

Criminal Responsibility in Cases of Illegal Transfer and Transplantation of Human Organs, Tissues, and Cells

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Abstract:

The majority of global legislations, whether western or arabic, have increasingly moved toward permitting the removal, transplantation, and donation of human organs, tissues, cells, and blood, particularly in cases where medical conditions render conventional treatment impossible and may lead to death. However, given the profound implications of these procedures for human life, affecting both donors and recipients, they have been the subject of extensive legal and ethical debate regarding their legitimacy and the conditions under which they may be considered permissible. As a result, most legal systems have sought to establish clear regulations and procedural safeguards to govern these practices, while simultaneously addressing potential violations, due to the highly sensitive nature of the process and its direct impact on human life. Nevertheless, the field has not been immune to abuse; the emergence of transnational criminal activities, commonly referred to as trafficking in human organs, has posed significant challenges. In response, legislatures have imposed criminal penalties to deter such illicit practices and to protect both human dignity and public health

Keywords: Removal of organs, transplantation of organs, donor, recipient, trafficking in organs.

1. Introduction

Human beings possess a set of rights that protect their dignity as persons, rights that are enshrined under international law. Yet, by their very nature, humans are vulnerable and inevitably subject to illness, which can impair their ability to live fully and effectively. For this reason, divine providence has ordained medical treatment as a means of safeguarding physical integrity.

However, medical interventions, while intended to preserve life and protect the human body, may themselves entail certain intrusions upon bodily integrity. With the

advancement of scientific research and medical technology, medical procedures have become increasingly invasive; nevertheless, the anticipated benefits to the patient often outweigh the potential harm, provided such interventions are not used for illegitimate purposes that compromise human safety.

In light of these considerations, various positive legal systems have recognized and permitted medical practice, deeming physicians' actions lawful and legitimate when performed under established conditions. This recognition reflects the transformative impact of modern medical

discoveries, which have enabled practitioners to save the lives of millions while balancing the imperative to respect human dignity and bodily integrity

However, medical acts can only be justified if they are performed by a person who is scientifically and practically qualified and legally licensed to practice such acts, provided that the therapeutic purpose is fulfilled and that the patient's consent is obtained for any medical intervention, except in cases of medical emergency.

Consequently, any medical intervention that falls outside any of the aforementioned conditions constitutes an unlawful act. In such cases, the medical act is transformed into conduct punishable under both criminal and civil law. The most serious form of unlawful or impermissible medical intervention in the medical field is the violation of a healthy human body for the purpose of removing an organ and transplanting it into the body of a patient. If this act is assessed in light of the general rules of criminal law, it constitutes a serious felony subject to aggravated punishment. However, for humanitarian reasons, such interference has been permitted under positive law, subject to specific conditions.

Nevertheless, international efforts to combat crimes related to the trafficking of human organs did not begin until 1972, despite the view of some researchers that the transfer and transplantation of human organs is among the oldest subjects and not a phenomenon of the twentieth century, but rather as old as humanity itself. The significant development of these practices in the modern era, however, did not begin until the second World War, particularly

through experiments conducted by Nazi Germany. The World Health Assembly first expressed its concern regarding the trafficking of human organs in Resolution WHA 40.13. Subsequently, various states undertook measures to combat this type of crime. The Algerian legislator was among those who criminalized such acts through the amendment of the penal code by Law No. 09-01 of 25 February 2009, which introduced three additional sections to the Penal Code: Section Five bis, entitled trafficking in Persons; Section Five bis (1), entitled Trafficking in human Organs; and section Five bis (2), criminalizing the smuggling of migrants.

