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Egypt's draft laws on organ transplantation

Introduction

Organ transplantation is – female genital mutilation beside¹ – the major bioethical issue in Egypt, being heatedly debated in the Egyptian media and in parliament.² For some time international newspapers have reported about organ trafficking in Egypt, transplant tourism and kidnapping for the procurement of organs. The Egyptian Minister of Health, Hatim al-Gabaly, was finally determined to regulate organ transplantation by law in 2007. Therefore the proposals for laws on organ transplantation were discussed and are still in the process of negotiation in the Egyptian parliament. In the following the present regulations on organ transplantation, draft laws and Islamic statements will be presented and discussed.

Legal background

Although Egypt has no transplantation law, transplantations are not carried out completely without a legal framework, as bodily injury is prohibited by article 240 of the Egyptian Penal Code. Physical harm caused by physicians is evidently covered by it, especially when a medical intervention is performed without obtaining the patient's consent.

Law number 103 of 1962 and law number 79 of 2003 regulate cornea banks and eye grafting. The decrees of the Minister of Health and Population number 291 of 2000 and 234 of 2003 elaborate on the two laws.³ And law number 51 of 1971 on the regulation of medical centres provides regulations for transplant centres. The Professional Code of Conduct of 1974 in its amended version of 2003 (part three, section three) deals with the “procurement and transplant of human organs and tissues”. It states that transplantations are subject to the ethical norms and regulations issued by the Egyptian Medical Syndicate. The physician has to inform the donor of the consequences and risks of the operation. The Code of Conduct interdicts the trade with human organs, tissues, cells and genes and prohibits the physicians to participate in it.⁴

In 1988 the Egyptian Medical Syndicate (EMS) issued an internal regulation on organ transplantation. It stipulates the conditions under which the EMS may give its approval to an organ transplantation. The regulation covers only kidney and liver transplants and requires the surgeon to make application for each transplantation at the EMS. Furthermore it specifies the medical, administrative and general conditions under which the EMS gives its approval. The medical requirements include particulars on the hospital, patient, surgeon and donor, but also the clinical findings, laboratory analysis, sonograms etc. Administrative requirements include documenting the degree of kinship between the donor and the recipient, photos of them and the documentation of the informed consent. Finally the general conditions stipulate that the donor should not be under 21 years of age, the administrative fee for the consent of the EMS is 300 Egyptian Pounds (about 40 Euro) for Egyptians and 1,000 Egyptian Pounds (about 130 Euro) for foreigners and is not

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I would like to express my sincere thanks to the Egyptian Medical Syndicate (EMS) for supplying me with the texts of the draft law on organ transplantation of the Egyptian State Council, the decision on organ transplantation of the Academy for Islamic Research and the internal regulation for performing organ transplantations by the Egyptian Medical Syndicate.

1 Cf. Fischer, Nils: “Das zähe Ringen um ein Verbot der Frauenbeschneidung” INAMO 14 (2008) 55: 37-43.

2 Cf. Fischer, Nils: “Die rechtliche Kontroverse über die Organtransplantation in Ägypten” INAMO 15 (2009) 57: 31-35.

3 Cf. Boustany, Fouad N.: Final report of mapping bioethics regulations in 16 Arab member states in the UNESCO. Paris: UNESCO, 2008: 31.

4 Decree of the Minister of Health and Population 238 § 49-51 (2003).

charged in the case of first-grade relative donors.⁵ It seems that the internal regulation does not allow transplantations from non-related donors.

Since 1992 the Egyptian Society of Nephrology (ESN) prohibits its members to perform organ transplantations involving non-related donors.⁶ And the ESN commits itself to the principles of the Declaration of Istanbul on Organ Trafficking and Transplant Tourism which have been issued by the participants of the International Summit on Transplant Tourism and Organ Trafficking organised by the Transplantation Society and International Society of Nephrology in 2008.⁷

