

Medical ethics around the world

Bioethics regulations in Turkey

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Abstract

Although modern technical and scientific developments in medicine are followed closely in Turkey, it cannot be claimed that the same is true in the field of bioethics. Yet, more and more attention is now being paid to bioethics and ethics training in health sciences. In addition, there are also legal regulations in bioethics, some of which are not so new. The objective of these regulations is to provide technical and administrative control. Ethical concerns are rather few. What attracts our attention most in these regulations is the presence of the idea of "consent".

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Introduction

Discussions regarding bioethics have not yet fully developed in Turkey. Neither the public nor those in medical and academic circles can be said to follow closely the latest developments in bioethics. Hitherto, the term "deontology" has been employed to cover the subject of "medical ethics". But it has gradually been replaced by the term "medical ethics": "bioethics" too, is increasingly used.

Medical ethics training is conducted by members of deontology and the history of medicine departments in Turkey (some are called merely deontology departments). The number of academic personnel in these departments, which can only be found in large universities, is small. In the faculties without any deontology department, lessons related to bioethics are given by any interested academic member. Deontology departments have never been considered essential and have had to struggle hard to survive. No specialists in deontology and the history of medicine are employed outside universities. Even though specialists in other branches have shown interest in the history of medicine, similar interest has not been shown in medical ethics. And it cannot be said that any real effort has been made to attract

practitioners of either philosophy or the law to the subject of medical ethics.

However, there is a growing interest in medicine ethics training and in bioethical issues in medicine. The number of deontology and the history of medicine departments is increasing, and these departments place more emphasis on ethics. Medicine and other health sciences display a considerable interest in the subject. Conferences, panels and symposia are organised. The number of students who want to do postgraduate training in this subject is also increasing. The number of theses completed on the subject of medical ethics is rising as well. A journal of medical ethics is published every four months. It seems that universities are gradually becoming more and more receptive to departments of deontology and the history of medicine.

On the other hand legal regulations in bioethics have developed along quite a different path, and such regulations may even precede academic activities. The need to find immediate solutions to the problems confronted in practice may be the reason for this. Therefore, in Turkey academic and legal activities in bioethics are developing independently. In other words, medical ethics departments and circles have not usually participated in the process of preparing legal regulations. Actually, when you examine the laws and regulations, you see that ethical concerns are few and that the regulations are directed to technical and administrative ends. It is my contention that by studying these regulations one can get an idea about the extent to which they reflect ethical concerns and solutions.

Organ transplantation

In Turkey, the first kidney transplantation from a living donor was performed in 1975, and from a cadaver in 1978. From 1975 to 1997, 3,610 kidney (from cadaver, 653), 107 liver (from cadaver, 83), 3,898 cornea and 520 bone-marrow transplants were carried out. The law regulating organ transplants came into effect in 1979. The most important incentive for the introduction

this law was that doctors faced being accused of illegal acts when they are conducting transplants. None the less, many verdicts against doctors for organ transplants have been annulled by the Court of Appeal.¹

The law² regulates the procurement of organs and tissues from living and cadaver donors for transplantation. The donor must be at least 18 years old and must sign a written document in the presence of two witnesses and must give his/her consent without being under any influence. The doctors who will remove the organ or tissue have to give information about the possible dangers and psychological, familial and social consequences of the procedure in a proper manner. What "proper" refers to here is not clearly defined. The expression "informed consent" is not used. Doctors must also inform the donor about the benefits to the recipient from the procedure.

Organs and tissues cannot be supplied from people who are not in a sound mental and psychological state and who are unable to make decisions by themselves. In addition, it is illegal to procure organs and tissues for financial gain or for a reason incompatible with humanitarian ideals. If the donor is married, the doctor must inquire if the spouse is informed about the situation and draw up a protocol to certify this. Except in cases where relatives and close personal relations are involved, the names of the donor and recipient should not be disclosed. It is strictly forbidden to take any organ or tissues, the loss of which will jeopardise the donor's life.

