The Right to Oblivion in a Comparative European Perspective

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ABSTRACT: This paper analyses the "Right to be 'medically' forgotten" – starting with a brief introduction on how this concept has evolved during the last decades – with specific regard to the medical field. It focuses on cancer survivors and their right to live a life without injustices and discriminations caused by the stigma of the disease. By using the comparative method, this work aims to address the European perspective on the issue, as well as the need for a more harmonised legal framework.

KEYWORDS: Oblivion; cancer survivors; legal medicine; comparative law; European law

1. Oblivion: From a Condemnation of Memory to a Legally Recognized Right

"Dimenticanza (non come fatto momentaneo, per distrazione o per difetto di memoria, ma come stato più o meno duraturo, come scomparsa o sospensione dal ricordo)":[1] with these words, the Treccani Encyclopedia defines oblivion, linking in no more than two lines the analyzed concept to *time*, which plays – as will be further outlined – a fundamental role in the essay. Indeed, the term *oblivion* does not refer to a temporary amnesia, but rather to an actual "scomparsa o sospensione dal ricordo": its consequences are eternal and definitive, and they erase every trace related to the object of forgetfulness.

In Ancient Rome, oblivion carried an extremely negative meaning: when serious convictions occurred, those people affected by the so-called *damnatio memoriae* experienced the erasure of every memory relating to their person and existence. No document, image or inscription would ever mention the name of the convicted person again, decreeing his disappearance from society – almost as that person had never existed. But while in the past oblivion was a punishment,[2] nowadays the situation has been re-

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[1] https://www.treccani.it/vocabolario/oblio/ (last viewed: 28/08/2025). Translation by the author: forgetfulness (not as a temporary occurrence, due to distraction or memory deficiency, but as a more or less enduring condition, such as disappearance or suspension from recollection.

[2] The term *damnatio memoriae* literally means "consignment to obscurity".

versed: the erasure of every reference to someone is no longer the nefarious consequence of a political measure, but rather a right (at least in abstract terms) safeguarded by law,[3] which allows its holder to prevent certain (unfavourable) information relating to his existence, by now outdated and no longer socially relevant, from continuing to cause him damages in the present.

Therefore, the right to oblivion can be defined as "il diritto a non restare indeterminatamente esposti ai danni ulteriori che la reiterata pubblicazione di una notizia può arrecare all'onore e alla reputazione di un soggetto".[4] These few lines immediately reveal the two factors that most influence both the configuration and the limitation of the right in question: on the one hand, time, which is reflected in the adverb '*indeterminatamente*' (indefinitely) as well as in the adjective '*reiterata*' (repeated); on the other hand, the exposure of the person to media attention, which is evoked by the activity of '*pubblicazione di una notizia*' (publishing information). Taking the analysis a step further, this definition also highlights the counterpart of the right to oblivion: since it involves the erasure of certain references – whose publication was considered lawful in the past – the right to oblivion inevitably conflicts with the freedom of the press and the freedom to be informed, risking to place individual interests above the needs of the community.

But let us take a step back. If, in general terms, the right to be forgotten entails the possibility for the applicant not to be indefinitely burdened by his or her past, one must ask which specific aspects of that past are being targeted for removal. This question necessarily prompts a reflection on the evolution that the right to be forgotten has undergone over the decades, as well as on the influence that progress – particularly of a technical and scientific nature – has exerted on its configuration and protection.

1.1. The Evolution of the Right to Be Forgotten and Its Different Meanings

The right to be forgotten is closely connected to the concepts of privacy and confidentiality; indeed, it may be said to belong "alle ragioni e alle regioni del diritto alla riservatezza".[5] These are concepts whose protection is widely regarded as necessary within the European context. It is therefore unsurprising that the right to be forgotten has found its most significant expressions and its most substantial recognition in legal scholarship and case law of the Old Continent, which has always been attentive to the protection of human dignity and personal identity – spheres to which privacy and confidentiality are inevitably linked.

However, the idea of protecting individuals' most intimate and private sphere did not originate in Europe, but in America – the very continent that is now known for being reluctant to grant extensive privacy rights to its citizens. In fact, it was two U.S. lawyers, Samuel D. Warren and Louis D. Brandeis, who questioned the need to protect individuals from invasions of privacy by journalists and photographers – a need that arose as a result of the development of society, which made it necessary to consider new

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[3] The use of the expression 'in abstract terms' is not random: although legally recognized, nowadays the right to oblivion still risks facing some obstacles in its concrete application and harmonization.

[4] C. Mistri, M.C. De Angelis, *I principali profili giuridici del diritto di cronaca e di critica nei più recenti interventi giurisprudenziali delle sezioni civili della Corte di cassazione*, in *Magistratura indipendente*, 2018. Translation by the author: the right not to be indefinitely exposed to further damage that the repeated publication of certain information may cause to a person's honour and reputation.

[5] G.B. Ferri, *Diritto all'informazione e diritto all'oblio*, in *Riv. dir. civ.*, 1990, 808. Translation by the author: to the reasons and the realms of the right to confidentiality.

rights. It is no coincidence that their essay, entitled *The Right to Privacy* and published on December 15, 1890, in the *Harvard Law Review*, opens with a reflection on this very point: masterfully, the authors write ”That the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society”.[6] They continue by explicitly mentioning the new inventions that have invaded the sacred boundaries of private and domestic life, stating that “Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual what Judge Cooley calls the right ‘to be let alone’. Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that ‘what is whispered in the closet shall be proclaimed from the house-tops’”.[7]

