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COMMENT

Pindo Mulla v Spain: is religion missing from the equation?

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Introduction

The judgment of the Grand Chamber (GC) of the European Court of Human Rights (ECtHR) in the case of *Pindo Mulla v Spain*[1] appeared to be a major victory for Jehovah's Witnesses in Europe. After examining the circumstances in which the applicant was subjected to an unwanted blood transfusion during a life-saving procedure, the Grand Chamber reached a unanimous conclusion that there had been a violation of the European Convention on Human Rights. Jehovah's Witnesses around the world were quick to express their satisfaction, announcing that they were 'pleased with the court's decision to uphold the right of Sister Pindo Mulla and millions of others to choose medical treatment according to their personal beliefs, values, and convictions'.[2] The case has been flagged as a key case in the HUDOC database. A great day for human rights, it would seem. But is it really?

It is never pleasant to be the one to spoil the party, especially as the Jehovah's Witnesses appear to have valid reasons to rejoice: the applicant's right to refuse medical interventions that conflicted with her beliefs has been defended by the Grand Chamber. From this point of view, it might at first seem like yet another major triumph for Jehovah's Witnesses in Strasbourg, following the historic judgment in *Bayatyan v Armenia* at the beginning of the last decade, when, after years of legal struggle, their right to conscientious objection to military service was finally recognised.[3]

But this latest victory is less clear-cut—and perhaps even a little bittersweet. While after *Bayatyan* it was fair to say that the Grand Chamber had rendered a grand

[1] *Pindo Mulla v Spain* App no 15541/20 (ECtHR, GC, 17 September 2024).

[2] 'Grand Chamber of the European Court Upholds Patient Autonomy for Jehovah's Witnesses: Court Rules Unanimously in the Case of *Pindo Mulla v. Spain*', 11 October 2024, available at https://www.jw.org/en/news/region/spain/Grand-Chamber-of-the-European-Court-Upholds-Patient-Autonomy-for-Jehovahs-Witnesses, accessed 20 November 2024.

[3] *Bayatyan v Armenia* App no 23459/03 (ECtHR, GC, 7 July 2011).

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judgment,[4] which restored human autonomy in fundamental moral matters to its rightful place, the Court's reasoning in *Pindo Mulla* is far less compelling and offers limited potential to shape future jurisprudence on freedom of religion or belief. Reading this judgment feels akin to biting into a beautifully decorated cake that, contrary to expectations, turns out to be surprisingly bland.

The Court found a violation of Article 8 ECHR (right to respect for private and family life) read in the light of Article 9 ECHR (freedom of religion or belief). This characterisation of the case implies that the right to privacy – including the right to make decisions about one's personal affairs, such as the continuation of therapy – was treated as the primary issue, while the religious dimension was essentially brushed aside. Religious beliefs were regarded as little more than an interesting footnote, perhaps relevant for understanding the applicant's motivation and internal decision-making process, but not really influencing the Court's assessment of the case. By taking this approach, the Court missed an opportunity to engage directly with the true essence of the application: the applicant's sincerely held religious beliefs. For what better proof of the sincerity of a belief than a person's willingness to sacrifice their life for it?

The purpose of this comment is to analyse the Court's reasoning in *Pindo Mulla* from the perspective of freedom of religion or belief, rather than limiting the discussion to patients' rights or issues of procedural fairness.

The road to Strasbourg

A detailed account of the applicant's medical ordeal occupies a significant portion of the judgment, but for the purposes of this piece, it seems appropriate to focus on the key elements of her story. The applicant, an Ecuadorian national residing in Spain, was treated at a public hospital in Soria for an ailment later diagnosed as a uterine myoma. When the doctors recommended surgery, the applicant agreed to the procedure but made it clear from the outset that she would never accept a blood transfusion, as this would contravene the teachings of her religious community. She also sought to have her objection formally recognised as legally valid by producing two documents which outlined her opposition to blood transfusions. One document was filed with the public registry and was accessible to the hospital through its electronic system, although – for reasons that remain unclear – it was not attached to her paper medical records. The second document was carried by the applicant herself at all times.

In both documents, the applicant made an unequivocal statement of her opposition to blood transfusions: 'I direct that no transfusions of whole blood, red cells, white cells, platelets or plasma be given to me under any circumstances, even if health-care providers consider that such are necessary to preserve my life or my health'.[5] She also explicitly acknowledged the risks of relying on alternative non-blood therapies. It was emphasised that her decision had been made

[4] P Muzny, '*Bayatyan v Armenia*: The Grand Chamber Renders a Grand Judgment' (2012) 12:1 *Human Rights Law Review* 135–147.

[5] *Pindo Mulla* at para 11.

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with full knowledge of the facts, freely, and with complete understanding of its implications.

