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Freedom Of Worship for Jehovah's Witnesses, Patient Autonomy, And Biolaw: Jurisprudential Criteria in Chile, Colombia, And Europe

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ABSTRACT

This research aims to show how different courts have resolved the conflict between the right to life and the right to religious freedom of Jehovah's Witnesses when they have to undergo a blood transfusion prohibited by their religion. To do this, we will analyze the criteria used by the high courts of justice in Chile over the past 25 years. Likewise, we will study the criteria adopted on the matter by the Colombian Constitutional Court and what the European Court of Human Rights has recently stated, whose rulings reflect its consistency with recognizing the full exercise of the right to religious freedom and worship. As a preliminary step and for greater understanding, we consider it essential to briefly review the theological foundations of the prohibition against giving/receiving blood by Jehovah's Witnesses, which justify their decision.

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I.- INTRODUCTION

Chile is currently a country where a plurality of religious denominations coexist, all protected under Article 19, No. 6 of the Political Constitution of the Republic, which guarantees freedom of conscience, the expression of all beliefs, and the practice of all forms of worship. Unfortunately, this religious freedom has historically been one of the fundamental rights, receiving the least recognition, particularly when it comes into conflict with other fundamental rights.

This research updates a previous study on the subject. It aims to examine the primary infringement of religious freedom experienced by Jehovah's Witnesses—a minority religious group in Chile—when, driven by personal conviction and biblical grounds, they refuse blood transfusions in a medical setting.

The approach adopted in this research is qualitative. We have primarily employed a jurisprudential method to synthesize, identify, and analyze the evolution of the criteria applied by higher courts in Chile—including Courts of Appeal from various regions and the Supreme Court—over the last 15 years regarding blood transfusions for Jehovah's Witnesses. Furthermore, we have examined the criteria established by the Constitutional Court of Colombia in its recent rulings on this subject, as well as the positions taken more recently by the European Court of Human Rights concerning the issue at hand.

In addition to this, we have utilized a comparative method to contrast the Chilean experience with those from other jurisdictions, drawing upon a range of sources—including legal statutes, case law, academic doctrine, and theological texts.

To develop this study, we deemed it necessary to divide it into two parts: a legal component allowing us to track the evolution of Chilean case law regarding this issue over the past two decades, and a theological section outlining the specific religious foundations underpinning the conviction of Jehovah's Witnesses concerning blood transfusions. It is crucial to our study—as previously noted—to analyze the criteria upheld by the Constitutional Court of Colombia, given its significant influence across Latin America, as well as the content of a recent ruling by the European Court of Human Rights, which represents a genuine jurisprudential milestone regarding blood transfusions.

The importance of the research presented in the following pages lies in the fact that, although Chilean court rulings from the period under analysis reflect inconsistent criteria—rather than a clear trend—regarding blood transfusions, it is valuable to delve into the arguments raised in their favor, as well as to highlight the significant gap between these rulings and Colombian jurisprudence in terms of the quality of judicial pronouncements.

Upon concluding this study, we will be able to establish that, while the right to religious freedom held by Jehovah's Witnesses is recognized within the national legal system, the practical vulnerability they experience stems from the courts' flawed understanding and erroneous interpretation of the relevant legal provisions. This analysis will enable us to recommend an alternative regulatory adjustment to ensure what we consider to be the proper protection of this fundamental right.

II.- CONFLICT BETWEEN THE PATIENT'S RELIGIOUS CONVICTIONS AND THE PRESERVATION OF LIFE

Currently, adherents of the Jehovah's Witness faith face the constant challenge of demanding respect for one of the most controversial aspects of their religious convictions: the prohibition against giving or receiving blood from another person or animal. This restriction creates a crucial dilemma for the believer when faced with a medical emergency requiring a blood transfusion.

As we can anticipate, the issue has two facets. On one hand, the believer—acting out of fidelity to their religious convictions—will choose to refuse a transfusion, accepting the potential health consequences this entails in critical, life-threatening situations. From the opposing perspective, the physician—who, under Chilean law, is charged with actions aimed at disease prevention, health promotion and protection, recovery, and rehabilitation1—must decide whether to save the patient's life (or prevent their health from deteriorating) by administering a blood transfusion or to respect the patient's religious freedom.

The issue described will most often arise in a judicial setting, triggered by a constitutional action for protection (or its equivalent in jurisdictions using different terminology) filed by the director of the healthcare facility where the blood transfusion is to be performed; the aim is to secure a court order prioritizing the patient's right to life over any religious conviction.

In this regard—and as will be analyzed in detail on the following pages—Chilean case law does not reveal an

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absolute or clear-cut trend, but rather a prevailing inclination to uphold the right to life2, resulting in court-ordered transfusions for Jehovah's Witness believers without their consent, thereby infringing upon their fundamental rights.

