

## Reflections about the right to privacy of children and adolescents in a comparative perspective<sup>1</sup>

### *Reflexões sobre o direito à privacidade de crianças e adolescentes em perspectiva comparada*

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#### Abstract:

From a double perspective, the central scope of this article is to examine the protection of the right to privacy of children and adolescents. It is intended, initially, to emphasize the recognition of the legal position of children and adolescents as legal subjects. In a second stage, some of the main issues related to the subject of protecting the rights of the personality of children and adolescents are highlighted, and the relevance of the current Brazilian model of protecting the personality of children and adolescents is critically examined, notably in relation to comparative law. Finally, the legislative development on the matter is suggested as a means of providing effective protection to children and adolescents.

**Keywords:** privacy ; children and adolescents protection; personality rights ; capacity theory ; children and adolescent act.

#### Resumo:

*A partir de uma dupla perspectiva, o escopo central do presente artigo reside em examinar a proteção do direito à privacidade de crianças e adolescentes. Pretende-se, inicialmente, sublinhar o reconhecimento da posição jurídica das crianças e adolescentes como sujeitos de direito. Em um segundo estágio são destacadas algumas das principais questões referentes ao tema da tutela dos direitos da personalidade de crianças e adolescentes, e examina-se de modo crítico a pertinência do modelo brasileiro atual da tutela da personalidade das crianças e adolescentes, notadamente em relação ao direito comparado. Sugere-se, ao final, o desenvolvimento legislativo da matéria como meio de propiciar efetiva tutela à criança e ao adolescente.*

**Palavras-chave:** privacidade; tutela de crianças e adolescentes; direitos da personalidade; Teoria da capacidade; Estatuto da criança e do adolescente.

## 1 Introduction

The development of personality rights is a fundamental theme of international and national doctrine. Few are the subjects of Civil Law that, in a short period of time, have had such a dazzling trajectory: relegated to a topical treatment in the codification of the late

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nineteenth century, as in the case of German law, or even ignored, as the Brazilian codification of 1916 serves as an example, they reached the status of fundamental right before the end of the twentieth century: for the legal irradiation of the guardianship of the person (Bioy, 2003, p. 785).

However, the affirmation of personality rights is not limited to topography and condition. Conceived as an instrument for the protection of the current interests of the person to prevent the attack of others on the private sphere of the individual, the right to personality is also used in other areas, reaching new projections, in order to regulate new cases in which the person relates to third parties.

A recent example of this circumstance concerns the question of who has the right to enforce personality rights: the most elementary answer would be to say that all subjects of rights are favored with personality rights. This study seeks to investigate the extent to which the protection of personality rights extends to children and adolescents, in particular in relation to the right to privacy.

It is true that the issue of the guardianship of children and adolescents has autonomous frameworks, as can be seen from the examination of article 16<sup>2</sup> of the 1989 Convention on the Rights of the Child, an international norm ratified in the national legal system through Legislative Decree No. 28/1990, promulgated by Executive Decree No. 99.710/1990.

Likewise, in Brazilian legislation, the 1990 Statute of the Child and Adolescent, in its article 17, establishes the right to respect and contemplates sets of rights such as image, identity and autonomy. It is, therefore, a legislation that specifies the rights of personality.

Although it is recognized that children and adolescents are subjects of law, it must be borne in mind that the matter raises questions based on the need established by the legal system for parents to exercise a duty of zeal and care in relation to their children. – Therefore, it is possible to outline an element of tension between the aforementioned need to look after the interests of children and their demand that their personality rights be safeguarded, in this case, the right to privacy (Corriero, 2004, p. 998; Meyer, 2002-2003, p. 1117; Beater, 2013, p. 111).

Recently, the issue has gained debate due to the entry into force of the General Data Protection Law (Law 13,709/2018) which provides, in its article 14, that the processing of personal data of children and adolescents must be carried out in their best interests.

