

Personal data protection and penal instruments of fight against the new discrimination forms based on genetics

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The information on genetic inheritance are strictly personal information related to the identity and the state of health of the individual, which have the peculiar character to catch the subject in its uniqueness, putting him at the same time in relation with other individuals belonging to the same genetic line.

If, on the one hand, the knowledge of genetic data bears undoubted advantages, for instance for predictive medicine, on the other hand the unlawful or somehow improper circulation of such data may leave the single person in a condition of "frailty", which may negatively reflect on his public and private relations and may engender new forms of discriminations, based precisely on genetic characters. That may happen, for instance, in labour or insurance fields, where employers and insurance companies might discriminate workers and clients based on genetic data considered "abnormal", or, more generally, in the social fabric where the subject is integrated, whereas the community is informed that it results that the subject have a genetic predisposition towards a certain pathology or a certain kind of behaviour, or that it results that he has been enlisted in a biobank for forensic purposes. The peculiar characters of genetic data imply the further risk that the harm to the right of privacy and/or the discrimination assume intergenerational character, thus extending their prejudicial effects also to other subjects belonging to the same genetic line.

The risk that the establishment of practices of discrimination or stigmatisation related to genetic factors is, besides, strongly incremented by the proliferation of ever more wider archives, often computer-based and often lacking adequate regulations, destined to the conservation and the classification of genetic data and biological samples, which allow to delineate a full profile of the characteristics of the interested persons.

Italy lacks a specific penal regulations concerning genetic discrimination, while the treatment of genetic data, under the aspect of privacy and secrecy of the information contained in the genetic inheritance of the individual, is regulated by the code of protection of personal data (legislative decree 30 June 2003, n. 196, so called "Code of privacy"). We need therefore to question the possibility and the limitations of a penal protection against acts of discriminations based on genetics, also evaluating whether in our jurisdiction we could find effective means of (penal and non-penal) protection capable to prevent and sanction a discriminatory use of genetic data. In such a context, it is necessary also to question the role that the principle of human dignity may have in a strictly penal perspective. Many invoke the valorisation of such principle precisely with regard to the protection of genetic privacy and the protection against discriminations based on genetic features.