III.- THEOLOGICAL BASIS FOR THE REFUSAL OF JEHOVAH'S WITNESSES TO ACCEPT OR DONATE BLOOD

Given the adverse health consequences that can arise from strictly adhering to the conviction prohibiting the giving and receiving of blood, it is worth asking: what is the reason for this prohibition among Jehovah's Witnesses, and what are its origins and scope? Where and how is this prohibition regulated? What is the impact on the believer if this prohibition is violated?

As a preliminary matter, it must be clarified that the origin of the Jehovah's Witnesses' doctrine regarding the rejection of blood transfusions lies in the Holy Scriptures. Indeed, the Bible contains a series of precepts relating to this prohibition—constituting its sole and exclusive source—which have become one of the group's most cherished and respected beliefs, yet also one that faces significant social objection.

In reviewing the various biblical precepts concerning this subject, we must mention the passage addressing what humans are permitted to eat, which states: "The only thing you must not eat is meat with its soul—that is, with its blood." This provision constitutes one of the key principles that allows us to begin to understand that the refusal of blood transfusions associated with the aforementioned religion is not arbitrary; rather, it is based on the biblical mandate that “the soul of every living being resides in the blood.”

In accordance with the foregoing, for the Jehovah's Witnesses faith, the blood of living beings (whether human or animal) represents life; since life is a gift from God—holy and sacred—blood is considered equally so. Consequently, their refusal applies not only to receiving blood via transfusion but also extends to the act of directly consuming animal blood as food.

In this regard, it is worth noting that, according to biblical precepts, the human diet was entirely vegetarian prior to the Great Flood. Subsequently, God permitted humanity to add meat to their diet, but only subject to a specific additional requirement: that the meat consumed be free of blood.

Furthermore, a common misconception regarding the Jehovah's Witnesses—one that can be dispelled—is the idea that the religion's dogmatic prohibition extends to the consumption of meat itself. Regarding the consumption of meat, the Bible explicitly commands: "Be sure not to eat the blood, because the blood is the life, and you must not eat the life with the meat." Thus, the prohibition is not against eating meat per se, but rather against consuming meat and blood together.

However, for Jehovah's Witnesses, refusing to accept blood into their bodies via transfusion often represents a burden they feel compelled to bear; consequently, they seek to avoid the procedure at all costs, fully aware that their conviction will be subject to scrutiny.

Finally, regarding the consequences for a Jehovah's Witness arising from a failure to comply with the restriction, it must be noted that if this specific mandate—or others of equal importance to their religion—is willfully disobeyed, they believe they could lose "eternal life" or "their friendship with God." These matters are essential to the religious denomination in question, and they constitute the primary reasons why strict observance is so significant for the faithful.

IV.– RECOGNITION AND PROTECTION REGARDING BLOOD TRANSFUSIONS IN THE CHILEAN LEGAL SYSTEM

Given the significance of the tension between the right to life and the right to religious freedom—experienced by those who, due to religious conviction, refuse blood transfusions in medical emergencies—it is appropriate to analyze the legal provisions regulating the right to religious freedom within the national legal system and how convictions regarding blood transfusions fall within its scope.

A) Political Constitution of the Republic of Chile

The essential provision in our Constitution is Article 19, No. 6, Paragraph 1, which guarantees all persons "freedom of conscience, the manifestation of all beliefs, and the free exercise of all forms of worship that are not contrary to morality, good customs, or public order." Three distinct legal provisions can be derived from its content. The first is freedom of conscience, which refers “to the moral judgment regarding one's own actions and acting in accordance with said moral judgment. The objective of this right is the judgment of morality and

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acting in concordance with said moral judgment." Next is the manifestation of all beliefs, which guarantees the outward expression of all types of opinions or statements—whether or not they originate in religion. Finally, there is the free exercise of all forms of worship, consisting of activity confined to the religious sphere, even though some religions do not possess a strictly ritualistic or ceremonial aspect. It should be clarified, however, that when we speak of such outward expression, we refer to the rites, celebrations, or demonstrations characteristic of the professed religion.

An analysis of the provision contained in Article 19, No. 6 reveals that it is not absolute in nature; like all fundamental rights, it is subject to limits—in this case, morality, good customs, and public order. While it is true that domestic legal scholarship has widely noted that the aforementioned provision regulates the right to religious freedom, the fact remains that it is not the Constitution—in the article just mentioned—that uses the expression "Religious Freedom" in those precise terms; rather, it is Law No. 19.638, which we will discuss in the following pages, that directly refers to it.

In addition to the constitutional provision already analyzed, we must also mention another constitutional provision that supports the recognition of the right to religious freedom: the second paragraph of Article 5 of our Constitution. This article stipulates that "It is the duty of the State to respect and promote such rights guaranteed by the Constitution, as well as by international treaties ratified by Chile that are currently in force." By virtue of this provision, all international treaties ratified by Chile that are in force—and which recognize and protect the right to religious freedom—are effectively considered "Law of the Republic" (and thus an integral part of our legal system).

Within this framework, several instruments stand out for their explicit treatment of the right to religious freedom: the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the American Convention on Human Rights, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Consequently, an analysis of Article 19, No. 6, and Article 5 of the Political Constitution of the Republic reveals that the fundamental right to religious freedom is recognized by our Constitution and forms part of the national legal system.

