



Justice and Consumers

1st webinar on the use of artificial intelligence in the justice field

Anonymisation and pseudonymisation of judicial decisions

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National solutions on anonymisation of judicial decisions: Italy

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§ 1

Privacy *vs* Information:

a real conflict?



- **Data protection / Privacy**
- Article 6 ECHR
- Articles 7 and 8 of the Charter of Fundamental Rights of the European Union
- Article 2 of the Italian Constitution



- **Publicity of the trial / knowledge of the outcomes / Judgment**
- Article 6 ECHR
- Article 47 Charter of Fundamental Rights of the European Union
- Articles 101 and 111 of the Italian Constitution



- **Freedom of information**
- Art. 10 ECHR
- Art. 11 of the Charter of Fundamental Rights of the European Union
- Articles 2 and 21 of the Italian Constitution

- **Judicial decisions** contain a lot of **personal data** collected for purposes other than publication and are subject to data protection rules.
- Full disclosure of the details of the reasons for coming before a judicial authority **could cause damages** to the persons involved.
- The judicial function is not a public service like any other: the **right to know how the power conferred on judges is exercised** in practice in the interest of citizens.
- A **full knowledge of case-law** developments promotes **predictability** of decisions and **reduces disputes**

Not a *single* judicial decision but *online archives*, potentially accessible to everyone (*open access and open data*)

NOTA 'A'

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REPUBBLICA ITALIANA
IN NOME DEL POPOLO ITALIANO
LA CORTE SUPREMA DI CASSAZIONE
SEZIONE LAVORO

Composta dagli Ill.mi Sigg.ri Magistrati:

Dott. GIOVANNI AMOROSO - Presidente - Us. 12/17/2016
Dott. GIUSEPPE BRONINI - Rel. Consigliere - PO
Dott. FEDERICO BALESTRIERI - Consigliere - PO
Dott. GIUSEPPINA LEO - Consigliere - PO
Dott. FRANCESCA SPINA - Consigliere - PO

ha pronunciato la seguente

SENTENZA

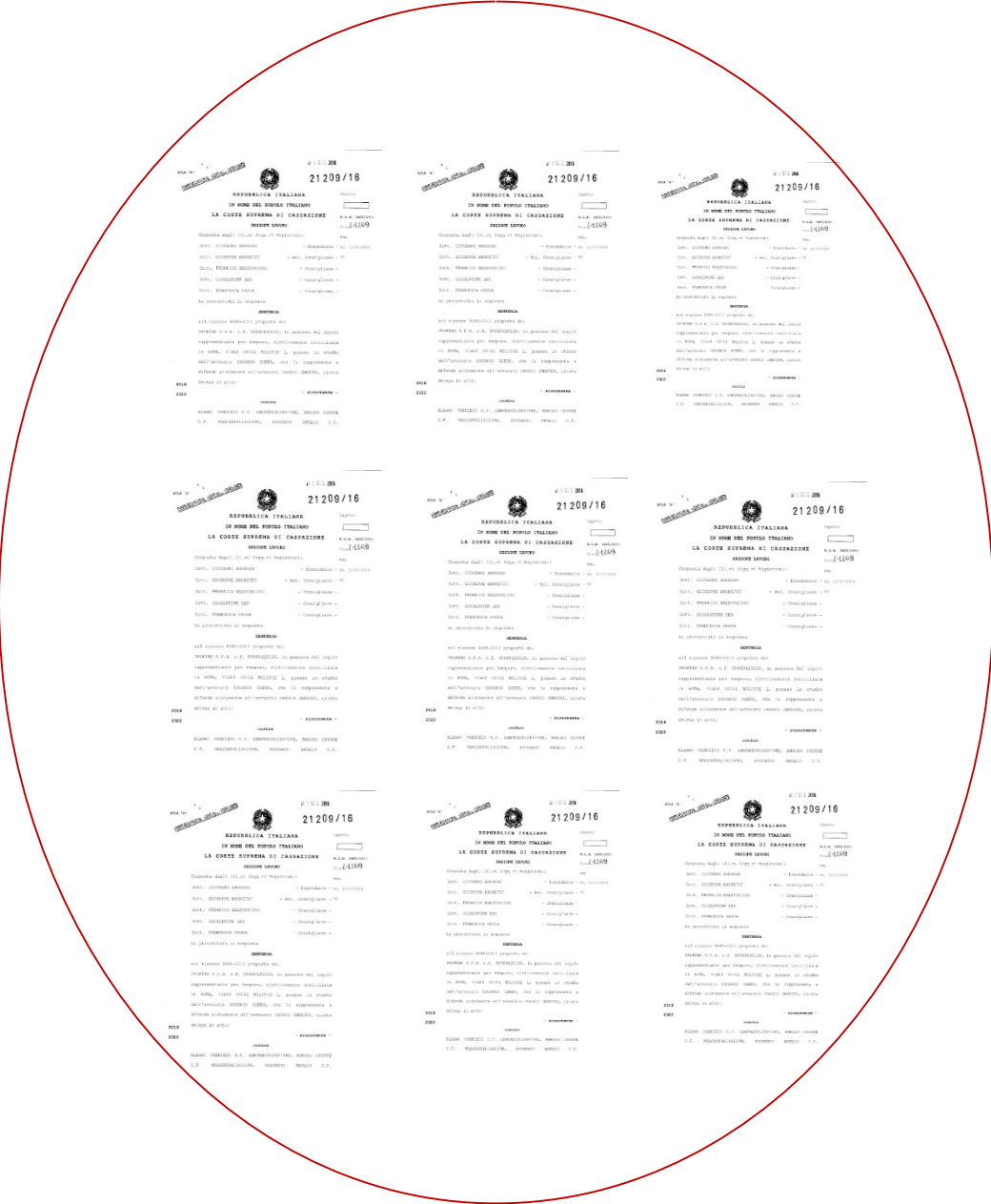
sul ricorso 9085-2011 proposto da:

