

# Prosecutor Mr Gian Carlo Caselli retires – his examples stays

The Chief Prosecutor (Procuratore capo della Repubblica) of Torino, Mr Gian Carlo Caselli, retires from office at 75. (-> [news](#))

This excellent magistrate, who served as Prosecutor for over 40 years, has been a touchstone of commitment to justice and the law. After being a leading figure in the fight against internal left-wing terrorism during the late 70s and early 80s, he was committed, together with Mr Falcone and Mr Borsellino, in the struggle against the Mafia and 'Ndrangheta, playing a protagonist' role in the inquiries against mob chiefs.

In retiring, he leaves behind an entire generation of law students, attorneys and judges (or at least a good portion of a generation) who got inspired by his independence, commitment, good doctrine and integrity.

The news spread in the papers early in november, but his decision becomes operational as of January 1st.

Italians in general (and lawyers in particular) should thank Mr Caselli for his constant commitment to let this Country remain a good place to live. I, personally, do so.

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# Enigma codebreaker Alan Turing receives royal pardon (from "The Guardian")

Alan Turing, convicted of gross indecency in 1952 after admitting a sexual relationship with a man, has been granted a posthumous royal pardon 59 years after his death.

The famous mathematician was the person who had broken the [Enigma](#) Code (giving a fundamental advantage to the Allies over the Axis Powers during World War II) and had set the basis for modern computers by imagining a machine (-> the [Turing Machine](#)) that could verify -on a case by case basis- if a mathematical relation (i.e.  $1+1=3$ ) is true or false. He had achieved such results also in H.M.'s service, while directing the [Bletchley Park](#) research group during the war.

Despite these achievements, and their importance, a court established under law could not but convict him for his homosexuality, that was a crime in UK until 1967. (read the article from The Guardian -> [here](#))

I still find amazing (and shocking) how absurd can be the result of applying legal categories to strictly personal behaviors. In this case, we have a world class hero induced to suicide by the very legal system that he contributed to defend. Luckily for the whole Western world, Mr Turing was tried after the war and not before: otherwise, the war could have had a different end, computers could have been invented somewhere else and, maybe, the Nazi Weltanschauung could have prevailed.

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# **I earned the Master title as Data Protection Officer!**

And now some self promotion! I'm pleased to announce that I passed the final exam of the Master course as Data Protection Officer, held in Torino in 2013 and co-organized by the well known law firm [ICT Legal Consulting](#) and by [UnoLegal](#).

The Master title achieved – centered on the legal aspects of data protection under the present Italian legal framework (dlgs. 196/2003) and on the upcoming EU regulation on data protection, certifies my continuous commitment in the field of TMT law.

Thanks to all those who supported this effort and a special thanks to [Lessicom](#), who was essential in helping me achieving this result!

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# **The Italian Inventory of Real Property Authority reclassifies the value of estates**

In these last days of 2013, the Italian Uffici del Territorio dell'Agencia delle Entrate (Real Estate division of the Inland Revenues) are performing a mass operation of reclassification

of real estate values, in order to reconcile the (alleged) market value of estates to the nominal value they have for administrative purposes. (for an opinion on this matter see this article by Giuseppe Marino →[here](#))

Unfortunately, the operation is conducted in *automatic mode*. This implies that all notices of reclassification served in these days have practically the same declared motives and therefore... are potentially void.

In fact, the automatic reclassification is based only on a presumptive value. The Corte di Cassazione, on the other hand, in its decision n. 22557/2008, has clearly ruled in favour of the existence of a right of the taxpayer to receive a classification of his real estate that really reflects its value (even if lower than expected), so that he's always allowed to prove that the value given is wrong.

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## **Lo Stato del Delaware modifica la propria legislazione societaria... e rischia di perdere il suo primato in questo campo**

Lo Stato del Delaware, comunemente noto nel mondo del diritto commerciale per la sua avanzatissima legislazione in materia di diritto societario, rischia, secondo il professor Eric A. Chiappinelli della Texas Tech University School of Law, di perdere il suo primato.

Questo Autore, nel suo saggio in uscita ([Chiappinelli, Eric A., The Underappreciated Importance of Personal Jurisdiction in Delaware's Success \(December 3, 2013\). DePaul Law Review, Forthcoming](#)) descrive l'attuale tendenza delle Corti (in particolare della Court of Chancery) dello Stato a tentare di limitare "aggressivamente" l'emorragia di cause verso altre giurisdizioni statali americane.

A quanto risulta, a seguito della recente riforma di diritto societario dello Stato, seguito alla implementazione del [Sarbanes-Oxley Act](#) anche in Delaware, tale giurisdizione sta perdendo quella caratteristica di "Lussemburgo d'America" che l'ha reso, fin dagli anni '30 del '900, lo Stato di elezione per la localizzazione di grandi società negli Stati Uniti.