B) Law No. 19.638 on the Legal Constitution of Churches and Religious Organizations

Beyond the scope of our Political Constitution—and with the aim of giving effect to Article 19, No. 6—we find the aforementioned Law No. 19.638 on the Legal Constitution of Churches and Religious Organizations. As previously noted, this law explicitly addresses "religious freedom" in its Article 1, stating that "The State guarantees religious freedom and freedom of worship in the terms set forth in the Political Constitution of the Republic."

Article 6 of the aforementioned law sets forth a non-exhaustive list of prerogatives that foster the full exercise and spiritual development of every individual—all of which constitute religious freedom. For the purposes of this study, we are particularly interested in the provisions of subsection (a), which outlines the right to “profess a religious belief of one’s free choice or to profess none at all; to manifest it freely or refrain from doing so; or to change or abandon a previously held belief”; and subsection (b), which governs the right to “practice acts of prayer or worship—whether in public or private, individually or collectively; to observe religious holidays; to perform rites; to observe a weekly day of rest; to receive a dignified burial upon death, free from religious discrimination; not to be compelled to perform acts of worship or receive religious assistance contrary to one’s personal convictions; and not to be hindered in the exercise of these rights.”

The right to religious freedom, as we have outlined it, comprises two successive stages—or what are termed the “two moments” of religious freedom: the first entails the freedom to make an act of faith or to refuse to do so; the second entails the freedom—given an affirmative response to the act of faith in the first moment—to act in accordance with that faith by performing the acts of worship it entails”. This latter stage or moment is known as “freedom of worship”; while it is part of religious freedom, it represents the externalization or outward expression of the content of one’s beliefs.

It is important to clearly distinguish between these two stages, since—in the case of the religious conviction under consideration, namely the refusal by Jehovah's Witnesses to receive or donate blood—the matter corresponds to the second stage of religious freedom: the manifestation or externalization of the conviction. This is because the externalization of the belief (that blood represents life, and since life is sacred to God, blood shares that same

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quality) translates into opposition to blood transfusion. In other words, the moment the conviction moves beyond the individual's internal realm and takes the form of a specific action (rejecting a blood transfusion) is the moment we can properly speak of "freedom of worship" or the second stage of religious freedom.

Accordingly, any violation of a Jehovah's Witness's expressed will to refuse a blood transfusion constitutes an infringement or transgression of their right to freedom of worship—and, ultimately, of the freedom of religion of which that right forms a part.

V.- CASE LAW REGARDING BLOOD TRANSFUSIONS IN CHILE:

The study presented in the following pages consists of a critical analysis of the arguments put forward by Chilean higher courts over a period of approximately 15 years regarding the recognition of freedom of worship for Jehovah's Witnesses. It should be clarified at the outset that the judicial decisions examined in this research share a common focus: they all concern adult patients who are Jehovah's Witnesses. Consequently, cases involving minors belonging to the same religious group are excluded from the scope of this study.

As a preliminary observation, it can be noted that in some rulings, the requirement for a sufficient level of legal reasoning—ordinarily expected in all judicial decisions—is called into question, given that a limited justification suffices for the aforementioned (protection action) to be upheld. This occurs, for instance, when an appellate court states that "the respondent cannot dispose of her own life; therefore, her refusal to undergo a life-saving procedure is unlawful."

The court further adds: "The ruling is not precluded by the right to freedom of conscience guaranteed under Article 19, No. 6 of the Political Constitution of the Republic regarding the profession of beliefs; this right is limited by the fundamental rights of others or—as in this case—by a superior right, such as the right to life."3 4 This conclusion is reached without any in-depth balancing or analysis regarding the fundamental right being infringed.

One notable aspect of the ruling under analysis is the reasoning behind the minority opinion, which posits that the only limits recognized by the Political Constitution of the Republic of Chile regarding the exercise of the right to religious freedom, the expression of all beliefs, and the free practice of all forms of worship are morality, good customs, and public order—none of which would apply in the case of a patient refusing a blood transfusion on religious grounds.

Subsequent rulings, following this same line of reasoning, state that "The exercise of this right cannot be considered an infringement of the kind mentioned in the appeal. It is not appropriate to pit the right to life against the right established in Article 19, No. 6 of the Political Constitution of the Republic, since the practice of worship and adherence to a religious faith must be respected, and it is not possible to determine externally when a person's life is being endangered in relation to freedom of worship and belief."

Regarding limitations, it has also been argued that the absolute nature of the fundamental right to life and to physical and psychological integrity—enshrined in Article 19, No. 1 of the Political Constitution of the Republic of Chile—precludes any restriction of this right, even with the consent of the individual whom the legal action seeks to protect.

After 2016, a new ground for granting the constitutional protection action was introduced: the provision in the first paragraph of Article 14 of Law No. 20.584—which regulates the rights and duties of individuals regarding their healthcare—stating that "Every person has the right to grant or withhold consent to undergo any procedure or treatment related to their healthcare..." The third paragraph adds that "In no case may the refusal of treatment aim to artificially accelerate death, carry out euthanasia practices, or assist in suicide."

