
**GENERAL DATA PROTECTION LAW AND ITS IMPLEMENTATION IN
THE MUNICIPALITY OF PARANAÍ IN COVID-19 TIMES*****LEI GERAL DE PROTEÇÃO DE DADOS E A SUA IMPLEMENTAÇÃO
NO MUNICÍPIO DE PARANAÍ EM TEMPOS DA COVID-19*****IVAN DIAS DA MOTTA**

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ABSTRACT

Objective: Aims to analyze the influence of public data protection policy, with regard to citizens' rights and what mechanisms such implementation should be observed for the purpose of having true applicability in cities of equal or similar port and that the city of Paranavaí in the state of Paraná.

Methodology: It is an applied social research of exploratory and descriptive type with qualitative approach, where the documental analysis of documents related to municipal management is used.

Results: After the research, public data were reached and the absence of legislative or infralegal mechanisms was confirmed at the municipal level, capable of implementing and implementing public policy instituted by the LGPD.

Contributions: Only with the observance by the Municipalities, it will be possible to promote the effectiveness and respect of the personality rights of citizens who have data with the Public Power, effective the rights of personality: freedom, privacy and own security of sensitive information.

Keywords: Public policy. Personality Rights. Data Protection.

RESUMO

Objetivo: Tem por objetivo buscar analisar a influência da política pública de proteção de dados, no que se refere aos direitos do cidadão e quais os mecanismos que tal implementação deverá observar para fins de possuir verdadeira aplicabilidade em cidades de igual ou similar porte que a cidade de Paranavaí no estado do Paraná.

Metodologia: Trata-se de uma pesquisa social aplicada do tipo exploratória e descritiva com abordagem qualitativa, onde emprega-se a análise documental de documentos relativos à gestão municipal.

Resultados: Após a realização da pesquisa, alcançou-se dados públicos e confirmou-se a ausência de mecanismos legislativos ou infralegais no âmbito municipal, capaz de implementar e colocar em prática da política pública instituída pela LGPD.



Contribuições: *Apenas com a observância pelos Municípios, será possível promover a efetivação e respeito aos direitos da personalidade dos cidadãos que possuem dados com o Poder Público, efetivando-se assim os direitos da personalidade: liberdade, privacidade e própria segurança de informações sensíveis.*

Palavras chaves: *Políticas Públicas. Direitos da Personalidade. Proteção de Dados.*

1 INTRODUCTION

This study will focus on data protection in the scope of the Municipality of Paranavaí-Paraná, due to the advent of the General Data Protection Law, Federal Law No. 13,709 / 2018, as a public policy, able to seek the implementation of personality rights of local citizens, such as the right to privacy and access to information and of all individuals who have data with the Municipal Administration, whether as servants, contractors, and the Public Administration itself from other spheres.

Data and the object of the protection of the mentioned standard are understood as the personal information protected by determined or determinable legislation, that is, any data that allow the identification of a natural person or make it possible, such as: name; surname, e-mail, numbering of documents and credit cards, bank and financial data, medical and laboratory information, geographical location, IP addresses and other personal information.

In the face of such a concept, expressions such as data and information as synonyms, however, must be distinguished. The data, in fact, would be the primitive state of information, the raw facts that after processed and organized, become something intelligible, from which information can be extracted.

From another point, art. 5, item IV, of the General Data Protection Law defines a database as being a “structured set of personal data, established in one or several places, in electronic or physical support”. Its dynamics involve the input (input) and data processing and the output (output) of information; and its management is essential to extract knowledge from it.

In the meantime, the rights of the personality are properly demonstrated, as protection is directly related to the freedom, security and privacy of the individual,



intrinsic to this institute, intensified by the access of a large number of people to the world wide web, social networks and other applications, which request and access personal data, in addition to identification data, but also the consumption profile. In this context, it is highlighted that companies sell data from their users, without clear knowledge of them about such a fact, which can hurt the rights of the personality, concerning privacy, as well as, public entities may use such data in an inappropriate way.

Thus, the systematic absence of local rules and regulations regarding the institute in question at the local level, may cause numerous problems in the social sphere, in view of the validity of the referred legal norm, which will derive the relevance of the present work, allied to the situation of Existing pandemic of coronavirus disease (COVID-19), which will contribute and make difficult the analysis of the discussion related to the mentioned legal norm, in times when the Administration seeks to prioritize and focus on situations related to the state of exception experienced.

