SUPREMO TRIBUNAL DE JUSTIÇA

NATIONAL CASE-LAW

PERSONAL DATA PROTECTION

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 27.04.2016

LAW NO. 58/2019 OF 08/08

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SUPREMO TRIBUNAL DE JUSTIÇA

I. CONSTITUTIONAL COURT

- **Judgment of the Constitutional Court no. 268/2022**
  Reporting Judge: Judge Afonso Patrão

"JUDGMENT:

Given the grounds set forth, the Constitutional Court decides:

a) To declare the unconstitutionality, with general binding force, of the rule set out in Article 4 of Law no. 32/2008 of 17 July, in conjunction with Article 6 of that same law, due to the breach of the provisions of Article 35 (1) and (4) and of Article 26 (1), in conjunction with Article 18 (2), all of the Constitution;

b) To declare the unconstitutionality, with general binding force, of the rule in Article 9 of Law no. 32/2008 of 17 July, on the transmission of stored data to the competent authorities for the investigation, detection, and prosecution of serious crimes, in the part that does not provide for the person concerned to be notified that the data stored were accessed by the criminal investigation authorities, as long as such communication is not likely to jeopardise the investigations or the life or physical integrity of third parties, for breach of the provisions in Article 35 (1) and Article 20 (1), in conjunction with Article 18 (2), all of the Constitution."

In
https://www.tribunalconstitucional.pt/tc/acordaos/20220268.html

II. SUPREME COURT OF JUSTICE

- **Judgment of the Supreme Court of Justice, of 14-07-2021**
  Case no. 15/21.5YFLSB-A – Litigation section
  Reporting Judge Maria Olinda Garcia

"*I – From the provisions of Article 5 of Law no. 52/2019, two normative commands arise that contemplate the statutory specificities of the position of the judges (as well as the public prosecutors). On the one hand, this norm transfers a specific regulatory power to the competent body - the High Council for the Judiciary - to adapt the content and exercise the declarative obligations (foreseen in Article 13 of this legal decree) and, on the other hand, it establishes restrictions as to the application of Law no. 52/2029, in the measure in which this is suitable to reconcile the norms of this decree with the specific rules that regulate the activity of the judges. The Regulation on Declarative Obligations [ROD] does not fully comply with the scope of these two normative commands.*

II – The protection of the general interest as to asset transparency underlying the legal affirmation of the declaratory obligations of the judges, foreseen in Law no. 52/2019 and to be achieved through the ROD, must be suitably harmonized with the principles inherent to the position held by the judges and, particularly, with their specific requirements of independence and impartiality.

III – Unlike others obligated to comply with declaratory obligations (mentioned in (2), (3) and (4) of Law no. 52/2019), judges do not typically hold positions that are limited in time. They do, however, always perform the same type of duties, throughout their working life (remaining bound by their statutory duties even upon retirement). Thus, their private life may potentially be more affected by the broad access to personal data than the private life of other subjects covered by that decree.

IV – Unlike what happens with other subjects covered by said decree, judges make rulings that immediately impact the lives and interests of specific citizens, thus exposing them to potential direct reactions from people that are unhappy with those rulings.

V – The safety and peace of mind that judges need to be able to rule, as provided by the Statute of Judicial Court Judges [EMJ], with independence, impartiality, and wisdom are values that cannot be called into question through mechanisms that can make it easier to intrude into their personal and family life.

VI – As the holders of the judiciary power and, therefore, as members of sovereign bodies that carry out justice on behalf of the people, judges must be subject to the scrutiny of their assets in order to prevent and detect the possibility of illicit enrichment, as intended by Law no. 52/2019. But this scrutiny must be carried out to the extent necessary and appropriate to fulfil that objective. Accordingly, information that allows direct or indirect

access to knowledge as to the home address of any judge or that, in any way, allows damaging the right to privacy of their private and family life, cannot be subject to public access.

VII - The ROD norms relative to which a breach in the law is identified, as well as the violation of the general principles of administrative law, must be declared illegal with general mandatory force, determining the elaboration of new norms that make the purposes of Law no. 52/2019 suitably compatible with the GDPR and other applicable laws on matters of exposure of personal information.".

In

http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/ebeabdbdef0753f980258717003718d3?OpenDocument

- **Judgment of the Supreme Court of Justice, of 07-09-2021**
  Case no. 25579/16.1T8LSB.L2.S1- 1.st Section
  Reporting Judge Fátima Gomes

"I – In this case, giving primacy to the plaintiff's right to honour and good name, and with the unlawful processing of personal data being at stake, the data subject has the right to obtain from the defendant, responsible for its processing, its respective deletion, under the terms established in Article 6 (1) (d) and (2), Article 7 (e) and (f), Article 12 (b), and Article 14 (a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, and in Articles 5 (1) (d) and (3) and Article 11 (d) of the Personal Data Protection Law (PDPL).