DALMINE S.P.A. c.f. 00680620150, in persona del legale rappresentante pro tempore, elettivamente domiciliata in ROMA, VIALE DELLE MILIZIE 1, presso lo studio dell'avvocato EDOARDO GHERRA, che la rappresenta e difende unitamente all'avvocato FRANCO JANNONI, giusta delega in atti;

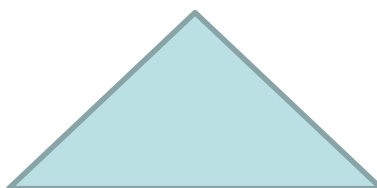
2016
2322

contro

ALBANI PADRIZIO C.F. LBNFR266G26A794E, AMADRO CESARE C.F. MNDVSR5815G1590, AVDGAURI ANGELO C.F.



The correct *balance* between the values



§ 2

The Italian framework

A *complex* framework

(the rules on the protection of personal data)

European law

- Regulation (EU) 2016/679 (General Data Protection Regulation)
- Directive (EU) 2016/680

National law

- Legislative Decree 30 June 2003, no. 196 (Data Protection Code), rewritten by Legislative Decree No. 101 of 10 August 2018 to allow harmonisation with European legislation
- Legislative Decree No. 51 of 18 May 2018, implementing Directive (EU) 2016/680

- In the Italian system, the protection of personal data in the judicial system does not concern the **acts of the trial**, which must **always be complete** with the identification data of the parties, but the disclosure of the decisions once they have been delivered at the registry.
- The system of **disclosure of judicial decisions** is regulated by Articles 51 and 52 of Legislative Decree No 196 of 2003.

- The principle of *full* access to the Court decisions (Article 51, paragraph 2):
- “*judgments and other decisions of judicial authorities of any order and degree submitted to the court registry are also made accessible through the information system and the institutional website of the same authority on the Internet*”, observing the precautions provided by the Article 52, which contains provisions relating to the identification data of the interested parties.