This research addresses the following main question: What criminal liability arises from the illegal transfer and transplantation of human organs, tissues, and cells? To answer this question, the study adopts the following structure:

Introduction

First Section: The nature of the process of transferring and transplanting human organs

First Subsection: The concept of the Transfer and transplantation of human organs

second subsection: The legal regulations permitting the process of transferring human organs

Second section: The Illegal transfer and transplantation of human organs, tissues, and cells

First subsection: The removal and transplantation of human organs, tissues, and Cells in exchange for material consideration

Second Subsection: The crime of removing an organ without the owner's consent

Third subsection: criminal liability for the removal and transplantation of human organs, tissues, and Cells under the Algerian penal code

Conclusion

2. First title: The Nature of the Process of Transferring and Transplanting Human Organs

Organ transplantation is a medical procedure whereby a non-functioning organ in a patient's body is replaced with a healthy organ donated by another individual. This process involves the removal of an organ from a donor and its implantation into a recipient whose organ has ceased to perform its physiological function. Organs may be retrieved for transplantation following the death of a donor, particularly in cases where brain death has been medically established. Additionally, organs may be donated by a living person (First Subsection), subject to strict legal conditions and regulatory safeguards governing such procedures (Second Subsection).

2.1. First Subtitle: The Concept of the Transfer and Transplantation of Human Organs

Organ transplantation is defined as the process of removing living cells, tissues, or organs from the human body and subsequently transferring them either back into the same body or into another human body. It is a highly complex and demanding medical procedure; nevertheless, it is regarded as one of the most effective

treatments for the functional failure of a specific organ. Treatment through transplantation prolongs the patient's survival and significantly improves quality of life. Organ transplantation is therefore considered a modern therapeutic approach aimed at replacing damaged organs or tissues with healthy organs, parts of organs, or tissues.

Scholarly and legal definitions of the transfer and transplantation of human organs vary. Some define it as the set of medical procedures by which an organ is transferred from the body of a healthy person to replace a corresponding diseased organ in the body of another individual. Others describe it as the replacement of a diseased organ or tissue with a healthy one, or the implantation of a new organ into the living human body to compensate for deficiencies affecting physiological functions (Abdeljawad Abdallah Idris, 2009, p. 46)

As for what specifically concerns the general concept of the human organ, there are those who defined it as the organ whose removal and excision is from a living or dead human body and its implantation or manufacturing according to the requirements of the case in another living human body (Abdelhamid Nabih Nasrine, 2008, p. 84).

The organ transplantation operations that are carried out in our present day for organs and tissues are as follows:

- Liver, kidney, pancreas, heart, lungs, intestines, cornea, ear.
- Skin, bones, bone marrow, heart valves, connective tissue, middle ear.

2.2. Second Subtitle: The Legal Regulations Permitting the Process of Transferring Human Organs

The transfer and transplantation of human organs are subject to strict rules and limitations due to their direct impact on bodily integrity and the right to life. In this regard, the algerian legislator established specific safeguards through Law No. 18-11 on health (Law No. 18-11 of 2 July 2018 relating to health, Official Gazette No. 46, issued on 29 July 2018). Among these safeguards are conditions that must be fulfilled by the donor for the procedure to be lawful, most notably the requirement that the donor give informed and voluntary consent (Article 357, paragraph (2), of the same law). The donor is required to give clear and explicit consent to the donation of his organs, and such consent must be the result of a free and independent will, without any form of threat or compulsion .

Laws regulating the transfer and transplantation of human organs emphasize that consent must be expressed without material or moral pressure. Some legal systems even prohibit the recipient from exerting emotional influence over the donor, as such influence is regarded as a form of coercion that undermines the donor's free will(Khalfi Abdelrahman, 2014, p. 206). Consent to organ transfer is invalid if it exposes the donor to serious danger or risks causing their death(Article 360, paragraph (1), of Law No. 18-11 relating to health). In addition, the algerian legislator recognizes the donor's right to revoke consent at any time and without formalities, as provided in Article 360 of Law No. 18-11. Furthermore, the law

addresses the issue of minor donors by requiring that the donor have full legal capacity to dispose of their organs and not be a minor, with the sole exception of donations made between siblings (Article 361 of Law No. 18-11 relating to health). Examination of Donors:

Donors undergo thorough screening to detect cancers and infections that could be transmitted during the transplantation process. Physicians assess any potential malignancies by conducting a comprehensive review of the donor's medical history and examining the organ in the operating room at the time of its recovery. Organs found to contain cancerous cells or other significant pathological conditions are deemed unsuitable for transplantation. In cases involving donors with a previous history of cancer, the decision to use their organs depends on whether residual cancer cells remain or whether the disease has metastasized to the organ intended for transplantation. Bacterial infections are generally identifiable through an evaluation of the donor's overall health and are often diagnosed and treated before the donation process. When appropriately managed, these infections do not preclude transplantation, although recipients may require adjunctive antibiotic therapy to ensure safety.

Examination of the Recipient:

Similarly, recipients undergo comprehensive evaluations, including screening for cancers, infections, and an assessment of their overall health. Since organ recipients are administered high doses of immunosuppressive drugs during

transplantation, patients with active infections or uncontrolled cancers are ineligible for the procedure until these conditions are appropriately treated, as immunosuppression could exacerbate the underlying disease.

Patients experiencing general health deterioration, certain viral infections, or additional comorbidities alongside the organ-specific condition necessitating transplantation face significantly lower success rates for the procedure. Decisions regarding whether to proceed with transplantation are therefore made on a case-by-case basis, taking into account factors such as the patient's age and overall medical status.

Psychological and social assessments are also essential, given that post-transplant care including lifelong medication adherence and regular follow-up visits is both physically and psychologically demanding. Not all patients may be capable of fully complying with these requirements. Accordingly, a multidisciplinary team, including physicians, nurses, psychiatrists, and social specialists, works closely with patients and their families to ensure they understand the long-term commitments and challenges associated with transplantation. Consideration of the patient's broader social and psychological context is crucial in determining whether organ transplantation is the most appropriate intervention.

In addition, the Algerian legislator has established specific conditions that must be satisfied by the recipient. Among the most important is obtaining the recipient's

informed consent, as the transplantation of organs, tissues, or human cells cannot proceed without it. Consent must be given in the presence of the attending physician and the head of the relevant department, and before two witnesses. If the recipient is unable to express consent, a written authorization may be provided by an adult family member, following the legally defined order of priority (Article 364, paragraphs (1) and (2), of Law No. 18-11 relating to health). Similarly, it is the physician's duty to provide the recipient with comprehensive information regarding the transplantation procedure, including its potential effects, side effects, and associated medical risks. This ensures that the patient is fully informed and able to deliberate carefully before giving consent. (Article 360, paragraph (7), of the same law).

Recent decades have witnessed significant advancements in the medical field, leading to practices in human organ transplantation that, in some respects, resemble the treatment of mechanical spare parts. While these developments have enhanced medical capabilities, they have also contributed to the emergence of ethical and legal challenges, including human cloning, surrogacy, embryo banking, gender reassignment, and other practices that may have implications for public order and societal moral standards (Khalfi Abdelrahman, *Ibid.*, p. 213.)

3. Second title: The Illegal Transfer and Transplantation of Human Organs, Tissues, and Cells :

As previously noted, the removal and transplantation of human organs, tissues,

and cells are strictly regulated and must adhere to established legal requirements. Among these regulations, the most significant include the prohibition of financial gain (Subsection One) and the necessity of obtaining the informed consent of both the donor and the recipient (Subsection Two). Failure to comply with these provisions constitutes the crime of human organ trafficking, a serious offense recognized internationally, for which all participants or facilitators may bear criminal responsibility (Subsection Three).

