



Universiteit
Leiden
The Netherlands

Religio-ethical discussions on organ donation among Muslims in Europe: An example of transnational Islamic bioethics

Ghaly, M.M.I.

Citation

Ghaly, M. M. I. (2012). Religio-ethical discussions on organ donation among Muslims in Europe: An example of transnational Islamic bioethics. *Medicine, Health Care And Philosophy*, 15(2), 207-220. Retrieved from <https://hdl.handle.net/1887/20114>

Version: Not Applicable (or Unknown)

License: [Leiden University Non-exclusive license](#)

Downloaded from: <https://hdl.handle.net/1887/20114>

Note: To cite this publication please use the final published version (if applicable).

Religio-ethical discussions on organ donation among Muslims in Europe: an example of transnational Islamic bioethics

Mohammed Ghaly

**Medicine, Health Care and
Philosophy**

A European Journal

ISSN 1386-7423

Volume 15

Number 2

Med Health Care and Philos (2012)
15:207-220

DOI 10.1007/s11019-011-9352-x



Your article is published under the Creative Commons Attribution license which allows users to read, copy, distribute and make derivative works, as long as the author of the original work is cited. You may self-archive this article on your own website, an institutional repository or funder's repository and make it publicly available immediately.

Religio-ethical discussions on organ donation among Muslims in Europe: an example of transnational Islamic bioethics

Mohammed Ghaly

Published online: 21 October 2011

© The Author(s) 2011. This article is published with open access at Springerlink.com

Abstract This article analyzes the religio-ethical discussions of Muslim religious scholars, which took place in Europe specifically in the UK and the Netherlands, on organ donation. After introductory notes on fatwas (Islamic religious guidelines) relevant to biomedical ethics and the socio-political context in which discussions on organ donation took place, the article studies three specific fatwas issued in Europe whose analysis has escaped the attention of modern academic researchers. In 2000 the European Council for Fatwa and Research (ECFR) issued a fatwa on organ donation. Besides this “European” fatwa, two other fatwas were issued respectively in the UK by the Muslim Law (Shariah) Council in 1995 and in the Netherlands by the Moroccan religious scholar Muṣṭafā Ben Ḥamza during a conference on “Islam and Organ Donation” held in March 2006. The three fatwas show that a great number of Muslim religious scholars permit organ donation and this holds true for donating organs to non-Muslims as well. Further, they demonstrate that transnationalism is one of the main characteristics of contemporary Islamic bioethics. In a bid to develop their own standpoints towards organ donation, Muslims living in the West rely heavily on fatwas imported from the Muslim world.

Keywords Islam · Fatwas · Organ donation · Islamic bioethics · Interplay of Islam and the West · Muslims in Europe

Introductory Notes

Three main fatwas issued in Europe between 1995 and 2006 on organ donation will be analyzed in this article. Attention will be paid to the Islamic religio-ethical arguments adopted in each fatwa. Another focal point in this analysis is the transnational dimension in these fatwas: to what extent do these fatwas cross the national borders of Europe to quote or base their arguments on fatwas imported from the Muslim world? Bearing in mind the fact that a fatwa is in principle an answer to a question raised by an individual or community and thus reflects specific social concerns, attention will also be paid to the dissemination of these fatwas and their reception by the Muslim community to whom the fatwa is directed. Before delving into the analysis of these three fatwas, first two introductory remarks are due:

1. Since the 1950s, when the earliest fatwas on this issue appeared,¹ it became clear that biomedical advances will produce unprecedented and complicated questions to Muslim religious scholars and this will require practising a fresh *ijtihād* (independent legal reasoning). *Ijtihād* practised in the field of biomedical ethics and the resulting fatwas have been done either by individual Muslim religious scholars or by collective Islamic institutions where religious scholars collaborate with biomedical scientists. During the last three decades different Islamic institutions have been active in the field of biomedical ethics.

The Islamic Organization for Medical Sciences (IOMS), based in Kuwait and established officially in 1984, seems to be the most influential one. This institution exclusively studies bioethical issues from an Islamic perspective. The

M. Ghaly (✉)
Leiden University, Leiden, The Netherlands
e-mail: m.ghaly@religion.leidenuniv.nl

¹ For a historical overview of these fatwas, see Albār (1994: 275–306); Qaradāwī (2010: 61–94).

IOMS coordinates with two other institutions that pay occasional but not exclusive attention to bioethical questions. One is the Islamic Fiqh Academy (IFA), established in 1977, which is affiliated with the Muslim World League and based in Mecca, Saudi Arabia. The other is the International Islamic Fiqh Academy (IIFA), established in 1981, based in Jeddah, Saudi Arabia, and affiliated with the Organization of Islamic Conference (Ghaly 2010a: 8). In a bid to build bridges with the Islamic juristic legacy, these contemporary institutions try to make benefit from the diversity inherited in the classical schools of Islamic law without strictly following a specific school. They adopt a critical approach by which the opinions recorded in the manuals of these schools can be equally consulted, criticized and/or endorsed (*Majallat* 1986: 60).

The importance of these collective institutions and the weight of their fatwas, thought to surpass that of the “individual” fatwas, are increasingly being recognized (Ben Ḥumayd 2010: 55, 63–64). However, these fatwas, of course, do not represent a “court of final appeal” and thus leave room for negotiations and critical remarks from disagreeing religious scholars. At the end, fatwas are generally acknowledged as fallible opinions because of the possibility of human misunderstanding, misinterpretation or lack of knowledge about the phenomenon which fatwas are addressing. As we shall see below, two of the three fatwas discussed in this paper have been issued collectively.

2. Islamic literature is almost unanimous that *ijtihād* or its resulting fatwas cannot be properly performed without first grasping the reality of people (*aḥwāl al-nās*) (Ramadan 2004: 47). Hence, analyzing a fatwa can be hardly detached from understanding the reality of people for whom the fatwa was issued. Hence, glimpsing information about the image of Muslims living in the UK and the Netherlands concerning organ donation is due. Information below shows that these fatwas do not only handle an abstract ethical problem but also tackles a social issue in which Muslims living in Europe have been directly involved and some of the critique directed towards them had to do with their religion, namely Islam.

The general image of Muslims in both the UK and the Netherlands has been reflecting an alarming situation. They provide fewer donors than the average percentage in their countries and as a consequence their patients generally have to wait longer in order to get a suitable organ. One of the main reasons frequently mentioned in order to explain this alarming situation was the religion of this group, i.e., Islam. As for the UK, the Randhawa’s research of 1998 on different religious communities in Luton generally indicated that religious and cultural factors play a much less prohibitive part in organ donation than had previously been thought for Asian groups. However, particularly for Muslims, being aware of their religion’s stance towards organ

donation, the research argued, proved to be an important influence (Randhawa 1998; Hayward and Madill 2003: 390). A questionnaire survey conducted among 50 UK Muslim graduates of non-medical background, whose results were published in 2007, also showed that 54% of the interviewees mentioned religious prohibition as the major reason for not considering organ donation. Some of the other reasons mentioned in the same study can also be easily associated with religion as well like delaying the funeral rituals (80%) and body mutilation (64%) (Aslam and Hameed 2007: 92). The same negative image is prevalent in different studies (Randhawa 1998; Morgan et al. 2006; Perera and Mamode 2010: 1).

As for the Netherlands, a study published by the Dutch Kidney Foundation (*Nierstichting*) in 1993 under the title *Islam and organ donation: How do Muslims think about organ donation?* stated “Now the impression of the Kidney Foundation has grown that there is little willingness in the Muslim community in the Netherlands to sign a donor card whereas patients from these circles do like to become eligible for kidney transplant” (Pranger 1993: 1; compare Zwart and Hoffer 1998: 19–21). This negative image was criticized by an empirical study published in 1998. On the basis of interviews with imams in mosques, representatives of Islamic organizations and also with Muslim individuals in the Netherlands, the authors concluded that this negative stereotyping of Muslims was based neither on solid empirical data nor on well-structured academic research. On the contrary, their own results showed that Muslims living in the Netherlands do not deviate from the average standpoint adopted by Dutch people towards organ donation (Zwart and Hoffer 1998: 135–136). Despite the socio-political attention which this study received (Linsen 2000: 22), the negative image of the attitude of Muslims in the Netherlands towards organ donation did not radically change. For instance, a front-page newspaper article was released in March 2005 in which the Dutch Minister of Health was quoted to say, “Muslims in particular refuse to donate their organs for religious reasons. However, they are ready to receive such organs if they fall sick ... This does not hold for an incidental Muslim but for a substantial group” (Peeperkorn 2005: 1). The latest report published by the Dutch National Institute for Health Promotion and Disease Prevention (NIGZ) in 2009 again confirmed this image by stating that the group non-Western “foreigners” or “immigrants” (in Dutch *allochtonen*), to which the majority of Muslims in the Netherlands belong, are less often donors, less often registered in the donor register, less positive about organ donation and also have less knowledge about organ donation. The report added that this negative attitude has (partially) to do with the uncertainty of this group about the stance of their religion towards organ donation (Thiel and Kramer 2009: 7, 35).

