

Decision

1- This is about the request for the suspension of the applications known in the global market as 'Whatsapp', of responsibility of the company of the same name, acquired by Facebook Inc, also solidary responsible, these legal persons being part of the same billionaire mundial conglomerate and, in Brazil, represented by *Facebook Serviços Online do Brasil Ltda*, with headquarters in the city of São Paulo/SP, their efforts, publicly and notoriously, tried to convince this country that they would not be in the same chain of responsibility for being distinct and that would be submitted to the American and not the Brazilian legislation;

2- It is affirmed by the Federal Police Authority, Dr. Renato Beni da Silva, pages 02/13, that the suspension for 72h of the 'Whatsapp' application, of propriety of Facebook Inc is a measure imposed, according to entity typified in article 12, item III, of Law 12. 965/2014, bearing in mind that *Facebook Serviços Online do Brasil Ltda* is **STILL** overdue in spite of the fines arbitrated by this Criminal Court in the attempt to fulfill the order of intercepting messages in real time and, finally, of the arrest in May 1st 2016 of the representative in this country of the Vice-President for Latin America, Mr. Diego Jorge Dzordan, by order of this same magistrate, considering article 2, item 1, of the Law of Criminal Organizations (Law nº 12.850/2013) and reported by the Public Attorney's Office of the State of Sergipe, him being in freedom since March 2nd 2016, benefited by an injunction of habeas corpus, whose merits were not appreciated;

3- Here and in the other processes made, in which a criminal organization sponsor of interstate drug trafficking and with branches in this state of Sergipe and in several others continues to perpetrate its unlimited criminal practises and disdain of the constituent Powers;

4- The police investigations found themselves interrupted in what relates to the possibility of unraveling important facts for the faithful dismantling of this organization that would use the 'Whatsapp' application, knowing now that they could use of this "crime platform" without being bothered, in national Brazilian territory;

5- Favorable report from the dignified representative of the Public Attorney's Office of the State of Sergipe, Dr. Renê Antônio Erba, fls 19/21, under the canopy that the company called *Facebook Serviços Online do Brasil Ltda* would confess, nationally, that it does not comply with the Brazilian legislation and that, finally, the end to end cryptography could be 'disabled', according to document registered in the records, fl 18, by Mr. Chief of Federal Police, in a technical report of the Federal entity, in Brasília, fl 20;

I reported on the interests. I fundament. I decide.

6- The request for the temporary suspension of 'Whatsapp', of property of Facebook Inc, whose company is controlled on national territory answers by the name of *Facebook Serviços Online do Brasil Ltda* with headquarters in the city of São Paulo/SP is here looked after;

7- From what is apparent from the files it is necessary to assert, from plan, on the reasons for which the requested 72h suspension could contribute to the dismantling of the criminal organization. At first, the simple suspension could be incompatible with what is aimed, it is worth mentioning, the collection of proof elements for the incorporating to the already existing ones, one the suspension itself would derail the communication of the messages, videos or voice recordings between the components of the criminal organization;

8- In a precipitated analysis, one could think that this reasoning in its apparent contradiction. But what is intended by the Federal Police Authority, would be, once more, that the coercitive measures make that company respect the Brazilian legal system;

9- That being, and this first part solved, we analyse, exhaustively, the presented topic, by professional duty and as this Law Judge has always done;

10- At first, it is established that this concrete case is about a clash between the supremacy of the public interest in face of the the private interest, and the limits of this one, entering as well on the right to privacy, of constitutional character;

11- The purpose of the state existence is not other than diverse from itself. It is intended, through the base principle of the Administrative Right of the Supremacy of the Public Interest, to rule the own activity of the state;

12- What is intended is the supervision of the primary interests, it is worth saying, that lay in the crib of the Fundamental Principles that are the state's reason for existing. It should impose on the citizen, previously called "administrated" and, under some conditions, a limitation of if acting. It is worth mentioning, the public interest actually protects the private interest. Then, it is ensured the social order in benefit of the collectiveness;

13- Therefore, the private interest can be mitigated when what is intended is to ensure the fundamental rights, having in sight the protection of social order. In weighing the right to privacy, it is known that none of the fundamental rights is absolute, including the one to life, in case of declared external war, article 5, item XLVII, of the Federal Constitution/88;