With regard to the originality of the work, it appears that there are no other works that address the theme at the municipal level, in addition to the legislative innovation that is extremely modern and complex for a city of approximately 90 (ninety) thousand inhabitants, such as the Municipality from Paranavaí, located in the northwest region of the state of Paraná, but which is at the forefront of the region as a hub for the region, thus characterizing the relevance of the study.

The general view for the elaboration of the referred work, will meet the perspective of the implementation of the public policy of the General Data Protection Law, under the focus of personality rights, which may or may not be respected and fostered, given the absence or material realization. public policy, which is compromised in the face of the existence of areas even more affected by the COVID-19 pandemic, being the main reason for the work.

With the aforementioned research, improvement in practices related to access to information and data management can be aimed at, with which consequently there will be greater respect for citizens in terms of personality rights, granting intangible value as to their employment in the Public Administration itself, through the



systematization of the regulatory framework at the national, regional and local levels, always under the public focus and respect for public policies.

Timely, the choice of the theme occurs at a relevant moment, because in times of scarcity of public resources directed to public policies not affected by the health and pandemic area, which naturally leads to a greater allocation of public resources in more sensitive areas, as health and sanitation, the existence of such a mandatory burden on Public Administration, even more so in medium-sized cities, although with the aim of giving greater concreteness to the rights of individuals' personality, it may render the application of the aforementioned legislation unfeasible or even cause a purely formal application, without a minimum of care and technical rigor in its observance by the municipal managers, who in many cases do not have their own framework for its application and detailed study.

In fact, as it is a public policy, the General Data Protection Law is not designed in isolation, interconnecting directly with the data processing sector of Public Administration, compliance, internal controllership and all other portfolios. of the Administration, since the Administration is uncertain as a whole and not in isolated organisms.

Thus, the present study aims to analyze the influence of public data protection policy, with regard to citizens' rights and what mechanisms such an implementation should observe for the purpose of having true applicability in cities of the same or similar the size of the city of Paranavaí-PR, located in the northwest region of the State of Paraná.

2 METHODOLOGY

It was an exploratory and descriptive applied social research, with a qualitative approach (CHIZZOTTI, 2000). The data source was the federal, state and municipal management documents related to data protection, published since 2018. This time frame is justified by the enactment this year of the General Law for the Protection of Personal Data (LGPD), Law No. 13.709 / 2018, which regulates personal data



processing activities and also changes articles 7 and 16 of the Marco Civil da Internet, in Brazilian legislation (BRASIL, 2018). This law is believed to have influenced the organization of the State of Paraná and the municipality of Paranavaí on the subject. This municipal entity was chosen because it is a hub for the Northwest region of the State of Paraná-Brazil.

The collection and analysis of data took place through documentary research, which favored the observation of the process of evolution and construction of the jurisdictional framework, allowing to add the dimension of time to social understanding (CELLARD, 2008).

The data were located in the Official Diaries of the Union and of the Municipality, available for public consultation in the online form, with few documents related to the scope of the study at the municipal level. They were grouped according to type. Then, the data were pre-analyzed by means of readings: exploratory, selective, analytical and interpretive, surveying five dimensions of each document: the context, the author (s), the authenticity and reliability of the text, the nature of the text, the key concepts and the internal logic of the text.

Thus, the aforementioned documents were selected for analysis, namely: two federal laws, seven municipal management documents and a federal bill. The selected documents went through a process of survey of the analysis units and, then, definition of the analysis categories, this was guided by the following question: How the public policies of Protection of Personal Data, concretized by Federal Law nº 13.709 / 2018, impacts on citizens' personality rights? This process took place in the second half of 2020.

The discussion of the data has given rise to current scientific literature on the subject of data protection, mainly from the United Kingdom, and Personality Rights. The research does not require appreciation and approval by the competent ethical bodies as it is carried out with public and unrestricted access documents.