Selection criteria

The diagnosis of death, which will make organ transplantation from a cadaver possible, must be made by a committee of doctors consisting of a cardiologist, a neurologist, a neurosurgeon and an anaesthetist-reanimation specialist. The attending physician of the recipient and those who will carry out the transplantation procedure are not allowed to be on this committee. It seems that the selection criteria governing which specialists should be on the committee is debatable. Furthermore, the expression "medical death", used in this context, is not defined. In the statute on organ transplantation centres, which came into effect much later, (in 1993), the term "brain death" is used, and defined as "complete and irreversible loss of brain function".³ In addition, this statute contains a statement which gives cause for ethical concern. This statement is as follows: "After brain death is declared to the relative of the patient, if organ transplantation permission is not given, ventilator treatment of the patient is withdrawn". This puts

the relatives of the patient under pressure to approve organ donation. Faced with the "threat" of withdrawal of "life-sustaining" treatment, they have no choice but to approve. Fortunately, this statement was removed a few months after the introduction of the statute.⁴

In the days following this change, a survey was made of a population of 1,054 doctors, nurses and medical students in two different regions. In this survey, 57% of the participants were of the opinion that brain death should be acceptable as "legal death". Interestingly, 32% of the participants considered it ethically acceptable for life-sustaining treatment to be withdrawn in order that an organ be made available for donation.⁵

An organ cannot be taken from a cadaver, unless the deceased drew up a written and signed document, which was approved by a physician, or declared his wish to donate his organs in the presence of two witnesses. However, if these criteria are not fulfilled, it is still possible to take an organ from a cadaver with the consent of his/her spouse, mature children, parents or siblings who were with him/her at the moment of death. If he/she had openly expressed opposition to transplantation when alive, organ transplantation is not allowed. If someone whose life has ended due to serious injury in an accident or natural disaster is not attended by any relative or close person and if the cause of death is not directly related to the organs to be donated, the organs of this person can be taken without anybody's consent. Certainly this last edict makes finding organs for transplantation easier. If no will or declaration has been made against it, corneas may be taken from the cadaver. Furthermore, the corpses of people who willed and donated their bodies for scientific research as well as corpses not claimed by anyone are given to universities to be used for research after being preserved for six months.^{6,7}

Coordination system

People who break the law on organ transplantation and those who carry out transplants for financial rewards are fined and sentenced to between two and four years of imprisonment. There is no special charge against physicians giving mistaken diagnoses of death. In such cases the prosecution will be conducted in accordance with other laws. The Ministry of Health established a scientific council for organ transplantation in order to control applications. The ministry, organ transplantation centres, and the Turkish Medical Association are represented on this council. So far there is no medical ethics specialist on this council. In addition, a coordination system for organ transplantation has been set up.

On the other hand, Turkish civil law, issued in 1926, states that nobody can abstain from exercising his civil rights, even partially. This gives rise to a legal contradiction with organ transplantation law. To overcome this drawback, an article regarding organ transplantation was added to the civil law in 1990. This additional article resolves the contradiction between written consent and the taking and transplanting of biological material of human origin.⁸

Abortion

The so-called abortion law⁹ came into effect in 1983. It is estimated that before this law was issued, about 400–500 thousand women annually attempted abortion, whereby some 10,000 women lost their lives each year. In practice, this kind of abortion is implicitly accepted in Turkish society.¹⁰ The law in question is actually on population planning. That abortion is considered within the framework of population planning may sound confusing. In its present state, the law regards the causes of abortion as part of population planning. Apart from abortion, the law includes clauses on sterilisation. Abortion is legal until the tenth week of a pregnancy. For later abortions, medical rationales are demanded. For abortion, the consent of the pregnant woman and, if she is married, that of her husband, is required. As for pregnant women who are not yet adult, the consent of both the pregnant woman and her guardian is necessary. If she is under guardianship and not legally mature, a justice of the peace as well as her guardian must give consent. Controversially, in the case of women who are mentally disabled no consent is necessary for the evacuation of the womb. In emergency cases, consent is also not imperative.

The law includes penal clauses as well. If someone performs an abortion on a woman without her consent, he can be sentenced to seven to twelve years' imprisonment. In pregnancies of longer than ten weeks' duration, the woman and the person who performs the abortion, even with her consent, are sentenced to two to five years. The physician must have the consent form signed by the woman and the other relevant individual(s) in order to be able to perform an abortion.

