



The controls of the Human Organs Removal and Transplantation Under the Algerian Health Code



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Abstract

The world has achieved a significant progress in medicine, due to the enormous scientific discoveries , so that enable to save many patients' lives , and rid them of their pains ; notably after the success of the organ removal and transplantation . and it was incumbent to annex this progress with some updated legal provisions, to frame and control this process, so as not depart from its framework and noble purposes, and even be reconcile between the interests of the donor's in maintaining the safety and dignity of his body , and the recipient patient in benefiting and utilizing the donated organ, And that's what the Algerian legislator tried to embody in the Algerian Health Law N° 18 -11.

Keywords

Human organs;
Organ removal;
Organ transplantation;
Donor;
Recipient.

الكلمات المفتاحية

الأعضاء البشرية؛
نزع الأعضاء؛
زرع الأعضاء؛
متبرع؛
مستلقي.

ضوابط نزع وزرع الأعضاء البشرية في ظل قانون الصحة الجزائري

ملخص

حقّق العالم تطورا ملحوظا في مجال الطب، بسبب الاكتشافات العلمية الهائلة، التي مكّنت من إنقاذ حياة الكثير من المرضى وتخليصهم من آلامهم، خصوصا بعد نجاح عمليات نزع وزرع الأعضاء البشرية، وكان لزاما أن يصاحب هذا التقدم استحداث نصوص قانونية تؤطر العملية، وتضع الضوابط التي تحكمها، حتى لا تخرج عن إطارها وغايتها النبيلة، وحتى يتم التوفيق بين مصلحة المتبرع في الحفاظ على سلامة وكرامة جسده، ومصلحة المريض المتلقي في الاستفادة والانتفاع بالعضو المتبرع به أيضا، وهذا ما حاول المشرع الجزائري تجسيده في قانون الصحة الجزائري رقم 18-11.

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Introduction:

The right to life and bodily integrity stand as paramount rights protected by diverse legal systems and legislative frameworks worldwide. Safeguarding these rights from all forms of abuse is a legal obligation undertaken by the state through various institutions and regulations, each fulfilling a vital role within society. This protection persists even posthumously due to deep-rooted social and religious principles that advocate for the sanctity of human life both during life and after death.

Advancements in medical science have had a transformative effect on human existence and global health. These advancements have enabled complex therapeutic interventions, such as the removal and transplantation of human organs, providing new hope to patients suffering from severe organ failure and an inability to perform essential physiological functions. However, alongside these positive developments, a dark side has emerged: the exploitation of patients in dire need of organs and the vulnerable poor, who are coerced by financial desperation, becoming victims to organ traffickers and unethical medical practitioners.

The consequences of organ removal are far-reaching, beginning with the immediate physical pain and extending to the permanent loss of organ function and alterations in bodily appearance. Despite these challenges, acts of altruism, empathy, and a sense of solidarity often inspire individuals to donate their organs selflessly, particularly within familial settings. These acts are also motivated by spiritual beliefs and the desire for reward in the afterlife.

To address the complexities of this practice, the Algerian legislator has taken significant steps to establish a comprehensive legal framework that governs organ donation and transplantation. This includes setting stringent controls and guarantees under the new health law enacted in 2018. Consequently, it is essential to explore the following question: What are the legal regulations that oversee the removal and transplantation of human organs to ensure their legitimacy and ethical conduct under the health code?

To answer this question, an inductive approach was employed to systematically examine the legal texts governing human organ donation within the health code. Furthermore, an analytical approach was adopted to critically evaluate these texts, assessing their adequacy in providing robust protection for human organs and the individuals involved.

The research was guided by specific hypotheses, emphasizing the legislator's role in defining stringent controls for organ removal and transplantation. It highlights the importance of upholding patient dignity, safeguarding the health of donors from risks associated with organ removal, and restricting the justifications for such procedures to necessary diagnostic and therapeutic purposes, all while ensuring informed consent as mandated by Health Law No. 18-11.

This scholarly article aims to elucidate the justifications for engaging in organ removal and transplantation procedures and the legal conditions designed to protect donors, ensuring their physical integrity and dignity. It also seeks to highlight the benefits to recipients and the overarching protection of societal values.

To thoroughly investigate this topic, the research is divided into two main sections: the first addresses the justifications for human organ removal, while the second delves into the specific conditions and regulations that govern these medical procedures.

