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DIGITAL LAW AND THE IMPACTS OF GENETIC ENGINEERING ON INTERNATIONAL LAW

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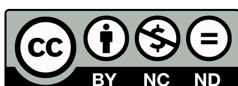

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Abstract: With the evolution of technology, social, economic, and political relationships undergo major changes, which directly impact the thinking and living of human beings. Nevertheless, the law follows social changes and alters itself throughout history, because its main goal and challenge is to organize society in the most fair and correct way possible. Meanwhile, the Digital Right is born, which encompasses all legal spheres, adapting them, however, to a new, previously unknown scenario. Thus, laws that govern the regulation of digital data have arisen in Brazil and around the world, which are essential to be studied and understood, because it is increasingly through the Internet that society relates, moving valuable information and large fortunes. Moreover, with the advent of new technologies, the human being itself is the object of study of some of them, which is important to the law. Scientists investigate genetic data in search of health improvements, fertilization clinics operate, and so many other procedures that, in the final analysis, bring into question the great question of the immeasurable value of life and of the human being itself. This technological, digital, and genetic advance is global, although more apparent in some countries than in others, which gives geopolitical power to the former, and must be analyzed and studied in light of domestic and international law. Therefore, this paper aims to study digital law and its new technologies, as well as the impact of genetic engineering, nationally and internationally, in defense of human rights, that is, the human being itself.
Keywords: Technology. Digital Law. Genetic engineering. International right. Human rights.

STRUCTURE OF THIS WORK

The main theme of this work is the analysis of Digital Law and the protection of personal data on the internet in the light of national and international law, which is justified by the advancement of technology in recent times, consequently reaching a much greater range of people who make use of it every day of their lives. The objective here is also to demonstrate how genetic engineering appropriates new technologies and sensitive data, which has major global impacts that matter to the human species.

The work will be developed in three chapters.

In the first, the text discusses the origins of the digital world and the right to govern it, following with the international legislative apparatus on the protection of personal data, focusing on the legal provisions of the United States and the European Union, in particular, Germany regarding to the theme.

In the second chapter, the work addresses the fundamental rights that support the right to protection of personal data on the internet, and defends the security of information as a fundamental right.

Finally, the third chapter goes to the heart of the issue in Brazil, dealing with the legislative evolution of data protection in the country, followed by the forecasts contained in the Marco Civil da Internet and ends with the analysis of the diploma dedicated to the protection of personal data in Brazil, Law 13.709/2018.

It is worth mentioning that this work is an exploratory and qualitative research, which uses references based on legal doctrine, mainly with regard to Digital Law, also making use of national and international legislation, jurisprudence, legal documents, and news, to guarantee the theoretical basis.

INTRODUCTION OF THE FIRST PART

As stated above, the main theme of this work in this first part is the analysis of Digital

Law and the protection of personal data on the internet in the light of national and international law, which is justified by the advancement of technology in recent times, consequently reaching a much wider range of people who make use of it every day in their lives.

This way, the internet contributes significantly to this advance, with the creation of a virtual space that facilitates communication between people around the world, streamlining access to information, being used as a work tool, or to simply offer a moment of leisure. Coupled with the current ease of having free access to the internet, the flow of data generated and transmitted between people does not stop growing exponentially. The creativity of companies in the creation of applications for the use of the internet does not seem to end, there are constantly launches of applications for cell phones, social networks, software for computers, as well as a constant improvement of the functionalities of the products that are already on the market.

Human beings have increasingly prioritized the use of these applications, linking their lives to them. Internet users, for the most part, have a large part of their personal data registered in these applications, as well as constantly sharing private aspects of their lives in these vehicles provided by the digital world.

The problem of the research is based on the transfer of personal data to internet applications, which carry a large informational load on the individual, and is carried out without any kind of concern with the use of information provided to companies. With this, companies feel free to use the data not only to provide a better experience in the use of applications, but also as an instrument to obtain profit, whether to sell a product, suggest an advertisement, or even try to offer ideals to benefit the 3rd. In this context, the need arises to provide the user with the necessary information regarding the processing of their data, as well as guarantee the security of their personal information, valuing the well-being of the person in the virtual world, guaranteeing basic fundamental rights.

In this sense, the present monograph has the general objective of analyzing the Brazilian and international legislative regulations regarding care with the information provided on the internet in relation to the protection of Digital Law.

The present work also has the specific objectives of carrying out a historical-legal study of international law regarding the processing of personal data around the globe, the clarification of fundamental rights that surround the protection of personal data on the network and the approach to advances concerning the Brazilian legal system with regard to the protection of personal information in cyberspace, especially Law Number 12,964/2014, the Civil Rights Framework for the Internet, and Law Number Data Protection.

HISTORIC FROM THE PROTECTION IN DATA PERSONAL IN CYBERSPACE

The internet unquestionably provoked a technological revolution from the end of the 20th century to the present day, creating a virtual space that interconnects millions of computers worldwide, causing significant transformations in the daily lives of individuals in nations around the world, as it brought changes in the social, economic, political and even legal relations[1].

Furthermore, the technology that gave rise to what we call the internet today emerged in the context of the cold war, in the 1970s, but expanded by leaps and bounds to the world throughout the 1990s, with the creation of new technologies allied to the improvement

1 ABRAMS, Martin. Boxing and concepts of harm, in: Privacy and Data Security Law Journal, 2009.

of the use of the internet, with evolution in the area being constant (ABRAMS, 2009).

However, the spread of the internet gave rise to conflicts between the classes that use the network, namely people, companies, States and international organizations, causing the intervention of law in the digital environment to regulate the relationships created by the internet. Among the relationships created, many make use of personal data for the use of applications made on the World Wide Web (ABRAMS, 2009).

Since the expansion of the digital world, there has been a need for protection and proper regulation to accompany advances in technology, as well as the handling of personal data provided on the internet.

However, this view was not a global concern, but rather a concern mainly of the United States of America and the European Union, which were pioneers in the legal treatment of the internet and the personal data contained therein (ABRAMS, 2009).

THE CREATION AND EXPANSION OF THE INTERNET

The beginnings of the internet date back to the Cold War period, which comprises the conflict between the United States and the Soviet Union between the year 1945, at the end of World War II, and the year 1991, with the extinction of the Soviet Union. Furthermore, at the end of the 1950s and beginning of the 1960s, the US military saw the need for a system that would allow information and communication in a network resistant to a nuclear attack, and a means 11 for exchanging information between the centers of scientific production through computers, with these purposes, the prototype of the internet[2].

The connection system between computers came about through a 1958 project called Advanced Research Projects Agency - ARPA (Advanced Projects Investigation Agency), a research department that involved university computing centers to create the interconnection system between computers. The department was managed by the computer scientist of the Massachusetts Institute of Technology - MIT (Massachusetts Institute of Technology) Joseph Licklider, who was the first person to propose a worldwide computer network (CASTRO, 2005).

Later, in 1962, ARPA created the Arpanet to interconnect military bases and research departments of the US government, considered the embryo of the internet in the form it currently stands (CASTRO, 2005).

In 1970, the first experiments using the network were carried out in the USA, for which four universities were chosen to be connected to the Arpanet, but the system quickly expanded in the university environment and, in three years, there were already thirty-eight universities connected to the network, as well as ARPANET also served the military community. Indeed, the distribution of Arpanet to US universities allowed them to contribute to the US Department of Defense, it also allowed the research center to use the network as its own means of communication and for personal conversations between people who had access to the system (CASTRO, 2005).

Over time, it was seen that the Arpanet could have a use beyond university campuses and military bases, as well as the network would enable several commercial opportunities for its use. Thus, in 1978, the first computer modem was invented by students Ward Christensen and Randy Suess, both from Chicago - USA. The modem made it possible to transfer computer programs over the telephone line[3].

The following year, the first online commercial service provider, CompuServe,

2 CASTRO, Catarina Sarmento. IT law, privacy and personal data. Coimbra: Almedina, 2005.

3 GARFINKEL, Simson. Database Nation: The Death of Privacy in the 21st Century. California: O'Reilly Media, 2000.

appeared in the United States. In Europe, the second provider appears, linked to American Online (AOL) and then Prodigy, another provider of commercial online services. The three providers were responsible for spreading the occupation of cyberspace (GARFINKEL, 2000).

In the beginning, the internet was difficult for the lay population to use, however, technological advances allowed the popularization and expansion of the internet from the 1990s onwards. In 1990, At the European Center for Nuclear Research - CERN, located in Geneva, Switzerland, the World Wide Web - WWW, was created by a group of researchers led by Tim Berners-Lee and Robert Cailliau, who imagined the possibility of integrating computers into a worldwide network, where each machine was a file on that network (CASTRO, 2005).

The World Wide Web was the main responsible for the dissemination of the internet in the layest and poorest layers of society, making the internet a means of mass communication (GARFINKEL, 2000).

In addition, the European Center for Nuclear Research has improved the internet over time, creating a format for hypertext documents, HTML, and a hypertext transfer protocol, HTTP, which guides communication between browsers and servers, the which standardized the addresses on the network, through the Uniform Resource Locator - URL, responsible for combining information about the application protocol and the computer that intends to access them (CASTRO, 2005).

Consequently, with these inventions, instant communication programs emerged, such as IRC, ICQ, MSN, and the emergence of large companies in the internet sector in the 90s, such as Yahoo!, with a media and e-mail service, the Amazon and eBay, in the e-commerce segment, and, in 1998, Google appears as a search tool to facilitate access to the various addresses established on the internet (GARFINKEL, 2000).

With the facilities created allied to the offer of content, which was huge and did not stop growing over the years, the internet quickly consolidated itself among the public, expanding its utilities and the emergence of new applications created by companies in the technology segment, being used by more and more people, reaching the present day, a period in which the internet is not restricted to computers, but is present in cell phones, tablets, watches, televisions, and in an infinity of items of our day to day, keeping people in a constant connection with the network and in a movement of constant development of cyberspace (CASTRO, 2005; GARFINKEL, 2000).

SOCIAL CHANGES CAUSED BY THE INTERNET

The creation and diffusion of the internet around the globe has undoubtedly transformed social relations, changing the way of thinking and acting in society as a whole, making it impossible today to think of a disconnected world, as the internet plays a part in various moments of our lives. day to day, as a means of research, information, entertainment and work. The Statista portal (2017), in its latest report, reported that at the end of 2017 the world had a total of approximately 3.58 billion Internet users, a number that tends to continue to increase, given the ease of access to computers, the modernization of countries and the spread of the use of mobile devices[4].

Furthermore, the Brazilian Institute of Geography and Statistics - IBGE (2016), estimates that in Brazil there are 116 million people with access to the network, which results in 64.7% of Brazilians (G1, Feb. 21, 2018). According to Facebook (2016), which

4 MALTA, Tatiana. The Right to Privacy in the Information Society: effectiveness of this fundamental right in the face of information technology. Porto Alegre: Sergio Antônio Fabris Editor, 2007

also conducts studies on the use of the internet in the world, there are basically four factors that slow down access to the network to reach the world in its entirety, namely availability, which is infrastructure necessary to provide access; accessibility, which concerns the cost of accessing the internet; relevance, which is about the motivation of people to connect with; and ease, which deals with the ability to access, which includes skills and cultural acceptance[5].

Currently, there is a tendency to break down barriers and disseminate access to the digital world for all people. The transformations caused by the internet are dynamic, and today we can speak of a society that lives in the Digital Age, where everything can be done through the internet, thus creating a virtual world that works concurrently with the real world (CASTRO, 2005).

However, the internet today is also not limited to computers, as it was at the beginning of its history, but has spread and is present in more and more devices used in people's routine, such as cell phones, tablets, televisions, watches, cars, etc., increasingly facilitating individuals' access to the digital world and increasing their connection and dependence on cyberspace (CASTRO, 2005).

However, without a doubt, the internet has positively revolutionized society, bringing more facilities to people's lives, giving practicality and instantaneity to everyday tasks.

Like public bodies, which are now connected to the network, they provide transparency to the population regarding their activities, enable access to documents and services, streamline processes with more bureaucracy in physical bodies, promote rapprochement with the population and full-time availability of their services (CASTRO, 2005).

In addition, many individuals saw the internet as an opportunity for financial growth. The so-called e-commerce is growing exponentially, physical companies tend to invest more and more in expanding their services to the internet, and deploying even more money in this sector, due to the increase in the reach of customers and the convenience for them to make their purchases. Just as there is a trend towards greater investment in marketing on digital platforms, in all applications that use the internet[6].

In the same way, more people and companies have found their livelihood exclusively on the internet. The number of people who work in a home office and freelance regime is growing, a phenomenon made possible by the existence of a dynamic cyberspace and increasingly integrated into the real world (EXAME, 23 jan. 2017).

Just as the business world is experiencing today the outbreak of startups, a type of business that arises around an innovative idea, of a person or a small group, with the purpose of creating products or services to make everyday life easier, they are businesses that tend to have an increase in profit without increasing costs much (DONEDA, 2014).

These companies make use of the internet to sell their ideas, reach investors and offer their products and services (EXAME, 01 mar. 2018). We are also currently experiencing a time when people support themselves by exposing their lives on the internet, producing content without commitment to large companies, becoming famous in the digital world and earning money to influence people to buy products from different brands that have invested in this market. And many

5 MENDES, Laura Schertel. Transparency and privacy: violation and protection of personal information in the consumer society. Graduate Department Unb. Brasilia, 2008.

6 DONEDA, Danilo. The protection of personal data in consumer relations: beyond credit information. National School of Consumer Protection. Brasilia, 2010.

of these phenomena gained more strength with the spread of social networks, one of the most popular activities on the internet, which brings together different types of people from all over the world in the same space within the network, with Facebook being the greatest exponent, having almost a third of the world's population registered on the site (DONEDA, 2014).

Social networks allow immediate access to all types of content, be it informative, cultural, educational or merely for leisure. And it provides immediate and all-time communication with anyone in the world connected to the network.

Undoubtedly, social networks are one of the main factors that foster the need for individuals to stay connected.

RISE OF DIGITAL RIGHT

Ulpinian, in the Roman legal work Corpus Juris Civilis[7], uttered the expression "Ubi homo ibi societas; ubi societas, ibi jus," a Latin phrase widely used in legal doctrine that means "where man is, there is society; where is society there is a right", that is, community life leads to the manifestation of the right (GARFINKEL, 2000)[8].

Cintra, Pellegrini and Dinamarco (2015), in their famous work "Teoria Geral do Processo", state in their analysis of society and law, that law has the function of keeping society in order, coordinating the interests that manifest themselves in social life, organizing cooperation between people and in the settlement of conflicts of interest. Moreover, in the authors' view, law, from a sociological perspective, is one of the most effective and important forms of social control[9].

Advances in technology and cyberspace, as seen earlier, created forms of social interactions between people, companies, organizations and the State. We live in an era in which the so-called digital world is consolidated and it is natural that eventual conflicts arise in this new context established by the development of the Internet (GARFINKEL, 2000).

In this sense, Law must accompany the development of society, to guarantee the order of social interaction in the virtual environment, following this conjuncture, Digital Law, also called Electronic Law or Information Technology Law, originates. There are authors who claim that in a scenario where information and communication are crucial for internet users, organizations and governments, law plays an indispensable role in the face of new technologies.

Purkyt (2018, online)[10] says:

> Much has been said about Digital Law, with some even understanding it as an "area of Law", however it is certain that today Digital Law does not have scientific autonomy, that is, it does not have its own institutes, purposes, object and information principles, which do not are confused with those existing in other areas of law. This way, Digital Law is not a new area of Law, but a new vision, which can be understood as a vector that affects the relationship between people (individuals and/or legal entities) due to the intensive use of technology and which, consequently, affects the Law of each of these actors (2018).

Pinheiros (2010)[11] states that Digital Law addresses the evolution of law itself, which came to introduce new institutes and elements

7 Corpus Juris Civilis (formerly Constantinople – present-day Istanbul, Türkiye). Ams Pr; 1988. Available athttps://super.abril.com.br/comportamento/corpus-juris-civilis-o-direito-romano/,accessed on 09/23/2020.

8 GARFINKEL, Simson. Database Nation: The Death of Privacy in the 21st Century. California: O'Reilly Media, 2000.

9 CINTRA, ACA; GRINOVER, AP; DENMARK, CR GENERAL THEORY OF THE PROCESS. 21. Ed. São Paulo: Editora Malheiros, 2015.

10 Purkyt, Jaroslav. Mistrovstvi CR v bleskovem sachu druzstev 2018.

11 PINHEIRO, Alexandre Sousa. Privacy and personal data protection: the dogmatic construction of the right to informational identity. Lisbon: AAFDL, 2010.

for the legal system as a whole, covering the fundamental principles and institutes that are in force and are applied in law until today.

Araújo (2018, p. 20), when dealing with the concept of Digital Law, says that:

> [...] it is a new legal discipline that consists of the incidence of legal norms applicable to the so-called cyberspace, in a recognition that the legislation and the traditional legal doctrine are insufficient to regulate the relationships in the virtual world, which challenge new questions and new answers, in an environment devoid of the well-known space-time boundaries. This new discipline represents a renewal in the way of understanding Law itself, based on new paradigms and new visions constructed in the philosophical, scientific, social and cultural field.

Electronic Law is essentially multidisciplinary, having repercussions in all branches of Law, and is globalized, as the virtual world provides contact between different peoples and cultures, making it difficult to demarcate a territory in this space (PURKYT, 2018).

In short, the Law applied to the internet comes to act on different issues originating in the digital universe, from the simplest to the most complex, establishing a more dynamic interpretation of the conflicts inherent in the society present in cyberspace. To ensure the prosperous development of the internet, the Law must be thought and practiced in modern precepts. Thus, Digital Law is an improvement of the current legal system, by promoting the extension of various branches of the current legal system (PURKYT, 2018).

TREATMENT IN DATA PERSONAL AT INTERNET UNDER AINTERNATIONAL LEGISLATIVE PERSPECTIVE

The relationships maintained in the digital world between people, companies, organizations and governments involve a constant exchange of information between network users. With the constant creation of new applications for technology and the improvement of the existing one, there is a greater migration of people to the digital environment and form a habitual relationship with the internet. Companies and organizations that maintain their operations on the internet and provide services and products on the network, whether free or for a fee, make use of data provided by users on their platforms, commonly from a registration, where the individual voluntarily provides information about you to enable the use of the service or product provided by the online application[12].

This way, companies and organizations use the data to profile the application's user and use it in different ways in the services and products contained in the digital world. Whether to improve the user experience by providing content based on their characteristics and preferences, to offer advertisements based on their accesses, to guarantee security in operations carried out in cyberspace, such as the use of internet banking, among other possible applications from obtaining data users' personal data (SCHWENKE, 2006).

However, the personal information provided is not always respected by those who have it, who eventually use the data in an abusive way, as well as the suppliers still do not have a hundred percent effective means to ensure the protection of this data, which are tainted by vulnerability (SCHWENKE, 2006).

In addition, there are frequent reports in the news about the leakage of personal data held by websites, caused by so-called hackers, such as the Netshoes e-commerce that carried out one of the biggest data leak events in Brazil at the end of 2017, which affected almost 2 million users, compromising the customers'

12 SCHWENKE, Matthias. Individualierung und Datenschutz. Deutscher Universitats-Verlag, 2006.

names, CPF, date of birth, e-mail and purchase history on the site, which required the action of the Public Ministry of the Federal District, demanding that the company take the necessary measures with regard to the affected consumers (G1, 28 Feb. 2018).

The Yahoo! was also the victim of hacker attacks, which between 2013 and 2016 affected the entire base of accounts registered on the company's website, which dates back to the number of three billion users affected, this being the biggest case of data leakage in history (OLHAR DIGITAL, 03 Oct. 2017).

However, to prevent abuse or distortions in the processing of personal data and due to the constant evolution of matters related to the protection of personal data, it is necessary to develop legal regulations on the subject (SCHWENKE, 2006).

However, Brazil was late in legislating on the subject compared to other nations that already have laws aimed at protecting personal data on the internet, both exclusively focused on the problem and in a dispersed way. In the position of exponents with regard to the protection of personal data on the internet are the United States of America and the European Union[13].

TREATMENT IN DATA PERSONAL AT INTERNET UNDER AUNITED STATES PERSPECTIVE

The United States of America does not have a law that is exclusively directed to the processing of personal data, but it has sparse laws that contribute to the understanding of the treatment given to personal data in the country.

As it is absolved from the lessons of Fortes (2016), in 1966 the USA constituted the Freedom of Information Act - FOIA, the Freedom of Information Act of the United States, which aims to regulate access to opinions, public information, requests, records and processes (CASTRO, 2005).

In 1974, the Privacy Act was approved in the country, which focuses on regulating the collection, maintenance, use and disclosure of information contained in federal records on the population. The law offers individuals the opportunity to access records about them, as well as change them (CASTRO, 2005).

In addition, in 1986 the Electronic Communications Privacy Act - ECPA (Electronic Communications Privacy Act) was enacted in the country, this law underwent many changes over the years, the last one being carried out in 2008 (CASTRO, 2005).

Currently, the law aims to protect communications made by electronic means at the time of their realization. Initially, the law only protected telephone communications, however, today it covers information transmitted between computers[14].

In 2001, in reaction to the September 11 attacks, George W. Bush signed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act - USA PATRIOT ACT. to Intercept and Obstruct Terrorism), the law allowed the sharing of data between government agencies to prevent new threats and reflected on the internet, offering greater protection to victims of virtual attacks, helping in the investigation and identification of hackers (OLHAR DIGITAL, 03 out. 2017).

It is important to highlight the Children's Online Privacy Protection Act - COPPA (Law for the Protection of Children's Online Privacy), of 1998, which deals with the collection and processing of data from children up to 13 years old, requiring authorization from parents or guardians so that the use

13 SECRETARY OF INVESTIGATION OF COMPARATIVE LAW, Supreme Court of Justice of the Nation. Protection of Personal Data, Argentine Republic.

14 ARTICLE 29 DATA PROTECTION WORKING PARTY. Opinion 2/2010 on online behavioral advertising. 2010.

of data occurs (OLHAR DIGITAL, 03 Oct. 2017).

Furthermore, the United States was the first nation to establish, by law, the obligation for companies to inform customers about leaked or stolen data, this in 2002, in California (G1, 16 Aug. 2018). It is clear that the US integration action with the international scenario in favor of the protection of personal data, more specifically with the European Union, which adopted the so-called Privacy Shield, an agreement negotiated since 2013, but implemented in 2016, which aims to protect the flow of personal data between Europe and the United States.

Finally, it is important to point out that the handling of data is constantly supervised by the Federal Trade Commission - FTC (Federal Trade Commission), a body created in 1914, aiming at protecting consumers and promoting fair competition in trade, as reported in the commission's website.

This is how the FTC acts to prevent the abuse of rights by companies in relation to customers, which includes the use and processing of personal data on the internet.

TREATMENT IN DATA PERSONAL AT INTERNET UNDER AEUROPEAN UNION PERSPECTIVE

Europe, arguably, is the place that pays the most attention to the regulation of data protection, being a reference for several legislations around the globe that make use of the guidelines established by its legal diplomas, such as those established by Directive 95/46/EC and by the General Data Protection Regulation of the European Union (originally called the General Data Protection Regulation - GDPR), which will be better discussed ahead[15].

As Pinheiros (2010) teaches, Europe is avant-garde in the protection and processing of personal data, with Germany being a pioneer in the matter. In 1970, the state of Hessel - Germany, created the first personal data protection law in the world, which was the scope for the elaboration of a federal law for the protection of personal information (OLHAR DIGITAL, 03 out. 2017).

