



# American Journal of Society and Law (AJSL)

ISSN: 2835-3277 (ONLINE)

VOLUME 4 ISSUE 2 (2025)



PUBLISHED BY  
E-PALLI PUBLISHERS, DELAWARE, USA



## Normative Conflict between Human Rights: Blood Transfusions in Jehovah's Witness Patients in Spain

Dia A Abu Fannas Abdel Jawad<sup>1\*</sup>

### Article Information

**Received:** July 20, 2024

**Accepted:** August 24, 2024

**Published:** August 05, 2025

### Keywords

*Hemotransfusions, Human Rights, Jehovah's Witnesses, Normative Conflict, Right to Health, Right to Life, Right to Religious Freedom*

### ABSTRACT

The refusal of Jehovah's Witnesses patients to receive blood transfusions poses a normative conflict between several human rights. On one hand, there is the "Right to Religious Freedom", which allows these patients to rely on their religious convictions to refuse such medical procedures. On the other hand, there are the "Right to Life" and the "Right to Health", which obligate healthcare professionals to perform all necessary actions to preserve patients' lives and improve their health. Additionally, healthcare professionals are bound by the commitments and guidelines of their profession in performing their duties. Within this context, the current study conducts a qualitative analysis of articles, legal instruments, and ethical frameworks. The study employs a legal analysis to explore the normative conflict surrounding blood transfusions for Jehovah's Witness patients in Spain. It focuses on the interplay between the Right to Religious Freedom, Right to Life, and Right to Health using a qualitative approach. The analysis considers relevant legal instruments, ethical frameworks, and case law to identify critical factors influencing decision-making in medical practice, particularly the patient's state of consciousness and the urgency of their condition. It concludes that the patient's state of consciousness and the severity of their condition are the decisive factors. If the patient is conscious and not in a critical condition, their decision to refuse the treatment should take preeminence. Conversely, in cases where a blood transfusion is necessary but not urgent, the matter should be brought before the competent judicial bodies for a decision. However, in situations where the transfusion is both necessary and urgent to save the patient's life, the decision will be made by the healthcare professionals involved, who must then assume the consequences of their actions.

### INTRODUCTION

In a diverse society, individuals navigate a complex framework of rules and principles intended to balance personal freedoms with communal harmony (Mayer, 2018). This framework includes both the rights and obligations that individuals must adhere to. These rights encompass all the prerogatives granted to individuals, typically established within the legal system of a country, most notably in its supreme legal document (Loveland, 2018). This document is often referred to as the "Constitution". The Constitution, as the highest legal authority, encompasses a comprehensive set of rights granted to individuals (Chemerinsky, 2023). This implies that the state is committed to creating and enforcing measures to ensure these rights are exercised and protected. The constitution also aims to restore victims' legal status and provide compensation when needed. (Ashworth, 2019).

Moreover, the legal framework described above includes a set of rights deemed particularly important for individuals, which is reflected in the willingness of states to sometimes limit their national sovereignty to align with international guidelines (Daly, 2020). As a result, these rights are often given constitutional or even supra-constitutional status, depending on the normative framework of each country (Pejchal Grünwald, 2022). These rights are known as "Human Rights" and are rooted in the dignity of the human being, with the

primary goal of protecting individuals and promoting their full development (Gilabert, 2019). Hence, the state is both a promoter and guarantor of these rights.

It is also significant to understand the meaning of the concept of 'Human Rights'. The concept of "Human Rights" originated in ancient times with strong religious ties, but in modern times, it has evolved to focus on people while separating from any religious connections (Makrides, 2020). This new notion recognizes the equality of all humans and the consequent need for respectful interaction among them, which leads to the future coordination of legal resources to ensure equality in the legal and political landscapes, despite the multiple differences between the people (Łuków, 2018). With the emergence of the theoretical foundation of human privileges, human dignity broadened its scope in two ways, vertically, since human beings are superior to other species of the animal kingdom, and horizontally, by establishing equal treatment among them regardless of their rank in society (Giustina, 2021).

Moreover, understanding the following terms is also crucial to capture the key concepts and clarify the complex interplay of rights involved. The term "Right to Religious Freedom" can be defined as the liberty of individuals to engage in their religious activities, which is an essential doctrine of Jehovah's Witnesses (Gunner, 2023; Martínez-Torrón, 2006). At the same time, the "Right to Life" also highlights the responsibility for the safeguarding of life,

<sup>1</sup> Casa Di Consiglio FZE LLC, UAE

\* Corresponding author's e-mail: [AbuFannasAbdel@outlook.com](mailto:AbuFannasAbdel@outlook.com)

while the “Right to Health” includes the possibility of receiving proper health care and treatment (Nampewo *et al.*, 2022; Wicks, 2022). These definitions set the context of the study, which is to discern the role of the above-mentioned rights in decision-making in the medical context. Analyzing these priorities, the current study aims to propose solutions for resolving the conflicts that arise when religious beliefs challenge standard medical practices (Mattei, 2023; Petrini, 2014).

The current study evaluates the normative clash of human rights referring to Jehovah’s Witnesses in Spain, with an emphasis on their religious beliefs towards blood transfusions (Ramírez-Salazar *et al.*, 2003). Jehovah’s Witnesses are an independent group of Christianity who hold different beliefs and practices, especially regarding the rejection of blood products (Spencer, 2002). This is due to what they consider forbidden by the scriptures, including the consumption of blood, which in their view includes transfusion (Murphy, 2023). They were founded in the late 1800s and focus on the individual’s life as explained in the Bible and stress holiness as opposed to physical existence (Peyton, 2020). Due to their beliefs regarding the intake of blood transfusions, they pose ethical and legal dilemmas in healthcare facilities especially when the treatment options offered to them are against their faith (Loix *et al.*, 2020).

Evaluating this issue is significant, and is reflected in the novelty of the current study since it focuses on the conflict of interest between the liberty of faith and the right to life and health (Harris *et al.*, 2023). These rights define other basic human values and freedoms but they can clash in certain situations, such as when a patient’s freedom of religion clashes with the doctors’ and nurses’ code of ethics (Chemerinsky, 2023). Therefore, the objective of the article is to present a brief analysis of this conflict by presenting legal, ethical, and medical aspects (Petrini, 2014). The research question guiding this study is: How the healthcare practitioners uphold the right to freedom of religion with the rights to life and health of individuals who are Jehovah’s Witnesses and decline to take blood transfusion? In answering this question, the article aims to advance the knowledge of human rights and medical ethics practices for policy and practice purposes in similar cases (Mattei, 2023).

