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First Case of Medically Assisted Suicide in Italy Set New Legal Perspectives

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Abstract

The first act of assisted suicide in Italy was recently carried out. This event is an absolute novelty for the country, affected by recent legislative changes aimed only at introducing the right to interrupt health treatments and, therefore, carry out exclusively omissive end-of-life acts. These normative provisions lay their foundations in a cultural context centered on the protection of the right to life and health; however, the cases that have occurred over time, including the famous story of DJ Fabo, have led the Constitutional Court to re-evaluate these dictates, introducing in 2019 the right to resort to assisted suicide procedures within well-defined areas, including incurability of the condition, the serious suffering of the individual and the retained ability to stand trial.

The case addressed concerns a quadriplegic subject who was the victim of a road accident. Following consultation with a specialized institution, the subject made the decision to undergo an assisted suicide procedure in Italy. Having obtained the authorization from the competent authorities, he started a fundraiser to finance the devices and drugs required and, finally, he died.

The opening by Italy towards the assisted suicide procedure represents a great step towards a broad context, as well as a decisive act for the purpose of protecting the right to self-determination of the individual. However, the current legislative framework presents significant criticalities and shortcomings. In first place, the dissonance between the laws in force and the judicial sentences is likely to generate problems of uneven application of the rules in a country dominated by the principle of Civil Law. Furthermore, the need for the applicant to fully self-finance the procedure clearly clashes with the constitutional principle of free access to care. Then emerges the need for a guideline document regarding the completion of the procedure itself, the times, methods and drugs implied, in order to significantly reduce the decision-making process by the ethics committees that still weighs on each individual case. Finally, considering what has been observed on the subject of voluntary termination of pregnancy, it is necessary to ask what will be the general orientation of the doctors called to perform the act and whether they will be given the opportunity to express their refusal.

The case analyzed could represent the beginning of a new era for Italian culture, but the large-scale application of assisted suicide procedures requires the introduction of legislative provisions that definitively eliminate the critical issues that have emerged so far. ***Clin Ter 2024; 175 (1):7-10 doi: 10.7417/CT.2024.5026***

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Introduction

Following a long legislative and judicial process, recently in Italy occurred the first act of physician-assisted suicide (PAS). Despite the numerous similar cases that have emerged over the years in Italian debate, the absence of unambiguous legislation on this matter has never previously allowed similar consequences. The Italian Law no. 219/2017 in addressing the complex issues related to the legitimacy of informed consent, i.e., the introduction of the living will (called "Advance Treatment Declarations" or DAT), exclusively establishes the possibility, on the part of the doctor, to interrupt the medical administration of liquids and nutrients, finally being able to alleviate the suffering of the subject at the end of life by administering deep palliative sedation. Furthermore, this law establishes the obligation for the doctor not to proceed with the implementation of disproportionate or obstinate treatments considering the patient's clinical conditions. In other words, in Italy, the legislative provisions currently applicable would see the doctor authorized to interrupt all health treatments necessary for the patient survival, except for sedative therapy in case of suffering not otherwise coercible, only in case of his valid consent (or of his legal representative) (1). Law no. 219/2017, therefore, allows the implementation of "omissive" behaviors if requested by the patient, without ever admitting direct and deliberate acts aimed at interrupting the patient's life. There are neither addressed nor legitimized modalities of interruption of life, currently admitted in several European and worldwide countries (2). Mainly, there are two modalities of terminating life considered at the legislative level:

Euthanasia (E), if it is the doctor himself who takes the last action determining death.

PAS, which consists of physician assistance and facilitation of a patient's death by providing the necessary means to complete the suicide independently (3).

The provisions of Law no. 219/2017 do not exhaust, at present, the Italian regulatory framework on the subject of end of life.

The notorious case of Fabiano Antoniani (4), better known as DJ Fabo, led to a complex judicial process that culminated in the sentence of Constitutional Court no. 242/2019.

