



The application of Injunctions and Restraining Orders against Telemarketing disturbances

A aplicação das Tutelas Inibitória e Cessatória, contra a perturbação de Telemarketing

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ABSTRACT

With the constant advance of technological means, various facilities and improvements have been provided to society. In consumer relations, this is widely visible, given the greater ease of contact and means of seeking satisfaction for consumer rights. However, there is one point that needs to be debated and which afflicts a large portion of the population: telemarketing calls.

Keywords: Telemarketing, Disturbances.

RESUMO

Com o constante avanço dos meios tecnológicos, diversas facilidades e melhorias foram proporcionadas à sociedade. Nas relações de consumo isso é amplamente visível, dada a maior facilidade de contato e meios de busca de satisfação dos direitos do consumidor. Porém, há um ponto que deve ser debatido e que aflige grande parcela da população: as ligações de telemarketing.

Palavras-chave: Telemarketing, Perturbação.

1 INTRODUCTION

With the constant advance of technological means, various facilities and improvements have been provided to society. In consumer relations, this is widely visible, given the greater ease of contact and means of seeking satisfaction for consumer rights. However, there is one point that needs to be debated and which afflicts a large portion of the population: telemarketing calls.

The right to solicit - the right to offer services and products - is guaranteed to these companies and is considered legitimate. But what happens is not a common and respectful practice, but real disturbances to the oblates - those who receive the offer - since the calls are made at various times, whether commercial or leisure, even when the policed person has already denied interest in what has been offered.

Having understood what the research is about, its importance for society and for discussion among legal experts is clear. Since law is the main means of resolving conflicts between citizens, there is nothing more coherent than delving into people's real, everyday problems in order to provide solutions to them, which is ample justification for the choice of topic. In the public academic sphere, this is even more visible,



given the researcher's need to give back to taxpayers. And in this case, where the problem affects the most diverse social levels with constant recurrence, there is a high degree of relevance to the study.

With only a theoretical contextualization of the issue, it is important to understand how the law can intervene in this matter in a practical way. This is the problem to be tackled by this research, i.e. what are the possible judicial and extrajudicial measures made available by the Brazilian legal system that can be applied to these cases to reduce telephone disturbances, which will be explored in greater depth later on, but can be summarized in the use of injunctions and restraining orders to curb the constant calls.

After describing the context of the research and its relevance, we can analyze the relationship between the scientific initiation subproject and the research project to which it is linked. The sub-project seeks to provide legal means to solve a problem - the abusive use of the right to offer - and, to do so, it must find the necessary procedural and extra-procedural means. With this analysis, it can be seen that the research project "Challenges of the Process: impacts of the Civil Procedure Code on the civil legal system" largely fits in with what the subproject is seeking, since it deals with the impacts of the CPC, the north of civil procedure, on the civil legal system. In short, we are looking for procedural measures to resolve issues in the civil legal system, i.e. "ordinary life".

2 OBJECTIVE

In short, the research has three objectives: a broad one, a specific one and one that focuses on the result. Broadly speaking, the aim is to construct a propositional thesis that considers telephone disturbances to be an abuse of rights. Specifically, to identify the legal consequences of telephone disturbances in relation to personality rights. And finally, to see how specific protection measures are applied to safeguard personality rights in cases of telephone disturbance.

3 METHODOLOGY

The methodology used in this research consists of analyzing the body of legal literature, the Civil Code and the Code of Civil Procedure, as well as rules that deal with the main points of analysis, namely disturbance of the peace, personality rights and specific protection. Finally, in order to strengthen the hypotheses, we will look for any court decisions on the subject.

To reach this expected result, the deductive research method is used, in which we seek to understand a broader context in order to reach more specific conclusions. This method is advantageous because, when it comes to law, it is complex to find a general rule from more specific cases and also because, in a general and broad context, there are several discussions on the same subject in the doctrine and in the courts themselves.



The criterion, then, is the assessment and evaluation of the entire body of documents obtained, both in terms of their grounds and their effects, in order to apply them together with any court decisions to form a solid foundation.

4 DEVELOPMENT

With the methodology and materials presented, the results sought are based on the three (3) main points of discussion: what is a personality right, what are injunctions and injunctions and the numbers about telemarketing calls.

Firstly, for Pablo Stolze and Gagliano Filho, personality rights are those that have as their object the physical, psychic and moral attributes of the person themselves and their projections, in other words, a series of values that are irreducible to money. Francisco Amaral's position is similar, with the concept of personality rights as subjective rights whose object is the person's essential goods and values. Now, since this is the majority position of the doctrine, and since personality rights are not exhaustive, the result is that it is completely plausible to treat disturbances to the quiet as an injury to personality rights.

After the first stage of results, it is necessary to seek the appropriate legal remedies to remedy this violation. Several Brazilian legal provisions deal with the guarantee of personality rights: the Constitution of the Republic (in its Article 5, X) and the Civil Code (Articles XI to XXI), which are not exhaustive. And as a guarantee of the protection of these inviolable rights, the Civil Code provides for judicial protection of personality rights. In this case, the remedies that could be applied are injunctive relief, provided for in Article 461 of the Code of Civil Procedure, and injunctive relief. The latter is designed to stop unlawful acts that are happening repeatedly, while the latter is designed to prevent future unlawful acts that may harm an individual's personality rights. Once the references and sources are clear, it is important to emphasize that the content is revised in order to apply a new causality, different from the ones found.

With the presentation of these remedies, it is possible to conclude that they are appropriate in the case of telemarketing calls. This is because, on most occasions, callers seek legal remedies while they are being harassed; in other words, injunctive relief would be appropriate to curb the continuation of this illegal act. By the same token, the goal of these oblates is to no longer receive these types of calls, not in the way that they are made, so injunctive relief is appropriate in order to prevent future violations that have not yet occurred.

For information purposes, this is the position that has begun to take hold in the lower courts and collegiate courts, although it is not yet a crystallized position.

And, to conclude the results, to show how this is an issue present in the daily lives of Brazilians, various surveys show that Brazil is one of the world leaders in telemarketing calls. According to the most recent Truecaller report (December 2021), on average, each Brazilian receives approximately 32.9



unwanted calls per month. In addition, data from January 15 to 21, 2023 from Anatel, released by the agency, shows that almost half of the calls made in the country are from robots.

5 FINAL CONSIDERATIONS

With all the data and conclusions presented, it is clear that law, as an applied social science, needs to provide the necessary elements to solve people's everyday problems. And not only to provide these elements, but also to motivate the operators of the law to look for ways to make these solutions real, in other words, to move from the academic field to the practical field. With this more philosophical conclusion, the topic itself brings with it a relevant study value, with the conclusion that it is possible to apply injunctive and restraining orders against telemarketing nuisance.



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