Revista Multidisciplinaria Perspectivas Investigativas
Multidisciplinary Journal Investigative Perspectives
Vol. 6(4), 98-106, 2026
https://doi.org/10.62574/rmpi.v6i4.532

Objection to blood transfusions, human rights and critical physicians in comparative law

Objeción a transfusiones sanguíneas, derechos humanos y médicos críticos en el derecho comparado

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ABSTRACT

The refusal of Jehovah's Witnesses to receive transfusions sets patient autonomy against the medical duty of beneficence, since courts and health teams resolve the conflict with disparate criteria. The study therefore aimed to analyze objection to blood transfusions from a praxeological approach, as a legal and medical practice in comparative law. A systematic literature review with a hermeneutic-analytical method was applied to 20 sources (1998-2026), including bioethical doctrine, supranational and national case law and clinical studies. The results showed that the European Court of Human Rights, the Constitutional Court of Colombia and the Federal Supreme Court of Brazil recognize the refusal of the competent adult, while a protective approach persists for minors. It was concluded that the critical physician must exhaust bloodless alternatives and fully inform the judge before overriding the patient's will.

Descriptors: conscientious objection; blood transfusion; patient autonomy; bioethics; human rights. (Source: UNESCO Thesaurus).

RESUMEN

La negativa de los Testigos de Jehová a recibir transfusiones enfrenta la autonomía del paciente con el deber médico de beneficencia, por cuanto tribunales y equipos de salud resuelven el conflicto con criterios dispares. Es así que el estudio se planteó como objetivo analizar la objeción a las transfusiones sanguíneas desde un enfoque praxeológico, como práctica jurídica y médica en el derecho comparado. En este sentido se empleó una revisión sistemática de literatura con método hermenéutico-analítico sobre 20 fuentes (1998-2026) de doctrina bioética, jurisprudencia y estudios clínicos. Entre los resultados se obtuvo que el Tribunal Europeo de Derechos Humanos, la Corte Constitucional de Colombia y el Supremo Tribunal Federal de Brasil reconocen el rechazo del adulto competente, mientras en menores persiste el enfoque protector. Entre las conclusiones se estableció que el médico crítico debe agotar las alternativas sin sangre e informar al juez antes de sustituir la voluntad del paciente.

Descriptores: objeción de conciencia; transfusión sanguínea; autonomía del paciente; bioética; derechos humanos. (Fuente: Tesauro UNESCO).

Received: 6/07/2026. Reviewed: 12/07/2026. Accepted: 9/09/2026. Published: 1/10/2026.
Research Articles Section

INTRODUCTION

When a conscious, informed and competent adult refuses a blood transfusion on religious grounds, the health team faces one of the most studied dilemmas in clinical bioethics, since patient autonomy clashes with the duty of beneficence and with the principle of preserving life. In line with this approach, Muramoto (1998) explained that the refusal of Jehovah's Witnesses is based on a reading of the Scriptures that forbids receiving whole blood and its primary components, and warned that bioethical deliberation should also consider the institutional pressure that weighs on the believer, so that respecting the decision requires verifying that it is free and not merely that it is religious.

For his part, Muramoto (2001) documented that around 2000 the organization stopped formally expelling those who accepted blood and began to consider that they had disassociated themselves, a change that doctrine interpreted as a shift of responsibility toward individual conscience. This indicates that the objection is not an isolated act at the bedside but a social practice constituted by religious norms, hospital protocols, legal discourses and judicial decisions that condition one another.

In the field of human rights, the debate changed scale when the Grand Chamber of the European Court of Human Rights [ECtHR] (2024) decided the case of *Pindo Mulla v. Spain*, in which a patient was transfused during surgery despite having repeatedly recorded her refusal, and found a violation of the right to respect for private life interpreted in light of freedom of religion. At the same time, the Federal Supreme Court of Brazil recognized in September 2024 the right of a capable adult to refuse procedures involving transfusion and to receive the alternatives available in the public health system (Pagani & Souza, 2026), so that two courts of continental reach agreed in the same year in placing autonomy at the center of the decision.