The purpose of their work is to verify whether there is a principle in law that can be invoked to protect individual privacy and, if so, to understand the nature and extent of the protection granted.[8] The article ends with a provocative question, which has prompted the global community to reflect on the issues arising from the invasion of privacy and the possibility of containing the intrusive tendencies of the media: in an almost theatrical manner, the Boston lawyers conclude their essay by writing that “The common law has always recognized a man’s house as his castle, impregnable, often, even to its own officers engaged in the execution of its commands. Shall the courts thus close the front entrance to constituted authority, and open wide the back door to idle or prurient curiosity?”.[9]

From the reflections of Warren and Brandeis, the point just stated clearly emerges: the concept of privacy – and, today, the related right to be forgotten – are intrinsically and inevitably linked to the freedom of the press. It is precisely to this freedom that American jurists make explicit reference when discussing the risks of the press and journalism, the main means of communication known in the nineteenth century. In this context, in which the world of the Internet was not even on the horizon, the previously mentioned definition of the concept of the ‘right to be forgotten’ fits well, from which it follows that any potential violation of such a right depends on the *reiterated* (and, therefore, *repeated*) publication of news harmful to the individual.

Today, however, this definition has become partly outdated: the technological evolution that Warren and Brandeis had already considered in their reflections has only intensified over the past decades, forcing legal practitioners to engage with an entirely new world that requires constant updates in the articulation and interpretation of rights.

In light of this, it is therefore appropriate to specify that, in modern times, the right to be forgotten does not have a single meaning; rather, with the advent of the digital era, three different interpretations[10] of this right can be identified today.

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[6] S.D. WARREN, L.D. BRANDEIS, *The Right to Privacy*, in *Harvard Law Review*, 4(5), 1890, 193.

[7] *Ivi*, 195.

[8] *Ivi*, 197: “It is our purpose to consider whether the existing law affords a principle which can properly be invoked to protect the privacy of the individual; and, if it does, what the nature and extent of such protection is”.

[9] *Ivi*, 220.

[10] For an extensive discussion on this point, see G. FINOCCHIARO, *Il diritto all’oblio nel quadro dei diritti della personalità*, in *Diritto dell’informatica*, 4-5, 2014, 592 ss.

In brief, the first interpretation refers to the “diritto di un soggetto a non vedere pubblicate alcune notizie relative a vicende, già legittimamente pubblicate, rispetto all’accadimento delle quali è trascorso un notevole lasso di tempo”.[11] At this stage, no reference is made to the world of the Internet – the central aspect lies in the *republication* of news after a certain lapse of time.

However, the perspective changes in the second half of the twentieth century with the advent of the Internet and the World Wide Web: the republication of information loses its relevance, since “nella Rete l’informazione non è cancellata, ma permane disponibile o quantomeno astrattamente disponibile”.[12] If data is never truly deleted and always remains accessible to the users, who with a simple search can retrieve photos and articles uploaded online even many years earlier, then republication ceases to play the decisive role it once had, giving way instead to the *continuous online presence* of the data in question.

Finally, the third interpretation of the right to be forgotten refers to “al diritto alla cancellazione, al blocco, al congelamento dei dati o all’opposizione al trattamento dei dati previsti dalla Direttiva 95/46/CE”.[13] Although this Directive is no longer in force,[14] this understanding of the right remains valid and highly relevant today and it is closely connected to the protection of personal data: indeed, it enables the data subject to request the deletion of information stored in digital networks and to object to its processing.[15]

1.2. A “Fourth Interpretation”: Oncological Oblivion

Having made this necessary general premise concerning the right to be forgotten, we can now turn our attention to another, more specific interpretation of this right which might perhaps be regarded as a fourth and distinct meaning. The notion of *oblivion* underlies a particular right that has only recently gained recognition within European legal systems, one that transcends the strictly legal domain to intersect with the medical and healthcare sphere: the so-called oncological oblivion, or the “diritto ad essere ‘medicalmente’ dimenticato”.[16] This legal category belongs to the broader framework of citizens’ rights

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[11] *Ibid*. Translation by the author: right of an individual not to have certain news published concerning events, already lawfully reported, about which a considerable amount of time has passed.

[12] *Ibid*. Translation by the author: on the Internet, information is not erased but remains available, or at least potentially available.

[13] *Ibid*. Translation by the author: the right to erasure, to the blocking or freezing of data, or to object to the processing of data as provided for by Directive 95/46/EC.

[14] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data, was in fact repealed by 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 (the so-called GDPR, *General Data Protection Regulation*).

[15] Art. 4 (2) GDPR “processing means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction”.

[16] Translation by the author: right to be ‘medically’ forgotten. The quote is taken from M. MEZZANOTTE, *Brevi note in tema di diritto ad essere ‘medicalmente’ dimenticato: il caso del diritto all’oblio ontologico*, in *Consulta OnLine*, 2, 2023, 486 ss. It should be noted, however, that not everyone considers the use of the expression *‘oblio oncologico’* appropriate from a technical-legal perspective. On this point, see, among others, M. FACCIOLI, *Il diritto all’oblio on-*

not to disclose their clinical information once they have recovered from certain categories of diseases, with the aim of ensuring the full and satisfactory reintegration of former patients into society – thus preventing discrimination in specific areas such as employment, insurance, or even adoption proceedings.