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The case of DJ Fabo's end of life, in fact, highlighted the need for the intervention of a third person, a member of a non-profit organization for the support of assisted suicide, who accompanied him personally to an authorized center in Switzerland to access the PAS procedure.

The judicial process began when the assistant returned to Italy as he was under criminal investigation for "Instigation or aid in suicide" provided for by Law no. 580 of the Italian Criminal Code.

The doubts that emerged during the judicial proceedings mainly concerned the faculty of identifying a distinction between an act of true and criminal instigation to the self-suppressive act, with respect to the case in which an individual gives assistance without however affecting the will of the person concerned. In this context, moreover, there was the particularity that the person concerned, following a serious car accident, had lost his autonomy. He was tetraplegic and had unbearable physical and mental suffering to such an extent as to generate a strong, explicit, and stable desire to end his life. The case was inscribed in a context, such as the Italian one, on one hand, dominated by a feeling of profound social protection of the good of Life, considered as an unavailable element for the single individual; on the other hand, numerous humanitarian principles inspired the subsequent decisions of the Constitutional Court. Among these, it is worth mentioning the provisions of the European Court of Human Rights (ECHR) that, with Articles 2 and 8 of the European Convention on Human Rights, establish the right to life and the right to private life. These provisions have been interpreted in court as affirmations of the right of each individual to decide the timing and means with which to interrupt their existence. It is to such an extent that the provision of Law no. 580 of the Italian Criminal Code has been questioned at the level of its constitutional legitimacy. The aforementioned case, in fact, concerned an individual fully in possession of his intellectual and legal abilities, who had deliberately chosen to interrupt his life and, therefore, required the right to respect his freedom to self-determination. Precisely based on the absolute criminal ineffectiveness of the action of DJ Fabo's assistant for the suicidal ideation and its reinforcement, it has come to the promulgation of sentence no. 242/2019 and to the modification of the current Italian legislative framework. Finally, assistance for suicide in Italy was decriminalized in case of well-defined situations, such as:

- The person suffers from an irreversible disease.
- The disease causes subjectively unbearable physical and psychological suffering.
- The person is kept alive by life-sustaining treatments.
- The ability to make autonomous, free, and informed decisions remains unchanged.

It should be emphasized that PAS was not foreseen and, probably, not foreseeable at the time when legal rules in question were drawn, while it became a possible option with the technical and scientific acquisitions during the time. In accordance with the provisions of art. 32 of the Italian Constitution, the individual can therefore evade unwanted treatment by right and finally reach the end of their existence after approval by a competent ethics committee and verification of the suitability of the conditions and methods chosen by the National Health System. The case regarding Federico Carboni, here reported, is contextualized in the process of the decriminalization of the PAS, in circumstances specifically provided for by the ongoing legislation.

Case presentation

The clinical story of Federico Carboni began in 2010 when, following a serious road accident, he was the victim of a spinal injury resulting in tetraplegia. Following the worsening of physical and mental suffering caused by the disease, in 2020 the person decided to begin the PAS process in Switzerland, and, for this reason, he contacted a non-profit organization for the protection of the rights related to the end-of-life.

Consequently, he decided to undergo the PAS procedure in Italian territory. Therefore, he submitted a request to the competent health authorities and, following a non-linear process passed through the legal warning of the Single Regional Health Authority of the Marche and the Italian Government, he obtained the authorization through a collegial evaluation conducted by a multidisciplinary team made up of psychologists, palliative care physicians, and neurologists. A fundraiser was then undertaken to finance the means necessary for the PAS procedure, namely the purchase of infusion devices and the lethal drug. On 16 June 2022, therefore, Federico Carboni began the PAS procedure and, at 11:05 am, the news of his death was published. This was followed by the publication of a posthumous video communiqué in which the person himself stated: "… I do not deny that I am sorry to take leave of life, I would be false and a liar if I said the opposite because life is fantastic, and we only have one. But unfortunately, it went like this. I have done everything possible to be able to live as well as possible and try to recover the maximum from my disability, but now I am both mentally and physically exhausted. I do not have a minimum of autonomy in daily life, I am at the mercy of events, I depend on others for everything, and I am like a boat adrift in the ocean. I am aware of my physical condition and future prospects; therefore, I am totally peaceful and calm about what I will do …".

