

The role and limitations of anonymity: searching for a constitutionally appropriate interpretation*

O papel e os limites do anonimato: em busca de uma interpretação constitucionalmente adequada

Miriam Wimmer**

Lucas Borges de Carvalho***

Abstract

The article proposes to investigate, from a critical perspective of the broad interpretation of the constitutional prohibition of anonymity, the functions of different techniques for restricting the identification of individuals in the exercise of various fundamental rights, with the general objective of (i) to understand the role and limits of anonymity; and (ii) propose parameters for a constitutionally adequate interpretation, capable of guiding the analysis and application of the concept in controversial cases, whether in the physical or digital environment. It is hypothesized that anonymity is a legitimate identity management technique, especially when linked to the exercise of freedom of expression, the guarantee of physical and moral integrity, and the protection of privacy and personal data. From a bibliographic review, survey, and discussion of applicable legislation and analysis of recent paradigmatic cases, it is possible to verify that anonymity is an instrument that enables fundamental rights, moving away from the concept that associates it with practice, in itself, absolutely prohibited by the legal system. On the other hand, a proportional approach is defended, which takes into account the context and available evidence in specific cases, as well as refuses and views with skepticism the establishment of extreme restrictive measures to anonymity or based on prohibitions and generic rules.

Keywords: Anonymity. Freedom of expression. Privacy and protection of personal data

Resumo

A partir de uma perspectiva crítica à interpretação ampliada sobre a vedação constitucional ao anonimato, o artigo se propõe a investigar as funções das diferentes técnicas de restrição de identificação de indivíduos no exercício de variados direitos fundamentais, com o objetivo geral de: (i) compreender o papel e os limites do anonimato; e (ii) propor parâmetros para uma interpretação constitucionalmente adequada, capaz de orientar a análise e a aplicação do conceito em casos controversos, seja no ambiente físico ou digital. Tem-se como hipótese que o anonimato é uma técnica legítima de gestão da identidade, especialmente quando vinculada ao exercício da liberdade de expressão, à garantia da integridade física e moral e à proteção da privacidade e de dados pessoais. A partir de revisão bibliográfica, levantamento e discussão da legislação aplicável e análise de casos paradigmáticos recentes é possível constatar que o anonimato é um instrumento viabilizador de direitos fundamentais, afastando-se a concepção que o associa a uma prática, em si mesma, absolutamente vedada pelo ordenamento jurídico. Em contrapartida, é defendida uma abordagem proporcional, que leve em consideração o contexto e as evidências disponíveis nos casos concretos, bem como recuse e veja com ceticismo o estabelecimento de medidas restritivas extremas ao anonimato ou baseadas em vedações e regras genéricas.

Palavras-chave: Anonimato. Liberdade de expressão. Privacidade e proteção de dados pessoais.

* Artigo traduzido por Inteligência Artificial.

** Doutora em Comunicação pela Universidade de Brasília (UnB), mestre em Direito Público e graduada em Direito pela Universidade do Estado do Rio de Janeiro (UERJ). Professora do corpo permanente do Mestrado Profissional em Direito do IDP-Brasília, onde também leciona na Pós-Graduação *lato sensu* e no Doutorado em Direito. Lattes: <http://lattes.cnpq.br/2365618822386653> Orcid: <http://orcid.org/0000-0001-9210-6651>. E-mail: miriam.wimmer@idp.edu.br.

*** Doutor em Direito pela Universidade de Brasília (UnB), mestre em Direito pela Universidade Federal de Santa Catarina (UFSC) e graduado em Direito pela Universidade Federal da Bahia (UFBA). Procurador Federal. Lattes: <http://lattes.cnpq.br/2930035853091994> Orcid: <https://orcid.org/0000-0003-0448-0673>. E-mail: lucasbcarvalho@gmail.com

1 Introduction

Discussions about legal functions and the limits of anonymity in Brazil have, to a large extent, taken place from a binary logic: it is commonly understood that either there is a complete link between a certain behavior or opinion and an individual, giving rise to their perfect identification; or there is an absolute disconnection of identity, characterizing anonymity. Thus, according to a widely disseminated conception in Brazilian doctrine, the constitutional prohibition on anonymity, provided for in Article 5, item IV, of the Federal Constitution, would imply a legal obligation regarding the possibility of identifying individuals in their social interactions related to the exercise of freedom of expression, in analog or digital media, in order to enable their liability for any damages caused.

Such a binary conception disregards the fact that anonymity is only one among several identity management techniques accepted by the Brazilian legal system. Complete anonymization, understood as the procedure through which certain information irreversibly loses the possibility of association with an individual, is at one of the extremes of a wide range of possibilities for identifying or disidentifying a person. Among such possibilities, it is worth mentioning pseudonymization, as well as various hypotheses of concealment of the identity "in layers", involving, for example, the restriction of an individual's identifying data to only a certain group of people, or even the possibility of re-identification of the agent only in specific circumstances or upon compliance with certain criteria and procedures.

In this article, it is argued that the constitutional prohibition on anonymity does not have the consequence of imposing the obligation of complete identification of individuals in all circumstances; On the contrary, as will be seen below, the Brazilian legal system fully embraces different techniques of identity management – including anonymity – as an instrument for the protection of fundamental rights.

Thus, by way of illustration, it is worth remembering that there are situations in which the legal restriction of third-party access to the identity of a subject is complete, such as electoral processes, in which the Constitution determines an absolute prohibition on associating the voter's identity with the content of his vote, in order to protect democracy itself. At the opposite extreme, there are circumstances in which identity restriction is prohibited, subjecting certain individuals to obligations to disclose personal information, as occurs, for example, in the case of the appointment of public servants or the disclosure of those approved in public examinations. Between such poles there are also an infinity of situations of partial restriction

of an individual's association with a certain behavior or discourse, the most easily understandable case being that of artistic *pseudonymity*.

Thus, although the idea that there would be a constitutional prohibition on anonymity is widespread, it is possible to observe that the Brazilian legal system uses a wide range of identity management techniques, in order to, in different circumstances, prohibit, provide or determine the identification of a person partially or entirely.

From this perspective, this article proposes to investigate the functions of the different techniques for restricting the identification of people in the exercise of various fundamental rights, with the general objective of: (i) understanding the role and limits of anonymity; and (ii) to set parameters for a constitutionally adequate interpretation, capable of guiding the analysis and application of the concept in controversial cases, whether in the physical or digital environment.

In this context, it is hypothesized that anonymity is a legitimate technique for identity management, especially when linked to the exercise of freedom of expression, the guarantee of physical and moral integrity, and the protection of privacy and personal data. Thus, by arguing that anonymity is an instrument that enables fundamental rights, the conception that associates it with a practice, in itself, illegal and absolutely prohibited by the legal system, is rejected. On the other hand, a proportionate approach will be advocated, which takes into account the context and evidence available in specific cases, as well as refuses and views with skepticism the establishment of extreme restrictive measures on anonymity or based on prohibitions and generic rules.

In order to test this hypothesis, the analysis on the subject is based on a bibliographic review and on the survey and discussion of the applicable legislation and recent paradigmatic cases, at the national and international levels. In this way, an analytical construction capable of sustaining a critical evaluation of the different conceptions of anonymity is proposed, as well as of the actual process of application of the pertinent norms.

The article is structured, then, as described below. Initially, elements will be presented that allow us to understand the way in which the legal system modulates the requirements of identification or disidentification of subjects, as a technique for the protection of different legal assets and fundamental rights, examining the various circumstances in which anonymity is accepted or rejected by the Brazilian legal system. Next, we proceed to examine in more detail the constitutional foundations of anonymity, highlighting its intrinsic relationship with the fundamental rights of freedom of expression, privacy and protection of personal data, in addition to the guarantee of physical and moral integrity. And in the last part, the analysis turns

to the peculiar application of anonymity in the digital environment, considering that in this space all social interactions leave, by default, traces, giving rise to an exposure of the human personality in an incomparably more intense way than what occurs in analog environments.

