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**Submission to UN Human Rights Committee**

**subsequent to the adoption of the List of Issues on the   
sixth periodic report of**

**Italy**

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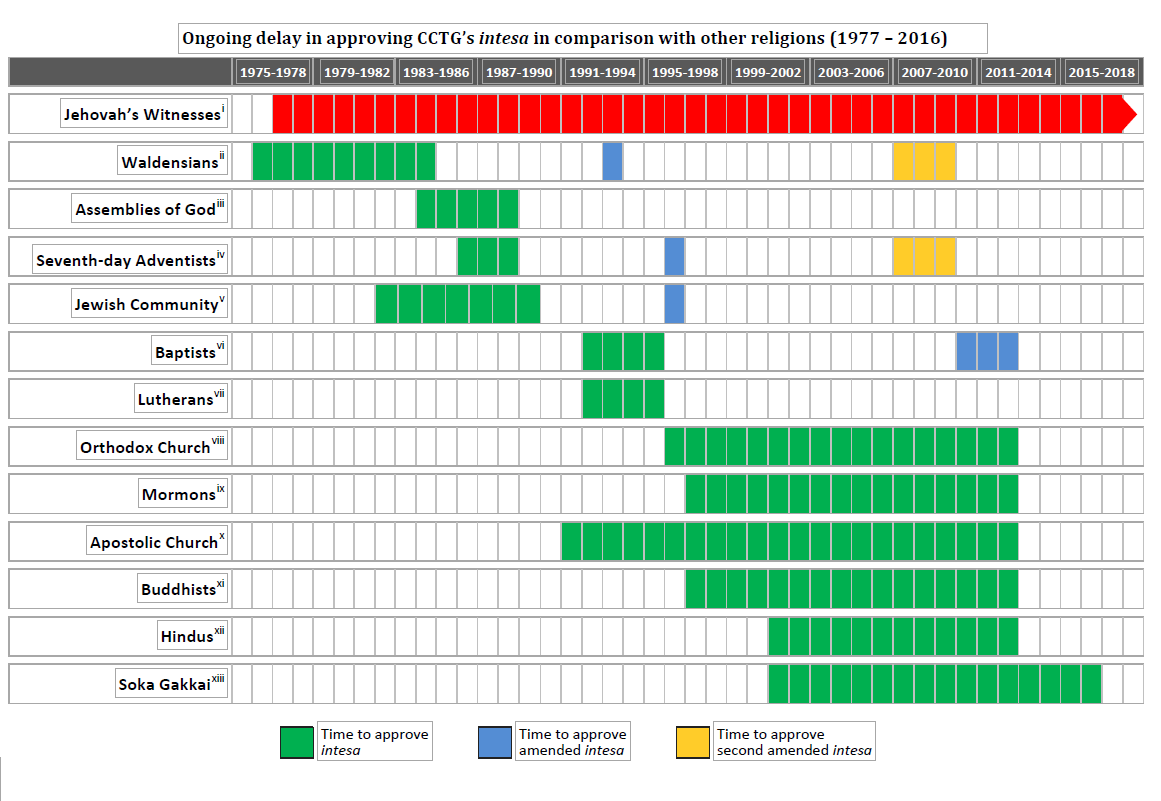
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SUMMARY OF SUBMISSION

Jehovah’s Witnesses are the second largest Christian religion in Italy. They number more than 251,000 members and more than 458,000 persons attending its religious services. They are the victims, however, of religious discrimination by State officials in three main areas:

1. For more than 40 years, State officials have failed to grant Jehovah’s Witnesses an “intesa.” This is the highest level of religious registration, provides significant benefits to facilitate the manifestation of religious beliefs, and excludes the religion from application of Italy’s 1929 religion law enacted by Mussolini’s fascist government. All other religions that have applied for an intesa (all smaller in number than Jehovah’s Witnesses) have had their applications granted in a fraction of the time, and often in four years or less. As a result, Jehovah’s Witnesses are reduced to a third-class religion in Italy. That discriminatory treatment ‘amplifies prejudices’, fostering the mistaken assumption they are a “dubious sect” and a third-class religion.
2. Legally capable adult Jehovah’s Witnesses have also been denied their right to personal autonomy and self-determination in their choice of medical treatment. Based on two discriminatory decisions of the Supreme Court of Cassation, adult Jehovah’s Witnesses have had to endure the severe violation of their autonomy and the indignity of having a morally repugnant medical procedure imposed on them (blood transfusions) in profound violation of their medical conscience. State authorities would never presume to have the same power to authorize or approve forcing a hysterectomy, abortion, or mastectomy on an unconscious or sedated adult woman knowing she had expressly (and repeatedly) refused such a procedure based on her personal beliefs or conscience. Only Jehovah’s Witnesses are singled out for such grossly discriminatory treatment.
3. In some cases, the courts have also imposed discriminatory restrictions on parents who are Jehovah’s Witnesses, ordering them not to discuss religious matters with their children or to bring their children with them to the religious services of Jehovah’s Witnesses. In none of these cases was it alleged that there was anything harmful in the beliefs or practices of Jehovah Witnesses. Instead, the restrictions were imposed solely because it was alleged it would be ‘confusing’ for a child to be exposed to different religious views. All such restrictions were imposed in favor of a parent of the Catholic faith. In a number of cases, the courts ordered that although a child should not attend the religious services of Jehovah’s Witnesses the child may nonetheless attend the religious service and traditions of the Catholic Church so the child does not feel ‘different’ from his peers, most of whom are Catholics. Such antiquated and discriminatory reasoning not only marginalizes the hundreds of thousands of parents who Jehovah’s Witnesses in Italy, but is also marginalizes parents of other faiths.
4. Observations on the *List of Issues* in relation to the sixth periodic report of Italy (CCPR/C/ITA/Q/6) and *Reply to the List of Issues* (CCPR/C/ITA/Q/6/Add.1)
   1. In its List of Issues (CCPR/C/ITA/Q/6 para. 20) adopted in connection with the consideration of the sixth periodic report of Italy, the Committee requested *inter alia* the State party’s comments on the following (at para. 3):
      1. Whether anti-discrimination provisions of article 3 of the Constitution cover all prohibited grounds of discrimination in articles 2(1), 3, and 26 of the Covenant.
      2. What steps have been or are being taken to adopt comprehensive anti-discrimination legislation that, inter alia, addresses discrimination in the private sphere … and provides for effective remedies in judicial and administrative proceedings.
   2. In its reply, the State party confirmed that Article 3 of the Constitution protects against religious discrimination. No additional information, however, was provided by the State party how that guarantee is applied in practice.
   3. This submission outlines three serious types of religious discrimination that Jehovah’s Witnesses are facing in Italy. This is of particular concern considering that Jehovah’s Witnesses are the second largest Christian religion in the country.
5. Discriminatory Denial of an “intesa” with the Italian State
   1. For nearly 40 years, since 1977, the religious organisation “Congregazione Cristiana dei Testimoni di Geova” (“CCTG”), which represents all Jehovah’s Witnesses in Italy, has been applying to obtain an agreement (“intesa”) with the Italian State under Article 8 § 3 of the Constitution.
   2. The intesa is the highest tier of religious recognition available to non-Catholic religions, provides substantial State benefits and protection to facilitate the manifestation of religious beliefs, and exempts the religion from application of religion Law no. 1159 of 24 June 1929 (“Law no. 1159/1929”) and Decree no. 289 of 28 February 1930 (“Decree no. 289/1930”) adopted by Mussolini’s fascist regime.
   3. After decades of delay, the Council of Ministers of Italy (CoM) signed the CCTG’s draft intesa in 2000, 2007 and 2014. Each time, however, the two chambers of the Italian Parliament failed to approve the intesa due to changes in the government, which then required the CCTG to restart the process from the beginning. In comparison, the State approved intese with twelve other religions, at times in less than four years, as illustrated by the following chart.



