

Mature minors and self-determination in medical consent law: a comparison between the Italian legal system and the English legal system

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Abstract. Italian Law no. 219 of 2017 reforms medical consent law and introduces advanced healthcare directives. No changes are made to general private law rules on children capacity, including medical consent within parental responsibility. In accordance with the recent innovations brought by the Italian reform of filiation, children have a right to be heard and express their own view on the treatment over their person, proportionately to their age and understanding. The paper criticizes the Italian medical consent law dispositions on children who have sufficient understanding. Making a systematic comparison between the Italian situation and the so-called *mature minor doctrine* in English law, the paper specifically examines the assumption that the child's right to be heard outside a judicial proceeding may be instrumental to assure self-determination of children within their fundamental rights of life, dignity and health.

Keywords: medical consent law, health decisions, mature minors, welfare principle, child's right to be heard.

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Children in the Italian private law: legal incapacity and its exceptions

In order to understand the legal treatment of children in medical consent law, one should be aware of the complications experienced within the Italian legal system in allowing children to self-determine, according to their age and level of maturity.

The Italian Civil Code - hereinafter referred as C.C. - introduces a fixed age limit - 18 years old - at which minors cease to be considered as such and are recognized before the law as capable of taking control of their own person and exercising most of their own rights. In meeting their parental responsibility for a child, parents represent them in all legal acts as long as the child is not legally competent. Designed as a protective measure, legal incapacity is mostly concerned with patrimonial interests (Venchiarutti, 1993; Alpa, 2013) and extends to ineffectiveness of contracts, lack of entitlement to apply to the courts and, widely speaking, the incapacity of making any harmful decision. Hence, rules such as Article 320, para. 6, C.C. establish the appointment of a special representative where a conflict of interest could arise between the parents and the child or between several children of the same parents¹. In compliance with Article 4 of the European Convention on the Exercise of Children's Rights², Article 79 of the Civil Procedure Code recognizes the child's right to apply in person for a special representative.

Besides, Italian law does not permit parents to act on behalf of a child in certain matters, regarded as "strictly personal", such as a will (Rescigno, 1988; Bonilini, 2010; Scalera, 2012).

Undoubtedly, in the process of decision making, parents should guarantee the participation of every child capable of forming their own view, even more if the determination involves the fundamental rights of the child. Literature supporting this interpretation dates back (Bianca, 2002; Bonamini, 2011). We will often refer to children who have reached sufficient understanding to be capable of forming and expressing their own view, despite their age, as mature minors. Italian private law comprehends just a couple of provisions allowing the child's maturity to be weighed in order to let them take some actions that would not be formally possible under full incapacity (Dell'Utri, 2008; Ruscello, 2011). Generally speaking, Article 2 C.C. admits the legislation to determine a different age at which a child may

¹ The doctrine extends it to any potential conflict with persons who are in an affective relationship to parents (Pelosi, 2012).

² Ratified by law 77/2003.

perform some specific activities effectively. Without any claim to be exhaustive, Italian law allows 16 years old to work and to register a patent and exercise all the rights coming thereof.

Specifically, provisions on marriageable age act as a perfect example of a system ensuring the mature minor's self-determination in referral to a "strictly personal act", such as marriage (Parisi, 2016). According to Article 84 C.C., the minimum age for marriage coincides with the age of majority and is set at 18 years. However, children are allowed to marry at 16 with a judicial consent. The child concerned is autonomously and exclusively entitled to apply to the court. In this context, the judge acts as an impartial third party. Although the law requires the existence of serious grounds to anticipate marriage, both doctrine and jurisprudence curb the extent of the judicial exam, which should only verify that the child has reached a level of maturity that makes them capable to consent to marriage as if they were of full age and that their will is freely expressed, absent any constraint or pathology (Stanzione, 2003; Scia, 2018). When they marry, the minor becomes emancipated (Article 390 C.C.). The law limits emancipated minors' capacity only in referral to propriety and contracts (see, Article 394 C.C.). Thus, the doctrine believes that the emancipated minor must be fully deemed as competent to act and consent in the personal sphere (Cattaneo, 1991; Naddeo, 2016). A last note: looking at anticipated marriages as antiquated and infrequent events (Casaburi, 2016), the recent Italian legislation on civil unions for same-sex couples sets the minimum age at 18, without any room for dispensation (Article 1, para.2, Law 76/2016).

