



DATA AND JUSTICE: WHEN THE LACK OF INFORMATION HINDERS ACCESS TO RIGHTS AND CREATES INEQUALITIES

Abstract

This article addresses the relationship between data and justice, highlighting how the lack of complete, updated, and shared information—as well as the impossibility of obtaining it—can hinder effective access to rights and generate forms of substantive inequality. This is particularly evident in the field of criminal enforcement and international judicial cooperation. Through an interview with the President of the Venice Supervisory Court, Dr. Linda Arata, the concrete difficulties that magistrates encounter when applying alternative measures to detention abroad emerge, specifically when data regarding the personal, family, social situation, and social dangerousness of the convicted person are missing. These critical issues are part of a broader European debate on the quality and use of data in public decision-making processes.

These critical issues fall within a broader European debate on the quality and use of data in public decision-making processes. In this context, the **DATA EQUALITY** project is particularly relevant — an initiative co-funded by the European Union, of which the Venice Court of Appeal is a partner — focusing on data-driven discrimination and on ways to prevent new emerging forms of discrimination through the collection and exchange of unbiased datasets at the cross-border level, based on cooperation among multiple agencies and institutions.

The project aims to develop a shared European methodology for civil society organizations, law enforcement agencies, and judicial authorities, enabling them to cooperate more effectively in the collection, management, analysis, and sharing of information concerning data-related discrimination, at local, national, and European levels.

Interview with the President of the Venice Supervisory Court, Dr. Linda Arata

What data do you and the Panel you preside over need to apply an alternative measure under Framework Decision 2008/947/JHA? Data is fundamental for our decisions: first and foremost, we need police information regarding the domicile, employment, and family of the convicted person, as well as their social dangerousness. Furthermore, reports from the UEPE (Office for External

Criminal Execution) conducted remotely and the European criminal record are necessary. Finally, the documentation produced by the defense also plays an important role.

Which data is most frequently missing? Police information is certainly the most difficult to obtain. We have tried various communication channels abroad, but every attempt has been unsuccessful. No response is provided via INTERPOL or Italian consulates, and unfortunately, direct contact with foreign authorities is also very difficult. Even international letters rogatory cannot be used.

How often do Supervisory Courts have to operate in the absence of complete data on the convicted person's situation? Unfortunately, it is a very common situation; it happens almost every time.

What are the consequences of this lack of data on the final decision? In the past, we proceeded with several postponements of the hearing; however, today, we no longer request police information from abroad. I should note that in my experience, some countries, such as Romania, engage in extensive dialogue—a sort of new preliminary investigation—before granting actual recognition, and they provide us with information that we naturally take into account.

Are there many convicted persons waiting for information to be sent by foreign judicial authorities? No, simply because we no longer ask for police information from abroad due to the aforementioned difficulties.

In your opinion, is the problem of missing data legal or organizational? We must distinguish the lack of police information from the issue regarding the adaptation of our prescriptions. Regarding the former, I believe the problem is due to the lack of specific legislation regulating the relationships between States in a detailed manner.

What role does the criminal record play in this framework? Is it easily requested and up to date? The European criminal record is fundamental in supervisory proceedings; it is an essential piece of data in our investigation. It is a very useful tool provided to us by the Public Prosecutor's Office and is kept up to date.

Are there countries where these problems are particularly evident? Certainly. Romania and Germany, for example, generally cooperate in taking charge of the execution of the measure. Conversely, in my experience, Spain, the Netherlands, and France very rarely respond to requests or agree to implement alternative measures in their territories. The reasons vary; I do not exclude economic factors, as these are proactive measures requiring constant coordination with local entities. Our "assignment to social services" (*affidamento in prova ai servizi sociali*) is very different from the probation existing in many countries adhering to the Framework Decision, where the effect is merely a suspended sentence or community service. The alternative measure we ask to be recognized involves numerous requirements and obligations, and monitoring compliance requires significant manpower and economic resources.

What is the ultimate impact of these difficulties? The limitations of the investigation do not affect the Italian declaration—which is often still in favor of the request—but rather the actual possibility of executing the measure abroad. It affects whether the foreign authority accepts the measure or not. For instance, France and Spain have not accepted any executions to date, even though the Supervisory Court has shown significant openness by adapting or even eliminating standard prescriptions.

Since the adoption of Framework Decision 2008/947/JHA, can you see progress in terms of cooperation between States? Yes, steps forward have undoubtedly been taken. The sensitivity of Italian Supervisory Magistrates regarding the personal and emotional sphere of the convicted has greatly increased. Today, we often waive requirements that our system considers complete in the name of the higher interest of rehabilitation and social reintegration. The convicted person has the right to maintain ties with their loved ones and their territory.

I would like to make one final observation. The work carried out by the Venice Supervisory Court—under my supervision and with the assistance of Dr. Tecla Cesaro and Italian Qualified Lawyer Erica Franceschin in collaboration with the **Agenfor Foundation**—has significantly contributed to this increased sensitivity. This was part of the **PRE&POST Trial** project, co-funded by the European Commission. The year-long research resulted in a structured and clear publication for operational use, which was sent to all Italian Supervisory Magistrates. It is a tool of concrete utility, as demonstrated by the many tokens of appreciation I have received from other Court Presidents.

Do you have any other observations or viewpoints to highlight? Yes, I want to highlight the impact that the impossibility of executing a sentence abroad has on people awaiting an alternative measure (*liberi sospesi*). If a foreign state informs the Public Prosecutor that it will not accept the measure, the prosecutor revokes the suspension. Consequently, the subject—who was previously free—could be taken to prison to serve the sentence. This is a serious consequence as it directly affects the fundamental right to personal liberty.