By examining these aspects, this article contributes to a deeper understanding of the ethical, legal, and social dimensions of organ donation and transplantation, ensuring that these life-saving procedures are conducted with the utmost respect for human rights and dignity.

1. Justifications for the Removal and Transplantation of Human Organs:

Medical science has achieved a significant milestone in the realm of organ removal and transplantation, a field that has been revolutionized by advancements in technology and surgical techniques. These medical breakthroughs necessitated the introduction of comprehensive health codes, incorporating new provisions to outline the justifications for undertaking such complex and potentially hazardous procedures.

The primary justification for resorting to organ removal and transplantation lies in their critical role in diagnosis and treatment (1-1). These procedures are not undertaken lightly; they are reserved for situations where the recipient's condition is dire. The individual in need of the transplant is typically facing severe health challenges, often in a life-threatening scenario (1-2). The gravity of their situation mandates that transplantation is not just an option but the only viable means of survival and recovery (1-3). This stringent criterion ensures that the medical intervention is absolutely necessary and not a matter of convenience.

The necessity of these operations is underscored by the principle that the organ transplant is the sole available treatment that can potentially save the patient's life. This criterion is crucial to exempting the physician from liability, as it justifies the extreme measures taken to procure and transplant an organ. The health codes are designed to protect all parties involved, ensuring that the procedure is carried out with the highest ethical standards and legal backing.

Moreover, the health code provisions are meticulously crafted to address the ethical and legal implications of organ transplantation. They ensure that the rights and well-being of both the donor and the recipient are safeguarded. The donor, whether living or deceased, is protected under stringent laws that mandate informed consent and ethical procurement practices. For the recipient, the regulations ensure that the transplantation is carried out as a last resort, emphasizing that the procedure is critical for their survival and overall health.

These provisions also serve to protect medical practitioners. By clearly defining the conditions under which organ transplantation is justified, doctors are shielded from legal repercussions, provided they adhere strictly to the established guidelines. This legal framework encourages doctors to perform these life-saving procedures without the fear of unwarranted liability, thus promoting a healthcare environment where critical medical interventions can be carried out efficiently and ethically.

In conclusion, the justifications for the removal and transplantation of human organs are deeply rooted in the necessity for life-saving treatment. The health codes play a pivotal role in ensuring that these procedures are performed under stringent ethical and legal standards, thereby protecting the rights and lives of both donors and recipients. This careful balance between medical necessity and ethical responsibility forms the backbone of modern organ transplantation practices, reflecting the profound advancements in medical science and the unwavering commitment to human dignity and life.

1-1. The Decision for Organ Removal and Transplantation Must Be Dictated Solely by Therapeutic and Diagnostic Purposes:

In the medical field, a human organ is defined as a complex structure of tissues that work together to perform a specific function. For example, the stomach, which is responsible for holding and digesting food, fits this definition. In contrast, tissues are collections of cells, which are the smallest units in the body[1]. Legally, however, there is variation in definitions. The Algerian legislator has not specifically defined human organs, whereas Jordanian law describes an organ as "any part or organ of the human body," performing a particular function, whether external like the cornea or internal like the kidney and liver[2].

Organ removal and transplantation involve transferring an organ or tissue from a donor, who may be living or deceased, to a recipient whose damaged organ needs replacement[3]. This process is known by various terms, including organ transplantation, humanitarian transfer, and compensation[4]. Article 355 of the Algerian Health Code specifies that the justification for organ removal and transplantation must be therapeutic or diagnostic in nature, prohibiting these procedures unless they meet these strict conditions[5]. Conversely, using organs solely for experimentation or scientific research is forbidden.

The therapeutic and diagnostic purposes serve as the only legitimate justifications for these operations. This means the primary goal must be to treat the patient, often as a last resort. Under Islamic Sharia, organ transplantation is seen as a significant necessity. It is permissible to transfer an organ from a donor to a recipient to save a life or alleviate suffering, provided it does not harm the donor. Allah says, "And if anyone saved a life, it would be as if he saved the life of all mankind"[6]. This verse emphasizes the noble act of donating an organ to save another's life or ease their pain.

Islamic Sharia permits the use of human organs from both living and deceased donors to treat another person in cases of legitimate urgency. This act is considered one of human solidarity, empathy, and compassion[7]. However, it is crucial that the donor is not harmed, as their well-being takes precedence. The donation must be altruistic and not involve any financial transactions. Article 358 of the Health Code reinforces this by prohibiting the sale and financial transaction of organs, tissues, and cells.

