

## SELF-DETERMINATION TO BLOOD TRANSFUSION. AN ANALYSIS OF THE SUPREME COURT

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### ABSTRACT

Blood transfusions are essential in medicine, but they involve risks and ethical dilemmas, especially when refused for religious reasons, such as by Jehovah's Witnesses. The Brazilian Constitution guarantees religious freedom and human dignity, but the right to health and medical action in emergencies generate conflicts. The STF, in Extraordinary Appeals 1,212,272 and 979,742 of 2024, recognized the patient's self-determination to refuse transfusions, as long as they are aware and informed, and the duty of the State to offer alternatives in the SUS. The research analyzes these legal and bioethical aspects, highlighting the tension between autonomy, belief, and access to health. The debate involves principles such as beneficence, non-maleficence and justice, demanding a balance between individual and collective rights.

**Keywords:** Blood transfusion. Religious freedom.

### INTRODUCTION

Blood transfusions and blood components are extremely important methods in modern and current treatment, when used correctly, they can save lives. As with any therapeutic intervention, they do not prevent acute or late complications, such as the risk of transmission of infectious diseases and other clinical complications, which are necessary. It has long been used in hospital routine, bringing with it some ethical and religious dilemmas (BIAGINI; ALBIERO, 2020).

Religious freedom is a fundamental right guaranteed by the Brazilian Federal Constitution (BRASIL, 1988). However, its interaction with the right to health and with the duties of the State can generate dissent, notably when it involves the refusal of essential medical procedures, such as blood transfusion (BIAGINI; ALBIERO, 2020).

The guarantees, in prominence freedom of conscience is essential in a democratic state of law, as it prevents moral values from being compulsorily imposed by the State, so that this right guarantees that each citizen can reflect and believe freely, without State interference. In

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addition, the State has the duty to create a social environment that allows the free development of individual thought, safeguarding minorities against the oppression of the majority. Thus, it is essential that prejudice and intolerance are curbed, ensuring that no view is imposed without the individual's real consent (MOYA, 2016).

Freedom of belief has long been discussed, which includes both the right to choose and practice a religion and the option not to follow any. This includes the likelihood of altering one's opinion, reporting on agnosticism, or being an atheist without penalties. However, this freedom does not confer the right to prevent or hinder the religious practice of other people. The fundamental principle is that individual freedom must be exercised without interfering with the rights of others (SILVA, 2007).

Freedom of belief has been studied a lot, and we can highlight that it is a right closely linked to the dignity of the human person, and there is no way to talk about democracy or dignity without the right to freedom of belief. We highlight that the Federal Constitution of 1988 in its article 1, item III enshrined the principle of the dignity of the human person, and that it has a universal scope. In the same way, religious tolerance, perceived as a deep respect for the religious conviction of others, is a factor that mediates and promotes peace and fraternity among peoples" (SORIANO, 2002).

In another sense, we can highlight the therapeutic needs of patients, and, since the physician is the prescriber of the therapies necessary for the patient under his care, Resolution 2,217 of the Federal Council of Medicine of 2018 determines that, in urgent and emergency situations that characterize imminent danger of death, the physician must adopt all necessary and known measures to preserve the patient's life, regardless of therapeutic refusal (FEDERAL COUNCIL OF MEDICINE, 2019).

The refusal of medical treatments, especially blood transfusions, is one of the most debated topics in the field of bioethics and law. Respect for religious convictions and the guarantee of patient autonomy are effective values, but there is also the essential need to protect life and ensure universal access to health. There is much discussion about the right to refuse, and this issue thus reached the Superior Court. Obviously, the discussion of the topic does not end in itself, so that the subject in question will still be much discussed, in view of the complexity of the process and the existing underlying theme, the right to life (RODRIGUES, et al., 2022).

In addition, it is important to highlight that the theme requires a constant debate and under the guidance of the ethical principles of beneficence, non-maleficence, autonomy, justice and equity (RODRIGUES, et al., 2022).

## OBJECTIVE

The objective of this article is to analyze the legal and bioethical aspects of the refusal to have blood transfusions, considering the recent decisions of the Supreme Court on the subject and their repercussions and the right to self-determination.

## METHODOLOGY

The present research was carried out based on a bibliographic review of academic articles, legislation pertinent to the theme and recent jurisprudence of the Federal Supreme Court (STF).