The debate on organ transplantation in Egypt

In the early 1960s the first cornea transplants were performed, followed by the first kidney transplantation in 1976 and bone marrow transplantation in 1989. In 1992 the first liver was transplanted in Egypt. Since the 1950s Islamic religious scholars regularly deal with the question whether organ donation and organ transplantation is allowed according to sharia law in their legal opinions (fatawa). In general they rate organ transplantation as allowed by sharia law and the majority of them accepts brain death as secure criterion for the determination of death. They condemn organ trade and monetary incentives for organ donation. The Islamic scholars regard the exploitation of the weak and poor and the severe impairment of the donor's health as illicit. They emphasise that organ donation should only be accepted on the basis of a voluntary decision, and that brain death should be diagnosed by at least two physicians. A minority of the scholars oppose organ transplantation completely, another minority allows financial compensations. Within the debate of Muslim scholars on organ transplantation several particularly Islamic questions are discussed. Some disputed issues are whether organ transplantation between Muslims and non-Muslims is allowed, whether organs from persons sentenced to death according to Islamic law (hadd punishment) can be removed for transplanta-

tion and whether the organ donor's bodily resurrection is assured on day of resurrection.⁸ While these issues seem to be strange and remote, an important objection of Muslim scholars is that sexual and reproductive organs should not be transplanted, especially when genetic material could be transferred which would in case of a pregnancy result in the violation of the Islamic principle of filiation (nasab).

Although Muslim scholars approve organ transplantation in general, Muslim communities are reserved against post mortem organ transplantation. While living related donor transplantation is relatively frequently practice as it is perceived as a form of solidarity within the family, post mortem organ donation is seldom performed. The major reason has to be seen in the traditional respect for the dead.

The Egyptian debate on organ transplantation is marked by two major Islamic positions. The first consists in the position of the popular Egyptian sheikh Muhammad Mutawalli ash-Sha'rawi (1917-1998) who criticised and banned organ transplantation in his weekly religious television programme in 1989. Ash-Sha'rawi judges intensive care and organ transplantation as the delay of man's meeting with his lord. His statement provoked a heated debate in the Egyptian society.⁹ The second position is associated with the Egyptian Muslim Brotherhood (Al-ikhwan al-muslimun) and is rooted in their scepticism towards the concept of brain death and the accentuation of Islamic criteria to determine death. Official Egyptian religious scholars, like the grand mufti of Egypt and the grand sheikh of the Azhar University, and official Islamic councils have repeatedly issued recommendations and fatwas in which they allow living and post mortem organ donation and approve the concept of brain death.

Decision of the Academy for Islamic Research

One of the latest documents is the decision of the Academy for Islamic Research (Majma' al-buhuth al-islamiya) which is the highest council for Islamic research at the Azhar University in Cairo. The acad-

5 EMS "Al-auraq al-matluba wa-sh-shurut al-wadjib tawafara-ha li-l-husul 'ala muwafaqat zar' al-kula wa-l-kabd".

6 Cf. Atighetchi, Dariusch: Islamic bioethics: Problems and perspectives. Springer: 2007: 190.

7 ESN "Measures to control organ trafficking in Egypt". <http://www.esnonline.net/news_details.php?id=25> (2009-06-16).

8 Cf. Krawietz, Birgit: Die Hurma. Schiariatrechtlicher Schutz vor Eingriffen in die körperliche Unversehrtheit nach arabischen Fatwas des 20. Jahrhunderts. Berlin: Duncker & Humblot, 1991: 169-202.

9 Cf. Krawietz 1991: 198-199.

emy consists of fifty experienced and well-known Islamic scholars representing all Islamic schools (*al-madhib al-islamiya*) from Egypt and abroad. The academy's president is the grand sheikh of the Azhar University. Its function is to promote Islamic culture and to issue Islamic rulings (*fatawa*). The academy's organs are assigned to put its policy and decisions into practice. On its 13th conference in March 2009 the Academy for Islamic research dealt with the issue of organ transplantation. The Islamic religious scholars were consulted by medical doctors. They stated in their decision, that the Islamic law (*shari'at al-islam*) has bestowed dignity upon man irrespective of him being alive or dead. Any violation is to be considered as an assault on this same dignity and therefore prohibited. The sale of the human body and its organs is prohibited for this reason. In regard to living donors the voluntary donation of organs by an adult is permitted, when his decision is free and regardless whether he donates it to a family member or someone else. It is not allowed to donate vital organs and to severely harm the health of the donor. It is prohibited to transplant reproductive organs and tissues. It is allowed to transplant organs of dead donors to save the life of someone suffering an incurable disease if the attending physicians agree and the consent is obtained during lifetime or given by a family member. If there is no legal guardian or Islamic legal guardian, the responsibility falls to the Muslim community. It is allowed to transplant organs of someone sentenced to death when he or his legal guardians agree. It is required that death is testified with certainty, which can be established in two ways: first the heart has to have stopped beating, respiration must have stopped completely, reanimation is impossible and death is testified by trustworthy physicians. Second, alternatively the physicians may ascertain brain death. When these conditions are fulfilled the parties involved in organ transplantation (physicians, medical association and minister of health) are free to lay down the rules for organ transplantation.¹⁰

