

# ERASING THE STIGMA: THE LEGAL CASE FOR THE ONCOLOGICAL RIGHT TO BE FORGOTTEN

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**Abstract:** This paper examines the Right to be Forgotten for Cancer Survivors (Oncological Right to be Forgotten) as an indispensable legal instrument for promoting human dignity, amidst significant medical advancements and rising survival rates. The research is premised on the fact that clinical recovery does not automatically eliminate the social and economic stigmas associated with the disease, investigating persistent discriminatory practices regarding access to credit and insurance. Through a dogmatic, constitutional, and comparative approach, the ethical foundations of this right are analyzed, with emphasis on European regulatory frameworks that impose objective time limits on the use of past health data. It is argued that perpetuating the status of "former patient" violates the free development of personality and undermines the effectiveness of fundamental rights. The study concludes on the necessity of legally recognizing the Oncological Right to be Forgotten as a mechanism for full social reintegration, ensuring material equality and effective privacy protection for cancer survivors.

**Keywords:** Right to be Forgotten; Human Dignity; Cancer Survivors; Discrimination.

## INTRODUCTION

Conceptual uncertainty continues to surround the notions of cancer survivorship and cancer survivor. International bodies such as the World Health Organization frame survivorship not merely as the absence of disease but as a multidimensional condition involving complete remission, a substantially reduced risk of recurrence, and the restoration of functional health across physical, developmental, and psychosocial dimensions. In this article, that clinical understanding is combined with the epidemiological benchmark of five-year cancer prevalence, as employed by the International Agency for Research on Cancer, thereby situating survivorship at the intersection of medical recovery and population-level assessment.<sup>1</sup>

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<sup>1</sup> Scocca, Grazia & Françoise Meunier, A Right to Be Forgotten for Cancer Survivors: A Legal Development Expected to Reflect the Medical Progress in the Fight Against Cancer,

Defining and classifying cancer survivors is not a purely semantic task; it constitutes a preliminary legal and policy step toward recognizing a distinct group whose interests require protection. This evolution parallels the trajectory observed in disability rights, where international and regional legal instruments progressively acknowledged functional limitations as grounds for enhanced safeguards, promoting inclusion, autonomy, and non-discrimination. In contrast, cancer survivors have not been consistently recognized as a group facing structurally aggravated vulnerability, and comprehensive reintegration measures remain uneven across jurisdictions.<sup>2</sup>

The growing complexity of contemporary life, intensified by technological development and the expansion of informational infrastructures, has fundamentally reshaped the conditions under which individual privacy and personal autonomy are experienced. Modern societies are characterized by unprecedented capacities for data collection, storage, and circulation, which expose individuals to forms of vulnerability that transcend traditional physical harm and increasingly manifest as psychological, reputational, and social injuries. In this environment, privacy ceases to be merely a space of isolation and becomes a structural condition for personal integrity and self-determination.<sup>3</sup>

Empirical evidence demonstrates that survivorship is frequently accompanied by persistent challenges, including late treatment effects, psychological burdens, employment instability, and discrimination in access to financial services such as credit and insurance. These obstacles reveal that survivorship is a distinct life phase demanding coordinated medical, social, and legal responses. Institutional recognition of cancer survivors as a specific category can strengthen survivorship care programs, support inclusive legal frameworks, and prevent their marginalization, thereby laying the foundation for more robust protection of their rights and social participation.<sup>4</sup>

The rapid expansion of digital technologies has fundamentally altered the ways in which personal data are gathered and processed. Information that individuals provide in the course of everyday interactions—often as a prerequisite for accessing goods or services—has become subject to widespread and frequently informal collection by organizations. In this context, the right to be forgotten emerges as a mechanism aimed at restoring

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25 *Journal of Cancer Policy* 100246 (2020).

<sup>2</sup> Scocca, Grazia & Françoise Meunier, A Right to Be Forgotten for Cancer Survivors: A Legal Development Expected to Reflect the Medical Progress in the Fight Against Cancer, 25 *Journal of Cancer Policy* 100246 (2020).

<sup>3</sup> Warren, Samuel D. & Louis D. Brandeis, The Right to Privacy, 4 *Harv. L. Rev.* 193 (1890).

<sup>4</sup> Scocca, Grazia & Françoise Meunier, A Right to Be Forgotten for Cancer Survivors: A Legal Development Expected to Reflect the Medical Progress in the Fight Against Cancer, 25 *Journal of Cancer Policy* 100246 (2020).

informational equilibrium: once personal data have fulfilled the purpose for which they were collected, their continued retention lacks justification. The core of this right lies in limiting indefinite data persistence and ensuring that personal information does not remain stored or reused beyond what is necessary or proportionate.<sup>5</sup>

This issue must be understood against the broader anthropological premise that sociability is a defining feature of the human condition. Human beings evolved as inherently social actors, whose survival and development depend on communication, cooperation, and group belonging. Contemporary scholarship in evolutionary biology and social psychology emphasizes that the capacity to form and sustain social groups constitutes a fundamental adaptive trait, enabling both individual achievement and collective success. Human nature thus reflects a dual dynamic: individuals are driven by self-interest yet simultaneously equipped with cognitive and emotional mechanisms that promote group cohesion and collective welfare. It is precisely within this tension between individual autonomy and social interdependence that the protection of personal data—and the possibility of limiting its indefinite circulation—acquires normative significance.<sup>6</sup>

Within this broader context, cancer survivorship presents a particularly revealing case. Advances in oncological medicine have dramatically increased survival rates, converting many forms of cancer from fatal diagnoses into chronic or curable conditions. However, the social consequences of a cancer diagnosis frequently persist long after clinical recovery. Individuals who have overcome the disease often continue to be treated as permanently “at risk,” facing barriers in access to insurance, credit, and other essential financial services. Thus, while medicine may grant biological survival, social and economic systems may perpetuate a form of civil stigma that outlives the illness itself.

The central problem addressed in this article can therefore be formulated as follows: to what extent does the continued use of past oncological information in financial and insurance decision-making constitute a violation of human dignity and fundamental rights once medical evidence indicates a normalization of risk?