* 1. Italy’s discriminatory four-tier system of religious recognition
  2. Italy has adopted a four-tier system of religious recognition. The application of that system profoundly discriminates against the CCTG, the second largest Christian religion in Italy with more than 251,000 members and more than 458,000 persons attending its religious services.
  3. The top tier of recognition is reserved for the Catholic Church under Article 7 of the Constitution. In 1984 the Catholic Church entered into the Agreement of Villa Madama (which replaced the Lateran Pact of 1929) and maintained its privileged status, including: the right to appoint religious ministers without State approval; protection of Church property from expropriation; tax exemption of Church property and other fiscal benefits; tax deduction of up to 1,032 euros (EUR) for taxpayers on donations made to the Church; State recognition of Church holidays; the guarantee of legal personality to any religious entity established according to canon law; the right of priests to freely perform marriages and conduct pastoral visits in State institutions; and the State’s obligation to teach the Catholic religion in public schools by teachers approved by the Church and paid by the State. (1984 Agreement of Villa Madama, Articles 3-11)
  4. The second tier of recognition is reserved for non-Catholic religions with an intesa with the State under Article 8 § 3 of the Constitution. Those religions are exempt from Law no. 1159/1929 and Decree no. 289/1930 and are governed instead by their respective intesa. They enjoy a number of the State privileges given to the Catholic Church, including: the right to freely appoint religious ministers; protection of property from expropriation; tax exemptions; EUR 1,032 tax deduction for taxpayers on donations made to the religion; and the right to freely perform marriages and conduct pastoral visits in prisons and hospitals. The State cannot unilaterally withdraw or amend an intesa, giving it quasi-constitutional status.
  5. The State also provides to the Catholic Church and religions with an intesa an annual State grant totaling 0.8% (otto per mille) of Italy’s personal income tax revenue. In 2014, that State grant was EUR 1.278 billion. The prescribed tax declaration asks taxpayers to indicate a choice (if any) where the 0.8% should be paid: to the State, the Catholic Church, or listed religions with an intesa. No other choices are permitted. The State’s failure to approve the CCTG’s intesa deprives individual Jehovah’s Witnesses and other Italian citizens of the opportunity to choose that the 0.8% should be given to the CCTG and deprives the CCTG of its corresponding right to receive its proportional share of that annual State grant. As the second largest Christian religion in Italy, it is obvious that the State’s failure to approve the CCTG’s intesa has deprived it of millions of euros annually that it would have been entitled to receive from the State grant.
  6. The third tier of religious recognition is for religions, like the CCTG, which do not have an intesa and are instead regulated by Law no. 1159/1929 and Decree no. 289/1930, which the State has conceded are unconstitutional. They are subject to “government supervision and guardianship” on all their activity and can be dissolved by order of the Ministry of Interior for alleged “serious irregularities” in their administration. The appointment of their religious ministers is subject to the prior approval of the Ministry of Interior, which also has the authority to override any decision made by the religious entity’s board of directors. These religions are entitled to some tax reductions. Their religious ministers must apply for State permission to perform marriages and to conduct pastoral visits in prisons and hospitals. (Decree no. 289/1930, Articles 13-15)
  7. The fourth and bottom tier of religious recognition is occupied by religions which are regulated as recognized and non-recognized associations under Articles 14-38 of the Civil Code. They have the same rights as other private non-religious legal entities.
  8. The CCTG’s 40-year failed attempt to obtain an Intesa
     1. June 1977 to July 2001
  9. On 23 June 1977 the CCTG (then a non-recognized association, the fourth and bottom tier of recognition) wrote both chambers of Parliament and the CoM President requesting an intesa. The CoM President replied that the government would establish “direct contact” with the CCTG. This did not happen.
  10. On 28 August 1985 the CCTG applied for legal personality as a religion under Law no. 1159/1929 (the third tier of recognition). On 30 July 1986 the Council of State recommended that the CCTG be granted legal personality, noting that Jehovah’s Witnesses were “active in Italy for many years” and that their beliefs were in harmony with the Constitution. On 31 October 1986 the CCTG was granted legal personality by Presidential Decree no. 783.
  11. For the next 14 years, the CCTG took all possible steps to try to obtain approval of the intesa, sending dozens of letters to the President of Italy, the CoM President, and Parliament. Several groups of parliamentarians called on the CoM to sign the CCTG intesa and submit it to Parliament for approval. The CoM delayed, however, giving various and conflicting excuses.
  12. First, the CoM claimed it was processing applications of other religions that applied before the CCTG. In reality, only the Waldensians had done so. Then, on 13 April 1989, after the CoM had signed and Parliament had approved intese with the Waldensians, Assemblies of God, Seventh-day Adventists, and the Jewish Community the CoM told the CCTG that its intesa application would not be considered until the CoM drafted a new religion law repealing Law no. 1159/1929 and Decree no. 289/1930, which never happened. Despite these excuses, amended intese were later approved by Parliament with the Waldensians (5 October 1993), the Seventh-day Adventists (20 December 1996), and the Jewish Community (20 December 1996) providing them with additional State benefits. New intese were signed and approved with the Baptists (12 April 1995) and the Lutherans (29 November 1995). Credible news reports and statements by parliamentarians indicated that the reason for the State’s failure to approve the CCTG’s intesa was opposition by Catholic bishops.
  13. On 15 May 1997, twenty years after the CCTG first applied for an intesa, the Intese Commission finally met with the CCTG to begin “negotiations”. After numerous delays, on 20 March 2000 the CCTG’s intesa was signed by CoM President Massimo D’Alema. On that same day, the CoM President also signed the Buddhist’s intesa although they had only applied three years earlier, in 1997. Subsequently, the D’Alema government fell on 11 June 2001 and the CCTG’s intesa was never considered by Parliament, which meant the CCTG had to restart the intesa process from the beginning with the next government.
      1. July 2001 to April 2007
  14. For the next seven years, the CCTG again took all available steps to have the intesa signed and approved. On 4 April 2007 CoM President Romano Prodi finally signed the CCTG’s intesa. On that same day, the CoM President also signed intese with the Orthodox Church, the Apostolic Church, the Mormons, the Buddhists, and the Hindus, all of whom had applied for an intesa nearly 20 years after the CCTG first applied. The Prodi government fell on 8 May 2008 and none of the signed intese were approved by Parliament. The CCTG had to again restart the intesa process from the beginning with the next Government
      1. April 2007 to December 2012
  15. On 13 May 2010 the CoM again approved the CCTG’s intesa (and the intese of the five other religions earlier signed on 4 April 2007). On 8 June 2010, CoM President Silvio Berlusconi submitted the CCTG’s intesa to Parliament for approval, noting the intesa was needed to guarantee the CCTG’s constitutional rights. In the meantime, Parliament approved further amended intese with the Waldensians (8 June 2009), the Seventh-day Adventists (8 June 2009) and the Baptists (12 March 2012). Parliament then approved intese with the Orthodox Church (30 July 2012), the Apostolic Church (30 July 2012), the Mormons (30 July 2012), the Buddhists (31 December 2012), and the Hindus (31 December 2012), but not with the CCTG.
  16. On 19 September 2012 the CCTG’s intesa was approved by the Senate and submitted to the Chamber of Deputies. Parliamentary hearings were then held on 2 and 4 October 2012 and 13 December 2012 which examined complaints by so-called “anti-sect” groups against the beliefs of Jehovah’s Witnesses. On 22 December 2012 the Monti government fell without the Chamber of Deputies approving the CCTG’s intesa. The CCTG had to restart the intesa process, for the third time, with the next government.
      1. December 2012 to May 2016
  17. On 1 October 2014 the CoM approved intese with the CCTG and Soka Gakkai, a Buddhist religion. On 27 June 2015 CoM President Matteo Renzi signed the intesa with Soka Gakkai but, on 31 July 2015, reopened negotiations on the CCTG’s intesa. On 26 November 2015 the Intese Commission asked the CCTG for a written submission whether it “forces” its members “to adopt some views having a bearing on medical treatment”. The CCTG had already answered that same question at least six times to the State’s satisfaction. Nonetheless, on 4 March 2016 it again provided the Intese Commission with a detailed written answer. In that answer, the CCTG requested that the CoM and its President sign the intesa and submit it to Parliament for approval by 15 May 2016 otherwise it would have no choice but to consider that the application was rejected and it would then need to take appropriate legal action. There was no response.
  18. In comparison to the Catholic Church and all other religions with an Intesa, the CCTG has been denied equal treatment. Instead, it has been and continues to be treated as a third class religion. That discriminatory treatment ‘amplifies prejudices’, fostering the mistaken assumption they are a “dubious sect” and a third-class religion. “[S]uch a situation of perceived inferiority goes to the freedom to manifest one’s religion”. (ECHR judgments: *Magyar Keresztény Mennonita Egyház and Others*, nos. 70945/11, 23611/12 …, §§ 92 and 94, ECHR 2014; *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 95, 26 April 2016)

