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The last mother: A constitutional analysis of the regulation of the end of life in Belgium, France and Italy

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Introduction:

The title of my work is in reference to a novel written by Michela Murgia," A accabbadora ", published in 2009 and I wish to explain the reason in which I chose it.

The story, which takes places in Sardinia in the 50's in an archaic and primitive society, you find the character Bonaria Urrai, who, possessing a secular experience of magic and medical potions has taken on the task of bringing a pitiful death to whom, victim of a very serious disease, is no longer able to tolerate existence.

Bonaria has never biologically been a mother. In fact, she adopts Maria Listo, the protagonist of the book, but she is "the last mother". "The first mother" is the one who gives life while the last mother is the one whose life becomes unbearable, thus takes it away. The meaning of the term "euthanasia" derives from the Greek adverb "*eu*" meaning "well", and the noun "*thatanos*" meaning "death", essentially combined meaning "good death". Amongst the centuries, different values have been in existence throughout the entire world- we will examine these different existences.

In Greek Roman society it has a political value while it has an ethical-moral value when it comes to ensuring the individual dignity in the supreme moment of existence. This approach is opposed by the Judeo-Christian conception that considers life a gift of God, of which, therefore, the individual has no availability.

The term "euthanasia" dates back to the 17th century, (Francis Bacon[1]), so when I deal with the theme of Greek Roman society resorted to the contemporary term of "suicide" dictated, however, by a need for individual freedom to dispose of one's life in a given political situation.

I would like to go into depth with the two concepts above. The first is identified in the famous oath of Hippocrates *"I will not administer to anyone, even if required, a deadly drug, nor will I suggest such advice"*[2], which then flows into the Judeo-Christian conception in which life is considered a gift of God of which no one should be deprived of.

Suicide, therefore, is understood as a mortal sin that was harshly punished with the burial in deconsecrated ground, where those who were stained with the most atrocious crimes were buried.

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[1] Of the Proficience and Advancement of Learning, Francis Bacon 1605

[2] *Hippocrate's Oats* 430 a.c.

The second position is that we can, in essence, be defined as Greco-Roman. Reference is made to Stoic morality, in particular to relations of "free man" and “tyrant”. The free man in conditions of tyranny has the opportunity to practice three ways to safeguard his fundamental right to freedom. The first is "live hidden”, noted as isolating himself from society; the second, the tyrannicide and the third is finally suicide.

I would like to mention the famous case of Brutus and Cassius who killed the tyrant Caesar, that when in the battle of Philippi saw everyone lose, they killed themselves.

Another important character of the “Caesarian era”, is *Catone Uticensis*[3], a free spirit, who rather than ending up under the tyranny of Caesar, took his own life away in the city of Utica.

Dante, catholic, while condemning the suicides in the infernal jungle, places Cato as the guardian of Purgatory. Virgil introduces Dante to Cato with these words*: “libertà va cercando che è si cara come sa chi per lei vita rifiuta/ tu’l sai che non ti fu per te amara in Utica la morte ove lasciasti la vesta che il gran dì sarà si chiara”*[4]

At the beginning of the 19th century a fundamental figure appeared on the stage of European history: Napoleon Bonaparte. The judgments of his contemporaries were ambiguous, he was sometimes seen as a liberator of people from tyranny, but many times he was seen as a tyrant.

Foscolo in the "Last Letters of Jacopo Ortis" makes the eponymous character perform three (3) actions described above; initially Jacopo plans to kill Napoleon assuming a tyrannicide, then he takes refuge in the Euganean hills living hidden and far from society, and finally commits suicide.

Still in the context of stoic conception of suicide as a way of opposing tyranny, I would like to recall the philosopher Seneca, Nero's tutor, who when he realized that his pupil was becoming a tyrant, decides to kill himself and his wife during a banquet with his closest friends.

Seneca and his wife had the veins of their wrists cut, and when the conversation on deep philosophical themes became interesting, they had the wounds bend. On the contrary, when the conversation languished, they removed the bandages. Alternating these two moments according to the quality of the debate they finally passed away.

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[3] Marcus Porcius Cato Uticense, also called Minor to distinguish it from his ancestor Marcus Porcius Cato, therefore called Maior (Latin: Marcus Porcius Cato Uticensis; Rome, 95 B.C. - Utica, 12 April 46 B.C.), was a Roman politician, military, writer and monetary magistrate.

[4] Divina Commedia Purgatory Chant 1

Individual freedom chooses death rather than living under tyranny with Tommaso Moro who expands to the freedom in the choice to die when the quality of life is compromised in its most extreme terms, for intolerable pain, and corrects the risk of gravity on loved ones with the weight of too heavy assistance: "*In the best form the incurable patients are cared for in the best possible way. But if the male is not only incurable, but gives the patient continuous suffering, then priests and magistrates, given that the patient is inept to any action , harassing others, burdensome to himself, in short, survives his own death, they urge him to die freeing himself from that bitter life, or allowing his will to be snatched from others ... it would be a religious and holy act "*[5]

Taking up the discussion from a part of the Christian Judaical conception, it indicates life, life as a gift from God, therefore it is a God himself who gives it and takes it away without any human intervention being possible. On the other hand, a concept that makes life an inalienable right of the individual who can deprive himself of it if existence becomes intolerable.

Before moving on to the fundamental rights, dignity and right to die, before, therefore, to address the current, I would like to add a further note regarding the Greco-Roman antiquity and also all those who were inspired by the classics (V.U. Foscolo); for all of them from Homer to Lucretius, to Virgil and beyond, the terms "mortal" and "man" are equivalent, they use either one or the other because, in their conception, death is inherent to the human condition, is present at the very moment of birth.

Today, however, the end of existence no longer seems to fall into the natural order of things, it is moved to an indeterminate "elsewhere", as if immortality were no longer the heritage of the Gods alone but belonged, as if it were a right, even to the human being.

This leads to a distortion of perspective that is not foreign to the discourse I am developing. If life is a purely biological fact, if life is only a heart (understood as a muscle) that beats, if life is not the contact with others the sociality, understood in the broadest sense of the term shared affection, the "correspondence of loving senses". Then that heart can beat forever, even activated by electrical impulses, but the existence of a human being is a completely different thing.

Analogous speech can be made for those who, from an incurable disease, are forced to live immersed in a flood of atrocious and unbearable pain, the bite, I repeat, is incurable, there is no chance of escape, palliative care either gives temporary relief or no more relief.

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[5] Thomas More *Utopia 1516*

What must a human being do in these conditions, in order to maintain self-respect, in order to preserve that dignity which, even at the extreme moment of existence, must be assured, as far as possible to all?

In this context, the issues I am going to deal with, namely dignity and the right to die, are raised.

Thus, the structure of this thesis is divided into the following chapters:

- Fundamental rights: dignity and the right to die, in this chapter I will deal with the fact that the right to dispose of one's life, in relation to medical-scientific progress, for about 50 years has suffered the onslaught of many criticalities, because such progress has ensured that life itself continues beyond the natural limit, often making existence a purely biological fact. It is therefore necessary to no longer speak only of the right to life but to demand that this life be dignified and worthy of a human being. Therefore, dignity becomes a fundamental requirement to be fulfilled and it is the task of the institutions to guarantee it to every citizen. These requirements were first expressed in the United Nations Charter of 1948, then repeated in the 1997 Oviedo Convention for the Protection of Human Rights and the Dignity of the Human Being with reference to bioethics, and, finally, in the Charter of Fundamental Rights of the European Union adopted in December 2007 in Strasbourg.
- Subsequently, I will analyse, at supranational level, the important role of the Council of Europe and the evolution of the orientation of its three most significant recommendations, and the fundamental contribution to the jurisprudence provided by the European Court of Human Rights with the various cases addressed.
- Subsequently, I will examine, specifically, the legislation of three European countries: Belgium, France and Italy. The analysis will proceed with a comparative method of the legislation of Belgium and France and the first steps, very uncertain, that our country is taking to provide itself with adequate legislation at the time. Although the Belgian law is the least recent, it is considered to be one of the most innovative in the world, the French law presents some criticisms that have not been completely overcome. Italy, on the other hand, has not yet adopted, as I mentioned above, a specific regulation on the subject discussed in this thesis.

- Finally, I will compare the views of four distinguished constitutionalists on the situation in Italy, in relation to the rulings of the Constitutional Court on end-of-life issues.

Fundamental Right: Dignity and Right to dye:

The right to provide one's life, in relation to medical-scientific progress, for about 50 years has undergone the onslaught of many critical issues, because progress is made so that life itself is protected beyond the natural limit, often using the existence is a purely biological fact.

The need therefore arises to stop talking only about the right to life but in asking for this life to be dignified and worthy of a human being therefore, dignity becomes a fundamental requirement to be met and it is the task of the institutions to guarantee it to every citizen.

When the possibility of leading a dignified life becomes unenforceable then the need arises to insert the right to die, the right that is connected to other already established principles: including the prohibition of degrading treatments, the right to give one's own freedom life and the right to individual and autonomous choices.

Over the past century, the need for an acceleration in the regulation on previous unknown evolving matters are felt.

As known , the technological advancement has generated innumerable problems in public interest which has involved for their resolution multilevel systems in the protection of fundamental rights, in a dialogue between the national and supranational Courts that led to the description and the entire evolution in the aim of various rights registered by the Constitutions of the Member States and by the European Charters.

In particular, the recognition on an international level of more numerous human rights bands to be protected and the flexibility of the opening up of borders in various categories has meant that clear conditions have arisen.

The possibility to introduce the right to death (or to choose how to die) has its foundations in many already established rights: the prohibition of degrading treatments, the right to guarantee the freedom of life, the right to privacy and the right to individual choices and autonomous.

In contemporary constitutionalism, particularly in matters of good life, the concept of human dignity is therefore often used as a real "umbrella" concept for all the fundamental rights that

protect the life and choices of the individual as regards to the modalities with which its existence must be conducted or must[6], finally, have a good point of view. Human dignity also means, necessarily, dignity in death[7]

The principle that is generally at the basis of individual freedom is human dignity. Even this concept is not tied to any normative value. However, it is on this that even more general rights and perspectives depend on; freedom of one's dignity is therefore a source of inspiration for the drafting of more detailed principles within many conventions.

Human dignity begins to be explicitly protected in the United Nations Charter. In the Preamble, in fact, it is declared that "[we are committed to reaffirming] faith in the fundamental rights of man, in the dignity and value of the human person, in the equality of rights between man and woman and of large and small nations"[8].

References to human dignity are also contained in the "Universal Declaration of Human Rights" which is placed at the basis of the universal recognition of rights; as explained also in the other texts, reference is made to the principle of dignity understood as an innate value and that therefore the individual does not acquire to the passage of time, but which instead must be protected in every person from the moment of birth regardless of the subsequent development of his personality[9]. In this case, the reference to the dignity of the human being is placed in the first examination of the Preamble: *of justice and peace in the world [...] "; similarly, in the fifth recital, it is again explained that "the Charter reaffirms its faith in fundamental human rights, in the dignity and value of the human being [...] and promotes social progress and the best standards of life and freedom"* .

As it is known then, following a classical approach, the entire article 1 is written that *"all living beings are born free and equal in dignity and rights".*[10]

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[6] See J. LUTHER, *The judge's power over life and death*, in *Corti supreme e salute*, n. 2, 2018, 3.
[7] See H. KÜNG, *Della dignità del morire*, Milano, Rizzoli, 1996.
[8] Look at United Nations Charter
[9] Declaration adopted by the General Assembly of the United Nations 10th december 1948 by resultion 217A
[10] GÓMEZ-LOBO, Bioethics and the human goods: an introduction to natural law bioethics, Washington DC, 2015, pp. 45-66.

The protection of human dignity represents the central value of the "Convention for the Protection of Human Rights and the Dignity of the Human Being with reference to Biology and Medicine (also known as the Oviedo Convention)"[11].

Within this convention, the term dignity is mentioned three times already in the Preamble; the first time when it is firmly declared that the dignity of a human being is guaranteed as respect to the individual that must exist both as an individual and as a being belonging to the social community. The second time when it is stated is when it says that the use of biology and medicine must not lead to abuse of an individual by subtracting dignity and autonomy. The third time is when emphasizing the change in the need to comply with stringent international measures to safeguard the individual and dignity in its entirety is, a must to be continued in the future, a fundamental principle of international bodies. Furthermore, the right to life with an acceptable standard is proposed again in addition to the preamble already in Article 1, where, as already said it has failed to give a precise definition of the human being (which in fact is an aspect almost overlooked), but where it is not found in affirming that the dignity, freedom and integrity of the individual are to be considered as observing protected and protecting in all respects.

The concept of human dignity also reappears in the "Charter of Fundamental Rights of the European Union (CDFUE)"[12]. In this circumstance, the main aspect of the concept of dignity is easily understood by the fact that in Title I (one) it is entitled precisely to the latter; moreover, everything within the first article already states, in a solemn and decisive way, that "*human dignity is inviolable. It must be respected and protected*[13]".Despite the fact that the concept of the right to life is not described in detail, this appears clearly from article 3 onwards, with reference to the whole integrity of the person both psychically and physically.

The freedom of the individual is foreseen by Article 3 in "*prohibits torture and inhuman or degrading treatment or punishment*[14]*"* The prohibition of torture and inhuman or degrading treatment, sanctioned by art. 3 of the European Convention on Human Rights, one of the most important goals of modern societies is necessary.

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[11] Treaty opened for signature by Member States, by non-member States which have participated in its preparation and by the European Union and the accession of other non-member States

[12] The Charter of Fundamental Rights of the European Union (CDFUE), also known in Italy as the Charter of Nice, was solemnly proclaimed for the first time on 7 December 2000 in Nice and for the second time in an adapted version on 12 December 2007 in Strasbourg[1] by Parliament, the Council and the Commission.

[13] Art 1 European Charter on Human Rights: The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

[14] Art 3 European charter on Human Rights

An interpretation in the medical-biological field of Art 3 offers us a vision of the possibility of being able to accept or refuse medical treatment in the manner prescribed by national law, from the prohibition on the tariff of one's own body, a profit-making perspective and the prohibition of putting in act a eugenic selection of people.

Furthermore, the will to equip the *Charter on fundamental rights of the European Union* to the main principles of the Union, such as the TEU[15] and the TFEU[16], has meant that the essentiality of human dignity has recently been reaffirmed as the founding value of the whole 'international organization. Within the TEU, in fact, it is found in Article 2 that *"the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights*[17]"; again, in Title V of the TEU entitled "*General Provisions concerning the External Action of the European Union*", in Article 21 paragraph 1 we read that "*the Union's action on the international scene is based on the principles that informed its creation, development and enlargement and which it aims to promote in the rest of the world: "[...] respect for human dignity, principles of equality and solidarity and respect for the principles of the United Nations Charter and international law".*[18]

Therefore, the desire to equip the Charter on Human Rights with the Union's well-founded treatments is to be identified as the Union's ambition to place human dignity above other rights, which are consequently used by it, and that does not include the possibility of being identified without the recognition of the psycho-physical inviolability of the human being and his free will.

The path of the Union therefore runs on a double track. On one hand, it runs on the ambition of regulatory provisions of an administrative nature that regulates the mechanisms of the organization, on the other hand, instead, those functions with a black on white change, the importance and the authority of the person.

The theme of the end of life and the possibility of including medically assisted suicide and euthanasia (active or passive) within the various reported legislation has also been much discussed within the European institutions, at various historical moments, has been at the center of many discussions. The debate came into play arguing between those who continue and defend the good of life by stating that deciding the moment of death is not an option that an individual should have

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[15] Treaty of Maastricht, effective since 1993
[16] The Treaty on the Functioning of the European Union (TFEU), as last amended by Article 2 of the Treaty of Lisbon of 13 December 2007 and ratified by Italy by Law No. 130 of 2 August 2008
[17] Art 2 Treaty of Maastricht
[18] Art 21 Treaty of Maastricht

the right to, while on the contrary there are those who would like to have the free choice in deciding when and how doctors inject lethal fluids into them.

Certainly, it is affirmed that the European continent has, throughout history, been largely influenced by Catholic religious doctrine and by the Church of Rome. In fact, secularism is necessarily recognized and is not imposed using the regulatory option of no religion by law of European populations, it would be superficial not to recognize the great influence that Catholic culture through religion has had on the old continent, conditioning certain political choices.

As for the issue of euthanasia, it is therefore necessary to affirm that in many cases the slowdowns in the discussions have depended on the religious ostracism due to not having total secularization which foresees dividing the competences of the secular state and of the religious faction.