II – The ruling of the lower court (which determines that the Defendant should remove and/or conceal, within 15 (fifteen) days after this ruling becomes final, all the search results generated by its search engine from the pages indicated in (7), (11) (a) and (12) of the facts deemed to have been proven in III)-A.1, as well as refrain from indexing in the search result lists other pages in which the Plaintiff's name appears associated to the terms "rapist", "sociopath" and "sexual predator") is not vague or undetermined, as it only determines the removal of search results that contain the name or the name associated to some specific words, limited in the universe of possible searches to be

carried out, which can be technically implemented with automatic solutions without the obligation of permanent surveillance by the Defendant; there is no general duty here to supervise the content which the Defendant may host or transmit, but a specific duty based on a specific court order, effectively known to the Defendant through this specific legal action or easily identifiable from this same ruling, which is an expression of the balance sought by the Directive (cf. also Article 15 of the Electronic Commerce Directive, to be applied to the Defendant – which is not certain as we are not talking about the obligation to remove content, but only not to list or index it; cf. the indicated judgement of the CJEU of 22.06.2021 in cases no. C-682/18 and no. C-683/18 - Frank Peterson vs YouTube LLC and Elsevier Inc. vs Cyando AG).

III – The limitation of the scope of the application of the appealed Ruling, in the sense that it must be limited to the contents that are accessible in the search engine available in Portugal, that is, that end in ".pt", is not imposed by the Data Protection Regulation regime, which is applied throughout the entire European Union territory.

IV – Because in the case in the records, the Defendant never raised this problem before the motion to review, not having alleged facts nor having proven facts that allow concluding that the invoked right to inform outside of the European Union should prevail over the Plaintiff's right to his/her good name, also leading to the understanding that the appealed ruling is to be maintained, even though its execution outside the territory of the European Union cannot be ensured with the effectiveness applicable to the same measure within the restricted territorial framework of the Union.

V – The matter of the international jurisdiction of the Portuguese courts to hear this case has already been decided – and has become final – in a concrete and affirmative manner, which, without any further delay, exempts the court from clarifying the point, since it is covered by res judicata and there can be no further ruling on the matter."

In

http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/7d6c9ffd0eeb41ae8025874b0035ca0a?OpenDocument&Highlight=0,conflito,de,compet%C3%AAncia,compet%C3%AAncia,territorial,acusa%C3%A7%C3%A3o

- **Judgment of the Supreme Court of Justice of 14-02-2022**

  Case: no. 2191/19.8T8PDL.L1.S1- 4th Section

  Reporting Judge: Judge Júlio Gomes

"I- An employer acts abusively when it does not send the union, when the latter has so requests, the list of workers available to provide minimum services and intends to substitute itself for the union in that designation.
II- The designation made by the employer is, in such case, abusive and illegal, and there is no duty of obedience. Consequently, not complying with it is not a disciplinary infraction.
III- Portuguese law does not recognise the figure of dismissal for breach or loss of trust without the existence of a disciplinary infraction."
In
http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/8b5f87621ff91cae8025888c003de4ad?OpenDocument&Highlight=0,RGPD

III. COURTS OF APPEAL

LISBON COURT OF APPEAL

- **Judgement of the Lisbon Court of Appeal, of 06-02-2020**

  Case no. 18479/16.7T8LSB-B.L1-2

  Reporting Judge Carlos Castelo Branco

"*I) Someone's address is personal data and may be made known to the person responsible for that processing or a third party to whom the data is communicated to pursue legitimate interests, provided that the interests or rights, freedoms and guarantees of the data subject do not take precedence.*

II) Professional secrecy is, in general, established according to various interests, namely that of the institutions, in whose activity the principle of trust is particularly relevant, that of people, direct "customers" of the entities that provide the services or carry out an activity, with the safeguarding of privacy being at stake, and that of third parties (indirect "customers") that deal with these institutions through them.

III) Within the scope of legal-private relations, the breach of professional secrecy assumes characteristics of exceptionality, and should be assessed within a logic of indispensability and limited to the minimum essential to reach the values intended to be achieved.

IV) The conflict between the duty of cooperation with the administration of justice and the duty of professional secrecy should be resolved, case by case, on the basis of the principle of proportionality.

V) The exceptional measure of breach of professional secrecy is justified when the information intended as the object of the duty of collaboration, and which is covered by professional secrecy, is essential to achieve the judicially determined purpose, constituting the only possible means of ensuring a right of the applicant, judicially recognized for a long time."

In

http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/e922d7c5a0ca56aa8025851200533efd?OpenDocument

- **Judgment of the Lisbon Court of Appeal of 15-07-2020**
  Case No 165/18.5JASTB.L1
  Reporting Judge: Judge Cristina Almeida e Sousa

"*Although it may and should be considered, similarly to what is required by Article 174 (5), paragraph c) of the CPC, which requires the consent of the person concerned (and not only of the person who has the availability or control of the data), that only the actual holder of the rights put in crisis or compressed by access to the computer data has substantive and procedural legitimacy to authorise this collection and its consideration as valid and effective evidence, once consent has been provided by the holder of the*

computer data to access and seize the data for purposes of a criminal investigation, any illegality of the procedure for obtaining this information is definitively ruled out. Thus, the gathering of digital evidence by the criminal police in the course of a consented computer search does not require prior authorisation from the judicial authority in order to be admissible, valid and effective, regardless of the nature of the data obtained, precisely because of the consent previously provided by the data subject, therefore, ruling out the application of Article 16 (1) and (3) and Article 17 of the Cybercrime Law.
In
http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/db06ec2792d040fb802585f50038d17b?OpenDocument&Highlight=0,RGPD

- **Judgment of the Lisbon Court of Appeal of 03-03-2022**
  Case no. 106459/20.6YIPRT.L1
  Reporting Judge: Judge Ana de Azeredo Coelho

" I)– Telecommunications secrecy is one of the dimensions of the right to respect for private and family life and the right to the inviolability of home and correspondence, which is enshrined autonomously in the Constitution.
II)– In matters of telecommunications, a distinction must be made between basic data (technical support and connection elements which are extraneous to the communication itself), traffic data (elements which already refer to the communication but do not involve its content), and content data (elements that refer to the content of the communication itself).
III)– The elements that refer to aspects that are administratively gathered when contracting the telecommunications service do not refer to the privacy of the life of the person or to his/her intimate sphere in terms of finding protection in the context of the legal assets protected by the Constitution.
IV)–The Constitution, in prohibiting the authorities' interference in telecommunications, safeguarding the system established for judicial proceedings of a criminal nature, does not refer to the basic elements or data of technical or administrative support that the telecommunication operators possess by reason of the established contract.

