

**Translation by Felipe Mansur – researcher at [InternetLab](#), law and technology research center – São Paulo, Brazil.**

FACEBOOK BRAZIL ONLINE SERVICES LTDA. qualified and duly represented by the petition forwarded at the end of the day 10.08.2012, requires the RECONSIDERATION of the sanctions imposed in these proceedings for breach of injunction previously granted (pgs. 29/31), which are the daily fine and the suspension of the access of the said mentioned network in Brazil, in the latter of twenty-four hours.

Complied with certain notices and citations in the combated decision, addressed to the people identified as owners of the equipment of which left the establishment and administration of the group that posted the anonymous offensive messages of the candidate for Alderman, the case was referred to the worthy Dr. promoter of the Electoral Justice for demonstration.

The Ministerial Opinion is on the fls.131 ff.

The case came concluded a (Saturday - 11.8.2012).

IT IS THE SHORT REPORT. I DECIDE.

Some preliminary considerations should be highlighted, considering the dimension of the subject under discussion in these proceedings.

First, the injunction granted originally should be maintained at this point for its own reasons, namely to maintain the suspension of the access and the insertion of electoral anonymous messages and offensive in the group called "Reaja Praia Mole", hosted on Facebook until further decision of this court.

The Constitution of the Republic of 1988, while promoting the free expression of thought and opinion, expressly prohibits anonymity (art. 5 º, IV). It does that correctly, because that same Constitution guarantees to every Brazilian citizen, as a fundamental right, the right to reply, proportional to the offense, besides the compensation for property damage, moral or image (art. 5., V ), which presuppose, for its effectiveness, the identification of the author responsible for the injury.

Thus, as a general rule, it is worth remembering that every citizen, while in the country, or any company operating in Brazil, are subjected to the provisions of the Constitution and the infra-constitutional law, civil, criminal, administrative and even Electoral.

Secondly, in the specific context of the Electoral Code, Law no. 9,504/97 and the Resolution no. 23,370/2011-TSE, in regard to the principles of the Constitution, regulating the general and municipal elections, expressly allowed the use of social networks, but also prohibited the

anonymity during the electioneering period (art. 21, Res. 23,370/2011 TSE), as well the realization of offenses of any person, candidates, agencies or public entities (art. 13, IX, res. 23,370/2011 TSE), because those are behaviors that don't contribute to the information and decision of the voter.

Therefore, it is up to the Electoral Court, in force of the law and in compliance with the supreme values and principles embodied in the Constitution, to supervise and ensure that candidates and voters exercise freely, democratically and responsibly the citizenship, by focusing the necessary sanctions in cases of violation of the legislation, capable of harming the normal electoral process.

Within this legal framework, are subjected to the Brazilian regulatory framework, the companies operating broadcasting tools, television, and now, more recently, the Internet companies classified as "social networks", even if still operating from other countries, as with Facebook, Twitter and others.

The feature that distinguishes these global or transnational companies, do not exempt from compliance with the Brazilian legislation, requiring the adoption, by themselves, internal mechanisms to give effect to the decisions in the election plan. Otherwise, the Internet would turn into a space lawless, situation incompatible with the constitutional organization of our country.

Sophia Martini Vial warns, while talking about the electronic commerce, here also applicable, that the information today is perhaps the most profitable and at the same time, a new form of social exclusion, adding that the need for the use of internet in Brazil must be based on the exercise of citizenship and human rights.

Finally, the challenges to improve the regulation and the safety of cyberspace are big, and are demanding a huge effort and synergy between government and the private sector to ensure respect for the fundamental rights of its users.

Well, established the controversy under these parameters, in this case, Facebook came to the Court to clarify the appointed breach of injunction granted in this process, supporting technical issues, but reaffirming the company's willingness to assure in the best way possible the Brazilian Electoral Court decision (pgs. 121)

At this point, over the justifications presented, it deserves attention the weightings of the decent Dr. Sidney Eloy Dalabrida, promoter of the Electoral Justice:

“The reasons that support the reconsideration of the fearless and brilliant judgments given show that a court order was not fully complied under the pretext that FACEBOOK BRASIL SERVIÇOS ONLINE did not have conditions to provide the restriction to the page “Reaja Praia Mole”. However, considering the object of this precautionary measure, I have as reasonable, given the already operated lock, suspended the operation of the application by the daily fine imposed, as well as the suspension order for 24 (twenty four) hours of the access to the entire information content of the

facebook social network in Brazil. However, be notified that in case of a new failure, the measure above will be immediately applied.

In other terms, it must be said that the injunction had not the intention to restrict the user's expressions on other topics that were not offensive or violated the election laws. Defending several views on various topics is not prohibited, although carried out by identified individuals (not anonymous) for the purpose of determining the responsibility for all that is said and disseminated, given the importance of establishing an ethical parameter least in terms of freedom of expression in the virtual world.

About canvass on the internet, the Superior Electoral Court has already settled that the constitutional guarantee of free manifestation of thought can not be used to accommodate the practice of torts during the election, specially when considering another equally valuable principle to the Constitution, as the balance in the elections, brought on representation in the 203 judgment of 17/03/2011 Min. HENRIQUES MARCELO RIBEIRO DE OLIVEIRA Publication DJE Journal of Justice Eletronico. Date Page 29).

Before the identification of the users allegedly involved in the creation and administration of the page with anonymous posts, and considering the express provision of Facebook to collaborate with the Brazilian Electoral Justice in the construction of fast mechanisms and procedures to give efficiency to the electoral court decisions, I suspend the sanctions imposed on the previous decision, as highlighted by the Electoral prosecutor.

NOW, THEREFORE, grounded on the Article 96, I, Law No. 9,504 / 97, I suspend the enforcement of the sanctions imposed in these proceedings to the defendant, under the representative indication of commitment in Brazil to the election judge contact and under the immediate enforcement of court decisions during the period of electioneering.

Notify the Electoral Prosecutor.

Comply.

Florianópolis, August 11, 2012 (5:40 pm)