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Is the Croatian Medical Law in Harmony with the International Comparative Standards on the Right to Self-Determination? The Example of Jehovah's Witnesses Patients

SUMMARY

Are Jehovah's Witnesses (JW) outstanding patients? One might answer in the affirmative. Is not their refusal of blood transfusions, a treatment traditionally considered as a life-saving treatment, problematic both from the medical and legal viewpoint? However, traditions are not everlasting. Both modern medical science and legal standards have greatly improved during the last two decades. Over the last few years, JW medical choice has become standard treatment for many physicians specialized in bloodless surgeries. From the legal standpoint, laws and case-law worldwide have been moving in the same direction: a patient endowed with discernment has the absolute right to choose the treatment he/she deems the most appropriate according to his/her own personal values. In light of this evolution worldwide, JW patients have become ordinary patients.

Since this is not the case in Croatia yet, this article seeks to put the Croatian legislation in harmony with the international standards by using the example of JW. It does so by answering five fundamental questions: 1) Should a JW patient be forced to undergo a blood transfusion against his or her will? 2) Should a JW patient be forced to undergo a blood transfusion in an emergency situation where life is at risk, and the patient is unconscious? 3) Can a doctor refuse to treat a JW patient because the patient refuses to accept a treatment deemed life-saving? 4) Can a doctor be held liable for respecting a JW patient's wishes if the patient dies? 5) Can a doctor be held liable for overriding a JW patient's wishes and administering a blood transfusion by force?

Keywords: Jehovah's Witnesses, blood transfusion, choice of treatment, emergency treatment, patient rights, personal autonomy, informed consent, advance medical directive, physicians, conscience, malpractice, medical liability, religion and medicine, Croatia, European Court of Human Rights, jurisprudence, legislation, ethics, comparative law.

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The notion of informed consent lies at the very heart of the relationship between doctors and patients since a valid consent is a legal condition for a medical treatment. Legal and medical publications have acknowledged that “the study of issues related to the refusal of consent is inspired, to a considerable extent, by the position of Jehovah’s Witnesses on blood transfusion”.¹ At the same time, these issues about patients who are Jehovah’s Witnesses who wish to be treated with medical and surgical strategies that avoid allogeneic blood transfusion² have been described as one of the most sensitive and problematic existing in the legal system.³

The first reason is that doctors and/or judges believe⁴ they are confronted with conflicting rights which are of fundamental nature: the right to life on the one hand and the right to personal autonomy and freedom of religion on the other hand. The second reason is that this conflict cannot be resolved through a fair-balance test which results in a consensual middle-road approach guaranteeing both rights. In such cases, between doctor’s will and patient’s rights, only one can be satisfied to the detriment of the other.

Comparative legal experience worldwide has shown, however, that a methodic approach can be implemented to legally resolve any challenging situation and bring about a stable and peaceful relationship for the mutual benefit of both doctors and patients.

This article aims at answering the main questions arising from situations where Jehovah’s Witnesses patients are to be treated. As for the scientific approach, intentionally we do not delve into any moral, philosophical or wishful thinking applicable to these cases. Instead, we have chosen a case-study approach for two main reasons. First, our purpose is to help doctors and lawyers who read this article find clear and practical answers to their questions pertaining to patients who are Jehovah’s

1 Sobolewski, Przemyslaw (2019), Consent to a Medical Procedure, in: Bosek, Leszek, ed., *Medical Law*, Wydawnictwo C.H.Beck 2019, 137.

2 For information on the religious and medical position of Jehovah’s Witnesses concerning blood, see: <https://www.jw.org/en/medical-library/videos/> (accessed: 20 February 2020).

3 See, for instance, ECHR, “the refusal of potentially life-saving medical treatment on religious grounds is a problem of considerable legal complexity, involving as it does a conflict between the State’s interest in protecting the lives and health of its citizens and the individual’s right to personal autonomy in the sphere of physical integrity and religious beliefs.” *Jehovah’s Witnesses of Moscow and Others v. Russia*, no. 302/02, § 134, 10 June 2010.

4 Many recent medical studies have shown, however, that, although the idea that “blood = life” is still commonly perceived as the reality, it scientifically is a false premise. See among others: Leahy, M. F., et al. (2017), Improved Outcomes and Reduced Costs Associated with a Health-System-Wide Patient Blood Management Program: A Retrospective Observational Study in Four Major Adult Tertiary-Care Hospitals, *Transfusion*, 57 (6), 1347-58; Isbister, J. P., et al. (2011), Adverse Blood Transfusion Outcomes: Establishing Causation, *Transfusion Medicine Reviews*, 25 (2), 89-101; Frank, S. M., et al. (2014), Risk-Adjusted Clinical Outcomes in Patients Enrolled in a Bloodless Program, *Transfusion*, 54 (10 Pt 2), 2668-77.M; Cf. <https://www.blood.gov.au/patient-videos> (accessed: 10 December 2019).

Witnesses. Both in common law and a continental law system, any legal issue finds its fulfillment and realistic conclusion in the interpretation of the legal rules by the highest domestic judicial bodies. So, our choice was made to approach the issue from the standpoint of what the law is internationally, and not what it could or should be. Second, both lawyers and doctors have published numerous articles on doctors-patients' relationships and informed consent over the last twenty years and, despite some discrepancies, they have reached a common understanding of the main issues of informed consent.⁵ However, with regard to patients who are Jehovah's Witnesses, lawyers' and doctors' opinions do not always reflect the legal standards applicable to these cases⁶. Perhaps this is because, for those authors, it appears illogical and irrational for patients to prioritize their religious beliefs over their own life. For these reasons, we will focus on the majoritarian predominant judicial approach established by the Supreme Courts in democratic countries where the goal is to develop and maintain the highest standards of human rights' protection. In addition to references to the case-law of Supreme Courts from around the world, the study relies on the well-established case-law from the American courts at the Federal and State level, and the jurisprudence of the European Court of Human Rights, which follow a common denominator. By offering this wide jurisprudential sample, this study analyzes the currently applicable rules in democratic countries, which could serve as a guide for similar future situations occurring in Croatia.⁷ We will compare these standards with the relevant legislation in Croatia and identify any deficiencies in the law.⁸

5 Among the vast literature on the issues of patients' rights and informed consent, see in the English-speaking literature: Maclean, Alasdair (2013). *Autonomy, Informed Consent and Medical Law: A Relational Challenge*, Cambridge University Press; in the French-speaking literature: Guillod, Olivier (1986). *Le consentement éclairé du patient: autodétermination ou paternalisme?* Neuchâtel, Université de Neuchâtel; in the German-speaking literature: Spickhoff, Andreas (2018). *Medizinrecht*, Munich, C. H. BECK; in the Italian speaking literature: Brazzini, Sara, Muià, Pier Paolo (2018). *La legge sul consenso informato e le DAT. Diritti del paziente e doveri del medico*, Padova, Primicerieditori; in the Spanish-speaking literature: Luelmo, Andres Dominguez, (2007). *Derecho sanitario y responsabilidad médica. comentarios a la Ley 41/2002, de 14 de noviembre, sobre derechos del paciente, información y documentación clínica*, Valladolid, LEX NOVA.

