



Council of Europe Standards on transplantation of human organs and tissues

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Council of Europe Sources

- European Convention on Human Rights (1950/53)
- Oviedo Convention (1997/1999)
- Additional Protocol concerning Transplantation of Organs and Tissues of Human origin (2002/2006)
- Convention against trafficking in Human Organs (2015/2018)
- Non-binding principles

European Convention on Human Rights

- Article 2: “Everyone’s right to life shall be protected by law.”
- Article 3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”
- Article 8: “Everyone has the right to respect for his private and family life, his home and his correspondence.”



Oviedo Convention

- Provisions concerning protection of living donors (Articles 19 and 20)
- Article 21: «The human body and its parts shall not, as such, give rise to financial gain.»

Additional Protocol concerning transplantation of organs and tissues of human origin

General framework for the protection of donors (living or deceased) and recipients

Convention against trafficking in Human Organs

- The Convention calls on governments to establish as a criminal offence the illegal removal of human organs from living or deceased donors:
- where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;
- where, in exchange for the removal of organs, the living donor, or a third party, receives a financial gain or comparable advantage;
- where in exchange for the removal of organs from a deceased donor, a third party receives a financial gain or comparable advantage.
- The Convention also provides protection measures and compensation for victims as well as prevention measures to ensure transparency and equitable access to transplantation services.

Case Study: Consent to removal from living donor

- Living donation from daughter to father
- Daughter not fully informed on
 - a) her own health risks
 - b) the father's risk to lose the organ

Hospital's argument: Daughter would have given consent even if she had been fully informed (hypothetical consent)



Bundesgerichtshof

search item



Federal Court of Justice

- Information provided to the daughter did not comply with the requirement with the law on transplantation:
 - She was not fully informed about her own possible health risks
 - She was not fully informed about the prospect of success of the transplantation (= risk that the father might lose the organ).

Federal Court of Justice

- Law on transplantation provides strict information duties prior to consent in order to protect the potential donor from causing serious personal harm to himself (« protect the donor from his own actions »)
- In case of donation of a non-regenerative organ to a close relative the donor finds himself in a particular sensitive situation
- Assuming « hypothetical consent » would undermine the necessary trust of living donors into the translation system
- Strict compliance with the provisions of the Law on Transplantation is an indispensable prerequisite for promoting living donations in the interest of saving lives.

Federal Court of Justice

Conclusion:

The Consent given by the daughter was not valid, because she had not been fully informed of all risks.

The hospital is fully liable for all damage suffered by the plaintiff due to the removal of her kidney.

Congratulations!

