

BETWEEN DATA AND DAMAGES: THE (IM)POSSIBILITY OF IMPOSING NON-MATERIAL/MORAL DAMAGES IN CASES OF PERSONAL DATA LEAKS IN THE INFORMATION SOCIETY

Stéfani Reimann Patz *

Abstract: The advancement of the internet has brought along the constant concern about the leakage of personal data, for both individuals and companies. This unease is amplified by the frequent news of inappropriate exposure of private information, notably in cases of leaks within the Austrian postal service company (Österreichische Post AG), the Bulgarian National Revenue Agency, and the Brazilian electricity company (Enel). Considering this backdrop, researchers have been dedicating themselves to exploring the possibility of accountability for non-material damages arising from data breaches. The study initiates with a review of the concept of the Information Society, explores the legal frameworks for data protection in the European Union and Brazil, and analyzes concepts of non-material and moral damages. Subsequently, the text investigates cases of data breaches and, finally, examines judicial decisions on accountability in similar situations, both in the European Union and Brazil.

Keywords: Non-material damages; Civil liability; Personal data breach.

INTRODUCTION

Since the advent of the internet, the constant risk of personal data leaks has been causing growing concern for both individuals and companies. Unfortunately, numerous news stories confirm this sense of apprehension, as reports of undue exposure of private aspects of life on social networks are becoming increasingly common.¹

In this context, a broad community of researchers has devoted itself to examining the feasibility of attributing Civil Liability for potential non-material damages arising from personal data leaks. The justification for this text is based on the understanding that contemporary life means inhabiting a world in which our data acquire increasing value, and in which potential leaks may lead to damages of various types.

This work first aims to conduct a bibliographic review of the Information Society, also outlining the main legislative milestones related to the protection of personal data in both the European Union and Brazil. Next, the text delves into analyzing the concepts of non-material damages and moral damages, considering the legal perspectives of both Portugal and Brazil.

* PhD Candidate in Law at the University of Coimbra, Portugal. Professor. Email: stefani.patz@hotmail.com /ORCID iD: <https://orcid.org/0000-0002-6375-2942>

¹ Cases will be discussed in sections 4 and 5.

After that, it investigates what characterizes a data leak (known as a security incident) and examines judicial decisions regarding the (im)possibility of attributing liability for non-material/moral damages in cases of personal data leaks, both in the context of the European Union and in Brazil.

Regarding the methodology, a deductive approach is employed, combined with an analytical methodology, conducted through indirect research by consulting books and scientific journals. It is important to emphasize that this is not intended to be an exhaustive review of the bibliographic material. The goal is to present readers with some relevant aspects of each topic, contributing to a broader understanding of the question posed.

I. THE INFORMATION SOCIETY AND THE PROTECTION OF PERSONAL DATA

Over the last two centuries, the pace of change has accelerated to such an extent that the social order has acquired a dynamic and flexible character. Today, we experience a state of continuous flux. When discussing modern revolutions, it is common to mention the years 1789 (the French Revolution), 1848 (the Liberal Revolutions), or 1917 (the Russian Revolution). However, the current reality shows us that revolution is an annual phenomenon. Nowadays, even a 30-year-old can say quite honestly to teenagers: “When I was young, the world was completely different.” The internet, for instance, emerged in the early 1990s—just over two decades ago. Today, it is impossible to conceive of the world without it.²

The exponential technological advancement of recent decades has enabled an unprecedented collection and processing of various types of data—a phenomenon known as Big Data. This scenario facilitates the exploration of those data in numerous contexts and for diverse purposes, ranging from enhancing understanding of the consumer public of a specific business to mapping the behavior of social communities at particular times and places.³

In this context, information plays a crucial role, transcending even the legal sphere and assuming existential importance. This is because, in the internet era, the value of information goes beyond property and may also have existential implications that intertwine with the individual’s identity itself. As Elimar Szaniawski affirms, “the object of personality rights is not limited to

² Harari, Yuval Noah. *Sapiens: Uma breve história da humanidade*. Translated by Janaína Marcoantonio. 51st ed. Porto Alegre, RS: L&PM, 2020, 375-376.

³ Santos, Leonardo Valverde Susart dos. 2022. “Compensação de danos não patrimoniais causados pela violação de normas de proteção de dados pessoais.” *Revista de Direito da Responsabilidade*, October 25, 2022.

the person itself; it has intrinsic value.”⁴ This leads to the understanding that existential situations do not necessarily fit within the traditional categories of subjective rights.⁵

Amid the informational society, Stefano Rodotà describes the formation of an electronic body, a new dimension of the individual that goes beyond the physical aspect and assumes a digital manifestation. For him, the body has become a tool to intensify security measures through the widespread invasion of everyday-life surveillance technologies. We are being constantly monitored by computers and cameras, resulting in an Information Society where transparency is expanded in an impressive way.⁶

According to Shoshana Zuboff, the digital reality is redefining our lives abruptly, even before we have had the chance to comprehend what is happening.⁷ Personal data, as Frank Pasquale points out, are being used by governments and large economic actors to create a “one-way mirror,” where they know everything about the citizens, while the citizens know little or nothing about them.⁸ This leads to an environment of perpetual surveillance, fostering a new type of capitalism and society based on constant observation. With respect to regulation, Javier Iniesta and Francisco Serna argue that it is necessary to regulate the digital environment in order to better understand the changes driven by technological progress.⁹

⁴ Szaniawski, Elimar. *Direitos de personalidade e sua tutela*, 2nd ed. São Paulo: Revista dos Tribunais, 2005, 87.

⁵ Zampier, Bruno. *Bens digitais*. Indaiatuba: Foco, 2017, 55.

⁶ Rodotà, Stefano. *A vida na sociedade da vigilância: A privacidade hoje*. Organized, selected, and presented by Maria Celina Bodin de Moraes. Translated by Danilo Doneda and Luciana Cabral Doneda. Rio de Janeiro: Renovar, 2008, 8.

⁷ Zuboff, Shoshana. *A era do capitalismo de vigilância: A luta por um futuro humano na nova fronteira do poder*. Translated by George Schlesinger. 1st ed. Rio de Janeiro, RJ: Intrínseca, 2020, 14.

⁸ Pasquale, Frank. *The Black Box Society: The Secret Algorithms That Control Money and Information*. Cambridge: Harvard University Press, 2015, 9.

⁹ Iniesta, Javier Belda, and Francisco José Aranda Serna. “El paradigma de la identidad: hacia una regulación del mundo digital.” *Revista Forense* 422 (July–December 2015): 181–202, 184. According to the authors: “*Pero, realmente, ¿en qué lugar podemos situar lo virtual? Con la aparición de Internet se da un cambio fundamental, la comunicación fluye de todos a todos. Hasta ahora, se ha visto esta realidad como un cambio cuantitativo, más que cualitativo, en las relaciones interpersonales, que habla de la disponibilidad ininterrumpida del otro y de formas de acercamiento afectivo, que hasta ahora requerían inexorablemente la co-presencia física de los actores. Evidentemente, esta variación de parámetros ha provocado un desenfoque de la visión que se tenía hasta el momento, dando lugar al surgimiento de conflictos de complejo enfoque jurídico. Así, Internet se nos presenta como un espacio abierto que permite interactuar en diversos contextos tomando distintas identidades, estas identidades – denominadas virtuales – se alejan de la noción de identidad basada en los presupuestos culturales de la persona que hasta ahora eran el paradigma de nuestra visión del ser humano*”. Tradução livre: “*Mas realmente, onde podemos situar o virtual? Com o advento da Internet há uma mudança fundamental, a comunicação flui de*

Moving forward, it is important to distinguish between data, information, and knowledge. Data are recorded facts or values, whereas information is interpreted data. Knowledge, in turn, is the understanding that results from interpreting the information.¹⁰

For example, a piece of data could be that Manuel is suffering from a serious illness, revealed by his medical history or by pharmacy receipts showing the purchase of medications for a certain condition. The information would involve interpreting these data, deducing that Manuel may miss work occasionally due to some treatment, although that is not certain. Meanwhile, knowledge would be represented by the decision not to hire Manuel for a position in a company, discriminating against him based on that information. Danilo Doneda summarizes this phenomenon, stating that “data would be related to pre-information, before interpretation and elaboration,” while information “goes beyond the representation contained in the data.”¹¹

The generation of data has grown exponentially in recent times, reaching levels never before seen in history. According to the report *Data Age 2025* by IDC, the volume of data created, captured, and consumed in 2018 reached 33 zettabytes, increasing to 59 ZB in 2020, and is expected to reach 175 ZB by 2025.¹²

In this scenario, John Corrado warns that the internet has allowed massive collection of personal information, representing a major threat to privacy.¹³ The protection of personal data becomes essential in a setting of growing digitalization and use of information to feed informational systems. In both the European Union (EU) and Brazil, the protection of personal data is regarded as a fundamental right of individuals, and data protection laws generally aim to ensure the privacy and security of personal data, while

todos para todos. Até agora, essa realidade tem sido vista como uma mudança quantitativa, e não qualitativa, nas relações interpessoais, que falam da disponibilidade ininterrupta do outro e de formas de aproximação afetiva, que até agora exigiam inexoravelmente a copresença física de os atores. Obviamente, essa variação de parâmetros tem causado um embaçamento da visão até então mantida, gerando conflitos com uma abordagem jurídica complexa. Assim, a Internet apresentasse-nos como um espaço aberto que permite a interação em vários contextos ao assumir diferentes identidades, essas identidades – ditas virtuais – afastam-se da noção de identidade baseada nos pressupostos culturais da pessoa que até agora eram os paradigmas da nossa visão do ser humano”.

¹⁰ Silva, Leandro Augusto, Sarajane Marques Peres, and Clóvis Boscariolli. *Introdução à mineração de dados*. Rio de Janeiro: Elsevier, 2016, 384-386.

¹¹ Doneda, Danilo. *Da privacidade à proteção de dados pessoais*. Rio de Janeiro: Renovar, 2006, 152.

