

Shortcomings which led to blood transfusions being administered to a Jehovah's Witness against her will breached her right to autonomy

In today's **Grand Chamber** judgment¹ in the case of [Pindo Mulla v. Spain](#) (application no. 15541/20) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights read in the light of Article 9 (freedom of thought, conscience and religion).

The case concerned blood transfusions administered to the applicant, a Jehovah's Witness, during emergency surgery, despite her refusal to undergo a blood transfusion of any kind.

The Court found in particular that the authorisation to proceed with that treatment had resulted from a decision-making process that had been affected by the omission of essential information about the documenting of Ms Pindo Mulla's wishes, which had been recorded in various forms and at various times in writing. Since neither the applicant nor anyone connected with her had been made aware of the decision taken by the duty judge authorising all treatment, it had not been possible to rectify that omission. Neither this issue nor the issue of her capacity to take a decision had been addressed in an adequate manner in the subsequent proceedings. The national system had therefore not responded adequately to her complaint that her wishes had been wrongly overruled.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Rosa Edelmira Pindo Mulla, is an Ecuadorian national who was born in 1970 and lives in Soria (Spain). She is a Jehovah's Witness. A core tenet of her religious beliefs is her absolute opposition to blood transfusions.

Following medical tests carried out between May to July 2017, Ms Pindo Mulla was advised to have surgery. She subsequently issued two documents – an advance directive, and a lasting power of attorney –, each recording her refusal to undergo a blood transfusion of any kind in any healthcare situation, even if her life was in danger, but that she would accept any medical treatment that did not involve the use of blood. The applicant indicated that she carried the lasting power of attorney document on her person. The advance medical directive was deposited in the official Register of Advance Directives of Castile and Leon and was accessible to Soria hospital via the electronic system used by health professionals in the region. Under the legal framework in Spain, advance directives deposited in the regional registers are to be copied within 7 days to the National Register of Advance Directives, so as to be accessible to health care providers throughout the country.

On 6 June 2018, Ms Pindo Mulla was admitted to Soria Hospital with serious internal bleeding, causing severe anaemia. That evening, a doctor spoke to her about receiving a blood transfusion, which she refused. She expressed her refusal in an informed consent document, which she and the doctor both signed. The document became part of the applicant's medical file at Soria hospital.

The following day, due to haemorrhaging, she was transferred by ambulance to a hospital in Madrid known for its capacity to provide alternative forms of treatment to blood transfusions. She agreed to

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

the transfer, her understanding being that she could be treated there without resort to blood transfusion. She was accompanied by a doctor with her medical records.

During the journey, the doctor warned the doctors at the hospital in Madrid that her condition was very serious. In light of this warning, anaesthesiologists at that hospital contacted the duty judge for instructions on what to do when she arrived. They indicated that she was a Jehovah's witness, that she had verbally expressed her refusal of all types of treatment and that her condition would be very unstable upon arrival. The duty judge, who did not know the identity of the patient, nor her precise wishes, transmitted the doctors' request to a forensic doctor and to the local prosecutor and requested their opinion. Within approximately an hour, based on the information received and those opinions, the duty judge authorised all medical or surgical procedures that were needed to save her life.

Treating the situation as an emergency, the usual consent protocol was not followed at the hospital. Surgery was performed that day and three transfusions of red blood cells were administered to Ms Pindo Mulla, who had not been informed of the duty judge's order, despite it having been arranged during her journey to the hospital when it was recorded that "she was conscious, orientated and cooperative", and despite still being fully conscious, as noted in her records, when she was taken to the operating theatre. The applicant, who believed that she was to undergo treatment without blood transfusions, did not reiterate her refusal or refer to any written document stating that refusal. She learned of the precise surgery carried out and of the transfusions the day after the operation.

Ms Pindo Mulla brought proceedings in the national courts, out of principle, to overturn the decision. The decision was upheld on appeal, and her subsequent *amparo* appeal was declared inadmissible by the Constitutional Court.

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private life) and 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights, the applicant complained that while her refusal of certain medical treatment had been, in her view, clearly established in many official documents, they had been ignored by the national authorities.

The application was lodged with the European Court of Human Rights on 13 March 2020.

On 16 April 2021 the Spanish Government was given notice² of the application, with questions from the Court. A [statement](#) of facts is available in English on the Court's website.

The Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber on 4 July 2023.

The French Government and the European Association of Jehovah's Witnesses intervened in the written proceedings as third parties.