Crucially, the religious motivation behind her decision was explicitly stated. The applicant explained in her written declarations that she was a Jehovah's Witness and that her objection to blood-based treatment was grounded in the Bible. She also referenced the relevant verse from the Acts of the Apostles, which includes the command to *abstain from blood*. Two of her relatives were named in both documents as representatives chosen to provide any additional clarifications necessary to ensure that her wishes were respected, with the proviso that their interpretations could not contradict the explicit instructions in the documents.

What could have gone wrong? The patient appears to have followed all the necessary formalities: she ensured that the medical staff were aware of her objections to blood transfusions, she made a formal declaration in the public register of objections, and she appointed representatives to act on her behalf if she was unable to communicate her wishes. Yet, when she was hospitalised again the following year and her life was in danger, her clear and firm wishes were disregarded.

All the evidence indicates that what happened was not a deliberate act but rather the result of a series of unfortunate circumstances and the ensuing chaos, which undermined the procedural safeguards intended to protect the applicant's autonomy. Ms Pindo Mulla was transported to a hospital in Madrid for treatment that would not require a blood transfusion. However, during transit, her condition deteriorated rapidly to the point where it was even feared she might not survive the journey. Perhaps under the pressure of time, those making decisions ignored the patient's clearly expressed wishes.

The duty judge, who was required to authorise the treatment, received incomplete and misleading information from the doctors in Soria. They incorrectly claimed that the patient had refused all forms of treatment and that her objection had been made only verbally, in violation of legal requirements – neither of which was true. Although the judge was also informed that the patient was a Jehovah's Witness, this detail seemingly failed to prompt a deeper consideration of the case. Similarly, the local prosecutor concluded that there was no credible evidence that the patient was refusing treatment. Consequently, the judge granted unconditional authorisation for the medical staff to perform any treatment necessary to protect the patient's life and physical integrity. Before the operation in Madrid, the standard informed consent procedure was not followed to acknowledge or disclose the patient's objections, even though reports suggest that she was conscious and fully aware at the time.

During the surgery, conducted under general anaesthetic, the patient experienced severe bleeding and was given three blood transfusions. Her husband arrived at the hospital after the operation had already begun. The following day, the patient was informed of the duty judge's decision and the medical treatment she had received. According to the judgment, this revelation came as a profound shock to her.[6]

[6] She reportedly described the transfusions with the following words: 'like a rape of my person, something disgusting, … very, very bad' (ibid at para 35).

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Having exhausted domestic remedies, the patient lodged an application with the European Court of Human Rights, alleging violations of Articles 8 and 9 ECHR. She argued that the treatment she had received was incompatible with her right to self-determination. Additionally, she emphasised her religious convictions, explicitly stating that the rejection of blood transfusions 'formed part of her core religious beliefs and was of paramount importance for her, making up her personal identity and shaping her personal conscience'.[7]

Patient or believer?

The European Court of Human Rights found a violation of the applicant's rights under the Convention. Interestingly, however, the issue of religion was side-stepped, as if the motivation behind an individual's decision to refuse treatment was irrelevant when assessing whether the doctors had acted properly. And on the whole, perhaps it was. The patient's right to self-determination, as long as it is grounded in informed consent, offers a sufficient basis to determine whether the treatment should have been administered at all. From this angle alone, the legal conflict at the heart of the case is not particularly compelling. It is also unclear why the Chamber relinquished jurisdiction to the Grand Chamber. According to Article 30 ECHR, this is only possible if the case raises a serious question affecting the interpretation of the Convention or if the results could be inconsistent with the Court's previous case law. The right to physical integrity lies at the core of the right to respect for private life, so if any inconsistency were to arise, it would stem from departing from that principle, not reaffirming it.

It seems highly unlikely that *Pindo Mulla* was intended to deviate from the well-established case law concerning patient autonomy and the primacy of the patient's wishes, a principle affirmed by the Grand Chamber even in end-of-life cases.[8] And *Pindo Mulla* does not even belong to this category. The applicant's situation did not concern a desire to end a life of suffering but rather a refusal of a particular therapy, even at the cost of her life, with her convictions explicitly and unequivocally stated. If patient autonomy is to be upheld as a guiding principle even in end-of-life decisions, it was all the more applicable to the case of the Ecuadorian Jehovah's Witness.

Importantly, the applicant's complaints were not limited to the right to respect for her private life. Freedom of religion or belief was no less significant, even though, as the Court acknowledged, much of the reasoning underpinning the allegation of a violation of Article 8 ECHR was mirrored in the complaint under Article 9 ECHR. This overlap is hardly surprising, for the applicant had only one story to tell: her religiously motivated opposition to the proposed treatment. These two dimensions of her case are so closely connected that it raises the question of whether

[7] Ibid at para 87.

