Rom J Leg Med [24] 333-338 [2016]
DOI: 10.4323/rjlm.2016.333

Legal and ethical dimensions of organ transplantation: A comparative report from Turkey

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Abstract: As the debate about organ transplantation continues worldwide, legal regulations are critically important to managing the ongoing process. Issues related to living donors, cadaver donation, economic incentives, brain death, and a variety of factors such as human nature and the sociocultural, religious, and transcultural dimensions make organ donation an important topic in medical ethics. Current debates relate mostly to the prohibition of commercialization and increasing donation on a voluntary basis. Enforcement of the first laws regarding organ and tissue preservation and transplantation began in the 1970s generally and in 1979 in Turkey, which was quite early compared to European countries. Our aim was to identify the divergence points that play a critical role in healthy decisions for organ transplantation. Our hypothesis is that either coercion or 'mis-un-true' informed consent is a possible obstacle. In this study, we analyzed two cases from clinical observation and carried out a small field study relevant to the topic in Turkey. Legislative limitations and authentic viewpoints are discussed in a comparative manner and a global context. In different parts of the world, sociocultural, transcultural, religious, and economic factors, hidden coercion, or mis-un-true informed consent might cause some vulnerable members of families to donate organs involuntarily or vice versa. These issues create ethical dilemmas and also a basis for legislative discussions.

Key Words: organ transplantation, legal, ethics, international, Turkey, coercion.

The issue of legitimacy, justice, informed consent, coercion, autonomy, and sociocultural values seems to come to the fore at each step of the organ transplantation process. These factors create an urgent requirement for the law to delineate the real place of science in society, a necessity that we have observed in Turkey. Most of the time, the approach is more conservative and protective in Turkey because of the fore grounding of the vulnerability of minors and the impact of commercialization and sociocultural values.

Worldwide, enforcement began in the 1970s of the first laws regarding organ and tissue preservation and transplantation. Enforcement began in 1979 in Turkey, which was considerably early compared to countries in Europe. Individuals under age 18 years were not permitted to donate organs or tissues in Turkey. Indeed, this requirement was especially presented as an exemption when Turkey signed the European Convention on Human Rights and Biomedicine (Oviedo Convention) in 1997 that contained articles about organ transplantation [1]. In addition, transplantation from dead bodies requires a medical report from an expert committee, and consent is mandatory from the spouse, siblings, parents, brothers, or sisters or any acquainted person if these relatives are not available.

Worldwide, sociocultural, transcultural, religious, and economic factors might cause some vulnerable members of families to donate organs involuntarily. Potential issues like these create ethical dilemmas and a starting point for legislative discussions.

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Our aim was to diagnose the divergence points that play a critical role in healthy decisions for organ transplantation, and our hypothesis is that either coercion or 'mis-un-true' informed consent is a possible obstacle [2]. In this study, we discuss the original viewpoints and study results related to organ transplantation in Turkey and compare them with the paradigms in different countries.

METHODS

We first present two cases observed in the clinics of two large academic hospitals. Then we describe a small field study and analysis of the results.

Clinical observation and analysis

In Turkey, different departments are involved in organ transplantation, related to nephrology, general surgery, psychiatry, forensic psychiatry, and ethics. There also is an organ transplantation unit comprising multidisciplinary professionals in university hospitals or large second-step hospitals. Two original clinical cases, both from an observational study and both of which involved ethical dilemmas relevant to sociocultural values and economic factors, are presented and analyzed below.

Case 1

A woman, age 40 years, married, and with three children, has been followed up by the nephrology department of a big hospital for 3 years. She had stopped attending her regular check-up for a year without any explanation. When she was again admitted, she had symptoms of renal insufficiency with an indication for dialysis.

Her physician, who was known in the clinics to take a paternalistic role in the patient–physician relationship, offered the possibility of renal transplantation from one of the patient's brothers or sisters. The patient had six brothers and sisters, all of whom had a positive tissue match with the patient.

