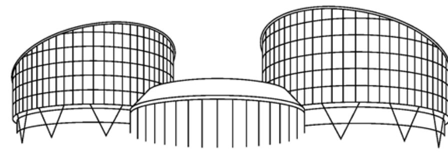

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Legal summary

September 2024

Pindo Mulla v. Spain [GC] - 15541/20

Judgment 17.9.2024 [GC]

Article 8

Article 8-1

Respect for private life

Medical treatment in the form of blood transfusions administered to a Jehovah's Witness, during emergency surgery, despite her expressed refusal to undergo a blood transfusion of any kind: *violation*

Facts – The applicant is a Jehovah's Witness. In 2017, after being advised to have surgery, she registered an advance directive and issued 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. In 2018 she was admitted to her local hospital with serious internal bleeding. When a blood transfusion was proposed to her, she signed an informed consent form refusing such treatment. She was therefore transferred to a hospital in Madrid known to provide forms of treatment that did not involve blood transfusions. In view of the gravity of the applicant's condition, the doctors at the hospital in Madrid, made an urgent application by facsimile to 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 judge, who did not know the identity of the applicant nor her precise wishes, authorised all medical or surgical procedures needed to save her life and physical integrity. Treating the situation as an emergency, the usual consent protocol was not followed at the hospital. Surgery was performed and blood transfusions of red blood cells were administered to the applicant: she was not informed of the decision or of the intended intervention. The duty judge's decision was upheld on appeal and her subsequent *amparo* appeal was declared inadmissible by the Constitutional Court.

On 4 July 2023 a Chamber of the Court relinquished jurisdiction in favour of the Grand Chamber.

Law – Article 8 read in the light of Article 9:

(1) *Legal characterisation of the case* – In the instant case, the two distinct rights relied on by the applicant, the right to respect for private life and the right to freedom of conscience and religion, were very closely intertwined: the applicant's wishes with respect to the treatment of her illness had been rooted in her fidelity to the relevant teaching of her religious community. As the main issue principally pertained to the patient's autonomy and self-determination in relation to medical treatment, the case fell to be examined under the "private life" aspect of Article 8, interpreted and applied in the light of Article 9 of the Convention.

(2) *Preliminary observations* – The present case differed from previous cases that had also involved the issues of respect for personal autonomy and the refusal of medical treatment. As the applicant had wished to be cured of her ailment and had been ready to accept all appropriate treatment subject to her refusal of blood transfusion, the case was to be distinguished from those that involved an individual's wish to put an end to their life. Nevertheless, the general principles set out in the judgments in certain of those cases, were not devoid of relevance for the present case. The case was also different from those featuring disputes over the treatment of a child or the withdrawal of life-sustaining treatment from a child, in which the issue of safeguarding the best interests of the child patient was the primary consideration. Given the public health care system setting, it was different from cases involving the treatment of persons deprived of their liberty and who were thus under the control and responsibility of the State, be it in the criminal law or mental health contexts. Nor did the applicant's refusal of a blood transfusion involve any direct risk to the health of third parties.

Finally, the Court took account of the relevant rules of international law applicable in relations between the parties, notably the relevant provisions of the Council of Europe's Oviedo Convention, as ratified by the respondent State.

(3) *The interference with the applicant's right to respect for private life* – The doctors at the hospital in Madrid had assessed that the applicant would be in an urgent, life-threatening situation upon arrival there and that, in order to survive, she would need surgery that was likely to require blood transfusions. In that regard, the Court clarified that it was not its function to call into question the assessment of the applicant's health by the medical professionals or their decisions on the treatment to be given: in fact, the applicant had not impugned the soundness of those assessments or decisions before any domestic court. The interference in the present case, as argued domestically, had been the duty judge's decision, a decision which had to be considered in the legal and factual context in which it had been given. Further, given the importance of procedural safeguards under Article 8, the Court examined how the decision-making process had been set in motion, conducted and reviewed, in order to ascertain whether the way it had operated in this case had shown sufficient respect for the applicant's autonomy.

(4) *Justification for the interference* –

(a) *Lawfulness and aim of the interference* – The interference had been in accordance with domestic law and had pursued the aim of "the protection of health".

(b) *Necessity of the interference* –

(i) *Relevant case-law principles* – As previously stated by the Court, the freedom to accept or refuse specific medical treatment was vital to self-determination and personal autonomy. A competent adult patient was free to decide on surgery or medical treatment, including blood transfusion. In the absence of any need to protect third parties, the State had to abstain from interfering with the individual's freedom of choice regarding health care. Given that the applicant had been assessed as facing an imminent danger to her life, it was also necessary to have regard to the principles that the Court had derived under Article 2 regarding the positive obligation on States to safeguard patients. A parallel duty had been derived from Article 8 with respect to patients' physical integrity.