6 There is no valid reason to treat cases of patients who are Jehovah's Witnesses differently from other patients. As stated by Sobolewski, P. (2019), 137: "The legal system, however, should not attach other legal effects to an objection made by a Jehovah's Witness from those made by a person of any other religion. The religion of the patient, therefore, should not affect in any way the effectiveness of his or her statements in the course of treatment. The medical doctor may not demand that the patient give reasons for his or her objection, and if the patient does not give any reasons, the medical doctor should not judge them. (...) Taking into consideration the religion of the patient while judging the effectiveness of his or her refusal (or harm caused by the refusal) is a breach of the constitutional principles of privacy and equality."

7 Ideally, this comparative approach should have put in perspective judicial decisions from Croatian courts with those International standards. However, there are presently no judicial decisions in Croatia concerning patients who are Jehovah's Witnesses yet. Besides, the Croatian legislation appears problematic in itself. So, we will confine our study to a comparison between these international judicial standards and the Croatian relevant legislation.

8 The relevant provisions are the Croatia Constitution, Articles 16, 22, 40, 58 and 134; The Act on Patients' Rights, Article 16 par. 1, 2 and 3; and The Act on Health Care, Article 26 par. 1, point 6, entered into force on 01 January 2019.

We have identified five main questions which can be set in the following order:

- 1) Should a JW patient be forced to undergo a blood transfusion against his or her will?
- 2) Should a JW patient be forced to undergo a blood transfusion in an emergency situation where life is at risk, and the patient is unconscious?
- 3) Can a doctor refuse to treat a JW patient because the patient refuses to accept a treatment deemed life-saving?
- 4) Can a doctor be held liable for respecting a JW patient's wishes if the patient dies?
- 5) Can a doctor be held liable for overriding a JW patient's wishes and administering a blood transfusion by force?

I will answer these questions, first, by explaining the current democratic standards applicable worldwide and, second, comparing them to the legislative state in Croatia.

1) Should a JW patient be forced to undergo a blood transfusion against his or her will?

Since the 2010 judgment from the ECHR *Jehovah's Witnesses in Moscow v. Russia*, the answer to this question is a clear "no".

In Resolution 1859 (2012), the Parliamentary Assembly of the Council of Europe reiterated that under Article 8 of the European Convention on Human Rights (right to privacy), "flow the principles of personal autonomy and the principle of consent." Treatment decisions of a capable adult patient "when clearly expressed, must prevail even if it signifies refusal of treatment: no one can be compelled to undergo a medical treatment against his or her will."

Supreme Courts worldwide would eventually acknowledge consent as defined by Judge Benjamin Cardozo near the beginning of the twentieth century that "every human being of adult years and sound mind has a right to determine what shall be done with his own body." However, there existed some doubt as to whether State interests could override this right in the extreme circumstance where doctors believed transfusions were the only intervention that would prevent a fatal outcome. In these cases, physicians often felt entitled to ignore the patient's will.

In the USA, for instance, there was room for doubt as the case-law had set an approach based on a balance of interests according to which "*the right to refuse medical treatment, (...) is not absolute. The State may intervene in a given case if the State's interests outweigh the interests of the patient in refusing medical treatment. (...) Generally, courts consider four State interests—the preservation of life, the prevention of*

suicide, the protection of third parties, and the ethical integrity of the medical profession—when deciding whether to override competent treatment decisions.”⁹

Over time, however, it became clear that, as to JW patients, none of these four State interests was weighty enough to overrule the will of a competent adult.

This does not mean that the highest courts have blindly rubberstamped what they viewed as an irrational approach. As stated by the New York Court of Appeals in a case involving a JW patient: “*The right of a patient to decline life-sustaining treatment was recognized in these cases, not because the State considered their lives worthless, but because the State valued the right of the individual to decide what type of treatment he or she should receive under particular circumstances.*”¹⁰

Hence, in cases of JW patients who do not wish to die but to remain alive and be treated in harmony with their conscience¹¹, courts have repeatedly emphasized the supremacy of the patient’s right to bodily self-determination.¹² Among the four interests, the protection-of-third-parties argument was most probably the one subjected to strongest debates, especially in case of pregnant women or parents whose life was at risk. Eventually, however, Courts made clear that “[A] woman’s right to refuse invasive medical treatment, derived from her rights to privacy, bodily integrity, and religious liberty, is not diminished during pregnancy. The woman retains the same right to refuse invasive treatment, even of lifesaving or other beneficial nature that she can exercise when she is not pregnant. The potential impact upon the fetus is not legally relevant.”¹³

9 *Public Health Trust of Dade County v. Wons* (1989) 541 So.2d 96 [Supreme Court of Florida, U.S.].

10 *Fosmire v. Nicoleau* (1990) 75 N.Y.2d 218, 551 N.Y.S.2d 876, 551 N.E.2d 77 [New York Court of Appeals, U.S.].

11 “The medical profession may consider a blood transfusion a rather ordinary or routine procedure, but, given Mrs. Wons’ religious beliefs, that procedure for her is extraordinary... The choice for her cannot be an easy one, but it is hers to make. It is not for this Court to judge the reasonableness or validity of her beliefs.” *Public Health Trust of Dade County v. Wons*, cited above (Concurring Opinion of Chief Justice Raymond Ehrlich). See also, *In re Fetus Brown* (1997) 689 N.E.2d 397, 405 [Illinois Appellate Court, U.S.], where the Court stated “that a blood transfusion is an invasive medical procedure that interrupts a competent adult’s bodily integrity.”

12 To justify the supremacy of a patient’s will over these state interests, Courts notably held: “When evaluating the state’s interest in protecting the ethical integrity of the medical profession, courts should recognize that it is well within the parameters of medical ethics to abide by a patient’s direction to abstain from treatment under certain circumstances.” *In re Duran* (2001) 769 A.2d 497, Superior Court of Pennsylvania [U.S.]

