



CNECV – NATIONAL COUNCIL OF ETHICS FOR THE LIFE SCIENCES

NOTE 27/CNECV/99
CONCERNING LAW NO. 12/99 OF THE 15TH OF MARCH

Law no. 12/99, published in the Diário da República -- 1st Series – A, no.62, of the 15th of March, 1999, which “authorises the Government to legislate on the lawful dissection of cadavers and the extraction of parts, tissues or organs for the purposes of teaching and scientific research” has come to the knowledge of the National Council of Ethics for the Life Sciences.

That legal instrument was assessed in a meeting of this Council held on the following 4th of May, which verified that some of its stipulations may lead to whatever legislation the Government eventually produces being useless to the desired objective of making available to Medical Schools the number of cadavers necessary to the training requirements of future physicians and specialists.

In fact:

1. Paragraph 3 of Article 2 determines that the dissection of cadavers is allowed **only when** the deceased has not expressed in life, to the Ministry of Health, his/her opposition thereto and provided that **“the surrender of the body has not been claimed in any manner within 24 hours of its certified death having been communicated to the persons referred to in Paragraph 5.”** This stipulation will lead to a marked reduction in the number of cadavers available for the purposes in view.
2. Paragraph 7 of that same Article determines that the future legal instrument must **“lay down that, in the cases provided for in the preceding Paragraph, the cadaver may not be retained for more than 15 days in the premises of the entities referred to in Paragraph 1.”** Thus, besides stretching the deadline for claiming the body and increasing the number of people entitled to claim it, there is imposition of a working time incompatible with the desired goal: it is enough to point out that cadaver preservation techniques involve a few months.
3. On the other hand, there is an apparent contradiction between the conditions laid down in Paragraph 3 of Article 2, transcribed above, and the stipulation of Paragraph 2 of that same Article whereby **“performance of the acts provided for in Paragraph 1 is allowed when the person has expressly declared in life the will that his/her cadaver be utilised for purposes of teaching and scientific research.”** If the requirements of both paragraphs are meant to be cumulative, that is nowhere expressed. In that is the case, then we fail to understand the reference to the necessity of no manifestation of opposition – for, obviously, if a declaration donating the cadaver exists, no manifestation will exist opposing its use for the purposes intended.

Furthermore, it is unacceptable from an ethical point of view that the will of someone else, whoever it may be, may override the will of the deceased.



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Concerning this matter, we quote below from our Opinion 24/CNECV/98 on the Draft Decree-Law aiming to set the Juridical regime of the Lawful Dissection of Cadavers and of the Extraction of Parts, Tissues or Organs for the Purposes of Teaching and Scientific Research. We stand by that Opinion and the following extract thereof:

“From an ethical point of view, there is almost total conformity between the Draft Decree-Law and what is defended in those two Opinions [2/CNE/92 and 8/CNE/94]. The divergence lies in the necessary requirements permitting the dissection of cadavers for the purposes stipulated.

“According to the CNECV Opinions mentioned, the utilisation of cadavers in teaching and research requires that the deceased should have manifested his/her conscious consent, and no one has a recognised right to revoke that decision after the donor’s death. Only in the case of unclaimed cadavers is it legitimate, ipso facto, to utilise them for the purposes stipulated, except if, in life, there was statutory manifestation to the contrary.

“According to the Draft Decree-Law, the decision falls to whoever is recognised to have the legal right to claim the body, a decision that may never run counter to an eventual declaration by the person opposing the utilisation of his/her corpse.

“In other words:

“As the CNECV understands it, the utilisation of the cadaver for teaching and research must be an expression of the person’s social solidarity, manifested clearly, knowingly and freely, and the obstruction of that desire is not to be allowed, for no one owns any corpse at all. As the Draft Decree-Law understands it, the protagonist in decision-making is whoever can legitimately claim the body, so long as “the person has not manifested in life to the Ministry of Health his/her opposition (subparagraph 1.a of Art.3) as per Art. 5, § 1, which opposition shall be on record in the National Registry of Non-Donors (Art. 5, § 2).

“I consider that protagonism in decision-making concerning the destination of the cadaver to teaching and research must fall, by inherent right, to the person of whom it is the mortal remains (...).

“(...)what is at stake is deciding the destination of the cadaver of “his” or “her” own body: it is not ethical to recognise only the person’s right to refuse its utilisation and not the right to allow it, transferring that prerogative to other parties.”

Lisbon, the 11th of May, 1999

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