

Letter to the Editor

Assisted suicide: article 17 of the Italian Code of Medical Ethics follows in the footsteps of the Italian Constitutional Court's landmark ruling

Dear Editor,

Less than a year ago, on September 25th 2019, the Italian Constitutional Court issued a landmark decision on assistance in dying, thus setting a long-awaited standard in terms of regulating assisted suicide¹. The ruling related to the case of Fabiano Antoniani, also known as DJ Fabo, a man in his forties who had made a pondered, steadfast decision to receive assistance in dying at a Swiss euthanasia clinic in 2017.

Fabiano was left blind and tetraplegic in the aftermath of a catastrophic road accident in 2014. His death has since become the subject of heated debate in a country, such as Italy, where euthanasia, whether active (i.e., doctors actively causing the patient's death) or passive (the self-administration by the patient of lethal drugs to end his or her life, the way Fabiano ended his), is adamantly opposed by the Catholic Church.

Italy's Constitutional Court has made it clear that euthanasia should be permitted by law in certain circumstances, including those in which a patient's irreversible condition was "causing physical and psychological suffering that he or she considers intolerable".

The court's ruling was centered around assisted dying and the "legal framework concerning end of life [situations]". A request had in fact been made by a Milan court to provide a clear interpretation of the law in the trial against pro-euthanasia politician, activist and campaigner Marco Cappato, who had actively helped Antoniani with his journey to a Swiss clinic which provides assisted suicide. There was much at stake, which is why this decision is so relevant: had he been found guilty of "instigating or assisting suicide", Mr. Cappato could have faced up to 12 years in jail; following the Constitutional Court decision, the defendant was acquitted. Italy's Parliament is now expected to debate the Court's decision and come up with a law bill. In the meantime, on February 2020, the Italian Medical Association (FNOMCeO) updated article 17 of the Code of Medical Ethics ("Acts aimed at causing death"), by laying out standards and defining situations in which doctors who withdraw life-sustaining treatment from patients who request it will not be punishable.

In the previous legal scenario², euthanasia was illegal in all its forms, but a patient had the constitutionally protected right to refuse care, including life support. The potential inconsistency led to several cases that created major divisions among Italians. From the practical, medical and ethical perspectives, in fact, can withdrawing life-sustaining treatment be viewed as a form of assisted suicide, thus punishable under Italian law? Let us briefly summarize two highly emblematic precedents that seem to belie that: the cases of Piergiorgio Welby and Eluana Englaro. Mr. Welby, a terminally ill Italian patient with muscular dystrophy, was assisted in dying by a doctor, Mario Riccio, who turned off his ventilator after sedating him, causing his death in his house, on 20th December 2006; Riccio was indicted for consensual homicide, but acquitted of all charges on 23rd July 2007, since his actions "do not constitute any crime"; the judge invoked article 51 of the Italian Criminal Code, which codifies the non-indictability of doctors who comply with their patient's will and requests, including the refusal to be treated, under article 32 of the Italian Constitution. Ms. Englaro, unlike Welby and Antoniani, had been in a vegetative state of unconsciousness since 18th January 1992, when she lost control of her car and hit a wall,

suffering catastrophic and irreversible brain injuries. Her case therefore differs from the other two, in that she was in no condition to manifest her will to end her life. Her father Beppino took the case all the way to the Supreme Court; ultimately, the Milan Court of Appeal allowed her caretakers to withdraw life-sustaining treatment, namely artificial hydration and nutrition. The ruling issued on 16th October 2007 set important standards: the patient's vegetative state must be irreversible, with no prospect for any recovery; the patient's will not to be kept alive artificially should be demonstrable, either by declarations in writing or through the testimony of other people who had heard the patient manifest it. Ms. Englaro had allegedly done so. That rationale laid the groundwork for the Italian legislation on advance health care directives, enacted on 14th December 2017³⁻⁶.

The crux of the matter is whether to consider life-sustaining artificial hydration, nutrition and ventilation as forms of treatment, which can be discontinued upon the patient's request, and can therefore constitute forms of futile treatment; that interpretation led the Milan Court of Appeal in the Englaro case to authorize the withdrawal of such procedures, resulting in the woman's death. It is worth stressing that the Italian Code of Medical Ethics agrees with that perspective⁷⁻⁹, which is in keeping with article 32 of the Italian Constitution, and article 9 of the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine¹⁰, ratified by Italy on 28th March 2001¹¹. The Catholic approach, on the contrary, does not deem life-sustaining procedures as forms of treatment; hence, refusing them is tantamount to committing suicide, unjustifiable under all circumstances for Catholic doctrine. Welby was in fact denied a religious funeral by Catholic authorities on those grounds¹².