The article advances the thesis that the indefinite social and economic relevance attributed to a prior cancer diagnosis is incompatible with the constitutional principle of human dignity and with the right to the free development of personality. It argues that, once the mortality risk of cancer survivors converges with that of the general population, the continued

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<sup>5</sup> Matic, Andreea Elena & Valentina Cornea, The Right to Be Forgotten in the Online Environment, 18 *Acta Universitatis Danubius Juridica* 109 (2022).

<sup>6</sup> Matic, Andreea Elena & Valentina Cornea, The Right to Be Forgotten in the Online Environment, 18 *Acta Universitatis Danubius Juridica* 109 (2022).

imposition of differentiated conditions amounts to discriminatory treatment and to a form of unjustified informational perpetuation.

### I. CANCER, SURVIVORSHIP, AND THE TRANSFORMATION OF PROGNOSIS

Currently, the term “cancer” encompasses more than one hundred distinct diseases characterized by uncontrolled cellular growth with the capacity to invade adjacent tissues and organs.<sup>7</sup> The origin of the pathology lies in alterations to the genetic structure (DNA), which disrupt precise instructions governing cell growth, division, and death.<sup>8</sup> Under normal physiological conditions, the body maintains an essential balance between cellular death rates and the reproduction necessary for tissue renewal.<sup>9</sup> However, contemporary oncology demonstrates that malignancy is established when this system is subverted: abnormal cells not only ignore regulatory signals but also acquire the active ability to evade programmed cell death and sustain chronic proliferative signaling.<sup>10</sup> Thus, when this regulation is disturbed by failures in genetic instructions that permit such biological deviations, the potential for neoplastic progression becomes consolidated.<sup>11</sup>

Neoplastic cells, although derived from normal lineages, acquire properties that fundamentally distinguish them. Firstly, the loss of control over the cell cycle and the inhibition of apoptosis lead to uninterrupted proliferation, resulting in tumor masses often detectable only at advanced stages. However, the most clinically severe characteristic resides in their capacity for tissue invasion and systemic dissemination, a process known as metastasis. At this stage, the tumor not only infiltrates adjacent tissues but also coordinates the formation of its own vascular network to secure nutritional supply and facilitate its progression.<sup>12</sup>

The differentiation between cellular masses is determined by the

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<sup>7</sup> Brazil, Instituto Nacional de Câncer (INCA), *O Que É Câncer?* (2022), <https://www.gov.br/inca/pt-br/assuntos/cancer/o-que-e-cancer>.

<sup>8</sup> Brazil, Instituto Nacional de Câncer (INCA), *Como se Comportam as Células Cancerosas?* (2022), <https://www.gov.br/inca/pt-br/assuntos/cancer/como-surge-o-cancer/como-se-comportam-as-celulas-cancerosas>.

<sup>9</sup> Brazil, Instituto Nacional de Câncer (INCA), *Como se Comportam as Células Cancerosas?* (2022), <https://www.gov.br/inca/pt-br/assuntos/cancer/como-surge-o-cancer/como-se-comportam-as-celulas-cancerosas>.

<sup>10</sup> Hanahan, Douglas, *Hallmarks of Cancer: New Dimensions*, 12 *Cancer Discovery* 31 (2022).

<sup>11</sup> Brazil, Instituto Nacional de Câncer (INCA), *Como se Comportam as Células Cancerosas?* (2022), <https://www.gov.br/inca/pt-br/assuntos/cancer/como-surge-o-cancer/como-se-comportam-as-celulas-cancerosas>.

<sup>12</sup> Hanahan, Douglas, *Hallmarks of Cancer: New Dimensions*, 12 *Cancer Discovery* 31 (2022).

nature of their growth and morphology. While benign tumors remain localized and preserve similarities to the tissue of origin, malignant tumors exhibit disordered and aggressive architecture. One of the keys to such aggressiveness is the activation of mechanisms of replicative immortality, such as telomerase enzyme expression, which prevents cellular senescence and allows continuous division. Nevertheless, the precise identification of these mechanisms of immortality and invasion has enabled the development of therapies capable of neutralizing disease aggressiveness, dramatically altering the prognosis of patients who previously had no prospects of cure.<sup>13</sup>

Historically, chemotherapy consolidated itself as one of the main alternatives for cure, control, and symptom relief in oncological treatment, employing cytotoxic drugs that circulate systemically and seek to inhibit neoplastic cell proliferation. However, due to the low specificity of this method, which indiscriminately affects tissues with high cellular turnover, intense and frequent adverse effects are observed. Added to this scenario, chemoresistance—whether intrinsic or acquired during treatment in initially sensitive tumors—poses significant obstacles that may lead to therapeutic failure.<sup>14</sup>

Currently, a transition in oncological practice is observed, driven by the rise of targeted therapies and immunotherapy. Unlike classical chemotherapy, these approaches focus on specifically neutralizing the mechanisms of “evasion” and “immortality” described by modern science, enabling more effective treatment with reduced damage to healthy tissues. This technological evolution responds to the need for effective strategies against a pathology that remains the leading cause of premature death before age 70 in many countries. Although projections from the International Agency for Research on Cancer (IARC) indicate an increase to 30.2 million new cases by 2040, the improvement of systemic therapies has transformed this growing volume of diagnoses into an increasingly large contingent of long-term survivors.<sup>15</sup>

From a historical perspective, the elevation of human dignity to the status of supreme legal value represents a direct response to the crisis of legal positivism and to the atrocities perpetrated by totalitarian regimes in the twentieth century, which operated within formal legality yet disregarded ethics. The post-war period thus marked the emergence of a new

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<sup>13</sup> Hanahan, Douglas, Hallmarks of Cancer: New Dimensions, 12 *Cancer Discovery* 31 (2022).

<sup>14</sup> Prihantono, M. F., Breast Cancer Resistance to Chemotherapy, 70 *Annals of Medicine & Surgery* (2021). Also check: Wilson, T. R., D. B. Longley & P. G. Johnston, Chemoresistance in Solid Tumours, 17 *Annals of Oncology* (2006).

