



DATA PROTECTION AND FUNDAMENTAL RIGHTS AS SEEN BY THE COURT OF JUSTICE OF THE EUROPEAN UNION

A PROTEÇÃO DE DADOS E OS DIREITOS FUNDAMENTAIS SOB O PRISMA DO TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA

Daniela Serra Castilhos

Escola Superior de Tecnologia e Gestão do Instituto Politecnico de Leiria, Leiria, Portugal

ORCID: <https://orcid.org/0000-0002-1259-7604>

E-mail: daniela.castilhos@ipleiria.pt

Tammy Fortunato

Universidade Portucalense, Porto, Portugal

Lattes: <http://lattes.cnpq.br/8549463050681368>

E-mail: tammyfortunato@gmail.com

Katerine Nygaard

Universidade Portucalense, Porto, Portugal

E-mail: 43665@alunos.upt.pt

Trabalho enviado em 01 de novembro de 2022 e aceito em 24 de setembro de 2022



This work is licensed under a Creative Commons Attribution 4.0 International License.



Rev. Quaestio Iuris., Rio de Janeiro, Vol. 16, N.03, 2023, p. 1572 - 1595

Daniela Serra Castilhos, Tammy Fortunato e Katerine Nygaard

DOI: [10.12957/rqi.2023.68370](https://doi.org/10.12957/rqi.2023.68370)

ABSTRACT

With the development of technology and the awakening of commercial interest in personal data, it is important to protect fundamental rights, among them the principle of human dignity, freedom, privacy and intimacy. The States have demonstrated concern when dealing with and circulating the personal data of their citizens, working in defense of the protection of fundamental rights, constitutionally considered fundamental. The qualitative method was used to accomplish this work, where it was sought to obtain a conceptual analysis on fundamental rights and the protection of personal data, seeking to understand the role of the Court of Justice of the European Union. There was an analysis of the legislation of Brazil, Portugal, and the European Union. The results obtained were satisfactory to the conclusion of the research

Key- words: Fundamental rights; General Data Protection Act; Passenger Name Record; insurmountable rights; Court of Justice of the European Union.

RESUMO

Com o desenvolvimento da tecnologia e com o despertar do interesse comercial pelos dados pessoais, importante se faz a proteção dos direitos fundamentais, entre eles o princípio da dignidade da pessoa humana, a liberdade, a vida privada e a intimidade. Os Estados têm demonstrado preocupação quando do tratamento e circulação dos dados pessoais de seus cidadãos, trabalhando em defesa da proteção dos direitos fundamentais, constitucionalmente considerados basilares. Para a realização do trabalho foi utilizado o método qualitativo, onde se buscou a obtenção de uma análise conceitual sobre direitos fundamentais e proteção dos dados pessoais, buscando trazer o entendimento o papel do Tribunal de Justiça da União Europeia. Houve análise da legislação do Brasil, Portugal e da União Europeia. Os resultados obtidos foram satisfatórios à conclusão da pesquisa.

Palavras – chave: Direitos fundamentais; Lei Geral de proteção de Dados; Registro de identificação dos Passageiros; direitos intransponíveis; Tribunal de Justiça da União Europeia.

INTRODUCTION

The present work, which has as its theme data protection and fundamental rights from the perspective of the Court of Justice of the European Union, seeks to analyze, in a conceptual way, the relevance of the protection of personal data for guaranteeing fundamental rights and what the role of the Court of Justice of the European Union.

The legal focus on the issue of personal data protection provided by Brazil and the European Union is important and will be analyzed in this work.

The research will also aim to analyze what fundamental rights are, in addition to their relationship with the protection of personal data, addressing the jurisprudential approach of the Court of Justice of the European Union.

The topic of personal data protection is relevant and should be widely debated, since the misuse of such data puts the guarantee of citizens' fundamental rights at risk, always deserving greater study and dissemination.

The qualitative method was used to develop the research, using consultation of the bibliography of national and international authors, research in the virtual environment, as well as research into legislation and jurisprudence of the Court of Justice of the European Union.

The research will be developed in three parts: Fundamental rights; Data protection and, Court of Justice of the European Union. Finally, the conclusions of this research and the bibliographic source researched will be presented.

FUNDAMENTAL RIGHTS

Since the most ancient times, dating back to Babylonian law, around 2,000 years BC, we have known about the first manifestations of fundamental rights, which were also recognized in Ancient Greece and Republican Rome¹.

Fundamental rights expanded in the 18th century, when they were incorporated by liberalism, becoming considered one of the sacred principles, with natural law at its core². However, there are those who consider that the true expansion of fundamental rights only occurred in the 20th century, as a result of the Second World War. In the words of Thomas Buergenthal quoted by Piovezan (2018, p. 209):

Modern International Human Rights Law is a post-war phenomenon. Its development can be attributed to the monstrous human rights violations of the Hitler era and the belief that some of these violations could be prevented if an effective international human rights protection system existed.

The concept of fundamental rights is presented by Canotilho (2003, p. 111) as those that “constitute a specific and autonomous sphere of citizens, are beyond the reach of legitimate attacks from power and could be defended against power”.

Fundamental rights have the status of an immutable clause and cannot be extinguished or modified³, which guarantees legal security to the citizen. There is a limitation on the power of the legislator. Casado Filho (2012, p. 112), treats the importance of immutable clauses as “a guarantee to the citizen against the legislator, limiting his future power, in order to prevent him, influenced by momentary pressures, from putting such important achievements at risk for the people”.

Guarantees aimed at citizens are organized institutional structures, aimed at defending rights. These are fundamental rights⁴.

Fundamental rights are those inherent to the human person, recognized and affirmed by the constitutional norms of each State. Sarlet, Marinoni and Mitidiero (2018, p. 321), state that:

It is related to documents of international law, as it refers to those legal positions that recognize human beings as such, regardless of their connection with a given constitutional order, and which, therefore, aspire to universal validity, for all peoples and in everywhere, in such a way that they reveal a supranational (international) and universal character.

In this line, rights are absolutely necessary to the Constitutions of each State, aiming in the words of Moraes (2003, p. 20) “to enshrine respect for human dignity, guarantee the limitation of power and aim for the full development of the human personality”.

Respect for the dignity of the human person and, striving for their development, brings us the idea that all human beings are equal in dignity. However, the classic political thought of the past is based on the words of Sarlet (1998, p.17), who:

The dignity (*dignitas*) of the human person was, as a rule, related to the social position occupied by the individual and their degree of recognition by other members of the community, hence it is possible to speak of a quantification and modulation of dignity, in the sense of admitting the existence of more worthy or less worthy people.

Certainly, a somewhat retrograde thought, since everyone is equal in their dignity. Including the Charter of Fundamental Rights⁵, Article 1 states that: “The dignity of the human being is inviolable. It must be respected and protected.” Once again mentioning Sarlet (2011, p.28), we have to:

Where there is no respect for the life and physical and moral integrity of human beings, where the minimum conditions for a dignified existence are not ensured, where there is no limitation on power, in short, where freedom and autonomy, equality (in rights and dignity) and fundamental rights are not recognized and minimally ensured, there will be no space for the dignity of the human person and this (the person), in turn, may be nothing more than a mere object of will and injustice.

