JUDGMENT NO. 242 YEAR 2019

In this case, the Constitutional Court responds to two questions regarding the constitutionality of Article 580 of the Criminal Code raised by the Court of Assizes of Milan with a referring order of 14 February 2018. The referring court objected to the criminalisation under Article 580 of acts of giving assistance to those wishing to commit suicide but which bore no relation to the would-be suicide's decision. It asserted that the said Article may contravene Article 117(1) of the Constitution and, consequently, Articles 2 and 8 of Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which state that the individual has the right to "decide by what means and at what point in time his life will end". Secondly, the referring court objected, if the act of assisting a suicide in their intent, albeit without influencing his or her decision in any way, is a crime, Article 580 appears to contravene Article 3 of the Constitution as it fails to distinguish between the gravity, from the causal point of view, of inciting a person to suicide and merely contributing to the fulfilment of the freely taken decision of a third party to end their life. Consequently, the referring court claims, it may also conflict with Articles 13, 25(2), and 27(3) of the Constitution, as the lack the aforementioned distinction also implies violation of the principle whereby the penalty must be proportionate to the harm caused in order to prevent violation and provide for the re-education of the offender.

The Court expressed an opinion on these questions in Order no. 207 of 2018, ordering that parliament take action to amend the law relating to the ending of life in such a way as to guarantee 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 support and the form of assistance necessary for the cessation of treatment and administration of heavy sedation already legally available.

In its Judgment 242, the Court confirms the conclusions reached in Order 207, reiterating, first of all, that the criminalisation of assisting suicide is not, in itself, contrary to the Constitution but is justified by the need to protect the right to life, especially of the weakest and most vulnerable persons, which the system seeks to protect by avoiding external interference in an extreme and irreparable choice, such as suicide.

Nevertheless, it identified a limited area in which such criminalisation is not compliant with the Constitution, namely when help is given to a person being kept alive by life-support treatments such as hydration and artificial nutrition and who suffers from an incurable illness that is a source of intolerable physical or psychological suffering but remains wholly capable of making free and informed decisions.

According to the Law on Advanced Medical Directives (Law no. 219 of 22 December 2017), patients in such conditions can already decide to allow death to take its course by requesting the interruption of life-support treatment and constant heavy sedation that would make them unconsciousness until the time of death, a decision that must be respected by physicians.

The law, on the other hand, does not allow physicians to provide patients with treatments that could lead to their death. Patients wishing to die are thus forced to undergo a slower process that prolongs the anguish of those close to them. This unreasonably restricts the freedom of self-determination of the patient in the

choice of treatments, including those designed to free him from suffering, guaranteed by Articles 2, 13 and 32 of the Constitution.
The Court holds, however, that merely decriminalising assisted suicide would open the way to various and serious risks, leaving the most vulnerable unprotected. As the legislator has not taken conclusive action on the matter, the Court has proceeded to resolve the violation autonomously.
In order to do so, the Court has identified a precise "point of reference" in the Law on Advanced Medical Directives concerning the waiver of life-preservation treatments and the guaranteed provision of suitable pain management and palliative care (Articles 1 and 2 of Law no. 219 of 2017). These provisions provide for a "medicalised process" that meets most of the needs identified by the Court. Furthermore, it considers that, pending new legislation, and in conformity with previous rulings on similar matters, the verification that the conditions necessary for assisted suicide to take place in compliance with the law should continue to be the province of public national health service personnel and be decided by a local Ethics Committee.
The court therefore declares Article 580 of the Criminal Code unconstitutional insofar as it does not exclude the criminal punishment of those who facilitate the fulfilment of the free and informed intent to commit suicide on the part of a person in the situations outlined above, provided that the assistance is provided in the manner laid down by the aforementioned Articles 1 and 2 of Law no. 219 of 2017 and provided that the existence of the above-mentioned conditions and the method of implementation are verified by a public health facility, after consulting the territorially competent Ethics Committee.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

during 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 in the 2018 Register of Referral Orders and published in the Official Journal of the Republic no. 11, first special series 2018.

Considering the entry of appearance of M. C., as well as the intervention of the President of the Council of Ministers;

having heard Judge Rapporteur Franco Modugno in chambers on 24 September 2019;

having heard Counsel Filomena Gallo and Vittorio Manes on behalf of M. C. and State Counsel [*Avvocato dello Stato*] 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.

1.1.– The referring court first calls into question the scope of application of the challenged provision, arguing that – according to the "living law" – it criminalises acts

of assistance to suicide "alternative to incitement and, therefore, regardless of their contribution to establishing or strengthening the resolve to commit suicide".