The role of the Council of Europe on the debate on the end of life:

As far as the European area is concerned, the Council of Europe has carried out actions on the issues of the end of life and the defense of minimum standards of dignity. The Council of Europe[19], founded by the London Treaty in 1949, is an international organization whose objective is to protect the European identity, human rights, and democratic values of the old continent; 47 states are part of it. It must be remembered that the Council of Europe does not have any binding actions, so its initiatives need to be ratified at a later stage. Since the protection of human rights is therefore one of the Council of Europe's most important issues, it is precisely here that the impetus discussions on euthanasia and related issues were created. Many efforts have been made since 1949 ranging from the recognition and transposition in the 50's of the various international conventions on human rights to the issuing of first recommendations on highly specific issues in the 80's.

It is in this context that the aim in which the important Oviedo Convention (1997) concerning biomedicine and the regulation of technological development in the medical field was held.

In this regard, Article 9 is of great importance, which states: "The wishes previously expressed with regard to a medical intervention by a patient who, at the time of the operation, is not able to express his will be taken into account"[20].

Through this article, for the first time on a European level, the value of the directives referred to is recognized as an important instrument. It should be noted, however, that the article does not arise rigidly, but with the expression "*will be taken into account"* having the ambition to give the living

[19] The Council of Europe (CoE) is an international organization whose aim is to promote democracy, human rights, European cultural identity, and the search for solutions to social problems in Europe. The Council of Europe was founded on 5 May 1949 by the Treaty of London and now has 47 member states.

[20] Art 9 Convention for the Protection of Human Rights and the Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine

will a legal relevance, and at the same time has as its objective to postpone to a third party the consideration of the expressed will of the individual.

The absence of a clear guideline would in fact lead to the risk of leaving it to the doctor's free will the possibility of respecting the patient's wish, making them, in certain circumstances, substantially useless.

Subsequent legislative efforts are therefore aimed at filling the gaps in the Oviedo Convention. In particular, efforts are being made to provide minimum requirements for which the directives referred to above can be regarded as absolutely valid and to be followed giving full legal value to this new legal instrument.

In the following years, the Council of Europe's most significant pronouncements on euthanasia were three.

The Council of Europe decided to reopen the debate on euthanasia two years after the important convention on biomedicine was adopted in the Spanish city.

The Recommendation n.1418 25/06/1999:

The Council of Europe with the "*recommendation 1418 of 1999"* [21] and therefore through a non-binding legal instrument. The text entitled "*Recommendation on the protection of human rights and Dignity of the incurable and dying sick*[22]", declares to be in contrast to the possibility of including euthanasia in the list of Laws and also declares the absolute prohibition of euthanasia for the terminally ill or for those dying.

The conclusion that is then drawn is extremely harsh. In fact, we read that the Council of Ministers must encourage individual States to "*give immediate effect to the will of the sick, to be compassionate, to communicate to them the complete truth about the treatments and their conditions"* Or *"to offer the patient the opportunity to consult other doctors besides his usual ones and not to be exposed to pressure from third parties or not to be conditioned by economic pressures "and" to enforce his formal declarations [living wills, biological testament] if the terminal patient no longer has the opportunity to express himself clearly or to be able to communicate adequately with the people who assist him*[23]*".*

Then, Recommendation 1418/1999 concludes with the invitation to the individual parties to assert an absolute prohibition against euthanasia within the individual national borders and to order "*maintaining the absolute interdiction to intentionally end the life of terminally ill patients and of the dying taking necessary measures* [24]"; and in the final part of the document the general principles followed to reach this conclusion are indicated in points.

At point one of the Recommendation, the European Convention on Human Rights is mentioned, which states in article 2 entitled "Rights and freedoms" that: "*The right to life is protected by law. Nobody can be intentionally deprived of life, except in execution of a death sentence pronounced by a court, in the event that the crime is punished by law with this penalty*[25]*"*.

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[21] Assembly debate on 25 June 1999 (24th Sitting) (see Doc. 8421, report of the Social, Health and Family Affairs Committee, rapporteur: Mrs Gatterer; and Doc. 8454, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr McNamara). Text adopted by the Assembly on 25 June 1999 (24th Sitting).
[22] ibidem
[23] Ibidem
[24] ibidem
[25] Art 2 European Convention on Human Rights

The Council of Europe, relying on this indisputable principle, affirms that the right to life is guaranteed for all citizens of the Member States, and therefore we refer you to the ECtHR[26] for any violations of this right. The second principle states that to which there is no type of written or oral will, where euthanasia is required, they can legally constitute a legal basis such as to oblige a third party to take responsibility for the death of an individual.

The last principle takes up an important concept, concerning the will of a person, who does not act as a legal justification for the implementation of actions that may cause its death, (regardless of whether it involves third parties and therefore it is medically assisted suicide or active euthanasia or that it is an omitted behavior resulting in passive euthanasia).

If this recommendation on the one hand imposes a ban on euthanasia, while on the other calls on the member of states to provide themselves with more effective and comprehensive mechanisms for the protection of human dignity, in accordance with the powers of the instrument of the recommendation.

In doing so, there are obviously contradictions, while the provisions adopted at an international level must be enforced. It is also true that the concept of human dignity and the threshold of overcoming the same dignity is provided by individual States. We therefore find ourselves in a situation where, on the one hand, a limit is imposed on the principle of autonomy of individuals, who in our case are terminally ill and therefore will certainly be deprived with every certainty of the practice of euthanasia, On the other hand, we are asked to respect dignified living standards and the will of the dying.

In this case, the residual autonomy left to the patient is limited to the single choice of whether or not to consent to a possible medical treatment, which may, at least for a limited period of time, improve his conditions. In fact, a relative could assert his own wishes by denying the necessary consent to be operated, and certainly shorten the duration of his life; however, it is not yet clear whether this path and these choices can be considered for the dignified individual.

The most inconvenient aspect of this choice is the fact that a patient, knowing that he cannot use euthanasia in the future, would prefer not be to treated and by abandoning himself to the disease and thus losing the possibility of remaining in precarious but still bearable conditions during his life. In this case, therefore, the absence of a law on euthanasia would cause an individual to consent to his early departure.

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[26] European Court on Human Rights

The aim of Recommendation 1418/1999 is also to ensure that the fundamental element of their relationship is never lacking between doctor and patient: the dialogue. As stated by the *Steering Committee for Bioethics (CDBI*[27]), what is fundamental, even more than the patient's choices, is the path that the patient takes together with the medical team of reference.

It is important to note that in all the provisions approved and just analyzed so far (both at Community level and at National level) is always stressed that correct information about the patient be delivered to his family pertaining essential health conditions and the continuation of this dialogue with the patient's family (or with a person who he represents). However, this is if the patient no longer has the power to express himself clearly. All of this is always with the limit imposed by the same Recommendation, that is the prohibition of euthanasia practices, as we reiterate, according to the latter, the patient's will cannot lead to a legal basis which could cause death to a person through the action of a third individual .

[27] National Committee for Bioethics: In 1985 the Ad hoc Committee of experts on Bioethics (CAHBI), set up under the direct authority of the Committee of Ministers, was responsible for the intergovernmental activities of the Council of Europe in the field of bioethics. In 1992, it became the Steering Committee on Bioethics (CDBI).

The recommendation n.11 9/12/2009:

Another Recommendation worthy of note is *N.11 9/12/2009*[28], which seeks to fill the gaps in the previous the Oviedo Convention, albeit through a Recommendation and therefore with a non-binding legal instrument.

The text, containing 17 articles introduced by a preamble, where already from the first article to the first paragraph, sets out its intention: "*to promote the self-determination of adults and to make them self-sufficient in the event of their future incapacity, through the directives anticipated*"[29]

The term self-determination, which will be repeated five times throughout the Recommendation, consists in the true keyword of the entire text, which promotes this value.

The first substantial difference to note between this Recommendation and that of 2009 is the shift of attention, in this case, directed exclusively towards the individual. In fact, if in 1999 the competent authorities of the State referred to the study of the possibilities of protecting the patient, ten years later we find the attempt to centralize this power in the individual himself. We therefore refer to the private sphere of the person the possibility of indicating how, and to what extent, you want to be cared for, thus ensuring an unknown independence until then.

The Recommendation then lists the differences between two institutions useful for the pursuit of what was said before, analyzing what distinguishes the tools of the power of attorney (power of legal representation) and the existent will (living will).

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[28] Assembly debate on 9 december 2009
[29] ibidem

In this contrast, the recommendation, the institution of legal representation seems more suitable for the purpose set up, to which most of the points are devoted to (from 3 to 13) against the only four points dedicated to the living will (14 to 17). This tendency to favor the legal representation by proxy is due to the possibility that it can deal with the interests of the patient in a more transversal and complete manner. It is in fact specified in one of the Memorandum of the Recommendation that the living will is to be considered mainly dedicated to problems concerning the state of health. Moreover, as we find written within the definition of existent will (living will), it is important to note the full meaning of the terms used. The will to define the living will as "instructions" and not as "wishes" would give this instrument the possibility to be considered binding.

It must also be considered that between the two legal options, the option of "*legal representation"* is already notoriously widespread within the societies of European countries and, unlike the living will, would not need to be introduced as a tool from scratch.

To arrive at these conclusions**,** it was necessary to develop a new reasoning according to which within the "continuing power of attorney" there is the possibility of not sticking to written statements set, maybe a long time ago. The difficulty in the drafting of the directives of advanced treatment would be found in not knowing, at the time of signature of the act, the precise health conditions that the patient will meet.

It has therefore been questioned whether leaving written wills was the right instrument and, at the end, the conclusion is that indicating a legal representative can bring the great advantage of allowing, until the end, the dialogue between the doctor and a person rather than abandoning the fate of an individual to the interpretation (which would risk being entirely personal) of a written text.

Since the tutor represents the patient, this position may act according to two guidelines. Following the first guide, the representative should make his decisions following the best interest of the person while in the second option, given that the representative, with very high probability, knows the preferences expressed in the past by the individual, must act according to the will of the patient.

To guide the choice of a guardian must be his knowledge of the wishes of the sick following the bioethical principles of charity and non-maleficence. However, as was the case in the Oviedo Convention, here too you may find shortcomings and aspects which are not clearly regulated; for example, with unregulated aspects there is the possibility of a contrast between the application of the patient's wishes expressed perhaps orally in the course of his life and the best interest, which sometimes may not match; and also the definition of continuing power of attorney given by the

Recommendation at point 2.1 is ambiguous and sometimes confused and could have been written in more detail ways. Point 2.1 also attempts to indicate the time at which the representative's mandate will have to be considered valid; if the guardian is required for the management of the petitioner's economic affairs, the term of office should be immediately enforceable and should last until the incapacity of the sick person is prolonged. On the other hand, the patient is given the main objective of leaving the guardian the responsibility of the consent of clinical treatments. This will become enforceable not at the time of signature but only at the time when the condition of incapacity due to illness occurs. One of the major criticisms of this document is the total lack of detail regarding the form of the document. In fact, it is only indicated that the act must be in writing and that the need for which the guardian has been requested as well as its scope must be specified. In addition, in order to understand the criticism of the completeness of this Recommendation, it is enough to notice that it is not stated in the text whether or not the document must be signed upon completion, although practice has shown that a signature is to be considered an obvious requirement especially considering that the representative will have the burden of deciding on matters concerning the life and death of said individual.

Finally, the Recommendation references the national states task of establishing through internal law other formal requirements for the validity of the document such as, for example, the presence of a notary at the conclusion of the act or other administrative aspects.

The Recommendation n.1859 25/01/2012:

The last recommendation reiterates the concept that, without the explicit consent of the individual, there can be no medical intervention or treatment. It is, in fact, the enunciation of a principle already focused but little practiced by the national states, which continued, and at times continue, to have laws not in conformity with those elaborated at Community level.

The novelty is that the Recommendation aims to broaden the debate on the living will to new actors, these new actors are public opinion, which must be sensitized through a campaign, and medical staff.

Finally, it provides for an assembly debate open to all political forces before the adoption of laws.

The recommendation makes no reference to the issue of euthanasia but deals only with the living will, precisely because political representatives want to keep the two issues separate, as those who are radically opposed to euthanasia fear that by combining the two arguments this may enter the debate in a subtle way.

At this point I can conclude that, through the various pronouncements of the Council of Europe, we have gone from the first assertions which attributed the competence of this delicate matter to the individual states, the perception that the individual is entitled to the choices regarding his life in the most sensitive areas such as health, and the end of life.

In this situation, therefore, it is clear that the invitations of the Council of Europe, although with non-binding effects, cannot and must not end up in the normative oblivion.

Although the state differences in this area are evident, the integration of these ethical principles determined in a supranational context must act as a stimulus for all actors on the international political scene, and cannot be neglected.

In this regard, it is important to stress that the Council of Europe has first of all taken care to create important foundations in this area, first by promoting the Oviedo Convention and then by articulating other important aspects in the 2009 Recommendation.

Although regulating the end of life is a particularly sensitive issue, the Community bodies, with different instruments, have repeatedly, and after a few years, that the full participation of all State companies in this project is both necessary and essential to create a comprehensive and effective regulatory environment.

The role of the European Court of Human Rights:

Another institution that has always been present on the end-of-life debate is the European Court of Human Rights

In Europe, as a result of the awareness of the possibility of applying for the right to die, in recent decades many people have decided to claim this right, passing first through the national courts and, following the failures, at the European Court in Strasbourg.

The European Court of Human Rights (ECtHR) has its seat in Strasbourg, it is a judicial body that acts at international level; it was established in 1959 by the European Convention for the Protection of Human Rights (1950)[30] and has the objective of providing an adequate guarantee of the inalienable rights of the individual through the issuing of judgments.

According to Article 34[31], the Court of Strasbourg has both State bodies and individuals, when they have not been satisfied with the national institutions, and then they turn to the Court of Strasbourg for satisfaction[32]. One of the Chambers of the Court (in the case of disputes between States) or a Committee (in the case of individual actions) assesses the admissibility of the action.

The recent medical and biotechnological development has brought the issue of euthanasia to the attention of society as a whole and has led many people to claim this right before the Court of Strasbourg, as they have often not been satisfied in the national courts. The importance of the work of the Court of Strasbourg in this case, therefore, stems from the novelty of the subject matter.

The absence or the inadequacy of national legislation has meant that this international body has helped to regulate the matter. The decisions which have been taken in this House are, therefore, extremely relevant to the subject.

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[30]The Convention was signed in Rome on 4 November 1950 by the 13 Member States of the Council of Europe (Belgium, Denmark, France, Greece, Ireland, Iceland, Italy, Luxembourg, Norway, Netherlands, United Kingdom, Sweden, Turkey)It is divided into three titles and consists of 59 articles, and entered into force on 3 September 1953[1].

[31] Art. 34*:"The Court may receive applications from any person, nongovernmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right".*

[32] Art 35 : "*The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken".*

I would like to begin by examining the first case concerning the end of life of which the court had to rule.

The Mr. Ramòn Sampredo case:

In 1993, Mr. Ramón Sampredo, a Spanish citizen suffering from tetraplegia as a result of a serious accident involving irreversible spinal cord injury called for the practice of medically assisted suicide or a form of euthanasia, with the express condition of not prosecuting the person who helped him die.

His request was not granted by the Spanish court but despite this the patient practiced medically assisted suicide while waiting for the *"recurso de amparo"*[33] ,which is the remedy before the Spanish Constitutional Court against violations of fundamental rights contained in Articles 14 to 29 and 30.2 of the Spanish Constitution.

After the death of Mr. Sampredo, his sister-in-law, M. Sanles, decided to engage in a legal battle for recognition of the previously denied right. Having received no satisfaction from the national institutions, she decided to appeal to the European Court of Human Rights. The appeal focused on the absence in the Spanish legal system of a regulation on the end of life. This absence did not give those dying the opportunity to realize their desire not to prolong beyond the limits of dignity and tolerability of their existence.

The appeal of the lady referred, in general, to the violation of Article 2 of the ECHR which, according to the applicant, in protecting the right to life should in a mirror way also recognize the right to death[34]. The appeal shall be deemed inadmissible by the appeal committee.

In my opinion the decision of the ECtHR to consider the appeal inadmissible because it considers Ms. Sanles not depositary of the rights harmed or direct victim of the situation, this is a typical

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[33]The Spanish constitutional justice system is characterized by the presence of a constitutional referendum, a direct individual appeal, that allows the citizen - in certain circumstances and situations and for the purpose of protecting the fundamental rights specifically indicated in the Constitution - to refer directly to the Constitutional Judge.