Note by Italian Qualified Lawyer Erica Franceschin and Dr. Beatrice Sperotto

The problem of acquiring accurate, complete, and up-to-date data for the determination of judicial proceedings has become an increasingly central issue in every legal system.

A judge's decision, in fact, cannot be made without effective knowledge of the facts, the persons involved, and the context in which the decision itself is intended to produce its effects. Data is not merely a technical element; rather, it constitutes the substantive prerequisite for a system of justice capable of combining formal legality with the effective protection of rights.

The issue of data acquisition assumes even greater significance at the international level, where obtaining information encounters structural and systemic difficulties.

Judicial cooperation between States is often hindered not only by the procedures in place — which are frequently neither specific nor detailed — but also by limited knowledge of international cooperation mechanisms, the slowness of institutional channels, and the fragmentation of information tools. Added to this is the difficulty of communicating in a truly effective manner, not merely for linguistic reasons, but above all because of the complexity of “translating” our legal institutions into systems that operate according to different logics, categories, and normative structures.

Communication between judicial authorities belonging to different legal systems is not simply a transmission of data; rather, it is an operation of legal and cultural mediation that requires specific expertise and appropriate tools. In the absence of instruments that properly regulate relations between States — and consequently the transmission of data — there is a risk that the information necessary for decision-making will either not arrive at all or will arrive far too late for the procedural timeline.

Yet, in order to decide correctly the matters submitted to the judge, it is essential to have precise and reliable information. When the communication of the requested data is inefficient and the foreign authority fails to transmit it, or does so in an untimely manner, a gap emerges between the formal recognition of rights and their actual possibility of being exercised.

This gap ultimately becomes an obstacle to the implementation of rights that are guaranteed not only at the national level, but that also find their foundation in supranational sources.

The problem also arises in the field of the execution of criminal sentences and, more specifically, in the work of the Supervisory Courts (Tribunali di Sorveglianza). These courts are required to carry out a highly individualized decision, as they must determine whether a person who has already been convicted may access alternative measures to detention, that is, whether the sentence may be served outside prison.

At the international level, this issue is addressed in detail by Framework Decision 2008/947/JHA. The Decision aims to facilitate the recognition of final judicial decisions imposing, in particular, sanctions that replace detention — that is, non-custodial sanctions that allow the convicted person to serve the sentence in a State other than the State of conviction when that person has habitual residence and family and employment ties in that State. The purpose is to promote the social reintegration of the offender as well as to protect victims of crime. In this way, as stated in recital no. 8, the objective is to prevent reoffending while satisfying the need to protect victims and society in general.

After an initial restrictive approach based essentially on the literal wording of the law — which, in the Framework Decision in question, did not expressly mention alternative measures, thus casting serious doubt on their inclusion among the “substitute sanctions” referred to in Legislative Decree No. 38/2016 — more recent case law of the Court of Cassation has taken the opposite view. It has held that the specific alternative measure of assignment to the social service (affidamento in prova) under Article 47 of Law No. 354 of 1975 (penitentiary law) is substantially comparable to the substitute sanctions indicated in Legislative Decree No. 38/2016, which implemented Council Framework Decision 2008/947/JHA, since it constitutes a non-custodial measure imposing

obligations analogous to those listed in the decree and therefore in the Framework Decision (see Cass., No. 20977 of 15 June 2020)¹.

Although it is now formally well established that assignment to the social service (*affidamento in prova al servizio sociale*) may be granted abroad, its practical implementation is far more difficult. Such decisions, in fact, require the availability of complex data: socioeconomic information, details about the family situation, the existence of an effective residence, the level of social dangerousness, and updated criminal records.

The interview conducted with Dr. Linda Arata, President of the Supervisory Court of Venice, highlights an essential point: the lack of reliable information is not a marginal difficulty but a systemic problem that affects the quality of judicial decision-making. The absence of data does not represent merely an “organizational deficit,” but rather constitutes a structural limitation on full access to justice, since a convicted person who could, in theory, be eligible to serve an alternative measure abroad is in practice deprived of that right precisely because the required information is missing. Where information does not circulate or circulates imperfectly or in a form that judges cannot immediately use or apply, the right of the convicted person risks remaining abstract and failing to meet the needs that the legal system claims to guarantee.

The issue is intertwined with Article 27, paragraph 3, of the Italian Constitution, according to which punishment must aim at the rehabilitation of the offender. Rehabilitation is not an abstract concept: it requires concrete knowledge of the person, of the social context, and of the real possibilities for reintegration.

Without data — in particular, in our case, in the absence of police information regarding residence, family, employment, and social dangerousness — the rehabilitative function remains a stated principle that is difficult to implement, because the convicted person is forced into a far more difficult reintegration into society, to be carried out far from family, employment, and personal relationships. The lack of accurate data is not a simple technical inconvenience, but a violation of a right recognized by the Framework Decision and incorporated into our legal system.

¹ Cassation Court, No. 20977 of 15 June 2020: “The notion of a ‘substitute sanction’ is not defined by reference to the rules laid down in Law No. 689 of 1981, Articles 53 et seq., but rather as ‘a sanction, other than a custodial sentence, a measure restricting personal liberty, or a pecuniary penalty, which imposes obligations and prescribes requirements’. This general definition is also applicable to probation under social service supervision (*affidamento in prova al servizio sociale*), which, although alternative to detention, has a punitive content realized through the imposition of obligations and conditions.”

The discriminatory effect that this situation produces toward foreign offenders is therefore particularly serious. The inability to access police information, in turn, entails the impossibility of exercising a legal entitlement and creates a substantive inequality based not on actual dangerousness but on the differing availability of information.

Without reliable information, it is impossible to speak of a true individualization of the sentence, full rehabilitation, or genuine equality in access to justice. Justice without data is a fragile form of justice, one that tends to protect itself by restricting rights rather than by ensuring their full implementation.