<sup>15</sup> International Agency for Research on Cancer, Cancer Tomorrow (WHO 2023), <https://gco.iarc.fr/tomorrow/en>.

constitutionalism and of international human rights law, characterized by the rapprochement between law and ethics and by the openness of constitutional texts to principles. This paradigm shift rejects the value-neutrality of law, demanding that the legal order be not merely a set of formal rules but a system materially committed to the protection of the human being.<sup>16</sup>

Philosophically, this hermeneutical turn rescues the conception that human beings possess intrinsic and absolute value and must always be treated as ends in themselves, never as means or instruments for external purposes. Such moral autonomy constitutes the basis of dignity and imposes upon the State and society a duty of unconditional respect. Human dignity thus consolidates itself as a true constitutional super-principle, endowed with maximum normative force, which unifies, centralizes, and confers rationality and meaning upon the entire legal order, both domestically and internationally.<sup>17</sup>

When trivial personal content attains the status of publication and occupies spaces that should be reserved for matters of genuine public interest, its relative importance may be mistakenly perceived. Triviality, while impoverishing critical thought, weakens moral sensitivity and prevents the flourishing of elevated ideals and generous impulses. In this scenario, it becomes necessary to investigate whether the current legal order provides adequate foundations to ensure the protection of individual privacy and, if so, to delimit the nature and scope of such protection.<sup>18</sup>

Recent scientific evidence indicates continuous growth in cancer survival rates, such that individuals who have overcome the disease now present life expectancy similar to that of people of the same age group and comparable sociodemographic characteristics without oncological history. Statistics show that the number of cancer survivors grows on average about 3% per year and that, in 2018, more than 12 million survivors were estimated in Europe. The quantitative shift in prognosis is reflected in SEER program records, which demonstrate that the five-year relative survival rate for all neoplasms increased from 49% in the mid-1970s to 68% today.<sup>19</sup> In tumors with high response rates to new therapies, such as breast and prostate cancers, five-year survival already exceeds 90%.<sup>20</sup>

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<sup>16</sup> Piovesan, Flávia, *Direitos Humanos e o Direito Constitucional Internacional* (23rd ed., SRV 2025).

<sup>17</sup> Piovesan, Flávia, *Direitos Humanos e o Direito Constitucional Internacional* (23rd ed., SRV 2025).

<sup>18</sup> Warren, Samuel D. & Louis D. Brandeis, *The Right to Privacy*, 4 *Harv. L. Rev.* 193 (1890).

<sup>19</sup> United States, National Cancer Institute, *SEER Cancer Stat Facts: Survival* (2023), <https://seer.cancer.gov/statfacts/>.

<sup>20</sup> American Cancer Society, *Cancer Facts & Figures 2024* (Am. Cancer Soc'y 2024), <https://www.cancer.org/research/cancer-facts-statistics.html>

In Brazil, although challenges related to access persist, the strengthening of oncological care networks has contributed to a shift in perception, whereby a cancer diagnosis is no longer viewed as an inevitable terminal condition but rather as a disease capable of definitive overcoming. This trend is corroborated by the global CONCORD-3 study, which indicates a consistent increase in net survival rates, including in Brazil, where breast cancer survival has reached 83.9%.<sup>21</sup>

This new reality of long-term survivorship, however, poses an ethical and legal challenge: stigma often does not receive “medical discharge.” It becomes imperative to ensure that the success of medicine in preserving life is not nullified by the perpetual social exclusion of the cured individual. If medicine seeks to restore the biological limits of life and cellular death, law must likewise restore the limits of social memory, ensuring that the stigma associated with disease does not enjoy the same form of immortality that cancer cells strive to achieve.

The recognition of the oncological right to be forgotten as an instrument for promoting a dignified life, combined with therapeutic advances and increasing possibilities of cure, prevents individuals from remaining indefinitely bound to a past diagnosis. In a context in which overcoming the disease has become increasingly feasible, the perpetuation of the condition of being a “sick person” proves incompatible with human dignity and may produce restrictive effects on the free development of personality and the full exercise of civil rights.

## II. THE ONCOLOGICAL RIGHT TO BE FORGOTTEN: LEGAL ARCHITECTURE AND COMPARATIVE EVOLUTION

A prior cancer diagnosis frequently functions as a structural barrier to accessing financial services such as loans, mortgages, and life insurance. Testimonies from survivors indicate recurrent patterns: outright refusals by financial institutions, mandatory life insurance as a condition for credit approval, and, even when coverage is offered, the imposition of excessive premiums or exclusion clauses that undermine the economic viability of the contract. Insurers and lenders often justify these practices by invoking the uncertainty associated with long-term prognosis and the potential risk of relapse. Acting under a precautionary rationale aimed at preserving financial solvency, they rely on conservative underwriting models that do not always reflect contemporary medical advances. As oncological treatments evolve rapidly, risk evaluations frequently continue to be based on outdated statistical assumptions, thereby perpetuating disproportionate assessments of

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<sup>21</sup> Allemani, Claudia et al., Global Surveillance of Trends in Cancer Survival 2000–14 (CONCORD-3), 391 *Lancet* 1023 (2018).

survivors' financial reliability.<sup>22</sup>

This dynamic intersects with the legal framework governing creditworthiness assessments. European mortgage credit regulation requires lenders to evaluate a consumer's capacity to meet contractual obligations on the basis of information that is necessary, sufficient, and proportionate. However, the absence of harmonized criteria regarding how health history should be considered leaves significant discretion to private actors. The resulting landscape is marked by fragmented, largely self-regulated practices characterized by limited transparency and weak oversight. The practical consequence is the exclusion—de jure or de facto—of many cancer survivors from life insurance and related financial instruments, making property acquisition difficult or unattainable in certain contexts. This situation produces what survivors describe as a “double penalty”: beyond overcoming the disease, they face enduring socio-economic restrictions that obstruct reintegration into ordinary social and professional life. Given the centrality of financial stability to post-treatment recovery, further research is necessary to examine how such denials contribute to financial stress and to the broader challenges experienced by survivors and their families.<sup>23</sup>

