

ETHICAL AND JURIDICAL ASPECTS ABOUT THE ORGAN PROCUREMENT: SHOULD WE HAVE AN “OPT-IN” OR “OPT-OUT” SYSTEM?

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The aim of this research is to provide a comparative analysis of the laws and policies concerning organ donation from deceased people. The need to collect organs for transplantation led societies to think up methods and policies to guarantee the sufficient procurement for medical purposes. The consent process to donate organs after death is differently regulated worldwide.

The European Commission's 2017 Report, based on a survey sent to EU countries in the 2014, showed three main legislative systems regulating organ donation in force within the EU Member States: a) “opt-in”, b) “opt-out” and c) “mixed”. “Opt-in” systems requires people to explicitly express the consent before death, while opt-out systems are based on the presumed consent unless the entitled person makes a contrary statement. Finally, countries having regions with different laws and/or combine elements of both opt-in and opt-out systems generally use “mixed” systems. In particular, sixteen EU countries (AT, BE, BG, CZ, EL, ES, FI, FR, HR, HU, LU, LV, MT, NO, PI, PT, SI and SK) have opted to an “opt-out” system, whereas seven countries (CY, DE, DK, IE, LT, NL and RO) have introduced laws setting out “opt-in” systems. Four (IT, EE, SE and UK) of all EU countries have declared to have a mixed system. More recently, some countries are revising their legal framework. For instance, Netherlands and France have already announced that their laws will permit “opt-out” system in the next future. From an ethical point of view, “opt-in” and “opt-out” systems are based respectively on the principle of solidarity and the principle of self-determination.

This presentation will impact the international community by providing an up-to-date framework about the consent process for organ donation after death and it will analyze the pros and cons of the adopted legislative system on organ procurement.