2 The legal modulation of "identifiability" as a tool for the protection of rights

Although the Brazilian Constitution refers to anonymity only in the context of the fundamental right to freedom of expression – in the form of a prohibition¹ – the possibility of restriction (temporary or permanent, partial or total) of the circulation of information that allows the identification of an individual, or that associates him with certain behaviors or opinions, is present, with different facets, in numerous contexts of life in society and the Brazilian legal system.

In fact, notwithstanding the prohibition on anonymity contained in Article 5, item IV, of the Constitution, it is observed that the Brazilian legal system has not been insensitive to the idea that an individual will not always want his thought, characteristics or actions to be directly associated with his identifying data. Thus, both in the body of the Constitution itself, as well as in various infra-constitutional norms, it is possible to observe the adoption of measures to manage the identity of individuals, either at one extreme, to determine the prohibition of their identification; or, in another pole, to determine its mandatory disclosure.

A particularly interesting example occurs in the context of the exercise of political rights in electoral processes. For this context, the technique adopted by the Constitution, in its Article 14, was to establish an absolute prohibition on the association of the voter with his manifestation of political-electoral will, determining that the vote is secret.

As can be seen from different judgments of the Federal Supreme Court (STF) on the subject, the constitutional guarantee of the secrecy of the vote aims to mitigate the risks of voter identification that could constitute a threat to their free choice. In the judgment of ADI 4543, for example, the understanding was established that "[t]he guarantee of the inviolability of the vote imposes the need to ensure that the vote is impersonal to guarantee freedom of expression, avoiding coercion on the voter" (Brasil, STF, 2014). It is observed, in this case, that the restriction of the possibilities of correlating the identity of the citizen with his vote was used as an instrument to protect democracy itself, in the face of pressures that could compromise the freedom of choice of elected representatives.

¹ According to Costa (2020), who analyzes how freedom of expression was treated in Brazilian constitutions, it was in the 1891 Constitution, the country's first republican constitutional law, that anonymity was prohibited.

On the other hand, it should be noted that the technique of restricting identification will not always be the most appropriate to ensure the full functioning of democratic processes, and limitations on secret ballot are legitimate in cases where social control is necessary. In the judgment of ADPF 378, for example, which dealt with the voting rules of the presidential *impeachment* process, it was understood that all voting should be open, in order to allow greater transparency, control of representatives and legitimacy of the process. As can be seen from the ruling, the secrecy of the scrutiny, in this case, would be incompatible with the nature and seriousness of the proceeding for a crime of responsibility. Thus, according to the STF, the need to ensure the greatest possible degree of transparency and publicity would rule out the use of secret ballots as an instrument to guarantee the freedom and independence of congressmen, because "[i]f the secret ballot may be able to remove certain pressures, at the same time, it weakens popular control over representatives, in violation of democratic, representative and republican principles" (Brasil, STF, 2016).

The obvious differences between the electoral processes aimed at collecting votes from ordinary citizens in regular elections and the process of collecting votes among elected representatives in the context of a presidential *impeachment* process justify the different solutions adopted in each case and illustrate how both the protection of anonymity and the requirement of identification are tools that can, in different circumstances, be used to promote the realization of fundamental rights and guarantees.

The constitutional guarantee of protection of the confidentiality of the source is another important example in which the Constitution itself ensures the right that the identity of an individual is not correlated with his or her manifestations. In this regard, it is worth remembering that in the context of the judgment of Rcl-AgR 21.504, the journalist's prerogative to preserve the confidentiality of the source and not to suffer any sanction, direct or indirect, as a result of this practice was qualified as "a true institutional guarantee aimed at ensuring the exercise of the fundamental right to freely seek and transmit information" (Brasil, STF, 2015). The preservation of the anonymity of the journalistic source is understood, here, as an essential mechanism to ensure freedom of expression and the constitutional right of access to information by the media.

Also in the infra-constitutional sphere, it is possible to observe the receptivity of the legal system to the right not to publish personally identifiable information associated with the expression of thought and other fundamental rights.

This possibility is made explicit, for example, by the Copyright Law (Brasil, 1998), which protects the patrimonial rights of anonymous works and explicitly incorporates the possibility

of pseudonym use by creators of literary, artistic or scientific works. In the same vein, the Brazilian Civil Code, in its Article 19, stipulates that the pseudonym adopted for lawful activities enjoys the protection that is given to the name (Brasil, 2002). It is important to note that, in this case, the motivations for choosing anonymity or pseudonymity do not matter, which can be of the most varied orders (artistic freedom, fear of retaliation, discrimination or social ostracism). Confronting possible risks and benefits associated with the circulation of works without identification of authorship, the legislation clearly attributed greater weight to the public interest related to the wide dissemination of intellectual, artistic, scientific and communication activity.

In another area, recognizing anonymization as a technique capable of protecting vulnerable people or those at risk, the Statute of the Child and Adolescent (Brasil, 1990), in its Article 247, establishes the prohibition of the disclosure, in whole or in part, without due authorization, of the name, act or document of a police, administrative or judicial proceeding related to the child or adolescent to whom an infraction is attributed. In the same vein, Law No. 9,807 of 1999 (Brasil, 1999) includes, among the possible measures to be adopted within the scope of special programs for the protection of victims and threatened witnesses, the possibility of preserving image, identity and personal data. In both cases, the non-disclosure of individuals' identifying information is intended to protect them; or, in the case of juvenile offenders, due to the prospect of rehabilitation of a person in development to whom the Constitution assigns priority and special protection, or, in the case of protected victims and witnesses, due to the need to ensure their physical and psychological integrity and their right to life.

Also in the field of investigations into administrative or criminal offenses, the protection of anonymity is clearly evidenced. Despite the STF's statements to the effect that news of criminal practice without identification of the perpetrator does not serve, by itself, to justify criminal prosecution, it is also established the understanding that there are no obstacles to anonymous plea bargains, received by mechanisms such as the *Disque Denúncia*, to boost the investigation of a possible situation of illegality². Still in the criminal field, it is also worth remembering the provision of Article 10-C of Law No. 12,850, of 2013, regarding the possibility of infiltration of police officers in investigative tasks, establishing the law that the

² In this sense, the decisions rendered in the following judgments are made: Inq 1.957, rel. Min. Carlos Velloso, vote of Min. Celso de Mello, j. 11-5-2005, DJ of 11-11-2005; HC 99.490, rel. Min. Joaquim Barbosa, j. 23-11-2010, 2nd T, DJE of 1-2-2011; HC 95.244, rel. Min. Dias Toffoli, j. 23-3-2010, 1st T, DJE of 30-4-2010; HC 90.178, rel. Min. Cezar Peluso, j. 2-2-2010, 2nd T, DJE of 3-26-2010.

police officer who conceals his identity in order to collect evidence of authorship and materiality of crimes does not commit a crime (Brasil, 2013).

Anonymization or pseudonymization are also techniques used, in many cases, to honor the constitutional principles of impersonality and morality applicable to the Public Administration. Thus, in general, the de-identification of public exams is promoted, in order to ensure the fairness of the selection process. The restriction on the identification of candidates is an increasingly common practice also in numerous private spheres – as occurs in the blind review of articles intended for publication in scientific journals and also in the selection of musicians for orchestras, in which the applicants perform behind screens – and is intended to ensure that the impartiality of the evaluation is not tainted by factors indelibly associated with the identity of the candidate, such as their race, gender or possible personal relationship with a member of the evaluation committee (Skopek, 2014, p. 1778).

In the case of organ donation, although there is no specific provision in the Brazilian legislation on transplants, ethical criteria indicate the importance of respecting the anonymity of the donor's identity for the recipient's family, as well as for the donor's family, including clinical and psychosocial considerations³. In the same vein, the guarantee of anonymity (or, alternatively, the determination of disclosure of identity) of gamete or embryo donors can generate important impacts on the willingness of individuals to make donations, given the legal, social and emotional repercussions associated with the identification of a kinship relationship with children that may be generated through assisted reproduction techniques. Still in the field of health, it is worth remembering the provisions of Law No. 14,289, of January 3, 2022, which prohibits the disclosure of information that allows the identification of the condition of a person living with HIV infection and the chronic hepatitis virus, as well as a person with leprosy and tuberculosis (Brasil, 2022), understanding that the notorious social stigma that falls on people with such diseases justifies legal protection regarding the preservation of their identity.

