

Last update - 02:34 03/04/2008

Encourage organ donation

By Haaretz Editorial

The brain and respiratory death law, passed last week, was born out of a dialogue between the health-care system and rabbinic authorities on Jewish law, and hopefully it will revolutionize organ donation in Israel. While the bill was being voted into law in the Knesset, Chief Rabbi Shlomo Amar issued a precedential ruling, which he wrote with the approval of a leading Sephardi rabbi on Jewish law, Ovadia Yosef.

The ruling, on which the new law is based, states that modern medical technology makes it possible to establish death when the brain dies, even before the heart has stopped. This is already a groundbreaking claim, because some of the other ultra-Orthodox Ashkenazi authorities, led by Rabbi Yosef Shalom Elyashiv, are holding firm to their position that no patient may be taken off life support if the heart is beating, and that in any case organs cannot be removed from the body for donation.

After the ruling, Rabbi Amar clarified it relates only to the issue of discontinuing life support and does not constitute a sweeping sanction of organ donation. "The top rabbis must be consulted with, and a special ruling must be issued on each question," he declared. These words came as a disappointment to those who had hoped that the ruling would lead to a comprehensive call by ultra-Orthodox rabbis encouraging organ donation.

Rabbi Amar's clarification is not "backpedaling," nor is it "a ruling against organ donation." The brain and respiratory death law, which deals with how the moment of death is determined, was formulated all along as a separate law from the one encouraging organ donation, also passed by the Knesset last week with the support of the Shas party. Moreover, even the World Health Organization makes a distinction between determining death and issues of organ donation.

The halakhic ruling joins previous rulings by important rabbis, including the late Rabbi Moshe Feinstein and Rabbi Mordechai Elyahu. This week the "Lithuanian" ultra-Orthodox lobby, led by the journal Yated Ne'eman, attacked the ruling by the Sephardi rabbis, claiming they have supported acts of "murder."

These claims obscure early signs that even Ashkenazi rabbinic authorities may be leaning toward more moderate positions, led by the late Rabbi Shlomo Zalman Auerbach, who, after being shown an experiment in 1992, qualified his previous ruling that death could only be declared when the heart had stopped. After an experiment by Rabbi Prof. Yigal Shafran, in which a sheep's heart was shown to go on beating by artificial means long after the sheep's head had been cut off, Rabbi Auerbach wrote he questioned his own previous ruling.

Most of the Israelis who recoil from the idea of organ donation are secular and masorti - moderately observant. Still, when it comes to matters of life and death, the rabbis' position carries great weight even for the general Jewish public. The ruling of rabbis Yosef and Amar opens up an important pathway toward a change in Israeli organ donation, but it needs to be accompanied by a public and ethical message.

The proof of the brain and respiratory death law, which takes effect in 14 months, will be in the number of rabbis who endorse the ruling, which states that death can be declared when the brain stem dies. The law will allow organ donation in individual cases. The question is whether the rabbis will speak out clearly and declare organ donation to be a religious and human duty.

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