In these terms, it is appropriate, in the first place, to point out the main moments in the evolution of the Personality Rights of children and adolescents. Below, it is intended to glimpse,

2 "Article 16. 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, or to unlawful attacks on his or her honour or reputation.

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without wishing to be exhaustive, some of the main issues related to this topic, especially to verify the relevance of the treatment given to the protection of the right to privacy in Brazilian law.

Finally, it should be noted that the topic finds resonance in different legal systems, and the focus of this work is the examination of the contributions of comparative law, the promotion of reflections on the subject examined, as well as the relevance of the solutions adopted in the field of national law.

## **2 The affirmation of the personality rights of children and adolescents**

### **2.1 The applicability of personality rights to children and adolescents**

The protection of children and adolescents, in the Brazilian legal system, is a constitutional one, and Article 227 of the Magna Carta requires the family, society and the State to<sup>3</sup> guarantee a wide range of rights to children and adolescents. However, this article does not mention the personality rights identified in article 5 of the Federal Constitution, classically recognized in the theory of private law, such as honour, privacy and image, which points to the intention of the legislator to provide for the protection of children and adolescents in specific provisions.

Thus, the constitutional regulation is in harmony with the international provisions on the subject, especially with the United Nations Convention of 1989, mentioned above. At the European level, the Charter of Fundamental Rights of the Union (Charter of Nice) of 2002, by specifically considering the rights of the child in its Article 24<sup>4</sup>, constitutes another milestone for the subject.

<sup>3</sup> Article 227. "It is the duty of the family, society and the State to guarantee the child, adolescent and young person, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community life. in addition to safeguarding them against all forms of negligence, discrimination, exploitation, violence, cruelty and oppression."

<sup>4</sup> "Article 24. 1. Children have the right to the protection and care necessary for their well-being. They may freely express their opinion, which will be taken into account in matters that concern them, according to their age and maturity."

For the purposes of implementing article 227 of the Federal Constitution, article 2 of the Statute on Children and Adolescents distinguishes between children under 12 years of age and adolescents under 18 years of<sup>5</sup> age.

Within the scope of this work, two of the rights contained in the Constitution that were later specified in the Statute of the Child and Adolescent are specifically mentioned: the right to respect, provided for in article 17 of the aforementioned Statute<sup>6</sup>, and the right to dignity, contained in article 18 of the same legal title<sup>7</sup>.

It can be said that children and adolescents are holders of fundamental rights (Page; Humprey, 1981, p. 502). Although at first glance the statement may sound like a truism, since it is natural persons who qualify as subjects of law (holders of subjective rights qualified as relevant by the constitutional legal system), the Supreme Court of the United States<sup>8</sup> expressly highlighted the constitutional protection directed at them.

In essence, the principle of universality applies, in the sense that all natural persons have the status of subjects of fundamental rights. It should be considered that this premise does not necessarily imply that children and adolescents are holders of all fundamental rights (Sarlet, 2009, p. 358); However, they are holders of rights linked to their status as persons, which induces the applicability of personality rights.

It is important to highlight the evolution of personality rights in Brazilian law, as a specific instrument of protection for the general protection of interests in the personal sphere. This circumstance is established: on the one hand, by the aforementioned protection provided for in the Federal Constitution (Article 5, paragraph X), in addition to establishing the dignity of the human person among the foundations of the Republic; on the other hand, by the provision contained in Article 21 of the Civil Code of 2002, which recognizes the right to privacy and establishes the existence of a general right of personality (Andrade, 2013).

In this sense, although the expression of human dignity translates as the recognition of the value of the person and effectiveness in the infraconstitutional sphere (Sarlet, 2009, p. 74-79), the recognition of a general right to personality is indispensable (Moraes, 2003, p. 117).

<sup>5</sup> In the context of public policies, it is necessary to pay attention to the provisions of the Youth Statute (Law 12.852/2013), which in its article 1, paragraph 1, qualifies young people between 15 (fifteen) and 29 (twenty-nine) years old, and in paragraph 2 there is a specification to the effect that for adolescents between 15 and 18 years of age the application of the Youth Statute is exceptional.

