DATA PROTECTION AND CONSUMER PROTECTION: PRIVATE AUTONOMY IN FRONT OF PRIVACY

A PROTEÇÃO DE DADOS E A DEFESA DO CONSUMIDOR: AUTONOMIA PRIVADA FRENTE À PRIVACIDADE

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ABSTRACT

In the midst of the advances of the Internet, we saw it repagining relations and opening new commercial perspectives. In this context, consumer protection, which dates back to the constitutional bases of 88, crystallized by the Consumer Protection Code, is challenged to contemplate new business models developed within the Internet, especially within the theme of Data Protection. In this step two specific legislation on Digital will be analyzed: initially the Civil Framework of the Internet and, after, the General Data Protection Law, in order to bring key concepts to identify consumer elements within these devices, as well as understand how both legal acts operate to ensure consumer protection in the subject of data protection, considering mainly the private autonomy of users. To this end, the research was developed through the deductive and exploratory method, supported in the bibliographic review and comparative analysis of legislation. The aim was finally to demonstrate the importance of private autonomy in the face of possible violations of fundamental rights, such as privacy, as well as the abuse of personal data.

Keywords: Consumer Protection Code. Civil Landmark of the Internet. General Data Protection Act.

RESUMO

Em meio aos avanços da Internet a avistamos repaginando relações e abrindo novas perspectivas comerciais. Neste contexto, a defesa do consumidor, que remonta às bases constitucionais de 88, cristalizadas pelo Código de Defesa do Consumidor, se vê desafiada a contemplar novos modelos de negócios desenvolvidos dentro da internet, sobretudo dentro da temática da Proteção de Dados. Neste passo serão analisadas

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How to cite this article/Como citar esse artigo:
GUIMARÃES FILHO, Pedro Andrade; FERNEDA, Ariê Scherreier; FERRAZ, Miriam Olivia Knopik. *Data protection and consumer protection: private autonomy in front of privacy.* Revista Meritum, Belo Horizonte, vol. 15, n. 2, p. 38-51, May/Aug. 2020. DOI: https://doi.org/ 10.46560/meritum.v15i2.7749.

duas legislações específicas sobre matéria Digital: inicialmente o Marco Civil da Internet e, após, a Lei Geral de Proteção de Dados, com o intuito de trazer conceitos chaves para identificar elementos consumeristas dentro destes dispositivos, bem como compreender de que modo ambos os diplomas legais operam para garantir a proteção do consumidor na temática da proteção de dados, considerando principalmente a autonomia privada dos usuários. Para tanto, a pesquisa foi desenvolvida por meio do método dedutivo e exploratório, lastreado na revisão bibliográfica e análise comparada de legislações. Pretendeu-se demonstrar, por fim, a importância da autonomia privada em face de eventuais violações de direitos fundamentais, como a privacidade, bem como o abuso no tratamento de dados pessoais.

Palavras-chave: *Código de Defesa do Consumidor. Marco Civil da Internet. Lei Geral de Proteção de Dados.*

1. INTRODUCTION

In the light of contemporaneity, celebrated thirty years of its edition, it is quite clear that the Brazilian Constitution of 1988 was promulgated in order to become the cornerstone of a State of strong social character, insofar as it elects the citizenship and dignity of the human person as the foundations of the Federative Republic of Brazil.

In this regard, the particular concern of the constituent legislator in aspects related to consumer law is undeniable, being the subject of specific analysis in more than one point of the constitutional text, with special attention to the listing of the theme next to the list of Fundamental Rights listed next to the body of art. 5th, in your inc. XXXII.

Notwithstanding the material recognition of the scope and weight played by the consumerist question, it was also kept in mind the imperative need of editing a specific codification to address and contemplate the theme, a fact verifiable by art. 48 of the Acts of Transitional Constitutional Provisions (ADCT), which provided for a short deadline for the edition of a specific legislation to cover consumer matters.

