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Ruling about forced blood transfusion of a Jehovah's Witness in Spain

Shortcomings which led to blood transfusions being administered to a Jehovah's Witness against her will breached her right to autonomy. The decision was unanimous

Registrar of the European Court (17.09.2024) - In the case of Pindo Mulla v. Spain (application no. 15541/20), the Grand Chamber of the European Court of Human Rights held, unanimously on 17 September, that there had been:

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

The case concerns blood transfusions administered to the applicant, a Jehovah's Witness, despite her refusal to undergo a blood transfusion of any kind (full blood, red blood cells, white blood cells, platelets or blood plasma).

The Court found in particular that the authorisation to proceed with that treatment had resulted from a decision-making process that had been affected by the omission of essential information about the documenting of Ms Pindo Mulla's wishes, which had been recorded in various forms and at various times in writing.

Since neither the applicant nor anyone connected with her had been made aware of the decision taken by the duty judge authorising all treatment, it had not been possible to rectify that omission. Neither this issue nor the issue of her capacity to take a decision had been addressed in an adequate manner in the subsequent proceedings.

The national system had therefore not responded adequately to her complaint that her wishes had been wrongly overruled.

Principal facts

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

Following medical tests carried out between May to July 2017, Ms Pindo Mulla was advised to have surgery. She subsequently issued two documents - an advance directive, and a lasting power of attorney -, each recording her refusal to undergo a blood transfusion of any kind in any healthcare situation, even if her life was in danger, but that she would

accept any medical treatment that did not involve the use of blood. The applicant indicated that she carried the lasting power of attorney document on her person. The advance medical directive was deposited in the official Register of Advance Directives of Castile and Leon and was accessible to Soria hospital via the electronic system used by health professionals in the region. Under the legal framework in Spain, advance directives deposited in the regional registers are to be copied within 7 days to the National Register of Advance Directives, so as to be accessible to health care providers throughout the country.

On 6 June 2018, Ms Pindo Mulla was admitted to Soria Hospital with serious internal bleeding, causing severe anaemia. That evening, a doctor spoke to her about receiving a blood transfusion, which she refused. She expressed her refusal in an informed consent document, which she and the doctor both signed. The document became part of the applicant's medical file at Soria hospital. The following day, due to haemorrhaging, she was transferred by ambulance to a hospital in Madrid known for its capacity to provide alternative forms of treatment to blood transfusions. She agreed to the transfer, her understanding being that she could be treated there without resort to blood transfusion. She was accompanied by a doctor with her medical records.

During the journey, the doctor warned the doctors at the hospital in Madrid that her condition was very serious. In light of this warning, anaesthesiologists at that hospital contacted the duty judge for instructions on what to do when she arrived. They indicated that she was a Jehovah's witness, that she had verbally expressed her refusal of all types of treatment and that her condition would be very unstable upon arrival.

The duty judge, who did not know the identity of the patient, nor her precise wishes, transmitted the doctors' request to a forensic doctor and to the local prosecutor and requested their opinion. Within approximately an hour, based on the information received and those opinions, the duty judge authorised all medical or surgical procedures that were needed to save her life.

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

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

Complaints, procedure and composition of the Court

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

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

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

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

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

A hearing took place in public in the Human Rights building, Strasbourg, on 10 January 2024.

Judgment was given by the Grand Chamber of 17 judges.

Read more

Ban on Islamic headscarf in Flemish schools admissible

Ban on visible symbols of belief in the official education system of the Flemish Community not incompatible with Article 9 of the Convention

Registrar of the European Court (16.05.2024) - In its decision in the case of Mikyas and Others v. Belgium (application no. 50681/20) the European Court of Human Rights has, by a majority, declared the application inadmissible. The decision is final.

The case concerned three young women who identify as Muslims. They complained that they were unable to wear the Islamic headscarf in their secondary schools (except during religious education classes), following the prohibition on wearing any visible symbols of one's beliefs in the official education system of the Flemish Community.