<sup>6</sup> Article 17. "The right to respect consists of the inviolability of the physical, mental and moral integrity of the child and adolescent, including the preservation of image, identity, autonomy, values, ideas and beliefs, spaces and personal objects."

<sup>7</sup> Article 18. "It is everyone's duty to guarantee the dignity of children and adolescents, keeping them safe from all inhuman, violent, terrifying, humiliating or shameful treatment."

<sup>8</sup> In relation to criminal procedural law, it was pointed out: "minors are persons with the right to the constitutional protection of their rights" (United States, 1967).

The reflection on the General Law of the Personality tends to connect with the effectiveness of the principle of human dignity, by considering the expansive vision of the system of protection of personality rights in Brazilian Law (*numerus apertus*), capable of receiving all subjects of rights as recipients of personality rights. which favors the inclusion of children and adolescents as holders of these rights.

## **2.2 The personality rights of children and adolescents and their status as subjects of rights**

The fact that children and adolescents are holders of personality rights leads to the need to regulate in greater detail the discipline of capacity and the exercise of rights.

In Brazilian Civil Law, persons under the age of 16 are considered absolutely incapable (art. 3, Civil Code), which implies the obligation to be represented in order to exercise their rights.

It is important to note that Brazilian civil law is far from the contemporary discipline in this area. See, for example, that Section 104, n. 1 of the German Civil Code (BGB) considers minors under the age of 7 to be absolutely incapable, and the age of majority begins at eighteen. Thus, from the age of 7, under Section 107 of the BGB, limited capacity (*beschränkte Geschäftsfähigkeit*) applies; in this case, especially from the age of 14, the discernment of the minor (*Einsichtsfähigkeit*) is examined, in order to verify whether he or she can intervene in legal transactions, in order to establish a double control (*doppelzuständigkeit*) (Beater, 2013, p. 117).

In Argentine law, Article 26 of the Civil Code of 2015 is based on the premise that minors are represented by their parents. It provides, however, that in accordance with their age and degree of maturity, minors may exercise by themselves the acts that are authorized by the legal system. In addition, in the event of a conflict of interest with the representatives, the minor may intervene in this regard, and it is especially envisaged that he or she has the right to participate in decisions concerning him or her (Carlucci *et al.*, 2015).

In view of this simple panorama, it is possible to note a disharmony in Brazilian civil law between the conception of the capacity to have rights and to exercise, resulting from a nineteenth-century vision of the exercise of subjective rights, and the framework of property and the exercise of the personality rights of children and adolescents.

In this context, the question of the possibility of invoking the personality rights of children and adolescents is of interest, in order to underline their effective role as subjects of rights and within the family (De Meo, 2012, p. 461; Woodhouse, 1994, p. 321). The next part of this paper outlines the questioning of the invocation of the defense of privacy by children and adolescents.

### 3 Privacy in favor of children and adolescents

#### 3.1 Privacy settings in favour of children and adolescents

The affirmation of a sphere of privacy for "minors" corresponds to a significant advance in this area (Corriero, 2004, p. 998; Página, 1981, p.499; Marwick; Diaz; Palfrey, 2010, p. 10-29; Shmueli; Blecher-Prigat, 2011, p. 759): at the same time that this circumstance implies the expansion of the sphere of intimacy, it configures the consequent reflection on the exercise of the paternal function.

Emphasis is placed on the modification of the understanding of the exercise of paternal duties, which should not be qualified as a simple manifestation of power, despite the maintenance of the term "power" in Brazilian civil law. An example of this change can be found in the wording of Article 147 of the Italian Civil Code, based on the legislative reform of Family Law in 1975: the duties of parents in relation to their children must be exercised in accordance with "their capacity, natural inclinations and aspirations" (Corriero, 2004, p. 999).