## LITERATURE REVIEW

The issue of blood transfusion refusal by Jehovah’s Witnesses has been a significant topic of discussion within the fields of medical ethics, law, and healthcare management. A paper published by Radovanović *et al.* (2019) explains that the best approach to minimize the use of homologous blood components in massively bleeding Jehovah’s Witness patients is the transfusion of intraoperative blood and autotransfusion (Radovanović *et al.*, 2021). However, as useful as these alternatives are, the literature reveals that they come with their drawbacks.

Firstly, these methods are often applicable in very few centres, which means that they are impossible to access

when controlling is needed during an emergency when there is no time and available resources. Moreover, even though there are stimulators of erythropoiesis such as recombinant erythropoietin (rEPO), they are relatively costly as compared to allogeneic blood transfusion. There is also a question about patient consent as Jehovah’s Witnesses may not be aware of the current spectrum of blood-related components and techniques, which makes acceptance of these alternatives an individual matter of faith. Such a circumstance can raise ethical issues for healthcare personnel who struggle between keeping alive and the principle of the patient’s self-determination.

Legal approaches to refusal for blood transfusion have also been extensively studied, chiefly in the context of Europe. In Europe, it has also been noted that patient self-determination has become more emphasized in the years after the mid-1990s. In their paper, Loix *et al.* (2019) describe the legal aspects of transfusion refusal among Jehovah’s Witnesses in various European countries. The study contrasts and compares the legal conditions in different countries, citing some aspects of paternalism and others that assert the patient’s sovereignty even if it contradicts the doctor’s advice (Loix *et al.*, 2020). However, the literature lacks a unified legal viewpoint, with unpredictable court rulings contributing to uncertainty in both medical practice and patient care.

The scoping review by Peyton (2020) highlights a dilemma between a patient’s right to self-determination and the principle of beneficence, a paramount consideration, especially if the patient’s life is at risk due to refusal of treatment. The author emphasizes the emotional and moral costs that healthcare providers experience when the provider wants to save the patient’s life but also respects the patient’s decision to refuse blood transfusion. Despite the depth of discussion on this topic, the literature reveals a gap in understanding how these ethical challenges are managed in real-time clinical settings (Peyton, 2020). The COVID-19 pandemic has significantly impacted various professional sectors, including legal professionals in Bangladesh, highlighting socio-economic and psychological challenges faced during the crisis (Rashid, 2024). Similarly, issues of human security and conflict, such as rustling in Nigeria, further complicate the legal landscape and necessitate a robust response from regional organizations like ECOWAS (Akah *et al.*, 2023). These contemporary challenges underscore the importance of examining how legal and ethical frameworks adapt to crises that affect patient rights and healthcare practices.

There are several gaps in the existing literature, firstly, although the usefulness of non-transfusion management approaches is established, there is a shortage of studies on their long-term efficacy and patient outcomes, especially in non-specialized settings. Secondly, the legal interventions in cases of transfusion refusal vary across jurisdictions, and more studies are necessary to establish the outcome of such variability on both the clients and the practitioners. Last but not least, the bioethical discourse more often than not tends to dwell on theoretical

conundrums rather than on actual experimental problem-solving scenarios that clinicians have to deal with when handling such cases. The current study intends to bridge this gap by providing an empirical analysis of the practical implementation of alternative transfusion strategies, examining legal precedents and their impact on medical practice. It further aims to highlight the regional and global ethical issues faced in actual clinical practice.

## MATERIALS AND METHODS

The methodology employed in this study involves a legal analysis of the normative conflict encapsulating blood transfusions for Jehovah's Witness patients in Spain. This study focuses on the correlation of the Right to Religious Freedom, the Right to Life, and the Right to Health through an integrative, qualitative approach that analyses articles, legal instruments, and ethical frameworks (Vandemeulebroucke *et al.*, 2022). The review section of the study includes a total of ten articles that were considered in the analysis. The selection procedure involved identifying relevant literature that addresses the intersection of the Right to Religious Freedom, the Right to Life, and the Right to Health, particularly in the context of Jehovah's Witnesses' refusal of blood transfusions. This process aimed to ensure a comprehensive understanding of the ethical, legal, and medical implications surrounding the issue, drawing from diverse perspectives to inform the qualitative analysis conducted in the study. Therefore, studying case law and statutory provisions, the study identifies critical factors influencing the decision-making process in medical practice (Anderson *et al.*, 2012). Moreover, the current study particularly the patient's state of consciousness and the urgency of their medical condition. This creates a discussion because the patient's autonomy the roles of the healthcare professionals, and the potential legal repercussions of their decisions are explored.

## RESULTS AND DISCUSSION

### Human Rights

"Human rights" are a set of privileges inherent to every person and have seen a progressive rise in international law both from normative and organizational perspectives (Martínez-Torrón, 2006). Incidentally, Article 1 of the "Universal Declaration of Human Rights" stipulates that everyone is born independent and equal in dignity and rights (Juaristi, 2023). Consequently, under Article 2, all the rights contained therein must be recognized, respected, and guaranteed by the States within their respective jurisdictions to all individuals without any distinction (Ramcharan, 2021). This normative position is echoed in Article 2.1 of the "International Covenant on Civil and Political Rights", Article 2.2 of the "International Covenant on Economic, Social, and Cultural Rights", and Article 1 of the "Convention for the Protection of Human Rights and Fundamental Freedoms" (Dziurda *et al.*, 2021; Ikawa, 2020; Stanislovas, 2019). These international documents also frame the obligation for

the States Parties to implement all legal, judicial, and administrative measures necessary to guarantee and protect the aforementioned rights.

Additionally, human rights are inherent and inalienable, meaning they cannot be traded or extinguished, although their exercise can be suspended or limited in extreme situations (Nowak, 2021). They are also non-transferable, as individuals cannot transfer or waive these rights. Moreover, humanitarian rights are also accumulative and irreversible as new rights can be gained over time or the scope of existing rights expanded, making it impossible to reduce or reverse already recognized rights (Goodale, 2022). They are inviolable, meaning no individual, legal entity, or governmental body is authorized to infringe, damage, or destroy them.

