

Child and Parents' Religious Freedom and Right to Healthcare. Considerations above the recent Court of Cassation's Decree n. 2549/2025

(13 February 2025)

The Italian Supreme Court, in a recent decree¹, concluded a case law of considerable sensitivity², concerning the requirement of a minor's parents' consent to health treatments, situated within the distinctive framework of conscientious objection to blood transfusions. This case seems to present a «significant field of inquiry in relation to the balance between the protection of the right to religious freedom and the protection of the right to public health»³. This is a ground where determining «a synthesis between the inescapable requirements of the legal system and the pressing conscientious demands of the individual»⁴. In this particular case, the child was diagnosed with a severe heart malformation that required surgical intervention. It was highly probable that blood transfusions would have been necessary following the procedure. However, the hospital required parental consent for the operation. The parents stipulated their consent contingent upon the blood being sourced exclusively from donors who had not received a vaccination against Covid-19⁵.

The “Sant’Orsola Hospital” in Bologna, having represented the impossibility of guaranteeing such a selection of donors as well as adhering to the request to resort, on its own, to non-vaccinated donors – because this was a practice that did not conform to that dictated by international protocols – appealed to the tutelary judge of Modena ex art. 3, paragraph 5, l. no. 219/2017, requesting the urgent authorization of consent to the surgery and possible transfusion. The appeal also included the proposal of the appointment of a special curator in the person of the hospital director.

The tutelary judge, in a decree dated February 8, 2022, determined that conditional consent is tantamount to non-consent and thus appointed the director general as the minor's curator, authorizing him to express consent for the minor in the manner prescribed by law. The parents subsequently appealed this decision before the Juvenile Court of Bologna. In its subsequent decree, the court rejected their appeals, noting that

¹ See Italian Supreme Court, Civili 1st Section, Decree n. 2549, February 3, 2025, available in *www.dejure.it*.

² The story in its factual development is described by MARIANGELA GALIANO, *A proposito del rifiuto, religiosamente motivato, alla vaccinazione opposto dai genitori per i propri figli. Considerazioni a partire da un recente caso giurisprudenziale*, in *Diritto e Religioni*, XVII, 2022, 2, pp. 154-173.

³ Thus MARIA D’ARIENZO, *Vaccini anti-Covid e fattore religioso*, in *Milan Law Review*, II, 2, 2021, p. 39.

⁴ These words are by ANTONIO GUARINO, *Obiezione di coscienza e valori costituzionali*, Jovene, Napoli, 1992, p. 4.

⁵ About this issue, see DANIELA MILANI, *Vaccinazioni e bene comune: la prospettiva ecclesiastica*, in *Quaderni di diritto e politica ecclesiastica*, XXX, 2, 2022, 363-370. With regard to the case of the objection to the transfusion of blood with the blood of vaccinated persons, see DANIEL H. KIM, EMILY BERKMAN, JONNA D. CLARK, NABIHA H. SAIFEE, DOUGLAS S. DIEKEMA, MITHYA LEWIS-NEWBY, *Parental Refusals of Blood Transfusions from COVID-19 Vaccinated Donors for Children Needing Cardiac Surgery*, in *Narrative Inquiry in Bioethics*, XIII, 3, 2023, pp. 215-226.

it had previously intervened in the matter by suspending parental responsibility, which was subsequently revoked in May 2022.

The child's parents subsequently petitioned the Court of Cassation to review the decree issued by the Juvenile Court. In response, the hospital company filed a counter-appeal, along with a formal objection to the parents' appeal, citing the fact that the surgical procedure had already been performed prior to the filing of the appeal. The healthcare facility's rationale for undertaking the surgical procedure on the minor was articulated in court. The facility asserted that its actions were guided by medical protocols that precluded accommodation of the conditions stipulated by the minor's parents. Additionally, it was contended that the facility's actions were in accordance with the guidelines and the Council of Europe Recommendation on anonymous and periodic donation.

The Court of Cassation, on this point, ruled that when consent is made conditional on unacceptable conditions, the hospital will be legitimized to proceed with the surgery even without their consent. The parents' request was grounded in two fundamental convictions. First, the composition of the vaccine was of concern, particularly the alleged dangers of the spike protein, which was purported to be present in quantities above standard levels. Second, the request was based on religious grounds, as the vaccines were believed to be produced using cell lines derived from aborted fetuses. The parents argued that the inoculation of their children with these vaccines would constitute a violation of the Catholic Church's doctrine⁶.