In 1979, the first Federal Law for the Protection of Personal Data, originally called Bundesdatenschutzgesetz - BDSG, came into force, combined with a moment of technological advancement involving computers in the early days of the internet. Also noteworthy is the historic trial for the regulation of personal data, which was held in 1983 in Germany, involving the so-called Census Law. On that occasion, the fundamental right to informational self-determination on personal data was recognized (originally called Recht auf informationelle selbstbestimmung), which gave the population the right to decide when and to what extent personal data can be published (OLHAR DIGITAL, 03 Oct. 2017).

Furthermore, the Charter of Fundamental Rights of the European Union, which contains provisions on human rights, proclaimed in 2000, was also concerned with addressing the issue in its list of provisions, more specifically in Chapter II, which talks about Freedoms, in its Article 8, which reports:

> Article 8 Protection of personal data 1. Everyone has the right to the protection of personal data concerning them. 2.
> Those data must be processed fairly, for specific purposes and with the consent of the person concerned or with another legitimate basis provided for by law. All persons have the right to access data collected concerning them and to obtain the respective rectification. 3. Compliance with these rules is subject to inspection by an independent authority (EUROPEAN UNION, 2000).

In addition, the Treaty that establishes a

15 ARTICLE 29 DATA PROTECTION WORKING PARTY. Opinion 2/2010 on online behavioral advertising. 2010.

constitution for Europe, signed in Rome, in October 2004, in Title VI, of Part I, which deals with the democratic life of the Union, has provisions on the subject, in its article I-51, That say:

> Article I-51 Protection of personal data 1. Everyone has the right to the protection of personal data concerning them. 2. European laws or framework laws lay down rules relating to the protection of natural persons with regard to the processing of personal data by Union institutions, bodies, offices and agencies, as well as by Member States in the exercise of activities relating to the application of the Union law, and the free movement of such data. Compliance with these rules is subject to control by independent authorities (EUROPEAN UNION, 2004).

The same European legal diploma brings in its annexed provisions, specifically in its article 10, a weighting regarding the aforementioned article, the article declares that:

> Declaration on Article I-51 The Conference declares that, when it is necessary to adopt, on the basis of Article I-51, rules on the protection of personal data that may have direct implications for national security, the specifics of this issue must be duly weighted. The Conference recalls that the currently applicable legislation (see, in particular, Directive 95/46/EC) provides for specific derogations in this matter (EUROPEAN UNION, 2004).

The above device highlights Directive 95/46/EC, which is the specific regulation on the protection of personal data and their processing that has been in force since 1995, later replaced by the General Data Protection Regulation - GDPR (General Data Protection Regulation). The Directive, according to lessons from Pinheiros (2010), brings a variety of important definitions, both legal and technical in the area of information, which give North for the interpretation of the regulations, among them is the definition of personal data in article 2, which according to the directive are:

> a) Personal data: any information relating to an identified or identifiable natural person (data subject); anyone who can be identified, directly or indirectly, is considered identifiable, namely by reference to an identification number or to one or more specific elements of their physical, physiological, psychological, economic, cultural or social identity; (EUROPEAN UNION, 1995).

The regulation is based on respect for freedoms and fundamental rights, ensuring the protection of the individual's private life and determines that the member countries of the European Union must guarantee the protection of personal data with the institution of authorities for this purpose (EUROPEAN UNION, 1995).

It must be noted that in the European legal diploma, the principles of data protection must be applied to any identified or identifiable person, considering the means used to identify the person. In addition, it emphasizes that the processing of personal data must be done in a lawful and loyal manner with the person transferring the information, and if the data present any risk to the fundamental rights inherent to the individual, they must be exploited only with their express consent (EUROPEAN UNION, 1995).

In 2001, Regulation 45/2001 was enacted, which aims to protect the freedoms and fundamental rights of natural persons, and also deals with the privacy of individuals with regard to personal data. The Regulation created the European Data Protection Supervisor - EDPS (European Data Protection Authority), in order to ensure the application of the regulation and the Personal Information Management Directives, later, in 2013, the Authority issued the Decision 2013/504/UE which defines the entity's administrative and management rules and the mode of operation

of the EDPS in everyday life, accompanying technological development, identifying potential impacts on data protection (PINHEIROS, 2010).

In May 2018, after five years of extensive negotiation between the countries of the European Union, the General Data Protection Regulation (GDPR) came into force. The regulation replaces Directive 95/46/EC and covers the personal data protection needs allied to the digital world, because at the time the Directive was introduced, the development of technology and the internet was not measured in the way that it has been happening.

This rule is mainly aimed at modernizing and harmonizing the rules regarding the protection and processing of personal data of individuals in the European Union, giving them greater control of their data, as well as contributing to technological and economic development. It is important to point out that the effects of the regulation go beyond the borders of Europe, having a global reach, since many companies maintained on the Internet operating all over the world, such as Google, changed their privacy policies to adapt to the directives established by the regulation (PINHEIROS, 2010).

It must be noted that the General Regulation of Personal Data, as well as Directive 95/46/EC, brings in its body important concepts for understanding and applying the protection of information contained on the network[16].

Likewise, the concept of personal data was maintained in Article 4, however expanded in the new legal diploma, in order to cover the dilemmas arising with the advancement of technology, as seen below.

> Article 4 Definitions For the purposes of this regulation, the following definitions apply: 1) «Personal data», information relating to an identified or identifiable natural person («data subject»); Identifiable means a natural person who can be identified, directly or indirectly, in particular by reference to an identifier, such as a name, an identification number, location data, electronic identifiers or one or more specific elements of the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person; (EUROPEAN UNION, 2016).

Furthermore, the changes in the Regulation in comparison with Directive 95/46/EC are evident, among them the requirement of clarity in the conditions of data handling, so that the user does not have any doubts at the time of acceptance. Neither Any authorization for the use of personal data will have more effect of presumption, when this permission has been obtained in general.

In addition, the regulation prevents the collection of data that is irrelevant to the use of applications. It also guarantees network users the right to withdraw consent or limit the handling of personal data at any time, as well as requesting information regarding the data collected and its treatment.

In addition, the regulation provides special protection to children and adolescents under 16 years old, requiring that consent for the use of their data be given by parents or legal guardians (EUROPEAN UNION, 2016).

The Regulation established that the member countries of the European Union must maintain the so-called Personal Data Protection Authorities, which will have the role of carrying out administrative procedures, investigating cases of data processing that go against the Regulation, prosecuting and sanctioning those who do not comply. the law, with administrative fines of 10 to 20 million euros or 2% to 4% of the company's annual revenues around the globe (EUROPEAN UNION, 2016).

In short, the European avant-garde

16 ARTICLE 29 DATA PROTECTION WORKING PARTY. Opinion 16/2011 on EASA/IAB Best Practice Recommendation on Online Behavioral Advertising. 2011.

legislation regarding the protection of personal data, combined with the development and expansion of the internet, inspired an international legislative advance, which includes Brazil, to guarantee the effective storage of personal information on the network.

THE PROTECTION OF PERSONAL DATA ON THE INTERNET AS A FUNDAMENTAL RIGHT

Life in a society transformed by the computerization of people's daily lives presupposes the role of law to regulate the relationships created in the digital environment and the activities carried out in cyberspace, as seen in the previous chapter.

As conceptualized, digital law is defined as a new way of seeing the law, applying the various legal systems to the dilemmas arising from the interconnection of devices connected to the internet around the globe (PURKYT, 2018).

Of the various applications and services that appear daily, many make use of personal data provided by users for different purposes in their activities. However, the data are not always used ethically, devoid of abuse, in addition to the obvious vulnerability of the information contained in many sites, with the constant finding of leaks of information[17].

Some nations around the world, such as the North Americans and the Europeans, began to pay due attention to the issue, worrying about the problem by legislating for the protection and processing of personal data of individuals, with the European Union being at the forefront and creating the first specific legislation focused on the subject, Directive 95/46/EC, which was replaced by the General Data Protection Regulation, which entered into force in 2018, in view of the technological development that required a new perspective to deal with the subject.

After extensive negotiation, in August 2018, Brazil finally approved Law Number 13,709, which becomes the General Law for the Protection of Personal Data, which will be better discussed later on. It must be noted that the law deals with personal information in the broad sense, that is, it is dedicated both to personal data contained in the physical world and to that kept in the virtual world (BRAZIL, 2018).

It is evident that the protection of personal data on the internet is a right that must be safeguarded in every way that the legal system provides, and undoubtedly it is a fundamental right for the well-being of the individuals present in the cyberspace, a right that carries with it a range of fundamental rights established by the Brazilian legal system.

It must be noted that Law Number 13,709/2018, in its Article 2, was concerned with highlighting the fundamentals that underlie the protection of personal data, namely:

> Art. 2nd The discipline of personal data protection is based on: I - respect for privacy; II - informative self-determination; III - freedom of expression, information, communication and opinion; IV - the inviolability of privacy, honor and image; V - economic and technological development and innovation; VI - free initiative, free competition and consumer protection; and VII - human rights, the free development of personality, dignity and the exercise of citizenship by natural persons (BRAZIL, 2018).

For the purposes of this research, the rights related to freedom, the defense of honor and image, and the right to privacy will be discussed, which are in line with article 5 of the largest law, the Federal Constitution of 1988, in the title which deals with Fundamental Rights

17 ARTICLE 29 DATA PROTECTION WORKING PARTY. Opinion 16/2011 on EASA/IAB Best Practice Recommendation on Online Behavioral Advertising. 2011.

and Guarantees, in the chapter on Individual and Collective Rights and Duties.

RIGHT TO FREEDOM OF EXPRESSION ON THE INTERNET

The internet era allows for constant connection between people of all peoples who have access to the network. With the spread of social networks, the bonds between different types of people became closer, just as cyberspace gave the ability to information about any and all events in the world and at the time of the occurrence.

Currently, the internet has been an effective channel for spreading information, advertisements, thoughts, opinions, etc. and the digital environment, in much of the world, allows people to express themselves freely, as well as allowing free access to any information content of interest[18].

As seen previously, among the principles that encompass the right to protection of personal data on the internet, under the terms of the General Law for the Protection of Personal Data, in its article 2, item III, is freedom of expression, information, communication and of opinion (BRAZIL, 2018).

Freedom of expression can be defined as the guarantee of protection for any message that allows communication, as well as protection of any opinion, conviction, comment, evaluation or judgment on any topic, whether or not it has any value.

Eduardo (2014), states that freedom of expression is more than a right, but comprises a range of rights, such as the rights to information, communication, opinion, religious, artistic, intellectual manifestation etc.[19].

The set of rights that encompass free expression guarantees the protection of the individual who propagates or receives information and opinions, which applies perfectly to the internet context.

Silva (2000) points out that the right to freedom of expression is a constitutional guarantee, which addresses all the rights contained in it, as is extracted from article 5, items IV, V, VI, IX, and XIV of the Federal Constitution of 1988:

> Art. 5 All are equal before the law, without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms: IV - the expression of thought is free, anonymity being prohibited; V - the right of reply is assured, proportional to the grievance, in addition to compensation for material, moral or image damage; VI - freedom of conscience and belief is inviolable, the free exercise of religious cults being ensured and the protection of places of worship and their liturgies guaranteed, under the terms of the law; IX - the expression of intellectual, artistic, scientific and communication activity is free, regardless of censorship or license; XIV - access to information is guaranteed to everyone and the secrecy of the source is protected, when necessary for professional practice; (BRAZIL, 1988).

In addition, the devices above combined with articles 220 to 224 of the Major Law, which deal with the manifestation of thought, comprise the constitutional precepts of freedom of expression (SILVA, 2010)[20].

However, the right in vogue, as well as all fundamental rights, is not an absolute right, in case of collision between fundamental rights, one will have to be restricted to comply with

18 BOBBIO, Norberto. The era of rights. 7th edition. Rio de Janeiro: Elsevier, 2004.

19 MAGRANI, Eduardo. Connected democracy: the internet as a tool for political-democratic engagement. Curitiba: Juruá, 2014

20 SILVA, Martha christina motta. Improper disclosure of data and information via the internet: analysis on civil liability. Rio de Janeiro, 2010.

the other. The constitutional protection of such a right does not extend to violent action, limiting freedom of expression for rights such as life, equality, physical integrity, freedom of movement. That is, freedom of expression ceases when it develops illegal or abusive activities or practices.

Certainly, the digital world is protected by freedom of expression and its nuances, and users must be protected from the right to have the necessary information regarding their data, and give them full freedom to exercise their rights and guarantee their well-being. being in the virtual environment, as well as offering information to them, cannot go beyond what is acceptable and moral (SILVA, 2010).

Likewise, there are applications that make use of personal data to improve the content offered to Internet users, providing a personalized access experience to sites and applications based on their interests, however, the limits for offering content must be respected and protected, in order to avoid any abuse of the right to freedom of expression (SILVA, 2010).

DEFENSE OF INTIMACY, HONOR AND IMAGE ON THE INTERNET

In the virtual world, applications collect personal data of all kinds, as well as users themselves storing personal information and files in the most diverse applications, such as cloud services, which allow data to be stored in providers that are unrelated to the computer that uses them. cede, enabling access to such files on any machine connected to the internet around the globe, using the account in which the information is stored.

Another means of the internet that currently causes a large transfer of information are social networks, which allow the sharing of various data with anyone with access to the network around the world, as well as allowing private conversations to be held with any individual (SILVA, 2010).

Likewise, it occurs with electronic mail applications, which keep the lives of millions of people, companies and organizations active in a mutual and constant exchange of messages (PURKYT, 2018).

Undoubtedly, such information carries great responsibility for the honor, image and privacy of the holders, and as seen in a previous moment, the vulnerability of the data is evident, already causing several cases of leaks of files that are offensive to the mentioned rights, such as those that occurred in 2014, where a hacker posted nude photos of Hollywood celebrities on the internet, all collected from iCloud, Apple's cloud service (G1, 01 Sep. 2014).

Law 13.709/2018 expresses concern in defense of the subject and maintains in its article 2, item IV, the defense of intimacy, honor and image as the foundation of the protection of personal data, as well as having constitutional protection as a fundamental right, since the Federal Constitution of 1988 disciplines in its 5th, item X: "the intimacy, private life, honor and image of people are inviolable, ensuring the right to compensation for material or moral damage resulting from their violation;" (BRAZIL, 1988).

Several authors treat intimacy as the right to be alone. It is the set of information that only the holder takes with him, as it is the most intimate sphere of the individual, preventing any type of external intrusion. In addition, the right to honor is related to the moral value that the individual has, in addition to the view that society has of him, which reflects on personal dignity (MAGRANI, 2014).

This right can be divided into subjective honor and objective honor, the first being the way the individual sees himself, and the second the concept that society has of the person, would be the so-called reputation

(SILVA, 2010).

Therefore, image is conceptualized as all forms of exteriorization of an individual, which includes appearance, gestures and voice.

The right to image receives a bipartite treatment by Eduardo (MAGRANI, 2014), who divides it into image-portrait and image-attribute, the latter being the set of attributes cultivated by the individual and recognized by society, and the former related to the graphic reproduction of the person. However, it is up to companies to correctly manage the data provided by users and the data collected. Intimacy, honor and image are very personal and sensitive fundamental rights, which eventual injuries cause invaluable damage materially, and mainly, psychologically, not restricted to the virtual environment, but also extending to the real world (TEFFÉ, 2017)[21].

The public power is also responsible for enforcing constitutional dictates, in order to guarantee full compliance with the fundamental guarantees of the individual, giving him the opportunity for a comfortable life both in the digital world and outside it (TEFFÉ, 2017).

RIGHT OF PRIVACY ON THE INTERNET

Adherence to the digital world, as seen, makes the internet user keep a variety of information about himself on the network, both the most basic and the most private. Certain information the user does not even realize is being provided and there is no reflection on excessive exposure by the computerized society (PURKYT, 2018).

However, as it is absolved from the previous title, the national legal system safeguards the privacy of the individual, as can be seen from article 5, item X, of the Federal Constitution of 1988, this right, which is an important pillar for achieving the protection of personal data on the internet and maintained as the foundation of this protection, as the discipline of Law 13,709 of August 2018, in its article 2, item I, which says: “The discipline of the protection of personal data is based on: I - respect for privacy; (BRAZIL, 2018)”.

Magrani (2014) teaches that the right to privacy is a condition for the regular development of an individual’s personality, it is the right that the person has to stand out from society, isolating himself from its view, and it is also the right that the individual has to have control over the information that is conveyed about him.

Silva (2010) also points out that the Constitution deals with private life and intimacy separately, but both are included in the right to privacy, the first referring to relationships maintained by the person, with family, friends, work, etc. and the second is a more restricted core, which encompasses the individual’s most intimate relationships, protected even against the acts of people closest to him.

There are manifestations and personal data that must be kept away from access by others, which offends the right to privacy not only the disclosure of personal information, but also obtaining it without the authorization of the holder (TEFFÉ, 2017).

The development of the internet has put the concept of privacy in crisis, as the user is in a situation of constant exposure and vulnerability of secrets taken to the network. Today it is almost impossible to go unnoticed in the virtual world, as monitoring has the characteristic of being permanent, as well as it is impossible to remove everything that was once placed in this environment (MAGRANI, 2014).

21 TEFFÉ, Chiara Spadaccini de. MAGRANI. Edward. Article “Proposal for the creation of the Brazilian Personal Data Protection Authority. Available in:https://itsrio.org/wp- content/uploads/2018/12/autoridade-protecao-de-data.pdf.Accessed on: 12/10/2020.

Currently, the biggest enemy of Internet privacy is not the government, but commerce, which has made the virtual world a huge market, where personal data has become a product. Because all the information provided on the network allows companies to trace the life of each person, forming a database about their physical, psychological, economic conditions or their opinions on politics or religion (TEFFÉ, 2017).

Some confidential information is spontaneously provided on the network, through registrations on social networks, applications or e-commerces, however companies have other means of obtaining information about people, such as through their location, which can be registered by the cell phone GPS system or computer locator, another means is by collecting cookies, which are internet files that temporarily store what the user is accessing in cyberspace, or simply by analyzing the habit of accessing content on the network (TEFFÉ, 2017).

With the information, the user's preferences are known, enabling the formulation of personalized advertisements based on the Internet user's profile, which are offered in advertisements on websites or applications, in pop-ups, or through messages sent to the e-mail address. mail, among other means created by the internet industry (MAGRANI, 2014).

However, the user will not stop using the virtual environment, therefore it is up to the State to guarantee the due protection of privacy in the digital environment, enforcing the constitutional precepts of protection of intimacy and private life, guaranteeing the correct use of private data (TEFFÉ, 2017).

For the information to be used ethically, it is necessary to maintain a clear and objective privacy policy on the Internet and also to encourage the user's knowledge of their rights and duties on the network, in order to provide the well-being of individuals in the virtual world (MAGRANI, 2014).

FUNDAMENTAL RIGHT TO PROTECT PERSONAL DATA

The individual, in order to have guaranteed freedom of action in the virtual world, must have his fundamental rights met, in order to preserve the principles inherent to the human person, as disciplined by the Brazilian constitutional text.

Moreover, among the fundamental rights protected in the digital environment, the right to protection of personal data is one of the most significant of humanity in contemporary times (SILVA, 2010).

The right to the protection of personal data on the internet encompasses a range of fundamentals and principles that are indispensable for the development of the individual's personality, both on and off the internet, as can be seen from the teachings of Pinheiros (2010).

Pinheiros (2010) treats data protection as an expression of freedom and personal dignity, so it is not admissible that the use of data turns the person into an object under constant surveillance.

The author reports that the progress of technology and its relationship with people's lives have transformed individuals into citizens of the network, who, in constant contact with the digital environment, have their habits, movements and contacts profiled, which significantly impacts the autonomy of individuals, going against the nature of the protection of personal data as a fundamental right (TEFFÉ, 2017).

Thus, in order for individuals to have the freedom to live peacefully in the virtual environment, it is necessary to guarantee the protection of their personal data, forcing websites and applications to carry out the ethical use of information, as well as comply

with the appropriate treatment (SILVA, 2010).

It is up to the right, through the action of the State, to ensure that the guidelines for the realization of the right to guard personal information are complied with.

As seen in the previous chapter, international legal systems, mainly the European one, already treat personal data as a fundamental right, as provided for in the body of the Charter of Fundamental Rights of the European Union (2000).

Convention Number 108 of the European Council (1981), treats respect for private life and the protection of personal data as important and necessary fundamental rights to achieve improved security and the preservation of human rights.

As for the Brazilian legal system, there is no direct prediction of respect for personal data as a fundamental right in our magnum text, however, the Federal Constitution of 1988, as seen, is in charge of listing rights that are basic to support the right to protection of personal data (TEFFÉ, 2017).

As can be seen from the studies by Doneda (2017)[22], the constitution contemplates the theme through guarantees to freedom of expression and the right to information, which are confronted with the protection of the personality, mainly, with the right to privacy.

However, Doneda (2011)[23] reports that from reading the constitutional guarantees it is verified that it does not cover the complexity of the phenomenon of technological development, therefore, the infraconstitutional legislation combined with the evolution of the internet, began to give due concern to the protection of personal data, with the addition of provisions in sparse laws to guarantee the holder of personal data control over the information contained in the banks of physical and virtual data, a topic that will be addressed with more emphasis later.

On August 14, 2018, Law Number 13,709, the General Law for the Protection of Personal Data, was sanctioned, a national diploma aimed exclusively at regulating the guarantee of safekeeping of personal information. The law is based on the foundations already mentioned, following the principles of good faith, purpose, adequacy, necessity, free access, data quality, transparency, security, prevention, non-discrimination, accountability and accountability, as disciplined in its article 6, which will be dealt with in due time below (BRAZIL, 2018).

In summary, the right to protection of personal data is a fundamental right to be guaranteed not only in a physical world, but also in cyberspace, since in the so-called information society, the internet is occupied by people, companies, institutions, organizations and the State itself., and fundamental rights have an important role to play in this environment, giving due protection to the dignity of the person using the network (DONEDA, 2011).

THE PROTECTION OF PERSONAL DATA ON THE NETWORK UNDER THE PERSPECTIVE OF BRAZILIAN LAW

The Federal Constitution of 1988, despite being prior to the era of internet diffusion, provides in its text guidelines for the application of the fundamental right to protection of personal data.

However, the concern with data security started to be mentioned in sparse laws to deal with matters that may influence the way in which personal information is treated (TEFFÉ, 2017).

However, given the technological evolution of the internet, transformed into a new means of relationship between people and the world,

22 DONEDA, Danilo. Privacy and Personal Data Protection. Brasília, 2017

23 DONEDA, Danilo. Privacy and Personal Data Protection. Brasília, 2011

there is a clear need to create standards specifically aimed at activities carried out in cyberspace (PURKYT, 2018).

In this bias, the Brazilian legal system enacted three laws that began to consider the virtual world as a space in need of adequate regulation, with the enactment of the Law on Access to Information, of 2011; of the Computer Crimes Law, in 2012 and the Civil Rights Framework for the Internet, of 2014.

However, there was still a gap to overcome behaviors related to the treatment of personal information of individuals, to fully guarantee the right to privacy, the inviolability of intimacy, honor and image of people present in the virtual environment (PURKYT, 2018).

In this sense, Law nº 13.709/2018 is enacted, which deals with the protection of personal data in Brazil in a context focused on the virtual world and beyond. The norm bears similarities with the General Data Protection Regulation of the European Union, despite some limitations of its text due to the presidential veto (TEFFÉ, 2017).

