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Subjective Identity and the Right to be Forgotten: A Multifaceted Claim in the Legal System

Abstract: In the complex relationship between individual identity and its claims for recognition and protection by the legal system, the right to be forgotten is crucial, because it addresses a personal, social and legal definition of the individual as authentically as possible and highlights the uniqueness of each identity, with changes experienced in the temporal dimension. The lack of distinction in real life between the physical world and the analogue context traces new spatial and temporal coordinates, able to profoundly redefine the traditional categories of identity and difference, as well as to modify the usual dynamics of personal and social inclusion and exclusion, submitting identity to a process of dismemberment that makes the individual a complex 'informational organism'. The multiple connections between the right to be forgotten and the protection of personal identity are confirmed by the most recent developments of European legislation and, in particular, in Italian jurisprudence, which outlines it as an identity claim in order to obtain a correct representation of oneself, resulting in the guarantee offered by the legal system of reconfiguring one's telematic image. This describes an evolving and comprehensive right capable of protecting the originality of the individual and his/her representation and relationships.
Keywords: digital data, digital identity, identity, legal system, memory, right to be forgotten

Introduction

This essay aims to outline, alongside analogue and digital action, two different but related concepts of personal identity. This will then be analysed as an evolving idea which is referable to multiple personality rights: in this context, the right to be forgotten arises between the right to the protection of personal data and the right to personal identity on the Internet, representing a multifaceted claim in the legal sys-

tem. The examination of the right to be forgotten will start from the main EU and Italian regulatory and jurisprudential sources.

Although human identity and experience are found in an evident lack of distinction, in real life, between the physical world and the analogue context (Floridi, 2017, p. 67), the virtual can be defined by characterizing terms such as deterritorialization, decentralization, destatutalization and data surveillance (Amato Mangiameli & Campagnoli, 2020, p. 3); these expressions obviously do not indicate mere abstractions but outline new spatial and temporal coordinates, capable of profoundly redefining the traditional categories of identity and difference. In addition, the same elements lead to an overcoming, at least on a formal level, of the usual dynamics of personal and social inclusion and exclusion, given that every element of reality appears potentially reproducible and shareable on the Web. The latter, in fact, shows itself to be indifferent to traditional space–time delimitation criteria, being able to eliminate both the future, understood as a contingency (Han, 2022, p. 9), and the stability of the past as a source of commitments (Han, 2022, p. 13), punctuated by the ubiquity of instantaneous contacts (Amato Mangiameli & Campagnoli, 2020, p. 10). '*Only the moment counts*. Not even his "story" is a story in the proper sense of the term. It is not narrative, but additive. It ends in a series of snapshots. Digital time disintegrates, becoming a simple succession of an episodic present' (Han, 2022, p. 46). Virtualization therefore shifts the centre of reflection from the solution to the problem, ensuring that virtual identity finds its essentiality in a problematic field, made up of non-obvious boundaries, a mixture of places and times, and a continuous transition between inside and outside (Amato Mangiameli & Campagnoli, 2020, p. 17).

> Today we run after information without arriving at any *knowledge*. We take note of everything without learning about it. We travel everywhere without real *experience*. We communicate continuously without taking part in a *community*. We save enormous amounts of data without making *memories* resonate. We accumulate friends and followers without ever meeting the *Other*. Thus information generates a way of life devoid of stability and duration. (Han, 2022, p. 13)

The ego finds itself, then, in a privileged relationship with self-referential 'autistic objects', which lack the dimension of dialogue with the Other and are forced into a constant compulsion to repeat; this reifies personal identity, which is itself objectified because it is deprived of a real relationship with otherness (Han, 2022, pp. 38–39, 91).