- Article 52 of Legislative Decree no. 196 of 2003 provides that the omission of personal data may be ordered by the **authority pronouncing the judgment**:
- a) the **request of the interested party, for legitimate reasons**, with a specific annotation (par. 1),
- b) **ex officio**, by the same authority, in order **to protect the rights or dignity of the persons concerned** (par. 2).
- Also, in the absence of a decree of the authority which adopted the decision, both in the **cases provided for by Article 734 bis of the Criminal Code** relating to persons offended by acts of **sexual violence**, and whenever it is possible to discover, even indirectly, the **identity of minors**, or of the parties in proceedings relating to **family relations** and **status of persons**.
- To such cases must be added personal data revealing the state of **health** of the parties or third parties (Art. 9 GDPR).

- **Outside** of the hypotheses of anonymisation (Art. 52, par. 7):
- “*the **diffusion** in any form of the content, also integral, of judgements and other jurisdictional decisions is **admitted**”.*
- - Articles 51 and 52, according to the choice of the Italian legislator, constitute the **legal basis** for the **legitimacy of the data processing** (Art. 6(2) and Art. 23(1) GDPR, relating to the safeguarding of the independence of the judiciary and judicial proceedings, Art. 23(1)(f)).
- - If Art. 51 and 52 constitute the legal basis for the legitimacy of the processing, pursuant to Art. 45-bis of the Privacy Code, it means that, **except in cases where anonymisation is ordered or data must be obscured** in the cases provided for by the law, the **full disclosure** of judicial decisions is always **allowed**.

- “Legitimate reasons” for which the party may ask for obscuration:
- the request must be made by filing an **application** at the registry, before the judicial proceeding is concluded.
- In this case, the assessment is left to the **discretion** of the **judge**.
- This allows a **concrete balancing** between the right to information and the protection of privacy claimed, allowing, the finding of an appropriate reason.

- What is the extent of *ex officio* anonymisation in order to protect the rights or dignity of the persons concerned (para. 2)?
- - (a) discretionary case by case evaluation
- - (b) reference to other legal provisions protecting the dignity of the person (reduction of the judge's appreciation)

- The processing of data relating to judicial functions may also concern **sensible data** (racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, as well as genetic data, biometric data intended to uniquely identify a natural person, data relating to a person's **health or sex life or sexual orientation**, Art. 9 GDPR).
- The same is to be said under Art. 10 of the GDPR (personal data relating to **criminal convictions and offences or related security measures** that must only take place under the supervision of a public authority or if the processing is authorized by Union or Member State law providing appropriate safeguards for the rights and freedoms of the data subjects).
- In the presence of such data, considering the **relevance** of the **interests** involved, the legal system would seem to bind or reduce the judge's power of omission *ex officio*, excluding any specific discretionary assessment.

§ 3

*The **experience** of anonymisation
in the Italian Superior Courts*

§ 3.1

Constitutional Court



- The Constitutional Court inaugurated a **very careful case-law** on the **protection of privacy** about 20 years ago.
- The Court has published a **specific study** on the topic (available on the [*web*](#)) but there is **no written self-regulation** in this field.
- The processing of personal data is regulated by **common practices**.
- The Court protects privacy by **anonymising the names** of the natural persons involved.

- Unlike the ordinary and administrative Courts, where the activity is carried out *ex post*, once the decision adopted is disseminated, it is the **Constitutional decision** itself which is “born” with the omission of the names of the parties.
- In 2019, obscured decisions represented almost 52% of the decisions, in 2020 58%.
- **All decisions** of the Court are **freely available** on the [web](#)

§ 3.2

Court of Cassation



- A **Decree** of the First President of the Court of Cassation **no. 178 of 2016** is addressed to the protection of personal data in the reproduction of judicial decisions for legal information.
- The aim is to ensure the **widest information** regarding the **decisions** of the Court of Cassation **in compliance** with the **personal data protection**, in accordance with the Guidelines adopted by Italian Data Protection Authority in compliance with art. 52 of the Privacy Code.

- The **central registers** (civil and criminal) provide for the **mention** of proceedings in which a **request** for obscuration has been made **or** in which is **mandatory**.
- After this first filter, the **judges** in charge of the **preliminary examination** of the appeals must **check** whether the proceedings for which anonymity is mandatory or for which the conditions for obscuration may be met have been duly indicated, otherwise they will make an entry themselves.
- In cases where anonymity is compulsory or where the request is granted, the **Chamber** will note on the **hearing record** that the decision must be obscured before it can be published on Internet.