The challenged provision is alleged to violate, for this reason, Articles 2 and 13(1) of the Constitution, which, respectively, sanction the "personalistic principle" – that places the person, and not the State, at the centre of society – and the principle of the inviolability of personal freedom, and thus appear to acknowledge the freedom of the self-determination of the person, also with regard to the end of his or her own existence, choosing when and how this should take place.

This provision may also be in conflict with Article 117(1) of the Constitution, with regard to Articles 2 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, ratified and implemented by Law no. 848 of 4 August 1955. In safeguarding, respectively, the right to life and the right to respect for private life, they would appear to imply – according to the interpretation of the European Court of Human Rights – that the individual has the right to "decide by what means and at what point in time his life will end" and that repressive intervention in this field by States may have the sole purpose of avoiding risks of undue influence with regard to particularly vulnerable persons.

In the light of all the constitutional provisions evoked, it would therefore appear to be unjustified to punish acts facilitating the suicide of others constituting the mere implementation of what has been autonomously decided by the person exercising the freedom in question, without influencing in any way the mental processes of the passive subject, since the act is not harmful to the protected legal good.

1.2.– Secondly, the Milan Court questions the penalties envisaged for the conduct in question, challenging Article 580 of the Criminal Code "insofar as it provides that conduct facilitating suicide that does not affect the decision-making process of the would-be suicide seeker is punishable by imprisonment from five to ten [*recte* twelve] years, without distinction with respect to incitement".

From this point of view, the challenged provision would appear to be in conflict with Article 3 of the Constitution, since the conduct of incitement to suicide is certainly more serious, from a causal point of view, than that of persons who have simply contributed to the fulfilment of the autonomous decision of another person to end his or her own existence, and the intent and nature of the agent are completely different in both cases.

Moreover, Articles 13, 25(2), and 27(3) of the Constitution would appear to be violated, as they state that the freedom of the individual can be sacrificed only in the event of prejudice to a legal good that would not be otherwise avoidable, and that the penalty must be proportionate to the harm caused in order to prevent violation and provide for the re-education of the offender.

2.– With Order no. 207 of 2018, the Court had already made a number of observations and drawn a number of conclusions with regard to the *thema decidendum*. Both are confirmed here. Today's decision is linked, in logical consequence, to these.

2.1.– With the aforementioned Order, the Court noted, first of all, that there is an implicit relationship of subordination among the questions raised: the question of the extent of punishment only has actual meaning if the conduct at issue remains criminalised and, therefore, only if the questions intended to redefine the boundaries of the criminal offence are rejected.

It also considered unfounded the numerous objections of inadmissibility formulated by State Counsel, including that of failure to attempt an interpretation

conforming the provision to the Constitution, observing that the proposed interpretation is incompatible with the letter of the challenged provision.

2.2.– On the merits, the Court rules out that – contrary to the claim of the referring court – the criminalisation of assisting suicide, even if not strengthening the victim's intent, could in itself be regarded as contrary to the Constitution.

The referring court's mention, in support of this conflict, of the right to life, implicitly recognised – as "the first of the inviolable rights of the person" (Judgment no. 223 of 1996), as a prerequisite for the exercise of all the others – by Article 2 of the Constitution, (Judgment no. 35 of 1997) and, explicitly, Article 2 of the ECHR, is irrelevant.

"Article 2 of the Constitution – not unlike Article 2 ECHR – gives rise to the duty of the State to protect the life of every individual, 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*)" (Order no. 207 of 2018).

Nor may it be deduced that assisting suicide is generally inoffensive on the basis of some general individual right to self-determination considered as a good of life arising, as the referring court alleges, from Articles 2 and 13(1) of the Constitution. Regardless of the views of which the legislator was the bearer in 1930, the rationale of Article 580 of the Criminal Code can easily be perceived, in the light of the current constitutional framework, in the "protect[ion of] 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 irreparable choice of suicide. It fulfils the perennially important purpose of protecting people in painful and difficult circumstances, not least by protecting the people deciding to carry out the extreme and irreversible act of suicide from facing pressure of any kind" (Order no. 2017 of 2018).

The same considerations also serve to rule out that the challenged provision always contravenes Article 8 ECHR, which establishes the right of everyone to respect for their private life: this conclusion is confirmed by the relevant case law of the European Court of Human Rights.

