Italian Constitutional Court

Legal summary

Judgment No 135/2024

ECLI:IT:COST:2024:135

THE COURT CONFIRMS THAT ASSISTED SUICIDE IS ONLY LAWFUL WHEN LIFE-SUSTAINING TREATMENTS ARE IN PLACE AND CLARIFIES THE MEANING OF THIS REQUIREMENT

In Judgment No 135/2024 the Constitutional Court (the "**Court**") held that the defence from the offence of assisted suicide, introduced in 2019 and applying only when the patient is kept alive by life-sustaining treatments (Judgment No 242/2019), is not discriminatory or unreasonable under **Article 3 IC**, does not infringe a patient's right to medical self-determination under **Articles 2, 13 and 32 IC**, and does not violate **Article 117 IC** in connection with **Articles 8 and 14 ECHR**, with respect to patients' right to private and family life as well as the prohibition of discrimination in the enjoyment of this right.

Limiting the application of this defence to cases involving life-sustaining treatments is not arbitrary. The scope of the defence derives from the right of all patients to refuse any medical treatments, including life-sustaining ones, a right protected under Article 32 IC and Italian statutory law. Patients whose survival depends on life-sustaining treatments can decide to refuse them, and let themselves die; therefore, it would be unreasonable to prevent them from seeking help from others to terminate their life. The scenario is different for other patients whose survival does not depend on life-sustaining treatments, since there is no stand-alone right to commit suicide. Limiting the defence to individuals assisting the first group of patients does not constitute discrimination in violation of Article 3 IC.

While the principle of medical self-determination must be respected, authorising assisted suicide at large would impinge on the constitutional value of protecting human life. It is for the legislature to balance these competing principles and values. The defence for assisted suicide currently in force strikes this balance in a way that is neither unreasonable nor disproportionate, as it safeguards vulnerable patients from the consequences of irreversible decisions that may not be fully deliberated, or may result from undue external pressure. On these grounds, there is no violation of Articles 2, 13 or 32 IC.

Similarly, the right to private life under the ECHR allows for proportionate restrictions. As the European Court of Human Rights recognises, States enjoy a wide margin of appreciation in regulating end-of-life procedures, and the Italian legal framework falls within this margin, thus not violating Article 117 IC in connection with Articles 8 and 14 ECHR.

Main proceedings

M.S., an Italian citizen, was diagnosed with multiple sclerosis in 2017, and his health gradually deteriorated thereafter. By 2022, he was almost completely paralysed, with only

partial use of his right arm remaining. That year, M.S. reached out to a Swiss volunteer association that supports those who wish to access assisted suicide.[1] With the help of several Italian citizens, M.S. was transported to Switzerland, where assisted suicide is legal, and used the one arm he could still control to take a fatal pill, passing away a few minutes later.

The Italian nationals who assisted M.S. in carrying out his plan reported themselves to the police. As a result, they were investigated and prosecuted for organising the medical procedure and accompanying M.S. to the Swiss clinic where it occurred, in breach of Article 580 of the Criminal Code, which criminalises inciting a person to commit suicide or assisting them in doing so.[2] This criminal provision had already been challenged before the Court for failing to provide any exception, and the Court introduced on that occasion a defence for assisted suicide when a person is "**kept alive by life-sustaining treatments** and is suffering from an irreversible condition that is a source of intolerable physical or mental suffering but who is fully capable of taking free and informed decisions, provided that those conditions and the procedures for implementation have been verified by a public entity within the national health service, following an opinion by the ethics committee with geographical jurisdiction" (Judgment No 242/2019).

On the ground that M.S.'s condition was irreversible at the time of assisted suicide and that he was capable of making autonomous decisions, the prosecutor requested that the Criminal Court of Florence (the "**referring court**") dismiss the criminal proceedings against the suspects. However, the referring court observed that the defence introduced in 2019 by the Court only applies when the individuals are "kept alive by life-sustaining treatments" and observed that the circumstances at hand did not meet this express requirement. Consequently, it issued a referral order to the Court, asserting that Article 580 of the Criminal Code, as modified by the Court in 2019, violates the Italian Constitution (IC) by defining the scope of the defence too narrowly.

Complaints

The referring court first contended that Article 580 of the Criminal Code, as modified by the Court's decision of 2019 (the "**challenged measure**"), violates **Article 3 IC (Principles of equality and non-discrimination)**. In its view, the defence from criminal liability established by Judgment No 242/2019 was unreasonably restricted to cases where the person seeking assisted suicide is kept alive by life-sustaining treatments.