In fact, ensuring respect for the dignity of the human person is one of the purposes of the fundamental principles, the basic support of the Constitutions of the Republic of Brazil and Portugal⁶.

However, it should be noted that fundamental rights are the values and rights enshrined in the Constitution, while human rights are values and rights enshrined through international treaties⁷.

It is important to note that both terminologies: human rights and fundamental rights are considered synonymous by doctrine and jurisprudence⁸. Casado Filho (2012, p.19), discusses the topic:

The expression human rights is normally used to refer to the values and rights enshrined in international treaties. In turn, the expression fundamental rights is used to refer to the same set of rights, when inserted in the Constitution.

Fundamental rights are protected in the Magna Carta of some States, including Brazil and Portugal. The Constitution of the Republic of Brazil⁹ brings fundamental rights in title II, being subdivided into chapters that deal with individual and collective rights; social rights; nationality; political rights and political parties.

The Constitution of the Republic of Portugal¹⁰ provides in part I individual rights and duties, dealing in titles I and II with general principles and personal rights, freedoms and guarantees.

Among the fundamental principles, there is the right to security, freedom, the inviolability of privacy, moral integrity, the inviolability of correspondence and home, the guarantee of access to data that concerns you, among others.

With regard to European territory, Pacheco (2005, p. 102 and 124) asserts: the treaties that created the European Communities (from 1951 and 1957) did not have any provision for fundamental rights, since their objectives were essentially of a economic. However, as a result of the successive revisions carried out in the original treaties, the field of community competences expanded to the civic dimension and to matters traditionally belonging to the core sovereignty of

States, namely already related to fundamental rights. So, in this community of law, a form of protection became necessary, its own protection regarding fundamental rights.

The lack of a specific catalog of European Union rights was remedied by the action of the Court of Justice, according to Alves and Castilhos (2016, p.10-11), it was in 1959 the first time that the Court of Justice was called upon to rule- on the issue of the protection of fundamental rights in the Community legal order. When situations involving fundamental rights arose, the Court of Justice used other sources of law such as the Constitutions of the Member States and international instruments, including the ECHR.

In current times, where there is an incessant search for personal data, the fundamental principles of freedom, security and privacy gain prominence. The Charter of Fundamental Rights of the European Union states that everyone has the right to freedom and security, including the security of their personal data.

According to Alves and Castilhos (2016, p.14):

[...] the Charter brings together, in a single text, all the fundamental rights protected in the Union, which understands that the rights and principles contained in the Charter derive in particular from constitutional traditions and international conventions common to the Member States, the ECHR, the adapted Social Charters by the Community and the Council of Europe, as well as the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights.

The Charter of Fundamental Rights of the European Union (CDFUE) has great weight as it deals with fundamental founding values of the Union, with its elevation of legal value from mere soft law to the value of original, binding law, as provided for in article 6. , nº 1, of the TEU, as one of the most relevant changes to the Treaty of Lisbon, according to Mesquita (2017, p.26).

The principle of freedom is conceptualized by Filho (2016, p.46): “The powers to act are recognized and protected by the legal order for all human beings”. Having as its objective, still in the words of Filho (2016, p. 48): “To act or not to act, to do or not to do. To use or not to use. Go, come or stay.”

The principle of freedom is somewhat broad and subjective, but when it comes to freedom of exposure, release and protection of your personal data, freedom itself becomes more restricted, especially when treated not in the way the Constitution of the Republic preaches, but mainly in the virtual environment.

In fact, when the principle of freedom is mentioned, with the objective of providing or not providing data belonging to a natural or legal person, we have to work in conjunction with the principle of security.

The principle of security that concerns a State obligation is considered as an individual and collective guarantee¹¹, provided for in the Constitution of the Brazilian Republic, as well as in the Portuguese¹², guaranteeing everyone this right.

However, everyone's security must also be observed when the topic of data protection is a topic that comes up. In this vein, the principle of intimacy and private life has been intertwined.

The principle of intimacy consists of an insurmountable, inviolable right of each person. In the words of Filho (2016, p.99): “Intimacy must be understood as the freedom to have peace of mind in the development of personal and intimate relationships in life”.

Intimacy and private life are constitutional rights present in the Magna Carta of Brazil and Portugal and can be differentiated by the words of Ferreira Filho cited by Moraes (2003, p. 135), who presents what intimacy consists of and what is considered private life:

The concept of intimacy relates to the subjective and intimate relationships of the human person, their family and friendship relationships, while the concept of private life involves all of the person's relationships, including objective ones, such as commercial relationships, work, study etc.

However, the State must protect the citizen, as well as guarantee the maintenance of their rights. Personal data that are part of intimacy, private life, guaranteeing the freedom and security of the individual, are conceptualized by Pinheiro (2018, p. 19) as being:

All information related to an identified or identifiable person, not limited to name, surname, nickname, age, residential or electronic address, and may include location data, license plates, shopping profiles, Internet Protocol (IP) number), academic data, purchase history, among others. Always related to a living natural person.

Aiming to protect not only citizens, but mainly constitutional principles, States, according to Dimoulis and Martins (2014, p. 123) must: “[...] comply with their duty of protection through legislation on personal data ”

Both Brazil and Portugal excel in their security duty and have legislated on the protection of citizens' data as will be analyzed in the next chapter.

DATA PROTECTION

The right to private life emerges in Europe as a concern against intrusions from third parties, more precisely as a protection against State intrusion¹³. The Universal Declaration of Human Rights is considered the first instrument to deal with respect for family life and private life, influencing other legal protection instruments¹⁴.

Concern about the protection of personal data emerged in Germany, in Hesse, in the mid-1960s, but it was only in 1970 that the first standard that specifically dealt with the topic was identified¹⁵. However, Doneda (2021, p. 197), points out the evolution of personal data protection standards, bringing the evolution that occurred in the Italian legal system, showing that: “The formation of the right to privacy in the case of the Italian legal system was the work of jurisprudence that, with the support of doctrine, aware of the evolution of the right to privacy in other countries, was concerned with seeking its contours and foundations”.

The European Union is considered a pioneer in concerns about data protection. There was even concern about industry data, as Lynskey (2015, p. 3) points out: “One of the reason why the European Parliament initially called for data protection legislation in the mid-1970s was as a reaction to the emergence of a data processing industry in the EU”.

There was also a need to protect private life, protection of intimacy, so that, later, there would be a need to protect not only personal data, but also the protection of commercial data, company data. Pinheiro (2018, p. 13) states that:

The reason that inspired the emergence of personal data protection regulations in a more consistent and consolidated manner from the 1990s onwards is directly related to the development of the digital economy business model itself, which began to have a much greater dependence on international flows of database, especially those related to people, made possible by technological advances and globalization.