The Appellate Court ruled to this effect, indicating that the appellant was fulfilling its obligation as an institution dedicated to improving its patients' health and that, regarding interpretations of the fundamental right to life, "any interpretation that would allow the patient's life to be put at risk must be rejected."

Regarding the citation of Article 14 of the aforementioned Law No. 20.584, it is striking that this provision is used to argue in favor of blood transfusions, given that the article addresses a scenario where an individual refuses medical treatment with the intent of taking their own life. This situation differs vastly from the case at hand; Jehovah's Witnesses—in refusing to give or receive blood—do not do so with the aim of causing their own death, committing suicide, or seeking euthanasia. On the contrary, they wish to live; indeed, it

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is precisely to preserve their lives that they voluntarily seek care at a clinic or hospital, albeit while wishing to do so in full accordance with their personal convictions.

This latter ruling was appealed to the Supreme Court, which upheld the original position. Nevertheless, the dissenting opinion remains a significant contribution to the legal debate, as the same arguments would be used years later to rule in favor of Jehovah's Witness patients. Regarding the patient's right to life and to physical and psychological integrity, the opinion notes that "it is within her capacity for self-determination to reject procedures that are invasive to her body—over which she has full freedom, provided she does not violate the legal order."5 Furthermore, it adds that the patient "is an adult—holder of both aforementioned fundamental rights—who is fully conscious and clearly aware of the potential consequences of her decision; this capacity leads to the conclusion that she was fully empowered to decide as she did, even if prioritizing her fundamental right to freedom of conscience might affect another right that is, in the first instance, hers to decide."

One notable aspect of this ruling is that, while it alludes to physical integrity for the first time, it overlooks the violation of psychological integrity suffered by a person forced to undergo a blood transfusion against their most fundamental personal beliefs.

The ruling states that the respondent holds all the rights in question; therefore, as an adult possessing full capacity, she is fully able to make decisions regarding the rights she holds.

In some instances, Article 14 of the aforementioned Law No. 20.584 is cited as grounds for dismissing a filed constitutional protection action, thereby recognizing the right to refuse a blood transfusion. In one such case, it was noted that the patient had—in accordance with the aforementioned article—refused to undergo blood transfusions, and that this refusal was fully valid given the absence of the limitations set forth in Article 16 of the same law6. In another case, the ruling stated that "where a legal provision mandates respect for a patient's wishes regarding the medical treatments they accept or reject—and where such a declaration of intent has been validly made, specifically rejecting a certain treatment—the healthcare facility has no other course of action but to abide by that declaration and proceed with alternative medical treatments."

Undoubtedly, one noteworthy ruling on this subject involved a protection action filed by a Jehovah's Witness patient against a hospital that had refused to perform surgery after she had submitted a written refusal of blood transfusions. Although the Court of Appeals initially dismissed the action7, the Supreme Court upheld the appeal89; this stands as one of the few rulings to clearly address the feasibility of "bloodless surgery."

One of the key arguments in this ruling is that the patient's refusal to undergo a transfusion is not an attempt to "induce healthcare providers to perform a euthanasia procedure, assist in her suicide, or collaborate in an act associated with the dying process. On the contrary, the patient wishes to live and enjoy health protection by undergoing a surgery she has been awaiting for three years, yet she needs to refuse a potential blood transfusion in the process. This refusal is neither arbitrary nor a constraint that prevents healthcare providers from carrying out their professional duties; rather, it reflects the patient's beliefs—beliefs that must be respected in light of her right to freedom of conscience and her dignity, especially given the existence of medical reports indicating that the surgery can be performed without the need for such a transfusion."

It further adds that this "affects the individual's psychological integrity and freedom of worship by refusing to perform a surgical procedure without a blood transfusion, despite the availability of all alternative methods." We consider this ruling significant in light of the aforementioned points regarding psychological integrity; it is the first pronouncement to recognize that the impairment of freedom of worship—whether through the refusal of surgery on religious grounds or the violation of specific religious prohibitions—also entails a detriment to the affected person's psychological integrity.

One of the most notable points in the case law on the subject under analysis indicates that "human dignity, liberty, religious beliefs, privacy, and the right to make decisions regarding one's own body are deeply personal rights that must be respected." It further notes that the Constitution itself establishes the freedom of belief and its exercise, and therefore, "the State must respect the autonomy of the will in this instance."

More recently, a petition for constitutional protection action was upheld, with arguments stating that "the

principle of the inviolability of consent yields to urgent situations involving the right to life and a high-risk prognosis when no other medical or therapeutic alternative exists to achieve the necessary outcome. Furthermore, parents cannot impose their religious beliefs upon their children. The transfusion had already been administered by the time the judgment was issued."

Some current rulings justify the primacy of the right to life over the right to religious freedom based on the fact that "all means and techniques comprising the *lex artis medica* [accepted medical standards] aim to preserve patients' lives through blood transfusions when necessary—even against the wishes of the patient and their family members, who may refuse treatment on religious grounds."

