

***Tribunale di Milano, Corte d'Assise,
order 14 febbraio 2018***

**Court of Assize of Milan, Italy: Mannucci Pacini, President; Simi de Burgis,
Judge; Marco Cappato, Defendant: 14 February 2018**

Human rights – Right to life – Right to die - Right to respect for private and family life - End of life decisions pertaining to the instigation and aiding of suicide – Mr A was a tetraplegic man on artificial respiration and alimentation, suffering from bilateral cortical blindness, contractions, and spasms, his cognitive functions were intact – D taking Mr A to Switzerland for the purpose of undergoing voluntary euthanasia - Whether assisting Mr A to travel to Switzerland to undergo voluntary euthanasia amounted to the instigation and aiding of a suicide – Whether aiding a man already determined to undergo voluntary euthanasia, to implement his will by taking him to Swiss clinic by car amounted to aiding suicide – Whether article 580 of the Italian Criminal Code punishing instigation and aiding of suicide constitutionally legitimate - Italian Constitution art 3, art 13, art 25 second paragraph, art 27 third paragraph, art 117 - European Convention on Human rights, art 2 and art 8.

On the application for judicial review by the Court of Assize of Milan as to the constitutionality of Article 580 of the Italian Criminal Code on instigation and aiding of suicide, the Court of Assize's view was that the current interpretation of Article 580, according to which "suicide is a blameworthy act in itself" and the right to life has to be protected "beyond individual's will", was contrary to those Constitutional provisions implementing the right to life and the right to family and private life pursuant to Articles 2 and 8 of the European Convention on Human Rights respectively. In particular, according to such legal provisions, "the right of each person to end her own existence represents an individual freedom". Such freedom was fully respected if "the conduct of taking part in the suicide" does not "compromise the decision of the person" who had resolved to die.

In the light of these considerations, the Court of Assize identified two ways in which Article 580 came into conflict with the Constitutional protection of fundamental rights. Firstly, Article 580 considered the conduct of aiding suicide an alternative crime to abetting suicide, without taking into account that the latter contributes to the decision of committing suicide and the former simply helps in creating the conditions for the suicide of a person already determined to commit it (Italian Constitution art 3, art 13 first paragraph and art 117; European Convention of Human Rights, art 2 and art 8). Secondly, facilitative acts which did not affect the deliberative process of the "aspiring suicide" were subject to the same punitive sanctions, namely with jail (Italian Constitution art 3, art 13, art 25 second paragraph, art 27 third paragraph). The case is currently pending before the Constitutional Court.

Recorded at: <https://www.penalecontemporaneo.it/d/5861-la-corte-dassise-di-milano-nel-caso-cappato-sollevata-questione-di-legittimita-costituzionale-della>

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