Discussions on the European level: the fatwa of the European council for fatwa and research (ECFR)

This council, based in Dublin, Ireland, was established in 1997 and it focuses on issues with specific relevance to Muslims living as religious minorities in the West. It is usually argued that the fatwas issued by this council enjoy growing acceptance among Muslims living in Europe in addition to increasing interest from the European political authorities (Ghaly 2010a: 31). In his introduction to the ECFR collection of fatwas, Shaykh Yūsuf al-Qarāḍāwī, the president of the ECFR, stressed that the relation between the ECFR and other fiqh academies based in the Muslim world such as the International Islamic Fiqh Academy (IIFA) and the Islamic Fiqh Academy (IFA) are complementary rather than competitive: “The ECFR will surely benefit from the resolutions adopted by and the researches submitted to these reputable academies” (Majlis 2002: 7). Furthermore, Qarāḍāwī has frequently participated in the discussions of the IIFA and IFA on different occasions. This collaboration was clear when the ECFR pondered over the issue of organ donation in 2000. The ECFR quoted the full text of the IFA and IIFA fatwas.² Strikingly enough, the ECFR did not refer to the fatwa issued by the UK’s Muslim Law (Shariah) Council which was issued in 1995. This might imply that the ECFR relies more on the institutions based in the Muslim world than those established in the West.

The ECFR fatwa on organ donation was issued in the sixth session held by the ECFR in Dublin, Ireland during the period 28 August–1 September 2000. The fatwa was also included in the ECFR fatwa collection published in 2002. This fatwa is one of the longest and most detailed fatwas in this collection. The fatwa was divided into two main parts. The first and the larger part endorsed and quoted the full text of three fatwas issued in the Muslim world by the aforementioned IFA and IIFA. The second part consisted of three main points which the ECFR added because of their particular relevance for Muslims living in the West (Majlis 2002: 175–181).

The main purport of the first part of the ECFR fatwa is that the issue of organ transplantation/donation cannot be approached as one single block. A distinction was made between *autotransplantation* or *autograft* (transplanting tissues or organs from one part of the body to another in the same body) and *allotransplantation* or *allograft* (transplanting tissues or organs from one person into another person’s body). Additionally, the fatwa paid attention to

specific organs and tissues whose transplantation or donation requires particular religious and ethical considerations, namely the organs of the reproductive system and the cells of the brain and the nervous system.

The fatwa stated that autotransplantation is permissible in Islam as long as one is certain (1) that the potential benefits of such an operation outweigh the probable ensuing harms and (2) that the purpose for this operation is legitimate which is the case, among others, when replacing a missing organ, restoring its shape or usual function or reforming a defect or removing ugliness that causes psychological or physical harm. As for allotransplantation the fatwa stated that it is permissible to obtain an organ from a living person as long as this person is legally qualified to donate and the donated organ regenerates itself automatically such as blood and skin. Further, it is also permissible to benefit from another person’s organ or tissue which has been excised for medical reasons such as the cornea. However, it is forbidden to transfer an organ upon which the person’s survival depends such as the heart or an organ whose removal will disrupt a fundamental function in the donor’s life such as transferring the corneas of both eyes. Concerning cadaveric transplant, the fatwa stated that it is permissible as long as the receptor’s life or a fundamental function in his body is dependent on receiving such an organ. The main condition stipulated by the fatwa is that the dead person should have given his consent before death or his heirs give theirs after his death. If neither the deceased nor heirs were identifiable then the consent of the “Guardian of the Muslims (*walī amr al-muslimīn*)”,³ should be obtained.

The abovementioned general permissibility for transplanting organs is not applicable to specific organs in the reproductive system. Thus, transferring someone’s testicle or ovum to another person is forbidden because they continue conveying the genetic characteristics of the donor even after being transplanted in the receptor’s body. However, transplanting other organs of the reproductive system which do not transfer the genetic characteristics –except the genitals– is permissible. As for transplanting the cells of the brain and the nervous system, the fatwa argued that it is permissible if they are obtained from the adrenal gland of the patient himself. The same holds true for the cells obtained from an animal fetus as long as the transplantation operation was likely to be effective without involving any practices that contravene Islamic principles. However, transplanting these cells is forbidden if they are obtained from a human fetus that is still living in the mother’s uterus or from a baby born with anencephaly. Obtaining such cells from a human fetus is permissible

² An English translation of the ECFR fatwa is available (European 2002: 67–71). However, the analysis here is mainly based on the original text published in Arabic.

³ This term is usually used in Islamic legal literature to denote the governmental authority in an Islamic state.

only after an abortion which is considered legal from an Islamic perspective or after natural miscarriage. As for obtaining these cells from a baby born with anencephaly the fatwa stated that it is permissible only after being diagnosed with brain death (Majlis 2002: 177–180).

The second and shorter part of the fatwa contained three supplementary remarks:

(A) If the donor or his heirs specified a certain person to benefit from the donated organ, or they authorized a certain authority to specify the beneficiary, then this should be abided by as much as possible. If this [specification] could not be settled because of mental incompetency or medical reason then the donor's heirs, and if not available then the authority concerned with the Muslims' interests in non-Muslim countries,⁴ should be consulted. (B) If a person wrote a document donating one of his organs posthumously then the rulings with pertinence to testaments (*waṣīyya*) should be applied herein. Neither the heirs nor anybody else has the right to change this testament. (C) If there is a law of a posthumously presumed consent then the absence of one's refusal [to be an eventual donor] in clear terms would be tantamount to an implied consent" (Majlis 2002: 180–181).

A number of analytical remarks are due on both parts of this fatwa. The first part was exclusively based on three fatwas issued in the Muslim world: one by the IFA in its eighth session held in Mecca, Saudi Arabia during the period 19–28 January 1985 and two by the IIFA issued respectively in its fourth session held in Jeddah during the period 6–11 February 1988 and again in its sixth session held in Jeddah, Saudi Arabia during the period 14–20 March 1990.⁵ Such a detailed quotation from fatwas issued in the Muslim world reveals the nature of the collaboration between the ECFR and its counterparts based in the Muslim world. This also confirms the transnational character of contemporary Islamic bioethics. Bearing in mind the aforementioned statement of the ECFR president, Yūsuf al-Qaradāwī, which recognized the reputable status of the Islamic institutions based in the Muslim world, it becomes clear here that the ECFR concedes the credibility of these institutions. The ECFR accepted the IFA and IIFA fatwas at face value and presented them as normative statements which, from the ECFR perspective, do not need any further theological argumentation to prove their consistency with the Islamic ethical precepts. For instance, no reference was

made to any Qur'anic verses, Prophetic traditions or even any of the often quoted Islamic legal maxims which are usually cited to justify the compatibility of organ donation with Islamic ethics. Also no reference was made to any of the competing opinions which object to organ donation. It is as if the ECFR wanted to argue that the dispute on organ donation in the Muslim world had been more or less settled by these three collective fatwas.⁶ It is to be noted, however, that endorsing the religious authority of these Muslim-world-based institutions does not mean that the ECFR always adopt their fatwas uncritically. For instance, the ECFR examined the fatwa issued by the IIFA on milk banks and came to the conclusion that it is not fitting for Muslims living in the West and finally issued a different fatwa (Ghaly 2010b).

Another remark about the first part of the ECFR fatwa has to do with the list of the organs and tissues to be or not to be donated. The fatwa was silent about the life donation of one kidney or part of the liver which are now the common organs to be donated by living persons in different European countries. Harvesting organs from living donors is a recent development in different European countries including the UK. In 2006 the Human Tissue Act came into force and it allowed organs (usually kidneys or part of the liver) to be taken from living people (Campbell 2010: 14).

