ORDER NO. 207 YEAR 2018

In this case, the Court considered a referral order challenging a criminal provision making it a criminal offense to incite or assist another person to suicide. The referring Court objected to the criminalization of acts of assistance that did not have an impact on the other person's decision. The Court did not entirely adopt the view of the referring Court, but affirmed that the legislator was legitimately able to act to protect vulnerable persons by means of regulating the acts of third parties. It also unequivocally rejected the idea that, as a derivative of the right to self-determination, assisting suicide was non-problematic as a general matter. However, the Court went on to hold the provision unconstitutional. The Court pointed out that medical advancements today enable people, like the plaintiff in the underlying case, to survive severely damaging illnesses and events, leaving them dependent upon medical technologies for basic survival, but with their intellects intact. It recalled the existing right of these persons to demand cessation of such treatments to allow death to take its course (a request binding upon third parties), and the right to be heavily sedated during the time between cessation of treatment and death. The Court then held that lucid persons making a free and informed decision to suicide, but unable to carry out the act themselves due to their medical state, have a right to third-party assistance, drawing no distinction between such assistance and the form of assistance necessary for the cessation of treatment and administration of heavy sedation already legally available. Seeing the legitimate need to ensure the protection of vulnerable persons, and the importance of not leaving a regulatory gap between the Court's decision and the time when the legislator could adopt new legislation, the Court made a rare use of its procedural powers, borrowing a model used by the Supreme Court of Canada in a similar case, and postponed a final judgment on the matter in order to give time to the legislator to act.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

ORDER

in proceedings concerning the constitutionality of Article 580 of the Criminal Code, initiated by the Court of Assizes of Milan, during criminal proceedings against M.C., with a referral order of 14 February 2018, registered as no. 43 of the 2018 Register of Referral Orders and published in the Official Journal of the Republic, no. 11, first special series of 2018.

Considering the appearance of M.C., as well as the interventions of the President of the Council of Ministers, [the research center] Centro Studi "Rosario Livatino," and the free association of volunteers "Vita è," and of the *Movimento per la Vita Italiano*;

having heard from Judge Rapporteur Franco Modugno during the public hearing of 23 October 2018;

having heard from Counsel Simone Pillon on behalf of the free association of volunteers "Vita è," Mauro Ronco on behalf of Centro Studi "Rosario Livatino," Ciro Intino on behalf of the *Movimento per la Vita Italiano*, Filomena Gallo and Vittorio Manes on behalf of M.C., and State Counsel Gabriella Palmieri on behalf of the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.– The Court of Assizes of Milan questions the constitutionality of Article 580 of the Criminal Code, which makes it a crime to incite or assist a person to commit suicide, on two separate grounds.

First, it calls into question the scope of application of the challenged provision, alleging that it criminalizes acts of assistance to suicide that have not contributed to establishing or strengthening the victim's resolve. Second, it objects to the sanctions attached to such acts, criticizing the fact that they are punished with the same, severe penalty that is provided for more serious acts of incitement.

The court in the pending proceedings does not rank the two questions, but one is subordinate to the other by the very nature of the questions. Indeed, it is clear that the challenge concerning the severity of punishment only makes sense to the extent that the punishable conduct remains criminalized. This presupposes that the questions intended to redefine the scope of application of the criminal offense are rejected.

2.– Having said this, the objections of inadmissibility brought by the President of the Council of Ministers are unfounded.

Contrary to the claims of State Counsel, the fact that the referring court already ruled that the actions of the accused in this case had not reinforced the victim's intent to commit suicide does not make the questions irrelevant. Indeed, these questions rest on the interpretive premise that the law criminalizes the facilitation of suicide even where it does not influence the deliberations of the passive subject, and they are intended precisely to challenge the constitutionality of this kind of regulation.

Upon examination, this premise is correct. An opposite interpretation would, indeed, contradict the letter of the provision, because it would result in an abrogative interpretation. If facilitating conduct is considered punishable only if it generates or reinforces suicidal intent, then providing for a scenario of assisted suicide, as an alternative and separate ("or") offense from that of incitement, as the challenged provision does, would be totally emptied of meaning.