Contemporary medicine has profoundly reshaped the ontological understanding of cancer. What was once predominantly perceived as a fatal condition has, due to advances in early detection and precision therapies, come to be regarded in many cases as a chronic or fully curable disease. Europe currently counts more than 20 million cancer survivors, forming an expanding population group that, despite clinical recovery, frequently encounters a paradoxical reality: biological survival is often accompanied by civil or financial exclusion. This phenomenon, described in specialized literature as “financial toxicity,” manifests in restricted or denied access to essential financial products—such as life insurance, housing loans, and consumer credit—or in the imposition of disproportionate burdens that fail to reflect the effective reduction of medical risk.<sup>24</sup>

The oncological right to be forgotten arises as an ethical and normative response to the asymmetry between medical progress and the practices maintained by financial and insurance sectors. It does not entail erasing clinical history for healthcare purposes, but rather establishes legal limits on

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<sup>22</sup> Scocca, Grazia & Françoise Meunier, A Right to Be Forgotten for Cancer Survivors: A Legal Development Expected to Reflect the Medical Progress in the Fight Against Cancer, 25 *Journal of Cancer Policy* 100246 (2020).

<sup>23</sup> Scocca, Grazia & Françoise Meunier, A Right to Be Forgotten for Cancer Survivors: A Legal Development Expected to Reflect the Medical Progress in the Fight Against Cancer, 25 *Journal of Cancer Policy* 100246 (2020).

<sup>24</sup> European Cancer Organisation, Cancer Survivors Have a Right for Their Cancer to Be Forgotten by Financial Service Providers, <https://www.europeancancer.org/content/survivorship-cancer-survivors-have-a-right-to-be-forgotten.html>.

the use of past oncological data in risk assessment once a scientifically justified remission period without relapse has elapsed. Its legal basis rests on principles of non-discrimination and full social reintegration, grounded in the premise that, once mortality risk converges with that of the general population, maintaining differentiated financial burdens constitutes an abusive and discriminatory practice.<sup>25</sup>

The European trajectory of the oncological right to be forgotten illustrates a gradual shift from self-regulatory mechanisms based on voluntary codes of conduct toward binding regulatory models characteristic of hard law. Initially addressed within the framework of Europe's Beating Cancer Plan (2021), financial discrimination against cancer survivors was acknowledged as a barrier to full European citizenship. However, disparities among national legal systems exposed the insufficiency of soft coordination, leading to the demand for more consistent and enforceable supranational legislative intervention.

France occupies a pioneering role in institutionalizing the oncological right to be forgotten. First introduced in 2016<sup>26</sup> and later structurally reformed through the 2022 legislation (Loi n° 2022-270), the French model evolved from the AERAS Convention—a tripartite agreement involving the State, insurers, and patient organizations—into a legal framework granting individuals the right not to declare certain past oncological conditions after specific timeframes. Initially set at ten years (or five years for diagnoses before adulthood), the system was restructured under the “Loi Lemoine,” which reduced the general period to five years and, in certain credit insurance contexts, eliminated medical questionnaires altogether, thereby minimizing risks of discrimination and involuntary misrepresentation.<sup>27</sup>

Belgium followed the French experience by adopting a dynamic model grounded in periodically updated scientific evidence. Incorporated into the insurance law<sup>28</sup> through amendments in 2019<sup>29</sup> and strengthened in 2022, the Belgian framework introduced progressively reduced time limits, culminating in a five-year threshold after treatment completion. The system further distinguishes itself through reference grids that allow even shorter

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<sup>25</sup> The Health Policy Partnership, *Life After Cancer: Why the “Right to Be Forgotten” Matters*, <https://www.healthpolicypartnership.com/life-after-cancer-why-the-right-to-be-forgotten-matters/>.

<sup>26</sup> France, Loi No. 2016-41 du 26 janvier 2016 relative à la modernisation de notre système de santé, *Journal officiel de la République française* (Jan. 27, 2016).

<sup>27</sup> France, Loi No. 2022-270 du 28 février 2022 pour un accès plus juste, plus simple et plus transparent au marché de l'assurance emprunteur, *Journal officiel de la République française* (Mar. 1, 2022).

<sup>28</sup> Belgium, Loi du 4 avril 2014 relative aux assurances, *Moniteur belge*, Apr. 30, 2014.

<sup>29</sup> Belgium, Loi du 22 avril 2019 modifiant la loi du 4 avril 2014 relative aux assurances en ce qui concerne le droit à l'oubli, *Moniteur belge*, May 7, 2019.

periods for cancers with particularly favorable prognoses, subject to regular review by the Federal Healthcare Knowledge Centre (KCE). Its scope, initially limited to mortgage-related insurance, was later extended to guaranteed income insurance covering work incapacity.<sup>30</sup>

Luxembourg initially relied on a conventional agreement<sup>31</sup> but subsequently consolidated the oncological right to be forgotten into primary legislation<sup>32</sup> in 2025, aligning the regime explicitly with the General Data Protection Regulation. The legal framework provides a clear basis not only for the lawful processing but also for the mandatory non-processing of health data in contractual contexts. The Luxembourg model preserves traditional ten- and five-year periods (depending on age at diagnosis), while permitting shorter terms through regulatory instruments inspired by the Belgian system.<sup>33</sup>

The Netherlands has adopted a more sector-specific approach focused on regulating medical examinations in insurance underwriting. Although it does not formally recognize a right to be forgotten in the French or Belgian sense, Dutch regulations impose strict limits on insurers' investigative powers, setting ten- and five-year periods depending on age at diagnosis. A consistent political movement, however, seeks to reduce the adult threshold to five years to harmonize with emerging European standards.<sup>34</sup>

Portugal has embraced a distinctive perspective by framing the oncological right to be forgotten primarily within anti-discrimination law rather than solely as a data erasure mechanism. The Portuguese regime prohibits unfavorable treatment in credit and insurance markets once objective time limits have passed—ten years after treatment for adults and five years for diagnoses before twenty-one. An innovative feature is the automatic nullity of contractual clauses requiring disclosure of such information beyond legal limits, providing immediate and objective consumer protection and reinforcing substantive equality.<sup>35</sup>

Romania integrated the oncological right to be forgotten into patient rights legislation, becoming the first Central and Eastern European country

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<sup>30</sup> Belgium, Loi du 30 octobre 2022 modifiant la loi du 4 avril 2014 relative aux assurances en matière de droit à l'oubli, *Moniteur belge*, Nov. 18, 2022.

