Adolescents, Autonomy and Medical Treatment
Divergence and convergence across the globe

Although adolescence cannot be said to be a medical condition, and although most adolescents are healthy, some do become ill. But the adolescent is not a patient like any other. Today, the age of majority is set in most jurisdictions at the age of 18 years, but in the context of medical treatment, many countries do recognize a certain level of autonomy (to a greater or lesser extent) of adolescents who are deemed to be mature. However, the extent to which this autonomy raises many questions, is the consent of the adolescent required, along with that of the parents, before any intervention may take place? Do they have a right of veto? Is their consent alone enough? Are they recognized as having the right to take part in medical trials, the right to refuse necessary treatment...

These and many other questions are at the heart of this multidisciplinary and international study, which is the fruit of reflection and discussion between lawyers, philosophers, sociologists and child psychologists during the 2nd Workshop of the International Academic Network on Bioethics. The issues raised cannot be reduced to law because they engender questions of the individuality of the adolescent and her ability to make choices when faced with illness and even her own death. Despite the complexity and depth of the subject, the chapters in this volume clearly reveal the status of the adolescent in medical decision-making, in sixteen different countries. Despite obvious differences between the systems studied, the same thing that is clear is the gradual recognition of the adolescent's growing autonomy in medical decision-making which is not always expressly provided for in legislation. Such an evolution is hardly surprising at a time when the distinction between adolescence and adulthood is becoming less certain for many.

Created in 2007, the IANB’s objective is to promote research through collaboration between academic representatives from different countries and cultures, all specialists in the field of biomedicine. Based upon a comparative approach of different legal systems, the work of the group analyzes social choices in biomedicine through the different lenses of ethics, anthropology, philosophy and sociology. In this way, their research feeds into the elaboration and development of international regulation of biomedical practices and accordingly on achieving the balance between the respect for different cultures and the move towards a certain universalism, supporting the harmonization of laws. This new collection will therefore be indispensable for anyone seeking to understand the social implications of bioethics.

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ADOLESCENCE AND MEDICAL TREATMENT: THE ITALIAN SITUATION

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I. — A SOCIO-LEGAL PRESENTATION

As in most other countries, legal majority in Italy commences at the age of 18 years. (1) Nevertheless, Italy differs from a number of Northern European countries, in that there is no specific age of majority in Italian medical law relating to health matters, which tends to start at the age of 16. It is only from the ethical perspective that the capacity for discernment of older adolescents is taken into account by medical practitioners. However, it would be inaccurate to assume that older adolescents can act in an autonomous manner with regards to accepting or refusing medical treatment. If the doctor seeks Court intervention, it is the judge who may take the decision to go against the wishes of the parents of an adolescent over the age of 14. But the threshold of 16 years as an effective medical majority is in no way an opposable criterion in medical law and there is no legal text that can be invoked to this effect. On the other hand, one must take into account the strong (sociological) hold that the Italian family has over older adolescents (which is to say those over the age of 14, the age which marks the beginning of criminal responsibility) who are designated ragazzi (ragazzo in the singular). It is not insignificant that the word ragazzo is also used to refer to young adults in Italy, who are very often economically dependent on their families; in 2004, according to Istat, (2) more than 70% of those under the age of 30 were living with their families or in accommodation owned by the family.

(1) Art. 2 L. CC.
(2) Istat is the Italian Office for National Statistics.
All around the Mediterranean, great institutional value is placed on the traditional family. Moreover, Italy remains a country where the hold of the Catholic Church within society remains strong for rather obvious synchronic and diachronic reasons. Thus (indissoluble) Catholic marriage has immediate consequences on personal laws. Marriage is indeed firmly established as a constitutional value, upon which the family is built. The Italian Constitution goes as far as to declare that the family is a natural society founded on marriage. (3) Nevertheless, it should not be ignored that Italy does have a high divorce rate and it is well known that it is suffering from a consequent drop in birth rate. (4)

However, defence of the traditional family remains important within political debate. Hence Italian law does not recognise de facto cohabitation (in other words there is no equivalent of the French Pacs, or the British Civil Partnership) and assisted reproduction is prohibited for single people, as is recourse to artificial insemination by donor.

