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Euthanasia, therapeutic obstinacy or something else? An Italian case

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In 1998 a man entered the intensive care unit (ICU) of San Gerardo Hospital in Monza, Italy, and, after being informed about the serious condition of his wife, forced physicians and nurses to stay away using an (unloaded) gun while he disconnected his wife from the ventilator. He held her in his arms until he was convinced that she was dead ("Condannato a 6 anni per eutanasia della moglie", *La Repubblica*, 20 June 2000, available at: http://www.repubblica.it/online/societa/eutanasia/condanna/condanna.html; "Mercy killing in Milan", *BBC News*, 21 June 1998, available at: http://news.bbc.co.uk/1/hi/world/europe/117389.stm) [1]. One week previously the 46-year-old woman was admitted to the hospital because of an idiopathic thrombocytopenic purpura, subsequently complicated by an extensive cerebral hemorrhage requiring neurosurgical removal. After the operation (on the day before her husband's action) she was comatose and receiving high doses of barbiturates because of intracranial hypertension [1].

In the first stage of the subsequent trial the husband was convicted of willful murder but was given a reduced prison sentence because the court took into account the defendant's partial mental illness. The court's reasoning was unusual because the husband's lawyer never argued for a plea of insanity, and the husband did not undergo a psychiatric examination ("Condannato a 6 anni per eutanasia della moglie", *La Repubblica*, 20 June 2000). When the court of appeal tried the case in 2002, the public prosecutor requested an aggravation of penalty because of inapplicability of the extenuating circumstance of mental illness. He also advised the defendant to ask for mercy in case he was found to be guilty, stating that "the justice that turns a blind eye for pity is not an impartial justice" ("Chiedo la condanna, spero nella grazia", *Corriere della Sera*, 24 April 2002). The court of appeal changed the first degree sentence, but acquitted the defendant on the grounds of insufficient proof that the man's action caused the woman's death ("La coscienza di un giudice", *Corriere della Sera*. 25 April 2002; "Il confine della vita", *La Repubblica*, 25 April 2002), stating that there was not enough evidence that the woman was still alive when her husband removed the ventilatory support. Lacking this evidence, and therefore the causal relationship between the husband's action and the woman's death, the court also reasoned that it was not possible to consider the case as euthanasia or murder ("La coscienza di un giudice", *Corriere della Sera*. 25 April 2002; "Il confine della vita", *La Repubblica*, 25 April 2002) [1]. It should be noted that the last electroencephalogram, performed 1 h before the husband disconnected the ventilator, demonstrated the presence of cerebral activity [1].

This case featured prominently in both the Italian and the European press (*Corriere della Sera*, 24, 25 April 2002; *La Repubblica*, 25 April 2002; "En Italie, la condamnation puis l'acquittement d'un homme relance le débat", *Le Monde*, 2 May 2002) and engendered intense debate among legal, political, medical, and religious spokespersons. Two main positions were expressed in the newspapers. Those speaking for Catholic Church or the government opposed the sentence as they considered it the legal justification for euthanasia ("D'Agostino: infranta la logica giuridica", *La Stampa*, 25 April 2002). Secular political exponents and members of the scientific community approved the sentence (*Le Monde*, 2 May 2002), supporting the interpretation of the case as an example of drama caused by blameworthy medical "therapeutic obstinacy".

The embarrassment that this case has caused the justice system, as often the case in other legal actions against ICU physicians [2], is obvious at all steps of this trial: the court of first jurisdiction acknowledging an unasserted mental illness, the public prosecutor "advising" the court to turn a blind eye and the defendant to ask for mercy, and the unusual justification of the final sentence. Obvious embarrassment to the justice system stemmed here from the difficulty to classify this typical case of "mercy killing" as a murder in the current Italian legal context.

This case raises several interesting aspects. The justification of the final sentence is one novelty of the case. According to Italian law, cerebral activity and life are presumed to be present unless demonstrated otherwise. On the other hand, the court reasoned that because of the serious illness it was impossible definitely to rule out that the woman had already died during the period between the last electroencephalography and the ventilator disconnection [1]. To justify its sentence the court introduced a surprising exception to the formal diagnosis of death, depending on the fact that donation of organs could be performed or not (as in the present case). According to this point of view, the legal verification of brain death by an ad hoc medical commission, albeit essential for organ donation, is not applicable in the context of the biological end of life: "what is important for organ donation may not to be equally relevant for assessing a murder, which is based only on the certainty that a person is still alive when the criminal action is carried out" [1]. The motivation of the sentence therefore seems to bring the definition of death into question, at least in particular circumstances. Moreover, to speak of "therapeutic obstinacy" in this case seems, in our opinion, rather inaccurate because of the short time elapsed since the operation (less than 24 h) and the ordinary postoperative care that the woman was receiving [1].

Another issue raised by the present case is the role of relatives in the decision-making process, particularly at the end of life. Italian law currently does not recognize a legal right of relatives of incompetent patients. Recent reports suggest that many ICU patients with decision-making capacity are willing to designate a surrogate [3], and that family members want to participate in medical decisions [4]. Family members and close relatives are considered the best available surrogates for incompetent patients. However, particular family situations and even the present case suggest that this solution is not free of potential problems.

Finally, the sometimes difficult position of the medical staff facing end-of-life issues should be considered. Although there is a general consensus in condemning "therapeutic obstinacy" in Italy, this concept has no legal definition. In everyday clinical practice physicians may therefore face the dilemma between a charge for murder (in the case of euthanasia) and moral censure without legal consequences (in the case of "therapeutic obstinacy"). The result is often overmedication at end of life by physicians seeking to protect themselves against indictment for murdering their patients, as declared by both the former and the current president of the National Bioethics Committee ("Il testamento biologico divide: no all'accanimento terapeutico, ma attenti all'eutanasia", *Avvenire*, 27 April 2002).

The Italian case indicates the urgent need for regulation of end-of-life care and for a reasonable but definitive solution to the problem of the rights of incompetent patients, to avoid leaving patients, families, physicians, and judges alone in the search for the right decisions in difficult circumstances. The same difficulties and legal uncertainties have been seen in France, where

Parliament is currently examining a law that clearly addresses the issue [5].

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