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Person and Self-Determination in the System of Fundamental Rights

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Abstract

Are we truly free?

Thanks to the experiences of certain individuals, we are freer today. Although, under Article 32 of the Italian Constitution, no medical treatment may be imposed, the effective exercise of this freedom has nonetheless required acts of civil disobedience, Constitutional Court jurisprudence, and legislative intervention. Since the case of Piergiorgio Welby, much has changed. We are freer—although still not free enough.

Who decides?

Who decides over my body under certain conditions?

This article addresses that question by beginning with a human face—an individual story—before turning to the law. The key concepts are personhood, freedom, and guarantees.

Piergiorgio Welby: the person before the norm

Piergiorgio Welby was co-president of the Luca Coscioni Association. In the trailer of *Sei stato felice? Mina e Piero Welby, una lunga storia d'amore*,¹ we see a man not yet dependent on a ventilator and not yet receiving artificial nutrition, as would soon be the case.

Welby was immobilized by an incurable disease, muscular dystrophy, trapped in a body that had lost almost all function.

Yet his struggle was strikingly clear: not merely an individual claim, but a public, political, and constitutional one.

Welby sought to be free: free to speak, to decide, free from suffering, and free to vote (we owe to him the extension of voting rights to persons unable to be transported).

And also free to die.

He wrote: *“Dying horrifies me; what remains to me is no longer life.”*

Yet Piergiorgio did not claim that freedom for himself alone: he sought to make it a freedom for all. For this reason, his claim became a matter of public concern rather than remaining confined to the private sphere.

Eighty-eight days elapsed between his public letter to the President of the Republic, Giorgio Napolitano, and the possibility of dying as he wished. That letter contains not only suffering, but also a conception of citizenship: a claim to be recognized as a person—as a bearer of freedom—until the very end.

In Chiara Lalli's podcast, *Sei stato felice? Mina e Piero Welby, una lunga storia d'amore*, we hear his final words to Mina: *“Were you happy?” – “I was. And you?”*

On the evening of 20 December 2006, Piergiorgio died. The physician, Mario Riccio, in accordance with the doctor-patient relationship and Welby's wishes, withdrew all life-sustaining treatment following sedation. Charged with consensual homicide, Riccio was ultimately cleared: he had committed no crime.²

Mina, Piergiorgio's wife, would later recall that, on that day, *“everything around me disappeared.”*

This is the reality experienced by those who endure the suffering of illness, and by those who love them and remain at their side for as long as possible.

¹ Trailer of *Sei stato felice? Mina e Piero Welby, una lunga storia d'amore*, directed by Chiara Lalli.

² The legal case of Piergiorgio Welby”, Associazione Luca Coscioni, available at: <https://www.associazionelucacoscioni.it/il-caso-giuridico-di-piergiorgio-welby>

For a long time, however, the law remained distant from all this.

Welby was the first Italian citizen to show the country what it means to assert the right to choose until the very last moment of one's life.

The legal question: can I say no?

The strength of the Welby case lies not only in articulating an individual claim, but in compelling the legal system to confront itself: can a person refuse treatment? Can they request its withdrawal? And who bears responsibility for such a decision?

Welby brings to the forefront of public debate a central question: is the right to health merely a right to receive treatment, or also a right to refuse it?

The refusal of treatment is already enshrined in the Constitution, yet for many years it remained ineffective in practice.

Constitution: health, body, person

Three constitutional provisions are central.

Article 32 of the Constitution establishes that the right to health is not a duty to live; it is a personal right. It further affirms a crucial principle: no one may be subjected to medical treatment except as provided by law.

Article 13 provides that personal liberty is inviolable.

Article 2 affirms that inviolable rights do not recede in conditions of vulnerability; rather, they apply most fully precisely in such circumstances.

The key proposition, therefore, is this: **therapeutic self-determination lies at the intersection of health and freedom.**

Can we still speak of freedom when a person is ill and dependent on life-sustaining technologies? Or is it precisely in such conditions that freedom requires the greatest protection?