V)–Data such as the address of the contracting consumer is not informative data that benefits from the special access regime established for telecommunications, with the operator being bound only to a duty of confidentiality.

VI)– Neither the specific regime applied to telecommunication operators nor the general regime for personal data protection establish the generic obligations of protection that they enshrine as duties of professional secrecy.

VII) – Telecommunications operators are subject to a duty of confidentiality regarding the customers' address but this does not constitute professional secrecy and does not fall within the scope of the prohibition of interference in telecommunications outside the scope of criminal proceedings.

VII)– Article 418 of the Civil Procedures Code does not distinguish between administrative services of public entities and/or private entities." *In* https://jurisprudencia.csm.org.pt/ecli/ECLI:PT:TRL:2022:106459.20.6YIPRT.L1.6.74/

- **Judgment of the Lisbon Court of Appeal of 04-04-2022**
  Case No 2440/19.2T8BRR.L1
  Reporting Judge: Judge Albertina Pereira

"*(…)*

IV- Since strikes may conflict with the protection of the general interest of the community and with other fundamental rights of citizens, the lawmaker provided that in companies or establishments intended to meet unavoidable social needs, the trade union declaring the strike or the strike committee and the adhering workers should ensure that minimum services essential to meet those needs are provided during the strike (Article 537 (1), of the Labour Code).

V – In this context, the representatives of the striking workers should designate the workers who will be connected to the provision of the minimum services defined and inform the employer of this fact up to twenty-four hours prior to the beginning of the strike period or, if they do not do so, the employer should proceed with this designation (Article 538 (7) of the Labour Code). Therefore,

VI – The 2nd Defendant, now the Appellant, should have indicated to the XXX Union the workers who were able and available to provide the minimum services, as requested by the latter, since the employer had the relevant information in that regard.
VII – The Plaintiff, having ascertained that his name was not on the list containing the names of the workers designated to provide the minimum services prepared by said Union – the entity legally responsible for that indication - and having chosen to take part in the strike, in light of the Constitution, the law and the rules of good faith, cannot have his absence from work on the day in question qualified as an unjustified absence, since it occurred within the scope of the legitimate exercise of his right to strike.
.*"*
In
http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/3d4ea7d3530268fb8025882a005133b4?OpenDocument&Highlight=0,RGPD

- **Judgment of the Lisbon Court of Appeal of 21-06-2022**
  Case No 7159/08.7TBCSC-A.L1
  Reporting Judge: Judge Ana Rodrigues da Silva

"*1.– Records relating to motor traffic, specifying the date and time at which a given motor vehicle passed through the toll collection points determined by means of an electronic system, are personal data, falling within the concept of the respect for private life and under which there is a duty to secrecy;*
2.–The lifting of that professional secrecy by requiring the provision of information which may affect the private lives of the customers of the entity responsible for collecting those toll charges, on the grounds that such information is needed for the seizure of vehicles in enforcement proceedings, is disproportionate to the objectives pursued, which can be achieved through other means.
(…)"
In
http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/0b8b258f1c4b67148025887d00578954?OpenDocument&Highlight=0,RGPD

- **Judgment of the Lisbon Court of Appeal of 27-10-2022**
  Case No 18143/20.2T8LSB-A.L1
  Reporting Judge: Judge Cristina Pires Lourenço

"*1.– "Via Verde Portugal – Gestão de Sistemas Eletrónicos de Cobrança, S.A." is not authorised to provide information on the whereabouts of vehicles to be impounded.*
2.–The records of toll passages of vehicles with the "via verde" identifier constitute personal data and elements of the private life of the subscribers to the services.
3.–Within the scope of its duties, and being responsible for the processing of the personal data relating to the users who are its customers, that company is bound to the duty to secrecy by virtue of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and Law no. 58/2019 of 8/08.
4.– Since there is an exemption from providing information on the passage of vehicles at toll collection points, under the duty to secrecy, it can only be lifted in an incident filed for that purpose under the terms and as established in Article 417 (3), paragraph c), and (4) of the Civil Procedures Code, and Article 135 of the Criminal Procedures Code, if, when comparing the conflicting interests – on the one hand, the interests of justice and, on the other, the interests protected by the duty to secrecy – it is concluded that the former predominates in that specific case, which will not be the case if the information sought does not prove to be essential or even useful for seizing a vehicle ."
In
http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/e77cc3c9571b58fb802588f4005f43d3?OpenDocument&Highlight=0,RGPD

- **Judgment of the Lisbon Court of Appeal of 05-12-2022**
  Case No 184/19.4YUSTR-H.L1-PICRS
  Reporting Judge: Judge Paula Pott

Explanatory overview:

I. In judicial proceedings, it is for the Court alone – by virtue of the principle of independence of the judiciary – to determine the extent to which such processing of personal data is necessary and the purposes of such processing, by a decision which may be challenged only on appeal.