14- But what is presented in this criminal sphere? A powerful and organized group devoted to criminal practises of interstate drug trafficking (of competence of the state Justice, and not the Federal Justice, even if the requirement here analysed is of authorship of a Federal Police Chief, which by itself does not transfer the competence from one to the other), continues to execute its actions devoted to the macro criminality. In face of this, it was requested the temporary suspension of an application service provided by the representative Facebook named 'Whatsapp' as it was used by the components of the organization, considering that all other previous measures, in the present case, and whose records are attached, were not complied with;

15- The great benefits brought to the contemporary world by the informatic technology are of general knowledge, mainly, on the concrete case, to the appreciators of the fought app named 'Whatsapp', also known by some simply as "zap". Through this application limitless communication between people is possible, whether they are natural or legal. It is believed that

billions of natural people around the world enjoy this precious creation of privileged minds that deserve respect and admiration. It is the human being granted with the gift of intelligence to come closer to so many others by diverse and whatever reasons, including to take part in condemnable and criminal acts;

16- However, the rebellion of the company is not reasonable when it wants to impose a confess disobedience to the national legislation. When keeping this aloof behavior, one is committing to illegality. That is, it is illegally acting in national territory, under the inert eyes of those whose duty/power of vigilance should be enforced with the purpose to hinder the orders of several Judges in Brazilian territory, leading this magistrate to determine the arrest of its Vice-President in Latin America, in the aforementioned date. Here, it is not attributed to Facebook the direct responsibility for a criminal organization, for what is presented. But, in face of its inconceivable defiance, contributes to such, UNIQUELY commercial purposes and its legal desire for billionaire profits. The known "gold fever";

17- In spite of the efforts of this Criminal Judge, and others in Brazil, in fulfilling these court orders, Facebook continues to mock the Brazilian Judiciary Power in a diminishing manner that is perpetrated until the present day and that does not count with any inertia from this magistrate or no other in the Brazilian territory. On the contrary, a new requirement is analysed, whose consequence should be reflected on millions of users who are used as a "manipulated mass" and as a "shield" by Facebook, who does not care at all with the supposed right to absolute privacy -- and that does not find constitutional shelter -- of whomever it may be, only and solely, to "sell" the idea that it is impossible to intercept the messages or videos exposed in their app, since like this, it mainly secures the value of their Nasdaq shares;

18- After the arrest of the always remembered Latin America Vice-President, by coincidence or not, now pretends to convince all of those who would be protected by end to end cryptography, which would impossibilitate any control by the company and, also, by any competent authority to succeed on a criminal investigation;

19- **According to a document found in the records, fls 14/7, by the Federal Police Authority.** "...The police investigations... continue to have its progress hindered, considering the resistance of the representatives of the Facebook company... in what relates to the interception of communications between investigated targets... The interception of messages ... in real time, properly decrypted, is essential for the state's role... dismissing the deepening of greater comments on the damage that all society suffers with such resistance of the company Facebook in complying with the judicial determinations under the most varied arguments, several of them even of doubtful sincerity... the technical possibility of the app to transmit such data in real time for investigation bodies when judicially stated, there is no doubt of its possibility... the mirroring of such images in real time was solicited... with the purpose to give following to the investigations, as it usually happens with a SMS message and telecommunications breach... in any moment previous messages were solicited... among the various and shallow arguments widely spread by the company... there is the impossibility of mirroring such dialogs, which once again does not match the reality, one only needs to check the tool to send dialogs via e-mail and the option of Whatsapp Web, where the user of the system can have access to their device in a computer in the same way as in their Smartphone. Another highly publicized issue by the representatives of Whatsapp is the impossibility of forwarding such messages properly

decrypted, this argument being again unmasked considering it was the company itself the responsible for producing the system, not being reasonable to expect that the creature overcomes its creator and becomes an autonomous system in which the company is itself unaware of its engineering program... the Brazilian legislation is clear... An example of what we are talking about was the behaviour of the company owner of the Blackberry system, that explores the field of encrypted communications... directing in real time the communications of investigated subjects... globally known by its integrity and security...";

20- To the fls. 16/7 there is a news article from UOL, also led by that Federal Authority, under the title "In website, Whatsapp mentions the possibility of storing data from users", dated March 10th 2016, in which "...However, the terms and conditions of Whatsapp cites the possibility of storing more information from users, like date and time of the sent messages associated to the respective cell phones in the conversation, in addition to exchanged files. These data would be kept in the servers for a 'short period of time' and then would be deleted..."