This leads to a significant redefinition of the relationship between identity and otherness in the direction of ever-greater abstraction, both in identity and in relationships, both dimensions being characterized by the flexibility of cyberspace (Amato Mangiameli & Campagnoli, 2020, p. 14). 'If the virtual self is flexible and multiple, if many selves are discovered behind the computer screen, a profound understanding

of identity in real life also passes through the online self (the many selves)' (Amato Mangiameli & Campagnoli, 2020, p. 15). Thus a multiplicity of 'informational identities' emerges, which become increasingly difficult to keep an inventory of (Sisto, 2020, p. 138). On the other hand, the concepts of community and the public sphere also undergo profound changes, effectively described through the suggestive idea of 'social swarms' (Han, 2023), a concept capable of faithfully reporting the fragility of subjective interactions in the parallel and progressive atomization of centres of private power, separated from any connection with traditional procedures of political representation and mainly aimed at maximizing particular objectives and interests. 'Swarms do not need to be weighed down by the tools of survival; they come together, disperse and gather again, from one occasion to another, each time for an invariably different reason, and are attracted by changing and mobile objectives' (Bauman, 2010, p. 96). Swarms do not form teams, are not subject to hierarchies and do not correspond to superior orders; they do not identify a centre or a summit, but coincide with impromptu groupings of interests in support of changing and volatile objectives, ensuring that each component is, at the same time, a specialist which is both an indispensable and a superfluous element in the pursuit of changeable objectives (Bauman, 2010, p. 97).

1. Personal identity on the Web

To deal with the critical issues deriving from the weak social ties that are typical of the Web, it does not seem possible to make constructive uses of the interactive peculiarities of the most recent forms of virtual exchange, such as social networks or social media, which are often correctly defined as 'bubble filters' of reality, inflated by individuals understood, first and foremost, as consumers who, in expressing their preferences through 'likes', merely reproduce the essentially private mechanisms of desire and demonstrate the validity of a personal choice which, for this very reason, becomes something to emulate (Bauman, 2017, pp. 24–25). The delineation of personal identity therefore constitutes a task which is not without obstacles and which develops over time (Ferraris, 2022), and because of the coincidence of personal and digital identity, the projection of the individual into the virtual appears reconfigured in a unitary concept of identity that is capable of understanding the contiguity between physical and analogue reality (Floridi, 2017, pp. 67–98): 'Our double – the "avatar" or the nickname of the past – begins to integrate with the biological self in the management of daily life' (Sisto, 2020, p. 42). A condition is therefore outlined in which the subject is included as part of the virtual environment, through processes that make the distinction between offline and online existence indistinguishable and obsolete (Floridi, 2017, pp. 74–80).

> Our life is not divided between online experiences and offline experiences, and there is no supremacy, or greater authenticity, of one over the other. Everything is fused: a virtual experience can continue in the physical world, our action in the virtual world can have concrete repercussions in the offline one. And, above all, there is no reason to believe that what happens online is less 'true' than what happens offline. We are not human beings who temporarily immerse ourselves in the digital world and then reemerge, shake it all off, and resume our regular lives: the two experiences are constantly and deeply intertwined. (Signorelli, 2020)

In this way, the conception of a culture centred on dislocation and destined to profoundly question the traditional concept of personal identity is gradually affirmed: the lack of distinction between the online and offline dimensions in fact submits identity to a process of dismemberment, of multiplication in various digital identities (Sisto, 2020, p. 52) that make the individual a complex 'informational organism', connecting to similar natural and artificial organisms capable of autonomously processing information (Floridi, 2017, p. 106). Identity, lost 'in the deep layers of neuronal networks to which the human being has no access' (Han, 2022, p. 11), experiences an original condition of 'digital transformation' (Sisto, 2020, p. 56), which on the one hand seems to guarantee the subject freedom of action and a variety of roles, considering the possibility of creating virtual identities, but which, on the other, exposes the individual to pervasive information surveillance and the 'datafication' of one's identity (Longo & Scorza, 2020, pp. 136–137), which is now subjected to algorithmic decision making and predictive processing that is only presumptively neutral and objective but which is not without biases and unknowns in terms of the protection of fundamental human rights (Rejmaniak, 2021).