Draft-law on organ transplantation (EMS, 2008)

The Egyptian Medical Syndicate (EMS, *Niqabat atibba' Misr*), which is the Egyptian medical association, and its members are engaged in the debate on

a law on organ transplantation for years. The EMS has issued the internal regulation on organ transplantation in 1988 to control organ transplants and to ensure the compliance with medical and ethical standards. The EMS has repeatedly proposed draft laws in the parliamentary discussion on organ transplantation. Especially the president of the EMS, Hamdi as-Sayyid, has argued for an efficient regulation of the issue in debates of the Egyptian parliaments' health committee. The draft law on organ transplantation which the EMS introduced in the debate in 2008 defines death as the complete separation (*mufaraqa*) from human life¹¹ which is determined by exact medical standards (§ 2). The draft law stipulates the establishment of a national commission for organ transplantation appointed by the minister of health (§ 3). Organ transplantation is only allowed as the last effort to save a life, but is forbidden if transplantation of organ or tissues may result in confusion of filiation (*ikhtilat al-ansab*) (§ 4). The draft prohibits buying and selling of human organs and tissues (§ 6). It permits living organ donation only among Egyptian family members up to the fourth degree (§ 9) and post mortem organ transplantation when consent is obtained, human dignity (*al-karama al-insaniya*) is respected and when no financial compensations are paid (§ 10). The draft law demands the expertise of a medical committee of at least three specialised physicians to determine the death according to the international medical standards which have to be elucidated by the law (§ 11). The draft law fines offences depending on the degree of the violation with 20,000 (about 2,700 Euro) to 500,000 Egyptian Pounds (about 68,000 Euro) and a custodial sentence of at least 5 years (§ 12-16).¹²

Draft law on organ transplantation (Supreme Administrative Court, 2008)

At the beginning of the year 2009 the office of the vice-president of the Egyptian State Council (*Madjlis ad-daula*), being Egypt's supreme administrative court, prepared a draft law on organ transplantation which was discussed in the Health and

¹⁰ Majma' al-buhuth al-islamiya "Al-bayan al-khatimi li-mu'tamar Majma' al-buhuth al-islamiya ath-thalith 'ashara".

¹¹ The standard definition of death in Islamic texts is "separation of the soul from the body" (*mufaraqat ar-ruh li-l-djasad*).

¹² EMS "Mashru' qanun raqm () li-sanat 2008 bi-sha'n naql wa-zira'at al-a'da' al-bashariya". <http://www.ems.org.eg/akhpar_hama/Q-N-A19-10.doc> (2009-06-16).

Environment Affairs Committee (Ladjnat ash-shu'un as-sihha wa-l-bi'a) of the Egyptian parliament, the People's Assembly (Madjlis ash-sa'b) and in the Shura Council (Madjlis ash-shura) which is a consultative council to the parliament. The draft law covers the transplantation of human organs and tissues (§ 1) and defines death as the complete separation (mufaraqa) from human life (§ 2). It allows organ transplantation as ultimate medical treatment between living family members up to the fourth degree (§ 3-4). It permits post mortem organ donation between Egyptian citizens (§ 5), demands the fair allocation of organs (§ 6), stipulates the establishment of a committee for organ transplantation (§ 8), and defines the minimum requirements for organ transplantation centres (§ 10). § 13 of the draft law deals with the diagnosis and the criteria of death which should be established by a committee according to the clinical and assured medical experiences. It punishes violations with a fine ranging from 100,000 Egyptian Pounds (about 13,500 Euro) to 300,000 Egyptian Pounds (about 40,500 Euro) and imprisonment of minimum 5 years (§ 15-19).¹³