In current times, there is a clear need to protect data not only from companies, but also the protection of citizens' personal data, preserving the dignity of the human person, freedom, security, intimacy and private life, rights that are constitutionally guaranteed .

In fact, strengthening privacy protection is one of the objectives of legislation, whether in Brazil or adopted in the European Union, seeking according to Pinheiro (2018, p. 24): “freedom of expression, information, opinion and communication, the inviolability of intimacy, honor and image and economic and technological development”.

In fact, with the deep-rooted promotion of intimacy and its inviolability, there was a need to further strengthen individual rights. Doneda (2021, p. 31) states that:

From its roots strongly linked to a tradition regarding the right to privacy and, in general, the strengthening of individual rights, the protection of personal data began to be structured with greater autonomy at the moment when automated data processing began to take hold. represent, in itself, a risk factor for the individual.

Mister is currently carrying out an analysis of the General Data Protection Regulation (GDPR), which is a regulation of European law that deals with privacy and protection of personal data, being applicable to all individuals in the European Union and European Economic Area, in other words, it also covers Portuguese citizens.

In Brazil, there is the General Data Protection Law (LGPD), which was inspired by the RGDP¹⁶. In fact, data protection is seen as typically European, since European regulatory frameworks are pioneers in this regulation and protection of the right to privacy¹⁷.

The right to privacy and protection of personal data is recognized as a fundamental right provided for in the Constitution of the Republic of Brazil, including protecting personal data contained in digital media¹⁸.

However, although there is a need to protect the data of companies, industries and legal entities in general, these are protected by specific legislation and are not embraced by data protection laws, GDPR and LGPD, which aim solely at protecting of data from individuals, striving to strengthen intimacy and private life¹⁹.

Pinheiro (2013, p. 53), when dealing with the right to privacy, states that “the right to privacy constitutes a natural limit to the right to information” and continues stating that “Every individual must have the right to the protection of their properties and of your privacy.”

The protection of data of individual or natural persons, as called in Portugal, is governed in the European Union by regulation 2016/679²⁰, with the aim of establishing rules for the protection, processing of data and circulation of personal data.

European Union regulation 2016/679²¹ One of its objectives is: “The regulation defends the fundamental rights and freedoms of natural persons, namely their right to the protection of personal data”. Maldonado and Blum (2020, p. 24) point out that “there are no absolute rights, but any limitation to fundamental rights must occur in a moderate, necessary and proportional way”.

The Charter of Fundamental Rights²², in its article 8, it also deals with data protection: “Everyone has the right to the protection of personal data that concerns them”. In the European Union and Brazil, the protection of personal data, as well as respect for private life, are considered fundamental rights. Maldonado and Blum (2020, p. 27) state that:

The concern with the protection of personal data is associated with the very notion of privacy protection, a legal good whose inviolability has been elevated to the status of a fundamental right by the world's main democratic constitutions. Civilized societies have realized that the protection of privacy is an inseparable element of human dignity, which is why any act capable of affecting a citizen's privacy would also be an act that undermines the human experience of a dignified life.

In Brazil, Law 13,709 of 2018 is in force²³, which aims to protect the fundamental rights of freedom, privacy and the free development of the personality of the natural person and, since the Constitutional Amendment²⁴ No. 115, of 2022, the protection of personal data is considered a fundamental right.

The protection of personal data is the central element of LGPD and GDPR, which can be reductionist or expansionist in their concepts. In the first there is a retraction of the law, while in the second, the expansion²⁵.

The concept of expansionist personal data is one in which the person is identifiable and indeterminate, having a mediate, indirect, imprecise or inexact link, with an expansion of the qualification of the data as personal. When it comes to the concept of reductionist personal data, the person is identified, being specific or determined, with an immediate, direct, precise or exact link, with a reduction in the qualification of the data as personal²⁶.

According to Maldonado and Blum (2020, p. 82), Brazilian legislation adopted the expansionist concept of personal data, pointing out that “not only information relating to a directly identified person will be protected by the Law, but also that information that can – has the potential of – making the person identifiable.”

An example of the expansionist application of personal data is the case of the company NETFLIX, which uses automatic data collection through the interaction of the platform user, recording not only the data filled in when contracting the services, but also the films that were watched, whether they were watched in full or not, the time and place at which the searches were carried out, the IP (Internet Protocol) address, among others, so that a consumption map can be created, considered by marketing companies as very important information²⁷.

Relevant information collected automatically raises concerns about the protection of people's privacy and private lives. Redden (2017) points out that there are risks and opportunities in capturing data, meaning that people are unaware of the algorithmic profile, made up of a range of data, including that collected when a person travels.

Other examples of the misuse of personal information, such as the sale of lists of rape victims and people with genetic diseases, among others²⁸. The sale of such information encourages a black market, not only causing personal information to be exposed, but leaving people in a situation of vulnerability and discrimination.

Redden (2017), addresses the issue of discrimination in the collection of personal data, showing that such a situation can cause harm to the person and illustrates the discriminatory act by addressing a situation in which a man had his credit rating reduced by the American Express card, which made an assessment of a person's credit based on the place where they usually shopped, taking into account not their payment history, but that of other people who also shopped at the same commercial establishment and had bad credit. And follow:

As corporations, government agencies and others make use of big data, it is critical to know that discrimination can and is happening – both unintentionally and intentionally. This can happen when algorithm-driven systems offer, deny, or mediate access to services or opportunities for people differently.

Both the LGPD and the GDPR include the figure of the holder. This is defined as the natural person, to whom the personal data that is subject to processing refers²⁹, having the freedom to authorize, deny, revoke any authorization previously granted for the processing of your data³⁰.

The RGPD³¹ details the data subject's access rights in detail and in accordance with the law, including: whether or not their data will be processed; What is the purpose of the treatment; who the data is intended for; what are the data categories; what is the data storage period; to request rectification, deletion, limitation of data processing and, also, to oppose the processing. And, if data is transferred to another country or international organization, you have the right to be informed about the appropriate guarantees regarding data transfer.

The data can only be personal or sensitive personal data. Wachowicz (2020, p. 29), presents the difference between both: “personal data is defined as information that can be attributed to an identified or identifiable natural person”, while sensitive personal data can be conceptualized as:

Sensitive personal data is defined as personal data that reveals the racial or ethnic origin, religion, political opinions, trade union membership, political party or philosophical or religious beliefs, or data relating to the health or sexuality of the data subject.

The circulation of sensitive personal data can cause a high potential for damage to their holders, which is why there was a need for differentiated categorization and, consequently, greater protection of such data³².

The processing of sensitive personal data requires more careful protection, and the principles and rights of the data subject must be observed, since, if there is a failure in the security of their protection, serious consequences may affect the rights and freedoms of the data subject.³³.

Pinheiro (2018, p. 52) states that sensitive personal data deserves different treatment and explains:

Sensitive data deserves special treatment because in some situations its use is indispensable, but care, respect and security with such information must be ensured, given that – whether due to its nature or its characteristics – the violation may entail significant risks in relation to the fundamental rights and freedoms of the person.