The Italian adolescent tends to find himself plunged into the heart of the family by tradition rather than volition. Indeed, the Italian family is an all-encompassing social fact that places enormous limits on the freedom of adolescents and their social situation gives them little opportunity to make their voice heard outside of the family; it is difficult to see Italian adolescents as persons in the etymological sense of the term (per-sona, per-sonare, to emit a sound). Their opinion, or assenso, which is close to the English word assent, is however taken more and more into account in medical deontology, but not without difficulty.

The French expression acte médical is little used in Italian, although one can speak of an atto medico to designate all actions carried out by doctors. More generally and with a meaning equivalent to what is understood in French by acte médical, Italian law uses the expression trattamento sanitario. Medical treatment is established at the very highest level of the pyramid of norms. The Italian Constitution declares that “No-one may be subjected to medical treatment (trattamento sanitario) unless this has been decided in law. In any case the law may not violate the limits imposed by respect for the human being”. (5) Italian constitutional lawyers and the case law of the Constitutional Court recognise in this provision the fundamental right derived from article 13 of the Constitution which provides that: “Personal freedom is inviolable”. But the adolescent still struggles for acceptance of his or her freedom of choice and to be considered an individual in his or her own right, even though this situation is gradually improving.

II. – General aspects regarding medical treatment and adolescents

The Italian Civil code clearly states that minors (and thus adolescents) are always regarded as incapable and that nothing can be undertaken with regard to them, without the prior consent of their legal representative. Article 316 of the Italian Civil code, entitled “Exercise of parental power”, (6) clearly indicates that children are subject to the decisions made by their parents until the age of majority. (7) However, in the case of conflict between parents and an adolescent under the age of 14, regarding medical treatment, the doctor may apply to the Court, which following a hearing with both parents and the adolescent, will propose the best course of action with regards to the minor’s interests. Naturally, in the case of absolute necessity, and where the adolescent’s life is in danger, doctors can intervene in such an emergency without the need for parental consent.

Within Italian medical deontology, age thresholds leading up to full civil majority exist to determine an adolescent’s capacity for discernment regarding an appreciation of the consequences of medical treatment. Referring specifically to this, the 1998 Code of Medical Ethics (8) advises medical professionals to listen to minors aged between 14 and 16 and give weight to their opinions, (9) particularly when they object to treatment. (10) In cases where adolescents are over the age of 16, the onus is even more firmly on doctors to

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(3) Art. 39, Società naturale fondata sul matrimonio.
(4) In 2004, according to Istat, the number of children per woman was 1.2, as opposed to 2.42 in 1970.
(5) Art. 32.
(6) Esercizio della potestà dei genitori.
(7) Il figlio è soggetto alla potestà dei genitori sino all’età maggiore’.
(8) Art. 33.
(9) Riconoscere rilevanza.
(10) Soprattutto nel caso di esplicito e fermo dissenso.
conform as closely as possible to the wishes of the adolescent. From the age of 16, at least according to the deontological approach, medical capacity is thus recognised. It is considered that from this age the free-will of the adolescent is largely comparable to that of an adult. (11)

Unfortunately, the Code of Medical Ethics contains antinomies that make the expression “medical majority of adolescents” a real oxymoron. The consent of the legal representative is indispensable, no matter the age of the minor. Article 34 of the aforementioned Code spells out a determining factor: the wishes of the legal representatives take precedence over the minor’s opinion, again, irrespective of the age of the minor. Although from the deontological point of view the doctor is obliged to inform the minor and take into account his or her wishes in line with his or her age and capacity to understand, it is equally true (in deontology and above all in real law) that the rights of the legal representative must be absolutely respected. (12) The appropriate judicial authority is informed only in cases of disagreement between the doctor, adolescent and legal representative on the nature and possibility of medical treatment. (13)

The Code of Medical Ethics was revised in 2006. What emerges is a greater regard for the expectations of the adolescent and the role of the doctor as a guarantor of the minor’s interests. In the 2006 version, listening to the minor (and in particular the adolescent) is reinforced, as is the role of the doctor. This is particularly well illustrated by article 32, entitled “The Doctor’s duty towards vulnerable subjects”, (14) which confers a much more active role upon the doctor. The same goes for his duty to actively protect the minor: “The doctor must do everything possible to protect the minor, in particular when he or she considers that the minor’s family or familial environment is not adequate for the protection of his or her health (non sia sufficientemente sollevato alla cura della loro salute) or is in fact the location of harmful physical or psychological treatment or even sexual abuse”. The doctor’s role as guarantor of the minor’s interests is stated in these terms: “the doctor should put everything in place, in all circumstances, to ensure that the minor may benefit from all that is necessary for harmonious physical and psychological development.” Where there is conflict with the legal representatives, the doctor must not only “inform” the appropriate judicial authority but refer to it in a formal manner. (15)