This reasoning suffices to rule out the other objections raised by State Counsel: that the questions are inadmissible because they are intended to obtain support for their interpretation, and did not follow the necessary attempt to provide a constitutional interpretation of the challenged provision. As this Court has stated many times, the duty to develop a constitutional interpretation yields to a constitutional referral, when the letter of the provision does not allow for such an interpretation (see, among many, Judgments no. 268 and 83 of 2017, no. 241 and 36 of 2016, and no. 219 of 2008). With this in mind, the fact that the presumed interpretation underlying the questions turns out to have been implemented, as the referring court acknowledges, by only one ruling by a single division of the Court of Cassation (Court of Cassation no. 3147 of 6 February-12 March 1998) – which, since it is an isolated case, is not an appropriate basis for giving rise to a "living law" (contrary to the referring court's claims; see, among many, Judgments no. 223 of 2013 and 258 of 2012, and Order no. 139 of 2011) – has no impact on their admissibility.

3.– Equally unfounded, with respect to the referring court's question, is State Counsel's final objection, which says the questions are inadmissible since the referring Court has requested a "manipulative" ruling in an area reserved to legislative discretion, that of identifying the conduct to which criminal liability is attached, in the absence of a constitutionally obligatory solution.

Here, it bears noting that the referring court asks, seizing this Court directly, to make facilitating another's act of suicide criminally neutral when it has not influenced the victim's decision, irrespective of the personal circumstances of the passive subject or the reasons for his or her act. This would substantially be tantamount to eliminating the criminal offense of assistance to commit suicide, placing it entirely under the offence of inciting someone to suicide. Looking beyond the letter of the question in the referral, the Court of Assizes of Milan is calling, therefore, for a merely ablative ruling: a ruling that, in the referring court's view, flows automatically from the line of reasoning underlying the challenges, without entailing any "creative" form of intervention. Indeed, it is the referring court's opinion that Articles 2, 13(1), and 117 of the Constitution, in reference to Articles 2 and 8 of the European Convention on Human Rights (ECHR), signed in Rome on 4 November 1950, and ratified and executed with Law no. 848 of 4 August 1955, gives everyone the freedom to decide when and how to end their life. In line with this perspective, assisting a person who has independently decided to commit suicide in the exercise of this constitutional freedom would, in any case, amount to harmless conduct.

4.– On the merits, the referring court's theory cannot be endorsed in its entirety.

Our legal system, like other contemporary legal orders, does not punish suicide, even when this would be physically possible, as in the case of attempted suicide. It does severely punish, however (with five to twelve years in prison) anyone who contributes to the suicide of another person, either in the form of moral complicity, such as forming or reinforcing another's suicidal intent, or in the form of material complicity, namely facilitating its accomplishment "in any way." This is if the suicide actually takes place, or if, at least, an attempted suicide results in serious or critical injury (in which case a lesser punishment is provided).

The legislator thus intends, in substance, to protect subjects from decisions that will cause them harm. Given that it cannot act directly upon the subjects themselves, it creates a sort of "protective belt" around them, preventing third parties from colluding with them in any way.

This structure cannot be considered to be in contradiction, per se, with the parameters invoked by the referring court.

5.– First of all, the referring court's reference to the right to life, which is implicitly recognized by Article 2 of the Constitution, as the "first of the inviolable rights of the person" (Judgment no. 223 of 1996), since its existence is assumed in order for all other rights to be exercised (Judgment no. 35 of 1997), as well as explicitly recognized by Article 2 of the ECHR, is irrelevant.

Article 2 of the Constitution – not unlike Article 2 of the ECHR – gives rise to the duty of the State to protect the life of every individual, and not the diametrically opposed right to ensure that each individual may obtain assistance to die, from the State or from third parties.

The European Court of Human Rights has long since affirmed that the right to life, guaranteed by Article 2 of the ECHR, cannot give rise to a right to refuse to live and, therefore, a true right to die, precisely in relation to assisted suicide (Judgment of 29 April 2002, *Pretty v. The United Kingdom*).

6.– Nor, on the other hand, and contrary to the opinion of the referring court, is it possible to deduce that assisting suicide is generally inoffensive from a general individual right to self-determination, traceable to the good of life, which arises, the referring court alleges, from Articles 2 and 13(1) of the Constitution.