But how has this shift translated into the practice of national courts and physicians, and what happens when the person refusing blood is a minor or a person with diminished capacity? Based on the above, the research aims to analyze objection to blood transfusions from a praxeological approach, understood as a legal and medical practice, in light of human rights and comparative law, in order to identify the scope and limits of the right to refuse life-saving treatment and the requirements this entails for critical medical practice.

METHOD

The methodology used is qualitative, with a systematic literature review design and the hermeneutic-analytical method, which made it possible to interpret a delimited corpus of bioethical, case-law and clinical sources. Accordingly, a praxeological approach was adopted, which according to Juliao-Vargas (2024) consists of analyzing a practice, distancing oneself from it and conceptualizing it in writing, which is why the objection was read as a practice involving patients, physicians and judges. Likewise, the phases of identification, screening, eligibility and inclusion were followed, and their criteria are summarized in Table 1; documentary analysis was used as the technique and a recording matrix per source (author, year, type of document, finding and axis) as the instrument, and its data were subjected to content analysis by axis.

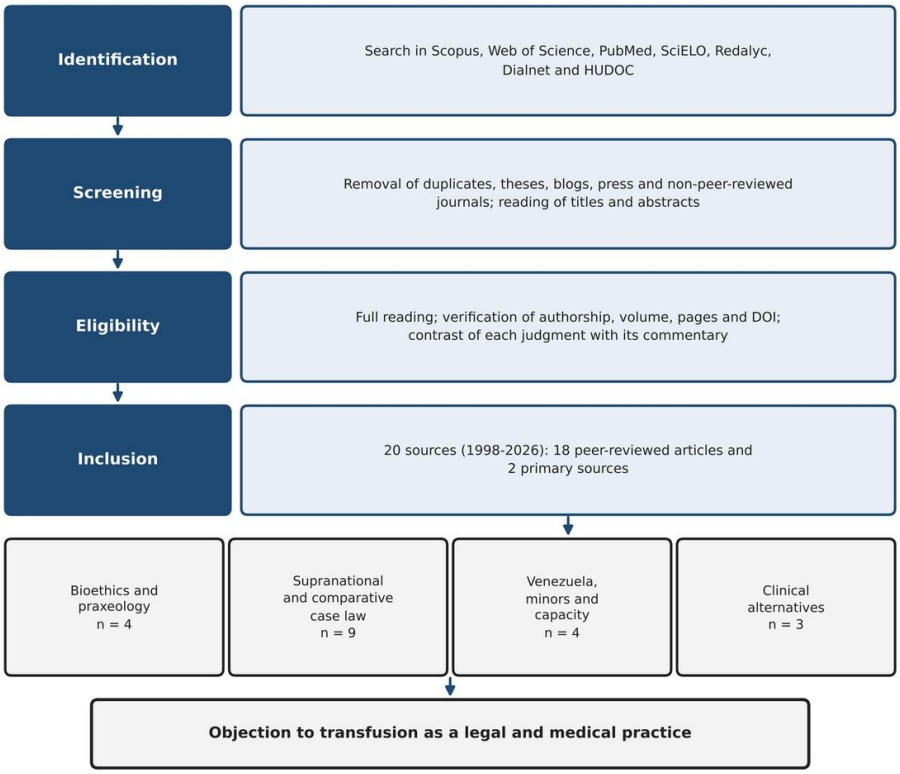
Table 1. *Systematic review protocol*.

Element	Description
Design	Systematic literature review with a hermeneutic-analytical method and praxeological approach
Databases and repositories	Scopus, Web of Science, PubMed, SciELO, Redalyc, Dialnet and HUDOC (European Court of Human Rights)
Search terms	("Testigos de Jehová" OR "Jehovah's Witnesses") AND ("transfusión" OR "blood transfusion") AND ("autonomía" OR "autonomy" OR "consentimiento" OR "jurisprudencia" OR "court")
Period	1998-2026
Inclusion criteria	Peer-reviewed articles with a verifiable record; case commentaries; clinical studies on bloodless management; indispensable primary sources
Exclusion criteria	Theses, legal blogs, press, confessional material, non-peer-reviewed journals and duplicate records
Axes of analysis	Bioethics and praxeology (n = 4); supranational and comparative case law (n = 9); Venezuelan legal system, minors and capacity (n = 4); clinical alternatives (n = 3)

Note: developed in-house.