Donating such organs imply specific medical risks. For instance, on the website of the National Health Service in the UK, the section on organ donation handled the question: Are there any risks to me about living kidney donation? The reply read:

All operations carry some risk and this is no different for living donation. Donors are at risk of infections (e.g. chest, wound or urine) and, more rarely, bleeding or blood clots. There is a very small risk of death for the donor: this is estimated at 1 in 3,000 for this operation (http://www.organdonation.nhs.uk/ukt/how_to_become_a_donor/living_kidney_donation/questions_and_answers.jsp)

In the light of these possible harms, some Muslims might doubt the permissibility of life kidney donation. The text of the fatwa did not refer to kidneys in specific but it included the following cautious phrase: "If the transfer [of an organ from a living donor to a living recipient] disrupts part of an essential function (*yu'aṭṭil juz' min wazīfa asāsiyya*), then the case requires further research

⁴ The text of the fatwa did not indicate exactly which authority this will be. So, it seems that identifying such authority is to be dependent on the respective conditions of Muslim communities in each country.

⁵ For the full text of these fatwas, see Qaradāwī 2010: 84–92.

⁶ This is, of course, not the case everywhere in the Muslim world. See for instance the heated discussions on organ donation in Egypt especially those which accompanied the trials of drafting law on organ donation in Egypt and the session held by the Islamic Research Council (*Majma' al-Buḥūth al-Islāmiyya*), affiliated with al-Azhar, which took place long time after these two fatwas were issued (Fischer 2009; Qaradāwī 2010: 11).

and examination” (Majlis 2002: 178). The criterion “disrupts part of an essential function” sounds anyhow vague. On the other hand, living kidney donation in the Muslim world and specifically in Saudi Arabia where the aforementioned three fatwas were issued has now been accepted and practiced without any serious religious objections (Faqih et al. 1991; Shahat 1999: 3271; Shaheen and Souqiyeh 2004). However, it would have been helpful if the ECFR had studied these recent developments around life organ donation in the European countries which took place after issuing the ECFR fatwa and if it had updated this fatwa accordingly. When the ECFR fatwa was published online by the website <http://islamtoday.net> one of the website visitors was, for instance, still wondering if the life kidney donation would be permissible on the basis of this fatwa (<http://islamtoday.net/bohooth/artshow-32-5721.htm>).

As for the second part of the fatwa, the first point touched, however indirectly, upon the interreligious dimension of organ donation which is central to many Muslims living in the West. The three fatwas quoted by the ECFR were issued in the Muslim world where Muslims live as great majority and thus both the organ donor and recipient are in most cases Muslims. Important questions raised by Muslims in the West include for instance: What if my to-be-donated organ went to a non-Muslim? What if the organ I would receive came from a non-Muslim and: is it permissible to perform the Islamic rituals such as prayer while having such an organ in my body? Such questions do play an important role in the decision making process among Muslims in the West and also contribute to creating a negative image about Muslims in the public debates on organ donation and also about the degree of their integration in European societies (Wiegers 2002; Peepkorn 2005; Ghaly et al. 2010). However, the fatwa did not refer specifically to the interreligious dimension but spoke rather about the wish of the donor to specify the identity of the recipient. According to the ECFR, this wish is to be respected “as much as possible”. The possibilities are outlined by the current European laws which tolerate specifying the organ recipient in the case of life organ donation but not in the case of cadaveric donation.

The permissibility of donating organs to non-Muslims was also elaborated upon by the president of the ECFR, Shaykh Yūsuf al-Qaraḍāwī, in the symposium held by the Islamic Organization for Medical Sciences (IOMS) in Kuwait on organ transplantation during the period 23–26 October 1989. Al-Qaraḍāwī argued that donating organs is analogous to charity and that Muslim religious scholars unanimously agreed that Muslims can give charity to non-Muslims. Al-Qaraḍāwī further wondered, “Why would it not be permissible to donate [our organs] for the non-Muslims while they donate [their organs] for us?” He also spoke about actual cases of different Muslims who have been to the USA and other non-Muslim countries for

kidney transplantation and the kidneys were donated by non-Muslims. However, al-Qaraḍāwī stipulated that the non-Muslim recipient should not be engaged in war (*muḥārib*) against Muslims (Jundī 1994: 156). While discussing the recent Egyptian debate on organ donation where both Muslims and Christians live, al-Qaraḍāwī added to the prohibitive list of non-Muslim recipients those who launch an intellectual war against Muslims and also the aggressive apostates who work hard to disintegrate the Muslim nation (*umma*). He also added that in case of organ shortage, the organ donated by a Muslim should go first to a Muslim blood-relative, then to a Muslim non-relative and finally to a non-Muslim (Qaraḍāwī 2010: 48–49). This prioritization based on religious affiliation cannot be applied anyhow in the light of the binding European laws and regulations. For instance, after rumors in 2000 about a case in the UK where organ donation with racist conditions was accepted, the then Health Minister, Lord Hunt, was quoted in the newspapers as saying, “Racism of any kind is appalling. The government is totally against any kind of conditions being attached to organ donation. Donated organs are a national resource, and are available to people regardless of race, religion, age or other circumstances” (Boseley 2000: 5).

The second point in the second part of the ECFR fatwa referred to the donor card. According to the ECFR, filling in this card is analogous to the drafting of a testament according to Islamic law. Hence, the heirs are not entitled to act against the will of the deceased. The last point in this part referred to the opt-out system where everyone is in principle a potential donor as long as s/he did not declare it differently. According to the fatwa, there is no objection in Islam against this system.

The ECFR made use of different techniques in order to disseminate its fatwa. First of all, it was published on the ECFR’s website in both Arabic and English. Specifically this fatwa is usually available directly on the ECFR homepage (<http://www.e-cfr.org/ar/index.php>). The fatwa was also published on different well-known Islamic websites such as www.islamonline.net; www.Islamtoday.net and www.onislam.net.

Besides these electronic facilities, the ECFR decided in 2001 to establish national fatwa committees in different European countries in order to be more accessible to the Muslim communities in Europe. The first two committees were established in the UK and France. The ECFR has now plans for generalizing this experience in as many European countries as possible.⁷ Also the ECFR includes members from different European countries including the UK such

⁷ Personal communication with al-Khammār al-Baqqālī, the ECFR member and the imam of Al-Islām Mosque in the Hague, The Netherlands. 20 December 2010, The Hague, The Netherlands.

as Sālim al-Shaykhī, imam at Didsbury Mosque in West Didsbury and the head of the ECFR fatwa committee in the UK, and the Netherlands such al-Khammār al-Baqqālī, the imam of Al-Islām Mosque in the Hague and the head of the Union of Imams in the Netherlands. The possibility of spreading the ECFR fatwas through these members to the local imams in the UK and the Netherlands and then to the common Muslims should not be crossed out. However, empirical studies are still needed to further investigate or negate this possibility.

Despite the variety of these dissemination techniques, information about the possible impact of this fatwa on Muslims in Europe is extremely scarce. Available discussions on organ donation and Muslims in the UK made no reference to it and the fatwa issued by the Muslim Law (Shariah) Council already predates the ECFR fatwa. However, the ECFR fatwa was mentioned in the Dutch debates and specifically in response to the aforementioned negative statements of the Dutch Minister of Health which were released in March 2005. Ahmed Marcouch, at this time a board member of the Union of Moroccan Mosques in Amsterdam and Outskirts (UMMAO), wrote an article in the well-known Dutch newspaper *De Volkskrant* which also published the statements of the Dutch Minister of Health. In his article, Marcouch first of all refuted the claim of the Dutch Minister that Islam forbids organ donation. To argue for this standpoint, Marcouch referred to the ECFR fatwa and said that according to this fatwa it is not prohibited for Muslim to be an organ donor. Marcouch argued further that organ donation should even be stimulated if we kept in mind the rule that saving the life of one person, for instance by donating an organ, is as good in Islam as saving the life of the whole mankind.⁸ Islam just requires specific conditions such as the abstinence of trading in human organs. Islam also stipulates that life organ donation does not threaten the donor's life, Marcouch concluded (Marcouch 2005: 7).

Discussions in the United Kingdom: the fatwa of the Muslim Law (Shariah) Council UK

The United Kingdom has been witnessing rich discussions for decades on the Islamic perspectives with relevance to organ donation. In his book *Islamic Health Rules* published in 1981, the late Syed Mutawalli ad-Darsh (d. 1997), who was a well-known imam in the UK, elaborated on the Islamic vision on organ donation (Darsh 1981). Also a fatwa dated 4 March 2004, issued by Mufti Muhammad ibn

Adam al-Kawthari from Darul Iftaa based in Leicester, is also available on different websites including that of Darul Iftaa (http://www.daruliftaa.com/question.asp?txt_QuestionID=q-18480963).