The Child's Right to Be Heard

In the 19th century, conventional law affirmed children as subject of rights, drastically changing national family laws (Flick, 2015).

Self-determination of children who have sufficient understanding mostly emerges as a State obligation to take all appropriate measures to ensure their opportunity to be heard in any judicial and administrative proceedings affecting them. For instance, the "right of the child to be heard" gets addressed by Article 12 of the UN Convention on the Rights of the Child (UNCRC)³. Paragraph 1 assures to every child capable of forming his or her own views, the right to express those views freely in all matters affecting them. In accordance with their age and maturity, the views of the child must be given serious consideration in decisions that affect their lives. Paragraph 2 guarantees that the child be afforded the right to be heard in any judicial or

³ Ratified by law 176/1991.

administrative procedure that have either a direct or an indirect impact on them. European law protects the child's right to be heard in Article 24 of the Charter of Fundamental Rights of the European Union and lists its violations as a ground of non-recognition for judgements relating to parental responsibility (Article 23 Reg. (EC) No. 2201/2003).

National law has faced some difficulties in implementing the child's right to be heard, mostly related to the originality of the institution and its extraneousness to the evidence system: the hearing is not supposed to prove an element of the claim but aims to acquire the opinion of a subject whose vulnerability requires the decision to be made in their interest (Ruo, 2012). Moreover, most jurisdictions lack a coherent, accessible and age-appropriate informative system (FRA, 2015).

In the Italian legal system, the child's right to be heard is first taken in consideration by Article 6, para. 9 of Law 898/1970⁴ as a discretionary tool in divorce proceedings. Ten years later, adoption law prescribes hearings of children over 12 - and even younger, when capable of sufficient understanding - as compulsory in declarations of adoptability, foster-care decisions and adoption orders⁵. However, adoption law does not contain any practical arrangements, such as directives on how, when and where the hearing will take place.

Aspiring to grant the child's right to maintain an effective and balanced relationship with both parents (Sesta, 2006), the Law no. 54 of 2006 affirms joint custody as a rule and generalized the hearing of children in civil matters relating to the attribution and exercise of parental responsibility, as a consequence of the parents separating. Resort to child's hearings is left to the judge's individual choice, as a way of strengthening information upon which to base their decision (Di Gregorio, 2013).

The hearing shapes up to be a legal right of children just in 2013 (Acierno, 2014; Ferrando, 2017), with the innovations brought by the Italian reform of Filiation (Law no. 219 of 2012 and Leg. Decree no. 154 of 2013). Articles 315-*bis*, 336-*bis* and 337-*octies* C.C. together codify every child's right to be heard in judicial or administrative proceedings affecting him or her, once he or she reaches the age of 12. Children under 12 years old who are capable of forming their own view share the same right.

Anyhow, the law does not contain any clear-cut answers about the practical arrangements for the hearing, so the child is not in the position of knowing what to expect. According to Article 336-*bis* C.C., the judge is meant to "lead the hearing", while the law simultaneously allows them to resort to external experts. Recently, the Italian Supreme Court interpreted the

⁴ Repealed by leg. decree 154/2013.

⁵ Articles 10, 15, 22, 23, 24 Law 184/1983.

hearing as a “direct relationship” between the child and the judge, excluding that it may be absorbed in the exams conducted by any qualified expert appointed as advisory by the Court⁶.