LEGISLATIVE EVOLUTION OF PERSONAL DATA PROTECTION IN BRAZIL

The Brazilian legal system was late in legislating regarding digital law, therefore, it took a while to provide for some protection of personal data in the virtual environment in some legislative diploma (PURKYT, 2018).

As discussed in the previous chapter, the Federal Constitution of 1988 does not specifically regulate the matter of data protection in cyberspace, as the major law predates the expansion of the internet as a means of disseminating information.

Thus, the constitutional text comprises the fundamentals for the protection of personal data, and deals with an institute that is minimally close to the current conception of the custody of personal information that is Habeas Data.

Habeas Data is a constitutional remedy contained in the list of fundamental rights protected by Article 5, specifically in item LXXII which says:

> LXXII - habeas data shall be granted: a) to ensure knowledge of information relating to the person of the petitioner, contained in records or databases of governmental or public entities; b) for the rectification of data, when it is not preferred to do so through a confidential, judicial or administrative process; (BRAZIL, 1988).

Magrani makes use of the lessons of Limberger (2007), and justifies that Habeas Data is limited in terms of the protection of personal data, as it only allows the individual to have access to information in governmental or public databases, being harmed any claim for access to private databases.

Later, on September 11, 1990, Law Number 8070, the Consumer Defense Code - CDC, was enacted, which in Article 43 addresses the registration of consumers in databases, which must provide information to consumers of the contained in records, files, records and consumption data filed about it, as well as informing about the origin of the data obtained.

In addition, § 2 requires companies to inform the consumer when a registration is opened about him, even if he does not request it (BRAZIL, 1990).

In addition, it must be noted that the Brazilian criminal procedural legislation protects data transmitted by telephone or computer in Law 9,296 of July 24, 1996, known as the telephone interception law, which regulates item XII of article 5 of the Federal Constitution. The law does not express specifically about the protection of personal data transmitted by means of the telephone or internet, but it protects the flow of communication carried out by such means, guarding against interception practiced

without judicial authorization or with purposes not authorized by law (BRAZIL, 1996).

Subsequently, on January 10, 2001, Complementary Law Number 105 was enacted, providing for provisions relating to the secrecy of operations by financial institutions. The legal diploma governs that bank information that holds personal data must be under total secrecy, with the exception of the cases referred to by law (BRAZIL 2001).

Already in 2002, the Brazilian Civil Code was instituted by Law nº 10.406, which dedicates the entire chapter II to the rights related to the personality of individuals, going back to the constitutional device once presented for the protection of private life, and even allows for judicial action to take the necessary measures to prevent or stop any means of violating this precept, as can be seen from article 21 of the Code:

> Art. 21. The private life of a natural person is inviolable, and the judge, at the request of the interested party, will adopt the necessary measures to prevent or stop acts contrary to this rule (BRAZIL, 2002).

Further, on November 18, 2011, Law Number 12,527, known as the Access to Information Law, was enacted.

The rule emerged to regulate access to information provided for by articles 5, item XXXIII, 37, paragraph 3, item II, and 216, paragraph 2 of the Federal Constitution of 1988.

All entities of direct and indirect administration are subordinated to the legal regime, as well as binding private non-profit institutions that develop actions of public interest and receive public resources (BRAZIL, 2011).

It must be noted that Law nº 12.527/2011 was the first contemporary legal norm accepted in the context of the internet, and aims to guarantee the fundamental right of access to information, combined with the principles of public administration, such as compliance with publicity for the dissemination of information of interest public through means provided by the internet, among others (MAGRANI, 2014).

Such right to information has the purpose of strengthening democracy and the participation of the people in politics.

However, said law represents a breakthrough with regard to legislation related to digital law in Brazil and regarding the regularization of personal data.

It contains a list of definitions that guide the interpretation of the law, among which is the definition of "information" and "personal information", the first being defined by data, processed or not, used for the production and transmission of knowledge, the second is related to an identified or identifiable natural person.

The Law is also concerned with defining the term information processing as "[...] a set of actions related to the production, reception, classification, use, access, reproduction, transport, transmission, distribution, archiving, storage, elimination, evaluation, destination or control of information" (BRAZIL 2011).

Furthermore, Law 12,527/2011 obliges subordinate entities to treat personal data in a transparent manner, respecting the fundamental rights of privacy, privacy, honor and image of individuals.

Likewise, it limits the control of information, giving a maximum period of 100 (one hundred) years for access to data, as well as enabling access or disclosure to third parties only in case of consent of the holder of the information (BRAZIL, 2011).

Finally, on November 30, 2012, Law Number 12,737, popularly known as the Cyber Crimes Law, was enacted, which provides for the classification of crimes committed over

the internet and amends the Brazilian Penal Code.

It is noteworthy here that the legislator began to provide greater protection to personal data, characterizing the invasion of computer devices to obtain, adulterate or destroy data without the authorization of the holder as a crime (SILVA, 2010).

INTERNET CIVIL FRAMEWORK AND PERSONAL DATA PROTECTION

The expansion of the internet to the point of making it ubiquitous in people's daily lives has generated a legal discussion focused mostly on the evils arising from the criminal and irresponsible use of the network, with the emergence of laws aimed at protecting users from actions in this regard.

However, on April 23, 2014, Law Number 12,737, the so-called Civil Rights Framework for the Internet, was enacted, which constitutes a bill of rights for the Internet in Brazil, defining what can and cannot be done in civil terms in the virtual environment.

The Marco Civil is the greatest legislative advance linked to the use of the internet in the life of Brazilians, as it brought responses in the letter of law that collaborate with the strengthening of the Democratic State of Law and the recognition of rights extended to the network (SILVA, 2010).

The Brazilian internet bill of rights carries the characteristic of being like a code with a restricted scope, as Doneda (2014) treats, thus serving as a criterion for the interpretation of other laws that regulate the internet.

Therefore, the Marco Civil brings in its text, specifically in Article 5, technical definitions that facilitate the understanding of the norm and other similar ones, as follows:

Art. 5o for the purposes of this Law, it is considered:

> I - internet: the system consisting of the set of logical protocols, structured on a worldwide scale for public and unrestricted use, with the purpose of enabling data communication between terminals through different networks;
> II - terminal: the computer or any device that connects to the internet;
> III - internet protocol address (IP address): the code assigned to a terminal on a network to allow its identification, defined according to international parameters;
> IV - autonomous system administrator: the natural or legal person who manages specific IP address blocks and the respective autonomous routing system, duly registered with the national entity responsible for the registration and distribution of IP addresses geographically referring to the country;
> V - internet connection: enabling a terminal to send and receive data packets over the internet, by assigning or authenticating an IP address;
> VI - connection log: the set of information referring to the date and time of the beginning and end of an internet connection, its duration and the IP address used by the terminal for sending and receiving data packets;
> VII - internet applications: the set of functionalities that can be accessed through a terminal connected to the internet; It is
> VIII - Internet application access logs: the set of information regarding the date and time of use of a given Internet application from a given IP address (BRAZIL, 2014).

In addition, Law nº 12.965/2014 is based on strict respect for constitutional dictates, especially with regard to the right of human individuality, privacy and dignity, enshrined elementary principles in its article 3 for the regulation of civil use of the internet in Brazil, guaranteeing freedom of expression, communication and expression of thought; the protection of privacy and personal data; preserving the stability, security and functionality of the network; accountability of agents according to their activities; preservation of the participatory nature of the network and the freedom of business models

promoted on the internet (BRAZIL, 2014).

The Marco Civil also established in article 2 that the use of the internet in the country is based on freedom of expression, recognition of the worldwide scale of the network, human rights, personality development, the exercise of citizenship in cyberspace, plurality, diversity, openness, collaboration, free initiative and competition, as well as consumer protection and the social purpose of the network (BRAZIL, 2014).

It must be noted that the law aims to promote access to the internet for all people, as well as access to information, knowledge, participation in cultural life and public affairs by citizens, the law also aims at innovation and the promotion of dissemination of technology and adherence to technological standards that allow communication, accessibility and interoperability between applications and databases, as described in Article 5 of the Framework (BRAZIL, 2014).

The Law emphasizes that the right to privacy and freedom of expression are essential for the exercise of the right to access the internet, a fundamental right for the performance of citizenship (BRAZIL, 2014).

It can be seen from article 7 of the norm that the legislator was concerned with accepting devices for the protection of personal data, firstly by reaffirming the constitutional principle of the inviolability of intimacy and private life, being liable to compensation for any violation of this right in the territory digital.

Accordingly, the Law states that communications made in the virtual environment are inviolable and confidential, and may be violated only in case of a court order that requires it (BRAZIL, 2014).

Article 7 continues with regard to personal data provided to third parties in cases prevented by the rule, being possible only in case of free, express and informed consent by the holder of the information.

It also requires that the information regarding the collection, use, storage, treatment and protection of personal data must be complete and clear, as well as the consent of the holder must occur separately from the other contractual clauses, and the personal data can only be used in purposes that justify the collection, legal and specified in the service provision contracts.

It is noteworthy that the regulation allows the user the right to definitive exclusion of data provided in internet applications, except in the case of mandatory custody (BRAZIL, 2014).

The protection of the inviolability of personal data is reinforced by the Law when it deals with the provision of connection and internet applications, in Chapter III, Section II of the rule, determining that the custody and availability of connection records, access to applications of internet, personal data and the content of private communications must be aligned with the preservation of intimacy, private life, honor and image of the parties involved, and records that contribute to the identification of the user or terminal may only be made available by the provider by court order (BRAZIL 2014).

A normative advance regarding the protection of personal data security rights is represented by article 11 of the legislation that determines respect for the Brazilian legal system in operations for the collection, storage, custody and processing of personal data or communications on websites or applications where at least one of the acts takes place in Brazilian territory, always having as a guide the guarantee of the rights to privacy, protection of private information and the secrecy of private communications.

As Doneda (2014) states, such determination partially answers the questions concerning the effectiveness of national law,

given the sovereignty of States and the global nature of the virtual world.

In short, the Marco Civil da Internet emerges as an evolution of the guarantee of fundamental rights to privacy and the protection of personal data on the Internet, as it includes rules specifically aimed at protecting this matter in the virtual environment, thus preventing the cyberspace becomes an uncomfortable environment and curbing the abuse of rights in this environment (DONEDA, 2014).

It is noteworthy, however, that there are provisions in Law 12,965/2014 that aim for their own regulation so that the fullness of the fundamental right to the protection of personal data is achieved (DONEDA, 2014).

LAW 13,709/2018 - AN ANALYSIS OF THE PERSONAL DATA PROTECTION DIPLOMA

On August 14, 2018, Law Number 13,709, also called the General Data Protection Law - LGPD, was sanctioned, which brought provisions on the subject and amended provisions of the Civil Rights Framework for the Internet.

Law 13,709/2018 does not specifically address the security of personal data on the network, but it presents itself as a significant advance in guaranteeing privacy in the digital world (BRAZIL, 2018).

Law 13,709/2018 aims to protect the fundamental rights of freedom and the free development of the individual's personality, applying the rule to any processing operation carried out by a natural or legal person, regardless of the country of headquarters or location of the data, in a total environment or partially automated, provided that the processing operation is carried out in Brazil, that the activity is aimed at providing goods or services and that the data has been collected in our country (BRAZIL, 2018).

Thus, as done by the Civil Rights Framework for the Internet, the General Data Protection Law was concerned with establishing technical concepts related to the subject guiding its interpretation and similar cases, as provided in article 5 and items:

Art. 5 For the purposes of this Law, it is considered:

> I - personal data: information related to an identified or identifiable natural person;
> II - sensitive personal data: personal data about racial or ethnic origin, religious conviction, political opinion, union affiliation or organization of a religious, philosophical or political nature, data referring to health or sexual life, genetic or biometric data, when linked to a natural person;
> III - anonymized data: data relating to a holder who cannot be identified, considering the use of reasonable technical means available at the time of processing;
> IV - database: structured set of personal data, established in one or several places, in electronic or physical support;
> V - holder: natural person to whom the personal data that are subject to processing refer;
> VI - controller: natural or legal person, public or private, who is responsible for decisions regarding the processing of personal data;
> VII - operator: natural or legal person, public or private, who processes personal data on behalf of the controller;
> VIII - person in charge: natural person, indicated by the controller, who acts as a communication channel between the controller and the holders and the national authority; IX - treatment agents: the controller and the operator;
> X - treatment: any operation carried out with personal data, such as those referring to the collection, production, reception, classification, use, access, reproduction, transmission, distribution, processing, archiving, storage, elimination, evaluation or control of information, modification, communication, transfer, diffusion or extraction;
> XI - anonymization: use of reasonable

technical means available at the time of treatment, through which data loses the possibility of association, directly or indirectly, with an individual;
XII - consent: free, informed and unequivocal statement by which the holder agrees with the processing of his personal data for a specific purpose;
XIII - blocking: temporary suspension of any processing operation, by keeping personal data or the database;
XIV - deletion: deletion of data or a set of data stored in a database, regardless of the procedure used;
XV - international data transfer: transfer of personal data to a foreign country or international organization of which the country is a member;
XVI - shared use of data: communication, dissemination, international transfer, interconnection of personal data or shared treatment of personal databases by public bodies and entities in compliance with their legal competences, or between these and private entities, reciprocally, with specific authorization, for one or more treatment modalities permitted by these public entities, or between private entities;
XVII - personal data protection impact report: documentation from the controller that contains a description of the processes for processing personal data that may pose risks to civil liberties and fundamental rights, as well as measures, safeguards and risk mitigation mechanisms;
XVIII - research body: direct or indirect public administration body or entity or non-profit private legal entity legally constituted under Brazilian law, with headquarters and jurisdiction in the country, which it includes in its institutional mission or in its corporate or statutory objective basic or applied research of a historical, scientific, technological or statistical nature;
XIX - national authority: indirect public administration body responsible for ensuring, implementing and supervising compliance with this Law (BRAZIL, 2018).

It is noteworthy that the law excels in protecting only the natural person as the holder of personal data, not extending its protection to the legal entity[24].

It is also verified from the legal text that there are two types of treatment agents, the controller and the operator, which can be any person, natural or legal, public or private, the first being the one who has the decision-making power over the treatment of data, and the second who carries out the treatment at the command of the controller.

Even agents having different definitions, the Law foresees hypotheses of common duties and joint responsibility between both. The author Rita (2018) also points out that in a systematic analysis of Law 13.709/2018 it is verified that there is no protection for anonymous data, since, as it is extracted from its article 1 and article 5, I, personal data presupposes the identification or the possibility of identifying the holder.

Thus, the General Data Protection Law provides that anonymized data are not considered personal data, only when it is possible to reverse the anonymized condition (BLUM, 2018).

With regard to the processing of personal data, the Law, in Article 6, determines that the principles of objective good faith, legitimate, specific, explicit and informed purpose of the treatment be followed; the necessity, suitability and proportionality of data processing; transparency and accountability on the part of agents processing personal information; prevention of damage to the holder and broad accountability of agents who operate the data; and the prohibition of discrimination (BRAZIL, 2018).

The rule in question takes care of treating different types of data differently, distinguishing the processing of common personal data, sensitive personal data and data of children and adolescents, applying stricter rules to the last two.

Article 7 of the said Law lists the hypotheses

24 BLUM, Rita Peixoto Ferreira. The right to privacy and protection of consumer data. São Paulo: Almedina, 2018.

for processing general personal information, where the first is based on the consent of the holder, which must be free, unambiguous, formed by knowing all the information necessary to make the decision and restricted to the purpose informed to the data subject, being dispensable in the case of data that have become manifestly public by the subject (BLUM, 2018).

The expression of will will be made in writing or by another means that demonstrates it, as provided in article 8, and cannot under any circumstances be extracted from the omission of the data subject. The norm disciplines that consent may be revoked at any time through a free and facilitated procedure, and any change in the way data is processed will require a new consent, pursuant to article 8, § 5 (BRAZIL).

As extracted from Law 13.709/2018, consent is combined with the right to information on the part of the holder of personal information, a right established in the principle of transparency and accountability.

The text of the norm, in article 9, provides that the user has the right to facilitated access to information about the processing of his data, which must be made available to him in a clear, adequate and ostensive way about the purpose, form and duration of the treatment, the identification and contact of the controller, information regarding the sharing of data by the controller, the responsibilities of the treatment agents and the rights of the holder (BRAZIL, 2018).

Another hypothesis provided for in article 7 of Law 13,709/2018, for the processing of personal data, is in case of compliance with a legal or regulatory obligation by the controller. In this case, the public interest prevails over the private interest of the data subject, however, this situation does not exclude the rights of the user, thus the controller must observe the principles of limiting the purpose of the treatment, the use of adequate and necessary means to achieve the purpose intended with the treatment, of information of the holder regarding the processing of his data and the availability of the data in the terms required by the national authority (BRAZIL, 2018).

There is the possibility that authorizes the processing of personal data for purposes of interest to the administration or research, admitting the use of personal data for the execution of public policies, as provided for in article 7, item III.

The Law also authorizes treatment regardless of consent to carry out a study by a research body, with a guarantee of anonymization of data whenever possible, under the terms of item IV.

The following hypothesis admits the processing of data when necessary for the performance of a contract or preliminary procedures related to a contract to which the holder is a party (BRAZIL, 2018).

The legal text follows, in article 7, item VI, with the possibility of processing data for the regular exercise of rights in judicial, administrative or arbitration proceedings, admitting the use of personal data as evidence for the parties to a proceeding (BRAZIL, 2018).

Law 13,709/2018 provides, in items VII and VIII of the aforementioned articles, for the use of personal data to protect the life, physical integrity and health of the holder and third parties, likewise, treatment for health protection in procedures carried out by health professionals or health entities, hypotheses that again place the public interest over the interests of the holder (BRAZIL, 2018).

Another possibility authorizes the processing of personal data regardless of the consent of the holder in case of need to meet the legitimate interests of the controller or third parties, except in the case of prevalence of the fundamental rights of the holder that require the security of personal information,

as stated in article 7th, IX.

The hypothesis in question does not clarify what would be the legitimate interest of the controller and the measure of this interest can be placed in front of fundamental rights and freedoms. However, the General Data Protection Law does not resolve the controversy in its text (BRAZIL, 2018).

The last hypothesis that admits the processing of personal data is for credit protection. The device deals with the peculiarity of credit protection, which must observe the relevant legislation on the subject (BRAZIL).

Furthermore, in Section II of Chapter II, the norm addresses the rules regarding the protection of sensitive personal data, which are those that have the characteristic of subjecting the holder to discriminatory practices, or enable the identification unequivocally and persistently, as can be done with genetic data (BLUM, 2018).

Such data deserves special attention, and must be treated differently, with additional layers of security, and different and more restricted devices, but maintaining the prevalence of the subject's consent as a rule.

The hypotheses for processing sensitive data are mostly the same as for personal data, except for cases of contract execution, credit protection and legitimate interest of the controller, which was replaced by the interest of the data subject.

Currently, from common personal data it is possible to extract sensitive data through artificial intelligence, for example in a purchase history it is possible to assess religious, political, philosophical beliefs, sexual orientation or even health status, thus profiling the user from the Web.

However, the General Data Protection Law guarantees the protection of the information used to form the behavioral profile of a given person, as provided in article 12, paragraph 2 (BRAZIL, 2018).

With regard to the processing of personal data of children and adolescents, the norm treats sensitive or common data equally. The processing of data on minors must aim at the best interest of the holder, under the terms of article 14, and can only be carried out with the consent of a parent or legal guardian, with the controller being responsible for using the means for verification. of consent. This verification imposes on the controller a duty of care in relation to the underage user (BRAZIL, 2018).

As stated in article 14, paragraph 3, consent is only necessary for data collection in case of need to contact the parents or guardians, and may be used this way only once, or for the protection of the minor, however, in both cases, consent will be required. consent of a parent or legal guardian in case of transfer to third parties (BRAZIL, 2018).

The law provides, in paragraph 4 of article 14, that for children and adolescents internet services, such as games and applications, cannot condition their use to the provision of personal data, such practice being admitted only when the information is strictly necessary for the exercise of the activity (BRAZIL, 2018).

The controller still has the obligation to keep the information about the data collected public, preserving the principle of transparency, which is already required in other possibilities of data processing, however, regarding the minor, the controller must adapt to the minor's ability to understand, being able to use audiovisual resources, when necessary, pursuant to paragraph 6 of article 14 (BRAZIL, 2018).

Law 13.709/2018, in its article 15, determines that the processing of data must be terminated when the purpose has been achieved, in case of unnecessary use of the data, at the end of the processing period, when required by the holder or in case of violation

device of the legal text, at the behest of the national authority.

However, the conservation of data is authorized for compliance with legal or regulatory obligations, study by a research body, transfer to a third party under the terms of the law and for the exclusive use of the controller, its access by a third party being prohibited and the data anonymized (BRAZIL, 2018).

The General Data Protection Law dedicates the entire Chapter III to the rights of the holder of personal data, namely:

> Art. 18. The holder of personal data has the right to obtain from the controller, in relation to the data of the holder processed by him, at any time and upon request:
> I - confirmation of the existence of treatment;
> II - access to data;
> III - correction of incomplete, inaccurate or outdated data;
> IV - anonymization, blocking or deletion of data that is unnecessary, excessive or treated in violation of the provisions of this Law;
> V - portability of data to another service or product provider, upon express request and observing commercial and industrial secrets, in accordance with the regulation of the controlling body;
> VI - deletion of personal data processed with the consent of the holder, except in the cases provided for in art. 16 of this Law;
> VII - information on public and private entities with which the controller shared data;
> VIII - information about the possibility of not giving consent and about the consequences of the refusal;
> IX - revocation of consent, pursuant to § 5 of art. 8 of this Law (BRAZIL, 2018).

Rita emphasizes with primacy that the rights provided for in the aforementioned article must be interpreted in accordance with the previous provisions already presented in this work, mainly safeguarding the fundamental rights of freedom, intimacy and privacy (BLUM, 2018).

Law 13.709/2018, in article 42, provides that agents are jointly and severally liable for improper or unauthorized use of data, and in the event of information security incidents. When such incidents occur that may entail significant risk or damage to the holders, the controller must notify them within a reasonable period (BRAZIL, 2018).

In the same sense, article 46 provides that it is up to the treatment agents to adopt adequate security measures for the effective protection of personal data from unauthorized access and situations that may trigger the destruction, loss, alteration, communication or any form of inappropriate or unlawful treatment of information (BRAZIL, 2018).

In addition, in case of violation of the provisions of the legal text, agents are subject to administrative sanctions, provided for in article 52, starting with the warning to adopt corrective measures, with the possibility of imposing a fine of up to two percent of the person's billing. private law in its last exercise, amount limited to a total of fifty million reais per infraction.

The law allows the application of astreinte, that is, a daily fine to stop the violations committed (BRAZIL, 2018). Regarding the original project of the law, there was a presidential veto regarding the creation of a National Data Protection Authority, responsible for applying sanctions, monitoring compliance with the law and defining security standards for data storage, however the veto stems from the need for a law proposed by the Presidency of the Republic, as reported by the G1 news website (Brazil, 2018).

Finally, Law 13,709/2018 will only come into force 18 (eighteen) months after its publication, that is, only on January 15, 2020, thus, legal entities, public and private law, have this period to adapt to what is proposed by the new law (BRAZIL, 2018).

CONSENT AND ITS LIMITS FOR THE CONCESSION OF PERSONAL DATA

Digital Law also permeates the issue of personal data for general marketing issues, which aims to foster the consumerist market. It is also a mutation vector of advertising activity, which encompasses the most modern means of digital business (BLUM, 2018).