It is a view that may indeed be shared that the right to be forgotten is not merely "uno schermo contro l'informazione"[17] rather, it is, in general terms, "uno strumento di protezione dell'individuo contro tutti quei dati che non sono più aggiornati in relazione a una condizione attuale, che ne distorcono le sembianze e che non lo rappresentano più agli occhi della collettività con le peculiarità che ha, in presenza di un interesse che deve essere considerato prevalente".[18] From this perspective, medical information too may be considered detrimental to an individual's image and reputation within society, in cases where, despite having recovered, the person continues to be stigmatized for a previous clinical condition. It is in this sense, therefore, that we can speak of a right to be forgotten within the medical and healthcare domain.[19]

The recognition of this type of right allows cancer survivors[20] not to endure indefinitely the consequences of the illness that affected them: those who have already faced a difficult path to recovery "shouldn't have to pay twice for their diagnosis".[21] Indeed, having already endured the physical, psychological, and

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cologico nella l. n. 193/2023: la via italiana alla tutela giuridica dei cancer survivors, in *BioLaw Journal – Rivista di BioDiritto*, 1, 2024, 92 ("Tale sintagma è senza dubbio efficace ed evocativo sul piano del linguaggio comune, ma dal punto di vista tecnico-giuridico appare piuttosto lontano dal modo in cui viene comunemente inteso il c.d. diritto all'oblio nella moderna società dell'informazione", translation by the author: this phrase is undoubtedly effective and evocative in terms of common language, yet from a technical-legal point of view it appears rather distant from the way in which the so-called right to be forgotten is commonly understood in the modern information society).

[17] M. MEZZANOTTE, *op. cit.*, 486. Translation by the author: a shield against information.

[18] *Ibid.* Translation by the author: a tool for the protection of the individual against all those data that are no longer up to date with respect to his or her present condition, that distort his or her image, and that no longer represent him or her in the eyes of the community in accordance with the characteristics he or she currently possesses, in the presence of an interest that must be regarded as prevailing. Continuing (487), the Author states, with specific reference to the right to oncological oblivion: "a differenza della *privacy* storica intesa come quel diritto a negare che fatti un tempo resi pubblici con i media tornino all'attenzione della collettività, il diritto all'oblio oncologico consente la cancellazione dei dati personali in ragione del tempo trascorso dalla fine dei trattamenti sanitari senza che la patologia sia ricomparsa". Translation by the author: unlike privacy in relation to past events, understood as the right to prevent facts once made public by the media from resurfacing to the attention of the community, the right to oncological oblivion allows for the erasure of personal data by reason of the time elapsed since the end of medical treatments, provided that the disease has not reappeared.

[19] In the scientific literature on the subject, the right to be forgotten in the medical field is examined with specific reference to cancer survivors. Although this is statistically the area in which former patients are most frequently subjected to discrimination on account of their clinical history, the right to be forgotten may more generally apply to other diseases as well (e.g. hepatitis C). In what follows, therefore, references will mainly concern cancer survivors, without losing sight, however, of the fact that the right to be forgotten-conceived as an instrument serving the protection of human dignity and confidentiality-ought to safeguard all categories of patients.

[20] For the rationale behind the use of this expression, see the previous note.

[21] The quote is taken from M. LAWLER, F. MAUNIER, *Don't make cancer survivors pay-twice – the right for them to be "forgotten" should be law everywhere*, in *BMJ*, 2022. Similarly, L. BORGIA, *I diritti umani oltre la malattia: i sopravvissuti al cancro e il diritto all'oblio oncologico*, in *Archivio giuridico online*, 2, 2023, 903; refers to a 'doubling of the penalty' that prevents cancer survivors from returning to a normal life.

financial[22] repercussions of the illness they have fought, these individuals should not be forced to bear its aftermath also on the social level – something that would occur if they were not guaranteed a position of full equality with those who have 'always been healthy'. When higher insurance prices are imposed on former patients (on the assumption that their risk of default is greater), or differentiated working conditions are established for them (with resulting economic disparities), or when the process of adopting a child is made more difficult (thus hindering the creation of stable emotional and family bonds), the individual ceases to be an insured person, an employee, or an adoptive parent – like anyone else in the same position – and once again becomes a 'patient', subjected this time not to the care of a doctor, but to the prejudices of society. In this regard, one may speak of a "categoria di cittadini 'fantasma' in attesa di un *exitus* sancito non dalla scienza, ma dalla società: sono i cosiddetti 'lungo-sopravvissuti' (*long survivors*) per i quali non viene mai assicurato il 'fine pena' sociale".[23]

1.2.1. The Mother's Right to Be Forgotten: Anonymous Childbirth and the Right of Access to One's Origins

The right to be 'medically' forgotten does not, however, end with the protection of those who have successfully overcome certain diseases. This right may also take shape in the woman's claim, as a mother giving birth, not to be mentioned on her child's birth certificate.

The legal tool in question is known as anonymous childbirth, deriving from the mother's request not to be identified. Such prerogative is granted to her under Article 30 of D.P.R.[24] no. 396 of 3 November 2000,[25] and responds to the need to prevent abortions and child abandonment.

This article must, moreover, be read in conjunction with Article 93, paragraph 2 of Decree[26] no. 196 of 30 June 2003, which provides that the medical record containing data identifying the anonymous mother may be released, to those having an interest and in accordance with the law, once one hundred years have elapsed since its creation:[27] it is thus established that access to information concerning the woman

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[22] Related to financial consequences, the terms *financial toxicity* and *financial distress* are commonly used.

[23] L. BORGIA, *op. cit.*, 893. Translation by the author: a category of 'ghost' citizens awaiting an *exitus* sanctioned not by science but by society: they are the so-called 'long survivors,' for whom the 'end of sentence' is never socially granted. With regard to the subject of oncological oblivion and the protection of cancer survivors, see below for a more in-depth analysis.

[24] Decreto del Presidente della Repubblica.

[25] "1. La dichiarazione di nascita è resa da uno dei genitori, da un procuratore speciale, ovvero dal medico o dalla ostetrica o da altra persona che ha assistito al parto, rispettando l'eventuale volontà della madre di non essere nominata". Translation by the author: The declaration of birth may be made by one of the parents, by a special attorney, or by the physician, midwife, or other person who attended the delivery, in compliance with the mother's possible wish not to be named.

[26] Decreto legislativo (D. lgs).

