The Swedish Transplants Act (1975:190)

Background

In 1987 the Parliament (Riksdag) of Sweden introduced the Act (1987:269) concerning the criteria for determination of human death. In accordance with the Act a person is dead when all functions of the brain have totally and irrevocably ceased. The application of brain-related criteria of death made it possible to remove organs from a deceased person. Therefore it was urgent to introduce new rules of consent for the removal of organs for transplant surgery. At the Ministry for Social Affairs a Government Bill tightened up certain provisions of the Transplants Act (1975:190). The Bill was passed by the Riksdag and the Act came into force on 1st January 1988.

The Transplants Act is applicable to surgical operation for the removal of organs and biological substances from living donors and deceased persons for the purpose of treating another person’s disease or injury. The Act does not apply to minor surgery, such as the removal of blood, skin and cornea.

The removal of an organ must be carried out in a hospital. The decision of the removal shall be made by a chief surgeon. The physician who is responsible for the care of the receiver of the organ cannot decide on the transplantation.

Current Swedish law does not raise any basic objections to the removal of organs for transplantation, neither from a living person nor from a deceased person. One basic legal principle, however, is that respect must be shown for the integrity of the individual. Where deceased persons are concerned, the operation must comply with standards for the respectful treatment of a dead body.

Living donors

Regarding living donors, the present Act sanctions the removal of organs with the donor’s written consent. Special rules apply to persons under 18 and to mentally ill and handicapped persons who are incapable of giving consent. Only if there are medical reasons for the removal of biological substances, can an operation be done. In such a case it must be performed by the Legal Committee of the National Board of Health and Welfare. As for a minor or the mentally handicapped person, an operation may not be performed unless the
custodians or the guardian or the administrator have given their opinion. The operation may be permitted by the National Board only if there are particular reasons and the donor has not refused the removal.

According to the Transplants Act the chief surgeon has to inform the donor and – whenever applicable – the custodians, the guardian or the administrator, of the character of the operation and the risks it will cause. The surgeon must also be convinced that the information given is understood by those receiving it.

An operation must not be done if there are serious risks for the donor’s life and health.

Deceased donors

The main rule of the Transplants Act is that the deceased, during his lifetime, has to have given written consent to the removal of organs from his body after his death. Failing such consent, organs may still be removed if the deceased had expressed himself as being in favour of this being done or if there are other well-founded reasons for supposing that such action would have been in keeping with his views. If there is uncertainty regarding the past views of the deceased, organs may be removed by consent of a close relative. If, in a case of this kind, there are no close relatives or the close relatives disagree, organs may not be removed. Until the law was amended on 1st January 1988, uncertainty regarding the previously held views of the deceased implied a presumption in favour of consent. The amendment substituted a presumption of non-consent.

The Transplants Act provides that any person committing deliberate interference contrary to the Act shall be fined or sentenced to imprisonment for up to six months if the offence is not punishable under the Penal Code.

The Swedish Committee on Transplantation

The Transplants Act has been the subject of a comprehensive review by the Swedish Committee on Transplantation. In two reports (SOU 1989:98 and SOU 1992:16), the Committee indicates the condition on which organs may be removed from living persons and from deceased persons. The proposal of the Committee has not yet been handled by the Government of Sweden.

In regard to living persons, the Committee proposes that a distinction must be made between non-regenerative substances, especially kidneys, and regenerative substances such as bone marrow, skin or blood.