As for its composition, the corpus comprised 20 sources, of which 18 are articles in peer-reviewed journals and two are primary sources, the Constitution of the Bolivarian Republic of Venezuela (1999) and the ECtHR (2024) judgment in *Pindo Mulla v. Spain*, while the other judicial decisions were examined through commentaries published in specialized journals. Subsequently, the sources were organized into four axes, namely the bioethical and praxeological foundations, supranational and comparative case law, the Venezuelan legal system together with the regime for minors, and clinical alternatives to transfusion, as represented in Figure 1.

Figure 1. *Phases of the systematic review and axes of analysis*.



Note: developed in-house.

Finally, since this is a documentary study, no work was carried out with people or medical records, and two safeguards were adopted, namely contrasting the reading of each judgment with at least one doctrinal commentary and distinguishing what the sources state from what is proposed as the authors' inference.

RESULTS

The results of the research are described below, organized according to the four axes of the corpus:

Objection as a social practice and models of autonomy

First, a praxeological reading requires looking at how autonomy is exercised in hospitals and not only at how it is stated in codes, as shown by Rajtar (2013), who after nine months of ethnographic fieldwork in Berlin described two opposing conceptions: a reason-based autonomy, preferred by German physicians in line with Kantian philosophy and constitutional law, and a choice-based autonomy, invoked by Jehovah's Witness patients and close to the tradition of Mill.

Similarly, Lawson & Ralph (2015) recall that the anesthesiologist must know precisely which products each patient accepts, since doctrine allows believers to decide in conscience on minor fractions and blood salvage techniques.

Supranational case law and the procedural turn

Second, the ECtHR had already stated in 2010, in the case of Jehovah's Witnesses of Moscow v.

Russia, that the freedom to accept or refuse medical treatment is essential to self-determination and that the State cannot presume that the refusal of blood is always the result of undue coercion, a precedent the Grand Chamber took up again in *Pindo Mulla v. Spain* (ECtHR, 2024). In that case, the applicant had expressed her refusal in advance directive documents and to the health staff, but the duty judge's authorization was issued without the judge being aware of that information, and the Court concluded that the decision-making process was deficient and violated Article 8 of the Convention read in light of Article 9.

However, Brzozowski (2025) warns that the judgment focuses on procedural safeguards and relegates the religious dimension of the case to the background, so that the message for States is more about properly informing the judge than about recognizing a substantive right to object. Table 2 brings together these decisions and the most relevant national ones.

Table 2. *Judicial decisions on the refusal of transfusions in comparative law*.

Court and decision	Year	Criterion
ECtHR, Jehovah's Witnesses of Moscow v. Russia	2010	Accepting or refusing treatment is essential to self-determination
ECtHR (Grand Chamber), Pindo Mulla v. Spain	2024	Violation of Art. 8 in light of Art. 9; the judge decided without knowing of the documented refusal
Court of Cassation (Italy), 4211	2007	Transfusion of an unconscious patient justified by necessity
Court of Cassation (Italy), 23676	2008	A no-blood card does not prove a current and informed will
Constitutional Court (Spain), STC 154	2002	Amparo granted to the parents of a minor who refused blood
Constitutional Court (Colombia), T-659	2002	The clear and express refusal of a capable adult prevails
Courts of Appeals (Chile), 11 rulings	1992-2017	Transfusion authorized in 9; autonomy respected in 2
Constitutional Chamber, TSJ (Venezuela), 1.431	2008	Transfusion permitted against the patient's will if there is a risk to life and no alternative
Federal Supreme Court (Brazil), RE 979742 and 1212272	2024	Refusal by a capable adult and duty to offer alternatives in the public system