[34] ADAMO, Il diritto convenzionale in relazione al fine vita (eutanasia, suicidio medicalmente assistito e interruzione di trattamenti sanitari prodotti di un'ostinazione irragionevole). Un'analisi giurisprudenziale sulla tutela delle persone vulnerabili, in Rivista AIC, 2016, n. 2, pp. 7-8.

example of *pilatesca* decision because it seems like a ruse to avoid facing the topic of euthanasia head-on.

This experience is important because it makes the public aware that it is possible to have legal recourse to a highly important supranational body, especially in a sector such as the end-of-life sector which has not yet been evenly regulated. The weakness in this particular case, however, is evident from the scarcity of evidence presented by Mr. Sampredo's sister-in-law before the ECtHR, in fact, according to many, the appeal could have been argued in a better way.

As it has been shown in subsequent cases, the decision in question did not in fact infringe only Article 2[35] of the ECHR on the protection of the individual's life, but it could have involved adjacent and equally important aspects.

The Diane Pretty case:

In 1998, a new case attracted public attention. A UK citizen, 43-year-old Diane Pretty with ALS, was seeking suicide assistance, which was not viable for her.

The suicide had been decriminalized in 1961 by the "*Suicide Act"*[36], but this law considered illegal aid to suicide. So, Mrs. Pretty's request was denied. But when the situation due to the degenerative process of the disease became untenable, the lady's lawyer decided to write a letter to the public prosecutor ("*Director of Public Prosecutions"*[37], DPP) asking to commit to not prosecuting the person who would have contributed to Mrs. Pretty's death, in this case her husband. All the courts to which the lady's lawyers had applied rejected her because they believed that not prosecuting a crime punished by the law would create a dangerous precedent[38]. It was also argued by the UK's internal courts that although the "*Suicide Act"* did not provide for medically assisted suicide, this

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[35] Article 2 of European Convention on Human Right : 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

[36] The Suicide Act 1961 is an Act of the Parliament of the United Kingdom. It decriminalized the act of suicide in England and Wales so that those who failed in the attempt to kill themselves would no longer be prosecuted.

[37] In England and Wales, the office of Director of Public Prosecutions was first created in 1880 as part of the Home Affairs, and had its own department from 1908. The DPP was responsible for the prosecution of only a small number of major cases until 1986 when responsibility for prosecutions was transferred to a new Crown Prosecution Service with the DPP as its head. The Director is appointed by the Attorney General for England and Wales. The current DPP, since 1 November 2018, is Max Hill QC.

[38] ADAMO, op. cit., p. 9, e MERKOURIS, Assisted suicide in the jurisprudence of the European Court of human rights: a matter of life and death, in NEGRI (ed.)

was not incompatible with the *"European Convention on Human Rights*", as suggested by the applicant. Dissatisfied with the positions of the English courts, the lady decided to refer to the Court of Strasbourg. In support of her argument, Ms. Pretty's application indicated that the Suicide Act violated a multiplicity of articles of the ECHR: *Article 2 (right to life[39]) Article 3 (prohibition of torture[40]), Article 8 (right to respect for private and family life[41]), Article 9 (freedom of thought, conscience and religion[42])* and *Article 14 (prohibition of discrimination[43]).*

The appeal of the lady appears much more completed and detailed than that of Mr. Sampredo just two years before. The first point of the application, namely the violation of Article 2 of the ECHR, is substantiated by the assertion that Article 2 would not only guarantee the right to life, but also the right to choose whether to continue or cease to live, that decision according to the applicant should be left solely to the individual and should be regarded as a real corollary of the right to life[44].

The judges of Strasbourg reject the idea of the violation of Article 2, because they consider it not obvious that the provision of a law must automatically entail the legitimacy of its opposite. That is to say that the right to live should be assumed to exist a right to die.

In a detailed argument the opposite should be in fact the "duty to live", which however would entail the violation of the right to self-determination and therefore the right to refuse medical treatment.

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[39] Art.2 Right to life:1*. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defense of any person from unlawful violence;(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.*

[40] Art. 3 Prohibition of torture *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

[41] Art.8 Right to respect for private and family life 1*. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*.

[42] Art.9 Freedom of thought, conscience, and religion 1*. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

[43] Art. 14 Prohibition of discrimination *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*.

[44] ADAMO, op. cit., p. 10, e MERKOURIS, Assisted suicide in the jurisprudence of the European Court of human rights: a matter of life and death, in NEGRI (ed.), op. cit., pp. 111-112.

The second point in Mrs. Pretty's appeal is the violation of Article 3[45], namely the prohibition of torture. The desperate conditions of Mrs. Pretty involve an unsustainable and inhuman suffering, this suffering according to the applicant is the responsibility of the United Kingdom that not foreseeing the possibility of assisted suicide obliges her to live an unworthy and degrading life. The other important point of this part of the appeal is that the lady does not require the institution of assisted suicide for anyone, but only for those living in specific conditions, in full mental capacity, to avoid an even more oppressive future condition.

Even this violation is not recognized by the court, the grounds for rejecting the appeal to Article 3 is, in my opinion, perhaps legally flawless, but rather cynical. While masking with a series of turns of words, the brutal reality of the speech basically states that Mrs. Pretty, as the Suicide Act (Suicide Act) provides for it, could practice suicide while his health conditions still allowed him, without resorting to outside help. Having, however, preferred to continue the clinical treatments, and this is his decision, he cannot attribute to others the responsibility of his current status as a person who must be helped to die.

Another point in the application is that concerning Article 8[46]: right to respect for private and family life. The progress of the disease according to Ms. Pretty would destabilize both family and private life. Family relationships, and the ability to always keep active the conversation with those around us are what make life worth living; a devastating illness overturns all of this and prevents the realization of serene interpersonal relationships.

The Court's answer is not exactly exhaustive, as the matter is shifted to a more general context, being the risk of abusing euthanasia and assisted suicide.

There is, in fact, the possibility that fragile individuals, having the legal possibility of taking their own lives with the means provided by the national state itself and with the consent of the most disparate international bodies, abuse this possibility by letting go to death and surrendering to illness.

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[45] Art. 3 European Convention on Human Rights: No one shall be subjected to torture or to inhuman or degrading treatment or punishment

[46] Art 8 European Convention on Human Rights: 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Another factor that has led the court to reject the appeal on this point, concerns an actor who needs to be part of these issues, namely the doctor, who sometimes is not able to deal in the wisest way with these decisions regarding the end of life.

The Court therefore does not take responsibility in making decisions in an area which would affect individual companies and therefore refers the matter to national legislators.

As for the alleged violation of Article 9[47], Pretty states that by not allowing her the possibility of suicide, the UK violated her freedom to pursue her aspiration to assisted suicide. Article 9 reads: *"Everyone has the right to freedom of thought of conscience and religion"* but in the continuation of the statement focuses attention on freedom of religion, and it is on this point that the court rejects the appeal of the English lady. I view this pretty correct because it argues that Article 9 is primarily suitable for regulating religious freedoms.

Finally, the court analyzes the last article that the lady considers violated. Article 14[48] reads as follows: "The enjoyment of the rights and freedoms recognized in this Convention shall be ensured without any discrimination, in particular those based on sex, race, color, language, religion, political or other opinions, national or social origin, membership of a national minority, wealth, birth or any other condition"[49].

The discrimination she claims to have suffered is two: one for the Suicide Act, other individuals may have resorted to the suicidal practice that she is denied, two if the case has given birth to her in a different state which applies end-of-life provisions. He could have executed his own will to die.

According to the interpretation of the judges in Strasbourg, there is no violation recalling also in this case the concrete risk of abuse caused by the acceptance of the appeal. The rejection of the application in its entirety indicates that the Court does not regard the provisions adopted in the United Kingdom as incompatible with the principles of the ECHR.

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[47] Art 9 European Convention on Human Rights: "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

[48] Art. 14 European Convention on Human Rights: "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

[49] Ibidem

The Mr. Ernest G. Hass case:

Now I talk to another case, involving a Swiss citizen Mr. Ernest G. Hass. This person, suffering from a mental illness, believes that his life is no longer worthy of being lived, has several times attempted suicide, and has therefore appealed to one of the organizations present on Swiss soil that helps the sick to walk the road to the end of life.

But the doctors of the Swiss association Dignitas deny him the prescription of *Pentobarbital Sodium* because they believe that his illness of a psychic nature does not fall within those considered terminal. It can be said that Switzerland is one of the few European countries that has clear and advanced legislation on suicide assistance. But to avoid abuse, it also has well-structured limits that provide a careful and rigorous analysis of the condition of the patient who must present a clinical situation of extreme severity before proceeding with the prescription of Pentobarbital Sodium.

Mr. Hass, having exhausted all the avenues of internal appeal, appealed to the Court of Strasbourg for the violation of Article 8 of the ECHR concerning his private life, because the Swiss would manifest excessive interference in his private life. The Court does not recognize the appeal as valid. First of all, the Court stated that Mr. Haas is not suffering from an incurable disease and therefore one of the basic required requirements is lacking in order to undergo assisted suicide. Furthermore, the Court, not recognizing the physical limits of the individual, states that this is not in any way denied the possibility of proceeding to suicide independently.

It is later also stated that, since the Mr. Haas condition is strongly altered by a mental breakdown due to the illness, the desire to die may be determined by a moment of transient distress. With the aim of avoiding the risk of abuse and making it an absolute possibility to choose to die, the Court rejects the appeal recognizing as valid the Swiss system; also states that through these rules Switzerland is making appropriate efforts to protect the right to life. Here too, the Court

acknowledges that the State is interfering in the private life of the patient, but it legitimizes it on the grounds of social security.

Unlike the cases mentioned above, a different fate falls to Mr. Koch who in July 2012 presents his case to the judges of Strasbourg. As a result of an accident, Mr. Koch was almost completely paralyzed and had to be subjected to continuous artificial ventilation. Wishing to die in his own country, Germany, he applied to the "*Bundesinstitut für Arzneimittel und Medizinprodukte*[50]" "*Federal Institute for Drugs and Medical Division*" for a dose of Pentobarbital Sodium. This medicine in Germany is only granted for use in any medications or vaccines, therefore, the application for administration is refused. Here, Switzerland and the Dignitas Association, to which Mr. Koch's spouses are addressing, are once again at stake. After the death of his wife, Mr. Koch began the legal procedures necessary to see his rights recognized in his country, but all appeals were refused by the German courts and decided, therefore, to present their arguments to the judges of Strasbourg.

The Court partially upheld Mr. Koch's action based on the infringement of Article 8 of the ECHR. I think this judgment is worthy to note because for the first time, unlike the Sampredo's case, the violation of Mr. Koch's personal rights is recognized. In the Sampredo's case, the rights of the sister-in-law who appealed to Strasbourg's Court were not deemed to have been violated because the affinity with Mr. Sampredo's was considered to be insignificant.

[50] The Federal Institute for Drugs and Medical Devices (Bundesinstitut für Arzneimittel und Medizinprodukte, BfArM) is an independent federal higher authority within the portfolio of the Federal Ministry of Health.

The Mr.Koch case:

This is about the rights of a man who has been married for more than 25 years, therefore, with a solid and lasting marriage. That is why Mr Koch must be regarded as a person directly affected by the decision of the German Federal Institute which led to his wife's death in Switzerland and all its destabilizing consequences. The decision of the German authorities not to grant Mrs. Kock a dignified death within their national borders had resulted in the family moving to Switzerland, causing particularly unbearable discomfort in view of the patient's serious health conditions, and therefore, the Strasbourg court acknowledges a breach of the protection of privacy. I would like to point out that even in this case the transferability of Mr. Koch's personal rights to her husband is not accepted.

The judgment concludes with the Court's invitation to National States to adopt measures in accordance with the European Conventions on Human Rights.

The methods of hydration and artificial nutrition are used on coma patients, however, are often aimed at patients in a permanent vegetative state. It is therefore a particularly delicate point of the end-of-life treatment, as the suspension of hydration and artificial nutrition leads to the death of the patient. To this question refers the case "*Lambert and others vs France"* [51]. Actions to that effect had already been brought before the court in the case of "*Ada Rossi and others vs Italia*[52]", in which some applicants (six citizens, guardians of vegetative persons, and seven Italian associations) had complained of a series of violations that they believed could result to their detriment from the decision of the Court of Appeal of Milan that, putting an end to a long legal (and human) affair, had allowed the interruption of hydration and nutrition of *Eluana Englaro* .

The judges of Strasbourg, however, declared the appeal inadmissible, considering that the applicants could not be considered "victims" pursuant to Art. 34 of ECHR[53]. Since they were not

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[51] *Application no. 46043/14)*

[52] ECHR 2010/1 Case of Ada Rossi and Others v. Italy, 16 December 2008, No. 55185/08, 55483/08, 55516/08, 55519/08, 56010/08, 56278/08, 58420/08 and 58424/08 (Second Section). Legal Cases

[53] Article 34 of European Convention on Human Right: The Court may receive applications from any person, nongovernmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right

direct victims (since the decision of the Milan Court of Appeal concerned only the parties to the proceedings and the facts which were the subject of that decision), they did not fall within the category of potential victims either, having produced reasonable and convincing evidence as to the likelihood that the internal decisions - taken with specific reference to the case of Eluana Englaro - would result in violations of her rights.

In accordance with French legislation, the Doctor of Mr. Lambert together with a panel of three colleagues decides to stop the nutrition and artificial hydration of his patient in a permanent vegetative state following a serious car accident. This time, while in the other cases examined the appeal focused on the possibility of having a dignified death, in this case, it is Mr. Lambert's parents and brothers who are calling for the right to life guaranteed by Article 2 of the ECHR to be safeguarded against the doctors decision.

After denying that the applicants could act on behalf of Vincent Lambert, the Court granted them the status of indirect victims, but ruled out the existence of the alleged infringement. Since the French legislation provides a clear and linear legal framework for regulating the decisions taken by doctors in the situation indicated, and that the decision-making process in the case of Mr. Lambert was conducted accurately. In conclusion, therefore, the French State had correctly fulfilled the positive obligations deriving from art. 2 of the ECHR.

The issues are no less complex in the comparative landscape, and in addition to the cases of France and Switzerland mentioned above, the recent *Charlie Gard* case in the United Kingdom, who saw the parents of a child afflicted by a serious normally fatal degenerative disease who, however, did not wish to interrupt the (even experimental) care to which he was subjected, collide in a bitter judicial battle, despite the doctors who followed the little patient, believed that the condition had reached a point where any further attempt at treatment would be futile and would lead to further unnecessary suffering. Finally (and after the Court of Strasburg declared their appeal inadmissible), the parents agreed to the suspension of the treatments that kept their son artificially alive.

I would now like to look at the situation regarding end-of-life legislation in two European countries, Belgium and France. In Italy, on the other hand, the legislative framework is still very meagre for the reasons which I will explain later.

The Belgian Law on the end of life

Historic framework:

Belgium is one of the Member States of the European Union which, although a country with a Catholic majority, has adopted a comprehensive and clear end-of-life legislation with Law 137 of 10 April, which entered into force in 2002. A country so Catholic in its highest ranks, that King Albert II seriously considered repeating the gesture made by his brother in 1990 not to sign the law on euthanasia. King Baudouin, in fact, resigned for a day from his royal office, not to sign the Belgian law on abortion. King Albert II eventually gave up because he believed that this gesture would mark the end of the monarchy, as the king would show little or no consonance with Belgian public opinion.

Through this pioneering provision, probably the most advanced in Europe, the first in the world to admit euthanasia of the minor, the Belgian legislator wanted to decriminalize the practice of ending existence.

The basis of this rule lies in the principle of Belgian law, where the human body is different from the person and, therefore, the acts of disposition of the body are subject to the principle of self-determination of the individual[54]. Self-determination is limited by ethics, but it is understood as a tolerant and open ethic, typical of the Flemish countries[55].

From the idea that everyone has the right to personality, it follows that only the patient can give consent to a medical act, under the auspices of the highest principle of the dignity of the human person. According to Belgian law, only the person can decide what to do with his body, the same body, does not identify with the person, but becomes an object legally independent and separate from the legal entity.

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[54] Etienne Vermeersch, "The Ethical and Historical Background of the Belgian and Dutch Laws on Euthanasia"

[55] THE RIGHT TO DIE WITH DIGNITY: AN ARGUMENT IN ETHICS, MEDICINE AND LAW (2001),

The debate on these issues in Belgium has been particularly active since the late 1990s, when the debate on the first draft of the law on euthanasia and palliative care was broadcast on television, arousing a deep and careful reflection in public opinion[56].