Thus, the Consumer Protection Code (CDC), Law n. 8,078, was published in 1990, designed in line with the protective bias and human focus, a tonic emanated by the constitutional text. In addition, the CDC is an introduction to a series of basic concepts that guide the specific intelligibility of consumer relations, signalling the insertion of clear concepts of supplier and consumer, in addition to recognizing the vulnerability of this second group as a general principle that permeates the entire systematic of Consumer Law in Brazil.

It is, therefore, an imperative element to understand the consumerist legislation the observance of its incidence in concrete, embodied with a contemporary analysis of the society in which it operates, with the aim of addressing changes in business models performed by suppliers.

In this step, new business models emerge continuously, operating and monetizing new economic activities, wrapped up in technological advances - and new possibilities of earning a profit. This leads to disruptive consumption relationships when compared to conventional consumption: in addition to selling a product, the consumer becomes the product.

This is the case observed in every industry driven by data mining, whose presence is almost ubiquitous in digital environments, formatting a billion dollar industry operationalized

through the opening of privacy and the capture of users' personal data - which are, to the same extent, consumers.

The weight of the issue regarding the protection, management and protection of data did not go unnoticed by the legislator, who edited specific acts to address the intersection between law and the Internet, which are, at first, the Civil Framework of the Internet, Law n. 12.965/2014, and, in a second opportunity, the General Data Protection Law, Law n. 13,709/2018.

In view of this, the article was developed based on the deductive and exploratory method, supported in the bibliographic review and comparative analysis of legislation and is subdivided into two main parts, referring (i) the implementation of the CDC in the digital environment and its dialogue with the ICM and the LGPD; and (ii) consumer protection in the digital environment, considering their private autonomy.

How do the specific laws that address the Internet, the example of the Civil Framework of the Internet and the General Data Protection Law, dialogue with the Consumer Protection Code? Are they complementary instruments, capable of guaranteeing the protection of consumer relations in the digital environment, especially with regard to data protection?

2. THE CONSUMER PROTECTION CODE IN THE DIGITAL ENVIRONMENT: THE CIVIL FRAMEWORK OF THE INTERNET AND DATA PROTECTION

Although it is common knowledge the substantive changes that the Internet has been promoting in Brazilian society in recent years, with reverberations in the social, economic and political fields, it is important to note that the digital environment is not found, absolutely, stripped of Brazilian jurisdiction and jurisdiction.

Such an understanding undertakes to understand the Internet under the legal lens, especially regarding human relations between subjects within the large computer network, regardless of the specifics or objectives of this interaction. In the same way that the Constitution of the Republic emanates and links subjects and acts in Brazilian territory since 1988, its jurisdiction reaches the totality of the digital environment understood in Brazil.

In this way, it is completely possible, even if completely reprehensible, to foist third-party rights in the digital environment. It is also noted that crime soon flourished within the Internet, both on a global scale and in Brazil, including abusive consumer practices.

This is a natural consequence of the digitization of relationships, due to the increasing gradient in the number of people with access to the large computer network (CARDON, 2012, p. 22). Urges to emphasize, therefore, that the digitization of the Brazilian society occurs in two hands: both in the increase in the number of users, emphasizing, for example, that between the years 2016 to 2017 there was an increase from 69.3% to 74.9% of people with internet access (BRASIL, 2017, p. 5); as well as increasing the relevance, presence and volume of transactions that occur in the network, also called e-commerce, which designates *the sale*

purchase of goods or services, which is "conducted through computer networks and methods specifically designed for the receipt or delivery of orders." (OECD, 2011, p. 72) or

With regard to the figure of the consumer in digital media, it can be seen that he is already digitised, that is to say, even if he does not carry out the transaction via the Internet, "this does not mean that the way to collect information about goods and services no longer occurs massively over the web". That is, with the advent of the Brazilian Consumer Protection Code, there is the maturing of consumer relations and the consumer himself (PINHEIRO, 2018, p. 157).

Although the Constitution of the Republic, the Consumer Protection Code and the scattered legislation apply in a digital environment, the everyday reality and the difficulty of applying classical legislation led the legislator to debate about a specific legislative charter to address issues relating to the digital environment from all angles: this is the Civil Framework of the Internet (ICM), Law 12.965/2014.