2.3.– In the main question posed by the referring court, the Court has nevertheless identified a limited area of constitutional non-compliance with regard to the criminal offence, relating, in particular, to cases in which the aspiring suicide seeker identifies – as in the case in question – as a person "(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." (Order no. 207 of 2018).

These are "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 are not able to restore a sufficient level of vital functions." In such cases, assistance from third parties in putting an end to their life may appear to the patient to be, according to his or her individual choices, the only way out of artificial maintenance in life, which is no longer desired, and which he or she has the right to refuse under Article 32(2) of the Constitution. This provision is not

evoked in the operative part of the referral order but is mentioned several times in the reasoning section.

The Court noted that in the cases under consideration, the patient may already have made the decision to allow death to take its course under existing legislation, with binding effects on third parties, through a request for the interruption of ongoing life-support treatment and concurrent subjection to constant and heavy sedation. This is pursuant to Law no. 219 of 22 December 2017 (Provisions on informed consent and advance medical directives), which adopts and develops the substance of the conclusions already reached at the time by the ordinary courts – particularly following the rulings in the *Welby* case (preliminary hearing judge [*Giudice dell'udienza preliminare*] of the Ordinary Court of Rome, no. 2049 of 23 July-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 physician (Order no. 207 of 2018): a principle which may be classified as a "full-scale right of the person", grounded in the principles expressed in Articles 2, 13 and 32 of the Constitution (Judgments no. 253 of 2009 and no. 438 of 2008).

The aforementioned Law no. 219 of 2017 grants, in fact, "[e]veryone capable of acting" the right to refuse or interrupt any healthcare treatment, even if necessary for their survival, also expressly including artificial provision of hydration and nutrition within this notion (Article 1(5)): a right framed in the context of the "relationship of care and trust" between patient and doctor. 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 levels of healthcare – Law no. 219 of 2017 provides that the request to suspend healthcare 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." (Order no. 207 of 2018).

On the other hand, the legislation in force today does not allow a physician to make available direct treatment intended not to eliminate the suffering of patients in the above-described circumstances but to cause their death. In order to take leave of life, therefore, patients are forced to undergo processes that are slower and more painful for the people close to them. This is confirmed by the case at issue, in which, "[a]s the party thoroughly described [...] 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" (Order no. 207 of 2018).

In this respect, it should be considered that constant heavy sedation, linked to the interruption of life-support treatment – a form of sedation that is part of the family of health treatments – has the effect of totally and definitively effacing the patient's consciousness and will until the time of death. It is therefore understandable that terminal sedation can be experienced by some as an unacceptable solution.

In the circumstances set out in detail at the start of this point (2.3.), the protection requirements that justify the criminal prosecution of assisting suicide in other cases are put into question. 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 preventing the slower decline which results from the suspension of life support devices. As for 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 opportune to observe that if those who are kept alive by artificial means of support are legally considered to be able, under certain conditions, to take the decision to end their existence by suspending such treatment, there is no reason why the same persons, under certain conditions, cannot also decide to end their existence with the help of others.

The conclusion is therefore that within the specific area under consideration, an absolute ban on assisted suicide ends up unjustifiably and unreasonably restricting patients' freedom of self-determination in choosing treatments, including those intended to free them from suffering, which flows from Articles 2, 13 and 32(2) of the Constitution, ultimately imposing upon them one single way of taking leave of life.

2.4.– In Order no. 207 of 2018, the Court held, moreover, that it could not remedy – "under the status quo" – "the aforementioned violation", by means of a merely ablative decision regarding patients in the abovementioned condition. 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, indeed, "any individual – even one not working in healthcare – could legally offer, in their own residence 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* ascertainment 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". These are consequences for which "[t]his Court may not fail to assume responsibility" (Order no. 207 of 2018).

The regulation of this area, for the purpose of preventing such scenarios, fraught with risks for the lives of vulnerable individuals, has the potential to affect several other areas, each of which may involve discretionary choices, "such as, for example, the ways of medically verifying that the prerequisites for requesting assistance are met,

the regulation of the associated "medicalised 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".

Regulation could also be "introduced, [not] through a mere modification of the criminal provision set out in 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 too becomes an option under the framework of the "relationship of care and trust between patient and physician", duly recognised by Article 1 of the same law" (Order no. 207 of 2018). The need to "introduce an *ad hoc* regulatory scheme for prior existing situations", for which a variety of different solutions may be provided, may also arise.

Lastly, it must be emphasised that suitable precautions must be taken 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". Indeed, engagement in a course of palliative care should be "a pre-condition for a patient to subsequently choose any alternative course" (as already suggested in Order no. 207 of 2018).

