

Chapter 9

Treatment of Health Data : Between Rules and Limits

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ABSTRACT

The pandemic, from the very beginning, has overwhelmed the everyday life of all people and has strongly crystallized the need to correctly manage personal data relating to the health of patients if they can be used for scientific research and the collection of statistical data. Patient consent, public interest, and public health run counter to the right to the protection of personal data of Covid-19 patients. A balance must be struck between fundamental rights such as the right to privacy, the protection of personal data, and the public interest which translates into the protection of public health.

INTRODUCTION

The Legal Basis of Privacy

The right to privacy, used as a synonym for “confidentiality” understood as the right not to be subjected to unlawful interference by others in one’s own individual sphere, has manifested itself over time as the need to maintain control over one’s information or image, while nevertheless having to adapt to evolution of society and virtual spaces, in which inevitably, the link between digital identity and privacy can create countless distortions and consequences. For this reason, especially in recent years, the word privacy has taken on dynamic connotations, which also coincide with the right to the protection of personal data. The right to privacy finds regulatory confirmation in supranational and national sources. In the Nice Charter of 2000, in article 8, the right to the protection of personal data is recognized autonomous by the right to respect one’s private and family life pursuant to art. 7.

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In particular, article 8 entitled “Protection of personal data”, establishes that:

Everyone has the right to the protection of personal data concerning him; 2. Such data must be processed according to the principle of loyalty, for specific purposes and on the basis of the consent of the person concerned or another legitimate basis provided for by law. Everyone has the right to access the data collected concerning him and to have it rectified. 3. Compliance with these rules is subject to the control of an independent authority.

Also, article 7 entitled “Respect for private and family life”, prescribes that: *Everyone has the right to respect for his private and family life, his home and his communications.*

Article 52 of the Nice Charter, on the other hand, provides that the fundamental rights protected by the Charter are not absolute, but can be limited, by legislative provision, to achieve purposes of general interest - the protection of health for example - provided that their essential content. In the same sense, Article 16 of the Treaty on the Functioning of the European Union requires that “*every person has the right to the protection of personal data concerning him*” implements a more intense protection of the right to the protection of personal data.

The right to privacy is also reflected in article 12 of the Universal Declaration of Human Rights, which states that, *no individual may be subjected to arbitrary interference in his private life, in his family, in his home, in his correspondence, nor to the detriment of his honor and reputation* “.

Furthermore, it is established that “*everyone has the right to be protected by law against such interference or injury*”.

Article 17 of the International Covenant on Civil and Political Rights also states that

no one may be subjected to arbitrary or illegitimate interference in his private life, family, home or correspondence, nor to illegitimate offenses against his honor and to its reputation. Everyone has the right to be protected by law against such interference or offenses.

Furthermore, article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms contemplates the right to privacy in the context of the rights of liberty, as the right of each individual to the protection of personal data concerning him and as a right to data processing that is carried out according to precise parameters.

With the issue of Directive 95/46 / EC, the right to privacy was recognized in Italy through the Law of 31 December 1996, n. 675 and subsequently, with the Personal Data Protection Code, as Legislative Decree 196 of 2003.

Finally, definitive recognition was obtained with the EU Regulation 679/2016 and the transposition Legislative Decree 101/2018 in Italy.

It can be said that privacy is a fundamental right of freedom subject to balancing with other rights: individual safety should certainly be protected, without betraying the foundations of democracy, including in the first place the necessary balance between collective interests and freedom individual (Soro, 2020).

European directives have played a propulsive role in this matter such as Directive 95/46/EC on data protection, Directive 2002/58 / EC on e-privacy, amended in 2009, Directive 2006/24/EC on conservation of data (declared invalid by the Court of Justice of the European Union on 8 April 2014 due to serious interference with privacy and the protection of personal data), Regulation (EC) 45/2001 on the processing of personal data by EU institutions and bodies as well as the Council Framework Decision

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