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***DIGITAL SOCIETY AND HEALTH DISCRIMINATION. AN OVERVIEW ON THE ITALIAN
ONCOLOGICAL OBLIVION LAW***

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1. Annually, 400,000 individuals in Italy are diagnosed with cancer, of whom more than half demonstrate a positive recovery and can resume their lives in full. Advancements in medicine and significant breakthroughs in scientific research have frequently resulted in complete clinical healing and the potential for full recovery¹.

Nevertheless, the pathology marks the existence of survivors indefinitely². Cancer survivors encounter barriers when attempting to take out a mortgage, to purchase insurance coverage, to access to selective employment procedures or pursue adoption. Due to previous medical history, they are discriminated against in access to market goods and services as well as the social environments where the individual's personality takes place³.

So, e.g. individuals who have been diagnosed with cancer are often confronted with numerous challenges even regarding the basic need to take out a mortgage to purchase a property house⁴. The compromised medical history has a detrimental effect on the risk assessment that forms the basis of the activities of banks and credit institutions. Indeed, within the paradigm of market efficiency, they are often regarded as "high-risk" and consequently excluded from financial circuits⁵.

Furthermore, discriminatory exclusions occur outside the marketplace. As is the case when the right to parental status of those who decide to adopt a child is prejudiced by information about their previous state of health that adversely affects the assessment of their suitability to care for the child⁶.

Against these unfair and unacceptable practices, oncological voluntary associations have intervened on several occasions, denouncing the significant phenomena of "financial toxicity"⁷ affecting them. Recently, they promoted the "*Io non sono il mio tumore*" campaign in Italy, which is an important

¹ Data from Italian cancer registries not only reveal a steady increase in the number of people living after a cancer diagnosis, but also demonstrate that half of those who develop cancer in 2024 are expected to recover, with the same life expectancy as those who have not developed the disease. For more detailed information on recovery numbers cf. Aiom et al. (eds.), 2024, p. 7

² Who had suffered by cancer keep being identified by it, so ending up "*paying twice*" for the disease, once in terms of health and once in social and legal terms: in this perspective Lawler and Meunier, 2022, p. 1 observe that "*those living beyond cancer should not have to shoulder a previous diagnosis as an ongoing financial burden*"; Faccioli, 2023, p. 77; Borgia, 2023, p. 893

³ "*While increasing numbers of patients are surviving their cancer, their efforts to return to normal life are being hampered by a particularly unjust form of financial discrimination*": Lawler, Scocca and Meunier, 2024, p. 1123; Surbone et al., 2013, p. 2468. The aforementioned financial exclusion's repercussions are considerable and "*adversely impact the lives of cancer survivors, compromising their post-cancer live*": Dumas et al., 2017, p. 431. Especially in the case of childhood cancer "*the long-term consequences of illness on the socio-economic hardships of cancer survivors and their families are heavier*", as demonstrated by studies of Hendriks et al., 2021, p. 509.

⁴ Particularly, the reference is to the increasingly widespread phenomenon of "*tie-in*" between loan and insurance, analyzed in its economic and social effects by Francesca, 2020, p. 236, who warns about new discrimination's risks emerging in the face of today's safety and credit access strategy. In fact, in the contemporary welfare financialization's era, the market operators' activity has been observed to extend beyond the strictly economic and financial sphere, encompassing the effective enjoyment of social rights: Mignone, 2021, p. 569 and Nigro, 2023, p. 299.

⁵ "*Risk assessment is the cornerstone of the business model of private health and life insurance*". It ensures "*risk equalization within the relevant community of insured persons. Furthermore, in private insurance there is no obligation to contract*". In fact, "*insurance companies reinsure their risks and, therefore, must meet reassurance guidelines*": European Commission, 2022, p. 26.

⁶ The phenomenon of contractual discrimination related to previous cancer in the employment sector and on adoption in the Italian doctrine is respectively explored by Ferresi, 2024, p. 1125 and Renda, 2024, 1085.

⁷ A new form of toxicity that consists of "*negative and often very serious economic impact that cancer has on the financial lives of patients, with high risks of debt and bankruptcy*": Khera, 2014, p. 3337; Souza et al., 2014, p. 3245.

intervention in formalizing the protection of cancer survivors' rights. It was the aforementioned campaign, which involved the collection of signatures and the request of cancer associations, that initiated the long and tortuous legislative process which concluded with the approval of Law No. 193 of 7 December 2023, which introduced the so-called “oncological oblivion right” into Italian legal system⁸.

