26.0450
TJSP796	1090545-95.2020.8.26.0100
TJSP799	1130698-68.2023.8.26.0100
TJSP807	1015045-81.2024.8.26.0100
TJSP813	1046169-53.2022.8.26.0100
TJSP814	0005966-02.2021.8.26.0068
TJSP815	0005966-02.2021.8.26.0068
TJSP816	1162964-11.2023.8.26.0100



INSTITUTE  
FOR RESEARCH  
ON INTERNET  
AND SOCIETY