The Penal Code describes the illegal trade and purchase of human organs as organ trafficking, defining it as "the trade and purchase of one or more parts of the human body performing a specific function, whether internal or external"[8]. To ensure legal protection, the legislator has criminalized obtaining organs in exchange for financial gain, including money or any other benefit. According to Article 303 bis 16 of Law No. 09-01, dated February 25, 2009, those found guilty face imprisonment of 3 to 10 years and fines ranging from 300,000 to 1,000,000 DZD[10]. The same penalties apply to intermediaries who encourage or facilitate such transactions.

The voluntary nature of organ donation is emphasized by law, which prohibits anyone involved in organ removal and transplantation from conducting these operations for financial gain (Article 367 of the Health Code). Interestingly,

the legislator does not penalize individuals who sell their organs, potentially reflecting a recognition of individual autonomy over one's body. However, this can also be seen as a lack of adequate protection for human organs, as individuals cannot be both offenders and victims in such cases.

Islamic scholars (Fuqaha) have also prohibited organ donation for financial compensation, as the primary goal of these procedures is to serve the therapeutic interests of the patient. Islam allows differentiation between interests in medical practices, rejecting financial motives and emphasizing noble, non-profit intentions. Thus, the sale and trafficking of organs are not permitted[10], and donations are founded on the hope of spiritual reward rather than financial gain.

Moreover, the human body is honored, as stated in the Quran: "And indeed, We have honored the children of Adam, and We have carried them on land and sea, and provided them with good things, and preferred them above many of those We created"[11]. Allowing the sale of human organs could lead not only to the exploitation of the poor but also to heinous acts like abduction if sales were not consensual[12]. Therefore, human organs should not be commercialized, and civil law, which regulates sale provisions, also recognizes that human bodies and their parts are not commodities.

1-2. The Recipient is Endangered and in a Life-Threatening Situation:

In criminal law, this scenario is often referred to as a "case of necessity," meaning that the severe danger faced by the recipient necessitates the removal of a suitable organ from another living or deceased individual for transplantation. The legislator articulated in the repealed law No. 85-05 that the benefit derived from removing a human organ or tissue must be significant and assured, following thorough examinations determined by the treating physician.

The concept of "interest" in this context pertains to the life and health of the organ recipient[13]. Given the dire threat to the recipient's life and physical safety, these interests are legally protected and considered legitimate. The urgency, known as imminent risk, must be present, indicating that the protected interest is directly threatened in the given situation. However, this condition is not explicitly stipulated by many legislations that permit the removal of human organs[14].

This urgency condition is one of the essential treatment conditions included among the grounds of justification, which shifts the act from being criminalized to being permissible. The legislator has limited the legal and medical justifications for resorting to human organ removal and transplantation to diagnostic and therapeutic purposes. This application should be focused on the recipient patient, not on the donor, whose justification is often moral, humanitarian, or emotional.

It is rare to find an individual willing to part with an organ purely out of moral or humanitarian reasons unless driven by a deep personal connection or religious conviction. The donor might be motivated by the desire to seek spiritual reward or to help someone they deeply care for, such as a parent, spouse, or sibling. This altruistic act is often seen as a profound expression of empathy and solidarity, rooted in the hope of making a significant difference in the recipient's life.

The legal framework surrounding organ donation is designed to ensure that these acts of donation are carried out under strict ethical guidelines, prioritizing the health and safety of both the donor and the recipient. The process begins with a comprehensive evaluation to confirm that the donation is medically necessary and that the donor is fully informed of the risks involved. This ensures that the decision to donate is made voluntarily and with a complete understanding of the potential consequences.

Moreover, the legislation aims to protect donors from exploitation and to maintain the integrity of the medical profession. By restricting organ removal and transplantation to cases of genuine medical necessity, the law helps to prevent abuses and ensures that these life-saving procedures are conducted ethically. This legal protection is crucial in maintaining public trust in the healthcare system and in the process of organ donation.

In conclusion, the necessity for organ removal and transplantation is driven by the recipient's critical medical condition, which poses an imminent threat to their life. The legal and ethical frameworks in place ensure that these procedures are justified and carried out with the utmost care and consideration for all parties involved. This careful balance between necessity and ethical responsibility underscores the importance of these medical interventions in saving lives and improving the quality of life for recipients.

