Should Commercial Organ Donation Be Legalized in Germany? An Ethical Discourse

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ABSTRACT

Objective. We evaluated the arguments pro and con concerning kidney sales from a German perspective. At present, we see social, medical, and ethical reasons why organ selling should not be legalized in Germany.

Discussion. Legalization of organ selling would weaken the principle of solidarity within the German health system. Conversely, profit making will undermine the principle of social justice. Within the present social system in Germany, there is no economic pressure to sell an organ to save life, and there is no medical need to buy a kidney. Also, there exists the risk that opening the market for organ sales will de-motivate potential directed organ donors. Relatives would have more doubts about giving their consent to donate organs of their deceased. Moreover, the historical experience with the “action T4” of the Nazi regime sensitized German society for the categorical imperative set forth by Immanuel Kant (1724–1804), namely that man is not a means, but an end to himself. By selling one’s kidney, the donor uses himself as a means and as an instrument for the end result of gaining money. With directed organ donation, the welfare of the recipient is the end result. The pending reform of the German health system needs a more communitarian sense, which will be eroded should organs be sold and no longer donated as gifts.

Conclusion. Germany’s special historical experience and a deeply embedded consent toward ethical values give reason for the prohibition of organ selling in Germany.

KIDNEY transplantation is considered the best treatment for end-stage renal failure. As compared to dialysis, kidney transplant patients survive longer,¹ their quality of life increases,² and cognitive impairment improves.³ At €70,000 per year, hemodialysis is much more expensive than kidney transplantation⁴; the cost for a single kidney transplant from a live donor is €75,000.⁵ Long-term therapy of a successfully transplanted patient costs €20,000 annually.⁶ While the number of patients with end-stage renal failure is growing, the number of organs from brain-dead donors has stagnated. Additional kidneys after brain-death can only be obtained from donors with increasing age and worse transplant outcomes.⁷ Overt or tolerated organ sales are currently practiced in several countries worldwide.⁸ We evaluated the arguments for and against the selling of human organs in Germany.

PRINCIPLES OF MEDICAL ETHICS

The working group on medical professionalism consented on a charter of three fundamental principles in medical ethics.⁹ The principles are (1) the primacy of patient welfare, (2) patient autonomy, and (3) social justice. At first glance, the principles of recipient welfare and donor autonomy are clear arguments for the legalization of commercial organ donation. Even the principle of social justice can be a reason for organ selling if dialysis cannot be afforded. The commercialization of organ donation might be justified for special parts of the world—but not in Germany. Discourse ethics is seeking the consent of those involved.¹⁰ The consent might be different for various conditions, and the consent might change if the conditions change.¹¹ Our argument is based on the present conditions in Germany.

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THE GERMAN SYSTEM

We see social, medical, and ethical reasons why organ selling should not be legalized in Germany (Table 1). First, the German health system has been based on the principle of solidarity ever since Otto von Bismarck (1815–1898) and August Bebel (1840–1913). At present, the introduction of market principles into the system of social security seeks to reduce the growing demands and to contain the expanding costs. However, legalization of organ selling would weaken the principle of solidarity, conversely strengthen profit thinking, and undermine the principle of social justice. A free organ market would only benefit the rich. If made legal, misuse of the system could hardly be prevented. Even in a regulated market, ethical values would be replaced by economic interests. Also, there are signs that a “new impoverishment” would make the most vulnerable people at risk of having to sell an organ. Organ selling is prohibited by German law (§17; 1 and 2 TPG). This law is in conflict with the ethical principle of autonomy of the donor and his or her right to sell an organ. Within the present social system in Germany, however, there is no economic pressure to sell one’s organ in order to make a living. There is also no medical urgency to buy a kidney. In Germany, mortality on hemodialysis is 15.6% per year; this is significantly lower compared to 21.7% in the United States, which has a mixed health system.

Second, there is a risk that by opening the market to sell human organs, consent by relatives of brain-dead donors will diminish. Naïve objections against the diagnosis of brain death might resume. Making money by selling organs could de-motivate potential directed organ donors: Why should one take a substantial risk for something like organ transplants originate from directed donation.19 Personal relations and emotional connections are social values that constitute the health of a society.

Solidarity can be seen as the willingness to help another individual. Directed organ donation is the paradigm for solidarity in a communitarian sense. To donate an organ is an act of practical ethics because three parties—donor, recipient, and society—will benefit from it. There is a basic consent on social and cultural values that give ethical reasons to prohibit organ selling in Germany. Solidarity and social consent could be eroded by organ selling. Commercialization of kidney donation might first do harm to the health system and thus to the ethical principle of social justice. Furthermore, this will have negative effects on the principle of primacy of patient welfare. If the social health system in Germany deteriorates this will not be in the best interest of kidney patients. Thus, the autonomy of the donor and his or her right to sell a kidney must be postponed, and priority should be given to the principles of welfare of potential kidney recipients and to the principle of justice within the German health care system.

In conclusion, in Germany, special historical and ethical reasons for the prohibition of organ selling are deeply embedded in the society. Owing to the increasing organ shortage and in the interest of our patients, a discourse on the validity and temporality of these reasons should be initiated within the entire society.

Table 1. Special Reasons Why Organ Selling Should Not Be Legalized in Germany

| 1. Social | ● Health system is based on solidarity, not on market principles
|           | ● No economic pressure to sell an organ
|           | ● No medical need to buy a kidney
| 2. Medical | ● Organ market could de-motivate directed live donors
|           | ● Financial incentives could corrupt consent to donating organs of the deceased
| 3. Ethical | ● History of Nazi regime and “action T4”
|           | ● Kant’s categorical imperative that man should not be a means to an end to himself
|           | ● Organs as gifts are paradigmatic for communitarian nonprofit thinking

REFERENCES

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