In a similar sense, the protection of statistical secrecy was ensured by the STF, at the request of the National Institute of Studies and Research (INEP), in order to prevent the individualization of the database of the National High School Exam (ENEM) and the School Census and its subsequent sharing with the Federal Court of Accounts (TCU). At the time, it was considered that the identification of the interviewed students would subvert the original purpose of the collection, jeopardizing future research and the very continuity of public policy

³ According to Ortuzar (1998), the confidentiality of the donor's identity is an ethical obligation, as part of his interests, although it is frequently violated by the media. Thus, the lack of respect for the anonymity of the donor and recipient can cause sociological problems in the recipient (of personal identity) and culpability for the death of the donor, with the danger of rejection of the organ.

monitoring activities. Thus, anonymity was understood as an essential guarantee so that the interviewees can, with the due trust placed in the research body, provide reliable and truthful information, including regarding sensitive aspects such as family income (Brasil, STF, 2018).

In this line, it is also possible to visualize a function for anonymity not only in the protection of rights associated with the individual, but also in the organization of "markets" and structures for the distribution of information and other social goods, with the aim of facilitating or restricting their circulation (Skopek, 2014, p. 1755). This reasoning could be developed, for example, on the subject of donations from political campaigns: if, on the one hand, the current requirement to identify individual donors can provide greater social control, it can also give rise to a diffuse silencing effect ("*chilling effect*") resulting from the fear of persecution, especially in environments where there is marked political polarization. In this sense, as Ayres and Bullock (1998) argue, the eventual establishment of mandatory anonymity for campaign donations could also generate a disruptive effect on the market of political influence, promoting a decrease in donations of high amounts and an increase in the relative importance of small donors.

Finally, it should be noted that anonymization was also provided for in the General Law for the Protection of Personal Data – LGPD (Brasil, 2018) as a technique to reduce the risk associated with the processing of personal data. In this sense, in addition to being a practice explicitly recommended by law in various contexts – such as, for example, in the case of studies carried out by a research body – anonymization is described as a right of the holder, which can be exercised in the face of personal data held by third parties that are unnecessary, excessive or processed in non-compliance with the provisions of the legislation. The LGPD also includes the tool of pseudonymization, defined as the processing through which data loses the possibility of direct or indirect association with an individual, if not by the use of additional information kept separately, in a controlled and secure environment. The very principle of necessity provided for in the LGPD – defined as the limitation of processing to the minimum necessary for the achievement of its purposes, covering the pertinent, proportional and not excessive data in relation to the purposes of the data processing – presupposes that in the different business models, as well as in the technologies used for the processing of personal data, The collection and sharing of data relating to identified or identifiable natural persons is reduced as much as possible.

3 Constitutional foundations of anonymity

As we have seen so far, the Brazilian legal system is rich in examples in which

requirements or faculties of identification or de-identification of individuals are employed as a way to ensure the protection of constitutionally protected rights, values and interests. Likewise, the degree of openness or restriction of access to information that allows the identification of the subject is established according to the risks envisaged for individual rights and freedoms in each context.

In view of this scenario, it can be stated that the constitutional basis of anonymity is multidimensional, since it encompasses the protection of various legal purposes and rights, which can be summarized in three general foundations: (i) freedom of expression; (ii) physical and moral integrity; and (iii) privacy and protection of personal data. It should be noted that, depending on the case, the use of anonymity may be supported by one or more of these grounds, although they are often presented in an overlapping or joint manner.

This conceptual identification is relevant precisely because it allows a better understanding of the controversies surrounding the subject and enables the proper weighing of the interests involved, including the distinction between legitimate and abusive uses of anonymity. On the one hand, the characterization of anonymity as an abstract and absolutely illegal practice is rejected. On the other hand, it is demonstrated that, whenever associated with the three grounds mentioned, anonymity constitutes an instrument that enables fundamental rights.

Starting the analysis with the first ground, it can be seen that the defense of anonymity is often related to the argument that its existence would be a necessary condition to ensure freedom of expression – and, in particular, political speech – in an absolutely free and unimpeded way. Along these lines, it is common to argue that the possibility of anonymous manifestation contributes to the diversity, quantity and quality of voices in the "market of ideas", and, in general, creates a favorable environment for the free exchange of ideas and the formation of public opinion.

The conception that anonymity would contribute to the better dissemination of points of view is further reinforced by the fact that ideas conveyed anonymously are potentially received by third parties and taken into account without pre-judgments associated with the characteristics (social, economic, biological) of the individual who gave that speech; thus, the separation between the points of view expressed and the individual characteristics of their author, such as gender, race, social class or age, would allow, in theory, that the arguments be accepted or discarded due to their quality, and not received through the blurred lens of the social framework of the interlocutor (Crump, 2003, p. 224).

As reported by Machado and Doneda (2020), in countries such as the USA, Israel, Germany, and South Korea, it is possible to find court decisions affirming the value of anonymity as an essential element of the protection of freedom of expression. In this sense, it is worth mentioning the well-known decision of the U.S. Supreme Court in the case of *McIntyre v. Ohio Elections Commission*, handed down in 1995, involving the distribution of pamphlets with electoral content, without identifying the authorship. The decision reads that:

[i]n the Constitution, the anonymous distribution of pamphlets does not constitute a pernicious or fraudulent practice, but an honorable tradition of vindication and dissent. Anonymity is a shield against the tyranny of the majority [...]. Thus, [anonymity] illustrates the purpose of the *Bill of Rights* and, particularly, of the First Amendment: to protect unpopular individuals from retaliation, and their ideas from suppression, by an intolerant society (United States fo America, 1995).

It is therefore understood that the use of anonymity will be legitimate in contexts in which it presents itself as a mechanism associated with the guarantee of the political autonomy of citizens and pluralism of ideas. This implies admitting the use of techniques of non-identification of a person whenever they are necessary to ensure effective conditions of manifestation in informal or institutional public spaces without undue external constraints. In these circumstances, anonymity presents itself as an instrument for the preservation of freedom of expression itself, or even as a relevant element for the affirmation and strengthening of democracy, as the examples of the secret ballot and the secrecy of the journalistic source mentioned above demonstrate⁴.

A more controversial situation concerns the use of non-identification mechanisms during public meetings and demonstrations. In Hong Kong, for example, during protests for free elections, demonstrators used masks, umbrellas, and other instruments, such as laser pointers and sprays, to prevent their identification by cameras used by the police (Perassollo, 2019; Mozur, 2019). In Brazil, faced with a similar controversy, the State of Rio de Janeiro enacted Law No. 6,528/2013 (Rio de Janeiro, 2013), a rule that, among other points, prohibits the use of masks or any means of concealing the face that prevents the identification of people in public gatherings⁵.

⁴ According to the monocratic decision handed down by Justice Celso de Mello, of the STF, in a case involving the confidentiality of the source: "freedom of the press, to the extent that it does not suffer government interference or censorship restrictions, constitutes a positive expression of the high democratic coefficient that should qualify genuinely free social formations. And the prerogative of the confidentiality of the source, in this context, constitutes an instrument for the preservation of freedom of information itself" (Brasil, STF, 1996).

⁵ Law No. 6,528/2013 was considered constitutional by the Court of Justice of the State of Rio de Janeiro. Subsequently, an Extraordinary Appeal was filed with the STF, with general repercussion already recognized, cfr. ARE 905149, rapporteur Min. Roberto Barroso (Brasil, STF, 2016). As of the date of completion of this article, the case had not yet been judged by the Court.

Although the purpose of identifying people is legitimate, it is argued in this article that a proportionate approach should be privileged, which establishes adequate restrictions to achieve the proposed purpose, but which, at the same time, preserves the core of freedom of expression. In this sense, the demand for identification could be made occasionally and *a posteriori*, such as in the event that a person effectively commits unlawful acts, such as the depredation of public and private property. Broad and abstract prohibitions, such as the one established in Rio de Janeiro state law, express the conception that anonymity is, *per se*, an illegal practice, ignoring its intrinsic relationship with the guarantee of fundamental rights, in particular, freedom of expression. In this regard, it is enough to remember that the use of masks can be an essential part of a given public demonstration, such as, for example, when expressing criticism through a caricature of an authority, or even in other contexts, such as the use of costumes during the carnival period.

