



E7 The Right of Being a Donor Until the Real Death and Beyond

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After attending this presentation, attendees will understand the differences of opinion and legislation among Italian and European Union (EU) and other EU countries in the field of organ transplants as well as the definition of death.

This presentation will impact the forensic community by analyzing social, ethical, and legal aspects among different nations in the provision of organ transplants, taking into account rare aspects concerning the definition and determination of death, procedures of organ donation, and consent/right of being a donor.

This report reviews the ongoing debate concerning organ transplantation in Italy, comparing the Italian point of view with other countries'. Currently, the challenge in the EU regarding organ transplantation is to increase the supply of donors and ensure the quality and safety of the process from donation to transplantation. Therefore, in December 2008, the European Commission formulated several priorities to be enacted in order to strengthen the cooperation among Member States. These priorities were included in the "Action plan on Organ Donation and Transplantation (2009-2015): Strengthened Cooperation between Member States." The current legislation in Italy (Law 578/1993 - DM 2008) accepts two different assessments of death: an observation period of six hours with two checks, using EEG at the beginning and at the end of the period or, alternatively, continuous ECG for at least 20 minutes. Despite the obvious limitations imposed by the criteria of determination of death, the quality of the performed transplants has improved significantly with transplant outcomes comparable or superior to the main European countries (as evidenced by the main international registries). This achievement has been confirmed by a detailed study performed by the Italian Superior Health Institute (ISS - the leading technical and scientific public body of the Italian National Health Service) that, in line with European goals, has initiated a project for assessing the quality of health care with the aim of improving health conditions, raise the level of satisfaction of citizens and improve transparency.

Since 2008, due to the application of experimental protocols adopted by some leading Italian hospitals, the damages caused by prolonged cardiac observation period (20 minutes) have been minimized. These protocols are conceived to optimize logistics planning for the early identification of potential Non-Heart-Beating Donors (NHBDp). The NHBDp is a subject which doctors should consider the possibility to become a NHBD, before the assessment of clinical and legal death. The NHBDp category is essential in the organization of health care, and is compliant with legal and ethical principles. The organs preservation should be started very early (from the moment there is a possibility of evolution from a NHBDp into NHBD), applying all actions and techniques suitable for this purpose. However, always respecting the consent and (if applicable) the status of a living person, and the dignity of the corpse. Without taking these preventive actions, that are put in place while waiting the assessment of the individual's will or, alternatively, the non-opposition of relatives or legal representative (pursuant to Law 91/1999), the medical staff may infringe the right to donate organs (or the principle of non-opposition). Therefore, it would be contrary to the purposes of the law and to the respect due to the will of the donor, not to guarantee his right of being a donor on technical grounds.

In conclusion, although Italy does not implement the provisions of the Protocol of Pittsburgh, adopted by several countries (such as US, ES, NL), we are able to obtain very encouraging results in terms of transplants thanks to maximum optimization of all the technical, organizational and logistical aspects of the organ donation process.

Organ Transplantation, Informed Consent, Death