We believe that in light of the cases briefly summarized herein, the pressing need for a legislative intervention is now undeniable; as a matter of fact, the Italian Constitutional Court last October urged Parliament to intervene, giving it a year to fill a legal void on the question; regrettably, no legislative initiative has so far been undertaken. Leaving such an extremely sensitive matter to the judiciary to regulate, which only fuels uncertainty and jeopardizes the rights of patients, their families and doctors, is unacceptable. International doctrine tends to allow for passive euthanasia, under clearly defined and strict circumstances, whereas active euthanasia is illegal in the vast majority of nations (in Europe, only Belgium, the Netherlands and Luxembourg have legalized it). The core issue is how to best uphold patient self-determination, while ensuring that the fundamental principles of beneficence and non-maleficence (by which doctors can never harm their patients) are also enforced. Could a patient be suffering a deprivation of the right to self-determine, if they were forced to go on living a life they considered unworthy of being lived? We believe so, if the patient's dignity is prejudiced and they find such a situation unbearable; the Italian National Committee for Bioethics has stated that while it is arbitrary to judge the dignity and value of any patient's life, and human life cannot be viewed as disposable under any circumstances, it is ethically acceptable to withdraw artificial nutrition and hydration if such interventions merely constitute futile forms of care, for patients with no prospect of improving or under unbearably painful conditions. Still, some Committee members have disagreed, arguing that human life protection outweighs any other objective: the medical duty "to care and take care" of patients is irreconcilable with "facilitating or assisting" the suicidal intention¹³. The Committee itself has underscored how difficult it is to strike a legally and ethically acceptable balance between diverging views on such an extremely sensitive issue.

If on the one hand the Association Board left the phrasing in article 17 unchanged ("Doctors shall not pursue any form of treatment or intervention aimed at causing their patients' deaths, even if so requested by the patients themselves"), in agreement with the National Association of Catholic Physicians, exceptions were instated along the lines of the Constitutional Court ruling, applying the same standards for declaring doctors who provided aid in dying not ethically punishable. Based on a case-by-case, thorough evaluation, the updated version of the Code argues, doctors may not be punishable if they aided patients to commit suicide in cases such as the three herein mentioned. We firmly believe that any degree of legalization of assisted suicide, as it has already happened based on court rulings, albeit not through legislation, will have to take into account the rights of those professionals who would choose to refuse such assistance on con-

science grounds. In fact, neither the Constitutional Court ruling nor the Code of Medical Ethics establish any kind of obligation for doctors to assist patients in dying. The right to conscientious objection is already acknowledged for doctors and other providers who oppose abortion¹⁴ or emergency contraception¹⁵, which they deem a form of abortion¹⁶. A spirited public debate on conscientious objection to abortion has been going on for decades, in light of the repercussions the refusal produces on people's rights (71% of gynecologists are registered as conscientious objectors in Italy, 80% in Latium and Abruzzo, 93.3% in Molise¹⁷). The European Committee for Social Rights warned that conscientious objection makes it all but impossible for most Italian women to terminate their pregnancies in a safe, legal, and accessible manner, and the measures put in place by Italian lawmakers to ensure free access to abortion are insufficient¹⁸. Such rifts and conflicting positions and needs bear witness to the enormous magnitude of the issue of conscientious objection in health care, its complexities, and the risk that further divisions and polarization will be caused. For that very reason, legislators need to step in as soon as possible, in order to ensure that not only those who can afford to seek assistance in dying abroad can end their lives with dignity, if they can no longer bear to go on living. The Italian Medical Association has weighed and coped with landmark court decisions and even a Constitutional Court ruling; such adjudications have institutionalized the principle according to which self-determination outweighs any other foundational value, even life itself, which at least theoretically cannot be disposed of, unless its preservation "at all costs" conflicts with constitutionally guaranteed rights such as human dignity. The Association has chosen to retain the prohibition of any participation in practices aimed at causing the patient's death, in keeping with the fundamental Hippocratic precepts; still, from a practical standpoint, through its executive decrees, it has resolved to refrain from punishing its members who have not been convicted in a court of law for that crime. Yet, the issue is still nowhere near solved. The challenge that needs to be addressed now is how to reconcile the patient's right to self-determination, which has apparently been fully acknowledged by the judiciary, with the ethical principles which are medicine's very foundation; such tenets are not to be applied in absolute terms, however, but rather they encompass various views, beliefs and approaches on end-of-life issues.

Since the foreseeable consequence of that paradigm shift is likely to be that patients who want to end their own lives will be allowed to receive assistance in exercising such an extreme form of self-determination; at the same time, that same right to self-determination should be granted to doctors who are not willing to partake in that process, out of deeply-held, ethics-based beliefs. The extreme complexity of such apparently irreconcilable rights and prerogatives will not be solved unless the legislature steps up and sets clearly-defined standards, as the Constitutional Court itself urged it to almost a year ago.

Conflict of Interest

The Authors declare that they have no conflict of interests.

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