<sup>31</sup> Luxembourg, Convention "Droit à l'oubli" (2020). In effect since January 1st, 2020. Available at: <https://www.aca.lu>.

<sup>32</sup> Luxembourg, Loi du 7 décembre 2015 sur le secteur des assurances, *Mémorial A – Journal officiel du Grand-Duché de Luxembourg* (Dec. 11, 2015).

<sup>33</sup> Luxembourg, Loi du 6 février 2025 modifiant la loi du 7 décembre 2015 sur le secteur des assurances, *Journal officiel du Grand-Duché de Luxembourg* (Feb. 7, 2025).

<sup>34</sup> Netherlands, *Besluit van 2 november 2020*, *Staatsblad* No. 453 (2020).

<sup>35</sup> Portugal, *Lei No. 75/2021*, de 18 de novembro, *Diário da República* No. 224 (Nov. 18, 2021).

to do so.<sup>36</sup> Its legal framework establishes a seven-year period for adult diagnoses and five years for pediatric cases and imposes a duty on insurance distributors to clearly inform consumers of this right, directly addressing informational asymmetries in contractual relations.<sup>37</sup>

Spain adopted a swift legislative response in 2023, amending insurance contract law through an emergency decree.<sup>38</sup> It introduced a uniform five-year period after radical treatment without recurrence and declared null any contractual clauses that disadvantage insured persons based on past cancer diagnoses beyond this period. The reform also recognizes the policyholder's right to silence and prohibits insurers from considering such data even if obtained indirectly.<sup>39</sup>

Italy enacted one of the most comprehensive European frameworks in 2023, extending the oncological right to be forgotten beyond financial services to adoption procedures, public competitions, and labor market participation. While maintaining general ten- and five-year limits, the Italian approach reflects a transversal strategy aimed at combating stigma and promoting full social reintegration.<sup>40</sup>

Slovenia joined this group in 2024 by guaranteeing equal access to insurance and credit, setting a general seven-year period and five years for diagnoses before age twenty-one, while allowing shorter disease-specific timeframes based on prognosis.<sup>41</sup>

Beyond these established regimes, several countries are in advanced stages of transition. Ireland is prioritizing legislative reform to ensure mortgage insurance access five years post-treatment.<sup>42</sup> Greece is moving from sectoral codes toward binding legislation,<sup>43</sup> while Malta has launched public consultations proposing timeframes between five and ten years.<sup>44</sup>

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<sup>36</sup> Romania, Legea No. 46 din 21 ianuarie 2003 privind drepturile pacientului, Monitorul Oficial al României (2003).

<sup>37</sup> Romania, Legea No. 293 din 3 noiembrie 2022 privind prevenirea și combaterea cancerului, Monitorul Oficial al României (2022).

<sup>38</sup> Spain, Ley 50/1980, de 8 de octubre, de Contrato de Seguro, Boletín Oficial del Estado No. 250 (Oct. 17, 1980).

<sup>39</sup> Spain, Real Decreto-ley 5/2023, de 28 de junio, Boletín Oficial del Estado No. 154 (June 29, 2023).

<sup>40</sup> Italy, Legge 7 dicembre 2023, n. 193, Gazzetta Ufficiale della Repubblica Italiana No. 294 (Dec. 18, 2023).

<sup>41</sup> Slovenia, Zakon o pravici oseb po prebolelem raku do enakega dostopa do zavarovalnih in kreditnih produktov, Official Gazette of the Republic of Slovenia No. 102/24 (2024).

<sup>42</sup> Ireland, Central Bank (Amend.) Bill 2025. Available at: <https://www.oireachtas.ie>.

<sup>43</sup> Greece, Hellenic Cancer Federation (ELLOK), Proposals for the Adoption of the Right to Be Forgotten for Cancer Survivors in the Insurance Sector (2024–2025), <https://ellok.org>.

<sup>44</sup> Malta, Public Consultation on the Introduction of the Right to Be Forgotten for Cancer

Outside Europe, the United States does not recognize a federal oncological right to be forgotten. Existing protection focuses on genetic discrimination under GINA, which excludes life insurance and does not cover individuals with prior diagnoses. The American system thus remains rooted in actuarial freedom.<sup>45</sup>

Australia, although prohibiting disability discrimination, allows insurers to differentiate treatment if justified by reasonable actuarial or statistical data, maintaining a risk-based logic that contrasts with the European solidarity-oriented model.<sup>46</sup>

Brazil presents an intermediate position. While it possesses a robust constitutional and statutory framework grounded in human dignity and anti-discrimination—particularly through the Statute of the Person with Cancer—it lacks a specific regime establishing objective temporal limits. Legislative initiatives seek to address discriminatory insurance practices,<sup>47</sup> but the country has yet to consolidate a formal oncological right to be forgotten.<sup>48</sup>

Comparative analysis reveals distinct normative choices. European systems increasingly prioritize human dignity, solidarity, and reintegration, curbing purely actuarial logic. In contrast, Anglo-American models preserve statistical risk assessment as the organizing principle. Brazil, while normatively aligned with dignity-based reasoning, remains in a transitional phase, potentially moving toward a time-based model through anti-discrimination pathways.

### III. HUMAN DIGNITY, PERSONALITY RIGHTS, AND THE CONSTITUTIONAL FOUNDATIONS OF THE ONCOLOGICAL RIGHT TO BE FORGOTTEN

From a strictly technical standpoint, legal personality refers to the capacity to act as a subject within legal relationships, functioning as an autonomous center of rights and duties. In this doctrinal sense, the legal concept of personhood does not necessarily coincide with the biological notion of the human being, since legal systems attribute personality to collective entities lacking physical human existence—such as associations, corporations, and foundations—granting them the ability to hold rights and

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Survivors (2025), <https://meae.gov.mt>.

<sup>45</sup> United States, Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, 122 Stat. 881.

<sup>46</sup> Australia, *Disability Discrimination Act* 1992 (Cth). Available at: <https://www.legislation.gov.au>.