1. Discriminatory denial of personal autonomy and self-determination
   1. Every competent person has the right to make fundamental personal choices; to exercise control over his or her bodily integrity free from State interference. This is essential to human dignity, personal autonomy, and self-determination which are the bedrock of the Covenant. The right to refuse an unwanted and deeply objectionable medical procedure—and to have that refusal respected—is firmly rooted in the human rights protected by Articles 17 and 18 of the Covenant. A forced medical procedure is one of the most egregious violations of a person’s physical and psychological integrity.
   2. In Italy, adult Jehovah’s Witnesses have been repeatedly denied their right to personal autonomy and self-determination by the Supreme Court of Cassation, although those same rights are guaranteed to all other persons. As set out below, they have suffered both direct and indirect discrimination. As the Committee has recognized, direct discrimination occurs when persons in similar situations are treated differently without “reasonable and objective grounds” for that difference in treatment. (Communication No. 1249/2004, *Sister Immaculate Joseph et al v. Sri Lanka*, Views adopted on 21 October 2005, para. 7.4) Indirect discrimination occurs “when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different”. (ECHR, *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV)
   3. This is all the more surprising because the right of a legally capable adult to decide his or own medical treatment is right protected by Articles 17 and 18 of the Covenant and by Articles 8 and 9 of the European Convention of Human Rights. In the leading case of *Jehovah’s Witnesses of Moscow and Others v. Russia* (no. 302/02, §§ 133, 135, and 136, 10 June 2010) the ECHR held:

“It is generally known that Jehovah's Witnesses believe that the Bible prohibits ingesting blood, which is sacred to God, and that this prohibition extends to transfusion of any blood or blood components that are not the patient's own. The religious prohibition permits of no exceptions and is applicable even in cases where a blood transfusion is deemed to be necessary in the best clinical judgment to avoid irreparable damage to the patient's health or even to save his or her life. Some Jehovah's Witnesses, including members of the applicant community, carry an advance medical directive – known in Russia as a “No Blood” card (see paragraph 68 above) – stating that they refuse blood transfusions under any circumstances as a matter of religious belief.”

“… In the sphere of medical assistance, even where the refusal to accept a particular treatment might lead to a fatal outcome, the imposition of medical treatment without the consent of a mentally competent adult patient would interfere with his or her right to physical integrity and impinge on the rights protected under Article 8 of the Convention (see *Pretty*, cited above, §§ 62 and 63, and *Acmanne and Others v. Belgium*, no. 10435/83, Commission decision of 10 December 1984).