II. With regard to the protection of the elements whose confidentiality does not result from the circumstance of being business secrets, or does not result solely from that circumstance, but arises from the circumstance that they are, or are also, personal data, the Competition Authority is subject to the supervision of the National Supervisory Authority and to the obligations as to the collection, processing and protection of personal data provided for in the GDPR.

III. The GDPR only contains rules for the protection of natural persons and not legal persons with regard to the processing of personal data and only the personal data subjects – natural persons - are entitled to exercise the rights provided in Articles 12 to 22 of the GDPR.

IV. In the organically administrative phase, the Competition Authority must comply with the obligations set out in Articles 12 to 22 of the GDPR, whether the data processed are personal data only or are both business secrets and personal data, and must take into account, in particular, the transparency obligations set out in Article 14 of the GDPR when personal data is not collected from the respective data subject and consider whether the situation falls within the exemption provided for in Article 14 (4), paragraph – c) of the GDPR.

V. The costs of expunging the personal data of third parties from the documents placed on file in the organically administrative stage do not constitute costs for purposes of Article 16 of the Rules on Procedural Costs.

In

http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/9d85512c4d6bd3cb8025891d0054095c?OpenDocument&Highlight=0,RGPD

PORTO COURT OF APPEAL

- **Judgment of the Porto Court of Appeal of 11-05-2020**
  Case No 3345/19.2T8MAI.P1
  Reporting Judge: Judge Maria José Simões

"*I – The right to honour often clashes with the right to free expression of thought, both of which are enshrined in the Constitution.*
II – The right to freedom of expression is a fundamental right, constituting an essential condition for the promotion and expression of individual autonomy, a presupposition of human dignity, in its relational dimension.
III – Thus, a certain expressive content shall only cease to be protected if it is demonstrated, and to the extent that it is demonstrated, that it attacks, in a disproportionate manner, constitutionally protected rights and interests.
IV – The case law of the ECHR points to a lesser sphere of protection for the honour and consideration of public figures compared to that of mere private individuals, as well as when matters of public or general interest are at stake."
In
http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/f53aab6691d892cb802585c40034e7b8?OpenDocument&Highlight=0,RGPD

- **Judgment of the Porto Court of Appeal of 27-01-2021**
  Case No 22/19.8P6PRT.P1
  Reporting Judge: Judge Maria Joana Grácio

"*(…)*
VI – The right to personal portrayal is a right with constitutional dignity and protection, being distinct from the right to privacy and family life, even though they may be overlapping, so that any restriction of that right should be provided for by law and be

limited to the minimum necessary to safeguard other constitutionally protected rights or interests.

VII – It is in this perspective that one should insert and interpret the provisions of Article 167 (1) of the Criminal Procedures Code, according to which the capture and reproduction of images by photographic or cinematographic means or by means of an electronic image process may only be used as evidence of the facts if they are not illegal under the terms of criminal law, that is, under the terms of Article 199 of the Criminal Code.

VIII – The protection attributed to the right to personal portrayal by Article 79 of the Civil Code allows ruling out the crime provided for in Article 199 of the Criminal Code, as it does not require the consent of the person concerned in cases where the image is framed within public places or as facts of public interest or that have taken place publicly, provided that it is unequivocally integrated within those contexts and does not stand out or become independent of them.

IX – The circumstance that the Criminal Procedures Code never positively admits image recording, contrary to what happens with wiretapping, reveals that the rule (which safeguards the right with constitutional protection) is that of total exclusion of the possibility of image recording against the will of the subject and not the opposite.

X – In this perspective, the fact that an image is captured to be included in criminal proceedings, even if it takes place in a public space, does not make it atypical nor does this cause necessarily exclude its illegality;

XI – Among the causes justifying the illegality of the typical fact of the crime of illegal recording and photographs, allowing their consideration as means of evidence (Article 167 of Criminal Procedures Code), are those traditionally found in the Criminal Code (such as legitimate self-defence or the right of necessity), as well as those that refer to other permissive provisions of the Criminal Procedures Code (such as Article 147 (4) to (7) and Article 250 (6), and also the legal authorisations dispersed throughout separate laws (such as Law 5/2002 of 11-01, Law 1/2005 of 10-01, or Law 135/2014 of 08-09) that allow the capture of images, thus, admitting the use of these elements in criminal proceedings as a valid means of evidence provided that the images are collected in accordance with the purposes of each of these regimes, always imposing this weighting

in view of the specific legislation, conflicting interests and legal unity (national and Community law).

XII – If the capture of images by a video-surveillance system occurs under legal authorisation and the purposes provided for in separate legislation, and complies with the purposes and substantive assumptions of the legislative permission for the operation of the video-surveillance system, even though it may show formal flaws, such as the [non-]existence of a licence from the NCDP, it cannot be concluded that the images are illegal as a means of evidence.

