

Answers from Brazil (Association of Brazilian Judges - AMB)

2023 Questionnaire of the 2nd Study Commission IAJ-UIM

“How are data protection rules impacting on the way judges work in civil litigation?”

Questions:

- 1) In your jurisdiction is a court considered to be a data controller for data protection law purposes in all, or any, of the following situations:**
- When performing its judicial functions?
 - For purposes connected with the administration of justice, including the publication of a judgment or court decision, or a list or schedule of proceedings or of hearings in proceedings?
 - For purposes connected with the efficient management and operation of the courts and for statistical purposes?

Answer: *Yes, a Court in Brazil is considered to be a data controller for data protection law purposes. The processing of personal data by Courts is expressly covered by current data protection legislation, according to Law 13.709, of 2018.*

In all 03 situations above (a, b, c), according to art. 5, LX, of the Constitution of Brazil, the general rule is that the judicial activity is public, with the only exception of the cases that must be carried out with confidentiality. Those exceptions are provided by article 189 of the Code of Civil Procedure as follows:

“Art. 189. Procedural acts are public, but the following processes are conducted under seal of confidentiality:

I - when demanded by public or social interest.

II - concerning marriage, divorce, filiation, alimony, and custody of children and adolescents.

III - containing data protected by the constitutional right to privacy.

IV - concerning arbitration, including compliance with arbitral awards, provided that the confidentiality agreed upon in arbitration is proven before the court.”

Thus, according to the general rule, anyone can access the data of judicial proceedings, except in cases that are processed under seal of confidentiality (classified proceedings), where only the parties and their lawyers have access to the process.

- 2) In your jurisdiction does a data subject (e.g., a party to litigation, a witness, or a party whose interests may be affected by the litigation) have a right to information regarding the processing of their personal data by or on behalf of the courts?**

Answer: *Yes, he/she does.*

- 3) **In your jurisdiction does a data subject whose personal data is published in a court document such as a judgment, have the right to seek rectification of allegedly inaccurate or inappropriately disclosed personal data?**

Answer: Yes, there is that right, according to the Brazilian Data Protection Law.

- 4) **In your jurisdiction is personal data contained in a judgment or decision of a court, or in a list or schedule of proceedings or hearings, generally made accessible to the public? If so, are there exceptions and what are they? If not, is there a redaction requirement, or alternative requirement, to be implemented before a judgment / list /schedule can be published so as to safeguard the rights of data subjects?**

Answer: Yes, it is. The rule is the publicity of judicial acts, and the data is available to the public in general, except in cases that are processed under seal of confidentiality (classified proceedings), where only the parties and their lawyers have access to the process, as already explained.

- 5) **How are complaints addressed in your jurisdiction concerning alleged breaches by the courts of the rights of data subjects? Does your jurisdiction have a person or body with special responsibility for the supervision of data processing operations of courts when acting in their judicial capacity?**

Answer: Complaints about violations of data processing by the Brazilian Courts can be addressed to a special commission designated by the Courts for that purpose.

- 6) **In your experience have data protection rules impacted adversely on your judicial independence? If so, how have they done so?**

Answer: No, it cannot be said that data protection rules impacted adversely on judicial independence.