III. – SPECIFIC ASPECTS REGARDING MEDICAL TREATMENT AND ADOLESCENTS

Abortion has been legal in Italy since law No. 194 of 22 May 1978. This law, which also provides for the social protection of maternity, also deals with contraceptive methods. It states that minors may obtain, without informing their parents, contraceptives (most commonly the contraceptive pill) from health organisations and on medical prescription. (16) In addition, the free choice of proceeding with pregnancy or not (procreazione responsabile) is a right which applies equally to minors. By virtue of article 12, which regulates the access of minors to abortion, the agreement of legal representatives is required. However, within the first 90 days of pregnancy, in the case of serious motives which prevent consultation of legal representatives or render it ill-advisable, and also in the case of silence from the latter or disagreement with them, the family court is called upon, and it has the power to authorise an abortion. Where there is danger to the minor’s health (including after the time limit of 90 days and in the case of abnormalities to the foetus), the doctor may carry out the abortion without reference to either the legal representatives or the judge.

Blood transfusions may not be carried out on minors unless the written consent of both parents has been obtained. (17) But, as article 316 of the Civil code states, in general terms, where there is danger to the minor’s health, there is no need for consent.

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(11) Dopo il compimento dei 16 anni ... la volontà del minore, fondata sull’accontentato sviluppo delle capacità fisiche e psichiche, assume una rilevanza quasi completa.
(12) Il medico ha l’obbligo di dare informazioni al minore e di tenere conto della sua volontà, compatibilmente con l’età e con la capacità di comprensione, ferma restando il rispetto dei diritti del legale rappresentante.
(13) In caso di opposizione da parte del rappresentante legale al trattamento necessario e indifferibile a favore dei minori o di incapaci, il medico è tenuto a informare l’autorità giudiziaria.
(14) Art. included in Chap. 3, entitled “The Doctor’s duties of assistance”.
(15) Art. 32, § 2.
Detox treatments for drug use are available to adolescents without parental consent, but the latter can also impose these treatments on their child. (18)

The adolescent may have recourse to AIDS and HIV testing without the need for parental consent. Absolute confidentiality regarding the result is guaranteed to the minor. (19) This is the only example where medical confidentiality applies to adolescents.

Clinical research on minors is governed by Decree No. 211 of 24 June 2003, which transposes into Italian law European Directive 2001/20/EC regarding harmonisation of legal, regulatory and administrative frameworks in Member States, relating to the application of good clinical practice in carrying out tests on medicines destined for human use. But preamble 4 of the Directive, which requires that the written consent of the legal representatives of incapable patients be given in collaboration with the relevant doctor (that is, the family doctor and not the doctor carrying out the research), is not reproduced in the Italian legislation. However, in practice, and particularly with regard to adolescents, this collaboration with the family doctor is undertaken. Nevertheless, the adolescent’s opinion is always taken into account as the Directive recommends.

In conclusion, the Italian legal system for protection of adolescents vis-à-vis medical treatment is primarily subject to parental decisions. The adolescent’s voice struggles to be heard. There is no requirement for medical confidentiality with regard to the adolescent’s parents (except in the case of AIDS/HIV tests). The notion of adolescence is evoked in medical deontology but not affirmed in Italian medical law. Except in emergency cases, the adolescent is not able to dispose freely of his or her body, which is always subject to the potestas of his or her parents. This situation continues until death, since the removal of an adolescent’s organs is not possible without the consent of both parents. (20)

Since 2009, the extent of “parental possession” over the adolescent’s body has fuelled the parliamentary debate regarding parental consent and adolescents wishing to have tattoos or piercings. In practice, tattoo or piercing establishments tend to accept adolescent customers without asking for parental consent. However, since 1996, the case law of the Court of Appeal has found those who carry out these embellishments without parental consent guilty of bodily harm. The (controversial) bill proposed by the government is likely to adopt this line.

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(20) Art. 4, law No. 91 of 1999.