The Court stated that the concept of neutrality in the Community's education system, understood as prohibiting, in a general manner, the wearing by pupil of visible symbols of one's beliefs, did not in itself run counter to Article 9 of the Convention and the values underlying it.

The Court noted in the present case that the contested ban did not concern solely the Islamic veil, but applied without distinction to all visible symbols of belief. It considered that the national authorities had been entitled, having regard to the discretion ("margin of appreciation") enjoyed by them, to envisage that the Flemish Community's education system would provide a school environment in which pupils did not wear religious symbols.

The contested restriction could therefore be said to be proportionate to the aims pursued, namely the protection of the rights and freedoms of others and of public order, and thus was "necessary" "in a democratic society". It followed that the applicants' complaint under Article 9 of the Convention was manifestly ill-founded. Their other complaints were rejected for failure to exhaust the domestic remedies.

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

Principal facts

Belgium is a federal State, in which education comes within the competence of the Communities (Article 127 of the Constitution).

The three applicants are Belgian nationals who were born between 2001 and 2004 and live in Maasmechelen (Belgium). They stated that they identified as Muslims and that they wore the Islamic veil in accordance with their religious beliefs.

At the relevant time they were pupils in schools which belonged to the 14 Maasland school group and were part of the official education system organised by the Flemish Community (according to the Flemish education system's statistical yearbook for the 2022-23 academic year, this category concerned approximately 17% of the Flemish school population for the primary level and about 22% for the secondary level).

In 2009 the Education Council of the Flemish Community (*GO ! Onderwijs van de Vlaamse Gemeenschap* ("the GO!")) decided to extend the ban on wearing visible symbols of one's beliefs throughout its network. The measure was intended to apply to all school activities, with the exception of religious education and non-denominational ethics classes. The schools attended by the applicants implemented this ban.

When the applicants were enrolled in their respective secondary schools, their parents signed school regulations containing the prohibition in question.

In 2017 the applicants' parents, in their capacity as legal representatives, brought proceedings against the GO!, relying on the applicants' right to freedom of religion. The following year, the Tongeren Court of First Instance found that the prohibition in question was incompatible with Article 9 of the Convention. In 2019, however, the Antwerp Court of Appeal quashed that decision and held that the applicants' claims were unfounded. In 2020 a lawyer at the Court of Cassation indicated to the applicants that there was little prospect of lodging a successful appeal on points of law. The applicants decided not to lodge an appeal on points of law.

Complaints

Before the Court, the applicants alleged that the prohibition in question infringed their rights and freedoms as guaranteed by Articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion), 10 (freedom of expression) of the Convention and Article 2 of Protocol No. 1 (right to education) to the Convention, taken alone and in conjunction with Article 14 (prohibition of discrimination). They also submitted that they had been discriminated against in the enjoyment of those rights.

Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 12 November 2020. The decision was given by a Chamber of seven judges, composed as follows:

Arnfinn **Bårdsen** (Norway), *President*, Jovan **Ilievski** (North Macedonia), Pauliine **Koskelo** (Finland), Saadet **Yüksel** (Türkiye), Frédéric **Krenc** (Belgium), Diana **Sârcu** (the Republic of Moldova), Davor **Derenčinović** (Croatia), and also Hasan **Bakırcı**, *Section Registrar.* Decision of the Court

The Court held that the part of the application which concerned Articles 8, 10 and 14 of the Convention and Article 2 of the Protocol No. 1 to the Convention were inadmissible for failure to exhaust the domestic remedies, since the applicants had failed to submit to the national authorities (either expressly or in substance) any legal arguments concerning the rights guaranteed by those Articles.

With regard to Article 9 of the Convention, the Court noted that the present case concerned a type of public education, namely the official education system in the Flemish Community.

In accordance with Article 24 § 1 (3) of the Constitution, this education had to be neutral. Under this constitutional provision, neutrality implied, in particular, respect for the philosophical, ideological or religious convictions of parents and pupils.