According to the referring court, this restriction is arbitrary because it does not align with the fundamental rationales for the defence, namely the presence of an irreversible illness, unbearable suffering, and the patient's capacity for self-determination. Instead, it refers to circumstantial factors, including the patients' clinical condition, their treatment decisions, the specific nature of their illness, and the therapies available to them. These factors do not

[1] Assisted suicide is committed with the aid of another person (if that person is a physician, the expression used is often physician-assisted suicide). Swiss law allows physician-assisted suicide whereby the patient autonomously ingests a lethal drug without a third party's intervention.

[2] Article 580(1) of the Italian Criminal Code reads: "Whoever assists (*determina*) the commission of a suicide or reinforces the suicidal intent in someone else is punishable, if suicide occurs, by 5 to 12 years' imprisonment. If suicide does not occur, but the attempt results in serious or very serious bodily harm, the same conduct is punishable by 1 to 5 years' imprisonment."

directly pertain to the ethical or legal principles supporting the exclusion of criminal liability for aiding a third person's suicide. Moreover, the dependence of the patient's life on life support does not diminish the value of their life, nor does it provide assurance regarding their actual capacity to autonomously and conscientiously decide to die. Hence, this requirement results in unjustifiable disparities in the treatment of similar situations.

Secondly, the referring court argued that the challenged measure violates **Articles 2 (Fundamental human rights), 13 (Right to personal liberty), and 32(2) (Freedom to refuse health treatment) IC**. The inability for patients like M.S. to obtain assistance to end their lives infringes upon their right to self-determination concerning medical treatments, including those aimed at freeing the patients from unbearable pain.

Thirdly, the challenged measure violates the **principle of human dignity**. By compelling patients not relying on life-sustaining treatment to endure a slow progression of their conditions, the measure runs contrary to their own vision of a dignified death, and unnecessarily extend their suffering towards an inevitable death.

Finally, the challenged measure violates **Article 117 IC (Compliance with international commitments), in connection with Articles 8 (Right to private life) and 14 (Non-discrimination) of the European Convention on Human Rights (ECHR)**. By establishing a narrowly defined possibility of obtaining assisted suicide lawfully, the challenged measure creates arbitrary discrimination in the exercise of an individual's right to make a significant decision about their own existence.

Decision of the Court

The Court declared that the challenged measure **does not violate** Articles 2 (Fundamental human rights), 3 (Principles of equality and non-discrimination), 13 (Right to personal liberty), and 32(2) (Freedom to refuse health treatment) and 117 (Compliance with international obligations) IC. It does not violate the principle of human dignity either.

Reasons for the decision

The Court framed its analysis recalling its own case law on the two competing values involved in the decision: on the one hand, the protection of human life; on the other, the patient's fundamental right to self-determination in respect to medical treatments.

Human life is a fundamental value that serves as a prerequisite for exercising all other inviolable rights.[3] It is safeguarded by the Italian Constitution and numerous international instruments which bind the domestic legal system through Article 117 IC (Compliance with international commitments). Italy has a duty to provide adequate protection to human life, and this obligation must guide the authorisation of end-of-life and assisted dying procedures.

Conversely, every patient capable of making free and informed decisions has a fundamental right to decide whether to consent or refuse a medical treatment. This right derives from Articles 2, 13 and 32(2) IC, and can only be limited based on a law providing for a specific mandatory treatment. The right to refuse medical treatment also extends to treatments

[3] Constitutional Court, Order No 207/2018.

essential for the patient's survival, such as artificial hydration or feeding. The European Court of Human Rights (ECtHR) has recognised that this right derives from Article 8 ECHR, concerning the right to private life,[4] and the Italian legislature incorporated this right into statutory law.[5] In other words, Italian law grants individuals suffering from irreversible conditions and capable of making an informed decision the right to let themselves die by either refusing life-saving treatment or requesting its interruption.[6]

In **Order No 207/2018** and **Judgment No 242/2019**, the Court had already held that the offence defined under Article 580 of the Criminal Code must accommodate a defence that recognises the patient's right to self-determination.

In the present case, the Court reiterated, on the one hand, that the belief that human life must be preserved in all circumstances in the interests of society at large has become incompatible with the prevailing constitutional system. However, this does not mean that the decision to end one's own life should be left solely to individual discretion. Current criminal law effectively protects human life against self-destructive decisions by criminalising both consensual homicide and assisted suicide. These provisions serve to protect the lives of vulnerable people who are experiencing hardship and suffering, including from the risk that irreversible decisions to commit suicide might be influenced by undue external pressure. Therefore, they should be considered necessary, in principle, to fulfil the constitutional duty to protect human life, as the Court has already clarified in **Judgment No 50/2022**.

