

The obligation of the physician to save the life of the detainee on a hunger strike: the opinion of the Italian National Bioethics Committee

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Abstract

The Cospito case has highlighted a widely debated bioethical issue regarding the need to choose between safeguarding the life of a detainee and their right to self-determination through the practice of a hunger strike. Recently, the Italian National Bioethics Committee has been called upon to give an opinion on this matter. On the other hand, the media resonance of this case has shed light on the need to pose an ethical and social question regarding such situations: does the physician have an obligation to protect the detainee's health at the expense of their free choice? To be able to answer, it is necessary to understand whether law no. 219/17 is applicable to this context. *Clin Ter 2024; 175 (2):110-111 doi: 10.7417/CT.2024.5041*

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Dear editor,

The hunger strike is a practice that has been rising a legal debate of the Italian public opinion since the early 1980s., drew the attention of the Italian public opinion and legal debate. Particularly, detainees, but also some politicians, have used it to draw attention to perceived injustices or to demand more rights. (1)

The topic has become highly relevant again following the debate generated by the hunger strike initiated on October 20, 2022, by Alfredo Cospito, an anarchist convicted of causing serious bodily harm and attacking a Carabinieri cadet school. Due to incitement to violent struggle, he was subjected to a particularly severe prison regime (known as "41bis"), which isolates the detainee from both the outside world and other inmates. After the Court of Cassation rejected the revocation of "41bis," he suspended the intake of supplements, leading to a deterioration in his health condition and a new hospitalization, even considering possible emergency interventions by medical personnel. (2)

From the debate sparked by Cospito's hunger strike, the Ministry of Justice consulted the National Bioethics Committee for an opinion on issues related to self-determination by individuals deprived of personal liberty.

During the meeting held on March 6, 2023, the Committee expressed two substantially different stances: a pro-life orientation and a pro-choice orientation. The minority orientation (9 members) believed that there were no legally and bioethically valid reasons not to apply Law No. 219/2017 to a detained person on a hunger strike, even if their life is at risk. In fact, the right of an individual, even a detainee, to go through all stages of their existence without undergoing medical treatments against their will, including artificial nutrition, is a fundamental principle of the Italian legal system.

Therefore, in Italy, in recent decades, the concept of self-determination, provided it is conscious, has gained increasing importance in legal evolution, to the extent of allowing the refusal of life-saving treatments even with advanced directives. (3) And even more so if such a conscious choice is current. (4)

On the other hand, according to the majority orientation of the Committee (19 members), in the case of imminent life-threatening situations, the physician must implement all interventions aimed at saving the person's life.

To guide the ethical evaluation, it is necessary to reasonably and thoughtfully weigh the values at stake: the right to freedom of expression; the right to life and health of the individual; and finally, but no less important, the duty of the State to protect the right to life, as provided in Article 2 of the European Convention, especially when entrusted to institutions responsible for enforcing a judicial decision. (5)

In the logic of balancing, the refusal to nourish oneself cannot be systematically violated. However, the State also has a duty to protect life. The State would violate this duty if it allowed the detained person who refuses nutrition to die, in line with what was stated by the Constitutional Court in judgment no. 50/2022, according to which, "When the good of human life is at stake...the freedom of self-determination can never unconditionally prevail over the reasons for

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protecting the same good, always requiring, on the contrary, a constitutional balance that ensures its minimum protection.”

Furthermore, Law No. 219/17 does not bind the physician when it is clearly incongruous and does not apply to cases of hunger strike since such refusal aims to obtain a specific material or immaterial benefit. In the case of Cospito, the hunger strike aims to obtain less severe imprisonment conditions. The medical treatments are not considered by the striker as inherently unacceptable since he would revoke the refusal if he obtained what he requested through the strike.

In conclusion, as Cospito is on a hunger strike to obtain the revocation of “41bis,” his advance treatment directives cannot be respected.

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