Based on the research conducted, it can be inferred that in the majority of rulings analyzed in Chile over the last twenty years, courts have upheld the constitutional protection actions filed by hospitals or clinics against Jehovah's Witness patients refusing blood transfusions; this represents the prevailing trend. Notwithstanding the foregoing, it is worth noting the positions taken by Chilean Courts of Appeal that have ruled otherwise, preventing blood transfusions against a patient's wishes by prioritizing the right to religious freedom over the right to life. Furthermore, it is also relevant to include in this analysis the criteria established by the Constitutional Court of Colombia on this matter, as well as the findings from a recent ruling by the European Court of Human Rights—a decision that stands out due to the significance of its condemnation.

VI.- CRITICAL STUDY OF THE CONFLICT REGARDING BLOOD TRANSFUSIONS IN CHILE

National courts have not taken a uniform approach to the legal conflict arising from the refusal of Jehovah's Witnesses to undergo blood transfusions. It is therefore important to clarify the various perspectives on this issue and to contribute to a regulatory adjustment that broadens the understanding of the matter and potential solutions.

A) Clash between the right to life and the fundamental right to religious freedom

From a jurisprudential perspective, as previously noted, Chilean courts have often—without extensive analysis—affirmed the primacy of the right to life over the right to religious freedom. Consequently, one way to frame the issue arising when a Jehovah's Witness refuses a blood transfusion—despite a medical necessity for the procedure—is as a conflict between fundamental rights; specifically, an evident clash between these two rights held by the believer.

We believe that reducing the issue at hand to a conflict between fundamental rights is incorrect; for if we examine the nature of the rights in question—as is well noted in the national jurisprudence explored in the following pages—we can see that both fundamental rights (the right to life and the right to religious freedom) are held by a single individual (the patient, a Jehovah's Witness). In most cases, a conflict between fundamental rights presupposes the existence of two distinct individuals, each holding one of the rights in question.

However, even when faced with an intrasubjective conflict of fundamental rights, the tension arising from a blood transfusion must be resolved through a balancing exercise—specifically, by applying the so-called proportionality test—to determine which of those rights should take precedence over the other.10

Applying the proportionality test to conflicting rights (or, in Alexy's terms, conflicting principles)—comprising the criteria of suitability, necessity, and proportionality in the strict sense—will be complex in the case under discussion, primarily due to the criterion of necessity. Indeed, beginning with the first of these criteria—suitability—it can be noted that a blood transfusion would be perfectly suitable for protecting the patient's right to life, provided that this right is interpreted as a "duty to preserve life."

With regard to the principle of proportionality stricto sensu, some might argue—though we do not share this view—that the "harm" inflicted on the patient by the blood transfusion (specifically, the infringement of their right to religious freedom and worship) is less severe than the harm resulting from the failure to transfuse (namely, the deterioration of the patient's health or their death).

Finally, the problem arises with the criterion of necessity, as its application in this case is not entirely clear; there are, in fact, other less intrusive or harmful measures available to a Jehovah's Witness that could achieve their desired objective—remaining faithful to their conviction by avoiding a blood transfusion. Indeed, for over twenty years, members of this religious denomination have made significant scientific efforts to spur global research into avoiding the use of blood in medical treatments. Consequently, the "social demand for bloodless surgery is growing for a variety of reasons—not merely religious

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ones—and it should be available to all patients, regardless of their beliefs."

Today, numerous international medical studies support treatments and surgeries performed without the use of blood. In Chile, results have been published across various surgical specialties, and a wide range of surgical strategies aimed at avoiding blood use have been implemented; in the vast majority of cases, this has successfully established a clear alternative to blood transfusions, thereby naturally upholding the religious freedom of those who profess the Jehovah's Witness faith. In this regard, it should be noted that medical advances in recent decades have enabled the implementation of "bloodless surgery" programs, which dispense with the use of blood transfusions or blood products in favor of other practices aimed at controlling blood loss through measures such as: (i) the preoperative administration of folic acid, iron, and recombinant erythropoietin; (ii) the intraoperative use of aprotinin or tranexamic acid; (iii) the implementation of specialized surgical methods (using topical hemostatics and tissue adhesives) and technological aids (steam pulses, ultrasound, or argon beams); or the recovery and reuse of lost blood via electronic blood recovery systems for subsequent reinfusion (cell salvage)."

In light of this—and regarding blood transfusion as a last resort—"dozens of hospitals and clinical centers worldwide practicing state-of-the-art medicine have established Bloodless Medicine and Surgery Programs (BMSP)."11 In Chile, a care program was established in 1998 at the University of Chile Clinical Hospital to treat patients who do not wish to undergo blood transfusions, making it a pioneer in this field.

Consequently, given the existence of advanced research and medical experience that robustly supports avoiding the use of blood in treatments and surgeries, it is fair to state that there are indeed less invasive or harmful mechanisms available to the patient. These mechanisms achieve the patient's desired outcome—the exercise of their religious freedom—thereby creating a conflict regarding the application of the aforementioned "necessity" criterion.

