

LE DIRETTIVE ANTICIPATE SUI TRATTAMENTI SANITARI: PROFILI CIVILISTICI

Teresa Pasquino*

Abstract. The Living will, contained within the document of the National Bioethics Committee of December the 18th 2003, is defined as "a document by which a person, with full capacity, expresses her own will regarding the treatments that she wants to or does not want to be subjected to in the case that, in the course of an illness or due to a sudden trauma, she were incapable to express her own consent or informed dissent".

The power of self-determination and the principle of autonomy find their concrete implementation in the power of choice of the means by which a person can give relief to her own will in order to consent or dissent to medical treatment that might concern. More specifically, it concerns statements of intent expressing a consensus or a rejection, or even a partial consensus and/or limited consensus that would coexist with a refusal also partial and/or limited. It is by the performance of an act having prescriptive function that the person may, in fact, make decisions in the sense of consenting or refusing medical treatment on her body, depending on whether or not such treatments are performed in line and in full respect of the her own concept of self-identity or of one of several profiles which also her identity can assume in relation to the concept of dignity characterizing her social and individual existence .

Due to the absence of an ad hoc legislation, it is unavoidable to query about the identification of the normative reference points applicable to the previous directives whether they are conceived as a mere legal acts in the strict sense or negotiation acts; especially in the latter case, it seems necessary to address and preliminary resolve those profiles which are compatible with the mandatory provisions and the binding principles regarding the declarer's ability to act, the content of the statement itself and the possibility of its withdrawal, and finally, the form that such statements should take.

* Università degli studi di Trento.