In order to comply with this constitutional requirement, the GO! Council had decided to introduce a general prohibition on wearing visible symbols of belief within its establishments, and the Constitutional Court had held that this concept of neutrality was compatible with Article 24 § 1 (e) of the Constitution. Detailed reasons were given for the GO! Council's decision, taking into account both the context of the education system put in place by the Flemish Community and the various interests at stake under Article 9 of the Convention.

Referring to its previous case-law and reiterating that the national authorities enjoyed a certain discretion ("margin of appreciation") in regulating the wearing of symbols of belief in State educational establishments, the Court considered that the concept of neutrality in the Community's education system, understood as prohibiting, in general, the wearing by pupils of visible symbols of belief, did not in itself run counter to Article 9 of the Convention and its underlying values.

In this connection, it noted that the contested ban was not confined to the Islamic veil but applied without distinction to any visible symbols of one's beliefs.

Moreover, the applicants had freely chosen to attend schools within the Community education system, and could not have been unaware that the relevant governing bodies were required by the Constitution to ensure compliance with the principle of neutrality in such schools. The applicants had also been informed in advance of the rules applicable in the schools concerned and had agreed to abide by them.

In so far as the contested ban had been intended to protect pupils from any form of social pressure and proselytization, the Court reiterated that it was important to ensure that, in keeping with the principle of respect for pluralism and the freedom of others, the manifestation by pupils of their religious beliefs on school premises did not take on the nature of an ostentatious act that would constitute a source of pressure and exclusion. In this connection, it saw no reason to call into question the findings of the GO! Council with regard to problematic acts, nor those of the Antwerp Court of Appeal, according to which incidents had occurred in certain schools coming under the remit of the Community education system.

Lastly, the Court was not unaware of the different situation in which teachers and pupils found themselves. While the former were symbols of authority *vis-à-vis* the latter and could accordingly be subject to restrictions on the expression of their beliefs, underage pupils were, for their part, more vulnerable. The Court had already held in this connection that a prohibition on pupils wearing religious symbols could correspond to a specific concern to prevent any form of exclusion or pressure, while respecting pluralism and the freedom of others.

In the present case, the national authorities had been entitled, having regard to the discretion available to them, to envisage that the Flemish Community's education system would provide a school environment in which pupils did not wear religious symbols. The Court had emphasised on several occasions that pluralism and democracy were to be based on dialogue and a spirit of compromise, necessarily entailing various concessions on the part of individuals that were justified in order to maintain and promote the ideals and values of a democratic society. The contested restriction could therefore be regarded as proportionate to the aims pursued, namely the protection of the rights and freedoms of

others and of public order, and thus "necessary" "in a democratic society". It followed that the complaints under Article 9 of the Convention were manifestly ill- founded.

Georgian Muslim Relations and Others v. Georgia

A bleeding pig's head and other expressions of religious hatred with no police intervention

by dr. Cathérine Van de Graaf[1]

Strasbourg Observers (23.04.2024) - On 30 November, the Fifth Division of the European Court of Human Rights ruled in the case of "Georgian Muslim Relations and Others v. Georgia." The Court ruled that Georgia had violated its positive obligations under Articles 8 and 9 of the Convention in conjunction with Article 14 as the applicants were not afforded the required protection against overtly religiously biased acts of violence. In addition, the Court found a violation of Article 1 of Protocol No. 1 since, on the one hand, the applicants were denied access to their building due to unlawful acts of private individuals and to the failure of the authorities to take adequate measures against them, and, on the other hand, since their use of the building was impeded by the failure to connect the school building to the sewerage system. This last element will not be tackled in the blogpost.

The Facts of the Case

The application was submitted by a non-profit organisation whose main objective is to promote support for religious education and provide free education to socially vulnerable children, along with seven Georgian nationals belonging to the Muslim minority. In August 2014, the 'Georgian Muslim Relations' organisation obtained the right to use a piece of land under a lease agreement and decided to open a boarding school for Muslim children at that location. Already in June of that same year (when they had learned about the upcoming plan), members of the local Orthodox Christian population started protesting against the possible opening. During these protests, barricades were constructed to prevent the applicants' access to the building (including on the day of the school's opening) and insults were hurled at them on several occasions. On 10 September, the protesters slaughtered a pig in front of the school building and nailed the bleeding head to the entrance door. At the same time, a metal cross was fixed in front of the building. One of the protesters stated during a television interview that this was done 'because Muslims hate pigs'.