Continuing in the analysis, the second constitutional basis of anonymity highlights the relationship between it and the protection of the physical and moral integrity of a given individual or group of people. Although it is often seen as part of freedom of expression or privacy, it is important to consider it as an autonomous foundation, since it can justify the use of anonymity even if the others are absent. In addition, it allows us to qualify the justifications adopted by emphasizing that, in certain circumstances, anonymity constitutes an adequate, necessary and effective technique to protect people who would potentially be exposed to risks to their physical or moral integrity due to their actions and manifestations.

The risks in question may arise from serious threats or possible arbitrary acts of coercion and violence by others, including public authorities. In such situations, concealing the identity of an individual may be legitimate and necessary to protect both his physical integrity – and, ultimately, the right to life itself – and his moral integrity, for example, in the latter case, the subjective honor, image and reputation he has in society.

This is what happens in the aforementioned cases of witness protection and anonymous complaints, in which the guarantee of the physical and moral integrity of those involved is one of the main reasons to justify the use of anonymity. The use of masks in public demonstrations is also a mechanism that can serve to protect a person's physical integrity, as in the case where it is used to mitigate the effects of pepper spray and tear gas bombs (Perassolo, 2019).

Likewise, despite serving the most diverse purposes, including the simple freedom of artistic creation, the pseudonym can also be used as a means of hiding the identity of the author in order to protect his physical and moral integrity, notably in the face of possible political persecution or repression. In this sense, it is common for street artists to use pseudonyms – as

in the case of the British Banksy⁶ – or the simple non-signature of graffiti, given the controversial nature and political engagement of this type of artistic production⁷. In turn, in the field of music, one can mention the case of Chico Buarque, who resorted to the pseudonym Julinho da Adelaide as a way to protect himself and avoid restrictions imposed by censorship on his songs during the military regime⁸.

In short, all these examples demonstrate the possibility that a person conceals his identity in order to avoid the risk of suffering physical and moral damage or even of being coerced, exposed to serious threat or subjected to arbitrary acts of violence in retaliation for his actions. In such contexts, moreover, the protection of the physical and moral integrity of the subject qualifies and strengthens the justification used in defense of anonymity, by providing an additional and independent reason, which must be taken into account in the evaluation of concrete cases.

Finally, the third constitutional basis of anonymity is privacy and the protection of personal data. Broadly understood, privacy imposes limits on knowledge and public exposure of aspects of an individual's personality, including their identity. In turn, the protection of personal data seeks to expand the informational self-determination of citizens, giving them guarantees and prerogatives that ensure greater control over the use of their personal information by companies and state institutions. In view of this, anonymity can be understood as a legitimate mechanism for a certain person to prevent the exposure or misuse of their personal information by third parties.

To corroborate this idea, there is an extensive literature correlating anonymity with privacy. In *Privacy and Freedom*, for example, Alan Westin (1967) identifies anonymity as one of the four stages of privacy, experienced when a person is in public places, or performs public acts, and has the expectation of not being personally identified, even if he knows he is being watched. For Westin, this type of "privacy in public" is not limited to the prospect of anonymous

⁶ As described by the BBC, "Banksy is a famous – but anonymous – British graffiti artist. He keeps his identity confidential. [...] Street art and graffiti can be considered a property offense, so at first, it was thought that the artist remained anonymous to avoid trouble. [...] Banksy's work is known for presenting political messages" (*Banksy: Who is Banksy? What we know about the anonymous graffiti artist*, 2020).

⁷ As Estela Maris Balestrini argues, "[...] A peculiar situation assists graffiti artists who, due to the stain of marginality they endure or the influence of the recent and conditioned decriminalization of the practice of graffiti, usually do not assume authorship of the work or claim it in order to stop any abuses." (Balestrini, 2018, p. 22). It should be noted that the practice of graffiti does not constitute a crime, as long as the conditions stipulated in Article 65, § 2, of Law No. 9,605/1998, as amended by Law No. 12,408/2011 (Brasil, 1998), are met.

⁸ The pseudonym was created in 1974 and allowed songs with a strong political connotation – such as *Acorda Amor* – to be authorized by censorship technicians. In an article about the case, Eugenio Brauner recalls that "a report by *Jornal do Brasil* in 1975 ended up unmasking Chico Buarque and his pseudonym. An embarrassing fact for the Censorship, which from that date on began to demand CIC and RG along with the composer's name" (Brauner, 2005, p. 9).

movement through the streets of a city, but is also related to the possibility of publishing ideas anonymously, a situation in which the individual wants to present an idea to the community without being identified as its author.

At this point, the reading proposed by Carissa Véliz (2021) is valid, when she argues that there is an intrinsic relationship between privacy and power. According to the author, the value of privacy – and one can add anonymity – stems from the fact that, many times, sharing personal information or even your identity implies increasing your vulnerability to the abusive action of other people and institutions. Personal data constitute, in this sense, an input through which power is exercised over individuals, in particular the ability to predict, influence and determine their behavior⁹.

For this reason, as a mechanism for protecting privacy and personal data, anonymity cannot be conceived as a cunning strategy to hide illegal and abusive actions of an individual, in order to evade accountability. Although in certain circumstances anonymity can take on these contours, in the same way, in fact, that other rights can be exercised in an abusive manner, the fact is that, in many other contexts, its use is legitimate, especially when associated with the protection of privacy. As Carissa Véliz explains,

[T]he privacy is not a means of concealing bad behavior. Rather, it is about protecting ourselves from possible abuses by other people, such as criminals who want to steal our money. And to establish barriers to power, so that it cannot take advantage of knowledge about us to become even more powerful (Véliz, 2021, p. 70).

This argument becomes clearer and more relevant, given the expansion of the tools for analysis and massive collection of personal data by companies and state institutions, using them for the most diverse purposes, often without adequate transparency and without direct links to the original purpose of collection. As a consequence, apparently insignificant data – and which have no relation to errors or reprehensible conduct – can be aggregated, in order to allow inferences to be made about a person, including the formation of profiles, the prediction of behaviors and the disclosure of sensitive data (Solove, 2008, p. 766-777).

Therefore, aiming at the protection of privacy and personal data, anonymity can constitute a legitimate mechanism to reduce the vulnerabilities of individuals to the misuse of their personal data. Particularly in the digital environment, where the creation of behavioral profiles, based on the monitoring of browsing habits, is already an intrinsic part of the business models

⁹ In Brazil, in a similar vein, Ana Frazão refers to the existence of a pulverized surveillance structure that blurs the distinction between State and market and reveals that the data-driven economy and surveillance capitalism are two sides of the same coin (Frazão, 2019).

of large digital platforms, anonymity becomes a relevant tool to impose barriers to the abuse of power and to reduce the asymmetry of information that is established between these platforms and their users. as will be seen below.

4 Anonymity in the digital environment

The etymological origin of the word *anonymous* refers to the Greek expression *nomos*, which meant both *name* and *law* (Walty, 2007, p. 30). Thus, from a semantic point of view, the anonymous can be defined as one who (i) has no name; and (ii) is outside the law. From a legal point of view, however, the concept of anonymity must be limited to the first part of the definition, so that partially or fully concealing one's identity does not constitute, in itself, an illegal act or practice¹⁰. After all, as seen, whenever one or more of its legal foundations are present, anonymity constitutes a legitimate instrument for the protection of fundamental rights.

Although admitted in various social and legal spheres, this restricted definition of anonymity encounters obstacles to be transposed and properly applied to the digital environment. Among these obstacles is the dominant conception of the internet and digital tools. In fact, for many, the online environment is still seen as a true lawless land, based on a decentralized and complex technical architecture, which prevents or at least establishes significant restrictions on the effective regulation and coercive imposition of legal norms by national states. Associated with this conception, anonymity is usually interpreted in an essentially negative way, presuming both the bad faith of the subject who uses it and the illegality of the act performed¹¹.