Advertising can be defined by the communication established between the consumer| buyer and supplier/seller of a product or service, through which not only are they informed about the characteristics of the consumer good, but also the persuasion of the act of consumption.

Although it may seem contradictory, marketing science realized that mass communication and advertising were inefficient, since they wasted efforts with a public that would not have any propensity to consume the advertised good. Thus, more and more new technologies develop personalized channels, which are aimed at a specific audience. That is, it is much more likely that readers of car magazines have an affinity for consuming such a good, whereas an advertisement for a political book may be better received in a political magazine than in a simple newspaper, since the public attends to certain common standards and preferences.

Having said the above, there is today the development of online behavioral advertising, which is targeted and allows for even greater personalization of the contact between buyers and sellers, being more effective in relation to the previous ones[25].

More and more internet users are becoming consumers, which reaffirms the growth of electronic commerce. In Brazil, e-commerce accumulates significant growth rates, having earned a surprising amount of 44.4 billion reais in 2016.[26].

Therefore, there are numerous digital algorithms that record the navigation of internet users, creating a database about their preferences, political and religious trends, among others. Therefore, the advertising approach becomes precisely linked to the profile of the potential consumer, since the websites they browse, their online purchases, their websites accessed and social networks are virtually decoded, which creates their behavioral formula as an individual. and consumer (BLUM, 2018).

When the user browses the Internet, there is a series of clicks (clickstream) that reveal a multitude of information about their predilections, which means that online advertising can be tailored to the consumer[27].

Therefore, it can be concluded that online behavioral advertising reduces costs of the advertising action, since the advertised consumer good is surgically correlated to the interests of the addressed consumer. Communication with the target public of that good is practically accurate, resulting in a greater probability of success in terms of inducing consumption.

It is important to note that the clicks themselves allow measuring the efficiency of the advertisement. For example, Google has an intelligent search engine, which, in addition to establishing a relationship between the words searched by the user and targeted advertising, defines that the consideration will only be due if the potential consumer clicks on the corresponding ad (Google AdWords).

Correspondingly, social networks accumulate the most diverse personal data of their users, which are extracted from their registration, publications and their interaction

25 BIONI, Ricardo BruNumber Personal Data Protection: the role and limits of consent. São Paulo: Forense, 2019.

26 MARTINS, Guilherme Magalhães. Responsibility for accident of consumption on the internet. São Paulo: Revista dos Tribunais, 2018.

27 BIONI, Ricardo BruNumber Personal Data Protection: the role and limits of consent. São Paulo: Forense, 2019.

with the platform and with its other users.

In addition to the above, there is also user location monitoring. The omnipresence of the internet allowed the control of the geographic position, via GPS[28], of smartphones[29], which made it possible, for example, to record the number of people who effectively complied with social isolation during the new Corona virus pandemic[30].

All of the above illustrates the importance of ethics and the importance of user privacy and consent, since new digital technologies manage to capture personal data of their users with incredible precision and speed, something that will be increasingly controlled by protection laws. of data and by the Digital Law itself.

To begin with, in order to deepen the theme, it must be noted that data and information are not synonymous. This is because data is the primitive state of information, as it is not something per se that adds knowledge. Data are raw facts, which when processed and analyzed become something intelligible, and information can be extracted from them (BIONI, 2019).

Take for example the multinational Zara. The simple action of collecting and accumulating the facts (data) of the sales and output of your products is something that in itself is not endowed with any meaning, but, when organized, especially with the purpose of identifying which products were the best sellers, extracts therefore, useful information (BIONI, 2019).

Thus, the formation of a database involves the entry (input) and the processing of data and its output (output), which form the information.

Computers and information technology were crucial for the consolidation of software[31], which became automated and managed data in order to organize information extracted from raw data.

Therefore, a database must be linked to the idea of an information system, whose dynamics collect a series of characteristics of Internet users, enabling digital commerce and targeted behavioral advertising flow.

BIG DATA: DATA MINING

Based on what has already been exposed, it is worth clarifying the Big Data system before clarifying the importance of e-commerce. It is possible to say that Big Data represents the ecstasy of the process of perfecting the digital space. The technology now under analysis allows a huge volume of data to be aggregated, by an infinite range of affinities (BIONI, 2019).

Based on Doug Laney's[32] approach, Big Data is commonly associated with volume, variety and velocity. Volume and variety because it can exceed the capacity of traditional processing technologies, managing to organize unimaginable amounts of data in different formats, and all of this at high speed.

Through the aforementioned technology, it is possible, for example, to correlate a series of facts (data) and discover patterns and, consequently, even infer the probability of occurrence of future events.

For this reason, Big Data is not an intelligent system, however it may seem. This is because it is not about teaching a computer to think like a human being, but only a new methodology for processing and analyzing data to infer the (re)occurrence of events (LANEY, 2016).

In conclusion, Big Data is not concerned

28 Satellite communication and location system. Available in<http://en.wikipedia.Org/wiki/GPS>.

29 Smart phone, in free translation from English. It is a mobile phone with advanced features. Available in <http://pt.wikipedia.org/wiki/smartphone>.

30 Agent viral causative in disease, in Special, breathing. Available in < https://www.minhavida.com.br/saude/temas/novo-coronavirus>.

31 Operating system that serves as the basis for others. Available inhttps://canaltech.com.br/software/o- what-is-software/.

32 LANEY, Doug. 3D DataMabagement. London: Routledge, 2016.

with the causality of an event, but only with the probability of its occurrence. Instead of questioning why something happens, we try to diagnose what is happening.

THE PRAGMATIC IMPORTANCE OF THE DOGMATIC ALLOCATION OF PERSONAL DATA AS A NEW PERSONALITY RIGHT

On one occasion, a Google engineer stated that they did not collect information associated with people's names, as this would generate misinformation[33]. In another interview, Facebook's head of privacy affairs, Erin Egan, paradoxically stated that, despite the social network providing advertising based on the identity of its users, that would not configure identifiable people (HARDY, 2012).

In a series of reports on Apple's "Privacy Differential" technique, Wired magazine bluntly states that the technique "gathers data about you" but not much "well about you" (LANEY, 2016).

In fact, the way the Internet and other systems work does not make it necessary to know the identity of the user so that content can be directed to him, as it is enough to assign him a unique electronic identifier that allows him to be separated from the millions of users on the network or of the system.

However, if the premise of the regulatory cause of personal data protection is to protect the citizen, who is increasingly exposed to these practices, then a fervent compartmentalization between personal data and anonymous data would no longer make sense. It is recognized that when you are dealing with the formation of behavioral profiles that are intended to influence people's lives in some way, what is behind the device does not matter whether it will become identifiable or not (LANEY, 2016).

Thus, there is room for a consequentialist normative choice. It is not standardized only through the lens of mutually exclusive conceptualization between personal data and anonymous data, but through the cause and effect relationship that the mere activity of data processing can exert on the individual. Therefore, one cannot lose sight of the fact that even the processing of anonymous data can have repercussions on the free development of people's personalities. Algorithms that mine Anonymous data can hide discriminatory practices to the detriment of a group of people and unique data (BIONI, 2019).

An example of the above would be the case of a company that considers preparing a selection process anonymously for candidates, but whose selection criteria were parameterized by those who were already part of its team of collaborators. Thus, quite possibly, the selection algorithm would replicate the already determined and rooted biases of that organization, such as gender and ethnicity issues. Hypothetically, Afro-descendant or Asian women could obtain different results from white men, even though the individual meritorious analysis of each candidate suggested the opposite (BIONI, 2019).

The foregoing highlights the background of the debate around the regulation agenda for algorithms and artificial intelligence, and its challenge is to devise governance processes that prevent the occurrence of unwanted effects when introducing such technologies into everyday decision-making circuits (BIONI, 2019; LANEY, 2016).

The personal data protection laws help compose this governance arrangement, as their rules embrace any and all data processing that subjects an individual or a collective to a merely automated decision.

It matters little if such treatment focuses on

33 HARDY, Quentin. rethinking privacy in an It was of big Date. Available in <http://bits.blogs.nytimes.com/2012/06/04/rethinking-privacy-in-na-era-of-big-data/?_r=0>.

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isolated or aggregated information and that does not reveal a specific person, as long as they significantly impact collective life and the free development of the personality, they are already powerful enough to influence future events, requiring regulation.

Thus, the importance of allocating personal data protection as a new personality right is undeniable. With this, a greater normative scope is allowed, which will be able to cover any and all data processing activity (even if not personal), but which impacts the life of an individual (BIONI, 2019).

This is the rationale of the LGPD in providing that anonymous data can be considered as personal data if they are used for the formation of behavioral profiles (art. 12, paragraph 2).

Therefore, it can be said that the main focus is on the consequences that the data processing activity can have on a subject. Therefore, the expressions "specific person" and "identified", referred to in the aforementioned provision of the LGPD, must be understood as an unfolding of the treatment that data may have on a given individual. Thus, it is clarified that the focus is not on the data, but on its use - for the formation of behavioral profiles - and its consequent repercussion in the human sphere.

The aforementioned interpretation of the aforementioned device is in line with the systematic interpretation of the aforementioned article, which is related to the very expansionist concept of personal data - an identifiable and not only identified person -, as well as one of the objectives and foundations of the law itself - the free development of the personality (arts. 1 and 2, VII).

Furthermore, it would also make no sense, under the prism of teleological interpretation, to foresee an exception whereby anonymized data would be within the legal scope, but that it would not be possible to reach situations in which a group of individuals (identifiable persons) have their respective freedoms (personality development and fundamental rights) affected by the use of such data[34].

Thus, the exegesis that makes paragraph 2 of art. 12 applicable and not merely symbolic. Above all, it can be said that it is consistent with the concept of personal data that was designed and is aimed at expanding the protection of the natural person with regard to situations in which the activity of processing data - even anonymized - affects the free development of their personality.

In this sense, it is worth mentioning that the device analyzed here had a different wording when the debate in the National Congress began, since its expression "if identified" was before "albeit not identified", in the then PLPDP|EXE. This historical investigation reinforces the teleological sense that the legislator wanted to expand the protection of natural persons, even though the behavioral profile does not completely individualize them.

Another device that reinforces the explained position is art. 20 of the LGPD. The holder's right to review automated decisions extends to any type of automated data processing activity that "affects their interests".

Thus, the exercise of this right is not conditional on the sole basis of a "profile" referring to a "identified person", but all those who make use of aspects of their personality and that affect their interests.

With this, it is concluded that it is necessary to perceive that the processing of data, whether anonymous or personal, must be subject to a normative scope of protection of personal data, even more so with the advent of the digital economy at an international level and with the new regulatory challenges.

34 MALTA, Tatiana. The Right to Privacy in the Information Society: effectiveness of this fundamental right in the face of information technology. Porto Alegre: Sergio Antônio Fabris Editor, 2007

TO THE VIOLATIONS AT THE BUSINESS ELECTRONIC IN SCOPEINTERNATIONAL THAT CAUSED THE LGPD

Electronic commerce or e-commerce is the transaction of purchasing and transferring funds over the internet. It is a consumption relationship without direct contact between the consumer and the supplier of the good or service. This way is the realization of legal transactions at a distance, through the application of intense communication technologies (SOBHIE and OLIVEIRA, 2013, online).

The main benefit of electronic commerce was the improvement of the consumer-supplier relationship, given that the cost of inserting products in the virtual market is lower than in the physical one, which allows for greater efficiency in the consumption relationship. This cost reduction is understood due to the reduction of labor, the lack of physical space, less expensive advertising, use of the public internet domain, among several other factors (BARRETO FILHO, 2019, online).

Consumers were given the opportunity to conduct further research on the products they were looking for, being able to choose with less time spent and less inconvenience than physical commerce usually generates. This way, the consumer with the virtual space working instantly can save time and reduce costs. As for the supplier, there was the opportunity to carry out marketing aimed at the target audience, stimulating hyper consumption and increasing the sale of their products (BARRETO FILHO, 2019, online).

This new model is of great predominance in today's society. But like any legal business, especially in consumer relations where the consumer is already vulnerable to the supplier, there is a concern with protection, as the legal business carried out through e-commerce requires even greater caution on the part of the supplier and the consumer due to the facilities brought to commercial development, they can also be used to commit violations, which can range from fraud to the sale of personal data. (SOBHIE and OLIVEIRA, 2013, online).

And it is in e-commerce that the main violations of consumer rights occur, as the consumer rarely bothers to know the conditions of the offeror, the quality of the products, etc.

worry about the risks you may be exposed to, especially when you provide your personal data such as CPF, address, telephone, General Registration (RG), among others, to finalize the transaction (SOBHIE and OLIVEIRA, 2013, on-line).

As has been clarified earlier, personal data became the identity of the individual. According to DONEDA (2011) "personal data can sometimes become the person himself in a series of circumstances in which his physical presence would once be indispensable". It is based on its analyzes that a bank determines how much credit to release to a customer, for example. This data is collected whenever a registration is carried out on a given website, or on social networks, or simply through navigation cookies, which store this information in a database where a real puzzle is assembled with personal information, thus creating a form of virtual dossier on the individual (SOUZA, 2018, online).

The original purpose of the cookie was to provide convenience to the individual, so that every time he enters a website he does not have to enter his data again. However, this technology began to be used to track user behavior on various internet sites, to create databases about the individual. "This makes it possible to know the market in a much broader way, reduce risks and, above all, delimit specific segments to direct advertising to them" (SCHMIDT, 2018, online).

According to VENTURA (2019), new

digital services and devices connected to the internet considerably increase the volume of data captured. "In one minute, more than 100,000 searches are performed on Google, another 41.6 million messages are sent via WhatsApp and Messenger", that is, any individual or legal entity is currently capable of generating data. (VENTURA, 2019, online).

But the big question that goes back to the use of the data is whether they are being used with the consumer's consent, or to what extent this consumer has authorized the use of the data for commercial purposes, or its sharing. Or how long they will be stored. Bearing in mind that the consumer, generally faced with e-commerce, is not in the habit of reading the privacy terms only confirming without being aware of what is written there, which occurs due to the high complexity and size of the terms.

In this line of reasoning, as commerce migrated to the internet, companies saw the possibility of improving their generic advertisements, making them user-oriented. And in order to carry out this practice, it is necessary to collect personal data from consumers that they innocently make available. Thus, according to SCHIMIDT (2018) "the internet has become an environment that offers a series of risks to users, due to the broad means of identifying data of interest".

Mobile technology, ''smartphones" allowed advertisements, in addition to observing the consumer's profile, to also analyze their location. With the GPS (global positioning system) location tool, the data controller starts to offer the consumer good, according to where the potential consumer is (BIONI, 2019, online).

Therefore, it is not a coincidence to receive an advertisement from a place close to your location, it is what is called mobile marketing, an integration between advertising, the internet and the cell phone (BIONI, 2019, on-line). However, this practice consists of discriminating against the consumer. Storing users' personal data to create very personal profiles and thereby offer treatment of prices and specific offers to consumers who fit the profile that is advantageous to the supplier, resulting in violation of the principle of equality brought by the Constitution, in addition to directly violating the consumerist norms established by the CDC (BARRETO FILHO, 2019, online).

The cell phone and its applications complement the individual's routine, in addition to being the most used means of communication. Through Whatsapp, a text messaging application, it is even possible to determine the emotions that users are feeling at the time of the conversation, due to the use of emoticons, which are expression icons. In this scenario, companies appear that, with the aim of selling, seek to capture and use these feelings to enhance the advertising message. Internet services are mostly "free", such as access to social networks, e-mails, blogs, applications for smartphones with free download. However, these are highly profitable, even if they do not charge under their access. This is due to targeted advertising. There is an indirect remuneration.

The consumer has the illusion of enjoying the service for free, but without knowing that he is paying for the service with his personal data, and it is with the personal data of consumers that targeted advertisements are made, which are truly responsible for the great profitability of internet services (BIONI, 2019, online). This way, when the consumer sends an email, uses social networks, searches on websites, there is an exchange of personal data for the service, a true monetization of the very personal data of the consumer, who, today, is an international network consumer.

CONCLUSION OF THE FIRST PART

The advent of the internet constitutes one of the most important milestones of humanity, causing changes in existing economic, social and cultural relations. Which demonstrates that we are increasingly inserted in the virtual environment. In view of this, commerce was renewed, becoming electronic. This benefited the consumer, as he gained more convenience to make his purchases, and the supplier who can offer his products at a lower cost-benefit.

However, it is important to highlight that this new field also brought serious weaknesses in terms of security, ranging from fraud to improper collection of personal data. Thus, the various cases of leaks of personal data highlight security in the digital environment, given that the consumer has no idea of the procedure performed in view of the processing of their data provided. Which brought the need to create regulations to curb these violations and bring legal certainty to everyone, as we live in a computerized society and the daily insertion of data in electronic pages has become something common and necessary.

Legislation on the protection of personal data of individuals is extremely necessary to ensure that they do not suffer violations of their information, through the provision of data to third parties without the consent of the holder. This way, the General Data Protection Law protects the data subject, offering control over them, as consent and transparency are the pillars of the law.

Therefore, it can be concluded that the study of personal data protection in Brazil becomes increasingly important, due to the various risks that may arise from data processing. In this work, we chose to analyze the processing of data in electronic commerce under the vulnerability of the consumer, as it is the area that most occurs violations in addition to being more present in everyday life.

With regard to the measures that companies must adopt to comply with the law, it will be necessary for them to opt for compliance programs to avoid the occurrence of irregularities and the consequent sanctions imposed by the law. This is proving to be a costly and time-consuming procedure for companies, given that they have to invest massively in cybersecurity.

It is therefore important to emphasize that this can be an obstacle to the implementation of the law, as some companies may consider it more profitable to pay the established fine, rather than modifying their entire technological structure. Because this will be an extremely expensive procedure for companies, especially if analyzed together with all the charges that companies are already subject to in Brazil.

However, complying with the law may make companies open to new business opportunities, as privacy policies and processing of personal data are seen with good eyes, being a competitive differential, which can increase their reputation in the market and especially in the face of the consumers. The LGPD is a step forward for Brazil, as society is constantly changing and the law aims to monitor and regulate these changes. However, digital education is necessary for consumers so that they are more careful about their personal information, because with the popularization of the internet, practically the entire Brazilian population has access, but does not have the proper knowledge to behave in the digital environment.

Thus, it is concluded that the General Data Protection Law is a step forward for Brazil, being extremely necessary to provide legal security to internet users. For its effective application, society will need greater preparation, given that many companies, with just a few months to go into effect, do not

know how they will adapt to it.

In contrast, a culture of data protection must be developed by the entire population, as everyone must understand their rights and preserve their data.

INTRODUCTION OF PART TWO:

The second part of this work requires an in-depth analysis of topics related to Digital Law and the protection of sensitive data internationally. This is because technological evolution has been affecting all current legal systems, since the internet and the various networks and social media affect everyday life and the influence that Law exerts in each location on the globe.

In this sense, through the study of the dynamics of International Trade, digital dissemination and Human Rights. the intention is to extol great international achievements, but also to expose the possible severity of their consequences.

PUBLIC INTERNATIONAL LAW AND ITS EVOLUTION

Antiquity is understood as the period between three millennia BC and the fall of the Western Roman Empire, in 476 AD There are, of course, doubts as to the existence or not of an "International Law" at the time. However, although relations between states were established through force, law had a place in international relations.

Thus, since Egypt and Babylon became major commercial transit centers between India and the Mediterranean, there were treaties that permeated their negotiations. An example is the agreement celebrated in 1292 BC between the Egyptian pharaoh of the XIX dynasty, Ramses II (ca.1303-1203 BC), and the king of the Hittites, Httusili III, called Treaty of Perla, whose objective was the extradition of "refugee's politicians" and also included a non-aggression pact[35].

One can also highlight the importance of Israel, which runs through the prophet Isaiah's statement that agreements made under judgment, even with enemies, must be respected. Thus, the idea is born that peace and social justice are the key to the evolution of society, not power itself.

Furthermore, it is worth mentioning that, despite the constant threat of war between the Greek City-States, the war itself was largely avoided through treaties, such as the 20-year peace treaty, formulated between Athens and Sparta, in 446 BC, and the 50-year peace, made by the Treaty of Nicias, in 431 BC[36].

Therefore, it is clear that the Greeks left the important embryo of the political-legal legacy referring to the three great institutes that permeate International Law, namely the treaty, arbitration and diplomacy.

Nowadays, it is understood that International Law is not organized only by individuals, but by sovereign States, that is, by government organizations of a territorial community that does not recognize, above itself, any other distinct authority, except as they voluntarily submit to it[37].

Of course, other entities may be subject to International Law, but States are the ones that play a vital role, since they are the ones that constitute international bodies.

From this perspective, the concept of sovereignty is of paramount importance, which can be translated by the independence of each State to exercise its functions within its territory without the interference of another State. Thus, there is the international idea that the domain and state command is

35 NETO, Cretella José. Public International Law. São Paulo: Revista dos Tribunais, 2019.

36 BENEDICK, Richard Elliot. Ozone Diplomacy: New Directions in Safeguarding the Planet. Cambridge, Massachusetts, 1991.

37 BOURDON, William; DUVERGER, Emmanuelle. La Cour Pénale Internationale – Le Statut de Rome Commenté. Paris: Seuil, 2000.

predominant in its territory[38].

However, in terms of technology, commercialization of personal data through digital platforms and its possible impacts require greater flexibility of the concept and greater international transparency. This is because the digital computer arsenal today has numerous ways of capturing and storing personal, social, economic and even genetic data in order to enhance the influence and power of one nation compared to another[39].

Thus, it can be said that international discrimination is no longer guided solely by ideological and economic aspects, as occurred in almost the entire twentieth century, but also by computer and digital characteristics, which are endowed with artificial intelligence that manages, from of small information acquired through social networks or platforms, detect personal, social, political, genetic data, among others[40].

Therefore, it is imperative that the international community create clear rules that preserve transparency, privacy and ethics, so that new prejudices and new forms of subordination and manipulation do not become possible.

INTERNATIONAL RESPONSIBILITY

One of the most important general principles of law, already enshrined in Roman law, is that anyone who violates the rights of others is obliged to repair them.

When talking about civil liability, we talk about repairing damage caused by others, this damage can be both moral and patrimonial. The essence of civil liability and the order of law is that no offense can remain without fair compensation, as the injured party will have the right to be compensated for the damage suffered. (MARIA HELENA DINIZ, 2003, p. 3).

The principle is applicable internationally, since both the individual that causes damage to the State or vice versa, and a State that causes damage to another are obliged to indemnify them.

The idea seems simple, but it presents its challenges, especially when the theme is linked to Digital Law, technology, or the availability of personal data.

The three major areas of knowledge highlighted above play an enigmatic role in terms of the type and size of damage they can cause. This is because the damage they cause is not as clear as a nuclear accident, atomic bomb, forest fire or democratic ruptures. They are long-term, silent damages that do not make much noise, since they are caused by lack of digital control and by obtaining different data, accidental or deliberate, which cause great discriminatory power for the companies or States that have them[41].

The consequences can be overwhelming for international ethics, for global trade itself and for Human Rights, since political, economic, personal or genetic data can be manipulated according to different purposes[42].

It's scary to think that through a simple questionnaire, photos, comments or likes made by Facebook, Instagram or any other digital media or platform, these companies can obtain sources such as the political opinions of their users, their races, your beliefs, your personal preferences, your related friends, your economic status, among other information. Thus, it is possible to model

38 RECHSTEINER, Beat Walter. Private International Law: theory and practice. 5th ed. rev. and current. São Paulo: Saraiva, 2002.

39 ROBERTO SOBRINO, Waldo Augusto. Some of the new legal responsibilities derived from the internet. Consumer Law Magazine. São Paulo: April – June, nº 38, 2001.