From refusal of treatment to “how to die”: DJ Fabo and Cappato

For a long time, however, the Italian legal system addressed only part of the question: can a person refuse treatment?

It did not fully confront the more difficult question: can a person be assisted in dying when refusal of treatment is not sufficient?

This is where the case of Fabiano Antoniani,³ known as DJ Fabo, and Marco Cappato, treasurer of the Luca Coscioni Association, becomes central.

It is important to be precise: when this case reached the courts, Law No. 219 of 2017⁴ had not yet been enacted. The Constitution and case law existed, but a clear legislative framework was lacking.

Following an accident, Fabiano Antoniani was left blind and paralysed and expressed his wish to die. Marco Cappato accompanied him to Switzerland and subsequently reported himself to the authorities.

Under Italian law, such assistance is punishable pursuant to Article 580 of the Criminal Code, which provides severe penalties for instigating or assisting suicide. During the trial, it was established that there had been no instigation, but only assistance. Nevertheless, assistance alone was automatically punishable.

The Court of Milan therefore raised a fundamental question: is it constitutionally compatible to punish, in all circumstances, those who provide assistance in such conditions, even where the person is fully competent, suffering, and determined to end their life?

Law No. 219/2017: enacted amidst the tension between statute and Constitution

It was precisely in this context—while public debate was intensifying and the Cappato case was already underway—that Parliament enacted Law No. 219 of 2017.

This law incorporates into the statutory framework a simple yet fundamental principle: medical treatment cannot disregard the will of the person.

It rests on three pillars:

- informed consent,
- refusal and withdrawal of treatment,
- advance treatment directives (DAT).

Law 219 does not establish a “right to die.” Rather, it gives legislative expression to a right to choose already grounded in the Constitution and in judicial decisions—including where that choice entails the interruption of treatment.

³ The legal case of Marco Cappato, Associazione Luca Coscioni, available at: <https://www.associazionelucacoscioni.it/processo-marco-cappato-punto-punto>

⁴ Law No. 219/2017 (Italy), ‘Provisions on informed consent and advance treatment directives’, available at: <https://www.gazzettaufficiale.it/eli/id/2018/1/16/18G00006/sg>

At the same time, its limits must be acknowledged: the law effectively regulates refusal of treatment, but does not fully address medical assistance in voluntary death. This was the legal framework as of December 2017.

Constitutional Court Judgment No. 242/2019: a limited area of non-punishability

The Constitutional Court identified a crucial point: within the Italian legal system, a person may refuse any treatment and thereby choose to die, but cannot determine how to die.

In the meantime, in 2018, the Court—through Order No. 207⁵, in which it found the unconstitutionality of the provision without formally declaring it—granted Parliament time to intervene by adopting comprehensive legislation. However, Parliament failed to enact such legislation.

Thus, in 2019, Judgment No. 242/2019⁶ was delivered. The Court did not fully legalize assistance in dying; rather, it held that, under specific conditions, the automatic punishment of those who provide assistance is unconstitutional.

Four conditions were identified: the person must be capable of making free and informed decisions; must suffer from an irreversible condition; must experience intolerable physical or psychological suffering; and must be kept alive by life-sustaining treatment, subject to verification by the public health service and an ethics committee.

In essence, the Court carved out a limited area of non-punishability within a criminal offence, as required by the Constitution.

The present: living law and recent judgments, up to No. 204/2025

Following Judgment No. 242/2019, comprehensive legislation was expected. However, such legislation has not been enacted.