Since the right to be heard qualifies as instrumental to pursuing the best interest of the child (Cavallo, 2012; Danovi, 2014), the hearing can be avoided only in cases in which it could be harmful to the child’s welfare or manifestly unnecessary (Article 336-*bis*, para. 1, C.C.). Therefore, the hearing is compulsory whenever the child is indeed capable of forming their own view, presuming that they are once they reach the age of 12, but extending the obligation to all cases in which the child has a sufficient understanding of the matter that affects them, accordingly to their age and level of maturity (Bonafine, 2017). Nevertheless, the law does not contain any provisions on the consequences of the violation of the right of the child to express their view. According to the settled case law of the Italian Cassation Court⁷, omission of hearing of a mature child leads to the nullity of the entire proceeding, rendering the decision void. The amount of legitimacy decisions on the matter testifies how often first instance courts do not qualify the child’s hearing as a right and leave children out from matters that have a direct impact on their existence.

In addition, the child’s right to be heard comprehends a legal obligation to give due weight to their expressed view, in accordance with age and maturity. This means that it is not sufficient that the judge listens to children, but it is also necessary that they take the children’s perspective in serious consideration when making the decision⁸. Unfortunately, a recent inquiry by the European Union Agency for Fundamental Rights (FRA) shows that the experiences of children involved in judicial proceedings in nine EU Member States are often not positive. Just 50% of the children interviewed felt the decision as conforming to their expressed view (FRA 2017, at 50), while 21% declares that their experience made them feel like they were not listened to at all and held to be true that judge had already made a decision, regardless their opinions. Moreover, none of the considered jurisdictions provided for the children to be assisted in the proceedings by their own counsel (FRA 2017, at 54), leaving their trial representation to their parents’ lawyers, which is often perceived by children as a conflict of interest.

⁶ See, Cass., 24.5.2018, no. 12957.

⁷ See, *inter alia*, Cass., 21.10.2009 no. 22238; Cass. 29.9.2015, n. 19327; Cass. 7.3.2017, n. 5676; Cass. 24.5.2018, n. 12957; Cass., 9.10-13.12.2018, n. 32309; Cass., 17.4.2019, n. 10774.

⁸ See, *inter alia*, Cass., 17.5.2012, n. 7733; Cass. 15.3.2013, n. 6645; Cass. 15.5.2013, n. 11687; Cass. 5.3.2014, n. 5237; Cass. 9.6.2015, n. 11890.

Newly introduced rules anticipating capacity on specific matters in both European and Italian Law

The European General Data Protection Regulation (Reg. (EU) no. 2016/679) contains a provision which holds the personal data processing of a child lawful, in relation to the offer of information society services directly to the child - *i.e.* social networks - where the child who gave consent is at least 16 years old. Article 8, para. 1 of the GDPR allows for Member States to provide by law for a lower age, but not lower than 13 years old, introducing a so-called “*age of digital majority*” (Nitti, 2018 at 380). The Italian legislator has exercised the integrative power within the legislative decree no. 101 of 2018, making the child’s consent lawful if he or she is at least 14 years old. The choice of fixing a lower age at 14 is not consistent with the entire system on anticipated capacity, which is usually set at 16, as properly observed by the Italian Authority for Children and Adolescents (AGIA) when called to a compulsory report on the law proposal (AGIA 2018 at 4).

More generally, the European choice of providing a fixed term on children’s digital capacity is not convincing, since there is no overall consideration of the level of understanding of minors within the Regulation. In addition, the GDPR allows parents to consent to personal data processing for children of lower age, so that digital consent appears as an act that is not “strictly personal”, ultimately possible even though the minor has no understanding at all. The doctrine fiercely criticizes the rule as seemingly more protective to service providers than children (Bravo, 2017).

Recently, Italy adopted a legislation on cyberbullying (Law no. 71 of 2017). The law defines cyberbullying as comprehending a wide range of repeated activities and behaviors on the internet which constitutes harassment - such as posting rumors or personal information or making threats - with the intent to harm the child’s self-esteem, alienate them from their peers and instill a variety of negative emotional responses or any kind of psychical distress. Article 2, para. 1 l. n. 71/2017 - titled to child’s dignity - permits to victims who have reached the age of 14 to ask the information society service provider to obscure, remove or block any illicit content on their own. If the provider does not take care of the complaint within a 48-hour time limit, the minor is entitled to resort to the Italian Data Protection Authority, according to articles 143 and 144 of the Personal Data Protection Code (Legislative Decree no. 196 of 2003).