40 LUCCA, Newton de. Legal aspects of IT and telematics contracting. São Paulo: Saraiva, 2003.

41 LUCCA, Newton de. Legal aspects of IT and telematics contracting. São Paulo: Saraiva, 2003.

42 DIAS, Jean Carlos. Contract law in the virtual environment. 2nd edition. Curitiba: Juruá, 2004.

advertisements or advertisements, influence the results of the next elections or even favor one candidate over another because of their gender or race[43].

As already demonstrated in the first part of this work, this is already happening in several countries across the globe, which means that the international community must take a legal position in the face of these new challenges.

Just imagine the absurd consequences of how migration and trade issues between different States would be if the new digitally obtained data are not regulated in a transparent and ethical way. Muslim Brazilians prevented from entering the US and stopped in the immigration sector, Lebanese prevented from visiting Turkey, mestizos unable to have children with "pure" people, university exchanges only for those who have genetic data within certain parameters, etc.

It may even seem exaggerated to express the risk of digital and technological non-regulation this way, but the truth is that humanity already has the means of how to carry out such procedures, which is, on the one hand, fascinating and, on the other, a nightmare.

It is important to highlight that each State has its own legal system, and that these, in turn, make up the international system. However, Digital Law is unique, since artificial intelligence has managed to overcome geographic barriers and unify mathematical and computer language on all computers in the world (BIONI, 2019).

Thus, it is no use just for Brazil to create the LGPD or for any other country to create them individually, but clear international parameters are needed to unify them.

Nowadays, there is no international body that is responsible for the digital circulation of data, there is not even an initial plan on how to implement this in practice, nor has the UN taken a position on the subject.

DIGITAL LAW AND THE NEW GLOBAL REALITY

Currently, a large part of the population is part of the world wide web, either at home or in the so-called cybercafés or Lan Houses. This so indispensable technology emerged in 1969 as a military pilot project, with the aim of transmitting data via interconnected but distant computers, for the exchange of data without the interference that the radios of the time had and mainly without the enemy being aware of it. of this information (BIONI, 2019).

For greater security of this data, in 1973 a methodology was developed that is still used today in network machines, the so-called TCP/IP - Transmission Control Protocol/Internet Protocol. (PATRICIA PECK PINEIRO, 2011, p. 56, emphasis added.)

But it was only in 1980 that the internet began to take shape, with computers that were powerful for the time, located in strategic places, such as large universities and advanced research centers. Its sole purpose was the exchange of messages of a scientific nature, today, evolutionarily called forums or chat rooms (BIONI, 2019).

Already in 1989, the internet began to work with links and the WWW - world wide web, opening up the possibility for users, in addition to exchanging messages, to use the exchange of files via an interconnected network. From then on, evolution intensified, leaving the internet open to companies and home users, with a great expansion of computers around the world, creating a true virtual world among themselves (PINHEIRO, 2011)

With the evolution of the internet, more and more people are dependent on information technology. With its advancement, society gradually seeks convenience, ranging from simple purchases over the internet from

43 ROBERTO SOBRINO, Waldo Augusto. Some of the new legal responsibilities derived from the internet. Consumer Law Magazine. São Paulo: April – June, nº 38, 2001.

within their own homes to large business investments via the worldwide network (PINHEIRO, 2011).

Thus, society is totally linked to the quick and agile information that the worldwide network provides, which, in the business sphere, generates less losses and, consequently, more profitability of its products, since there is no longer a need for businessmen to travel to its branches for the follow-up of its production, and personal, this information can serve as a link between not having and being able to have. As Ana Maria D'Ávila Lopes (2011, p. 2) very well puts it in her article published on the internet:

> Authors compare the Internet with the invention of the press in the s. XV when information began to be freely disseminated. The consequences produced in society were visibly enormous. Regarding the invention of the Internet, it is still difficult to define its full impact, taking into consideration that when it was created, at the time of the ARPANET, there were only four computers connected, and today the number of connected computers continues to grow at a dizzying rate.

The transformation of the digital society brings behavioral changes, which require specific and qualified legal support, since the law must follow the evolution of society, and as the elaboration of laws cannot cope with technological evolution, digital law arises with the aim of readjust existing norms to social reality.

Companies use the internet as a low-cost advertising vehicle, as they obtain surprising responses due to the speed with which information is accessed and accepted by society, thereby generating greater profitability. Before this information was provided through newspapers, magazines and television, today these newspapers and magazines are read instantly, after being edited, on the websites of companies providing these services. (PINHEIRO, 2011, p. 72).

Nowadays, digital law accompanies the existing legal system, taking a broader approach to law and the evolution of law in the digital age. Digital law comprises the internet, which is a great means of communication and relationship, both business and personal, but it can also serve as a mechanism to violate the principles of morality and ethics, since its propagation is instantaneous and the eventual damages generated are often irreparable. (PINHEIRO, 2011, p. 76)

Although there is no specific legislation on internet law in our legal system, what is emerging is a particularity introduced in Brazilian legislation, called digital law, yet another branch of law, which even without own defined legislation arises with the particularity of duty of relations arising from the virtual world.

The fact that the digital law does not contain its own legislation does not mean that the citizen is immune to any illegal attitude posted in the virtual environment, as there are legal principles in the national legal system capable of holding these offenses accountable, such as Law 9.610/98 defending copyright, Law 9279/96, industrial property law, and Law 8078/90, consumer protection law, without forgetting to mention the Penal and Civil Codes, among others.

Thus, the need for transparency and international regulation is reiterated in the face of unlimited access to data obtained by digital means.

So that it is possible to give due continuity to the subject, it is necessary to expose the Internet providers and their responsibilities.

TRADE AND INTERNATIONAL LAW IN A NEW TECHNOLOGICAL AND POLITICAL PERSPECTIVE

As already mentioned, electronic

commerce on the Internet, as a form of virtual contracting, enables interaction between consumers and suppliers of different nationalities. Therefore, there is a need to analyze the territorial conflicts possibly resulting from these business relationships.

Edgar Carlos de Amorim explains that "within the territory of the State, there is always, behind each of its inhabitants, a complex of norms that give them rights and impose obligations[44].

Likewise, in view of the breakdown of barriers provided by electronic commerce, it is observed that "any consumer residing in Brazil can accept any offer from the supplier, national or foreign[45].

This way, Private International Law intends to make possible rules for choosing the application of substantive law with regard to disputes that involve, in some part, international entities. As a rule, the norms of Private International Law are indirect norms, that is, they do not solve the conflict itself, they simply indicate which internal material law must be applied. However, exceptionally, there are provisions of Private International Law of a direct nature, such as the norms of the Law of Introduction to the Civil Code that have personality and capacity[46].

In view of the above, it is observed that the scope of Private International Law is to resolve the conflict of laws in space, creating parameters of choice, especially when the foreign law violates the national public order[47]. Very important study, since it helps and makes it possible to maintain the protection of the vulnerable party against international suppliers in electronic consumer contracts.

However, Lionel Zaclis considers the existence of several possibilities for resolving conflicts related to electronic commerce and its internationalization. Regarding one of these ways, he argues about the applicability of article 9 of the Law of Introduction to the Civil Code[48], as a classic rule.

However, article 7 of the Consumer Protection Code does not exclude the use of international treaties and conventions, as well as internal legislation and regulations, which would result in the application of the Law of Introduction to the Civil Code in the absence of another applicable law.

However, in article 9, paragraph 1, of the aforementioned LICC, which provides: "if the obligation is intended to be performed in Brazil and depending on an essential form, this will be observed, admitting the peculiarities of foreign law regarding the extrinsic requirements of the act". The aforementioned paragraph 1 could be seen as a basis for the cumulative applicability of the legal system in Brazil. However, Cláudia Lima Marques[49] teaches that §2 is of value for electronic commerce, since it applies to distance contracts or contracts between absentees.

Thus, the law of the bidder's country would be used, which would not be consistent with consumer protection, considered a fundamental right and of public order by national law, as well as with Brazilian private international law.

With regard to the above, it is clear that international trade is increasingly using the electronic medium, which is important for Digital Law. This, because in addition

44 AMORIM, Edgar Carlos de. Private International Law. Rio and Janeiro: Forense, 2001, p. 04.

45 MARQUES, Claudia Lima. Consumer protection of foreign products and services in Brazil: first observations on distance contracts in electronic commerce. Consumer Law Magazine. Sao Paulo: Jan. – March, nº 41, 2002, p. 54.

46 DOLINGER, Jacob. Private International Law: (general part). 6th ed. amp. and current. Rio de Janeiro: Renovar, 2001, p. 05.

47 AMORIM, Edgar Carlos de. Private International Law. Rio and Janeiro: Forense, 2001, p. 6.

48 *Art. 9º To qualify and govern the obligations, the law of the country in which they are constituted will apply.*

49 MARQUES, Claudia Lima. Trust in electronic commerce and consumer protection (a study of legal consumer affairs in electronic commerce). São Paulo: Revista dos Tribunais, 2004, p. 440.

to personal data, there are sensitive data, defined in item II of article 5 of the LGPD as "personal data about racial or ethnic origin, religious conviction, political opinion, union membership or organization of a religious, philosophical or political data, data referring to health or sexual life, genetic or biometric data, when linked to a natural person".

The problem is that, not infrequently, the company that works in e-commerce collects sensitive data to optimize its sales, as it carries out personalized "advertisements" for each consumer, attracting greater responsibilities in the management of this information[50].

The law did not by chance treat these data as sensitive, as they have an impact on people's daily lives; because they concern your individuality as a human being.

Given this, e-commerce companies need to adapt to the LGPD rules,which provides, in its article 6, the principles that guide the owner-controller/operator relationship; so that the controller must demonstrate for what purpose he holds the data and that the type of treatment given to the information is adequate for the purposes informed to the holder, which must be observed at the international level as well, in accordance with an extensive interpretation of the treaties themselves that deal with matters of human rights[51].

Linked to this, it is obvious that the countries that stand out the most for their technological capacity are those with the greatest potential for profit and, consequently, GDP growth, since technology and profitability are terms that increasingly go hand in hand. This is essential to the study and understanding of geopolitics, since many conflicts stem precisely from this competitiveness.

THE CIVIL LIABILITY OF INTERNET PROVIDERS

As for civil liability, its main assumption is the existence of a causal link between the act and the damage produced, as provided for in arts. 186 and 927 of the Brazilian Civil Code.

Initially, the civil liability of access providers will be addressed. As seen previously, access providers are companies whose purpose is to provide content transmission services. They feature the provision of internet connection service and are similar to telecommunication systems.

Considering that access providers are companies that provide services to their users, it must be characterized as a consumer relationship. Thus, it is up to these companies to provide an efficient, safe and continuous service, that is, the provision of a service must be of quality, corresponding to what was contracted by the user. (LEONARDI, 2003, p. 66).

Or, in the words of the Minister of the Superior Court of Justice, Nancy Andrighi, rapporteur on special appeal nº 1.193.764 – SP (2010/0084512-0) defines an access provider as a provider that acquires the infrastructure of backbone providers and resells it to end users, enabling them to connect to the Internet.

Thus, characterizing the consumer relationship, in light of the law, the parties base their defense on the Consumer Defense Code - Law 8.078/90. Observing the consumption ratio, the access provider is civilly liable for damages caused to the user, for the poor provision of the service or for a service that the user did not contract.

A classic example of this is the contracting of a certain data transmission speed configuration, but the provider does not release the amount contracted by the user, or

50 LORENZETTI, Ricardo L. E-commerce. Translated by Fabiano Menke; with notes by Claudia Lima Marques. São Paulo: Revista dos Tribunais, 2004, p. 338.

51 LORENZETTI, Ricardo L. E-commerce. Translated by Fabiano Menke; with notes by Claudia Lima Marques. São Paulo: Revista dos Tribunais, 2004, p. 338.

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the temporary or permanent interruption of services without prior notice, which ends up causing losses to customers.

For Leonardi, the responsibility of the provider for the damage caused depends on the activity that the client performs, as he comments in his work:

> The extent of damage caused will depend on the activity of the consumer contracting the services and the consequences arising from the defect. For example, if important data is no longer transmitted, causing the loss of business or deadlines, the access provider must fully repair the financial and moral damage that may exist, provided that it is established that it was not possible to transmit the information by other means. (LEONARDI, 2011, p. 66).

It is up to the injured party to demonstrate concretely the existence of the damage suffered, as well as the causal link between the poor provision of the service by the provider, through evidence and arguments to substantiate a possible claim for compensation for the damage suffered. In other words, if there is a characterization of the relationship between the provision of the service and the user, the provider is liable for damages caused to the injured party by the poor or no provision of the service, even if for some reason the poor provision of the service was due to reasons of failure in some component of the server, thus guarantees the Consumer Protection Code in its art. 25, §2.

However, periodic maintenance is extremely necessary for adequate service delivery. This way, the civil liability on the part of the access provider is objective, as the services depend solely and exclusively on the acts performed (LEONARDI, 2003).

From another point of view, it is also necessary to ascertain the civil liability of access providers regarding the conduct of users. Thus, an analysis is made of the possibility of prior monitoring by providers to prevent bad browsing habits by users and possible violations of third party rights. (VARGAS, 2011, p. 2).

Leonardi, (2003, p. 97), defines an access provider as the company that provides users with equipment that enables access to the Internet. The purpose of the provider is the transmission of information, but it does not have any type of editing control in its context, not even control over the information that travels through its equipment. Therefore, in principle, the access provider cannot be held responsible for such information.

According to Grego, (2001, p. 183 apud Leonardi, 2003, p. 97), the access provider is similar to the telecommunication system, because it can only control the flow of messages and everything related to the provision of the service. service, but does not have the power to verify every piece of content that is passed through their systems, as is the case with telephone companies, which also do not have the power to verify the content of every conversation that is transmitted over their network.

Therefore, when the provider acts as a conduit for information traffic, it can be equated with telecommunications companies, as it is exempt from any liability for defamatory messages transmitted over the network. This is due to the fact that he cannot be compelled to inspect the content of each message, whose transmission has no participation, nor has any possibility of control[52].

However, if the provider has some type of editorial control, the responsibility of the provider is characterized, similar to other traditional media[53]. (PINHEIRO, 2011, p. 103).

Still following from the point of view

52 ZANCHET, Maria. Consumer protection in Brazilian Private International Law. Consumer Law Magazine. São Paulo: April – June, nº 62, 2007.
53 PINHEIRO, Patricia Peck. Digital law. 4. ed. São Paulo Saraiva, 2011.

of non-responsibility of access providers. Vargas (2011, p. 4), analyzes from a technical perspective the defensive thesis that providers are not held accountable to users for the technical impossibility of controlling the large number of users connected to the internet in Brazil. This argument is used due to the lack of responsibility on the part of the providers regarding the publication of content by the users, however, for the law, statistics, graphs or surveys are not taken into consideration, it is necessary to analyze the nature of the legal obligations on the part of providers and their users according to their conduct[54].

In short, internet access providers cannot be held liable for acts committed by their users. However, the provider can and must be held responsible when it is hired by an individual or legal entity and does not comply with what was agreed in the service provision contract, when, for example, the provision of service is of poor quality or is not what is regulated in the contract. Therefore, if proven breach of contract, the provider will be liable for damages arising from its conduct. We proceed to investigate the civil liability of service providers.

They are also mere transmitters of content, since they provide services related to the operation of the internet, make computer equipment available to customers to store information, in addition to providing services such as e-mail, search tools, web hosting, between others. In theory, access providers can also be classified as service providers, as the internet opens several doors for the growth of relationships and contributes to the prosperity of businesses (BIONI, 2019).

However, as the access provider is a prerequisite for the development of other activities, being the link between users, services and the internet, the doctrine opted to print a differentiated treatment for the category of service providers, because through It is from the access providers that services emerge. (VARGAS, 2011, p.4).

After this analysis, it is clear that there is a need to monitor the circulation of data through the internet and digital platforms, something that could be done through the UN and its sectors linked to Human Rights, since the purpose of this control is precisely the respect for individual freedoms and cultures of each people, as well as non-discrimination against human beings through the manipulation of their genetic data.

TRADE AND DIGITAL WAR BETWEEN CHINA AND USA

The US economy is the most advanced in many sectors and the largest. Its GDP in 2018 corresponded to USD 14.3 trillion, which represents approximately 24% of all world wealth. US GDP per capita in 2008 was estimated in USD 47,000 (PPC), placing the country in tenth position in the global ranking. Ahead of it were only countries with small populations or territorial extension, such as Liechtenstein, Luxembourg, Bermuda, Jersey and Singapore[55].

The 1990s were crucial for economic growth and modernization in the US, whose main cost was substantial gains in productivity derived, in part, from the increased use of computers and other advanced technologies in various sectors of the economy.

The weight of the external sector in the US economy is comparatively modest, with exports of goods and services corresponding to only 12% of GDP[56].

54 ZACLIS, Lionel. Alternative view of the nomogenesis of a legal system aimed at consumer protection in international electronic commerce: the so-called “lex electronica”. São Paulo: July – September, nº 43, 2002.

55 LEÃO, Guerra BruNumber Economic Relations between China and the United States: between geopolitics and globalization. São Paulo: CRV, 2012.

56 DREZNZER, Daniel. Can China´s Good Fortune Last? Available inwww.newsweek.com/id/21600.Accessed on 12/23/2020.

In turn, China's popular economy has undergone several changes since the end of the 1970s. The planned system of state production was gradually replaced by productive structures of mixed ownership and wholly private, both in the countryside and in the cities. Likewise, foreign trade underwent reforms, which resulted in the country's accession to the WTO in 2001[57].

Thus, the reforms launched by Deng Xiaoping from 1979 onwards were related to two main basic ideas of the economy: property and foreign trade. It can be said that the country is currently ambiguous, because if, on the one hand, the communist planned economy gave way to capitalist zones, enabling the economic growth of the country, on the other hand, Chinese society is highly monitored and limited by the State, which imposes its power through dictatorship (BIONI, 2019).

One of the most serious consequences of the Chinese state reform is its impact on social security - which includes retirement, pension, housing, health and education for employees and their families-something that has been receding in recent decades. In recent years, for example, Chinese employees and companies must contribute the amount of 3% of wages paid or received to fund the unemployment fund[58].

Starting in 1997, the government implemented incentive programs to attract national and foreign investment to the interior provinces. This increased the country's GDP significantly, despite the shortage of skilled labor and adequate physical infrastructure (ROCHA, 2007).

The trade dispute betweenChina It isU.S has been causing concern around the world since the beginning of 2018, when the US president,donald trump, made the first announcement of tariffs imposed on Chinese products. Since then, there have been attempts at an agreement, new threats and truce negotiations, without the situation reaching a definitive solution. In December 2019, in a first phase of commercial negotiations,the two countries decided to suspend new tariffs on imports[59].

The decision came about two months after Trump announced he was coming.to what would be a "first phase" of a commercial agreement with China. In August of the same year, the dispute moved from announcements and threats of tariffs on imported products to the exchange field.

That's because, in reaction to a new round of US tariffs, China heavily devalued its currency, the yuan, and wasaccused of manipulation.

With the argument that he seeks to protect US producers and reverse the trade deficit that the United States has with China, Trump has been announcing tariffs on products imported from the Asian country since 2018. The objective is to make it difficult for Chinese products to arrive in the United States, which would stimulate domestic production. The Chinese government, in turn, has reacted to these announcements with retaliation, even imposing tariffs on US products (LARDY, 2020).

The United States has the largest economy in the world and China the second. Therefore, if the two countries suffer negative consequences from this dispute, the fear is that other countries and the global economy as a whole could be impacted, in a chain reaction, harming the growth of the global

57 ROCHA, Roberto Silva da. Legal nature of contracts entered into with intermediation sites in electronic commerce. Consumer Law Magazine. São Paulo: January – March, nº 61, 2007.

58 LEÃO, Guerra BruNumber Economic Relations between China and the United States: between geopolitics and globalization. São Paulo: CRV, 2012.

59 LARDY, Nicholas. Integrating China into the Global Economy. Washington, DC: Press, 2020.

Gross Domestic Product (GDP).

In its July report, the International Monetary Fund (IMF) pointed out that world growth continues at a moderate pace in view of the worsening of relations between China and the United States. The concern is with global trade. According to the IMF, in the first quarter of 2019, trade tensions helped trigger a sharp slowdown in emerging Asian economies. "Global technology supply chains have been threatened by the possibility of the United States imposing sanctions" (LARDY, 2020).

In addition to the trade war between the two giants, it is a well-known fact that China has copied Western technology for many decades. However, in recent years it has been developing and investing a lot in technology. To reach the top, the Chinese invested heavily in education. Between 2010 and 2015, they injected 250 billion dollars a year into higher education — carried out both at local universities and by sending students to international institutions (LARDY, 2020).

In terms of entrepreneurship, few nations have produced companies that are as revolutionary as they are successful in a very short period of time. Take DiDi, created by Cheng Wei in 2012 as an example. It quickly became a startup valued at 60 billion dollars and began to gain scale thanks to an artificial intelligence system that collects 70 terabytes of data every day to identify bottlenecks in the transportation system (LARDY, 2020).

Through the above, it is possible to verify the power of China and its potential to, possibly within a few years, become the greatest economic and digital power in the world. This, not only due to its investments, but also due to its huge population that exceeds the impressive number of 1.393 billion (LARDY, 2020).

CHINA AS A NEW GLOBAL ECONOMIC AND DIGITAL POWER

The "made in China" has certainly been left behind. For a long time, China was considered a poor country, with little technology and secondary economy. If for decades China was known for cheap labor and for "copying" products made in the West, the current scenario places it as one of the leading powers in areas such as artificial intelligence, biotechnology, computing and space exploration (LARDY, 2020).

To exemplify its economic power, it is enough to mention its large applications that add dozens of services, such as an e-commerce that delivers in less than 30 minutes and state subsidies for technology. Bottom line: the second largest economy in the world buries the "Designed by China" label[60].

Hangzhou, capital of the coastal province of Zhejiang, located to the east, is one of the great metropolises that reflects the transition from peripheral China to digital China.

It is the hometown of Jack Ma, founder of Alibaba, the sixth largest company in the world, a municipality of 8 million inhabitants. The place has 30 incubators and 16 unicorns-startups worth more than US$ 1 billion (about R$ 3.8 million). Brazil, with 208 million inhabitants, has only 4.[61].

In 2015, the Chinese government inaugurated the city of Dream Town (Dream City), which has an infrastructure of three-square kilometers exclusively for local and foreign entrepreneurs in the field of technology. The site is home to 14,900 people who work in 1,645 startups. The government offers access to the data cloud for a period of three years, housing assistance, training, in addition to an investment fund[62].

60 DREZNZER, Daniel. Can China´s Good Fortune Last? Available inwww.newsweek.com/id/21600.Accessed on 12/23/2020

61 Available at:https://www.diariodocentrodomundo.com.br/quem-e-jack-ma-o-dono-do-grupo-chines-alibaba/. Accessed on 01/02/2021.

62 DREZNZER, Daniel. Can China´s Good Fortune Last? Available inwww.newsweek.com/id/21600.Accessed on 12/23/2020

Furthermore, Dream Town is surrounded by two universities, as well as other research and money institutes. In addition to the state incentive, there are 1,386 private funds that deposit about 136 billion reais (294 billion yuan) in three years (LARDY, 2020).

However, despite all this aggrandizement, one cannot lose sight of the fact that China is a republiccommunistand therefore aims to develop the principles of a socialist society. However, economic practices of a liberal nature are observed in the country – considered by many to be capitalist. The Communist Party, created in 1921, has been at the head of the Chinese government since 1949. The government is based on the performance of a single party, not allowing the existence of others (LARDY, 2020).