2. The right to oncological oblivion⁹ entitles people who have been cured of cancer for more than 10 years – or five years if they were under 21 when they were diagnosed – to not provide information or undergo investigations regarding their previous cancer when accessing financial services, employment selection procedures or adoption¹⁰.

The broad scope of application makes Italian law one of the most advanced in this area, in contrast to other European country that only grant protection in access to financial services¹¹.

According to the law, market operators (banks, financial intermediaries, credit institutions and insurance companies) are prohibited during the preparatory work for the conclusion or renewal of financial contracts from requesting information about the health status of contractors who have completed active treatment for cancer without recurrence. Likewise, such information must not be used under for decision-making in any circumstances, even if the operator already has or has acquired it from sources other than the former patient¹².

In addition to the aforementioned proscription, it is also forbidden to request medical examinations and health checks¹³. This is a substantial deviation from the regulatory framework that governs the operations of banking institutions and insurance companies; it is known that these entities typically accord significant importance to information pertaining to the financial soundness of the contracting party, as it is regarded as one of the so-called privileged risk factors¹⁴.

⁸ A detailed examination of the Italian legislation is conducted by Candido, 2024, p. 1146 and Campagna, 2024, p. 1167; specifically related to access in financial services see Ferrari, 2024, p. 31 and Paladini, 2024, p. 1063

⁹ Aside from its formal appellation, the right to oncological oblivion is distinct from the traditional right to be forgotten in both structure and function. To elaborate further, the latter is an important legal concept in contemporary data protection laws. It allows individuals to request the removal of personal data that could harm them. In a nutshell, “*the RTBF is a component of the right to privacy protected by International Human Rights Treaties, a right whose enjoyment must be guaranteed to everyone without discrimination. The right to privacy is closely linked to the right to protection of personal data, which is based on an individual’s interest in limiting access to, modifying or deleting information that affects his or her individual or social existence*”: Meunier, Scocca, Tulkens, 2025, p. 527. Conversely, ‘oncological oblivion’ can be conceptualized as a mechanism for safeguarding the interests of the cured individual, thereby ensuring that the establishment of a contractual relationship remains unaffected by any potential prejudicial influences that may be engendered by awareness of the individual’s history. On this topic, Paladini, 2024, p. 1064; Campagna, 2024, p. 1183; Faccioli, 2023, p. 22, which emphasize the discrepancies between the two legal concepts and disapprove of the analogy, deeming it unsuitable.

¹⁰ Art. 1, l. 7 December 2023, No. 193

¹¹ The legal landscape regarding the protection for cancer survivors has advanced significantly in recent years. There is growing recognition of the need to protect cancer survivors from socio-economic burdens, both national and European Union levels have made progressive changes to ensure that cancer survivors can move forward without facing undue financial and social hardship related to their medical history. In a comparative perspective, the strategies adopted by various European countries to combat the serious discrimination faced by cancer survivors are examined by European Commission, 2022, p. 16 and Iannarelli et al., 2024, p. 83, which define Italian law as a model to be emulated by the legislation of other European countries because it does not merely guarantee the right to be forgotten, but protects those who have recovered from any form of discrimination or unequal treatment compared to healthy people, in order to ensure that recovery from cancer corresponds to the possibility for former patients to exercise their rights on an equal footing with the rest of the healthy population.

¹² Art. 2, para. 1, l. 7 December 2023, No. 193.

¹³ Art. 2, para. 4, l. 7 December 2023, No. 193.

¹⁴ It is customary for financial institutions and insurance companies to place significant emphasis on the health status of potential applicants. In the context of the credit market, banking institutions are obligated to possess this information to facilitate solvency assessments, in accordance with the principle of “sound and prudent risk management” ex art. 5 and 127 t.u.b.: Scotti, 2023, p. 78; Lener, 2023, p. 8 and Dolmetta, 2021, p. 6. The legislative derogation is particularly evident in insurance activities, which by their nature are intended to give importance to risk factors (age, gender, health, ethnicity), since these elements affect the risk covered by the insurance company: Camedda, 2019, p. 567 and Battelli, 2022, p. 65

The same regulation is also reflected in the access to adoption procedures as well as competitive and selective procedures for employment and vocational training.

As to the first case, it is prohibited for public and private healthcare facilities that receive requests for information on the adoptive parents' medical history from the Juvenile Court to disclose any information on cancer. Similarly, individuals who have successfully recovered from cancer are not to be subjected to any clinical examination that reveal any reference to their previous illness¹⁵.