[27] "2. Il certificato di assistenza al parto o la cartella clinica, ove comprensivi dei dati personali che rendono identificabile la madre che abbia dichiarato di non voler essere nominata avvalendosi della facoltà di cui all'articolo 30, comma 1, del decreto del Presidente della Repubblica 3 novembre 2000, n. 396, possono essere rilasciati in copia integrale a chi vi abbia interesse, in conformità alla legge, decorsi cento anni dalla formazione del documento". Translation by the author: the certificate of assistance at birth or the medical record, where containing personal data identifying the mother who has declared her wish not to be named pursuant to Article 30, paragraph 1, of Presidential Decree no. 396 of 3 November 2000, may be released in full copy to those with a legitimate interest, in compliance with the law, once one hundred years have elapsed from the document's creation.

who does not wish to be named is precluded "per un periodo ascrivibile all'intero arco della vita sia della madre che del figlio".[28]

At the legislative level, mention must also be made of Article 28, paragraph 7 of Law no. 184 of 4 May 1983, which expressly excludes the possibility for an adopted person to access information regarding his or her origins and the identity of biological parents in cases where the mother has exercised the right not to be declared in the birth certificate.[29]

Given the absence of a normative balance between the mother's right to remain anonymous and the adoptee's right to know their origins, the Constitutional Court, in its landmark judgment no. 278 of 2013, declared the unconstitutionality of the aforementioned provision, insofar as it failed to allow the judge to contact the mother and ascertain whether her wish to remain unnamed persisted.[30] In doing so, the Court highlighted both the unreasonableness of the irrevocability of the mother's declaration and the divergence between the Italian solution and the solution provided under French law, which allows the woman to revoke her previously expressed dissent and ensures – borrowing the ECHR[31] phrasing – "sufficient proportion between the competing interests".[32]

More than a decade after the decision of the Constitutional Court, the Italian legal system still lacks legislation governing the balancing of interests in the matter of anonymous childbirth. In some cases, this may result in an excessive sacrifice of the child's position: it is sufficient to recall, for instance, the importance, in the medical field, of prevention and of the knowledge of family medical history – something that is difficult to reconstruct in the absence of information about the biological parents. In the healthcare context, therefore, the choice of anonymous childbirth ensures the woman's safety and self-

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[28] G. TOSCANO, *Prime riflessioni sul parto anonimo nell'ordinamento giuridico italiano*, in *Actualidad Juridica Iberoamericana,* 17 bis, 2022, 743. Translation by the author: for a period encompassing the entire lifespan of both the mother and the child.

[29] "7. L'accesso alle informazioni non è consentito nei confronti della madre che abbia dichiarato alla nascita di non volere essere nominata ai sensi dell'articolo 30, comma 1, del decreto del Presidente della Repubblica 3 novembre 2000, n. 396". Translation by the author: access to information is not permitted with regard to the mother who, at the time of birth, declared her wish not to be named pursuant to Article 30, paragraph 1, of Presidential Decree no. 396 of 3 November 2000.

[30] The Court "dichiara l'illegittimità costituzionale dell'articolo 28, comma 7, della legge 4 maggio 1983, n. 184 (Diritto del minore ad una famiglia), come sostituito dall'art. 177, comma 2, del decreto legislativo 30 giugno 2003, n. 196 (Codice in materia di protezione dei dati personali), nella parte in cui non prevede – attraverso un procedimento, stabilito dalla legge, che assicuri la massima riservatezza – la possibilità per il giudice di interpellare la madre – che abbia dichiarato di non voler essere nominata ai sensi dell'art. 30, comma 1, del d.P.R. 3 novembre 2000, n. 396 (Regolamento per la revisione e la semplificazione dell'ordinamento dello stato civile, a norma dell'articolo 2, comma 12, della legge 15 maggio 1997, n. 127) – su richiesta del figlio, ai fini di una eventuale revoca di tale dichiarazione". Translation by the author: the Court declares the unconstitutionality of Article 28, paragraph 7, of Law no. 184 of 4 May 1983 (Right of the child to a family), as replaced by Article 177, paragraph 2, of Legislative Decree no. 196 of 30 June 2003 (Personal Data Protection Code), insofar as it does not provide – through a procedure established by law, ensuring the utmost confidentiality – for the possibility of the judge contacting the mother, who has declared her wish not to be named pursuant to Article 30, paragraph 1, of Presidential Decree no. 396 of 3 November 2000 (Regulation on the revision and simplification of civil status law, under Article 2, paragraph 12, of Law no. 127 of 15 May 1997), upon request of the child, for the purposes of a possible revocation of such declaration.

[31] European Court of Human Rights.

[32] *Case of Odièvre v. France* (Application no. 42326/98), ECHR, 13 February 2003.

determination; at the same time, however, it may give rise to significant diagnostic difficulties, which call for greater attention from the legislature in future regulatory interventions on the subject.

2. Focus: The Right to Oncological Oblivion

Although the right to be ‘medically forgotten’ may assume different forms within the medical field and, even within the same sphere of information concerning previous illnesses, may refer to a variety of pathological situations, attention should now be focused on a specific right – already mentioned in the course of this paper – that constitutes the cornerstone of the discipline of oblivion in the healthcare sector: the right to oncological oblivion.