This has been acknowledged in national case law, which notes that "no one—not even the State—may arrogate to themselves the power to force a person to defend their own rights, especially when other alternatives exist that can achieve a result similar to that obtained through the administration of blood."

B) The State's duty to preserve the patient's life:

A second way of approaching the issue of blood transfusions involves incorporating into the analysis the State's role in preserving life and examining how this duty intersects with the individual autonomy of a patient who is a Jehovah's Witness. Indeed, another alternative approach proposed by Chilean courts to address this matter involves interpreting the fundamental right to life as an obligation on the part of the State to preserve it. This finds its legal basis in Article 19, No. 1, Paragraph 1 of the Political Constitution of the Republic of Chile, which states that the Constitution guarantees all persons "the right to life and to physical and psychological integrity."

While the Chilean State's duty to respect the fundamental rights of all persons—and specifically to protect their right to life—is undoubted, this duty must not be construed as binding against the express wishes of the right-holder. Thus, "the right to life would consist of the right not to be killed arbitrarily," which would also include, "as a counterpart, the duty not to kill arbitrarily."

Similarly, whenever a right within our legal system entails a mandatory obligation for the party required to promote or protect it (as is the case with the right to education12), such an obligation is expressly stipulated. This is not the case with the right to life; there is no rule to that effect, as no one can force a person to continue living against their own will.13 Consequently, and for the reasons stated above, we must reject the two perspectives Chilean case law has adopted regarding the religious freedom of Jehovah's Witnesses concerning blood transfusions.

However, we believe that although the refusal to undergo a transfusion is currently enshrined in the Constitution and statute law through the right to religious freedom—specifically via the freedom of worship—the lack of consistent rulings upholding the believers' convictions stems from the fact that the resolution of the conflict depends on the discretion of the presiding judge, who—in many instances—applies an inaccurate legal interpretation of these provisions.

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Given that two proposals for constitutional reform have been discussed in Chile14 over the last five years—and considering that the desire for constitutional change remains a present and latent reality in the country—we believe that a proposal for constitutional adjustment could help address the identified issue. The current legal framework allows for varying judicial interpretations; in a country that lacks a tradition of binding judicial precedent, this can lead to a lack of consistency in court rulings across similar cases.

Therefore, we believe that the inclusion of certain positive normative elements will allow the judicial interpreter to perform their task more accurately and free from the dilemma described. Thus, in order to enable more effective protection of the religious freedom of Jehovah's Witnesses, we believe that a constitutional adjustment to the provision in Article 19 No. 6 would be very appropriate to achieve this objective. This could be accomplished by narrowing the meaning and scope of the provision in question, incorporating the limitation "provided they do not infringe upon the rights of third parties" into its current wording, as this places the emphasis on the holder of the rights at stake. Consequently, under this proposed amendment, the provision would state that the Constitution guarantees all persons "freedom of conscience, the manifestation of all beliefs, and the free exercise of all forms of worship, provided they do not infringe upon the rights of third parties and are not contrary to morality, good customs, or public order."

With this newly specified limitation, those who interpret the law will understand that when two fundamental rights converge in the same individual, that person has the authority to choose how to exercise whichever fundamental right they deem appropriate—provided that doing so does not infringe upon the rights of others. Thus, a patient who is a Jehovah's Witness may exercise their right to religious freedom by refusing blood transfusions; this right takes precedence when it conflicts with the patient's own right to life, as such an exercise does not affect the rights of third parties, but rather concerns another right held by the individual themselves. In other words, the stated restriction allows for the sovereign exercise of religious freedom, since its expression does not interfere with the rights of others.

VII.- THE COLOMBIAN CONSTITUTIONAL COURT

The jurisprudence of the Colombian Constitutional Court is widely regarded as an important benchmark in Latin America—both for the sophisticated legal reasoning in its rulings and for the innovative criteria it introduces across the various subject matters it addresses. Consequently, examining these decisions proves highly valuable for enriching the legal debate surrounding the issue of blood transfusions.

A notable observation that emerges from a comprehensive review of the Colombian court's rulings—particularly when viewed from a comparative perspective—is the significant difference in both the scope and depth of the analysis. Indeed, while the arguments surrounding this topic in Chile tend to be more limited in scale, the Colombian judiciary provides a more thorough and nuanced exploration of the rights that come into conflict.

In addition to this, another difference between the Colombian Constitutional Court and the Chilean rulings analyzed is that the former, in most cases, protects the patient's religious freedom with notable rigor—not by pitting conflicting fundamental rights against one another, but by fostering their harmonious coexistence. This is evident when the court orders a necessary surgery to be performed but specifies a facility that "has a bloodless cardiovascular surgery program"15 in place. Thus, it does not prioritize the right to religious freedom by denying medical treatment; instead, it mandates the procedure while fully respecting the patient's convictions. The court holds that "a patient's refusal of a specific medical procedure does not imply a waiver of their right to health, nor does it absolve health institutions of their duty to provide medical care; on the contrary, they have a duty to strive to provide care that is compatible with the patient's religious beliefs, and (vi) this entails a duty to analyze the medical and scientific viability of therapeutic alternatives."

