

LEGA NAZIONALE CONTRO LA PREDAZIONE DI ORGANI E LA MORTE A CUORE BATTENTE

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APPEAL TO THE SUPREME COURT

ROCCO BARLABA' CONTINUES TO LIVE IN THE COURTS

His parents opposed the explant of their 16 year old son's organs. The doctors boasted about being able to overcome the opposition to an explant/transplant with an autopsy.

The 'Lega Nazionale Contro la Predazione di Organi' declared that carrying out the threatened autopsy on a patient with a still beating heart would be illegal and therefore a criminal act by present law

There has been a tug of war since June 1994 when Rocco fell off his bicycle on his way home from school. He was subsequently admitted to the 'Martini Nuovo' hospital in Torino on 8th June 1994 and that very afternoon he was considered to be in an irreversible coma and a request was made for his organs. His family was strongly opposed to the explant and the whole population of Grugliasco (Torino) rose together to stop the surgeons' knife. Anxious friends and relatives publicly denounced the aggressive attitude of the hospital staff after the refusal to donate Rocco's organs.

Prof. Gorgerino, who was both head of Intensive Care and head of 'Aido Piemonte' (organ donation association) at the time, talked to the press about Rocco during a 'Lions' convention about "organ transplants" at Torino Esposizioni (11.06.1994). The same evening the case was reported on the news and the next day it was reported in the national newspapers. The professor and other doctors declared that they had the right to carry out an autopsy on brain dead patients (*but with a still beating heart*) which would enable them to bypass the law and overcome the parents' veto to explant.

Gorgerino issued a strongly worded statement reported on the press and media: "*..four people have been sentenced to death due to this 'refusal'..*". This caused a great deal of upset and Rocco's parents declared: "*The doctors were persistent, they asked us for the organs four times and told us in a threatening manner that if the magistrate were to order an autopsy, organ removal would be possible without our consent*".

A national dispute ensued and the Barlabà case came about.

Gorgerino quoted article 10 of the DPR 409 of 1977, first to journalists and then later to magistrates, but omitted part of it and in doing so made an authoritative explant seem to be legal. He thus destabilized the interpretation of law and sowed seeds of panic about the effectiveness of opposition.

On the contrary, neither judges nor doctors can deny or refuse one's right to oppose explant as this is sanctioned by law. Neither can they impose autopsies on non-donors who are on ventilators.

The intervention of the 'Lega Nazionale Contro la Predazione di Organi e la Morte a Cuore Battente' was unavoidable. The organization sent a fax/appeal to both to Intensive Care and to the Hospital Director. A copy was also sent to the 'Procura' (Public prosecutor's office) which read "*...Carrying out an autopsy and enforced organ removal on a patient on a ventilator with a still beating heart by citing art. 10 of the DPR 409/77, is as fraudulent as it is illegal because article 10 refers to post-mortem examinations according to Law 83 of 1961 (before the definition of brain death existed)....This type of enforced autopsy refers to autopsies carried out on patients who have died from cardiac arrest and respiratory failure (stone cold).*"

Extending article 10 to cover those in a so-called irreversible coma is anti-constitutional, illegal and criminal". This was the core of the intervention by the 'Lega Antipredazione'. This was followed by appeals to the 'Procura', to avoid the illegal autopsy and to investigate into Rocco's condition as he was described from the first day by the press as being "brain dead" even though he was still in Intensive Care 6 days later.

Both the Lega Antipredazione and its president N. Negrello were cited for damages to the reputation of Prof. Gorgerino in January 1996, almost two years later. This was based on words extracted from complex legislative/medical documents sent to the authorities before and after Rocco's death.

There then followed countless hearings and testimonies over the subsequent 5 years. Gorgerino admitted having previously carried out an explant, despite opposition, by resorting to carrying out an autopsy on a patient with a still beating heart (the Farolfi case in 1987 which was in itself object of a highly charged national debate).

On delivering his judgment 17/05/2000, the monocratic judge recognized that there was a lot of public interest in the case but considered the appeals made by the 'Lega Antipredazione' to be denouncements against the work of doctors. This misinterpretation upheld the impression that there had been an omission of 'the truth of facts' and lack in 'ascertain the truth' by our organization, strengthened by the fact that no explant had, in the end, been carried out on Rocco. Therefore, despite the amount of public interest, the first judgment directed both the 'Lega Antipredazione' and N. Negrello to pay compensation of 30 million lire plus expenses (the doctor had requested 100 million lire).

The **Court of Appeal** had to examine the first judgment which, by its own admission, had combined the wording extracted from our appeals and subverted the chronological order to form a condensed report. There is no doubt whatsoever that this was to good effect but it was not truthful and ignored most of the arguments of appeal put forward by the 'Lega Antipredazione'. All the assessments contained in the first judgment were upheld.

Moreover, the fact that the doctors had threatened to perform an autopsy with the aim of carrying out an explant on a beating heart patient (which was the reason for our intervention to the 'Procura' and the press in the first place) was ignored.

It is decidedly worrying that neither the first nor second judgment responded to our many warnings on the deliberate omission of part of article 10 of the DPR 409/77 even in the legal procedures.

Besides it is interesting to note how, according to the Court of Appeal: "*The reason that a team was not on hand to declare Rocco to be brain dead was because this was not necessary as the explant process had not begun*". This interpretation is contrary both to the law and to the information contained on the web site of the Health Ministry.

In any event Rocco was declared to be 'brain dead' without the 'ascertainment' compulsory by law.

The Court rejected the appeal and endorsed the first judgement (published 16.05.2006): the compensation today totals 43.830,60 Euros.

It was therefore unavoidable that **we appeal to the Supreme Court for violation of the law and omission and insufficient motivation.**

Avv. Monica Della Gatta del foro di Torino, who had handled our defence since the previous hearings, is primarily asking for the sentence to be quashed, with the decision that neither the 'Lega Antipredazione' nor N.Negrello owe anything to Prof. Gorgerino, or alternatively, that the case should be quashed, with adjournment to the Court of Appeal.



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