Further, the Court emphasised the necessity of robust legal and institutional safeguards in the relevant decision-making process to ensure that a decision of such consequence was explicit, unambiguous, free and informed. The person had to be truly conscious of the implications of what they were asking for and had to be protected against pressure and abuse.

(ii) *Reconciling the Convention rights and duties at stake* – The Court had not yet had the opportunity to consider how, in an emergency situation, a patient's autonomy was to be reconciled with their right to life. In that respect it affirmed the position in its existing case-law in relation to patient autonomy, namely that in the ordinary health care context it followed from Article 8 that the competent, adult patient had the right to refuse, freely and consciously, medical treatment notwithstanding the very serious, even fatal, consequences that such a decision might have. It was a cardinal principle in the sphere of health care that the right of the patient to give or withhold consent to treatment had to be respected. That right, however, could not to be construed in absolute terms; the right to respect for private life, being the broader right that encompassed patient autonomy, was a qualified right and thus the exercise of any of its facets might be limited in accordance with Article 8 § 2 of the Convention.

In a situation involving real and imminent danger for an individual's existence, the right to life under Article 2 would also be in play, in tandem with the individual's right to decide autonomously on medical treatment. From the perspective of the State, its duties to ensure respect for both of those rights would likewise be engaged.

The Court noted that, while the public interest in preserving the life or health of a patient had to yield to the patient's interest in directing the course of his or her own life, the authenticity of a refusal of medical treatment was a legitimate concern, given that the patient's health and possibly life itself were at stake. What had to be ensured was that, in an emergency situation, a decision to refuse life-saving treatment had been made freely and autonomously by a person with the requisite legal capacity who was conscious of the implications of their decision. It also had to be ensured that the decision – the existence of which must be known to the medical personnel – was applicable in the circumstances, in the sense that it was clear, specific and unambiguous in refusing treatment and represented the current position of the patient on the matter.

It followed that where in an emergency there were reasonable grounds to doubt the individual's decision in any of those essential respects, it could not be considered a failure to respect his or her personal autonomy to proceed with urgent, life-saving treatment. That position was fully in harmony with Article 8 of the Oviedo Convention. It also followed that reasonable efforts should be made to dispel the doubt or uncertainty surrounding the refusal of treatment. As the Court had previously observed, albeit not in the same context, the wishes of the patient must be treated as being of paramount importance. What constituted a "reasonable effort" would necessarily depend on the circumstances of the case and might also be influenced by the content of the domestic legal framework. Where, despite reasonable efforts, the physician – or the court, as the case might be – was unable to establish to the extent necessary that the patient's will was indeed to refuse life-saving medical treatment, it was the duty to protect the patient's life by providing essential care that should then prevail.

The relevant international texts (notably, the Oviedo Convention) reflected both the complexity and the sensitivity that attached to the introduction and operation of a system of advance medical directives. While the principal institutions of the Council of Europe had taken positions in favour of such directives, in keeping with their non-binding nature, those positions contemplated considerable discretion for States regarding the status and modalities of such instruments. As found by the comparative study completed for case, while a considerable number of Council of Europe member States had specific provisions and arrangements in place for advance medical directives, or for taking into account previously expressed wishes, they had not done so in a uniform manner. Therefore, it appeared that there was a diversity of practice in Europe when it came to the modalities for reconciling as far as possible the right to life and the right to respect for the autonomy of the patient by taking account of previously expressed wishes. The Court thus took the view that both the principle of giving binding legal effect to advance

directives, as well as the related formal and practical modalities, came within the margin of appreciation of the Contracting States.

(iii) *Application of the above principles and considerations to the present case* – In *Reyes Jimenez v. Spain* the Court had already considered the provisions of the relevant domestic law governing the giving of consent and had observed that they were fully in conformity with the corresponding provisions of the Oviedo Convention. The domestic regulatory framework regarding advanced medical directives appeared to be a well-developed one and was guided by the relevant provisions and principles of the above Convention concerning patient autonomy. It represented a judicious balancing by the legislature between the fundamental rights of patients, the corresponding duties of the State and weighty public interests. There were also significant similarities between the Court's case-law and that of the Constitutional Court, notably in recognising the right of a legally competent patient to reject a form of medical treatment, including where that was likely to produce a fatal outcome. Furthermore, constitutional case-law affirmed the need to justify the administering of medical treatment against the patient's will, with reference to the principles of necessity, proportionality and respect for the essence of the patient's autonomy.

In addition, the Court noted that requiring that refusal of medical treatment be given in written form was not *per se* at variance with Article 8, which did not contemplate any particular form of consent.

The respondent State had chosen to confer binding effect on advance medical directives and had made specific practical arrangements to ensure that the instructions given by patients were known and followed in the health care system throughout the national territory. The Court underlined that, where such a system had been put in place (which was a choice falling within the State's margin of appreciation) and was relied on by patients who had made use of it correctly it was important that it functioned effectively to achieve its purpose.