The transboundary nature of human privileges allows the international community to intervene when aware of a State violating the human privileges of its population, and the aggressor State cannot claim violation of its national sovereignty in such cases. Lastly, they are also universal, meaning any person, regardless of age, sex, physical, social, political, legal, economic, or cultural condition, has human rights (Provea, 2008). This characteristic implies that these rights are ascribed to all individuals notwithstanding of any context, motivated by the fact that such adjudication is carried out regardless of any temporal, spatial, political, or cultural circumstance (Ferrajoli, 2008).

The legal doctrine has classified human rights into three generations. The first-generation rights include municipal and governmental privileges, such as the right to life, freedom of transit, freedom of expression, assembly, and religion, as well as political rights like suffrage, participation, and political association (Viola, 2015). The second-generation rights cover monetary, social, and ethnic rights, including the right to work, a decent salary, health, social security, education, and a decent standard of living. Lastly, third-generation rights, known as peoples' rights, encompass diffuse rights such as the right to a healthy environment, peace, sustainable development, and the self-determination of peoples (Viola, 2015). According to this classification, first-generation rights have a negative character, therefore such rights only require the State not to participate negatively in their realization, being of direct application and judicially enforceable; while second-generation rights have a positive character, as they require positive action by the State to achieve their exercise (Bidart Campos, 1998).

In this regard, the State, as the main guarantor of human rights, has three primary duties: the duty to respect, the duty to protect, and the duty to fulfil. The duty to respect means the State must refrain from any actions that interfere with the full realization of rights. On the other hand, the duty to protect involves safeguarding these rights from actions by third parties that might negatively affect them. The duty to fulfil requires the State to take concrete measures to ensure these rights are realized, which includes both facilitating and providing.

Facilitating involves promoting rights and acting preventively to favour their realization and avoid their violation. Providing, on the other hand, is necessary in cases of need or emergency, such as disability or natural or social catastrophes, where individuals cannot realize their rights on their own. In these exceptional cases, the State must provide the necessary means for individuals to enjoy their rights (Viola, 2015).

### **Right to Religious Freedom**

The right to religious freedom, along with freedom of thought and ideology, is one of the fundamental freedoms and falls within the category of first-generation rights (Giles, 2020). Its international legal foundation is drawn from Article 18 of the “Universal Declaration of Human Rights” and the “International Covenant on Civil and Political Rights,” along with Article 5 of the European Convention on Human Rights (Dziurda *et al.*, 2021; Weissbrodt, 2021). These provisions assert that every person has the right to liberty of thought, morality, and religion, including the autonomy to change faith or principles, and to manifest them individually or collectively (Gunner, 2023). The only limitations to this right are those necessary for security, public order, health, morals, or the fundamental rights and freedoms of others. The doctrine of religious freedom defines it as the freedom to make moral decisions based on one’s moral code, which stems from their system of thought or religious beliefs (Ramírez-Salazar *et al.*, 2003). Additionally, it is important to distinguish religious freedom from other related terms: “ideological freedom” refers to the ability to express and defend one’s ideas; “freedom of conscience” means acting without interference from authorities; while “religious freedom” pertains to the right to live according to one’s religious convictions (Hernández, 2020). Furthermore, religious freedom includes the right to conscientious objection, which is the right to act according to one’s convictions and beliefs.

It should also be noted that the “Right to Religious Freedom” is based on a broad international religious reality, which includes traditional religions, analogous institutional practices, and new religious movements, as long as they are not sects that threaten the dignity and integrity of the human being. Religious belief is recognized as a cultural and historical reality, which shapes the right and freedom of individuals to experience their existence as an essential part of their dignity (Abdulla, 2018). To better conceptualize religion, doctrine identifies three categories: belief (including non-belief), identity (including beliefs, cults, traditions, and rites), and way of life (religious activities and practices) (Whitehead & Chrystides, 2022).

Religious freedom is further understood to have four dimensions:

The first dimension is that of intellectual and spiritual search, in which individuals have the freedom to use reason in exploring and understanding the order of reality, seeking deeper insights into existence. The second

dimension is Practical reason which underscores that people possess the ability to align their lives with an invisible order and commit to any truths they discover, integrating these beliefs into daily life. Thirdly, according to the dimension of human sociability, there is freedom to engage with others, sharing and expressing one’s understanding of a transcendent order through social interactions. Finally, juridical and political expressions are the dimension where People have the right to manifest religious beliefs in civil society and political life, including owning property, directing educational and cultural centres, forming associations, and participating in politics (Shah *et al.*, 2012).

Jehovah’s Witnesses often invoke their right to religious freedom to refuse blood transfusions, based on conscientious objection (Mattei, 2023). This right allows patients to refuse treatment proposed by doctors due to religious or moral beliefs, thereby obligating doctors to respect their decision if viable alternative treatments exist. This refusal is also supported by the Principle of Autonomy, which states that no medical treatment can be administered without the patient’s prior consent, except in cases where their life or other fundamental rights are at risk (Ramírez-Salazar *et al.*, 2003).

Finally, the rejection of blood transfusions by this religious group is supported by their religious convictions. These convictions are based on various biblical passages that expressly prohibit ingesting blood (Rongved, 2024). Additionally, they believe that failing to comply with divine commands means losing the hope of the ‘Resurrection’ and the ‘Promised Paradise’ (Murphy, 2023).

### **Biblical Passages that Prohibit Ingesting Blood**

It has been exposed by the authors that Jehovah’s Witnesses accept the vast majority of medical treatments (“Those who are well do not need physicians, but those who are sick...” Luke 5:31). But in the case of blood transfusion, the situation is different. Based on various passages in the Bible, such as “You shall only abstain from eating flesh with its soul, that is, its blood” (Genesis 5:4), “No one from among you... shall eat blood” (Leviticus 17:12), “... for the life of all flesh is blood; whosoever eateth (eats) it shall be destroyed” (Leviticus 17:14). Therefore, the Witnesses firmly do not accept the transfusion of primary blood components. The primary blood components include red blood cells, white blood cells, platelets and plasma (Spencer, 2002). Plasma derivatives like albumin, clotting factors and immunoglobulins are usually taken by Jehovah’s Witnesses because they are biological components that cross the placental barrier during pregnancy and as such are not considered primary components. In addition, the entities that would have been classified as blood in the list of simpler components would not be so classified any longer (Petrini, 2014).