"Whatsapp can keep date and time information associated to successfully delivered messages and the involved cell phone numbers, as well as any other information Whatsapp can legally be forced to collect. Files that are sent through Whatsapp will reside in our servers after the deliver for a short period of time, but will be excluded and stripped from any identifiable information for a short period of time, in accordance to our general rules of maintenance", says the website. (www.whatsapp.com/legal); (I highlighted)

21- According to Technical informative of the Federal Police, n. 31/2016-SRCC/DICOR/DPF, fl 18, elaborated after the supposed establishment of the end to end cryptography, "... there are no indicatives of which cryptography protocol was used, how the management of the keys is done, nor if this encryption really is end to end or if it is just between server and user... As the implementation of end to end cryptography was incremental and considering the implementation of third party customers found on the Internet, there are strong traces that end to end cryptography is optional and theoretically could be disabled upon configurable parameters in equipments and company servers... Additional resources, like Whatsapp Web and the notification service theoretically could be used to allow the duplication of messages and subsequently the interception upon judicial order"; (I highlighted)

22- But what is cryptography? Nothing more than a codification of information technique usable between sender and receiver so that their communications are not captured by strangers in a comprehensible manner, being reversible with the use of the so called "keys", a set of bits under the cover of algorithms that allow the modifications of the encryption algorithm itself. It's worth mentioning that it is nothing more than a way to alter informations by transforming them, from so called readable, to a specific species of codes and that after are decoded by other readers who are capable of recognizing and interpreting these same codes. Furthermore, the so invoked cryptography has been used for long in the commercial world; banking services, credit card companies, e-commerce, messaging services and not even then the court orders for the supply of any data made these services unavailable, on the contrary, it increased their trust. *Therefore, from what is verified, Facebook confirms the possibility to provide what is requested;*

23- It is public and notorious that Facebook publicizes news affirming that, to enjoy the supposed end to end cryptography, users should use its new version. In spite of that, even if the

messages were encrypted by this new security tool, the technical report of the Brazilian Federal Police informs that it would actually be possible to decrypt it in the same way as it happens with Blackberry, with headquarters in Canada. It is only necessary to have access to a cell phone or smartphone, and to have the application, to read two diverse messages and of authorship of the represented.

1- For those users who did not upgrade from the older version:

“Messages sent to this conversation and calls are not end to end encrypted. Click for more informations.”

2- For those who updated from the older to the newer version:

“Messages you send to this conversation and calls are now protected by end to end cryptography.”

It's worth mentioning, exactly like affirmed by the Federal Police it is a choice made available by Facebook/Whatsapp itself if a customer/user wants to use the end to end cryptography (if existing) or not. Thus, there is no basis for what has been spread all over Brazil that all operations using this app would be in the new encryption.

24- It is not imaginable that an interstate drug trafficking investigation, covering the national territory in various states, is prevented from continuing for the (ir)responsibility of a billionaire company with merely commercial purposes in detriment of the national soberany.”