However, the main focus here will be the fatwa issued by the Muslim Law (Shariah) Council UK, below referred to as the UK fatwa, issued on 26 August 1995. The fatwa was signed by the late Zaki Badawi (d. 2006), who was at this time the chairman of the Muslim Law (Shariah) Council UK, together with 18 other signatories.⁹

This fatwa remains till now the most well-known fatwa on this topic in the UK. The fatwa has attracted considerable attention within the political and media milieus. Once it was issued, synopses of the fatwa were quoted by different journals such as *The Nursing Times* under the title "Life-giving fatwa" (Carlisle 1995: 13–14; Badawi 2000: 13) and the *Journal of Medical Ethics* (UK's Muslim Law Council 1996). The fatwa was also quoted in the brochure entitled *Islam and organ donation: A guide to organ donation and Muslim beliefs* produced by the UK Transplant in April 2003. The brochure was made available in English, Urdu, Gujarati, Punjabi and Bengali (Howitt 2003). Further, this fatwa is the most quoted Islamic opinion, and usually the only one, by the academic articles which handled the ethical and religious dimensions of organ transplantation in the UK (Gillman 1999; Ahmed et al. 1999: 627; Sheikh 2000: 162; Hayward and Madill 2003: 390; Aslam and Hameed 2007: 92). Finally, this fatwa was also quoted in other European countries such as the Netherlands when similar discussions started there.

The fatwa was issued in response to a question raised by the Ministry of Health under the Major government who

⁹ The full list of their names and affiliations were mentioned as following: (1) Dr. M. A. Zaki Badawi Principal, The Muslim College, London Chairman, The Muslim Law (Shariah) Council UK, (2) Dr. Jamal Sulayman, Professor of Shariah, The Muslim College, London, (3) Dr. A. A. Hamid, Professor of Hadith, The Muslim College, London, (4) Dr. Fazel Milani, Professor at The International College of Islamic Sciences London, (5) Dr. S. M. A. Shahristani, Principal, The International College of Islamic Sciences London., (6) Moulana Abdul Hadi Umri, General Secretary, Jamia-te-Ahl-e-Hadith (UK), (7) Moulana Qamaruzzaman Azami, Chief Imam, North Manchester Central Mosque & General Secretary, The World Islamic Mission, (8) Mufti Mohammed Yunus President, The World Islamic Mission & Imam, Woking Mosque, (9) Mufti Mohammed Muniruzzaman, Imam, Munir-ul-Islam Mosque, Rochdale, (10) Dr. Abdul Halim, Senior Imam, The Islamic Cultural Centre and London Central Mosque, Regent's Park London, (11) Mufti Alauddin, Head Imam, Brick Lane Central Mosque, London, (12) Moulana Hafiz M Khalid, Head Imam, Sparkbrook Islamic Centre, Birmingham, (13) Moulana Mumtaz Ahmed, Imam of Bradford, (14) A. Bashiri Esq. Barrister-at-Law, (15) R Abdullah Esq. Barrister-at-Law, (16) Dr. Safia Safwat, Barrister-at-Law, (17) Moulana M Shahid Raza, Director, Islamic Centre Leicester & Secretary, The Muslim Law (Shari'ah) Council UK, (18) Mr S. G. Syedain, General Secretary, Imams & Mosques Council UK and (19) Dr. Manazir Ahsan, Director of the Islamic Foundation.

⁸ Marcouch refers here to the purport of the Quranic verse "...and if any one saved a life, it would be as if he saved the life of the whole people" (05:32).

approached the Muslim Law (Shariah) Council UK asking for the views of Muslim scholars about organ transplantation. The Council summoned a group of scholars meant to be representative for the schools of thought prevalent in the Muslim community in the UK. However, it is difficult to judge how representative this group can be for the Muslim community in the UK as far as it relates to the schools of Islamic law and theology prevalent among Muslims there. All what we can identify here is that the group consisted largely of imams and those who are trained in the Islamic religious sciences. Ethnically speaking, a big number of the signatories came from a south Asian background. The summoned scholars paid first a visit to the Queen Elizabeth Hospital in order to get informed about the technical and medical sides of organ transplantation. Finally, the fatwa was issued on 26 August 1995 (Badawi 1995; Badawi 2000: 13).

The main thesis of this fatwa corresponds with that of the above-mentioned fatwa issued by the ECFR in 2000; they both permit organ donation in principle. However, there are important differences between the two fatwas. First of all, unlike the ECFR fatwa which quoted the full texts of three fatwas issued in the Muslim world, the UK fatwa made no reference to any of the fatwas issued in the Muslim world. The religious institutions based in the Muslim world were just mentioned in passing and also implicitly: “After a thorough consideration regarding medical opinion and several edicts issued by different religious bodies, the Council arrived at the following conclusions”, the UK fatwa stated (Badawi 1995). In 2000, when the late Zaki Badawi wanted to reassure the UK fatwa which he himself signed in 1995 he made reference to the classical sources in Islam and argued that the question of organ transplant is not new at all because Muslims already knew about it in the Middle Ages. Badawi said that there is already a classical fatwa with regard to orthopaedics. Doctors at this time wondered if it is permissible to use a dead person’s bones to remedy or cure the broken bones of a living person. In response, the classical Muslim religious scholars issued the fatwa that this practice is permissible in Islam. Badawi added: “But let me tell you about a fatwa that was given here, in this country, more recently” and then he started speaking about the UK fatwa issued in 1995 (Badawi 2000: 13).

Strikingly, neither the fatwa nor Badawi himself in his later comments made any reference to the well-known Indo-Pakistani religious scholars who did not permit organ donation. For instance, Mufti Muhammad Shafi, the late grand Mufti of Pakistan issued a fatwa in the 1960s against organ donation and the fatwa was endorsed by a number of Indo-Pakistani religious scholars. The fatwa was published first in Urdu and then in English in 1995 (Shafi and Muhammad 1995), interestingly enough the same year

when the UK fatwa which permitted organ donation was issued! Additionally, in its second seminar held during the period 8–11 December 1989 the Islamic Fiqh Academy of India issued a fatwa, after extensive discussions and consultations between religious scholars and experts of medical and social sciences, which stated that living kidney donation is permissible whereas cadaveric is not. The fatwa also added that if someone expressed his/her wish to donate his/her organs after death, this wish cannot be considered as a valid testament (*waṣīyya*) according to the Shariah (http://ifa-india.org/english/decision_Transplantation_of_Organs.html; Ebrahim and Mohsin 1998: 73).

The question here: Why did the UK fatwa did not make any direct reference to the fatwas issued in the Muslim world? It is possible that Badawi and his colleagues who issued the fatwa were eager to focus on the direct context where Muslims live, namely the United Kingdom, instead of importing fatwas from the Muslim world. The second possible reason is that referring to fatwas issued in the Muslim world would necessitate including those issued by Indo-Pakistani scholars who expressed strong reservations, on religious grounds, against organ donation. It has to be noted that the majority of Muslim community living in the UK come from a south Asian background and thus the voices of these Indo-Pakistani scholars might have impact on these Muslims. Badawi was confronted later with critical remarks raised by a number of Muslims in the UK who doubted the representativeness of this fatwa within the Sunni and Shī‘ī traditions of Islam. During the conference “Organ donation & transplantation: The multifait perspective” held on 20 March 2000, a Sikh renal transplant liaison sister at Hammersmith and Charing Cross Hospital spoke about her negative experience with a number of Muslim Asian women who said that they would not follow this fatwa. In response, Badawi made reference to the Muslim world. He stressed that Sunni countries like Egypt, Saudi Arabia, Malaysia, Libya and Morocco had approved the fatwa. He added that the Shī‘ī scholars of Iran had approved it as well (Badawi 2000: 14). In the aforementioned brochure on “Islam and organ donation” produced by the UK Transplant in April 2003 Badawi was quoted again. This time he laid more emphasis on the Muslim world and the religious institutions there: “Muslim scholars of the most prestigious academies are unanimous in declaring that organ donation is an act of merit and in certain circumstances can be an obligation.” As examples he referred to the IIFA, the Grand Ulema Council of Saudi Arabia, al-Azhar Academy of Egypt and the Iranian Religious Authority (Howitt 2003).