On the other hand, the Court confirmed that the right to refuse medical treatment makes it necessary to carve out a defence from the offence of assisted suicide. Without this defence, terminally ill patients could not receive support to give effect to their end-of-life decisions and would be compelled to endure prolonged suffering without any hope of improvement. Such a forced choice could conflict with the patient's concept of a dignified death and would not contribute to the enhancement of any other constitutional rights or values. Consequently, the Court held in 2019 that there can be no criminal liability for aiding the suicide of a person who is "kept alive by life-sustaining treatments and is suffering from an irreversible condition that is a source of intolerable physical or mental suffering but who is fully capable of taking free and informed decisions, provided that those conditions and the procedures for implementation have been verified by a public entity within the national health service, following an opinion by the ethics committee with geographical jurisdiction".[7]

In the present case, the **referring court essentially proposed to extend the scope of application of this defence**, asking that the requirement of life-sustaining treatments be removed.

The Court recognised that this requirement is unique to the Italian legal system (as noted by some amici curiae) and that the suffering of patients with degenerative conditions can be intolerable and just as severe as that experienced by patients dependent on life-sustaining

[4] ECtHR, judgment of 13 June 2024, *Dániel Karsai v. Hungary* (Application No 32312/23), paragraph 131; judgment of 29 April 2002, *Pretty v. the United Kingdom* (Application No 2346/02, paragraph 63.
[5] Law No 219 of 2017 (Informed consent and advance directives) Article 1.
[6] Constitutional Court, Order No 207/2018, point 8.
[7] Constitutional Court, Judgment No 242/2019.

treatments. Nonetheless, this requirement is central to the defence introduced in 2019 and cannot be removed.

The defence in question does not establish a broad, unrestricted right to commit suicide in any situation involving intolerable suffering from a terminal illness. Instead, the defence aligns with an existing legal entitlement, outlined in Law No 219/2017, to refuse life-sustaining medical treatments, in keeping with Article 32 IC. Patients whose survival does not depend on such treatments are therefore in a significantly different situation, as they cannot simply opt to die by refusing treatment. Therefore, **the argument under Article 3 IC that this defence is too narrow and entails unequal treatment in comparable situations is unfounded**.

Similarly, **the challenged measure does not breach Articles 2, 13 and 32(2) IC**. These provisions confer upon individuals the right to refuse medical treatments, including those that are necessary to preserve one own's life. This is an aspect of the right to personal integrity, which certainly extends to the right to reject unwelcome interferences on one's body. However, this right does not encompass a right to actively end one's own life, such that it could excuse third parties' assistance in its exercise.

The Court recognised that constitutional courts in Germany, Austria and Spain have affirmed the fundamental right to make decisions about the end of one's own life, including the right to seek assistance from third parties to that purpose.[8] Specifically, the German and Austrian courts have found that the criminalisation of assisted suicide is unconstitutional, while the Spanish court has gone as far as to affirm that the right to seek euthanasia and assistance to suicide is constitutionally protected. Other non-European courts have reached similar conclusions.[9]

However, the Court declined to expand the scope of the existing defence for assisted suicide, in line with ECtHR judgments and the UK Supreme Court's approach.[10] While legalising euthanasia and assisted suicide could enhance an individual's right to self-determination, such a reform would require the introduction of legal safeguards to prevent undermining the value of human life. Without such safeguards, **the legalisation of assisted suicide could lead to indirect social pressure on vulnerable individuals,** including the elderly, who might feel compelled to end their lives because they perceive themselves as a burden to their families or society.

The Court emphasised that it cannot assume the legislature's role in determining the most suitable balance between individual self-determination and the protection of human life. The Court's role is limited to clarifying the minimum core content of these

[8] German Federal Constitutional Court, judgment of 26 February 2020 in joined cases 2 BvR 2347/15, 2 BvR 2527/16, 2 BvR 2354/16, 2 BvR 1593/16, 2 BvR 1261/16, 2 BvR 651/16, paragraphs 208-213; Austrian Constitutional Court, judgment of 11 December 2020 in case G 139/2019-71, paragraphs 73 and 74; Spanish Constitutional Court, judgment of 22 March 2023, in case 4057/2021, 73-78).

[9] Colombian Constitutional Court, judgment of 20 May 1997, case C-239/97; Canadian Supreme Court, judgment of 6 February 2015 in case *Carter v. Canada*, 2015, CSC 5; Constitutional Court of Ecuador, judgment of 5 February 2024 in case 67-23-IN/24.