To do so, we must begin with a definition of the subjective legal situation under consideration: it consists of a sort of “*privacy* storica dei dati sanitari, in cui il diritto all’identità personale (inteso come situazione medica attuale) rappresenta il punto di riferimento fondamentale, da intendersi come la pretesa ad essere rappresentati secondo lo stato di salute attuale”.[33] Also in the medical field, therefore, the key concepts around which the notion of oblivion revolves are privacy—linked to confidentiality and respect for human dignity-and contemporaneity: health data,[34] in fact, as they reveal information about the individual’s state of health, can only be regarded as an expression of his or her personal identity; at the same time, the actuality of one’s health condition inevitably recalls the element of time, that variable which profoundly affects the balancing of conflicting interests in matters concerning oblivion. The right to confidentiality of personal data, to which the right to be forgotten belongs, also encompasses the protection of individual choices regarding health: Those who are ill must not only be able to decide freely to whom, how, and when to disclose the medical information concerning them, but they must also be placed in the position of not being compelled to share such information with potential employers, insurers, or judicial authorities once they have recovered and a sufficient period of time[35] has elapsed – on the basis of medical-scientific studies – to presume that the disease will not recur. It may be argued that the erasure of the memory of the illness constitutes the final step in the recovery process: from this perspective, the right to oncological oblivion is not merely an instrument enabling the normal reintegration of the recovered patient into social life, but also a means of fully restoring the individual’s health. The exclusion and discrimination that survivors risk facing may, indeed, have a serious and detrimental impact on their psychological and mental health, which deserves to be safeguarded no less than their physical health.

In order to fight cancer not only as a *disease* but also as a *stigma*, in recent years a significant debate has arisen at the European level on the right to be ‘medically’ forgotten. From this perspective, of extraordi-

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[33] M. Mezzanotte, *op. cit.*, 487. Translation by the author: privacy in relation to past health data, in which the right to personal identity (understood as one’s current medical condition) constitutes the fundamental point of reference, to be conceived as the claim to be represented in accordance with one’s current state of health.

[34] The GDPR defines “data concerning health» as «personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status” (Article 4(1)(15) of Regulation (EU) 2016/679).

[35] Approximately, this is a period ranging from five to ten years.

nary importance has been the adoption by the European Parliament of a resolution[36] calling on the Member States to introduce regulation on the oncological oblivion by 2025, as well as the publication of a Communication by the European Commission[37] highlighting the need to improve the quality of life of cancer patients and survivors.

2.1. The Regulation of the Right to Be Forgotten in Italy: Law No. 193/2023

In response to the appeals emanating from European institutions, Italy[38] has likewise enacted legislation aimed at "the prevention of discrimination and the safeguarding of the rights of individuals who have been affected by oncological diseases". Specifically, Law No. 193 of 7 December 2023, which came into force on 2 January 2024, "establishes provisions relating to equal treatment, non-discrimination, and the guarantee of the right to be forgotten for persons who have recovered from oncological conditions".

The legislation, under Article 1, first provides a strictly legal definition of the right at issue, which is understood as the right of survivors "di non fornire informazioni né subire indagini in merito alla propria pregressa condizione patologica".[39]

The statutory provisions then proceed to specify the circumstances in which such right applies. Article 2, entitled 'Accesso ai servizi bancari, finanziari, di investimento e assicurativi' (Access to banking, financial, investment, and insurance services), prohibits, for the purpose of entering into or renewing contracts in these sectors, the requirement that the contracting party disclose information regarding oncological diseases, provided that ten years have elapsed since recovery and no recurrence has occurred. Where the illness manifested prior to the age of twenty-one, this period is halved – to five years from the date of recovery.

Article 3 amends Law No. 184 of 4 May 1983 concerning adoption, excluding oncological diseases from the scope of health assessments of prospective adoptive parents – always subject to the temporal conditions aforementioned. Similarly, Article 4 contains analogous provisions relating to access to 'competitive examinations and selection procedures, employment, and vocational training'.

Article 5, finally, containing 'Disposizioni transitorie e finali' (Transitional and final provisions), entrusts the Data Protection Authority with oversight of the implementation of the law in question. Furthermore, paragraph two anticipates the definition – by decree of the Ministry of Health[40] – of the list of oncological diseases for which shorter periods than those provided in the preceding articles may apply. This as-

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[36] European Parliament resolution of 16 February 2022 on strengthening Europe in the fight against cancer — towards a comprehensive and coordinated strategy (2020/2267(INI)): the European Parliament "requests that by 2025, at the latest, all Member States should guarantee the right to be forgotten to all European patients 10 years after the end of their treatment, and up to five years after the end of treatment for patients whose diagnosis was made before the age of 18".

[37] Communication from the commission to the European Parliament and the Council Europe's Beating Cancer Plan (COM/2021/44 final) of 3 February 2021: "Europe's Beating Cancer Plan aims not only to ensure that cancer patients survive their illness, but that they live long, fulfilling lives, free from discrimination and unfair obstacles".

[38] Prior to the Resolution referred to in the preceding paragraph, several European countries had already enacted legislation in this area: France, Belgium, Luxembourg, and the Netherlands. Today, in addition to Italy, Portugal, Romania, and Spain have also adopted laws on the subject.

[39] Translation by the author: not to disclose information or to undergo inquiries concerning their prior pathological condition.

[40] To this end, Decree No. 22 of 22 March 2024 was adopted, published in the *Official Gazette* on 24 April 2024.

pect should not be underestimated, as it demonstrates the foresight of the legislator, who is aware of the differences among various types of cancer – not all of which are comparable in terms of prognosis and hospitalization timelines. Accordingly, Article 5, paragraph 2 of Law No. 193/2023 "sembra muovere proprio dall'esigenza di rendere il dettato normativo più rispondente alla complessità della realtà e dei costanti sviluppi delle cognizioni medico-scientifiche".[41]

The introduction of *ad hoc* legislation on oncological oblivion within the Italian legal system undoubtedly represents a significant achievement for *cancer survivors*; yet, within the broader category of former patients, those who have recovered from cancer are not the only ones at risk of having their rehabilitation process compromised due to prejudice and consequent discrimination suffered in the workplace and society at large. Indeed, other illnesses may give rise to similar reintegration difficulties within the community. The risk, with legislation that is excessively 'sectoral', lies in bridging the gap between the 'healthy' and the 'recovered' while simultaneously creating new distinctions in treatment among different categories of recovered individuals.[42]

From this perspective, the hope is to guarantee the broadest possible scope of protection for *all* survivors, regardless of the type of illness overcome – perhaps this objective will be achieved through the addition of further provisions concerning other diseases, or, at the case law level, through an expansive interpretation of the provisions introduced by the legislator.