XIII – This separate legislation appears as a justification for the restriction of the right to personal portrayal (legal authorisation), a restriction that was subject to the scrutiny of the judicial authority, when the addition to the case file of frames taken from video-surveillance systems in the investigation phase was evaluated and validated and, then, during the trial phase (judicial validation), and allows concluding that these means of evidence, as well as the records of their viewing, constitute valid means of proof, since the capturing of images and the mechanical reproductions thereof must be considered lawful for the purposes of the provisions of Article 167 of the Criminal Procedures Code, as having been justified, thus, excluding their illegality.

XIV - The Criminal Police does not benefit from a generic, unrestricted and arbitrary legal authorisation to capture images, even for the purposes of criminal investigation – a provision that does not exist in the Criminal Procedures Code – and, so, any restrictions to the right to personal portrayal that they may practice are illegal if they do not act under a separate and specific legal provision that allows such conduct and have not been subject to judicial authorisation and control.

XV – Even in these cases of pursuing criminal investigation purposes, the restriction of the right to personal portrayal cannot fail to be seen as extraordinary and subject to a judgment of proportionality and adequacy that only a judicial magistrate may issue, limitations that should, at least, be identical to those relevant for purposes of wire-tapping and subject to the same formalism.

XVI – The photographs taken by the Criminal Police in support of surveillance carried out during the investigation phase without judicial authorisation and control are illegal and cannot be considered as means of evidence, pursuant to the provisions of Article 167 (1) of the Criminal Procedures Code .”

In
http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/b183b0cb6c485fb58025869200407e4e?OpenDocument&Highlight=0,RGPD

- **Judgement of the Porto Court of Appeal, of 14-07-2021**
  Case no. 2594/19.8T8VFR-A.P1
  Reporting Judge Paula Leal de Carvalho

"*I – Medical secrecy is a fundamental pillar for exercising medical activity and protects both the right to privacy of private life, which is based on the dignity of the human person, legally enshrined [in international conventions, in the CPR, and in ordinary Law – cfr. namely Articles 12 of the UDHR, 8 of the ECHR, 10 of the CHRB, 26 and 32 (8) of the CPR, 16 of LC/2009, 195 of the Criminal Code, 126 (2) of the CPC, as well as in Law 12/2005, Law 117/2015 (EOM), and the Personal Data Protection Regulation contained in Reg. (EU) 2016/679 and Law 58/2019], as well as the indispensable trust in the doctor/patient relationship, aimed at protecting the trust of the individual who, confiding in the doctor, reveals confidential facts.*
II – The data contained in the medical files/records of (other) workers of the employer are, under the terms mentioned in I), subject to medical confidentiality, which unless lifted, will not allow the doctor to add them to the records, especially as evidence of facts that can constitute a disciplinary infraction which, in this case, was attributed to the worker/nurse.
III – In contrast to the right to privacy of private life mentioned in I), from the employer's point of view, relevance must be placed on the right of access to the courts to defend its legally protected rights and interests and to a fair process (Article 20 of the CPR), in terms of the right to evidence, with the good administration of justice (Article 202 of the CPR) also embodying a constitutionally protect interest, and, in the case and from the perspective of protecting the Defendant's interests, specifically at issue is the exercise of disciplinary power, which results from the employment contract entered into with the Plaintiff, a power that is, ultimately, based on the constitutional right to private initiative (Articles 61, 62, 80 c) and 86 of the CPR).

IV – In view of the collision of the rights mentioned in I) and II), the right/duty of professional secrecy must prevail, as an emanation of the right to privacy of one's private life and the dignity of the human person, and medical secrecy should not be lifted.
V - Nevertheless, as long as the medical records/files do not contain the identification, or the possibility of direct or indirect identification of the data subject [namely, name, address, professional category, tax identification, Social Security, NHS or other numbers, under the terms set forth in Article 4 (1) of the GDPR, namely identification number] it is understood that, in the consideration to be made of the protected interests and rights and in a judgement of necessity and proportionality, the lifting of professional secrecy should be authorized [although it is necessary to clarify that it is not within the scope of this incident of lifting secrecy to issue a decision on the issue of validity and/or admissibility, or not, of the production of evidence without, or with concealment, of the aforementioned identifying elements]."
In
http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/b4a6892731c247418025875100 2f6671?OpenDocument&Highlight=0,LEI,N.%C2%BA,58%2F2019,DE,08.08

- **Judgment of the Porto Court of Appeal of 15-12-2021**
  Case No 515/10.2TBGMR-D.P1
  Reporting Judge: Judge Augusto de Carvalho

"I – The circumstance that the Criminal Procedures Code never positively admits image recording, contrary to what happens with wiretapping, shows that the rule (which safeguards the right with constitutional protection) is for the total exclusion of the possibility of image recording against the will of the subject and not the opposite.
II – If the capture of images by a video-surveillance system occurs under legal authorisation and the purposes provided for in separate legislation, and complies with the purposes and substantive assumptions of the legislative permission for the operation of the video-surveillance system, even though it may show formal flaws, such as the [non-

]existence of a licence from the NCDP or issues due to storage periods, it cannot be concluded that the images are illegal as a means of evidence.
III – This separate legislation appears as a justification for the restriction of the right to personal portrayal (legal authorisation), a restriction that was subject to the scrutiny of the judicial authority, when evaluated and validated in the pre-trial investigation phase (as will also occur in trial – judicial validation), allows concluding that the capture of images and the mechanical reproductions thereof should be considered lawful for the purposes of the provisions of Article 167 of the Criminal Procedures Code, as having been justified, thus, excluding their illegality."
In
http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/3f8bcf4415c27b52802587ed0065d1cf?OpenDocument&Highlight=0,RGPD

