



***Permanent Mission of Brazil to the United Nations Office
and other International Organizations in Geneva***

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The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights – Special Procedures Branch and, with reference to the communication AL BRA 11/2020, from the Special Rapporteur on the independence of judges and lawyers, received on 9 October 2020, has the honor to transmit the attached observations from relevant Brazilian authorities in response to the abovementioned communication.

The Permanent Mission of Brazil would appreciate it if the present Note Verbale and its attachment were brought to the attention of Special Rapporteur on the independence of judges and lawyers.

The Permanent Mission of Brazil in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights – Special Procedures Branch the assurances of its highest consideration.

Geneva, 7th December, 2020



To the Office of the United Nations High Commissioner for Human Rights -
Special Procedures Branch
Mandate of the Special Rapporteur on the independence of judges and lawyers

Communication AL BRA 11/2020

Observations from competent Brazilian authorities

In reference to communication AL BRA 11/2020, dated 9 October 2020, from the Special Rapporteur on the independence of judges and lawyers, the Brazilian Government would like to make the transmit the following observations received from competent Brazilian authorities.

a) Information received from the International Relations Advisory Office of the Ministry of Justice and Public Security (MJSP), on the basis of inputs from the Police Station for Combatting Corruption and Financial Crimes (DELECOR/DRCOR/SR/PF/RJ):

Initially, the MJSP points out that the investigation known as “S \$HEME” (“E\$QUEMA S”) was conducted by the Federal Prosecution Service (*Procuradoria da República*) in Rio de Janeiro and the Federal Police was only ordered to execute search and seizure warrants issued by the judicial authority.

With regard to item 2 of the letter of allegations, on the execution of search and seizure warrants, the following information is provided:

Concerning the interested parties, the following search and seizure warrants were executed:

Team SP-01 - target ROBERTO TEIXEIRA - residential address: [REDACTED]
[REDACTED] – Search and Seizure Warrant (MBA) n° 510003533088, issued by the 7th. Federal Criminal Court, Rio de Janeiro (7th VFCr/RJ), in the records of Process n° [REDACTED]
[REDACTED];

Team SP-02 - target TEIXEIRA, MARTINS & ADVOGADOS (law firm) - business address: [REDACTED]
[REDACTED] issued by the 7th VFCr/RJ, in the records of Proc. n° [REDACTED]

Team SP-03 - target CRISTIANO ZANIN MARTINS - residential address: [REDACTED]
[REDACTED] issued by the 7th. VFCr / RJ, in the records of Proc. n° 5051965-[REDACTED]
[REDACTED]

Regarding the decision that authorized the searches, there was no order from the 7th. Federal Criminal Court of Rio de Janeiro that a copy be delivered to the Prerogatives Commission Brazilian Bar Association, Section of São Paulo (OAB/SP), and the secrecy of the process until the moment of its execution (6 am of 09/09/2020) was essential for its success.

-In ROBERTO TEIXEIRA's residence:

The search was accompanied by lawyer [REDACTED]
[REDACTED]

There was no indication that the residence functioned as a law firm, especially because the target has the headquarters of his office at a different address. The environment was compatible with those intended for family use (personal objects, decoration, structure all geared towards a family).

As the target was not in the property (according to employees of the condominium, he had traveled inland due to the pandemic), there was no way to check the contents of the seized HDs. However, it is worth emphasizing that their referral to the Criminalistics Section was limited to requesting that only files containing words related to the investigations be copied.

-At the aforementioned LAW FIRM:

The searches were accompanied by the lawyer [REDACTED]
[REDACTED] by the President of the Prerogatives Commission of OAB/SP, [REDACTED], among other lawyers who were at the scene (a total of 5 lawyers followed the searches). Copying of digital files was made possible by the office's own lawyers, who indicated which was the computer used by the investigated and granted access. The files were copied in the presence and under constant supervision of all lawyers.