Not all data is sensitive and, when mentioning data processing, Pinheiro (2018, p. 19) considers that:

Any operation carried out with some type of handling of personal data: collection, production, reception, classification, use, access, reproduction, transmission, distribution, processing, archiving, storage, editing, elimination, evaluation or control of information, modification, communication, transfer, diffusion or extraction.

With the processing of personal data, spaces (legal and social) must be opened with the aim of encompassing reflections on the protection of fundamental rights, bringing the apex of intimacy and privacy to the debate.

The protection of data, whether sensitive or not, is a fundamental right and must be guaranteed. However, the European Court of Justice still receives demands involving issues on data protection and fundamental rights, demonstrating that there are doubts about the applicability of the law on the European Continent.

COURT OF JUSTICE OF THE EUROPEAN UNION

The Court of Justice of the European Union (CJEU), formerly known as the Court of Justice of the European Communities, acts to ensure uniform interpretation of a community legal order, having an important and fundamental role³⁴. Varella (2019, p. 590) adds that “CJEU is responsible for guaranteeing community legal integration, ensuring uniformity of interpretation and compliance of Member States with regional norms”.

The CJEU strives for the preservation of the Union's values, aiming to participate in European construction through its jurisprudence³⁵, being called upon to hear requests for preliminary rulings, appeals against decisions given by the General Court, actions and direct appeals aimed at obtaining the annulment of a Union act or even obtaining a declaration of non-compliance with Union law by a Member State and also requests for opinions³⁶.

In Varella's (2019, p. 590) conception, regarding the functioning of the CJEU: “it functions as an appeal body, but it also has some original powers. In a way, it is one of the main drivers of community integration.”

Second CJEU report³⁷, about its missions as an institution:

[...] its mission is to ensure respect for Union law, ensuring the uniform interpretation and application of the Treaties and guaranteeing monitoring of the legality of acts adopted by the institutions, bodies and agencies of the Union.

In the words of Castilhos, Alves and Oliveira (2021, p. 249):

[...] In the context of the complex systematization of the European Union's legal system, integrated by original and derived sources and legal principles, the Court of Justice is responsible for ensuring the rule of law, through the interpretation and application of the Treaties.

Treaties are agreements concluded between two or more subjects of international law, being considered as a legal act of expression of the will of the parties³⁸.

The right to intimacy, privacy and human dignity are fundamental rights, principles that guide the European Union, and the CJEU is responsible for guaranteeing community integration through jurisprudence³⁹.

The case law established by the CJEU points out that the need to protect fundamental rights, such as intimacy and private property, must be reconciled with the right to data protection, as it is also a fundamental right⁴⁰.

However, it is noted that in a previous period there was no reference to the protection of fundamental rights in original treaties of the European Communities, with the participation of the CJEU being essential. According to the Manual⁴¹:

The original treaties of the European Communities did not contain any reference to human rights or their protection. However, in view of the proceedings brought before the then Court of Justice of the European Communities (ECJ) based on alleged violations of human rights under EU legislation, it developed a new approach. In order to grant protection to natural persons, it incorporated fundamental rights into the so-called general principles of European law. According to the CJEU, these general principles reflect the provisions on the protection of human rights contained in national constitutions and human rights treaties, in particular the ECHR. The CJEU stated that it would ensure compliance of EU law with these principles.

The approach to the issue of data protection in the European Union is based on the General Regulation, as already seen in the previous chapter, but, however, the CJEU's actions have great relevance in the development of the topic⁴². It is up to the CJEU, according to the European Legislation Manual⁴³:

To determine whether a Member State has complied with its obligations under the Data Protection Directive and to make preliminary rulings on the validity and interpretation of the Directive in order to ensure its effective and uniform application across Member States.

The CJEU's jurisprudence ensures the effective and uniform application of fundamental rights, creating rights and obligations⁴⁴. On the importance of jurisprudential precedents, Accioly (2019, p.370). says:

The CJEU plays a fundamental role not only as a guarantor of uniform interpretation of the community legal order, but also as a creator of that same right. It is worth remembering that the jurisprudential precedents established by the Court declare a series of rights for European citizens and obligations for member states.

Among demands filed with the CJEU on the issue of personal data protection, there are questions raised regarding so-called PNR data (*Passenger Name Record*)⁴⁵. PNR data includes the passenger's name, itinerary and travel dates, as well as luggage, assigned seats, emergency contacts and payment method⁴⁶.

Directive 2016/681⁴⁷, sets the PNR record to:

Passenger Name Record or PNR (Passenger Name Record), a record of the travel formalities imposed on each passenger that contains the information necessary to enable the processing and control of reservations made by participating air carriers in respect of each trip booked by a person or in its name, whether the record appears in the reservation systems, in the departure

control systems used to control passengers boarding flights, or in equivalent systems that offer the same functionalities.

Fundamental rights, as well as protection of the right to private life ⁴⁸ are ensured in Directive 2016/681⁴⁹, of the European Union that deals with the use of data from passenger identification records (PNR), seeking the effects of prevention, detention, investigation, aiming to repress terrorist offenses and serious crime, seeking to “guarantee security and protect life and the safety of people and create a legal regime applicable to the protection of PNR data⁵⁰”.

The application of PNR data in the fight against serious crime and terrorist actions allows the identification of suspicious people, however, innocent people mistakenly identified by the system must be spared as much as possible⁵¹. There is also prior information about passengers, called API (advance passenger information), which aims to improve border control and combat illegal immigration⁵².

The concern with the collection and analysis of PNR data first arose in the United States, after the terrorist attacks of September 11, 2001, when legislation was adopted that forced airlines that carried out activities in the territory American citizen to provide PNR data⁵³.

The Handbook prepared by the EU Fundamental Rights Agency⁵⁴ addresses the mandatory reporting of PNR data: “Under US law, airlines are required to make this data available to the Department of Homeland Security before departure. This obligation applies to flights to or from the United States.”

It is observed that there are airlines that carry out their activities outside the American territory and that even include the European Union, since there are transoceanic commercial activities and they encounter barriers regarding the sharing of PNR data, causing demands before the CJEU.

One of the first demands brought to the CJEU centered on the annulment of the PNR package⁵⁵, resulting in the conclusion of two agreements between the United States and the European Union and their objective was to establish a legal basis for the disclosure of PNR data and, also, to ensure an adequate level of data protection in the State receiving them.

At another time, the CJEU is working to analyze an agreement between the European Union and Canada⁵⁶, who negotiated the transfer and processing of PNR data. There was a statement from the CJEU to analyze “the compatibility of a draft international agreement with the Charter of Fundamental Rights of the European Union, in particular with the provisions relating to respect for private life and the protection of personal data⁵⁷”.