¹² Vopson, Melvin M. “The Information Catastrophe.” *AIP Advances* 10 (August 11, 2020). <https://aip.scitation.org/doi/full/10.1063/5.0019941>.

¹³ Corrado, John. “Not Forgetting Just Obscuring: American and European Attempts to Maintain Privacy in the Digital Age.” *Cardozo Journal of International and Comparative Law* 1 (2018): 308.

increasing transparency and accountability in how these data are treated.

Before directly addressing the General Data Protection Regulation (GDPR) in the European Union and the General Data Protection Law (LGPD) in Brazil, it is worth briefly revisiting the four generations of personal data protection laws.

The first generation emerged in the 1970s as a consequence of electronic data processing by public administrations and private companies, as well as proposals for centralizing national databases. Key examples include the Law of the German State of Hesse (1970), Sweden's Data Protection Act (1973), and Germany's Federal Data Protection Act (1977). These laws focused on strict procedural control, neglecting privacy protection.

The second generation is a reaction to the diaspora and proliferation of existing databases, associating data protection with privacy, negative freedoms, and individual freedom in general. During this period, data protection was included in the Constitutions of Portugal¹⁴ and Spain, as well as in the French Data Protection Act (1978).

The third generation, dating from the 1980s, was marked by efforts to refine the legal protection of personal data, under the principle of informational self-determination, emphasizing individual control over the processing of one's data, with greater involvement in all stages—from

¹⁴ The Portuguese Constitution (1976) addresses the use of information technology in the seven paragraphs of its Article 35:

“Artigo 35º.

1. Todos os cidadãos têm o direito de acesso aos dados informatizados que lhes digam respeito, podendo exigir a sua rectificação e actualização, e o direito de conhecer a finalidade a que se destinam, nos termos da lei.

2. A lei define o conceito de dados pessoais, bem como as condições aplicáveis ao seu tratamento automatizado, conexão, transmissão e utilização, e garante a sua protecção, designadamente através de entidade administrativa independente.

3. A informática não pode ser utilizada para tratamento de dados referentes a convicções filosóficas ou políticas, filiação partidária ou sindical, fé religiosa, vida privada e origem étnica, salvo mediante consentimento expresso do titular, autorização prevista por lei com garantias de não discriminação ou para processamento de dados estatísticos não individualmente identificáveis.

4. É proibido o acesso a dados pessoais de terceiros, salvo em casos excepcionais previstos na lei.

5. É proibida a atribuição de um número nacional único aos cidadãos.

6. A todos é garantido livre acesso às redes informáticas de uso público, definindo a lei o regime aplicável aos fluxos de dados transfronteiras e as formas adequadas de protecção de dados pessoais e de outros cuja salvaguarda se justifique por razões de interesse nacional.

7. Os dados pessoais constantes de ficheiros manuais gozam de protecção idêntica à prevista nos números anteriores, nos termos da lei”.

Portugal. *Constituição da República Portuguesa (1976)*. <https://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx>.

collection to storage and transmission—rather than an “all or nothing” approach. This generation corresponded to new network and telecommunications technologies. Noteworthy examples include the German Data Protection Act (1990), the 1986 Amendment to Austria’s Data Protection Act, and the constitutional provision for personal data protection in the Netherlands.

Finally, the fourth generation aims to base the protection of personal data not solely on individual choice, but also on tools that raise the collective standard of protection. Notable among these are Directive 2002/58/EC (on privacy and electronic communications), the General Data Protection Regulation (GDPR), and Brazil’s General Data Protection Law (LGPD).

In the European Union, the primary data protection legislation is the General Data Protection Regulation (GDPR), which took effect in 2018. The GDPR sets forth a set of rules for all companies that collect, process, or store personal data of EU citizens, regardless of where such companies are located. Under the GDPR, data subjects have the right to information about how their data are processed, as well as the right to access, rectify, erase, and port their data. Furthermore, companies must implement appropriate security measures to safeguard personal data.¹⁵ According to Article 4 of the GDPR, “personal data” means:

“(...) any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;”¹⁶

¹⁵ European Union. *Regulamento (UE) 2016/679 do Parlamento Europeu e do Conselho, de 27 de abril de 2016, relativo à proteção das pessoas singulares no que diz respeito ao tratamento de dados pessoais e à livre circulação desses dados* (General Data Protection Regulation). Official Journal of the European Union L119 (May 4, 2016). <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016R0679>.

¹⁶ In Portuguese, the provision states the following: “(...) *informação relativa a uma pessoa singular identificada ou identificável («titular dos dados»); é considerada identificável uma pessoa singular que possa ser identificada, direta ou indiretamente, em especial por referência a um identificador, como por exemplo um nome, um número de identificação, dados de localização, identificadores por via eletrónica ou a um ou mais elementos específicos da identidade física, fisiológica, genética, mental, económica, cultural ou social dessa pessoa singular*”. European Union. *Regulamento (UE) 2016/679 do Parlamento Europeu e do Conselho, de 27 de abril de 2016, relativo à proteção das pessoas singulares no que diz respeito ao tratamento de dados pessoais e à livre circulação desses dados* (General Data Protection Regulation). Official Journal of the European Union L119 (May 4, 2016). <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/>

From an analysis of the text, it is evident that the concept of “personal data” under the GDPR is broad, not restricted to an exhaustive list. This includes data that could allow identification, even if only potentially. The Handbook on European Data Protection Law reinforces this notion by stating that there is no need for direct identification of the subject for the data to be considered personal. Situations in which it would be possible to determine the individual to whom the data relate through additional research are also encompassed. Therefore, what matters is not direct identification, but rather identifiability:

“It is considered that information contains data about a person if:
– that person is identified in that information; or
– although not identified, that person is described in such a way that it is possible to find out who that person is by conducting further research. Both types of information are protected equally under European data protection law.”¹⁷

In Brazil, in turn, the General Data Protection Law (LGPD), in force since 2020, sets forth clear rules for the processing of personal data by companies and public authorities. It grants data subjects rights concerning the handling of their data and imposes obligations on companies to protect such data. According to Article 5 of the LGPD:

“I – Personal data: information concerning an identified or identifiable natural person;
II – Sensitive personal data: personal data regarding racial or ethnic origin, religious belief, political opinion, membership of a trade union or a religious, philosophical or political organization, data relating to health or sexual life, genetic or biometric data, when linked to a natural person;”¹⁸

The emergence of the LGPD, at a time when the digital panopticon is becoming entrenched, demonstrates its role in reinforcing the necessary and essential control individuals should have over their personal data.¹⁹ From this

¹⁷ Council of Europe. *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108)*. Strasbourg: Council of Europe, 1981. <https://rm.coe.int/16806ae65f>

¹⁸ Originally: “I - Dado pessoal: informação relacionada a pessoa natural identificada ou identificável; II - Dado pessoal sensível: dado pessoal sobre origem racial ou étnica, convicção religiosa, opinião política, filiação a sindicato ou a organização de caráter religioso, filosófico ou político, dado referente à saúde ou à vida sexual, dado genético ou biométrico, quando vinculado a uma pessoa natural”. Brazil. *Lei no. 13.709, de 14 de agosto de 2018 (Lei Geral de Proteção de Dados Pessoais)*. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113709.htm.

¹⁹ Oliveira, Samuel R. de. *Sorria, você está sendo filmado!: repensando direitos na era do reconhecimento facial*. São Paulo: Thomson Reuters Brasil, 2021, 147.

perspective, the Law acts as “both a brake and a transformative agent on the techniques currently employed by surveillance capitalism, in order to curb the massive extraction of data and the various applications and uses they may be subject to.”²⁰

Based on the above, it is clear that the context of the informational society requires states and organizations to take a more proactive position on personal data protection, through constant legislative updates. Before examining personal data leaks, this study invites reflection on what constitute patrimonial (material) damages and moral damages, drawing on a brief observation of how Portuguese and Brazilian law address these matters.

II. WHAT ARE NON-PATRIMONIAL/MORAL DAMAGES?

A. In the Portuguese legal system and in some European countries

The 1966 Portuguese Civil Code introduced a general clause concerning the indemnifiability of non-patrimonial damages into Portuguese law. Article 496(1) stipulates that “when setting the indemnity, regard shall be had to non-patrimonial damages which, due to their seriousness, merit the protection of the law.”²¹

Maria Manuel Veloso indicates that the expression “non-patrimonial damages” is not irrelevant to the potential enhancement of protection for these damages.²² Mário Júlio de Almeida Costa notes that this term encompasses both moral damages and aesthetic and physical harm.²³

Antunes Varela defines non-patrimonial damages as “injuries that do not affect property in itself.”²⁴ Inocêncio Galvão Telles adds that these harms are immaterial and cannot be appraised in monetary terms.²⁵ In Varela’s view, these are:

“(…) harms (such as physical pain, moral distress, embarrassment, loss

²⁰ Frazão, Ana. “Objetivos e alcance da Lei Geral de Proteção de Dados.” In *Lei Geral de Proteção de Dados Pessoais e suas repercussões no Direito Brasileiro*, edited by Gustavo Tepedino, Ana Frazão, and Milena D. Oliva, 103. 1st ed. São Paulo: Thomson Reuters Brasil, 2019, 103.

²¹ Portugal. *Decreto-Lei n.o 47 344, de 25 de novembro de 1966 (Código Civil)*. <https://dre.pt/dre/legislacao-consolidada/decreto-lei/1966-34509075>.

²² Veloso, Maria Manuel. “Danos não patrimoniais.” In *Comemorações dos 35 anos do Código Civil e dos 25 anos da Reforma de 1977*, vol. 3 – *Direito das Obrigações*. Coimbra: Coimbra Editora, 2007, 498.

²³ Costa, Mário Júlio de Almeida. *Direito das Obrigações*. 10th ed. Coimbra: Almedina, 2006, 601.

²⁴ Varela, Antunes. *Das obrigações em geral*. 10th ed. Coimbra: Almedina, 2000, 601.

