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Book Review

Simone Franca, *I dati personali nell'amministrazione pubblica. Attività di trattamento e tutela del privato*, Naples, Editoriale scientifica, 2023.

The book deals with the issue of personal-data processing by the public administration, in the now-traditional framework balancing the free circulation of data with the protection of interested parties. Indeed, the Author extensively examines the two, knowing that, despite their potential conflict, they are worthy of legal protection by both the Guarantor for the protection of personal data and the judicial authority.

Particular attention is devoted to issues relating to public administration's data processing and its power over the data it collects and uses. Such power allows it to exercise its functions, but also requires a complex system of guarantees to avoid distorted or exploitative use of the data, which are often collected without the consent of the interested parties. One example, as the Author appropriately points out, is the need to balance the visibility of the data collected during the administration's investigation, with the needs to protect citizens and deliver performance. And it is right inside the so-called administrative activity that the public-interest profile becomes crucial, because it (even more than the mere principle of legality) constitutes the litmus test to verify whether the planning, management and evaluation of the collected data comply with legal requirements that justify an even-potential interference with the privacy of the subjects involved.

In particular, the first chapter examines the evolution of the relationship between private individuals and public administrations, highlighting: the decline of secrecy as the epitomic rule of activity, the increasingly prominent role of technological development, the emergence of the data-management function, the transformative factor of big data, and the development of the digital transition. Moreover, such developments have been affected by the boost the National Recovery and Resilience Plan (PNRR) provided for the digital transition. Indeed, the PNRR provides for the implementation of: technological innovation, widespread digitalization, and cybersecurity systems; hence intercepting several issues already present in the pre- Covid debate. In this regard, the Author highlights how the coordination between these profiles and data protection is remitted to a safety clause which, rather than affecting the scope of the rules, allocates liability and burdens on the single administrations. Attention is also devoted to one of the most urgent needs, which is to guarantee security of data processing already from the very beginning rather than in the downstream operational methods of the data-processing administration.

The second chapter addresses the organizational issues relating to public administrations acting as data controllers, with particular reference to the function of the Data Protection Officer, as well as his/her subjective and objective responsibilities. Particular attention is paid to the criteria for appointing this figure, as well as his/her ability to act knowingly within the relevant organization, unburdened by exceedingly stringent regulatory, bureaucratic, and technical constraints.

The third chapter concerns personal-data processing from a procedural perspective: planning and identifying the processing's purposes, impact assessment, processing directors' mapping of the activity; and implementation of transparency, publicity and data protection. Finally, the Author addresses issues relating to search keys and data storage, with specific attention to algorithmic treatments, which combine the experience of artificial intelligence with a broad array of news and personal information that the algorithm combines in an automatic and predetermined way.

The fourth chapter explores in depth the role of the Guarantor of personal data. It distinguishes ex ante interventions (ranging from preventive conformation of the processing, to regulation based on the owner's liability), from ex post interventions (in particular, administrative protection and sanctions in matters of transparency, without forgetting the transactional and European importance of the Guarantor itself). Also based on the experiences of other European States, the Author seems to favor (rather than sanctions) collaboration amongst the public bodies collecting and processing data, the interested parties in various capacities, and the Guarantor itself.

The fifth chapter deals with the judicial review of the administrative activity of personal-

data processing, concerning the justiciability of claims in disputes regarding the protection of personal data and the transition from the more traditional subjective legitimation (i.e., based on plaintiff's alleged infringement of their subjective legal position) to an objective legitimation. As the Author clearly highlights, in such cases public or private entities –other than the holders of the injured subjective legal position- can take legal action on the basis of an express provision of law stating the requirements for the existence of this legitimacy (e.g.,, consumer-protection associations). Furthermore, the Author analyses the issues of: the scope of the ordinary judges' review over the administrative activity of personal-data processing; the Guarantor's powers; and the regulation of liability for illegal personal-data processing and possible compensation. After examining the scope of administrative judicial review in rights-of-access cases, the Author enumerates the criticalities deriving from the choice to allocate jurisdiction to ordinary judges, in terms of both protection's effectiveness and comprehensiveness, as well as procedural instruments' adequacy. In this framework, the Author discusses the French, Spanish and German experiences, which (like Italy) all feature a dual-jurisdiction system. Remarkably, the German system carves a precise area of jurisdiction to administrative judges for personal-data protection; and to special judges for "social-data" processing; as well as processing by the financial administration.