Discussion

The case presented, in the light of historical precedents in the Italian context, is the result of a judicial and legislative innovation about human issues and situations whose negligence and denial have persisted for a long time on the basis of several dogmatic reasons of sociocultural, ethical, and religious nature. With this step, therefore, Italy would seem to have approached, from a legal point of view, European countries already ahead on these issues (5), such as those of the Benelux and Spain where both the possibility of recurring to the E and the PAS is admitted; and Switzerland, which only admits the possibility of the PAS. Dutch legislation, based on the "Euthanasia Act", allows such practices as long as they are realized by health personnel and within the terms of voluntariness, irreversibility of the condition, unbearable suffering, and unavailability of therapeutic alternatives. Furthermore, according to the provisions

of the "Euthanasia Code 2018", the ability to express the will to access these procedures would be maintained only in the event of the first degree of cognitive impairment, as this condition is inextricably linked to the understanding of one's condition.

The Belgian context, by virtue of the "Belgian Act on Euthanasia", provides for the non-imputability of the physicians in the event of recourse to E and PAS procedures if there are elements not dissimilar to those provided for by Dutch legislation. In this case, too, it is necessary that the person, in full possession of his legal and cognitive capacity, is affected by an incurable condition and a cause of unbearable suffering. However, if the condition does not allow the patient's prognosis to be accurately predicted, the physician involved is explicitly required to seek the opinion of a colleague with a specialization in the specific disease. The latter elaborates a report that, in case of admission of the details for the PAS, allows the procedure to be started not earlier than 30 days from the direct request of the patient. Furthermore, as well as in the Dutch context, Belgian legislation allows the use of E/PAS procedures even for "emancipated" minors, when they are suffering from physical and non-psychological diseases. Spain, which already constitutionally guaranteed the individual's right to self-determination as an inviolable right, recently legitimized the E/PAS through the "Ley Orgánica 3/2021, de 24 de March, de regulación de la euthanasia". Finally, in Switzerland, the legislation on the subject of PAS has the Criminal Code as a direct reference. Unlike other European legislations, it also allows access to this practice for people residing in foreign countries. In such contexts, Italy has a regulatory framework placed in the wake of those of the European countries that have introduced the E/PAS. Reviewing the stages of the introductory excursus, it emerges that the current regulations, under law no. 219/2017, constitute a constitutionally sanctioned protection of the right to self-determination. The individual is therefore empowered to determine which treatments to accept and which to refuse, as long as he retains an adequate capacity to understand and will. The suspension of the administration of essential elements for survival, such as liquids and nourishment, and the possibility of resorting to deep palliative sedation techniques, also constitute the basis on which the prohibition of resorting to incongruous and disproportionate procedures in relation to severe conditions presented by the patients. From these assumptions, it must be reiterated that the Constitutional Court has recently established the lawfulness of PAS techniques, strictly in the health sector, within the limits defined by the existence of severe, incurable diseases, sources of serious suffering, and on the basis of an unchanged patients' ability to understand and will. Although these elements constitute a significant achievement on an ethical, social and legislative level, the criticalities and discrepancies presented by the current regulatory framework appear to be significant. First of all, it is necessary to underline how the Italian legislative system pertains to the principle of Civil Law, rooted in Roman Law, on the basis of which laws, specifically registered and issued ("codified"), would dominate the actions and decisions of the judicial system. The laws, therefore, in rising to operational indications, constitute regulatory elements, from which to extrapolate in an interpretative way the elements for which to adapt the legal bases to the individual concrete case. This system assumes as a fundamental implication the existence of a single jurisprudential source. Any previous judgments on similar cases, with their interpretation of the laws, must be considered secondarily, without constituting an obligation. However, the current legal basis to allow the completion of a PAS would result exclusively from a judicial sentence issued by Constitutional Court, namely the no. 242/2019. The content of the original reference standard, Law no. 219/2017, remains unchanged, with the risk of a non-univocal and homogeneous application of law enforcement. At present, there is an evident discrepancy between the reference legislative system, of a "Civil Law" nature, and the inspiring principle of the concession made to the person of Federico Carboni, based entirely on the cornerstones of the Anglo-Saxon system of "Common Law". Therefore, there is a need for an urgent adaptation of the current legislative provisions so that the judgment of the unconstitutionality of Law no. 580 of the Criminal Code does not constitute a mere jurisprudential orientation but a real juridical norm. In this sense, it should be remembered that the Law Decree no. 2553 on "Provisions on medically assisted voluntary death", issued in 2021 on the basis of a popular initiative, constitutes the current possibility of responding to this legislative gap. This text is in fact focused on guaranteeing the individual right to accede to PAS techniques within the current directives in force on fundamental human rights. Although approved in March 2022 by the Chamber of Deputies at the end of a long period of extension, this text will now have to be subjected to scrutiny by the Chamber of Senators. The evaluation of a bill as important as it is necessary by virtue of the current legislative state has therefore already been excessively postponed. The reflection of this current condition, on the other hand, is inherent in the very low number of requests currently pending for access to the PAS. This data is even more significant if we consider that in Switzerland the number of Italian patients admitted annually to access the PAS is constantly increasing. Another point is represented by the "slippery slope" effects, as in several countries around the world, the limitations on requests for help with the dying have progressively disappeared, allowing them to be extended to people suffering from mental disorders such as depression, personality disorders, neurocognitive and neurodevelopmental disorders (autism spectrum), if not due to conditions of existential and socio-family malaise. In this regard, the increase in mental suffering in the general population and those already affected by mental disorders should not be underestimated, particularly after the experience of COVID-19 and the ongoing socio-economic difficulties (7,8). A further critical element, moreover, can be seen in the current regulatory provision for which the costs deriving from PAS procedures, unlike other social and health services recognized and provided by the Italian National Health System, are fully borne by the patient. The economic problem emerged in the case reported, as it was necessary to resort to a popular fundraiser for the procurement of about 5,000 euros to purchase the necessary medical equipment and drugs. Furthermore, due to this regulatory and organizational gap, there is currently no unambiguous definition of the procedure to be implemented. An example in this regard concerns the case of Fabio Ridolfi, another