2. Identity and individuals: Evolving concepts and claims

The expression 'personal identity' has, over time, taken on various semantic values; in fact, in its first and oldest meaning, it indicated the complex of personal data that allow a specific subject to be identified, first of all in relation to public authorities. In a second and more recent meaning, personal identity expresses a sort of synthesis of the person's biography and a social projection of their personality, that is, their socially mediated and objectified image (Miniscalco, 2021, p. 35). In this way, the traditional concept of personal identity expresses the idea according to which each individual has his/her own uniqueness, a coincidence with oneself (Sisto, 2020, p. 52) from which the correspondence of personality and behaviour derives (Faini & Pietropaoli, 2021, p. 105). In other words, it consists of a valid individual representation, understood both in relation to one's own information and, in a more current direction, in a correct projection of the individual in the context of social life in which

a personality consisting of tastes, experiences and personal beliefs develops (Faini & Pietropaoli, 2021, p. 106). This last position is considered legally relevant by modern legal systems and constitutes a right of personality, which in turn falls within the idea of inviolable rights, particular subjective rights that guarantee all the human and moral qualities of a person and its specific social identity (Miniscalco, 2021, p. 31). From this perspective, identity, definable as the free determination and representation of oneself (Redazione Diritto dell'Informatica, 2020), both as the 'right to be oneself' and control over one's definition in the social context, constitutes a legally protected asset which is characteristic of current democratic systems.

> The right to identity, in fact, is not arbitrary, but protects the social projection of personal identity, which therefore requires social mediation between the image that the subject has of himself (personal truth) and the set of data objectives referable to the subject (historical truth), thus protecting the image, socially mediated and objectified, and therefore the identity of the subject. (Faini & Pietropaoli, 2021, p. 106)

The right to personal identity is among the fundamental rights and has been significantly defined by the Italian Constitutional Court as the right to be oneself, 'with the acquisition of ideas and experiences, with ideological, religious, moral and social convictions, which differentiate, and at the same time qualify, the individual'. Identity, continues the Court, represents 'a good in itself, regardless of the personal and social condition or the merits and defects of the subject, so that everyone is recognized as having the right to have their individuality preserved' (Constitutional Court, Sentence no. 13 of 1994).

3. The right to digital identity

The right to digital identity can be considered as a sort of electronic version of the right to personal identity, without thereby causing an undue coincidence of the two expressions, given that online it is possible for a person to take on a plurality of identities as a consequence of the storage on the Web of different types of personal information, or simply as the fruit of the author's imagination (Miniscalco, 2021, p. 35). On the other hand, digital identity is not an autonomous and different right compared to personal identity, but the expression of the latter on the Web, since it protects the subject's interest in being represented online with his/her correct identity and not seeing his/her heritage of ideas and life experiences misrepresented (Miniscalco, 2021, p. 37). In other words, the definition of digital identity must currently be added to the traditional delineation of personal identity, which is necessarily evolving and should be understood as the set of data and information entered into the Web and referable to a specific subject, that is, the set of digital data which allow us to re-

construct a more or less detailed profile of the user, relating to his/her personality or any other element capable of outlining personal identity. For example, following the dictates of the 'SPID Decree' of the Italian Presidential Council of Ministers of 24 October 2014 (Gazzetta Ufficiale della Repubblica Italiana, 2014), digital identity is constituted by the 'computer representation of the one-to-one correspondence between a user and his identifying attributes, verified through the set of data collected and recorded in digital form'. So digital identity can correspond to personal identity or be different from it, mainly thanks to the control established by individuals over their data circulating online; this is connected to the protection of privacy, defined in the sphere of the protection of personal data, but also operating outside of private life, in order to guarantee the individual's decision making and self-determination and, above all, their power to control the circulation and public availability of data concerning them, and to correct and transparent management of digital data, especially in terms of reputation and image, to the necessary IT security measures (Redazione Diritto dell'Informatica, 2020). It can be noticed how, over time, one or more virtual identities emerge for each individual, which grow through information, often having a life of their own and being disseminated in social networks or digital environments, which make their subsequent deletion or recovery possible (Ziccardi, 2017, p. 216). To this it must be added that this information, without precise space–time limits, is devoid of contextualization and is not qualitatively controlled, and is therefore subject to possible distortions and manipulations, so-called 'fake news' (Faini & Pietropaoli, 2021, p. 107). Digital identity definitely tends to break down into multiple individual profiles of Web surfers which are capable of outlining the self understood as an information system, according to which 'we are our information' (Floridi, 2017, pp. 77–78). This allows the outlining of an open and evolving notion of digital identity as a disembodied entity, entirely determined by the information that concerns it, 'the only and "true" projection into the world of each person's being. Not a virtual "double", therefore, that sits alongside and accompanies the real person, but the instantaneous representation of an entire life journey, a limitless expansion of social memory that conditions individual memory' (Rodotà, 2014, p. 42).