The elementary basis of the study was based on the analysis of Extraordinary Appeals 1,212,272 and 979,742 of the STF, of September 25, 2024, which established theses on patient autonomy and the state's obligation to provide alternative treatments, on blood transfusion. In addition, national and international studies on the approach to blood transfusion refusal were considered.

After reading the respective Extraordinary Appeals, the main reasons decided in the present appeal were described, as well as a word cloud of the respective judgments, from the document extracted from the STF website. Afterwards, other literary sources were researched in order to corroborate the doctrinal construction of the theme under discussion.

The articles used were extracted from the virtual health library, google Scholar, from the website of the Federal Supreme Court, all of which are freely accessible, in English and Portuguese, available in full, without time frame.

The data extracted from the pertinent literature do not exhaust the underlying theme, allowing for flexible exploration of the subject, using a broad and non-limiting approach.

Although the narrative review does not require the exhaustiveness of a review, it is important to highlight the existence of limitations of sampling due to convenience and opportunity.

## RESULTS

In the reasons for deciding Extraordinary Appeals 1,212,272 and 979,742 of the STF, the lines of discussion stood out - religious freedom; self-determination; medical practice; the right to refuse due to expressed interest. The table below will present the elements of the reasons decided when the respective appeals are judged.

**Table 01 – Results of the reasons decided in the respective appeals (2024).**

Extraordinary Appeal 1.212.272	Extraordinary Appeal 979.742
<p>1. Once the State recognizes that religious freedom protects acting in accordance with one's faith and that self-determination allows individuals to direct their lives, from the most elementary to the most fundamental decisions, the State must ensure that adult, conscientious and informed Jehovah's Witnesses have the right not to undergo blood transfusions. provided that this does not affect the rights of third parties.</p> <p>2. Self-determination and freedom of belief, when there is a free, conscious and informed manifestation of a civilly capable person in a sense contrary to submission to treatment, prevent the forced action of the health professionals involved, even if there is an imminent risk of the patient's death.</p> <p>3. Medical action in respect of the legitimate choice made by the patient cannot be characterized, a priori, as a criminal conduct, nor is there any need to speak of civil liability of the State or of the responsible agent due to damages suffered by the lack of use of means not accepted by the patient.</p>	<p>1. The right to refuse blood transfusion due to religious conviction is based on the constitutional principles of human dignity and freedom of religion. Human dignity requires respect for individual autonomy in decision-making about health and the body. The guarantee of religious freedom, on the other hand, imposes on the State the task of providing an adequate institutional and legal environment so that individuals can live according to the rites, cults and dogmas of their faith, without coercion or discrimination.</p> <p>2. The refusal of blood transfusion can only be manifested in relation to the interested party, without extending to third parties, including and notably minor children. However, if there is an effective alternative treatment, according to medical evaluation, parents can opt for it.</p> <p>3. The World Health Organization (WHO) recommends the adoption of alternative procedures to blood transfusion. In compliance with this guideline, other therapeutic resources are already offered by the SUS. Despite this, they are not yet widely available throughout the national territory. In this context, the government must adopt measures to progressively make these procedures available and capillary in the country, in a manner compatible with the principles of universal and equal access to SUS actions and services.</p> <p>4. In a reasonable accommodation between the rights to religious freedom and health, Jehovah's Witness patients are entitled to alternative treatments already available in the SUS, even when not available at home. In the event that the treatment methods at the place of residence are not adequate, treatment outside the home will be applicable, according to the regulations of the Ministry of Health.</p>

**Source:** Supreme Court, 2024.

Thus, when the respective appeals were judged - Extraordinary Appeal 1.212.272, of general repercussion, the court unanimously, appreciating the topic 1069 - Right of self-determination of Jehovah's Witnesses<sup>4</sup> to submit to medical treatment performed without blood transfusion, due to their religious conscience, established the following theses, presented in table 02.

<sup>4</sup> It is estimated that there are approximately 9 million followers of the Jehovah's Witness religion, so this number should be considered expressive (GIACOMETTO, *et al*, 2024).