Because it is originated due to the need to update the Brazilian legal compound regarding internet-related issues, often the MCI is considered as the "Constitution of the Brazilian Internet", for bringing a long list of definitions of two-dimensional technical order, juridical--computational, besides presenting the whole range of principles that regulate digital activities in Brazil.

It is also noted that, because the ICM is the first legislation of specific nature of regulation of the Internet, and corroborating with its "constitutional" facet on the subject, its body of articles does not deserve to detail specificities on such matters, but is concerned, in particular, with outlining general grounds which gave rise to the subsequent legal construction.

Thus, art. 2º of the said diploma presents the basis of foundations that discipline the internet in Brazil. In your inc. V, in turn, makes explicit mention of consumer protection, to discipline that the use of the Internet in Brazil is based on respect, including, free initiative, free competition and consumer protection.[4]

In sequence, the art. 3º lists the basis of principles that support and discipline the use of the internet in Brazil, highlighting its potential dialogue with economic activities performed by suppliers in the digital environment, ensuring its operation, but delimiting responsibility.[5]

It can be seen, therefore, from the analysis of the aforementioned legislation, that the elements focused on Consumer Law did not pass by the lawmaker when publishing the Civil Framework of the Internet, in three fundamental points: (i) recognises consumer protection in the digital environment as a foundation; (ii) acknowledges the responsibility and accountability of agents, a fact that, combined with a consumer reading, indicates the incidence of objective and joint liability of suppliers on the Internet; and (iii) conditions business models on the Internet on compliance with the principles of the Law.

In the meantime, it is appropriate to highlight the existing dialogue between the CDC and the MCI, in the search for a functional efficiency of the legal system from a constitutional nor-

4 Art. 2 The discipline of using the internet in Brazil is based on respect for freedom of expression, as well as: [...] V - free initiative, free competition and consumer protection (BRASIL, 2014).

5 Art. 3 The discipline of internet use in Brazil has the following principles: [...] VI - accountability of agents according to their activities, under the terms of the law; [...] VIII - freedom of business models promoted on the internet, as long as they do not conflict with the other principles established in this Law (BRASIL, 2014).

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mativity, insofar as the State will promote, in the form of law, consumer protection, pursuant to art. 5th, XXXII, of the Constitution of the Republic. In addition, it is noted that the scope of the CDC rules includes transactions on the Internet.

In view of this, when it comes to the processing of personal data of consumers on the Internet, the CDC and the MCI apply, considering that the duty of protection must involve several dimensions, as highlighted by Laura Mendes (2016):

> the obligation of interpretation in accordance with the Constitution to take account of the consumer's vulnerability and need for protection; the administrative duty to protect the consumer; the duty to develop a regulatory architecture for the effectiveness of such protection.

In this sense, such analysis becomes palpable in bringing to light issues involving the protection of personal data, with elements related to personality rights, especially in the intimacy and privacy species, whose guarantee dates back to the constitutional matrix. Therefore, considering that intimacy and privacy were clearly and immediately put on a collision course with data-processing practices, the legislator endorsed his defence in the Marco Civil (KRETSCHMANN; WENDT, 2018, p. 22).

Moreover, it is remarkable the attention spent in the Civil Framework for the topic of Data Protection, which was not strict, but systematic, treating it at various times, besides having the whole section II directed to the consideration of the theme.[6] The special relevance of the treatment given by art is highlighted. 7th of the MCI, which sets out the rights of the user and establishes that access to the Internet is essential to the exercise of citizenship.[7]

In addition, the list of Internet user rights has an intimate relationship with aspects of Consumer Law, being possible to identify convergence of digital rights and consumerist, mainly with inc. VIII of the aforementioned provision, with a clear reference to the Right of Information, enshrined in the Consumer Protection Code.