2.2. A Comparative Overview: Foreign Legislation on the Right to Oblivion

Even before the publication of the European Parliament Resolution, issued on 16 February 2022 with the aim of strengthening Europe in the fight against cancer, citizens of some European countries enjoyed the right to be forgotten in relation to cancer. Today, however, European legislations on the subject are largely aligned, also in light of the intervention of the European Union, which has urged those Member States still lacking specific regulations in this area to take action in order to ensure effective protection for cancer survivors.

A first comparative reference can only be made with regard to France, whose legislation on the right to be forgotten is now almost ten years old: the first French law on the subject dates back to 28 January 2016 and is (still today) contained in Article L. 1141-5 of the Code de la santé publique.[43] Under this article, people who have suffered from cancer cannot be discriminated against in the insurance field, and information relating to their clinical situation can no longer be collected after a period of ten years from the end date of the treatment protocol – a period that is halved if the disease arose before the age of 18. The first part of this provision is still valid and in force today; nevertheless, changes have recently been made with regard to the time interval between the end of treatment and the realisation of the right to be forgotten. Starting from 2 March 2022, indeed, the period after which information on the disease becomes irrelevant for insurance purposes has been reduced to five years in all cases (regard-

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[41] B. Perego, *Dati sanitari e profili discriminatori: il caso dei "cancer survivors" alla luce della legge n. 193/2023 in materia di oblio oncologico*, in *Osservatorio costituzionale*, 2, 2024, 88–89. Translation by the author: appears to stem precisely from the need to render the normative framework more responsive to the complexity of reality and to the ongoing developments in medical-scientific knowledge.

[42] On this point, see the reflections of M. Faccioli, *op. cit.*, 91.

[43] For regulatory reference, please see https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000045272010 (last viewed: 30/08/2025).

less of the age at which the person fell ill). This is the first point of difference between French and Italian legislation, to which is added the possibility, under French law, of extending the provisions on cancer oblivion to diseases other than cancer – in particular, chronic diseases – provided that science demonstrates the ability of treatments to significantly and lastingly limit the effects of the diseases at issue. Finally, the difference in the fields of application of the law should not be underestimated: no reference is made in the legislation examined to sectors other than insurance.

The EU resolution was preceded by legislation in the Netherlands, which regulated the issue of cancer oblivion with the decree of 2 November 2020 on insurance assessments of former cancer patients.[44] The title of the decree makes it clear that, in this case too, the scope of the legislation is limited to the insurance sector (as in France). The provision in Article 2 of the decree is interesting, according to which 'the question of whether a candidate has been diagnosed with cancer in the past constitutes a disproportionate violation of privacy': the explicit reference to the concept of privacy emphasises the important link between the right to be forgotten (including in the healthcare sector) and the right to confidentiality. The conditions that prevent such a disproportionate intrusion into a person's most intimate sphere are now clear: the full recovery of the individual and the passage of a reasonable period of time since the end of the illness, which in the Netherlands is ten years (or five if the subject was under 21 at the time of diagnosis) – just as in Italy.

These regulations have undoubtedly provided the basis for further reflection on the oncological oblivion at the European level,[45] contributing to the aforementioned Resolution of the European Parliament, which also prompted a few Member States to regulate this field.

After the European Resolution and before Italy, Romania also adopted the Law n. 200 of July 7, 2022[46] (to enact the Law on patients' rights n. 46/2003) to protect former oncological patients.

Once again, the right not to provide information or documents concerning one's oncological condition applies solely to the insurance sector. In this case, it is important to observe the timing: indeed, in this case, there is a middle ground between the timelines examined so far, with a seven-year limit within which it is possible to request oncological information (five years if the diagnosis occurred before the individual turned 18 years old).

Finally, the most recent European country to address the issue has been Spain, with Real Decreto-ley 5/2023 (of 28 June),[47] which, as part of a broader legislative reform, provides for the nullity of any clause or agreement excluding from the conclusion of a consumer contract those who have suffered from cancer,[48] as well as for the prohibition on requesting oncological information once five years have elapsed since the completion of medical treatment, provided that no relapse has occurred.

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[44] Please refer to the website https://zoek.officielebekendmakingen.nl/stb-2020-453.html (last viewed: 30/08/2025).

[45] Indeed, we mentioned here the laws of France (the firsts in Europe) and the Netherlands (with similarity to the Italian model from a temporal point of view). However other countries already had their own legislation on the right to be forgotten before the European Resolution (Belgium and Luxembourg). Moreover, today also Portugal has a law on the oncological oblivion. For further information, please refer to the literature on the topic, including: M. FACCIOLI, *op cit.*, 78 ss.; M. MEZZANOTTE, *op. cit.*, 488 ss.; B. PEREGO, *op. cit.*, 70 ss.

[46] Full text available at: https://legislatie.just.ro/Public/DetaliiDocumentAfis/257381 (last viewed: 30/08/2025).

[47] Full text available at: https://www.boe.es/eli/es/rdl/2023/06/28/5/con (last viewed: 30/08/2025).

[48] The same applies to people living with HIV (*Human Immunodeficiency Virus*)/AIDS (*Acquired Immunodeficiency Syndrome*).