The sixth and final chapter, presenting with the conclusions, is devoted to the legal regime applying to processing and its repercussions. Simone Franca expertly examines the issue in the framework of the traditional categories of administrative law. The main approach appears to be the balancing of interests in the administrative activity of personal-data processing, and the role of principles (transparency, minimization, proportionality, accountability) in defining the legal regime applicable to this activity. According to the Author, it is precisely such joint vision of the various principles that represents a key point for orienting: the Guarantor activities; the ordinary judges' review; and issues of illegal personal-data processing by the public administration. After having examined such protection profiles pertaining to the processing activity, with the purpose to balance people's protection with the pursuit of the public interest, the Author frames personal-data protection as a subjective legal position. Such interpretation implies a highly individualistic and absolute meaning of data protection and probably derives from civil scholarship that has dealt with privacy protection between 1980s and 1990s.

This approach would lead to allowing protection an excessive scope. Indeed, as the Author underlines, protection would be allowed also to merely selfish and sometimes even emulative demands. But the scope of such protection would also be reductive with regard to more risky situations, such as cases in which subjects do not grasp the potential dangers or costs of the processing. This interpretation ends up effectively delivering personal data to the data-controller itself, using them as consideration in contractual transactions (such as in the case of online purchases of goods and services). Ultimately, the Author seems to frame personal-data protection as a subjective legal position in which the people's protection interacts with the interest in data circulation. Such reading may find its reason in the public interest, as it is precisely the case of processing carried out by the public administration.

Overall, the book is well-structured, comprehensive and methodologically very appreciable. It tackles –in a reconstructive and critical way– all the aspects of a topic which in recent years has had a dizzying development and which requires an articulated discipline allowing for the reconciliation between confidentiality and public interest in personal-data collection and processing. This is an increasingly felt need, which however is also highly problematic and is prone to severely affect people's lives. In this perspective, Simone Franca's outstanding work contributes not only to legally clarifying situations that are not yet stabilized, but also offers solutions able to resolve the relationship between privacy and public interest in data collection and processing in terms of proportionality and reasonableness [Reviewed by VERA FANTI].

Albert Sanchez Graells, *Digital Technologies and Public Procurement: Gatekeeping and Experimentation in Digital Public Governance*, Oxford, Oxford University Press, 2024.

In *Digital Technologies and Public Procurement*, Albert Sanchez Graells examines a crucial yet underexplored dimension of legal scholarship: the intersection between digital transformation and procurement law. As digital governance accelerates, policymakers increasingly rely on public procurement mechanisms to regulate and implement technological adoption within the public sector. However, as the author convinc-

ingly argues, this reliance exposes fundamental legal and regulatory gaps, raising critical questions about transparency, legal certainty, public accountability, and fundamental rights protection (pp. 5-6).

Sanchez Graells' work is distinguished by its multidisciplinary approach, which blends doctrinal legal analysis, political economy, and socio-technical insights (pp. 6-7). This methodology allows the book to go beyond a mere legalistic interpretation of procurement rules, embedding them in broader discussions of digital constitutionalism, regulatory governance, and fundamental rights protection.

One of the book's central premises is that public procurement has been erroneously assigned a regulatory function that it was never designed to fulfill (p. 25). This phenomenon, which the author terms "regulation by contract", manifests in the expectation that procurement law can serve as a de facto regulatory framework for digital governance (p. 26).

Sanchez Graells critically assesses the European and UK contexts, illustrating how procurement frameworks are increasingly leveraged to impose digital policy requirements — such as transparency, accountability, and cybersecurity — through contractual mechanisms rather than statutory provisions (pp. 30-33). However, he argues that this contractualization of regulation is deeply flawed for several reasons: a) Fragmentation and Legal Uncertainty: Procurement decisions are decentralized and vary across contracting authorities, leading to inconsistent enforcement of digital governance principles (p. 63); b) Weak Public Buyer Problem: Public authorities often lack technical expertise and bargaining power vis-à-vis private technology suppliers, undermining their ability to impose meaningful contractual safeguards (pp. 54-57); c) Regulatory Capture and Privatization: Digital technology firms, rather than public institutions, shape the governance of digital procurement, raising concerns about regulatory capture and the erosion of democratic oversight (pp. 65-70).