person suffering from a serious condition of tetraplegia who, following a long and complex bureaucratic process culminating in the approval of the PAS procedure, in the absence of further executive directives, finally made resort to deep palliative sedation, dying a few days before Federico Carboni. Finally, given the recent Italian data relating to conscientious objection to voluntary abortion techniques, with a high rate of objectors, up to and 43.5% of anesthetists and 67% of gynecologists, whose work is often affected by defensive medicine, it is necessary to investigate the orientation that healthcare professionals have towards end-of-life procedures. In fact, under art. 6 of the Law Decree n. 2553, the possibility is envisaged for healthcare professionals to lift this clause. According to the same article, however, all accredited structures must guarantee the service through interventions of an (also) organizational nature.

In other words, the absence of data relating to the orientation of the health workers towards PAS procedures suggests the need for further study to develop an organizational strategy that allows guarantees its effective delivery (9).

Conclusions

In conclusion, despite the jurisprudential advances regarding end-of-life procedures, some critical points and some questions are currently still unanswered. The current Italian regulatory framework still refers to Law 219/2017, which however is not explicitly focused on the end of life (10). This *vacatio legis*, therefore, deserves a rapid and complex reformulation, to guarantee the protection of constitutionally sanctioned rights to the dignity of life, care, and free access. The eventual approval of the Law Decree no. 2553, therefore, represents a first step in the direction of a profound change in social thought, towards which only time can reveal its maturity.

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