Regarding the protection of fundamental rights, the CJEU, when analyzing the demand between the EU and Canada, brought that:

The fundamental right to respect for private life, enshrined in Article 7 of the Charter of Fundamental Rights of the European Union, implies that the data subject can ensure that personal data is processed accurately and lawfully. In order to carry out the necessary checks, that person must have a right of access to the data concerning him or her that is subject to processing⁵⁸.

The protection of fundamental rights, including those covering intimacy, private life and the protection of PNR data, is a relevant topic for the CJEU. In this context, the objective is public security, State activities and individual protection.

In the reported case between the EU and Canada, the CJEU declared that several provisions contained in the agreement were incompatible with the fundamental rights recognized by the EU, which is why it did not agree with the conclusion of the same⁵⁹. Even bringing⁶⁰:

Although the interventions in question may be justified by the pursuit of an objective of general interest (ensuring public security in the fight against terrorist offenses and serious transnational crime), several provisions of the Agreement are not limited to what is strictly necessary and do not provide for rules clear and precise.

The CJEU is deeply concerned about national security and the fight against crime and terrorism, while also being concerned about the protection of personal data.

Among the demands filed with the CJEU, there is one of the most important cases judged, which deals with access to personal data in the field of electronic communications, where one of the defendants is the company Facebook Ireland⁶¹.

As stated in the report issued by the Court, the ruling EU:C:2020:559, of July 16, 2020⁶², there was a statement that:

The level of adequate protection that must be ensured in the event of data transfer to a third country, as well as the obligations imposed on control authorities in the context of a transfer of personal data from the European Union to the United States. The Court also examined the compatibility of the protection ensured by the European Union – United States Data Protection Shield with the requirements regarding the protection of personal data and respect for fundamental rights.

The guarantee and maintenance of fundamental rights, including those aimed at protecting human dignity, private life, freedom and intimacy, are protected by the CJEU's jurisprudence.

On the other hand, the fight against terrorism and crime are also concerns when the objective is to protect personal data, PNR data and electronic data, with the CJEU being responsible for deciding possible demands and conflicts and, often, expressing its opinion

between the protection of the principles fundamental principles and the fight against serious violence committed against humanity.

CONCLUSION

Fundamental rights are protections inherent to the human person, insurmountable and inalienable rights. These are necessary rights and among them are the right to life, freedom, private life, intimacy and human dignity.

Such rights gained greater visibility after the horrors committed during the Second World War, an event that ignored any basic right of humanity.

In fact, the State increasingly needs to protect fundamental rights, and the citizen. In this sense, attention is paid to the protection of intimacy and privacy, which is necessary with the advancement of technology and the dissemination of the individual's personal data.

The dissemination of an individual's personal data exposes their intimacy, privacy, freedom and even their dignity, thus violating fundamental rights.

These rights are unavailable, present not only in the Constitutions of the Republic of Brazil and Portugal, but also in the Charter of Fundamental Rights of the European Union, which was a pioneer in the protection of personal data.

The concern with the protection and security of personal data aims to guarantee Fundamental Rights, since personal information or sensitive data were circulated, including commercially, violating citizens' rights.

There was a need to develop specific legislation for the protection and processing of personal data, including data used by passenger transport companies and electronic communication domains.

One of the biggest concerns, especially for airlines, is the protection/sharing of PNR data, including transport carried out outside the European Union.

Among the biases in sharing personal data, there is the issue of preventing terrorism and combating crime as a result of the attack suffered by the United States in 2001, which killed thousands of citizens.

Individual protection of Fundamental Rights must be guaranteed, as well as the fight against terrorism. One of the roles of the Court of Justice of the European Union is to guarantee the uniform interpretation of a community legal order, including the analysis of demands involving the protection of personal data.

The Court of Justice of the European Union's mission is to guarantee and respect international treaties, including those covering the protection of personal data and, mainly, ensuring fundamental rights.

NOTES

¹ DIMOULIS, Dimitri e MARTINS, Leonardo. Teoria geral dos direitos fundamentais. 5ª ed. rev., atual. e ampl. São Paulo: Atlas, 2014. ISBN 978-85-224-8722-6

² FILHO, Manoel Gonçalves Ferreira Filho. Direitos humanos fundamentais. 15ª ed. São Paulo: Saraiva: 2016. ISBN 9788502208513

³ CASADO FILHO, Napoleão. Direitos humanos e fundamentais. São Paulo: Saraiva, 2012. ISBN 978-85-02-16901-2

⁴ FILHO, Manoel Gonçalves Ferreira Filho. Direitos humanos fundamentais. 15ª ed. São Paulo: Saraiva: 2016. ISBN 9788502208513

⁵ EUROPEIA, União. *Carta dos direitos fundamentais da União Europeia* [em linha]. [consult. 28 mar. 2022]. Disponível em: https://www.europarl.europa.eu/charter/pdf/text_pt.pdf

⁶ CASADO FILHO, Napoleão. Direitos humanos e fundamentais. São Paulo: Saraiva, 2012. ISBN 978-85-02-16901-2

⁷ CASADO FILHO, Napoleão. Direitos humanos e fundamentais. São Paulo: Saraiva, 2012. ISBN 978-85-02-16901-2

⁸ CASADO FILHO, Napoleão. Direitos humanos e fundamentais. São Paulo: Saraiva, 2012. ISBN 978-85-02-16901-2, p.19.

⁹ BRASIL. Constituição Federal da República Brasileira [em linha]. Brasília. Presidência da República [Consult 23 Ago 2021]. Disponível em http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

¹⁰ PORTUGAL, Constituição da República Portuguesa [em linha]. Lisboa. Assembleia da República [consult 23 Ago 2021]. Disponível em: <https://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx>

¹¹ LENZA, Pedro. Direito Constitucional esquematizado. 24ª ed. São Paulo: Saraiva Educação, 2020. ISBN 9788553619290

¹² Na Constituição da República brasileira, está prevista no artigo 5º caput, enquanto na portuguesa, no artigo 27.

¹³ Manual da Legislação Europeia sobre Proteção de Dados. Luxemburgo: Serviço das Publicações da União Europeia, 2014. ISBN 978-92-871-9939-9

¹⁴ Manual da Legislação Europeia sobre Proteção de Dados. Luxemburgo: Serviço das Publicações da União Europeia, 2014. ISBN 978-92-871-9939-9

¹⁵ DONEDA, Danilo. Tratado de proteção de dados pessoais. Rio de Janeiro: Forense, 2021. ISBN 978-85-309-9219-4

¹⁶ WACHOWICZ, Marcos. Proteção de dados pessoais em perspectiva: LGPD e RGPD na ótica do direito comparado. Curitiba: Gedai, 2020. ISBN 978-65-86233-51-3

¹⁷ DONEDA, Danilo. Tratado de proteção de dados pessoais. Rio de Janeiro: Forense, 2021. ISBN 978-85-309-9219-4

¹⁸ BRASIL. Constituição Federal da República Brasileira [em linha]. Brasília. Presidência da República [Consult 15 fev 2022]. Disponível em http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. art. 5º, LXXIX.