- **Judgement of the Porto Court of Appeal, of 24-01-2022**
  Case no. 3328/19.2T8STS-A.P1
  Reporting Judge Augusto de Carvalho

"*I – The duty of secrecy that the physician must respect is essential to ensure the relationship of trust, which must exist between the doctor and his/her patients.*
II – In the capacity of heir, the plaintiff or any of the other descendants should have access to the data relative to their father's clinical situation in order to protect rights that may be in a position or risk of breach, namely, to challenge a donation celebrated at a time of alleged mental incapacity of the donor.
III – Pursuant to Article 17 (1) and (2) of Law no. 58/2019, any heir has the right not only to access, delete or rectify the clinical records of his/her parents, but also has the right to the data relative to their image, intimacy of private life, and communications.
IV – No. 2 of the same precept does not exclude any category of heir; and it does not establish ordering criteria, so that any subject belonging to one of the seven classes of heirs may exercise the corresponding rights."

In
http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/8fffb6004be424798025880100330de4?OpenDocument&Highlight=0,LEI,N.%C2%BA,58%2F2019,DE,08.08

- **Judgment of the Porto Court of Appeal of 04-05-2022**
  Case No 15308/18.0T8PRT.P1
  Reporting Judge: Judge Joaquim Moura

"*I – The right to elimination (or "erasure") of personal data and, consequently, the right to have them no longer processed, is subject to various restrictions;*
II – First and foremost, the limitations arising from the need to extend their storage, bearing in mind the protection of other fundamental rights and for reasons of public interest in various domains;
III – The failure to delete the personal data of the holder of a demand deposit account does not constitute the practice of an offence giving rise to civil liability if the banking institution where the account is held has refrained from deleting it pursuant to rules authorising or imposing its storage."
In
http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/182a1432eeef20a1802588590039357a?OpenDocument

- **Judgment of the Porto Court of Appeal of 28-11-2022**
  Case No 209/22.6T8VFR.P1
  Reporting Judge: Judge Rui Penha

"*I – The Labour Courts are competent to hear the special action to challenge the confidentiality of information or the refusal to provide information or to carry out consultations provided for in Article 186-A to 186-C, pursuant to the provisions of Article 126 (1), paragraph b) of the Law on the Organization of the Judiciary System.*

II – Nullity due to the failure to rule is only ascertained when there is absolutely no indication of the factual grounds or legal grounds for the decision, which is not to be confused with so-called error of judgment.

III – There is no breach of the adversarial principle in a legal decision produced as a result of the failure to consider facts alleged in the defence, when the party had the opportunity to present the whole defence in that pleading.

IV – Companies are required to provide annual information on their social activity, under the terms of Article 32 of Law no. 105/2009 of 14 September. This obligation does not breach the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016), nor constitutional rules on freedom of association or the protection of privacy.

V – Such information is purged of nominative elements, excluding gender, with the exception of remunerations relative to trade unions. It is, therefore, legitimate for the union to demand that the company where workers who are members of its trade union work, provide it with the Single Annual Report, with all its annexes, even if with the aforementioned legal constraints.

VI – The amount of the sanction shall be determined equitably, taking into account the condition of the debtor and the interests at stake, namely those of the creditor, but without ignoring the coercive purpose in fulfilling the obligation ."

In

http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/cddc071e663754ca802589130054d297?OpenDocument&Highlight=0,RGPD

COIMBRA COURT OF APPEAL

- **Judgement of the Coimbra Court of Appeal, of 26-06-2020**
  Case no. 4354/19.7T8CBR-A.C2
  Reporting Judge Felizardo Paiva

"I – Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April de 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/CE (General Data Protection Regulation), hereinafter designated only as Regulation.

II – The form or content of payslips falls within the definition of personal data contained in Article 4 (1) of the Regulation as they contain "information relating to an identified or identifiable natural person («data subject»)…" and its processing (Article 4 (2) of the Regulation) is only lawful if, in what is of interest to the case, "it is necessary for the purpose of the legitimate interests pursued by the person responsible for processing or by third parties, unless interests or fundamental rights and freedoms of the data subject prevail that require the protection of personal data, especially if the data subject is a child".

III – It is forbidden to process personal data that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, or union affiliation, as well as to process genetic data, biometric data to unequivocally identify a person, data relative to health or data relative to the sex life or sexual orientation of a person. This prohibition does not apply "if processing is necessary to establish, exercise or defend a right in a legal claim or whenever the courts act in their judicial role" – Article 9 (1) and (2) (f) of the Regulation.

IV – If it is true that, in this case, these workers are not parties in the proceedings, it is no less true that everyone, whether or not a party to the case, has the duty to cooperate in the discovery of the truth, namely, by providing what is requested – Article 417 (1) of the CPC, and, in this case, the grounds for refusal alluded to in no. 3 of the aforementioned precept have not been ascertained.