Debate in the People's Assembly

As the Constitution of the Arab Republic of Egypt states in article 2 that the "principles of Islamic law (Shari'a) are the principal source of legislation" the Egyptian government seeks religious legal advice from the official religious scholars and councils for Islamic law. Therefore the health minister's initiative of 2007 was accompanied by the publication of new legal opinions, but also by a survey on the Egyptians attitude towards organ transplantation. The survey showed that 75 % had heard about the possibility of living organ donation and only 64 % knew about post mortem organ transplantation. 32% of the interviewees opposed organ transplantation while 27 % approve it under conditions and 26 % generally approve it. The main reasons for rejection were religious concerns and the conviction that Islam does not allow organ transplantation.¹⁴ Opposition against the regulation of organ transplantation does not only come from single members

of parliament from different parties but is particularly associated with the parliamentary group of the Muslim Brotherhood. They strongly oppose the criterion of brain death and criticise that the draft laws legitimise the exploitation of the poor, especially when post mortem organ transplantation would be allowed. They favour living organ donation and stress the protection of physical integrity. In spring 2009, they emphasised that they do not want to obstruct a legal regulation and agreed to the draft law in the health committee.¹⁵ Thereon it has been submitted to the Shura Council which submitted the draft law to the conciliation committee (al-Ladjna al-mushtaraka) between the Health and Environment Affairs Committee and the Constitutional and Legal Affairs Committee (Ladjnat ad-dusturiya wa-t-tashri'iyah) of the Shura Council. During the discussion in the conciliation committee it was suggested that the law should be separated into a law on life donation and organ transplantation and a law on post mortem organ donation to separate the controversial issue from the uncontroversial. Nevertheless the unchanged draft law was finally approved in June 2009.¹⁶ As further steps of the legislative procedure the draft has to be approved by the Shura Council and finally by the Egyptian parliament.

Conclusion

Although up until now Egypt has not regulated organ transplantation by law, organ transplantation is not completely unregulated. The existing laws provide a sound framework for kidney, liver and cornea transplantation. Severe violations of the law like kidnapping, organ trafficking and desecration of dead bodies cannot be prevented by an organ transplantation law but generally fall into the scope of penal law. Infractions have to be punished by law enforcement authorities and also be socially discouraged. The function of an organ transplantation law is not to prevent scandals, unethical behaviour and malfeasance but to provide a legal basis for the practice of organ transplantation, to define limits and to state the responsibilities of the parties

13 Madjlis ad-daula "Qanun raqm () li-sanat 2009 bi-sha'n naql al-a'da' al-bashariya".

14 Ghatrifi, Ala al-: "32 % min al-masriyin yarfadun naql wa-zira'at al-'ada' bain al-ahya'... wa-26 % yuwafiqun" al-Masri al-yaum (4/9/2007). <<http://www.almasry-alyoum.com/article2.aspx?ArticleID=74885>> (2009-06-16).

15 Cf. Fischer 2009.

16 Cf. 'Abd-al-Halim, Khalid 'Umar: "'Sihha' wa-'Dusturiya ash-Shura' tawafaqan mabda'iyah 'ala qanun naql wa-zira'at al-a'da'... wa-mutalabat bitaqsimi-hi ila djuz'ain" al-Masri al-yaum (15/6/2009). <<http://www.almasry-alyoum.com/article2.aspx?ArticleID=215102>> (2009-06-16).

involved. The call for regulation of post mortem organ donation was aimed at the establishment of new transplantation programmes. But the objection that the establishment of such programmes would complicate the situation in Egypt instead of solving problems is not without merit. The central issue of the debate is not the acceptance or rejection of brain death as criterion. In fact the core problem is violation of fundamental human rights. This established trust in the law is surprising, especially considering prior experience with the legislation on cornea transplantation showing clearly that infringement of rights and ethical principles can not be prevented. Neither shall the contributions of Egyptian medical associations and physicians to the debate on organ transplantation be denied nor

their commitment cannot be belittled. Nevertheless it has to be granted, that a part of the medical profession in Egypt plays a decisive role in illegal organ transplantations. Regrettably neither the medical associations nor the Egyptian state seems to be able to stop them. Partly this may be due to Egypt being a huge country with a high fertility rate and its government facing severe tasks in providing for its population for example sufficient and affordable nutrition, basic medical care and education. For this reason it can be summarised that “economic and political ‘stability’ and commitment to human rights are essential for the success of transplantation programmes” and that “poverty, unless ameliorated, will continue to engender the buying and selling of organs.”¹⁷

17 Badran, Ibrahim: “Egypt”, in: World Health Organization (WHO): Report. Ethics, access and safety in tissue and organ transplantation: Issues of global concern. Madrid, Spain, 6-9 October 2003. Geneva: World Health Organization (WHO), 2004: 19.