The Court of Cassation, in denying the appeal, upheld the protective judge's determination that the parents' request was unreasonable, aligning with the predominant opinion within the scientific community that there is no distinction between blood from vaccinated individuals and that from unvaccinated subjects. The judges underscore that «the patient cannot demand that a health treatment be carried out in a manner contrary to professional ethics and existing health protocols, since this interferes with the physician's sphere of self-determination. The physician has a duty to follow the best clinical practices and established protocols to ensure the safety and effectiveness of treatment, even against the conditioned wishes of the patient or legal representatives». In resolving the conflict between the parents' and physicians' positions, the protective judge identified the child's best interests as determined by the available scientific literature and the protocols of the healthcare facility selected by the parents, ensuring optimal health outcomes for the child.

Furthermore, the Supreme Court determined that the interpretation of the guardianship judge regarding the religious objections raised by the parents was accurate and sufficient. The justices of legitimacy noted that

⁶ See KARIN M. DURANT, ASHLYN WHITESELL, KATHY D. DASSE, *A Review of Fetal Cell Lines Used During Drug Development: Focus on Covid-19 Vaccines, Transplant Medications, and Biologics*, in *American Journal of Health-System Pharmacy*, LXXXI, 13, 2024, pp. 336-344.

their authority did not extend to the examination of religious doctrine, although they did make reference to the documents of a Catholic Church Dicastery using the term «Vatican documents». They also cited the Catholic Church's stance on voluntary abortion and its subsequent condemnation of what is referred to as «passive material cooperation».

Furthermore, the Court acknowledges that Catholic doctrine has exceptions in this regard, citing the Congregation for the Doctrine of the Faith's «Note on the Morality of the Use of Certain Anti-Covid-19 Vaccines» of December 21, 2020⁷. This document, referenced by the plaintiffs, not only reiterates the favourable position on anti-Covid-19 vaccines but also clarifies that «when no ethically unimpeachable vaccines are available, are available, it is morally acceptable to use anti-Covid-19 vaccines that have used cell lines from aborted fetuses in their research and production process» and further that «the fundamental reason for considering the use of these vaccines morally permissible is that the kind of cooperation to evil (passive material cooperation) of procured abortion from which the same cell lines originate, on the part of those who use the resulting vaccines, is remote. The moral duty to avoid such passive material cooperation is not binding if there is a grave danger, such as the otherwise uncontrollable spread of a serious pathogen»⁸. Therefore, if the Church itself considers cooperation inherent in vaccinating to be remote, even more remote should be considered cooperation related to blood transfusions when there is no certainty about the donor's vaccine status and the type of vaccine received.

The Supreme Court also issued a ruling on the protection of the child's identity. The court's justices determined that the parents' legal action was erroneous due to their failure to recognize the need to preserve their child's religious identity while simultaneously imposing their own religious beliefs on the minor. Instead, the court determined that an individual's identity is defined by «the set of characteristics that represent man in his progressive becoming. It encompasses genetic, legal, and social dimensions, all of which contribute to the continuous and dynamic formation of one's personality». In this regard, the Supreme Court has established a precedent by affirming that, while parents bear the primary responsibility for their child's identity formation, as they are obligated to provide care, education, and transmission of their genetic heritage to their offspring, they must also act with respect for their child's abilities, natural inclinations, and aspirations⁹. From this perspective, the Court disengages from an «adult-centered» approach and a reified

⁷ Cfr. CONGREGATIO PRO DOCTRINA FIDEI, *Nota sulla moralità dell'uso di alcuni vaccini anti-Covid-19*, 21 dicembre 2020, in *Acta Apostolicae Sedis*, CXIII, 1, 2021, pp. 92-95; PONTIFICA ACADEMIA PRO VITA, *Riflessioni morali circa i vaccini preparati a partire da cellule provenienti da feti umani abortiti*, 5 giugno 2005, available in www.vatican.va.