13 *In re Fetus Brown* at 401 (quoting *In re Baby Boy Doe* (1994) 632 N.E.2d 326, 332 [Illinois Appellate Court, U.S.]). “There is no question that the State has an interest in protecting the welfare of children (...) The State’s interest in promoting the freedom of its citizens generally applies to parents. The State does not prohibit parents from engaging in dangerous activities because there is a risk that their children will be left orphans. (...) we know of no law in this State prohibiting individuals from participating in inherently dangerous activities or requiring them to take special safety precautions simply because they have minor children. There is no indication that the State would take a more intrusive role when the risk the parent has assumed involves a very personal choice regarding medical care. On the contrary, the policy of New York, as reflected in the existing law, is to permit all competent adults to make their own personal health care decisions without interference from the State.” *Fosmire v. Nicoleau*. See also: “Now, that a Jehovah’s Witness believer places higher value on not taking a blood transfusion than in trying to save his own life and seeks the course of absolute non-blood-transfusion, and that a doctor

Around the world, Supreme Courts have eventually abounded in the same vein. These are just a few among many other examples where Highest Courts worldwide emphasize the absolute right of a JW adult patient to choose a treatment approach that minimizes any blood loss and avoids allogeneic blood transfusion in harmony with his religious conscience.

*BRITAIN: “Prima facie every adult has the right and capacity to decide whether or not he will accept medical treatment, even if a refusal may risk permanent injury to his health or even lead to premature death. Furthermore, it matters not whether the reasons for the refusal were rational or irrational, unknown or even non-existent. This is so notwithstanding the very strong public interest in preserving the life and health of all citizens.”*¹⁴

*SOUTH AFRICA: “It is clearly for the patient, in the exercise of his or her fundamental right to self-determination, to decide whether he or she wishes to undergo an operation, and it is in principle wholly irrelevant that the patient’s attitude is grossly unreasonable in the eyes of the medical profession: the patient’s right to bodily integrity and autonomous moral agency entitles him or her to refuse medical treatment.”*¹⁵

*PUERTO RICO: “In accordance with the right to privacy consecrated in our Constitution and the liberty interest protected by due process of law, every patient has the right to make decisions about his medical treatment. This includes the right to accept or reject a given course of action related to his health-care, regardless of the particular diagnoses or specific conditions, even when that rejection could result in the death of the individual.”*¹⁶

*CANADA: “The right of medical self-determination is not vitiated by the fact that serious risks or consequences, including death, may flow from the patient’s decision. It is this same principle that is at work in the cases dealing with the right to refuse consent to medical treatment, or to demand that treatment be withdrawn or discontinued.”*¹⁷

SWEDEN: “Thus, an individual who chooses to exercise his right to refuse a particular medical treatment cannot be said to be acting in a manner inconsistent with the fundamental values of society. On the contrary, in our democratic society, respect for individual privacy and autonomy must allow for a patient to refuse treatment, even if it

approves of it and performs an operation on the condition of absolute non-blood-transfusion clearly do not violate the rights of others.” *Takeda* (1998) No. 1343 [Tokyo Appeal Court, Japan].

14 *In re T.* (1992) 4 ALL ER 649, 3 W.L.R. 782 at 799 [Court of Appeal, G.B.].

15 *Castell v. De Greef*(1994) (4) SA 408, 409 (C) [South Africa Supreme Court].

16 *Tirado Flecha* (2010) CC-2006-94 [Supreme Court, Puerto Rico].

17 *Carter v. Canada (Attorney General)*, 2015 SCC 5, par. 67 [Canada Supreme Court]].

appears medically necessary and even if his choice may seem irrational. Whether the choice is based on religious beliefs or other reasons is irrelevant in this case."¹⁸

As for the European Court of Human Rights, if Ms. Turkovic was right in 2008 to state that it was still uncertain whether the Strasbourg court would follow the same pattern, ten years later, there is no doubt that it certainly would.¹⁹

Indeed, in 2010, the ECHR took the opportunity to address the issue in the face of the Russian government, who considered such medical choice as one of the legitimate motives to ban one Jehovah's Witnesses local organizations. Since the motivation in this passage is remarkable, it deserves to be quoted extensively.

"The very essence of the Convention is respect for human dignity and human freedom, and the notions of self-determination and personal autonomy are important principles underlying the interpretation of its guarantees (see Pretty, cited above, §§ 61 and 65). The ability to conduct one's life in a manner of one's own choosing includes the opportunity to pursue activities perceived to be of a physically harmful or dangerous nature for the individual concerned.

The freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, is vital to the principles of self-determination and personal autonomy. A competent adult patient is free to decide, for instance, whether or not to undergo surgery or treatment or, by the same token, to have a blood transfusion. However, for this freedom to be meaningful, patients must have the right to make choices that accord with their own views and values, regardless of how irrational, unwise or imprudent such choices may appear to others. Many established jurisdictions have examined the cases of Jehovah's Witnesses who had refused a blood transfusion and found that, although the public interest in preserving the life or health of a patient was undoubtedly legitimate and very strong, it had to yield to the patient's stronger interest in directing the course of his or her own life (see the judgments cited in paragraphs 85 to 88 above). It was emphasised that free choice and self-determination were themselves fundamental constituents of life and that, absent any indication of the need to protect third parties – for example, mandatory vaccination during an epidemic, the State must abstain from interfering with the individual freedom of choice in the sphere of health care, for such interference can only lessen and not enhance the value of life (see the Malette v. Shulman and Fosmire v. Nicoleau judgments, cited in paragraphs 85 and 87 above)."

18 *Religious Community of Jehovah's Witnesses v. Sweden (Ministry of Health and Social Affairs)* (20 February 2017) No. 2310-16, p. 12 [Supreme Administrative Court, Sweden].

19 Turković, Ksenija (2008), Pravo na odbijanje medicinskog tretmana u Republici Hrvatskoj, *Medicina Fluminensis*, 44 (2), 158-170.

Indeed, JW patients “*just make a choice of medical procedures*”. In this regard, their position toward medical act and their relation to doctors is no different from any other patient such as, for instance, a patient allergic to a certain antibiotic who refuses that drug, a patient with cancer who prefers a more risky but less invasive method of treatment contrary to the recommendation of the doctor, a person who does not wish to be kept alive if he falls in a persistent vegetative state or a parturient who refuses a medical termination of pregnancy although her life is at risk.