“The freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, is vital to the principles of self-determination and personal autonomy. A competent adult patient is free to decide, for instance, whether or not to undergo surgery or treatment or, by the same token, to have a blood transfusion. However, for this freedom to be meaningful, patients must have the right to make choices that accord with their own views and values, regardless of how irrational, unwise or imprudent such choices may appear to others…”

* 1. In *Lambert and Others v. France* [GC] (no. 46043/14, §§ 178 and 180, 5 June 2015), the Grand Chamber of the ECHR reiterated these fundamental rights and held:

“… it is the patient who is the principal party in the decision-making process and whose consent must remain at its centre; this is true even where the patient is unable to express his or her wishes …

Lastly, the Court points out that in its judgment in Pretty, cited above (§ 63), it recognised the right of each individual to decline to consent to treatment which might have the effect of prolonging his or her life.”

* 1. The courts and treating doctors therefore do not have lawful authority to overrule the treating choices of a legally capable adult and impose a medical procedure which is deeply objectionable to their religious conscience.
  2. It should be emphasized that Jehovah’s Witnesses do not object to all medical treatment. As the ECHR stated in *Jehovah’s Witnesses of Moscow v. Russia* (cited above, at§§ 132 and 133), by refusing consent to blood transfusions Jehovah’s Witnesses “just make a choice of medical procedures but still wish to get well and do not exclude treatment altogether”.
  3. By doing so, they also avoid the medical risks associated with blood transfusions. An increasing number of hospitals and physicians throughout Europe and the world are providing medical treatment without blood transfusions. In 2016, *Transfusion*, a leading journal on transfusion medicine observed that “emerging evidence [shows] that patients who avoid [blood transfusions] do as well if not better than patients who accept [blood transfusions]” and that “bloodless approaches in selected patients could reduce risks, improve outcomes, and decrease costs for all patients”.[[1]](#footnote-1) In 2010, patient blood management (i.e. procedures that avoid blood transfusions) “was cited as one of the ten key advances in transfusion medicine in the past 50 years”. [[2]](#footnote-2)In contrast, the Italian medical journal *Minerva Anestesiologica* reports: “evidence indicates that a great number of the critically ill patients who are being transfused today may not be having tangible benefits from the transfusion”. [[3]](#footnote-3) The medical reasons why are explained by leading experts in the video of the National Blood Authority of Australia entitled: *“*What is the evidence telling us?”[[4]](#footnote-4)
  4. Direct discrimination resulting in highly objectionable forced medical procedures on legally capable adults
  5. Contrary to Resolution 1859 (2012) of the Parliamentary Assembly of the Council of Europe (PACE),[[5]](#footnote-5) Recommendation CM/REC(2009)11 of the Committee of Ministers of the Council of Europe, and Article 9 of the Oviedo Convention (ETS no. 164), Italy has not yet enacted legislation concerning living wills and advance medical directives.[[6]](#footnote-6)
  6. The Supreme Court of Cassation has addressed this lacuna in four main decisions. That case law cannot serve as a substitute for parliamentary inaction. In any event, as illustrated below and confirmed by respected legal authors, that case law is contradictory and erratic.[[7]](#footnote-7)
  7. **Court of Cassation, Third Civil Division, no. 4211 of 2007**: Mr Setti (one of Jehovah’s Witnesses) was admitted to the hospital fully conscious following a traffic accident. He consented to surgery but instructed his doctors that he absolutely refused blood transfusions. In disregard of that choice, he was transfused during surgery. He sued for damages; his claim was dismissed at trial and on appeal. The Court of Cassation held that his refusal of blood transfusions could be ignored because his medical condition changed during surgery and the doctors could not ‘consult’ him about that change because he was sedated. In other words, although Mr Setti had clearly and precisely instructed doctors of his firm decision to refuse blood transfusions based on his religious conscience, his competent refusal of blood was overturned because the Court of Cassation was of the view that the medical information the doctors provided to him before surgery was insufficient.
  8. **Court of Cassation, First Civil Division, judgment no. 21748 of 2007** (§§ 6, 6.1, 7.3 and 7.4): Mr Englaro (not one of Jehovah’s Witnesses) applied to withdraw life support for his daughter suffering an “irreversible vegetative coma”. She had not provided any prior instructions whether she wanted life support if her condition was hopeless. The Court of Cassation confirmed that the right of a competent patient to refuse unwanted medical treatment is paramount. It went on to rule that where the patient is unconscious and her treatment wishes are unknown, the support administrator “must decide not ‘in the place’ of the incapacitated person nor ‘for’ the incapacitated, but ‘with’ the incapacitated person: therefore, reconstructing the presumed will of the unconscious patient … taking into account the wishes expressed by him before the loss of consciousness, or inferring that will from his personality, from his lifestyle, from his inclinations, from his basic values and of his ethical, religious, cultural and philosophical convictions”.
  9. **Court of Cassation, Third Civil Division, judgment no. 23676 of 2008**: Mr Grassato (one of Jehovah’s Witnesses) was unconscious when admitted to the hospital. He was carrying in his wallet an advance medical directive refusing blood transfusions. He was transfused while unconscious and developed hepatitis. He sued for the disregard of his personal autonomy and religious conscience. His claim and subsequent appeals were dismissed. In rejecting his appeal, the Court of Cassation ruled that a clear and precise refusal of treatment must “*follow* and not *precede* the information [given by the doctors]”. It will only be valid if it is “an *ex post* refusal and not an *ex ante* one”. Paradoxically, after holding that Mr Grassato’s advance medical directive was not valid (solely because it was made before and not after he was admitted to hospital), the court concluded: “This, however, does not mean that whenever [one of Jehovah’s Witnesses] is unconscious, he must therefore undergo a medical treatment contrary to his faith. But in such a case … the objection to the health treatment needs to be expressed either by the patient himself by carrying a detailed, accurate, and explicit statement unmistakably testifying his refusal of transfusions even at the risk of his life, or by a different person appointed by him as his agent” (emphasis in original). This was precisely what Mr Grassato had done by means of his advance medical directive.
  10. Most scholars, troubled by this discriminatory contradiction, have concluded *Grassato* prevents legally capable adult Jehovah’s Witnesses from ever giving a binding refusal of blood transfusions, whether expressed orally or in writing and whether made in advance of hospitalization or just before being sedated for surgery.[[8]](#footnote-8)
  11. **Court of Cassation, Third Civil Division, judgment no. 2847 of 2010** (§§ 3-3.2): Ms S. G. (not one of Jehovah’s Witnesses) sued for damages for a surgical procedure done without her consent. The Court of Cassation ruled that although the procedure was necessary and performed according to the relevant standard of care, it was done without her consent in violation of Articles 13 and 32 § 2 of the Constitution. She was entitled to damages for the violation of her right to self-determination.[[9]](#footnote-9)