This characterization of the digital environment is currently somewhat inadequate, especially due to the broad technical possibilities of control, tracking, and surveillance that are structured around the massive collection of personal data from network users, notably to serve the commercial interests of large technology companies. State rules also contributed to strengthening the mechanisms for regulating and disciplining the use of the network by establishing rules that expanded the possibilities of identifying and tracking people, with the

¹⁰ As Rafael Mafei Queiroz argues, "such illegality is not to be confused with the absence of identification itself (illegality by form), but is limited to cases in which the content of the manifestation is substantively illicit, as occurs in slander, threats, racist and discriminatory manifestations in general" (Queiroz, 2021, p. 261).

¹¹ It is worth mentioning that, in the famous Declaration of Independence of Cyberspace, John Perry Barlow (1996) highlighted, with an optimistic and utopian bias, that individual freedom and autonomy would be the rule on the internet. Consequently, governments would not exercise any sovereignty over cyberspace, an environment in which "our identities have no bodies", which would prevent any attempt to "guarantee order by physical coercion". After all, on the internet, "identities can be distributed across many [...] jurisdictions".

consequent reduction of the space for anonymous action. The Brazilian Civil Rights Framework for the Internet (BRASIL, 2014), for example, determined that connection and application providers should maintain, respectively, for one year and six months, the storage of information necessary for the identification of users, making it available to the competent authorities for investigation purposes – as a rule, by court order.

In view of this scenario, marked by intense technical, economic and legal transformations that have reshaped the digital environment in recent years, it is correct to say that, far from a lawless land or a space full of autonomy and freedom, the internet has become "the most regulable space that humans have ever known" (Lessig, 2006, p. 32). In the same vein, in view of the dissemination of a culture of surveillance, David Lyon categorically states: "there is no anonymity in a world of *Big Data*" (Lyon, 2018, p. 165).

In this context, technologies that allow users to carry out secure communications and remain relatively anonymous in their online interactions play an important role in guaranteeing rights. Thus, instead of reinforcing and encouraging impunity in an unregulated environment, anonymous communication mechanisms on the internet represent an essential counterpoint to an asymmetric power structure or even a barrier to mass surveillance and abusive use of personal information by companies and public authorities, which can occur even in situations of apparent normality, when the data processing is allegedly carried out within the legal limits¹².

In this regard, in a document on encryption and anonymity, the United Nations (UN) Special Rapporteur on the promotion and protection of freedoms of opinion and expression, recommended that States adopt "laws and policies that support and provide comprehensive protection for the use of encryption and anonymity tools". In addition, it expressed rejection of the use of generic rules to justify the imposition of restrictions on the use of this type of tool, which can only be admitted in "exceptional circumstances, that is, when the requirements of legality, necessity and proportionality and legitimacy of purpose are met" (United Nations, 2018, p. 20). In Brazil, in a similar vein, in a vote delivered in the context of the Allegation of Non-Compliance with a Fundamental Precept (ADPF) 403, Justice Edson Fachin stressed the importance of cryptography and anonymity to enable the development and sharing of opinions and the protection of rights that, in a democratic society, are essential for public life (Brasil, STF, 2020).

¹² In this sense, David Lyon argues that legal guarantees, such as privacy and the protection of personal data, "tend to be more effective only in extreme cases, in which there is some evident and notorious invasion or violation. Most of the time, the real risks of this new surveillance affect people negatively when these systems are functioning properly, for their due purposes and within the limits of the law" (Lyon, 2018, p. 82-83).

Sustaining the exceptionality of any restrictions on anonymity implies adopting a considered approach, which refuses and views with skepticism the adoption of extreme and disproportionate measures, such as the criminalization and prohibition of the use of encryption or the possibility of installing technical vulnerabilities ("*backdoors*") in order to expand third-party access to communications and personal data¹³.

In general, measures of this nature reflect an inadequate conception of the digital environment, which tends to emphasize and overestimate the aspects related to its decentralized architecture and favorable to the exercise of individual freedoms, as described above. As a result, the systemic effects that may cause anonymity to restrictive decisions are underestimated, especially by negatively impacting the technical and legal environments on which the internet is structured.

In fact, beyond the private sphere of the subjects directly involved in a concrete case, these decisions tend to impact the rights and security of other users and institutions, ultimately reinforcing the concentration of power and the architecture of control and surveillance that predominates on the internet today. In the words of Marino (2013), Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights:

A specific restrictive measure may appear insignificant if it is examined only from the perspective of the affected individual. However, the same measure can have a seriously devastating impact on the general functioning of the Internet and, consequently, on the right to freedom of expression of all users. In this sense, it is crucial to evaluate each measure in a specialized way, from what could be called a digital systemic perspective (Marino, 2013, p. 25-26).

Following this systemic perspective, the difficult decision between defending anonymity and revealing a person's identity in the digital environment must be seen from two distinct but complementary points of view. On the one hand, it is essential to consider the presence of one or more of the three constitutional grounds of anonymity. As seen, whenever associated with the exercise of freedom of expression, the guarantee of the physical and moral integrity of the subject or the protection of their privacy and personal data, anonymity constitutes a legitimate practice, which, if not entirely excluded, at least significantly reduces the space for the imposition of restrictions.

On the other hand, it is necessary to evaluate the possible consequences generated by the restrictive decision, whether for the subjects involved in the case, or for other users and for the

¹³ Such debate was also raised in the context of questions about the constitutionality of the judicial decisions that determined the blocking of the WhatsApp application in Brazil. For a more detailed analysis of these decisions and the ongoing debate in the STF on the subject (ADPF No. 403 and ADI No. 5,527), see Souza and Mangeth (2019).

digital ecosystem as a whole. Thus, it is recognized that anonymity has a social value¹⁴, which transcends the mere defense of individual interests, imposing, therefore, that any restriction to be established be justified in a transparent manner, including, in particular, the assessment of the existence of other less harmful measures to achieve the same objective.

As Veridiana Alimonti (2019) points out, the balance to be made in these cases is not exactly between individual privacy and collective security, but rather between "security vs. security". It is worth mentioning that there is, on the one hand, the "security that comes from the maintenance of legal order and public order" necessary to ensure compliance with the law and accountability for illegal acts practiced in the digital environment; and, on the other hand, "information security", necessary to protect personal information from unauthorized access and misuse, which also stems from social and diffuse trust itself, which enables the use of digital tools (Alimonti, 2019, p. 64).

As an example, consider the debate that took place around Bill (PL) No. 2,630/2020, known as the Fake News Bill (Vieira, 2020). On the one hand, civil society organizations expressed concern about the disproportionality and risks of abuse arising from provisions that aimed to expand the requirements for identification and traceability of users of social networks and private messaging services. On the other hand, supporters of the bill argued that combating online disinformation would require efforts to identify those responsible for these practices, even though this could have negative effects from the point of view of the risks of monitoring and surveillance in the digital environment¹⁵.

Without intending to enter into the specific discussion about online disinformation, the fact to be highlighted is that generic requirements for user identification, accompanied by the expansion of the collection of personal data without the definition of objective and specific criteria and purposes, can negatively impact the guarantee of fundamental rights – in particular, privacy and freedom of expression – and the very way in which the digital environment is structured. This is because, from a general and systemic point of view, the power asymmetries

¹⁴ In this sense, Daniel Solove's (2008) argument about the social value of privacy applies to anonymity. According to the author, "privacy is not simply a way to free individuals from social control [...]. It is not an external barrier that imposes itself on society, but, in fact, an internal dimension of society itself. Therefore, privacy has a social value. Even when it protects the individual, it does so in the interest of society. Therefore, it should not be weighed as an individual right in opposition to a greater social good. Privacy issues involve the weighing of society's interests on both sides of the scale" (Solove, 2008, p. 763).

¹⁵ PL No. 2,630/2020, which establishes the Brazilian Law on Freedom, Responsibility and Transparency on the Internet, was approved by the Federal Senate at the end of June 2020. Until the conclusion of this article, the Chamber of Deputies had not deliberated on the proposal. For more details on the project, with different positions, see Coalition Rights on the Network (2020) and Hartmann (2020).

and vulnerabilities of individuals are expanded, who are now subject to unpredictable risks and damages arising from potential misuses of their personal data.