A seguito di tali [modifiche](#) (per cui si rinvia a [inhouseblog.org](#)) parrebbe che, poco alla volta, il diritto societario del Delaware stia perdendo le sue caratteristiche di originalità che l'hanno portato a sviluppare alcune fra le soluzioni giuridiche che maggiormente hanno influenzato il diritto societario dell'intero occidente industrializzato nel corso del novecento (prima tra tutti la regola per cui l'amministratore di società risponde delle proprie decisioni d'affari unicamente se abbia violato uno dei tre doveri di base: rispettare gli obblighi di fiducia (non agire in conflitto d'interesse), agire in buona fede ed agire in modo responsabile (duty of care): la cosiddetta "[business judgement rule](#)").

Secondo Chiappinelli, però, la radice del problema va ricercata principalmente nella "debolezza" dei principi di giurisdizione dello Stato del Delaware (in Italia parleremmo di competenza territoriale), che consentono, in determinate circostanze, la "migrazione" delle cause. Ciò provocherebbe, sul medio termine, una riduzione della massa di decisioni in materia societaria e, di conseguenza, una perdita della capacità dei giudici del Delaware di influire sullo sviluppo del diritto societario.

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# Anonymous activist convicted for conspiracy by the Italian Supreme Court

The Corte di Cassazione has confirmed the decision of conviction against Anonymous activist Mr Gianluca Preite, by its decision nr. 50626/2013. The decision affirms that defendant is in fact guilty of unlawful access to information systems (article 615-ter of the (italian) Criminal Code), in conspiracy with other activists. Defendant had attempted a defense line based on the particular ideal value of the motives behind the gesture of Mr Preite. The Court (predictably) ruled against this argument: *“more than the ideal values, the critical point is the existence of a shared plot with regard to the means to pursue the aims (for flattering and praiseworthy as they may be) that the group has assumed”*.

It is however striking, in the Court's decision, how attentively the high Judges have examined the motives. While, in fact, it is quite obvious that ideal motives, under Italian criminal law, may be such to operate as [extenuating circumstances](#), (see, i.e. Cass. pen. [46306/2007](#) – published on Altalex), they cannot, per se, exclude the existence of the crime.

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# Tax petitions cannot be served via certified e-mail

In May 2013, “il Sole 24 Ore”, the official house-organ of the Italian Confindustria, daily bible of Italian merchantmen and professional consultants, made a survey to find out how the compulsory certified e-mail system worked. It should be noted that the Certified Mail (in Italian “PEC – Posta Elettronica Certificata”) is *compulsory* in Italy for some entities: as of L. 221/2012 that converted Decree 179/2012 for all companies and professionals, and as of Legislative Decree 82/2005 for public bodies and administrations. This excellent contribution, by Antonio Iorio, can be read [here](#).

It turned out (not?) surprisingly that while the Tax offices have no problem whatsoever in serving their communications via PEC (including notification of decisions, scheduling of hearings and so on), they mainly *do not accept* to be notified with the same medium. The situation, by the way, has not changed since May (thus I can easily quote it here today).

In other words, the taxpayer receives tax notifications from a distant future, but he’s only allowed to respond with a nineteenth century instrument. Like being attacked by Mars and fighting back with a 1886 Winchester rifle... It does look like a [Steampunk](#) nightmare!

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# The Actor's hands

"All the world's a stage, and all the men and women merely players". Can we counter-argument to the Swan of the Avon? definitely not. Therefore, let's learn from the good players how to make our hour upon the stage.

Have a look at the theatrical gestures of most-lamented Italian actor Vittorio Gassman ([photos](#) recently found, and published by "La Repubblica"). How many marketeers could claim to be more expressive and effective, without saying a word? How many lawyers would give five years of life to become capable of convincing, influencing, communicating their cases without depending on their *speech* only?

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## **EU Commission publishes decisions on EURIBOR and LIBOR derivatives cartel agreements**

The here-linked [article](#), posted by Claudio Lombardi, is published on the "Osservatorio permanente sull'applicazione delle regole di concorrenza" (Antitrust Enforcement observatory).

The EU Commission has fined eight major International Banks for taking part in a cartel agreement in connection to derivatives' markets in the [European Economic Area](#). The overall fine amounts to 1,71 billion Euro.

The decisions are attached to the Article.



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# **ITL – International Trade Law – a reason to blog**

Hello World!

The blog starting today has a clear manifesto: sharing thoughts and (hopefully) useful tips in matter of International trade law, with a focus on technology and the Internet. Is this a novelty on the web? Yes, of course, nothing of this kind has ever been made before and, No, of course, there is plenty of information about new tech and the law around the web.

So why on earth should you read this specific legal blog? For the same reason why I write it: contributing to the Zeitgeist, sharing thoughts with potential readers (...an entire world of potential readers... amazing and ghastly) and collecting the tiles to compose new legal solutions.

The blog will be centered on Italy, admittedly. This is quite self-explanatory, since I am an Italian lawyer; I will endeavour to keep it in English, but many contributions you'll find here around will be in Italian or French of, rarely, German.

Now let's start.

Thanks

Ivan