In turn, the art. 43 of the CDC already expressed concern about the protection of personal data, providing that the consumer should have access to "information existing in the records, records, and personal and consumer data filed on it, as well as their respective sources" (BRAZIL, 1990).

Nevertheless, the introduction of a positive legal debate between the juridical universe and the Internet took place through the advent of Law n. 12.965/14, which brought principles and foundations to discipline the subject. However, specific topics, such as Data Protection, were addressed in general lines, delegating their regulation to the edition of Specific Law, pursuant to art. 3, Inc. III, of the ICM.

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6 Da Proteção aos Registros, aos Dados Pessoais e às Comunicações Privadas.

7 Art. 7º O acesso à internet é essencial ao exercício da cidadania, e ao usuário são assegurados os seguintes direitos: [...] VII - não fornecimento a terceiros de seus dados pessoais, inclusive registros de conexão, e de acesso a aplicações de internet, salvo mediante consentimento livre, expresso e informado ou nas hipóteses previstas em lei; VIII - informações claras e completas sobre coleta, uso, armazenamento, tratamento e proteção de seus dados pessoais, que somente poderão ser utilizados para finalidades que:
a) justifiquem sua coleta; b) não sejam vedadas pela legislação; e c) estejam especificadas nos contratos de prestação de serviços ou em termos de uso de aplicações de internet;
IX - consentimento expresso sobre coleta, uso, armazenamento e tratamento de dados pessoais, que deverá ocorrer de forma destacada das demais cláusulas contratuais; X - exclusão definitiva dos dados pessoais que tiver fornecido a determinada aplicação de internet, a seu requerimento, ao término da relação entre as partes. essalvadas as hipóteses de guarda obrigatória de registros previstas nesta Lei.

In addition, the ICM, as it is not one of a general data protection law, does not cover issues such as international data transfer, data leakage, anonymized data, among other topics (VIOLA; ITAGIBA, 2017, p. 19). Thus, only in 2018 was the General Data Protection Law (LGPD), Law 13.709/2018, in order to give continuity to the issues introduced by the MCI, bringing to the focal point the regulation of capture practices, storage, storage and effective processing of data.

It is also *clear* that the LGPD edition has met the requirements of the United Nations, together with the United Nations Guidelines for Consumer Protection (2016), in the sense that it is recommended that "companies must protect the privacy of consumers through a combination of appropriate control, security, transparency and consent mechanisms related to the collection and processing of personal data". This law, therefore, represented a strengthening of the individual and collective rights arranged in the CDC.

Thus, in relation to consumer protection, the LGPD takes it back as a foundation, in the same terms adopted by the MCI. Its effects and implications assume more practical contours, in that it is a thematic legislation, regulating a specificity of use - and economic exploitation - of the internet, which further strengthens the protective traits of the digital environment user as a consumer. This is because "a service can be offered free of charge to the consumer and, even so, be considered remunerated, given that it obtains indirect gains" through advertising and marketing of user navigation data (MENDES, 2016).

Notwithstanding this concern with consumer protection, the LGPD established with art. 18 that the data subject has the right to obtain from the controller, in relation to the data of the data subject processed by him, at any time and by requesting access to his data; among other hypotheses foreseen in the device.

In addition, the legislator has guaranteed to the data subject the right to petition his data against the data controller before the national authority, as well as the right to object to the processing carried out on the basis of one of the hypotheses of waiver of consent, as prescribed by the Art §§1º and 2º. 18 of the LGPD.

On the other hand, it is absolutely important to enter into an even more seminal debate, namely the identification of the central figures of consumer relations - consumer and supplier - in particular the second, within this new consumer engineering, in order to understand precisely and specifically what are the negotiating elements and legal assets relevant to this debate.

In this sense, it is possible to glimpse that the advances designed by the internet have driven a legiferante process imbued with the task of providing legal documents able to contemplate and ensure constitutional guarantees in a digital environment. Stems from this enterprise both the MCI and the LGPD, being the first introductory and general, and the second specific character, with clear and strict object.