In another relevant case, this time in the judicial sphere, *Jornal da Cidade Online* filed a lawsuit against Twitter Brasil, in order to obtain access to the identity of those responsible for the *Sleeping Giants Brasil* profile, in addition to the deletion of the account and all its posts. The profile became known after making public campaigns and alerting companies when their ads were displayed on pages associated with the dissemination of false or misleading content. Given the consequent review of advertising policies by companies, pages such as *Jornal da Cidade Online* had a significant drop in revenue, thus motivating judicial questioning. In view of the request presented, the judge of the 5th Civil Court of Passo Fundo, in Rio Grande do Sul, determined that Twitter provide the identification data of those responsible for the profile, however, at the same time, rejected the request to delete the account and its posts, on the grounds that they would not be illicit, since they are protected by freedom of expression (Rio Grande do Sul, 2020)¹⁶.

Three points of attention deserve to be highlighted in relation to this case. The first is the conception, rejected several times in this work, that anonymity is, in itself, a practice prohibited by the legal system. As demonstrated, the protection of anonymity is justified whenever at least one of its constitutional foundations is present. In the case in question, as recognized in the court decision itself, the content presented by the profile in its posts is part of the legitimate exercise of freedom of expression. Therefore, it is understood that the identification of the account could only occur if the illegality of the expressive act is proven, thus justifying possible legal redress.

The second point concerns the fact that, in the hypothesis, anonymity constituted a necessary measure for the protection of the physical and moral integrity of those responsible for *Sleeping Giants Brasil*¹⁷. In addition to strengthening and qualifying the defense of freedom of expression and anonymity, this reason, in itself, should justify a position of greater caution, notably when considering that the decision was rendered in the context of an injunction and that the data would be provided to an individual directly affected by the actions of the profile – and not, for example, to an authority with competence to investigate possible criminal acts. In

¹⁶ It is worth mentioning that the decision was upheld by the Court of Justice of Rio Grande do Sul, which denied an appeal filed by Twitter (Rio Grande do Sul, 2020).

¹⁷ As pointed out by Danilo Doneda and Estela Aranha, the use of the pseudonym *Sleeping Giants* for the purpose of mobilizing public opinion and combating *fake news* is carried out "in an absolutely legitimate way, due to the risks arising from the political polarization of our society, reflected in the large number of threats, including death threats, suffered by the authors of the account" (Doneda; Aranha, 2020).

addition, the maintenance of anonymity could be reversed at any time, obliging the application provider to provide the corresponding identification data, in the event of a possible demonstration – non-existent at the time, it is worth emphasizing – of well-founded indications of illegal practice, in accordance with the provisions of Article 22, sole paragraph, I, of the Civil Rights Framework for the Internet (Brasil, 2014). It is interesting to note that the line followed by the aforementioned judicial decision contrasts, to a certain extent, with that which has been adopted by the Superior Electoral Court (TSE), in the sense that the absence of immediate identification of the user responsible for the dissemination of certain content is not in itself a sufficient element to justify the granting of a request for removal of content or the preliminary granting of a request for breach of data confidentiality¹⁸.

Finally, the third point highlights the need to evaluate the systemic effects of the decision. In fact, beyond the concrete case, unjustified measures to restrict anonymity contribute to forming an environment of insecurity for other users of social networks. Especially for those who use critical and humorous discourses, the weakening of identity management techniques can create indirect silencing effects, undermining the sense of trust and security for the use of digital tools and for the free expression of ideas.

5 Conclusion

The legal contours of anonymity, in particular, the function it plays in the legal system and its limits, are the subject of strong controversy and many misinterpretations. Throughout this work, always based on the analysis of the legislation in force and examples and concrete cases, we sought to expose and criticize these conceptions, with the objective of establishing parameters for a constitutionally adequate interpretation of anonymity, capable of guiding the analysis and application of the concept in concrete cases, whether in the physical or digital environment.

On the one hand, the first misconception about anonymity stems from its interpretation based on a binary logic, as if the only options available were the total and irreversible concealment of identity or its perfect identification. Such a reading, however, ignores that

¹⁸ It is worth mentioning the Judgment handed down in 2010, in AgR-AC No. 1384-43.2010.6.00.0000, in which it was stated that "[i]f suspend the propaganda by the Electoral Court, the allegation that the material is anonymous is not enough. It is necessary that elements be extracted from it that demonstrate the violation of electoral rules or offend the rights of those who participate in the electoral process" (Brasil, TSE, 2010). The same logic can be found in Articles 38 and 40 of TSE Resolution No. 23,610, of 2019 (Brasil, TSE, 2019).

anonymity is a technique for identity management, among others admitted by the Brazilian legal system, which aims to protect constitutional rights and values in the most diverse contexts.

Hence, the constitutional prohibition on anonymity does not have the consequence of imposing the obligation of complete identification of individuals in all circumstances. In a different way, between the extreme of complete and mandatory identification – to meet, for example, the principle of publicity of the public administration – and the absolute secrecy conferred on voting in elections, there are situations in which restrictions on identification can be partial and granular, as occurs with the use of pseudonyms by artists and with the various forms of tracking and identification in the digital environment.

On the other hand, it is still common for anonymity to be interpreted as an illicit practice, regardless of the context and other relevant legal variables. Consequently, the bad faith of the subject who resorts to anonymity is presumed, in the abstract, as if his only purpose were to guarantee impunity by concealing bad behavior or illegal actions. On the other hand, in this article, it is argued that anonymity is an essential instrument for the guarantee of fundamental rights. More precisely, its use must be considered legitimate whenever it is associated with the exercise of freedom of expression, the guarantee of the physical and moral integrity of the subject or the protection of their privacy and personal data.

Thus, the first step in the analysis of controversial situations should be the search to identify the presence of these grounds, which, together or separately, confer constitutional protection to anonymity and make their use legitimate. Leaving aside binary logic and any absolute and abstract presumptions around the topic, the understanding of anonymity must be based on a proportionate approach, which takes into account the context and available evidence, as well as refuses and views with skepticism the establishment of extreme restrictive measures or based on prohibitions and generic rules.

More than that, it is essential to evaluate the existence of less harmful measures, capable of achieving the same objective with less impact on the fundamental rights involved, in addition to taking into account the potential systemic effects of the restriction to be imposed. Particularly, in the digital environment, the social value of anonymity must be recognized, which implies admitting that the consequences of restrictive decisions may go beyond the interests of the parties to a given case, affecting other users and, in general, the security and trust necessary for the proper functioning of the internet and other digital tools.

References

ALIMONTI, Veridiana. Encryption, rights and the problematic polarization between 'individual privacy' and 'collective security'. In: DONEDA, D.; MACHADO, D. (coord.). **Encryption in Brazilian law**. São Paulo: Thomson Reuters Brasil, 2019. p. 49-67.

AYRES, Ian; BULOW, Jeremy. The donation booth: mandating donor anonymity to disrupt the market for political influence. **Stanford Law Review**, Stanford, v. 50, n. 3, p. 837-891, fev. 1998. DOI: <https://doi.org/10.2307/1229325>. Available at: <https://www.jstor.org/stable/1229325?origin=crossref>. Accessed on: 23 Feb. 2022.

BALESTRINI, Estela Maris. **In defense of spray in the urban landscape**: reflections on the legal protection of anonymous and pseudonymous graffiti. 2018. Final Paper (Bachelor of Laws) - Federal University of Paraná, Curitiba, 2018. Available at: <https://acervodigital.ufpr.br/handle/1884/62514>. Accessed on: 23 Feb. 2022.

BANKSY: who is Banksy? what we know about the anonymous graffiti artist. **BBC**, [s.l.], 14 Feb. 2020. Available at: <https://www.bbc.co.uk/newsround/51504255>. Accessed on: 12 Aug. 2021.

BARLOW, John Perry. A declaration of Independence of Cyberspace. **Electronic Frontier Foundation**, Davos, Feb. 1996. Available at: <https://www.eff.org/cyberspace-independence>. Accessed on: 12 Aug. 2021.