¹⁹ MALDONADO, Viviane Nóbrega e BLUM, Renato Opice (coord.). LGPD: Lei Geral de Proteção de Dados Comentada. 2ª ed. rev. atual. e ampliada. São Paulo: Revista dos Tribunais, 2020. ISBN 978-65-5065-023-0

- ²⁰ Artigo 1º, 1. Regulamento EU 2016/679 de 27 de abril de 2016. Acesso em 26 de Ago 2021. Disponível em <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:02016R0679-20160504&from=EN>
- ²¹ Regulamento EU 2016/679 de 27 de abril de 2016. Acesso em 26 de Ago 2021. Disponível em <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:02016R0679-20160504&from=EN>
- ²² EUROPEIA, União. *Carta dos direitos fundamentais da União Europeia* [em linha]. [consult. 28 mar. 2022]. Disponível em: https://www.europarl.europa.eu/charter/pdf/text_pt.pdf
- ²³ BRASIL. Lei 13.709 de 14 de agosto de 2018 [em linha]. Brasília. Presidência da República [Consult 26 Ago 2021]. Disponível em http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113709.htm
- ²⁴ BRASIL. Constituição Federal da República Brasileira [em linha]. Brasília. Presidência da República [Consult 23 Ago 2021]. Disponível em http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm art. 5º, LXXIX.
- ²⁵ BIONI, Bruno Ricardo. *Proteção de dados pessoais: a função e os limites do consentimento*. Rio de Janeiro: Forense, 2019. ISBN 978-85-309-8328-4
- ²⁶ BIONI, Bruno Ricardo. *Proteção de dados pessoais: a função e os limites do consentimento*. Rio de Janeiro: Forense, 2019. ISBN 978-85-309-8328-4.
- ²⁷ RITTER, Otávio. 12 I Know What You Saw Last Summer: Uma Análise do Uso de Dados Pessoais pela Plataforma Netflix. **POLITICAS POLITICAS DIGITAIS NO BRASIL**.
- ²⁸ REDDEN, Joana. *Six ways (and counting) that big data systems are harming society. The Conversation*. Cardiff, 07 dez. 2017. Disponível em: <https://theconversation.com/six-ways-and-countingthat-big-data-systems-are-harming-society-88660> Acesso em: 29 ago. 2022.
- ²⁹ BRASIL. Lei 13.709 de 14 de agosto de 2018 [em linha]. Brasília. Presidência da República [Consult 26 Ago 2021]. Disponível em http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113709.htm
- ³⁰ PINHEIRO, Patrícia Peck. *Proteção de dados pessoais: comentários à Lei n. 13.709/2018 (LGPD)*. São Paulo: Saraiva Educação, 2018.. ISBN 9788553608317
- ³¹ Regulamento EU 2016/679 de 27 de abril de 2016. Acesso em 26 de Ago 2021. Disponível em <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:02016R0679-20160504&from=EN> . Art.15.
- ³² DONEDA, Danilo. *Da privacidade à proteção de dados pessoais. Fundamentos da Lei Geral de Proteção de Dados*. 2ªed. São Paulo: Revista dos Tribunais, 2020. ISBN 978-65-5065-030-8
- ³³ MALDONADO, Viviane Nóbrega e BLUM, Renato Opice (coord.). *LGPD: Lei Geral de Proteção de Dados Comentada*. 2ª ed. rev. atual. e ampliada. São Paulo: Revista dos Tribunais, 2020. ISBN 978-65-5065-023-0
- ³⁴ ACCIOLY, Hildebrando. *Manual de direito internacional público*. 24ª ed. São Paulo: Saraiva Educação, 2019. ISBN 9788553610082
- ³⁵ Tribunal de Justiça da União Europeia. *Panorama no ano. Relatório anual de 2020*. [Consult 03 Set 2021]. Disponível em: https://curia.europa.eu/jcms/jcms/Jo2_7000/
- ³⁶ Tribunal de Justiça da União Europeia. *Panorama no ano. Relatório anual de 2020*. [Consult 03 Set 2021]. Disponível em: https://curia.europa.eu/jcms/jcms/Jo2_7000/
- ³⁷ Tribunal de Justiça da União Europeia. *Panorama no ano. Relatório anual de 2020*. [Consult 03 Set 2021]. Disponível em: https://curia.europa.eu/jcms/jcms/Jo2_7000/ p.01.
- ³⁸ ACCIOLY, Hildebrando. *Manual de direito internacional público*. 24ª ed. São Paulo: Saraiva Educação, 2019. ISBN 9788553610082
- ³⁹ PIOVEZAN, Flávia. *Direitos humanos e justiça internacional: um estudo comparativo dos sistemas regionais europeu, interamericano e africano*. 9ª ed. rev.e atual. São Paulo: Saraiva Educação, 2019. ISBN 9788553610181
- ⁴⁰ *Manual da Legislação Europeia sobre Proteção de Dados*. Luxemburgo: Serviço das Publicações da União Europeia, 2014. ISBN 978-92-871-9939-9
- ⁴¹ *Manual da Legislação Europeia sobre Proteção de Dados*. Luxemburgo: Serviço das Publicações da União Europeia, 2014. ISBN 978-92-871-9939-9, p. 20.
- ⁴² KUNER, Christopher; BYGRAVE, Lee A. e DOCKSEY, Christopher. *The EU general data protection regulation (GDPR): A Commentary*. New York: Oxford University Press, 2020. ISBN 978-0-19-882649-1
- ⁴³ *Manual da Legislação Europeia sobre Proteção de Dados*. Luxemburgo: Serviço das Publicações da União Europeia, 2014. ISBN 978-92-871-9939-9, p. 19.
- ⁴⁴ Tribunal de Justiça da União Europeia. *Panorama no ano. Relatório anual de 2020*. [Consult 08 Set 2021]. Disponível em: https://curia.europa.eu/jcms/jcms/Jo2_7000/
- ⁴⁵ LYNSKEY, Orla. *The foundations of EU Data Protection Law*. New York: Oxford University Press, 2015. ISBN 978-0-19-871823-9.
- ⁴⁶ Conselho Europeu, Conselho da União Europeia [Acesso em 08 Set 2021]. Disponível em: <https://www.consilium.europa.eu/pt/policies/fight-against-terrorism/passenger-name-record/>