[8] See *Pretty v the United Kingdom* App no 2346/02 (ECtHR, 29 April 2002) at para 63; *Lambert and Others v France* App no 46043/14 (ECtHR, GC, 5 June 2015) at para 180. In *Lambert and Others*, the issue was far more complex, involving a patient in a vegetative state whose wishes had to be reconstructed from statements made prior to the accident that left him unable to communicate.

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one can overshadow or substitute for the other. The Court effectively answered in the affirmative, stating that '[t]he religious aspect of the applicant's complaint can be adequately accommodated by interpreting and applying Article 8 in the light of Article 9'.[9] As a consequence, religion, which was the genuine driving force behind the applicant's objection, is conspicuously absent from the main thrust of the judgment. And, quite frankly, the patient's rights are not fully addressed either, as the Court's reasoning leans heavily on procedural review rather than on the substantive obligations of the State. It has been rightly observed that 'the only standard that emerges is a procedural safeguard against oversubscribing to the wishes expressed by patients – essentially to protect them from themselves – and an open margin of appreciation to decide what role to accord to advance medical directives'.[10]

And yet the religious dimension of the case is absolutely crucial. There is no coincidence in the fact that the decision in *Pindo Mulla* was welcomed primarily by Jehovah's Witnesses, who immediately celebrated it on their website, rather than by the broader public of patients. For this was a *religious case*, not merely a legal conflict over the limits of informed consent or a contribution to a debate about paternalism in the relationship between the State and the individual. It would have been preferable to frame this application as also situated within the realm of religious freedom, on equal footing with the right to respect for private life. Instead, the Court's reasoning becomes drawn out, with detailed considerations of the successive stages of the decision-making process and attempts to identify the sources of misunderstanding, as though it were a case of mistakenly having one's tonsils removed instead of nasal polyps, or vice versa.

The true (potential) significance of this case is perhaps best illustrated by the third-party intervention submitted to the Court by the European Association of Jehovah's Witnesses. The biblical command to abstain from blood comes both from Acts 15:29, as referenced by the applicant, and from relevant passages in Genesis, Leviticus, and Deuteronomy. Jehovah's Witnesses believe that the Bible forbids any consumption of blood, including blood derivatives, whether in food or by transfusion, even in life-threatening circumstances. The doctrinal importance of abstaining from blood aligns with the belief that the human body is one of God's creations,[11] an argument not unlike those encountered in recent discussions of conscientious objection to mandatory vaccination in some jurisdictions.[12] Although advances in medicine have reduced the practical impact of abstaining from blood, it remains a significant challenge for Jehovah's Witnesses facing major surgery or

[9] *Pindo Mulla* at para 98.

[10] T Lesseliers, 'Pindo Mulla v. Spain – Blood Transfusions to Jehovah's Witnesses: Is Protecting Personal Autonomy Through Procedural Justice Enough?', Strasbourg Observers, 15 November 2024, available at https://strasbourgobservers.com/2024/11/15/pindo-mulla-v-spain-blood-transfusions-to-jehovahs-witnesses-is-protecting-personal-autonomy-through-procedural-justice-enough, accessed 20 November 2024.

[11] T Brace, 'Jehovah's Witnesses and the law: "Caesar's things to Caesar, but God's things to God"' in E Barker and JT Richardson (eds), *Reactions to the Law by Minority Religions* (Routledge 2021) 37–57, at 52.

[12] See the example given by I Trispiotis, 'Mandatory Vaccinations, Religious Freedom, and Discrimination' (2022) 11:1 *Oxford Journal of Law and Religion* 145–164, at 146.

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haematological issues, especially when bloodless medical options are insufficiently developed or not widely available.

The missing element

Why was the religious aspect of the case so downplayed by the Court? No doubt the ECtHR is entitled to legally characterise the case, i.e. to frame the complaint as it sees fit. Sometimes, this deviates a little (or more) from the expectations of the applicant, who may have a certain belief as to which of the cards will turn out to be their trump card in the game. Applicants often lay all their cards on the table, including those that may not have much chance of success before the Court, either out of prudence or in the mistaken belief that the more arguments presented, the better. So yes, this happens quite frequently. But isn't the Court missing the core issue here?