This leads to the right to effective information self-determination, that is, the control of one's own digital information, in order to obtain a complete, correct and updated delineation of identity, as well as an exact social projection of it; these principles are expressed by art. 9 of the Declaration of Internet Rights, made public on 13 October 2015 in the Sala della Regina of Palazzo Montecitorio in Rome, a document which, although lacking binding and prescriptive force, nevertheless performs a significant function of moral suasion, representing a guide in the promotion of digital regulations and in the valorization of a society of dignity, equality and participation (Rodotà, 2005). This Declaration states that every person has the right to integral and updated representation of their identities on the Internet, that the definition of identity concerns the free construction of personality and cannot be excluded from

intervention by and knowledge of the interested party, and consequently, the use of algorithms and probabilistic techniques must pay attention to the interested parties, who, in any case, can oppose the delineation and dissemination of profiles concerning them. Finally, it states that each person has the right to provide only the data that is strictly necessary for the fulfilment of obligations established by law for the supply of goods and services and for access to platforms operating on the Internet, and that the attribution and management of digital identity by public institutions must be accompanied by adequate guarantees, particularly in terms of security.

4. Identity and digital memories: The right to be forgotten

Memory and forgetting represent fundamental terms in the delineation of individual identity as well as in relation to different cultural contexts, being elements capable of positioning and repositioning individuals and collectivities in unprecedented spaces of individual action and social representation (Fabietti, 2001, p. 407). The most current digital technologies, moreover, delineate contemporaneity as characterized by an unprecedented intensification of contacts between individuals and between individuals and groups, each having its own identity, history and very different worldviews (Fabietti, 2001, p. 407). 'Memory and forgetting are selective processes through which identity is shaped. and thus are essential components in the configuration of any culture understood as an entity in continuous transformation' (Fabietti, 2001, pp. 408–409); this makes them indispensable reference points for embracing broad reflections on human life and its social dimensions (Fabietti, 2001, p. 421). In this field, then, the impressive and continuous growth of collection, storage and processing of digital data is located, becoming 'a relentless collective memory of the Internet, where the accumulation of our every trace makes us prisoners of a past destined never to pass, which challenges the construction of personality free from the weight of every memory, and which imposes a continuous social scrutiny by an infinite array of people who can easily know information about others' (Rodotà, 2014, p. 41). If one adds to this the aforementioned inability of the Web to make an appropriate selection of sources based on veracity and quality, it is understandable how attempting to trace the main lines of the debate on the right to be forgotten can be useful in a critical reflection on the vulnerability of an individual identity which appears to be immersed and shown in the virtual world, exposure for which one pays an absolutely real price (Faini & Pietropaoli, 2021, p. 61). In fact, 'today's world seems stricken by a veritable epidemic of memories that provides the past with an opportunity to emancipate itself from the control of the present. As it becomes autonomous as an objective reality in its own right, the past superimposes itself on the present by interposing itself between one instant and the next' (Sisto, 2020, p. 14). In other words, it is possible for memories buried in the digital world to face the present by

being brought back to life by most modern digital technologies, gaining the same actuality as the moment in which they were experienced (Sisto, 2020, pp. 20–21).

In the context described, and between the right to protection of personal data and the right to personal identity on the Internet, the right to be forgotten arises, aimed at preventing the re-publication of news that was legitimately made known at the time after a significant period of time has elapsed, such as to make the information of no interest to the community (Miniscalco, 2021, p. 37). The right to be forgotten is expressed, in turn, in two directions: as the right to correct and updated contextualization of online information and as the de-indexing of personal data visible in the list of results offered by a search engine. Both of these protect a person's interest in not remaining 'indeterminately exposed to the further damage that the repeated publication of news that was legitimately published in the past causes to his honour and reputation' (Judgment of the Italian Civil Court of Cassation, 1998). In such circumstances, the scope of the right to be forgotten is determined by past events, usually negative in terms of personal image, that were lawfully made public in the past but that, with time, may be subject to subsequent consultation and dissemination, making such dissemination unlawful (Faini & Pietropaoli, 2021, p. 62). As a result, the right to be forgotten constitutes the right not to be remembered in relation to past news events which are not currently of public interest and which may turn out to be no longer true; this is an aim to ensure that the identity and social image of the person concerned is not misrepresented. In other words, the right to be forgotten is related to the deceptive reproduction of a 'perennial actuality' that denies the dynamic character of individual identity (Zanichelli, 2016, p. 10).