<sup>47</sup> Brazil, Projeto de Lei No. 4007/2019, Câmara dos Deputados, <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2323050>.

<sup>48</sup> Brazil, Lei No. 14.238, de 19 de novembro de 2021, Diário Oficial da União (Nov. 22, 2021), <https://www.planalto.gov.br>.

obligations.<sup>49</sup>

It is therefore evident that the technical category of legal subjectivity is not confined to human materiality. Nevertheless, considering that law is teleologically oriented toward the regulation of social life and exists *hominum causa*—for and because of the human being—it follows as a logical imperative that human beings remain the primary addressees of legal personality. The recognition of human subjectivity thus constitutes a structural and logical precondition for the very existence and validity of the legal phenomenon.<sup>50</sup>

Human dignity, recognized as a foundational principle of the Brazilian legal order—particularly within the framework of fundamental rights—requires that individuals be understood as ends in themselves and as the ultimate reason for the existence of the legal system. This principle imposes upon both the State and private actors the obligation to fully respect the human condition, prohibiting practices that degrade or instrumentalize individuals. It operates as a central axiological vector guiding the interpretation and application of the entire legal order.<sup>51</sup>

In this perspective, human dignity functions as a unifying constitutional reference for the set of fundamental rights inherent to the human condition, understood as guarantees aimed at ensuring a minimum existential standard and protecting individuals from avoidable social suffering. The principle thus projects itself across the various dimensions of social life, serving as a normative parameter for safeguarding physical, psychological, moral, and social integrity.<sup>52</sup>

The protection of dignity presupposes that every human being, solely by virtue of being human and regardless of any other circumstance, is entitled to rights that must be recognized and respected by both public authorities and private actors. Under this principle, individuals can never be reduced to objects or mere instruments, as such treatment would negate their humanity and contradict the constitutional order.<sup>53</sup>

Although constitutional structure may not immediately reveal it, the fundamental nature of social rights is undeniable, as they are rooted in the principle of human dignity. Unlike classical individual liberties—which

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<sup>49</sup> Pinto, Carlos Alberto da Mota, António Pinto Monteiro & Paulo Mota Pinto, *Teoria Geral do Direito Civil* (Gestlegal 2020).

<sup>50</sup> Pinto, Carlos Alberto da Mota, António Pinto Monteiro & Paulo Mota Pinto, *Teoria Geral do Direito Civil* (Gestlegal 2020).

<sup>51</sup> DANTAS, Paulo Roberto de Figueiredo. *Curso de Direito Constitucional - 8ª Ed - 2025*. 8. ed. Cotia: Foco, 2025.

<sup>52</sup> DANTAS, Paulo Roberto de Figueiredo. *Curso de Direito Constitucional - 8ª Ed - 2025*. 8. ed. Cotia: Foco, 2025.

<sup>53</sup> DANTAS, Paulo Roberto de Figueiredo. *Curso de Direito Constitucional - 8ª Ed - 2025*. 8. ed. Cotia: Foco, 2025.

primarily demand state abstention—social rights require positive state action to ensure social well-being. Historically, this prestational dimension led to the mistaken view that such rights were merely programmatic or of reduced normativity, often subordinated to first-generation rights under arguments of resource scarcity. However, this reductionist understanding cannot withstand the imperative of guaranteeing a minimum existential core.<sup>54</sup>

Across Europe, the population of individuals living beyond a cancer diagnosis continues to expand steadily, reflecting both demographic and therapeutic advances. This growing group of long-term survivors — many with life expectancies comparable to the general population — underscores the need for public policies that extend beyond clinical care and address broader social and economic reintegration. Survivors frequently encounter obstacles in accessing financial services and insurance, revealing that the end of treatment does not necessarily mark the end of vulnerability. Long-term psychosocial support is therefore as essential as medical follow-up. Moreover, once recovery is achieved and a substantial period has passed without recurrence, the continued relevance of past medical history risks functioning as a social stigma, amounting to a disproportionate intrusion into private life and undermining the principle that former patients should enjoy the same rights and opportunities as other citizens.<sup>55</sup>

Legislative responses in several countries have sought to address these concerns through comparable frameworks, yet the absence of a harmonized European norm codifying the right to be forgotten remains a significant gap. Establishing common standards at the EU level would promote coherence in national approaches, particularly regarding the timeframes after which past oncological data should no longer be considered. Current regimes generally rely on five- or ten-year periods, with adjustments for specific prognostic profiles, but continued scientific progress may justify further reductions as survival rates improve and recurrence risks decline. The effectiveness of such legal innovations depends on ongoing advances in cancer research, alongside contributions from the social sciences aimed at identifying and eliminating residual forms of discrimination, including in areas beyond finance. Despite notable legal progress, the objective of shielding survivors from a “double burden”—first as patients, then as socially penalized individuals—remains incomplete. Ultimately, cancer survivors should not be constrained in their fundamental rights or life prospects by past illness, but instead be enabled to determine freely whether to disclose their medical history, while financial

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<sup>54</sup> Soares, Ricardo Maurício Freire, *O Princípio Constitucional da Dignidade da Pessoa Humana* (2d ed., Saraiva Jur 2024).

<sup>55</sup> Napoletano, Gabriele et al., Right to Be Forgotten: European Instruments to Protect the Rights of Cancer Survivors, 95 *Acta Biomedica Scientia* 1 (2024), <https://doi.org/10.23750/abm.v95i3.15877>.

and insurance sectors recognize this expanding, healthy population as fully legitimate participants in economic life.<sup>56</sup>

The positivization of this sphere of ethical intangibility establishes dignity not as an abstract formula, but as a superior, unconditional, and inalienable norm forming the foundation of collective legitimacy. From this standpoint, the human being is not conceived as an isolated individual or a mere fragment of a mass, but as a person endowed with intrinsic value and destined for free development. This subject exists within diverse communal and political relationships, and respect for this condition is an indispensable prerequisite for self-determination and responsible social coexistence.<sup>57</sup>