On the contrary, there can be no doubt that Article 580 of the Criminal Code, including in the part in which it makes it a crime to materially contribute to suicide, serves the purpose of protecting interests that are worthy of protection by the legal system.
The referring court correctly states that the legislator in 1930 adopted the criminal rule in question (which was, moreover, already present in the earlier Criminal Code of 1889 at Article 370) to attempt to protect human life, understood as an inalienable good, partly as a function of the collective interest in preserving the lives of its citizens. However, it is also perfectly easy to see the reasons underlying a rule like Article 580 of the Criminal Code today, in light of the changed constitutional landscape, which looks at the human person as a value in and of itself, and not as a mere means for satisfying collective interests.
Criminalizing inciting or assisting suicide, a choice which can also be found in many other contemporary legal systems, effectively works to protect the right to life, particularly that of the weakest and most vulnerable members of society, which the legal system intends to protect from the extreme and irreversible choice of suicide. It fulfills the perennially important purpose of protecting people in painful and difficult circumstances, not least of all by protecting the people deciding to carry out the extreme and irreversible act of suicide from facing pressure of any kind.
The fact that the system does not punish people who have attempted to end their own lives, a perfectly understandable choice, and one that has long been universally accepted, is not at all inconsistent with the decision to punish people who materially participate in ending another's life, by assisting the suicidal person to develop his or her intent. This kind of act (unlike the former kind) goes beyond the personal sphere of the actor, triggering a *relatio ad alteros* [relationship to another], which brings to light the need to respect life as a good, in all its fullness.
The prohibition in question here still has a clear purpose, even (if not above all) when it comes to people who are sick, depressed, psychologically fragile, or elderly and in solitude, and who could easily be induced to take their leave of life prematurely if the system allowed others to cooperate even only in the execution of their suicidal choice, perhaps for reasons of personal gain. Therefore, the criminal legislator is not prevented from prohibiting conduct that paves the way for suicidal choices, in the name of an abstract idea of individual freedom, which ignores the concrete conditions of distress or abandonment in which such decisions are often made. On the contrary, it is the duty of the Republic to establish public policies intended to provide support for those who live in such fragile circumstances, removing the obstacles which impede the full development of the human person (Article 3(2) of the Constitution).
7.– The considerations laid out above also rule out the proposition that the challenged provision, *per se*, contravenes Article 8 ECHR, wherein the individual right of each person to respect for their private life is enshrined.
In the cited case of *Pretty v. The United Kingdom*, the European Court of Human Rights [ECtHR] essentially declared that prohibiting the provision of assistance to another person's suicide, on pain of criminal sanctions, amounts to an interference with this right. The right entails, as a matter of principle, granting individuals a sphere of autonomy in decisions that concern their own bodies (except in cases where it must necessarily be balanced with opposing rights and interests, which will be discussed shortly). It also constitutes one aspect of the more general right to the

free development of one's own person. The ECtHR has developed this conclusion further in many subsequent cases, in which the Strasbourg judges have affirmed that the right to decide how and when a person's life should end, in the case of persons capable of freely making a decision and of acting in accordance with that decision, is one aspect of the right to private life granted by Article 8 of the ECHR, again with reference to cases in which the applicants complained that the defendant State had set obstacles preventing them from availing themselves of their right to obtain assistance to die by means of taking lethal drugs (ECtHR, judgment of 20 January 2011, *Haas v. Switzerland*; see also the judgment of 19 July 2012, *Koch v. Germany* and the judgment of 14 May 2013, *Gross v. Switzerland*).

Under Article 8(2), the public authorities may only interfere with the exercise of this right where such interference is both in accordance with the law and necessary "in a democratic society," for the reasons indicated therein, which include "the protection of the rights and freedoms of others." Moreover, according to the well-established case law of the ECtHR, the concept of necessity requires that the resulting interference be proportionate to the legitimate end that it is meant to pursue.

Furthermore, the ECtHR has granted States an ample margin of appreciation in this area, time and again highlighting the fact that general criminalization of assisted suicide is present in the legislation of the majority of the Member States of the Council of Europe (ECtHR, judgment of 29 April 2002, *Pretty v. The United Kingdom*; judgment of 20 January 2011, *Haas v. Switzerland*; judgment of 19 July 2012, *Koch v. Germany*). The reason that served to justify criminalization of this kind, including for purposes of complying with Article 8(2) of the ECHR, was found in the purpose of protecting weak and vulnerable persons – a purpose that also applies to the law being challenged here (see ECtHR, judgment of 29 April 2002, *Pretty v. The United Kingdom*).

