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JUDICIAL BRANCH
FEDERAL JUSTICE

SECRETARY OF THE 7th FEDERAL CRIMINAL COURT OF THE STATE OF SÃO PAULO

I receive the appeal filed by the defense of the accused to page 840. According to the request of the noble defendant, the presentation of their reasons of appeal will be in front of the Instance “ad quem”, in the terms of article 600, 4º., of the Code of Criminal Procedure.

The provisory collection form is to be dispatched with urgency.

In relation to the information given by the zealous Secretary, I observe that through the decree regularly dispatched by this Federal Judge, several ways of using technological tools of the perfecting and optimization of jurisdictional services offered by this 7th Federal Criminal Court of São Paulo were disciplined.

The purpose of the adopted innovations fulfills express constitutional determination, especially relative to the command of constitutional principles pertaining to the reasonable duration of the process, economy, efficiency, publicity, due legal process, adversary system and full defense, established in the items LIII, LIV, LV, of the article 5, and article 37, of the Federal Constitution.

The decree nº 10/2010 of this Federal Court instituted the **“Citizen-Process” upon implementation of new practices and methodology in the development of criminal procedures.**

_____The decree 15/2015, in complementation to the aforementioned, with the mainstay in article 370, paragraph 2, of the Code of Criminal Procedure, and article 67 of the Law 9.099/95, from which the communication of the procedure acts can be done by any idoneous means, **introduced the possibility of using the multi platform messenger application *Whatsapp Messenger***, for subpoenas, sending and receiving messages, images, audio, video, documents and/or photographs, of parties, lawyers, etc.

The decree 1357640/2015 introduced, in relation to the criminal hearings of this 7th Federal Criminal Court of São Paulo, the **live transmission via the World Wide Web (Internet)**, for Law students of any university of the country, public or private, aiming the Supervised Curricular Internship (mandatory), as well as for appointed lawyers, unable to attend the act. In this case, with the transmission, **the lawyer can use WhatsApp to communicate** with a colleague attending the hearing.

The Referred Decrees were widely publicized and **subdue to the sieve of administrative control entities** in the **federal sphere**, local and central magistrates, National Justice Council (CNJ), in addition to being informed to the Federal Prosecutor’s Office, the Public Defendant’s Office and the Brazilian Bar Association (OAB).

The decrees did not need any repair of any of the referred censor entities. Furthermore, in the judicial processes in which the decrees were concretely enforced, the respective jurisdictional acts were not approached by the proper ordinary paths, appeals directed to the Higher Courts (Regional Federal Court of the 3rd Region, Supreme Court Of Justice and Supreme Federal Court).

The decision adopted by state judge, determining the telecom companies to fully, generally and unrestrictedly block of the WhatsApp instant messaging app **interferes, improperly, in the determinations previously adopted by this Federal Judge.** The communications of acts of this Federal Court, made through WhatsApp in a free manner to all jurisdictions. Here are included communications of the Court with witnesses, defendants, etc., in accordance with the decrees.

With all the respect that the state justices deserve and, specifically, the Law Judge author of the block order, it is worth noting that decisions and administrative acts of this Federal Justice could not be reformed or narrowed by the order of a state judge, under the penalty of breaking the federative pact, as well as the usurpation of an activity exclusive to the administrative and jurisdictional control entities of the Federal Justice.

In the specific case of this criminal process, that is about international drug trafficking (200 kilograms of marijuana), whose defense attorney located in Montes Claros, Minas Gerais, had solicited that the subpoenas were made through WhatsApp, the re-establishment of the services should be awaited to fulfill the subpoena here addressed.

For this reason, based on the general power of caution that runs under article 251 of the Code of Criminal Procedure and constitutional provisions previously mentioned. Including the right of access to Justice, established in article 5 of the Federal Constitution, **it is requested of the President of the National Agency of Telecommunications (Anatel), to determine to the telecom companies the immediate re-establishment of the instant message service WhatsApp** for the line used by this Federal Court, (11) 94465-1179, Vivo telecom, **allowing the sending and receiving of messages/communication with any line** that wants or needs to connect with it. **Therefore any user should have free access to the referred line.** For now, it is consigned the fee provisioned in the item II of article 12 of the Law 12.965/2014 (Brazil's Internet Bill of Rights) for the eventual noncompliance of this order by the telecom companies.

In the case of impossibility of individualizing the unblocking, in the way above advocated, **the system should be re-established in the previous forms to the decision of the state judge of Sergipe,** putting in function the mentioned application, until the jurisdictions of legal control, National Justice Council and Federal Supreme Court, settle the issue.

In the administrative field, I forward the issue in the form of a **Term Of Request Of Measures to the Magistrate of Administrative Matters** of the respectable National Justice Council (CNJ), to the person of Her Excellency the Ministry Magistrate Nancy Andriahi. In the jurisdictional realm, in separate to this process, in the form of a **Representation of positive conflict of competence,** directed to His Excellency the President of the distinguished. Supreme Court of Justice, Minister Francisco Falcão, in the terms of the provision in the article 115, III, and 116, both of the Code of Criminal Procedure, considering that on the same matter, of realization of judicial communications via WhatsApp, there are contrasting decisions, one determining its fulfillment, another preventing it, the first from the Federal Justice and the second of the State Justice.

Summon.. Comply with the requisition to ANATEL via e-mail and other possible means, forward the the provided solicitations in the same manner, given the urgency of settling the issue. Forward a copy of this decision to the HH. Law Judge of Lagarto/SE to the actions that seem fit.

All done, submit the case records to the distinguished Regional Federal Court of the 3rd Region, with our honors and citations, as usual.

São Paulo, May 3rd 2015.

ALI MAZLOUM
Titular Federal Judge
7th Federal Criminal Court of SP