25- Measures of suspending a service in which the collective is affected certainly would bring in its core the discomfort and the outrage of customers. However, and as it has been said, Facebook has on its side the anger of millions of Brazilians that would be affected, not needing greater efforts to continue with the noncompliance with court orders, needing only to wait in the shadows for the repercussions of the case and its supposed admirers, all caused by an extremely individualized society that exists in this Brazilian nation. This magistrate determined the arrest of the Facebook representative in Brazil and decided, previously to that and to avoid it, (although he was not forced to that, on the contrary of what some legal practitioners understand, considering that the requirements and premises of a preventive arrest, article 312 of the Code of Criminal Procedure, does not have any relation to the provision of fines) fines of up to R\$ 1.000.000,00 (one million) of reais/per day, and that, in the moment, were suspended by determination of a preliminary injunction in writ of mandamus character, whose merits were also not judged. Well, effectively, **the Vice-President for Latin America was arrested** (and released) for supposedly characterizing in the article 2, item 1, of the Law of Criminal Organizations (and not by crime of disobedience, for as if it were, the declaration of preventive arrest would not have fit, as it can only be declared, sort of speak, for intentional crimes that have a maximum of imprisonment of 4 (four) years) **and the suspended blocks, aside from the impediment of arbitrating new fines with added values, in character of writ of mandamus**, one asks: “And so”? What are the measure to be taken? To fall into inertia? The share the recalcitrance of Facebook and collaborate with the criminals? To align with the authority crises lived in this country?

26- It was affirmed, in a recent and extremely polite decision from the São Paulo State Court Of Justice, in a notorious case from the São Bernardo do Campo/SP district, similar to this one, that it would be disproportionate and unreasonable to sustain the suspension, as it would affect millions of users. And that it was possible to raise the value of the applied fine to get what was intended. It happens that, **aside from being impossible to raise the already arbitrated fine on the case here present in face of an injunction that forbids any new block of new values and the stipulation of new fines**, to the eyes of this Law Judge, the discomfort is sponsored by the petitioner itself, Facebook, it's worth saying, for not wanting to subdue to the national legislation, mocking, repeating it to exhaustion, the Brazilian state. In fact, this is how it behaves worldwide, until some higher court changes its understanding in cases like this, since that, when continuing to proceed as such, it would find itself operating illegally in national territory, even generating higher degrees of coercion from other Courts in this country;

27- And I say more.

28- The application known as 'WhatsApp' (of property of the company of the same name and it global controller, Facebook Inc, and in Brazil represented by *Facebook Serviços On Line Brasil Ltda*), as well as Facebook itself are not synonyms of Internet. The Internet, as it is known, goes way, way beyond. These companies use it, only and solely of it for their goals, whatever they are. By any chance is the service offered by Facebook and Whatsapp considered essential, by the Brazilian legislation? It is evident that they are not. Therefore, why be inert and contribute to the perpetuation of criminal agents? Would it be reasonable and proportionate to disrespect the juridical order of this country? It is evident that no;

28- The supposedly irreparable damage to users of the referred application would be certainly alleged by those who are interested in keep disrespecting the Brazilian law. Well, thesis like this and others that would certainly be alleged in their own right, it would no longer qualify the use that Facebook does of their millions of users in this country, for it is very comfortable to do it, considering the decisions -- up to now, contrary to the first instance decisions -- of higher instances. That is, to invoke and transform their customers into true "human shields" and serve as "blankets" for their interests, in front of an individualized and of individualistic thoughts society;

29- The interception of millions of telephone lines was not intended, in the doing n. 201555000783. But of some and few of these. But the evil and intentional inertia, by merely commercial interests of Facebook, has been the only responsible for damaging their dear maintainers called "users" as if that company were above the law. The end justify the means, to their eyes;

30- Such illegalities were sponsored by other companies who put themselves above the Law -- as Facebook still does --, like Google and Blackberry (system and devices recognized by their excellence and security utilized, as well, by criminals to act on the margins of the law). However, the criminals migrated to the "WhatsApp system" by its diversified technology and because they possess full and total knowledge that in Brazil they are covered in their criminal practises, knowing that -- for now -- exist several contrary juridical understandings. Nonetheless, even so, almost every decision from the second instance supported the basis of the first instance courts and differ, only, on the coercive means to impose the law. In practice, though, all were reformed

and the police investigations did not go further. After some legal clashes, both Google and Blackberry began to respect the laws of this country and to subdue themselves, not by conviction, but because they were forced, not having any more resistance from them, on the contrary, they contribute a lot to the dispersion of actions that traffic on the underworlds of crimes;

31- It is public and notorious that the São Paulo Court of Justice determined to Facebook the data breach in a case of pornographic setting that happened in the district of São Paulo/SP and that was about a student of a well-known University in that state and which involved erotic and perverted content exposing the woman to extreme ridiculous in her honor, image and dignity;