As a result, the Constitutional Court has, in practice, continued to oversee the system, refining criteria, safeguards, and limits through its subsequent judgments—Nos. 135/2024⁷, 66/2025⁸, 132/2025⁹, and

⁵ Italian Constitutional Court, Order No. 207/2018 <https://www.cortecostituzionale.it/scheda-pronuncia/2018/207>

⁶ Italian Constitutional Court, Judgment No. 242/2019 (22 November 2019) <https://www.cortecostituzionale.it/scheda-pronuncia/2019/242>

⁷ Italian Constitutional Court, Judgment No. 135/2024: <https://www.cortecostituzionale.it/scheda-pronuncia/2024/135>

⁸ Italian Constitutional Court, Judgment No. 66/2025: <https://www.cortecostituzionale.it/scheda-pronuncia/2025/66>

⁹ Italian Constitutional Court, Judgment No. 132/2025: <https://www.cortecostituzionale.it/scheda-pronuncia/2025/132>

204/2025¹⁰. It has done so in response to further acts of civil disobedience aimed at assisting individuals who fell outside the scope of the 2019 judgment.

End-of-life law in Italy today constitutes a form of **living law**, with the Court managing a delicate balance between life, liberty, and equality.

A distinctively Italian requirement remains central—almost unique in the comparative landscape: life-sustaining treatment. This continues to be the most debated criterion, as it decisively determines who can access assistance and who remains excluded.

In this context, the most recent judgment—No. 204/2025, concerning regional legislation, which we promoted through a popular initiative regarding the provision of the assessments and assistance required by the Court in the Cappato judgment—is particularly significant. It reaffirms that a fundamental right cannot be left subject to the arbitrariness of practices and timing, while also clarifying the allocation of competences: the balance between rights and procedural guarantees must not result in territorial fragmentation. Regions may legislate in the field of healthcare, including end-of-life matters, in the absence of national legislation.

Italy is thus experiencing a paradoxical situation: the Court has indicated the path, yet the legislature has failed to follow it—and now risks altering its direction.

Do we need a law?

Twelve individuals have been able to access assisted dying. However, a law is needed for all those who cannot do so—either because they lack sufficient time or because they do not meet the requirement of life-sustaining treatment. One may think, for instance, of Roberto, who suffers from cancer but is not dependent on life-sustaining treatment: although authorized in Switzerland, he would prefer to die at home, in Italy.

Therefore, yes, a law is needed—one that leaves no one alone and respects individual freedom of choice under certain conditions, without requiring journeys such as those undertaken by Martina, Elena, Romano, Margherita, Ines, Paola, Massimiliano, and Fabrizio, who were compelled to travel to Switzerland in order to die.

At present, six criminal proceedings are ongoing in which Marco Cappato and others are under investigation for assisting seriously ill individuals in dying.

The legislative proposal currently under discussion represents the worst possible choice made by Parliament following the Constitutional Court's judgments, containing provisions that directly affect fundamental rights and raise serious issues of constitutional compatibility.

¹⁰ Italian Constitutional Court, Judgment No. 204/2025: <https://www.cortecostituzionale.it/scheda-pronuncia/2025/204>

On the one hand, it reinforces an understanding of life as unavailable—dating back to 1930, when the Rocco Code entered into force—which conflicts with the principle of self-determination already recognized by the Constitutional Court in 1948 as an expression of the inviolable rights of the person, protected under Articles 2, 3, 13, and 32 of the Constitution. On the other hand, it introduces stricter requirements and procedures.

Together with the Luca Coscioni Association, we have collected signatures and submitted a popular initiative bill regulating medical assistance in voluntary dying in a manner consistent with the Constitution and constitutional case law. The proposal provides for both self-administration and physician-administered end-of-life medication upon request, and introduces a terminal prognosis as an alternative to the requirement of life-sustaining treatment. It is a proposal that respects the Constitution, the right to self-determination, and the State's duty to ensure equal dignity and equal rights.

Conclusion

Ultimately, end-of-life issues compel us to understand what a “person” truly is within the constitutional framework: not a body to be kept alive at all costs, nor an absolute and unregulated freedom, but a concrete freedom—one that requires guarantees and equality, especially in conditions of vulnerability.

I conclude with a simple yet decisive question: is the main issue surrounding the end of life a legal one, or a political one?

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