

## ***Religious Freedom and the Refusal of Blood Transfusions: Analysis of the Recent Case of Pindo Mulla v. Spain by the European Court of Human Rights***

In the recent judgment of *Pindo Mulla v. Spain* on September 17, 2024, the European Court of Human Rights addressed a complex issue regarding the refusal of blood transfusions on religious grounds by a Jehovah's Witness.

The applicant, a Spanish citizen and member of the Jehovah's Witnesses religious movement, was subjected to blood transfusions following her emergency hospitalization due to a post-operative complication. However, she had clearly and previously expressed her refusal to undergo such treatment by drafting two documents in accordance with Spain's *Ley* 41/2002, which governs advance directives. In the first document, an advance medical directive (*documento de instrucciones previas*), she categorically refused blood transfusions under any circumstances as a Jehovah's Witness. In the second document, a continuing power of attorney (*declaración de voluntades anticipadas*), she reiterated her refusal and appointed the same persons as her healthcare representative and substitute. Both documents were properly filed with the National Register and the Register of the Autonomous Community of Castile and León, in compliance with Article 11 of *Ley* 41/2002 and Article 8 of the regional *Ley* 8/2003. Furthermore, as per Article 8 of *Ley* 41/2002, her refusal of blood transfusions was noted in her medical record during her first hospitalization at the hospital in Soria.

However, when she was transferred in an emergency to a second hospital, La Paz Hospital, the medical staff there only noted a *verbal* refusal of transfusions by the patient. Given the severity of her condition, they sought instructions from the *juez de guardia* (the duty judge) at the *Juzgado de Instrucción*. Lacking any information about her previous advance directives, the duty judge stated that Article 16 of the Spanish Constitution imposes inherent limits on religious freedom when it conflicts with other fundamental rights, such as the right to life and health. Considering the critical medical situation and the absence of "any reliable evidence of a refusal by the patient to receive medical treatment," the duty judge authorized the medical team to proceed with the transfusion. As a result, the patient received a treatment she had explicitly and previously refused.

The applicant then brought the case before the European Court of Human Rights, arguing that the Spanish state had violated her right to respect for private and family life (Article 8 of the ECHR) and her freedom of religion (Article 9 of the ECHR), asserting that her refusal of transfusions was not merely a medical choice but a fundamental aspect of her personal identity and religious conscience.

The Court was thus required to balance two fundamental rights: on one hand, the right to health and life, and on the other, religious freedom and the right to self-determination. The Court first referred to established principles in its case law (such as *Pretty v. U.K.*<sup>1</sup>, *Lambert and Others v. France*<sup>2</sup>, *Jehovah's Witnesses of Moscow and Others v. Russia* e *Taganrog LRO and Others v. Russia*<sup>3</sup>), highlighting that the right to respect for private life encompasses personal self-determination, which, safeguarded by free and informed consent, allows individuals to autonomously decide whether or not to undergo a particular treatment. The Court further clarified that, in the applicant's case, her refusal of transfusions based on her Jehovah's Witnesses faith could not be equated with a rejection of life but represented an exercise of her right to therapeutic self-determination. This principle implies that the imposition of medical treatment without consent, even in emergency situations, constitutes a violation of the right to respect for private life. Therefore, choices made in exercising the right to self-determination, inspired by religious motives, cannot be deemed unlawful, as the Convention, recognizing the individual's right to religious freedom, excludes any state discretion in assessing the legitimacy of religious beliefs or how they are expressed.

Regarding the decision-making process that led to the authorization by the duty judge, the Court pointed out that the patient had filed her advance healthcare directives as early as 2017, when the first symptoms of her illness had appeared, and that her subsequent and reiterated refusal had been duly

<sup>1</sup> *Pretty v. the United Kingdom*, European Court of Human Rights, 29 April 2002.

<sup>2</sup> *Lambert and Others v. France*, European Court of Human Rights, 5 June 2015.

<sup>3</sup> *Taganrog LRO and Others v. Russia*, European Court of Human Rights, 7 June 2022.

recorded in written form at the Soria hospital following her initial admission. These documents could and should have been accessed through the National Register and the Register of the Autonomous Community of Castile and León. Moreover, the written refusal, as registered, should have been transmitted from the Soria hospital to La Paz hospital. Consequently, the Court found that the decision by the duty judge was mistakenly based on incomplete and inaccurate information and that the Spanish health and legal systems had failed to respect the woman's right to personal self-determination. Therefore, the Court recognized a violation of Article 8 of the Convention, read in light of Article 9, as the state's interference in the applicant's private life through the authorization of the transfusion had not adequately respected her religious freedom and her right to make free decisions about medical treatment.

The judgment thus underscored the importance of procedural safeguards to prevent arbitrary state intervention that might violate fundamental rights. However, in the case of *Pindo Mulla v. Spain*, the Court chose to base its decision primarily on Article 8 of the Convention, using the concept of "personal autonomy" and assigning to the religious freedom enshrined in Article 9 the more limited role of an element that merely "colors" the case with a religious hue, without it representing the central focus. This approach may represent a missed opportunity to more thoroughly address the delicate balance between religious freedom and how it is exercised, in relation to other competing rights, especially in a case that, at its core, involved a clear violation of religious freedom.

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