In other words, a Jehovah's Witness patient's refusal of treatment does not result in the loss of the right to continued healthcare services; such services must be provided in a manner that respects the patient's convictions. It has also been argued that "the patient's decision not to receive blood transfusions—or transfusions of its four main components—must be respected; consequently, the provision of healthcare services required to treat the patient's condition must continue, provided these services do not entail blood

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transfusions or the use of its four main components. Likewise, efforts must be made to provide alternatives to blood transfusions or transfusions of its four main components, in accordance with the considerations set forth in this ruling."

The patient's expression of will is accorded a position of primacy, noting that "given the patient's religious beliefs, it constitutes a clear expression of individual autonomy, manifested through a reasoned, free, and spontaneous act." It is further added that "consequently, neither the attending specialist, nor Salud Total EPS, nor the constitutional judge may disregard this expression of will—much less impose their own judgment—insofar as it stems from the patient's will, consciously expressed by the holder of the fundamental right to religious freedom and the free development of personality."

The court's own assessment of the conviction itself—and its intent to protect it—is evident in its observation that a blood transfusion "would make it impossible for the petitioner to fulfill her aspiration to live in a manner consistent with the faith she professes and would, consequently, affect her personal relationship with God. In other words, by receiving transfusions of blood or its four components, DSCL would be unable to be at peace with God." The court further added that "receiving a transfusion of blood or its four main components would entail sacrificing her beliefs and moral values, resulting in grave psychological, spiritual, and emotional consequences, as she would have to live with the burden of having disobeyed God's commandments. That is to say, compelling the petitioner to receive such transfusions would mean subjecting her to living conditions she considers undignified in light of the faith she professes."

In some cases, it proposes options aimed at safeguarding the right to health by resolving to either "(i) turn to service providers willing to perform the surgery under the patient's specific conditions, or (ii) request the convening of a medical board to evaluate the treating physician's adherence to lex artis standards and determine the appropriateness of the procedure."

At times, the court orders the formation of a Technical-Scientific Committee to evaluate the existence of scientifically and medically viable options or alternatives that could substitute for the treatment rejected by the patient—thereby offering a bloodless option—as seen in specific rulings; the same applies when the court orders "the convening of a medical board to evaluate a case like that of DSCL, with the aim of analyzing therapeutic alternatives that, even if they do not replace blood transfusions, mitigate the consequences of foregoing them, align with DSCL's religious beliefs, and are medically and scientifically feasible."

A review of the jurisprudence of the Colombian Constitutional Court reveals how much further advanced that country is compared to Chile regarding the protection of first-generation fundamental rights—such as the right to religious freedom. This is reflected in the depth of the reasoning found in the Court's rulings and analyses, which often incorporate scientific advancements concerning blood transfusions into their judicial decisions.

VIII.- EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights recently ruled on a case considered one of the most significant regarding blood transfusions—not so much for the strength of its legal reasoning, but rather for its consequences, as the Spanish State was ordered to pay compensation to the affected patient.

Regarding the facts, the case concerns a woman who is a Jehovah's Witness; following tests conducted in 2017, she was advised to undergo surgery that would entail a blood transfusion. In light of this, the plaintiff executed two documents—an advance directive and a durable power of attorney—in which she clearly expressed her wish not to receive blood of any kind under any circumstances, even if her life were at risk, while accepting any medical treatment that did not involve the use of blood.

A year later, the applicant was admitted to the hospital with severe internal bleeding that was causing severe anemia. That same day, she stated her refusal to undergo blood transfusions in an informed consent document signed jointly with her attending physician. The following day, as she was being transferred to a hospital in Madrid—known for its bloodless treatment methods—her attending physician warned the medical staff there that the patient's condition was critical. They contacted the duty judge who, unaware of her previously expressed wishes, authorized all medical or surgical procedures necessary to save her life.

Ultimately, the patient received three blood transfusions; she only learned what had happened the day after the operation. She unsuccessfully pursued legal action through various levels of the Spanish national court system before finally turning to the European Court of Human Rights.

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The Court noted that allowing a patient to decide whether to accept treatment is a fundamental principle in healthcare, protected by the rule of free and informed consent. Furthermore, an adult patient with the capacity to act is free to decide whether to accept a surgical intervention or medical treatment, including a blood transfusion. The Court "explained how, in an emergency situation, a patient's autonomy must be balanced against their right to life. A decision to refuse life-saving treatment had to be "clear, specific, and unequivocal" and "reflect the patient's current stance on the matter." If there were reasonable grounds to doubt any of these aspects, healthcare professionals were obliged to make every reasonable effort to determine what the patient would have wanted. If, despite such efforts, the physician—or a national court—could not clearly determine this, their duty was to protect the patient's life by providing essential care."

