Translation by Paula Pécora de Barros – researcher at InternetLab, law and technology research center – São Paulo, Brazil.

JUDICIAL BRANCH

COURT OF JUSTICE OF PIAUÍ

ORDER

Writ of Mandamus nº 2015.0001.001592-4 (0013872-87.2014.8.18.0140)

Writ of Mandamus nº 2015.0001.001593-6 (0013872-87.2014.8.18.0140)

Rapporteur: Raimundo Nonato da Costa Alencar

Petitioner: Global Village Telecom S.A. and others

Defendant: Judge of the Central of Inquiries of Teresina (Piauí) County

There are two writs of mandamus, with preliminary requests, made by Global Village Telecom S.A., Empresa Brasileira de Telecomunicações S.A. (Embratel) and Claro S.A. against the act made by Judge of Law of Central of Inquiries from Teresina County, who determined to the directors of the petitioners that, in twenty four hours they suspend the application Whatsapp in all national territory, until the judicial order is followed from process n. 0013872-87.2014.8.18.0140, the data traffic through whatsapp.net and whatsapp.com domains, as well as their subdomains and all other domains that contain whatsapp.net and whatsapp.com on their names.

The petitioners affirm, in sum, that the determination made by the authority accused can't be followed due to technical limitations, as they wouldn't have the conditions to guarantee, in an effective way, the suspension of access and the traffic of informations through the Whatsapp application.

Afterwards, they discoursed on the merits of the present writ of mandamus, identifying the presence of the clear and determined right of their pretension on the Republic Constitution.

They add, in that sense, that the decision under attack would have violated articles 3º, VI, and 18, of Brazilian Internet Civil Rights Framework, inasmuch as the responsibilities of the connection provider or "backbone" and the application provider (on this case, the Whatsapp application) are distinct, and therefore, an agent can't be held responsible for another one's activity.

They claim, still, that the attacked decision, as it determined the suspension of the guard of data connection, ended up being contradictory, because it went against the own finality of the present investigation, preventing the detection of the allegedly occurred illicit facts.

On this point, they make the reminder that the article 13 of the referred Brazilian Internet Civil Rights Framework determines that connection providers, as the authors are, maintain the connection registries, under secrecy, in a controlled and secure environment, in 1 (one) year, on the terms of the regulation, in a way that the keeping of such data comes from a legal obligation.

They assert, more, that the analyzed act is completely deprived of reasonability, because it imposes the blocking of access to an infinitude of users to the functionalities of the referred application, just to answer the demands of an investigatory proceeding which end may be reached through many other measures, less onerous and possibly more effective.

They justify, then, based on the reasoning made and in precedent decision by the Court of Justice of the State of São Paulo, the need to anticipate the tutelage, asking, thereby, for the concession of the preliminary request in a way that the decision attacked is suspended.

This is what is enough to report.

On the facts established on the initial petition, I ascertain the existence of *fumus boni iuris.*

The decision under question, according to what was told, determined the suspension of access of the application of instant communication which is notoriously used by millions of people around the world, because there is (according to the mandamus of page 38 of the files of process n. 2015.001.0001.001592-4), a refusal to follow another judicial order, whose content, as it originally comes from processes protected by secrecy of justice, is covered by uncertainties.

Initially, independently of the content of the uncompiled order, under no hypothesis the interruption of access to a whole service should be justified, which has an area of reach that goes beyond the national borders of any nation, and affects, directly and surprisingly, the communication between countless people. It involves national users, and also those that, outside our frontiers, try to contact family, friends and others, residents in Brazil.

To better illustrate the lack of proportionality of the questioned act, imagine a judge that, unsatisfied with the praxis of a determined telecommunications company in giving secretive information, determined the suspension, throughout all of national territory, of this modality of communication service. Or, on a more rough analogy, if this judge determined the interruption of the delivery of letters and packages by mail, only based on the suspicion that, for example, drug dealers would be using this method to transport drugs.

Although, initially, these analogies seem to look out of place on the present case, it must be reminded that in all of these three situations, there's the same idea, which is (the attempt) to paralyse a gigantic and heavy structure, with undeniable international ramifications, we may add, in benefit of a criminal investigation that, quite probably, has a very limited number of suspects.

Besides, as it has been well stressed out on the initial petition, police organisms dispose of several other methods of investigation, and it is not plausible that a whole investigation may depend on information of telematic nature. Well, if there was - or it's happening - a crime through data transmission on the Whatsapp application (or other program of the same nature), those facts won't be made clear - and even less avoided - with the suspension of this service, because, it is known, there is an infinity of softwares of that nature, available to anyone.

If those reasons are not enough, which in my understanding justify the suspension of the questioned order, it is known that there was another writ of mandamus, on judicial call, whose magistrate on duty, judge José Ribamar Oliveira, accepted the preliminary request, suspending the efficacy of the orders made against TELEFÔNICA BRASIL S.A., in the files of process numbers 0013872-87.2014.8.18.0140 and 0007620-68.2014.8.18.0140, (...) maintaining all other orders made by the authority, coauthor in the process referred, until definite judgement.

On this other *writ* the same theme as here is discussed, for the decision of the defendant, as it has been pointed out, is directed to countless telecommunication service providers, through which, obviously, users of these services make use of the application whatsapp. Therefore, I bring here pieces of the decision of the eminent judge on duty that, for the reasons said, adapt to the present case. Look:

"It is disproportionate and unreasonable, in this way, the sanction applied by the judge, because, besides reaching an incalculable number of citizens that use the application, it is also

about the obligation that the Judicial Power can make happen with the responsibles for the registries, in this case, the company Facebook Serviços Online do Brasil Ltda., without violating the rights of a third party.

(...)

In this case, it is indispensable that the existence of proportion between the intended end is analyzed, which is, to make the company Facebook in Brazil to pass, in the most summarized way, the information referred to conversations of the investigated parties made by the application, and the onus imposed to the affected, which is, not only Telefônica Brasil S.A., but also all of Brazilian society.

(...)

At most, he legality of the decision made by the Judge of Law of the Central of Inquiries from the Teresina/PI County is not being discussed, but in which degree it is applied by the magistrate in view of the non-compliance of the decisory act previously professed by him.

(Writ of mandamus made by number 2015.0001.001604-7)

As for the *periculum in mora*, I understand that, for the reasons explained above, it is perfectly shaped, considering the deadline given by the defendant for the following of his determination.

Before all that was exposed, I accept the preliminary request, to suspend the efficacy of the order made against the authors, in process n. 0013872-87.2014.8.18.0140 (to which the official letters n. 0207/NI/2015, 0209/NI/2015 and n. 0215/NI/2015 refer to, all from the Center of Intelligence of the Secretary of Public Security of the State of Piauí), in no way affecting, I highlight, the judicial order of pages 43/46 of the referred act.

I determine, still, the notification of the authority considered co-author, following the end and deadline predicted on article 7º, n. I, of Law n. 12016/09, as well as it is forwarded copies of this decision, of the initial and the documents which accompany it, to the State Attorney's Office of Piauí, ex vi the arranged on article 7º, II, of the referred law.

Also, the Secretary of Security of the State of Piauí may be officiated, to the arrangements that he may want.

Finally, may the records be reunited, because of their flagrant connection, sending copies of this decision to both procedural documents.

May it be summoned and complied to.

Teresina, February 26th 2015