1-3. Transplantation as the Sole Method of Treatment:

Legally, the concept of organ transplantation as the only method of treatment is framed within the context of necessary conditions during emergencies. This principle dictates that the removal and transplantation of a human organ is the sole viable option to eliminate the imminent risk to the patient and restore their health. Essentially, it involves transferring an organ to a patient either to save their life or to enable them to regain one of the essential bodily functions through the use of the transplanted organ[15]. This requirement is explicitly articulated in Article 364 of the Health Law No. 18-11.

In emergency situations where a patient's life is at stake, organ transplantation becomes the last resort. The urgency of the patient's condition mandates that transplantation is the only feasible solution to prevent severe health deterioration or death. The medical necessity of this procedure is paramount, ensuring that every possible non-invasive treatment option has been exhausted before resorting to organ transplantation.

However, the urgency condition does not apply when the organ is donated by a deceased individual. In such cases, organ removal from deceased donors is prioritized over living donors. This preference is based on the ethical consideration that utilizing organs from the deceased can alleviate the burden on living donors and reduce associated risks. Before organ removal from a deceased donor, death must be confirmed through forensic evidence and scientific methods[16]. This verification ensures that the donor is indeed deceased, adhering to strict legal and medical standards. The procedure must also comply with legal conditions stipulated by law for the removal of organs from deceased individuals.

The transplantation process from a deceased donor is highly regulated to ensure that it is conducted ethically and legally. The priority given to deceased donors highlights the importance of utilizing available resources while protecting the rights and well-being of living individuals. The legal framework is designed to safeguard the dignity and integrity of both donors and recipients, ensuring that the procedures are carried out with the highest ethical standards.

In cases where a living donor is involved, the conditions are even more stringent. The donor must be fully informed of the risks and implications of the donation and must provide explicit consent. The donation should be voluntary, free from any form of coercion or financial incentive. This ensures that the donor's decision is based on altruism and a genuine desire to help another person, often driven by personal connections or humanitarian considerations.

The recipient, on the other hand, must be in a critical condition where transplantation is deemed the only viable treatment option. Their medical condition should be such that without the transplantation, their health would significantly deteriorate or result in death. The medical evaluation must conclusively demonstrate that the transplanted organ will substantially improve the recipient's health and quality of life.

The legal stipulations surrounding organ transplantation emphasize the necessity of these procedures being performed under strict conditions to ensure ethical conduct and medical necessity. By prioritizing deceased donors and enforcing stringent criteria for living donations, the law aims to balance the urgent needs of recipients with the ethical considerations of donation.

In conclusion, organ transplantation as the sole method of treatment underscores its critical importance in life-saving medical procedures. The legal and ethical frameworks established ensure that these procedures are carried out with the utmost care and respect for all individuals involved, reflecting a commitment to medical excellence and human dignity.

2. Conditions for Removing and Transplanting Human Organs:

To ensure the safety of both the donor and the recipient, as well as to maximize the success of the transplantation procedure, legislators have established stringent regulations governing the removal and transplantation of human organs. These regulations treat the process as an act of donation and cover a wide range of conditions. These conditions are divided into two main categories: those related to the instruments and methods used in the procedure (2-1), and those pertaining to the donor and recipient (2-2).

Instruments and Methods of the Operation:

The instruments and techniques utilized in organ removal and transplantation must meet the highest medical standards to prevent any risk of infection or complications. This includes using specialized, sterilized equipment designed specifically for such delicate procedures. The surgical methods employed must be state-of-the-art, ensuring minimal invasiveness and maximizing the likelihood of a successful outcome.

Medical facilities performing these operations are required to adhere to rigorous protocols. These protocols involve maintaining sterile environments, employing highly trained medical personnel, and using the latest surgical techniques

and technologies. Continuous monitoring and assessment of these procedures are necessary to ensure they meet the established standards and that any potential complications are swiftly addressed.

Conditions Related to the Donor and Recipient:

The selection criteria for donors and recipients are equally stringent to ensure compatibility and minimize the risk of organ rejection. For living donors, comprehensive medical evaluations are conducted to confirm that they are in good health and can safely donate without compromising their own well-being. These evaluations include thorough physical examinations, psychological assessments, and compatibility testing to ensure that the donor is a suitable match for the recipient.

