

Medically assisted suicide in Italy: Recent legal developments on a controversial topic

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Abstract

On 16th June 2022, the first case of lawful ‘medically assisted suicide’ took place on Italian soil. This event is a result of decade-long debates on informed consent and end-of-life care stimulated by medical jurisprudence. The authors first retrace the crucial moments that allowed this to happen and underline the problems still to be solved. The cases of DJ Fabo, Davide Trentin, Mario and Fabio Ridolfi are discussed, signalling how they influenced the path implemented by Italian jurisprudence.

Keywords

Assisted suicide, medical law, legal medicine, medical ethics, end of life care, informed consent

Introduction

On 16th June 2022, the first case of lawful ‘medically assisted suicide’, intended as the patient self-administration of the medically provided means for their death, took place on Italian soil.

This event is a result of decade-long debates on informed consent and end-of-life care stimulated by medical jurisprudence: Italian Courts decided on individual cases and led a, slow, cultural evolution to guarantee patient autonomy and right to self-determination. Accordingly, the Italian Medical Ethics Code was repeatedly modified. In the sixties and seventies, the Code was characterized by a predominant medical paternalism; the principle of informed consent was included in parts of the Code in the eighties and nineties; whereas the right to self-determination became predominant and paramount in the new millennium.¹ Changes were also stimulated by suggestions of the World Health Organization (WHO) on ‘patient empowerment’² and by the European Constitution (Rome, 29 October 2004, Title I, Dignity, Article 3, ‘*Right to the integrity of the person*’),³ this latter requires European Union member Countries to legislate on informed consent in healthcare, stating that it is imperative that informed consent should precede every medical procedure.

Italy aligned itself with the European Constitution only in 2017. The Law no. 219 art. 1 regulates the patient’s right to self-determination including the right to refuse life-saving or life-prolonging treatments.⁴ The article 5 of the

Law states that, in cases of chronic disease with poor prognosis, the doctor and patient should implement a shared planning of treatment. This plan includes whether the patient wishes to receive invasive life-prolonging treatments, such as tracheostomy or peripherally inserted central catheters. Ideally, patient’s treatment preferences should be discussed prior to becoming incapacitated or too unwell to communicate. The aim of early discussions and shared planning is to ensure that patient’s wishes are known and implemented when they are no longer able to express them. Law no. 219 also permits the use of advance treatment directives or ‘living will’: a written document allowing a trustee to represent a patient that has become incapacitated.

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Law no. 219 represents an important step forward as it clarifies numerous crucial aspects. For instance, the doctor implementing patient's requests cannot be prosecuted by law. It also states that artificial hydration and nutrition are therapies and, as such, their administration requires informed consent, and can, therefore, be refused (article 1). There are areas still not completely regulated by law no. 219, primarily pertaining to decision making in chronic non-immediately fatal diseases substantially impairing quality of life. In those cases, should the patient decide their suffering is too unbearable, Law no. 219 allows the patient to request to stop treatments, including artificial nutrition and hydration, although it does not allow to actively end life. It is, however, possible to resort to palliative sedation, to ease physical and psychological suffering, for instance once life-prolonging therapies are withdrawn.⁵

The DJ Fabo case

Withdrawal of life-sustaining therapies and palliative sedation was considered too unbearable by Fabio Antoniani, known as DJ Fabo in Italy, immobilized due to tetraparesis following a car accident. Therefore, he chose to travel to Switzerland to end his life by medically assisted suicide, helped by Marco Cappato of the Luca Coscioni Association.⁵⁻⁷ Once returned to Italy, Marco Cappato denounced himself for instigation to commit suicide. Article 580 of the Italian criminal code punishes anyone who determines, strengthens or facilitates someone's suicidal intention. This case led, after a series of Court's judgments, to a historic ruling by the Italian Constitutional Court: sentence number 242 (22nd November 2019) identified specific criteria of non-punishment for instigation to commit suicide. Specifically, non-punishment applies to anyone who helps or facilitates the death of a person wishing to die and (1) kept alive by life-sustaining treatments, (2) suffering from irreversible pathology, (3) suffering from intolerable physical or psychological suffering, and (4) fully capable of making free and informed decisions. Legally, a public structure of the Italian National Health Service, following authorization by an ethics committee, must verify the simultaneous presence of all the above conditions as well as instruct on the means to conduct 'medically assisted' suicide.