3 RESULTS AND DISCUSSION

The General Data Protection Law (LGPD) was enacted on August 14, 2018 (BRASIL, 2018), which establishes a true regulatory framework for the use and treatment of data that until then was managed only by private actors, without any control. public power. Thus, it is an important legislative framework, in line with the evolution initiated on the European continent, through the General Data Protection Regulation (GDPR) (EU, 2016). This has as its object the protection of personal data against the new social actors, with the scope of ensuring the free circulation of such data, in a transparent manner on the part of those responsible for the processing of personal data and control of the people who are in the European Union over their Dice.

In Brazil, Federal Law No. 13,709 / 2018 (BRAZIL, 2018) has already been amended even before its effective date by Federal Law No. 13,853 / 2019 (BRAZIL, 2019) currently has 65 articles, which are expected to be in force introduced by the amendment, for 24 (twenty-four) months after its publication, where it was strongly inspired by European regulation (BIONI; MENDES, 2019).

It is important to highlight that the moment in which the aforementioned standard was published was the same as that of a data leakage scandal by large economic conglomerates, such as: Netshoes® and Facebook® (RAPÔSO, 2019), which contributes to there being a enormous concern with such data that today have economic value and unique social relevance.

In the aforementioned law, there is a specific chapter, namely: Chapter IV, which deals with “the treatment of personal data by the public power”, which provides for specific responsibilities to the public power, bringing to light the reality of the use and storage of a huge amount of data by the Public Administration in general (MAGACHO, TRENTO, 2021).

Despite the postponement already established by the aforementioned legislative amendment, due to the COVID-19 Pandemic, Bill No. 1179/2020 (BRAZIL, 2020), authored by Senator Antônio Anastasia, arises at the federal level. o Emergency and Transitional Legal Regime for Private Law Legal Relations (RJET) during the Coronavirus pandemic period (COVID-19).



The aforementioned bill converted into Federal Law 14.010 / 2020 (BRASIL, 2020b), provided in its article 20, that article 65 of the LGPD will come into effect on August 1, 2021 as to articles 52, 53 and 54 that govern the sanctions to be applied to data processing agents.

In the previously amended Bill, more precisely in its article 25, there was the following provision (BRASIL, 2020a, s/p.):

Art. 25. Art. 65 of Law No. 13,709, of August 14, 2018, becomes effective with the following wording: Art. 65. [...] II - 36 (thirty-six) months after the date of its publication, regarding the other articles.

In this way, the intention of the legislator to promote an extension of the beginning of the rule's effectiveness will remain clear, in view of the difficulty that the Pandemic times cause and will cause to the authorities that should promote the implementation of the LGPD, as well as the very lack of implementation by the federal government, which ended up not materializing (LIMA; GIBRAN, 2020).

Notwithstanding the aforementioned draft bill, the Federal Executive Branch, using the prerogative to issue provisional measures that have the force of law, edited Provisional Measure 959 of April 29, 2020.

Among other legislative innovations, the mentioned norm brings in its art. 4, the following provision (BRASIL, 2020a, s/p.):

Art. 4 Law No. 13,709, of August 14, 2018, becomes effective with the following changes: "Art. 65. [...] II - on May 3, 2021, regarding the other articles."(NR)

In view of its immediate effectiveness, it came into force on the date of its publication, where according to the explanatory memorandum brought up by the text, it was edited under the aforementioned arguments, in verbis (BRASIL, 2020a, s/p.):

10. This same Provisional Measure also proposes to postpone the entry into force of the provisions provided for in the General Data Protection Law as a result of a possible incapacity of part of society due to the economic and social impacts of the crisis caused by the Coronavirus pandemic. 11. The urgency and relevance of the proposal stems from the need to immediately implement



the payment of the benefits provided for in Provisional Measure No. 936, of 2020, and to guarantee the application of the General Data Protection Law in an orderly manner and without legal uncertainty. 12. These are, Mr. President, the reasons that justify the forwarding of this Provisional Measure to your appreciation.

Although the conversion of the Provisional Measure reported above in Federal Law 14.058 / 2020 (BRAZIL, 2020b) took place, the specific amendment to the LGPD had not been accepted by the Brazilian parliament, with its non-approval in this regard.

Finally, it is registered even due to these legislative searches to change the date of entry into force of the legislation, in the Municipality of Paranavaí, there are no laws or regulations that regulate or regulate the federal legislation, as object of the present research, after deep research within the local municipal administration.

It is based on the premise that the main objective is based on the influence of public data protection policy, with regard to citizens' rights, in times of Pandemic. Furthermore, "If personality is that set of characteristics that distinguishes one person from another, then when you control the data that make up these attributes, what you have is the domain under the person." (MOTA; TENA, 2020, p. 22).

The values of intimacy, private life and security, especially in the relationship of data with the Public Administration, have singular relevance when contextualizing the rights of the personality.

In this way, "The right to private life and privacy can be translated into the idea of a part of our life that we wish to hide from our peers, insofar as we have a sense of what is private or intimate" (VIEIRA, 2002, p. 207).

Intimacy is a constitutionally provided right, where according to the doctrine (SILVA, 1992, p. 205-206):

[...] intimacy integrates the person's intimate sphere, his thoughts, desires and convictions, while private life means the individual's right to be and live his own life, relating to whomever he chooses. It reports that the Magna Carta, in protecting private life, refers to the interior life, as a set of the way of being and living, as the right of the individual to live his own life and not to the outer life, which involves the person in social and social relations. in public activities (SILVA, 1992, p. 205-206).



In a modern and increasingly globalized society, each data referring to an individual, can be monetized (VAINZOF, 2020), as well as, considered part of their intimacy, because with rare exceptions, almost the entire population fills in registrations and promotes the delivery of your personal data to conglomerates of companies and to the Public Power itself, which can be a custodian, a controller of the flow and treatment of such information.

In the same sense, Rosilene Sousa, Jacqueline Barrancos and Manuela Maia (2019, p. 242), about the relevance of data in the current economy and the need for protection regarding its control and treatment:

Personal data has become the main input of the economy, because in every activity carried out by individuals there is data production. The control and treatment of these data leads the market to benefit from the circulation of information as an instrument that allows the efficient use of available resources for production and consumption. These aspects cause the so-called informational asymmetry in which the increase in the amount of data reduces the knowledge of citizens mainly about their use (SOUSA; BARRANCOS; MAIA, 2019, p.242).

Accordingly, whether physical data or electronic data, both deserve protection, with no constitutional distinction in their protection, given the relevance on any of the platforms.

The doctrine of Tarcísio Teixeira (TEIXEIRA, 2015, p. 122), teaches that:

The secrecy of communication means the freedom of communication by any vehicle offered by modern technology, including the areas of telecommunication and telegraph. Regarding data confidentiality, it means that data and information about people are protected, and access to them is inviolable (TEIXEIRA, 2015, p. 122).

In fact, mechanisms aimed at implementing the LGPD today, after thorough documentary and legislative research with the Municipality of Paranavaí / PR, are non-existent, which contributes as a normative vacuum, but above all, with a vacuum as to the respect and protection of the safeguarded rights. by the LGPD, weakening such public policy.



The citizen has the right to know what data is in the possession of the Administration, with a view to having material access to it, in addition to having the possibility of promoting any alteration or even, holding agents responsible for intentionally promoting the misuse of the deposit of such information. , be related to taxpayers and / or to all other citizens who interact with the local government, as it characterizes the concept of private life.

In this sense (VAINZOF, 2020, p. 26), regarding this private life he explains:

(...) a set of situations that are usually reported without embarrassment. These are data that, although private - such as name, address, profession, age, marital status, affiliation, official public registration number, etc., condition human exchange in society, as they constitute elements of identification that make communication possible, current and safe (VAINZOF, 2020, p. 26).

The existence of robust and easy-to-understand legislation does not guarantee the implementation of public policies, but its absence means that the possibility of implementing appropriate administrative measures does not even exist, as the Public Administration is bound by such regulations, in view of the principle of legality.

Professor Lucas Rocha Furtado (FURTADO, 2012, p. 83) explains:

According to the traditional view, and dominant in our doctrine, administrative legality, called restricted or strict legality, creates the situation that the Public Administration can only act if and when the law authorizes action. According to this dominant interpretation, even if state activity does not imply imposing any positive or negative conduct on any citizen, the Administration would be prevented from acting (FURTADO, 2012, p. 83).

In the meantime, the research addresses only one facet of the aforementioned problem, and it is salutary to carry out a deepening when the effective implementation of the public data protection policy at national and local level, or even when there is a definition of the legislating scenario, as a skillful mechanism. the implementation of personality rights: intimacy and security.

The COVID-19 Pandemic has a significant negative impact on the implementation of other public policies, such as data protection, in favor of areas of sensitivity that are not discussed: health and sanitation.



Although the existence of public policies that demand the priority use of public resources, care with the data contained in the public administration, must have special attention, even in times of exception, such as those experienced in contemporary times.

It is never too much to remember that public policies understand that (SECCHI, 2012. p. 2):

[...] a guideline designed to address a public problem. Let's look at this definition in detail: a public policy is an orientation to someone's activity or passivity; the activities or passivities resulting from this orientation are also part of public policy and response to a public problem; in other words, the reason for establishing a public policy is the treatment or resolution of a problem understood as collectively relevant (SECCHI, 2012. p. 2).

Despite being neglected, such public policy contributes closely to the development of many others, as it directly contributes to the transparency that municipal entities must observe in the conduct of their governmental practices. And in this perspective, the evolution of information and data evolves towards what is called a network society, which operates within a pattern of interaction and social organization where information is the key element (QUONIAM, URQUIZA, YAMASAKI, 2020) that cannot be simply marginalized.

It so happens that the implementation of the General Data Protection Law, in force at the present time, in view of the existence of a disease with global reach, must always be observed and appreciated with reservations and respect, for the purpose of not restricting citizens' rights, under the pretext of observing others, although strongly defensible.

The existence of greater efforts for public areas sensitized by the crisis installed in the world context, is healthy, however, it needs to be framed with the area of data protection in a contextual way, that is, in a joint way, even though its size can be resized. full applicability or even social effectiveness.

In this context, even if implicitly, there was the edition of Provisional Measure 959/2020 (BRASIL, 2020c), as reported (VALENTE, 2020, s/p.):



The federal government postponed the General Data Protection Law (LGPD) to May 2021 - the law would go into effect in August. The change is contained in Provisional Measure 959 published in an extra edition of the Official Gazette this Wednesday (4/29). Several bills that deal with the law go through Congress. One of them, PL 1,179, recently approved by the Senate, provides for the law to come into effect as of January 1, 2021. According to the text, the fines and penalties for companies that fail to comply with the law would become effective on December 15, 2021. August 2021. In a technical note to Congress, the Federal Public Ministry argued that only the application of sanctions should be postponed to 2021. For the prosecutors, the law can help the country in the development of actions and collaboration with foreign actors during the pandemic (VALENTE, 2020).

Although the salutary need for reallocating public resources to the area of health and care itself is questioned and questioned, the implementation of the aforementioned public policy cannot be emptied, since the administrative approach that the data protection issue imposes is of enormous relevance. .

In a curious way and out of step with the best legislative technique, the change in the effective date of the LGPD took place in the midst of the Provisional Measure not subsequently converted into law, which established the operationalization of the so-called emergency aid, which seeks to materialize another public policy of assistencialismo of the federal government.

In this tuning fork, see the legal forecast (BRASIL, 2020a, s / p.):

THE PRESIDENT OF THE REPUBLIC, using the powers conferred on him by art. 62 of the Constitution, adopts the following Provisional Measure, with force of law: Art. 1º The hiring of Caixa Econômica Federal and Banco do Brasil S.A. for the operationalization of the payment of the Emergency Job and Income Preservation Benefit and the monthly emergency benefit referred to in art. 5th and art. 18 of Provisional Measure No. 936, of April 1, 2020. Art. 2 The beneficiary may receive the benefits referred to in art. 1st in the financial institution in which he / she has a savings account or demand deposit account, except for a salary account, provided that he / she authorizes the employer to inform his / her bank details when the information referred to in item I of § 2 of art. 5 of Provisional Measure No. 936, of 2020. § 1 In the event of non-validation or rejection of the credit in the account indicated, including by the financial institutions receiving the transfers, or in the absence of the indication referred to in the caput, Caixa Econômica Federal and Banco do Brasil SA may use another account of the type savings of ownership of the beneficiary, identified by means of registration data, for the payment of the emergency benefit. Paragraph 2 If the beneficiary's savings account is not located under the terms of paragraph 1, Caixa Econômica Federal and Banco do Brasil SA may pay the emergency benefit by means of a digital account, which is automatically opened, in the name of the beneficiary, with the following characteristics: I - exemption from the presentation of documents by the



beneficiary; II - exemption from charging maintenance fees; III - at least one electronic transfer of amounts per month, at no cost to the beneficiary, to a bank account held in any financial institution qualified to operate by the Central Bank of Brazil; and IV - prohibition of issuing a physical card or check. § 3 Regardless of the type of account used to pay the benefits referred to in art. 1, financial institutions are forbidden to make discounts, compensations or payments of debts of any nature, even under the pretext of recovering negative balance or paying off pre-existing debts, which imply the reduction of the benefit amount, except in the case of prior authorization of the beneficiary who expressly refer to the benefits referred to in art. 1st. § 4º The resources of digital accounts not moved within ninety days will return to the Federal Government. Art. 3 The Special Secretary for Social Security and Labor of the Ministry of Economy may edit complementary acts for the execution of the provisions of art. 1st and art. 2nd of this Provisional Measure.

Even though it was introduced in the aforementioned text, despite an apparent dissociation of the content that operationalizes the emergency aid with the change of the date of entry into force of the LGPD, it is seen that more than ever, the effective implementation of the Protection Law Data is relevant in our society, even to seek greater transparency in the most diverse public policies, in particular, the payment of emergency aid itself (CASTRO, 2012).

At the local level, the COVID-19 pandemic led to legislative and administrative measures in the municipality of Paranavaí / Pr, among them the drafting of decrees, ordinances, service orders, etc., which led to greater efforts in the areas of public health and promotion of related public policies, such management documents being thoroughly researched.

The Brazilian federative model contributes to the increase in complexity in the implementation of public policies, since States and Municipalities are autonomous entities, which allow local governments to establish their own agendas, or even, to omit themselves (VAZ-FERREIRA, RODRIGUES, 2020.).

In this way, the relevance of the present approach is emphasized, which contributes to the data collection and the beginning of the procedures tending to incorporate such norm in the administrative praxis, with the aim of aiming at real administrative mobilization by public managers, in the incessant search to reach and put the aforementioned public policy into practice, now considered.

As for the initial objective, the influence of public data protection policy, citizens' rights, as well as the absence of mechanisms that such implementation



currently suffers in the area of the Municipality that is the subject of the research, but that can be used, is appreciated. of the above mechanisms to give concreteness to the public data protection policy, closely linked to the rights of the personality.

4 FINAL CONSIDERATIONS

After the present investigation was carried out, it was found that the idea of adopting a regulatory framework for data protection has a unique relevance in an increasingly technological society, and with sparse data in the most developed and varied means of society, whether in the private or public scope.

The technological society living in today's society is based on values in which the data are monetized and can be the object of commercialization, legal or illegal, where an economic and even behavioral relationship can be established in the way in which the effective treatment of such occurs. data in many sensitive cases.

Although such a normative advent, there is still a minimal structure at the federal level not capable of an effective implementation of such public policy and mainly at the municipal level, there is a total detachment and lack of implementation of the LGPD, capable of guaranteeing the minimum applicability of the legislation already published and promulgated, although other public policies are focused on the COVID-19 pandemic.

It is also pointed out that, although the pandemic maintenance of COVID-19 that plagues the whole country, it is difficult for public policy instruments related to data protection to be implemented in time and in the manner established in the legislation, as there is no doubt the absence of material actions for its implementation , mainly in the public sector, despite the efforts made by the federal legislator.

With the work, there is also the absence of any working group to monitor and implement the measure at the municipal level under study, and it is not different in other municipalities in the region, which must carry out concrete attitudes towards the application of the standard materially, using even from legal figures like public consortia.



Thus, only with the training of public agents, the formation of working groups and the carrying out of structural adjustments of a technical and normative nature, it may, even in the not-so-near future, be able to fully implement this normative framework, aiming at the implementation the public data protection policy, aiming to respect the data of the taxpayers and all those who in some way relate to the Public Power, safeguarding the personality rights of each one.

Only with reliable data from the most diverse sectors of Public Administration and the convergence of public welfare interests, will it be possible to promote the effectiveness and respect for the personality rights of citizens and of all people who in some way have data with the Public Power , thus realizing the rights of the personality, embodied in the right to freedom, privacy and security of sensitive information.

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