In this context, the Italian experience recognizes the situation of the so-called "grande minore" or, in line with the current conception, of the young adult (*giovane adult*), in which case the actions of the parents must necessarily consider the personality of the young person in formation (Corriero, 2004, p. 999).

At the same time, it should be noted that the recognition of the right to privacy of the child and, more specifically, of the adolescent, implies the overcoming of the classical doctrine on the immunity of family members (Doctrine of *Immunity*): in short, the family was perceived as a closed unit, reluctant to the possible intervention of third parties to protect the conflicting interests of its members, which implied a restriction on the exercise of the claims of the children against their parents<sup>9</sup>.

<sup>9</sup> The *doctrine of family immunity* can be traced back to a Mississippi Supreme Court case, titled *Hewlett v. George* (1891). In that ruling, the court struck down a rule of common law that allowed children to sue their parents for breach of contract or for wrongful acts relating to the children's property or other interests. It was held that a girl was not entitled to seek compensation for personal injuries caused by the wrongful acts of the parents, as long

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The concern about the issue of protecting the privacy of children and adolescents is not unrelated to the privacy paradox, which discusses the contemporary trend towards the extreme disclosure of personal information to obtain a specific reputation and identity (Solove, 2020, p. 01). With respect to the development of the personality of adolescents and children, the occurrence of social phenomena is highlighted, such as the attraction of popularity in *the online environment* and the goal of achieving the status of "micro-celebrity" (Marwick; Diaz; Palfrey, 2010, p. 25), as well as the existing incentive on the part of the media, which encourages children's participation in entertainment programs (Shmueli, 2015, p. 289).

The presence of these facts in social reality cannot be ignored, however, young people have expressed their own concern about the disclosure of information concerning their personal lives (Mantelero, 2011, p.139-141). In addition, privacy supposes, at the same time, a multiplicity of dimensions and achievements, and it is possible to consider that among them is the control of the person's own information, which results in the so-called *informational* privacy (Soma; Rynerson, 2008, p. 21). In this context, the recognition of the privacy paradox does not invalidate the effort to recognize and extend privacy to children and adolescents.

In the normative sphere, the recognition of the subject in the context of the 1989 Convention on the Rights of the Child was pointed out in an introductory manner. In North American law, for example, due to this influence in line with the theoretical and social developments mentioned above, the issue of the protection of the privacy of children and adolescents has been the subject of intense considerations, addressing the need for protection at the state level and the intervention of parents (Shmueli; Blecher-Prigat, 2011, p. 750).

### **3.2 Contemporary problems of the protection of the privacy of children and adolescents**

In a first example, there was a debate about the possibility of children under sixteen years of age having access to contraception, which was favorably assessed by the Supreme Court of the United States as an expression of the recognition of privacy in the context of a lawsuit filed by agencies interested in the dissemination of contraceptive advertising (United States, 1977).

Still in this area of protection, it is possible to inquire about the invocation of the privacy of minors in relation to the duty of care imputed to those responsible for the school environment

as she and the parents had family duties to each other. In the court's opinion, a sensible public policy should be taken into account: allowing lawsuits between relatives would undermine social peace and the peace of the families that make up society. (Haley, 1996, p. 575).

and educational institutions in general. Also in U.S. law, it was considered that the privacy of students was not understood to be guaranteed in the event of disciplinary situations in the school environment, when schools were necessarily required to comply with the duty to inform the legal representative in order to comply with the right to due process of law guaranteed to adolescent students themselves (United States, 2007).

The protection of the privacy of children and adolescents when they are monitored during their Internet searches is also discussed (Marwick; Diaz; Palfrey, 2010, p. 15). In this field, the duty of care of educational institutions is given precedence, especially when they can be held liable for any damage caused to the integrity of their students.

In this first group of cases, it is observed that it is difficult to ensure the privacy of adolescents in the school environment, insofar as the jurisprudence, especially in the United States, in contrast to the previous statement, privileges the position of academic institutions, considering the condition of being responsible for the education and guidance of students under guardianship.