The aforementioned principles also apply to employment. The prohibition on requesting such sensitive information also applies to selection procedures involving the assessment of psychological and physical capabilities, or more broadly, candidates' state of health¹⁶.

So delineated, the legal framework pertaining to cancer remission assumes the status of a pivotal instrument for the safeguarding of cancer survivors from discriminatory practices on health-related grounds. Nevertheless, the efficacy of such measures – and more specifically the prohibition on the collection and utilization of information pertaining to previous ailments – is placed at risk by the digital capitalism, particularly in the context of the substantial digitalization that has transpired within the healthcare sector¹⁷.

3. The advent of new technologies has precipitated a substantial transformation in National Health Service organizational structure¹⁸. More specifically, electronic health records, digital medical charts, wearable devices, and medical monitoring applications has precipitated their rapid integration into medical practice, thereby establishing these tools as the prevailing *modus operandi* for doctor-patient relationships¹⁹. This has resulted in the creation of a data ecosystem characterized by reduced, if not eliminated, barriers to sharing sensitive information.

As a result, healthcare is becoming more connected and accessible.

Finally, these data set has been expanded by European policies that launched the open-access HealthData@EU platform on 28 March 2025²⁰, thereby liberalizing access to a vast amount of health data for public and private operators.

The objective is twofold: firstly, to enhance the efficiency of healthcare through the utilization of health information (primary use),²¹ and secondly, to facilitate research, innovation, social and market purposes (secondary use)²².

¹⁵ Art. 3, para. 1, l. 7 December 2023, No. 193.

¹⁶ Art. 4, para. 1, l. 7 December 2023, No. 193.

¹⁷ Technological developments have had a quantitative and qualitative impact on risk assessment systems. This assessment was originally based on so-called “hard data”, those are objective data that is easily verifiable and, in any case, relevant to the applicants economic and financial profile. In the contemporary era, this field encompasses a plethora of data types and methodologies for their processing. In particular, so-called “soft data”, which are extracted from extra-financial digital traces, such as those relating to health or sexual orientation, or those revealing racial or ethnic origin, are of central importance, since offers the most comprehensive overview of a contractors' life expectancy and quality of life. In this sense, see La Rocca, 2018, p. 299; Manes, 2021, p. 469; Gaggero and Valenza, 2021, p. 834; Rabitti, 2023, p. 192

¹⁸ Perlingieri, 2024, p. 486 deals with a “*cultural project*” that has impacted healthcare and aims to address the needs of patients and an evolving society in the face of social, economic and demographic changes that have prompted a rethink of the organisational structure of medicine. An important metamorphosis that necessitates not only an examination of the impact of digitalization in this sector as a catalyst for change and support, but also a consideration of the consequences of increased datafication. In the same perspective, see Viterbo, 2024, p. 1052.

¹⁹ For more information on innovative digital tools for care relationships, see Ferioli, 2023, p. 208; Camedda, 2019, p. 573; Colangelo, 2019, p. 275.

²⁰ Recently drawn up by the European Commission with Reg. UE/2025/327 UE, HealthData@EU platform “is designed to facilitate cross-border exchange, portability and sharing of electronic health data, also through the setting up of health data access bodies”: Viterbo, 2024, p. 1073

²¹ Chapter I, Reg. UE/2025/327.

²² Chapter II, Reg. UE/2025/327 regulating the “secondary use” of health data, which occurs when data are processed for reasons different from those for which they were initially collected, seeking to achieve additional goals in the healthcare sector capable of bringing benefits to society. On this topic see Perlingieri and Cocco, 2024, p. 275; Cabrio, 2022, p. 25; Ciancimino, 2022, p. 37

It is the ready availability of such data, in conjunction with the potential for its processing for economic objectives, engenders a range of risks. Above all, the risk that health information to be further processed by market operators for the purpose of maximizing profits, thereby resulting in discrimination against the most vulnerable individuals. The situation appears more acute in today's Big Data and predictive algorithms era, considering that platform's interoperability is accompanied by the obscurity of automated procedures used for risk assessment activities in several public and private sectors²³. E.g., in the insurance sector the capture of information regarding the health history of a policyholder who has survived cancer is sufficient for the algorithmic classification of said individual as a high-risk entity, consequently resulting in their exclusion from insurance coverage, despite regulatory prohibitions to the contrary²⁴.

The repercussions of this phenomenon are grave and extend far beyond the scope of mere access to insurance policies or credit. Indeed, financial institutions such as banks and insurance companies have become an integral part of the contemporary Italian welfare system²⁵. So, the risk of financial exclusion leading to social exclusion is real, which in turn has implications for the social rights' enjoyment (housing, health, education, assistance)²⁶.