### **Right to Life and Right to Health**

The Right to Life is a first-generation right of great importance, as outlined in Article 3 of the “Universal

Declaration of Human Rights”, which states it is inherent to every person. This principle is echoed in Article 6 of the “International Covenant on Civil and Political Rights”, which mandates that this right be safeguarded by law and prohibits arbitrary deprivation of life (Ramcharan, 2021). The death penalty is permissible only for the most serious crimes, following legal procedures, with the possibility of commutation. In Europe, Article 12 of the “Convention for the Protection of Human Rights and Fundamental Freedoms” protects this right. It allows exceptions only for lawful executions, self-preservation, lawful arrests, and prevention of riots or insurrections (Harris *et al.*, 2023). Similarly, Article 2 of the “Charter of Fundamental Rights of the European Union” asserts everyone’s right to life and prohibits the death penalty (Wicks, 2022).

Doctrinally, the “Right to Life” has different meanings; as the privilege to exist, to live a decent life, to be provided with food and shelter and not to be killed by another person or at the behest of another (Figueroa García-Huidobro, 2008). The ECHR has underlined that the State should not only avoid unlawful intentional and unintentional killings but also prevent deaths within its jurisdiction. This entails enacting criminal laws to discourage such crimes and putting measures in place to guard vulnerable persons (ECHR, 1998). Also, the State has the responsibility to investigate thoroughly cases of violation of the Right to Life, to bring to book the offenders and to compensate the victims whenever the “Right to Life” has been disrupted (“Judgement of the Court 28 March “, 2000 ). Another right that is closely linked to the content of this research is the “Right to Health,” which the World Health Organization describes as the absence of disease and infirmity (Organization, 2019). This encompasses the choices over one’s own life and physical integrity, including the liberty to make decisions regarding sexual and reproductive matters, and the right not to be subjected to torture or degradation.

The legal regulation of this right is found in Article 25 of the Universal Declaration of Human Rights (Eide, 1992). Article 5 contains the items that shall constitute the right to a decent minimum, which consists of receiving necessary medical treatment, social assistance, and insurance in case of sickness, disability, widow, old age or for other reasons in cases of loss of the means of livelihood, special protection of motherhood and childhood. This right is anchored on Article 12 of the International Covenant on Economic, Social and Cultural Rights (Olumese, 2021). According to this article, individuals are free to attain the highest level of health possible (Eide, 1992).

Moreover, the right to health encompasses a set of essential and interrelated features such as, public states are obliged to provide adequacy of health services, programmes, products, and facilities such as safe water, hygiene facilities, quality human health resources, and relevant health commodities (UN. Committee on Economic, 2000). There must be no restrictions when it comes to making these health resources available to society that is, there should not be any prejudices

in terms of the geography of the society or economic status or capacity of the society by among other things ensuring health information. Acceptability states that the health services delivered to the clients should be ethical, culturally appropriate, confidential, and oriented towards the client’s health enhancement. Requirement of quality holds that these services should conform to scientific and medical requirements of qualified medical personnel, efficient medicine, relevant equipment and clean water (UN. Committee on Economic, 2000).

### **Right to Health in the European Context**

In the European context, the privilege to health is enshrined in Article 35 of the “Charter of Fundamental Rights of the European Union” (Şaramet, 2020). This article states that everyone has the right to preventive and health care, under the legal and practical conditions of each country. Furthermore, the design and implementation of all policies and actions of the European Union must prioritize a high level of protection for human health.

The Convention for the Protection of Human Rights and Fundamental Freedoms addresses this issue, albeit in a limited manner (De Schutter, 2018). Article 8.2 correlates the right to health with the “Right to Respect for Private and Family Life” (Lagoutte, 2003). It establishes health protection as an exception that legitimizes interference by public authorities in an individual’s private and family life. However, this initial legal approach was refined by the European Social Charter. Article 11 of the Charter enshrines the commitment of states to adopt appropriate measures to eliminate the causes of poor health (Dalli, 2020). It emphasizes the establishment of training and consultation services to improve health and promotes a sense of individual responsibility for such improvements. Additionally, it addresses the prevention of accidents, as well as endemic and epidemic diseases.

### **Jurisprudential Perspectives**

At the jurisprudential level, the European Court of Human Rights has examined the right to health concerning the right to life (Yaroshenko *et al.*, 2021). The court has analyzed cases of medical negligence, where the actions of healthcare providers not only violate the right to health by failing to provide adequate services but can also result in the death of patients.

For example, in the case of *Asiye Genç v. Turkey*, the court addressed the death of a newborn due to a lack of coordination and insufficient medical resources (KwiatKowsKI, 2022). This case illustrates how inadequate medical services can violate the right to health and, consequently, the right to life. It underscores the imperative need to ensure suitable emergency services for individuals. Similar principles were applied in the “Center of Legal Resources on Behalf of *Valentin Câmpeanu v. Romania*” (Domaradzka, 2023). In this case, the court found violations of Articles 2, 13, and 4G of the European Convention due to the death of a disabled minor who did not receive the necessary care or adequate

treatment.

Additionally, in *Šilih v. Slovenia*, the court ruled on a case involving a patient's death caused by administering drugs to which the patient was allergic (Simović & Simović, 2021; Türmen). This case further demonstrates how medical negligence, which constitutes a clear abuse of the right to health in terms of the quality and suitability of medical services, can ultimately lead to a desecration of the "right to life" (Kapelańska-Pręgowska, 2019). In summary, the evolving legal framework and jurisprudential interpretations highlight the critical interconnection between the right to health and the right to life within the European context.

### **The Link Between Rights to Life and Health in Medical Practice**

Having outlined the notions and international legal parameters regarding the Rights to Life and Health, it is essential to clarify their connection to the current issue (Hemberg & Hemberg, 2020). Safeguarding these rights represents the primary commitment of medical and healthcare professionals (Nampewo *et al.*, 2022). Their actions are deeply rooted in these principles, as they are responsible for providing care and treatment in a manner that optimally ensures the improvement or maintenance of patients' physical and mental well-being. The performance of these professionals can significantly impact whether individuals enjoy these rights or experience their violation (Nampewo *et al.*, 2022).