²⁵ Telles, Inocêncio Galvão. *Direito das Obrigações*. 6th ed. Coimbra: Almedina, 1989, 370.

of prestige or reputation, aesthetic complexes) that are insusceptible of pecuniary valuation because they affect goods (such as health, well-being, freedom, beauty, physical perfection, honor, or a good name) that are not part of the injured party's assets, and thus can be compensated only by means of a pecuniary obligation."²⁶

According to Mafalda Miranda Barbosa, when we speak of damage, we are referring to the negative impact that a certain violation of a right or interest has on a specific individual. Thus, we must conclude that there is no absolute parallel between the nature of the injured legal interest and the nature of the harm suffered. In other words, non-patrimonial damages may arise both from breaches of rights of a patrimonial nature and from breaches of rights of a personal nature. Likewise, patrimonial damages may result both from breaches of rights of a personal nature and from breaches of rights of a patrimonial nature.²⁷

Nonetheless, compensation for moral damages has faced controversies and restrictions in many legal systems,²⁸ as observed in France, Germany, and Italy. In French law, compensation for moral damages was initially rejected, though acceptance gradually developed. The German Civil Code (BGB) allows compensation for moral damages only in specific, legally defined situations. In Italy, compensation for moral damages is provided for in certain expressly established cases, but case law and legal doctrine have extended it to other types of non-patrimonial damages.

In its early stages, the French legal system was opposed to compensating moral damages, under the argument that suffering could not be monetarily assessed. The Napoleonic Code did not directly address the issue, but its provisions were interpreted in a way that allowed compensation for moral damages in criminal cases, and later in other types of offenses, albeit amid controversy. Under the Draft Reform of Civil Liability, specific rules were established to determine compensable damages, covering both patrimonial and non-patrimonial interests. However, the question of compensating damages that cannot be monetarily evaluated, such as bodily harm, remains controversial, including in case law.²⁹

²⁶ Varela, Antunes. *Das obrigações em geral*. 10th ed. Coimbra: Almedina, 2000, 601, freely translated. Originally: "(...) prejuízos (como as dores físicas, os desgostos morais, os vexames, a perda de prestígio ou reputação, os complexos de ordem estética) que, sendo insuscetíveis de avaliação pecuniária, porque atingem bens (como a saúde, o bem-estar, a liberdade, a beleza, a perfeição física, a honra ou o bom nome) que não integram o património do lesado, apenas podem ser compensados com a obrigação pecuniária".

²⁷ Barbosa, Mafalda Miranda., 182.

²⁸ Barbosa, Mafalda Miranda. "O problema do ressarcimento dos danos não patrimoniais no quadro da violação de dados pessoais," *Revista de Direito da Responsabilidade*, published March 22, 2023, 182.

²⁹ Barbosa, Mafalda Miranda. "O problema do ressarcimento dos danos não patrimoniais

Under the Bürgerliches Gesetzbuch (BGB), the German Civil Code, non-patrimonial compensation is provided for by law only in legally typified scenarios. Pursuant to section 249 of the BGB,³⁰ compensation for non-patrimonial damages is allowed only when it is possible to restore the status quo ante, which rarely occurs. If compensation is claimed in the form of monetary damages, according to section 253 of the BGB, moral damages are compensable only in legally prescribed cases, such as injuries to the body, health, freedom, and sexual self-determination.³¹ Subsequently, case law applied this same approach in cases involving violations of the general right of personality, rejecting the possibility of non-patrimonial compensation in strict liability and contractual liability cases.

The *Zweites Gesetz zur Änderung schadensersatzrechtlicher Vorschriften* (Second Law Amending the Provisions on Compensation for Damages), enacted in 2002 and intended to modernize the law of obligations, repealed section 847 of the BGB and added paragraph 2 to section 253 of the BGB, stating:

“§ 253 Non-material Damages: (2) If there is an obligation to pay compensation for injury to the body, health, freedom, or sexual self-determination, a fair monetary compensation may also be demanded for damages that are not pecuniary.”³²

Recognition of a general right of personality, rooted in section 1 of the German Constitution (*Grundgesetz*, GG), broadened the range of moral damages that can be compensated. By shifting the systematic location of the

no quadro da violação de dados pessoais,” *Revista de Direito da Responsabilidade*, published March 22, 2023, 185-186.

³⁰ “Bürgerliches Gesetzbuch (BGB) - § 249 Art und Umfang des Schadensersatzes:

(1) Wer zum Schadensersatz verpflichtet ist, hat den Zustand herzustellen, der bestehen würde, wenn der zum Ersatz verpflichtende Umstand nicht eingetreten wäre.

(2) Ist wegen Verletzung einer Person oder wegen Beschädigung einer Sache Schadensersatz zu leisten, so kann der Gläubiger statt der Herstellung den dazu erforderlichen Geldbetrag verlangen. Bei der Beschädigung einer Sache schließt der nach Satz 1 erforderliche Geldbetrag die Umsatzsteuer nur mit ein, wenn und soweit sie tatsächlich angefallen ist”. Germany. *Bürgerliches Gesetzbuch (BGB) [German Civil Code]*. <https://www.gesetze-im-internet.de/bgb/BJNR001950896.html>

³¹ “Bürgerliches Gesetzbuch (BGB) - § 253 Immaterieller Schaden:

(1) Wegen eines Schadens, der nicht Vermögensschaden ist, kann Entschädigung in Geld nur in den durch das Gesetz bestimmten Fällen gefordert werden”. Germany. *Bürgerliches Gesetzbuch (BGB) [German Civil Code]*. <https://www.gesetze-im-internet.de/bgb/BJNR001950896.html>

³² “§ 253 Immaterieller Schaden: (2) Ist wegen einer Verletzung des Körpers, der Gesundheit, der Freiheit oder der sexuellen Selbstbestimmung Schadensersatz zu leisten, kann auch wegen des Schadens, der nicht Vermögensschaden ist, eine billige Entschädigung in Geld gefordert werden”. Germany. *Bürgerliches Gesetzbuch (BGB) [German Civil Code]*. <https://www.gesetze-im-internet.de/bgb/BJNR001950896.html>

provision, there is now an opening to widen compensation for non-patrimonial damages in strict liability and contractual liability, making it a more general solution. However, the system of legally typified offenses, aimed at protecting specific interests, remains in force.³³

In Italy, compensation for moral damages is provided only in cases expressly established by law. Nevertheless, case law and legal doctrine have expanded its application, allowing for compensation of other non-patrimonial damages besides moral damages, based on Article 2043 of the Italian Civil Code.³⁴ Specific categories of damages, such as bodily harm, biological damage, and existential damage, have been recognized independently.

The Constitutional Court played a decisive role in asserting that Article 2059 of the Civil Code³⁵ could not limit the protection of legally safeguarded interests guaranteed under the Constitution. Thus, it is considered that this provision refers only to moral damages in the strict sense, while broader non-patrimonial damages, including biological damage, are protected under Article 2043. Compensation for non-patrimonial damages is tied to the violation of fundamental rights or interests, deemed inviolable and connected to human dignity. Case law and legal doctrine aim to avoid trivial claims that do not exceed a socially tolerable threshold or reach a certain level of offensiveness, closely linking the nature of the violated legal interest to the harm suffered.³⁶

As we see, unlike the German and Italian systems—where the right to compensation for non-patrimonial damages exists only in legally specified cases—Portugal imposes no such restrictions, as the right to compensation is granted in general terms. The only requirement is that the damages be serious enough to justify compensation.³⁷

³³ Veloso, Maria Manuel. “Danos não patrimoniais.” In *Comemorações dos 35 anos do Código Civil e dos 25 anos da Reforma de 1977*, vol. 3 – *Direito das Obrigações*, 504. Coimbra: Coimbra Editora, 2007, 504.

³⁴ “Articolo 2043 del Codice Civile - Risarcimento per fatto illecito:

Qualunque fatto doloso o colposo, che cagiona ad altri un danno ingiusto, obbliga colui che ha commesso il fatto a risarcire il danno”. Italy. 1942. *Regio Decreto 16 marzo 1942, XX, n. 262 (Codice Civile)*. <https://www.codice-civile-online.it/regio-decreto-16-marzo-1942-xx-n-262>

³⁵ “Articolo 2059 del Codice Civile - Danni non patrimoniali:

Il danno non patrimoniale deve essere risarcito solo nei casi determinati dalla legge”. Italy. 1942. *Regio Decreto 16 marzo 1942, XX, n. 262 (Codice Civile)*. <https://www.codice-civile-online.it/regio-decreto-16-marzo-1942-xx-n-262>

³⁶ Barbosa, Mafalda Miranda. “O problema do ressarcimento dos danos não patrimoniais no quadro da violação de dados pessoais,” *Revista de Direito da Responsabilidade*, published March 22, 2023, 187-188.

³⁷ Monteiro, António Pinto. “A indemnização por danos não patrimoniais em debate: também na responsabilidade contratual? Também a favor das pessoas jurídicas?” *Revista Brasileira de Direito Civil* 5 (July–September 2015), 103.