The patient chose her youngest brother as the donor candidate. He acted as a voluntary donor. In keeping with institutional protocol, he was sent to a psychiatry and ethics consultation. A resident physician and an experienced registered nurse in the psychiatry department felt that he had been coerced into the transplantation. An IQ test showed an IQ below 70, a level below the minimum legal requirement for regular perception of a healthy individual.

Is the behavior of the brother morally irresponsible? Is the woman who was the potential recipient selfish? Or does coercion exist? Should that transplantation be performed? Was the informed consent process a mis-un-true process?

Case 2

A female patient who was expected to donate her kidney to her cousin in a large family had a ureter duplication. It was decided from a reasonable medical viewpoint that she would donate the kidney with ureter duplication. She suddenly began to insist on donating the intact kidney with an intact ureter in an enigmatic way. She preferred the kidney with ureter duplication stay in her body unnecessarily as if she had a passive-aggressive defense. Physicians were suspicious if this were a sign of reluctance. This enigmatic decision was evaluated in a meeting of ethicists and liaison psychiatrists as a refusal to be a forced donor within family relations. Eventually it was decided that she did not want to be a donor but could not reveal it.

Did this case need an ethics consultation? Was autonomy versus beneficence discussed? Could this decision have been made at the beginning of the process? Is it expected for the donor to regret or have psychological problems?

The field study

After our clinical observations, we planned a small field study. We prepared two questions and asked them of 200 healthy, Turkish volunteers over age 18 years. No sex, education, geographical region, or other selection criteria were used. Results were evaluated by a simple frequency test (Table 1). The questions are elaborated next.

Table 1. Participant responses

Questions	Answers	Number of participants	% of n=200
1. In the organ transplantation process:	a. Recipients should pay a standard and government-controlled amount of money to prevent any kind of coercion, commercialization, or illegal act.	150	75
	b. Any kind of money transaction should be avoided, and organ transplantation would be possible and sufficient only through donation.	50	25
2. Family bonds for organ transplantation:	a. Family bonds are enough for voluntary organ transplantation, and coercion or money is not a threat.	80	40
	b. Family bonds might be even more dangerous in terms of either economic or emotional coercion and end in injustice.	120	60

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b. Any kind of money transaction should be avoided, and organ transplantation would be possible and sufficient only through donation.

2. Family bonds for organ transplantation:

a. Family bonds are enough for voluntary organ transplantation, and coercion or money is not a threat;

b. Family bonds might be even more dangerous in terms of either economic or emotional coercion and end in injustice.

Findings

Regarding our first case, the woman who was a recipient candidate was essentially oriented by her physician, who had a clear paternalistic role in their relationship. The physician was known for her dominant role in being a beneficiary to patients.

On the other side of the story, the recipient herself was a member of a very paternalistic type of family where conventional values played a major role. She had taken care of her youngest brother for many years because he was very young when their parents got divorced. He is still economically dependent on her although he is married and has a son aged 2 years. Despite the fact that all of the sisters and brothers had a positive tissue match, she singled out the youngest brother as the donor candidate.

Two nurses recognized some sort of involuntariness in the brother and supplied this information to the transplantation unit, which required a liaison consultation with psychiatry. Psychiatry representatives first applied the IQ test to determine competency before addressing voluntariness and found that the brother was mentally incompetent. The psychiatry department then required consultation with the ethics department and forensic psychiatry department. Forensic psychiatry representatives determined that transplantation would be illegal, and ethics respondents found that the autonomy and the voluntariness of the donor were questionable because they could not interview the donor alone; a relative always accompanied him during the interviews.

Relevant to our second case, within family bonds, when the donor insisted on giving the kidney with the intact ureter, a psychiatric consultation was requested, and an involuntariness was detected that suggested some sort of psychological coercion.

In every case, as a result of the abovementioned conditions, a mis-informed or un-informed process [2] was in progress, and very rarely did a true informed consent process occur.

As the results of our small study show (Table 1), 75% of respondents declared that a certain amount of money should be paid to recipients and controlled by the government. A total of 60% declared that family bonds are not enough to prove that donation alone is fine because more coercion and hidden economic pressure might play an important role.