In the end, the current Italian legislation acknowledges a limited capacity of children over 14 - extended to the right to bring action - in relation to the protection of their personality, image and privacy on the Internet (Bocchini

& Montanari, 2018). In addition, courts increasingly value the opinions of mature minors to inhibit parents from spreading personal information and images of children on social networks (Nitti, 2018).

The legal position of children in the Italian law no. 219 of 2017 on medical consent

Law no. 219 of 2017 reforms Italian medical consent law and introduces advance healthcare directives. It fills a gap in State legislation, which in the past led some Regions to try and enact provisions on advance healthcare directives, whose unlawfulness was then promptly declared by the Italian Constitutional Court (Cinà, 2018).

First of all, Article 1 of Law 219/2017 states that “informed consent” - *i.e.* the process of getting permission before conducting a medical treatment on a person, by disclosing all the relevant information - implements a series of fundamental rights, such as a person’s right to life, health, dignity and self-determination, contained in both the Italian Constitution and the Charter of Fundamental Rights of the European Union. Therefore, consent must be given freely, after being duly informed of the nature, significance, implications and risks of the treatment (Dalle Monache, 2018). According to the doctrine, that unequivocally qualifies medical consent as an inviolable fundamental right (De Filippis, 2018; Adamo, 2018).

By linking self-determination in health decisions to human dignity, the law guarantees that any action on the patient’s body “*respects his soul*” (Cacace, 2018 at 936). Accordingly, the law affirms how forcing the patient to remain in a condition between “*not-life and not-death*” (Rinaldo & Cicero, 2018) violates human dignity. Thus, Article 1, para. 5 l. no. 219/2017 comprehends artificial hydration and feeding among procedure that can be lawfully refused, by that legitimating the so-called passive euthanasia.

However, the law appears inconsistent when it comes to legal treatment of children. Prior to Law no. 219/2017, the lack of a provision that recognized a conflict of interest and consented to give mature minors a progressively increasing role in the medical decisions affecting them, simultaneously decreasing the representative powers within parental responsibility (Figone & Ravot, 2016) arguably disregarded children’s self-determination⁹, which was gaining an increasing role in international law

⁹ See, Trib. Min. Milano, 15.10.2010 and Ruo 2015. The latter is a paper analyzing a court order which authorized a parent to consent to the treatment for sex reassignment of their mature child, affected by Gender Identity Disorder.

(Ruscello, 2011). Italian law comprehends some hypotheses where minors can autonomously make health decisions. First and foremost, Italian abortion law (Law no. 194 of 1978) enables the prescription of contraceptive to minors. A girl under 18 can also consent to abortion treatment, an act in which the self-determination of the woman¹⁰ is crucial (Farace, 2018). Parent's approval is required when the girl is underage. A judicial order may take its place: in that case, the judge shall only verify that the girl has sufficient understanding and the decision was taken freely, thus authorizing the girl to consent. In no case, the court can disregard her will (De Pamphilis, 2017). Minors who are about to give birth can also consent to the donation of stem cells, cord blood and placental blood (Article 3, l. no. 219/2005). In addition, the law allows minors to access to drug abuse treatments (Article 95 of Law no. 685/1975, as changed by Law no. 162/1990), with absolute protection of their privacy (Brandani & Navone, 2009).

Moreover, article 3 of Law no. 219/2017 addresses the medical consent of people who lack capacity and establishes the same discipline for persons who are unable to make the decision for themselves by reference to age or by an impairment in the functioning of the mind. According to Article 3, people who lack capacity hold a right to see their reduced understanding matter in the process of making a health decision that affects them. The principle recalls the fundamental right to self-determine held in Article 1 of the same law. Therefore, children must receive all the information about their health condition, provided in an age-appropriate way. The information must be communicated also to the parents, but they cannot interfere with the informative duty, for instance, by asking the clinicians to dismiss some details about the child condition (De Filippis, 2018).