BRAUNER, Eugenio. Julinho da Adelaide, a pseudonym that circumvented the Censorship. **Electronic Journal of Criticism and Theory of Literatures**, Porto Alegre, v. 1, n. 1, p. 1-10, jul./dez. 2005. DOI: <https://doi.org/10.22456/1981-4526.4839>. Available at: <https://seer.ufrgs.br/NauLiteraria/article/view/4839>. Accessed on: 24 Feb. 2022.

BRAZIL. Federal Supreme Court. **Allegation of Non-Compliance with a Fundamental Precept No. 378**. Precautionary Measure. Constitutional law. Precautionary measure in an Action for Non-Compliance with a Fundamental Precept. Impeachment process. Definition of the constitutional legitimacy of the rite provided for in Law No. 1,079/1950. Rapporteur: Justice Roberto Barroso, 8 mar. 2016. Available at: <https://portal.stf.jus.br/processos/downloadPeca.asp?id=308870644&ext=.pdf>. Accessed on: 23 Feb. 2022.

BRAZIL. Federal Supreme Court. **Inq. No. 870**. Rapporteur: Justice Celso de Mello, 8 Apr. 1996. Available at: <https://jurisprudencia.stf.jus.br/pages/search/despacho82806/false>. Accessed on: 23 Feb. 2022.

BRAZIL. **Law No. 10,406, of January 10, 2002**. Establishes the Civil Code. Brasília, DF: Presidency of the Republic, [2022]. Available at: http://www.planalto.gov.br/ccivil_03/leis/2002/110406compilada.htm. Accessed on: 04 jan. 2022.

BRAZIL. Superior Electoral Court. **Interlocutory Appeal in Precautionary Action No. 1384-43.2010.6.00.0000**. 2010 Elections. Early electoral propaganda. Internet. Blog. Injunction action. Anonymity. Pseudonym. Preliminary Suspension. Provider. Responsibility.

Free expression of thought. Rapporteur: Justice Henrique Neves, June 29, 2010. Available at: <https://www.tse.jus.br/jurisprudencia/deciso/es/jurisprudencia>. Accessed on: 23 Feb. 2022.

BRAZIL. Federal Supreme Court. **Direct Action of Unconstitutionality No. 4543**. Constitutional. Electoral. Article 5 of Law No. 12,034/2009: Printing of votes. Secrecy of the vote: a fundamental right of the citizen. Rapporteur: Justice Carmen Lúcia, 13 out. 2014. Available at: <https://jurisprudencia.stf.jus.br/pages/search/sjur280257/false>. Accessed on: 23 Feb. 2022.

BRAZIL. **Law No. 12,850, of August 2, 2013**. Defines criminal organization and provides for criminal investigation, means of obtaining evidence, related criminal offenses and criminal procedure; amends Decree-Law No. 2,848, of December 7, 1940 (Penal Code); repeals Law No. 9,034, of May 3, 1995; and provides for other provisions. Brasília, DF: Presidency of the Republic, [2022]. Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/112850.htm. Accessed on: 04 jan. 2022.

BRAZIL. Federal Supreme Court. **General Repercussion in the Extraordinary Appeal with Interlocutory Appeal 905.149**. Constitutional law. Extraordinary Appeal. Freedoms of expression and assembly. Prohibition of masks in demonstrations. Public security. General repercussion. Rapporteur: Justice Roberto Barroso, 25 ago. 2016. Available at: <https://portal.stf.jus.br/processos/downloadPeca.asp?id=310922279&ext=.pdf>. Accessed on: 23 Feb. 2022.

BRAZIL. **Law No. 12,965, of April 23, 2014**. It establishes principles, guarantees, rights and duties for the use of the Internet in Brazil. Brasília, DF: Presidency of the Republic, [2022]. Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/112965.htm. Accessed on: 04 jan. 2022.

BRAZIL. Federal Supreme Court. **Procedural Appeal in Complaint No. 21,504**. Complaint. Allegation of disrespect for the authority of the plenary judgment of ADPF 130/DF. Binding effectiveness of this decision of the Federal Supreme Court. Rel. Min. Celso de Mello, 11 Dec. 2015. Available at: <https://portal.stf.jus.br/processos/downloadPeca.asp?id=307878343&ext=.pdf>. Accessed on: 23 Feb. 2022.

BRAZIL. Federal Supreme Court. **Precautionary Measure in Writ of Mandamus No. 36,150**. Constitutional law. Writ of mandamus. TCU Act. Statistical secrecy. Individualized data from ENEM and the school census. Rapporteur: Justice Roberto Barroso, 10 Dec. 2018. Available at: <https://portal.stf.jus.br/processos/downloadPeca.asp?id=15349322719&ext=.pdf>. Accessed on: 23 Feb. 2022.

BRAZIL. **Law No. 13,709, of August 14, 2018**. General Law for the Protection of Personal Data (LGPD). Brasília, DF: Presidency of the Republic, [2022]. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113709.htm. Accessed on: 04 jan. 2022.

BRAZIL. Federal Supreme Court. **Allegation of Non-Compliance with a Fundamental Precept 403**. Rapporteur: Justice Edson Fachin, May 28, 2020. Available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=4975500>. Accessed on: 23 Feb. 2022.

BRAZIL. **Law No. 14,289, of January 3, 2022.** Makes it mandatory to preserve confidentiality about the condition of a person living with infection by the human immunodeficiency virus (HIV) and chronic hepatitis virus (HBV and HCV) and of a person with leprosy and tuberculosis, in the cases it establishes; and amends Law No. 6,259, of October 30, 1975. Brasília, DF: Presidency of the Republic, [2022]. Available at: http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2022/Lei/L14289.htm. Accessed on: 04 jan. 2022.

BRAZIL. **Law No. 8,069, of July 13, 1990.** Provides for the Statute of the Child and Adolescent and provides for other provisions. Brasília, DF: Presidency of the Republic, [2022]. Available at: http://www.planalto.gov.br/ccivil_03/leis/18069.htm. Accessed on: 04 jan. 2022.

BRAZIL. **Law No. 9,605, of February 12, 1998.** Provides for criminal and administrative sanctions derived from conducts and activities harmful to the environment, and provides for other provisions. Brasília, DF: Presidency of the Republic, [2022]. Available at: http://www.planalto.gov.br/ccivil_03/leis/19605.htm. Accessed on: 04 jan. 2022.

BRAZIL. **Law No. 9,610, of February 19, 1998.** Amends, updates and consolidates the legislation on copyright and makes other provisions. Brasília, DF: Presidency of the Republic, [2022]. Available at: http://www.planalto.gov.br/ccivil_03/leis/19610.htm. Accessed on: 04 jan. 2022.

BRAZIL. **Law No. 9,807, of July 13, 1999.** Establishes rules for the organization and maintenance of special programs for the protection of victims and threatened witnesses, establishes the Federal Program for Assistance to Victims and Threatened Witnesses, and provides for the protection of accused or convicted persons who have voluntarily provided effective cooperation in the police investigation and criminal proceedings. Brasília, DF: Presidency of the Republic, [2022]. Available at: http://www.planalto.gov.br/ccivil_03/leis/19807.htm. Accessed on: 04 jan. 2022.

BRAZIL. Superior Electoral Court. **Resolution No. 23,610, of December 18, 2019.** Provides for electoral propaganda, use and generation of free time and illegal conduct in electoral campaigns. Brasília, DF: STF, [2022]. Available at: <https://www.tse.jus.br/legislacao/compilada/res/2019/resolucao-no-23-610-de-18-de-dezembro-de-2019?texto=original>. Accessed on: 04 jan. 2022.

COALITION FOR RIGHTS ON THE NETWORK. PL 2630/20: CDR proposals for an effective and democratic law. **Coalition Rights on the Net**, [s.l.], 01 Sep. 2020. Available at: <http://plfakenews.direitosnarede.org.br/pl-2630-20-propostas-da-cdr-para-uma-lei-efetiva-e-democratica/>. Accessed on: 16 ago. 2021.