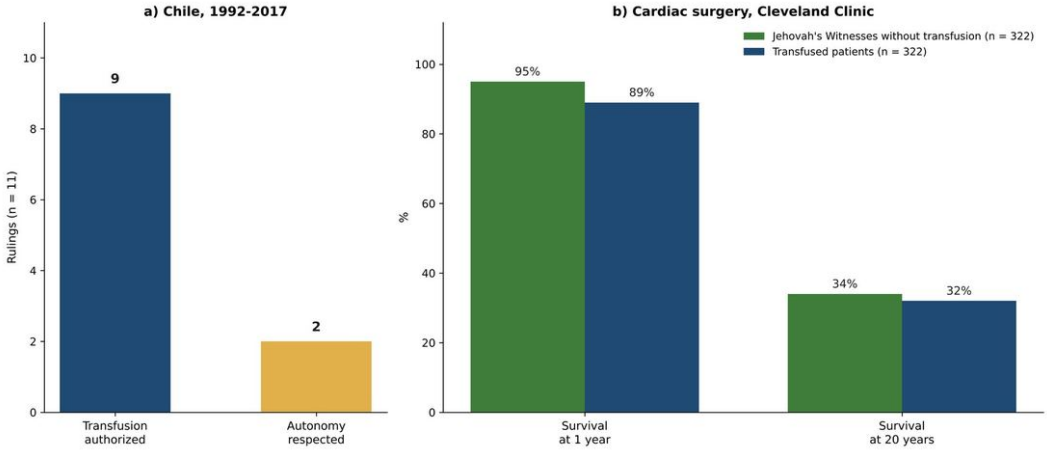
Note: developed in-house from ECtHR (2024), Petrini (2014), Pérez-Triviño (2010), Fuentes-Orozco (2019), Figueroa (2018), Marcano (2009) and Pagani & Souza (2026).

Comparative law, between paternalism and autonomy

In Europe, Petrini (2014) reports that the Italian Court of Cassation considered justified in 2007 the transfusion of an unconscious patient in a state of necessity, that in 2008 it deemed insufficient a card bearing the words no blood because it did not prove a current and informed will, and that in 2011 the Milan Court of Appeal ordered compensation of 400,000 euros to a patient transfused against her express will, in a country that ratified the Oviedo Convention through Law 145 of 2001. For his part, Pérez-Triviño (2010) analyzes judgment 154/2002 of the Spanish Constitutional Court, which granted amparo to the parents of a 13-year-old minor who died after refusing blood, on the grounds that they could not be required to persuade their son or to authorize the transfusion against their beliefs.

In Latin America, Fuentes-Orozco (2019) shows that the Constitutional Court of Colombia accepted in judgment T-659 of 2002 that, when a patient with full capacity clearly and expressly refuses a transfusion, not even the constitutional judge may decide otherwise, whereas in T-474 of 1996 it gave priority to the life of a minor. By contrast, Figueroa (2018) reviewed 11 Chilean rulings issued between 1992 and 2017 and found that transfusion was authorized in nine of them, with only two decisions from 2008, by the courts of Copiapó and Antofagasta, that respected autonomy, while Cardemil (2010) reported that in 77% of the protection actions reviewed the court order did not achieve its objective, either because the patient was not transfused or because the patient died anyway.

Figure 2. *Chilean rulings on transfusion (1992-2017) and survival after cardiac surgery with and without transfusion*.



Note: developed in-house from Figueroa (2018) and Pattakos, et al., (2012).

In the Brazilian case, Campos & Costa (2022) explain that the Code of Medical Ethics prohibits acting without consent except in imminent risk of death and that the Penal Code excludes the unlawfulness of non-consensual intervention only in that situation, so that for years the tension between religious freedom and life was left in the hands of each hospital. In light of the above, the decision of the Federal Supreme Court of September 25, 2024, adopted unanimously in extraordinary appeals 979742 and 1212272, closed that margin by requiring an unequivocal, free and informed decision and by obliging the public system to offer alternatives, even outside the patient's place of residence (Pagani & Souza, 2026). Figure 2 thus contrasts this development with Chilean case law and with the clinical results of bloodless surgery.