32- Assert to that that the “Whatsapp” is not the only application used in this country. Many others exist and are used, such as “Viber”, “Hangouts”, “Skype”, “Kakaotalk”, “Line”, “Kik Messenger”, “Wechat”, “Groupme”, “Facebook Messenger”, “Telegram”. All with possibilities, inside their development, of fulfilling the possible suspension of the “zap”. “WhatsApp” is another one, not the only one. And even if it were, it is not reasonable to collaborate, in an indirect manner, with criminal organizations;

33- Another analysis to be faced is that Facebook would not be responsible for the bad usage of its application, and so, it would have its rights violated. Well. It is known that the economic risks are from the enterprise and it is up to them to stop these services from being used for illegal activities, and, when impossible by human nature itself, they should be taken to bow before the laws and to collaborate with the authorities of this country in which they lay their feet with the purpose of earning their billionaire profits;

34- It is laughable to plead violence to the users privacy. It is affirmed so that any person can use these devices in the virtual world, needing only to click on the so called “**AGREEMENT**” and that, except for someone extremely curious, as a general rule no one reads the imposed conditions. Since if one reads it and doesn’t agree, they will not have access to what is wanted. Typical case of hypocrisy... these companies, such as the represented, have access and know in their files, even if their users don’t want it in fact -- and not right, although it is covered by an adhesion contract --, about your customs, habits, hours of access, IP, what you buy, sell, what upsets you, your providers, browsers, operational systems and etc, etc, even selling these precious information to many other companies and that develop their products based on these informations, imposing uses and customs to innumerable less aware people, devastating, actually, the privacies and intimacies of the other person, that is, their personal data;

35- A relevant fact unknown of almost everyone who access these applications or the Internet itself is the “Deep Web”, that is, the hidden or concealed Internet and where 93% of all data of any kind flow through, without any knowledge of the users, a place used for criminal practises without being bothered. An example of this is the network known as **TOR (The Onion Router)** located in Massachusetts/EUA, encrypted, and in which an anonymous navigation is executed aiming advantages in other people’s losses, when using navigation in layers, from where the name *Onion* comes from, once it eliminates the traces of access. Through this system, or another called **PANDORA** it is possible to buy cocaine, guns, passports of innumerable nationalities, images of torture, rape or murder, exploration of pedophilia, etc, etc and whose used currency is the “bitcoin”, created in 2009 and that is nothing more than an encrypted code and that

simulates a coin and that, it is believed, will take the place of banknotes and coins as we know them today of the financial and commercial market itself;

36- Now, when one is rebellious, without the smallest technical knowledge on the aimed decisions, only and solely, to ensure freedom and the social order, in a country devastated by endemic corruption, totally ingrained in the state apparatus it is imaginable to having reached the limits of the national juridical order;

37- Thus, for all that was extensively analysed, this magistrate understands, and also rooted on the favorable report of the Public Attorney's Office of the state of Sergipe, that the granting of the extreme measure to suspend the WhatsApp application in all national territory is needed, with the purpose of making *Facebook Serviços On Line do Brasil Ltda* comply with the order emanated from this Criminal Court;

38- The Mr. Prosecutor, Dr. Renê Erba, in a brilliant and succinct report, fls 19/21, supports that *"...Notwithstanding to the judicial order emanated from the Brazilian Judiciary Authority... the application, by means of their legal representative in Brazil, refused to comply with the decision from the Brazilian Judicial Branch under the basis that the technology used by their product... does not meet the precepts of the Brazilian Law that regulates on its activity..."*.

When analysing the case and, certainly considering the public and notorious manner in which it was publicized on national and global press, that Prosecutor mentions affirmations of the Facebook company, when expressing like this, as he encounters is the supposed end to end cryptography: *"...affirming that, in reason of it (technology), they do not possess the required data and don't even have the conditions to proceed with future interceptions (actually the duplication of the communications and the mirroring to the servers of the Federal Police)... In other words, affirmed their legal responsible that Whatsapp does not comply with the Brazilian Law."* (highlighted on the original).