In António Pinto Monteiro's view, the term "non-patrimonial damages" is more precise than the term "moral damages": first, because the former is broader than the latter; second, because it highlights the essential characteristic of this type of damage (namely, that it is insusceptible of monetary assessment); and lastly, because it is precisely this characteristic—common to a category of damages that is heterogeneous in other respects—that raises the fundamental legal issue of their compensation.³⁸

As the author notes, non-patrimonial damages cannot be strictly indemnified. However, they can be compensated. Clearly, pain has no monetary value (this is not a matter of assigning the injured party a "price of pain," or *pecunia doloris*, or, in German terminology, *Schmerzensgeld*), nor does money have the power to eliminate the pain completely. Nonetheless, such pain can be mitigated with a sum of money capable of providing the victim with pleasures or satisfactions that lessen or at least compensate for the damage. Thus, compensation for non-patrimonial damages is justified, not so much by the idea of indemnity in its strict sense, but rather by that of compensation: money does not remove the harm, but offers the injured party a satisfaction that can compensate for it.³⁹

According to Mafalda Miranda Barbosa, in the context of compensation for non-patrimonial damages, it is not enough that a faculty inherent to the content of the violated right has been disregarded. The negative impact of such a violation must be demonstrable from both a practical and normative standpoint.⁴⁰ This would seem, therefore, to exclude in Portuguese law the concept of *in res ipsa* damage, as the fundamental rule is that non-patrimonial damages—be they moral or otherwise—cannot be compensated without the allegation and proof of their existence.⁴¹

Within this context, Article 82 of the GDPR, under the heading "Right to compensation and liability," states in paragraphs 1 and 2:

"1. Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered. 2. Any controller involved in processing shall be liable for the

³⁸ Monteiro, António Pinto. "A indemnização por danos não patrimoniais em debate: também na responsabilidade contratual? Também a favor das pessoas jurídicas?" *Revista Brasileira de Direito Civil* 5 (July–September 2015), 106.

³⁹ Monteiro, António Pinto. "A indemnização por danos não patrimoniais em debate: também na responsabilidade contratual? Também a favor das pessoas jurídicas?" *Revista Brasileira de Direito Civil* 5 (July–September 2015), 107.

⁴⁰ Barbosa, Mafalda Miranda. "O problema do ressarcimento dos danos não patrimoniais no quadro da violação de dados pessoais," *Revista de Direito da Responsabilidade*, published March 22, 2023, 187-188.

⁴¹ Barbosa, Mafalda Miranda. *Direito da Responsabilidade: Uma disciplina jurídica autónoma*. Cascais: Princípa, 2021, 222-223.

damage caused by processing which infringes this Regulation. [...].”⁴²

According to Mafalda Miranda Barbosa, one must understand that the GDPR does not seek to establish a finished model of civil liability, entirely independent from the compensatory dogmatics in force in each Member State. This means that the special rules set out in the GDPR must maintain a continuous dialogue with national civil liability systems, since the GDPR is simply a projection in the punitive sphere of a liability framework that indeed has its own specific contours.⁴³

In the German legal system, for instance, where numerous decisions concern civil liability for GDPR violations, case law has been ambivalent about how—and under what conditions—non-patrimonial damages in this context should or can be compensated. In an attempt to go beyond the traditionally restrictive approach in compensating these kinds of damages, and in line with the aims of EU legislation, the courts are split between those that still require proof of how the legal breach specifically affected the injured party’s personal rights, and those that hold that a simple breach of the right to personal data protection constitutes non-patrimonial damage.⁴⁴

Neither the GDPR nor personal data protection laws explicitly spell out the requirements for awarding compensation for non-patrimonial damages. In this scenario, one must determine—based on the very objectives of legislation concerning personal data—whether or not it is necessary to satisfy the requirements imposed by Article 496 of the Portuguese Civil Code. Under the wording of the referenced article, non-patrimonial damages are eligible for compensation regardless of the protected legal interest that was violated, provided they are of sufficient seriousness to merit legal protection.⁴⁵

It follows that, under Portuguese law, attention must be paid to the particular seriousness of the damage. Against this background, the EU GDPR establishes a right to compensation for both material and non-material damage resulting from breaches of the Regulation. However, the GDPR does not specify the criteria for awarding non-patrimonial damages, highlighting

⁴² European Union. *Regulamento (UE) 2016/679 do Parlamento Europeu e do Conselho, de 27 de abril de 2016, relativo à proteção das pessoas singulares no que diz respeito ao tratamento de dados pessoais e à livre circulação desses dados* (General Data Protection Regulation). Official Journal of the European Union L119 (May 4, 2016). <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016R0679>.

⁴³ Barbosa, Mafalda Miranda. “O problema do ressarcimento dos danos não patrimoniais no quadro da violação de dados pessoais,” *Revista de Direito da Responsabilidade*, published March 22, 2023, 179.

⁴⁴ Barbosa, Mafalda Miranda. “O problema do ressarcimento dos danos não patrimoniais no quadro da violação de dados pessoais,” *Revista de Direito da Responsabilidade*, published March 22, 2023, 196.

⁴⁵ Portugal. *Decreto-Lei n.º 47,344, de 25 de novembro de 1966 (Código Civil)*. <https://dre.pt/dre/legislacao-consolidada/decreto-lei/1966-34509075>.

the need to align the Regulation with national civil liability regimes.

B. In the Brazilian legal system

Article 186 of the Brazilian Civil Code clearly provides that “anyone who, by a voluntary act or omission, negligence, or recklessness, violates a right and causes harm to another, even if only moral, commits a wrongful act.”⁴⁶ This is reinforced by the Constitution, which ensures the right to indemnification for material or moral damages arising from the violation of personality rights.⁴⁷

Additionally, Article 944 of the Brazilian Civil Code states that indemnification shall be determined based on the extent of the damage. Unlike in Portugal, Brazil has developed a robust legal and jurisprudential theory regarding the presumption of non-patrimonial damages. These damages are thus considered *in res ipsa*, arising from the very unlawful act, independent of demonstrating any concrete losses within the personal sphere of the harmed individual.⁴⁸

Strictly speaking, and as Von Bar explains, in such cases there is no liability without damage. The damage exists, yet it is presumed. The individual receives compensation for so-called “nominal damage,” which may occur whenever there is a *tort of trespass to person* or a *tort of trespass to land*.⁴⁹

Nevertheless, Brazilian legal scholars note that not every violation of personality rights leads to non-patrimonial damage. Interests must be selected based on whether their violation is capable of causing compensable harm to the rightsholder. This selection should be grounded in the significance of the interest affected in the case before the courts, rather than in the concrete impact on the injured individual’s personal sphere.⁵⁰ According to Anderson Schreiber, relying on these impacts would consign non-patrimonial damages to “an inaccessible limbo of personal, intimate, and occasional sensations.”⁵¹

⁴⁶ Brazil. *Lei no 10.406, de 10 de janeiro de 2002 (Código Civil)*. http://www.planalto.gov.br/ccivil_03/leis/2002/110406compilada.htm.

⁴⁷ Brazil. *Constituição da República Federativa do Brasil de 1988*. http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm.

⁴⁸ Santos, Leonardo Valverde Susart dos. “Compensação de danos não patrimoniais causados pela violação de normas de proteção de dados pessoais.” *Revista de Direito da Responsabilidade* (2022): 960.

⁴⁹ von Bar, Christian. *The Common European Law of Torts*, vol. 2, Oxford: Clarendon Press, 2000, 6 s.

⁵⁰ Santos, Leonardo Valverde Susart dos. “Compensação de danos não patrimoniais causados pela violação de normas de proteção de dados pessoais.” *Revista de Direito da Responsabilidade* (2022): 975.

⁵¹ The author expresses concern about a scenario of hyper-liability and therefore maintains that mere annoyances and inconveniences are not compensable. However,

Hence, the *in res ipsa* thesis for non-patrimonial damages in Brazil is well established, ultimately leading to a higher number of court-awarded indemnifications. As Anderson Schreiber points out, since the recognition of compensability for moral damages, Brazilian courts have faced the difficulties posed by an excessively broad notion of damage.⁵² Even in Portugal, this issue in the Brazilian civil liability system has already been recognized. Mafalda Miranda Barbosa observes:

“In the Brazilian legal system, it is common to resort to the notion of *in res ipsa* damages. Various and diverse situations allow for compensation without proving the concrete harm suffered: listing one’s name as a defaulter, overbooking situations, inability to practice a profession for young people whose undergraduate degrees have not been recognized by the relevant authorities, among others.”⁵³

Indeed, there are countless fact patterns recognized by the Brazilian judiciary as legitimizing compensation for non-patrimonial damages.⁵⁴ One

determining what constitutes mere annoyance or inconvenience cannot do without an examination of the injured party’s emotional state. Because a careful assessment of the harm suffered is unavoidable, the need to prove an actual injury in the individual’s personal sphere is a necessary requirement for awarding non-material damages. In contrast, he asserts that “the injury occurs objectively, and its verification is wholly unrelated to its impact on the victim’s state of mind.” In fact, it can be observed that, in rejecting the criteria enabling a concrete assessment of the harm, the author paradoxically grants the judge considerable discretionary freedom, yet with a heightened possibility of interference in the merits of the interest’s significance (which should be within the legislature’s purview), rather than focusing on the negative impact the offender’s unlawful conduct has on the injured party’s legal sphere. Schreiber, Anderson. *Novos paradigmas da responsabilidade civil*, 6th ed., São Paulo: Saraiva, 2015, 108-109; 140-142.

⁵² Schreiber, Anderson. *Novos paradigmas da responsabilidade civil*, 6th ed., São Paulo: Saraiva, 2015, 117.

⁵³ Barbosa, Mafalda Miranda. “Entre a ilicitude e o dano”, in *Novos desafios da responsabilidade civil: atas das II Jornadas luso-brasileiras de responsabilidade civil*, Instituto Jurídico, Coimbra, 2019, 262, freely translated. Originally: “No ordenamento jurídico brasileiro, é comum o recurso à figura dos danos *in res ipsa*. São variadas e de variada índole as hipóteses de ressarcimento sem a prova do dano concretamente sofrido: inserção do nome no cadastro de inadimplentes, situações de overbooking, impossibilidade de exercício da profissão por jovens que viram o seu diploma de licenciatura não ser reconhecido pelas autoridades com competência para o efeito, entre outras”.