Moreover, in its opinion of 18 July 2019 ("Bioethical reflections on medically assisted suicide"), despite the variety of positions expressed on the legalisation of medically assisted suicide, the National Committee on Bioethics unanimously stressed that the necessary effective provision of palliative care and pain management – which today faces "numerous obstacles and difficulties, especially due to the lack of a uniform territorial homogeneity in what the [Italian] National Health Service offers, and the lack of specific training for the health professions" – should be "an absolute priority for health policies".

Otherwise, one would fall into the paradox of not punishing assisted suicide without first ensuring the effectiveness of the right to palliative care.

2.5.– This Court has recently remarked that, in similar cases, it has declared the question raised to be inadmissible at the same time 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 unheeded, the ruling was, as a rule, followed by a declaration of unconstitutionality.

This solution was not considered practicable in the present case, however.

The aforementioned decisional approach 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 is raised. This may, however, occur a long time after the first ruling of inadmissibility has been handed down, while the laws in question continue to apply by default. Such an effect cannot be considered to be permitted in the case under review, both because of its particular features and because of the importance of the values it entails" (Order no. 207 of 2018).

This Court therefore deemed that it should proceed differently. Relying on "its powers to manage the constitutional process", it scheduled a new hearing to discuss

the matter eleven months later (namely, on 24 September 2019): a hearing at the end 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 this way, it has been left to Parliament to take the necessary decisions within its purview, but application of the provision has been blocked. The case before the referring court thus remains suspended.

3.– However, it must now be acknowledged that no legislation in this area has come into force pending the new hearing. Nor, furthermore, is any intervention by the legislator imminent.

Indeed, the numerous and various bills that have actually been submitted have all come to nothing.

Due examination of Bill A.C. 1586 and related acts – which began in the Chamber of Deputies – did not pass the committee stage, nor was it even possible to adopt a consolidated text.

4.– Given the absence of any determination on the part of Parliament, the Court cannot further refrain from ruling on the merit of the questions in order to remove the constitutional violation already noted in Order no. 207 of 2018.

This is not precluded by the fact that – as noted in the Order and mentioned above – the declaration of unconstitutionality brings to light specific regulatory requirements which, albeit subject to different responses on the part of the legislator, cannot be disregarded.

The deferral ordered at the conclusion of the previous hearing follows, albeit using a different technique, the logic that underlies, in the case law of this Court, the established mechanism of the "double pronouncement" (a ruling of inadmissibility "with admonition" followed, should this go unheeded, by a declaration of unconstitutionality). Once a reasonable period of time has elapsed, the need to guarantee constitutionality must, in any case, prevail over the need to leave room for the discretion of the legislator in the full regulation of the matter, which has priority.

As has been pointed out on several occasions, "when confronted with a violation of the Constitution which cannot be resolved through interpretation – especially where it relates to fundamental rights – the Court is in any case required to provide a remedy" (Judgments no. 162 of 2014 and no. 113 of 2011; similarly, Judgment no. 96 of 2015). It is necessary to avoid free zones in the legal system, immune from constitutional review: this holds true "especially in fields such as criminal law, where the need to ensure the real protection of fundamental rights, affected by the choices of the legislator, is critical" (Judgment no. 99 of 2019).

The case law of this Court has long held that, with regard to certain relationships, the real or apparent lack of regulation which may arise from declaring laws unconstitutional cannot be considered an obstacle to making such declarations (Judgment no. 59 of 1958). Where, however, regulatory gaps, which may be filled *per se* in different ways, risk giving rise – as in the present case – to a diminished protection of fundamental rights (also potentially prolonged over time if legislative inaction persists), this Court can and must shoulder the requirement to prevent them, not confining itself to the "categorical" cancellation of the unconstitutional provision, but deriving the constitutionally necessary, albeit not containing constitutionally bound content, criteria from the coordinates of the current system, until such time as Parliament intervenes on the matter (in this sense, Judgments no. 40 of 2019, no. 233 and 222 of 2018 and no. 236 of 2016).

5.– With regard to the content of this decision, the Court has already identified in detail, in its Order no. 207 of 2018, the situations where the indiscriminate criminal repression of assistance to commit suicide, set out in Article 580 of the Italian Criminal Code, enters into conflict with the constitutional precepts evoked. In particular – as mentioned above – these are cases where the fulfilment of the autonomously and freely made intention to commit suicide by a person kept alive by life support treatments and suffering from a terminal illness and physical or psychological distress that s/he finds intolerable, but is fully capable of making free and conscious decisions, is facilitated.