4. In such an emergency scenario, it is essential to devise appropriate remedies²⁷ to ensure the effective participation of cancer survivors not only in the market, but also in the social environments where the individual's personality takes place, such as employment and family.

In this regard, traditional private enforcement measures must be supplemented by public enforcement ones²⁸.

As to first case, the undue importance accorded to previous cancer diagnoses in the access to financial services is sanctioned by the nullity of contractual clauses that violate the principle of non-discrimination²⁹. Nevertheless, the remedy provided by the legislator is limited in scope. Above all, the protection is confined to instances in which the social stigma associated with the condition results in a price increase when accessing goods and services within the market. Instead, no protection is provided when any negotiation is completely precluded, thus leading to a refusal to contract by market operators³⁰. Yet, it is the latter hypothesis of discrimination that is most

²³ With the actual risk that the contractor remains trapped in a sort of “*filter bubble*” and “*so imprisoned in his past*” see Pariser, 2011, p. 76; Carapezza, 2024, p. 639. It is so because the logic governing the workings of artificial intelligence is extremely difficult to understand, as these procedures are characterised by a significant level of intrinsic opacity: in this terms Martone, 2022, p. 16; De Tullio, 2023, p. 78

²⁴ On to the risk of discrimination, the distortions in assessment processes, and the potential negative effects on the rights and freedoms of data subjects/insured persons resulting from the use of new technologies cf. Battelli, 2022, p. 63; D'Ippolito and Incutti, 2019, p. 735

²⁵ Today's “*financialization of welfare*” era is characterized by the pervasive entry of actors, values, instruments, languages and practices from the financial world into essential personal services and needs. So, the activities of banks and insurance companies are a material precondition for the satisfaction of social needs, as highlighted by contributions collected in Francesca and Mignone, 2020; Mignone, 2021, p. 567; Caselli and Rucco, 2018, p. 57

²⁶ Francesca, 2020, p. 235 and Femia, 1996, p. 477

²⁷ For the methodological premises, Perlingieri, 2011, p. 4

²⁸ A comprehensive examination of the necessary complementarity between “*public e private enforcement*” for effective and deterrent protection, see Libertini, 2010, p. 175

²⁹ In particular, the legislator has prescribed a particular form of protective nullity the purpose of which is twofold: firstly, to protect the weaker contracting party, and secondly, to guarantee and regulate market exchanges. For a more thorough and systematic analysis into this particular remedial measure, Scalisi, 2001, p. 489; Perlingieri, 2011, p. 49; Polidori, 2016, p. 9. The decision to sanctioned by nullity only discriminatory clauses, rather than on the entire contract, is consistent with the protection of interests that the law seeks to safeguard. In this particular instance, it is asserted that nullity and restitution sanctions may cause even greater damage to the interests of the beneficiaries: Mignone, 2024, p. 197

³⁰ On the various forms that contractual discrimination can takes in market exchanges see Carapezza, 2018, p. 1388 and, more specifically, Femia, 1993, p. 537, who distinguishes between *i*) the discrimination related the inability to enjoy a good or service, through refusal to contract or refusal to perform and *ii*) the different situation when the market transforms widespread prejudice into an additional cost added to the price of a good or service. In this case, the social

frequently observed in relation to the use of new technologies, especially those involving more advanced artificial intelligence.

Indeed, contractual remedies, both individual and collective, could only provide partial protection against the serious discrimination experienced by cancer survivors.

The law's ambitious objective is to "exclude any form of prejudice"³¹ that discriminatory conduct by private operators could engender. It means that remedies must involve compensation for pecuniary and non-pecuniary damage suffered by the most vulnerable contractors. In fact, the mere compensation for damage aimed at offsetting the harm suffered by the victim could well represent a cost that large market operators would be able to absorb without too much effort in the overall cost-benefit calculation of their business activities³². On this perspective, punitive damages, that going beyond the logic of individual compensation, represent the most effective and dissuasive measure against commercially minded economic operators who undermine individuals' fundamental rights³³.

Nevertheless, to ensure the effective protection of cancer survivors the remedial measures alone are not sufficient; it is imperative to implement the interventions with preventative ones³⁴.