Minors and diminished capacity

Third, the autonomy recognized for adults does not automatically extend to children, as Woolley (2005) explains, distinguishing between the young children of Jehovah's Witness parents, whose interests prevail over parental beliefs, and adolescents with sufficient maturity, whose opinion must be heard even though English-speaking courts have rarely allowed it to prevail when life is at risk. Along the same lines, Llopis & Salazar (2020) comment on amparo en revisión 1049/2017 of the Supreme Court of Justice of Mexico, according to which parents cannot object to treatments aimed at saving their children's lives and the physician must notify the child protection authority if they insist on an inferior option, while Figueroa (2018) confirms that in Chile the transfusion of newborns was authorized in all cases.

Table 3. *Decision regimes according to the patient's capacity*.

Subject	Predominant criterion	Requirement for the physician
Competent adult	Primacy of autonomy; free, informed and unequivocal decision	Inform about alternatives, record the refusal and respect it
Unconscious adult with an advance directive	Value of the advance directive if it is current and specific	Verify the document and communicate it to the judge
Unconscious adult without a directive	State of necessity	Exhaust alternatives and document the urgency
Mature adolescent	Opinion heard and weighed	Assess maturity case by case
Child or newborn	Best interests and protection of life	Use bloodless management when safe; turn to the authority if parents object

Note: developed in-house from Woolley (2005), Petrini (2014), Llopis & Salazar (2020) and Pagani & Souza (2026).

Clinical alternatives and the duty of the critical physician

Fourth, clinical evidence has changed the terms of the dilemma, since Pattakos, et al., (2012) compared 322 Jehovah's Witness patients who underwent cardiac surgery without transfusion with 322 matched patients who did receive it, and found similar in-hospital mortality, fewer reoperations for bleeding, less renal failure and sepsis, and one-year survival of 95% compared

with 89%, with equivalent figures at 20 years of 34% and 32%. Similarly, Shander & Goodnough (2018) describe anemia management strategies, such as preoperative treatment with iron and erythropoietin, pharmacological hemostasis, intraoperative blood salvage and the reduction of blood draws for laboratory testing.

Another aspect that should be examined is the organization of services, since Cardemil (2010) reports that the Clinical Hospital of the Universidad de Chile has maintained since 1998 a voluntary bloodless care program, with results comparable to those of the general population in cardiac, hepatic, orthopedic and oncological surgery.

The Venezuelan legal system and its tensions

In the Venezuelan case, the Constitution of the Bolivarian Republic of Venezuela (1999) declares the right to life inviolable in Article 43, requires consent for medical examinations and treatments except when life is in danger in Article 46, paragraph 3, guarantees freedom of religion in Article 59 and limits conscientious objection in Article 61 when it is invoked to evade the law or to prevent others from exercising their rights. On this basis, Marcano (2009) observes that the Law on the Practice of Medicine requires respect for the patient's written refusal and that the Code of Medical Deontology accepts the refusal of a competent adult even when life is at risk, whereas the Constitutional Chamber of the Supreme Tribunal of Justice, in judgment 1.431 of August 14, 2008, allowed an adult to be transfused against his or her will when life is in danger and there is no alternative.

DISCUSSION

The findings are discussed below and contrasted with what was set out in the introduction:

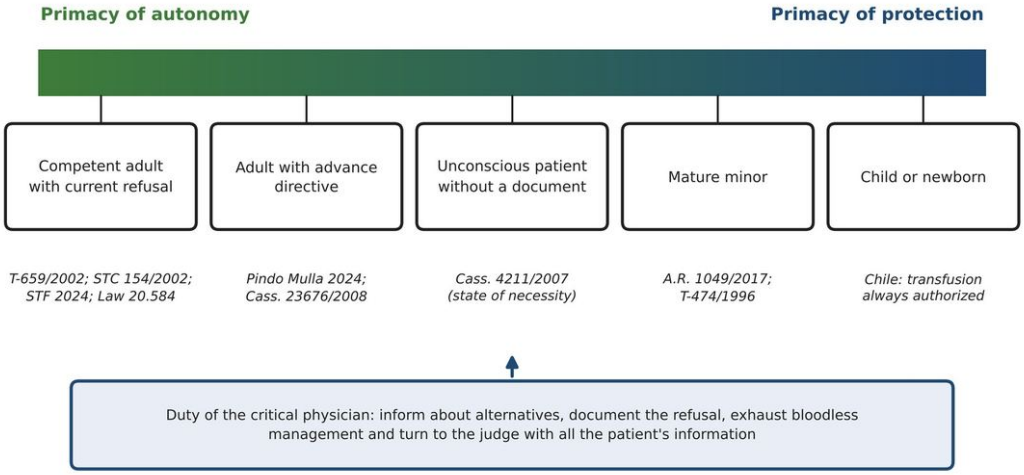
The results confirm what was anticipated in the introduction, since the objection is not an isolated act at the bedside, and Rajtar's (2013) ethnographic work shows that the conflict cannot be reduced to faith versus science, since physicians and patients both defend an idea of autonomy, albeit with different content. Accordingly, supranational protection currently operates as a quality control of the decision, which requires hospitals to document the refusal and convey it in full to the authority that must rule on it, as the ECtHR (2024) required in the case of Pindo Mulla v. Spain.

Another aspect arising from the results is the figure of the critical physician, understood as the professional who neither imposes his or her own conception of well-being nor abdicates his or her duty, but instead turns the objection into a clinical problem that requires planning, so that, according to the authors' inference, the critical physician is one who recognizes the objection as a clinical fact, informs the patient of all options, records the decision in writing, exhausts bloodless management and, when life is in danger, turns to the judge with all the available information and not only with the indication to transfuse.

Hence an intrinsic challenge, since the protection of the minor should not become a general authorization to dispense with alternatives, given that bloodless medicine is also available for children and its use reduces the number of conflicts that reach the courts. This indicates that the protective criterion is justified by the lack of capacity to consent and not by the religious content of the decision, so that the adolescent's maturity, assessed case by case, should determine the weight given to his or her opinion.

This invites reflection on the distance between the Venezuelan criterion and the comparative trend, because while Colombia, Brazil and the European system place the refusal of the competent adult at the autonomy end, the 2008 doctrine shifts it toward the protective end, as represented in Figure 3. In light of the above, the requirement to exhaust alternatives imposed by that same judgment offers a meeting point, since it obliges the physician to demonstrate that transfusion was the only option, which coincides with the procedural standard set by the ECtHR (2024).

Figure 3. *Gradient between autonomy and protection according to the patient's situation*.



Note: developed in-house from the corpus reviewed.

CONCLUSIONS

In sum, the review makes it possible to state that comparative law is moving toward the priority recognition of the competent adult's autonomy, as shown by the ECtHR in the case of Pindo Mulla v. Spain, the Constitutional Court of Colombia in judgment T-659 of 2002 and the Federal Supreme Court of Brazil in 2024, while for minors and persons with diminished capacity a protective approach persists that the case law of Mexico, Chile and Colombia maintains with few exceptions. Likewise, clinical evidence on bloodless surgery weakens the argument that transfusion is always the only option, so that practice is redefining objection not as an exception to the duty of care but as a right exercised within reasonable pluralism. Similarly, the Venezuelan legal system retains a tension between freedom of conscience and a 2008 judicial doctrine that allows the adult's will to be overridden, a tension that, based on the data reviewed, could be eased with hospital protocols for bloodless care, specific consent forms and the obligation to inform the judge of the documented refusal.

FINANCING

Non-monetary.

CONFLICT OF INTEREST

There is no conflict of interest with any individuals or institutions related to this research.

ACKNOWLEDGMENTS

To the Universidad Central de Venezuela, for the academic space that made this research possible.

AUTHOR CONTRIBUTIONS

Zoreima Saturna Arvelaiz-Padrón: conception of the study, review of case law and writing of the introduction and the results.

Noemí del Carmen Navarro-Villarroel: search, screening and verification of sources, and preparation of tables and figures.

Carlos Manuel Carreño-Vélez: comparative analysis and writing of the discussion and the conclusion. The authors participated in the critical revision of the manuscript and approved the final version.

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