> To free oneself from the oppression of memories, from a past that continues to heavily mortgage the present, becomes a goal of freedom. The right to oblivion presents itself as the right to govern one's memory, to restore to each person the possibility of reinventing oneself, of constructing personality and identity by freeing oneself from the tyranny of cages in which a ubiquitous and total memory wants to lock everyone up (Rodotà, 2014, pp. 43–44).

In relation to the possibility that this right poses, it could, on the one hand, clash with the principle of freedom of expression, defined as the right to inform and be informed; on the other hand, it complements the right to privacy and personal identity by resolving itself in the possibility of disassociating one's name from a given search engine result and in seeing the evolution of oneself represented by the elimination of data that is no longer referable to one's current personality (Ziccardi, 2017, p. 222). In this regard, the central issue is therefore represented by the 'persistent accessibility' of data online (Zanichelli, 2016, p. 25; Ziccardi, 2017, p. 211), which is a long way from that found in traditional electronic archiving systems, as it is able to sustain profound changes on the anthropological level and can give rise to pressing questions about the

virtual exposure of subjects who are condemned to a perpetual here and now and to a sort of 'permanent visibility' (Rodotà, 2014, p. 42). Therefore oblivion, in the online context, in many respects represents a fiction, or, rather, the hope that a given piece of data will remain under the surface of the Web, that is, will not become fashionable and the object of generalized attention (Ziccardi, 2017, p. 208). 'The Web does not function like a printed newspaper, yellowing in dusty archives. The problem today is no longer one of "republishing" a news story, but it is the permanence on the Web of a news story that can be "indexed" so as to override more up-to-date news' (Faini & Pietropaoli, 2021, p. 62). Such critical questions open up enormous problems in an information society fuelled by digital data based on pervasive user surveillance and the incessant reprocessing of information (Rejmaniak, 2021, pp. 25–26; Ziccardi, 2017, p. 215) that rebalances social and individual memories (Zanichelli, 2016, p. 28).

5. A look at European legislation and Italian jurisprudence

The issues developed above find an interesting confirmation in the path taken by European legislation and Italian jurisprudence, some basic traits of which are discussed here regarding the recognition of the right to be forgotten by bringing out the main connections with the protection of personal identity. In this regard, if in the famous ruling of the Italian Civil Court of Cassation of 9 April 1998 (sec. III, no. 3679) the right to be forgotten is considered as a current and relevant dimension of the right to personal privacy, in the subsequent Supreme Court ruling (no. 5525 of 2012), a direct reference to the protection of personal identity, established on the principle that outdated news can be equated to untruthful news, can be noted (Faini & Pietropaoli, 2021, p. 65). In fact, it should be emphasized how, in this case, the interested subject does not claim to remain anonymous or to arouse forgetfulness of a fact that has happened; 'rather he considers that indexing by search engines irreparably deforms the social projection of his own identity'. In this regard, the right to be forgotten does not coincide with a generic right to be forgotten, of arduous fulfilment in the virtual context, given the possibility of making offline copies of the events concerned by republishing them, but rather with the right to be remembered correctly, that is, in the necessary consideration of the temporal developments of the events recalled (Faini & Pietropaoli, 2021, p. 65). The right to be forgotten therefore refers to the need to obtain updated and contextualized news in relation to subsequent developments, leading to the convergence of the right to an accurate representation of one's identity with the right to control over personal information (Zanichelli, 2016, p. 16). In addition, it should be noted that, in an initial stage, digital publishers were the entities to whom any requests for updating the online archive should be addressed, while search engines were regarded as mere intermediaries of information: in this respect, the sentence of the Court of Milan of 26 April (no. 5820/2013) is framed, for example, as are

the numerous provisions of the Guarantor for the Protection of Personal Data (also known as the Privacy Guarantor) aimed at publishers who are required to give an account, in the margin of individual articles or in notes to them, of the developments of events relating to the subject applicant and prescribing a deadline for modification or integration. It is appropriate to clarify here that the Privacy Guarantor is an independent Italian administrative authority established by the Law of 31 December 1996 (no. 675) to ensure the protection of fundamental rights and freedoms and respect for dignity in the processing of personal data.