⁵⁴ According to the Brazilian National Council of Justice, in its “Justice in Numbers 2021” report, the topic Consumer Law – Supplier Liability / Compensation for Moral Damage ranks second, with 1,655,989 cases filed nationwide, representing 3.15% of the overall caseload in state courts. The reports show that, year after year, actions for compensation for moral damage remain at the top of the list, which brings us back to the concern raised by Justice Nancy Andrighi in the judgment of Special Appeal no. 1,426,710 – RS (published in DJe on November 9, 2016), pointing out the “trend of trivialization and belittling of moral damage compensation” and, furthermore, that “it is incumbent upon the courts to restore dignity to this mechanism which, as Youssef Said Cahali teaches us, was

prominent example is the so-called “productive deviation” theory, already accepted by the Superior Court of Justice (STJ). This theory holds that the mere loss of consumer time, caused by defective products or services, constitutes a compensable damage.⁵⁵

In the context of personal data protection regulations, it is crucial to coordinate the LGPD (Brazilian General Data Protection Law) with the general civil liability framework, considering the special nature of this legislation. Article 42 of the LGPD provides that “the controller or the processor who, as a result of the personal data processing activity, causes property, moral, individual, or collective harm to others, is required to repair it.”⁵⁶

Article 43 sets out scenarios in which the data processing agents are not held liable. They must demonstrate that (i) they did not process the personal data assigned to them; (ii) although they did indeed process the personal data, no breach of the data protection legislation occurred; or (iii) the harm resulted from the exclusive fault of the data subject or of a third party.⁵⁷

From a preliminary reading of the statutory text, the legislator appears to have established a broad protection scheme for data subjects, ensuring full redress for any damages they may suffer. However, upon closer examination, Leonardo Valverde Susart dos Santos highlights several problematic points: (i) the legislator limited liability only to instances in which the controller or data processor acted within the context of data processing activities; and (ii) in the realm of personal data protection, breaches of the law can occur not only during data processing but also in any other related activity, such as structuring governance programs, developing products, or even in an organization’s internal processes, which must all adhere to legal guidelines in accordance with widely publicized principles of *privacy by design*.⁵⁸

laboriously recognized in our legal framework.” According to the Eminent Justice, “This restoration necessarily requires a clearer definition of its contours (moral damage) and restraint in its application, so it will be invoked solely in cases that demand judicial intervention to redress severe harm to human dignity.” Rosenthal, Juliana G. Quintas. “O dano moral como fomentador da judicialização.” *Jota*, Published August 31, 2022. <https://www.jota.info/coberturas-especiais/aviacao-desafios-da-retomada/o-dano-moral-como-fomentador-da-judicializacao-31082022>.

⁵⁵ Santos, Leonardo Valverde Susart dos. “Compensação de danos não patrimoniais causados pela violação de normas de proteção de dados pessoais.” *Revista de Direito da Responsabilidade* (2022): 976.

⁵⁶ Brazil. *Lei no 13.709, de 14 de agosto de 2018 (Lei Geral de Proteção de Dados Pessoais)*. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm

⁵⁷ Brazil. *Lei no 13.709, de 14 de agosto de 2018 (Lei Geral de Proteção de Dados Pessoais)*. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm

⁵⁸ Santos, Leonardo Valverde Susart dos. “Compensação de danos não patrimoniais causados pela violação de normas de proteção de dados pessoais.” *Revista de Direito da Responsabilidade* (2022): 965.

Thus, the wording of the provision in question makes it clear that the mere violation of a data subject's right does not itself amount to a (patrimonial or non-patrimonial) harm. It is necessary for the agent, in the course of data processing, to effectively cause harm to be obliged to compensate. In this respect, Leonardo Valverde Susart dos Santos remarks that the legislator could have stated that "the controller or the processor who, in violation of data protection legislation, causes harm to third parties [...] is required to repair it," but instead chose to underscore that the harm must indeed result from the data processing activity.⁵⁹

Based on the foregoing, one may conclude that under both Article 82 of the GDPR and Article 42 of the LGPD, each respective civil liability framework provides for comprehensive compensation of damages suffered by data subjects, encompassing all forms of non-patrimonial harm that may be inflicted upon them.

III. SECURITY INCIDENT: CONCEPT, LEGISLATION, AND EXAMPLES OF PERSONAL DATA LEAKS

Section 2 of Chapter IV of the GDPR, entitled "Security of personal data," is closely linked to the principle of integrity and confidentiality laid out in Article 5(1)(f) of the GDPR. Ensuring such security follows from the obligation to prevent personal data breaches (Article 32) and to respond appropriately when breaches occur (Articles 33 and 34). Hence, an effective data security strategy should "prevent breaches wherever possible and respond promptly when they occur."⁶⁰

Under Article 4(12) of the GDPR, a "personal data breach" covers accidental or unlawful situations resulting in the destruction, loss, alteration, unauthorized disclosure of, or access to personal data.⁶¹ Graça Canto Moniz points out that security incidents may take various forms: data may no longer exist, or may no longer exist in a format useful for the controller; the data

⁵⁹ Santos, Leonardo Valverde Susart dos. "Compensação de danos não patrimoniais causados pela violação de normas de proteção de dados pessoais." *Revista de Direito da Responsabilidade* (2022): 976.

⁶⁰ European Union. *Regulamento (UE) 2016/679 do Parlamento Europeu e do Conselho, de 27 de abril de 2016, relativo à proteção das pessoas singulares no que diz respeito ao tratamento de dados pessoais e à livre circulação desses dados* (General Data Protection Regulation). Official Journal of the European Union L119 (May 4, 2016). <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016R0679>

⁶¹ European Union. *Regulamento (UE) 2016/679 do Parlamento Europeu e do Conselho, de 27 de abril de 2016, relativo à proteção das pessoas singulares no que diz respeito ao tratamento de dados pessoais e à livre circulação desses dados* (General Data Protection Regulation). Official Journal of the European Union L119 (May 4, 2016). <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016R0679>

may be damaged, including alterations, corruption, or incompleteness; or the personal data may still exist, but the controller has lost control or access to them, or does not have them in its possession anymore.⁶² This compromise of personal data ordinarily stems from unauthorized processing, whether accidental or unlawful.

By contrast, the LGPD makes no mention of what “leaks” or, more precisely, “security incidents” might be. However, Article 6 of the LGPD provides:

“(…) data processing agents must adopt security, technical, and administrative measures capable of protecting personal data from unauthorized access and from accidental or unlawful situations of destruction, loss, alteration, communication, or any form of improper or unlawful processing.”⁶³

A comparison with Article 4(12) of the GDPR reveals some immediate similarities, even though the Brazilian law does not provide a precise definition. The National Data Protection Authority (*Autoridade Nacional de Proteção de Dados*, ANPD) has suggested a definition in its procedural guide for reporting security incidents, available on its website:

“(…) a security incident involving personal data is any confirmed adverse event related to a personal data security breach, such as unauthorized, accidental, or unlawful access that results in destruction, loss, alteration, data leak or indeed any form of improper or unlawful data processing that may pose a risk to the rights and freedoms of the data subject.”⁶⁴

According to José Luiz de Moura Faleiros Júnior, the ANPD’s definition of a “security incident” is more detailed than the GDPR’s “personal data breach.” It explicitly refers to the well-known “data leak,” considered a

⁶² Moniz, Graça Canto. *Manual de Introdução à Proteção de Dados Pessoais*. Coimbra: Almedina, 2023, 244.

⁶³ Brazil. *Lei no 13.709, de 14 de agosto de 2018 (Lei Geral de Proteção de Dados Pessoais)*. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113709.htm, freely translated. Originally: “(…) os agentes de tratamento devem adotar medidas de segurança, técnicas e administrativas aptas a proteger os dados pessoais de acessos não autorizados e de situações acidentais ou ilícitas de destruição, perda, alteração, comunicação ou qualquer forma de tratamento inadequado ou ilícito”.

⁶⁴ Brazil. Autoridade Nacional de Proteção de Dados (ANPD). “*Incidente de Segurança*.” <https://www.gov.br/anpd/pt-br/assuntos/incidente-de-seguranca>, freely translated. Originally: “(…) um incidente de segurança com dados pessoais é qualquer evento adverso confirmado, relacionado à violação na segurança de dados pessoais, tais como acesso não autorizado, acidental ou ilícito que resulte na destruição, perda, alteração, vazamento ou ainda, qualquer forma de tratamento de dados inadequada ou ilícita, os quais possam ocasionar risco para os direitos e liberdades do titular dos dados pessoais”.

subtype of security incident, along with loss, alteration, or any other form of improper or unlawful processing.⁶⁵

This list is evidently illustrative, given the phrase “such as.” Hence, at least under the glossary used by the Brazilian authority, when referring to a “data leak,” what is meant is a specific type of security incident, although there is no more detailed explanation of what precisely constitutes it.⁶⁶ There is an endless list of personal data leaks,⁶⁷ and new incidents occur daily, affecting companies of every size.⁶⁸ In that context, let us note a few cases involving security incidents that resulted in personal data leaks.