⁸ Cfr. CONGREGATIO PRO DOCTRINA FIDEI, *Nota sulla moralità dell'uso di alcuni vaccini anti-Covid-19*, cit., p. 93.

⁹ See ANGELO LICASTRO, *Relazioni tra genitori e figli: il ruolo della libertà di religione e di coscienza*, in *Stato, Chiese e pluralismo confessionale*. Rivista telematica (www.statoechiese.it), 16, 2023, pp. 15-36.

conception of the minor – as a passive object of choices and decisions concerning their life – in favor of recognizing the minor as a subject of rights and freedoms. The orderly development of these rights and freedoms legitimizes the removal of any obstacles by legal representatives.

Indeed, even a child of tender years possesses innate inclinations and aspirations. Yet, far more significantly, they harbor profound potential for growth, which may ultimately lead them to embrace life choices – including religious affiliations – divergent from those of their parents. The latter, in turn, are bound by the duty to respect their child's autonomous determinations, for it is «inadmissible that parental decisions be so thoroughly dictated by their own religious convictions as to invariably and unconditionally override all other interests of the minor».

The judiciary, therefore, is entrusted with the paramount duty of safeguarding the superior interests of the child, which serve as the lodestar in the delicate equilibrium between parental religious orientations and the minor's fundamental rights and interests—chief among them, the right to psycho-physical well-being and the unimpeded, harmonious unfolding of their developmental trajectory¹⁰.

This decree thus inserts yet another piece into the intricate mosaic of inalienable human rights, reaffirming the necessity of balancing the underlying constitutional values at stake through a process of adaptation whose unifying principle must be the pursuit of the child's best interest. As a vulnerable subject in need of the broad protections that the Constitution ensures for their personal development, the minor stands at the heart of this legal framework¹¹, whose complexity is further heightened when the child's status intersects with the interplay between religious freedom and the right to health.

Nonetheless, this is an issue that, although resolved by the Supreme Court in a sense commensurate with the urgency of the case, seems to leave open two questions of no small significance. On the one hand, the court's decision appears to have a limited capacity to address the absolutization of medical protocols over religious freedom. It also fails to consider instances where balancing the performance of healthcare services with ethical and religious values of parents might be a viable option. Furthermore, the court's decision does

¹⁰ On this point, see MARIA D'ARIENZO, *Il minore come soggetto di diritto. Considerazioni introduttive*, in MARCO CROCE, ANTONIO GORGONI (ed.), *La tutela dei minori fra diritto e religione. Atti del Convegno di Firenze del 20 novembre 2023 nella Giornata Internazionale dell'Infanzia e dell'Adolescenza*, Nessun Dogma, Roma, 2024, p. 31 ff.

¹¹ According to PIERANGELA FLORIS, *Appartenenza confessionale e diritti dei minori. Esperienze giudiziarie e modelli di intervento*, in *Quaderni di diritto e politica ecclesiastica*, VIII, 1, 2000, p. 194, «once connected to the role of parent, even the right to religious freedom is bound to assume a relevance never full and direct, but only as a part or aspect of those rights-duties that belong to the parent as a whole, and that are both 'bound' in exercise to the care of the interests/rights of the offspring».

not adequately address the possibility of converting the legal obligation¹². In this case, the plaintiffs had committed to ensuring the transfusion on their own, in a manner compatible with the surgical procedure.

On the other, some perplexities of method and content related to the Supreme Court's assumption of competence to assess the degree of internal cogency or the level of obligatory perception of confessional indications in the soul of the faithful; the judges, indeed, asseverate, in support of the thesis of minimal cooperation to abortion, a kind of 'authentic interpretation' of the note of the Congregation for the Doctrine of the Faith, inferring cooperation of an even milder degree in the case of anonymous transfusion and, therefore, not traceable with certainty to a vaccinated subject. That seems to give rise to a distortion of the principle *iura novit curia* that could undermine the principle of the distinction of orders as enshrined in Article 7 of Italian Constitution.

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¹² As underscored by ANTONIO GUARINO, *Obiezione di coscienza e valori costituzionali*, cit., p. 60, «[...] the issue at hand concerns the efficacy of employing legal obligations to align the modalities of exercising constitutional freedoms with the particular obligations stipulated for the fulfillment of duties of solidarity».