The function of search engines, together with the action of digital platforms and social networks, will gradually become more and more central in the digital traceability referable to an individual, as well as in the automatic processes of mass collection of digital data and its interpretation, thanks to search engines which are capable of indexing information according to an order which is sorted by relevance, not chronologically, thereby making it available for subsequent reprocessing without, however, its overcoming or updating being effectively highlighted (Zanichelli, 2016, p. 26). In this context, a first significant problem concerns the possible balancing of the right to be forgotten with rights of equal importance; the former situates itself, as we have seen, at the crossroads between the right to personal privacy, which it, represents a projection or a reflection of, (Faini & Pietropaoli, 2021, p. 63), the right to report news and the right to achieve correct information as the basis of authentic democratic participation. These are therefore instances of protection aimed at the truth and authenticity of one's identity and image that evolve in historical actuality (Zanichelli, 2016, p. 14), instances that are made explicit in the exercise of effective control over personal data and the time of their accessibility (Zanichelli, 2016, p. 27).

6. The Google/Spain ruling: A watershed in the right to be forgotten

In this regard, the famous ruling of the Court of Justice of the European Union on the *Google/Spain* case (C-131/12) of 13 May 2014 can be recalled, which pointed the way to de-indexing that is not intended to remove the disputed news, but rather to make it more difficult to find online, in order to reduce the exposure of the interested party to the events as much as possible but without compromising the competing right to news and information. From the perspective of this judgment, the search engine operator is considered responsible for the processing of personal data, which here coincides with the publication of news on the Web, an activity capable of profoundly affecting the exercise of the fundamental rights to identity, privacy and the protection of personal data (Zanichelli, 2016, p. 17). It derives a position of particular importance from it that refers to the obligation, in the presence of specific conditions, to delete or to put at the bottom of the link list certain links to the list of search results. This activity is indicated by the terms delisting or de-indexing, which do not consist

of eliminating from the Internet all the information referable to a specific person, but of omitting information which is potentially harmful to personal honour and dignity, as well as data no longer current in reference to a specific subject, from the list of results proposed by the search engine.

The importance of the *Google/Spain* pronouncement therefore signals the need to ensure uniform application of European law to the point where the search engine's activity, in addition to that of publishers, significantly affects fundamental rights to identity, privacy and personal data protection (Mensi & Falletta, 2018, pp. 388–398). This clearly does not amount to the recognition of a general and absolute right to the removal of controversial virtual information, but seeks a balancing of the different rights at stake by emphasizing how the rights of the interested party prevail over both the economic interest of the search engine and, in some cases, of the collective interest in information. An example of this is the case considered by the judgment of the European Court of Human Rights dated 19 October 2017, concerning a famous businessman's request for the deletion of online news regarding his involvement in corruption matters and his belief that this news violated respect for privacy and family life; on this point, the European Court of Human Rights agreed with the decision of the German judges who rejected the request, taking into account the influence of the person concerned in the social context and the public interest in knowledge of the affair.

The *Google/Spain* pronouncement not only raises the need for a uniform international guideline for search engines, but also gives rise to some issues concerning the role of search engines and their resulting responsibilities in representing private actors with considerable market power; they are called upon to perform a very delicate balancing act between subjects and their associated interests, with recourse to the national Guarantor for the Protection of Personal Data or the judiciary being only secondary and a later step.