The debate then continued with great intensity until it resulted in the law of 28 May 2002 on euthanasia.

I would now like to proceed to a more detailed analysis of the Belgian law on euthanasia. I would begin with the definition of euthanasia according to Article 2 of the Belgian law: "*the act, practiced by a third party, of intentionally putting an end to the life of a person at the latter's request"* (art. 2). This can only be done by a doctor.

The 2002 Law de-penalized the euthanasia, Article 3 of the Law lists the conditions for the use of this practice. In fact, Art 3 disciplined the condition in order to practice a legal euthanasia. The conditions are different depending on whether the patient is conscious or in a state of unconsciousness.

In the case of euthanasia on conscious patient the law provides that this can be practiced in a hopeless medical situation involving intolerable physical suffering combined with a psychic illness related to the disease, which is substantiated by the fear of losing one's dignity and physical autonomy[57]. The serious and incurable condition of the patient must also be acclaimed by a third doctor competent in the specific pathology.

The law revolves around the patient's request, in fact it must be made voluntarily and after a long and careful reflection: it must not be the result of momentary discouragement or external pressures, since it is a necessary condition for euthanasia must come from the patient, not from a family member. It should be stressed that the law confers the right to request euthanasia but not the right to euthanasia.

In the case of euthanasia on an unconscious patient, the Belgian law provides that a declaration on the euthanasia may be made in advance (Art. 4[58]). The legislator, however, has taken into account that a person can change his decision, so he has set some precautions: In order to be effective, the declaration must have been signed not earlier than five years before the patient cannot express his will.

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[56] Tony Sheldon, Belgium Considers Legalizing Euthanasia, 320 BRIT. MED. J. 137 (2000). See also PAUL SCHOTSMANS & TOM MEULENBERGS, EUTHANASIA AND PALLIATIVE CARE IN THE LOW COUNTRIES (2005).
[57] Tony Sheldon, *Belgium Considers Legalizing Euthanasia*, 320 BRIT. MED. J. 137 (2000)

The advance declaration shall be signed by two witnesses, at least one of whom shall have no material interest in the death of the declarant, who, if he is not able to express himself, may appoint one or two persons of his trust to take his place. The Belgian law, in fact, provides for the doctor's conscientious objection, but at the same time he is obliged to inform the patient of the reasons for his refusal to perform euthanasia and to forward the dossier to another doctor.

The law of 2 March 2014 or the law on euthanasia of minors not emancipated:

It should be noted that the 2002 law regulates euthanasia for adults and for emancipated minors, but, on 2 March 2014 there was a further expansion of those interested in implementing euthanasia, in fact, since that date it has been extended to minors.

This law states that a child of any age in intense suffering, impossible to alleviate, suffering from an incurable disease, may ask that he put an end to his suffering, In any case, the minor must possess the ability to understand and to will and must be judged able to make such a choice in the presence of a psychologist and a psychiatrist[59]; in addition, must have the written consent of both parents or of those who replace them.

One of the most authoritative professors in the field of euthanasia, the Belgian Chris Gastmans, who works at the biomedical ethics center in Louven, says that *"after 15 years euthanasia is now something normal, it is considered a new way of dying. People in Belgium now consider euthanasia a right"*[60].

According to data from the Belgian Euthanasia Review Committee, 349 people received lethal injections in 2004, while in 2017, 2309 people underwent euthanasia. Now I would like to talk more

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[59] Luc Deliens et al., End-of-life Decisions in Medical Practice in Flanders, Belgium: A Nationwide Survey, 356 LANCET 1806, 1806 (Nov. 25, 2000).

[60] "*Euthanasia and Assisted Suicide: Lessons from Belgium*" (Cambridge University Press, 2017)

in detail about child euthanasia. There are three minors in Belgium who have benefited from the enlargement of 2 March 2014 to the law on euthanasia.

The Federal Commission for the Evaluation and Control of Euthanasia did not provide medical details of individual cases. It is only known that the 17-year-old had Duchenne muscular dystrophy, the 9-year-old had brain cancer and 11 had cystic fibrosis.

The case of the 17-year-old boy is the first in the world to have had as its object the practice of eutanxiety on a patient under the age of eighteen. Wim Distelmans, Chairman of the Federal Commission on Control and Evaluation of Practice specified that this is an exceptional case. *"Fortunately, there are few such patients*," said the professor, "*but that does not mean that we have the right to deny them the right to a dignified death*". At the BBC Distelmans explained that "*the minor (it is not known if he was a boy or a girl) suffered unbearable physical pain. The doctors used sedatives to induce coma as part of the process".*

The case of the 11-year-old patient has the most problematic aspects; cystic fibrosis, with the appropriate therapies, has a very slow course and has a median life expectancy of around forty/forty-three years.

Advances in science have allowed a continuous improvement in the living conditions of cystic fibrosis patients, and it is conceivable that within a few years all genetic mutations will be curable.

It therefore seems almost premature to apply euthanasia to an eleven-year-old child taking these factors into account. In the light of the above, the question arises as to whether the law has been observed where it states that death is foreseeable within a short period of time.

The Belgian legislation on euthanasia, and in particular the cases just mentioned, has had a disruptive effect on public debate worldwide and clearly also in Italy, where two sides have opposed each other.

In this debate the accents are profoundly different, we go from the tweet of popular area deputy Maurizio Lupi *"euthanasia for a child in Belgium. Herod is back, massacre of the innocent".*

To the favorable position of the Luca Coscioni Association, "Belgium is the first country in the world not to turn its head on the other side of the source to the conditions of unbearable suffering that can affect even minor people".

The president of the Italian National Bioethics Committee, Lorenzo D'Avack, expressed an unquestionably authoritative and convincing position regarding what happened in Belgium: *"I am absolutely against the idea of euthanasia for minors"*, said the Professor of Philosophy of Law of the University of Roma Tre. *"We can discuss that of adults, which with certain guarantees may also be admissible, but the circumstances are different. Today we have tools to alleviate the pain of children, to the point of palliative care and deep sedation, the subject of an opinion of the CNB just expressed which also admits it in minors and which specifies that this medical practice is something different from euthanasia. This document has been greatly appreciated by the doctors themselves, precisely because it solves the question whether deep sedation is comparable to euthanasia".* In general, the president stressed, the problem of the end of life in Italy must still be more regulated. "*We are incredibly late on the end-of-life front, there are draft laws under discussion for years, but we have not solved the problem with clear legislation".*

The opinion of the Conseil d'état:

It is natural that the two laws, (that of May 2002 and March 2014) bold in their formulation have aroused a heated debate not only in Belgium but in all Western countries. In fact, before the formulation of the law of May 2002, the state council was called by the President of the Senate to express an opinion on the substance of the bill.

The Conseil d'État examined the laws both in relation to respect for the right to life (first part of the opinion) and in relation to criminal law (second part of the opinion)[61]. Specifically, it was a question of determining whether, by decriminalizing euthanasia, the legislator failed in its task of protecting life.

And so on 20 June 2001 the Conseil d'État established that the importance of the obligation to protect the right to life must be interpreted in the light of the right to self-determination. In this context, the Conseil considered that the intensity of the will of the person requesting euthanasia must be taken into account. For example, if an individual is not able to decide for himself, the obligation imposed on the authorities is obviously more important than what you have when the person concerned is actually able to make choices about their own life.

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[61] Il *Conseil d'État* ha rinviato alla decisione della Corte EDU, n. 20527/92, del 10 febbraio 1993, *Widmer*, §1.

Art. 2 of the European Convention on Human Rights and Art. Article 6 of the International Covenant on Civil and Political Rights in no way implies an obligation for the State to protect life under any circumstances against the will of the person concerned. Such an interpretation would presuppose that international human rights treaties would impose obligations on States in the main and that citizens' rights would be granted on a subsidiary basis.

The Conseil d'État considered that interpretation to be contrary to the principle of the recognition of human rights, namely that each individual possesses fundamental and inalienable rights, which the State as such must respect and protect.

Moreover, according to the Conseil d'État, it seems surprising that no conventional provision obliges authorities to protect "life" as such, which confirms once again the principle that it is appropriate to rely on the concrete situation in which each individual is to verify whether or not the protection of that right.

In this way, the general picture was re-established and the extent to which the will to die expressed by an individual influenced the importance of the positive obligation of the authorities to protect the right to life. In this regard, Conseil d'État recalled that this obligation conflicts with the right of the person concerned to be protected against inhuman or degrading treatment (art. 3 European Convention on Human Rights and art. 7 International Covenant on Civil and Political Rights.) and with the right to respect for his physical and moral integrity, which stems from the right to respect for private life (Art. 8 European Convention on Human Rights and Art. 17 International Covenant on Civil and Political Rights), a conflict which has not been resolved by either the EDU Court or the International Covenant on Civil and Political Rights.

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The judges continued by pointing out that the aim of the bill is to mitigate the ban on responding to the request to die. This measure, being a matter for the legislature, implies that certain limits are indeed placed on its discretion. To this end, the Council has examined the conditions governing euthanasia: in its view, the procedure envisaged provided sufficient conditions to ensure that euthanasia would be carried out with the necessary prudence. The judges therefore concluded that this bill was not incompatible with the provisions of the EDU Convention and the International Covenant on Civil and Political Rights.

In conclusion, what seems to me to be of great importance is the fact that the Belgian Council emphasizes the centrality of the rights of the citizen considered superior to the obligation of the state to protect the life of the individual.

The judgment of the Cour Constitutionelle:

We now examine the last judgment of the Cour Constitutitionelle n. 156/2015[62] of 29 October 2015, on the request for annulment of the law of 28 February 2014, amending the law of 28 May 2002 on euthanasia, to extend euthanasia to minors lifted by *ASBL Jouriviee pro vitae jeunes pour la vie* .

The Cour Constitutionelle told that:

- a doctor who euthanizes an emancipated minor patient with the ability to discern does not commit an offence provided that he complies with the criteria and procedure laid down by law.
- that the contested law creates new obligations in respect of existing ones in the case of euthanasia of an emancipated minor. These obligations concern doctors and paediatricians The legislator therefore intended to respond to the request, raised by paediatricians and other doctors, to decriminalize euthanasia for minors who were in a medical situation with no way out, with constant suffering, unbearable and that could not be alleviated. Based on the opinion of the Order of Physicians, according to which "the mental age of a patient is more important than his civil status", the Court has established that a child can be endowed with a sufficient capacity of discernment to assess the scope of a request for euthanasia and that this capacity must be assessed on a case-by-case basis.
- added, however, the need to seek the consent of the child's legal representatives who request euthanasia.
- After recalling the provisions of art. Article 3 of the ECHR, according to which no one may be subjected to torture, inhuman or degrading treatment or punishment, and the case law of the ECHR, according to which the right of an individual to decide how and when to die, provided that it is able to freely formulate its will and to act in consequence 28, the Cour Constitutionelle has established that the free choice of a person, made with knowledge of the facts, to avoid what

[62] http://www.const-court.be/public/f/2015/2015-153f.pdf.

constitutes a purpose-unworthy life must fall within the protection of fundamental rights guaranteed by art. 8 of the EDU Convention and art. 22 of the Constitution.

To conclude, the Law of 28 March 2002 as amended by the Court of Justice is based on a fair balance between the right of each individual to choose to end his life in order to avoid an unworthy life, a corollary of the principle of respect for the private life of the individual, and the right of the child, including measures to prevent the abuse of euthanasia, which results from the right to life and physical integrity.

The French legal system and the “Leonetti Loi”

Historic framework:

In 1810 the French penal code wanted by Napoleon Bonaparte, no longer contemplates the crime of suicide. With Napoleon, in fact, a secular conception of both civil and criminal legislation is finally affirmed in the field of law. Suicide until then, on the basis of the Christian conception, was seen as a mortal sin, a rejection of the divine gift of life, in fact, suicides were buried in desecrated ground and suicide marked as an unworthy act. It is clear that we are talking about a world very far from the present day.

The Leonetti Law:

Given this historical premise we can go back to the present by talking about the law Leonetti[63] that was originated from a dramatic case, the case of Vincent Humbert. At nineteen, young Vincent was involved in a car accident that leaves him in a coma for nine months. Upon awakening, the boy turns out to be tetraplegic, mute and almost blind, but also absolutely present to himself and lucid.

Vincent can only communicate with his right thumb, and using this tool of connection with the outside, he told his nurse a letter addressed to President Chirac in which he manifests for the first time the will to die. *"to her, who has the right to grant the grace, I ask the right to die"*[64].

Chirac does not accept his request and urges him to live. Vincent then turns to the one who gave him life, to his mother Marie, who with an extreme act of love injects his son with a lethal dose of barbiturates, unfortunately this dose was not lethal. In fact, the young man falls into a coma, and is a doctor, Doctor Chaussoy who administers the patient with potassium chloride that finally leads him to death. He died on 26 September 2003. The mother and the doctor were investigated by the prosecutor but subsequently acquitted because they acted in a state of extreme need.

Following the clamor aroused by this tragedy: “le président de l’Assemblée nationale, à l’instigation de plusieurs députés, au nombre desquels M. Gaëtan Gorce et Mme Nadine Morano (Le Monde, 12 avril 2005, p. 14), a mis en place une mission d’information ayant pour mission de s’interroger sur le point de savoir quelles sont les réformes législatives requises pour éviter semblable cas. Sa

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[63] https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031970253&categorieLien=id.

[64] *“Io vi chiedo il diritto di morire”* di Vincent Humbert e Frédéric Veille 22 ott. 2003

présidence fut assurée par M. Jean Leonetti (député UMP des Alpes-Maritimes) qui en a dirigé le rapport. Composée de 31 membres représentant toutes les sensibilités politiques, elle a procédé à 81 auditions organisées en cinq cycles. Elle a ainsi entendu des historiens, des philosophes, des sociologues, des théologiens et des religieux, des représentants des loges maçonniques, des médecins et des représentants du secteur hospitalier, des associations les plus diverses, des juristes ; enfin, elle s'est déplacée en Belgique et aux Pays-Bas. Son travail particulièrement conséquent s'est déroulé entre octobre 2003 et juin 2004 : elle a adopté à l'unanimité le rapport de son président le 30 juin, il a été publié en juillet 2004, en deux tomes (Assemblée nationale, document no 1708) sous le titre Respecter la vie, accepter la mort qui en constitue un parfait résumé. En première lecture, le 30 novembre 2004, la proposition a fait l'objet d'une quasi-unanimité (moins une voix). Assez étrangement, le Sénat se divisa le 14 avril 2005. La loi fut promulguée le 22 avril 2005[65].

In France, in fact, on 22 April 2005, the "Leonetti law on the management of medical treatments" was approved. Despite this, it reaffirms the prohibition of access within the French borders to euthanasia (specifying the prohibition of both active and passive practices), the Leonetti law enshrines the established right of every individual to have access to the most appropriate care and recognized as valid by medicine; it also states that the administration of any medication, must never involve a risk disproportionate to the expected benefits of that therapy to which the patient is subjected. So, all those treatments that refer to the maintenance in life of the individual and that can be configured as a therapeutic fury are not justified and therefore, according to the law, are not to be undertaken.

Although it cannot be interpreted as an attempt to legislate on euthanasia, the Leonetti law makes important progress in the recognition of the rights of the sick. In fact, in art. 5 law Leonetti reads: *"Toute personne ont […] le droit de recevoir les soins les plus appropriés et de bénéficier des thérapeutique dont l'efficacité est reconnue et qui garantissent la meilleure sécurité sanitaire au regard la connaissances médical avérés"*[66]

This law allows the patient to refuse a medical treatment although of fundamental importance for the continuation of life; in this case, however, the task of the doctor is to try to persuade the individual to accept it by showing him clearly, in accordance with the principle of transparency, the conditions under which it is likely to be faced. The law also recognizes the importance of advance directives and patient wills, regulating individual cases. According to the law Leonetti the adult, in

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[65] "*Le droit de la fin de vie"* Nicolas Aumonier Dans L'euthanasie (2012)

[66] Art. 5 Leonetti's Law

fact, has the possibility to draw up directives in which to provide indications of treatment in case the adult could not communicate due to an illness or some other imponderable situation.

The directives will be taken into consideration by the doctor, in particular if the latter are written less than three years before the event that will lead to the state of unconsciousness and if there is no evidence of any rethinking by the patient.