8.– The reasoning above, therefore, leads to the conclusion that criminalizing the provision of assistance to suicide cannot be considered incompatible with the Constitution.

Nonetheless, it is important to specifically consider situations like the one in the present case: situations that were unimaginable at the time when the challenged law was introduced, but which have been brought within its scope of application by medical and technological advancements, which are often able to save the lives of patients in extremely dire conditions, but not able to restore a sufficient level of vital functions.

The reference is, more specifically, to the scenario in which the assisted persons are (a) affected by an illness that is incurable and (b) causes physical or psychological suffering, which they find absolutely intolerable, and who are (c) kept alive by means of life support treatments, but remain (d) capable of making free and informed decisions.

This is a scenario in which another person's assistance in bringing an end to their life may seem to the sick person to be the only way out of being kept alive by artificial methods that are no longer desired, and which he or she has the right to refuse under Article 32(2) of the Constitution, in keeping with his or her own concept of the dignity of the person. This constitutional provision is not evoked in the operative part of the referral order, but appears time and again in the reasoning section.

The facts of the underlying case are paradigmatic, and concern an individual who was rendered blind and quadriplegic by a serious automobile accident, as well as

unable to breathe independently (requiring the assistance, albeit only periodically, of a respirator inserted into a hole in the trachea), eat independently (nutrition is artificially provided), or evacuate waste independently. However, the patient's intellectual capacity and sensitivity to pain remained intact. In addition to the psychological suffering brought on by the dire conditions of blindness and total paralysis, the patient suffered particularly intense physical pain caused by daily muscle spasms and cramps. The condition proved unresponsive to all attempted treatments, even experimental treatments undertaken abroad.

In cases like this, a patient may already decide to allow death to take its course under existing legislation, by requesting the interruption of the ongoing life-sustaining treatment and concurrent subjection to heavy and constant sedation, with binding effect on third parties. This is particularly true under recent Law no. 219 of 22 December 2017 (Provisions on informed consent and advance medical directives): a law the express purpose of which is intended to protect the rights of the person to life, health, dignity, and self-determination, in compliance with the principles of Articles 2, 13, and 32 of the Constitution, and Articles 1, 2, and 3 of the Charter of Fundamental Rights of the European Union (Article 1(1)).

The regulatory scheme it establishes, after the occurrence of the facts of this case, adopts and develops the substance of the conclusions already reached at the time by the regular courts, particularly following the rulings in the *Welby* case (Ordinary Tribunal of Rome, no. 2049 of 17 October 2007) and the *Englaro* case (Court of Cassation, First Civil Division, no. 21748 of 16 October 2007), as well as this Court's indications concerning the constitutional value of the principle of a patient's informed consent to medical treatments suggested by a doctor: a principle which may be classified as "a full-scale right of the person," which "is grounded in the principles expressed in Article 2 of the Constitution, which protects and promotes the fundamental rights of the person, and Articles 13 and 32 of the Constitution, which provide, respectively, that 'personal freedom is inviolable' and that 'nobody may be forcefully submitted to medical treatment except as provided by law'" (Judgment no. 438 of 2008), in practice carrying out a "role as a synthesis" of the rights to self-determination and to health (Judgment no. 253 of 2009).

Given the above, Law no. 219 of 2017 grants to everyone "capable of acting," the right to refuse or interrupt any healthcare treatment, even if necessary for their survival, expressly including artificial provision of hydration and nutrition within this notion (Article 1(5)). The exercise of this right is framed, moreover, within the context of the "relationship of care and of trust" – the so-called therapeutic alliance – between patient and physician, which the law seeks to encourage and support." This relationship, "which is based on informed consent, which represents the encounter between the autonomous decision-making of the patient and the competence, professional autonomy, and responsibility of the physician," and which involves, "if the patient so wishes, the patient's relatives or partner in a civil union or cohabitant, or else a trusted person chosen by the patient" (Article 1(2)). In particular, it provides that, where the patient demonstrates the intent to refuse or interrupt treatments necessary for survival, the physician must explain to him or her, and, if he or she consents, to his or her relatives, the consequences of the patient's decision and any possible alternatives, and to provide "every supportive action to the patient, even making use of psychological assistance services." This should also leave intact the possibility that the patient may modify his or her desire at any time (Article 1(5)).