Despite the differences, both bring consumer protection as a basis. In this meander it is assertive to turn again attention to the Consumer Protection Code, in order to understand the nuclear concept of supplier, as well as its framework, to, in a second moment, counteract these ideas with similar concepts of digital legislation.

That being said, the CDC conceptualizes the figure of the supplier as being any natural or legal person that develops activity of production, construction, import, export, distribution

or commercialization of products or services, in accordance with the terms of art. 3 of the abovementioned legislation. This concept is based on some basic predicates, such as the professional supply of product or service within a consumer market, through a consideration of value or economically valuable element.

To carry the concept to the digital environment and format it to the reality of data protection, it is necessary, in the first step, to resume the legal analysis of the MCI, since key concepts of professional activity in digital environment are described in its text.

Thus, according to Law 12.965/14, there are two forms of Service Providers, which, potentially, can perform the function of supplier, as arranged by the CDC. These are: (i) Connection Provider, considering a connection under the law "enabling a terminal to send and receive data packets over the Internet by assigning or authenticating an IP address"; (ii) Application Provider, considering it to be an application, or, as determined by the legal text, "the set of functionalities that can be accessed through a terminal connected to the internet".

Decanting such concepts, it is evident that the connection provider will be played by an autonomous system administrator, or, under the terms of art. 5º, IV, of the ICM by a "natural or legal person who manages specific IP address blocks and the respective autonomous routing system, duly registered in the national entity responsible for the registration and distribution of IP addresses geographically referring to the Country". They are thus companies, usually telephony companies, which provide access to the Internet.

The relevance for the present study, however, lies in the scope of the Application Provider, a very aggregating category that encompasses numerous activities - economic or not - that have a direct impact on the issue of data protection.

In art. 15 of the ICM, on the other hand, it is possible to identify a cutout that the legislator makes on application providers for framing in the form of supplier proposed by the CDC, to the extent that it establishes that it is constituted in the form of a legal person and that it carries out that activity in an organised, professional and economic manner. For this, it must "keep the respective records of access to internet applications, under secrecy, in a controlled and security environment, for the period of 06 (six) months, in accordance with the regulation" (BRASIL, 2014).

It is interesting to note how vendor characterization assumptions are explicitly cited, such as activity performance in an organized, professional and economic way, to impute a specific responsibility of record keeping and access, a fact that may lead one to believe that, although the CDC is not cited or referenced, it is, with accuracy, the figure of supplier, now transposed to the digital area.

3. THE PRIVATE AUTONOMY OF THE CONSUMER AND THE USE OF DATA

Given the notorious relationship between the CDC and the data protection legislation - MCI and LGPD - it is valid to raise some relevant points to understand, in general lines and with exemplifying purpose, what is the professional and organized nature of the activities

to which art. 15 of the MCI makes reference, especially those who work directly with data mining.

Nevertheless, it is important to point out that in relation to data mining, it has been a "search for valuable information in large databases" (WEISS; INDURKHYA, 1998). That is, it is not enough to have the information, it is necessary to transform it into knowledge.

Thus, some of the activities in which data mining is satisfactorily applied stand out: (i) credit cards, in order to identify turnover patterns and market segments; (ii) telemarketing, allowing easy access to customer data; (iii) identification of consumer patterns and consumer profiles, from which it is possible to select and direct the sending of promotional advertisements, among other factors (CAMILO; SILVA, 2009, p. 2).

In addition, it is noted that:

> An example of the application of Data Mining techniques was stated in the news "The potential of Whatsapp for use in data mining: Data mining is the process of exploiting large amounts of data looking for consistent patterns." Such news explains that Target, the second largest retail network in the US, was using the data mining process to understand the shopping habits of its customers and that Facebook "knows when you will date" cross-referencing data about user interactions on the social network. It also shows that there is enormous potential to be explored by techniques that "scavenge" text data, such as those used in Whatsapp or Voip (BOFF; FORTES; FREITAS, 2018, p. 193).

