

Abortion and privacy: the importance to respect maternal choices regarding the burial of the fetus.

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Abstract. A recent Italian legal matter has raised the issue of fetal burial together with respect for maternal privacy and consent. Although the case was closed with a dismissal after the Public Prosecutor's request, it nevertheless raises important reflections on the issues of the moral value of the embryo, the mourning to be recognized to fetal death and the necessary respect for maternal choices.

Key words: Fetal burial; legislation; abortion; privacy violation; maternal consent; ethics; legal matter

One of the most discussed events in the Italian judicial reporting of recent years, relating to the burying of a fetus with the indication of the mother's name without the latter's consent, has ended with a judgment of dismissal.

A legal matter began in 2020, when a woman visiting the Prima Porta cemetery in Rome came across the "tombstone" of a fetus, noting that her name and surname were written on the wooden cross without her, at the time of the interruption of pregnancy, having signed any consent to this funeral practice and, even less, to having the burial associated to her name.

The issue, which raised inquiries about privacy violation, was exacerbated when other women accidentally discovered their names on fetal burials, on which a cross had been affixed. In this way, an ethically sensitive question linked to a highly divisive issue such as the voluntary interruption of pregnancy was enclosed within the Catholic symbolic horizon. Even if this choice is justified with the consideration that Catholic symbols would not only have a religious but also a cultural meaning, the display of a symbol (the cross) always has the purpose of impressing an identity and affirming a precise message of belonging (1).

The National Mortuary Police Regulation (Italian Presidential Decree No. 285 of 10 September 1990) provide that the "*products of conception under 20 weeks of gestation are buried only at the request of family members*". Otherwise, they are considered 'abortive products' and "*treated as special hospital waste by the Local Health Authority (ASL)*". From the 20th to the 28th week of gestation, the Regulation provide that fetuses "*are buried at the request of family members or, in any case, on the disposition of the Local Health Authority*". Upon express indication of the mother, it is also possible to add the name and surname on the tombstone.

In the case herein presented, the Rome Penal Court, excluding the willful misconduct, even if finding the consequence of an erroneous practice determined by a legal vacuum, dismissed the case after the Public Prosecutor's request. Regardless of this judicial outcome, the case calls for important reflections on an issue that continues to be discussed and which concerns, in addition to the moral value of the embryo (2), one of the most personal and intimate moments in a woman's existence and which can lead to great suffering. In some cases, municipalities or hospitals allow third parties - often associations with a declared

ideological position - to proceed with the burials and the related accompanying rituals.

The possibility of offering burial to the fetus can represent the recognition of a prenatal bereavement that is often not adequately considered and, also for this reason, even more difficult to process. At the same time, equal attention and respect must also be recognized for those who prefer to remove the pain and suffering, which the rituals of burial could also exacerbate (3,4). The constitutional principle of secularism imposes “impartiality and equidistance concerning each religious confession” (5).

In excluding ideological approaches, it is necessary to identify forms of protection for prematurely interrupted human lives, that are shared, respectful of the principle of secularism and equality, as well as the intimacy of the choices that most mark our existence and give life to our humanity, and the different positions that can be expressed by mothers.

References

1. Morelli A. Simboli, religioni e valori negli ordinamenti democratici. In: Dieni E, Ferrari A, Pacillo V (a cura di). *I simboli religiosi tra diritto e culture*. Milano: Giuffrè; 2006.
2. Patuzzo S, Goracci GB, Gasperini L, Ciliberti R. 3D Bioprinting Technology: Scientific Aspects and Ethical Issues. *Sci Eng Ethics* 2018; 24(2):335–48.
3. Tesi C, Licata M, Picozzi M, Ciliberti R. The fate of stillborns. Perceptions from a historical, anthropological, and bioethical reasoning. *J Matern-Fetal Neonatal Med* 2021; 2:1–6.
4. Fulcheri E, Buffelli F, Fiore C, Izzotti A, Piccardo MT, Chiozza MB, Petralia P, Ciliberti R, Bonsignore A. Considerations about the burial of fetuses of less than 20-weeks gestational age. *Pathologica* 2022; 114(3):238.
5. Di Cosimo G. Sepoltura dei feti abortiti e fattore religioso. *BioLaw J* 2021; 2:107–11.

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