In the event that there are no written directives and there is no possibility for the patient to communicate, the law Leonetti institutionalizes the figure of the guardian, giving to the latter a great importance; in particular, in the absence of directives anticipated, the decisions of the latter (as well as those of the family and persons close to the patient have great relevance on the will of hospital staff in the interruption or administration of treatment.

In this regard, Article 10 of the Leonetti law provides: “Ces actes ne doivent pas être poursuivis par une obstination déraisonnable. Lorsqu’ils apparaissent inutiles, disproportionnés ou n’ayant d’autre effet que le seul maintien artificiel de la vie, ils peuvent être suspendu ou ne pas être entrepris […]”[67]

The issue of the end of life in France was again addressed following the election of President Hollande who declared, during his election campaign for the 2012 elections, that he wanted to allow assisted suicide no later than 2013; A Commission was therefore set up chaired by Dr. Didier Sicard with the aim of drawing up the points of interest to be discussed and on which to legislate. Subsequently, in July 2013, the French Bioethics Commission, by issuing an opinion, advised against a revolution on this matter, thus trying to maintain the status quo of the situation. In the same way (and against all odds) a fairly prudent attitude was also maintained by the Sicard Commission itself, which stated that the democratic quality of a society is not found through the unlimited affirmation of a right (in this case the right death) and that the affirmation of this freedom would consequently have entailed other particular situations on which to legislate, not completely solving the problem. . The perception is that the law much desired by former President Hollande, however, would not have had the capacity to solve the problems concerning the terminally ill. It should be noted that a few years earlier in France a law was enacted authorizing palliative care, but the Sicard commission notes that this law had not been fully implemented; this opinion was also confirmed by the data previously collected by the "Société française d'anesthésie et de réanimacion (SFAR)" which already in 2012 analyzed how palliative care was offered in rare cases, and how the

[67] Art. 10 Leonetti’s Law

suitable structures and machinery were lacking practice them. He also pointed out that most doctors in France are reluctant to administer palliative care or to offer the patient this possibility, so much so as to induce in the patient the desire to end his life. Therefore, the concept that medical action is an act aimed at maintaining life remains alive in French society and which can lead in certain situations to an unwanted persistence in therapy that the Leonetti law of 2005 should have prohibited and eradicated over time.
In its conclusions, the Sicard Report hopes for better protection of the patient already from the moment of diagnosis of the disease which, sometimes incorrect, creates the conditions for a subsequent therapeutic persistence; furthermore, better implementation of the Leonetti law is hoped, which in other conditions can be particularly effective. The Ordre National des Médecins expressed itself in the same way on February 8, 2013, stating how palliative solutions are unknown to most doctors and how the Leonetti law of 2005 can constitute, if applied in a different context, adequate protection. both the right to life and the right to death of every sick person.

The “Claeys-Leonetti Loi”:

To conclude this discussion concerning the French legislation on end-of-life treatment, I want to recall that on February 2, 2016, after the re-examination of the issues connected with the accompaniment of dying patients and euthanasia by a parliamentary commission, the French government issued a law called the "Claeys-Leonetti Law".

This law recognizes the wishes expressed by patients and establishes the right to a deep and continuous sedation, up to death if the patient is in danger of experiencing pain; all this is associated with the suspension of any life-sustaining treatment, including artificial nutrition and hydration.

On the delicate point of interrupting the treatment of a patient unable to express his will, the Conseil d’État was called several times to rule following the appeal of the same decisions.

In some cases, the dispute has reached the European Court of Human Rights, including Lambert et eutres v. France, of which I have already spoken in the previous chapter, and considered the

national legislation on the interruption of care in compliance with art. 2 of the European Convention, even if the patient is a minor.

The Conseil Constitutionnel also intervened on the Clays Leonetti Law on a question of constitutionality relating to the procedure for the interruption of treatment, and: with sentence no. 2017-632[68] QPC of 2 June 2017, the Conseil Constitutionnel declared the legitimacy of this procedure

[68] https://www.conseil-constitutionnel.fr/decision/2017/2017632QPC.htm

The Italian situation on the end of life

Historic Framework:

In Italy, despite the fact that the Constitution guarantees the secularity of the state, the predominant presence of the Catholic Church has long prevented in-depth reflection on the issues of the end of life. This is a fact that is part of the common feeling of the Italian public opinion most felt that, on ethically sensitive issues (abortion, assisted fertilization and issues of the end of life), has always perceived the urgent and continuous intervention of the Vatican.

On the other hand, illustrious figures such as Franco Cordero and Piergiorgio Odifreddi (and others), in the pages of "La Repubblica", until they collaborated with the newspaper, spread rivers of ink on the subject. But here I would like to quote the voice of an authoritative theologian, Hans Kung. The Swiss thinker in *"Pope Francis: a paradox?"*[69] welcomed the election of Jorge Maria Bergoglio as the tangible sign of an epochal change. Retracing the story of Francis of Assisi of which Pope Bergoglio, first of all popes, took the name, note that if Innocent III the pope who after Honorius II, approved in writing the Franciscan rule, had followed the teaching of the Saint of Assisi, could have promoted a return to the word of the gospel, to simplicity, to poverty, to the most authentic message of Christ. With "I se>> and with i ma>> history is not made" (W. Churchill), in fact, Innocent III has taken a completely different path, strengthening the temporal power of the popes, initiating the Church to move progressively away from the message of Christ, a message of mercy and piety. The presence of the Church has weighed on the whole of Italian history, it is the boulder that has prevented the formation of a critical-secular thought, the unfolding, as it happened in other countries, of an open and modern public opinion. I would also like to quote Hans Kung on the subject of this thesis, in fact in a book published in Germany entitled *"Die Happy"*[70], he expresses his reflections on the subject. In an article by Repubblica published by Andrea Tarquini, the journalist begins with this sentence: "if life is a gift from God, why not accept the possibility of gently returning the gift?". The journalist continues with the words of Kung himself: "it is part of

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[69] *Una battaglia lunga una vita*, Hans Kung, Rizzoli 2019

[70] Morire felici? Lasciare la vita senza paura, *Hans Küng 2019*

my way of conceiving life, and it is linked to my faith in eternal life, the choice not to prolong my earthly life indefinitely".

Kung continues: "If and when the time comes, I would like to have the right, if I can still do it, to decide with my responsibility the time and the way of my death". And then he adds," is the consequence of the principle of human dignity the principle of the right to self-determination, even for the last stage, death. Under no circumstances does the right to life derive from the duty of life, or the duty to continue living in all circumstances. Help to die is meant as an extreme help to live. Even in this case, no heteronomy should reign, but the autonomy of the person, which for believers has its foundation in theonomy". (decision of God or inspired by divine dictates).

Completely opposite, as we will see, is the position of the ecclesiastical authorities, and in particular that of the former Cardinal Vicar of Rome, Camillo Ruini, who denied the funeral to Piergiorgio Welby, an episode of which I will deal shortly.

We can go back to saying that to widen the debate from the closed rooms of religious and political power to the entire Italian public, were two striking and dramatic cases, the case of Englaro and then the case of Welby, which I have just mentioned.

In the Italian legal system legislators have long questioned the relationship between suicide (such as the act with which an individual voluntarily and consciously procures death)[71], self-determination and the right to life.

In the fascist era the Rocco code came into force in 1930[72], which takes its name from its extensor, which provided for the crime of incitement or aid to suicide and the crime of murder of the consenting party. With the fall of fascism, the Rocco Code became part of Italian legislation and Articles 580 (incitement or suicide aid) and 579 (murder of the consenting party) remain in it.

So great is the condemnation of suicide that all conduct which in some way can facilitate or disseminate this practice is punished: publications and broadcasts with impressive content are also prohibited.

According to the classical reconstruction, therefore, the inalienability of the right to life referred to in Article 2 Cost.[73] and the prohibition of compulsory health treatment not imposed by law referred

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[71] S. CURRERI, Lezioni sui diritti fondamentali, cit., 236.
[72] Come into force “Regio decreto n.1938 il 19 ottobre 1930
[73] The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in the social formations where his personality takes place, and requires the fulfillment of the mandatory duties of political, economic and social solidarity.

to in Article 32 Cost.[74] ,. follows the consequence that there is no right in our constitutional order to suicide of the individual.

According to this approach, therefore, suicide is not even a freedom, and therefore not a prohibited behavior, but rather a "legally tolerated behavior", with reference only to the subject who tries to commit suicide, and not to any other persons who have contributed to its determination.

This extremely rigid legal framework is weakened by the progress of the European integration process, in fact, by the entry into force of the Charter of Fundamental Rights of the European Union (Article *3 prohibits torture and inhuman or degrading treatment or punishment, this principle extended in the field of biological medicine offers the possibility of accepting or refusing medical treatment*) and with the ratification of the Oviedo Convention (Article *9 the wishes previously expressed about a medical treatment by a patient who at the time of the operation is not able to express his will will will be taken into account*), we move to integrate and better specify the fundamental article 32 of the Italian Constitution.*", the republic protects health as a fundamental right of the individual and interest of the community (…….) No one can be obliged to a certain health treatment except by law, the law cannot in any way violate the limits imposed by respect for the human person"*

Now I would like to begin to address the first of the two cases that have imposed themselves with all their brutal evidence because accompanied by fierce controversies and in some cases absurd to the attention of Italian public opinion: the case of Eluana Englaro and then the case of Piergiorgio Welby.

[74]The Republic protects health as a fundamental right of the individual and the interests of the community, and guarantees free treatment for the poor. No one can be obliged to a certain health treatment except by law.

The Eluana Englaro case:

Eluana Englaro was a 21-year-old girl from Lecco who lost control of her car because of the icy asphalt, and then crashed into a pole. The consequences of the accident were very serious, the girl in fact reported a brain trauma that caused a state of deep coma and then a persistent vegetative state with spastic tetraparesis and loss of all higher psychic faculties. Eluana's body became a shell devoid of any ability to contact or relate to the outside, a prison of which it was not possible to break the bars. A non-life that was limited only to the biological aspect, a heart that pulsed but did not feel feelings and emotions.

After about four years, since the psycho-physical state of the girl did not present any change, the Court of Lecco declared Eluana banned and appointed her guardian father Beppino Englaro. Seven years after the accident, when Eluana's condition was irreversible, the father, began a long judicial case calling for the interruption of life support therapy, comforted in his intent by the deep knowledge of the orientation of his daughter and his beliefs about the intolerability of the vegetative state in which he was.

The first two attempts of Beppino Englaro to unblock the situation were rejected, the first, by the court of Lecco, confirmed also in the complaint by the Court of Appeal of Milan, the second, always submitted to the court of Lecco, ended up in the Court of Cassation which declared it inadmissible. The first claim before the Court in Lecco was deemed inadmissible because it was incompatible with Article 2 of the constitution. This measure was confirmed in the complaint by the Milan Court of Appeal, which denounced a regulatory uncertainty on the matter in question. The second claim, submitted and rejected by the Court of Lecco, was also rejected by the Court of Cassation because there was no provision for participation in the proceedings of the special

administrator of the incapable to be appointed pursuant to Article 78[75] of the Code of Civil Procedure.

In 2005 Mr Englaro made a third attempt by appointing a special curator, the lawyer Franca Alessio, but again his appeal was rejected. But during the preliminary investigation, in addition to the statement of Mr Englaro are also to be considered relevant the depositions of three friends of Eluana who stated that the girl, following a car accident in which had been involved a friend of theirs entered then in a coma, had stated that he would, in the same situation, prefer to die suddenly. But despite these statements the appeal was unsuccessful.

Beppino Englaro and lawyer Franca Alessio resorted to the Supreme Court and this time the appeal was granted. The Supreme Court complements the in-depth examination of the principles set out in the Constitution with the principles contained in international conventions that prevail for our country such as the Oviedo Convention of 4 April 1997 on human rights and biomedicine (not yet ratified by Italy, ss I wrote in the other pages)

The Court of Cassation finally establishes by the judgment 21748/2007[76] that the interruption of artificial nutrition and hydration, may be authorised at the request of the guardian "only in the presence of two competing circumstances: a) the patient's condition of vegetative state is clinically appreciated as irreversible, without any possibility at all according to internationally recognized scientific standards of recovery of consciousness and perception; b) is unambiguously established, on the basis of elements taken from the patient's experience, personality and ethical, religious, cultural and philosophical convictions which guided the patient's behavior and decisions, if conscious, he would not have given his consent to the continuation of treatment.

If one or the other presupposition does not exist, authorization must be denied, because then it goes from unconditional primacy to the right to life, regardless of the perception that others may have, of the quality of life itself.

Having established that Eluana's condition was irreversible, the Court rejected the application on the grounds that the statements of her father and the other witnesses were inadequate. In that, it is believed that Eluana made such statements at a time of strong emotion due to the death of his friend.

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[75] Art 78 : If the person responsible for representation or assistance is missing, and there are grounds for urgency, he may be appointed to the incapacitated, to the legal person [11, 12, 13 CC] or to the unrecognised association [36 CC] a special curator to represent or assist them as long as the representative or caregiver takes over (1).

[76] Foro.it,2007,I,3025

Dissatisfied with this outcome Beppino Englaro turned to another section of the Court of Appeal of Milan, which finally put a firm point to the whole affair with the decree of 9 July 2008[77].

Having established the irreversibility of the vegetative state and, therefore, satisfied the first condition requested by the Court of Cassation, and that the second assumption is also satisfied considering the reconstruction carried out by Peppino Englaro with regard to the alleged will of his daughter Eluana. Also confirmed by other findings in the investigation.

At this point a squalid and indecorous battle broke out over the poor torn body of Eluana Englaro. The President of the Lombardy region, Roberto Formigoni, declared the unavailability of hospitals and clinics in his region to practice the interruption of hydration and forced nutrition. But the Regional Administrative Court of Lombardy condemned the region to compensation of about 143,000 euros for the decision to prohibit the suspension of therapies.

In reference to the latter judgment, both branches of parliament voted on a conflict of attribution against the judgment of the Court of Cassation of 16 October 2007, and the subsequent decree of the Court of Appeal of Milan of 25 June 2008, which constituted an act able to innovate the legal system. It was the Constitutional Court that rejected this act by Order 334/2008[78]. The Constitutional Court in fact "has cleared the field impeccably, by order and in the council chamber, by the conflict of attribution promoted by the Chambers, who complained of an invasion of their legislative sphere by the judges. The ballet of the pronouncements continued for a long time until 13/12/2008, the date on which the court of cassation accepted the will of Peppino Englaro to suspend the therapeutic fury of hydration and forced nutrition on the body of his daughter.

At this point the Politics comes into the field, which with an impressive progression of choices and unworthy acts, tries to prevent the implementation of the judgment. The Minister of Labour Maurizio Sacconi begins that prohibits public and private structures affiliated with the S.S.N., throughout the Italian territory to practice the interruption of hydration and forced nutrition.

Again, without disturbing the new frontiers of the constitutional state, the problem submitted to the Court can be traced back to the essence of the rule of law: the distinction between the function of legislative production and judicial activity, limited to the specific case, in a context, inter alia, in which, as the Court has pointed out, "Parliament may at any time adopt specific legislation on the

[77]https://www.eius.it/giurisprudenza/2008/104
[78] http://www.giurcost.org/decisioni/2008/0334o-08.html

subject, based on appropriate points of balance between the fundamental constitutional assets involved""[7980]

As a result, a private clinic in Udine, which had declared itself available, renounced. The solution is offered by the Residenza Sanitaria Assistenziale "la Quiete" in Udine, a non-contracted structure that accepts to host Eluana Englaro for the implementation of the sentence of suspension of hydration and forced nutrition.

At this point an ambulance carrying Eluana Englaro arrived at "La Quiete" in Udine and on the morning of February 6, 2009 the team of the facility announced the start of the progressive reduction of hydration.

In the afternoon the Council of Ministers passed a Decree Law to prevent the suspension of nutrition and hydration of patients. The Prime Minister Silvio Berlusconi had already made absurd statements about the state of health of Eluana Englaro arousing the indignation of the girl's father. Fortunately, the President of the Republic Giorgio Napolitano refused to sign the Decree Law, on the same day, at 20.00 the Council of Ministers approved a bill with the same contents of the decree that President Napolitano had refused to sign. The bill was immediately forwarded to the Senate to discuss the text on Monday, February 9, 2009.