Thus, the contradiction of China is evident. Because, if on the one hand it adopts specific locations for private enterprises and trades with different countries, on the other hand it is based on a dictatorship marked by a history of much blood and genocide. If the Chinese elite is extremely rich, the majority of the population is still very poor and needy. While the GDP per capita in the USA is 62,794.59 USD, that of China is only 9,770.85 USD (LARDY, 2020).

China's stance towards international transparency, as well as its aerospace and biotechnology investment projects, is questionable, the most recent example being the spread of Covid-19.[63]. The country violates Human Rights, because in addition to the persecution of government opponents, there is the institutionalization of work analogous to slavery and disrespect for the environment. These are the reasons why many countries invest in China, since labor is still cheap, there are no strict rules to protect workers, as well as environmental legislation that is respected or enforced.

Thus, for the purpose of this work, the idea of holding China accountable for non-transparency and communication with the international community about the new Corona Virus will be developed.

VIRAL DATA HANDLING AND THE COVID-19 ISSUE

A new coronavirus appeared in the city of Wuhan, China, in December 2019 and is changing the world as it was known. The coronavirus, SARS-CoV-2, is a very diffuse respiratory transmission virus that causes the disease called Covid-19 (MINISTRY OF HEALTH, 2020). Because it is a highly transmissible virus, in a globalized world society, the disease spreads rapidly across several countries, infecting thousands of people and causing deaths.

China, as everyone knows, is a global leader in technology, mobile applications and artificial intelligence and to contain the crisis caused by the coronavirus, it has used many of these resources to collect, process and store personal data of infected people or suspected of having been infected. without obtaining express consent and without providing the necessary clarifications about the purpose of your treatment (DREZNZER, 2020).

Due to the pandemic, China has greatly increased the amount of personal and sensitive data collected without proper authorization, as revealed by the Chinese newspaper South China Morning Post in an article entitled Coronavirus accelerates China's big data collection, but privacy concerns remain.

With the exponential increase in the processing of personal data, the concern for privacy has also increased, as the massive collection, treatment and disclosure are unauthorized or without the necessary clarifications and necessary care with the handling of health data (sensitive data),

63 Agent viral causative in disease, in Special, breathing. Available in < https://www.minhavida.com.br/saude/temas/novo-coronavirus>.

can generate a discriminatory wave against carriers of the virus as well as those who are still waiting for the result and confirmation of laboratory tests (BIONI, 2019).

As already mentioned in the first part of this work, in Brazil, the General Data Protection Law (Law 13.709/18), which came into force in August 2020, provides for the protection of personal data and sensitive data, based on the premise protection of privacy and intimacy as fundamental rights.

In this sense, the Federal Constitution of 1988, the right to information, in all its dimensions, is contemplated in article 5, items IV, X, XII, XIV, XXXIII, XXXIV, LX, LXXII; in article 37, paragraph 3, item II; article 93, item IX; article 216, paragraph 2; and article 220 (BRAZIL, 2020c). This right is also expressed in the Human Rights treaties that have been ratified by Brazil.

Thus, as a fundamental right, it is a citizenship right, endowed with the quality of a subjective right, directly enforceable against the State (SARLET and MOLINARO, 2014, pp. 15-16). It is, therefore, an essential right for the exercise of citizenship in so-called democratic societies. There is no democracy without information and information is linked to freedom.

Therefore, health data are considered sensitive data and as such must be protected, even if Brazilian law itself establishes in its article 11, II, "e" and "f" that the processing of sensitive data may occur without the consent of the holder when intended for the protection of life or physical safety of the holder and third parties or when intended for the protection of health.

However, even in the above hypothesis, holders must be aware of the existence of the processing of their personal data and what will be done with them, as well as where they will be stored and who will be in charge or responsible for them (BIONI, 2019).

Technology provides tools for data protection and it is extremely important to involve the Law in handling it safely when the challenge is about people. The same relationship is made in the performance of Law in the use of technologies, especially in the misuse of data (BIONI, 2020).

In order for people to be aware of the culture in relation to electronic media, it is essential to adopt policies, notices, lectures and training aimed at understanding Information Security.

The issue that seems to have shaken the international community the most was distrust of China's posture and transparency in the face of information about the virus and the pandemic. This is just another issue that afflicts contemporary geopolitics and that reaffirms the importance of data protection and the honesty and reliability of information and news conveyed through digital means (DREZNZER, 2020).

POSSIBLE RESPONSIBILITY OF CHINA FOR THE DISSEMINATION OF THE NEW CORONA VIRUS

It must be noted, from the outset, that all analysis focuses on investigating how China eventually violated the WHO International Health Regulations (2005) and the Organization's Constitution itself, withholding important data.

In the first place, it is the obligation of every State to inform the WHO of anomalous situations that occur in its territories related to human health, a duty that is expressed in art. 7 of the Regulation, whose wording — in the best hard law style — is direct and imperative, in the following terms:

*If a State Party has evidence of an unexpected or unusual public health event within its territory,*regardless of its origin or source, which may constitute a public health emergency of international concern, it will provide all relevant public health information

to WHO. In that case, the provisions of Article 6 apply in full.

The provision requires States to provide WHO with relevant public health information regardless of the origin or source of the unexpected or unusual event occurring within their territories that may constitute a public health emergency of international concern. And, the aforementioned article 6, gives a period of 24 hours for this communication to be carried out.

Thus, the question that arises is whether China warned the world health authority — the WHO — by "the most efficient means of communication available" and "within 24 hours of the evaluation of public health information" about all events in its territory that could constitute a public health emergency of international importance, pursuant to art. 6 of the Regulation.

Press reports report that China took much longer than anticipated to share its internal information internationally[64]. The omissive conduct of the Chinese government, therefore, would be violating the obligation to inform provided for in art. 7 of the Regulation, since "all relevant public health information to the WHO" was not provided, as determined by the device.

Therefore, the obvious conclusion is that the People's Republic of China had violated a conventional international norm (hard law) by not informing the World Health Organization — within the period determined by the International Health Regulations and without due diligence — of the epidemic The initial outbreak (and subsequent pandemic) emerged in Wuhan, Hubei province, leading to the spread of the virus outside of China and the world's lack of knowledge about its symptoms and effects[65].

The Chinese lack of diligence, as widely reported in the international press, has resulted in human and economic losses for several States.

The legal issue, however, is that only the WHO Constitution — and not the International Health Regulations — provides for recourse to the International Court of Justice, and therefore, China's responsibility would have to be linked to the commandment of the WHO Constitution, albeit via the International Health Regulations. In fact, as provided in art. 75 of the WHO Constitution:

> Any question or difference concerning the interpretation or application of this Constitution which is not resolved by negotiations or by the Health Assembly shall be submitted to the International Court of Justice, in accordance with the Statute of that Court, unless the parties concerned agree otherwise.

The International Court of Justice (The Hague) has already recognized the validity of art. 75 of the WHO Constitution in § 99 of the 2002 Case of Armed Conflicts in the Territory of Congo (Democratic Republic of Congo v. Rwanda).

> The Court observes that the Democratic Republic of the Congo has been a party to the WHO Constitution since 24 February 1961, and Rwanda since 7 November 1962, and that both are members of that Organization. The Court also observes that Article 75 of the WHO Constitution provides, under the conditions provided for in that provision, the competence of the Court to hear "any question or divergence concerning the interpretation or application" of this instrument. That provision requires that such question or dispute concern the interpretation or application of this particular Constitution.

The whole difficulty lies in finding in the

64 Available in: https://valorinveste.globo.com/mercados/internacional-e- commodities/noticia/2020/06/02/china-slow-to-share-information-about-covid-19-with-who- say-agency.ghtml.Accessed on 04/01/2021.

65 Available in:https://www.direitonews.com.br/2020/04/responsabilizar-china-corte-internacional- covid-19.html.Accessed on 03/04/2021.

very text of the W.H.O. Constitution objective obligations to States to safeguard health in cases of transnational pandemics, such as those contained in the International Health Regulations of 2005. All of this leads to uncertainties about the possibility of a State to demand the China at the International Court of Justice for the Covid-19 pandemic.

It must be noted that the WHO Constitution expressly attributes to the Health Assembly the authority to adopt regulations relating to sanitary and quarantine measures and other procedures aimed at preventing the international spread of diseases (art. 21). And thus, a possible link and an open door would exist for the harmed States (despite the political difficulties of this action) to sue China before the International Justice (DREZNZER, 2020).

In addition, the obligation to comply with the regulations of the World Health Assembly also entails that States, under the terms of art. 62 of the WHO Constitution, the duty to submit "annually a report on the measures taken in relation to the recommendations made to it by the Organization and in relation to the conventions, agreements and regulations". In fact, it would make no sense for the rule to require States to submit annual reports if it were not to exercise its role as an international body for monitoring global health issues[66].

Finally, the hypothesis of the use, by China, of the institute of "force majeure" as an exclusion of illegality is also suggested here. The institute of force majeure is foreseen by the Project (Draft) of the UN Convention on the international responsibility of States for unlawful acts, in the following terms (art. 31, paragraph 1):

> The unlawfulness of an act of a State in breach of an international obligation of that State shall be excluded if the act is given by reason of force majeure, understood as the occurrence of an irresistible force or an unpredictable event, beyond the control of the State, making it materially impossible, in this circumstance, to fulfill the obligation.

However, there will be no exclusion of State liability if (a) the irresistible or unforeseen situation is due, by itself or in combination with other factors, to the conduct of the State that invokes it, or (b) if the State has assumed the risk of the occurrence of the situation (art. 23, § 2).

Could force majeure be claimed by China as an exclusion of unlawfulness in the case of Covid-19?

The entire analysis, evidently, involves knowing whether or not the epidemic that appeared in that country was under the control of the Chinese State. In fact, even if it is understood that China was responsible for the delay in disclosing information about what happened in its territory, this would not rule out the possibility of an exclusion of unlawfulness (force majeure) if it proves that, even with knowledge of the entire situation presented, the force of the harmful event (initial epidemic and subsequent pandemic) would be irresistible in terms of the State's conditions to effectively control all person-to-person infections caused by Covid-19.[67].

The issue is extremely complex and, at first sight, the argument that, even having violated the International Health Regulations, the People's Republic of China would not be able to control a transnational pandemic of these propositions, given the capacity of the new coronavirus (Sars- Cov-2) to proliferate very easily among humans.

The irresistible force caused by the spread of the pandemic — even if there was immediate communication of the fact, following all

66 NETO, Cretella José. Public International Law. São Paulo: Revista dos Tribunais, 2019.

67 Available in: https://valorinveste.globo.com/mercados/internacional-e- commodities/noticia/2020/06/02/china-slow-to-share-information-about-covid-19-with-who- say-agency.ghtml.Accessed on 04/01/2021.

WHO rules and protocols — would lead to the exclusion (hypothesis) of responsibility due to an event beyond the control of the State.

In other words, it would be difficult to impute causality (causal link) to China due to the fleeting expansion of the pandemic.

It is worth mentioning, by the way, the case of the HIV[68] virus, which originated from the SIV virus found in the immune system of chimpanzees and the African green monkey, probably transmitted to humans with the domestication of chimpanzees and green monkeys in tribes in central- West Africa and spread to the rest of the planet from the 1960s and 70s.

On the other hand, it is no less true that the lack of information from China regarding the epidemic (in violation of the respective international norm) could make the rule of art. 23, paragraph 2, b, of the UN Convention Project, which prevents the exclusion of force majeure "if the State has assumed the risk of the occurrence of the situation".

As a result of this rule, when the State accepts the risk of the harmful situation occurring, due to its previous conduct or unilateral act, it cannot benefit from force majeure in order to exclude the illegality of the act (DREZNZER, 2020).

Therefore, a possible liability of China in relation to the Covid-19 pandemic is possible, in view of its violation of the World Health Organization Regulations. However, this is a delicate issue that is difficult to prove, but it demonstrates how harmful data manipulation can be, after all, the new Corona Virus seems to be here to stay and, with it, changing viral data and collapse in the health system of several countries.

The big issue that arises is international insecurity, since a lot of information is passed on without a "filter", so that one lies or denies the other.

An example is what was published on social media, news that claimed that many who took the Coronavac vaccine did not have antibodies at measurable levels.

The question remains: was it a wind vaccine, the vaccine has problems, the virus was "smart", China and the Brazilian government are hiding information, the Butantan Institute was wrong in the analysis, people in the health area did not know how to apply the vaccine, or is the journal biased and divulging conjectures?

There are so many variables and unreliable agents. For the Brazilian people and the international community, the only thing left is the use of masks, gel alcohol, isolation and hope.

In any case, it is evident how important the correct dissemination of information is, including viral and statistical data, since in the face of the unknown, little or nothing can be done.

DATA HANDLING IN FRONT OF HUMAN RIGHTS

Advances in the biotechnological and genomic spheres have been increasing since the 20th century, raising the need to enable effective protection of the dignity of the human person and intervention in the human genome that aims to introduce a modification in the genome of future generations (DINIZ, 2011).

It cannot be forgotten that research and work in the area of genetic manipulation have brought significant advances in terms of quality of life and essentially as a means of guaranteeing health (DINIZ, 2011).

In this sense, as Hammerschmidt[69] asserts, a ban on genetic manipulation is not justified in order to prevent the use of the progress it entails in terms of maintaining life.

Genetic data define relevant and unique

68 Disease causing agent. Available in:https://antigo.saude.gov.br/saude-de-az/aids-hiv. Accessed on 05/25/2021.

69 HAMMERSCHMIDT D. 2005. Some aspects of information, privacy and genetic discretion in the international legal context.

characteristics not only of individuals, but also of their ancestors and descendants. It is not, therefore, a human right related only to health, but also to the environmental issue, as it defines the human being as a species, describing the common bonds of humanity[70].

The protection of human genetic data is the protection of the genetic heritage itself and the continuity of the species in dignified conditions (DINIZ, 2011).

Still regarding the environmental impact, to safeguard the rights of future generations, biodiversity is part of the international human rights protection system and the Brazilian constitutional system as a fundamental right[71].

Genetic heritage is legally defined as: "information of genetic origin of plant, animal, microbial or species of another nature, including substances derived from the metabolism of these living beings". (Law n. 13.123/2015, art. 2, I)

It must be noted that this concept refers to genetic data in a broad way, whether obtained directly from DNA or RNA, or obtained from other material that contains genetic information.

Law Number 13,123/2015 now regulates access to genetic heritage and associated traditional knowledge aimed at research and technological development. The law also addresses the issue of sharing the benefits arising from the economic exploitation of products or reproductive material developed through access to the national genetic heritage and associated traditional knowledge[72].

It is important to point out that Law nº 13.123/2015 promoted significant modifications and updates to the national regulatory framework, making access to genetic heritage and associated traditional knowledge less bureaucratic.

Human genetic data can generate discriminatory social characterizations, with the distinction of individuals whose genetic analysis identified the possibility of developing genetic diseases from the rest of society, a plausible example being the requirement of genetic analysis for the individual to exercise a certain profession or assume a certain position[73].

There are some international documents that seek to promote protection of scientific progress, without forgetting the protection of human genetic material and, above all, without jeopardizing human rights[74].

It is extremely important that the use of the individual's genetic heritage can be safeguarded and that the means of study and progress do not exceed respect for life and genetic intimacy (LIMA, 2008).

We turn to the analysis of the Universal Declaration on the Human Genome and Human Rights.

As early as Article 1, the human genome, expressed as the basis of the fundamental unit of the human species, is classified as a heritage of humanity.

Concerned about possible discrimination, this Declaration establishes the need to guarantee respect for dignity and human rights, regardless of the individual's genetic characteristics. Such characteristics do

Revista dos Tribunais, São Paulo, year 94, v. 837, p. 11-42.

70 GAMA, Guilherme Calmon Nogueira. The new affiliation: biolaw and parental relationships: the establishment of parenthood-affiliation and the legal effects of heterologous assisted reproduction. Rio de Janeiro: Renew, 2003.

71 SARMENTO, Daniel. The weighting of interests in the Federal Constitution. 1 ed. 3 print run. Rio de Janeiro: Lúmen Juris, 2003.

72 LEITE, Eduardo de Oliveira. Artificial procreations and the law: medical, religious, psychological, ethical and legal aspects. São Paulo: Editora Revista dos Tribunais, 1995.

73 ANDRADE, André Gustavo Corrêa de. The fundamental principle of human dignity and its judicial implementation. São Paulo: Magazine of the courts, 2015.

74 LIMA NETTO, Francisco Vieira. The right not to suffer genetic discrimination a new expression of personality rights. Rio de Janeiro: Lúmen Juris, 2008

not represent the totality of man, a unique and unrepeatable being, which cannot be represented only biologically (DINIZ, 2011; NETO, 2019).

As for the characteristics of the human genome, the document cites evolution and non-commerciality. It is evolutionary, as it is subject to mutations and is considered res extra commercium, and its negotiation must be prohibited (DINIZ, 2011).

For research, treatment and diagnosis that intervene in the human genome, Article 5 incorporates the principles of beneficence and autonomy, determining the prior assessment of the risks and benefits of the intervention, as well as the need for prior, free and informed consent of the people involved.

Nobody must be subjected to discrimination based on their genetic characteristics. In addition, genetic data that may identify the individual must be kept confidential[75]. And any damage suffered as a result of the intervention in the genome is subject to reparation of an indemnity nature (articles 6, 7, 8).

Human genetic data make up the complex structure of identifying an individual, presenting information from the analysis of their DNA. This genetic information determines the functioning of the entire organism, but, as already mentioned in Article 3 of the International Declaration on Human Genetic Data, it is only one component of identity[76].

Genetic data is information obtained, or obtainable, from human DNA and RNA. Legal protection is not present only when genetic material is transformed into information; the mere potentiality of becoming information already produces legal effects. Thus, it is not necessary for anyone to become aware of the information, the mere potentiality of it existing may, in the concrete case, be legally relevant. For this reason, genetic intimacy is protected or the individual is guaranteed the possibility of refusing genetic analysis[77].

Thus, genetic data and genetic material do not coincide; that is the result of its transformation into information or, at least, the potential to transform the genetic material into information.

Thus, the continuation of this chapter about the importance of genetic data in accordance with Human Rights will be better developed in the third part of this work, but it deserves attention right now, since the dissemination and commercialization of genetic data is a topic that directly impacts the development of humanity and the primary constitution of the human being, which can be used for positive purposes, such as advances in health, and for repulsive purposes, such as decriminalization and genetic exclusion (DINIZ, 2011).

Brazilian doctrine invokes the category of “diffuse interests” for the protection of certain transindividual situations. These are interests that have the following characteristics: the indeterminability of their holders; absence of a previous legal relationship, what unites them is only a factual circumstance; and heterogeneous, as they lack organizational linkage, and the holders are circumstantially united (RODRIGUES, 2015)[78].

Thus, in addition to protecting people born, diffuse rights would fulfill the noble function of “protecting future generations, preventing their interests from being affected by present actions, in disrespect to the ideal of justice[79].

75 PETERLLE, Selma. R. The Fundamental Right of Genetic Identity in the Brazilian Constitution. Porto Alegre. Lawyer’s Bookstore: 2007.

76 REICH, Warren. Encyclopedia of Bioethics. 2nd edition New York: MacMilan, 1995.

77 FRAGA, Ivana de Oliveira. Violation of genetic identity, intimacy and originality as an affront to the rights of the individual’s personality. Magazine of the Graduate Program in Law at ``Universidade Federal da Bahia``. Number 20, year 2010.1.

78 RODRIGUES MA. 2015. Systematized environmental law. Sao Paulo: Saraiva

79 RAMOS A, VG FF. 2015. Human Life-From Genetic Manipulation to Neogeny. Rio de Janeiro: Lumen Juris.

It is noticed that the diffuse law carries a strong ethical bias, however it runs the risk of moving away from the Law, if it does not have a normative reference (ANDRADE, 2015).

Legal norms come from different interests. In the legislative process, personal and group interests influence the elaboration of the norm. Contemporary democracy is guaranteed by the access of multiple values and interests. However, it is important to understand that these interests are not legal elements, but factual, meta-legal elements, referring to an animic or political aspect (ANDRADE, 2015).

Interests are values, that is, social, economic, religious and political elements linked to the usefulness they play in people's lives. They are facts and not norms and, as such, they can be part of the content of the legal norm, but they are not legal elements that can affect the concrete case. With that, your location is in the world of Moral[80].

It is impossible to conceive interest as a legal situation. It is a factual situation. Part of the Brazilian doctrine has erroneously classified the situation of environmental protection as a diffuse interest. With this, the focus of the discourse shifts to a value that extends to all humanity, including future generations. The fallacy of generalizing values creates a false legal situation of interest, which, in fact, corresponds to a fundamental right - a fundamental subjective right to the environment. There is, therefore, a sphere of freedom, consisting of the intention to act on behavior that threatens or harms the environment, and guaranteed by the legal system (ANDRADE, 2015).

To bring the argument to the case of genetic data, it can be said that, legally, what differentiates the fundamental right to the environment from so many others is, only, the legitimacy that many people can apply for the protection of human genetic data. Interest is not a legal element capable of assisting in this distinction and, moreover, its application is dangerous, as it can lead man to a state of authoritarianism justified by a pseudo-legal discourse (ANDRADE, 2015; DINIZ, 2011).

Finally, the genetic heritage is a fundamental right based on the dignity of the human person and the environment and not on the current idea in Brazil of diffuse interests. Diffuse interest, in isolation, brings the disadvantages pointed out by Habermas regarding Morality, including operational deficiencies. Legally, the interest only makes sense if connected to a fundamental right.

CONCLUSION OF THE SECOND PART

As explained above, economic, political, personal and genetic data are vectors of development in several states, since the advancement of technologies improves the quality and life expectancy of certain people.

However, the international scenario presents a series of conflicts, which range from secular ideological disputes to new issues, such as the rise of data manipulation systems.

Thus, technological and digital advancement is, at the same time, a relief to the anxieties of the present and the hope of a better future, as well as a growing dystopia that encompasses greater discrimination in disrespect for Human Rights.

Regulatory and supervisory measures in the face of these atrocities must be taken by the entire international community, in order to preserve balance and global development and the dignity of the human person.

INTRODUCTION OF THE THIRD PART

The development of genetics, with the discovery of the structure of human DNA, conducted through the Human Genome Project, expanded the range of possibilities

80 REALE, Miguel. Philosophy of law. 20. ed. São Paulo: Editora Saraiva, 2002, p 139 and ss.

regarding the performance of diagnoses, making it possible to predict the future health of an individual. Despite the numerous benefits arising from the Human Genome Project, negative consequences, never imagined for social relations, also revealed themselves.

The present work seeks to present the need to relate biomedicine and genetic engineering with the Law and the protection of its data, showing that, in order to have a better quality of life for all individuals, both must go hand in hand.

In order for citizens to be guaranteed genetic security, regardless of their physical characteristics, their integrity must be respected. Thus, it will be explored how the protection of the right to biosafety is very important for the maintenance of the genetic heritage of humanity.

In addition, the present study aims to carry out an analysis of the development of scientific research in the field of genetic manipulation, in particular genetic engineering techniques, their viability and potential in view of the Principle of Human Dignity and the ethical and legal implications that permeate this biotechnology.

For the development of the study, the approach method used was qualitative, since a universe of meanings, concepts, motives and values was observed, which guide the social reality of scientific research, starting from general premises to reach the particularities of the specific case.