Also, another example of an instrument capable of exploiting data is the use of cookies, which are "digital markers, inserted in the hard disks of the Internet user's computer by the websites visited, which allow the identification and storage of the navigation of the internet user" (MENDES, 2016).

This is an example of how the technological advances of the last fifty years have allowed a recomposition of the major economic players in the global market. Over the years the computer technology industry has become extremely profitable, a fact supported by numbers demonstrated by research conducted by Brandztm.

It can be seen that most brands keep data mining within their portfolio of activities. Google and Facebook, in turn, have in their ad engine their largest source of revenue (LUCIAN; DORNELAS, 2018, p. 195) - service that is only possible through the Data Processing. This is because, when using the services offered by Google, for example, the user adheres to the collection of data, which are used to offer services more efficiently, maintain and improve them, develop new services, provide personalized services, including advertisements and content, among other functions (GOOGLE, s.d.,). In turn, Facebook uses the personal data of your users to determine which ads or products should display in exchange for the free use of the application (FACEBOOK, s.d.).

In addition, regarding the processing of data as an economic engine, it is noteworthy that the position that the "processing of personal information has in its products [...], corroborates the fundamental importance of personal data in the foundation of its business model" (DONEDA, 2010, p. 10).

The fact is that data processing constitutes a very lucrative business for its agents. The breadth represented by the issue of economic exploitation of personal data gained a key

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episode when Cambridge Analytica, a British company specialized in data processing for strategic communication in election campaigns, was accused, and later pleading guilty, of improperly accessing the data of 87 million Facebook users during the US presidential campaign, in favor of the then presidential Donald Trump (PRESSE, 2019).

This event sparked the debate on Data Protection and Security on a global scale, driving to a large extent the approval of the Global Data General Protection Regulation (GDPR) in the European context, which entered into force on 25 May 2018 in that continent. Undeniable the influence of the GDPR edition on the international context, causing an intense movement of companies and States, a fact that is also observed about Brazil, with the edition of the LGPD (Law n. 13,709/2018).

Despite the strong material and formal influence of the GDPR, the LGPD has a very national point of support, in that it reproduces in literality the provision of consumer protection punctuated by the Civil Framework. n order to achieve this protective model, the central task of the LGPD is to cover the complexity of data-related issues, following the same structural basis as the Civil Framework, explaining legal definitions for technical elements and aspects, in addition to demonstrating a general grounding trend, when designing new principles to be observed and respected in data processing practices.

Once these findings are noted, it is important to note that the LGPD understands the issue of data protection in a very comprehensive and expansive way, comprising not only the data in digital media; it follows from this the recognition of the existence of various forms of processing agents, in accordance with art. 3º.

Despite this open reading, it is especially important to observe the provisions of art. 4º, with special emphasis to its inc. I, which states that the LGPD does not apply to the processing of personal data when performed by “natural persons for exclusively private and non-economic purposes” (BRASIL, 2018).

The importance of reading both articles in a conjugated way is decisive for the understanding of the LGPD as a regulatory diploma, whose focus is especially on the economic exploitation of data processing, as a means or end to the offering of goods or services, which refers to an explicit framework of the content of the Law in the consumer arena.

Sobre a aplicação da Lei na observância de fins econômicos, se assevera:

> The delimitation of the applicability of the Law in relation to the types of data that are considered regulated by the LGPD demonstrates that the processing of personal data must follow a certain and functional purpose, but that it does not exceed freedom of information and expression, the sovereignty, security and defence of the State. Likewise, the domestic use for non-economic purposes does not receive the application of the law, considering that one of the focuses of action of the device is to regulate activities whose objective is the supply of goods or services (PINHEIRO, 2019, p. 57).

Thus, from the edition of the European GDPR and Brazilian LGPD, giving special attention to conjecture protective measures to users, it is remarkable that these end up becoming, by the economic nature of the data processing activity, consumers.

It therefore remains to address the figure of the consumer in the digital environment in terms of data protection. Of course, although its treatment in the text of the Law is not given

nominally, the consumer condition must be extracted through a systematic reading of the LGPD, keeping it in line with the Consumer Protection Code.