Secondly, from an examination of Google's Guidelines published in November 2014, one can note the provision of a detailed procedure by which the interested party can submit a request for de-indexing; Google previously established the parameters to be considered and specify that, in the event of their failure to accept the request, the interested party may, as seen, appeal to the courts or the Guarantor. It emerges from these Guidelines that the granting of the request is not subject to any adversarial or public measure, and thus appears to be centred in a private, profit-driven perspective that raises a further danger of the indiscriminate granting of de-indexing requests, implemented by the search engine to avoid losing in a possible court case, in a direction contrary to the protection of freedom of information. Secondly, national data protection authorities appear to be vested in concrete ways of implementing the *Google/Spain* judgment, as indicated by the European Commission spokesperson, thus leaving the way open for different and discordant national interpretations, as well as the possibility of the consolidation of more sensitive jurisprudential orienta-

tions on the protection of personal identity, to the detriment of freedom of expression, or vice versa.

The 2014 Guidelines were followed by the Guidelines 5/2019 on the criteria for exercising the right to be forgotten in the case of search engines, pursuant to the GDPR. Without explaining the details of the procedure for requesting de-indexing, this document clearly describes the legal bases, admissible reasons, any exceptions to the possibility of exercising the right to be forgotten and the content of this; the procedure consists, essentially, of deleting one or more links to Web pages from the list of search results, starting from the first name and surname of the interested party, in light of the provisions of art.17 of the GDPR, and clarifies how the content will remain available using other search criteria. From reading the Guidelines, it is also clear that requests for de-indexing do not entail the complete deletion of personal data. In fact, personal data will not be deleted either from the website of origin or from the index and cache of the search engine provider; for example, an interested party can request the removal of personal data found in the media, such as in a newspaper article, from the index of a search engine. In this case, the link to the personal data may be removed from the search engine index, but the article in question will still remain under the control of its original publisher and may remain publicly available and accessible, despite being no longer visible in results based on queries which in principle include the name of the interested party.

As can be seen, for a first complete definition of the right to be forgotten in the legislative field, it is necessary to wait until European Regulation 2016/679; it should be remembered here that the provisions contained in the Regulation have a direct and immediate effect in States of the European Union, without the need for further implementation measures. Despite this, on a national level, it has been necessary to adapt the regulatory acts that already were concerned with the matter of privacy to the provisions contained in the Regulation; in Italy, this meant in particular the Privacy Code (Legislative Decree no. 196/2003). In particular, art. 17 of the GDPR enshrines the right of the data subject to obtain the deletion or modification of his/her personal data, and the data controller has the obligation to delete such data without undue delay if one of the conditions indicated in the first paragraph of the provision occurs, although the Regulation makes no mention of search engines (Faini & Pietropaoli, 2021, p. 71). In art. 17, the right to be forgotten is represented both as a means of reaction to the illicit or incorrect processing of personal data and as an expression of the power of self-determination of information, as an individual manifestation of a free and conscious choice in which the external representation of one's personality is relevant; this can also be present in lawful and correct data processing. The same provision details the specific hypotheses in which the right to be forgotten cannot be exercised and the reasons that require the cancellation or at least the obscuring of personal data which is not necessary for the purposes for which it was collected, the revocation of the interested party's consent, opposition to processing without there

being any prevailing reason to proceed, the assessment, exercise or defence of a right in court, the processing of data for direct marketing purposes or the deletion of data in fulfilment of an obligation established by European or national legislation.