In any case, the physician "is bound to respect the express will of the patient to refuse healthcare treatments and to renounce to the same," becoming "as a result of this, […] immune to civil or criminal liability" (Article 1(6)).
Taken together with the provisions of Law no. 38 of 15 March 2010 (provisions to guarantee access to palliative care and pain management) – which protects and guarantees the patient access to palliative care and pain management treatments, adding these to the category of essential healthcare – Law no. 219 of 2017 provides that the request to suspend healthcare treatments may be linked to the request for palliative care, for purposes of relieving the patient's suffering (Article 2(1)). Article 2 also provides, in paragraph 2, that the physician may, with the patient's consent, administer heavy and constant palliative sedation in connection with pain management, in order to manage pain that resists treatment. This provision cannot fail to refer to a patient's pain caused by the patient's legitimate rejection of life-sustaining treatment, like artificial ventilation, hydration, or nutrition: a choice that triggers a process of decline of the bodily functions, which results (not necessarily quickly) in death.
9.– The law in force today does not, however, allow a physician who is asked to do so to provide a patient in the above-described conditions with treatments intended not to eliminate their suffering, but rather to bring about their death.
In this way, the patient is obliged to undergo a slower process, in a scenario that corresponds less well to the patient's vision of a dignified death and which is marked by more pain and suffering for the people close to the patient.
As the party thoroughly described, in the case before the referring court, the patient requested assistance to commit suicide, rejecting the solution of interrupting life-sustaining treatment with simultaneous administration of heavy sedation (a solution that was, in fact, offered to him), for the reason that this solution would not ensure a rapid death. Indeed, since the patient does not depend totally on a respirator, death would occur only after a considerable amount of time, quantifiable in days. In the view of the patient, this would be an undignified way to end his life and his loved ones would have to share in it on the emotional level.
The scenarios under examination here cast doubt on the need for protection which, in other cases, justifies criminalization of assisted suicide.
If, indeed, the primary importance of the value of life does not rule out the duty to respect the patient's decision to end his or her life by means of suspending healthcare treatments – even when this requires action by third parties, at least on the naturalistic plane (i.e. to detach or power off machines, and to submit the patient to heavy and constant sedation and pain medication) – there is no reason for the same value to become an absolute obstacle, supported by criminal liability, to accepting the patient's request for assistance in avoiding the slower decline – perceived as running contrary to their idea of a dignified death – which results from the suspension of life support devices.
In addition, when it comes to the need to protect the most vulnerable individuals, it is clear that persons with incurable illnesses who experience high levels of pain may generally be ascribed to this category. But it is also useful to observe that, if people kept alive by artificial life support treatments are considered under the system to be capable, under certain conditions, to decide to bring an end to their lives by suspending this treatment, there is no clear reason why the same person should instead be considered to be in need of unyielding and indiscriminate protection

against their own wills when it comes to the decision to end their lives with the help of others, when they consider this option to be more dignified than the aforementioned suspension of treatment.
Thus, in the specific area under consideration, an absolute ban on assisted suicide ends up limiting the freedom of self-determination of sick persons in choosing treatments, including those intended to free them from suffering, which flows from Articles 2, 13, and 32(2) of the Constitution, by, in the final analysis, imposing upon them one single way to take their leave of life. This limitation cannot be assumed to be intended to protect another constitutionally relevant interest, and thus results in the violation of the principle of human dignity, as well as of the principles of reasonableness and equality in relation to different subjective situations (Article 3 of the Constitution: this last parameter is not mentioned by the referring court with respect to the principal question, but in any case it is relevant as the foundation of the protection of human dignity).
10.– This Court holds that it cannot remedy the aforementioned violation of the principles mentioned above, under the status quo, by merely removing scenarios in which help is provided to individuals in the circumstances just described from the scope of application of the criminal provision.
Indeed, such a solution would leave the area of materially assisting patients in such conditions to commit suicide entirely unregulated, in an ethical and social area that is highly sensitive and in which any potential forms of abuse must be firmly prevented.
In the absence of specific regulations in the area, more specifically, any individual – even one not working in healthcare – could legally offer, in their own place or at the patient's home, as an act of charity or for a fee, suicide assistance to any patients who wished to have it, without any *ex ante* oversight that, for example, the individual is capable of self-determination, that the choice they have expressed is free and informed, and that the illness afflicting the patient is really incurable.
This Court may not assume responsibility for the possible consequences of its decision, even where its duty is, as in the present case, to evaluate the incompatibility of just one criminal provision with the Constitution.
Regulating this area, for the purpose of avoiding such scenarios, which are full of risks for the lives of vulnerable individuals, has the potential to impact several other areas, each of which may, in turn, involve discretional choices. These could include, for example, the ways of medically verifying that the prerequisites for requesting assistance are met, the regulation of the associated "medicalized process," potentially limiting the administration of such treatments to the exclusive purview of the national health service, and the possible ability of healthcare workers involved in the procedure to conscientiously object.
Then again, the legislator could introduce provisions regulating the conditions for carrying out the decisions of such patients to free themselves from their sufferings not only through heavy and constant sedation and concomitant rejection of life-sustaining treatment, but also through the administration of drugs that quickly bring about death, not through the mere modification of the challenged criminal provision under Article 580 of the Criminal Code, which is under review here, but by inserting the regulatory provisions into the context of Law no. 219 of 2017 and its spirit, such that this becomes an option under the framework of the "relationship of care and of trust between patient and physician," duly recognized by Article 1 of the same law.