The constitution of the consumer figure takes shape from an analogous reading of art. 5th of the LGPD, in which are the definitions used in the Ordinance. Therefore, under the terms of inc. V of the aforementioned article, the owner is the "natural person to whom the personal data that are the object of processing refer" (BRASIL, 2018).

In addition, among the many dialogues that are undertaken through debate originated from the intersection between Consumer Law, supported by Law 8078/90, and the general elements that guide data protection, a point gains special outline refers towhether the topic of how the link between consumer and supplier originates in a digital environment.

It is clear that the question goes a long way in this maelstrom, passing at first hand the question of consumer vulnerability in all consumer relations, one of the most expensive postulates to consumer matters, operating as the cornerstone supporting the entire protective spectrum emanating from such a diploma.

Also, notable that the issue also encompasses elements relating to personality rights, primal matter of any debate that deigns to address issues relating to personal data on the Internet, his and possibility of availability, topic that refers from the Constitutional Law to the Civil field of contractual nature.

In the meantime, specific attention will be paid to the protective bias of the duty of information, sustains of good faith in the midst of consumer relations, which is imported in a very poignant way by the LGPD. Nevertheless, the CDC, in its art. 6º, inc. III provides that it is the basic right of the consumer "adequate and clear information on the different products and services, with correct specification of quantity, characteristics, composition, quality, taxes incident and price, as well as on the risks they present" (BRASIL, 1990).

It is therefore noted that it is the obligation of the supplier to present all the information concerning the products and services in a clear way to the consumer, recognized its intrinsic condition of vulnerable, so that it allows the formation of its judgment of choice, qualifying it. However, the determinations of this device may be potentially incomplete to encompass a new type of relationship between consumer and supplier in digital media.

It should be noted that such a relationship occurs through a digital contract, signed at a distance, with the use of electronic devices (PINHEIRO, 2018, p. 408). In such a way, one is faced with a contract that, by reason of its object, addresses eminently technical issues, such as specific language of technology and the like, a fact that can hinder the intelligibility of the consumer when exercising an act of contracting, which may also negotiate your personal data in this type of enterprise.

Moreover, this form of digital hiring hardly allows any form of debate with the supplier. Are, Starte, membership contracts in its essence and form, so as to further vulnerabilize the consumer user, which has only the option to accept or not the contractual terms (DI LORIO; GIACCAGLIA, 2018, p. 222).

This issue emerged as one of the main elements of analysis by the legislator when he edited the LGPD, largely weighing the consumerist character of the relations, in order to make legislation capable of filling the possible gap left by the CDC's general approach.

Initially, the question is illustrated in the body of art. 6º, inc. I and IV respectively, in so far as it provides that personal data processing activities must comply with good faith and principles such as the purpose (processing for legitimate, specific, explicit and informed purposes to the holder, without the possibility of further processing incompatible with those purposes) and transparency (provision of clear, accurate and easily accessible information to data subjects on the conduct of processing and their processing agents, in compliance with business secrets and industrial).

While emphasizing the imperative to work with clear information about the mode of treatment, the legislator has paid particular attention to the requirement of clarity in contractual acts, in which the consumer expresses his will, in the clear intention of qualifying their power of choice.

Therefore, it should be noted that the LGPD evaluated with special attention the real possibility of suppliers operating in the data mining sector to act with potential lack of good faith and incurring information bias when determining explicit rules to rule out such possibility. That remains clear next to art. 44 of the law, providing that the processing of personal data is irregular when it ceases to observe the legislation or when it does not provide the security that the holder of it can expect (BRASIL, 2018).

Indeed, faced with possible damage caused by the controller or personal data operator, the aforementioned law establishes in its art. 42 the obligation to repair it, whether it is patrimonial, moral, individual or collective, in violation of the legislation of protection of personal data. Still, the concern of the legislator extended in art. 45, which provides that in case of violation of the right of the holder in the scope of consumer relations, the liability rules provided in the relevant legislation apply, because the information has economic value (BRASIL, 2019).