And, then, the representative from Sergipe ends:

"It is certain that the activity developed by the Whatsapp application, safeguarded, in the understanding of their idealized, in an absolute manner the data and private communications of their users, beyond the noncompliance with the (...) systematic Brazilian Constitution of no absolute individual right -- not even the right to (...) life, since our Constitution authorizes death penalty in extreme cases -- also allows us to affirm...: (highlighted from origin)

1º Serves as a tool for the free practice of crimes, such as homicide, drug and people trafficking, terrorism, child pornography, etc;

2º The conglomerate Whatsapp and Facebook denies, in unique instance and for their sovereign will, validity to the present Brazilian Federal Law, a function destined foremost and constitutionally to the Judiciary Branch.... (highlighted on the original);

Well affirmed by Mr. Prosecutor. To the eyes of the system of law it seems that the represented, to their will, chooses to deny the democratic State under the rule of law, since it understands

that, before its economic power and because it believes that the world depends on itself, it will be above everything and everyone, counting on primary thesis many times (with absolute respect) because without basis on the laws of this country;

39- In this field, the technical information led to the records by the Federal Police Authority, Dr. Renato Beni da Silva and his competent team are adamant:

“...the technical possibility of the app in transmitting such data in real time to the investigation entities when judicially urged, there is no doubt of its possibility... among the various and shallow arguments widely spread by the company... there is the impossibility of mirroring such dialogs, which once again does not match the reality, one only needs to check the tool to send dialogs via e-mail and the option of Whatsapp Web, where the user of the system can have access to their device in a computer in the same way as in their Smartphone. Another highly publicized issue by the representatives of Whatsapp is the impossibility of forwarding such messages properly decrypted, this argument being again unmasked considering it was the company itself the responsible for producing the system, not being reasonable to expect that the creature overcomes its creator and becomes an autonomous system in which the company is itself unaware of its engineering program...”, fls 14/7.

As it has been already analysed, the end to end cryptography (if existing) is optional, in face of the findings of its messages of its own authorship (item 23 of this decision). Even if it were impossible to decode it, as it is on the most recent one, it would already be a violation of this country's legislation. Or, even, if the law is changed for its benefit...

As well as on document fl 18 and previously notem on item 21 and here repeated:

According to Technical informative of the Federal Police, n. 31/2016-SRCC/DICOR/DPE, fl 18, elaborated after the supposed establishment of the end to end cryptography, “... there are no indicatives of which cryptography protocol was used, how the management of the keys is done, nor if this encryption really is end to end or if it is just between server and user... As the implementation of end to end cryptography was incremental and considering the implementation of third party customers found on the Internet, there are strong traces that end to end cryptography is optional and theoretically could be disabled upon configurable parameters in equipments and company servers... Additional resources, like Whatsapp Web and the notification service theoretically could be used to allow the duplication of messages and subsequently the interception upon judicial order”; (I highlighted)

40- Brazil's Internet Bill of Rights, on its article 10, imposes that:

“The retention and the making available of connection logs and access to internet applications logs to which this law refers to, as well as, of personal data and of the content of private communications, must comply with the protection of privacy, of the private life, of the honor and of the image of the parties that are directly or indirectly involved.” (I highlighted)

Paragraph 1:

“The provider responsible for the retention of the records as seth for in **art. 10** shall only be obliged to provide them, whether separately or associated with personal data or other information that allows the identification of the user or of the terminal, **upon a judicial order...**” (without the second highlight on the original).

Article 11, of the same Law, caput:

“**In any operation of collection, storage, retention** and treating of personal data or **communications data by connection providers and internet applications providers** where, at least, one of these acts takes place in the national territory, the Brazilian law must be mandatorily respected, including in regard the rights to privacy, to protection of personal data, and to secrecy of private communications and of logs.”