As for the level, the research fits into the exploratory field, since it involves an in-depth bibliographical survey regarding the problem in question and aims to improve ideas, in order to obtain precise considerations about genetic manipulation with human beings.

BIOETHICS AND ITS SOCIAL CONSTRUCTION

At first, it is important to emphasize that we will not discuss in detail the history and emergence of bioethics, however, as it is considered a recent topic, especially within the legal framework, it is essential to address some concepts and ideals brought by some authors on the subject studied.

Thus, initially, the aim is to contextualize this multidisciplinary discipline known as Bioethics, only then to analyze the principled question that governs it.

In 1971 Van Renssealer Potter, a biologist and researcher at the University of Wisconsin, Madison, used the term Bioethics for the first time when publishing his work Bioethics-Bridge to the Future[81], in January 1971. The aforementioned author stated that through this new discipline the human species would have a better quality of life in the face of unbridled technological advances. This way, Bioethics would become the science that would ensure the survival/dignity of humanity. (MANSO, 2004)

Although there are many definitions for the term, there is no uniform consensus on a universal concept for Bioethics. Including, there are still those who find it difficult to define it. However, there is agreement on considering bioethics as ethics applied to life. (DURANT, 1995, apud OLIVEIRA, 2001).

In this context, Alves and Costa (2011) teach that: "among the various practices of bioethics, therapeutic activities in a broad sense stand out, involving any and all exercise of the professional relationships of technicians specialized in health and disease, as well as users of the new biomedical techniques".

There is no doubt that the phenomenon of Bioethics, interpreted as an ethical concern, in its correlation with the progress of the life sciences, is a novelty, however, quite

81 Potter, Van Rensselaer. Bioethics: Bridge to the future. Englewood Cliffs, NJ Prentice-Hall, 1971

diversified in its development, manifesting in the conditions of origin a strong defense of the human person, in his individuality and universality.

About the object of bioethics, says Ségun (2001, apud ALVES; COSTA, 2011):

> [...] the objective of bioethics is to ensure that all medical interventions are carried out within ethical standards and respect for human dignity, from those performed in the initial process of life, such as in vitro fertilization, to those that culminate in the extinction of the person. Bioethics seeks moral answers to technical questions from medicine and biology with an educational nature, guaranteeing access to information and raising the general public's awareness of these issues.

In summary, Potter states:

> this phenomenon of knowledge aims to assist humanity in terms of rational, cautious participation in the context of biological and cultural evolution, serving as a means of access between science and humanity, highlighting two essential elements for a new wisdom: knowledge biological and human values. (POTTER, 1971, apud ALVES; COSTA, 2011)

Roy (1979, apud OLIVEIRA, 2001) assured that bioethics is: "the interdisciplinary study of the set of conditions required for a responsible administration of human life, or of the human person, in view of the rapid and complex progress of knowledge and technologies biomedical".

The growth of biomedical sciences, life sciences and the humanities made Bioethics rise to the condition of an autonomous discipline, which, for Bellino (1997), represented "a field of knowledge", a multidisciplinary territory, in the face of the ethical conflict that arose from legal, philosophical, medical, genetic issues, among others. (PORTIUNCULA, 2014)

In this context, it is noteworthy that one of the greatest subsidies for the growth of this discipline, both in practical application and in the expansion of its areas beyond US borders, was born from the discussion about the ethical conflicts that involved scientific research with human beings. (ALMEIDA, 2000; POTTER, 1971 apud COSTA; GAMA et al, 1997)

It was in the period between the 1940s and 1970s that bioethics began to gain strength, as a result of biomedical and scientific experiments with human beings that were carried out at the time without major limitations, without ethical guidelines, guided only by medicine itself. Many of these experiments were based on laws that despised individuals considered second class (mentally ill, elderly, physically disabled, prisoners), giving impression to international communities of practices similar to those of Nazi Germany. (PORTIUNCULA, 2014)

Therefore, it was in this historical context that Bioethics emerged, with the objective, initially, of balancing the existing conflict between law, ethics and medical science.

In view of the reaction of the American population to the dissemination of scientific research carried out in that country in the early 1970s in the biomedical area, that is, in the face of a scenario marked by the urgent need to curb or at least limit scientific research with human beings and to In order to protect human dignity, the US government created, in 1974, the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (PESSINI; BARCHIFONTAINE, 2000; MELLO et al, 2003 apud MANSO, 2004).

This Commission, according to Maia (2017): "was intended to carry out a research and a complete study that would identify the basic ethical principles that must guide experimentation, in human beings, in the behavioral sciences and in biomedicine."

Faced with the need to identify and establish the basic ethical principles guiding research with human beings, among the

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works of this Commission, which presented ideas and conclusions on the guiding points of the scientific research carried out, the report by Belmonte Reporte appeared in 1978, responsible for defining what are the fundamental ethical principles and guidelines of Bioethics to guide research involving human beings. (MAIA, 2017)

Thus, in this report, the Commission defined the three fundamental and guiding principles of scientific research, which would serve as a basis for their ethics: respect for people, also known as the principle of autonomy, the principle of beneficence, and the principle of justice. (MANSO, 2004)

However, there are authors who subdivide the principle of beneficence into two: beneficence and non-maleficence, thus establishing four fundamental principles that serve as a theoretical framework for Bioethics. (MAIA, 2017)

BIOETHICS AND ITS UNIVERSAL PRINCIPLES

In order to better understand the subject, let us now move on to an objective analysis of the principles that govern bioethics.

PRINCIPLE OF AUTONOMY

The principle of autonomy is linked to respect for the human person, refers to the individual right and self-determination, which exercises harmony with its moral values, and is therefore a corollary of the fundamental right to freedom.

It is by Marco Segre defined as:

> [...] the capacity for self-government, a quality inherent in rational beings that allows them to choose and act in a thoughtful way, based on a personal appreciation of future possibilities, evaluated in terms of their own value systems. "From this point of view, autonomy is a quality that emanates from the ability of human beings to think, feel and issue judgments about what they consider good" (1991, p. 1).

It is prudent to mention, however, that the mere recognition of a human being as autonomous does not mean assuring him the right to act in accordance with his moral standards, an end only attainable when, more than simply recognized, his autonomy is respected, as Tom L. Beauchamp and James Childress:

> Being autonomous is not the same thing as being respected as an autonomous agent. Respecting an autonomous agent is, at the very least, recognizing that person's right to have their opinions, make their choices and act based on personal values and beliefs. This respect involves respectful action, not merely a respectful attitude. [...] In this conception, respect for autonomy implies treating people in a way that enables them to act autonomously, while disrespect involves attitudes and actions that ignore, insult or degrade the autonomy of others and, therefore, deny a minimum equality among people (2002, p. 142-143).

Complements José Roberto Goldim:

> An autonomous person is an individual capable of deliberating about his personal goals and of acting in the direction of this deliberation. Respecting autonomy is to value the consideration of opinions and choices, avoiding, in the same way, the obstruction of their actions, unless they are clearly harmful to other people. Showing a lack of respect for an autonomous agent is disregarding their judgments, denying the individual freedom to act on their judgments, or omitting information necessary for a judgment to be made when there are no compelling reasons to do so (online, 2004).

PRINCIPLE OF BENEFICIENCY AND NON-MALEFICIENCY

Foundations for the practice of Medicine, the principle of beneficence imposes on the medical class the duty to act in favor of the well-being and benefit of the patient, while

non-maleficence "is the principle according to which we must not inflict harm or damage on others" (BEAUCHAMP, 2002, p. 45)[82].

It is from these perspectives that, in the light of the Code of Medical Ethics, therapeutic intervention is justified, even without the patient's authorization, when he is under imminent risk of life, under the terms of the aforementioned articles 46 and 56 of the Code of Medical Ethics and, also, of article 146, §1, I of the Penal Code.

PRINCIPLE OF JUSTICE

The Principle of Justice can be divided into three basic issues, that is, the burden of carrying out scientific research, where all members of society must bear the burden of maintaining research and applying the results, equally and in the same measures. of the possible; the application of resources earmarked for research, which implies a fair and equitable distribution of financial and technical resources for scientific activity and health services, not only for first world countries, but mainly for underdeveloped countries; and the allocation of the practical results obtained from these researches, which science must be applied equally to all members of the human species, and there must be no distinction based on social class or economic capacity of those who need medical treatment[83].

Correlated to the ideal of equality, its assumption is "to treat[r] all people as equal with regard to their essence as people, but different when considering the circumstances in which they find themselves, their merits, existential conditions [...]" (SAUWEN; HRYNIEWICZ, 2008, p. 18).

Since it is evident that not only life in its biological sense must be safeguarded, as man's most important interests are not always exclusively restricted to it - an issue to be addressed in the future; it is urgent to recognize that more than making an effort to promote beneficence - for the simple reason that the beneficial action of one will not necessarily correlate with the good expected by another -, it is prudent to adopt actions that keep unscathed not only the physical life of the individual, but also its intrinsic values that make it one.

Therefore, with several subjects taken up by discussions within the field of bioethics and biolaw, it is necessary to deal with genetic research, since this, despite the potential benefits, can also be used in a contrary and offensive way to the principles and rights fundamental.

DISCRIMINATION GENIC IN SHOCK TO THE INTERNATIONAL PRINCIPLES

Foundations for the practice of Medicine, the principle of beneficence imposes on the medical class the duty to act in favor of the well-being and benefit of the patient, while non-maleficence "is the principle according to which we must not inflict harm or damage on others" (BEAUCHAMP, 2002, p. 45).

Nowadays, with the technical and scientific innovations applied in the health area, with the evolution of biomedicine, genetic engineering and all technological development that achieves incredible results every day, the need arises to discuss the problem of all this scientific progress and its ethical and legal limits.

Our Magna Carta guarantees scientific freedom as one of the fundamental rights. On the other hand, this freedom finds limits when faced with other rights, also fundamental, such as, for example, the dignity of the human person. Therefore, it is not an absolute right,

82 BEAUCHAMP, TL Principles of Ethics and Bioethics. São Paulo: Loyla, 2002.
83 VARELLA, Marcelo Dias; SOURCES, Eliana; ROCHA, Fernando Galvao da. Biosafety and biodiversity: regulatory scientific context. (excerpts) 1st ed., Belo Horizonte: Del Rey, 1998.

and must be limited in the face of other constitutionally recognized legal interests[84].

Faced with the accelerated evolution of biological sciences and also the various ethical discussions on the subject, a need for legal regulation on the subject began to emerge in order to place limits on these researches. With this, bioethics and biolaw arise. Bioethics is a new branch of knowledge, originated by the intertwining of ethical issues with the biological sciences, which analyzes and discusses the changes brought about by the development of biotechnology and the paradigm related to the way health professionals act in the face of these changes[85].

Along the same lines, Welter says that bioethics can be understood as a specialized discipline of general ethics, since it derives much of its foundations from this, but which seeks to solve problems in areas of biological sciences such as biomedicine and biotechnology. It is an important instrument of reflection, which guides action and decision-making in relation to the various issues of the life sciences, protecting man from researchers and from economic and political interests[86].

Biolaw is the branch of law that deals with legal issues related to bioethics, making use of various branches of legal sciences such as civil, constitutional, labor, criminal law, among others., since law cannot exempt itself from disciplining the various issues involving bioethics and biogenetics, and must submit scientific progress to the limits of ethics and law (BEAUCHAMP, 2002).

Anyway, both sciences have the same object of study, but approach different perspectives and analyses. Bioethics is responsible for studying the ethical issues that involve medicine and other biological sciences in relation to society and living beings in general. It is part of general Ethics, therefore, it is also the object of study of Philosophy. Biolaw, on the other hand, is a legal discipline that tries to standardize the conduct and intervention procedures of the biological sciences in the lives of living beings and in society. In any case, bioethics and biolaw must guarantee the dignity of the human person in the face of the development of biological sciences (BEAUCHAMP, 2002).

Due to the absence of Brazilian laws dealing with issues related to human genetic data, many studies are based on international documents that regulate the matter, such as the Universal Declaration on the Human Genome and Human Rights of 1997 and the International Declaration on the 2003 Human Genetic Data. Such statements were legitimized in UNESCO conferences and are based on respect for human dignity and the protection of human rights in procedures involving genetic data and biological samples.

In addition to these more specific statements, when there is a need to create laws to regulate certain facts, the legislator may also take as a basis the Universal Declaration on Bioethics and Human Rights, which seeks to protect rights such as human dignity, life and fundamental freedoms. (SARMENTO, 2003).

The Universal Declaration of the Human Genome and Human Rights was approved in 1997 with the aim of limiting practices related to the human genome internationally and also to encourage the creation of national legislation on the subject by the signatory States. It aims to protect human rights from the application of practices involving the human genome, ensuring that scientific development

84 SARMENTO, Daniel. The weighting of interests in the Federal Constitution. 1 ed. 3 print run. Rio de Janeiro: Lúmen Juris, 2003.

85 FERNANDES, Tycho Brahe. Assisted reproduction in the face of bioethics and biolaw: aspects of family law and inheritance law. Florianopolis ed. Legal Diploma 2000, p. 85

86 WELTER, Belmiro Pedro. Equality between biological and socio-affective affiliations. São Paulo: Editora Revista dos Tribunais, 2003.

does not go against human dignity (NETO, 2019).

In Brazil, the Biosafety Law (Law n. 11.105/2005) is the one that best disciplines safety standards and inspection mechanisms involving genetic material, but it is still insufficient to discipline the subject when it comes to mapping of the human genome. However, there are numerous bills that are related to the matter being discussed in the National Congress, but which are awaiting a vote, such as: Bill (PL) 3.377/00 by Deputy Aloízio Mercadante, which provides for the use and research of the Genome; PL 4,610/98 by Senator Lúcio Alcântara, which defines crimes resulting from genetic discrimination; PL 4,900/99 (prohibits the requirement of genetic tests by health plans) and PL 7,373/06 (protects the person against genetic discrimination) of deputies Eduardo Jorge and Fábio Feldman.

BASIC NOTIONS ABOUT THE HUMAN GENOME AND GENOME PROJECT

The starting point for achieving the knowledge we have today about cell theory and genetics was the creation of the microscope in the mid-17th century, which made it possible for medicine to study cells. But it was from the 19th century onwards, with the studies of Gregor Mendel on genetics, that it was possible to understand the functioning of the transmission of hereditary characters. In addition to Mendel's contributions, other factors such as the discovery of the chromosome by Wilhelm Waldeyer, at the end of the 19th century, the structure and functioning of DNA, by James Watson and Francis Crick, in the mid-20th century, were also important for the development of the genetic study[87].

It was only in 1986, at the US Department of Energy, that there was a meeting to discuss issues related to human genome research and, in particular, genetic mapping and sequencing. As a result, some institutions have shown interest in research in order to develop the greatest project in biology. Then, in 1988, the HUGO (Human Genome Organization) was created, bringing together scientists from different countries with the aim of deepening this research. In addition to this organization, several countries sought to develop genetic research internally, but it was only in 1990 that the Human Genome Project (HGP) was officially created, with the participation of more than fifty countries, including Brazil.

Before talking specifically about the Genome Project, it is important to bring some basic concepts for a better understanding of the subject and the purpose of the HGP (Human Genome Project).

DNA is the English acronym for deoxyribonucleic acid (DNA) which is where the genetic messages with the characteristics of each human being are found. The DNA molecule is structured in two twisted strands that form a double helix. Each of these strands is composed of a different nucleotide sequence (gene). The nucleotide is a part of the DNA strand, containing different types of chemical components (cytosine, thymine, adenine and guanine) that connect through hydrogen bonds. From the sequencing of these components,the DNA will encode and generate the amino acids that will transform into the main substance of the human body, the proteins[88].

The gene is a segment in a series of DNA nucleotides that corresponds to specific information, responsible for generating a certain characteristic in the individual. The chromosome is present in 23 pairs in humans, formed by DNA (deoxyribonucleic acid) plus proteins and each of these chromosomes is

87 OLIVEIRA, Fatima. Bioethics a face of citizenship. Sao Paulo: Ed. Modern, 2004.
88 Available in:https://www.todamateria.com.br/dna/. Accessed on 04/06/2021.

composed of a huge amount of genes[89].

In relation to the genome, it is the total amount of information (set of genes) present in the chromosomes of a cell. It is what differentiates human beings from each other and from other species, as it determines the internal and external characteristics of the individual and is also responsible for its transmission. It was listed as a genetic heritage of humanity according to art. 1 of the Universal Declaration on the Human Genome and Human Rights: "Article 1. The human genome constitutes the basis of the fundamental unity of all members of the human family as well as of their inherent dignity and diversity. In a symbolic sense, it is the patrimony of humanity[90].

Therefore, the Human Genome Project aims at mapping, locating, sequencing and describing the genes and chromosomes of the human race, through the nitrogenous bases of DNA. However, this study accompanies many questions and discussions of an ethical-legal nature, such as, for example, respect for human dignity and the privacy of the person. The Human Genome Project was one of the most important scientific studies in recent centuries, as it allowed the location of genes in a practical way through genetic sequencing. With this mapping, it will be possible to discover probable illnesses that may affect the individual, but that will allow a previous treatment through these diagnoses[91].

The mapping is done from the analysis of DNA fragments, where the genes will be cataloged and their positions will be represented graphically. Given the above, through the Genome Project, it will be possible to make a prior diagnosis of future diseases resulting from genetic alterations such as cancer, as well as the analysis predisposition and prevention of these, enabling greater security for people's lives and health.

It is clear, therefore, the medical benefits that can be contemplated by the new genetic technologies, but it is undeniable that such power and knowledge in the face of the most sensitive and essential data of the human being can mean changes related to race, aesthetics and stereotypes considered "more appreciable" in society, which would lead to genetic and, therefore, social discrimination.

EUGENICS

In human history, there has always been the idea that certain characteristics were passed on from parents to children, as well as the idea that malformations must be combated. It can be said then that eugenics is prior to genetic knowledge, but the new techniques related to the manipulation and mapping of genes has revived this thought. This new current was called neo-eugenics[92].

Francis Galton was the first to use the term eugenics in the 19th century, and it was also during this period that efforts were made to give eugenics a scientific basis on which to base it. He believed that the English population was degenerating, due to the urban way of life making natural selection difficult and facilitating the reproduction of weaker and more fragile individuals, hence he became concerned with the idea of improving the race. Galton also thought that the poorer classes reproduced in greater numbers and faster than the intellectually and morally more favored of the upper classes, and this hindered the moral and intellectual development of society (OLIVEIRA, 2004).

So, through his ideas, he sought to favor the reproduction of the upper class to the detriment of individuals from the poorer

89 Available in:https://www.todamateria.com.br/projeto-genoma/. Accessed on 04/06/2021.

90 https://gddc.ministeriopublico.pt/sites/default/files/decl-genomadh.pdf.Accessed on 04/06/2021.

91 Available in:file:///C:/Users/andri/Downloads/14842-50677-2-PB.pdf. Accessed on 04/07/2021.

92 SOUZA, Paulo Vinicius Sporleder de. Genetic crime. São Paulo: Revista dos Tribunais, 2001.

classes. The solution proposed by him was through the control of marriage.

As a result, eugenics gradually became a form of reproduction control and social elimination, seeking to extinguish individuals with hereditary imperfections.

The idea of improving the human race through the manipulation of genes gained ground in the early 20th century with Charles Darwin's theory of evolution and the rediscovery of Mendel's laws. This was reflected in certain laws that prohibited access to marriage for certain people (OLIVEIRA, 2004).

With the new idea of genetics, this problem gained greater amplitude and gravity, as it allowed greater access to information and knowledge of certain characteristics of people such as, for example, illnesses that the subject may acquire, in addition to other aspects of the individual's most intimate sphere, such as personality traits (OLIVEIRA, 2004).

All this technique, together with the knowledge of these data, can bring eugenic problems even if smaller than those of the Nazi genocide period. The control of marriages for genetic reasons directly affronts human rights, whether those protected nationally, as well as those protected by the Universal Declaration of Human Rights, even if seen from the perspective of public health or the protection of healthy descendants[93].

Eugenics stems from genetic engineering, as it is through this that it is possible to modify what must be hereditary in human beings.

As seen, the Genome Project enabled the study and knowledge of the thousands of genes that make up the human body, however, one of the biggest problems today is the use of this for practices of genetic discrimination and eugenics against people[94]. This is even more noticeable in labor relations, since there are numerous cases of discrimination against employees on grounds of color, ethnicity, sex or religion. There are several factors analyzed for this illicit selection criterion[95].

In the words of Maria Helena Diniz, "the term eugenics, by itself, has the meaning of generating good, but it also indicates the science that studies the best conditions for the reproduction and improvement of the human species[96].

Therefore, in relation to eugenics, this can be of two types, positive and negative eugenics. In positive eugenics, a series of scientific measures are sought aimed at reducing the genes capable of causing disease, so that with this it is possible to generate the birth of healthy children. Negative eugenics, on the other hand, aims to avoid the birth of individuals who have genes prone to developing some type of pathology, but also seeks to avoid the transmission of these genes by hereditary means, through birth control and sterilization (ROCHA, 2008).

It is also customary to classify eugenics depending on its purpose, in this case, it can be negative, which seeks to eliminate descendants with some type of malformation, through abortion for example; and positive eugenics, which seeks to select physiologically desired characteristics (ROCHA, 2008).

Therefore, eugenics must only be allowed if it is positive eugenics, as this has a therapeutic purpose and aims only at preventing a certain disease or even at curing it. Furthermore, it does not violate the principles of beneficence and non-maleficence, hence its acceptance.

But, in relation to eugenetics, which is the new form of eugenics and is a science that involves genetic engineering and molecular biology, it can also be negative or positive.

93 ROCHA, Renata. The Right to Life and Stem Cell Research. Rio de Janeiro: Elsevier, 2008.

94 Available in:https://www.todamateria.com.br/projeto-genoma/. Accessed on 04/06/2021.

95 ROMITA, Arion Sayao. Fundamental rights in labor relations. 2nd ed. rev. and aum. Sao Paulo: LTr, 2007.

96 DINIZ, Maria Helena. The current state of biolaw. São Paulo: Saraiva, 2011, p. 43-44

If negative, it seeks to cure pathologies or even avoid them. On the other hand, if it is positive, its scope is the improvement of human characteristics such as intelligence and personality aspects. There is also a utopian derivation of eugenetics, called eugenics, which aims to create human beings who are free of diseases or genetic problems through the replacement of genes (ROCHA, 2008).

Neoeugenics is a practice related to the right to health, being a subject that concerns doctors and patients interested in generating healthy descendants. However, there is a difference between neoeugenics and the eugenic movements of the early twentieth century, as the latter were marked by political regimes that sought to eliminate homosexuals, ethnic groups and even sterilization practices for the disabled. Anyway, with regard to eugenic practices, it can be concluded that they have always exerted a certain fascination in man since the historical beginnings of humanity (LEITE, 1995).

PROBLEMS ABOUT GENETIC DETERMINISM

During the historical development of humanity, the thought of containing the birth of sick people was constant. One of the ways this was achieved was by limiting breeding directly or indirectly. The direct limitation was through the imposition of sterilization and the indirect was done through the prohibition of the marriage of people who could transmit certain undesirable characteristics, capable of compromising the health of their descendants (LEITE, 1995).

For Victor Penchaszadeh, genetic determinism, which occurred in the 19th century and in the first half of the 20th century, was idealized by the dominant classes and intellectually based racism, discrimination against the poor and condemned the reproduction of physically and mentally disabled people. Due to this ideology, countless poor and disabled people were forcibly sterilized in the United States in the 1920s and 1930s. This genetic determinism also underpinned the racial extermination provoked by the Nazis that lost strength and caused shame after the 2nd World War (LEITE, 1995).