Human dignity therefore operates as a genuine super-principle that centralizes and unifies the entire legal system, conferring coherence and meaning upon it. By affirming that human beings are ends in themselves—never means—this principle responds to historical arbitrariness and guides contemporary constitutionalism. It functions as the supreme directive permeating both the creation of abstract norms and decision-making in concrete cases, ensuring that the protection of humanity remains the unshakable foundation of the democratic rule of law.<sup>58</sup>

The realization of human dignity is inseparable from the conjunction of freedom and substantive equality. Neglect of social rights fosters exclusion and violence, ultimately undermining classical individual freedoms themselves. Prestational rights are therefore not merely complementary but essential for transforming formal citizenship into real participation in socio-economic life, a condition indispensable for ensuring a dignified existence and the pursuit of justice.<sup>59</sup>

In light of these premises, the growing population of cancer survivors must be guaranteed the possibility of full reintegration into ordinary social life, under conditions equivalent to those of individuals of the same age group without an oncological history. Yet the effective reconstruction of adequate quality of life remains a frequently neglected dimension. In various European contexts, survivors encounter significant barriers to social inclusion, particularly regarding access to financial services such as housing credit, loans, and life insurance.<sup>60</sup>

Legal frameworks establish that, in the context of these financial

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<sup>56</sup> Napoletano, Gabriele et al., Right to Be Forgotten: European Instruments to Protect the Rights of Cancer Survivors, 95 *Acta Biomedica Scientia* 1 (2024), <https://doi.org/10.23750/abm.v95i3.15877>.

<sup>57</sup> Piovesan, Flávia, *Temas de Direitos Humanos* (13th ed., SRV 2025).

<sup>58</sup> Piovesan, Flávia, *Temas de Direitos Humanos* (13th ed., SRV 2025).

<sup>59</sup> Soares, Ricardo Maurício Freire, *O Princípio Constitucional da Dignidade da Pessoa Humana* (2d ed., Saraiva Jur 2024).

<sup>60</sup> Soares, Ricardo Maurício Freire, *O Princípio Constitucional da Dignidade da Pessoa Humana* (2d ed., Saraiva Jur 2024).

instruments, the period after which insurers are prohibited from collecting medical information related to a past oncological diagnosis cannot exceed ten years following treatment completion, reduced to five years when diagnosis occurred before adulthood. Moreover, exceptional rules apply to cancers with especially favorable prognoses, for which even shorter timeframes may be set for the exercise of the right to be forgotten.<sup>61</sup>

Although recent European initiatives represent progress in addressing financial discrimination against cancer survivors, current proposals remain inadequate, particularly regarding the duration after which a past diagnosis should cease to have legal relevance. Timeframes extending to ten or even fifteen years after treatment completion do not align with contemporary clinical evidence. Moreover, reliance on directives places the burden of implementation on individual Member States, resulting in uneven protection and legal fragmentation. A regulation, by contrast, would ensure immediate and harmonized applicability across the Union, more clearly establishing the unlawfulness of discriminatory financial practices. Ongoing consultations at the European level, including discussions on a common code of conduct, reveal tension between financial sector caution and the position of medical experts and patient advocates, who support an evidence-based five-year limit following treatment without relapse. High-level political engagement, such as recent European conferences and advocacy campaigns, has reinforced calls for a unified legal framework, enhanced parliamentary cooperation, and stronger European solidarity to ensure consistent protection for survivors regardless of national jurisdiction.<sup>62</sup>

Policymakers are therefore urged to prioritize the establishment of an EU-wide legal regime in forthcoming legislative cycles, drawing upon the practical experience of countries where the right to be forgotten is already in force. Empirical evidence, particularly from France, suggests that implementing such measures does not jeopardize the financial stability of insurers. Clinical and epidemiological data indicate that a five-year period after treatment completion, in the absence of recurrence, constitutes a scientifically justified threshold for limiting the use of oncological history in financial decision-making. The right to be forgotten should thus be understood not as a gesture of compassion but as a matter of evidence-based regulation and legal justice. Individuals who have been declared cured and whose risk profiles align with the general population should not continue to face penalties tied to past illness. Failure to recognize this right risks

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<sup>61</sup> Soares, Ricardo Maurício Freire, *O Princípio Constitucional da Dignidade da Pessoa Humana* (2d ed., Saraiva Jur 2024).

<sup>62</sup> Lawler, Mark et al., Ending Financial Discrimination for Cancer Survivors: Embedding the Right to Be Forgotten in Legislation Across Europe, *25 Lancet Oncology* 1123 (2024).

undermining the social, professional, and personal reintegration of survivors, whereas its legal consolidation across Europe would affirm equality, dignity, and the principle that recovery must not be followed by enduring discrimination.<sup>63</sup>

The right to the free development of personality, often regarded as a constitutional principle, manifests itself through the recognition of numerous subjective rights. However, it has also served as the foundation for the continuous emergence of new sub-rights, whose scope varies according to the many conceivable forms of exercising individual autonomy. The core difficulty lies in the tendency to equate personality development with mere self-determination, when in fact these notions correspond to distinct and irreducible dimensions of human experience.<sup>64</sup>

Human dignity presupposes the existence of a protected sphere of privacy within which individuals may live freely and without disturbance, shielded from external curiosity—whether from private actors, public authorities, or the media. The right to privacy thus functions as a limit on undue interference in personal life and ultimately translates into the right to be left undisturbed in one's intimate sphere.<sup>65</sup>

Privacy protection must be understood as the general rule rather than the exception, both because it constitutes a personality right and because it is enshrined as a fundamental right at constitutional level. Restrictions on this right are only admissible where justified by a public interest of exceptional relevance, such that its preservation would otherwise cause serious and concrete harm to the community.<sup>66</sup>

The right to oncological oblivion represents a core ethical principle aimed at securing equal treatment between cancer survivors and individuals without a history of disease. Even after recovery, a cancer diagnosis often continues to generate stigma and implicit moral judgment, placing survivors under an unjust burden unrelated to personal responsibility. This situation produces frustration and weakens trust in social institutions, which must respond to these inequities. As cancer incidence rises due to population aging, environmental factors, and lifestyle changes, failure to act will increase the number of individuals exposed to discrimination. Recognizing the right to be forgotten in oncology is therefore both a legal and social necessity, promoting inclusivity, empathy, and equal respect, and ensuring that a person's medical

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<sup>63</sup> Lawler, Mark et al., Ending Financial Discrimination for Cancer Survivors: Embedding the Right to Be Forgotten in Legislation Across Europe, 25 *Lancet Oncology* 1123 (2024).

