**Cruz v. Whatsapp Inc. and Others**

**Case Analysis**

***Meta-Data*:**

* **Case Number**: 5119849-39.2018.8.13.0024
* **Date of decision**: May 14, 2021
* **Featured case**: N/A
* **Region**: Brazil, Latin-America and Caribbean
* **Country**: Brazil
* **Type of expression**: Eletronic
* **Judicial Body**: First Instance Court
* **Type of law**: Civil Law
* **Main Themes**: Defamation, Reputation, Privacy
* **Outcome**: Motion Granted, Judgment in Favor of Petitioner
* **Status**: Closed
* **Tags**: Fake news; Private information.

***Analysis:***

* **Summary and Outcome**:

A Brazilian court ordered WhatsApp and Facebook to disclose the personal data and IP addresses of three phone numbers associated with the WhatsApp application. These accounts had disseminated an image of a pamphlet containing defamatory and false information about a state deputy seeking reelection during the electoral period. Recognizing the importance of combating fake news and that the inviolability of private life and data secrecy are not absolute, the court determined that the personal data of the phone number owners be provided, under penalty of fine.

**Facts**:

In August 2018, Luiz Sávio De Souza Cruz, a state deputy seeking reelection, filed a complaint requesting telecommunications companies, as well as WhatsApp and Facebook, to provide the personal data and IP addresses of three phone numbers. He argued that during the elections, these numbers disseminated a pamphlet containing false and defamatory conversations about him. He clarified that he was able to trace the messages back to their original transmitters, the three numbers mentioned. Cruz argued that it was necessary to identify the individuals responsible to pursue a criminal libel case against them in court. He also requested that these accounts be blocked by the platform and that the URL address of the image be provided.

On August 30, 2018, Judge Eduardo Veloso Lago of the 25th Civil Court of Belo Horizonte, in the state of Minas Gerais, issued the preliminary decision. Recognizing that privacy and data secrecy rights, as outlined in Articles 5, X and XII of the Brazilian Constitution, are not absolute and can be set aside by a court order, especially for investigating unlawful acts and criminal offenses, the judge deemed an urgent judicial order necessary to breach data secrecy.

Accordingly, in a preliminary analysis, he ordered WhatsApp (and Facebook, recognized in the decision as part of the same economic group) to identify the owners of the phone numbers and accounts, under penalty of daily fine. He did not grant Cruz's request to block access to the application and provide the URL address of images, photos, and videos, as he considered that these measures would be assessed after the defense's response. The telecommunications companies OI MOVEL S/A and SURF TELECOM were also ordered to provide the data of the phone owners.

Facebook appealed the decision, which was rejected by the appellate court, on the grounds that the disclosure of data/information about Cruz via the WhatsApp application constitutes a violation of his personality rights, as provided in Article 5, X, of the Federal Constitution. Judge Rogério Medeiros' decision, supported by the other court members, also stressed the urgency of the measure due to the risk of the data being shared with more people.

* **Decision Overview**:

On May 14, 2021, Judge Eduardo Veloso Lago delivered the final decision. The central issue for the Court was whether the inviolability of private life and data secrecy can be set aside given the victim's need to investigate potential unlawful acts related to fake news and defamatory content. The applicable law includes Article 5, Clauses X and XII of the Federal Constitution, which establish the rights to personality and data secrecy, and Article 10, § 1 of Law 12.965/2014 - the Brazilian Civil Rights Framework for the Internet, which requires a judicial decision to compel the provider to make user data available.

Judge Lago confirmed his preliminary decision and ordered the identification of the owners of the phone numbers and WhatsApp accounts. On the other hand, he considered blocking access to the application unwarranted, as it would affect third parties unrelated to the case, and ruled out providing a contact channel to request the URL addresses of images, photos, and videos.

Since WhatsApp/Facebook did not comply with the preliminary decision, the Judge imposed a fine of 5,000.00 Brazilian reais (approximately $920 USD).

Facebook appealed the decision, but it was again rejected by the appellate court. In a decision delivered on August 22, 2022, the Court upheld the lower court's decision, emphasizing that “[t]he determination to provide data does not constitute a violation of constitutional precepts and is supported by the constitutional right to information, regulated, in the specific case, by Law No. 12.965/2014”. Judge Luiz Carlos Gomes da Mata also cited an article of his own authorship, adding that “[c]ombating the harmful effects of disinformation for Brazilian democracy is to strengthen the principle of popular sovereignty, enshrined in the sole paragraph of Article 1 of the Constitution of the Republic of 1988”.

**[I did not analyze the decision of the second instance as the main decision because I understood that it simply confirmed the decision of the first instance, without adding relevant elements regarding freedom of expression.]**

***Direction:***

**Mixed Outcome**

Despite ordering the disclosure of phone numbers, the decision is in accordance with Brazilian law, which allows this exceptionally to protect the victim's personality rights from fake news and defamatory content.

***Perspective***:

Braz., Constituição Federal art. 5, X (1988);

Braz., Constituição Federal art. 5, XII (1988).

Braz., Law No. 12.965/2014 - Brazilian Civil Rights Framework for the Internet.

***Significance***:

**The decision establishes a binding or persuasive precedent within its jurisdiction.**

* **Related Cases**: Self-generated
* **Date updated**: N/A

***Docs***: