Foreword: The Need for a Right-based and Multidisciplinary Approach to Frame AI and Data Governance in Latin America

Our opening commentary on this special issue concerns the core of the current debate on artificial intelligence systems at their intersection with personal data protection, with a specific focus on Latin America.

In this sense, the CPDP LatAm 2022, as the Latin American version of the Computers, Privacy and Data Protection Conference (CPDP), the MyData LatAm conference and the Privacy Law Scholars Conference LatAm (PLSC LatAm) made a compilation of unpublished papers presented on the occasion, which are presented in this publication. The papers come from Academia, especially from researchers from areas such as Law, Social Sciences, Philosophy, Computing, Economics and Public Policies, among others, and value interdisciplinarity, as well as the participation of different social actors in their environment: politicians, regulators, government agents and experts.

Let us not forget that the right to the protection of personal data manifests itself as an enabling right for other rights, such as the rights to freedom of thought and freedom of expression, the right to express an opinion, the right to information, and the right to work with dignity, which is why the signs of multidisciplinarity are highly positive and enriching.

The CPDP, in its traditional European version, is a conference that has been held for fifteen years, with annual meetings since 2007 generally held in January in Brussels. It is characterized by the reunion of personalities from different environments related to personal data protection in the same interdisciplinary and relaxed atmosphere, inviting interaction in an independent atmosphere where mutual respect reigns. It was an undertaking initially done by three universities, the Vrije

Universiteit in Brussels, Namur University, and Tilburg University, who were then joined by other scientific research institutes, to the point that today the Conference has become a platform run by twenty academic centers of excellence from the European Union, the United States, and other parts of the globe. MyData works to enable privacy, security, and therefore trust, while presenting elements of innovation in terms of personal data protection. The PLSC LatAm Conference, meanwhile, is an event that brings together research developed by experts and was held in Latin America for the first time in 2022.

Every year, CPDP offers innovative legal, regulatory, academic and technological approaches to privacy and the protection of personal data, also covering the point of view of large corporations and civil society. It offers everyone a place to exchange ideas and discuss the latest trends and most innovative products.

The different sessions of CPDP LatAm have discussed topics such as the regulation of artificial intelligence, the transformations produced in the regulation of public health, the concept of legitimate interest as a legitimizing basis for data processing in artificial intelligence systems, the standardization of gender aesthetics in social networks, discrimination, the damage that robotics and autonomous systems can cause, the consumer perspective on algorithms, the use of artificial intelligence in the Judiciary, data protection in public administration, and the anonymization of personal data.

In this case, it is about providing the reader with an overview of what is happening in terms of artificial intelligence and personal data protection in Latin America. The subject is treated from many different perspectives.

This Special Issue includes five selected articles, which corroborate and exemplify these discussions with concrete case-studies. For instance, Luca Belli, Walter Gaspar and Yasmin Curzi point out how the first attempts by legislators to regulate Artificial Intelligence seem to have failed

to take into account not only some of the substantive provisions of the data protection framework, but also the challenges involved in properly implementing a principled and open-ended framework.

They make the point that participation of various societal stakeholders, including the data protection authority, is essential to ensure a fair implementation- a point recently made by the Supreme Court with regard to the legality of the Basic Citizen Registry (Cadastro Base do Cidadão), in the context of which it directed the government to include a more diverse set of stakeholders in the composition of the governance body in charge of defining the extent and form in which citizen data can be shared across government departments[1].

A second contribution, by Katerina Demetzou, Gabriela Zanfir-Fortuna and Sebastian Barros Vale examines the way in which the comparative experience on the application of data protection to automated decision-making helps shed light on a path for the Latin American framework. This contribution stresses the importance of provisions empowering individuals against the perils of objectification involved in automated decision-making, which have recently led to a surge of cases in the European framework.

They also point to other provisions of the data protection ecosystem that go beyond the specific rights triggered by the existence of legal or similarly significant effects: these provisions cannot be neglected as fairness and transparency should inform the entire pipeline of data processing, in order to ensure a principled approach to artificial intelligence development and deployment.

In the third article, Paula Pedigoni Ponce considers the risk of discrimination raised by algorithmic technologies, with particular emphasis on the possibility that such discrimination occurs indirectly- in other words, as a result of a facially neutral treatment which generates disparate impact. The

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[1] 'STF valida compartilhamento de dados mediante requisitos' (15 September 2022), at https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=494227&ori=1

author shows that the Brazilian framework, unlike its European and American counterparts, does not set out specific evidential requirements for plaintiffs wishing to bring such cases.

However, the opaque nature of algorithmic technologies presents challenges that can only be adequately dealt with by recognizing the central role attributed by Brazilian data protection law to the principle of non-discrimination, and by a proactive approach to the use of safeguards like data protection impact assessment and the right to revision of automated decision-making.

In the fourth article, Pablo Trigo Kramcsák presents the apparent tension between the need to process high-quality data to reach precision and effectiveness of Artificial Intelligence, and the difficulty of obtaining consent for such processing. In light of this challenge, he suggests that the legal basis of the legitimate interest may better fit the bill, and in fact is increasingly recognized in the Latin American context. However, he warns that its use should only be permitted provided that certain conditions are met, even where not made explicit in the legislation: above all, the necessity (not just usefulness) of the processing for achieving a legitimate purpose, and the potential need to apply safeguards that can mitigate the negative effects of the processing, such as strong information security, pseudo anonymization, transparency measures and the right to object to the processing in question.

Finally, in the fifth and last article, Luciano Charlita de Freitas and Ronaldo Neves Moura discuss the problem of normalization of female aesthetics in social networks, with a particular focus on the Brazilian context. They document the bias embedded in the artificial intelligence deployed by the providers of social media networks, leading to a subconscious effect of serpentinization of the feminine body. To address this challenge, they suggest that the legal framework should not only be concerned with individual decisions, but also collective and gendered justice.

This special issue presents different facets of artificial intelligence analyzing their different intersections with the law. The contributions present AI systems in their complexity, stressing the

synergies that need to be constructed with fundamental human rights, at the national, regional, and global level, emphasizing that the human being must be at the center of any legal conception, principle, and the ultimate end of any structure of the legal and social order.

Artificial intelligence systems permeate our lives: they accompany us in business, on trips, and when we cook; they help us predict the weather, promote trade and productivity, enable us to detect epidemics, save lives, and improve the planet; they have changed financial systems and commerce, allow us to measure pollution in a city and improve the transportation system; they have changed people's lives. However, they create risks at the same time, considering that they can neglect the role of human beings as the center of every legal system and every value system. The disruptive impact of artificial intelligence systems has the great challenge of meeting the fundamental human rights of man as a social and cultural being, while providing new opportunities for new generations.

On the other hand, we must not neglect that the democratic rule of law presupposes the existence of fundamental human rights, such as the right to privacy and the protection of personal data, and that it is not enough that they are legally enshrined, but, as the fundamental rights that they are, they must be protected and enforced. It is not enough that they have only a virtual degree of existence. They must also have legal instruments that fulfill the function of enforcing the law administratively and judicially. Under no circumstances can artificial intelligence systems constitute an exception in this respect.

Hence, the transcendence of texts such as the present one, which, while instructing us about advantages, presents us the challenges of these new decision-making systems in a way that is both scientific and realistic.

In short, this is a work that will constitute an important contribution to the enrichment of those readers eager to understand how new steps are being implemented in the culture of personal data protection.

Dr. Ana Brian Nougrères

UN Special Rapporteur on the Right to Privacy