In summary, the Member States' legislations on oncological oblivion seem very similar, all seeking the safeguard of the dignity of former oncological patients. These legislations also foresee the ban on collecting data on the former oncological patients' health conditions once complete recovery can be assumed, based on the assessments of the medical-scientific community.

A few differences, already mentioned in this comparative analysis, remain: first, it is clear that the Italian legislator sought to establish a high level of protection for former patients, not only through the prohibition on the collection and processing of data in insurance contracts. Indeed, the Law n. 193/2023 protects the person who has healed from cancer, even in the access to job positions and in the adoption process – unlike what happens in other countries.

An additional point of divergence among the legal systems under examination concerns, as anticipated, the temporal dimension. In Italy (as well as in the Netherlands), a period of ten years must elapse from the conclusion of therapy before the patient's medical data cease to be usable for the purposes identified by the relevant legislation. By contrast, it happens that in other European jurisdictions the timeframes are different. France and Spain provide, for example, a period of five years; Romania, on the other hand, has opted an intermediate solution (seven years). Based on these considerations, we can – and indeed *must* – highlight the risk of discrimination among former oncology patients within the European Union: depending on the Member State, the period during which an individual continues to be deemed 'not socially cured' varies significantly – being in some cases even double compared to others. This will exert a substantial impact on the opportunities to be reintegrated as a fully-fledged member of society and, as a consequence, will influence the individual's overall state of health.

According to the guidelines of the European Society for Medical Oncology (ESMO), after five years from the completion of treatment, the risk of relapse for former patients becomes equivalent to the general risk of the healthy population of developing the disease *ex novo.*[49] It would therefore be appropriate for the European Union to intervene in order to further harmonize legislations on the right to oncological oblivion, thereby giving normative effect to the indications emerging from the scientific community and, above all, in order to reduce the risk of discriminations.[50]

3. Concluding and Prospective Remarks

When personal identity is at stake, history belongs to the individual who has written it: in all cases where someone's experience does not bear public relevance, that person should be able to retain mastery over the information concerning he or her. This applies both with regard to the right to be forgotten in the strict sense, as everyone's right not to remain indefinitely exposed to potentially harmful in-

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[49] https://www.esmo.org/press-releases/the-right-to-be-forgotten-esmo-calls-on-eu-countries-to-ensure-equal-financial-rights-for-cancer-survivors (last viewed: 08/31/2025): "By five years, most cancers, if not all, have a risk of relapse which is considerably decreasing to a point where it likely becomes smaller than the risk of developing a new cancer, which is a risk shared by all healthy individuals".

[50] G. Scocca, F. Meunier, *Towards an EU legislation on the right to be forgotten to access to financial services for cancer survivors*, in *European Journal of Cancer*, 162, 2022, 136. "A Pan-European solution based on the implementation of the RTBF is feasible within current treaties and seems the best approach to tackle the issue. The EU Action would provide a common and harmonised regulatory framework among the Member States to avoid discrimination and ensure equality among EU citizens being cured of cancer".

formation, and in the broader sense, as the right not to suffer discrimination for each one's history (including medical history). What follows is a serious impairment of fundamental rights: as has been shown, the right to be forgotten is firmly rooted in the concepts of privacy, confidentiality, and human dignity. A failure to protect the right to 'forgetfulness' thus translates into a failure to protect the individual.

Applied to oncological oblivion, "la prassi, ormai vietata in Italia ma ancora ammessa in altri ordinamenti, di acquisire informazioni sulla salute e sulle condizioni cliniche pregresse a fini assicurativi, di accesso ai servizi bancari, nei concorsi pubblici e nelle procedure di adozione, dimostra come la storia clinica […] possa costituire un ostacolo al pieno esercizio dei diritti fondamentali".[51]

All this is confirmed by the testimonies of cancer survivors: due to their cancer history, it often proves difficult for those who have overcome the disease to achieve financial independence, with serious repercussions also on their mental health[52] and, consequently, on the healing process itself. It has become increasingly clear that the illness may significantly aggravate not only the clinical condition of patients and/or survivors, but also their overall quality of life: survivors are more likely to suffer from stress and depression,[53] a condition that is further exacerbated when their reintegration into society is hindered by entrenched prejudices regarding the disease and its consequences. Breaking the vicious cycle of disease–psychopathology–disease is therefore essential, by intervening in the quality of life of patients (and former patients) and by improving the system of support available to them – starting from legislative measures such as those examined in this study, aimed at eliminating discrimination against cancer survivors.

Whether it concerns intrusions into private life or discrimination stemming from medical history, human dignity must be respected and safeguarded in every domain. On the one hand, harmful news damaging the reputation of an individual, relating to past events for which no legitimate public interest any longer exists, may threaten his or her full social reintegration, once again imposing a stigmatizing label on that person. On the other hand, reintegration into the community also proves difficult for those who, having already endured serious illnesses, must still cope, after recovery, with prejudices about their health status and life expectancy. Regardless of the interpretation attributed to the right to be forgotten, it is undeniable that today it represents a primary safeguard, intended to meet the need to protect privacy and human dignity – across the social, occupational, emotional, financial, and familial domains.

Oncological oblivion, particularly, constitutes an important victory in the fight against cancer, as it enables those who have already won the medical battle to avoid subsequently experiencing a form of 'social death' or even a further deterioration of their clinical condition. It is all too often overlooked that health

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[51] G. Sdanganelli, *Il diritto all'oblio oncologico e i limiti all'uso dei dati sanitari nell'assicurazione digitale*, in *Federalismi.it*, 12, 2025, 247. Translation by the Author: the practice, now prohibited in Italy but still permitted in other jurisdictions, of acquiring information regarding health and past clinical conditions for insurance purposes, access to banking services, public recruitment, and adoption procedures, demonstrates how each one's clinical history […] may constitute an obstacle to the full exercise of fundamental rights.