While in the clinic of Udine had begun the suspension of the treatments already mentioned, a group of troublemakers, stirred by the atheist-devotee Giuliano Ferrara showed up in front of the clinic brandishing bottles of water and sandwiches to signify (hopefully only metaphorically) that they would provide food and drink to Eluana. While the Senate debated the text of the Decree Law, the news of the death of Eluana arrived in the courtroom, the Government withdrew the bill and did not comply with the instructions of the Constitutional Court, in that legislature, never discussed the issues of the end of life.

About the Englaro case I found particularly interesting an essay by Tania Groppi, The Englaro case: a journey to the origins of the rule of law and return.

Professor Groppi begins by saying that a case like that of Eluana Englaro calls "scholars to reflect on the very essence of constitutionalism, in all its facets: the guarantee of rights, the separation of

[79] Corte costituzionale ordinanza 334/2008
[80] Tania Groppi, il caso Englaro: un viaggio alle origini dello stato di diritto e ritorno. 2009

powers, the role of public opinion and the media, the relationship between law and law, law and morality".

The professor goes on to say that, in the case of Englaro, "we are in many ways faced with an ancient story> in the relationship between rights and power[81]".

And it is a very "ancient" story that can be traced back to the times of Athens, when the debate between what was later called "juridical positivism"[82] supported by the sophists, and natural law was particularly heated.

This debate reverberates on the drafting of Sophocles' Antigone[83]. Here, the protagonist, Antigone, in comparison with Uncle Creon, ruler of Thebes, who wants the body of Polynices, who had fought against his homeland, to remain unbroken, and he states that higher than the human law (the one imposed by Creon, the political power) is the "law written in the stars", the natural law that imposes the burial of the deceased. We know, then, how the tragedy ends.

Just as well we know how the tragic story of Eluana Englaro ended. Professor Groppi says: "an episode of the centuries-old struggle between individual rights and political power took place around the disputed body of Eluana Englaro"[84].

As has been pointed out by the relevant judicial decisions, the law whose recognition was sought (and which this recognition finally found) can be traced back to Article 13 of the Italian Constitution, that is to the most classical and ancient of the rights of the first generation, personal freedom, in which "the sphere of explanation of the power of the person to dispose of his own body" is postulated.

What I would like to underline here (which I shall return to when I conclude on the subject of science) is that the various sectors of human action, law, science, economics, politics, etc., which, over the centuries, had become independent and had become autonomous, nowadays, little by little, they are brought back under the aegis of ethics, a bulwark that must prevent the law, science, economy and politics, which should be at the service of humanity, from becoming a stumbling block to civil progress.

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[81] ibidem

[82] The term juridical positivism or juridical giuspositivism means that doctrine of philosophy of law, which considers as the only possible right the positive law, that is, the one placed by the human legislator

[83] is a tragedy of Sophocles, represented for the first time in Athens at the Great Dionysias of 442 BC.

[84] *Il "caso Englaro":* un viaggio alle origini dello Stato di diritto e ritorno di Tania Groppi

The Piergiorgio Welby case:

As the debate on the Englaro case became increasingly heated, another case rose to the limelight of Italian public opinion.

Unlike Eluana Englaro, a body that has become the shell of a non-existent life, in the case of Piergiorgio Welby, the protagonist of the new story, it was clear that he was fully supportive of his assisted suicide to end his tragic conditions of living.

Piergiorgio Welby was an activist of the Radical Party, a journalist, poet and painter, committed to the legal recognition of the right to refuse therapeutic harassment in Italy and the right to euthanasia and co-chairman of the association "Luca Coscioni".[85]

Piergiorgio Welby was suffering from a degenerative disease, muscular dystrophy, which had affected him at a very young age, and had forced him to leave school. The disease had progressed in its nefarious effects preventing it from walking, speaking, and making any movement, and in the final stage, compelled it to stand motionless in a bed. Despite his terrible condition he tried to lead a "normal" life, and married in 1980 to Mina, an Alto-Atesina girl, who would be his companion in a thousand battles. To alleviate the atrocious pain of his condition he resorted to drug use, from which he was forced to detoxify with methadone.

In July 1997, Welby was seized by a very serious respiratory crisis due to the course of his illness, his wife Mina, who at the time had not yet realized the desperate will to die of her husband, with a gesture dictated by the loving instinct typical of a wife, called the Hospital Santo Spirito for help. Piergiorgio Welby was hospitalized in a coma at the Santo Spirito hospital in Rome, and he was attached to an automatic respirator. Out of his coma, he agreed to undergo a tracheotomy.

In this terrible situation he repeatedly asked for the plug to be pulled, but his request was promptly rejected because the laws in force did not allow it. In essence, Welby demanded that under sedation the artificial respirator be detached, so death would come due to respiratory failure. He believed that the use of the automatic respirator was a form of therapeutic overkill, as it would in no way lead to an improvement in his clinical condition.

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[85] Founded in 2002 by Luca Coscioni, an economist suffering from amyotrophic lateral sclerosis who died in 2006, is a non-profit social promotion association

The Court of Rome, by order no.16 of 16/12/2006[86], rejected the request, while acknowledging the existence of a subjective right guaranteed by Article 32 of the Italian Constitution, namely to request the interruption of medical therapy, the judge considered that there was no specific legislation to regulate end-of-life decisions in a clinical context.

Subsequently, the Public Prosecutor's Office of Rome, summoned by Piergiorgio Welby, lodged a complaint against the decision of the civil court of Rome because "affected by a clear contradiction"

From this judgment, Welby considered strengthened the certainty of the existence of his right to self-determination and, given the impossibility of detaching the respirator, decided to continue in his intent despite a few days before the Superior Council of Health. At the request of the Minister of Health, it issued an opinion in which it excluded that the case of Piergiorgio Welby constituted a therapeutic fury.

Welby had found an anesthesiologist from Cremona, Doctor Mario Riccio, who was willing to meet his needs. On 20 December 2006, in the house of Welby, Dr Mario Riccio in the presence of the patient's wife and sister, and Mr Marco Pannella and Mr Marco Cappato, Doctor Riccio practiced the interruption of the assisted breathing under terminal sedation, after several times having ascertained that what he was doing represented the unique and unequivocal will of Piergiorgio Welby. The death, as stated by the medical-legal report, occurred within half an hour, due to cardiovascular arrest due to irreversible respiratory failure, to be attributed only to the impossibility of Welby to ventilate autonomously and spontaneously, because of the very serious muscular dystrophy from which the same was affected.

Mina, the wife of Piergiorgio Welby, a Catholic, asked for her husband's religious funeral, but these were denied by the Cardinal Vicar of Rome, Camillo Ruini, who considered Welby's gesture a suicide and as such not admitted by the church. I consider this decision shameful and not dictated by a Christian piety.

The Cremona Medical Association initiated proceedings against Doctor Riccio, who was held responsible for Welby's death, but decided to dismiss the case on the grounds that the anesthesiologist "*did not administer drugs or other substances to determine death."* and that the terminal sedation was found "*for dosage of drugs, mode and timing of administration, in line with normal protocols".*[87]

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[86] decreto 16 dicembre 2006; Pres. Paganoni, Rel. Marini; ric. E.
[87] Il Caso giuridico di Piergiorgio Welby

Similar conclusions were reached in criminal proceedings by the Public Prosecutor's Office, which had initiated proceedings against Doctor Riccio, because the basic reason for absolution was the exclusion of any link between the sedation and the death of the patient.

But the request for dismissal advanced by the prosecutor and was rejected by the GIP of Rome who requested the referral to trial of Riccio because he was guilty of having committed the crime of murder of the consenting party provided for by article 579[88] of the penal code.

The procedure ended in July 2007 with a judgment of no need to proceed against the doctor, and this is because the judge for the preliminary hearing in Rome, following the constitutional dictate, pointed out that in the Italian legal system no one could be obliged to a certain health treatment except by express provision of the law, recalling, moreover, art. 13 Cost.[89], according to which "personal freedom is inviolable".

This judgment of absolution also referred to Article 5 of the Oviedo Convention[90] (although it has not yet entered into force within our legal system); this article expressly provided that: "Intervention in the field of health shall not be carried out until the person concerned has given his or her free and informed consent. This person shall first receive adequate information on the purpose and nature of the intervention and its consequences and risks. The person may at any time freely withdraw his or her consent."

In conclusion, Dr. Riccio was found not to be prosecuted, as his conduct was carried out in the context of a therapeutic relationship and, therefore, under the constitutional cover of the patient's right to refuse unwanted health treatments.

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[88] Anyone who causes the death of a man, with his consent [c.p. 50], is punished with imprisonment from six to fifteen years [c.p. 20, 32]. The aggravating factors referred to in Article 61 shall not apply. The provisions relating to murder [c.p. 575, 576, 577] shall apply if the offence is committed: 1. against a person under the age of eighteen; 2. against a person who is mentally ill, or who is mentally deficient, for another infirmity or for the abuse of alcoholic or narcotic substances; 3. against a person whose consent was obtained by the offender with violence, threat or suggestion, or cheated.

[89] Personal freedom is inviolable. No form of detention, personal inspection or search, or any other restriction of personal freedom is allowed, except by a reasoned act of the judicial authority [cf. art. 111 c. 1, 2] and only in the cases and under the conditions provided by law [cf. art. 25 c. 3]. In exceptional cases of necessity and urgency, strictly indicated by law, the public security authority may take interim measures, which must be communicated within 48 hours to the judicial authority and if it does not validate them within the next 48 hours, it shall be deemed revoked and shall remain ineffective. E` punishes all physical and moral violence against persons subject to restrictions on freedom [cf. art. 27 c. 3];. The law sets maximum limits for preventive detention.

[90]Intervention in the field of health may not be carried out until the person concerned has given his or her free and informed consent. This person shall first receive adequate information on the purpose and nature of the intervention and its consequences and risks.

The Welby case has brought to light fundamental elements, first of all the gap in our legal system on a subject that has had wide developments since the 90s of the last century; Secondly, the judgment which the doctor acquitted highlights the existence of the right to refuse medical treatment, a right which, being constitutionally guaranteed, does not need a rule which implements it, since it is in itself a law in force.

The Welby case and the related events of Dr Riccio have fuelled not only the debate between the experts on the right of Welby to refuse treatment and the duty of the doctor to comply with this request, but have extended the debate on this issue to the public. The central issue of the debate concerns the role of medicine, that is, the defence of life as such or the defence of life defined as "good".

The Fabio Antoniani case:

The second to last case in chronological order is that of "Dj Fabo" (aka Fabiano Antoniani), but in practice is very different from the cases of Eluana Englaro and Piergiorgio Welby.

Beppino Englaro, during an interview ten years after Eluana's death, when the journalist had asked to him why he didn't take his daughter to die in Switzerland, he replied that he wanted the Italian law to put an end to the therapeutic fury practiced on the body of his daughter.

On the other hand, Piergiorgio Welby considers exhaustive the judgment of the Rome Public Prosecutor's Office, in fact, according to this vision, the judgment of the Civil Court of Rome is contradictory, and therefore, through the action of Doctor Riccio, he proceeds to detachment of the artificial respirator.

The Englaro case and the Welby case are both linked by an important element: in the case of Eluana Englaro the element is the suspension of hydration and forced nutrition, in the Welby case the element is the interruption of artificial respiration. Therefore, both the first and the second medical practice were considered therapeutic fury, indeed medical instruments mechanically prolonged two existences now reached the end.

The case of Dj Fabo, instead, is a real case of assisted suicide, but we need to take in consideration that his case has been amplified in the public opinion through the use of social networks of which he was an usual user.

Fabiano Antoniani, born in Milan on February 9, 1977, had started a career as a broker and insurer, but to follow his greatest passion, the music, he decided to move to India with his girlfriend Valeria, where he started to get to know himself around the most important clubs with the name of Dj Fabo.

His existence was destroyed by a car accident while returning from a club in Milan where he had held a DJ set. It was a trivial accident. Fabiano was trying to pick up the phone that had fallen out of his hand, but he collided with a car that came in the opposite direction and ended up thrown out of the cockpit. The consequences of the accident were very serious, tetraplegic and blind Fabiano sank into "a night without end".

Fabiano appeals to the President of the Republic Sergio Mattarella, but he does not get the expected results, at the same time, for the third time in italy is postponed the law and the debate on the living will.

The health condition of Dj Fabo in the meantime worsen, the spasms and pains become unbearable, during his agony he knew Marco Cappato, an activist and radical politician, that after to get in touch with his family, indicate a possible solution: "assisted suicide in Switzerland".

The association Dignitas operates in Switzerland, I have already spoken about it in the other pages, and it is proper this association that the family of Fabiano decided to consider.

And is Marco Cappato that go together with Fabiano in the Swiss clinic where, after a medical-psychological examination, which serves to confirm his will, is practiced assisted suicide, that is properly regulated in that country.

I want to remember the message that Fabiano wrote on Twitter: "I finally arrived in Switzerland and I arrived there unfortunately with my own strength, and not with the help of the State". I wanted to thank someone who was able to lift me from this hell of pain, pain, pain. This person is called Marco Cappato and I will thank him until death".

Dj Fabo’s heartfelt thanks go hand in hand with Marco Cappato’s self-denuncio (1 March 2017). The charge is aid to suicide, a crime provided for by Article 580 of the Criminal Code, which provides from 5 to 12 years in prison.

The judicial proceedings continue with requests for dismissal and renewed charges. In the meantime, a very small step forward had been made, in fact, on 31 of January 2018,the law

219/2017[91], about the "testamento biologico" entered into force, for the first time in Italy this law try to regulated in an organic way the informed consent about the medical examinations and treatments to which the patients are subjected and has introduced the new institute of the anticipated dispositions of treatment and that of the shared planning of the care.

The Constitutional Court, while considering that the criminalization of suicide aid cannot be considered constitutionally illegitimate, noted that the present case, (that is the help of Marco Cappato to Dj Fabo), is a particular case.

Since it is a person (a) suffering from an irreversible pathology; (b) undergoing physical or psychological suffering, suffering that he finds absolutely intolerable; (c) being kept alive by means of life support treatments; (d) being able to make free and conscious decisions.

In such a case, the assistance of third parties in order to end their lives becomes for the sick the only viable way to escape from an unwanted maintenance in artificial life that he has the right to refuse as considered detrimental to his dignity. In the words of the Court, "the absolute prohibition of aid to suicide ends, therefore, to limit the freedom of self-determination of the patient in the choice of therapies, including those aimed at freeing him from suffering, arising from articles 2, 13 and 32 paragraph 2 Cost., imposing on him a single way of taking leave of life, without that limitation being considered preordained to the protection of another constitutionally appreciable interest, with consequent violation of the principle of human dignity, as well as the principles of reasonableness and equality in relation to different subjective conditions".

Finally, the Court has delegated to the Italian Parliament, as the holder of legislative power, the task of regulating end-of-life matters.

After the death of Dj Fabo, in Italy were presented several proposals for legislation, the last in order of time dates back to March 2019, and this text had begun the parliamentary debate.

But in August, the crisis of the Conte Government blocks the parliamentary debate, so the legislator was not able to meet the deadline indicated by the Council with the ordinance n. 207/2018. The Constitutional Court has therefore definitively expressed itself on the question with the sentence n. 242/2019[92].

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[91] https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2019&numero=217

[92] Look at A. RUGGERI, Rimosso senza indugio il limite della discrezionalità del legislatore, la Consulta dà alla luce la preannunziata regolazione del suicidio assistito (a prima lettura di Corte cost. n. 242 del 2019), in Giustizia Insieme, 24 novembre 2019; C. CUPELLI, Il Parlamento decide di non decidere e la Corte costituzionale risponde a se stessa, in Sistema penale, n. 12, 2019; G. BATTISTELLA, Il diritto all'assistenza medica a morire tra l'intervento

Indeed, having taken note of the fact that despite the postponement and the considerable time allowed to it, the legislator has remained substantially inactive. So, the Court justifies its intervention as "substitute" and "residual" compared to that of Parliament.

The replacement of the Constitutional Court in the introduction of a new discipline, necessarily transitional (pending the desired intervention of the legislator) that regulates access to assisted suicide. To do this, the Council identifies a "point of reference" in the aforementioned Law n. 219/2017, and in particular in Articles 1[93]and 2[94] thereof, which already set the methods of investigation "the patient's capacity for self-determination and the free and informed nature of the choice expressed". Therefore, the norms of law n. 219/2017 also apply to assisted suicide, and therefore the manifestation of will must be acquired "in the ways and with the instruments most suited to the patient's condition" and documented "in writing or through video recordings or, for the person with a disability, through devices that allow her to communicate", and then be included in the medical record. This, "remaining the possibility for the patient to change his will": which, moreover, notes the Court, that in the case of suicide aid, is inherent in the very fact that the person concerned retains, by definition, the dominance over the final act that triggers the lethal process.