7. The right to be forgotten in Italian jurisprudence

In a direction similar to that indicated by GDPR is the judgment of the Court of Milan (Civil Sect. I, no. 10374/2016), which, following the Constitution as well as the prevailing European orientation in the field, affirms the centrality of personal identity, reflected in the right to be forgotten: 'rather than an autonomous right of personality, *sub specie* of the right to be forgotten, it constitutes an aspect of the right to personal identity, namely the right to disassociate one's name from a given search result'. The right to be forgotten therefore intertwines with the identity claim to obtain a correct representation of oneself, which results in the guarantee offered by the legal system of reconfiguring one's telematic image. More recently, the Court of Cassation, in Judgment no. 9147/2020, reiterated, in line with the CJEU's 2014 decision, the principle according to which the de-indexing of news by a search engine allows the right to privacy and deletion of data to be reconciled with that of reporting, without forcing a media outlet to delete parts of its computerized archives. The ruling in question also expresses the distance and, at the same time, the relationship between the right to be forgotten and the right to privacy, since it is not a question of preventing the disclosure of confidential data and information, but of preventing such data and news, even if legitimately published, remaining available to the community *sine die*, causing potential damage to the reputation of the interested party due to reference to past events; the right to be forgotten must in any case have precedence where news relating to facts taking place in the past no longer provides a suitable representation of the interested party. Despite the rights granted to the interested party by art. 17 of the GDPR, the Court underlined how the same EU provision determines the exclusion of protection where the right to be forgotten must be balanced with the processing of data due to the exercise of the right to freedom of expression and information; archiving in the public interest represents a particular case, as it is instrumental to historical research and the expression of the right to freedom of art and science and their teaching pursuant to art. 33 of the Italian Constitution, as an expression of freedom of thought pursuant to art. 21 of the Constitution. Therefore, in this case, the right to be forgotten may materialize not as a request to delete news from the archive, but rather as a claim to limit generalized and unclear access to news given to Internet users, following the digitization of the name of the interested party in the search engine query, to refer to the solution of delisting.

The very recent ruling of the Court of Cassation (no. 3013/2024) relating art. 17 of the GDPR to art. 21 of the Italian Constitution is also extremely significant and

interesting, as it establishes the prevalence of the right to information over anonymity if the distribution of the image or news provides a contribution to a debate of public interest, if there is an actual and current interest in dissemination of the news or images, or if the interested party has a certain degree of notoriety due to the particular position they hold in the public life of the state. The ruling also offers precise criteria on the methods of sharing information, which must be truthful, must not exceed the informative purpose, must be in the public interest and free from insinuations and personal considerations.

Conclusions

As seen, the permanence of data on the Internet has made it necessary to better protect the individual and their digital identity; in this context, the right to be forgotten and the right to personal identity tend to combine, because the re-emergence of events from the past that are referable to a person must take place with regard to the identity of the individual, who is often damaged by the spreading of untruthful or misleading information that contributes to the creation of an identity which does not correspond to current reality. From this perspective, the right to be forgotten presents multiple facets that converge in an exact and updated representation of individual identity, placing itself in a strategic position between the right to protection of personal data and to identity, real and digital; this is in a delicate balance with the right to information and constitutes an indispensable prerequisite for an authentic life, that is, capable of reflecting the uniqueness of each person in the moments of their life. The relevance of the right to be forgotten, as an identity claim, is demonstrated by the most recent development of Italian legislation in a different field. In this regard, it is worth remembering the Cartabia Law, which reformed some rules on the administration of justice and regulated the right to be forgotten for defendants and people subject to investigation by introducing art. 64-ter of the Code of Criminal Procedure, according to which search engines have to dissociate the names of those acquitted from news circulating online that refers to investigations in which they were found innocent, avoiding an embarrassing identification with a negative image that is now out of date (Gazzetta Ufficiale della Repubblica Italiana, 2022).

Furthermore, in the sensitive field of oncology, Bill no. 2548/2022 has been presented in Italy by a group of associations that particularly support individuals with genetic mutations often linked to an increased risk of developing certain types of cancer; this proposal was accepted and formalized with the Law of 7 December 2023 (no. 193), which contains new provisions for the prevention of post-recovery discrimination, supporting interested parties with the right not to give information or undergo investigations regarding their previous pathological condition. The new law will enshrine the right to oncological anonymity, after a reasonable period of time

has passed since treatment, preventing any possible discrimination against those who have 'beaten' cancer. In particular, the period has been identified as ten years from the end of active treatment, with no episodes of recurrence, for adults and five years for cancers that arose before the age of 21. This right applies, in the cases stipulated in the law, not only to financial and insurance services, but also to the world of work and that of adoptions and child custody. The right to be forgotten therefore offers the possibility not to be identified with the disease for those who have overcome oncological illness, helping them psychologically as well as legally. From these brief considerations, which deserve an independent discussion, the crucial importance of extending the legal protection offered by the right to be forgotten stands out, taking into account the critical issues raised by the most recent information technologies, in order to outline an evolving and comprehensive right capable of protecting the originality of the individual and his/her representation and relationships.

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