In this context, medical personnel dedicate their training and efforts to healing their patients as efficiently and effectively as possible (Shanafelt *et al.*, 2019). They constantly assess the consequences and feasibility of applicable treatments, typically opting for those most likely to achieve a curative effect with the least harmful side effects. This commitment is further supported by the Ethical Principles of Medicine (Nampewo *et al.*, 2022). These include the Principle of Beneficence which claims that physicians should act for the benefit of patients and society (Avant & Swetz, 2020). Similarly, according to the Principle of Equity physicians are obligated to provide medical care based on current health needs, without discrimination, preferences, or privileges (Blanchet Garneau *et al.*, 2019). Similarly, the principle of Autonomy implies that adult patients, in full use of their faculties, have the right to decide on the type of medical care they wish to receive (Lewis, 2020). Their willingness and acceptance are fundamental for the application of the medical treatments to which they are entitled. Finally, according to the Principle of Confidentiality, patients have the right to ensure that information shared during doctor-patient interactions remains confidential (Murtaza *et al.*, 2021).

In summary, the intersection of these rights and ethical principles underscores the critical role that healthcare professionals play in upholding the "Right to Life and Health" (Nampewo *et al.*, 2022). Also belonging to this set of principles, the Principle of Dignity consists of

the commitment of physicians to provide care to their patients following their human condition, their organism, conscience, will and freedom (Camosy, 2021). On the other hand, according to the Principle of Respect, the medical care given to patients should be based on consideration and courtesy to their condition as patients. The Principle of Solidarity indicates the obligation of physicians to share their goods and knowledge with people who need their services or support, as well as the promotion of organ donation for transplants (Shaw, 2019). Moreover, the Principle of Honesty is based on the duty of health professionals to express themselves and act in strict compliance with current regulations and religious ethical principles (Varkey, 2021). The Principle of Loyalty implies the obligation of the physician to correspond to the trust placed in them and the Principle of Justice, is based on giving to each person what corresponds to them, according to law or reason (Huang *et al.*, 2021; Kelsen, 2022).

Finally, it is important to specify that the described legal relationship has two scenarios. The first one is when the patient is conscious and in a state that does not represent a risk to his physical integrity. In this case, he will determine, according to the Principle of Autonomy, whether or not to apply the required transfusions (Bolcato *et al.*, 2021). The patient, knowing the details, situation, and consequences of the application or non-application of the treatment proposed by the physician, indicates his approval or refusal of the application of the same (Utomo).

The second scenario is when the patient is not conscious, there is no legal representative who can give any approval, or the refusal to hemotransfusions was established in the informed consent, but the patient's medical situation is so serious that it puts his life or the quality of his life at significant risk. In this case, the medical professional has the responsibility to decide, based on the urgency of the patient's situation, how to safeguard the Rights to Life and Health, based on his professional ethical principles (Burkholder *et al.*, 2019). This may lead to the application of blood transfusion, an action that may imply the violation of the Right to Religious Freedom of the Jehovah's Witness patient, an aspect that will be discussed further in the following section.

### **Spanish Context of Blood Transfusions in Jehovah's Witness Patients**

The Spanish regulatory framework is governed by the Spanish Constitution, a legal instrument that establishes the macro guidelines for governmental action (da Silva Rodrigues *et al.*; Solanes Mullor & Torres Pérez, 2019). This framework naturally includes the obligations of individuals and their rights, which the State must guarantee and protect. The obligation extends to Human Rights, especially when the Government commits itself by signing international conventions on the matter. These conventions become part of the internal legal system after their official publication, as stated in Article 5 of the Constitution.

### Right to Religious Freedom

Regarding the “Right to Religious Freedom”, its legal basis is implicit in Article 16 of the Spanish Constitution, which guarantees the ideological, religious, and worship freedom of individuals and their consequent manifestations (Martínez-Torrón, 2001). The only limiting factor is the maintenance of public order, which includes a prohibition against forcing individuals to declare their beliefs, religion, or ideology. However, the limits to exercising this right have been extended legally. Article 3, paragraph one of the Organic Law of Religious Freedom stipulates that this right may be exercised except in cases where public liberties, fundamental rights, public safety, health, and morals may be affected (Martínez-Torrón, 2001, 2006).

Additionally, the Organic Law of Religious Freedom, according to Article 1, approves the State’s obligation to guarantee the enjoyment, exercise, and protection of religious freedom (Martínez-Torrón, 2001). It prohibits discrimination based on religious beliefs and establishes the secularity of the State. The law also outlines the aspects of this right, which include professing religious beliefs and manifesting them, changing or abandoning religious beliefs, practising acts and activities of worship, receiving assistance related to their faith, providing and receiving religious teachings and information by any means, meeting or expressing themselves, publicly for religious purposes, and associating to develop religious activities as a community (Justicia, 2017).

These provisions are detailed in Article 2 of the aforementioned law (Canameres, 2010). Given this context, Jehovah’s Witnesses, as patients exercising their religious freedom, have the right to express and assert their conscientious objection to receiving hemotransfusions. This objection is a manifestation of their beliefs and convictions, and it must be duly communicated to the relevant medical personnel, who are obligated to respect the patient’s wishes, within the legal limits described above.

### Implications

The legal analysis of Jehovah’s Witness patients’ negative stance on blood transfusions leads to several important conclusions. Both in the international and Spanish spheres, the right to life is considered to have a developed hierarchy than the rest of human rights, as without it the existence of the others is not possible (Delmas-Marty, 2021). There is a strong connection between the Right to Life and Health and the medical profession since the latter’s activities are a determining factor between the exercise or violation of such rights. The negligent performance of medical tasks may generate a desecration of both the “Right to Health” and the “Right to Life” in the same patient (Aker & Tamanna, 2020).

In cases where the patient is conscious and his/her life is not in danger, his/her manifest will refuse to receive blood transfusions due to religious beliefs (Obidimma, 2019). It will be given preeminence, by the principle of autonomy.

When blood transfusion is necessary for the patient’s condition but not urgent and the patient has expressed his or her disapproval of this medical procedure, the case must be brought before the competent judicial bodies for resolution. The judges, when evaluating the case, have the responsibility to take into account the imminent danger that the non-application of hemotransfusions would represent for the patient’s life or the quality of the transfusion.