Thus, rather than serving as a gatekeeping mechanism, public procurement may inadvertently become a Trojan horse for deregulated, opaque, and potentially harmful digital transformations (p. 119).

Sanchez Graells provides an in-depth legal analysis of how procurement fails as an effective regulatory tool, particularly in the domains of algorithmic governance, artificial intelligence (AI) adoption, and public sector automation (pp. 73-99).

The contractual flexibility inherent in procurement frameworks—while beneficial in commercial transactions—becomes problematic when used to regulate fundamental aspects of public governance. The author explores specific legal and constitutional risks, including: a) lack of Public Scrutiny: Unlike statutory regulations, procurement contracts are not subject to robust democratic oversight. Critical decisions regarding AI deployment in public administration or data-driven public services are made within opaque contractual negotiations, often shielded from public scrutiny (p. 85); b) absence of Fundamental Rights Protections: The procurement process does not guarantee ex ante compliance with constitutional or human rights obligations, such as data protection (GDPR), non-discrimination, and due process (pp. 113-116); c) enforceability and Accountability Issues: While procurement contracts may include ethical AI principles or cybersecurity standards, their enforceability remains weak, as breaches typically lead to contractual remedies rather than regulatory penalties (p. 94).

These findings align with broader critiques in legal scholarship regarding the privatization of public law functions and the risks of regulatory outsourcing to market mechanisms (p. 119).

One of the book's most compelling legal contributions is its examination of how digital procurement interacts with fundamental rights and administrative law principles. Sanchez Graells highlights the incompatibility between procurement-driven governance and established principles of legality, proportionality, and transparency (pp. 110-113).

A particularly important discussion centers on the Charter of Fundamental Rights of the European Union (CFREU) and its application to digital procurement: a) Article 41 (Right to Good Administration): The increasing use of automated decision-making in public services raises concerns about the lack of human oversight, due process violations, and potential algorithmic bias (p. 184); b) Article 8 (Right to Data Protection): The procurement-driven adoption of AI and big data analytics often bypasses data protection impact assessments (DPIAs), leading to non-compliance with GDPR requirements (pp. 185-187); c) Article 47 (Right to an Effective Remedy): The lack of regulatory clarity creates legal ambiguities regarding judicial redress when public procurement decisions result in harmful digital implementations (p. 188).

These analyses reinforce the need for stronger ex ante legal safeguards, rather than relying sole-

ly on procurement as an after-the-fact accountability mechanism (p. 119).

In the final chapters, Sanchez Graells proposes a set of legal and institutional reforms aimed at addressing the shortcomings of procurement-driven digital governance. His key proposal is the establishment of a dedicated regulatory body—the AI in Public Sector Authority (AIPSA)—which would oversee: i) Mandatory AI Impact Assessments for Public Sector Procurement (p. 106); ii) Binding Public Law Standards for Digital Governance, ensuring compliance with transparency, non-discrimination, and accountability principles (p. 114); iii) Enhanced Judicial Review Mechanisms, providing legal recourse for individuals affected by digital procurement decisions (p. 116).

This proposal aligns with emerging regulatory trends in the European Union's AI Act and OECD frameworks on public sector digitalization, underscoring the need for more robust regulatory intervention beyond procurement mechanisms (p. 145).

Sanchez Graells' *Digital Technologies and Public Procurement* is a landmark legal study that challenges prevailing techno-solutionist narratives surrounding digital governance. By exposing the limits of procurement as a regulatory tool, the book advances a compelling case for hard law interventions and institutional safeguards. For of public law, procurement law, and digital governance, this book represents an essential reference, offering both theoretical insights and concrete policy recommendations [Reviewed by ALESSANDRO DI MARTINO].