**Table 02:** Thesis established by the STF at the time of the judgment of Extraordinary Appeal 1.212.272

1. It is permissible for the patient, in the full enjoyment of his civil capacity, to refuse to undergo health treatment for religious reasons. Refusal of health treatment, for religious reasons, is conditioned to the unequivocal, free, informed and informed decision of the patient, including when conveyed through advance directives of will.
2. It is possible to perform a medical procedure, made available to everyone by the public health system, with the prohibition of blood transfusion or other exceptional measure, if there is technical-scientific feasibility of success, consent of the medical team with its performance and unequivocal, free, informed and informed decision of the patient". All in accordance with the vote of the Rapporteur. Plenary, 9.25.2024.

**Source:** Supreme Court, 2024.

In the same sense, in Extraordinary Appeal 979.742 of the STF - Conflict between religious freedom and the duty of the State to ensure universal and equal health benefits, unanimously, appreciating topic 952 of general repercussion, dismissed the extraordinary appeal and established the following thesis:

**Table 03:** Thesis established by the STF at the time of the judgment of Extraordinary Appeal 979.742

1. Jehovah's Witnesses, when of age and capable, have the right to refuse a medical procedure involving blood transfusion, on the basis of individual autonomy and religious freedom.
2. As a consequence, in respect for the right to life and health, they are entitled to the alternative procedures available in the Unified Health System – SUS, and may, if necessary, resort to treatment outside their home". Plenary, 9.25.2024.

**Source:** Supreme Court, 2024.

From the results obtained in the respective appeals, a word cloud was made, thus identifying the main words presented in the appeals, such as health, treatment, transfusion, blood, religious (Extraordinary Appeals 1,212,272 and 979,742 of the STF, of September 25, 2024).



Extraordinary Appeal 979.742



Extraordinary Appeal 1.212.272.

Thus, the word cloud provides a panoramic view of the keywords present in the Rulings, revealing the most recurrent terms, and, therefore, the objects most discussed and analyzed by the Supreme Court, specifying greater relevance within the legal context analyzed.

## DISCUSSION

On the other hand, it is appropriate to understand that blood transfusion is a right guaranteed to all those who need it to save their lives (DINIZ, 2024, p. 298).

In this sense, there are numerous regulations that regulate the matter, in order to seek to guarantee safety for those who need it, of which we can highlight the Technical Regulation of Hemotherapy Procedures regulated by Ordinance No. 158/2016, of the Ministry of Health.

The discussion regarding those people, who, for religious reasons, do not accept such a procedure, such as Jehovah's Witnesses.

It is initially noted that Jehovah's Witnesses understand it as forbidden

Any use of blood, even if it is to save their own lives, this includes refusal, also, to use any primary component of blood, such as red and white blood cells, plasmas, and platelets. "As to the various fractions derived from these four components, and products containing such fractions, the Bible has made no comment. Therefore, each Jehovah's Witness makes his or her own personal decision on these matters (SILVA, 2019, p.15).

On the other hand, for the religion of Jehovah's Witnesses, the transfusion of allogeneic blood is not allowed, considering some passages of the Bible that give rise to the interpretation of its members, of which: Genesis, 9:3-4<sup>5</sup>; Leviticus, 17:10-14<sup>6</sup>; Acts, 15-19-21 and 28, 29<sup>7</sup>, because they understand that it highlights blood as sacred (DINIZ, 2024, p. 336).

<sup>5</sup> "3 That moveth that is living shall be for your food; I have given you everything like green grass. 4 But the flesh with its life, that is, with its blood, you shall not eat" (BÍBLIA SAGRADA).

<sup>6</sup> "10 Every Israelite or resident foreigner who eats the blood of any animal, I will turn against him and cut him off from among his people. 11 For the life of the flesh is in the blood, and I have given it to you to make atonement for yourselves on the altar; it is the blood that makes propitiation for life. 12 Therefore I say to the Israelites, 'None of you may eat blood; nor does the resident foreigner. 13 Any Israelite or resident foreigner who hunts an animal or bird that can be eaten shall shed the blood and cover it with earth, 14 for the life of all flesh is its blood. Therefore I said to the Israelites, "You may not eat the blood of any animal, for the life of all flesh is your blood; everyone who eats it will be eliminated" (BÍBLIA SAGRADA).