Moreover, if, in the future, criminal non-punishability is linked with following a particular procedure, this could bring about the need to introduce an *ad hoc* regulatory scheme for the prior existing situations (like the one that gave rise to the pending proceedings), which could not otherwise benefit therefrom. Here, again, a variety of possible solutions may be provided.

A final factor that must be evaluated is the need to adopt suitable precautions (including in the practical application of the future regulatory scheme) so that the option of administering drugs capable of swiftly bringing about the death of a patient does not carry the risk of any premature renunciation, on the part of the healthcare facilities, to always offer patients the concrete possibility to receive forms of palliative care other than heavy and constant sedation, where they are appropriate for alleviating the patients' pain – in keeping with the duty taken on by the State with Law no. 38 of 2010 – in order to place the patient in the circumstances to live out the remainder of his or her life intensely and with dignity. Indeed, engagement in a course of palliative care should be a pre-condition for a patient to subsequently choose any alternative course.

The delicate balancing indicated here falls to the Parliament as a matter of principle, as it is the natural role of this Court to verify the compatibility of choices already made by the legislator, in the exercise of its political discretion, with the limits dictated by the need to respect constitutional principles and the fundamental rights of the persons involved.

11.– In situations similar to the one under review, this Court has, until now, declared the question raised to be inadmissible, accompanying its ruling with an admonishment to the legislator urging it to adopt the necessary laws to remove the constitutional violation. Where this admonition went unheard, the ruling was, as a rule, followed by a pronouncement of unconstitutionality (see, for example, Judgment no. 23 of 2013 and, later, Judgment no. 45 of 2015).

This decision-making technique, however, has the effect of leaving the unconstitutional regulatory scheme on the books and, therefore, exposed to further application, for an unforeseeable length of time. Indeed, the potential pronouncement of unconstitutionality following confirmed legislative inaction, presupposes that a new constitutional challenge has been raised. This may, however, occur a long time after the first ruling of inadmissibility is handed down, while the laws in question continue to apply be default.

Such an effect cannot be permitted in the case under review, both because of its particular features and because of the importance of the values it entails.

In order to avoid that the rule be applied in the meantime, in the part specified here, while nevertheless still leaving Parliament the possibility to make the necessary decisions that fall under its discretion as a matter of principle – and leaving in place the need to ensure the protection of the patient within the limits laid out in this decision – this Court, thus, holds that it must proceed differently, relying on its powers to manage constitutional proceedings: namely to order the deferment of the proceedings underway, scheduling a new discussion of the questions of constitutionality at the hearing of 24 September 2019, at the outcome of which the potential supervention of a new law which governs this area in compliance with the described needs for protection may be evaluated. In the meantime, the pending proceedings before the referring court shall also be suspended. In other cases, it falls to the courts to determine whether, in light of what is laid out in this judgment,

similar questions of constitutionality of the provision under review must be considered relevant and not manifestly unfounded, so as to avoid applying the relevant part of the provision itself.