DISCUSSION

Here we tested to a certain extent the hypothesis that either coercion or mis-un-true informed consent is a possible obstacle on the way to organ transplantation. In the described cases, a hidden coercion was present within interfamilial relations that led to the demise of informed consent. Economic parameters were also obvious with the first case, although it was not an obvious commercialization.

The limitations of our study were that we did not select people who had experienced any transplantation process personally, so the responses in our small field study reflect only the attitudes of a healthy population. This factor might have led to some limitations. Below, we compare their replies with the findings of a dissertation [3] carried out in our clinics with a population who had experience with the transplantation process.

Regarding the findings of our study, 60% of the healthy volunteers declared that family bonds are not enough to prove that the donation is truly appropriate because more coercion and hidden economic pressure might play an important role. Also, 75% of participants proposed a government-controlled legal payment to the recipients to prevent any illegal, coerced, uninformed, or misinformed act for transplantations involving family or a fourth-degree relative. Potentially compensating for the limitations of our study are the findings of a 2007 dissertation-related investigation completed by a PhD student in our department [3], in which transplantation patients in different large hospitals responded to relevant questions. According to the findings of the dissertation, as patients become more educated, they respect autonomy and informed consent more, but as they age they claim that autonomy and informed consent might diminish within family bonds. The approach of patients to payment is positive between ages 26 and 35, 36 and 45, and over age 45 years, but they are indecisive between ages 19 and 25 years. As the whole population becomes more educated, the attitude toward various types of payment becomes more positive [3].

In 1953, the first human kidney transplantation was accomplished between identical twins. Since that time, innovations in surgery, a better knowledge of immunosuppressive therapy, and the introduction of more sophisticated drugs have made it possible to increase the rate of patient and graft survival [4]. In Turkey, organs like kidney, liver, heart, lungs, pancreas, and ileum can be transplanted, as can tissues like cornea, cardiac valves, bones, bone marrow, and skin. The current debate in Turkey seems to increase donations from within families, but commercialization is continuing.

According to our observed cases and study findings, injustice seems always to be a threat in the organ transplantation process, which should create a strong requirement for the law to delineate what the real place of science is in society, a point that needs to be discussed with respect to the legislative perspective.

Legislative viewpoint

With respect to our hypothesis, mis-un-true informed consent is an obstacle, and laws after 1953 might be grouped into two categories in terms of informed consent [5]. The first group includes presumed consent in Austria, Belgium, France, Portugal, Finland, and Norway; the second group refers to informed consent in England, Turkey, Sweden, and Denmark.

In 1978, the European Council emphasized the topic of consent in transplantation from living and dead donors for harmonization among member countries. In Turkey, the first law addressing organ transplantation was enforced in 1979, much earlier than in Europe, where most nations enforced their regulations after 1985. Although some of them had regulations dating to the 1950s, these nations canceled those and replaced them with laws in the 1980s. Generally, the laws refer to informed consent. The differences arise from the age of accepted competency, and individuals under age 18 years are not permitted to donate organs or tissues in Turkey [6, 7]. Donors over age 18 years are required to sign their autonomous decisions approved by the physician in front of two witnesses. Consent from a spouse is also mandatory.

The factor related to dead donors that is considered most is the presence of a denial if there was any when alive. In some countries, transplantation from dead bodies requires a medical report from an expert committee, and consent is mandatory from spouse, siblings, parents, brothers, or sisters or any acquainted person if family members are not available, and the same condition is accepted in Turkey [5].

In 1982, this legislation was changed with respect to the 14th article regarding transplantation from dead bodies in Turkey. If the bodies are damaged terribly after accidents or disasters, and if there is a medical emergency, then transplantation might be possible without consent, which would not have been legal with the previous act [1].

Two other laws became active in 1993. These laws are related to centers associated with cornea and organ transplantation and focus on the minimum requirements for such facilities.

In 2005, Turkish Criminal Law was amended. The controversial point was that a "New Criminal Act" concerning organ transplantation included some articles about commercialization [8]. These articles addressed forgiving a donor who has taken money with the condition that the donor claims regret about the action. Forgiving in criminal acts usually refers to organized crime, which is very controversial in the context of organ transplantation [8].

