

The Lifespan End Ethical Decisions in the Context of Intercultural Approaches in Germany and Turkey

Legal Perspective / Turkey

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TERMINATING MEDICAL TREATMENT – PASSIVE EUTHANASIA

Article 90/5 of the Constitution provides: when Human Rights are in contradiction with international conventions, the Convention will prevail.

Article 2 of European Convention on Human Rights and Biomedicine states that people's welfare and interests shall prevail over the interests of science or society. **Article 5/1** states that in order to intervene with health of an individual, a permission must be obtained from the relevant party. **Article 8**, however, provides that emergency cases are an exception. **Article 9**: In cases where the patient is not able to express his consent due to his illness, the medical intervention will be performed considering the patient's requests made in advance when he was still able to express him/herself.

Turkish Criminal Code art. 84 provides that any kind of help to suicide is illegal and will be punished. Article 81 states that deliberate killing is a murder.

Turkish Criminal Code art. 26/2: death constituted as a result of an expressed consent of the deceased will not be considered as crime.

The Directive on Patients' Rights art. 13 prohibits Euthanasia.

Article 14 provides: as required by the patient's condition the medical staff must show reasonable care. In the case where it's possible to save the patient's health or life the necessary treatment must be made in order to relief his suffering.

Articles 22 and 24 provide: when the consent or permission is not present, the medical intervention can not be performed.

Article 25: It's in the right of patient to refuse the medical treatment and request to stop it half-way through.

LIABILITY: In the cases where the medical treatment has been stopped on patient's request, the written proof must be provided by the patient or by his legal representative.

Turkish Criminal Code Drafts: 1987-1989-1997-1998-2000: the liability for a criminal offence such as Euthanasia is very simple and indoors 1 or 2 yeras of imprisonment.

GIVING INFORMATION ABOUT PATIENT- INFORMING PATIENT FAMILY OR RELATIVE

Enlightenment is an essential condition for the patient's preferences: The relationship between consent and informing is important.

Institution of patient's testament is not regulated in Turkish law.

As a rule, patient's relatives or family should be considered, where patient is unable to understand the speech.

There is no law on the protection of personal data in Turkey. Only the Criminal Code and Criminal Procedure Law has several articles.

EUROPEAN BIOMEDICINE CONTRACT

Art. 2: Patient's best interests and welfare is above scientific improvement and benefit of society

Art. 5: The person should be well informed before his consent.

Art. 9;. A patient, who is not in a position to express his opinion about medical intervention, will be medically intervened considering his previous opinion before this case.

Art. 10/2: Everyone has the right to request to be shown respect in their private life with regard to information about their own health.

Art. 10/3: In exceptional cases, restrictions by law in terms of patient's benefit in the exercise of the rights referred to in paragraph 2 may be foreseen

CONSTITUTION

Art. 20/3: Everyone has the right to protection of personal data. These rights; include rights to request to learn about the personal data concerning him or her and also with actual access to that data. Principles regarding the protection of personal data shall be regulated by the law.

MEDICAL DEONTOLOGY REGULATION (MEDICAL ETHICS LAWS)

Art. 14 / 2-3: PROVISION ON MEASURES TO BE TAKEN BY DIAGNOSIS:

Doctors and dentists can cheer up by giving hope to their patients, if there is a possibility to lead to increase in diseases having a negative effect on the morale of the patient. If there is no possibility to increase diseases via diagnoses, the precautions that should be taken according to diagnoses should be told clearly to the patient. However, if the course of the disease has grave consequences, then it is suitable to hide it from the patient.

The situation can be implied to a diagnosed patient directly with a great care. **PROHIBITED:** if it is requested by the patient that such a prognosis should not be informed to his family, but it has been declared to the designated person, the situation cannot be informed to the family.

Art. 15: Doctor will report according to the scientific rules and conscientious blood samples. Report or other document cannot be provided for a particular purpose or friendship

PATIENT'S RIGHTS REGULATION

Art. 15: Patient is entitled to request information orally or in writing about all the details of his health status. Health information can be requested by the patient himself or by his parent or guardian in cases where a patient has no ability to speak. Patient can entrust someone to obtain information about his health status to the 3rd party.

Art. 16 Patient's records and files containing information about the health status can be examined directly, by the legal representative and a copy can be obtained. Only records related to the treatment of the patient can be seen.

Art. 18: Information is given in accordance with the patient's mental condition and in a gentle way.

Art. 19: If there is a possibility to increase the illness by making bad influence on the spiritual condition of the patient and its' outcome would be severe, it is permissible to hide diagnosis from the patient. Patients or his relatives, should be given information about his health status, at the discretion of the physician under the conditions established in the statute. A diagnosis that has no treatment can only be implied to the patient by a doctor. If patient has no opposition or there is no entrusted person to notify about medical condition, the family will be notified directly of such a diagnosis.

Art. 20: Patients may wish not to give their family or relatives information about the health status; for the exclusion of the necessary measures required by the relevant legislation, that can be taken by a competent authority according to the nature of the disease.

