



E.B. v. X

Case No. 21748/2007 of 16 October 2007

Country: Italy

Region: Europe

Year: 2007

Court: Supreme Court of Cassation

Health Topics: Diet and nutrition, Disabilities, Informed consent, Mental health

Human Rights: Right to bodily integrity, Right to health, Right to life, Right to privacy

Facts

E.E., an adult, was in a car accident in 1992. As a result of this accident, she entered into an irreversible vegetative coma. E.E. was not clinically dead, defined as the "irreversible" cessation of all encephalon functions, but was clinically in a permanent vegetative state (PVS). She was kept alive through force-feeding by means of a nasogastric tube.

Three friends of E.E. reported that shortly before her accident, E.E. had visited a friend who was in a coma following a car accident, and said that she preferred the situation of a boy who died instantly in the same accident to that of her friend. E.E.'s teachers reported the same statements.

E.B., E.E.'s father, was made the guardian of E.E. As guardian, E.B. petitioned the Tribunal of Lecco to end E.E.'s force feeding. Advocate X was appointed as E.E.'s guardian ad litem and agreed with E.B.'s petition. The Tribunal held on 2 February 2006 that E.B.'s petition was inadmissible as neither E.B. nor the guardian ad litem were entitled to represent E.E. The guardian appealed to the Court of Appeal of Milan, which on 16 December 2006, found the appeal admissible because of the presence of the guardian ad litem but rejected E.B.'s petition on the merits with the position that as E.E. was still alive, her right to life trumped E.B.'s assertion of her rights to self-determination or dignity. E.B. appealed to the Court of Cassation with the guardian ad litem cross-appealing.

Decision and Reasoning

The Court held that a judge may allow the removal of a nasogastric tube that is keeping artificially alive someone in a PVS for many years if there was no medical foundation for the possibility of recovery and a truly expressive request is made by the represented person based on personality, lifestyle and convictions regarding their dignity. The case was remanded to determine if E.E. had made a truly expressive request.

The Court ruled that someone in a PVS retains all rights, including the right to life and the right to health care. The right to health care includes informed consent. Informed consent is the basis for the doctor-patient relationship and includes the ability to choose and refuse therapy. There are only a few statutorily defined situations where health treatments would be compulsory. A doctor must therefore respect the informed, authentic refusal of treatment expressed by a competent person or by their legal representative.

The Court also ruled that a legal guardian did not have an unconditional power over the health choices of the person in PVS because of the highly personal nature of the right to health. A legal guardian must act in the "exclusive interest of the incompetent person" and make decisions "with" the incompetent person.

The Court distinguished refusal of treatment from euthanasia as refusal of treatment allowed an illness to follow its natural course and did not accelerate it.

Decision Excerpts

"Ove il malato giaccia da moltissimi anni (nella specie, oltre quindici) in stato vegetativo permanente, con conseguente radicale incapacità di rapportarsi al mondo esterno, e sia tenuto artificialmente in vita mediante un sondino nasogastrico che provvede alla sua nutrizione e idratazione, su richiesta del tutore che lo rappresenta, e nel contraddittorio con il curatore speciale, il giudice può autorizzare la disattivazione di tale presidio sanitario (fatta salva l'applicazione delle misure suggerite dalla scienza e dalla pratica medica nell'interesse del paziente), unicamente in presenza dei se

presupposti: (a) quando la condizione di stato vegetativo sia, in base ad un rigoroso apprezzamento clinico, irreversibile e non vi sia alcun fondamento medico, secondo gli standard scientifici riconosciuti a livello internazionale, che lasci supporre la benché minima possibilità di un qualche recupero della coscienza e di ritorno ad una percezione del mondo esterno; e (b) sempre che tale istanza sia realmente espressiva, in base ad elementi di prova chiari, univoci e convincenti, della voce del paziente medesimo, tratta dalle sue precedenti dichiarazioni ovvero dalla sua persona dal suo stile di vita e dai suoi convincimenti, corrispondendo al suo modo di concepire, prima di cadere in stato di incoscienza, l'idea stessa di dignità della persona. Ove l'uno o l'altro presupposto non sussista, il giudice deve negare l'autorizzazione, dovendo allora essere data incondizionata prevalenza al diritto alla vita, indipendentemente dal grado di salute, di autonomia e di capacità intendere e di volere del soggetto interessato e dalla percezione, che altri possano avere, della qualità della vita stessa."

"il carattere personalissimo del diritto alla salute dell'incapace comporta che il riferimento all'istituto della rappresentanza legale non trasferisce sul tutore, il quale è investito di una funzione di diritto privato, un potere incondizionato di disporre della salute della persona in stato di totale e permanente incoscienza"

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