Paragraph 2:

“The established in **Art. 11** applies even if the activities are carried out by a legal entity placed abroad, provided that it offers services to the Brazilian public or at least one member of the same economic group is established in Brazil.” (highlighted on the original)

Article 12, caput:

“Without prejudice to any other civil, criminal or administrative sanctions, the infringement of the rules set forth in the Articles 10 and 11 above are subject, in a case basis, to the following sanctions applied individually or cumulatively:

I- *omissis*

II- *omissis*

III- **the temporary suspension of the activities that entail the events set forth in Article 11...**”
(I highlighted)

Well, it is of solar clarity the perfect framing of Facebook’s reluctant behavior in the present case, and in so many others, in this country of vast territorial extension, considered the 5th in the world on this aspect. It is worth saying that the recalcitrant is obliged to submit to the Brazilian laws, not being important if the crib of its controlling company lays on the USA. The fact is that it offers services in Brazil and it is here installed, earning billionaire profits, according to its main goal. In the case of judicial orders it should, indeed, meet the fulfillment of those orders, under penalty of “governing this country”. Not fulfilling this, determined sanctions will be applied to decimate its law violating behavior in Brazil. The reflections and consequences of its defiance can only be attributed to it, besides invoking, wisely, but under subterfuges, damages to millions of its users, as if it were always concerned;

Article 13, caput:

“In the provision of Internet connection, the entity responsible for the management of the autonomous system must maintain the connection records, under confidentiality, in a controlled and safe environment, for the term of 1 (one) year, in accordance to the regulation.”

41- I also make use of the article 15, caput, and its paragraph 4, of the same 12.965/2014 Law, respectively:

“The Internet application provider that is duly incorporated as a legal entity and carry out their activities in an organized, professional and with economic purposes must keep the application access logs, under confidentiality, in a controlled and safe environment, for 6 months, as detailed in regulation.”

Paragraph 4:

“When imposing a sanction due to breach of this article, the nature and gravity of the breach shall be considered, as well as the damages arising from such breach, any vantages obtained by the breacher, any aggravating circumstances, any prior records and any repeated infringements.”

42- Thus, three considerations:

The **first** is the absence of the regulamentation of determined articles or paragraphs here used to support this decision. Weighted the respected decisions on the contrary, the absence of a regulation does not have the strength to revoke laws or keep them suspended as for their coverage and enforceability. If there is no regulation, the law is enforced as it is;

Second, the legislator wanted that, in paragraph 4 of article 15, of the Brazilian *Marco Civil da Internet*, the Judicial Branch, through the best decisions of its members, based on the legally noted parameters, without a previously established sanction legally expressed;

Third, the interception of the messages was intended, it is worth mentioning, in real time like in telephonic interceptions.

Very well.

Facebook, through its representative, refuses without limits, to fulfill the Brazilian legislation here, in this state and in all Brazilian territory, with unpredictable duration, in several occasions, showing its **background and recurrences**.

Fines of up to R\$ 1.000.000,00 (one million) per day were arbitrated, but received with disdain, as the company kept itself linear and in solemn silence. With the arrest of the Vice-President, it remained with the same attitude after his release, as he was benefited from an habeas corpus. And up to this date, remains in its silence, betting on the defiance. **The nature and the gravity** of the infraction is patent: violation to the national soberany, disrespecting all Brazilian legal system. The case is about interstate drug trafficking, in the species of cocaine and marijuana, considering as an **aggravating circumstance** the fact that the investigations are still prevented from continuing.

It gives an economical advantage. since in maintaining this behavior, its purposes are enlarged, multiplying the huge values of its actions in stock markets around the world, convincing -- we don't know until when -- that its application is inviolable, even if under court orders from a state that intends to be sovereign. Well, bigger the belief that its cryptography, whichever it is, is impenetrable, bigger the number of users won and, as said, the value of its shares on the financial market would be kept in an elevated and stable level.

Finally, the **damages** are, in the same way, patents. In an indirect way, it contributes to the existing criminality of this country, to mention this only here. As it is not possible that any alive person does not know that it is possible to use this company's application to perpetuate drug and gun trafficking, pedophilia crimes, extortions, fake passports and so many other crimes whose evils are felt on the Brazilian families and on the national health system, under the fake certainty that they will not have, even in cases covered by the Constitution and lower legislation, its intimacies and privacies mitigated in benefit of a collectiveness, through the criminal use of a virtual platform, as it is here analysed;