It is so because, as a matter of fact, “*Surgeries cannot be viewed generally. Each surgery has its own specificities relating to manner of its performance, pursuant to the standards of the medical profession. Subsequently, the manner in which surgery alleviates, rectifies the damage or heal the patient depends on his or her general and specific state of health, current treatment of the condition for which the surgery is indicated, possible treatment of other diseases, certain medication which prevents coagulation, the patient’s behavior toward his or her own health (i.e. alcohol or drug addiction), or his or her health discipline, etc.*”²⁰

Otherwise said, every patient, every medical act, every doctor, and every context is unique. It would, therefore, run counter any sense of logic to force a patient to be molded in what doctors consider a standard procedure. The reality shows that quality doctors do not practice off-the-shelf medicine but rather tailor treatments based on the patient’s age, medical history, and health status while respecting the will of patients.

A lucid conclusion is: “*if each patient is allowed to refuse a single procedure within the medical treatment and further receives treatment in accordance with his or her wishes and preferences, appropriately medically suiting his or her state of health, then also the patient refusing blood and blood products because of his or her beliefs, should receive the appropriate procedure to which he or she consented.*”²¹

“The patient’s perspective of his or her own interests should be respected by the surgeon. The ethical principle of respect for autonomy captures what is at stake clinically. The surgeon should acknowledge and accept the integrity of the competent patient’s values and beliefs, whether or not the surgeon agrees with them, and should provide the patient with an adequate amount of information.”²²

This obviously shifts the issue to the main question of the patient’s capacity to consent. Thus, both in a common law and in a continental law system, the question

20 Roksandić Vidlička, S. et al. (2017), Right of Jehovah’s Witnesses on Surgical Health-Care. *Liječ Vjesn*, 139, 91–98.

21 Ibid.

22 Jones, J. W., McCullough, L. B., Richman, B. W. (2007), A Comprehensive Primer of Surgical Informed Consent. *Surgical Clinics of North America*, 87, 903, 905.

is therefore not whether JW patient can be forced to receive a certain treatment, but whether the patient is capable of understanding to choose his treatment.²³

This means that when a physician is confronted with a refusal of treatment of a conscious patient, he must follow a three-steps-approach as required by the ECHR: “Firstly, one of the central issues in determining the validity of a refusal to undergo medical treatment by a patient is the issue of his decision-making capacity.²⁴ Secondly, except for unconscious patients who have expressed their will through a legal representative or an advanced medical directive, such a decision should be based on the patient being provided with sufficient information, and any medical intervention should have the patient’s informed consent.²⁵ Thirdly, the patient’s decision should reflect his free will, failing which the decision to consent or to refuse to consent to treatment will not be valid.”²⁶

This three-steps-assessment is generally limited to adults. However, because this review is carried out *in concreto* and based on the unique character of each individual, courts worldwide have also in some circumstances extended it to minors, if found mature enough²⁷ “to understand the state of their health, the scope of the medical act to

23 In an expert case study entitled “The legitimacy of the refusal of blood transfusion by Jehovah’s Witnesses: Human dignity, religious freedom and existential choices,” Luís Roberto Barroso, currently judge at the Supreme Federal Court in Brazil explains: However, [the need of] patient’s consent to an operation or to other [treatment] is based on the right to self-determination where each individual can determine the course of his own life (his life-style, or, the values he places before his own life). So, if a patient’s consent is limited by an obligation to sign a form in order to be treated, the right to self-determination is, as a result, also limited by such obligation: which it should not. “For this to be *valid*, the right holder must be civilly capable and have the sound judgment to express it. Therefore, in addition to capacity, the right holder must be fit to express his will, which would exclude persons in a mentally altered state, whether due to a traumatic situation, the use of psychoactive drugs, or to being under the effect of medications that significantly impede or prevent cognition. For the consent to be deemed *unequivocal*, it must be strictly personal, explicit and current.” (At par. 44, 05 April 2010; unpublished)

24 ECHR, *Arskaya v. Ukraine*, no. 45076/05, § 69, 05 December 2013.

25 ECHR, *V.C. v. Slovakia*, no. 18968/07, § 108, ECHR 2011 (extracts).

26 ECHR, *Yizbachenko v. Ukraine*, no. 65567/13, §36, 18 October 2016.

27 See, for instance, “On appeal, the order of the trial court pertaining to E. G.’s right to refuse treatment was vacated in part and modified in part. (161 Ill.App.3d 765, 113 Ill. Dec. 477, 515 N.E.2d 286). The appellate court observed that this court, in *In re Estate of Brooks* (1965), 32 Ill.2d 361, 205 N.E.2d 435, held that an adult Jehovah’s Witness had a first amendment right to refuse blood transfusions. The appellate court then extended the holding in *Brooks* to include “mature minors,” deriving this extension from cases in which the United States Supreme Court allowed “mature minors” to consent to abortions without parental approval through the exercise of constitutional privacy rights. (See *City of Akron v. Akron Center for Reproductive Health, Inc.* (1983) 462 U.S. 416, 103 S. Ct. 2481, 76 L.Ed.2d 687; *Bellotti v. Baird* (1979) 443 U.S. 622, 99 S. Ct. 3035, 61 L.Ed.2d 797.) Although the United States Supreme Court has not broadened this constitutional right of minors beyond abortion cases, the appellate court found such an extension “inevitable.” Relying on our Emancipation of Mature Minors Act (Ill.Rev.Stat.1987, ch. 40, par. 2201 et seq.), the court held that a mature minor may exercise a constitutional right to refuse medical treatment.” *In re E.G.* (1989) 133 Ill.2d 98, 549 N.E.2d 322, 139 Ill. Dec. 810, 58 USLW 2321 [Illinois Supreme Court, U.S.].

*the executed and the consequences or the results or the risks involved in connection with this medical act.”*²⁸

That being said, remains the question as to what should happen with these principles in an emergency scenario, when the patient is admitted to hospital in a serious state while unconscious.

2) Should a JW patient be forced to undergo a blood transfusion in an emergency situation where life is at risk while unconscious?

Article 16, paragraph 1, of the Croatian Act on the Protection of Patients’ Rights states that:

“The patient shall have the right to consent or to refuse a particular diagnostic procedure or treatment, except in case of an urgent medical intervention, the lack of which would put at risk the patient’s life and health or cause permanent damage to their health.”

This exception of “an urgent medical intervention” has been understood by some to indicate that doctors are allowed to ignore the patient’s right to consent or refuse treatment when the life of the patient is at risk.