On the day of the pig slaughter, criminal proceedings were initiated based on threats received by the seventh applicant that the school building would be set on fire and vandalised. In the following days, several applicants were interviewed, who confirmed the events as well as previous altercations. The local residents interviewed stated that they had nothing against Muslims, but that opening a Muslim school was not necessary as the area was mainly home to Orthodox Christians. Several other proceedings ran parallel to the criminal proceedings. The applicants' legal representative repeatedly wrote to the Georgian Minister of the Interior and the chief prosecutor about the events around the school and complained about the ineffective police response. It was stated that the police had patrolled the area from 15 September but had never intervened. Several additional hate statements were also reported. Among other things, protesters stated that the applicants were participating in Turkish expansion, that one applicant was 'a son of Turks' for which there is no place there, they were 'Tatars', that if he was a Georgian he should go to church and also that they did not need a religion with foreign money in the area. In addition, they were denied service in a local grocery shop because they were Muslims. After reporting another incident in June 2015, an investigator found two bullet-like

fragments on the ground and damage to a window. Forensic expert examination determined that they were shell casings from a pneumatic rifle that did not constitute ammunition.

In 2019, the prosecutor issued a decision changing the qualification of the alleged crime from 'threat' to 'persecution on religious grounds' and denied a legal basis to grant procedural victim status to any of the applicants. Additional investigative measures were taken in 2019 and 2020, and the applicants regularly voiced complaints about the inadequacy of the investigation and police misconduct. The criminal investigation is still ongoing.

In November 2014, some applicants filed a civil suit against the Ministry of the Interior and three private individuals, asking the Batumi court to order the defendants to stop their ongoing discriminatory acts against the applicants. The Ministry's representative explained that it was not part of their responsibility to remove barricades on private property. On 19 September 2016, the Batumi court granted the applicants' claims and concluded that the attitude of three private individuals was Islamophobic. However, the Kutaisi Court of Appeal found that there was no evidence that the Ministry had failed to perform its duties and that it had done so on discriminatory grounds. Furthermore, it considered the applicants' argument that the police's inaction was motivated by religious bias was to be unconvincing. Since the Kobuleti police had not received any complaints about a possible interference with the functioning of the boarding school in the period between 1 January 2016 and 1 January 2019, there was no reason to believe that there was any interference with the functioning of the boarding school.

The Court's Decision

First, the Court held that it was not satisfied that the contested acts were so serious that they caused the applicants – all adults – the kind of anxiety, fear or feelings of inferiority necessary to reach the threshold of Article 3. The Court did accept the applicants' claim that acts were intended to publicly mock, humiliate or frighten the applicants. It went on to state that an individual's ethnic and religious identity may fall within the personal sphere protected by Article 8, as 'any negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group's sense of identity and the feelings of self-worth and self-confidence of members of the group' (par. 78). The Court further noted that all the individual applicants were Muslims who were active members of the Muslim religious community in the region concerned and involved in the establishment of the boarding school, an activity related to education within the meaning of Article 9 of the Convention. One applicant was the head of Georgian Muslims Relations and two applicants were *khojas* (Islamic teachers). The Court decided to assess their complaints simultaneously under Articles 8 and 9 of the Convention in conjunction with Article 14 on the basis that the acts were caused by religious hatred and prejudice. The applicants' complaint was not about direct involvement of the police or other public authorities in the hate campaign, but rather their inadequate response to it The Court ruled that the public authorities had a positive obligation to safeguard the applicants' rights without discrimination and thus to take prompt and adequate measures to stop unlawful 'mob action', hate speech and other discriminatory acts on the part of local people. They were therefore expected to take proactive steps that would 'realistically' enable the applicants to exercise their religious rights.