In cases where blood transfusion is necessary and urgent given the seriousness of the patient, the medical staff will make the respective decision, which should lean towards the application of such transfusion given the preeminence of the “Right to Life” and the “Right to Health” over the Privileges to Religious Independence in the Spanish legal system (Casey-Maslen & Heyns, 2021). Moreover, the non-application of the blood transfusion to the Jehovah’s Witness patient when it was necessary and urgent to preserve his life or the quality of his life, may result in administrative and/or criminal liabilities for health professionals, such as a criminal investigation for the crimes of injury or culpable homicide, due to the condition of guarantor of the rights to life and health that these professionals have in the performance of their duties (Ernest & Okpokam, 2019).

### CONCLUSION

The evaluation of the normative conflict regarding blood transfusions for Jehovah’s Witness patients highlights a clash between the privilege of Religious Freedom and the “Right to Life and Health”. This conflict illustrates the necessity of considering individual beliefs in medical practice while healthcare providers uphold their oath to save lives. Consequently, the patient’s state of consciousness and critical health condition are paramount in determining the appropriate course of action. If the patient is fully conscious, even in a severe condition, their religious belief to refuse treatment should prevail. However, in situations where a blood transfusion is necessary and life-threatening, healthcare professionals must act in the best interest of the patient, even if it means potentially violating the patient’s religious rights. Ultimately, this analysis emphasizes the need for established legal and ethical standards that guide healthcare providers in managing such conflicts while respecting patient rights and beliefs.

### REFERENCES

- Abdulla, M. R. (2018). Culture, religion, and freedom of religion or belief. *The Review of Faith & International Affairs*, 16(4), 102-115. <https://doi.org/10.1080/15570274.2018.1535033>
- Akah, A. U., Ekpo, T. J., & Okocha, O. C. C. (2023). Rustling and human security in Nigeria-An analysis of ECOWAS response. *American Journal of Society and Law*, 2(2), 51-57. <https://doi.org/10.54536/ajsl.v2i2.2014>
- Aker, A., & Tamanna, T. (2020). Fundamental rights

- during corona pandemic-Bangladesh perspective: A study special reference to access to justice and fair trial, legal protection and right to life. In *BiLDBANGLADESH*. [https://www.researchgate.net/publication/346329715\\_Fundamental\\_Rights\\_during\\_Corona\\_Pandemic-Bangladesh\\_Perspective\\_A\\_Study\\_Special\\_Reference\\_to\\_Access\\_to\\_Justice\\_and\\_Fair\\_Trial\\_Legal\\_Protection\\_and\\_Right\\_to\\_Life](https://www.researchgate.net/publication/346329715_Fundamental_Rights_during_Corona_Pandemic-Bangladesh_Perspective_A_Study_Special_Reference_to_Access_to_Justice_and_Fair_Trial_Legal_Protection_and_Right_to_Life)
- Anderson, E., Tremper, C., Thomas, S., Wagenaar, A. C., & Burris, S. (2012). *Measuring statutory law and regulations for empirical research*.
- Ashworth, A. (2019). Victims' rights, defendants' rights and criminal procedure. In *Integrating a victim perspective within criminal justice* (pp. 185-204). Routledge.
- Avant, L. C., & Swetz, K. M. (2020). Revisiting beneficence: What is a 'Benefit', and by what criteria? *The American Journal of Bioethics*, 20(3), 75-77. <https://doi.org/10.1080/15265161.2020.1714796>
- Bidart Campos, G. J. (1998). *Manual de la Constitución reformada*.
- Blanchet Garneau, A., Browne, A. J., & Varcoe, C. (2019). Understanding competing discourses as a basis for promoting equity in primary health care. *BMC Health Services Research*, 19, 1-11. <https://doi.org/10.1186/s12913-019-3981-9>
- Bolcato, M., Shander, A., Isbister, J. P., Trentino, K. M., Russo, M., Rodriguez, D., & Aprile, A. (2021). Physician autonomy and patient rights: Lessons from an enforced blood transfusion and the role of patient blood management. *Vox Sanguinis*, 116(10), 1023-1030. <https://doi.org/10.1111/vox.13122>
- Burkholder, T. W., Hill, K., & Hynes, E. J. C. (2019). Developing emergency care systems: A human rights-based approach. *Bulletin of the World Health Organization*, 97(9), 612. <https://doi.org/10.2471/BLT.18.224139>
- Camosy, C. C. (2021). *Losing our dignity: How secularized medicine is undermining fundamental human equality*. New City Press.
- Canamares, S. (2010). The Spanish Organic Law on religious freedom: Appropriateness and grounds for amendment. *IUS Canonium*, 50, 477.
- Casey-Maslen, S., & Heyns, C. (2021). *The right to life under international law: An interpretative manual*. Cambridge University Press. <https://doi.org/10.1017/9781108881515>
- Chemerinsky, E. (2023). *Constitutional law*. Aspen Publishing.
- da Silva Rodrigues, Q. P., Lins, S. M. d. S. B., & Peres, E. M. Blood and blood component transfusion for Jehovah's Witnesses: A scoping review.
- Dalli, M. (2020). The content and potential of the right to social assistance in light of Article 13 of the European Social Charter. *European Journal of Social Security*, 22(1), 3-23. <https://doi.org/10.1177/1388262720912272>
- Daly, E. (2020). *Dignity rights: Courts, constitutions, and the worth of the human person*. University of Pennsylvania Press.
- De Schutter, O. (2018). The Charter of Fundamental Rights as a social rights charter.
- Delmas-Marty, M. (2021). *The European Convention for the protection of human rights: International protection versus national restrictions* (Vol. 19). Brill. <https://doi.org/10.1163/9789004478441>
- Domaradzka, A. W. (2023). Children's rights with disabilities and alternative care between universal and regional (Council of Europe) standards of protection. *European Integration Studies*, 19(1). <https://doi.org/10.5755/j01.eis.19.1.33392>
- Dziurda, M., Golab, A., & Zembrzusi, T. (2021). European Convention for the Protection of Human Rights and Fundamental Freedoms: Impact on Polish law development. *Access to Justice in Eastern Europe*, 23.
- Eide, A. (1992). *Article 25 of the Universal Declaration of Human Rights*. In (pp. 377-389): Oslo, Scandinavian University Press.
- Ernest, N. A., & Okpokam, D. C. (2019). Bloodless medicine and surgery: A review of practice and consideration of Jehovah's Witnesses. *Asian Journal of Medicine and Health*, 16(3), 1-7. <https://doi.org/10.9734/ajmah/2019/v16i330143>
- Figueroa García-Huidobro, R. (2008). Concepto de derecho a la vida. *Ius et Praxis*, 14(1), 261-300. <https://doi.org/10.4067/S0718-00122008000100011>
- Gilbert, P. (2019). *Human dignity and human rights*. Oxford University Press, USA.
- Giles, J. (2020). A theological justification for freedom of religion and belief as a universal right. In *Why religion? Towards a critical philosophy of law, peace and God* (pp. 101-136).
- Giustina, T. G. a. D. (2021). The principle of human dignity, law and relativism: The challenge of connecting diversity.
- Goodale, M. (2022). *Reinventing human rights*. Stanford University Press.
- Gunner, G. (2023). Religious freedom as a human right. In *Freedom of religion and religious pluralism* (pp. 79-100). Brill Nijhoff. [https://doi.org/10.1163/9789004530736\\_006](https://doi.org/10.1163/9789004530736_006)
- Harris, D. J., O'Boyle, M., Bates, E., & Buckley, C. (2023). *Law of the European Convention on Human Rights*. Oxford University Press.
- Hemberg, J., & Hemberg, H. (2020). Ethical competence in a profession: Healthcare professionals' views. *Nursing Open*, 7(4), 1249-1259. <https://doi.org/10.1002/nop2.480>
- Hernández, M.-A. P. (2020). Ideological freedom and related legal wording. *The Age of Human Rights Journal*, 14, 109-136. <https://doi.org/10.17561/tahrj.v14.5688>
- Huang, I.-C., Du, P.-L., Lin, L.-S., Liu, T.-Y., Lin, T.-F., & Huang, W.-C. (2021). The effect of perceived value, trust, and commitment on patient loyalty in Taiwan. *INQUIRY: The Journal of Health Care Organization, Provision, and Financing*, 58, 00469580211007217. <https://doi.org/10.1177/00469580211007217>
- Ikawa, D. (2020). The International Covenant on