The problem is exacerbated when it comes to considering the protection of the personality rights of children and adolescents within the family group, before its other members.

A first example in this regard is whether parents are authorized to record their children's conversations to protect them from potentially dangerous situations (Dinger, 2005, p. 955). The answer is mostly affirmative in American law: based on the theory of *vicarious consent*, it is considered that parents have the duty to act in favor of their minor children, which includes the possibility of recording conversations. It is considered that, in the face of the risk of parental responsibility, in the event that the children are victims of a crime perpetrated by a third party, a wide margin of discretion should be maintained in favor of the parents (Dinger, 2005, p. 1003-1017), without neglecting the necessary balance between parental duties and the privacy of the children (Shmueli; Blecher-Prigat, 2011, p. 782). The prevailing doctrinal orientation is to safeguard the sphere of action of parents in relation to the protection of children, insofar as parents are supposed to act in accordance with the best interests of their children.

The issue is not limited to U.S. law, as the same matter was the subject of a decision in Brazilian law, in a case involving the alleged practice of a sexual offense against a 13-year-old boy. The illegality of the telephone interception of a third party, carried out without judicial authorization, was discussed, and, in this case, the use of evidence extracted from the son's telephone recording, authorized by the victim's mother at her residence, was considered admissible. In this regard, it was expressly considered that, in view of the matter in question, the comprehensive protection of the child played a relevant role in the matter (Brasil, 2014).

Another type of issue to be addressed is the existence of children's privacy in relation to their parents, in the field of academic performance. U.S. federal law of 1974 ("*Family Educational Right to Privacy Act*" – FERPA) expressly authorizes parents to control their children's information up to the age of 18, even if they object (Shmueli; Blecher-Prigat, 2011, p. 782). In turn, in German law, the Constitutional Court recognized the right of parents to access information about their children, who had entrusted their own references to an educational counselor (Germany, 2016).

Under Brazilian law, parents can verify their children's academic performance until they come of age, and mechanisms for accessing their children's grades are usually implemented by private educational institutions. Although the parents continue to present themselves as financially responsible for the payment of the monthly fees, after the age of majority of the children the right of access to the children's personal information should not be considered present, except in exceptional conditions with judicial authorization.

In the context of public institutions, Article 31 of Law No. 12,527/2011, when dealing with access to information, regulates that the processing of personal information must respect private life and intimacy. In paragraph II of the aforementioned provision, for the authorization of access by third parties, the consent of the owner of the information is required.

Therefore, parents cannot be allowed, even in the case of the child's financial dependence for income tax or maintenance arrangements, to have access to documentation of academic performance, since it is conceivable that the child himself may admit to this circumstance.

The right to privacy of children in relation to their parents would thus be formal, but doctrine has increasingly emphasized its recognition and its importance for the personal development of children (Shmueli; Blecher-Prigat, 2011, p. 782). In this sense, the possible monitoring of minor children by parents would contemplate risks of configuring conduct unfavorable to the personality of the child and adolescent, insofar as privacy must be considered as an essential right for the development of the personality<sup>10</sup>.

In view of this context, there is a debate about the contemporary behavior of parents who disclose information about their children, whether in print media, *blogs* or on digital platforms; the practice is configured as sharing parental experiences online (*sharenting*), which may

<sup>10</sup> "Privacy is closely implicated in notions of self-respect and self-respect, and of love, friendship, and trust. Apart from any philosophical analysis, this is intuitively obvious. In this section I will try to make the connection explicit. In general, my thesis is that in developed social contexts, love, friendship, and trust are only possible if people enjoy and grant each other a measure of privacy. (Fried, 1968, p. 475-482).

imply behavior considered harmful to the development and personality rights of children (Steinberg, 2017, p. 839).

Although theorized in the doctrine, it must be considered that in North American law it is based on the premise of considering the disclosure of information by people who share experiences authorized<sup>11</sup>, which would imply allowing this behavior on the part of parents, even under the consideration that children might prefer to protect the privacy of these reports<sup>12</sup>.