This is all the more surprising given that, in its earlier case law, the Court has occasionally commented on the beliefs of Jehovah's Witnesses regarding blood transfusions, and these comments have clearly been accommodative of their religion. The background to these cases was the forced dissolution and banning of Jehovah's Witness associations by the Russian authorities, who sought to portray them as an extremist organisation that threatened public safety and the rights of others. The Russian authorities used a variety of legal grounds, including accusations of breaking up families, violating children's rights, using 'mind control', and neglecting civic duties. Importantly, the Jehovah's Witnesses were also accused of encouraging suicide among individuals in life-threatening situations; their religious publications were considered by the Russian authorities to be extremist material and therefore subject to confiscation. The Court addressed this issue in extensive passages on the denial of medical assistance, considering these circumstances in relation to adult Jehovah's Witnesses who were capable of making medical decisions for themselves.[13] These passages leave no doubt that the State has a duty to respect such views on treatment involving blood transfusion and to refrain from opposing the religious doctrine which justifies such views.

Of course, in the above cases, it was the religious neutrality of the State that was at issue, not individual conscience. The Court's decisions are considered paradigmatic for future cases in which an improper assessment of the legitimacy of religious beliefs or practices results in a violation of freedom of religion or belief as guaranteed by the European Convention on Human Rights.[14] But the findings on the autonomy of a (religious) patient could be applied almost unchanged to the Spanish case. So why did the same position not resonate strongly in *Pindo Mulla*, even though the referral to the Grand Chamber provided the Court with an excellent opportunity to reaffirm its earlier findings?

[13] *Jehovah's Witnesses of Moscow v Russia* App no 302/02 (ECtHR, 10 June 2010) at paras 131–142; *Taganrog LRO and Others v Russia* Apps no 32401/10 and 19 others (ECtHR, 7 June 2022) at paras 161–165.

[14] M-J Valero-Estarellas, 'Neutrality, Margin of Appreciation and Religious Autonomy: Advancing Pluralism and Non-Discrimination in Strasbourg' (2023) 15 *Revue du droit des religions* 161–175, at 171.

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There are no easy answers. Perhaps *Pindo Mulla* is simply yet another example of the procedural turn in the ECtHR.[15] Or perhaps we have reached a point where the mere mention of religion has become antagonistic and polarising. If the latter intuition is correct, then the Court, wishing to preserve its ability to communicate effectively with the public, is deliberately avoiding the issue in order to secure a stronger persuasive footing. The future will reveal whether this is indeed the case.[16]

Concluding remarks

This could have been a landmark decision. Acknowledging the applicant's actual motivation would have opened the door to further inquiries into the legal implications of sincerely held beliefs for individual self-determination in health matters. It would have made it possible to offer guidelines for deciding future conscience-based claims of a patient, especially where the objection to a particular treatment might clash with the conscientious objection of a health professional who, for religious reasons, believes it is his or her duty to save human life.[17] Moreover, such an approach would have met the expectations of the applicant, who simply hoped for the recognition of the general right of Jehovah's Witnesses to refuse blood transfusions and the corresponding duty of the State to make this right effective, even in the event of medical emergencies.[18]

Nevertheless, the Court opted for a different avenue in deciding the case. By assuming the role of a scrupulous auditor of domestic procedures, it successfully avoided pronouncing on fundamental issues. Perhaps such a strategy increases the chances that the judgment will be received sympathetically by those who are annoyed by any advance in the accommodation of religion. And perhaps judicial restraint will also be welcomed, especially by those who fear that the *living instrument* interpretations coming from Strasbourg might at some point threaten parliamentary sovereignty. But in this particular case, an explicit articulation of the rights of Jehovah's Witnesses – or any other religious patient, for that matter – would not have been a step beyond established jurisprudence. It would simply have been an affirmation of what had already been said before. And in human rights

[15] Among the extensive literature on this subject, see e.g. OM Arnardóttir, 'The "procedural turn" under the European Convention on Human Rights and presumptions of Convention compliance' (2017)15:1 *International Journal of Constitutional Law* 9–35.

[16] More recent developments suggest that the approach adopted in this judgment will also prove disappointing for Jehovah's Witnesses. The criteria set out in *Pindo Mulla* were applied late last year in a Danish case concerning a Jehovah's Witness who was given an emergency transfusion after suffering a serious injury. Due to a subarachnoid haemorrhage, he was unable to confirm his religion-based objection to the procedure, and his prior (unequivocal) advance medical directives were deemed insufficient by the national authorities. They were also considered insufficient by the Court to establish a violation of the Convention. See *Lindholm and the estate after Leif Lindholm v Denmark* App no 25636/22 (ECtHR, 5 November 2024).

[17] The possibility of such a moral conflict has been noted by A Ponce Tamayo, 'Respeto a la autonomía personal y objeción de conciencia a tratamientos médicos. Comentario a la Sentencia del Tribunal Europeo de Derechos Humanos *Pindo Mulla* contra España (Demanda Nº 15541/20), de 17 de septiembre de 2024' (2024) 66 *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 1–14, at 1.

[18] Lesseliers (note 10).

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practice, much like in a romantic relationship, the sudden absence of a declaration of commitment can itself raise legitimate concerns.

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