- Economic, Social and Cultural Rights and the Optional Protocol. In *Research handbook on economic, social and cultural rights as human rights* (pp. 14-26). Edward Elgar Publishing. <https://doi.org/10.4337/9781788972130.00010>
- Juaristi, F. J. R. (2023). Article 1–Dignity and equality. In *The Universal Declaration of Human Rights* (pp. 12-35). Brill Nijhoff. [https://doi.org/10.1163/9789004545396\\_003](https://doi.org/10.1163/9789004545396_003)
- Judgement of the Court 28 March ECHR (Court of Justice 2000).
- Organic Act 7/1980, of 5 July, On Freedom of Religion, (2017).
- Kapelańska-Pręgoska, J. (2019). Medical negligence, systemic deficiency, or denial of emergency healthcare? Reflections on the European Court of Human Rights Grand Chamber Judgment in Lopes de Sousa Fernandes v. Portugal of 19 December 2017 and previous case-law. *European Journal of Health Law*, 26(1), 26-43. <https://doi.org/10.1163/15718093-12261036>
- Kelsen, H. (2022). *What is justice?: Justice, law, and politics in the mirror of science*. Univ of California Press.
- Kwiatkowski, P. (2022). European standard for the protection of patients' lives. *Przegląd Prawniczy Uniwersytetu im. Adama Mickiewicza*, 14, 119-137. <https://doi.org/10.18566/rfdcp.v46n124.a02>
- Lagoutte, S. (2003). Surrounding and extending family life: The notion of family life in the case-law of the European Court of Human Rights. *Nordic Journal of Human Rights*, 21(3), 292-306. <https://www.idunn.no/doi/abs/10.18261/ISSN1891-814X-2003-03-03>
- Lewis, J. (2020). Getting obligations right: Autonomy and shared decision making. *Journal of Applied Philosophy*, 37(1), 118-140. <https://doi.org/10.1111/japp.12383>
- Loix, S., Henin, P., Descamps, O., & Reusens, I. (2020). Jehovah's Witnesses and transfusion: Where do we stand in Europe? *ISBT Science Series*, 15(2), 212-220.
- Loveland, I. (2018). *Constitutional law, administrative law, and human rights: A critical introduction*. Oxford University Press.
- Łuków, P. (2018). A difficult legacy: Human dignity as the founding value of human rights. *Human Rights Review*, 19(3), 313-329.
- Makrides, V. N. (2020). Orthodox Christianity and modern human rights: Theorising their nexus and addressing Orthodox specificities. In *Global Eastern Orthodoxy: Politics, religion, and human rights* (pp. 13-39). [https://doi.org/10.1007/978-3-030-56919-1\\_2](https://doi.org/10.1007/978-3-030-56919-1_2)
- Martínez-Torrón, J. (2001). Freedom of religion in the case law of the Spanish Constitutional Court. *BYU Law Review*, 711.
- Martínez-Torrón, J. (2006). Religious freedom and democratic change in Spain. *BYU Law Review*, 777.
- Mattei, L. (2023). Jehovah's Witnesses and bioethics, right to treatment and religious freedom. *BioLaw Journal-Rivista di BioDiritto*, 25, 219-241. <https://doi.org/10.15168/2284-4503-2847>
- Mayer, K. U. (2018). Whose lives? How history, societies, and institutions define and shape life courses. In *Contextual influences on life span/life course* (pp. 161-187). Routledge.
- Murphy, C. A. (2023). A comparative analysis of the doctrine of bodily resurrection in Jehovah's Witnesses versus traditional Christianity. <https://digitalcommons.liberty.edu/masters/1091/>
- Murtaza, M., Ali, S., Shahbaz, W., & Elger, B. (2021). Doctor-patient confidentiality: A cross-sectional study of opinions among medical students and doctors. *Discover Journal of Public Future*, 4, e16. <https://doi.org/10.1007/s43399-021-00010-8>
- Nampewo, Z., Mike, J. H., & Wolff, J. (2022). Respecting, protecting and fulfilling the human right to health. *International Journal for Equity in Health*, 21(1), 36.
- Nowak, M. (2021). *Introduction to the international human rights regime* (Vol. 14). Brill.
- Obidimma, E. O. (2019). Fundamental right to freedom of thought, conscience and religion and the right to refuse medical treatment on religious grounds under Nigerian law. *African Journal of Constitutional and Administrative Law*, 1. <https://ezenwaohaetorc.org/journals/index.php/AJCAL/article/view/768>
- Olumese, O. (2021). Duty without liability: The impact of Article 12 of the International Covenant on Economic, Social and Cultural Rights on the right to health care in Nigeria. *African Human Rights Law Journal*, 21(2), 1112-1134. <http://dx.doi.org/10.17159/1996-2096/2021/v21n2a44>
- Organization, W. H. (2019). *Global action plan on physical activity 2018-2030: More active people for a healthier world*. World Health Organization.
- Pejchal Grünwald, V. (2022). European Convention on Human Rights and national constitutional orders. In *Encyclopedia of contemporary constitutionalism* (pp. 1-18). Springer. [https://doi.org/10.1007/978-3-030-56919-1\\_2](https://doi.org/10.1007/978-3-030-56919-1_2)
- Petrini, C. (2014). Ethical and legal aspects of refusal of blood transfusions by Jehovah's Witnesses, with particular reference to Italy. *Blood Transfusion*, 12(Suppl 1), s395. <https://doi.org/10.2450/2013.0175-13>
- Peyton, M. A. (2020). The sanctity of blood: Jehovah's Witnesses and bloodless medicine. *Hektoen International: A Journal of Medical Humanities*. <https://hekint.org/2020/01/29/the-sanctity-of-blood-jehovahs-witnesses-and-bloodless-medicine/>
- Radovanović, M., Končar, I., Vujčić, A., & Davidović, L. (2021). The right of Jehovah's Witnesses to refuse and to accept blood transfusion. *Vojnosanitetski preglod*, 78(7), 782-788.
- Ramcharan, B. G. (2021). *The concept and present status of the international protection of human rights: Forty years after the universal declaration* (Vol. 13). BRILL.
- Ramírez-Salazar, C., Jiménez-Corona, M., & Rivera-Cisneros, A. (2003). Legal aspects in cases of blood transfusion in Jehovah's Witnesses. *Gaceta Médica de México*, 139(4), 423-425.
- Rashid, M. H. (2024). Impact of COVID-19 pandemic on legal professionals in Bangladesh: A study findings in Dhaka City. *American Journal of Society and Law*, 3(1),