The solution adopted here definitively shoulders concerns similar to the ones that inspired the Canadian Supreme Court in 2015, when it struck down a criminal provision similar to the one currently under review as unconstitutional, in the part in which that provision prohibited medically assisted suicide in the case of a capable adult person who had clearly consented to end her own life, and who suffers from a serious and incurable disease that causes persistent and intolerable pain. In that case, the Canadian high court decided to suspend its ruling for twelve months, in order to give the Parliament the chance to draft comprehensive legislation in the area, avoiding the gap in legislation that would have otherwise been caused by the decision (Supreme Court of Canada, judgment of 6 February 2015, *Carter v. Canada*, 2015 SCC 5).

On the other hand, the spirit of this judgment is, like that of the recent judgment handed down by the Supreme Court of the United Kingdom on assisted suicide, in which the majority of judges deemed that "it would be institutionally inappropriate at this juncture for a court to declare that [the provision under review] is incompatible with article 8 [ECHR]" without giving Parliament the opportunity to consider the issue (Supreme Court of the United Kingdom, Judgment of 25 June 2014, *Nicklinson and another*, [2014] UKSC 38). On that occasion, the UK Supreme Court underscored that even only partial legalization of medically assisted suicide was a difficult, controversial, and ethically sensitive issue, which calls for prudence on the part of the courts, and it added that such an issue requires thorough analysis on the part of the legislator, which has the chance to intervene – at the outcome of a process that may involve a multitude of experts and representatives of opposing interests – laying down a new overall regulatory scheme in the area that is non-criminal in nature, and that includes a procedural framework that allows the rules established therein to be correctly applied to concrete cases. All of this takes place in a context expressly called "collaborative" and "dialogical" between the Court and the Parliament.

Thus, as a final matter, it should be noted that whenever, as in the case at issue, the solution to the question of constitutionality involves the intersection between values of primary importance, the balancing of which presupposes, in a direct and immediate way, choices that the legislator is, first of all, authorized to make, this Court considers it appropriate – in a spirit of faithful and dialogical institutional cooperation – to allow Parliament, in this case, every appropriate reflection and initiative, so as to avoid, on the one hand, that a provision continues to produce effects considered to be unconstitutional in the ways described, but, at the same time, to prevent potential gaps in the protection of values, which are no less relevant at the constitutional level.

IN THESE GROUNDS

THE CONSTITUTIONAL COURT

Postpones the consideration of the questions of constitutionality raised with the Referral Order indicated in the Headnote to the public hearing of 24 September 2019.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 24 October 2018.

Attached:

the order read at the hearing of 23 October 2018

ORDER

Having duly noted that, in the proceedings on constitutionality initiated by the Court of Assizes of Milan with the Referral Order of 14 February 2018 (R.O. no. 43 of 2018), the research center *Centro Studi "Rosario Livatino,* the free association of volunteers "*Vita è*," and the *Movimento per la Vita Italiano* submitted interventions, in the person of their respective *pro tempore* legal representatives; and

that, in addition, the free association of volunteers "Vita è" submitted a memorandum on 26 September 2018.

Considering that the aforementioned associations are not parties to the principal matter; and

that, according to the well established case law of this Court (see, among many, the orders attached to Judgments no. 16 of 2017 and no. 237 and 134 of 2013), participation in proceedings on constitutionality are limited, by rule, to the parties to the underlying proceedings, as well as to the President of the Council of Ministers and, in the case of regional laws, the President of the Regional Council (Articles 3 and 4 of the Supplementary Rules on Proceedings before the Constitutional Court);

hat it is possible to derogate from these rules – without going against the incidental character of the constitutional proceedings – only in the case of third parties that have a qualified interest, which is directly related to the substantive relationship brought before the court and not to one that merely falls under the challenged rule or rules, like any other (see, among many, the orders annexed to Judgments no. 29 of 2017 and no. 286 and 243 of 2016);

that the present case – the object of which is Article 580 of the Criminal Code, in the part in which it makes it a criminal offense to provide assistance to suicide, "regardless of the person's contribution to the resolution or the reinforcement of the intent to commit suicide," as well as in the part in which it punishes such conduct with the same punishment provided for inciting a person to suicide – does not entail the production of direct, or even indirect, effects upon the intervening associations; and

that, therefore, they are not permitted to participate in the proceedings before this Court.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

declares that the interventions of the research center *Centro Studi "Rosario Livatino,"* of the free association of volunteers "*Vita è*" and of the *Movimento per la vita italiano* are inadmissible.

Signed: Giorgio Lattanzi, President