In addition, the doctor must present to the patient "the consequences of such a decision and the possible alternatives", promoting "every action of support to the patient himself, also in the making use of psychological assistance services".

Is also at this stage that the "irreversible nature of the pathology" must also be ascertained, and it has to be indicated in the clinical report, together with the warning to the patient about the consequences of the interruption of the vital treatment and the possible alternatives.

The inspection of the above mentioned conditions must necessarily be carried out by "public structures of the national health service", which must also "verify the relative modalities of execution", which will ensure that there is no abuse to the weak persons.

«costituzionalmente obbligato» del Giudice delle leggi e la discrezionalità del Parlamento. Spunti di riflessione sul seguito legislativo, in Osservatorio AIC, n. 1, 2020.

[93]This Law, in accordance with the principles set out in Articles 2, 13 and 32 of the Constitution and Articles 1, 2 and 3 of the Charter of Fundamental Rights of the European Union, protects the right to life, to the health, dignity and self-determination of the person and establishes that no health treatment can be initiated or continued if without the free and informed consent of the person concerned, except in cases expressly provided for by law.

[94] It promotes and enhances the relationship of care and trust between the patient and the doctor which is based on informed consent in which the decision-making autonomy of the patient and the competence, professional autonomy and responsibility of the doctor meet. Contributors to the care report, according to their respective competencies, the practitioners of a health profession that make up the team

The territorially competent ethics Committees shall also have an advisory role.

Conscientious objection is guaranteed, and the Court specifies that the sentence does not produce any obligation to attend suicide (under the conditions described above) in the hands of the doctor.

This does not apply to Dj Fabo, because the pronunciation of the Consulta does not produce effects on previous cases. So, Marco Cappato was reassigned to the judicial authority which will have to ascertain whether 1) if “the conditions of the applicant which are valid for making the provision of the aid lawful” - irreversible pathology, serious physical or psychological suffering, reliance on life-support treatments and the ability to make free and informed decisions - have been verified in the medical field, 2) if “the will of the person concerned has been clearly and unambiguously expressed, in accordance with its conditions", 3) if “the patient has been adequately informed of both the latter and the possible alternative solutions, in particular with regard to access to palliative care and, where appropriate, continuous deep sedation".

The Court of Appeal of Milan, on December 23, 2019, following the indications expressed by the Council and hoping, once again, that the legislator intervenes to put the word "end" to this endless debate, decided to acquitted Marco Cappato because the fact does not exist.

I can express some doubts about the lowest level of the Italian political debate on ethically and sensitive issues (abortion, assisted procreation, euthanasia, etc.) and I think is difficult to reach an acceptable and shared solution for this problem.

The Davide Trentini case:

Another very recent trial (the judgment was issued on 27 July 2020) involved once again Marco Cappato and Mina Welby, the wife of Piergiorgio Welby, co-president and treasurer of the association Luca Coscioni who helped Davide Trentini, MS sufferer to leave in 2017 with assisted suicide in Switzerland. The trial took place at the Court of Massa following the self-denunciation of Welby and Cappato.

This leads to a distortion of perspective that is not foreign to the discourse I am developing. If life is a purely biological fact, if life is only a heart (understood as a muscle) that beats, if life is not the contact with others the sociality, understood in the broadest sense of the term shared affection, the "correspondence of loving senses" Then that heart can beat forever, even activated by electrical impulse, let's go back through the words of Mina Welby interviewed by "La Repubblica" after the acquittal on the basis of the decision of the Constitutional Court n. 207/2018 decriminalizing the aid to suicide. "I am happy, I promised my husband Piergiorgio that I would continue in his place the battle for euthanasia, although at the beginning for me it was an immense pain., but the existence of a human being is a completely different thing.

This sentence is a step forward but there is still a lot to do, the law is not yet there and I am ready, despite the years that pass, to accompany anyone in Switzerland who will ask for help".

"How do you remember David" when asked by the journalist? Mina Welby answers: "He suffered too much, he was sick of the disease, of the multiple sclerosis that consumed him, humiliated him for more than twenty years. So, he sought us, he asked us for help, even economic. I accompanied him across the border"

When we left his home in Massa for Switzerland, he told me: "I feel like I'm going on vacation. I looked at him with affection. It was Holy Week, almost Easter. For me it was like another poor Christ who needed help. I am religious, Catholic and for this I helped him, I accompanied him across the border, I was close to the last. And I would do it again". The journalist asks Mr. Welby why she accompanied Trentini to Switzerland. The answer is that she fulfilled a specific promise made to her husband on his last day of life and that years later she saw herself in the eyes of the mother of David.

The journalist's next question is *"Are you like David's mother?*" Yes, she was injured and therefore could not accompany her son to Switzerland, she greeted him watching him, hugging him hard, saying: 'Go my son', hiding and holding back the tears. Respecting his own choice"

the journalist digs deeper to outline the relationship between Mina Welby and David Trentini. "*How did you meet with David?*" David had decided, but he needed help to send the documents to Switzerland, I know German and then when he asked Marco Cappato, who was in charge of finding the necessary money because David did not have any, he put us in contact. We went on and on and on and on and on and on and on with e-mails, and I translated and sent the papers to the Swiss doctors.

Then we met, the day before leaving. I arrived at his home in Massa, he had to live with his mother. They had prepared a bed for me in the next room. And he said to me: 'Thank you, thank you that you accompany me, I really want to finish suffering. It's like I'm going on vacation".

"And what about Switzerland?" I stood by him while he was on an IV drip, while he opened the poison container. I saw him fall asleep forever, happy. The next day we went to the carabinieri station to self-declaration of guilty

Finally, I would like to quote an article by Mimmo Lombezzi that appeared in the Fatto Quotidiano on 3 August 2020 entitled *"End of life, I want to thank Marco Cappato and Mina Welby for their commitment"*[95].

After talking about the acquittal of Welby and Cappato at the trial of Massa and after summarizing the events of Davide Trentini, the journalist reveals that he has followed for a long time the video testimonies on euthanasia collected on the website of the association Luca Coscioni, and to have stopped six years ago when a friend of youth had discovered to have a malignant tumor, and the idea to have to face with him situations and choices like those narrated by the site, had become unbearable.

The friend who had reached the point of having to make a drastic decision by now had become the hostage of the disease. The final reflection is that "the sick want to be able to decide before it is too late, so they still have enough life to choose a dignified death".

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[95] https://www.ilfattoquotidiano.it/2020/08/03/fine-vita-voglio-ringraziare-marco-cappato-e-mina-welby-per-il-loro-impegno/5888685/

As Trentini said, "no more pain. The main thing is pain. We must focus on the word pain. Everything else is more".

Two reflections emerge from these events: the first concerns, as is clear from the story of Davide Trentini, the importance of the economic factor, a trip by ambulance to Switzerland is not sustainable by everyone and we must also think of the incidental expenses, the second is the importance of the judgment n. 207/2018 of the Constitutional Court which allowed the acquittal in the two trials, of Cappato and Cappato and Welby. But the end of this endless story is not in sight despite the solicitations of the Constitutional Court.

I can express some doubts because, awaiting the lowest level of the Italian political discourse on ethically sensitive issues (abortion, assisted procreation, euthanasia, etc.), I find it difficult to reach an acceptable and shared solution.

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The constitutional scholarship confronting with assisted suicide

Order no. 207/2017 of the Italian Constitutional Court triggered a lively debate amongst Italian constitutional scholars. Professor Tripodina, speaking before the final judgment of the Court, focused on the “not negligible consequences” that would occur at the level of the legal system if the unconstitutionality "envisaged[96]" by the Constitutional Court were to be declared; she also defined order n.207/2018 of the Constitutional Court an "unpublished order-delegation" (inedita ordinanza delega).

The Constitutional Court, according to Professor Tripodina, suggested to the legislator a line of direction, without specifying the terms and delegated to Parliament the task of making a law considering this a purely political decision.

What the Court found as unconstitutional, without declaring it in 2018, was that a person
a) suffering from irreversible pathology
b) a source of physical and psychological suffering, which you find absolutely intolerable,
c) kept alive by life-sustaining treatments,
d) capable of making free and conscious decisions, the right - the constitutional right - to request the interruption of treatment is recognized and the right to ask for aid to die for the penal prohibition contained in Article 580 of the Criminal Code is denied.

The court said “if the value of life does not exclude the obligation to respect the decision of the patient to end his life through the interruption of health care, there is no reason why the same value should result in an absolute obstacle, criminally guarded, to the acceptance of the patient’s request for help that would be useful to remove him from the slower course - appreciated as contrary to his own idea of dignified death”.

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[96] G. LATTANZI, Giurisprudenza costituzionale dell’anno 2018, su www.cortecostituzionale.it, p. 13, definisce l’ordinanza 207/2018 “ordinanza di incostituzionalità prospettata”.

Who is kept alive by artificial support treatment «is considered by the legal system able, under certain conditions, to take the decision to terminate its existence through the interruption of such processing », 'We do not see why the same person should be considered in need of an iron and indiscriminate protection against his will when discussing the decision to conclude his life with the help of others».

For the Court if the ban on assisting suicide and the ban on choosing is maintained: "*treatments not intended to eliminate suffering but to determine death"* forces the individual to undergo a death process not *"corresponding to one's own vision of the dignity of dying"-, one thus ends up limiting [his] freedom of self-determination", with "consequent violation of the principle of human dignity, as well as the principles of reasonableness and equality"*[97]

"*There is, therefore, for the Constitutional Court a constitutional right - although not enunciated expressis verbis, but implied unequivocally to the whole decision - not simply to die in dignity, but to die in the way most appropriate to one's own vision of dignity in dying, which renders unconstitutional the prohibition of aid to suicide in the part in which it does not allow medically assisted suicide under the conditions of the Court indicated*".[98]

The Court did not indicate any article of the Constitution from which it is possible to derive the right to die in the way that best corresponds to one's own vision of dignity in dying.
The court also did not accept the attempt of the Milan Court of Assizes to link the right to die to articles 2 and 13 of our Constitution.

The resolution of the Constitutional Court was to associate the right to die in the way that most corresponds to one's vision of dignity in dying with the principle of equality contained in Article 3 of the Italian constitution, or the principles of dignity and equality before the law.

Also referring to the implementation of Article 32 of the Italian Constitution which governs the right to refuse and the interruption of health care treatments including life support and recognizes the right to let everyone die as a negative consequence of the right to health. For the Court "there is no reason" for a person in the given conditions to ask the one thing (to let himself die) and not the other (to be helped to die).

Professor Tripodina noted that the Constitutional Court did not spend a single word on the difference between being left to die in relation to being helped to kill yourself and from the point of

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[97] CORTE COST., ord. 207/2018, Cons. dir., § 8.
[98] "Le non trascurabili conseguenze del riconoscimento del diritto a morire "nel modo più corrispondente alla propria visione di dignità nel morire" Chiara Tripodina

view of the healt care provider omitting or interrupting a health treatment to ensure that the disease takes its course or to provide direct aid to death.

Professor Tripodina also believes that: "*It could be argued that it is only hypocrisy at the point of law to distinguish on the basis of the omission or the commissivity that the choice requires (given that even the interruption involves an act). From a practical and moral point of view this could also be true: turning off a switch of a life-saving machine is not so different from pressing the plunger of a lethal injection; omit a therapy knowing that within a few hours death will occur is not so different from making a lethal injection aimed at causing immediate death*".[99]

But she concludes that there are hypocrisies on this point that are such from a practical or moral point of view but that they could make sense from a legal point of view. That is, they can serve in this case to remind politicians that there are limits to human action, in this case legitimizing the right to die with the help of others would mean undermining the rooted taboo of not killing.[100]

Another issue addressed by Professor Tripodina concerns the expression: "morire nel modo più corrispondente alla propria visione di dignità nel morire".

This expression introduces an aspect of subjectivity with serious consequences, because that right cannot be limited only to the person who "a) suffering from an irreversible pathology and b) a source of physical and psychological suffering, which he finds absolutely intolerable, which is c) kept alive by means of life support treatments, but remains d) able to make free and conscious decisions" [101].

But it must also be extended to those who do not see their life dependent on life-sustaining treatments but consider their way of dying undignified, and also to those who do not have the self-sufficiency that would allow them to kill themselves by pressing with lips the plunger of a syringe, and therefore ask, not to be helped to die but to be killed. All this concerns the fact of leaving to the subject the decision on what is his vision of dignity in dying.

The conclusion that seems to me most relevant to Professor Tripodina on the subjective conception of dignity in dying is that each of us is the bearer, in this regard, of his own vision, "if this vision is

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[99] "Le non trascurabili conseguenze del riconoscimento del diritto a morire "nel modo più corrispondente alla propria visione di dignità nel morire" Chiara Tripodina

[100] It is not a taboo that does not admit exceptions (think of killing for self-defense; or the death penalty, in the systems in which it is allowed); but the exceptions cannot be introduced by sliding from one case to another, through the use of the principle of equality. We need a democratic political decision to introduce new exceptions to the non killing taboo.

[101] CORTE COST., ord. 207/2018, Cons. dir., § 8.

elevated to the right, it means imposing on the Republic the duty to guarantee it: and therefore to guarantee death corresponding to one's vision of dignity in dying ”as a due social and health service.

It can be noted that just as Professor Tripodina had spoken of an "unpublished delegation ordinance" so Professor Salazar spoke of the "hybrid" nature of the ordinance. In fact, in the first part of the reasoning, the argument coincides with a decision of rejection, but not total because article 580 of the penal code is considered illegitimate when suicide aid is provided on a person "a) affected by a irreversible pathology and b) source of physical and psychological suffering, which you find absolutely intolerable, which is c) kept alive by means of life-sustaining treatments, but remains d) capable of making free and conscious decisions ", while in the second part it addresses a broad warning to Parliament to intervene from a legislative point of view on this matter in the time frame that runs from the publication of the order in the Official Gazette to the date of the new hearing of the Constitutional Court set for 24 September 2019.

The novelty of this ordinance lies precisely in the fact that the Constitutional Court invests the Parliament with the task of legislating in coherence with the warning within a very specific time frame, and to sensitize the other judges who find themselves applying Article 580 of the Penal Code to propose the question for consideration by the Constitutional Court.

Professor Salazar, after a long discussion on topics that I have already addressed in previous chapters, concludes by saying "that the right to die on which the Council expresses itself negatively has nothing to do with the right to refuse treatment based on art. 32, c 2, of the Constitution, to which - as we know - is often referred to, precisely, also with the term right to die or - more correctly - with the formula right to let oneself die ".[102]

And she suggests avoiding using the term euthanasia because it would affect the exposed nerves of some sensitivities.

Further she noted that article 32 of the Constitution "allows and indeed demands that everyone's right to choose freely and consciously if and how to heal themselves should be expanded, even by putting an end to the most artificial invasions in the prolongation of a life perceived as horrible and reasonably evaluable as such"[103] .

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[102] Carmela Salazar “*Morire sı, non essere aggrediti dalla morte*”. Considerazioni sull’ordinanza n. 207/2018 della Corte costituzionale

[103] Donini 2017, 17

In this light, "surrendering to an inexorable disease does not mean choosing death, but acknowledging that you cannot fight it".[104]

The words of Hans Jonas are perfectly suited to this context, "it is a question of the right to take possession of one's own death, in the concrete awareness of its impending (not only, therefore, in the abstract awareness of mortality): in fact the right to life finds here his crowning, including the right to death "[105]

Another noteworthy point expressed by Professor Salazar is that which concerns what she herself defines "Health Tourism" on the route that goes from south to north in relation to the palliative therapies that should lead to death, since the shortcomings of public health in our south are really many.

In this regard, I would like to broaden the discussion by taking up the sentence of 26 February 2020, of the German Federal Constitutional Court which deals with the "commercial facilitation of suicide", fearing the risk that private associations may take over the management of the growing requests for profit. to help suicide.

In this regard, I would like to recall what was already mentioned in the interview with Mina Welby about the Trentini case, where Mrs Welby said that a fundraiser had to be used to support the costs of transport and assistance to the patient. This speech is absolutely necessary to address the law urged by the Constitutional Court for end-of-life treatment as, the state of affairs creates a strong inequality for economic reasons between citizens who are willing and able to face the costs and those who want it, and being in the conditions set up by the Constitutional Court the patient cannot afford the luxury of dying with dignity.[106]

In the last part of the speech, Professor Salazar shifted her point of view to another aspect of the problems of the end of life. Scientific medical advances have transformed death from a natural event, into an artificial path that drugs and machines can extend for an indefinite duration, offering

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[104] Così D'Aloia (2012, 304), che si esprimeva in tal senso già in Id. (1998, 237 ss.). Per una prospettiva differente, tra i contributi più recenti, v. Mangiameli (2009); Nicolussi (2010, 269 ss.).