However, Article 3, para. 2, postulates that the informed consent to a medical treatment over a child is expressed by their parents, with no exceptions. Children who have sufficient understanding shall express their own view within their right to be heard. In the end, the law presumes that the parents' decision is taken in accordance to the child's will (Bozzi, 2018), hoping that they will respect the idea of parental responsibility as intended to realize the child's desire and attitudes in Article 316 C.C. In addition, the law prescribes that parents decide accordingly to children's health and life right and their dignity; strangely, there is no mention of their best interests (Article 3, para. 2 l. no. 219/2017).

The legal treatment of children raises some concerns.

¹⁰ Self-determination of the woman in consenting to abortion treatments is a right that excludes any interference; see, Corte Cost., 19.7.2012, no. 196 and Cass., S.U., 22.12.2015, no. 25767.

We have already seen that even in judicial proceedings the hearing of a child may not be effective in guaranteeing their opinion to matter. The child's right to be heard appears as a weaker tool outside the courts of justice (Dell' Utri, 2008), where there is no mechanism to control if the children expressed their views, nevertheless if their opinion was taken into consideration.

Moreover, the law does not contain any provisions on conflict of interests. This circumstance also excludes the application of rules on children's entitlement to apply to the court for the appointment of a special representative. By that, the law ignores that the parents are not an impartial party in health decisions over their children, since their emotive response and their own beliefs may have an impact (Amran & Comandè, 2018). Besides, the law seems blind to the fact that litigation between parents and between parents and clinicians on health decisions over children was already frequent (*i.e.* disagreements on traditional medicine¹¹, religious sensitivities¹², diet¹³).

Article 3, para. 5, l. 219/2017 entitles the clinicians to apply to the court if the minor representative withholds consent to treatment, whenever they feel that the treatment is necessary. The provision raises a couple of perplexities. First, it applies to any refusals and not only to life-saving treatments. Secondly, it provides a distinction between consent and refusal, since only the latter may be judged. Thirdly, it seems to treat clinicians as third parties, underestimating the role that both law and ethical duties imposes to doctors in preserving people's life¹⁴. Lastly, we must consider the possible interpretations of the expression used in the legislation: "*if the clinicians deem the cure as necessary*". The sentence may surely be read as involving a consideration of the child's welfare. However, it does not undoubtedly give the clinicians the possibility to apply to the courts just to make them aware of a contrast between the parents' expression of consent and the child's will, except for cases where parents object to a treatment that the child wants to authorize¹⁵.

Ultimately, the law is not clear in relation to children's refusal of life-saving treatments. Article 3 l. 219/2017 does not recall the rule on patient's possibility to object to any medical treatments, including life-saving ones,

¹¹ See, Trib. Roma, 16.2.2017 on homeopathy.

¹² See, Trib. Roma, 30.6.2017 on the damages claim brought by a Jehovah's witness against the clinicians who disrespected her parents' refusal of a blood's transfusions.

¹³ See, Trib. Roma, 7.10.2016 on the contrast between parents in prescribing a vegan diet to children.

¹⁴ See also, Article 3 of the Italian Code of Medical Ethics.

¹⁵ See also, Article 37 of the Italian Code of Medical Ethics.

which is prescribed for people who have full capacity in Article 1, para. 5, of the same law. A restrictive view may lead interpreters to exclude life-saving treatments from the cures that can be refused when people lack capacity. This interpretation is not convincing, in light of the principles contained in the Constitution and in the law itself. In particular, it would lead to the total annihilation of the self-determination of mature minors (Dalle Monache, 2018), by denying rationality and legitimacy to the rejection of life-saving treatments of children who are of fully understanding and in proximity to the age of majority¹⁶, except where they obtained legal emancipation thanks to marriage.

Finally, children are excluded from the application of advance healthcare directives, for which the age of majority is required, according to Article 4 l. 219/2017.