Concerning the need to prevent the mere subtraction of such acts from the sphere of application of the challenged provision giving rise to intolerable gaps in the defence of protected values, leading to the risk of abuse regarding the "lives of patients in extremely dire conditions" (Order no. 207 of 2018), the Court has, on several previous occasions, shouldered the need to prevent such outcomes: specifically, it has subordinated exemption from punishment of acts addressed from time to time to respect for specific safeguards, in order to ensure – pending the intervention of the legislator – a preliminary verification of the existence of the conditions that make the act lawful.

This occurred, for example, in a matter relating to abortion, with Judgment no. 27 of 1975 (which declared Article 546 of the Italian Criminal Code unconstitutional) in so far as it made no provision for the termination of pregnancy in cases where continued gestation involved "serious, medically verified harm, or danger to the health of the mother, within the meaning stated in the grounds and not otherwise avoidable"); or, more recently, with regard to medically assisted procreation, with Judgments no. 96 and no. 229 of 2015 (ruling unconstitutional, respectively, the provisions denying access to the pertinent techniques by fertile couples with serious genetic illnesses that could be transmitted to the unborn child, as "ascertained by appropriate public facilities", and the provision criminalising all forms of eugenic selection of embryos, without excluding selection procedures designed to prevent the uterine implantation of embryos with serious transmissible genetic diseases ascertained as above).

At present, moreover, a precise "point of reference" (Judgment no. 236 of 2016) already existing in the system – which may be used for the purposes under consideration, pending the intervention of Parliament – is found in the provisions of Articles 1 and 2 of Law no. 219 of 2017, to which reference is repeatedly made in Order no. 207 of 2018.

The declaration of unconstitutionality specifically and exclusively concerns assisting the suicide of individuals who could already otherwise allow their lives to end by renouncing the health treatments necessary for their survival, pursuant to Article 1(5) of the above-mentioned law: a provision which, as part of the broader fabric of the Article, envisages a "medicalised process" that can be extended to the situations addressed here.

Reference to this procedure – with the additions that will be discussed below – is well suited to responding to most of the regulatory requirements highlighted in Order no. 207 of 2018.

This applies, first of all, with regard to "the ways of medically verifying that the prerequisites for requesting assistance are met". The procedure in question already makes it possible to ascertain a patient's capacity for self-determination and the free and informed nature of the choice they have made. Indeed, Article 1(5) of Law no. 219 of 2017 recognises the right of persons "capable of acting" to interrupt ongoing life-

support treatments and establishes that the request to do so must be expressed in the ways established in paragraph 4 of the same provision regarding informed consent. The expression of intent must therefore be obtained "in the manner and by the means best suited to the patient's state" and documented "in written form or through video recordings or, in the case of disabled persons, using devices that allow him or her to communicate" and will then be added to the medical record. This "should also leave intact the possibility that the patient may modify his or her desire at any time", which, moreover, in the case of assisted suicide, is inherent in the very fact that the person concerned retains, by definition, control over the final act that triggers the process leading to death.

Article 1(5) also provides that the physician must inform the patient of "the consequences of the […] decision and any possible alternatives", proposing "every supportive action to the patient, even making use of psychological assistance services". In this context, the irreversible nature of the condition must obviously be taken into account too, a factor mentioned in the medical records and made known by the physician when warning the patient of the consequences of interrupting vital treatment and the "possible alternatives". The same is true of physical or psychological suffering: the proposal of action to support the patient, especially pain management, presupposes an accurate knowledge of the conditions of suffering.

On the other hand, reference to this provision also implies the pertinence of the matter in question to the relationship between physician and patient.

With regard to the need to provide the person concerned with a course of palliative care, Article 2 of Law no. 219 of 2017 lays down that the patient must always be guaranteed appropriate pain management treatment and the provision of palliative care envisaged under Law no. 38 of 2010 (and included, as already mentioned, in the category of essential levels of healthcare). This provision can also be extended to the case at hand: when it is able to eliminate suffering, access to palliative care can often remove the causes of a patient's desire to end their life.

In the same way as has already been established by this Court with the above-mentioned Judgments no. 229 and no. 96 of 2015, the verification that conditions making assisted suicide lawful exist must nonetheless continue to be the province – pending the interpretation that the legislator may give – of public national health service facilities. These will also be responsible for ascertaining the appropriate methods of implementation, which must clearly be able to prevent the abuse of the vulnerable, guarantee the dignity of the patient, and prevent suffering.