Linked to this point is the expression of this very personal right, especially how to provide children and adolescents with instruments that guarantee the exercise of this right (Camardi, 2018, p. 831; Marx Neto, 2011, p. 343), because, despite being considered subjects of law, in terms of the capacity to exercise, as can be seen from Article 3 of the Civil Code, they are still considered absolutely incapable!

With regard to the discipline on the ability to exercise, it should be noted that there is no degree in this regard in Brazilian legislation. With the exception of adoption discipline, which requires the consent of a person over 12 years of age<sup>13</sup>, an "all or nothing" discipline is generally adopted, without recognizing the progressive autonomy of the child and adolescent.

Parallel to this issue, in Italian law, for example, there was an intense debate on the intention to establish a special guardian for children, in order to protect their own interests at the time of their parents' divorce. Initially, the Italian Constitutional Court responded negatively, arguing that the Public Prosecutor's Office and the judge could exercise this role (Corriero, 2004, p. 1019).

The issue, in Brazilian law, has a legislative basis insofar as the Statute of the Child and Adolescent, in the sole paragraph of its article 142, provides for the possibility of assigning a special guardian to the child or adolescent when his or her interests clash with those of his or her parents or guardian, or when they lack representation or legal assistance. even if it is occasional. However, in most cases where it is involved, it is not essential to assign a guardian to the child.

The question was also raised as to whether parental consent was sufficient when it came to the dissemination of images of children and adolescents, or whether a specific protection

<sup>11</sup> In the 2004 decision of the Massachusetts Court in the case of *Boneme v. Kaysen*, the man's claim of privacy was rejected in the face of the publication of a book by his ex-girlfriend that revealed details of his personal life (Volokh, 2011).

<sup>12</sup> Although with particularities in relation to the premise of the text, it is found in German jurisprudence in which it was considered that a teacher was not authorized to write a book in which he recounted the characteristics of one of his students, which violated his right to personality. (GERMANY. Bundesgerichtshof (BGH), 15.09.2015, 6th Senate, ZR 175/14).

<sup>13</sup> The consent of the person over twelve years of age is required for adoption, in accordance with article 45, paragraph 2, of the Statute of the Child and Adolescent.  
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instrument should be used. Italian legislation upholds the need for additional protection, especially in the case of a person under 16 years of age, considering, for example, that the authorization for the dissemination of an image was not validly granted (Corriero, 2004, p. 1024).

In Brazilian legislation, although it is true that article 149 of the Statute of the Child and Adolescent requires judicial authorization for the participation of children and adolescents in various activities, the same is not true for the use of their image, expressly (Rettore; Silva, 2016, p. 31). From a positive point of view, it is not necessary to hear the judge on the use of his image, establishing all the protection in the field of parental responsibility. Likewise, there is no control over the ability of parents to create accounts for their children on social platforms, or, as mentioned above, make available photos or images of their children on them.

Specifically, with regard to the protection of the personality of children and adolescents, the provisions of article 143 of the Statute of Children and Adolescents are highlighted<sup>14</sup>, which prohibits the disclosure of judicial and police acts of juvenile offenders. It is, however, a rule related to the matter of infringement, so its scope could be questioned in cases that do not involve it (Fernandes, 2016, p. 257), through an expansive interpretation. Thus, in order to fully protect the child and adolescent, when the disclosure of his or her image has a connotation contrary to the honor and dignity of the minor, it is advisable to adopt an extensive interpretation in accordance with jurisprudence (Brasil, 2012).

In general terms, however, the notion prevails that the authorization of the parents or guardians is sufficient to protect the child's right to personality (Brasil, 2021). Only in cases where the authorization of the responsible party is not established is the prerequisite for compensation for damages to the person of the child or adolescent considered present.

It is noted that Brazilian legislation lacks instruments capable of granting children and adolescents the means to protect their privacy. Even the possibility of guardianship through the figure of the right to be forgotten, considered in various legal systems as an instrument of guardianship conducive to children and adolescents, is in principle prohibited, in national legislation, based on a decision issued by the Federal Supreme Court in RE No. 1010606 (Brasil, 2021).