According to Maria Helena Diniz, "gene therapy must seek to overcome the disease, not being able to alter non-pathological hereditary characteristics, much less claim eugenics, in search of a perfect human being"[97].

With the idea of eugenics and with the techniques of gene therapy, there would be the possibility of creating embryos with better genetic qualities, which would entail the risk of changing the human species.

Therefore, Brazil only allows this type of therapy with the aim of correcting a serious physical disability, which is regulated in Law n. 11.105/2005 (Biosafety Law).

However, one of the problems with the genetic study also concerns the possibility of identifying genes that favor the development of violent and criminal personality, which could cause a form of segregation towards these individuals.

More and more research reveals the discovery of the genes responsible for certain characteristics such as homosexuality, tendency to crime or violent behavior, among others. The disclosure of these genes to society, through the media, can generate a great genetic discrimination of individuals, or even their families, as a result of something uncertain. It is the predictive genetic tests that make it possible to know the genetic information of the individual[98].

Such tests have benefits, but inappropriate

97 DINIZ, Maria Helena. The current state of biolaw. São Paulo: Saraiva, 2011, p. 167.
98 QUEIROZ, Juliane Fernandes. Paternity: legal aspects and techniques of artificial insemination. Belo Horizonte: Del Rey, 2001

use and unrestricted access can cause the violation of fundamental rights.

As in Brazil there are no laws dealing with the matter, it is necessary to seek legitimacy and standardization based on an interpretation of the legal system so that the use of these tests in favor of health is carried out in an ethically correct manner (DINIZ, 2011).

Therefore, the medical professional also plays an important role in curbing any discriminatory practice, since he is responsible for the genetic information obtained and for genetic counseling. Genetic counseling, also called genetic counseling, is part of predictive or preventive medicine and is a procedure designed to warn patients of possible diseases of genetic origin that they may develop or transmit hereditarily.

ASSISTED REPRODUCTION AND ITS PROBLEMS

At first, the subject of genetic engineering and the need to protect genetic data may seem obscure, but its importance is obvious when we think about controversial issues involving artificial insemination, especially heterologous.

This, because heterologous artificial insemination is the one that receives the genetic contribution from a donor who is not part of the couple, occurs mainly when the husband is sterile, or as a result of hereditary diseases. Referred sterility is usually definitive[99].

The donation of genetic material for purposes of heterologous artificial insemination or other type of assisted reproduction is spontaneous, so that no law could constrain such an act, whereby a fertile couple helps an infertile couple. The donation of gametes or pre-embryos has no commercial or lucrative purpose, and is always free. In this sense, the Constitution of the Republic prohibits all types of commercialization of human organs, tissues and substances in art. 199, § 4o.

Thus, in this type of artificial insemination, the embryo implanted in the woman does not belong to her husband, and if he did not agree with the implant or was unaware of this fact and comes to know about it later, he may file a legal separation between the couple[100].

In this modality of artificial insemination, the anonymity of the genetic material donor is a barrier to knowledge of the biological origin. Resolution Number 1338/92 of the Federal Council of Medicine, item IV, n. 2, stipulates that "donors must not know the identity of recipients and vice versa". It is important to emphasize that this is a controversial and controversial issue, since there are opinions contrary to this type of paternity. the anonymity of the donor must be preserved; at the same time, others understand that the fundamental guarantees of a child are indisputable.

It is not intended here to exhaust this theme, but only to alert the reader that, regardless of the right to genetic identity of the unborn child, or the right to anonymity of the donor, it is essential that there is no discrimination as to the genetic information donated. This is because it would be inconceivable that certain people, whether due to race, social status, among other aspects, would be prevented from donating, under penalty of prioritizing certain biophysical standards to the detriment of others[101].

It is true that healthy people are the ones who, in theory, can donate gametes for reproductive purposes, but even the very concept of health can be problematized. The important thing is that fertilization clinics do not abuse the genetic data they have in order to constitute a kind of "genetic supermarket"

99 VENOSA, Silvio de Salvo. Civil law: family law. 5. ed. São Paulo: Atlas, 2005, v. 6, p. 256

100 DINIZ, Maria Helena. The Current State of Biolaw. São Paulo: Saraiva, 4th edition, 2007.

101 MONTEIRO, Washington de Barros. Civil Law Course: General Part. 39. ed. to see. and current. São Paulo Saraiva, 2003

for their clients, in which the phenotypic characteristics of their future children can be assembled at the pleasure of the parents.

GENETIC DATA, PERSONALITY RIGHTS AND DIGNITY OF THE HUMAN PERSON

Technological development is important in achieving social improvements that make people's lives easier. However, scientific progress has had a great social impact on issues related to biomedicine, in which genetic engineering is inserted.

Human rights, fundamental rights and personality rights are intended for the legal protection of certain qualities of the human personality, each on different levels of protection (SCHREIBER, 2014)[102].

Personality rights protect the person itself, while human rights protect a greater amount of legal goods, which cover the person and the political and cultural issues related to him. While fundamental rights encompass the social, cultural, political and economic rights of a given community (NAVES, 2007)[103].

Human rights are more focused on the international scope, regardless of how each State treats the matter, while fundamental rights take care of the rights that were established in the Constitution of the State, they are an option of the constituent. The expression personality rights is used in the context of private relationships to protect certain human qualities, but which can also find support in the Constitution and internationally[104].

Paulo Bonavides[105] provides that fundamental rights are all those rights provided for in the Constitution that enjoy greater protection, security and guarantees, so much so that they can only be changed through constitutional amendments. It's about rights that vary from one State to another, according to their ideologies, values and forms of government, that is, each country has its fundamental rights considered as absolute.

Thus, personality rights, human rights and fundamental rights have similar contents, but are used differently, as the latter deal with situations that are unrelated to attributes of the human being considered in himself, which do not result from your personality[106].

Dignity is a quality inherent to every human being, as it stems from their condition as a person and constitutes a universal value, regardless of sociocultural diversity. So, despite all the existing differences, whether physical or psychological, everyone has the same vital needs, therefore, they are holders of dignity by virtue of their human condition[107].

When it comes to the principle of human dignity, it influences all legal norms, but has a closer relationship with fundamental rights and personality rights[108]. Dignity has equality and freedom as its pillars.

This way, through the ethical precepts of equality, the rights of the individual will be assured, regardless of ethnicity, gender, religion, color or any other characteristic. Freedom, on the other hand, widely considered, enables the individual to fully exercise his rights, however, it finds limits in the personality rights of other

102 SCHREIBER, Anderson. Personality rights. 3rd ed. - São Paulo: Atlas, 2014, p. 13

103 NAVES, Bruno Torquato de Oliveira. Critical-discursive review of personality rights: The "legal nature" of human genetic data. 2007. Thesis (Doctorate in Law) - Graduate Program in Law at `` Universidade Pontifícia Católica de Minas Gerais``, Belo Horizonte. P. 25-26. Available at: <http://www.biblioteca.pucminas.br/teses/Direito_NavesBT_1.pdf>. Accessed on: 03 June. 2020.

104 SCHREIBER, Anderson. Op. cit., 2014, p. 13

105 BONAVIDES, Paul. Course in Constitutional Law. 28th ed., current. São Paulo: Malheiros, 2013, p. 579

106 NAVES, Bruno Torquato de Oliveira. Op. cit., p. 25-26

107 ANDRADE, André Gustavo Corrêa de. The fundamental principle of human dignity and its judicial implementation. P. 2-3.

108 ANDRADE, André Gustavo Corrêa de. Op. cit. P. 15.

subjects, as happens when faced, for example, with intimacy and private life[109].

It so happens that, with the advancement of research related to the Genome Project, efforts were made to direct and regulate the activity of researchers through ethical and moral precepts, legally limiting professional and scientific activities.

For this, the Universal Declaration of the Human Genome and Human Rights was edited. The fundamental objective of this declaration is to protect human rights from any harm or threat of harm resulting from practices related to the human genome or from any scientific activity that violates human dignity[110].

The Universal Declaration of the Human Genome and Human Rights disciplines human dignity as a fundamental value and prohibits any type of discrimination based on genetic data in its articles 2 and 6:

> Article 2.
> a) Every individual is due respect for their dignity and rights, regardless of their genetic characteristics.
> b) This dignity makes it imperative not to reduce individuals to their genetic characteristics and to respect their uniqueness and diversity. [...]
> c) Article 6. No individual shall be subjected to discrimination based on genetic characteristics, which seeks to violate or which has the effect of violating human rights, fundamental freedoms and human dignity.

The dignity of the human person is a fundamental and basic principle of our order, of great axiological hierarchy, enshrined in art. 1, III of the 1988 Federal Constitution, which will guide the understanding of all fundamental individual rights (life, equality, freedom), social rights (health, education, housing, work), among others.

However, the big problem with this general clause lies in the fact that it is an undetermined legal concept (despite knowing the legal consequences of its non-compliance, there is doubt as to the meaning of these expressions or words contained in the norms)[111].

One of the objectives of bioethics is to protect the dignity of the human person from abuses related to biotechnological issues, with a focus on this work discoveries related to genetics such as mapping and manipulation of genes. Bioethics gives special protection to life and human dignity and its final objective is the good of the human person[112].

Based on this premise that art. 5, IX of the Federal Constitution of 1988, which deals with scientific freedom, suffers limitations. That is, despite being a fundamental right, there are other legal interests and rights, also fundamental, that can be violated due to the inappropriate use of scientific activity, such as life and privacy[113].

Based on what has been seen, if necessary, the advancement of medicine must be limited to safeguard human dignity, as this is an ethical value that conditions all biomedical practices. The sciences of bioethics and biolaw are directly related to human rights and cannot be omitted with regard to abusive practices against the person, which use scientific

109 Ibid., p. 4-5.

110 MYSZCZUK, Ana Paula; DE MEIRELLES, Jussara Maria de Leal. Genetic tests, eugenics and employment contract: Analysis in the light of the Universal Declaration of Human Rights and the Human Genome and the Federal Constitution of 1988. Annals of the XVIII National Congress of CONPEDI. São Paulo, 2009, p. 1185

111 SOARES, Ricardo Maurício Freire. Fundamental Rights: Reflections and perspectives. Salvador: Faculdade Baiana de Direito, 2013, p. 52-57.

112 SARLET, Ingo Wolfgang. Some notes on the relationship between the principle of human dignity and fundamental rights in the Brazilian constitutional order. In: LEITE, George Salomão (Coord.). Constitutional principles: Considerations around the principled norms of the Constitution. 2nd ed., rev., current. and amp. São Paulo: Method, 2008, p. 167

113 Ibid., p. 31

progress on behalf of society as a pretext to act contrary to human dignity, since that these activities can bring several risks[114].

The in-depth knowledge of the human genome hopefully makes it possible to detect, prevent and treat numerous diseases that still have no cure. However, like all scientific advances, this does not only bring benefits, knowledge and access to this information by third parties makes human beings socially more vulnerable, as it interferes with their private life. Currently, there are numerous discussions in the courts about the principle of human dignity, noted, especially, in the area of civil liability that brings compensation for moral damages in the event of injury to any of the rights of the personality[115].

Let's see an example:

> STJ - SPECIAL APPEAL - 1025104 RS 2008/0010959-2 (STJ)
> BRAZIL. Superior Justice Tribunal. SPECIAL RESOURCE: 1025104 RS 2008/0010959-2. Rapporteur: Minister Nancy Andrighi. Brasília, DF, April 27, 2010. Available at:. Accessed on: 01 Jul. 2021
> Publication date: 05/13/2010
> Subject: CIVIL LIABILITY. BREACH OF CORRESPONDENCE. FGTS EXTRACT ADDRESSED TO THE APPLICANT AND SENT TO THE DEFENDANT'S HEADQUARTERS, HIS FORMER EMPLOYER. USE OF VIOLATED CORRESPONDENCE FOR INSTRUCTION OF THE DEFENSE IN LABOR CLAIM. OFFENSE TO THE CONSTITUTIONAL GUARANTEES OF CONFIDENTIALITY OF CORRESPONDENCE AND PROTECTION OF INTIMITY. CONFIGURED MORAL DAMAGE. - A liability for moral damage, in the case of the case, operates by virtue of the simple violation of correspondence (in re ipsa), regardless of proof of injury. - The information contained in all models of FGTS statements is supported by the duty of secrecy provided for in art. 1 of Complementary Law 105/01. - By using the violated document to support its arguments in the labor claim filed by the appellant, the defendant gave undue publicity to the content of the violated correspondence, which represents interference in the private life of the appellant. Special Appeal known and granted[116].

There is a need to protect the right to privacy, since its violation has direct implications for human dignity, and must therefore be subject to compensation due to the legal importance of this principle. Finally, the Universal Declaration on the Human Genome and Human Rights itself makes compensation possible due to interference with genetic data: "Article 8. Each individual shall have the right, under national or international law, to fair compensation for any damage suffered, directly or indirectly, of intervention on its genome"[117].

Therefore, it is understood that the intervention in genetic data is also capable of causing damage to the individual in the face of the violation of their privacy and, consequently, the disrespect to the basic principle of the legal system, which is human dignity.

GENETIC DATA AND THE FUNDAMENTAL RIGHT TO PRIVACY

Despite the benefits achieved, technological evolution has enabled greater dissemination of information about the person, resulting in a greater need for legal protection for the individual. One of the points that needs special

114 DINIZ, Maria Helena. The current state of biolaw. São Paulo: Saraiva, 2011, p. 43-44.

115 ANDRADE, André Gustavo Corrêa de. The fundamental principle of human dignity and its judicial implementation. P. 31-32. Available in:. Accessed on: 22 Jul. 2021

116 BRAZIL. Superior Justice Tribunal. SPECIAL RESOURCE: REsp 1025104 RS 2008/0010959-2. Rapporteur: Minister Nancy Andrighi. Brasília, DF, April 27, 2010. Available at:. Accessed on: 01 Jul. 2021

117 UNESCO. Universal Declaration on the Human Genome and Human Rights. Available in:. Accessed on: 30 Jul. 2021

protection of the fundamental right to privacy concerns the genetic data of the human being, since the scientific development of recent years has made it possible for scientists to map and know this information.

Genetic research made possible a breakthrough for medicine, while it made possible the knowledge of human genes that are responsible for certain diseases. However, due to the distortion of the purpose that was sought with the mapping, there is a concern about the dissemination and use of these genes against the individual. For all these aspects, there is an urgent need for legal protection of genetic privacy, as a criterion to avoid abuse and violation of the individual's intimate sphere (HAMMERSCHMIDT D. 2005).

Genetic data are directly related to the characteristics of personality rights. They are essential, as the information present in the genes govern the human body. They are also lifelong, as they are present throughout the life of the being. It can also be said that they are unavailable and non-transferable, since they concern the subject's life. Finally, they are off-balance sheet, because they are not economically valuable, therefore, they cannot be traded. Taking these aspects into consideration, it is possible to state that genetic data fall within the category of personality rights, as both are inherent to the person[118].

Besides, with regard to genetic data, they are information that can be obtained through the DNA of man. The simple fact that it is possible to obtain some information from the human genome already requires legal protection.

For this reason, there is a need to protect genetic privacy, moreover, the individual may refuse to have his/her genome analyzed[119].

The right to genetic privacy is included in personality rights and concerns the right that the subject has to preserve his genetic information from the interference of others, as well as to regulate its use. Through this right, the person will be able to delimit who can and under what conditions have access to this data (HAMMERSCHMIDT D. 2005).

For there to be some form of genetic intervention in the individual, the consent of the individual is required, which must be free (without vices such as coercion, error or fraud) and clarified. Such consent must be given only after knowing the procedures to be adopted as well as the objectives, benefits and possible risks, as provided for in art. 6 of the Universal Declaration on Bioethics and Human Rights[120].

Due to private autonomy, it is possible for the owner to control genetic data, before or after collection. Therefore, for the genetic test to be carried out, it is necessary that there is a prior explanation to the individual about the procedure that will be performed, as well as its advantages and risks. That is why prior genetic counseling is important, as it allows the transmission of this information more clearly[121].

It is also worth mentioning that despite art. 5, IX of the Federal Constitution guarantees freedom of research, this freedom is limited by the individual's consent, which must be obtained in accordance with the provisions of art. 8 of the UNESCO International Declaration on Genetic Data and may be revoked at any time as it is a potestative

118 NAVES, Bruno Torquato de Oliveira. Critical-discursive review of personality rights: The "legal nature" of human genetic data. 2007. Thesis (Doctorate in Law) - Graduate Program in Law at `` Universidade Pontifícia Católica de Minas Gerais``, Belo Horizonte. P. 55. Available at: <http://www.biblioteca.pucminas.br/teses/Direito_NavesBT_1.pdf>. Accessed on: 03 Jul. 2021

119 NAVES, Bruno Torquato de Oliveira. Op. cit., p. 54

120 STOCCO, Adriele Rodrigues; VIEIRA, Teresa Rodrigues. Genetic interventions in human beings and genetic discrimination: ethical and legal aspects. Rev. Science Jur. and Soc. from Unipar. Umuarama. v. 12, n. 1, Jan./June. 2009, p. 42

121 NAVES, Bruno Torquato de Oliveira. Critical-discursive review of personality rights: The "legal nature" of human genetic data. 2007. Thesis (Doctorate in Law) - Graduate Program in Law at `` Universidade Pontifícia Católica de Minas Gerais``, Belo

right[122].

Regarding the protection of the principle of privacy, genetic tests must be voluntary and require the person's express and prior consent. A Brazilian Federal Constitution, in its art. 5, X says that "the intimacy, private life, honor and image of people are inviolable, ensuring the right to compensation for material or moral damage resulting from their violation".

CONCLUSION ABOUT THE THIRD PART

In summary, it can be seen that, linked to the new digital technologies that encompass the legal sphere, there is a clear presence of strong scientific development in our society that prospers genetic engineering, which must be regulated by law, under penalty of discrimination and devaluation of the human being.

Thus, it must be understood that, although scientific freedom is essential to the maintenance and improvement of human beings, since it improves their quality, expectation and condition of life, it must not be absolute, as it cannot in any way be used as a means of discrimination, under penalty of infringing Human Rights and tearing up all international and national norms that value the essence of homo sapiens.

Therefore, scientific freedom, despite being a fundamental right, is not absolute, as it finds limits when faced with other fundamental rights of citizens. This way, bioethics and biolaw play an important role in protecting the rights of the human person, as they delimit the actions of doctors, researchers and scientists in relation to genetic data. Likewise, there are important International Declarations that ensure the human rights of such practices and that will serve as a legal basis for the creation of national laws regarding genetic information.

In addition, genetic tests allow the knowledge of genes responsible for violent and criminal characteristics, possible illnesses that the individual may develop, as well as his ability and intelligence to develop certain activities. So, the unrestricted and unreasonable use of such tests favors and facilitates the subject's genetic discrimination, violates his privacy and interferes with his private life, which in no way must be accepted by the national or international legal system.

FINAL CONLUSION

For all the above, some interesting conclusions can be drawn from this work, namely:

I) Civil liability stems from the general duty not to harm (nemninem laedare) and seeks compensation for damages in the event of injury or damage to the rights of others, arising from a general duty or an obligation assumed by the parties. It has the function of repairing or compensating the material or moral assets of the individual who suffered the injury. For it to be characterized, it must result from harmful and conscious human conduct, not being confused with the intention to cause damage, as there must also be a causal link between such elements.

II) Patrimonial damage occurs when the injured assets have economic valuation, while moral damage is configured through the violation of personality rights. Compensation for property damage will be made through emerging damage, loss of profits as well as the loss of a chance, a theory that somewhat mitigates the causal link, but of great acceptance in our legal system, provided that it is a plausible opportunity.

III) That today both objective and subjective responsibility are in force in Brazil, the latter being the general rule of the order, while the

Horizonte, p. 165

122 NAVES, Bruno Torquato de Oliveira. Critical-discursive review of personality rights: the "legal nature" of human genetic data. 2007

former applies to specific hypotheses.

IV) Proof of guilt in the harmful conduct is only required when it is a case of subjective civil liability, therefore, it must be proven in order for the agent to be held accountable. Its importance for the pre-contractual phase concerns the so-called culpa in contrahendo, resulting from the unjustified refusal of the agent to enter into an almost signed contract, violating the rules of objective good faith.

All of the above applies to the scope of Digital Law and its manipulating agents.

V) Civil liability can be of the contractual type, when the damage results from the breach of a contract, or of the non-contractual type, arising from an obligation imposed by law. If it stems from the breach of a contract, it is up to the victim to prove non-compliance with the obligation, while the other party must prove that he did not act culpably. Due to the violation of an obligation imposed by law, the burden of proof will be on the victim.

VI) Pre-contractual civil liability is based on non-compliance with the general duties of objective good faith conduct, therefore, both material damages and moral damages caused by the unjustified refusal to contract must be compensated, provided that it is observed whether the contracting party had conditions for this, in the case of subjective responsibility.

VII) The fact is that, regardless of whether they are hired directly or not, everyone has the right and duty to observe the provisions of the LGPD and ensure that there is no abuse in the handling of information from personal and sensitive data, which are understood as fundamental rights constitutionally guaranteed.

VIII) At the international level, technology and media advances that enable the storage, circulation and manipulation of data must be observed in accordance with Human Rights and, in particular, electronic commerce must ensure a safe environment for its users.

IX) Technology and profitability are currently intertwined, which corroborates with changes in the international political and economic scenario.

X) Scientific freedom, despite being a fundamental right, is not absolute, as it encounters limits when faced with other fundamental rights of citizens. This way, bioethics and biolaw play an important role in protecting the rights of the human person, as they delimit the actions of doctors, researchers and scientists in relation to genetic data. Likewise, there are important International Declarations that ensure the human rights of such practices and that will serve as a legal basis for the creation of national laws regarding genetic information.

XI) Genetic data is sensitive data and therefore deserves special attention and protection.

XII) Genetic tests allow the knowledge of genes responsible for violent and criminal characteristics, possible illnesses that the individual may develop, as well as his ability and intelligence to develop certain activities.

So, the unrestricted and unreasonable use of such tests favors and facilitates the subject's genetic discrimination, violates his privacy and interferes with his private life.

XIII) Fundamental rights and personality rights protect attributes of the human personality in the various levels of social and private relations, as they have similar content and seek to ensure the dignity of the human person, a pillar of defense for individual rights and the basis for any interpretation, including referring to issues involving biology and medicine.

XIV) In particular, personality rights are inherent to the human person, therefore, they do not depend on legal provisions to be protected and, if violated, allow the offended party to compensate for moral damages. Such compensation will be through pecuniary

compensation, to be arbitrated by the judge according to the seriousness of the damage.

XV) Intimacy and private life are constitutionally guaranteed fundamental rights that must have their access protected against third parties, so that they are fully effective. The first is focused on an individual's inner and reserved sphere, understanding its characteristics, secrets and intimacies. The second is focused on the outer sphere of the subject and his social and family relationships.

XVI) Intimacy is also characterized as one of the rights of the personality and compensation for moral damages is a way to ensure this right. This way, the protection of genetic privacy also has constitutional support and is included in the list of personality rights, enjoying strong legal support.

XVII) The individual is assured the right not to undergo tests that allow the knowledge of his/her genome. If accepted, he must give his free and informed consent for any form of genetic intervention to be carried out, and the results of these tests, as they keep personal characteristics of the subject, must also only reach third parties if there is consent from their holder. The individual must also be aware of the procedure to be performed and the medical professional must protect his privacy, maintaining his duty of secrecy regarding this information, as well as in cases of assisted reproduction.

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