- The **two** main **archives of case-law** of the Court of Cassation by the Electronic Documentation Centre (EDC):
- [ItalggiureWeb](#) - access restricted to a defined number of users (Judges and Prosecutors, Public administration, Lawyers, Universities, Libraries, with reserved access or by subscription) with different levels of content depending on the type of user.
- [SentenzeWeb](#) - freely accessible on Internet, limited to decisions of the last five years and not available with Internet search engines.

§ 3.3

Council of State



- The **Council of State** has adopted several **documents** to regulate the anonymisation of court decisions and court records.
- **Opinion** of the Study Office of 8 March 2017 on privacy compliance and publication of judgments online;
- **Guidelines** for the pseudo-anonymisation of hearing roles, 2019;
- **Act of the S.G.** no. 12743 of 4 September 2019, containing instructions on access to Court files and electronically processed data, as well as on anonymisation.

- In the cases of Article 52 of the Legislative Decree No. 196 of 2003, the **College or the President**, in monocratic session, **orders the obscuration** either **upon request of a party**, evaluating the legitimacy of the reasons, **or ex officio**, when it is considered functional to the protection of the rights and dignity of the interested parties, or again in the case of compulsory obscuration.
- Anonymisation during the drafting of the decision is ordered by the **rapporteur** by a special annotation on the decision itself, which precludes the disclosure of identification data during publication.

- The decision is unchanged, but the inclusion of the formula implies an **obligation for the registries** to proceed with the corresponding obscuration during publication on the website or when copies are released.
- The types of proceedings before the administrative courts for which the need for data protection arises are different and occur in the majority of cases.
- **All decisions** of the Council of State (as well as those of the Regional Administrative Courts and of the Council of Justice for the Sicilian Region) are published on the [institutional website](#);
- **freely accessible** to the public (Article 51 Legislative Decree 196 of 2003 and Article 56(2) of the Digital Administration Code).

§ 3.4

Italian Court of Auditors



- The **Court of Auditors** is the constitutional body that performs control functions, in order to ensure the proper management of public funds, and judicial functions in public accounting matters.
- The Secretary General of the Court of Auditors has adopted a **note** concerning the anonymisation of judgments in the database on internet.
- Anonymisation mainly concerns judgments on **pensions** and on **financial liability**.

- **Pension matters:** the note provides, as a **general precaution**, for the **omission** from all judgments published on the internet of the personal data of the natural persons involved (name, surname, tax code, place and date of birth, domicile, etc.).
- **Accounting matters:** considering the interest of the community to know the cases of financial damage and the right to request for legitimate reasons and possibly obtain the omission of their identification data under Article 52, the **note does not provide for the need to obscure the personal data** of the parties in all judgments published on [Internet](#).

§ 4

Outlook of anonymisation



- Minimising references to individuals involved in decisions
- Question of **drafting** techniques
- **Reducing** the impact of personal data in individual judgments to simplifying obscuration and facilitating online publication of decisions
- Adopting drafting techniques that **exclude** the need to include **more than strictly necessary data** of the parties in the reasons.

- Pseudo-anonymisation solutions using artificial intelligence
- Projects are being tested by both the Court of Cassation and the Council of State.
- The CED of the Court of Cassation is an active part of a research project with the Ministry of Justice and the University of Campania aimed to develop software based on machine learning techniques to support the activity of anonymisation of data relating to civil and criminal judgments.
- The work started in 2019 with the definition of the categories (parties, addresses, third parties, witnesses, tax codes and other identifiers), which can potentially be subject to anonymisation/pseudonymisation and which will be searched in the texts.

- The aim is to create a **proof of concept** for the application of these techniques to exemplary cases;
- a **flexible system** allowing these categories to be identified for the time being, leaving to a later stage the **legal decision** whether or not to proceed with anonymisation and in which form.
- In a **second phase**, the Conference of Italian University Rectors will support the specification of requirements and the design of an innovative software system for anonymisation based on experimentation and experience.

Thanks for your attention!