<sup>7</sup> "20 On the contrary, we should write to them, telling them to abstain from food defiled by idols, from sexual immorality, from the flesh of strangled animals, and from blood. 21 For from ancient times Moses has been preached in all the cities, and is read in the synagogues every Sabbath. 22 Then the apostles and elders, with the whole church, decided to choose some of them and send them to Antioch with Paul and Barnabas. They chose Judas, called Barsabbas, and Silas, two leaders among the brothers. 23 With them they sent the following letter: The brother apostles and elders, to the Gentile Christians who are in Antioch, Syria, and Cilicia: Greetings. 24 We have heard that some have gone out from among us without our permission and have disturbed you, upsetting your minds with what they have said. 25 So we all agree to choose some men and send them to you with our beloved brothers Paul and Barnabas, 26 men who have risked their lives for the name of our Lord Jesus Christ. 27 So we are sending Judas and Silas to verbally confirm what we are writing. 28 It seemed good to the Holy Spirit and to us not to impose on you anything other than the following necessary requirements: 29 That you abstain from food sacrificed to idols, from

Although the analysis of the issue by the STF does not exhaust the existing discussions, there is much to be discussed about ethical issues and fundamental rights. It is necessary to rethink ethical issues and understand beliefs, also understand alternative means of treatment and above all, of prepared professionals and institutions. To seek the best solution, supported by ethical and moral principles, as well as to ensure in a way that is compatible with religious convictions, and by weighing each hypothesis (FERREIRA, et al., 2016).

It is important to highlight that in a recent decision the STF decided so

If possible, the Government must guarantee the right to health in a manner compatible with the religious convictions of the citizen, since it is not enough to guarantee their survival, but a dignified existence, with respect for the beliefs of each one, in accordance with article 1, III, of the Federal Constitution (BRASIL, 1988; STF, 2024).

In the Supreme Court's statements on the funding of alternative treatment by the Government (Topic 952), it decided that capable adults can refuse blood transfusion based on religious freedom and individual autonomy, and that the State must offer alternative procedures available in the Unified Health System (SUS). In the same sense, it decided that, if necessary, the government should make available to another location where alternative treatment is available (STF, 2024).

There are alternative methods such as erythropoietin, normovolemic hemodilution, vitamins such as ferrous sulfate and vitamin B12 (GIACOMETTO, *et al*, 2024) and they are accepted for medical treatment purposes without harming the religious aspect.

As for children and adolescents, the refusal to transfuse does not apply, because in these cases, the principle of the best interest of the child must prevail (STF, 2024).

Regarding topic 1069, the Supreme Court decided that adult patients have the right to refuse blood transfusion, as long as this decision is Free (without coercion or pressure); Conscious (taken with discernment); expressed and informed (with knowledge of the risks). In addition, the refusal can be expressed in writing, including by advance clauses of will, and the doctor cannot import the transfusion if the refusal meets the normative criteria. In addition, the refusal does not apply to minors, unless there is a safe and effective alternative treatment, according to the medical evaluation of the specific case. If there is a viable and scientifically safe alternative procedure, it is possible for the SUS to make it available, as long as there is consent from the medical team (STF, 2024).

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blood, from the flesh of strangled animals, and from sexual immorality. You will do well to avoid these things." May everything go well with them" (BÍBLIA SAGRADA).

From an ethical point of view, if a rational adult patient who has been fully informed about the consequences of not receiving blood transfusions or blood components or any other treatment and still persists in refusing it, this decision must be respected (EFFA-HEAP, 2009).

In view of the debate, the ethical-legal basis from which professionals should start is that the refusal to undergo any type of examination and treatment is within the patient's rights. Presenting any form of discrimination because it is a matter of decisions based on religious beliefs or of some other nature goes against the principle of bioethics of autonomy and individual freedom (CARDEMIL, 2010).

Religious belief is a fundamental right, revealing not a subjective preference, but the belief in a transcendent reality, which entails a set of rituals, which establish the link between man and God (DINIZ, 2024, p. 334).

It is prudent to remember that in bioethics the principles of autonomy, non-maleficence, beneficence and justice are harmonized with the individual values of people (RETAMALES, 2006).

The bioethical training of the professionals who care for these patients is essential, as the therapeutic refusal of blood transfusions represents an individual choice and the exercise of the right to autonomy and free will, guaranteed by law, must be respected. Even in the face of this refusal, it is essential that professionals maintain effective communication and a relationship of trust with the patient, in order to achieve the best results in challenging situations. Open and respectful dialogue allows the team to better understand the patient's expectations and concerns, in addition to enabling the exploration of viable therapeutic alternatives (RODRIGUES, et al., 2022).