In this sense, it is necessary to adopt organizational measures at the inter-company and intra-group level to prevent the circulation and use of health information. The need invests measures similar to the Chinese walls already adopted in the financial sector are needed to prevent conflicts of interest, with the creation of internal barriers within the same corporate organizational structures to prevent the communication, sharing and interpenetration of information between different activities³⁵. This is of particular importance in the current socio-economic context, where healthcare institutions' control is often exercised directly by insurance operators. In Italy, large insurance groups have already acquired entire private healthcare facilities, so having free access to a wide range of healthcare data. E.g., in 2022 UnipolSai acquired the L-GAM investment fund and, therefore, total control of the "Centro Medico Santagostino" group and its 34 clinics³⁶.

Just as with public enforcement, data governance measures are required to ensure that any data processed, including with the aid of automated processes, is accurate, relevant and reliable, and is used appropriately and in accordance with the purposes for which it was collected³⁷.

In this sense, the supervisory activities of the authorities play a central role. Regarding the right to oncological oblivion, the legislator has assigned the important task of monitoring effective

position of the person subjected to discrimination translates into an extra cost that they are forced to pay to obtain the contractual benefit.

³¹ Art. 1, para 1., l. 7 Dicembre 2023, No. 193.

³² See Nitti, 2021, p. 123, who argues that despite the particular nature of their socially relevant and regulated activities, insurance companies are economic operators in the market and interact within it with the same dynamics and logic as any other company.

³³ From a critical perspective, the original purpose of punitive damages to provide redress to victims for the suffering endured, but above all to regulate economic conducts i.e. "*public system building*", cf. Calabresi, 2014, p. 13 and Englard, 1980, p. 27; especially, in the Italian doctrine see Ponzanelli, 2006, p. 297; Grondona, 2016, p. 7; Gambaro, 2017, p. 1409; Quarta, 2019, p. 95; Di Raimo, 2020, p. 179

³⁴ On the implementation of preventive measures like key to the broader protection of individuals, ensuring that existential situations are effectively addressed, see Perlingieri, 2020, p. 320

³⁵ These intra-company measures, also known as "*firewalls*", are the best model for preventing the misuse of sensitive or confidential information, thus ensuring transparency, fair competition, and trust in the market. Originally, it has developed in common law common system and has since been adopted by civil law systems. It is used especially to prevent information from being exchanged between different departments within the same intermediary, thereby minimizing the risk of conflicts of interest: among many others see Brewer and Nash, 1989, p. 206

³⁶ "*The operation is an important part of the welfare ecosystem, involving the development and direct management of a network of polyclinics. Centri Medici Santagostino's service model is aimed at ensuring a high-quality patient experience at affordable prices with reduced waiting times. This is partly thanks to technological innovation, one of the company's distinguishing features*": this is stated in the Unipolsai press release, available at <https://www.unipol.com>.

³⁷ Regarding the necessary of data governance measures to ensure the legitimate use of health data, Perlingieri, 2024, p. 50; Viterbo, 2023, p. 1461 and Cippitani, 2018, p. 133, who argues for the need for healthcare data governance measures based on "*trust, responsibility and evaluation*".

compliance with the law's provisions to the Data Protection Authority³⁸. But the close relationship between the various market sectors makes continuous dialogue and coordination between all the relevant regulatory bodies essential. So, in the Italian legal system there must be cooperation between the Data Protection Authority, IVASS, CONSOB and the Bank of Italy, to guarantee the effectiveness of Law No. 193 of 2023³⁹.

However, empowerment measures are needed. The Italian legislature has already recognized the importance of active policies that ensure equal opportunities for all cancer patients to access and remain in the market and social wider⁴⁰.

However, this has not been reflected in the public sector's practices. In fact, advocacy interventions to support individuals throughout their recovery process are carried out exclusively by third-sector organizations⁴¹. Consequently, activities aimed at providing information on the disease and treatment options, as well as emotional support to facilitate acceptance of the disease, are provided exclusively by voluntary oncology associations. The same applies to significant financial aid to support out-of-pocket expenses, access to group insurance policies and free legal advice and assistance to protect the rights of cancer survivors⁴².

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³⁸ Art. 5, para. 4, l. 7 December 2023, No. 193.

³⁹ In a legal system characterized by a strong synergy of interests such as the Italian one, it is particularly important that the authorities engage in continuous collaborative dialogue without any one authority having formal supremacy over the others, according to Femia, 2012, p. 102 and Perlingieri, 2020, p. 18

⁴⁰ Art. 4, para. 3, l. 7 December 2023, No. 193.

⁴¹ Organisations increasingly called upon to compensate for the State's withdrawal from social welfare: on this point, a comprehensive examination in Di Raimo and Mignone, 2017, p. 145

⁴² D. Petruzzelli et al., 2025, p. 204

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