- ⁴⁷ Diretiva (UE) 2016/681 Do Parlamento Europeu e do Conselho de 27 de abril de 2016. Disponível em: <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016L0681&qid=1631288930117&from=EN> Acesso em: 10 Set. 2021. Artigo 3º, inciso 5º.
- ⁴⁸ Diretiva (UE) 2016/681 Do Parlamento Europeu e do Conselho de 27 de abril de 2016. Disponível em: <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016L0681&qid=1631288930117&from=EN> Acesso em: 10 Set. 2021
- ⁴⁹ Diretiva (UE) 2016/681 Do Parlamento Europeu e do Conselho de 27 de abril de 2016. Disponível em: <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016L0681&qid=1631288930117&from=EN> Acesso em: 10 Set. 2021.
- ⁵⁰ Diretiva (UE) 2016/681 Do Parlamento Europeu e do Conselho de 27 de abril de 2016. Disponível em: <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016L0681&qid=1631288930117&from=EN> Acesso em: 10 Set. 2021, consideração nº5.
- ⁵¹ Diretiva (UE) 2016/681 Do Parlamento Europeu e do Conselho de 27 de abril de 2016. Disponível em: <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016L0681&qid=1631288930117&from=EN> Acesso em: 10 Set. 2021.
- ⁵² Diretiva (UE) 2016/681 Do Parlamento Europeu e do Conselho de 27 de abril de 2016. Disponível em: <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016L0681&qid=1631288930117&from=EN> Acesso em: 10 Set. 2021
- ⁵³ Tribunal de Justiça da União Europeia. Ficha temática. Disponível em: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/fiche_thematique_-_donnees_personnelles_-_pt.pdf Acesso em 13 Set 2021.
- ⁵⁴ Manual da Legislação Europeia sobre Proteção de Dados. Luxemburgo: Serviço das Publicações da União Europeia, 2014. ISBN 978-92-871-9939-9, p. 148.
- ⁵⁵ Manual da Legislação Europeia sobre Proteção de Dados. Luxemburgo: Serviço das Publicações da União Europeia, 2014. ISBN 978-92-871-9939-9
- ⁵⁶ Tribunal de Justiça da União Europeia. Ficha temática. Disponível em: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/fiche_thematique_-_donnees_personnelles_-_pt.pdf Acesso em 13 Set 2021, parecer 1/15(Acordo PNR EU – Canadá) de 26 de julho de 2017 (Grande Secção) (EU:C:2017:592).
- ⁵⁷ Tribunal de Justiça da União Europeia. Ficha temática. Disponível em: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/fiche_thematique_-_donnees_personnelles_-_pt.pdf Acesso em 13 Set 2021, p. 28.
- ⁵⁸ Tribunal de Justiça da União Europeia. Ficha temática. Disponível em: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/fiche_thematique_-_donnees_personnelles_-_pt.pdf Acesso em 13 Set 2021, p. 30.
- ⁵⁹ Tribunal de Justiça da União Europeia. Ficha temática. Disponível em: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/fiche_thematique_-_donnees_personnelles_-_pt.pdf Acesso em 13 Set 2021
- ⁶⁰ Tribunal de Justiça da União Europeia. Ficha temática. Disponível em: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/fiche_thematique_-_donnees_personnelles_-_pt.pdf Acesso em 13 Set 2021, p. 29.
- ⁶¹ Tribunal de Justiça da União Europeia. Panorama no ano. Relatório anual de 2020. [Consult 03 Set 2021]. Disponível em: https://curia.europa.eu/jcms/jcms/Jo2_7000/
- ⁶² Tribunal de Justiça da União Europeia. Panorama no ano. Relatório anual de 2020. [Consult 03 Set 2021]. Disponível em: https://curia.europa.eu/jcms/jcms/Jo2_7000/

REFERENCES

ACCIOLY, Hildebrando. *Manual de direito internacional público*. 24ª ed. São Paulo: Saraiva Educação, 2019. ISBN 9788553610082.

ALVES, D. R., CASTILHOS, D. S. *A evolução dos direitos humanos na Europa: os principais momentos desde a ausência de direitos fundamentais na União Europeia até a actualidade*. In G. A. Bedin (org.), *Cidadania, justiça e controle social* [recurso eletrônico] (pp. 10-21) . Santa Cruz do Sul: Essere nel Mondo, 2016. [consult. 10 jun 2022]. Disponível em: <http://hdl.handle.net/11328/1461>.

BIONI, Bruno Ricardo. *Proteção de dados pessoais: a função e os limites do consentimento*. Rio de Janeiro: Forense, 2019. ISBN 978-85-309-8328-4.

CASADO FILHO, Napoleão. *Direitos humanos e fundamentais*. São Paulo: Saraiva, 2012. ISBN 978-85-02-16901-2.

CASTILHOS, D. S.; ALVES, D. R.; Oliveira, S. M. H. L. O efeito direto horizontal das diretivas e o tribunal de justiça da união europeia. *Cadernos de Direito Actual*, 15 (Número ordinário 2021), 233-253. [consult. 10 jun 2022]. Disponível em: <http://www.cadernosdedereitoactual.es/ojs/index.php/cadernos/article/view/606>

CANOTILHO, J.J. Gomes. *Direito constitucional e teoria da constituição*. 7ª ed. 11ª reimp. Coimbra: Almedina, 2003. ISBN 978-972-40-2106-5.

CONSELHO EUROPEU, Conselho da União Europeia [em linha]. [consult. em 08 set. 2021]. Disponível em: <https://www.consilium.europa.eu/pt/policies/fight-against-terrorism/passenger-name-record/>

_____, *Manual da Legislação Europeia sobre Proteção de Dados*. Luxemburgo: Serviço das Publicações da União Europeia, 2014. ISBN 978-92-871-9939-9.

DONEDA, Danilo. *Da privacidade à proteção de dados pessoais. Fundamentos da Lei Geral de Proteção de Dados*. 2ªed. São Paulo: Revista dos Tribunais, 2020. ISBN 978-65-5065-030-8.

_____, Danilo. *Tratado de proteção de dados pessoais*. Rio de Janeiro: Forense, 2021. ISBN 978-85-309-9219-4.

DIMOULIS, Dimitri e MARTINS, Leonardo. *Teoria geral dos direitos fundamentais*. 5ªed. rev., atual. e ampl. São Paulo: Atlas, 2014. ISBN 978-85-224-8722-6.

EUROPEIA, União. *Carta dos direitos fundamentais da União Europeia* [em linha]. [consult. 28 mar. 2022]. Disponível em: https://www.europarl.europa.eu/charter/pdf/text_pt.pdf

FILHO, Manoel Gonçalves Ferreira. *Direitos humanos fundamentais*. 15ª ed. São Paulo: Saraiva: 2016. ISBN 9788502208513.

KUNER, Christopher; BYGRAVE, Lee A. e DOCKSEY, Christopher. *The EU general data protection regulation (GDPR): A Commentary*. New York: Oxford University Press, 2020. ISBN 978-0-19-882649-1.

LENZA, Pedro. *Direito Constitucional esquematizado*. 24ª ed. São Paulo: Saraiva Educação, 2020. ISBN 9788553619290.

LYNSKEY, Orla. *The foundations of EU Data Protection Law*. New York: Oxford University Press, 2015. ISBN 978-0-19-871823-9.

MALDONADO, Viviane Nóbrega e BLUM, Renato Opice (coord.). *LGPD: Lei Geral de Proteção de Dados Comentada*. 2ª ed. rev. atual. e ampliada. São Paulo: Revista dos Tribunais, 2020. ISBN 978-65-5065-023-0.