A [hearing](#) took place in public in the Human Rights building, Strasbourg, on 10 January 2024.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Síofra O'Leary (Ireland), *President*,
Georges Ravarani (Luxembourg),
Marko Bošnjak (Slovenia),
Gabriele Kucsko-Stadlmayer (Austria),

² In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to bring to the attention of a Convention State's Government that an application against that State is pending before the Court (the so-called "communications procedure"). Further information about the procedure after a case is notified to a Government can be found in the Rules of Court.

Pere Pastor Vilanova (Andorra),
Arnfinn Bårdsen (Norway),
Egidijus Kūris (Lithuania),
Branko Lubarda (Serbia),
Mārtiņš Mits (Latvia),
Stéphanie Mourou-Vikström (Monaco),
Pauliine Koskelo (Finland),
María Elósegui (Spain),
Anja Seibert-Fohr (Germany),
Ioannis Ktistakis (Greece),
Frédéric Krenc (Belgium),
Mykola Gnatovskyy (Ukraine),
Anne Louise Bormann (Denmark),

and also Marialena Tsirli, *Registrar*.

Decision of the Court

[Article 8 taken in the light of Article 9](#)

The Court clarified that its role in this case was not to call into question the assessment of Ms Pindo Mulla's health by medical professionals or their decisions on the treatment to be given, but to focus on whether the decision-making process had shown sufficient respect for her autonomy. To do that, it examined how the decision-making process had been set in motion, conducted and reviewed.

The Court recognised that the aim behind the duty judge's decision had been to potentially save Ms Pindo Mulla's life. At the same time, letting a patient decide whether to accept treatment is a basic and fundamental principle in the public health sphere and protected by the rule of free and informed consent. The Court's case-law states that a competent adult patient is free to decide whether to accept surgery or medical treatment, including blood transfusion. At the same time, robust legal and institutional safeguards are necessary in the decision-making process to ensure that the person is truly conscious of what they are asking for.

The Court set out how, in an emergency situation, a patient's autonomy was to be reconciled with their right to life. The decision to refuse life-saving treatment had to be "clear, specific and unambiguous" and "represent the current position of the patient on the matter." If there were any reasonable grounds to doubt any of these aspects, then there was a duty for health care professionals to make every reasonable effort to determine what the patient would want. If, despite those efforts, the physician – or a national court – was unable to establish that clearly, it was their duty to protect the patient's life by providing essential care.

The Court underlined that, when a State had decided to put in place a system of advance medical directives that was relied on by patients, it was important that the system functioned effectively. It noted that the duty judge had not been provided with the full and correct information and therefore her decision had been based on very limited, incorrect and incomplete facts. The fax sent by the hospital in Madrid had stated that the patient rejected "all types of treatment" and that her refusal had only been expressed verbally. The lack of information in the fax had had a determinative effect on the decision-making by the duty judge. Moreover, the crucial issue as to whether Ms Pindo Mulla still had the capacity to decide for herself had been sidelined, and the power to decide had been transferred to the doctors treating her. Neither she, nor anyone with close ties to her, had been told about the duty judge's decision before the surgery went ahead.

The Court found in particular that the authorisation to proceed with treatment had resulted from a decision-making process that had been affected by the omission of essential information about the

documenting of Ms Pindo Mulla's wishes, which had been recorded in various forms and at various times in writing. Since neither the applicant nor anyone connected with her had been made aware of the decision taken by the duty judge, it had not been possible to rectify that omission. Neither this issue nor the issue of her capacity to take a decision had been addressed in an adequate manner in the subsequent proceedings. The national court of appeals had surmised, in its dismissal of Ms Pindo Mulla's claim, that she had been in a position to give or withhold consent, yet it still confirmed that the duty judge had been right to authorise whatever treatment was necessary to save her life.

Moreover, a missing signature on a copy of the informed consent document, obtained by the applicant for the appellate proceedings from the Soria hospital that had treated her, had been a central issue, yet it had remained unelucidated. The national system had therefore not responded adequately to Ms Pindo Mulla's complaint that her wishes had been wrongly overruled.

These shortcomings meant that Ms Pindo Mulla had not been able to exercise her autonomy in order to observe an important teaching of her religion, in violation of her right to respect for private life under Article 8 of the Convention, read in the light of Article 9.

Just satisfaction (Article 41)

The Court held, by 9 votes to 8, that Spain was to pay the applicant 12,000 euros (EUR) in respect of non-pecuniary damage and, unanimously, that it was to pay the applicant EUR 14,000 in respect of costs and expenses.

Separate opinions

Judge Elósegui expressed a concurring opinion, as did Judge Ktistakis, joined by Judge Mourou-Vikström. A partly concurring and partly dissenting opinion was expressed by Judge Seibert-Fohr, joined by Judges Kucsko-Stadlmayer, Pastor Vilanova, Ravarani, Kūris, Lubarda, Koskelo and Bormann. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.