The *Gillick* case: children competence to authorize medical treatment in English law

Current English law on children's capacity to authorize medical treatments is based upon the 1986 House of Lords' decision of *Gillick v West Norfolk Area Health Authority*. Section 8 (1) of the *Family Law Reform Act 1969* already allowed a minor who has attained the age of 16 to give an effective consent to any surgical or medical treatment, as if they were of full age. The case questioned the lawfulness of a circular issued by the Department of Health and Social Security, enabling the prescription of contraceptive or abortion treatment to a girl under 16 without parental consent.

The first issue addressed by the Court within *Gillick* was the extent of parental rights. According to the child's welfare principle¹⁷, the Lords denied the idea of parental rights as authority over the child and affirmed them to be a responsibility (Davies & Basuita, 2017), which faces a gradually

¹⁶ A recent case involved a 17-year-old girl who was recognized by courts as a mature minor and firmly objected to treatments for leukemia. Both her and her parents rejected traditional medicine and adhered to the theories of Ryke Geerd Hamer, who holds psychological traumas to be the cause of cancer. Taking into consideration the opinion of the girl, the court appointed a special representative and authorized the parents to move the girl to Switzerland to have access to alternative cures. The girl died a few days after getting to the age of majority. Parents are now on trial for murder; see Cass. Pen., 11.2.2019, no. 6432.

¹⁷ Also known as *best interests of the child*, the principle was first stated in English law here and shaped the following statutes, particularly the *Children Act 1989*; see Lowe & Douglas, 1998.

decreasing role as the child's capacity evolves (Probert, 2012). From this angle, the legal presumption on children's incapacity cannot work as a blank wall, preventing adolescents from pursuing their welfare on their own whenever they appear mature enough to fully understand the matter and give a valid consent to the procedure (Fitchett, 2010).

Therefore, the House of Lords regarded minors under the age of 16 as capable to authorize medical treatments in their own rights and established a test by which clinicians and courts could measure children's competence. In the majority opinion, Lord Scarman stated that a minor must demonstrate "*sufficient understanding and intelligence to enable him or her to understand fully what is proposed*"¹⁸, in order to be held competent to decide. Hence, whenever a medical treatment involves a minor, clinicians shall first evaluate if the child can be deemed as capable of forming their own view, according to *Gillick*. Consequently, they shall obtain parents' or guardians' consent just in case the minor appears "*Gillick incompetent*" to them; otherwise, they shall regard as effective the minor consent to medical treatment.

Gillick became a landmark decision¹⁹. It crystallized the so-called "*mature minor*" doctrine and led interpreters to address the subject as "*Gillick competence*". Following this new elastic rule on medical consent (Lewis 2001), Sections 8(1) and 10 (8) of *Children Act 1989* entitled the child concerned to apply to the court, in order to obtain a *prohibited steps order*, i.e, a ruling preventing the parent to exercise parental responsibility in connection to the activity specified in the order.

Subsequent judicial interpretation of *Gillick* circumscribed some of its statements, aggravating the legal position of competent minors.

First, in *Re R (A Minor) (wardship: consent to treatment)* the Court of Appeal held that the parents share a concurrent power to consent until the competent child reaches the age of 18. Judges retained that only a withholding of consent by all having that power would create a veto for clinicians. Hence, they ordered a 15-year-old girl who suffered from suicidal tendencies to be subjected to the medical treatment to which she objected and her parents consented, since her "fluctuations"²⁰ in mental capacity interfered with her competence²¹.

¹⁸ *Gillick v West Norfolk and Wisbech Area Health Authority & Anor*, at 189.

¹⁹ See, *inter alia*, Fortin, 2011, Ramchand et al. 1990.

²⁰ Judges wrote that "*her fluctuating mental condition meant that she could only meet the criteria on a "good day"*", [1993] Fam 64 (Court of Appeal), at 86.

²¹ The case creates a disparity between the way in which law treats competent children and mentally ill adults, since the latter are held able to make their own decisions in moments of sufficient lucidity (Murphy, 1992).