3.1. First Subtitle: Removal and Transplantation of Human Organs, Tissues, and Cells for Financial Gain

Article 358 of the health Law explicitly prohibits the removal and transplantation of human organs, tissues, and cells for any form of monetary or material compensation. This provision establishes that such procedures are fundamentally acts of donation, and any violation of this rule is considered a criminal offense. Similarly, Article 303 bis 18 of the Penal Code stipulates that anyone who removes tissues or cells from a person's body in exchange for money or other benefits, regardless of their nature, shall be subject to imprisonment (Order No. 156/66 dated 18 Safar 1386 AH, corresponding to 8 June 1966, concerning the amended and supplementary Penal Code.) From these articles, we conclude that the Algerian legislator criminalizes the act of obtaining an organ from the human body for material consideration or a specific benefit. The Algerian legislator did not specify the status of the perpetrator who performs this act, as he may be a natural person, the patient

himself, or a hospital where organs are located.

The intermediary in this crime is not an accomplice, so that the provisions of an accomplice in punishment apply to him; rather, he is a principal actor who is treated the same as the one who obtains an organ from the human body for consideration (Articles 44–45 of the previous law).

The basis for criminalizing this act is the refusal of material or beneficial consideration. The human body has its value; it is not bought and sold, on one hand, and for the sake of preserving his dignity, his life, and keeping the human value that God placed in him, on the other hand. He is not an animal to be bought and sold, even his organs. This illegal trade becomes affiliated with specialized gangs, whether they are physicians, brokers, or private hospitals (Abdeljawad Abdallah Idris, *Ibid.*, p. 185.) .

The provision of any benefit in exchange for the removal of human organs is criminalized, even when an agreement exists between the owner of the body and the recipient of the organ. Such agreements are considered null and void for violating public order and public morals (Aayed Al-Diyat Samira, 1999, p. 68.) .

Regarding the mental element of this offense, it is an intentional crime, established by the deliberate direction of the perpetrator's will toward committing the act, with full awareness that the law prohibits and punishes such conduct. The intentional perpetrator is anyone who obtains an organ or a part of the human body for material gain or without the owner's consent, whether the act is

committed for trafficking or simply seizing the organ without authorization.

3.2. Second Subtitle : The Crime of Removing an Organ Without the Owner's Consent

Article 362 of the Health Law explicitly provides that no organ may be removed or transplanted from a human body except following a legal medical determination of death, and never without the owner's consent during their lifetime. The individual's consent may be expressed through any legally recognized means prior to death. Similarly, Article 303 bis 19 of the Penal Code establishes that no organ may be removed from a deceased person except in compliance with applicable legal provisions.

It can therefore be concluded that this crime is established by the mere absence of the body owner's consent, whether the individual is alive or deceased. While consent in traditional medical procedures is a prerequisite for the permissibility of interventions aimed at treatment, in the context of organ transplantation, consent is particularly essential due to the significant risks to which the patient may be exposed in the future. The physician has an obligation to fully inform the patient of all aspects of the transplantation process, including potential risks and anticipated benefits, ensuring that the patient is free to make a voluntary decision without any form of pressure or coercion. In this context, the physician's duty is limited to providing a comprehensive account of the patient's condition and the likelihood of improvement should the transplantation

proceed (Abdelkarim Mamoun, 2009, p. 584).

The law does not prescribe the specific methods by which the physician must communicate this information, leaving such decisions within the professional discretion of the medical practitioner. Concealment of potential or serious consequences of the transplantation process constitutes a medical error and may give rise to criminal liability. The primary purpose of this obligation is to secure genuine, informed consent. This duty reflects respect for personal autonomy and the inherent right of individuals to exercise control over their own bodies (Shawqi Omar Abu Khotwa Ahmad, 1999, pp. 88, 108.).

The Algerian legislator, through Article 362, paragraph 2 of the Health Law, provides that a deceased individual's refusal to donate can be formally expressed by registering in the refusal register maintained by the National Agency for Organ Transplantation before death. Consequently, the medical team responsible for organ removal must consult this register to determine the deceased's stance. In the absence of registration, consultation is made with the adult members of the deceased's family or, if no family exists, with the legal representative (Article 362, paragraph 3, of Law No. 18-11 relating to health.).