The second main difference between the UK fatwa and the ECFR fatwa has to do with the content. First of all the UK fatwa stated in clear terms that “It is permissible for a living person to donate part of the body such as the kidneys

to save the life of another, provided that the organ donated would not endanger the donor's life and that it might help the recipient" (Badawi 1995) whereas the ECFR fatwa remained vague on this point. This specific standpoint goes in line with the Indo-Pakistani fatwas even those which did not permit cadaveric organ donation such as the one issued by the Islamic Fiqh Academy of India. May be that is why we do not find a detailed argumentation in the fatwa to defend this point. But keeping in mind the sometimes vehement opposition of the Indo-Pakistani fatwas against cadaveric organ donation the UK fatwa remarkably provided lengthy argumentations about this specific point.

In order to argue for the permissibility of cadaveric organ donation, the fatwa focused first on proving that brain death, from an Islamic perspective, is an accepted death criterion. The fatwa quoted a couple of Qur'anic verses (32:7–9; 39:24)¹⁰ to support their premise that man consists of two essential elements, namely body and soul and further to argue that what matters in the case of death is the soul and not the body. So death should be understood as the departure of the soul from the body. However, the fatwa added, the soul is a mysterious entity and nobody would uncover its nature. That is why ascertaining the departure of the soul was always associated with physical signs to be determined on the basis of medical observation. In the past, the medical profession used to view the heart as the center of life in the body and thus death was determined once the heart completely stops functioning. But this is not the case anymore: "The last five decades have witnessed a big leap in medical science bringing great benefits and skills which were unthinkable before", the fatwa argued. As a consequence, the central role of the heart with regard to life and death got replaced now by the brain and especially the brain stem. In order to verify the reliability of brain stem death, the Muslim Law (Shariah) Council discussed this specific issue in more than one meeting with doctors and specialists, studied the safeguards instituted by the Ministry of Health in the UK and finally examined the research done by trustworthy Muslim doctors. Eventually, the Council concluded that when trustworthy doctors certify that the brain stem has died, this means that the person in question is dead from an Islamic perspective and thus organs needed to save other peoples' lives might be procured and the life support machines can be switched off (Badawi 1995).

¹⁰ "Who made all things good, which He created, and He began the creation of man from clay then He made his seed from a draught of despised fluid. Then He fashioned him and breathed into him of His Spirit, and He appointed for you hearing and sight and hearts. Yet small thanks do you give for it!" (32:7–9). "Allah recalls souls at the time of their death, and those who have not died, during their sleep. He holds on to anyone whom death has been decided for, and sends the others back for a specific period." (39:42).

It has to be noted here that harvesting organs from people diagnosed with brain death is a controversial issue in contemporary Islamic legal discussions. The Islamic Organization for Medical Sciences (IOMS) discussed this issue in two symposia held respectively in 1985 and 1996 and concluded that brain death is an acceptable death criterion (Madhkūr et al. 1985; Jundī, Aḥmad Rajā'ī al-. 2000). The same standpoint was adopted by the International Islamic Fiqh Academy (IIFA) in its third session held in 1986 (*Majallat* 1987: 809). However, the Islamic Fiqh Academy (IFA), in its tenth session held in 1987, did not recognize brain death as an adequate death criterion in Islam (Aḥmad 2006: 214–215). Recently, different academic studies have also raised critical remarks about brain death from an Islamic perspective (Bedir and Aksoy 2011: 290–294; Padela et al. 2011: 53–72).

Beyond the issue of brain stem death, one of the common arguments used by the anti-organ donation voices is that a person does not own his/her body. It is just a trust (*amāna*) from God who is the real Owner (Shafi and Muhammad 1995: 48; Ebrahim and Mohsin 1998: 58). In response to this argument, the UK fatwa stated that Islam conceded that a person has legal authority over his own body. That is why one is allowed in Islam to hire himself for work that might be difficult or exhausting for one's body. In some cases, he may even volunteer to engage in war which can put his whole life in danger. Further, the purport of the Prophetic tradition which prohibits inflicting harm on others or to suffer harm from them (*lā ḍara wa lā ḍirār*) does not mean that harm cannot be inflicted on the body in any case. Necessity sometimes overrules prohibitions and thus when one's life is threatened the prohibition of eating carrion or drinking wine gets suspended as stated in the Quran.¹¹ The final argument used by the UK fatwa to legitimize organ donation was the reference to the legal maxim of adopting the lesser of two evils (*irtikāb akhaff al-ḍararayn*) which is widely proliferated in the manuals of Islamic jurisprudence (Badawi 1995). The relevant implication of this maxim for the case of organ donation is that the lesser evil caused by procuring organs from a dead person should be tolerated in order to avoid the greater evil, namely the death of an already living person. On the basis of this lengthy argumentation, the fatwa drew the following conclusions:

- "The medical profession is the proper authority to define the signs of death.

¹¹ "He has only forbidden you what has died by itself, blood and pork, and anything that has been consecrated to something besides God. Yet anyone who may be forced to do so, without craving or going too far, will have no offence held against him; for Allah is Forgiving, Merciful" (2:173).

- Current medical knowledge considers brain stem death to be a proper definition of death.
- The Council accepts brain stem death as constituting the end of life for the purpose of organ transplant.
- The Council supports organ transplant as a means of alleviating pain or saving life on the basis of the rules of Shariah.
- Muslims may carry donor cards.
- The next of kin of a dead person, in the absence of a donor card or an expressed wish of the dead person to donate his organs, may give permission to obtain organs from the body to save other people's lives.
- Organ donation must be given freely without reward. Trading in organs is prohibited" (Badawi 1995)

According to Randhawa this fatwa was publicized via a limited number of channels: a news item on the morning edition of Radio 4; television coverage on the evening news in the Midlands area, where the fatwa was issued, and limited coverage in two Asian newspapers (Randhawa 1998: 1953). However, compared with the ECFR fatwa, there is a considerable amount of studies which reflected upon the (possible) impact of the UK fatwa on the Muslim community there. The late chairman of the Muslim Law (Shariah) Council UK, Zaki Badawi spoke himself about the impact of the fatwa. In his talk during the conference "Organ donation & transplantation: The multifaith perspective" held on 20 March 2000, Badawi said that after issuing the fatwa the Council started to receive calls asking: "Can I carry a donor card? Is it permissible under Muslim law?" According to Badawi, most of the enquiries came from young people and the majority of them were girls (Badawi 2000: 14). In his exploratory qualitative study among Asian population in Luton, UK, published in 1998, Randhawa found that only two out of the total 32 Muslim respondents had heard about this fatwa. However, Randhawa argued, Muslim respondents in this survey did perceive the standpoint of their religion as a decisive factor in shaping their behaviour towards organ donation. Instead of relying on their own conclusions in this issue, 26 out of the 32 Muslim respondents were awaiting the viewpoint of Muslim religious scholars on this contemporary issue. Thus it seems that the non-familiarity of the UK fatwa among Muslims there has, at least partially, to do with ineffective means used for communicating such fatwas to the Muslim community (Randhawa 1998: 1951, 1953). The same impression about the non-familiarity of the UK fatwa among Muslims there was reported in different subsequent studies which argued that adopting more effective communicative channels can help Muslims reach an informed decision about organ donation (Ahmed et al. 1999: 627; Rashid 2001: 79; Hayward and Madill 2003: 390; Aslam and Hameed 2007: 92). However, one should not ignore

the fact that the UK fatwa managed in 2006 to cross the UK borders and reach the Netherlands, as we shall see below, when the Muslim community there discussed Islam and organ donation.

Discussions in the Netherlands: The fatwa of Muṣṭafā Ben Ḥamza

The aforementioned negative statements of the Dutch Minister of Health, released in March 2005, about Muslims and organ donation triggered heated reactions from the Muslim community in the Netherlands. One of these reactions argued that the statements of the Minister are tantamount to discrimination (Marcouch 2005: 7). The main official reaction came from the Contact Group for the Relations between Muslim Organizations and Government (CMO) which was established on 14 January 2004 and recognized by the Dutch government on 1 November 2004 as representing, on a national level, the majority of Muslim organizations in the Netherlands (Ghaly 2008: 378, 385). The CMO sent a letter to the Dutch Minister of Health complaining about his negative statements and stated that such statements stigmatize the Muslim community. "It is very unfortunate that he chose this wording", the CMO secretary commented (Broek 2005: 3). Later on, the CMO proposed holding a conference on "Islam and organ donation". The idea appealed to the Dutch Minister of Health who was one of the keynote speakers in the conference which was held on 28 January 2006. In his speech, the Minister tried to nuance the controversial statements ascribed to him in March 2005 (Hoogervorst 2006).