Relevant to our findings about coercion within family bonds, on March 15, 2010, an amendment to organ transplantation legislation was enacted in Turkey. The principle act is donation from living donors, and the extra protection is enforced for donors who do not have any family relations. These donations will be discussed by city ethics committees. The hospital where the surgery will be accomplished will apply to the health council of the province of the city, and parties will be required to answer a very detailed questionnaire. Couples who wish to donate to each other are required to be married and to have lived together for more than 2 years. Other donors are permitted to a maximum of the fourth degree of family bonds.

In Japan, organ transplantation is forbidden except from cadavers, and only governmental organ banks are accredited for transplantation. It is interesting to note that in 1997, Japan adopted its first legislation establishing a legal recognition of brain death, whereas European countries signing the Oviedo Convention on Biomedicine and Human Rights seemed to offer an example of legal harmonization in fields such as organ transplants [9]. In 1997, Turkey signed the Oviedo Convention as an international code. Turkey added a reservation that is related to the article defining the competency age of donors. As noted, donors under age 18 years are not recognized as legal potential donors [1]. In 2004, the Convention was adopted into the internal law system of Turkey. In China, organ sales and organ transplantation usually involve organs from executed prisoners [10, 11].

In Turkey, a recent draft legislative proposal [March 2016, Section 5, Article 24] mandates the formation of formal ethics committees for reviewing organ transplantation cases [12]. This proposal is an addition to the existing 1979 law (Law 2238) that regulates organ and tissue removal, preservation, grafting, and transplants. The proposal requires extra-familial organ transplants to be approved by dedicated provincial ethics committees. According to the proposal, this new committee will be chaired by the Public Health General Secretary or a chairman appointed by the Secretary. Its members will include (a) a provincial deputy chief of police or the head of the Anti-smuggling and Organized Crime Unit, to be assigned by the Provincial Governorship; (b, c) a physician and a psychiatrist from public hospitals other than the one where the transplant will take place; (d) a lawyer to be assigned by the local bar association; and (e) a social worker to be assigned by the Provincial Governorship. Secretariat of the committee will be carried out by the Public Health General Secretariat. Applications for organ transplants will be made to the Public Health General Secretary by the transplanting hospital administration. The Committee will look into the information and documents in the application and issue an 'ethical appropriateness' conclusion for the transplant upon having been convinced that there is no unethical or illegal issue between the donor and the recipient. Decisions of the Committee are final, and no transplants other than those approved by the Committee can ever be carried out.

An application that has already been denied by any of the committees cannot be approved by any committee in other provinces [12].

Societies worldwide share the struggle with many of the ambiguities of scientific development and techno-sciences like the transplantation process. Although the ways that scientific advances may encroach on liberty or integrity may differ in Europe and Asia, the necessity of ethical debate is universal as a counterpart to balance the potential destructive impact of technological progress. What is interesting in the process is the search for a balanced position that acknowledges the medical progress of organ transplants and considers the necessity of ensuring that human dignity and individual freedom are respected. However, the principles adopted for such regulations at the European level leave some major issues with a great margin of improvement for domestic legislation. Therefore, legal harmonization is inevitable but may not imply a complete culturally common approach [9].

Socio-cultural values and family bonds

Could the laws of a society be harmonious with cultural values? In Turkey, we have already mentioned that the Oviedo Convention is in conflict with the new criminal act in terms of the commercialization issue [13]. A last point that should be stressed about the European protocol is its lack of efficiency regarding the neglected but important issue of organ trafficking, which is very important for European countries [13].

The major cultural factors that should be considered by the committees are the moral pressure and economic parameters within the family relations, even though these might not be considered as a strictly commercial issue. This necessity parallels our study findings. Castro, from the Philippines [14], emphasized an emerging trend towards more living donors. The outcome can be pressure on possible organ donors and a burden on relatives and even on non-relatives. In Europe, living donors might not be more than cadaver donors, but the trend is rising. In the USA and in Asia, living donors of kidneys have exceeded the number of cadaver donors for a long time [14]. Having a living donor is usually less risky and more effective both for the recipient since you are not restricted only for cadavers, long waiting lists and cases of brain death etc. There is also a need to broaden the criteria for accepting organs by (a) moving the age limit at both the low and high ends; (b) establishing a system of presumed consent; (c) accepting from living non-related donors; (d) using executed prisoners; (e) using non-heartbeating donors; and (f) using monetary and other incentives [14].