In 2015, the dating site Ashley Madison was the target of a successful cyberattack. This site’s slogan is: “Ashley Madison – Life is short. Have an affair.” Ashley Madison belongs to Avid Life Media, which acknowledged that the attack also affected Cougar Life and Established Men. The site had 37 million users.⁶⁹

In Carissa Véliz’s view, it is hard to grasp the exact extent of the suffering and destruction that took place after the data leak. Millions of people suffered from insomnia and anxiety. Some lost their jobs. Some were blackmailed by criminals threatening to inform their spouses of their use of the site unless they paid. In one instance, the extortion letter included the warning: “If you do not comply with my demand, I will not only humiliate you, I will humiliate those close to you.” Even if the victim paid for silence, there was no guarantee they would not be exposed in the future. In Alabama, a newspaper printed the names of all local residents who appeared in the database.⁷⁰

In 2016, an Australian blood donation and collection service provider, the

⁶⁵ Faleiros Júnior, José Luiz de Moura. “O que é, afinal, um ‘vazamento’ de dados?” *Migalhas de IA e Proteção de Dados*, September 10, 2021. <https://www.migalhas.com.br/coluna/migalhas-de-protecao-de-dados/351388/o-que-e-afinal-um-vazamento-de-dados>

⁶⁶ Faleiros Júnior, José Luiz de Moura. “O que é, afinal, um ‘vazamento’ de dados?” *Migalhas de IA e Proteção de Dados*, September 10, 2021. <https://www.migalhas.com.br/coluna/migalhas-de-protecao-de-dados/351388/o-que-e-afinal-um-vazamento-de-dados>

⁶⁷ Tunggal, Abi Tyas. The 50 Biggest Data Breaches [Updated for 2020]. *UpGuard*, 27 nov. 2020. Disponível em: <https://www.upguard.com/blog/biggest-data-breaches>

⁶⁸ According to the *DLA Piper GDPR Fines and Data Breach Survey: January 2023*, the year 2022 broke the record, with a total of €1.64 billion in GDPR violation fines reported across Europe. The combined value of the fines imposed in 2022 was 50% higher than the value of fines reported in 2021. Meta Group was the subject of some of the largest fines, with Ireland’s Data Protection Commission issuing penalties of €210 million against Facebook and €180 million against Instagram for their profiling practices. DLA Piper. *GDPR Fines and Data Breach Survey 2023*. <https://inform.dlapiper.com/9/7964/uploads/dla-piper-gdpr-fines-and-data-breach-survey-2023.pdf>

⁶⁹ SAPO Portugal. “Ashley Madison: Hackers Revelam Dados de Utilizadores de Site de Adulterio.” <https://sol.sapo.pt/artigo/407688/ashley-madison-hackers-revelam-dados-de-utilizadores-de-site-de-adulterio>

⁷⁰ Véliz, Carissa. *Privacidade é poder: Por que e como você deveria retomar o controle de seus dados*. Translated by Samuel Oliveira. São Paulo: Editora Contracorrente, 2021.

Red Cross Blood Service, experienced a major security breach when information concerning 550,000 blood donors was publicly released due to transferring a file containing donor details to an unsecured computing environment. The data related to blood collections carried out between 2010 and 2016. The event was serious in itself, given the personal nature of the data posted on a website, namely: name, gender, address, and date of birth. More dramatically, among the disclosed information was a particularly sensitive detail indicating that a given donor was considered a “person with risky sexual behavior.”⁷¹

In January 2021, a massive personal data leak affected millions of Brazilians. The incident involved the release of full names, taxpayer registration numbers (CPF), addresses, telephone numbers, and credit histories of more than 223 million individuals, becoming the largest data leak in Brazilian history. The data were made available on online forums and widely reported in both national and international media.⁷²

The leak was attributed to a security flaw on a server belonging to a São Paulo-based marketing firm (SERASA), which stored a significant amount of Brazilians’ personal data. The company denied responsibility for the incident, although investigating authorities stated it had been negligent in adequately protecting user information. The breach raised concerns about privacy and personal data security in Brazil and reinforced the need for stricter data protection measures.⁷³

The full extent of the repercussions of this major data leak in Brazil remains uncertain, but the exposure of sensitive personal information could lead to serious security risks, including identity theft, financial fraud, and extortion. Brazilian authorities are investigating the matter and seeking to hold the responsible company accountable, while also working to strengthen privacy and data security policies in the country.

Finally, in August 2022, the airline TAP Portugal suffered a hacker attack (claimed by the Ragnar Locker group) that resulted in the exposure of the personal information of over 1.5 million passengers. According to the company, the attack occurred on an inactive server containing flight records

⁷¹ Mulholland, Caitlin Sampaio. “Dados pessoais sensíveis e a tutela de direitos fundamentais: uma análise à luz da lei geral de proteção de dados.” *Revista de Direitos e Garantias Fundamentais* 19, no. 3 (2018): 159–80.

⁷² El País. “Todos os Brasileiros Estão com Seus Dados à Venda (e Há Muito Pouco o que se Pode Fazer para se Proteger).” January 26, 2021. <https://brasil.elpais.com/brasil/2021-01-26/todos-os-brasileiros-estao-com-seus-dados-a-venda-e-ha-muito-pouco-o-que-se-pode-fazer-para-se-protoger.html>

⁷³ El País. “Todos os Brasileiros Estão com Seus Dados à Venda (e Há Muito Pouco o que se Pode Fazer para se Proteger).” January 26, 2021. <https://brasil.elpais.com/brasil/2021-01-26/todos-os-brasileiros-estao-com-seus-dados-a-venda-e-ha-muito-pouco-o-que-se-pode-fazer-para-se-protoger.html>

and passenger data from 2011 through 2016. The leaked data included details such as full names, passport numbers, dates of birth, and contact information (email addresses and phone numbers).⁷⁴ “The affected information may vary from one customer to another and may include names, contact details, demographic information, and frequent flyer numbers,” explained the airline, assuring that payment data (such as credit card numbers and so on) had not been compromised.⁷⁵

TAP Portugal reported that the hackers demanded a ransom in exchange for not making the data public, but the company opted not to meet their demands. Instead, it hired a cybersecurity firm to investigate and remedy the incident. TAP Portugal also offered support to impacted passengers by providing updated information on the incident and instructions on how to protect their personal information.⁷⁶

These examples make it clear that the current scenario presents major challenges. With harmful events of substantial proportions occurring frequently, there is significant uncertainty regarding full protection of this fundamental right, notwithstanding the latest regulatory measures that have been introduced. Along these lines, the next (and final) section examines courts’ stances on the issue.

IV. COURTS’ POSITIONS: ANALYSIS OF EUROPEAN AND BRAZILIAN CASES

A. Decisions of the Court of Justice of the European Union

The first case concerns the questions referred for a preliminary ruling by the *Oberster Gerichtshof* (Supreme Court of Austria) to the Court of Justice of the European Union (CJEU) in case C-300/21.⁷⁷ Based on a summary by Mafalda Miranda Barbosa, since 2017, the *Österreichische Post AG*, a

⁷⁴ Dantas, Miguel, and Rui Barros. “Hackers Publicam Dados de Clientes da TAP. Moradas, Nomes e Telefones Entre Informação Divulgada.” Published September 13, 2022. <https://www.publico.pt/2022/09/13/sociedade/noticia/hackers-publicam-dados-clientes-tap-moradas-nomes-telefones-informacao-divulgada-2020350>

⁷⁵ Dantas, Miguel, and Rui Barros. “Hackers Publicam Dados de Clientes da TAP. Moradas, Nomes e Telefones Entre Informação Divulgada.” Published September 13, 2022. <https://www.publico.pt/2022/09/13/sociedade/noticia/hackers-publicam-dados-clientes-tap-moradas-nomes-telefones-informacao-divulgada-2020350>

⁷⁶ Dantas, Miguel, and Rui Barros. “Hackers Publicam Dados de Clientes da TAP. Moradas, Nomes e Telefones Entre Informação Divulgada.” Published September 13, 2022. <https://www.publico.pt/2022/09/13/sociedade/noticia/hackers-publicam-dados-clientes-tap-moradas-nomes-telefones-informacao-divulgada-2020350>

⁷⁷ Austria. *Processo C-300/21 UI contra Österreichische Post AG*. Available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=266842&pageIndex=0&doclang=pt&mode=req&dir=&occ=first&part=1&cid=309320>.

company specializing in address processing, had been gathering information about Austrian citizens' political-party affiliations, defining target groups through algorithms and socio-demographic criteria.

In the case, “UI” is a natural person whose information was subjected to statistical extrapolation by Österreichische Post in order to classify them into potential target groups for political campaign advertising by different political parties. This analysis led to the conclusion that the “injured party” strongly identified with one particular party. Although the data were not shared with third parties, “UI,” who did not consent to the processing of her personal data, expressed discomfort over her political affiliations being analyzed, in particular the inferred party association established without her agreement. “UI” sought EUR 1,000 in non-material damages due to the internal turmoil she experienced. She alleged that her reputation had been tarnished, in addition to feelings of public exposure, dissatisfaction, and loss of trust.⁷⁸

Both the trial court and the appellate court rejected the claim. They held that not every breach of the GDPR automatically gives rise to a right to compensation for non-material damage. Austrian law complements EU law in this area, and therefore only harms that exceed mere unease or emotional distress are compensable.⁷⁹ The injured party subsequently appealed to the *Oberster Gerichtshof* (Supreme Court of Austria), which formulated preliminary questions that led to the proceeding before the CJEU.⁸⁰ In May 2023, the CJEU delivered a judgment in case C-300/21, ruling that Article 82 of the GDPR must be interpreted as follows:

- A mere infringement of the provisions of the GDPR is not sufficient to confer a right to compensation.
- It precludes a national rule or practice under which compensation for non-material damage is subject to the condition that the harm suffered by the data subject reach a certain threshold of seriousness.
- For purposes of setting the amount of compensation owed under the right to compensation, national courts must apply their own State's internal rules on the scope of monetary compensation, provided that the principles of equivalence and effectiveness of EU law are respected.

According to this interpretation by the CJEU, the notions of both material

⁷⁸ Barbosa, Mafalda Miranda. “O problema do ressarcimento dos danos não patrimoniais no quadro da violação de dados pessoais,” *Revista de Direito da Responsabilidade*, published March 22, 2023, 179.

⁷⁹ Barbosa, Mafalda Miranda. “O problema do ressarcimento dos danos não patrimoniais no quadro da violação de dados pessoais,” *Revista de Direito da Responsabilidade*, published March 22, 2023, 179.

⁸⁰ Barbosa, Mafalda Miranda. “O problema do ressarcimento dos danos não patrimoniais no quadro da violação de dados pessoais,” *Revista de Direito da Responsabilidade*, published March 22, 2023, 179.

and immaterial damage—as well as of compensation—are autonomous concepts under EU law and must be interpreted consistently in all Member States, given that Article 82(1) of the GDPR does not dictate otherwise. The CJEU established that the right to compensation under Article 82(1) of the GDPR depends on three cumulative conditions: (i) the existence of damage; (ii) a breach of the GDPR; and (iii) a causal link between the breach and the damage. Additionally, the Court noted that Article 82(1) does not automatically confer the right to compensation merely for a breach of the GDPR provisions.