In vitro fertilisation and embryo transfer

The statute which regulates in vitro fertilisation and the establishment of centres where embryo transfers can be done came into effect in 1987.¹¹ It includes technical and administrative regulations. With this statute, the name of which was later changed, the Ministry of Health established a sci-

entific council on in vitro fertilisation and embryo transfer. The council consists of 14 members representing the ministry, the Turkish Medical Association and other physicians and academicians. There is no medical ethics specialist on the council. Following an amendment in 1990, written consent began to be taken both from the husband and the wife. The consent form, given in the appendix here, must be signed by the couple.

Ethics committees

There was no legal regulation proscribing ethical control of research on human subjects until 1990. In the beginning of that year, a statute on drug research was published.¹³ The objective of the statute was to establish a central as well as local ethics committees that would oversee clinical trials. It would not be unfair to say that ethical concerns were not much emphasised in this statute, which was drawn up predominantly by pharmacologists.

Until that date, there were ethics committees only in the major medical faculties of Turkey. The motive behind their establishment was practical, rather than academic. The fact that journal editors demanded ethics committee approval for articles sent to Western journals led to the establishment of ethics committees in some faculties. When you examine the instructions issued by these committees at that period, you can easily see that they are rather hasty instructions, and not arrived at as a result of thorough investigation. Although all ethics committees are revising their ways of operating at present, it is my contention that some mistakes continue to be made. In some faculties, for example, all kinds of ethical activities (research, clinical, academic etc) are dealt with by a single committee.

The statute does not require a medical ethics specialist to be on the Central Ethics Committee. This committee consists of the following members: The undersecretary of the Ministry of Health, who is the chairperson of the committee, three officials and three clinicians from the ministry, university teachers (three pharmacologists and three clinicians from medical faculties, three academics from pharmacy faculties and one from a faculty of law) and representatives from medical and pharmacy associations.

Local ethics committees are composed of three clinicians, one medical pharmacologist, one pharmacist, one biochemistry specialist, one pathologist, one specialist relevant to the investigation and, if possible, a medical ethics specialist (deontologist). The reason why the expression "if possible" is used might be that for the time being there is not a medical ethics specialist in each faculty.

Yet, it is not clear why there is no such specialist on the central committee. It is not easy to conceive of a committee that does not require a medical ethics specialist for itself, but recommends such a specialist to local ethics committees.

Local ethics committees make decisions on fourth and, if necessary, third-phase clinical trials. The Central Ethics Committee has the authority to decide for research at earlier stages. The representative of the team that will conduct the clinical trial applies to the committee, submitting a protocol file. Among the documents, a copy of the last part of the Helsinki Declaration, signed by the researcher, and a consent form to be taken from the patient are present. It is not stated whether the consent is "informed" or not, although, in actual practice, this proviso is needed.

Conclusion

In conclusion then, what can we say about the situation of bioethics in Turkey? Firstly, the determining factor motivating the introduction of legal regulations in the area of bioethics in this country has been the practical need to solve administrative and legal problems, rather than a desire to improve bioethical decision making. Though required on the local ethics committees, no medical ethics specialist needs to be present on the Central Ethics Committee. Ethics is not a consideration in any regulation: it is mentioned neither in the titles, nor in objectives nor in other places. The only ethical subject mentioned is "consent". Even though "informed consent" is not explicitly spelled out, the way that consent is described on the printed consent forms makes it clear that the consent referred to is informed consent. The reason why "written consent" has a special importance may be more to do with the wish to give legal protection to physicians than to protect and respect the patient or research subject.

Appendix

CONSENT FORM FOR IN VITRO FERTILISATION AND EMBRYO TRANSFER

We listened to all of the explanations made by the physician before the procedure. We were thoroughly informed about the probable complications and medical consequences of the in vitro fertilisation and embryo transfer procedure and were told that this procedure could not be attempted without our consent.

The following points particularly were made clear to us:

1. The procedure has no guarantee of success.
2. The laparoscopic and other procedures that might be employed for removing oocytes are risky.

3. There is a probable fetal anomaly risk and when pregnancy occurs the tests that will be carried out to detect probable anomalies have certain risks.

We declare that we are not under any threat, pressure or suggestion and that all the responsibility belongs to us, and we give our consent to the storage of our frozen embryos to be used subsequently (provided that the material will not be used after three years) and to the destruction of preserved embryos before this period is over in case one of us dies or our divorce is legally completed, or if we so wish, and that we will not attempt to exploit the consequences against each other and the physician, and we are ready to suffer all the consequences.

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