[10] UK Supreme Court, judgment of 25 June 2014, case *Nicklinson et al.*, KSC 38; ECtHR, *Karsai v. Hungary* (n 4).

rights,[11] leaving the responsibility to develop solutions that may provide different levels of protection to the competing values at issue to the legislature. **The situation in the main proceedings falls within the area of legislative discretion.** Therefore, under the current legal framework, there is no unjustifiable violation of patients' right to self-determination.

Regarding the **principle of protection of human dignity**, every person bears inalienable dignity, which is objective and does not depend on the individual circumstances of their existence. From a subjective perspective, however, human dignity engages the individual's understanding of what makes one's own existence worth living. According to the Court, this is the concept underlying the referring court's claims. In this version, however, human dignity overlaps with self-determination, as both notions involve the patient's right to make autonomous decisions about their existence, including decisions concerning death. Consequently, the respect for the understanding of one's own dignity, like the right to self-determination, must be balanced against the State's duty to protect human life. The legislature can determine the appropriate balance between these two interests, and the current content of the challenged measure falls within the permissible limits of such determination.

The challenged measure does not violate Article 117 IC, in connection with Articles 8 and 14 ECHR, either. While the ECtHR has acknowledged that the criminalisation of assisted suicide does limit individuals' right to private life, it has also emphasised that Member States of the Council of Europe enjoy a significant margin of appreciation in this regard.[12] Both the criminalisation and the authorisation of assisted suicide and euthanasia are per se compatible with the Convention.

Finally, **the Court clarified the meaning of "life-sustaining treatment"** in light of the principle that all medical treatment can be refused. The term refers to any medical intervention that, if discontinued or withheld, would inevitably lead to the patient's death. It includes treatments that require specific expertise, typically provided by healthcare professionals, but that may also be administered by trained family members or caregivers. Examples of such treatments are routine procedures for patients who are not self-sufficient and need nursing care, such as manual bowel evacuation, urinary catheterisation, or suction of mucus from the lungs.

Patients have the right to refuse this type of care, even if doing so exposes them to the risk of dying. **In such cases, they would meet the criteria set out in Judgment No 242/2019, and, since the defence for assisted suicide would apply, they could also obtain external assistance to implement their end-of-life choices lawfully**.

The Court added two final statements, expressing concern about the correct implementation of its previous decisions No 207/2018 and No 242/2019.

[11] In the past, the Court ruled out the possibility of legalising the murder of a consenting person, as this would undermine the minimum protection of human life mandated by the Constitution, see Constitutional Court, Judgment No 50/2022.

[12] ECtHR, *Karsai v. Hungary* (n 4), paragraph 144; likewise, see judgment of 4 October 2022, *Mortier v. Belgium* (application No 78017/17), paragraph 143; judgment of 20 January 2011, *Haas v. Switzerland* (application No 31322/07), paragraph 55.

First, in addition to the requirement of life-sustaining treatment, courts must also ascertain compliance with the procedural conditions established in Judgment No 242/2019. These procedural safeguards are essential to prevent the risk of abuse of vulnerable patients.

Second, the Court reiterated its call for the legislature and national health service to swiftly and effectively implement the principles expressed in its previous rulings, including – if necessary – through the adoption of new legislation. Moreover, the Court reaffirmed the appeal made in Judgment No 242/2019 for palliative care to be available nationwide to all patients. Access to palliative care is a right for all patients, including those eligible for assisted suicide, as established by Law No 38/2010. The Court specifically restated its concern, first expressed in Order No 207/2018, that generalised scarcity of this treatment could lead healthcare providers to prematurely withhold palliative care from suffering patients, and offer assisted suicide instead.

Type of proceedings	Constitutional review by referral order
President of the Court	Augusto Antonio Barbera
Judge rapporteurs	Franco Modugno, Francesco Viganò
Composition of the Court	Augusto Antonio Barbera (President), Franco Modugno, Giulio Prosperetti, Giovanni Amoroso, Francesco Viganò, Luca Antonini, Stefano Petitti, Angelo Buscema, Emanuela Navarretta, Maria Rosaria San Giorgio, Filippo Patroni Griffi, Marco D'Alberti, Giovanni Pitruzzella, Antonella Sciarrone Alibrandi
Delivery of the judgment	18 July 2024
Challenged measure	Article 580 of the Criminal Code, as modified by Judgment No 242/2019 of the Constitutional Court