  12. **Court of Cassation, First Civil Division, judgment no. 21743 of 2016:** Mr. Ciucci (one of Jehovah’s Witnesses)—age 45, married, and a business owner—admitted himself to the hospital for medical care. He instructed his doctors in the clearest of terms that he must not “under ANY circumstances” be given blood transfusions. Hours later, he was sedated for long-term treatment. The next day, Siena court Judge Paulo Bernardini ruled to authorize forced blood transfusions in total disregard of Mr Ciucci’s competent refusal. Judge Bernardini ruled that “health is a primary interest ... to the point that we have to ignore [Mr Ciucci’s] wishes”. Doctors imposed at least 15 blood transfusions on Mr. Ciucci in profound disregard of his religious conscience. Alternatives to blood transfusions (which were available and effective) were not considered. When Mr Ciucci finally regained consciousness, he joined in an urgent appeal filed by his wife and support administrator. The appeal court refused to declare Judge Bernardini’s decision unlawful and, instead, merely discontinued the proceedings. The Supreme Court of Cassation refused to intervene.
  13. At best, the Court of Cassation jurisprudence is arbitrary and contradictory, violating the express text of Article 32 § 2 of the Constitution and Articles 5 and 9 of the Oviedo Convention. It means that a competent and conscious adult patient admitted to the hospital who gives clear and precise instructions about what treatment he accepts and what treatment he refuses, cannot foresee that those instructions will be followed by medical staff or upheld by the courts if he then becomes unconscious (e.g. sedated for surgery or due to a deterioration in the patient’s health).
  14. At worst, the Court of Cassation jurisprudence establishes a discriminatory standard for Jehovah’s Witnesses—their refusal of blood transfusions will never be respected, no matter how that refusal is expressed (judgments nos. 4211/2007 and 23676/2008). It establishes an entirely different standard for all other patients, guaranteeing their personal autonomy will be respected, even if the patient becomes legally incapable or unconscious and has not previously expressed treatment instructions (judgment no. 21748/2007) or if doctors have failed to obtain consent and/or failed to fully explain all the possible risks and benefits of the treatment (judgments nos. 2847/2010, 19220/2013 and 14642/2015).
  15. The message from the Court of Cassation judgments in *Setti* and *Grassato* is unmistakable. Refusal of blood transfusions by adult Jehovah’s Witnesses will not be respected, no matter how it is expressed. As in Mr Ciucci’s case, this has resulted in severe violations of bodily autonomy and religious conscience, as the following examples confirm:
  16. **Court of Milan, Fifth Civil Division, no. 6052/2015 of 13 May 2015**: Doctors forcibly transfused a conscious and competent adult woman who is one of Jehovah’s Witnesses. Relying on *Setti* and *Grassato*, the court concluded that although she had repeatedly refused blood transfusions and was conscious when transfused, her refusal could only be considered valid if she had got up from her hospital bed (despite the fact she was suffering a haemorrhage) and walked out of the hospital. Because she did not, the court decided that the doctors were justified in forcing blood transfusions.
  17. **Court of Brescia, Second Civil Division, no. 1886/2016 of 17 June 2016**: A conscious and competent adult woman who is one of Jehovah’s Witnesses was admitted to the hospital for elective surgery. She instructed doctors of her absolute refusal of blood transfusions and provided them with a copy of her advance medical directive. She was forcibly transfused during surgery. She sued for damages. In rejecting her claim, the court relied on *Setti* and *Grossato* to conclude her refusal of blood transfusions was not valid. It reasoned that during the doctors’ discussion with the patient, they incorrectly stated there was a ‘possibility’ rather than a ‘probability’ they would consider blood to be necessary during the surgery. The court asserted that this alleged lack of information meant that the adult patient could not give an informed refusal of blood transfusion and therefore these same doctors were justified in forcing blood transfusions.
  18. **Genoa Court of Appeal, Third Civil Division, decision published 19 July 2016**: A conscious and competent adult man who is one of Jehovah’s Witnesses, suffering from a chronic bleeding disorder, applied to the Guardianship Judge to confirm his choice of a support administrator in his advance medical directive to ensure he would not be transfused if he ever became unconscious. The Guardianship Judge rejected that application, relying on *Grassato* (judgment no. 23676/2008) (Doc 36, p. 2). The Court of Appeal agreed, ruling that a support administrator can only be appointed if the beneficiary is legally incapable. It also ruled that such an appointment, even if granted, could not protect the applicant from a forced blood transfusion since doctors can override such a refusal in an alleged ‘life-threatening’ situation.
  19. **Genoa Court of Appeal, Third Civil Division, decision published 2 May 2015**: An unconscious adult man who is one of Jehovah’s Witnesses was admitted to the hospital. He was carrying an advance medical directive refusing blood transfusions which also appointed his wife as support administrator. The wife applied to the Guardianship Judge to confirm her appointment as support administrator. The judge confirmed the wife’s appointment but, relying on *Setti* (no. 4211/2007) and *Grassato* (no. 23676/2008), prohibited the wife from refusing consent to blood transfusions notwithstanding the husband’s clear and precise refusal of blood transfusions as stated in his advance medical directive. The Court of Appeal rejected the appeal, claiming it was not within its competence. The case is now pending before the Court of Cassation.
  20. The current state of the case law in Italy discriminates against Mr Ciucci and other competent adult patients who are Jehovah’s Witnesses, arbitrarily denying their right to self-determination, human dignity, and religious conscience. There are more than 250,000 Jehovah’s Witnesses in Italy. Each one of them is directly affected by the Court of Cassation’s conflicting jurisprudence, with each of them threatened with the possibility that if they require medical treatment doctors and courts can lawfully ignore their competent refusal of blood transfusions and violate their bodily integrity, personal autonomy, and religious conscience.
  21. Indirect discrimination—capable adult Jehovah’s Witnesses treated as if they were mentally incapable and denied the right to decide
  22. As the above cases make clear, legally capable adult Jehovah’s Witnesses in Italy are also victims of indirect discrimination. In particular, the Supreme Court of Cassation (and lower courts) has “[failed] to treat [them] differently [from] persons whose situations are significantly different”.
  23. Although they are legally capable, adult Jehovah’s Witnesses have been treated by the domestic courts as if they were young children, unable to decide for themselves, or an adult suffering from a severe mental disability who is legally incapable of making sound decisions. In essence, the domestic courts have treated Jehovah’s Witnesses as if their religious conscience deprives them of mental capacity and therefore the courts must override their refusal of blood transfusions and choice of alternatives to blood and make a decision which the court believes is in the adult patient’s “best interest”. There is no objective and reasonable justification in treating legally capable adults in such an objectionable and discriminatory manner, denying them the right to make their own medical treatment decisions.