In the second case, which occurred on July 15, 2019, in Bulgaria, there was unauthorized access to the Bulgarian National Revenue Agency’s (NRA) information system, resulting in the disclosure of tax and social security data belonging to millions of citizens.⁸¹ Some individuals, including “VB,” filed lawsuits against the NRA, seeking compensation for non-material damages associated with worries and fears about possible misuse of their personal data. “VB” asserted that the NRA had violated national legislation and its obligation to adopt appropriate measures to ensure the security of personal data.

The trial court rejected the claim, maintaining that the NRA could not be deemed responsible for the data breach and that the burden lay with “VB” to prove that the measures adopted by the NRA were inadequate. The Supreme Administrative Court submitted preliminary questions to the CJEU regarding the interpretation of the GDPR, with the aim of clarifying the conditions under which compensation for non-material damages could be awarded to individuals whose personal data were disclosed due to hacking attacks (Case C-340/21).⁸²

Advocate General Giovanni Pitruzzella issued his Opinion on April 27, 2023, stating that data controllers must implement appropriate measures to ensure compliance with the GDPR. The suitability of those measures must be evaluated in light of the nature, scope, context, and purpose of the processing, as well as the likelihood and severity of risks to the rights and freedoms of natural persons.⁸³ The Opinion underscored five crucial points:

- A mere personal data breach does not suffice to conclude that the

⁸¹ Mazzuca, Antonio. *Bulgaria, attacco hacker e diffusione di dati personali: quando il danno morale è risarcibile?* May 4, 2023. Disponível em: <https://www.insic.it/privacy-e-sicurezza/privacy-e-gdpr/bulgaria-attacco-hacker-e-diffusione-di-dati-personali-quando-il-danno-morale-e-risarcibile/>

⁸² Court of Justice of the European Union (CJUE). *Comunicado de Imprensa n.º 67/23*. Luxembourg, April 27, 2023. <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-04/cp230067pt.pdf>.

⁸³ Court of Justice of the European Union (CJUE). *Comunicado de Imprensa n.º 67/23*. Luxembourg, April 27, 2023. <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-04/cp230067pt.pdf>

technical and organizational measures adopted by the controller are inadequate. The choice of measures should consider factors such as the state of the art and available technology, taking into account data subjects' interests and the principle of proportionality.

- National courts must fully examine the measures that have been taken, looking at their content, implementation, and practical effects. The adoption of codes of conduct or certification procedures may serve as a useful indicator of compliance, with the burden of proving that such measures were in place resting on the controller.
- The data controller bears the burden of proving that the measures taken were adequate, and each Member State may determine the admissible methods of proof, including evidentiary measures, in accordance with its own legal system.
- A breach of the Regulation by a third party does not automatically exempt the data controller from liability. To be exempt, the controller must provide a high level of proof showing that it was not responsible for the event causing the damage. An unlawful personal data processing scenario is considered an aggravated liability scenario, based on presumed fault, but the data controller may present exculpatory evidence.
- The fear of potential misuse of personal data—provided that the data subject can demonstrate that fear—can constitute non-material damage meriting compensation. However, this must be a genuine and certain emotional injury, not merely a minor inconvenience or annoyance.

Lastly, it is important to note that the Advocate General's Opinions are not binding on the CJEU. Advocates General independently propose legal solutions for the cases they review. The judges of the Court are now deliberating in Case C-340/21, and the judgment will be handed down in due course.⁸⁴

Moreover, the preliminary reference mechanism allows the courts of Member States to submit questions to the CJEU on the interpretation of EU law or the validity of an EU act in disputes before them. The CJEU does not rule on the national dispute itself; it is for the national court to decide the case in accordance with the Court's answer. The ruling also binds other national courts that encounter similar issues.

B. Decisions of the Brazilian Superior Court of Justice

The third case dates from March 2023, when the Brazilian Superior Court

⁸⁴ Court of Justice of the European Union (CJUE). *Comunicado de Imprensa n.º 67/23*. Luxembourg, April 27, 2023. <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-04/cp230067pt.pdf>

of Justice (STJ) handed down a ruling in which it held that the mere leak of personal data, in and of itself, does not give rise to presumptive moral damages. The scenario involved a consumer who filed suit against a Brazilian electricity provider (ENEL), alleging that the company leaked her personal data, which were subsequently traded, leaving her vulnerable to fraud. The plaintiff requested BRL 15,000 in compensation for moral damages.⁸⁵

At the trial level, the suit was dismissed for lack of evidence of harm to the plaintiff. She appealed to the São Paulo Court of Appeals (TJSP), which reversed the trial court's judgment and ordered the company to pay BRL 5,000 for moral damages. The TJSP justified its decision by arguing that the disclosure of the plaintiff's data demonstrated a security failure on the part of the company and that, given the plaintiff's advanced age, she was more vulnerable to fraud.

The company then appealed to the STJ, which held that compensation was not owed, because there was no proof of any moral harm suffered by the plaintiff. The Superior Court also noted that Brazil's General Data Protection Law (LGPD) establishes a limited set of sensitive personal data, and that the leaked data did not fall within this category.

Under the law, personal data are those that encompass "information related to an identified or identifiable natural person," whereas sensitive personal data include information concerning "racial or ethnic origin, religious belief, political opinion, membership of a trade union or organization of a religious, philosophical, or political nature, information about health or sexual life, genetic or biometric data."⁸⁶

Based on this interpretation, Justice Francisco Falcão, the case rapporteur, concluded that the leaked data were common information not protected by confidentiality, as they concerned routine registration details. He reasoned that disclosing these data to third parties did not breach the plaintiff's right to privacy. Consequently, compensation for moral damages resulting from the leak of non-sensitive information was unwarranted. Finally, the STJ stated:

"The leakage of personal data, despite constituting an undesirable failure in the processing of a natural person's data by a legal entity, does not in itself give rise to compensable moral damage. That is, moral damage is not presumed; the data subject must prove any harm resulting

⁸⁵ Brazil. Superior Court of Justice. *Agravo em Recurso Especial n° 2.130.619/SP (2022/0152262-2)*. Published March 10, 2023. Available at https://processo.stj.jus.br/processo/julgamento/eletronico/documento/mediado/?documento_tipo=integra&documento_sequencial=178204788®istro_numero=202201522622&formato=PDF

⁸⁶ Brazil. *Lei no. 13.709, de 14 de agosto de 2018 (Lei Geral de Proteção de Dados Pessoais)*. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113709.htm.

from the exposure of such information.”⁸⁷

From a judicial standpoint, the requirement of proving moral damage in data leak cases is crucial to avert unfounded claims and marks a significant step in the debate over this issue, addressed here for the first time by Brazil’s highest civil court.

In this regard, Juliana Rosenthal reflects on the responsibilities of society and the judiciary. According to the author, while society often criticizes the judiciary’s delays, it also seeks damages for harm not genuinely suffered. On the other hand, by accepting requests based on *in res ipsa* principles, courts unwittingly stimulate litigation. Claims for moral damages are frequently misused or distorted—not to mitigate pain but rather as a simple way to monetize an allegedly non-existent injury.⁸⁸

Finally, it should be noted that data leaks can have consequences not only for data subjects but also for data controllers, in both financial and reputational terms. Hence, it is vital for companies to: (i) implement effective compliance programs under the law; (ii) adopt appropriate security measures; and (iii) be prepared to respond to possible data breaches and security violations.

CONCLUSION

The cyberattacks mentioned throughout this text underscore the importance of cybersecurity for companies and institutions handling personal data. These entities must implement robust cybersecurity measures and establish incident-management procedures to reduce the risk of attacks and mitigate the damage caused by data breaches. Additionally, individuals must be aware of the risks posed by sharing personal information online and take steps to safeguard their data, such as using complex passwords, regularly updating software, and employing cybersecurity tools.

Within the Portuguese legal system, it is worth noting that non-patrimonial compensation does not arise automatically. The Court of Justice

⁸⁷ Freely translated. Originally: “*O vazamento de dados pessoais, a despeito de se tratar de falha indesejável no tratamento de dados de pessoa natural por pessoa jurídica, não tem o condão, por si só, de gerar dano moral indenizável. Ou seja, o dano moral não é presumido, sendo necessário que o titular dos dados comprove eventual dano decorrente da exposição dessas informações*”. Brazil. Superior Court of Justice. *Agravo em Recurso Especial nº 2.130.619/SP (2022/0152262-2)*. Published March 10, 2023. Available at https://processo.stj.jus.br/processo/julgamento/electronico/documento/mediado/?documento_tipo=integra&documento_sequencial=178204788®istro_numero=202201522622&formato=PDF

⁸⁸ Rosenthal, Juliana G. Quintas. “O dano moral como fomentador da judicialização.” *Jota*, Published August 31, 2022. <https://www.jota.info/coberturas-especiais/aviacao-desafios-da-retomada/o-dano-moral-como-fomentador-da-judicializacao-31082022>

of the European Union itself has established that Article 82(1) of the General Data Protection Regulation must be interpreted to mean that a simple breach of its provisions does not suffice to guarantee the right to compensation. However, the Court's forthcoming judgment in Case C-340/21, concerning unlawful third-party access (hacker attacks) to personal data, is pending.

Lastly, Brazil's Superior Court of Justice has ruled that the mere leak of personal data, although it constitutes an undesirable failure in the handling of individuals' information by legal entities, does not by itself automatically give rise to compensable moral damage. In other words, such damage is not presumed, and data subjects must prove any harm caused by the exposure of their information.