Besides the Dutch Minister of Health, the main speakers of this conference included the Dutch Islam specialist Gerard Wiegers, two speakers from the UK, namely Hamid Alnajdi (London University) and Muhammad Shadid Reza (Muslim Law (Shariah) Council UK) who introduced the aforementioned UK fatwa, Isamil Karagoz (the Turkish Ministry of Religious Affairs, Diyanet) and, finally, the Moroccan religious scholar Muṣṭafā Ben Ḥamza (Higher Council of Ulema, Morocco). The fatwa issued by Ben Ḥamza will be the main focus here for different reasons. Compared with the other papers, the fatwa of Ben Ḥamza was the most detailed contribution in this conference.¹² Ben Ḥamza gave a comprehensive review of the Islamic classical and contemporary discussions relevant to organ donation. Additionally, he dedicated a whole section of his fatwa to the interreligious dimension of organ donation, namely donating organs to or receiving donated organs

¹² I hereby submit my due thanks to Prof. G. A. Wiegers (University of Amsterdam) who provided me with a copy of the full proceedings of this conference.

from non-Muslims. This issue, despite its direct relevance and significance for Muslims in the West, was only touched upon very briefly in the aforementioned ECFR and UK fatwas. Also, the final declaration endorsed by the conference was more or less based on the premises posed by the fatwa of Ben Ḥamza.

Before delving into the details of the fatwa, a short biographical note on the religious scholar who issued this fatwa is due. Muṣṭafā Ben Ḥamza was born on 17 July 1949 in Oujda, Morocco. He studied Islamic sciences in the Faculty of Shariah and Arabic literature in the Faculty of Arts and Sciences, both in Fez, Morocco. He taught these sciences as a professor in Moroccan universities such as Muhammad V University in Rabat. He is currently one of the well-known members of the Higher Council of Ulema (*al-Majlis al-ʿImī al-Aʿlā*) in Morocco which is the official authority entrusted with issuing fatwas there. This Council, established in 1981, is chaired by the King of Morocco and includes 47 members of the Moroccan religious scholars (<http://www.ben-hamza.de/tahrif.htm>; <http://www.almajlis-alilmi.org.ma/ar/index.aspx>).

Ben Hamza's 20-page fatwa was divided into an introduction, which elaborated on the flexibility of Islam and its capacity to accommodate novel issues such as organ donation, and four sections. The first section reviewed the relevant scriptural texts which are usually quoted in the contemporary Islamic religious discourse on organ donation. The second section explored the arguments of Muslim religious scholars who did not permit organ donation and the counterarguments of those who did. Ben Ḥamza supported the second group of scholars and refuted the arguments of those who did not permit organ donation. The third section was dedicated to examining the interreligious dimension of organ donation. The final section was an appendix containing 13 fatwas issued in the Muslim world which all permitted organ donation. Our Limited space dedicated to this article does not allow giving a comprehensive analysis of all the sections of this fatwa. Additionally, the second and the third sections follow more or less the same line of argumentation as that of the UK and ECFR fatwas. Hence, the main focus here will be on the last two sections only. Specifically the third section is unique because it examines the issue of donating organs by Muslims to non-Muslims which, despite its importance in the Western context, did not receive due attention in the ECFR and UK fatwas.

Before analyzing the third section, a word is due on the final section of this fatwa which clarifies the transnational dimension of issuing fatwas on organ donation. This section was meant to communicate a specific message to Ben Ḥamza's addressees in the Netherlands, namely, permitting organ donation is more or less a settled issue in the Muslim world. Ben Ḥamza stated that fatwas issued by both

individual Muslim religious scholars and collective Islamic institutions agree that organ donation is permissible. To him, the fatwas just disagree which precautions should specifically be taken in order to safeguard the donor's and the recipient's interests. In order to support this argument, Ben Ḥamza quoted 13 fatwas the first five of which were issued by individual Muslim religious scholars: 'Abd al-Raḥmān Nāṣir al-Sa'dī (Saudi Arabia) in 1952, Ḥasan Ma'mūn (Egypt) in 1959, Muḥammad Khāṭir (Egypt) in 1972, 'Abd Allāh Kanūn (Morocco) in 1978 and Jād al-Ḥaqq (Egypt) in 1979. Ben Ḥamza also quoted 7 collective fatwas issued respectively by the international Islamic Conference held in Malaysia in 1969, the Supreme Islamic Council (*al-Majlis al-Aʿlā*) in Algeria in 1972, the Fatwa Committee of Jordan in 1977, 2 fatwas issued by the Authority of the Supreme Scholars (*Hay'at Kibār al-ʿUlamā'*) in Saudi Arabia in 1978 and in 1981, the Islamic Fiqh Academy (IFA) in 1985 and the International Islamic Fiqh Academy (IIFA) in 1988. The thirteenth fatwa quoted in this section was on brain-death because of its essential relevance for cadaveric organ donation. This fatwa was the one issued by the IIFA in October 1986 which recognized brain death from an Islamic perspective and stated that organs can be procured from brain dead people (Ben Ḥamza 2005: 14–20). The importance of this section was clear in the final declaration of the conference which stressed, as we shall see below, that the majority of Muslim scholars agreed that organ donation is permissible in Islam.

Unlike the aforementioned ECFR and UK fatwas, the interreligious dimension of organ donation was central in the fatwa of Ben Ḥamza. It is clear that he was well-informed of the heated debates which preceded this conference where Muslims were portrayed as a group of profiteers who are willing to receive organs donated by non-Muslims but not ready to donate their own organs to non-Muslims. Ben Ḥamza stressed that adopting such a standpoint tarnishes the image of Muslims living in the West and demonstrate them as opportunists who are willing to take but not to give. Beyond the religious perspectives, Ben Ḥamza argued that this standpoint is neither ethical nor wise. It is unethical because no single society would ever accept accommodating a group of people who would behave in such a selfish way. It is further unwise because Muslims in the West, statistically speaking, live as minorities and this will not enable them to have self-sufficiency through organs donated by Muslims only. If the non-Muslim majorities adopted the same logic and thus decided to donate their organs exclusively to non-Muslims, Muslims would eventually have no organs available for transplantation. Besides these ethical and pragmatic remarks, Ben Ḥamza elaborated on the Islamic religious perspective to show that that Muslims can donate their organs to non-Muslims without religious qualms (Ben Ḥamza 2005: 11, 13).

In order to justify the permissibility of donating organs to non-Muslims, Ben Ḥamza referred first to the Qur'anic verse (05:32) which is usually quoted by those who permit organ donation in general. This Qur'anic verse reads, "...If any one slew a person (*nafs*) -unless it be for murder or for spreading mischief on the earth- it would be as if he slew the whole people: and whoever keeps it alive, it would be as if he saved the life of the whole people." Ben Ḥamza quoted different authoritative Muslim scholars of Qur'an exegesis to argue that the term *nafs*, usually translated as person or human being, is a generic term which makes no distinction between Muslims and non-Muslims. Thus, saving the life of a human being, by means of organ donation for instance, irrespective of her/his religion is always a commendable deed in Islam. Further, Ben Ḥamza made reference to another Qur'anic verse (02:126) which reads "And remember when Abraham said: 'My Lord, make this a City of Peace, and feed its people with fruits, such of them as believe in Allah and the Last Day.' He said: (Yea), and such as reject Faith, for a while will I grant them their pleasure, but will soon drive them to the torment of Fire, an evil destination (indeed)!" To Ben Ḥamza, this verse indicates that providing people with means of living in this life should not be dependent on their religious identity. As the Qur'anic verse shows, religious affiliation will rather be an important criterion in the Hereafter. The final argument used by Ben Ḥamza was the permissibility of concluding treaties of peaceful coexistence between Muslims and non-Muslims. As a historical example, he referred to the treaty concluded between the Prophet of Islam and the inhabitants of Medina on the basis of which Muslims and Jews committed themselves to defend each other against foreign enemies. Such treaties compelled Muslims even to sacrifice their lives in order to save the lives of their non-Muslim allies. All this can be taken as a valid basis for permitting donating organs to non-Muslims especially if they also do the same with Muslims, Ben Ḥamza argued. Finally, he said that some Muslims might feel uneasy about donating organs to or receiving organs from non-Muslims because they believe that religious affiliation might influence the purity of human organs. In response to this reservation, Ben Ḥamza stated that human bodies of both Muslims and non-Muslims, from an Islamic perspective, are all equally pure (*tāhir*) in the physical sense. He also quoted the well-known Muslim religious scholar al-Nawawī (d. 1278) who transmitted the unanimous agreement of Muslim scholars on this point (Ben Ḥamza 2005: 11–13).