However, if this exception is interpreted in this way, it will contradict the above-mentioned principles. The right to personal autonomy is not conditional. The physician’s obligation to respect the will of a patient remains the same, whether in an emergency situation or in case of elective surgery. So we can only approve of Prof. Turkovic’s conclusion, which states: *“the provision under Article 16, paragraph 1 of the Law on the Protection of Patients’ Rights, in the section generally ignoring the patient’s right to refuse a single diagnostic, that is, therapeutic procedures, in case of an urgent medical intervention, where failure to take action may jeopardize the patient’s health or cause permanent damage to his health — runs counter to the Convention on Bioethics. Since this Convention has force transcending legislation, the provision in that section is invalid. Physicians should, therefore, not ignore the patient’s refusal of treatment, in cases where refusal may jeopardize, that is, permanently harm the patient’s health. It is not allowed to ignore such refusal, not even in urgent cases, since in cases of urgency the patient’s wish expressed in advance must be respected.”*²⁹

²⁸ The Code of Medical Ethics, Article 12 par. 2 point b(aa); The Convention of Oviedo, Article 6 par. 2; International Convention on the Rights of the Child (Law No. 2101/1992), Article 12.

²⁹ Turkovic, K. (2008), 169.

The only difference in an emergency situation results from the fact that a patient is oftentimes unconscious when admitted to hospital. However, firstly, this is not always the case. And secondly, even if the patient were unconscious, this does not release doctors from searching for and respecting the patient's will before becoming unconscious. Doctors shall find whether the patient prepared advanced medical directives or appointed a legal representative to decide in his name.³⁰ Article 9 of the Oviedo Convention on Bioethics unambiguously states that "The previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account." In this regard, Articles 18 and 19 of the Croatian Act on the Protection of Patients' Rights³¹ also do not meet the legal requirements set out within the Council of Europe.

We add: not only do Articles 16, paragraph 1, and 17 and 18 of the Croatian Act on the Protection of Patients' Rights violate the Convention on Bioethics, but they also contradict the US case-law, the ECHR's position and judgments from other Supreme Courts.

The North-American case-law is clear in this regard. In the well-known Ontario Court of Appeal case of *Malette v. Shulman*,³² a Jehovah's Witness individual was seriously injured in an automobile accident, which rendered her unconscious. When she was taken to the emergency room, her refusal of blood card was found in her purse. Despite the patient's clear written refusal of blood, she was transfused. The Ontario Court of Appeal affirmed a lower court's ruling that even though the patient was unconscious when she arrived at the hospital, her express, written refusal of blood should have been honored.

Similarly, if a patient loses consciousness during the operation, the obligation to respect his or her will at all costs remains: *Actually the cited cases dealt with an extension of the rule, requiring the doctors and hospitals to respect the right even when the patient becomes incompetent if, while competent, the patient had clearly stated a desire to decline life-sustaining treatment under specified circumstances. In each case we held that this was a matter of personal choice, and that the patient's wishes should be honored if there was clear and convincing evidence that the patient had made a firm resolve to decline*

30 Chassot, P. - G., Kern, C., Ravussin, P. (2006), Hémorragie et transfusion: le cas des Témoins de Jéhovah [Hemorrhage and transfusion: the case of Jehovah's Witnesses]. *Rev Med Suisse*, 2 (88), 2674-6, 2678-9. (Discussion of the need for clinicians to respect advance health-care directives).

31 Article 18 states: "If due to the urgent nature of the situation consent cannot be obtained from a legal representative or guardian referred to in Article 17, paragraph 1, the patient shall undergo a diagnostic procedure or treatment only in such a case when a lack of procedure would pose a direct threat to their life or a serious and immediate threat of severe damage to their health. The procedure may be performed without the consent of the patient's legal representative or guardian only while the aforementioned threat is imminent."

32 *Malette v. Shulman* (1990) 72 O.R. (2d) 417 (Court of Appeal, Canada).

life-sustaining treatment. Where there was such proof, we ordered that life-sustaining measures be discontinued (Matter of Eichner v Dillon, supra); but where the patient's statements were equivocal and did not clearly show a firm resolve to make such a choice under the circumstances (Matter of Westchester County Med. Center [O'Connor], supra) or where the patient was incapable ever of making such a choice because of retardation (Matter of Storar, supra) we ordered that medical care continue."³³

It must be noticed that the principle covers not only pre-operative and intra-operative situations involving unconscious patients, but also post-operative situations. In the Supreme Court of Carolina case *Harvey v. Strickland*, the patient received elective surgery, and his surgeon knew that the patient was one of Jehovah's Witnesses and that he would not consent to blood transfusions. After his surgery, when the patient was unconscious, complications arose, and the surgeon obtained 'consent' to transfuse him from Mr. Harvey's mother, who was not one of Jehovah's Witnesses. Even though the blood issue arose in Mr. Harvey's case post-operatively, the principle of the doctor's honoring his patient's known wishes is the same, The Court made it clear: "A patient's wishes against medical treatment or intervention, when made known to a physician prior to surgery, must be followed by the attending physician."³⁴

The European Court also emphasized this obligation weighing upon doctors in the well-known *Lambert v. France* case where the European Court had to decide whether the French authorities would violate the right to life (Article 2) by interrupting the administration of palliative care to a patient in a neuro-vegetative state. Focusing on the most decisive issue in this case, the European Court held that "it is the patient who is the principal party in the decision-making process and whose consent must remain at its centre; this is true even where the patient is unable to express his or her wishes."³⁵

As for Supreme Courts worldwide, they have, for the wide majority of them, emphasized the obligation to respect the patient's wishes even in an emergency situation by obliging doctors to determine what these wishes were.

For example, the Supreme Court of Poland held that "the patient's medical directive prepared in advance in case of a coma, which consists of one's wish to be treated by a

³³ *Fosmire v. Nicoleau*, (1990).

³⁴ *Harvey v. Strickland* (2002) 350 S.C. 303, 566 S.E.2d 529 [South Carolina Supreme Court, U.S.].

³⁵ *Lambert and Others v. France* [GC], no. 46043/14 ECHR, 2015. "The Council of Europe's 'Guide on the decision-making process regarding medical treatment in end-of-life situations' recommends that the patient should be involved in the decision-making process by means of any previously expressed wishes, which may have been confided orally to a family member or close friend (see paragraph 63 above)." 179. The Court also observes that, according to the comparative-law materials available to it, in the absence of advance directives or of a "living will", a number of countries require that efforts be made to ascertain the patient's presumed wishes, by a variety of means (statements of the legal representative or the family, other factors testifying to the patient's personality and beliefs, and so forth)."

medical practitioner in situations may be anticipated in the future, is binding for a doctor if it was done explicitly, clearly and without any doubts."³⁶

The Supreme Court of Puerto Rico stressed the preeminence of the patient's wish by stating that "*neither a subrogate, nor a family member of the patient can refuse or consent to the administration of a certain medical treatment if they do not present proof that that would have been the wishes of the patient in such circumstances.*"³⁷

The Supreme Court of Italy made clear that "*according to Articles 5 and 9 of the Oviedo Convention on Human Rights and Biomedicine (transposed in Italy by Law no. 145 of 2001), healthcare interventions may only be carried out after the person concerned has given free and informed consent, and taking into account any previously expressed wishes, if the person is in a state of incapability.*"³⁸

Some have opposed the view that between the signing of the advanced medical directive and the very treatment in case of emergency, specific circumstances may have influenced the will of the patient. However, if the choices expressed in the directive have been expressed by a competent adult and are consistent with the way of life and beliefs of the person, it can hardly be argued that there would be a sudden change in the approach of the person. Besides, such an opinion would render useless the signing of any advanced directive whose aim is precisely to express, clarify, and set the will of the patient for any future circumstances.³⁹

3) Can a doctor refuse to treat a JW patient because of his/her refusal to accept a treatment deemed life-saving?