The ruling was in contrast with Article 17 of the 2014 Italian Code of Medical Ethics, which regarding 'Acts aimed at causing death', stated: 'The doctor, even at the request of the patient, must not carry out or favor acts aimed at causing death'. Following the 2019 Constitutional sentence, the National Council of the Italian Federation of the Colleges of Physicians significantly amended Article 17 in February 2020. Article 17 currently reads: 'The free choice of the doctor to facilitate, on the basis of the principle of self-determination of the individual, the autonomously and freely formed intention to commit suicide by

a person kept alive by life-sustaining treatments, suffering from an irreversible pathology, a source of intolerable physical or psychological suffering, who is fully capable of making free and conscious decisions (judgment 242/19 of the Constitutional Court), must always be assessed on a case-by-case basis and, if all the elements indicated above exist, the doctor cannot be punished from a disciplinary point of view'.⁸

The Davide Trentini case

The case of DJ Fabo established the legality of medically assisted suicide in Italy provided four criteria are met. The case of Davide Trentini clarified the interpretation of the first criterion relating to dependence on life support.⁹

Davide Trentini was diagnosed with multiple sclerosis in 1993. In 2015 he contacted a Swiss Dignitas clinic, in which assisted suicide is performed and asked to be aided by Marco Cappato and Mina Welby of the Civil Aid Association. On 12th April 2017, Mina Welby accompanied him to the Swiss clinic where, the following day, Trentini operated a drip to inject himself with a fatal compound. Following this event, Mina Welby and Marco Cappato were called by the Court of Assizes of Massa to answer for the hypothesis of strengthening of the suicidal intention of Trentini and the facilitation of its execution, as provided for by Article 580 of the Italian criminal code (Instigation or aid to suicide).

Since Trentini was not connected to machinery for eating, medications, or breathing, the question was whether the case could fall under sentence number 242 of the Constitutional Court as one of the four requirements, that is, the dependence on life-sustaining treatments, was not met.⁹

Trentini was dependent on two types of medical support: the first was therapy for pain control, which had reached maximum dosages; the second was mechanical support to resolve constipation. The Court of Assizes of Massa, with the sentence of 27th July 2020,⁹ pointed out that law no. 219 recognizes the patient the right to refuse and interrupt any medical treatment. According to the Court of Assizes, 'Dependence on life-sustaining treatments does not necessarily and exclusively mean dependence on a machine'. The definition of 'life-sustaining' applies to all those medical treatments the interruption of which may result in the death of the patient (even if the demise is not rapid). Furthermore, since the Constitutional Court in the sentence number 242 held that the law no. 219 permits the lawful interruption of life-sustaining treatments upon patient's request, it is unreasonable to continue to deem unlawful suicide facilitation in the form of providing a lethal drug that the patient can self-administer. Marco Cappato and Mina Welby were, hence, acquitted by the Court because 'the facts charged do not constitute an offense'.

This sentence represents an important step forward because it clarified that ‘dependence on life-supporting treatments’ has wider meaning than ‘dependance on machine’, from a legal point of view.

The Mario case

Both DJ Fabo and Davide Trentini travelled to Switzerland for medically assisted suicide and, in both cases, those who helped them were acquitted by the Italian courts. Mario, name changed to protect his anonymity, was the first patient to decide to make use of medically assisted suicide in Italy. He was a quadriplegic patient immobilized for over ten years due to a car accident. Mario had obtained the green light to be able to go to Switzerland for assisted suicide in 2020. However, following the Antoniani-Cappato sentences and discussions with Marco Cappato, he chose to follow the procedure indicated by the Italian Constitutional Court. He contacted his local Health Unit and asked to verify the existence of the four criteria indicated by the Constitutional Court and to approve the prescription of a drug that would allow him to die in his home country. Upon refusal by the Health Unit of the Marche region to activate the procedures, Mario turned to the Court of Ancona, with the legal support of the Luca Coscioni Association. He requested that the Health Unit of the Marche region should be ordered to prescribe the drug sodium thiopental to ‘put an end to his existence in a rapid, effective, and painless way’, making use of the so-called medically assisted suicide, in compliance with the recent ruling of the Constitutional Court.

The Health Unit of the Marche region, however, affirmed that in the Italian law there is no obligation for healthcare professionals to assist suicide and, consequently, the patient has no right to be provided with the drug. Moreover, the Health Unit argued that the Constitutional Court sentence number 242 is relevant only for criminal matters and cannot be applied in civil cases and to healthcare. The Court of Ancona initially rejected the appeal of Mario and accepted the theses of the Health Unit of the Marche region¹⁰ stating that ‘there are no [...] reasons to believe that, by identifying the condition required for suicide aid to be considered lawful, the Constitutional Court has also founded the patient’s right to obtain the collaboration of health professionals in implementing his decision to put an end to his/her own existence. In other words, the recognition of the requisites that allows a patient to ask for a medically assisted suicide, does not imply the duty for the doctors to help them’.