Even more interesting is the Court's reasoning regarding the advance directive system in place in Spain, noting that "when a State has decided to implement a system of advance directives that patients trust, it is important that such a system functions effectively." In the case at hand, the patient had expressed her refusal of blood transfusions on various occasions and in different ways; nevertheless, she underwent three blood transfusions. This prevented her from exercising her autonomy to observe an important tenet of her religion, thereby violating her right to respect for private life—recognized in Article 8 of the Convention and interpreted in light of Article 9. In response to these events—and herein lies the novel aspect of the ruling—the Court ordered Spain, by a vote of 9 to 8, to pay the applicant 12,000 euros (EUR) in non-pecuniary damages and, unanimously, to pay 14,000 EUR for costs and expenses.

This is significant not only because it recognizes the plaintiff's right to religious freedom, but also because the ruling is innovative in its decision to impose a financial penalty on the Spanish State for the violations committed—violations that ultimately resulted in an unjustified infringement of the fundamental right of the patient, who is a Jehovah's Witness.

IX.- CONCLUSIONS

The number of Jehovah's Witnesses in Chile—according to the church's own official figures—exceeds 85,000. One of their core religious convictions is the prohibition against either donating or receiving blood; consequently, blood transfusions are strictly forbidden for them. As we have had the opportunity to examine, this belief is rooted in various biblical precepts that provide its foundation—precepts which this religious denomination observes with great care.

Historically and internationally, members of the religion under study have systematically experienced violations of their right to religious freedom when courts of law order a blood transfusion to be performed against the recipient's will. However, the refusal of blood transfusions—as an expression of the freedom of worship practiced by Jehovah's Witnesses, and thus a dimension of religious freedom—is enshrined (as previously noted) in both Article 19, No. 6 of the Political Constitution of the Republic of Chile and Chilean Law No. 19,638. This allows us to affirm that the national legal system protects and upholds the various religious convictions held by the different religious denominations that coexist within the national territory, including this specific conviction held by Jehovah's Witnesses.

The research at hand demonstrates that, over the last 15 years, the aforementioned infringement upon the right to freedom of worship—specifically as it pertains to Jehovah's Witnesses—has occurred through various rulings by our higher courts. These rulings fail to adequately analyze the legal provisions designed to protect the fundamental right in question; instead, they have—improperly, in our view—prioritized the right to life over any personal belief or conviction.

We believe that the limited body of case law is due, in part, to the fact that our higher courts have applied an incorrect legal interpretation when resolving issues of this nature. In such cases, there has been no proper analysis or balancing of the conflicting fundamental rights, nor has there been any recognition of a state obligation to preserve an individual's life against their own expressed will.

One of the proposals we put forward—for reasons already set out in the body of this research—is to add the limitation "provided it does not affect the rights of third parties" to Article 19, No. 6, of the Political Constitution of the Republic; this would allow judges to narrow the meaning and scope of the constitutional provision when reaching a decision.

However, notwithstanding a few isolated Chilean rulings recognizing the primacy of the right to religious freedom for Jehovah's Witnesses, we have analyzed one of the most significant recent judgments issued by the European Court of Human Rights regarding the avoidance of blood transfusions when a patient has clearly refused them; the ruling ordered the Spanish State to pay direct

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compensation to the affected individual for non-pecuniary damage, as well as an additional amount for legal costs and expenses. Given its pioneering nature—specifically regarding the ordered compensation—this ruling could serve as a benchmark for other European courts and even for courts in Latin America.

It is worth noting the depth and argumentative density with which the Colombian Constitutional Court has addressed the issues in question; in the vast majority of cases, this has enabled a harmonious coexistence between a patient's right to life and their right to religious freedom. This has not been achieved by relinquishing the right to health, but rather through a reasonable accommodation—facilitating medical care—such as bloodless surgery—thereby respecting the convictions of the individuals concerned.

In this regard, it is worth noting the work carried out by the community of Jehovah's Witnesses in the scientific sphere. Motivated by their religious convictions, they have fostered the creation of a substantial body of high-quality research, which represents a significant contribution to both Chilean and international medicine. Furthermore, the establishment of a network of Hospital Liaison Committees (HLCs)—a notable initiative by Jehovah's Witnesses—provides support, mediation, and protection for hundreds of their fellow believers across Chile when faced with the dilemma of blood transfusions.16

Finally, one of the reasons this work includes an initial theological section is to address a methodological need: to eliminate interpretive biases regarding the core beliefs of the religion under examination. From a strictly legal perspective, a religious minority—such as the Jehovah's Witnesses—should not receive a lesser degree of legal or constitutional protection for its religious convictions than that afforded to a majority religion. We are convinced that the path our country must forge in this regard begins, undoubtedly, with the legal and jurisprudential framework developed by our institutions; yet, this must also go hand in hand with a profound social shift—one that encourages greater empathy, rejects the discrimination and stigmatization of those who are different or belong to a minority, and ultimately allows us to view the challenges faced by this religion (and others) with tolerance, respect, and genuine goodwill.

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