Where there are conflicting rights, the Court's role is to examine whether the authorities have tried to strike a fair balance between the two. In this regard, the Court noted that the State did not examine how a balance could be struck between respecting the rights of the applicants and those of the protesters. It added that 'attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating xenophobic or otherwise discriminatory

speech in the face of freedom of expression exercised in an irresponsible manner' (par. 89). The tension at the boarding school did not arise so spontaneously that it could justify that the police could only avoid physical confrontations. With the religious hostility present, the authorities should have anticipated that the opening of the school would be obstructed. The Court thus held that by failing to identify and punish the perpetrators and restore public order, the police allowed the protesters to engage repeatedly and for lengthy periods of time in what was later qualified as discriminatory treatment by the national courts. Faced with police indifference, the applicants had no choice but to simply tolerate these acts. In addition, the Court also took note of the length of some procedures. It stressed that since the anti-discrimination proceedings against the Ministry of Interior lasted almost eight years, the effectiveness of the remedy was undermined. Certain other proceedings were completed only six years after the events in question.

In conclusion, the discriminatory behaviour, which consisted mainly of hate speech, threats, and degrading treatment, coupled with the inaction of the police, created feelings of fear and insecurity among the applicants and prevented them from opening a boarding school. The Court held that there were clear grounds to believe that the applicants had been insulted and threatened because they were Muslim. It was therefore essential that the relevant national authorities took all reasonable steps to unmask the role of possible religious bias in the events and protect the applicants from it.

Read the rest of the article online

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Strasbourg Observers is an academic blog that discusses recent developments at the European Court of Human Rights. The editorial team of Strasbourg Observers is based at the Human Rights Centre of Ghent University and the Centre for Government and Law of Hasselt University.

Hearing on blood transfusion administered to a Jehovah's Witness against her will

Watch HERE the video recording of the Grand Chamber hearing in the case Pindo Mulla v. Spain (Application no. 15541/20)

Registrar of the European Court (10.01.2024) - On 10 January, the European Court of Human Rights held a Grand Chamber hearing in the case of Pindo Mulla v. Spain (Application no. 15541/20).

The case concerns blood transfusions administered to the applicant, a Jehovah's Witness, despite her refusal to undergo a blood transfusion of any kind (full blood, red blood cells, white blood cells, platelets or blood plasma).

The case

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

Following medical tests carried out in July 2017, Ms Pindo Mulla was advised to have surgery. She subsequently issued three documents: an advance directive, a lasting power of attorney and an informed consent document. Each recorded her refusal to undergo a blood transfusion of any kind (full blood, red blood cells, white blood cells, platelets or blood plasma) 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.

On 6 June 2018, Ms Pindo Mulla was admitted to Soria Hospital. The following day, due to haemorrhaging, she was transferred by special ambulance to a hospital in Madrid.

Upon learning that the applicant was a Jehovah's Witness, anaesthesiologists at that hospital contacted the duty judge for instructions on what to do. The duty judge, who did not know the identity of the patient, nor her precise wishes, and in the absence of concrete information on her state of health, authorised all medical or surgical procedures that were needed to save her life.

Surgery was performed that day and blood transfusions were administered to Ms Pindo Mulla, who had not been informed of the duty judge's order, despite still being conscious when she was taken to the operating theatre. The parties dispute, however, whether she was fully lucid at that time.

This decision of the duty judge was upheld on appeal and her subsequent amparo appeal was declared inadmissible by the Constitutional Court.

Procedure

The application was lodged with the European Court of Human Rights on 13 March 2020. Relying on Articles 8 (right to respect for private life) and 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights, the applicant complains that while her refusal of certain medical treatment had been, in her view, clearly established in many official documents, they were ignored by the national authorities.

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

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

The French Government and the European Association of Jehovah's Witnesses were granted leave to intervene in the written proceedings as third parties.

After the hearing the Court began its deliberations in private. Its ruling in the case will, however, be made at a later stage.