In addition, pressure is on transplant coordinators to improve the system of recruitment. Donors are attracted by the idea that they will have an improved sense of well-being and a boost in self-esteem. In addition, blood relatives are not necessarily more medically suitable donors because of great advances in anti-rejection drugs.

Regional differences exist in Turkey, and in some geographical areas, extended family is a norm. Feudal relationships also persist as people who depend on others feel bound by some kind of close relationship just as in many other Asian countries. The situation might be more coercive as a result of relations that could be truly exploitative. Debate continues about how to resolve these issues.

Religious Viewpoint

Yakıt I. [15], who is an expert in the Philosophy of Islam, emphasizes that people frequently ask questions about organ transplantation, usually questions related to life after death. Whether or not people who have donated organs will restart life after death without those organs remains a question mark within Islam.

Thus, in Islam, it should be declared that there is not a clear dictate about organ transplantation or about any forbidden side of organ transplantation.

Quoting from Yakıt I: "Organ donation is definitely approved by our religion, because according to the Koran, 'Endowing life to one man is equal to endowing it to the whole of mankind'. Whether a human being will donate his organs or not, his dead body is certain to get wasted. It is his spirit that is immortal. In the hereafter, people will arise from the dead depending on their lifestyle."

Two groups of scholars of Islam diverge on the issue, however, with one approving organ donation and the other refusing it under any circumstances. Both depend on indirect comments relevant to the body and organs but not to organ transplantation specifically. The two groups agree that it is fundamentally wrong to harvest organs from cadavers without prior permission from the deceased or the relatives. This debate is being re-examined, and it is argued that under the imperative to preserve life, the moral and theological ground is sufficient to allow the state to harvest organs from the deceased without prior permission. Islam is considered individualistic in the sense that it values every individual life as being as important as the whole world, and it is communitarian in the sense that it recognizes the need to sacrifice some individual liberties for the well-being of the majority of lives [16].

Ethical issues

The issues of legitimacy and justice seem to come to fore at each step of the organ transplantation process [17]. Most of the time, the approach is more conservative and protective in Turkey because the issues around vulnerability within family bonds, commercialization, minors, and brain death might present as illegal acts. Our observed cases and study findings are in agreement with this idea. Sociocultural factors could lead some vulnerable subjects in families to donate organs involuntarily [17]. Therefore, medical practice leaves open an urgent need for legal input, and even expectations about harmonization of values might be left to the law.

New capabilities force us to address concerns

about some ethical questions: "Could the laws of a society be in contradiction with what is viewed as 'natural law', the respect for tradition including family ties and cultural and religious values?"

Ethical considerations play a crucial role in bridging the gap between law and sociocultural values. In transplantation surgery, the donor takes a risk (without any direct benefit) to help the other (the recipient). This imbalance is a contradiction for the physician's traditional paternalistic role, because the physician is not allowed to do harm to an individual even for the benefit of another. Regarding the necessity to protect individual rights and freedom, the donation should be done with the free acquiescence (autonomy) of the donor. It is known that, in most cases, the potential donors are under strong social, economic, or psychological pressure. The physician should inform the donor, in detail, about the possible risks that may arise. This requirement is included in our laws in considerable detail compared with European countries [5].

Commercialization of the organs also creates the problem of inequitable conditions and the ethical dilemma of justice against autonomy [18]. Recently, fetal tissue has held potential for diseases like Parkinson, and it seems that a new ethical dilemma has emerged between the right to life of the fetus and benefits to the elderly.

CONCLUSION AND SUGGESTIONS

Human relations can be very complicated, and values can vary considerably. Close genetic relatives are a very special kind of donor, but they do not necessarily take precedence over other relatives or relationships associated with organ donation. In short, eligibility for organ donation should not rest primarily on genetic relationships.