V – If, in order to achieve the intended purpose (to know if there is a breach of the aforementioned constitutional principle) it is necessary to attach the payslips in order to prove the amount of wages earned by the other workers, it is no less certain that this attachment could lead to an intrusion into the private life of these workers since the receipts may contain other information, such as, for example, union dues, insurance and child support payments, and absences from work, knowledge of which is not essential or indispensable to be able to rule on the alleged breach of the constitutional principle of "equal pay for equal work"

VI – Thus, if the addition of payslips is appropriate, or necessary, for the plaintiff to exercise a right in judicial proceedings, that is, to prove the amount of the salaries in order to make it possible to conclude whether or not said principle has been breached or not, it cannot be forgotten that this inclusion, under the aforementioned terms, may result in a breach of the right to privacy, depending on the content of such payslips.
VII – Therefore, considering the conflicting rights that must be safeguarded, bearing in mind the criterion of balance that must govern the analysis of this type of situation, within the legal framework in force, it is decided that the payslips should be attached to the records as long as they only contain the salary amount, including all of its remuneration components, and omit references to any other elements that, besides the remuneration amount, may appear therein."
In
http://www.dgsi.pt/jtrc.nsf/c3fb530030ea1c61802568d9005cd5bb/18aeffd15973832f8025859d004d0763?OpenDocument&Highlight=0,protec%C3%A7%C3%A3o,dados

- **Judgement of the Coimbra Court of Appeal, of 29-06-2021**
  Case no. 302/19.2T8MGL.C1
  Reporting Judge Sílvia Pires

"*I – The right to image is an autonomous right with constitutional protection, alongside other personality rights, in Article 26 (1) of the Constitution of the Portuguese Republic, covering, among others, a person's right not to have their picture taken or to have their portrait displayed in public without their consent.*
II – A person's portrait cannot be displayed or published without their consent – Article 79 (1) of the Civil Code.
III – The inalienable and unassignable nature of personality rights does not, in fact, prevent their limitation through consent from the injured party, and Article 81 of the CC admits the possibility, in a general sense, of the voluntary limitation of personality rights.
IV – Thus, people may renounce or restrict their personality rights through consent, therefore being prevented later on from invoking the illegality of the respective injuries, in a kind of materialization of the adage 'volenti non fit injuria'.

V – Article 28 (1) of Law no. 58/2019 of 8 August (Personal Data Protection Law) establishes that "the employer may process the personal data of its workers for the purposes and within the limits defined in the Labour Code and respective complementary legislation or in other sectorial regimes, with the specificities established in this article."
In
http://www.dgsi.pt/jtrc.nsf/8fe0e606d8f56b22802576c0005637dc/141b49e56fb1bbc280258707003588fa?OpenDocument

- **Judgment of the Coimbra Court of Appeal of 07-09-2021**
  Case No 1254/19.4T8ANS-B.C1
  Reporting Judge: Judge Maria Catarina Gonçalves

"*I – The aim of a commercial company (profit) is not to be confused with its corporate object, and it is by the former and not by the latter that the capacity of companies is measured.*
II) Business entered into by a commercial company and which is necessary or convenient to obtain a profit is valid, even if it is extraneous to its corporate object.
III) Not only credit institutions may acquire and hold a credit arising from a bank loan.
IV) As a result of what is stated in I) to III), nothing prevents a bank loan, already overdue and in default, from being assigned to a company that is not a credit institution.
V) The need to transfer personal data that is protected by the legal regimes of protection of personal data and banking secrecy does not determine the inadmissibility or nullity of the transfer of the bank loan, even if it is done without the consent of the data subject.
VI – The limitation period for bills of exchange runs from the due date that is inscribed on the bill, unless that date has been placed therein in breach of the completion agreement, in which case the relevant due date shall be the one that results from that agreement.
VII – With the completion agreement providing that the creditor is authorised to fill out the promissory note when necessary, according to its own judgment, and with the due date being set by it when, in the event of default by the debtor, it decides to resort to the coercive enforcement of the respective credit, there is no abusive completion of the

promissory note by the creditor who sets a due date situated approximately seven years after the event that might legitimise the completion of the note."

In

http://www.dgsi.pt/jtrc.nsf/c3fb530030ea1c61802568d9005cd5bb/7a2289353bbd214c80258754003258ad?OpenDocument&Highlight=0,RGPD

ÉVORA COURT OF APPEAL

- **Judgment of the Évora Court of Appeal of 23-09-2021**
  Case No 2654/20.2T8VNG-F.E1
  Reporting Judge: Judge Tomé de Carvalho

"1 – The subsequent claim of other credits may only be exercised if they comply with the requirements provided in Article 146 (2) of the Insolvency and Corporate Recovery Code.
2 – With regard to previously constituted credits, since the aforementioned 6-month period has elapsed, there was no possibility of extending the time limit for filing the autonomous action to ascertain other credits by resorting to the duty of procedural management, within the scope of procedural adequacy, as this situation is absolutely unsurpassable.
3 – Appeals are means of contesting judicial decisions and not a means of judging new issues and, thus, the Court of Appeal cannot be called upon to rule on matters that were not alleged by the parties in the appealed instance or on claims that were not formulated therein."

In

http://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/2bc6681ecfd2ea1080258776006c1f32?OpenDocument&Highlight=0,RGPD

- **Judgement of the Évora Court of Appeal, of 28-10-2021**

Case no. 945/20.1T8PTM.E1

Reporting Judge Anabela Luna de Carvalho

"- Should a joint owner intend to assess the pertinence and suitability of one of the possible reactions (annulment or suspension) because he/she has suspicions as to the representativeness at the general meeting, and having this meeting taken place allegedly with the statutory quorum legally required through the number of attendances and representations, this partner has the right to demand that the management make the documents of interest available to ascertain said representativeness.