Furthermore, the importance of the value at stake requires the intervention of a suitably expert third-party collegiate body able to ensure protection in particularly delicate situations. Pending intervention by the legislator, this task is entrusted to the territorially competent ethics committees. These committees – as advisory bodies and points of reference on ethical problems that may arise in relation to healthcare practice – play a consultative role in ensuring the protection of the rights and values of the individual with regard to the clinical trials of medicinal products or, more broadly, their use and that of medical devices (Article 12(10), letter c) of Legislative Decree no. 158 of 2012; Article 1 of the Ministry of Health Decree of 8 February 2013 setting out "Criteria for the composition and functions of ethics committees"), functions that specifically imply the protection of vulnerable individuals and also extend to the so-called compassionate use of medicinal products on patients suffering from conditions

for which no valid alternative treatments are available (Articles 1 and 4 of the Ministry of Health Decree of 7 September 2017, setting out "Regulations on the therapeutic use of medicinal products subject to clinical trials").

6.– Lastly, with regard to the question of conscientious objection on the part of medical personnel, it should be noted that this pronouncement of unconstitutionality is limited to excluding the punishment of assisting suicide in the cases considered here, without creating any obligation for physicians to provide such assistance. It therefore remains a matter of conscience for individual physicians to choose whether or not to grant a patient's request.

7.– The procedural requirements set out here, as conditions for the exemption from punishment for assisting the suicide of persons in the situations described in detail in point 2.3 above, apply to cases subsequent to the publication of this Judgment in the Official Journal of the Republic.

Since they have been clarified by the Court only with the present Judgment, and pending intervention by the legislator, the procedural conditions in question cannot be required, as they stand, in relation to previous cases, such as that of the case before the referring court, which precedes the entry into force of Law no. 219 of 2017. With regard to previous cases, the conditions in question would, in practice, never be met precisely.

This imposes a different inflection of the content of the ruling in temporal terms.

With regard to previous cases, exemption from punishment of assistance to suicide will depend, specifically, on whether the assistance was provided in ways that, albeit differing from those mentioned, offered substantially equivalent guarantees.

It will therefore be necessary for the conditions of the applicant which make the provision of assistance lawful, namely incurable illness, serious physical or psychological suffering, dependence on life-support treatment, and the ability to make free and informed decisions, to have been medically assessed; that the will of the person concerned has been clearly and unambiguously expressed in a manner compatible with his or her condition; that the patient has been adequately informed of both his/her condition and possible alternative solutions, especially access to palliative care and, where appropriate, constant heavy sedation. All of these requirements must be verified by a court on a case-by-case basis.

8.– Article 580 of the Criminal Code must therefore be found unconstitutional, as it violates Articles 2, 13 and 32(2) of the Constitution, insofar as it does not exclude punishment for those who, in the manner established under Articles 1 and 2 of Law No. 219 of 2017 – or, with regard to cases prior to the publication of this Judgment in the Official Gazette of the Republic, following equivalent procedures within the meaning of the foregoing – facilitate the fulfilment of the independently and freely formed intent to commit suicide by a person fully capable of making free and informed decisions kept alive by life-support treatments and suffering from an incurable illness which is a source of physical or psychological suffering that he or she considers intolerable, provided that these conditions and the method of implementation have been verified by a public national health service facility after consulting the territorially competent ethics committee.

The further question raised in the referral in relation to violation of Article 117(1) of the Constitution, with regard to Articles 2 and 8 of the ECHR, is absorbed.

The subordinate questions relating to the punishment are also absorbed.

9.– The Court cannot fail to strenuously reiterate its wish that the matter be subjected to prompt and complete regulation by the legislator in accordance with the principles set out above. ON THESE GROUNDS

THE CONSTITUTIONAL COURT

declares unconstitutional Article 580 of the Criminal Code, in so far as it does not exclude the punishment of those who, in the manner established by Articles 1 and 2 of Law no. 219 of 22 December 2017 (Rules on informed consent and advance medical directives) – or, with regard to cases prior to the publication of this Judgment in the Official Gazette of the Republic, in a manner equivalent to those set forth in the reasoning section – facilitates the fulfilment of the autonomously and freely formed intent to commit suicide of a person fully capable of making free and informed decisions kept alive by life-support treatments and suffering from an incurable illness which is a source of physical or psychological suffering that he or she considers intolerable, provided that these conditions and the method of implementation have been verified by a public national health service facility after consulting the territorially competent ethics committee.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 25 September 2019.