Because there is a need to be aware of commercially motivated 'kinships', this wariness must be tempered by an openness to emerging types of human bonds. Divergence points seem to be involuntary donations or apparent voluntaryism shadowed by commercialization or uncontrolled payment, coerced donations by family bonds, and a mis-un-true informed consent process and autonomy of the deceased.

Overall, laws and regulations are important to ensure justice for individuals and those who are vulnerable and for regulating relatives. Ethical debates might form the basis for such laws. In Turkey, we might easily conclude that the responsibility belongs to health care institutions, organ transplantation units, and multidisciplinary ethics committees, but rights are ultimately protected by laws.

Today, where globalization dominates the health care system, nurses and health care professionals should be trained regarding different values, behaviors, transcultural care, and ethical sensitivity about organ transplantation. In the very near future, it also seems that information about transcultural values will be quite important, especially regarding organ transplantation in the globalizing world.

Conflict of interest. The authors declare that they have no conflict of interest concerning this article.

References

1. Organ transplantasyonu ile ilgili kanun ve yönetmelikler. In: Arslan Terzioğlu, editor. Klinik Etik'e Giriş. Istanbul University Publishers, Istanbul; 1998. p. 297-318.
2. Dogan H. Mis-un-true informed consent. Saarbrücken, Germany: LAP Lambert Academic Publishing; 2015.
3. Vatanoglu E. The Dissertation study. Dogan H, consultant. Istanbul; 2007.
4. Case consultation, Department of Deontology, Cerrahpasa Medical School. Patient Records and Statistics; 2014.
5. Görkey Ş. Bazı ülkelerin organ aktarımı ile ilgili yasalarının aydınlatılmış onam açısından değerlendirilmesi. In: Arslan Terzioğlu, editor. Yearbook of medical ethics V. Istanbul; 1996. p. 33-56.
6. Convention on human rights and biomedicine and its protocols. In: European treaty series, No.164. Dubrovnik; 24-30 April 2005.
7. Cherkassky L. The interfamilial principle and the harvest festival. Eur J Health Law. 2016;23(1):61-79.
8. Yeni Türk Ceza Kanunu (New Turkish Criminal Law). 91. Md (Issue 91). Ankara; 2005. p. 84-86.
9. Byk J. The European protocol on organ transplant: key issues. Proceed. of Int. Cong. on Ethical Issues in Brain Death and Organ Transplantation. 2004:6-15.
10. Awaya T. Why do organ sales and transplantation from executed prisoners take place in Asia? Proceed. of Int. Cong. on Ethical Issues in Brain Death and Organ Transplantation. 2004:48-49.
11. Rogers WA, Trey T, Fiatarone Singh M, Bridgett M, Bramstedt KA, Lavee J. Smoke and mirrors: unanswered questions and misleading statements obscure the truth about organ sources in China. J Med Ethics. http://dx.doi.org/10.1136/medethics-2016-103533.2016.
12. Draft of legislation package about health issues. 2016. www.saglik.gov.tr.
13. Demirhan A. A perspective to the medical ethics and laws in organ transplantations of children in Turkey. Proceed. of Int. Cong. on Ethical Issues in Brain Death and Organ Transplantation. 2004:37-43.
14. Castro L. Living non-related donors: Is blood truly thicker than water? Proceed. of Int. Cong. on Ethical Issues in Brain Death and Organ Transplantation. 2004:21-23.
15. Yakıt İ. Tıp felsefesi ve tıp etiği üzerine. Ötüken Yayıncılık, İstanbul; 2016.
16. Aksoy S. A critical approach to the current understanding of Islamic scholars on using cadaver organs without prior permission. Bioethics. 2001;15(5-6):461-472.
17. Morgan M, Kenten C, Deedat S, Farsides B, Newton T, Randhawa G, Sims J, Sque M. Increasing the acceptability and rates of organ donation among minority ethnic groups: a programme of observational and evaluative research on Donation, Transplantation and Ethnicity (DonaTE). Southampton (UK): NIHR Journals Library; 2016.
18. Martin DE. Trade in kidneys is ethically intolerable. Indian J Med Ethics. 2016;9:1-4.