Also, it is noteworthy that, although the LGPD has provided that as a rule the responsibility of the controller and the operator is not joint, art. 45 ensured the application of the objective and joint responsibility of the CDC for the case of consumer relations, as in the case of defects or defects of a product, for example (BRAZILIAN CHAMBER OF ELECTRONIC COMMERCE, 2019, p. 3).

From the given panorama, it is reasonable to believe that the incidence of Consumer Law on issues related to data protection is massive and extremely present, even if direct mentions are rare in specific laws, and consumer protection is umbilically attuned to and embodied in the LGPD edition.

In addition, it addresses the understanding of private autonomy that is understood as the power of the individual to establish legal rules for their own behavior (AMARAL NETO, 1988, p, 10), self-regulation. Also according to Francisco dos Santos Amaral Neto (2003, p. 348), “private autonomy is the power that individuals have to regulate, by the exercise of their own will, the relations that participate, establishing the content and the respective legal discipline”.

In fact, there should be a stimulus to “adopt standards for services and products that facilitate the exercise of control of the owners over their personal data, considering the specificities of the activities and the size of the responsible ones” (SILVA, 2019, p. 98). That is, actions that guarantee the exercise of private autonomy by consumer users.

In this sense, when the data processing is carried out in breach of the legislation, the supervisory and sanctioning activities of the National Data Protection Authority may be triggered, in accordance with art. 18 of the LGPD. Likewise, in order to qualify decision-making and effectively promote the autonomy of users' will to the national authority, it is incumbent to disseminate knowledge about the protection of personal data and privacy to the population, according to art. 58-B, V, of the LGPD.

In turn, with major social changes, Doneda states the emergence of a second generation of laws, in the sense that the provision of personal data has become a requirement for "their effective participation in social life", that is, the third generation of laws now protect not only the supply of consumers, but beyond: "[...] which involves the individual's own participation in society and takes into account the context in which he is asked to disclose his data" (DONEDA, 2010, p.42). Thus, means of protection should be in order to understand the complexity of data provision and capture and develop effective protections.

As pointed out, when one understands the processing of the data in this way, the consumer is guaranteed the permission or not of the use, but also the information and barragem of the uses and purposes of the storage of their data. In this way, private autonomy resumes its position of importance, by allowing the consumer to have full knowledge of how his data will be and are being used, which must necessarily be accompanied by a free clarification.

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4. FINAL CONSIDERATIONS

Every day digital technology advances on contemporary society, flooding human relations and changing its classical paradigms; at this point we find the Law, challenged daily to update themselves in the face of the new challenges that reverberate from this new and complex universe.

One of the legal elements that has been affected in a more profound and poignant way is the Consumer Law, which gradually must reinvent itself to continue playing the protective role to the Consumer, always vulnerable, so as not to neglectin the face of possible new abuses.

This situation found a critical turning point in relation to the Protection of Personal Data, in that, in addition to the digital products and services offered, the consumer - and his personal data - became the largest product. The Consumer Protection Code had been taken to its interpretative extreme, requiring the edition of specific legislation on the Brazilian digital environment.

In this sense, the first topic addressed the dialogue of sources in order to ensure a functional efficiency of the legal system based on a constitutional normativity of consumer protection. To this end, a joint analysis was made of the devices of the CDC, the Civil Framework of the Internet, as well as the General Data Protection Law regarding consumer protection.

In addition, it was pointed out that through the Civil Framework of the Internet and, second-hand, with the advent of the General Data Protection Law, consumer protection in the digital environment has found new points of support, with legislative innovations that have

allowed the issue to be materially oxygenated, in order to assist the Consumer Protection Code.

Nevertheless, the need and importance of autonomy for the control of personal data of consumer users was highlighted, in order to avoid the abuse of their use and the violation of privacy by the controller, which can be held objectively and jointly accountable to the principle of vulnerability that guides consumer relations.

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Recebido/*Received:* 19.03.2020.

Aprovado/*Approved:* 26.07.2020.