- 34-39. <https://doi.org/10.54536/ajsl.v3i1.2907>
- Rongved, F. K. (2024). Modern medicine and obeying God: How the Watchtower Society legitimizes the controversial teaching of refusing blood transfusion. The University of Bergen. <https://doi.org/10.13140/RG.2.2.22336.00004>
- Şaramet, O. (2020). The right to protection to health or the right to health?—Constitutional approaches. *Jus et Civitas: A Journal of Social and Legal Studies*, 71(1), 29-40. <https://www.ceeol.com/search/article-detail?id=979034>
- Shah, T. S., Franck, M. J., & Farr, T. F. (2012). *Religious freedom: Why now?*, defending an embattled human right. Witherspoon Institute.
- Shanafelt, T. D., Schein, E., Minor, L. B., Trockel, M., Schein, P., & Kirch, D. (2019). *Healing the professional culture of medicine*. *Mayo Clinic Proceedings*. <https://www.sciencedirect.com/science/article/pii/S0025619619303453>
- Shaw, R. M. (2019). Altruism, solidarity and affect in live kidney donation and breastmilk sharing. *Sociology of Health & Illness*, 41(3), 553-566. <https://doi.org/10.1111/1467-9566.12805>
- Simović, M. N., & Simović, M. M. (2021). Protection of the right to life and Constitutional Court of Bosnia and Herzegovina. *Right to Life*, 359. [http://www.iksi.ac.rs/izdanja/yearbook\\_novi\\_sad\\_2021.pdf#page=359](http://www.iksi.ac.rs/izdanja/yearbook_novi_sad_2021.pdf#page=359)
- Solanes Mullor, J., & Torres Pérez, A. (2019). The Constitution of Spain: The challenges for the constitutional order under European and global governance. In *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law: National Reports* (pp. 543-590). <https://library.oapen.org/bitstream/handle/20.500.12657/22841/1/1007320.pdf#page=557>
- Spencer, J. R. (2002). A point of contention: The scriptural basis for the Jehovah's Witnesses' refusal of blood transfusions. *Christian Bioethics*, 8(1), 63-90. <https://doi.org/10.1076/chbi.8.1.63.8761>
- Stanislovas, T. (2019). *International Covenant on Civil and Political Rights*.
- Türmen, J. Šilih v. Slovenia1 (Application No 71463/01) *European Court of Human Rights* (Grand Chamber). 9 April 2009.
- General comment no. 14 (2000), *The right to the highest attainable standard of health* (Article 12 of the International Covenant on Economic, Social and Cultural Rights), (2000).
- Utomo, L. Ethics and law in clinical practice: Principles of how to understand an ethical dilemma.
- Vandemeulebroucke, T., Denier, Y., Mertens, E., & Gastmans, C. (2022). Which framework to use? A systematic review of ethical frameworks for the screening or evaluation of health technology innovations. *Science and Engineering Ethics*, 28(3), 26. <https://link.springer.com/article/10.1007/s11948-022-00377-2>
- Varkey, B. (2021). Principles of clinical ethics and their application to practice. *Medical Principles and Practice*, 30(1), 17-28.
- Viola, A. M. B. d. (2015). Conséquences de la classification des droits de l'homme en générations par rapport à la justiciabilité des droits sociaux. *Journal of the Faculty of Law and Political Science*, 4(124), 32. <https://doi.org/10.18566/rfdcp.v46n124.a02>
- Weissbrodt, D. (2021). *The right to a fair trial under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights: Articles 8, 10 and 11 of the Universal Declaration of Human Rights* (Vol. 1). Brill. [http://66.36.242.93/reports/ccpr\\_c\\_mli\\_2003\\_2.doc](http://66.36.242.93/reports/ccpr_c_mli_2003_2.doc)
- Whitehead, A. R., & Chryssides, G. D. (2022). *Contested Concepts in the Study of Religion*.
- Wicks, E. (2022). Article 2—Right to Life. The EU Charter of Fundamental Rights,
- Yaroshenko, O. M., Steshenko, V. M., Anisimova, H. V., Yakovleva, G. O., & Nabrusko, M. S. (2021). The impact of the European court of human rights on the development of rights in health care. *International Journal of Human Rights in Healthcare*, 15(5), 501-513. <https://doi.org/10.1108/IJHRH-01-2021-0011>