1. Discriminatory restrictions on parent-child relationship
   1. Some parents who are Jehovah’s Witnesses in Italy have also had discriminatory restrictions imposed on their parental right to discuss religious matters with their children or to bring their children with them to the religious services of Jehovah’s Witnesses which are always age appropriate. The restrictions imposed were always in favor of the other parent who insisted that the child should only be exposed to the beliefs and practices of the Catholic faith.
   2. In doing so, the domestic courts rely on the following judgments of the Supreme Court of Cassation which imposed restrictions on two parents who were Jehovah’s Witnesses. In neither case was it alleged the parents’ religious practice caused any harm. Instead, it was claimed that exposing a child to religious views different than the Catholic faith might ‘confuse’ a child.
      1. Supreme Court of Cassation, First Civil Division, judgment no. 9546 of 2012; and
      2. Supreme Court of Cassation, First Civil Division, judgment no. 24683 of 2013
   3. Some domestic courts have also ruled that because Italy is predominately Catholic, it would be harmful for a child if he was perceived in some way as being ‘different’ from his peers because he does not participate in all of the celebrations that are traditionally observed by Catholic youth. At least one court has concluded that this is necessary for a child’s “healthy social growth.”
   4. Such antiquated and religiously discriminatory reasoning affects not only parents who are Jehovah’s Witnesses, but also means that the tens of thousands of children in Italy from Jewish, Buddhist, and Muslim faiths allegedly do not have a “healthy social growth” because they do not participate in “events that are traditionally associated with Catholicism.” Such reasoning is directly contrary to religious pluralism and tolerance protected by Articles 18, 26, and 27 of the Covenant.
   5. These judgments of the Supreme Court of Cassation directly contradict the best interest of a child which is presumed to be met by an open and unrestricted relationship with both parents. Religious tolerance and pluralism is always in a child’s best interest. The ECHR has already addressed this issue in a series of cases, holding that a court may not impose limitations on the parent-child relationship unless there is “convincing evidence … to substantiate a risk of actual harm, as opposed to the mere unease, discomfort or embarrassment” that a child might experience when receiving religious training from a parent. (*Vojnity v. Hungary*, no. 29617/07, §§ 38 and 40) No such evidence of harm has been cited in any of the cases where restrictions were imposed by Italian courts on parents who are Jehovah’s Witnesses.
   6. Instead, the prohibition against discrimination requires the courts to uphold the rights of both parents to openly share their views and beliefs with their children. The ECHR ruled in *Jehovah’s Witnesses of Moscow and Others v. Russia*, cited above, at § 125 that: “spouses enjoy equality of rights in their relations with their children… Both parents, even in a situation where they adhere to differing doctrines or beliefs, have the same right to raise their children in accordance with their religious or non-religious convictions…” The ECHR repeated this same conclusion in *Vojnity v. Hungary*, cited above, at § 37.
   7. The Supreme Court of Cassation, however, has not yet addressed this ECHR case law and therefore its two judgments from 2012 and 2013 continue to be relied on by lower courts to wrongly impose restrictions on parents who are Jehovah’s Witnesses solely because of their faith and although there is absolutely no evidence of harm.
2. Recommendations
   1. Jehovah’s Witnesses in Italy express concern for the above discriminatory violation of their fundamental rights. They respectfully request that Italy:
      1. Immediately approve their intesa, thus granting Jehovah’s Witnesses the same rights enjoyed by almost all other religions in Italy.
      2. Explicitly recognize the right of legally capable adults to give in advance binding health instructions, either orally or by means of an advance medical directive.
      3. Prohibit courts and doctors from overriding the treatment decisions in a duly completed advance medical directive that was signed by the patient while legally capable.
      4. Recognize the rights of parents of faiths other than the Catholic Church to involve their children in their peaceful religious activity.

