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# *Italian Supreme Court Caselaw on the Right to Be Forgotten*

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# The impact of Google Spain case over national jurisprudence



- After 2014, many courts had the difficult task of interpreting the national legal provisions implementing EU data protection legislation in the light of the CJEU decision
  - Art 29 Working party provided for guidelines concerning the implementation of the Google Spain judgment aimed at ensuring consistency and coherence, as well as compliance with EU law
  - In some countries the jurisprudence addressing the interplay between the persistence of personal data in press articles and in online archives and the protection of individual privacy was already well-established





# Italian Supreme court jurisprudence



- Judgment n. 13161/2016
  - period of time of **two years** between the moment of the notification of the request for removal and the time of the actual deletion, together with “sensitive” data, is sufficient to qualify the data processing as unlawful.
- Judgment n. 38747/2017
  - Even if the fact occurred more than **thirty years** ago, it is quite possible that there is still a public interest in the re-enactment of such piece of news, therefore the processing of personal data is legitimate
- Judgment n. 6919/2018
  - criteria according to which the right to be forgotten can be limited by the equally protected press freedom, if specific conditions are met





# Right(s) to be forgotten?



- Grand Chamber of the Italian Supreme Court n. 19681, 22 July 2019
  - the right to be forgotten cannot be subject to a *reductio ad unum*, rather the right to be forgotten acts as a limit to the exercise of the freedom of expression and proves to be functional to the exercise of other personality rights, such as the right to digital identity.
  - Three types of conflict:
    - the *ex novo* publication of news related to events legitimately disseminated in the past;
    - the availability of online information (mainly on archives of newspapers and newspapers) not updated compared to the initial publication;
    - the possibility to access through search engines to information available online about events and facts no longer updated or relevant.





# Right(s) to be forgotten?



- Grand Chamber of the Italian Supreme Court n. 19681, 22 July 2019
  - Distinction between original press publication and current publication (or subsequent republication), qualified as **historical re-enactment**.
  - the classification of ‘news’ is only applicable to the publication by press or other means of distribution of ‘something’ that concerns current event
    - in the absence of topicality element, the description of the events becomes an historical re-enactment
  - As a result, the right to historical re-enactment with a lower protection vis-à-vis the one endowed to news





# Open questions



- Which are the criteria that allow to distinguish between press freedom and right to historical re-enactment?
  - when does the time lapse since the first publication can be said to be “significant”?
- Is there a difference in case of publication on traditional media and online press?
  - Can the historical purpose be extended also to a linked webpage providing the original piece of news?
  - Judgement n. 9147/2020