COSTA, Alessandra Abrahão. Freedom of expression in Brazilian Constitutions: analysis of democracy as an open society. *In*: CONPEDI VIRTUAL MEETING: LAW, PANDEMIC

CRUMP, Catherine. Data Retention: Privacy, Anonymity, and Accountability Online. **Stanford Law Review**, Stanford, v. 56, n. 1, p. 191-229, out. 2003. Available at: <https://www.jstor.org/stable/1229685>. Accessed on: 23 Feb. 2022.

DIGITAL TRANSFORMATION: New Times, New Challenges, 2, 2020, Florianópolis. Fundamental rights and guarantees II. Florianópolis: CONPEDI, 2020. p. 65-82. Available at: <http://site.conpedi.org.br/publicacoes/nl6180k3/cd656y7b/50G9plvdzkDOP1Ay.pdf>. Accessed on: 23 Feb. 2022.

DONEDA, Danilo; ARANHA, Estela. The debate on anonymity in the case of Sleeping Giants Brasil. **Estadão**, São Paulo, 15 Dec. 2020. Available at: <https://politica.estadao.com.br/blogs/fausto-macedo/o-debate-sobre-o-anonimato-no-caso-do-sleep-giants-brasil/>. Accessed on: 18 Aug. 2021.

ERASSOLO, João. Umbrella establishes itself as a symbol of democracy in Hong Kong. **Folha de S. Paulo**, São Paulo, June 12, 2019. Available at: <https://www1.folha.uol.com.br/mundo/2019/06/guarda-chuva-se-firma-como-simbolo-da-democracia-em-hong-kong.shtml>. Accessed on: 13 Aug. 2021.

FRAZÃO, Ana. Fundamentals of personal data protection. Introductory notions for understanding the importance of the General Data Protection Law. *In*: TEPEDINO, Gustavo; FRAZÃO, Ana; OLIVA, Milena Donato (coord.). **General Data Protection Law and its repercussions on Brazilian law**. São Paulo: Thomson Reuters Brasil, 2019. p. 23-52.

HARTMANN, Ivar. Metadata storage is a surgical measure in a project against fake news. **Folha de S. Paulo**, São Paulo, 3 jul. 2020. Available at: <https://www1.folha.uol.com.br/poder/2020/07/armazenamento-de-metadados-e-medida-cirurgica-em-projeto-contras-fake-news.shtml>. Accessed on: 16 ago. 2021.

LESSIG, Lawrence. **Code**: version 2.0. New York: Basic Books, 2006.

LYON, David. **The culture of surveillance**: watching as a way of life. Cambridge, UK: Polity Press, 2018.

MACHADO, Diego; DONEDA, Danilo. Right to anonymity on the internet: foundations and dogmatic contours of its protection in Brazilian law. **Journal of Contemporary Civil Law**, [s.l.], v. 7, n. 23, p. 95-140, Apr./June 2020. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3698938. Accessed on: 23 Feb. 2022.

MARINO, Catalina. **Freedom of expression and the internet**. [S.l.]: Inter-American Commission on Human Rights, 2013. Available at: http://www.oas.org/en/iachr/expression/docs/reports/2014_04_08_internet_eng%20_web.pdf. Accessed on: 23 Feb. of 2022.

MOZUR, Paul. In Hong Kong protests, faces become weapons. **The New York Times**, New York, July 26, 2019. Available at: <https://www.nytimes.com/2019/07/26/technology/hong-kong-protests-facial-recognition-surveillance.html>. Accessed on: 13 Aug. 2021.

ORTUZAR, María Graciela. En pos de la integración regional, de la ética y del transplante de organos. **Cuadernos del Programa Regional de Bioética**, Buenos Aires, vol. 7, p. 133-158, 1998. Available at: https://memoria.fahce.unlp.edu.ar/art_revistas/pr.11475/pr.11475.pdf. Accessed on: 23 Feb. 2022.

QUEIROZ, Rafael Mafei. Freedom of expression on the internet: the restricted conception of anonymity and the option for intervention of lesser intensity. **Suprema – Journal of Constitutional Studies**, Brasília, v. 1, n. 1, p. 241-266, jan./jun. 2021. DOI: Available at: <https://suprema.stf.jus.br/index.php/suprema/article/view/24>. Accessed on: 23 Feb. 2022.

RIO DE JANEIRO (State). **Law No. 6,528, of September 11, 2013**. Regulates Article 23 of the State Constitution. Rio de Janeiro: Governo do Estado do Rio de Janeiro, 2013. Available at: <https://gov-rj.jusbrasil.com.br/legislacao/1036049/lei-6528-13>. Accessed on: 04 nov. 2021.

RIO GRANDE DO SUL (State). Court of Justice of Rio Grande do Sul (TJ-RS). **Interlocutory Appeal No. 5038372.25.2020.8.21.7000/RS**. Interlocutory appeal. Monocratic decision. Action of obligation to do with request for urgent relief. Urgent relief. Article 300 of the Code of Civil Procedure. Missing. Rapporteur: Des. Gelson Rolim Stocker, 3 ago. 2020. Available at: https://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2020/08/desembargador-sleeping-giants_260820205537.pdf. Accessed on: 18 Aug. 2021.

RIO GRANDE DO SUL (State). Court of Justice of the State of Rio Grande do Sul. 5th Civil Court of Passo Fundo. **Common Civil Procedure No. 5004444.68.2020.8.21.0021/RS**. Applicant: J. Pinheiro Tolentino Filho Eireli. Defendant: Twitter Brasil Rede de Informação LTDA. Rapporteur: Ana Paula Caimi, 27 ago. 2020. Available at: https://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2020/08/juiza-sleeping-giants_260820205430.pdf. Accessed on: 18 Aug. 2021.

SKOPEK, Jeffrey. Anonymity, the Production of Goods, and Institutional Design. **Fordham Law Review**, New York, v. 82, n. 4, p. 1751-1809, 2014. Available at: <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4960&context=flr>. Accessed on: 23 Feb. 2022.

SOLOVE, Daniel. 'I've got nothing to hide' and other misunderstandings of privacy. **San Diego Law Review**, San Diego, v. 44, n. 4, p. 745-772, 2008. Available at: <https://ssrn.com/abstract=998565>. Accessed on: 23 Feb. 2022.

SOUZA, Carlos Affonso; MANGETH, Ana. Encryption between flexibilization and blocking of applications: international lessons and the Brazilian experience. *In*: DONEDA, D.; MACHADO, D. (coord.). **Encryption in Brazilian law**. São Paulo: Thomson Reuters Brasil, 2019. p. 69-87.

UNITED NATIONS. **Encryption and anonymity follow-up report**. Research paper 1/2018. Geneva: Office of the High Commissioner for Human Rights, 2018. Available at: <https://www.ohchr.org/Documents/Issues/Opinion/EncryptionAnonymityFollowUpReport.pdf>. Accessed on: 16 ago. 2021.

UNITED STATES OF AMERICA. Supreme Court. **McIntyre v. Ohio Elections Comm'n. 514 U.S. 334**. Ithaca: Legal Information Institute, 1995. Available at: <https://www.law.cornell.edu/supct/html/93-986.ZO.html>. Accessed on: 18 Aug. 2021.

VÉLIZ, Carissa. **Privacy is power: why and how you should take back control of your data**. London: Corgi Books, 2021.

VIEIRA, Alessandro. **Bill No. 2,630, of 2020**. Establishes the Brazilian Law on Freedom, Responsibility and Transparency on the Internet. Brasília, DF: Federal Senate, 2020. Available at: <https://legis.senado.leg.br/sdleg-getter/documento?dm=8110634&ts=1630418505591&disposition=inline>. Accessed on: 04 jan. 2022.

WALTY, Ivete Lara Camargos. Anonymity and resistance in 'they were very horses', by Luiz Ruffato. **Eixo Roda: Revista de Literatura Brasileira**, Belo Horizonte, v. 15, p. 27-41, 2007. Available at: http://www.periodicos.letras.ufmg.br/index.php/o_eixo_ea_roda/article/view/3260/3194. Accessed on: 23 Feb. 2022.

WESTIN, Alan. **Privacy and freedom**. New York: Ig Publishing, 1967.

Received: 07.28.2020

Accepted: 01.18.2022