The answer depends on the circumstances, and the reasons adduced for such a refusal.

As it is common in many countries, doctors have the right to refuse to perform certain treatments asked for. However, such refusals are strictly regulated. Actually,

36 *Re Boguslawa L.* (2005) Case No. III CK 155/05 [Poland Supreme Court].

37 *Tirado Flecha*, (2010).

38 *Besaggio v. Macciardi* (2017) No. 17162/2015 [Italy Cassation Court, civil chamber].

39 In this regard, the Supreme Court of Namibia held for instance: "*What is significant is that [the patient] had established her intentions and wishes regarding her medical treatment in the DPA [durable power of attorney]. This stance on her part was consistent with all of her conduct both before and after the operations. Regardless of whether or not the DPA can be said to have formal legal status, it clearly establishes the wishes of Mrs ES in connection with her ongoing medical treatment. The document was signed voluntarily at a time when it is common cause that Mrs ES was competent to make such a decision. There were no circumstances to suggest that she had changed her mind subsequent to her signing the durable power of attorney. Therefore, the court below should not have refused Mrs ES's application and granted Mr AC's counter-application on the basis that Mrs ES was not compos mentis.*" *E.S. v. A.C.* (SA 57/2012), [2015] NASC 11 (24 June 2015) [Namibia Supreme Court].

there is only one motive that can justify a refusal to treat a patient according to his wishes. It is an appeal of conscience.⁴⁰

Article 20 of the Croatian Act on Medical Profession states: *“A medical doctor is entitled to an appeal of conscience on the grounds of ethical, religious or moral principles or beliefs and decline to provide diagnostics, treatment and rehabilitation services to the patient, if this is not in contradiction to the rules of the profession or if it does not cause lasting harmful effects to the health of the patient or jeopardize their life. They shall inform the patient of their decision in due time and refer them to another doctor of the same specialization.”*

This appeal of conscience is valid if it fulfills several requirements. First and foremost, it must be based on an authentic motive of conscience. It would be difficult for instance for a doctor to refuse to treat a Jehovah’s Witness patient for the sake of right to life, if at the same time, this doctor practices or condones abortions or accepts to treat a cancer patient without recourse to chemotherapy although this might prove to be life-saving. Such refusal must, in principle, be consistent with the ethics and practice of the doctor.

Second, that conscientious objection must be based on the doctor’s individual choice. In some instances, the refusal to treat JW patients simply originates from the hospital administration, which imposes a general directive on all the doctors practicing in the hospital. Such refusal is based on institutional policy and is not grounded on the personal ethics of the doctor. A collective conscience constitutes a contradiction. The expression of a conscientious choice is only of individual nature. Besides, such institutional policy directives are also harmful to doctors as they could result in forcing a certain practice on a doctor who otherwise might have treated the patient according to his wishes.

Third, this conscientious objection must be justified and proportionate. For instance, some doctors have dismissed a JW patient for a diagnostic or a simple treatment where the risk of blood loss was close to zero, such as the insertion of a catheter, a nasal septoplasty, or a knee arthroscopy. Such a refusal was obviously excessive because the very motive on which the conscientious refusal is based, that is, the risk of life-endangering bleeding, is extremely unlikely.

⁴⁰ See, for instance, *Takeda*: “Of course, this does not obligate a doctor to comply with patient’s requests on what treatment to be administered, including an application for absolute non-blood-transfusion. Whether a doctor should comply with a request for absolute non-blood-transfusion treatment or not wholly depends on the doctor’s own ethics as well as on how he views the matter of life and death. Aside from this duty of explanation, which we are going to take up later, a doctor should administer treatment according to his own conscience, and a patient cannot force a doctor to adopt any treatment against his conscience”.

Fourth, even when the preceding requirements are met, the doctor must still fulfill two other legal requirements. On the one hand, there is an obligation to inform the patient and the hospital management in due time. Hence, it would certainly be unlawful to dismiss a patient the very day of the surgery, as it has unfortunately happened in some circumstances. On the other hand, the doctor must refer the patient to another doctor of the same specialization who is willing to treat the patient according to his wishes.⁴¹ This obligation, which oftentimes tends to be forgotten, is all the more natural as it goes in harmony with the respect for the patient and the principle of life. Indeed, it would be contradictory for a doctor who refuses to treat a JW patient because his conscience puts greater emphasis on the survival of the patient, to subsequently get rid of the patient without providing him any help, which could endanger his very life.

So, depending on the circumstances, doctors may have a right to refuse to treat a patient. However, due to the importance of the right to personal autonomy of patients and the commitment taken by doctors with “great humbleness and awareness of [their] own frailty”⁴² to take care of patients who might disagree with their approach, such a right is limited by the strict requirements explained above.

4) Can a doctor be held liable for respecting a JW patient’s wishes if the patient dies?

The answer is no, for a simple reason. A doctor cannot be held liable for obeying the law. As explained above, to respect a patient’s choice constitutes respect for a fundamental right, the right to self-determination, and personal autonomy. It would, therefore, be unlawful to punish a doctor for ensuring the implementation of the fundamental right to personal autonomy, even if the patient were to die.

The situation would certainly be different if a doctor were to help a person to commit suicide or to hasten its death through the withdrawal of medical treatment because deprivation of life is not protected by any legal provision. However, as clearly stated by the European Court in relation to JW patients: *“In so far as the domestic judgments can be understood to consider that the refusal of a blood transfusion is tantamount to suicide, in the Court’s view, this analogy does not hold, for the situation of a patient seeking a hastening of death through discontinuation of treatment is different from that*

41 “States are obliged to organize the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation.” *R.R. v. Poland*, Application no. 27617/04, ECHR 2011 (extracts).