TURKISH PENAL CODE

Art. 134: Violating the confidentiality of private life is a crime. **Art. 135/2:** To seize or give away personal data unlawfully is an offense. **Art. 136/1:** To give personal data to another in violation of the law, seize or spread it, is an offense.

Art. 137/1: If the offender is a public official or a particular professional, penalty is increased by half.

CRIMINAL PROCEDURE LAW

Art. 80/1: Examination results carried out on the body parts which are taken from accused, victim or another person for physical examination or the molecular, genetic analysis are considered personal data, and can not be used for any other purpose; the file contents can not be given to another person by authorities who have right to learn the results.

LAWS AND REGULATIONS THAT PREVENT PATIENT TO BE INFORMED ARE PARALLEL TO

BIOMEDICINE CONTRACT. HOWEVER: 1) It is not within the provision of law. 2) There is no constitutional basis. 3) There is no such parallelism to informing family. 4) Patient's Rights Directive Art. 20 "indicating, giving

BY THE END OF PATIENTS LIFE - INTERRUPTION OR LIMITATION OF TREATMENT?

When death should take place? 1) According to Organ and Tissue Transplant 2, a doctor will determine unanimously the 'state of death' 2) Regulations Appendix 1: 'The diagnosis of brain death'
If treatment is available, it must be performed before death.

EXCEPTION: Patient can say or might have said in advance, otherwise (In Turkey, it depends on family – particularly in attempted suicide case)

The consent of spouse in abortion? : 1) Population Planning Law 6 / 2 (SPOUSE SHOULD ALSO GIVE CONSENT), 2) If married, the consent of the spouse is required (Patients' Rights Directive art. 30/3), 3) **the Turkish Penal Code** (SPOUSE'S CONSENT IS NOT REQUIRED).

Organ Transplantation Law Act art.14: 1) Spouse, children, parents or relatives decision can only be applied, if patient has not already given consent openly, closely, or conjecturally) 2) The decision of at least one from the previously listed is enough.

MEDICAL DEONTOLOGY REGULATION

Art. 14/1: Doctors and dentists provide sanitary care required by the patient's condition. When saving or protecting the patient's life is not possible, the doctor is obliged to try and to reduce or relief suffering.

Art. 15/2: Doctor, if necessary, even at the expense of discontinuing the treatment, shall strive to ensure the observance of hygiene and protection rules.

Art. 19/1: Doctors and dentists with professional or personal reasons can leave the patient before the end of treatment.

Art. 19/2: However, in such cases, it is essential to inform the patient on time by leaving enough time to allow another colleague to take over the treatment. If the release is likely to harm the patient's well-being, endanger his life, the patient cannot be left, until another colleague is provided to take over.

Art. 20/1: Doctors and dentists, should not prescribe a medicine to a patient when it is clear that the medicine will have no beneficial effect. However, in the cases where the medicine will have no effect to the fundamental condition of the patient, but will make his decease more comfortable, the doctor can prescribe it.

Art. 20/3: Doctors including dentists, should not make a patient undergo unnecessary costs for the treatment which will not benefit that particular patient

PATIENT'S RIGHT REGULATION

Art.5: (Principles): a) In each page of the Regulation it is always considered that the most basic human right is to live in good health in terms of physical, emotional and social aspects. b) An individual has the right to protect any tangible and intangible assets, has the right to development and the right to be treated humanely as a patient. No competent authority can eliminate these rightsd) A person's body integrity can not be touched without his/her consent, with an exception of medical necessity in the cases prescribed by the law.

Art. 6: In order to promote healthy living within the framework of justice and fairness a patient is entitled to benefit preventative treatments according to his needs. This right involves receiving healthcare in any medical institution where medical staff ought to provide appropriate health services in accordance with the standard.

Art. 14: The medical staff obliged to provide reasonable medical care suitable for the patient's condition. In cases where it is not possible to save patient's life or health, the treatment of suffering relief must be used.

Art. 27: Implementation of Non-Conventional Treatment Procedures

APPLICATION OF TRADITIONAL AND COMPLEMENTARY MEDICINE REGULATIONS (RG: 27. 10. 2014 – p: 29158)

Art. 1: Purpose: The methods of traditional and complementary medicine for human health must be authorised and regulated by the legislator within the scope of principles and procedures determined and implemented by trained professionals.

CONSTITUTION

Art. 5: (The State's purpose), **Art. 12:** fundamental rights protection, **Art. 17:** untouchable patient's physical and spiritual existence.

Art. 56/3-5:

1- The state ought to ensure of everyone's physical and moral health; taking care of human and material resources and its' increasing productivity creating cooperation and regulating the health services.

2- The state ought to ensure of everyone's physical and moral health; taking care of human and material resources and its' increasing productivity creating cooperation and regulating the health services.

3- In order to widespread the use of health services, health insurance must be widely available to the public.

Thank you for your attention !

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