Mario challenged this decision by the Court of Ancona and asked for a revision which was successful. The appeal resulted in an order by the same Court requiring the Health Unit of the Marche region to ‘verify the existence, in the case of Mario, of the conditions indicated by the Constitutional Court ruling number 242’.¹¹ The Court

order clarifies that a public health facility cannot refuse the request to ascertain those conditions identified by the Constitutional Court as they are necessary to establish the legality of the act.

In addition, regarding Mario’s request to order the prescription of the lethal drug by the Health Authority, the Court of Ancona requested the verification by the Health Unit of the Marche region and an Ethics Committee, that ‘the modality, the method and the drug chosen [...] in the indicated quantity, is the most appropriate for the case in question and is respectful of human dignity’.

The Health Unit of the Marche region and the Ethics Committee initially refused to carry out the requested verifications. It took two warnings before they could positively identify that, in Mario’s case, the conditions required by the Constitutional Court were indeed all present.¹² At the time, the Ethics Committee stated it could not express itself on the adequacy of the lethal drug. Only in February 2022, following a torture crime complaint against the leaders of the Ethics Committee and those of the Health Unit of the Marche region, in which Mario accused them of torturing him with their delay, the Ethics Committee Commission finally expressed itself by declaring that ‘Sodium Thiopentone appears suitable for guaranteeing a quick (minutes) and painless death at a dosage of not less than 3 to 5 gram in a 70 kg adult’ and that ‘the method of administration should be self-administration by intravenous infusion’.¹²

Despite a lengthy judicial ordeal, this ruling allowed Mario to exercise his right to self-determination. He died using sodium thiopental in Italy on 16th June 2022 and established an important legal precedent regarding methods and procedures.

The case of Fabio Ridolfi

Analogously to Mario, also Fabio Ridolfi, a 46-year-old man bed ridden for 18 years due to tetraparesis, had the Constitutional Court requisites recognized by an Ethics Committee, on 19th May 2022. However, the Ethics Committee did not indicate the type of drug and dose to be self-administered. Fabio Ridolfi decided not to go ahead with legal challenges and requested the interruption of all treatments (as allowed by law 219). He was then administered palliative sedation and passed away after a few days.¹³

Bill on medically assisted suicide

Euthanasia, intended as the death caused by a doctor with the patient’s consent, at the end of life has recently returned to the political debate. In 2021, in Italy, 1.2 million signatures were deposited in the Court of Cassation requesting a referendum to decriminalise euthanasia.¹⁴ Sentence number 50 of 2nd March 2022 by the Constitutional

Court¹⁵ considered the referendum inadmissible because it would have sanctioned ‘the full availability of life by anyone who is able to give valid consent to his or her death, without any limitative reference’.

Nonetheless, the large number of signatures acquired sparked an intense media debate and spurred the intervention of Parliament.¹⁶ On 10th March 2022, a bill on medically assisted suicide was approved by the Chamber and is currently under examination by the Senate.¹⁷ Article 1 of the bill states the legal framework governing the legitimacy of assisted suicide: ‘This law governs the faculty of the person affected by an irreversible pathology and with a poor prognosis or by an irreversible clinical condition, to request medical assistance, in order to voluntarily and autonomously end their life [...] in compliance with the principles of the Italian Constitution, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union’. In a later paragraph, medically assisted death is defined as: ‘the death caused by an autonomous act by which [...] one’s life is terminated voluntarily, with dignity, and awareness, with the support and under the control of the National Health Service’.

Conclusions

The right to self-determination in medical care has reached an unprecedented milestone in Italy. To date, it is possible to refuse or discontinue any therapy, even a life-sustaining one, and to request palliative sedation. Following individual Court cases, the Constitutional Court reiterated the right not to prolong an existence considered, by the sufferer, to be burdened by unbearable agony, and the possibility to recur to medically assisted suicide.

There are, however, specific requirements which must be verified. In addition, patients must be able to self-administer a lethal drug which must be authorised and prescribed by a medical doctor. In this regard, the Constitutional Court requires an Ethics Committees to support doctors: the Ethics Committee must verify the correctness of legal requirements and specify type and dose of the lethal compound.

Individual Court cases also illustrate numerous obstacles encountered in the process. For instance, the refusal to verify requirements and prescribe the lethal drug by some consulted doctors and by Ethics Committees. Another important point clarified by the Court is the definition of ‘dependence on life-sustaining treatments’: initially it was not possible for people not attached to life-saving machinery to apply for medically assisted suicide. Following the Trentini case, the Court of Assizes of Massa, interpreted ‘dependence on vital supports’ as any drug therapy or medical assistance (nursing or by means of machinery) which support the patient’s life. As a result, patients kept alive by chemotherapy, or who need continuous assistance

for their biological functions, are legally allowed to resort to medically assisted suicide. The minimum common denominator is whether suffering is unbearable and life is exclusively perceived as a burden or not. Quality of life has become the main reference point for end-of-life decisions.

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