The fatwa of Ben Ḥamza besides the other papers read during the conference, held on 28 January 2006, resulted in the following final declaration which was officially adopted by the Contact Group for the Relations between Muslim Organizations and Government (CMO) and the Shiite Islamic Council in the Netherlands (SIRN):

The majority of Muslim scholars in the Muslim world have declared that there is no objection to organ transplantation, provided that it is necessary for the patient, there is no financial gain, the decision to become a donor is freely taken, the deceased's wishes are respected and finally the removal and transplant procedures take place with the greatest medical and social cautiousness (<http://www.donorvoorlichting.nl>).

Unlike the UK fatwa, examining the (possible) social impact of the fatwa issued by Ben Ḥamza, as well as the final declaration adopted by the conference still await academic studies. However, the media coverage for the conference can give some primitive indications in this regard. For instance, it was reported that the CMO and the SIRN promised to urge the imams of the mosques affiliated with them not to resist organ donation anymore. One of these imams already expressed this tendency during the conference: "We follow the advice of our scholars and we will allow organ donation", upon which the audience that already included many other imams applauded. Further, the final declaration of the conference was distributed among Muslims via mosques and Islamic organizations (Catoen 2006: 3). The Dutch National Institute for Health Promotion and Disease Prevention (NIGZ), which included the department of Donor Information (*Donorvoorlichting*), also tried to publicize the final declaration of the conference. They published a report about the conference on their website under the title, "Islam is no obstacle for organ donation". The report stated that the conference was attended by at least 100 imams. The NIGZ also developed brochures in Arabic and Turkish, available via the Internet and in printed versions as well, on Islam and organ donation. The final declaration of the conference was quoted in these brochures (<http://www.donorvoorlichting.nl>).

A slight increase was noticed in the number of registered donors in 2007, compared with 2005, among Dutch people with Moroccan and Surinamese origins. This was reported in a small-scale empirical study, conducted by order of the NIGZ, which also indicated that the percentage of registered donors among people from Turkish origins remained unchanged (MCA Communicatie 2007: 7–9). It might be a hasty conclusion to state that these statistics indicate that the conference proceedings held in 2006 succeeded in increasing the numbers of the registered donors. For instance, the latest report published by the NIGZ in 2009, *Support for Organ Donation*, still speaks of a negative attitude towards organ donation prevalent among ethnic minorities in general who live in the Netherlands. According to this report, uncertainty about the position of one's religion on organ donation is (partially) responsible for this negative standpoint (Thiel and Kramer 2009: 7). Examining the possible influence of the religious discourse

on the Muslim community in the Netherlands still needs large-scale academic studies which should also pay attention to the social, cultural and political factors (Wiegers 2002: 224).

Conclusions

This article analyzed three main fatwas issued respectively in 1995 by the Muslim Law (Shariah) Council UK, in 2000 by the European Council for Fatwa and Research (ECFR) and finally in 2006 by the Moroccan religious scholar Muṣṭafā Ben Ḥamza during a conference held in the Netherlands. On the basis of these three fatwas, three main conclusions can be reached.

First of all, the three fatwas agree that both life and cadaveric organ donations are in principle permitted in Islam. None of the fatwas stated that this standpoint would change if the recipient or the donor was a non-Muslim. The fatwa of Ben Ḥamza clearly argued for the permissibility of donating organs to non-Muslims and stated that receiving organs donated by non-Muslims on one hand and refusing to donate organs to them on the other hand is neither ethical nor Islamic. Such fatwas which have been issued specifically for Muslims living in Europe indicate that Islam started to become part of the bioethical deliberations in Europe. In the context of discussing palliative care, Van den Branden and Broeckaert (Catholic University of Leuven, Belgium) have rightly argued: “Europe can no longer cling to a Christian or secular conceptual frame of reference to explain general attitudes towards ethical decisions” (Branden and Broeckaert 2008: 194). The Islamic religious discourse on organ donation shows that this statement holds true for other bioethical topics as well.

The second concluding remark is that Islamic bioethics has a transnational character. For instance, the discussions of and fatwas issued by Muslim religious scholars in the Muslim world on organ donation proved to be an essential component of the fatwas issued for Muslims living in the West. This holds true especially for the fatwas issued collectively by Islamic institutions in the Muslim world. This was clear in the fatwas issued by the ECFR and Ben Ḥamza. Even the authors of the UK fatwa which did not quote any specific fatwa issued based in the Muslim world had, later on, to stress that this fatwa was endorsed by Muslim scholars living in the Muslim world. This transnational characteristic is not exclusive to the discussions on organ donation but can also be observed in other bioethical issues such as cloning and milk banks (Ghaly 2010a: 30–33; Ghaly 2010b: 8–10). Further, there is a certain degree of interchangeability between these fatwas issued in different European countries. The UK fatwa issued in 1995 was on the table during the conference held in the

Netherlands in 2006. Also the ECFR fatwa issued in 2000 was quoted in the public debates on Islam and organ donation in the Netherlands.

The final concluding remark has to do with the reception of these fatwas. The governmental apparatus of different European countries have been trying to spread the positive standpoint, promoted by these fatwas, towards organ donation among Muslims living in these countries. However, there is hardly any academic study which fathomed out the possible influence of these fatwas within the broader European context. Unlike the public debates which always concentrate on the religious dimension only, such prospective academic studies should also examine the other important social, cultural and political dimensions relevant to this issue.

Open Access This article is distributed under the terms of the Creative Commons Attribution Noncommercial License which permits any noncommercial use, distribution, and reproduction in any medium, provided the original author(s) and source are credited.

References

- Aḥmad, Yūsuf al- (2006) *Aḥkām naql a'ḍā' fī al-fiqh al-Islāmī* [Rulings on organ transfer in Islamic jurisprudence]. Riyadh: Dār Kunūz Ishbīliyya li al-Nashr wa al-Tawzī'.
- Ahmed, W., S. Harris, and E. Brown. 1999. Attitudes to organ donation among south Asians in an English high street. *Journal of the Royal Society of Medicine* 92: 626–627.
- Albār, Muḥammad. 1994. *Al-Mawqif al-fiqhī wa al-akhālqī min qaḍīyyat zar'al-a'ḍā'*. Damascus/Beirut: Dār al-Qalam/al-Dār al-Shāmiyya.
- Aslam, M., and W. Hameed. 2007. UK Muslim graduates need more information about organ donation and transplant. *Transplant International* 21(1): 92–93.
- Badawi, M.A. Zaki (2000) Reassurance is needed. In *Organ donation and transplantation: The multi-faith perspective*, ed. Robin Jeffrey, 13–14, Bradford: National Museum of Photography, Film and Television.
- Bedir, Ahmet, and Sahin Aksoy. 2011. Brain death revisited: It is not ‘complete death’ according to Islamic sources. *Journal of Medical Ethics* 37: 290–294.
- Ben Ḥamza. 2005. *Istī'sāl al-a'ḍā' al-bashariyya wa zar'uḥā wa tabāduluhā bayna al-Muslimīn wa ghayrihim* [The removal of human organs, transplanting them and exchanging them between Muslims and non-Muslims]. A paper submitted to the conference “Islam and organ donation”, held on 28 January 2006, Driebergen, the Netherlands.
- Ben Ḥumayd, Šāliḥ. 2010. *Al-ijtihād al-jamā'ī wa aḥammiyyatuh fī nawāzil al-'aṣr* [The collective independent legal reasoning and its significance for the unprecedented issues of this time]. *Majallat al-Majma'al-Fiqhī al-Islāmī* 25: 47–73.
- Branden, S. Van den and B. Broeckaert. 2008. Medication and God at interplay: End-of-life decision-making in practicing male Moroccan migrants living in Antwerp, Flanders, Belgium. In *Muslim medical ethics: From theory to practice*, ed. Jonathan Brockopp and Thomas Eich 194–208, Columbia, S.C.: University of South Carolina Press.
- Carlisle, D. 1995. Life-giving Fatwa. *Nursing Times* 91(29): 14–15.
- Darsh, S.M. 1981. *Islamic Health Rules*. London: Taha publishers.