Secondly, the law courts restricted the powers of competent minors in refusal cases. In *Re W (A Minor) (Medical Treatment: Court's Jurisdiction)*²², the Court of Appeal ordered that a 16-year-old girl suffering from anorexia be transferred against her will to a hospital specializing in eating disorders. The Court overthrew the girl's refusal - although finding her of sufficient intelligence and understanding to make informed decisions - by exercising its unlimited inherent jurisdiction in asserting the minor's best interests²³.

Consequently, the English mature minor doctrine currently recognizes competent children as autonomous medical decision makers for the purpose of consent, while it considers their refusal rebuttable by both courts and parents²⁴. The doctrine regards the situation as inconsistent (Devereux, Jones, & Dickenson, 1993; Heywood, 2009; Cave, 2014), since it seems to inherently presume the rationality of consent and at the same time deliberately exclude lucidity in refusal cases.

Except for the United States, where State courts adopt divergent approaches to mature minors (Benston, 2016), *Gillick* and its subsequent interpretation is considered good law in many common law jurisdictions, such as New Zealand (McLean, 2000) and Australia (Lennings, 2015).

Conclusion: Is Italian medical consent law deaf to children's needs?

In Western law countries, the law traditionally presumes that parents exercise parental responsibility in accordance to the child's best interest.

²² See, *Re W (A Minor) (Medical Treatment: Court's Jurisdiction)*, All ER 627, [1992].

²³ English Courts advocate the final word in the child's best interest, by acting as an ultimate guardian. The power derives from the 1722 decision *Eyre v. Countess of Shaftsbury* and it is also known as the *parens patriae* doctrine (Black's Law Dictionary, 1979). Recently, a best interest case involved an infant boy named Charlie Gard, born with a rare genetic disorder that has no acknowledged treatment. In June 2017, the UK Supreme Court disagreed on an experimental treatment being in the best interest of the child and ultimately ordered mechanical ventilation to be withdrawn. Parents' appeal to the European Court of Human Rights was declared inadmissible (see Falletti, 2017).

²⁴ British Medical Association identify Scotland as the only jurisdiction within the Kingdom where neither statutes or case law allow competent children refusal to be rebutted; <https://www.bma.org.uk/advice/employment/ethics/children-and-young-people/children-and-young-peoples-ethics-tool-kit/4-consent-and-refusal>.

Jurisdictions are usually more careful about recognizing children to self-determine, proportionally to their gaining a sufficient understanding to be able to form and express their own view, in relation to age and maturity level.

The principle of the child's welfare is first affirmed in English law exactly in relation to the opportunity to enable mature minors to consent to medical treatments.

The legal position of children in health decisions in Italian law does not appear as solid.

Although some recent interventions allow children to self-determine, particularly in relation to their privacy and personality rights on the internet, no influential changes have been made to the civil code's rules on legal incapacity. Other exceptions, such as marriageable age, are in the civil code from the start and equip minors with the entitlement to apply to courts to have them verify - as a third and impartial party - the capability to form an independent opinion and express an effective and free consent.

Mostly, mature minors may have a chance to see their opinion matter through their right to be heard, which is prescribed in every judicial and administrative proceeding that affects them.

From that perspective, the Italian law on medical consent seems to lack in the implementation of the constitutional principles that it follows. After stating that informed consent is a fundamental right, it addresses the child as holder of the information needed to form their own will, in a way that is appropriate to their age and in accordance to their understanding. However, the discipline outlines great chances for the mature child's will not to enter the decisional proceeding.

On the one hand, parents represent them fully, with no exceptions. On the other hand, the law recognizes them the right to be heard, which appears insufficient to assure their view is properly taken into consideration. As a matter of fact, the absence in law no. 219/2017 of provisions that avoid conflicts of interest and entitles the mature minor to apply to the judge whenever they feel that the consent given or withheld by the parents does not reflect their will is a serious concern. Hence, the legal treatment of mature minors in Italian medical consent law emerges as weak, thus threatening the purpose of the law itself and its conformity to the child's best interest.

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