42 The Modern Hippocratic Oath. (1964).

*of patients who – like Jehovah’s Witnesses – just make a choice of medical procedures but still wish to get well and do not exclude treatment altogether.”*⁴³

If under exceptional circumstances, a JW patient allegedly died because of his or her refusal to accept a blood transfusion despite a doctor’s doing everything he could to manage without blood, the Court would, therefore, relieve the doctor from liability as has been emphasized by courts worldwide.

For example, the Court of Appeal of Florida held the following: *“It goes without saying, however, that the medical personnel who accede to the patient’s wishes in refusing medical assistance in these circumstances, cannot... be held criminally or civilly liable for their conduct.”*⁴⁴

In the same vein, the Supreme Court of Poland stated that the: *“The principle of patient’s autonomy requires respecting his will, regardless the motives (religious, ideological, medical etc.). Therefore, the objection to a particular treatment (type of treatments) is legally binding for a medical practitioner and relieves him of the criminal or civil responsibility, whereas in the case of administering it — makes it illegal.”*⁴⁵

The Appeal Court of Gwanju in South Korea also judged that a physician should not be held liable because *“when the patient exercises his right of self-determination in a way that directly collides with the general responsibility of a physician, that is, a responsibility to save the patient’s life based on that of the state to protect the right of life, the patient’s right, in principle, should be given priority over the responsibility of a physician, and if the patients right of self-determination is based on a belief by the freedom of religion, it should be guaranteed at a higher level.”*⁴⁶

Even clearer is the decision from the Czech Constitutional Court, which had to determine what were the consequences for doctors who respect the principle of patient autonomy. After showing that such principle of autonomy must be respected at all costs, the Court held:

“... in the field of provided health care, it is necessary to fully respect the principle of freedom and autonomy of the will and the patient’s possibility to refuse care even though it would be deemed crucial for preserving their life. Physicians and other healthcare

⁴³ *Jehovah’s Witnesses of Moscow and Others v. Russia* at §132.

⁴⁴ *Wons v. Public Health Trust*, 500 So.2d 679, 686 (1987) [Florida District Court of Appeal, U.S.].

⁴⁵ *Re Boguslawka L.*, (2005).

⁴⁶ It adds: *“Therefore, since the patient’s choice of medical option is, in itself, the right for his own life and happiness, regardless of whether it is the best appropriate way to treat his ailment, his refusal of a safer option in an objective sense cannot be condemned as disrespecting the right of life or as a wrong decision. If the general responsibility of a physician takes precedence over the patient’s right of self-determination, it would result in making the state a ward of the patient, allowing it to objectify an individual and severely interrupt the right to human dignity and the right to pursue happiness.”* (Gwangju District Court 2009Noh1622, affirmed *Korea v. Lee*, Supreme Court 2d Division 6/26/14.)

professionals may convince such persons or they may attempt to change their approach if it is manifestly harmful to them, but ultimately, they cannot prevent them from taking a decision on refusing care, made on the basis of the free and serious will of a fully competent adult person, solely due to the fact that they believe that the decision harms the person concerned. For this reason, if any person acts in accordance with these rules and does not provide the necessary care with respect to the disapproval of a fully competent adult patient, they cannot commit a criminal offence of failure to provide assistance, as it would not fulfil one of the necessary characteristics of a criminal offence, i.e. the aforementioned illegality of the conduct.”⁴⁷

Obviously, physicians have nothing to fear from respecting patients' wishes. Two exceptions must, however, be stressed. First, in order to determine whether the release of liability is lawful, judges would need to ascertain whether the doctor verified prior to the surgery that the patient was endowed with decision-making capacity and informed him, subsequently, of all the consequences this choice entails.⁴⁸ Or, in case of an unconscious patient, judges would have to check whether the doctor verified the existence of an advanced medical directive or/and a legal representative. Second, respecting patients' wishes does not exonerate doctors from acting *lege artis*, acting within the frame of medical standards in harmony with patient's wishes.⁴⁹

47 Czech Republic Constitutional Court, case No. I. ÚS 2078/16, 02 February 2017, §25-30.

48 *“However, Article 2 of the Convention enshrines the principle of sanctity of life, which is especially evident in the case of a doctor, who exercises his or her skills to save lives and should act in the best interests of his or her patients. The Court has therefore held that this Article obliges the national authorities to prevent an individual from taking his or her own life if the decision has not been taken freely and with a full understanding of what is involved (see Haas v. Switzerland, no. 31322/07, § 54, ECHR 2011). It follows that one of the central issues in determining the validity of a refusal to undergo medical treatment by a patient is the issue of his or her decision-making capacity.”* Arskaya at § 69.

49 *“The printed form of the previously expressed refusal often states that the signatory releases the doctor, the healthcare institution and the hospital staff from any liability for the risks arising out of refraining from administering a blood transfusion to the patient (a liability exclusion clause is thereby included). Due to the complexity of a medical treatment program which may involve many separate surgical procedures, which may not be unrelated to one another, it is understood that blood transfusion and the liability resulting from its administration or omission is just one issue among many. Furthermore, as in the case of consent, the doctor is exposed to complaints of providing inadequate information or inappropriate treatment, which necessitated the transfusion of blood. Finally, a physician who is not specialized in methods alternative to blood transfusions should extend the liability exclusion clause so as to include assumption of risk, in the case the doctor does not have sufficient experience and has informed the patient of this.”* Kyriakaki, E. N. (2016), *The Patient's Refusal to Accept a Medical Procedure and the Doctor's Duty to Provide Treatment (the example of refusing blood transfusions on religious grounds)*, Human Rights Law Journal *Dikaionomata*, No. 69.

5) Can a doctor be held civilly and/or criminally liable for overriding a JW patient's wishes and administering a blood transfusion by force?

The answer to this question is yes, although sometimes difficult for courts to apply.⁵⁰ On the one hand, it is logical that disrespecting fundamental principles renders one liable to civil and/or criminal punishment. Otherwise, what would be the meaning of the right to personal autonomy if a doctor could disrespect it without being held accountable for its violation? On the other hand, doctors have always enjoyed a positive reputation, which makes it difficult for judges or juries to punish someone who disregarded the will of another individual driven by the imperious motive of trying to save his life. Such contradiction makes the answer to this question challenging *de facto*. However, legally and practically speaking, a doctor who transfuses a patient against the patient's expressed wishes could be held civilly and/or criminally liable. After defining consent as required for medical treatment in 1914, Justice Cardozo added, "and a surgeon who performs an operation without his patient's consent commits an assault."⁵¹ If judges and juries make it clear that administering a certain treatment by overriding a patient's wishes is unlawful and entails legal consequences, they set a clear limit to a doctor's power to control the lives of individuals which is conducive to a certain form of humility in line with their Hippocratic oath. Besides, such limits protect individuals from being subjected to additional harm as mere objects of treatment. Indeed, such violation is not only viewed by a JW patient as a spiritual rape, but it has also sometimes given rise to negative medical consequences, such as blood-borne infections or acute traumatic reactions that can lead to death⁵².