- Ebrahim, Abul, and Fadl Mohsin. 1998. *Organ transplantation: Contemporary Islamic legal and ethical perspectives*. Kuala Lumpur: A. S. Noordeen.
- European Council for Fatwa and Research. 2002. *Fatwas of European Council for Fatwa and Research*. Translated by Anas Osama Altikriti and Shakir Nasif Al-Ubaydi. Cairo: Islamic INC. Publishing & Distribution.
- Faqih, S., et al. 1991. The influence of Islamic views on public attitudes towards kidney transplant donation in a Saudi Arabian community. *Public Health* 105: 161–165.
- Fischer, Nils. 2009. Egypt's draft laws on organ transplantation. *Journal of International Biotechnology Law* 6(1): 168–172.
- Ghaly, Mohammed. 2008. The academic training of imams: Recent discussions and initiatives in the Netherlands. In *The study of religion and the training of Muslim clergy in Europe*, ed. W.B. Drees and P.S. van Koningsveld 369–402, Leiden: Leiden University Press.
- Ghaly, Mohammed. 2010a. Human cloning through the eyes of Muslim scholars: The new phenomenon of the Islamic international religio-scientific institutions. *Zygon* 45(1): 7–35.
- Ghaly, Mohammed. 2010b. Milk banks through the lens of Muslim scholars: One text in two contexts. *Bioethics* doi:10.1111/j.1467-8519.2010.01844.x.
- Ghaly, M., K. Schipper, and T. Abma. 2010. Orgaantransplantatie en moslims in Nederland: Theologische en interculturele dimensies [Organ transplantation and Muslims in the Netherlands: Theological and intercultural dimensions]. *Tijdschrift voor Gezondheidszorg en Ethiek* 20(4): 111–116.
- Gillman, John. 1999. Religious perspectives on organ donation. *Critical Care Nursing Quarterly* 22(3): 19–29.
- Hayward, C., and A. Madill. 2003. The meanings of organ donation: Muslims of Pakistani origin and white English nationals living in North England. *Social Science and Medicine* 57: 389–401.
- Howitt, Rachel. 2003. *Islam and organ donation: A guide to organ donation and Muslim beliefs*. Bristol: UK Transplant.
- Jundī, Aḥmad Rajā'ī al-. 1994. *Ru'ya Islāmiyya li zirā'at ba'ḍ al-a'ḍā' al-bashariyya* [An Islamic vision for the transplantation of some human organs]. Kuwait: Islamic Organization for Medical Sciences.
- Jundī, Aḥmad Rajā'ī al-. 2000. *Al-ta'rīf al-ḥibbī li al-mawt* [The medical definition of death]. Kuwait: Islamic Organization for Medical Sciences.
- Linsen, L. 2000. Levensbeschouwing doorslaggevend bij orgaandonatie (Worldview decisive for organ donation). *Ethiek en beleid* 1: 22.
- Madhkūr, Khālīd al-, 'Alī Sayf, Aḥmad al-Jundī and 'Abd al-Sattār Abū Ghudda. 1985. *Al-ḥayāh al-insāniyya: Bidāyatuhā wa nihāyatuhā fī al-mafhūm al-Islāmī* [Human life: Its beginning and its end from an Islamic perspective]. Kuwait: Islamic Organization for Medical Sciences.
- Majallat Majma' al-Fiqh al-Islāmī. 1987. Jeddah: International Islamic Fiqh Academy 3(2): 525–809.
- Majallat Majma' al-Fiqh al-Islāmī. 1986. Jeddah: International Islamic Fiqh Academy 1(1): 59–66.
- Majlis al-Ūrubbi li al-Iftā' wa al-Buḥūth, al-. 2002. Qarārāt wa fatāwā [Resolutions and fatwas]. Cairo: Dār al-Tawzā' wa al-Nashr al-Islāmiyya.
- MCA Communicatie. 2007. *Orgaandonatie onder Turken en Marokkanen* [Organ donation among Turks and Moroccans]. Utrecht: MCA Communicatie.
- Morgan, M., R. Hooper, M. Mayblin, and R. Jones. 2006. Attitudes to kidney donation and registering as a donor among ethnic groups in the UK. *Journal of Public Health* 28(3): 226–234.
- Padela, Aasim, Hasan Shanawani, and Ahsan Arozullah. 2011. Medical experts & Islamic scholars deliberating over brain death: Gaps in the applied Islamic bioethics discourse. *Muslim World* 101: 53–72.
- Perera, S. and N. Mamode. 2010. South Asian patients awaiting organ transplantation in the UK. *Nephrology Dialysis Transplantation* doi: 10.1093/ndt/gfq581.
- Pranger, D. 1993. Islam en orgaandonatie: Hoe denken moslims over orgaandonatie? [Islam and organ donation: How do Muslims think about organ donation?] Bussum: Nierstichting Nederland.
- Qaradāwī, Y. al-. 2010. *Zirā'at al-a'ḍā' fī daw' al-Sharī'a al-Islāmiyya* [Organ transplantation in light of the Islamic Sharia]. 1st ed., Cairo: Dār al-Shurūq.
- Ramadan, Tariq. 2004. *Western Muslims and the future of Islam*. Oxford: Oxford University Press.
- Randhawa, G. 1998. An exploratory study examining the influence of religion on attitudes towards organ donation among the Asian population in Luton, UK. *Nephrology, Dialysis, Transplantation* 13: 1949–1954.
- Rashid, Asrar. 2001. Muslim families: Donating organs and asking for post mortems. *Archives of Disease in Childhood* 85: 79.
- Shafi, Moulana, and Mufti Muhammad. 1995. *Islam on grafting & transplantation of human organs*, 1st ed. Karachi: Darul-Ishaat.
- Shahat, Y.I. el-. 1999. Islamic viewpoint of organ transplantation. *Transplantation Proceedings* 31: 3271–3274.
- Shaheen, F., and M. Souqiyeh. 2004. Increasing organ donation rates from Muslim donors: Lessons from a successful model. *Transplantation Proceedings* 36: 1878–1880.
- Sheikh, Aziz. 2000. Attitudes to organ donation among South Asians in the UK. *Journal of the Royal Society of Medicine* 93: 161–162.
- Thiel, L. van and P. Kramer. 2009. *Draagvlak orgaandonatie: Kennis, houding en gedrag van Nederlanders* [Support for organ donation: Knowledge, attitude and behaviour of the Dutch people]. The Hague: (NIGZ)-Donorvoorlichting.
- UK's Muslim Law Council. 1996. UK's Muslim Law Council approves organ transplants. *The Journal of Medical Ethics* 22(2): 99.
- Wiegers, G. 2002. Muslim discussions on organ donations to adherents of other religions. In *Intercultural relations and religious authorities: Muslims in the European Union*, ed. W.A. R. Shadid and P.S. van Koningsveld, 215–225, Leuven: Peeters.
- Zwart, H. and C. Hoffer. 1998. *Orgaandonatie en lichamelijke integriteit: Een analyse van christelijke, liberale en islamitische interpretaties* [Organ donation and bodily integrity: An analysis of Christian, liberal and Islamic interpretations] Best: Damon.

Newspaper articles and Internet

- Badawi, M.A. Zaki. 1995. Organ transplant. Available online <http://www.iol.ie/~affi/Articles/organ.htm> (Accessed 13 January 2011).
- Boseley, Sarah. 2000. Transplant chief loses job over racism row. *The Guardian* 23 February 2000: 5.
- Broek, Marc Van Den. 2005. Ommezwaai Hoogervorst oogst kritiek: Experts verrast door plan orgaandonatie [Hoogervorst's change of mind harvests criticism: Experts surprised by the plan of organ donation]. *De Volkskrant* 5 March 2005: 3.
- Campbell, Denis. 2010. The gift of life: Would you give up a kidney for a total stranger? *The Guardian* 22 July 2010: 14.
- Catoen, Nanette. 2006. Moslim mag organen doneren aan elk mens [A Muslim is permitted to donate organs to every human being]. *NRC Handelsblad*, 30 January 2006: 3.
- Hoogervorst, H. 2006. Toespraak van de minister van Volksgezondheid, Welzijn en Sport, H. Hoogervorst, tijdens de conferentie 'Islam en orgaandonatie' op 28 januari 2006 in Driebergen

- [The speech of the Minister of Public Health, Welfare and Sport, H. Hoogervorst, during the conference 'Islam and organ donation' on 28 January 2006 in Driebergen], available online http://www.minvws.nl/images/67600-28.01-islam-en-orgaandonatie-toespraakg_tcm19-106308.pdf (Accessed 19 August 2008).
- Marcouch, Ahmed. 2005. Leer moslim liever dat orgaandonatie wel mag [You better teach Muslims that organ donation is permissible]. *De Volkskrant* 7 March 2005: 7.
- Peeperkorn, M. 2005. Hoogervorst wil voorrang orgaandonor: Houding moslims 'wringt' bij transplantaties" [Hoogervorst wants priority for organ-donor: Standpoint of Muslims concerning transplantation 'wrings']. *De Volkskrant* 4 March 2005: 1.