The key feature of the present case had been the involvement of the duty judge, a standard practice for the hospital in Madrid when caring for a patient who refuses a blood transfusion. The Court had recognised the important role that courts could play in resolving disputes or giving legal guidance in relation to medical treatment. However, the benefits of judicial decision-making on delicate issues arising in difficult circumstances would necessarily depend on the information that was provided to, or could be obtained by, the decision maker.

The doctors' application to the duty judge had contained very limited, but also inaccurate, information as it had stated that the applicant had rejected "all types of treatment" and that her refusal had been verbal. That gave to understand – and had been so understood by the duty judge – that the applicant's refusal had only been verbal. In their assessment of the situation, the two officials contacted by the duty judge, namely the forensic doctor and the local prosecutor, had started from the assumption that that had been the case. The lack of essential information about the documenting of the applicant's wishes, which had been recorded in various forms and at various times in writing, had had a determinative effect on the decision-making in relation to the applicant's care. In a system in which, the refusal of medical treatment needed to be expressed in writing, that lacuna had been a significant one. Since neither the applicant nor anyone connected with her had been aware of the decision taken by the duty judge, it had not been possible, even in theory, to make good that omission.

In view of the circumstances and the degree of urgency, the practical possibility to involve the applicant at what had been the critical stage of the process – the proceedings before the duty judge – had been greatly diminished. It had also severely limited the possibilities open to the duty judge to undertake any further inquiries into the facts of

the situation. That had made it all the more important to give the decision-maker an adequate factual basis for a decision that, either way, had been of very great consequence for the applicant.

Furthermore, what was at issue was the right of the competent patient to decide autonomously on their health care. That evidently included the freedom to change one's decision as much as to maintain it. The question whether the applicant had had the capacity to do so had been a crucial one, given that there had been an advance medical directive on record to ensure that her refusal of blood transfusion would remain operative in the event of her being unable to take such a decision at the relevant point in time according to Spanish law. Yet that issue had not been put to the judge at the outset. While it had been alluded to by the forensic doctor during the consideration of the application, it had not been expressly addressed in the decision. Rather, it had been implicitly answered in the negative with the authorisation that had been given to proceed directly with the necessary treatment without needing to obtain consent. The Court further observed that nothing had been said regarding the domestic law safeguard where the patient's consent could not be obtained, i.e., consultation when circumstances permit of relatives or of persons with *de facto* ties to the patient. Nor had any such step taken following the notification of the decision to the hospital.

It being noted that any assessment of the decision had to bear in mind the limits inherent in the form of the proceedings and the urgency within which they had to be conducted, the Court considered that, in the circumstances, extensive legal reasoning had not been feasible. Viewed from the perspective of the Convention and the applicable principles, the reasoning of the decision had clearly addressed the importance of protecting the right to life whereas the importance of respecting the right of the patient to decide autonomously on medical treatment, had been considered to a lesser extent. Referring to the fatal consequences that would ensue if treatment were withheld, authorisation had been granted in unqualified terms to give the applicant whatever treatment had been necessary to save her. In effect, the decision had transferred the power to decide, as from the moment it was given, from the applicant to the doctors. The subsequent proceedings had not adequately addressed the above-mentioned issues.

The Court fully appreciated that the actions, taken on the day in question by the staff of both hospitals, had been motivated by the overriding concern to ensure the effective treatment of a patient who had been under their care, in keeping with the most fundamental norm of the medical profession. It did not question their assessments regarding the severity of the applicant's condition at the time, the urgency of the need to treat her, the medical options available in the circumstances, or that the applicant's life had been saved that day. However, it could not be said that the domestic system had adequately responded to the applicant's complaint that her wishes had been wrongly overruled. The shortcomings identified indicated that the impugned interference had been the result of a decision-making process which, as it had operated in this case, had not afforded sufficient respect for the applicant's autonomy as protected by Article 8, which autonomy she wished to exercise in order to observe an important teaching of her religion.

Conclusion: violation (unanimously).

Article 41: EUR 12,000 in respect of non-pecuniary damage.

(See also *Pretty v. the United Kingdom*, 2346/02, 29 April 2002, Legal Summary; *Jehovah's Witnesses of Moscow and Others v. Russia*, 302/02, 10 June 2010, Legal Summary; *Haas v. Switzerland*, 31322/07, 20 January 2011, Legal Summary; *Arskaya v. Ukraine*, 45076/05, 5 December 2013; *Lambert and Others v. France* [GC], 46043/14, 5 June 2015, Legal Summary; *Mortier v. Belgium*, 78017/17, 4 October 2022, Legal Summary; *Lopes de Sousa Fernandes v. Portugal* [GC], 56080/13, 19 December 2017,

Legal Summary; *Reyes Jimenez v. Spain*, 57020/18, 8 March 2022, Legal Summary; *Taganrog LRO and Others v. Russia*, 32401/10 et al., 7 June 2022; Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (CETS 164, the Oviedo Convention) of 4 April 1997)

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