-In CRISTIANO ZANIN MARTINS's residence:

Only the HD and the cash found in the safe were seized (the safe was opened afterwards because there was no professional able to open it at the location of the searches). In relation to the other items put in the safe there was no seizure. Due to the fact that H.E. Minister Gilmar Mendes suspended the acts related to the investigations, the Federal Police is awaiting authorization to be able to return these items to the interested party.

When the Federal Police team arrived, employees of the condominium made contact with the residents, who, according what was informed, were absent since the beginning of the pandemic (March), having been asserted that a person of the target's confidence would come to the place. The team waited for the arrival of that person, but due to the passage of considerable time (almost two hours), searches were started at 7:49 am, and at 8:00 am the lawyer [REDACTED] [REDACTED], who had already been at the business address of target (whose search started at 6 am and was located at a nearby address), arrived at the residence. Thus, the searches were accompanied by a lawyer.

As the target was not in the property, there was no way to verify the content of the seized media. However, it is emphasized that their referral to the Criminalistics Section was limited to asking that only files containing words related to the investigations be copied.

It is also necessary to highlight that there was no indication that the residence functioned as a law firm, mainly because the target has the headquarters of his office at a different address. The environment was compatible with those intended for family use (personal objects, decoration, structure all geared towards a family).

In short, the searches carried out both in the office and in the two residences were accompanied by lawyers, the material collected was in accordance with the order contained in the court warrants, and the media that were collected, the contents of which were not verified due to the absence of the target in the place, were sent to the Criminalistics Section with specific requests. Regarding the two residences it is also necessary to emphasize that these were evidently familiar environments and that they were not being routinely used by targets due to the pandemic (both would have gone to properties inland).

b) Information received from the National Council of Justice (CNJ):

The President of the National Council of Justice (CNJ) determined that communication AL BRA 11/2020 be sent to the Procedural Secretariat and to the National Office of Internal Affairs of Justice (*Corregedoria Nacional de Justiça*) to verify whether there were any, under the CNJ, related to the facts described in letter AL BRA 11/2020. According to the Procedural Secretariat, "there was no procedure filed or pending within the scope of the National Council of Justice that has the federal judge Marcelo Bretas in the passive pole, and/or has as its object alleged violations of the rights of lawyers Roberto Teixeira and Cristiano Zanin Martins, from the issuing of search and seizure warrants by federal judge

Marcelo Bretas on September 9, 2020 in the context of the Lava Jato operation, or other facts narrated in the Letter of Allegations AL BRA 11/2020".

Similarly, the Head of the National Office of Internal Affairs of Justice clarified that "there is no process instituted to investigate the alleged violations of lawyers' rights that would have occurred in September 9, 2020, following the issuance of 75 search and seizure warrants by Federal Judge Marcelo da Costa Bretas within the scope of the Lava Jato operation, which, according to reports, aimed at investigating the services provided by law firms to the Federation of Commerce in Rio de Janeiro. The procedures initiated in the face of the magistrate, reporting on this Internal Affairs, are related to other facts not related to those contained in the Letter of Allegations AL BRA 11/2020."

The National Council of Justice highlighted several provisions of the Federal Constitution concerning the functions and powers of CNJ as well as the independence, organization and functioning of the Judiciary Branch. It noted that the Federal Constitution gives precedence to the independence, impersonality, efficiency and impartiality of the Judiciary. Domestic jurisprudence does not allow the interference of the National Council of Justice in matters of jurisdictional nature. This understanding is based, among other reasons, on the need to safeguard the independence of the Judiciary. As a result, the judicial decisions can only be reviewed by another higher court, which manifest itself when the appeals are filed by the parties. Likewise, Brazilian procedural law provides for mechanisms to control the impartiality of the judge, such as the possibility of opposition through the exception of suspicion or impediment of magistrates. In this case, it is up to the excipient to present the arguments that, in their view, would justify the recusal of the judge. Naturally, the recognition of impediment or suspicion of magistrates is an exceptional measure that presupposes a robust factual and evidential basis, and mere assumptions or conjectures created by the parties are not enough.