<sup>64</sup> Barbosa, Mafalda Miranda & Tomás Prieto Álvarez, *O Direito ao Livre Desenvolvimento da Personalidade: Sentido e Limite* (Gestlegal 2020).

<sup>65</sup> Vasconcelos, Pedro Pais de, *Direito de Personalidade* (Almedina 2019).

<sup>66</sup> Vasconcelos, Pedro Pais de, *Direito de Personalidade* (Almedina 2019).

past does not define their future opportunities.<sup>67</sup>

Ethical bodies stress that implementing this right requires careful regulatory structuring. Clear definitions of oncological conditions are essential because different cancers involve distinct prognoses and remission periods. Uniform time limits applied indiscriminately could disadvantage individuals with less aggressive diseases and shorter recovery timelines. Continuous review of scientific evidence and epidemiological data, supported by specialized advisory bodies, is therefore crucial. Discrimination also extends beyond financial services to employment, childhood survivorship, and adoption contexts. Public awareness initiatives should inform all individuals with a cancer history, particularly those diagnosed in childhood, about the consequences of disclosing sensitive health data. These measures would enhance legislative effectiveness and ensure comprehensive protection against the social impacts of cancer-related stigma.<sup>68</sup>

Understanding the right to be forgotten as a personal right is therefore essential. Since the late nineteenth century, personal rights have been conceived as the category encompassing prerogatives inherent to the individual, including the right to life, protection against aggression, and autonomy in self-determination. In parallel legal traditions, this category also includes the right to preserve social reputation and to enjoy civil rights fully, and may extend, in certain contexts, to political rights.<sup>69</sup>

Requests for deletion or erasure of personal data are often grounded in the absence of a legitimate legal basis for processing, typically related to the lack or withdrawal of consent or to the loss of necessity for the original purpose of collection. In such cases, the burden of demonstrating lawfulness lies with the data controller, who must ensure legal compliance at all times. Under the principle of accountability, controllers must be capable of proving the existence of a valid legal basis, failing which they are obliged to cease processing activities.<sup>70</sup>

The recognition of the oncological right to be forgotten is therefore indispensable to safeguard the free development of personality, preventing individuals from having their social identity permanently defined by a past medical condition. It enables those who have overcome disease to participate

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<sup>67</sup> Bailo, Paolo et al., Freedom from the Stigma of Oncologic Disease: Legislative and Ethical Aspects of the Right to Be Forgotten in Oncology, 143 *Minerva Forensic Med.* 57 (2023), <https://doi.org/10.23736/S2784-8922.23.01844-7>.

<sup>68</sup> Bailo, Paolo et al., Freedom from the Stigma of Oncologic Disease: Legislative and Ethical Aspects of the Right to Be Forgotten in Oncology, 143 *Minerva Forensic Med.* 57 (2023), <https://doi.org/10.23736/S2784-8922.23.01844-7>.

<sup>69</sup> Cooley, Thomas M., *A Treatise on the Law of Torts, or the Wrongs Which Arise Independently of Contract* (Callaghan & Co. 1879).

<sup>70</sup> European Union, Council of Europe & European Court of Human Rights, Manual on European Data Protection Law (2014).

fully in social life under conditions of equality, with effective access to fundamental rights such as property acquisition, family life, and privacy, without their clinical history functioning as a source of stigma or exclusion.

### CONCLUSION

The transformation of cancer from a predominantly fatal diagnosis into a condition compatible with long-term survival exposes a structural mismatch between medical knowledge and legal-economic practices. While science has redefined prognosis, many regulatory and market frameworks continue to operate on outdated assumptions of permanent risk. This dissonance produces a form of post-clinical exclusion in which survivors remain socially and economically marked by a condition that medicine has already overcome. In such a context, the continued use of past oncological data without temporal limits constitutes not a neutral actuarial practice, but a mechanism of structural discrimination incompatible with contemporary standards of fundamental rights protection.

Human dignity, as the axiological foundation of constitutional orders, prohibits reducing individuals to a past biological event and demands recognition of the person as a self-determining subject capable of social reintegration. When survivors are indefinitely treated as “former patients,” their identity becomes juridically frozen, impairing the free development of personality and undermining substantive equality. The oncological right to be forgotten emerges, therefore, not as a symbolic or compassionate concession, but as a normative requirement derived from dignity, privacy, and non-discrimination. It restores the temporal dimension of legal memory, ensuring that medical recovery is not neutralized by permanent informational stigma.

Comparative experience demonstrates that legal systems capable of aligning insurance and credit practices with updated clinical evidence do not compromise financial stability. Instead, they correct distortions produced by risk models detached from scientific reality. The persistence of resistance grounded in precautionary economic reasoning reveals an underlying prioritization of statistical abstraction over the concrete person. A rights-based legal framework rebalances this equation by recognizing that actuarial logic cannot operate in isolation from constitutional principles. Where mortality risk converges with that of the general population, differentiated treatment loses its rational and ethical justification.

The absence of clear and binding regulation leaves survivors dependent on fragmented, opaque, and frequently self-regulated practices that erode legal certainty and perpetuate inequality. Establishing objective temporal thresholds for the use of oncological history is thus essential to prevent

arbitrary or disproportionate decision-making. Such limits do not erase medical truth; they delineate the legitimate scope of its social relevance. By doing so, the law affirms that recovery must produce not only biological survival, but also full civic rehabilitation.

The oncological right to be forgotten is therefore an essential juridical instrument for translating therapeutic progress into effective citizenship. It embodies the ethical commitment that victory over disease cannot be followed by lifelong civil penalty. Safeguarding this right ensures that survivors are not perpetually defined by vulnerability, but recognized as equal participants in social, economic, and family life. In this sense, the right to be forgotten in oncology is not peripheral to human dignity; it is one of its contemporary expressions, indispensable to a legal order that seeks coherence between scientific reality, social justice, and the constitutional protection of the person.

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