In addition, the preparation of professionals who work in patient care is extremely important according to protocols and guidelines that guide the care of patients who refuse transfusions. The patient's autonomy and self-determination allow him to make decisions about the care he will receive, including the decision to refuse blood and blood products. Compliance with this autonomy is one of the fundamental principles on which bioethics is based. The principle of autonomy takes into account the patient's freedom and responsibility to decide what is good for her, even if the choice is not shared by the physician (BEZERRA, et al., 2015).

In this aspect of medical updating, it is worth remembering that the Code of Medical Ethics states that doctors must keep up to date with the new techniques that are available on the market, in addition to leaving aside any form of religious prejudice (FRANCO, 2019).

As for non-maleficence in the face of refusal of blood, the idea of what it means to "do no harm" should be prudent, since, for the doctor, the performance of a transfusion can be linked to



the principle of beneficence - in the sense of doing good to the patient. However, for some patients, it may be causing damage. Blood transfusion in this case goes against the beliefs and values of patients who refuse transfusion and can cause emotional, spiritual and even physical damage (BEZERRA, et al., 2015).

It happens that when the patient chooses blood-free treatment, he is not exercising the right to die, but only opting for a medical treatment, therefore an alternative treatment (DINIZ, 2024, p. 336).

From the point of view of the principle of beneficence, through the refusal of blood, non-maleficence must be interpreted similarly. On the other hand, if the physician considers the performance of the blood transfusion even against the patient's will an act of beneficence, this attitude may represent an act of maleficence for the patient, since this medical decision, despite the benefit, may affect his right to physical dignity, and may cause emotional and spiritual damage (BEZERRA, et al., 2015).

The principle of justice in relation to the refusal of blood transfusion raises the issue of the allocation of human, financial and material resources (BEZERRA, et al., 2015).

The CF/1988 and the infra-constitutional legislation, notably the Civil Code (art. 15) and the CP (art. 146, caput), safeguarded the principle of patient self-determination in the doctor-patient relationship. Thus, all medical treatment and surgical intervention depends on the consent of the patient, or, in case of incapacity, of his legal guardian (DIAS; NORÕES, 2017).

However, in cases of patients in imminent danger of death, article 146, paragraph 3, item I, of the CP and articles 22 and 31 of the CEM dispense with the consent of the patient and/or his legal representative to perform the blood transfusion and safeguard the patient's life. By acting in this way, the doctor remains supported from an ethical-professional point of view, and cannot be incurred in the crime of illegal embarrassment (DIAS, NORÕES, 2017).

Not unlike this, it is considered important to present the Informed Consent Form (ICF), whose objective is to make the patient aware of the risks inherent to hospitalization procedures, as well as the exemption of the medical team and hospital from any judicial interpellation, and furthermore, respecting the patient's will (FRANCO, 2019).

Thus, for such refusal to be effective, it is necessary for the patient, responsible for his or her acts at that moment, to sign the informed consent, which according to Paiva (2018) brings as a document in which the patient signs, stating the choice to refuse or not the blood transfusion, and it is also essential for the patient to have the right to choose, in a way that does not interfere with the information exposed during the dialogue that follows while deciding whether to do it or not.

In order for there to be a better relationship between the parties, the ICF is one of the forms that has not been widely used, being part of the patient's medical record, thus avoiding several conflicts that may arise in the future (MENDOÇA, 2022).

In any case, it is considered relevant that it is not enough to guarantee the individual the right to manifest himself, in the face of his will, it is necessary to be sure that it will be fulfilled, in addition to generating security for the professionals involved, family members and putting an end to the patient (LIMA, et al., 2022).

## **FINAL CONSIDERATIONS**

Refusal of blood transfusion for religious reasons presents complex challenges for law and bioethics. The recent decisions of the Supreme Court reinforce the need to balance individual autonomy with the State's duty to guarantee public health. The recognition of the obligation to offer therapeutic alternatives in the SUS represents a significant advance in the protection of religious freedom in Brazil.

In addition, these decisions reinforce respect for individual autonomy and religious freedom, guaranteeing the right of capable adults to refuse blood transfusion. However, in the case of minors, the principle of the best interests of the child prevails, which can prevent refusal by the parents. In addition, the State must offer viable alternatives and, if necessary, take care of positions to guarantee these rights.

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