In spite of not being able to directly interfere on the result of judicialized matters, the CNJ acts so that the Judiciary Branch can function in a harmonious, uniform, independent, efficient and transparent way. As examples of initiatives of CNJ that contributed greatly to the improvement of the services provided by judicial bodies and to the expansion of the social control exercised over the Brazilian Justice: (i) the setting of the National Goals of the Judiciary (<https://www.cnj.jus.br/gestao-e-planejamento/metast/>); and (ii) the preparation of monitoring reports on jurisdictional activity, entitled "Justice in Numbers" (<https://www.cnj.jus.br/pesquisa-juditariaias/justica-em-numeros>).

It was also highlighted the important work of the National Office of Internal Affairs of Justice, which ensures compliance with the functional duties of the members of the Judiciary, both in a preventive way (through corrections and inspections) and in a repressive way (through the disciplinary investigation of faults committed by magistrates).

The relevant role played by the Office of the National Ombudsperson of Justice, the unit responsible for the CNJ's dialogue with society, pursuant to Resolution No. 103 of 02/24/2010, is also to be underlined.

Furthermore, although the CNJ cannot interfere in matters that are judicialized, this control body has issued recommendations, under the terms of art. 103-B, § 4, item I, of the Federal Constitution of Brazil, in order to guide the Brazilian Judiciary to adopt the best practices in carrying out its task. Considering the issues under examination, the following acts deserve to be mentioned:

- Recommendation No. 76 of 09/08/2020 - Provides for recommendations to be followed in the management of cases, in terms of collective actions, within the scope of the Judiciary.
- Recommendation No. 74 of 9/21/2020 - Recommends measures to implement an open data policy within the scope of the Judiciary.
- Recommendation No. 65 of 05/07/2020 - Recommends to all Brazilian magistrates, except the STF ministers, to refrain from exercising functions, even if of an honorary nature and without remuneration, in any bodies linked to federations, confederations or other sports entities, including “Conmebol”, under penalty of violation of functional duties, as well as recommends to all Brazilian magistrates, except STF ministers, to refrain from exercising functions, even if of an honorary, consultative and unpaid nature, in councils, committees, commissions or the like, of a political nature or of administrative management of services linked to Branches or bodies outside the Judiciary, except in cases provided for by law.
- Recommendation No. 39 of 06/19/2019 - Provides for the need to comply with the decisions of the National Office of Internal Affairs of Justice related to the prohibition of designating as interim officers relatives of former delegates holding the vacant services.
- Recommendation No. 35 of 02/27/2019 - Recommendation for all Brazilian magistrates, except STF ministers, to refrain from exercising functions, even if of an honorary, advisory and unpaid nature, in councils, committees, commissions or similar, of a political nature or of administrative management of services linked to Branches or bodies outside the Judiciary.

It is also important to recall the possibility that the CNJ, in the exercise of its powers, issues resolutions, which are mandatory for all organs of the Judiciary, with the exception of the Federal Supreme Court. Here are some of the resolutions that are pertinent to the topics addressed in the AL BRA 11/2020 Letter of Allegations:

- Resolution No. 200 of 03/03/2015 - Discipline cause of impediment of magistrate provided for in art. 134, IV, of the Civil Procedure Code.
- Resolution No. 233 of 07/13/2016 - Provides for the creation of a register of professionals and technical or scientific bodies within the scope of the first and second degree courts.
- Resolution No. 305 of 12/17/2019 - Establishes the parameters for the use of social networks by members of the Judiciary.
- Resolution No. 351 of 10/28/2020 - Establishes, within the scope of the Judiciary, the Policy for the Prevention and Countering of Moral Harassment, Sexual Harassment and Discrimination.
- Resolution No. 60 of 09/19/2008 - Establishes the Code of Ethics of the National Magistracy.

It can be seen, therefore, that the National Council of Justice acts, in different axes, so that the Judiciary Branch can function independently, efficiently and in accordance with the parameters established in the Brazilian legal system.