3.3. Third Subtitle : Criminal Liability for the Removal and Transplantation of Human Organs, Tissues, and Cells under the Algerian Penal Code

When introducing the crime of human organ trafficking in the Penal Code in 2009,

the Algerian legislator distinguished between criminal responsibility arising from the removal of human organs and that arising from the removal of human tissues and cells. The penalty is more severe in the case of organ removal, reflecting the greater ethical and medical significance, whether the violation concerns the principle of gratuitous disposition or the requirement of consent for the removal procedure.

The law establishes that any individual, regardless of status, who obtains a human organ whether it is a single or paired organ essential to human life by any means, whether lawful or unlawful, and in exchange for financial compensation or any other benefit, is considered a perpetrator of the crime of human organ trafficking. The legislator treats this conduct as an aggravated offense, reflecting the serious nature of the act and its consequences (Abdelkarim Mamoun, *Ibid.*, p. 399).

With regard to human tissues, cells, and other body materials, Article 303 bis 18 of the Algerian Penal Code distinguishes between two acts: the removal of tissues and cells, and the collection of human body materials. Any person who removes human tissues or cells in exchange for material gain or any other benefit, regardless of its nature, is considered a perpetrator of the crime of human organ trafficking. Similarly, any individual who collects materials from the human body, such as bone marrow, is deemed to commit the same offense. This article further clarifies that liability extends to anyone who performs the act of removal or collection, irrespective of their status. This includes physicians performing surgical procedures within the scope of

their practice, as well as any other individuals engaged in these acts. Notably, the legislator excludes the owner of the tissues, cells, or body materials from criminal liability if they voluntarily provide them in exchange for consideration.

The Algerian legislator also differentiates between the removal of human organs and the removal of tissues or cells without the owner's consent. The penalty is more severe for the removal of organs, which is treated as an aggravated offense, whereas the unauthorized removal of tissues or cells, or the collection of other body materials without consent, is classified as a simple misdemeanor (Zahdour Ashouak, 2009, p. 127).

A review of Articles 303 bis 17, 303 bis 18, and 303 bis 19 of the Algerian Penal Code reveals that the legislator explicitly emphasizes the necessity of complying with the legal provisions regarding consent for the removal and transplantation of human organs, tissues, and cells, as stipulated in the Health Protection and Promotion Law. This requirement applies equally to both living and deceased individuals. Any violation of these rules constitutes a criminal offense under Algerian law. Accordingly, it is essential to obtain the free, informed, and voluntary consent of the owner of the organ, tissue, or cell prior to its removal.

Furthermore, Articles 303 bis 14 and 303 bis 19 of the Penal Code indicate that the legislator does not limit the scope of the crime to a particular purpose for the removal of an organ, tissue, or cell without the owner's consent. Consequently, the crime of trafficking is established regardless of whether the removal was intended for

therapeutic purposes, such as transplantation into another patient, or for non-therapeutic purposes, including sale or other forms of material gain. Liability arises irrespective of the status of the individual performing the act, whether it is a physician specializing in such surgical procedures or any other person involved in the removal.

4. Conclusion:

In conclusion, after examining the issue of criminal liability arising from the illegal transfer and transplantation of human organs, tissues, and cells, it is evident that the Algerian legislator permits such procedures only within the limits and regulations established by Law No. 18-11 relating to health. At the same time, the law clearly criminalizes any unauthorized transfer or transplantation, holding accountable all individuals who contribute to or participate in the act whether they are physicians, donors, or recipients since the offense is established upon the fulfillment of all its constitutive elements.

Criminal responsibility extends to anyone involved in the commission of the act, with penalties ranging from fines to imprisonment, and the severity of the punishment may increase depending on the consequences of the offense.

To further prevent and limit the occurrence of this crime, the Algerian legislator should consider strengthening the penalties associated with the illegal transfer and transplantation of human organs, tissues, and cells. Additionally, enhancing judicial oversight and institutional supervision of organ transplantation procedures

performed by hospitals would contribute significantly to safeguarding public health, protecting human dignity, and preserving the ethical integrity of medical practice.

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