That is why, several Courts worldwide have stated,⁵³ similar to the judgment of the Supreme Court of Poland that "the objection to a particular treatment (type

⁵⁰ For this issue, in case of emergency, see our developments under question 2.

⁵¹ *Jehovah's Witnesses of Moscow and Others v. Russia* at Nos. 87, 135 (quoting *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125).

⁵² In this regard, judges will have to evaluate every situation on a case by case basis. If doctors are in principle to be held liable for overriding a patient's will, they might be able to reduce the extent of their liability in the light of several criteria. It might depend on the doctor's efforts to find out the patient's medical choice, the degree of emergency, the degree of patient's discernment, the degree of clarity of patient's medical choice, and to what extent the treatment was beneficial to the patient's health.

⁵³ See, for instance, *Malette*, and *Perkins v. Lavin* (1994) 648 N.E.2d 839 (Ohio Court of Appeal, U.S.). Both of these cases affirmed the civil liability of doctors who transfused Jehovah's Witnesses patients against their will. In *Malette*, the Ontario Court of Appeal said that a doctor's "honest and even justifiable belief that the treatment was medically essential did not serve to relieve him from liability for the battery resulting from his intentional and unpermitted conduct." In *Perkins v. Lavin*, the Ohio Court of Appeals said "Battery not only protects individuals from harmful contact but protects them from any offensive contact: 'A harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff or a third person to suffer such a contact, . . . is a battery.'

of treatments) is legally binding for a medical practitioner and relieves him of the criminal or civil responsibility, whereas in the case of administering it — makes it illegal.”⁵⁴

Conclusion: We must leave the credit to the Superior Court of Pennsylvania in *re Duran* for having rightly summed up the opposing interests between JW patients and doctors: “*it is a difficult thing to decline potentially life-saving treatment for a loved one, rendered mute by her condition, on the basis of her devotion to religious beliefs. Nevertheless, absent evidence of overarching state interests, the patient’s clear and unequivocal wishes should generally be respected.*”⁵⁵

Today, medical research and science are showing that the liberal use of blood transfusions results in worse patient health outcomes and that use of medical and surgical treatment strategies that avoid blood transfusion result in superior clinical and economic outcomes.⁵⁶ In the context of this medical research and science, the strengthening of fundamental principles toward the absolute recognition of patients’ will, the juncture between JW patients’ and doctors’ conscience has never been so close to forming a mutual bridge of understanding and cooperation. Similar to what has taken place over the last ten years in countries where the right to personal autonomy has received full protection, there is also hope in Croatia that this sensitive issue will soon be part of the past. At least, as we could see in this article, we have now at our disposal well-established and convincing legal rules which can help doctors, patients, and judges to methodically resolve any opposing interests in this field for the benefit of all parties.

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Prosser, Law of Torts (5 Ed. 1984) 39, Section 9; see *Love v. Port Clinton* (1988), 37 Ohio St.3d 98, 99, 524 N.E.2d 166, 167. ‘Battery’ includes innocent intentional contact and even intentional contact meant to assist the complainant, if that contact is unauthorized: “The defendant may be liable when intending only a joke, or even a compliment, as where an unappreciated kiss is bestowed without consent, or a misguided effort is made to render assistance.” Prosser, Law of Torts (5 Ed. 1984) 42, Section 9. In this case, the plaintiff specifically informed defendant that she would consider a blood transfusion offensive contact.” *Perkins* at 841.

⁵⁴ *Re Boguslaw L.*, (2005).

⁵⁵ In *re Duran*, (2001).

⁵⁶ Leahy, M. F. (2017), 1347-58.

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Je li hrvatska pravna regulativa iz područja zdravstva usklađena s međunarodnim komparativnim standardima o pravu na samoodređenje? Primjer pacijenata Jehovinih svjedoka

Sažetak

Jesu li Jehovini svjedoci posebni pacijenti? Moglo bi se odgovoriti potvrdno. Nije li njihovo odbijanje transfuzije krvi, liječenja koje se tradicionalno smatra životno važnim, problematično s medicinskog i pravnog gledišta? Međutim, tradicije nisu vječne. I moderna medicinska znanost i pravni standardi znatno su se poboljšali u posljednja dva desetljeća. U posljednjih nekoliko godina način liječenja koji izabiru Jehovini svjedoci postao je standard za mnoge liječnike specijalizirane za operacije bez krvi. S pravnog stajališta, zakoni i sudska praksa širom svijeta kreću se u istom smjeru: pacijent sposoban da samostalno donosi odluke ima apsolutno pravo izbora liječenja koje smatra najprikladnijim u skladu sa svojim osobnim vrijednostima. U svjetlu te evolucije širom svijeta Jehovini svjedoci postali su obični pacijenti. Budući da to u Hrvatskoj još uvijek nije slučaj, ovim se radom želi usmjeriti hrvatsko zakonodavstvo k usklađivanju s međunarodnim standardima, koristeći primjer Jehovinih svjedoka. To se čini odgovarajući na pet temeljnih pitanja: 1) Treba li Jehovina svjedoka prisiliti na transfuziju krvi protiv njegove/njene volje?; 2) Treba li Jehovinom svjedoku dati transfuziju krvi u hitnim situacijama u kojima mu je život ugrožen, a on je u nesvijesti?; 3) Može li liječnik odbiti liječiti Jehovnog svjedoka ako pacijent odbija prihvatiti tretman koji se smatra neophodnim za spašavanje njegovog života?; 4) Može li liječnik biti odgovoran ako je poštovao volju Jehovnog svjedoka u slučaju da pacijent umre?; 5) Može li liječnik biti odgovoran za nepoštovanje želja Jehovnog svjedoka i za prisilno davanje transfuzije krvi?

Glavne riječi: Jehovini svjedoci, transfuzija krvi, izbor liječenja, hitno liječenje, prava pacijenta, osobna autonomija, informirani pristanak, anticipirajuća naredba, liječnici, savjest, nesavjesno postupanje, medicinska odgovornost, religija i medicina, Hrvatska, Europski sud za ljudska prava, jurisprudencija, zakonodavstvo, etika, komparativno pravo.