[105] Hans Jonas "il principio di responsabilità. Un'etica per la civiltà tecnologica" 1995

[106] In argomento, v. Rauti (2009, 247 ss.); D'Aloia (2010, 248); Casonato (2017, 601); Canestrari (2019, 20). In particolare, sulle cure palliative, v. Reichlin (2006, 247 ss.); Pezzini (2011, 177 ss.); Razzano (2014).

a strategy of postponement of the exit from life that however, Not being able to ensure the elimination of suffering, sometimes it can transform the body into an unbearable prison[107].

In this context, deeply changed, the Article 580 P.C. becomes in fact an impediment to the exercise of freedom of choice.

Like Professor Tripodina, Professor Salazar also noted the subjective dimension of the expression *"to die in the way that best corresponds to one's own vision of dignity in dying".*

Professor Salazar has doubts about the path followed by the Court which consists in "completion" of the right to refuse treatment for patients who are in the conditions indicated in judgment 207/2018 for which it is foreseen the non-guilty according to article 580 P.C..

The court, as things stand, cannot replace the legislative power in the hands of parliament by limiting itself to the "mere removal" of the cases provided by the court itself. This, "because such a solution would create a regulatory vacuum, as a result of which any person - even if he is not a health professional - could lawfully offer suicide assistance to patients who so wish in a completely uncontrollable way"[108].

The Court therefore invited Parliament to draw up legislation indicating that suicide aid may be given exclusively to medical staff.

Professor Salazar noted that the court's order makes a very precise suggestion to the legislator to foresee the conscientious objection of the health care personnel involved in the procedures.

The recommendation addressed to the legislator is based on four guidelines:

- The first indicates to the legislator A) the mode of medical verification regarding the existence of the conditions under which the patient can ask for help; B) the discipline of the related medical process; C) whether the provision of such treatment should be reserved exclusively to the National health Service; D) the introduction of conscientious objection;
- The second concerns the legislative field in which the discipline must be inserted: the court suggests operating instead of Article 580 p.c. on Law 219/2017;

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[107] Con riguardo al caso di Fabiano Antoniani, v. spec. Pugiotto (2018, 41); Manes (2018, 5). In generale, v. per tutti Rodotà (1995, 144 ss.); Neri (2011, 1787 ss.); Tripodina (2004; 2006, 2369 ss.); Agosta (2012); Adamo (2018 a).

[108] Carmela Salazar "*Morire sı, non essere aggrediti dalla morte*". Considerazioni sull'ordinanza n. 207/2018 della Corte costituzionale

- The third guideline is based on the principle that no law can be retroactive so that it is necessary to introduce an ad hoc framework for events prior to the enactment of the law;
- Fourth and last guideline concerns the need to prevent and combat situations of loneliness and abandonment of the sick at the end of life and the need for access to palliative care other than deep sedation.

Subsequently, Professor Salazar reiterated that this was an eminently political choice and suggested that a public debate should be launched as open as possible on the model of the general state of bioethics tested in France, involving contributions from different scientific contexts (bioethics, criminology, philosophy, law, medical, psychiatric, etc.) and from selected sectors of civil society (religious confessions, voluntary organizations, etc.).

The involvement of all these group within civil society certainly lead to a reaction by the community from which it will be possible to derive the capacity of Italian society to transpose a rule as delicate as appropriate to the times.

In this way, what Jurgens Habermans wished for in his book "History and Criticism of Public Opinion"[109] would be realized, namely that questions relating to life and death require the "discussion of private individuals gathered in public".

On order n. 207/2018 Professor Adamo[110] claimed that the Constitutional Court had "invented a new decision-making technique in the sense that, while revealing the unconstitutionality in the legislation submitted to its scrutiny, rather than declaring its unconstitutionality pursuant to art. 136 Cost[111]., postponed the discussion of the case by fixing the date of the hearing to 24 September 2019[112].

The court noted that the absolute prohibition of aid to suicide ends by limiting the freedom of self-determination of the patient in the choice of therapies, including those aimed at freeing him from suffering, triggered by Articles. 2, 13 and 32, second paragraph, Cost. »[113]

However, Article 580 P.C. must continue to guarantee the protection of the good of life while recognizing "a place of lawfulness, recognized to those suffering from an irreversible pathology and

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[109] Storia e critica dell'opinione pubblica 2006 Il mulino
[110] Ugo Adamo is a professor at the University of Calabria
[111] Quando la Corte dichiara l'illegittimità costituzionale di una norma di legge o di atto avente forza di legge [cfr. art. 134], la norma cessa di avere efficacia dal giorno successivo alla pubblicazione della decisione.
[112] In tema di aiuto al suicidio la corte intende favorire l'abbrivio di un dibattito parlamentare" Ugo Adamo 2018
[113]Corte costituzionale n. 207/2018

a source of physical or psychological suffering, which they find absolutely intolerable, as well as the freedom to put an end to one's own existence by asking for help that would be useful to remove it from the slow course of illness".[114]

Professor Adamo pointed to a number of essential requirements to ensure that future legislation will be effective for everyone.

They are the following:

- conscious and free request;
- the expression of the personalist principle and of the free self-determination of the petitioner.
- the achievement of a state of illness so serious that it is defined as irreversible and that living is no longer acceptable to the person who requires that his life ends in a way (for her) dignified;
- verification of the full capacity of the applicant to understand and to will;
- an adequate period of time between the patient's request and the completion of the act;
- assessment of the scientific validity of medical diagnosis;
- prediction of the possibility of objection by the doctor (conscientious objection).

Professor Adamo concluded this reflection by saying that "open to euthanasia means not endorsing a request for death tout court - as it is most often stated unexpectedly -, but following a request for a dignified death, which is limited and rigidly circumscribed by assumptions set legislatively. As it happens in the case of a request for recourse to abortion, it is only the prediction of assumptions that determines a space of lawfulness".[115]

From the observation of comparative law it can be noted that two other constitutional or supreme courts, that of Canada[116] and that of Colombia[117], the Court have left it to the legislator to define the terms of an end-of-life procedure by giving their parliaments a clear time frame, the same procedure followed by the Italian Constitutional Court.

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[114] In tema di aiuto al suicidio la corte intende favorire l'abbrivio di un dibattito parlamentare" Ugo Adamo 2018
[115] ibidem
[116] Canada - Supreme Court of British Columbia - Carter v. Canada: unconstitutionality of the ban on suicide assistance 15 June 2012
[117] https://www.corteconstitucional.gov.co/noticia.php?T-423/17-Corte-ordena-a-Ministerio-de-Protecci%C3%B3n-implementar-procedimiento-de-Eutanasia-8177

Professor Adamo said that the Court has continually stressed the importance of the Parliament debating these issues; "This is because only a parliamentary debate, which is public, allows for a serious political debate on these issues, supported scientifically and fairly for the issues defined ethically sensitive; only a political decision after being taken will be able to be, then, assessed as compatible or not with the constitutional text. This is the «spirit» of this Decision, which moves in a context expressly defined as «collaborative» and «dialogue» between the Court and Parliament"[118]

A voice outside the chorus was that of Professor Antonio Ruggeri he comments on the sentence of the Constitutional Court number 242 of 2019[119].

The beginning of the article is already quite clear "What was feared happened. The dominant note of the ruling in comment is the confirmation by it of the lordship that the Court claims for itself in respect of what until now was called the sphere reserved for discretionary (or, let's say, political tout court) of the legislator"[120].

According to Professor Ruggieri in Order 207/2018, the Court had repeatedly reiterated the advisability of legislative intervention in a set period of time, because a decision of the Court itself would be an invasion of the field in an area not within its competence.
However, in its judgment of 27 November 2019, the Court prevailed over its role as guardian of the Supreme Law (the Italian Constitution) as it suggested that "where a legislative discipline deemed constitutionally necessary does not come to light at the hands of the legislator, the constitutional judge will take charge of it, without limit of any kind"[121].

In support of his thesis, Professor Ruggieri indicated some contents as possible in the order n.207/2018 and as necessary in the judgment n 242/2019 such as the recognition of conscientious objection or the indication of the places where death may be caused identified in the public facilities

[118] In tema di aiuto al suicidio la corte intende favorire l'abbrivio di un dibattito parlamentare" Ugo Adamo 2018
[119] in his article published on 27 November 2019 entitled "Rimosso senza indugio il limite della discrezionalità del legislatore, la Consulta dà alla luce la preannunziata regolazione del suicidio assistito (a prima lettura di Corte cost. n. 242 del 2019)"
[120] Rimosso senza indugio il limite della discrezionalità del legislatore, la Consulta dà alla luce la preannunziata regolazione del suicidio assistito (a prima lettura di Corte cost. n. 242 del 2019)" commenta la sentenza della Corte costituzionale n 242 del 2019. A. Ruggeri

[121]Rimosso senza indugio il limite della discrezionalità del legislatore, la Consulta dà alla luce la preannunziata regolazione del suicidio assistito (a prima lettura di Corte cost. n. 242 del 2019)" commenta la sentenza della Corte costituzionale n 242 del 2019. A. Ruggeri

of the national health service, and the creation of a third-party collegiate body (with the appropriate expertise) identified in the relevant ethics committee by territory.

Professor Ruggeri argued that "if the price to be paid to finally see a constitutional right recognized and effectively safeguarded is that which can be brought back to the inexorable Machiavellian" logic "of the end that justifies the means, he may object that the distortion of institutional roles is a price that the constitutional order is unable to pay, since the same rights would inevitably be infected, according to the inspired intuition of the French revolutionaries, admirably carved in art. 16 of the 1789 Declaration[122].

Lame in one of the two legs on which it stands and with which only it can carry on in its non-linear, however suffered, path, the constitutional state would in fact be condemned to dissolve and with it, therefore, to be sacrificed precisely those rights for the whose safeguard has come into existence"[123]

[122] Toute société dans laquelle la garantie des droits n'est pas assurée, ni la séparation des pouvoirs établie, n'a pas de constitution.

[123] Rimosso senza indugio il limite della discrezionalità del legislatore, la Consulta dà alla luce la preannunziata regolazione del suicidio assistito (a prima lettura di Corte cost. n. 242 del 2019)" commenta la sentenza della Corte costituzionale n 242 del 2019. A. Ruggeri

Conclusion:

I said in the title of the chapter "Fundamental rights: dignity and the right to die" that the right to dispose of one's own life in relation to scientific medical progress has suffered the onslaught of many criticisms.

Now I would like to deepen what are these criticisms:

Since the middle of the 20th century, after World War II, scientific medical progress has allowed life to be extended to terms that a few years earlier were unimaginable. We have progressively gone towards a medicalization and hospitalization (hospice) of death, that death which is an inescapable moment of life itself.

Death has therefore become a taboo, an unpronounceable word, almost scandalous. Life is a fetish even in the most extreme conditions when it is no longer possible to relate to others, when intolerable pain makes an ordeal the continuation of existence itself. This, as mentioned above, has meant that the sick person risks facing the supreme moment of existence in almost total solitude.

All these issues have made the debate on the fundamental rights of people in relation to life and death increasingly necessary, in summary what emerges from this work, is that the case law on the subject of the end of life has evolved in step with scientific medical development, this has not happened for all states, in fact Italy appears to be the only state in Western Europe, still lacking a clear and comprehensive law governing this matter.

In essence, we have only the directives of the Constitutional Court which could allow assisted suicide on four lines, but which should find their application in a future law.

- The first of these guidelines indicates to the legislator:
  a) the modality of medical verification regarding the existence of the conditions under which the patient can ask for help for assisted suicide;
  b) the discipline of the relevant medical process;
  c) to verify whether the provision of such treatment should be reserved exclusively to the SSN or even private clinics.
  d) the introduction of conscientious objection.
- The second concerns the legislative field in which the discipline must be inserted: the court suggests to manage on the law 219/2017 instead of the article 580 p.c.

- The third guideline is based on the principle that no law can be retroactive so that it is necessary to introduce an ad hoc framework for events prior to the enactment of the law;
- Fourth and last guideline concerns the need to prevent and combat situations of loneliness and abandonment of the sick at the end of life and the need for access to palliative care other than deep sedation.

According to the association Luca Coscioni, by secretary Filomena Gallo, in an article published online on “il fatto quotidiano”[124] on September 14 entitled "assisted suicide, already a right" it is clear that "the paradox is that medically assisted suicide is a right already recognised in Italy and available through a process initiated at the ASL, but, In the absence of a law that establishes in a precise way the duty of the state to respect and help the exercise of freedom of choice on the part of patients, there is no certainty about the timing and there is a strong risk of ending up in the judicial process". However, there is uncertainty about the roles, individual responsibilities and competences, details not specified by the Constitutional Court which cannot enter into this field because it concerns the functioning of healthcare provision, as the delivery of a lethal drug to end one’s suffering".

To make these problems very topical was the pandemic period of Covid-19 that made us all aware that death is around the corner, that isolated the sick from the family, that turned death into a kind of assembly line.

Between the end of February and the beginning of March the Italian Association of Anesthesiologists stated in a report, that the use of intensive care, (having noticed that the places available were limited), it was to be reserved exclusively for patients who would have had greater chances of survival, the others would be accompanied to death with the aid of pain therapy.

We are therefore in full debate on euthanasia, the unpronounceable word that the Italian legislator has always hidden and that anesthetic doctors have described in its raw and brutal reality, avoiding the hypocrisy of politics.

In Italy, as we have seen in the course of this thesis, the meshes of articles 2, 13, and 32 of the I.C. have been widened, which we remember is from 1948. So, in biomedical and biotechnology not exactly up to date in our time. I would like to recall that those who had the misfortune to face an

[124] Appeared after the publication of the reasons for the decision to acquit the trial at the Court of Massa, Cappato and Welby for the case Trentini

invasive medical examination or a surgical operation certainly had to sign a release, there were cases in which the patient did not agree to proceed with treatment, and the affair ended with death.

What I have just said goes a little beyond the time limit of the speech on the Constitution of 48 because at the same time the process of European integration is slow to develop, firstly simple trade treaties, then gradually the realization of a monetary union, with enormous difficulties, between steps forward and backward, the long-awaited political union; which involves a debate on a wide range of topics and topics including what we are talking about, euthanasia.

The discovery of new technologies, especially in the genetic field, has a significant impact on the relationship between science and ethics, which have a radical need for an updated and supranational regulatory framework to which reference should be made.

It is still alive in the memory, especially of the Italians, the law on assisted insemination severely penalizing those who had to resort to this practice because otherwise they could not have the joy of becoming parents.

We can say that scientific discovery is neither moral nor immoral, it is simply amoral, moral, or immoral is the use that is made of it. The relationship between science and ethics is the problem of the problems of the modern world. In this regard, I would like to quote a short excerpt from "Life of Galileo", by Berthold Brecht: what is the purpose of our work? I do not believe that science has any other purpose than to alleviate the fatigue of human existence. If men of science do not react to the intimidation of the powerful selfish and simply accumulate knowledge to know, science can remain broken forever, and every new machine will be nothing but a source of new torments for man. And when, in the course of time, you have discovered all discoverable, your progress will be only a progressive departure from humanity. Between you and humanity there will be an abyss so great that every one of your eureka will hear a universal cry of pain. This is an appeal to scientists to set an ethical limit to their research.

But the appeal must also be extended to politicians because, those torments that the Galileo of Brecht denounces as a consequence of the excessive use of science, can also be extended to the suffering that therapeutic relentlessness, the will to impose at all costs the continuation beyond all limits of an existence of atrocious pains, can be alleviated by a well-articulated law on the end of life. A law that does not yield to excesses of the Belgian legislation but is balanced and above all human.

To conclude my work, I would like to say that because of my age and my fortunate life so far, I have never personally had to face the dramatic circumstance of being faced with a loved one,

seriously ill, with no hope of salvation, who suffers atrociously and has lost his dignity. We know that those who find themselves in these terrible situations have often thought of resorting to a definitive solution, but either they have not had the courage or the resources to carry out their intentions. Here, I would like, if I were to find myself in the conditions just set out that "the last mother", in my place, would provide, with a gesture of extreme "pietas", to end a tormented existence.

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