MESQUITA, Maria José Rangel. *Introdução ao Contencioso da União Europeia*. Coimbra: Grupo Almedina, 2. ed., 2017, p. 26. ISBN 978-972-40-6941-8.

MORAES, Alexandre de. *Direitos humanos fundamentais: teoria geral, comentários aos arts. 1ª a 5ª da Constituição da República Federativa do Brasil*. 5ª ed. São Paulo: Atlas, 2003. ISBN 85-224-1769-5.

PACHECO, Maria de Fátima de Castro Tavares Monteiro. “A protecção dos particulares no sistema português de direitos fundamentais e no sistema da União Europeia” in *Revista de Ciências Empresariais e Jurídicas*. Instituto Superior de Contabilidade e Administração do Porto, n.º 3, 2005. ISSN 1646-1029. p. 99 a 152.

PINHEIRO, Patrícia Peck. *Proteção de dados pessoais: comentários à Lei n. 13.709/2018 (LGPD)*. São Paulo: Saraiva Educação, 2018. ISBN 9788553608317.

_____, Patrícia Peck. *Direito digital*. 5ª ed. rev., atual. e ampl. de acordo com as Leis n. 12.735 e 12.737, de 2012.. São Paulo: Saraiva, 2013. ISBN 978-85-02-20166-8.

PIOVEZAN, Flávia. *Direitos humanos e o direito constitucional internacional*. 18ª ed., rev. E atual. São Paulo: Saraiva Educação, 2018. ISBN 978-85-536-0027-4.

_____, Flávia. *Direitos humanos e justiça internacional: um estudo comparativo dos sistemas regionais europeu, interamericano e africano*. 9ª ed. rev. e atual. São Paulo: Saraiva Educação, 2019. ISBN 9788553610181.

REDDEN, Joana. *Six ways (and counting) that big data systems are harming society. The Conversation*. Cardiff, 07 dez. 2017. Disponível em: <https://theconversation.com/six-ways-and-countingthat-big-data-systems-are-harming-society-88660> Acesso em: 29 ago. 2022.

RITTER, Otávio. 12 *I Know What You Saw Last Summer*: Uma Análise do Uso de Dados Pessoais pela Plataforma Netflix. **POLÍTICAS POLÍTICAS DIGITAIS NO BRASIL**. Acesso em 29 ago 2022. Disponível em: https://bibliotecadigital.fgv.br/dspace/bitstream/handle/10438/30688/0.%20MIOLO_Políticas%20digitais%20no%20Brasil_Digital.pdf?sequence=1#page=159



SARLET, Ingo Wolfgang, MARINONI, Luiz Guilherme e MITIDIERO Daniel. *Curso de direito constitucional*. 7ª ed. São Paulo: Saraiva Educação, 2018. ISBN 9788547230883.

SARLET, Ingo Wolfgang. *Dignidade da pessoa humana e direitos fundamentais na Constituição Federal de 1988*. 9ª ed. rev.atual. Porto Alegre: Livraria do Advogado, 2011. ISBN 978-85-7348-730-5.

TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA. *Panorama no ano. Relatório anual de 2020* [em linha]. [consult 03 set. 2021]. Disponível em: https://curia.europa.eu/jcms/jcms/Jo2_7000/

TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA. *Ficha temática* [em linha]. [consult. 13 set. 2021]. Disponível em: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/fiche_thematique_-_donnees_personnelles_-_pt.pdf

VARELLA, Marcelo Dias. *Direito internacional público*. 8ª ed. São Paulo: Saraiva Educação, 2019. ISBN 9788553609031

WACHOWICZ, Marcos. *Proteção de dados pessoais em perspectiva: LGPD e RGPD na ótica do direito comparado*. Curitiba: Gedai, 2020. ISBN 978-65-86233-51-3.

LEGISLAÇÃO E JURISPRUDÊNCIA

BRASIL. Constituição Federal da República Brasileira [em linha]. Brasília. Presidência da República [consult 15 fev 2022]. Disponível em: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

_____. Lei 13.709 de 14 de agosto de 2018 [em linha]. Brasília. Presidência da República [consult. 26 ago 2021]. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113709.htm

PORTUGAL, Constituição da República Portuguesa [em linha]. Lisboa. Assembleia da República [consult 23 ago 2021]. Disponível em: <https://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx>

_____, Regulamento 2016/679 [em linha]. [consult. 26 ago 2021]. Disponível em: <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:02016R0679-20160504&from=EN>

TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA. ECLI:EU:C:2017:592 [em linha]. Parecer 1/15 (Acordo PNR UE-Canadá) de 26 de julho de 2017 (Grande Secção). [consult. 08 set 2021]. Disponível em: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=193216&doclang=PT>

UNIÃO EUROPEIA. Diretiva 2016/681 [em linha]. Parlamento Europeu e do Conselho de 27 de abril de 2016. [consult. 10 fev 2022]. Disponível em: <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016L0681&qid=1631288930117&from=EN>

Sobre as autoras:**Daniela Serra Castilhos**

Doutora em Direitos Humanos, Docente na Escola Superior de Tecnologia e Gestão do Instituto Politécnico de Leiria, cidade do Leiria (Portugal). Coordenadora do módulo Jean Monnet The European Union as a global player for Democracy and Fundamental Rights da Universidade Portucalense Infante D. Henrique. Membro Integrado Instituto Jurídico Portucalense, Porto (Portugal)
Escola Superior de Tecnologia e Gestão do Instituto Politécnico de Leiria, Leiria, Portugal
ORCID: <https://orcid.org/0000-0002-1259-7604>
E-mail: daniela.castilhos@ipleiria.pt

Tammy Fortunato

Advogada e professora. Mestranda em Ciências Jurídicas e Políticas pela Universidade Portucalense (Portugal). Especialista em Direito e Negócios Internacionais pela Universidade Federal de Santa Catarina. Pesquisadora na área de violências contra a mulher
Universidade Portucalense, Porto, Portugal
Lattes: <http://lattes.cnpq.br/8549463050681368>
E-mail: tammyfortunato@gmail.com

Katerine Nygaard

Graduada em direito pela universidade Estácio de Sá, especialista em gênero e direito pela escola da magistratura do estado do Rio de Janeiro, mestranda em ciências jurídico-políticas na universidade Portucalense Infante Dom Henrique. atuação profissional: juíza de direito em exercício no VI juizado de violência doméstica e familiar contra a mulher do Rio de Janeiro, membra da coordenação da mulher em situação de violência do Tribunal de Justiça do estado do Rio de Janeiro, primeira vice-presidenta no ano de 2022 do fórum nacional de juízes e juízas de violência doméstica, vice presidenta do fórum de violência doméstica da escola da magistratura do estado do Rio de Janeiro, professora da escola de administração judiciária do Tribunal de Justiça do estado do Rio de Janeiro
Universidade Portucalense, Porto, Portugal
E-mail: 43665@alunos.upt.pt

As autoras contribuíram igualmente para a redação do artigo.