In opposition to this position, the US law is established with the "*Children's Online Protection Act*" (COPPA) of 1998, which, when dealing with the dissemination of personal data of children and adolescents on the Internet, differentiates the guardianship for children under

<sup>14</sup> "Article 143. The disclosure of judicial, police and administrative acts that affect children and adolescents to whom the perpetrator of an infraction is attributed is prohibited."

13 years of age. In this case, the right to erasure of the data that may be made available (Marwick; Diaz; Palfrey, 2010, p. 26-38). In California, there is a right to delete information made available on the Internet by minors through the *Business and Professions Code* (BPC) of 2015, which in its § 22581, allows minors under the age of 18 to obtain the removal of information or content inserted on Internet sites, network applications, online services, mobile applications (United States, 2015).

The aforementioned instruments do not exist in the data protection discipline established in the French legislation of 2018 (Rochfeld; Marcial-Braz, 2019, p.76), and were not provided for in Brazilian national legislation (Law No. 13.709/2018). Article 14 of the aforementioned Law maintains the traditional system of consent for the use of data by parents, without instituting any specific guardianship for children and adolescents. It should be noted that there is no legal provision on the conflict between the interests of legal representatives and those of the child and adolescent.

In this bias, in comparative legislative experience, there are protection mechanisms that do not exist in Brazilian private law, even if it is scarce or occasionally. The comparative analysis allows us to conclude the insufficiency of the existing legislative regime for the effective realization of the personality rights of children and adolescents (Steinberg, 2017, p. 869), from the point of view of the effective subjects of the law, as well as the error committed by the Federal Supreme Court, in the Thesis of General Repercussion n. 786, by categorically rejecting the existence of the right to be forgotten as an instrument for the protection of privacy in national legislation.

## 4 Conclusion

This study emphasizes *the relevance of the Rights of Personality, prima facie*, which migrate from the strict scope of Civil Law, to the status of Fundamental Rights, in order to verify the realization of their qualifications by children and adolescents. It also points out the importance of the expansive vision of the subject, based on the General Law of Personality as a mechanism for the protection of Personality Rights.

It is verified that there is no convergent discipline of the Personality Rights of children and adolescents in the Brazilian private law system. Although there are various provisions in the Statute of the Child and Adolescent, based on the constitutional provision on the subject, in the area of privacy the Civil Code has not established a treatment capable of providing a

comprehensive regime for the defense of the rights of the personality of children, girls and adolescents.

Although it is possible to sustain the possibility of self-application of the protection of children and adolescents on the basis of a constitutional principle, it is necessary to consider that two axes in private law still predominate in this area: on the one hand, in terms of capacity, despite the reform established by the Statute of Persons with Disabilities, A person under eighteen years of age is considered incapable. On the other hand, Brazilian Family Law groups powers in the person of the parents, in order to guarantee the integrity of the child's person, which implies an almost insurmountable obstacle to the non-recognition of their right to privacy.

In this context, to the extent that it is possible to advocate the need to balance interests, weighing the indispensable balance between family members, in order to effectively safeguard the right to privacy of children and adolescents in the light of the experience of comparative law, it is necessary to advocate a dogmatic revision through legislative reform to establish effective instruments and mechanisms. protection of personality rights aimed at children and adolescents.

In this regard, it is considered that, for example, the solution presented by the Argentine Civil Code should serve as the first model for the defence of the interests of children and adolescents in the area of personality rights, insofar as it makes it possible to highlight the notion of individuality of each person in the family environment.

Specifically, it can be indicated that both the Federal Supreme Court and the Data Protection Law (Law No. 13,709/2018) could have contributed to the timely implementation of this protection, either by recognizing the right to be forgotten when evaluating the matter, or by its institution in national positive law, in favor of children, girls and adolescents.

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