43- The company *Facebook do Brasil* has already been **notified** by this Criminal Court, process of real time data interception, **afterwards there was the arbitration of fines.** at first of the value of R\$ 50.000, 00 (fifty thousand reais)/per day, after new infringements the value was raised to R\$ 1.000.000, 00 (one million reais)/per day, aside from the order of arrest of its major representative in Latin America, and therefore, in Brazil (article 12, items I and II, of the commented law), **obeying a scale of coercions allowed on the legislation;**

44- It is true that illegalities that may have been perpetrated by the criminal organization should fall only on those who practiced it, as they were their agents. It happens that Facebook refuses to comply with the Brazilian legislation, impeding the responsabilization of who directly sponsors those illegal acts, Facebook then agreeing to those same practices;

45- The **Telecom Companies** are not, on the contrary of what can be affirmed, immune to their responsibilities, having in sight that they submit themselves, to any test, to the ruling of the *Marco Civil da Internet*, by composing this virtual world, precisely because they **serve as access and transportation means to the application providers**, such as Facebook/Whatsapp and others.

Such provision is part of article 3, item VI, of the *Marco Civil da Internet*, quoted:

“Art. 3o The discipline of internet use in Brazil has the following principles:

.....

VI – the liability of the agents according their activities, pursuant to the law.”

46- Assert that the temporary suspension of the service offered by the respective application does not hurt the Principle of Neutrality (article 9, of the same law). This does not concern the

present case. The referred Principle concerns, yes, the isonomic treatment between the existing companies on the market, whether of bigger or smaller commercial and financial stature, because this law aims to safeguard the public character and the free access to the world of the Internet. That is, the data packages should be treated with absolute isonomy.

It is not the Telecom Companies that will suspend the access by themselves, by comply with the order of this Court;

47- There is not, as it has already been said in a recent decision of this Judge, any obligation to invoke the Judicial Assistance In Criminal Matters Treaty, celebrated between the Brazilian and North American governments. The facts occur in Brazilian territory, by Brazilian citizens, not intending to hear whomever it is of american nationality. This thesis is defended by lack of technical knowledge or wisdom;

48- Finally, **even though it does not possess any juridical value**, and **only by curiosity**, and, **therefore without 'ratio decidendi' value**, a regulation of the law 12.965/2014 was drafted, in which you can see on Section II - Records, Personal Data and Private Communications Protection, in its article 13, with the exception of subsequent alterations that:

“The data concerned on article 10 of the Law 12.965/2014 should be kept in a format that facilitates the access resulted of judicial decision or legal determination, respecting the guidelines listed on article 11 of this regulation”.

It means that, the present regulation, in these terms, in the future, would not alter what is understood until today by these courts throughout Brazil;

49- Thus, for all that was exposed, and not by other reasons, properly fundamented on articles 10, 11, 12, 13 and 15, and its paragraphs of Law 12.965/2014, I will for good **GRANT** the **SUSPENSION** of the **'WhatsApp'** application, of property of WhatsApp and its controller Facebook Inc, in Brazil represented by *Facebook Serviços On Line do Brasil Ltda*, with headquarters in São Paulo/SP, **by the period of 72h**, **determining the Telecom Companies TIM, VIVO, OI, CLARO, NEXTEL AND TELEFÔNICA, that comply with this decision, suspending temporarily the traffic of any data of the 'WhatsApp' application (whether it is its text, media or voice functions) in your systems of telephone/Internet, and also the traffic of data through the domains whatsapp.net and whatsapp.com, as well as all its subdomains and all other domains that may contain whatsapp.net and whatsapp.com in all its annotated names, besides blocking, logically, WhatsApp address on the world wide web of computers of Internet so that the use of the named application on mobile connections and through 'wi-fi' and, even, all IP numbers that are related to the domains and subdomains are prevented from use, including the clean of cache of those domains, expliciting so that this decision is complied with in its fullness, under penalty of desobedience and payment of fines of R\$ 500.000.00 (fifty thousand reais), each, per day of noncompliance.**

Notify the Telecom Companies **TIM, VIVO, OI, CLARO, NEXTEL AND TELEFÔNICA**, **informing them** of the referred decision.

TO BE COMPLIED.

Notify the Public Attorney's Office.

Lagarto (SE), April 26th 2016.

Marcel Maia Montalvão
Titular Law Judge
Criminal District