1. Resar L. et al, “Bloodless medicine: current strategies and emerging treatment paradigms”, *Transfusion* Volume 56 October 2016, p. 2637-2647 [↑](#footnote-ref-1)
2. Goodnough LT, “Blood management: transfusion medicine comes of age”, *Lancet* 2013;381(9880): 1791-2. [↑](#footnote-ref-2)
3. Liumbruno GM, VAglio S, Grazzini G, et al, “Patient blood management: a fresh look at a fresh approach to blood transfusion”, *Minerva Anestesiol* 2014;80:1127-35. [↑](#footnote-ref-3)
4. Available online at: <https://www.blood.gov.au/health-professionals> [↑](#footnote-ref-4)
5. PACE Resolution 1859 (2012) on protecting human rights and dignity by taking into account previously expressed wishes of patients. (Doc 44, pp. 1-2, paras. 6-7) [↑](#footnote-ref-5)
6. Bill no. 10, XVI Legislature, “Provisions of informed consent and advance medical directives” (accessed 6 February 2017 from http://www.senato.it/leg/16/BGT/Schede/Ddliter/29638.htm). [↑](#footnote-ref-6)
7. Giusepe Cricenti, “Il cosiddetto dissenso informato”, *Nuova Giur. Civ.*,2009, 2, 10170(decision note); Martina Petri, “Preventivo rifiuto all emotrasfusione e carattere inequivoco della manitestazione”, *Giur. It*., 2009, 7 (decision note); Nicola Colaianni, “Regole di vita”, in *Diritto pubblico delle religioni* (Il Mulino, 2012), 237 (Doc 47); Lorenzo D’Avack, “Il rifiuto delle cure del paziente in stato di incoscienza”, in *Trattato di biodiritto del corpo,* Vol. 2 (Giuffrè, 2012), 1917; Enrico Silingardi and Anna Laura Santunione, “Il rifiuto anticipato dei trattamenti transfusionali”, *Rivista Italiana di medicina legale*, 2009, 1, 213(decision note); Roberto Masoni, “I Testimoni di Geova tra legittimita, merito ed amministrazione di sostegno”, in *Il diritto di famiglia e delle persone*, 2009, 1, 58 (decision note) [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. The Court of Cassation reached the same conclusion in other cases where the patient is not one of Jehovah’s Witnesses. See judgments no. 19220 of 2013 (§ 2.6) and no. 14642 of 2015 (§ 6.2), which hold that treatment imposed without consent (or contrary to the patient’s refusal of consent) is unlawful. [↑](#footnote-ref-9)