REFERENCES

- Austria. *Processo C-300/21 UI contra Österreichische Post AG*. Available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=266842&pageIndex=0&doclang=pt&mode=req&dir=&occ=first&part=1&cid=309320>.
- Barbosa, Mafalda Miranda. "Entre a ilicitude e o dano", in *Novos desafios da responsabilidade civil: atas das II Jornadas luso-brasileiras de responsabilidade civil*, Instituto Jurídico, Coimbra, 2019.
- Barbosa, Mafalda Miranda. *Direito da Responsabilidade: Uma disciplina jurídica autónoma*. Cascais: Príncipia, 2021.
- Barbosa, Mafalda Miranda. "O problema do ressarcimento dos danos não patrimoniais no quadro da violação de dados pessoais," *Revista de Direito da Responsabilidade*, published March 22, 2023.
- Brazil. Autoridade Nacional de Proteção de Dados (ANPD). "*Incidente de Segurança*." <https://www.gov.br/anpd/pt-br/assuntos/incidente-de-seguranca>
- Brazil. *Constituição da República Federativa do Brasil de 1988*. http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm.
- Brazil. *Lei no 10.406, de 10 de janeiro de 2002 (Código Civil)*. http://www.planalto.gov.br/ccivil_03/leis/2002/110406compilada.htm.
- Brazil. *Lei no 13.709, de 14 de agosto de 2018 (Lei Geral de Proteção de Dados Pessoais)*. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113709.htm
- Brazil. Superior Court of Justice. *Agravo em Recurso Especial nº 2.130.619/SP (2022/0152262-2)*. Published March 10, 2023. Available at https://processo.stj.jus.br/processo/julgamento/electronico/documento/mediado/?documento_tipo=integra&documento_sequencial=178204788®istro_numero=202201522622&formato=PDF
- Corrado, John. "Not Forgetting Just Obscuring: American and European

- Attempts to Maintain Privacy in the Digital Age.” *Cardozo Journal of International and Comparative Law* 1 (2018).
- Costa, Mário Júlio de Almeida. *Direito das Obrigações*. 10th ed. Coimbra: Almedina, 2006.
- Council of Europe. *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108)*. Strasbourg: Council of Europe, 1981. <https://rm.coe.int/16806ae65f>.
- Court of Justice of the European Union (CJUE). *Comunicado de Imprensa n.º 67/23*. Luxembourg, April 27, 2023. <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-04/cp230067pt.pdf>.
- Dantas, Miguel, and Rui Barros. “Hackers Publicam Dados de Clientes da TAP. Moradas, Nomes e Telefones Entre Informação Divulgada.” Published September 13, 2022. <https://www.publico.pt/2022/09/13/sociedade/noticia/hackers-publicam-dados-clientes-tap-moradas-nomes-telefonos-informacao-divulgada-2020350>
- DLA Piper. *GDPR Fines and Data Breach Survey 2023*. <https://inform.dlapiper.com/9/7964/uploads/dla-piper-gdpr-fines-and-data-breach-survey-2023.pdf>
- Doneda, Danilo. *Da privacidade à proteção de dados pessoais*. Rio de Janeiro: Renovar, 2006.
- El País. “Todos os Brasileiros Estão com Seus Dados à Venda (e Há Muito Pouco o que se Pode Fazer para se Proteger).” January 26, 2021. <https://brasil.elpais.com/brasil/2021-01-26/todos-os-brasileiros-estao-com-seus-dados-a-venda-e-ha-muito-pouco-o-que-se-pode-fazer-para-se-proteger.html>
- European Union. *Regulamento (UE) 2016/679 do Parlamento Europeu e do Conselho, de 27 de abril de 2016, relativo à proteção das pessoas singulares no que diz respeito ao tratamento de dados pessoais e à livre circulação desses dados (General Data Protection Regulation)*. Official Journal of the European Union L119 (May 4, 2016). <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32016R0679>
- Faleiros Júnior, José Luiz de Moura. “O que é, afinal, um ‘vazamento’ de dados?” *Migalhas de IA e Proteção de Dados*, September 10, 2021. <https://www.migalhas.com.br/coluna/migalhas-de-protecao-de-dados/351388/o-que-e-afinal-um-vazamento-de-dados>
- Frazão, Ana. “Objetivos e alcance da Lei Geral de Proteção de Dados.” In *Lei Geral de Proteção de Dados Pessoais e suas repercussões no Direito Brasileiro*, edited by Gustavo Tepedino, Ana Frazão, and Milena D. Oliva, 103. 1st ed. São Paulo: Thomson Reuters Brasil, 2019.
- Germany. *Bürgerliches Gesetzbuch (BGB) [German Civil Code]*.

- <https://www.gesetze-im-internet.de/bgb/BJNR001950896.html>
- Harari, Yuval Noah. *Sapiens: Uma breve história da humanidade*. Translated by Janaína Marcoantonio. 51st ed. Porto Alegre, RS: L&PM, 2020.
- Iniesta, Javier Belda, and Francisco José Aranda Serna. “El paradigma de la identidad: hacia una regulación del mundo digital.” *Revista Forense* 422 (July–December 2015): 181–202.
- Italy. 1942. *Regio Decreto 16 marzo 1942, XX, n. 262 (Codice Civile)*. <https://www.codice-civile-online.it/regio-decreto-16-marzo-1942-xx-n-262>
- Mazzuca, Antonio. *Bulgaria, attacco hacker e diffusione di dati personali: quando il danno morale è risarcibile?* May 4, 2023. Disponível em: <https://www.insic.it/privacy-e-sicurezza/privacy-e-gdpr/bulgaria-attacco-hacker-e-diffusione-di-dati-personali-quando-il-danno-morale-e-risarcibile/>
- Moniz, Graça Canto. *Manual de Introdução à Proteção de Dados Pessoais*. Coimbra: Almedina, 2023.
- Monteiro, António Pinto. “A indemnização por danos não patrimoniais em debate: também na responsabilidade contratual? Também a favor das pessoas jurídicas?” *Revista Brasileira de Direito Civil* 5 (July–September 2015).
- Mulholland, Caitlin Sampaio. “Dados pessoais sensíveis e a tutela de direitos fundamentais: uma análise à luz da lei geral de proteção de dados.” *Revista de Direitos e Garantias Fundamentais* 19, no. 3 (2018): 159–80.
- Oliveira, Samuel R. de. *Sorria, você está sendo filmado!: repensando direitos na era do reconhecimento facial*. São Paulo: Thomson Reuters Brasil, 2021.
- Pasquale, Frank. *The Black Box Society: The Secret Algorithms That Control Money and Information*. Cambridge: Harvard University Press, 2015.
- Portugal. *Constituição da República Portuguesa (1976)*. <https://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx>.
- Portugal. *Decreto-Lei n.º 47,344, de 25 de novembro de 1966 (Código Civil)*. <https://dre.pt/dre/legislacao-consolidada/decreto-lei/1966-34509075>.
- Rodotà, Stefano. *A vida na sociedade da vigilância: A privacidade hoje*. Organized, selected, and presented by Maria Celina Bodin de Moraes. Translated by Danilo Doneda and Luciana Cabral Doneda. Rio de Janeiro: Renovar, 2008.
- Rosenthal, Juliana G. Quintas. “O dano moral como fomentador da judicialização.” *Jota*, Published August 31, 2022. <https://www.jota.info/coberturas-especiais/aviacao-desafios-da-retomada/o-dano-moral-como-fomentador-da-judicializacao-31082022>.
- Santos, Leonardo Valverde Susart dos. “Compensação de danos não

- patrimoniais causados pela violação de normas de proteção de dados pessoais.” *Revista de Direito da Responsabilidade* (2022).
- SAPO Portugal. “Ashley Madison: Hackers Revelam Dados de Utilizadores de Site de Adultério.” <https://sol.sapo.pt/artigo/407688/ashley-madison-hackers-revelam-dados-de-utilizadores-de-site-de-adulterio>
- Schreiber, Anderson. *Novos paradigmas da responsabilidade civil*, 6th ed., São Paulo: Saraiva, 2015.
- Silva, Leandro Augusto, Sarajane Marques Peres, and Clóvis Boscariolli. *Introdução à mineração de dados*. Rio de Janeiro: Elsevier, 2016.
- Szaniawski, Elimar. *Direitos de personalidade e sua tutela*, 2nd ed. São Paulo: Revista dos Tribunais, 2005.
- Telles, Inocêncio Galvão. *Direito das Obrigações*. 6th ed. Coimbra: Almedina, 1989.
- Tunggal, Abi Tyas. The 50 Biggest Data Breaches [Updated for 2020]. *UpGuard*, 27 nov. 2020. Disponível em: <https://www.upguard.com/blog/biggest-data-breaches>
- Varela, Antunes. *Das obrigações em geral*. 10th ed. Coimbra: Almedina, 2000.
- Véliz, Carissa. *Privacidade é poder: Por que e como você deveria retomar o controle de seus dados*. Translated by Samuel Oliveira. São Paulo: Editora Contracorrente, 2021.
- Veloso, Maria Manuel. “Danos não patrimoniais.” In *Comemorações dos 35 anos do Código Civil e dos 25 anos da Reforma de 1977*, vol. 3 – *Direito das Obrigações*. Coimbra: Coimbra Editora, 2007, 498.
- von Bar, Christian. *The Common European Law of Torts*, vol. 2, Oxford: Clarendon Press, 2000.
- Vopson, Melvin M. “The Information Catastrophe.” *AIP Advances* 10 (August 11, 2020). <https://aip.scitation.org/doi/full/10.1063/5.0019941>.
- Zampier, Bruno. *Bens digitais*. Indaiatuba: Foco, 2017.
- Zuboff, Shoshana. *A era do capitalismo de vigilância: A luta por um futuro humano na nova fronteira do poder*. Translated by George Schlesinger. 1st ed. Rio de Janeiro, RJ: Intrínseca, 2020.

* * *

Stéfani Reimann Patz

PhD candidate in Law at the University of Coimbra, Portugal, specializing in Civil Law. Holds a Master's degree in Special Rights from the Stricto Sensu Graduate Program in Law (Master's and Doctorate) at the Regional Integrated University of Alto Uruguai e das Missões (URI), Santo Ângelo/RS campus.

Email: stefani.patz@hotmail.com

ORCID iD: <https://orcid.org/0000-0002-1015-4885>