[52] F. Meunier, *Protecting cancer survivors from financial discrimination throughout the EU: A cross-European perspective*, in *European Journal of Cancer*, 209, 2024.

[53] F. Massoni, P. Ricci, M. Crusco, E. Onofri, L. Petrone, C. Sacco, L. Ricci, M. Ricciardi, T. Archer, S. Ricci, *Psychopatology and neoplastic disease: medico-social and medico-legal considerations*, in *Clinica Terapeutica*, 168 (1), 2017, 48-53.

is not merely physical but also mental:[54] preventing a relapse must not rely solely on appropriate medical check-ups, but also on the protection of mental health – a topic that, unfortunately, still suffers from inadequate awareness. Only the integration of physical, social, and mental well-being can ensure an adequate level of health for the individual, who – if deprived of one or more elements of this triad – risks seeing his or her ability to participate actively in society, as well as the possibility of leading a healthy life, seriously compromised.

The taken path – with the pressures coming from the EU environment for Member States to adopt legislation on the right to be forgotten – is definitely the right one. Anyway, when it comes to law there's always space for improvement, where improvement is taken to relate to the regulatory harmonization, stemming from a holistic and multifactorial approach, which would allow *real equality* not only among 'healed' and 'healthy' ones but also among the healed themselves across different legal systems.

Therefore, the next step could be the introduction of a real European legislation, in order to sustain, coordinate or complete the action of Member States. Having already determined – due to the 2022 Resolution – a clear improvement of former cancer patients' life conditions, it is to be hoped the prevision of a tighter protective framework of protection which harmonizes the subject matter at the European level (across different points of view: the temporal requirements for the application of the legislation, its fields of application, the diseases concerned, etc.).

Introducing the right to be forgotten, we began with ancient Rome – where the erasure of memories related to a person was a punishment (*damnatio memoriae*) – took a comprehensive journey, and reached the modern era, in which, sometimes, the memories themselves are a sentence. When considering oblivion in its classical meaning, the punishment is not forgetting but rather its opposite: the eternal collective memory of what happened, which doesn't allow the individual to move forward. Similarly, if we stare at the oblivion in what has here been defined as a 'Fourth Interpretation' (the right of being 'medically' forgotten), the punishment is the clinical history of the former diseased, which marginalizes him from society on the foundation, in this case, of a fatality (the disease) and not due to any fault.

It is therefore necessary to persevere along the path that is being followed, namely to continue to adapt the law to the new concept of oblivion, in order to avoid inequalities and discriminations – with full respect for human dignity, in order to ensure complete protection both during and after the disease. The protection of human dignity in the medical field comes from the combined provisions of Articles 2 and 32 of the Constitution,[55] which are mentioned at the beginning of Law No. 193 of December 7, 2023,

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[54] T. Archer, S. Ricci, F. Massoni, L. Ricci, M. Rapp-Ricciardi, *Cognitive Benefits of Exercise Intervention*, in *Clinica Terapeutica*, 167 (6), 2016, 180-85; on this point, see p. 182 "Health has been described variously to conform with a state of physical, mental and social well-being through which individuals apply their own abilities, cope with the normal stresses of life, live and work productively, fruitfully and constructively, with adequate community contribution".

[55] Article 2 states: "La Repubblica riconosce e garantisce i diritti inviolabili dell'uomo, sia come singolo sia nelle formazioni sociali ove si svolge la sua personalità, e richiede l'adempimento dei doveri inderogabili di solidarietà politica, economica e sociale". Translation by the author: the Republic recognises and guarantees the inviolable rights of the individual, both as an individual and in the social groups where human personality is expressed and requires the fulfilment of the mandatory duties of political, economic and social solidarity. Article 32 states: "La Repubblica tutela la salute come fondamentale diritto dell'individuo e interesse della collettività, e garantisce cure gratuite agli indigenti. Nessuno può essere obbligato a un determinato trattamento sanitario se non per disposizione di legge. La legge non può in nessun caso violare i limiti imposti dal rispetto della persona umana". Transla-

adopted in order to prevent discriminations and protect the rights of people who have been affected by oncological diseases. Similarly, the aforementioned articles also form the cornerstone of another very important normative act of healthcare legislation: Law No. 219 of December 22, 2017,[56] promulgated with the aim of protecting the right to life, health, dignity, and self-determination of the individual. We know, in fact, that the defense of human dignity requires respect for the privacy of the individual, which translates into the patient's *freedom of choice* to share informations about his health with relatives and family members (information that cannot be disclosed without his or her *consent*, in accordance with the relationship of trust established with the doctor). Conversely, in the phase following recovery, respect for individual confidentiality translates into the inadmissibility of requests for informations relating to the contractor's medical history, if the latter, by virtue of the time elapsed, is no longer considered relevant. Once again, thereby, human dignity is confirmed as the cornerstone of medical considerations and the essential point of balance in the relationship between science and law "in un contesto dove l'incentivazione della ricerca e dello sviluppo scientifico e tecnologico deve essere direttamente proporzionale alla protezione dell'individuo".[57]

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tion by the author: The Republic protects health as a fundamental right of the individual and in the interest of the community and guarantees free medical care to the indigent. No one may be obliged to undergo any given health treatment except under the provisions of the law. The law may not under any circumstances violate the limits imposed by respect for the human person.

[56] Provisions for informed consent and advance directives.

[57] G. SCARCHILLO, *La responsabilità medica: risarcimento o indennizzo? Riflessioni, evoluzione e prospettive di diritto comparato*, in *Responsabilità civile e previdenza*, 5, 2017, 1508. Translation by the author: in a context where the promotion of research and scientific and technological development must be directly proportional to the protection of the individual.