- The documents mentioned in the minutes of the joint owners meeting and which are an integral part thereof and that support the reference made in the minutes that there was sufficient constitutive and deliberative quorum for the meeting to be held upon the second call, contain personal data of the joint owners who issued them, as well as, addresses, and personal and tax identification numbers.

- These are personal data, as defined in Article 4(1) of the GDPR.

- However, if it is not demonstrated that such data are processed by fully automated means, by partially automated means or by non-automated means as long as contained in or intended for files, the GDPR cannot be invoked to legitimize the management's refusal to deliver these documents, as it is outside the scope of its material application (Article 2 (1) of the GDPR)."

In

http://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/552297d2ea805776802587d1006ebf26?OpenDocument&Highlight=0,LEI,N.%C2%BA,58%2F2019,DE,08.08

- **Judgment of the Évora Court of Appeal of 28-10-2021**

  Case No 111134/18.9YIPRT-A.E1

  Reporting Judge: Judge Anabela Luna de Carvalho

"*Telecommunications companies are subject to duties of confidentiality. The customers of telecommunications companies, by expressing their will not to authorise*

the disclosure of their personal data, set out in that telecommunications service contract, exercise a right that is constitutionally protected (Articles 35 (4), CPR) and that falls within the framework of the right to the protection of personal data (Article 5 (1), paragraph f, of the GDPR).

In principle, telecommunications companies (responsible for processing such data) cannot carry out processing which has not been consented to by the data subject.

However, consent shall not be required if the processing is necessary for the purposes of legitimate interests pursued by third parties and if, making use of a principle of proportionality, the interests or fundamental rights and freedoms of the data subject do not take precedence.

This situation includes the right of a third party to effective jurisdictional protection, for which it needs information on the address of the telecommunications company's customer in order to enable the summons of the latter, as defendant, once all the possibilities of obtaining the same information by a less intrusive means have been exhausted.

The refusal of the telecommunications company to provide information is not legitimate in this case."

In http://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/02742740d4f00a21802587d1006ebf27?OpenDocument&Highlight=0,RGPD

- **Judgment of the Évora Court of Appeal of 12-05-2022**
  Case No 61522/20.0YIPRT-A.E1
  Reporting Judge: Judge Anabela Luna de Carvalho (with dissenting vote)

"- *Telecommunications companies are subject to duties of confidentiality (Article 48, Law no. 5/2004 of 10-02 "Electronic Communications Law" and Article 4 (1) of Law no. 41/2004 of 18-08 "Law on the Protection of Personal Data and Privacy in Telecommunications")*

The customers of telecommunications companies, by expressing their will not to authorise the disclosure of their personal data, set out in that telecommunications service contract, exercise a right that is constitutionally protected (Articles 35 (4) CPR) and within the

framework of the law on the protection of personal data (Article 5 (1), paragraph f of the GDPR).

- In principle, telecommunications companies (responsible for processing such data) cannot carry out processing which has not been consented to by the data subject.

- But consent is not the only cause of legitimacy and lawfulness in the processing of personal data.

- Consent shall not be required where processing is necessary for the purposes of the legitimate interests pursued by third parties (Article 6, paragraph f) of the GDPR) and if, making use of a principle of proportionality, suggested by the same rule, the interests or fundamental rights and freedoms of the data subject do not take precedence.

- This situation includes the right of a third party to effective jurisdictional protection, for which it needs information on the address of the telecommunications company's customer in order to enable the summons of the latter, as defendant, once all the possibilities of obtaining the same information by a less intrusive means have been exhausted.

- The refusal of the telecommunications company to provide information is not legitimate in this case."

In

http://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/5f48179250e6beac8025884b0049219a?OpenDocument&Highlight=0,RGPD

- **Judgment of the Évora Court of Appeal of 09-06-2022**
  Case No 322/20.4T8BJA.E1
  Reporting Judge: Judge Mário Branco Coelho

"*1. The extension of the limitation period for a disciplinary infraction because the facts also constitute a criminal offence, does not depend on the effective exercise of the criminal action or on the exercise of the right to file a criminal complaint, when the exercise of the former is dependent on the latter. It suffices that the facts also substantiate, in abstract, the commission of a crime, which is the only requirement for the extension of the limitation period of the disciplinary infraction.*

2. There are two types of disciplinary procedures, one aimed at dismissal, which guarantees more protection, and the other, which aims at the application of sanctions that maintain the bond, simpler and less protective.

3. This disciplinary procedure is subject to the employer's duty of initiative, and may not follow the written form but obeys the principles of prior hearing, the worker's right to defence, and the proportionality of the application of the sanction and must respect the deadlines for the exercise of disciplinary power (Article 329 (2), punishability of the offence (Article 329 (1) and enforceability of the sanction (Article 329 (3)).

4. The worker – a NHS nurse – who accessed the clinical data of two users - a total of nine accesses in 23 days – motivated by personal reasons commits a disciplinary offence.

5. The concept of an abusive sanction is composed by two elements: an objective element - one of the situations described in Article *331 (1) of the Labour Code – and a subjective element – the persecutory or retaliatory intention.*

6. Hence, the mere circumstance that the disciplinary sanction is excessive or disproportionate does not automatically lead to the conclusion that it is abusive, and it is necessary to demonstrate the aforementioned objective and subjective elements." *In* http://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/d0f793b88533c891802588690032cc96?OpenDocument&Highlight=0,RGPD