Living donors must provide informed consent, fully understanding the risks involved and the implications of their decision. They must be of legal age and possess the mental capacity to make such a decision. In cases involving deceased donors, prior consent must have been obtained, either from the donor themselves or from their next of kin, in accordance with legal requirements. This ensures that the process respects the wishes of the deceased and their family.

Recipients must be in a condition where organ transplantation is the only viable treatment option. Their medical assessment must demonstrate that without the transplant, their health would significantly deteriorate or result in death. The potential benefits of the transplant must clearly outweigh the risks involved, ensuring that the procedure will substantially improve the recipient's quality of life.

Ethical and Legal Considerations:

The ethical framework surrounding organ donation is designed to uphold the highest standards of integrity and respect for human life. This includes prohibiting any form of exploitation or commercialization of human organs. The Health Law explicitly forbids the sale of organs, tissues, and cells, ensuring that all donations are voluntary and altruistic, free from financial incentives.

Transparency and accountability are also critical components of the legal framework. Medical professionals are required to follow strict documentation and reporting protocols, ensuring that every step of the organ donation and transplantation process is traceable and transparent. This helps build public trust in the system and encourages more individuals to consider organ donation.

Conclusion:

The conditions for removing and transplanting human organs are meticulously crafted to ensure the safety and well-being of both donors and recipients. By adhering to these stringent regulations, the medical community can conduct these life-saving procedures ethically and effectively. This careful balance between medical necessity, ethical responsibility, and legal compliance underscores the importance of organ donation in modern healthcare, reflecting a commitment to saving lives and upholding human dignity.

2-1. Requirements for the Removal and Transplantation Operation Conditions:

These requirements are stipulated in Health Law No. 18-11, which mandates adherence to medical rules (2-1-1) and the performance of operations in licensed hospitals (2-1-2).

2-1-1. Compliance with Medical Rules:

Adherence to medical rules and principles of the medical profession is one of the basic conditions required for surgeries, especially those involving the removal and transplantation of human organs and cells. This is confirmed in Article 359 of Health Law No. 18-11. It requires that the doctor performing the surgery be a specialist with an academic degree in the relevant field (Article 166 of Law No. 18-11). The doctor must not have any disabilities or illnesses that hinder their ability to practice medicine, must not have been convicted of any crimes against honor, and must be registered with a regional inspectorate council for medical ethics after taking the legal oath[17].

An integrated medical staff assists the doctor during surgery, each member fulfilling their professional and technical role with strict adherence to medical guidelines and professionalism. The doctor must also obtain legal authorization to perform organ removal and transplantation operations, along with the authorization to practice medicine, ensuring that their medical practices are justified and professional.

Furthermore, it is beneficial to engage foreign specialist doctors with recognized expertise in human organ removal and transplantation surgeries through formal agreements[18]. The recipient center must ensure thorough medical

examination and monitoring for both the donor and the recipient (Article 359 of the Health Code). This requires equipment for tissue analysis and cytotoxic body examination[20], ensuring the overall success of the removal operation and maintaining the health and safety of both the donor and the recipient.

To protect the organ from damage after removal from the donor's body, it should be preserved under appropriate medical conditions, which vary depending on the organ. For example, the liver, which is prone to rapid damage, needs to be kept at ultra-low temperatures (16-20 °C) and transplanted within one hour[20]. The kidney, on the other hand, can last up to 72 hours and should be kept in a less cold environment (4°C)[21]. These conditions are crucial for ensuring the health and safety of the recipient.

To further protect the integrity of human organs, the legislator, according to Article 257 of the Health Code, has mandated the creation of hospital-level structures licensed to remove and transplant human organs. These structures are tasked with maintaining human organs, cells, and tissues for use when needed, in consultation with the National Organ Removal and Transplantation Agency.

2-1-2. Performing the Surgery in Licensed Hospitals:

The legislator requires that organ removal and transplantation operations be performed in public hospitals licensed by the Minister of Health. These hospitals must have the necessary medical and technical organization and coordination to obtain the license for performing organ removal operations (Article 366 of the Health Code). This restriction serves as a safeguard against human organ trafficking. By limiting these operations to public hospitals, the processes become transparent, and collusion to violate regulations related to organ removal and transplantation is minimized.

The legislator's decision to select licensed hospitals for these operations is prudent due to the inherent risks associated with performing such delicate procedures in unlicensed facilities. These surgeries involve life-and-death situations and impact the health and dignity of individuals. Therefore, it is imperative to prevent the manipulation of human organs by directing these operations to public hospitals licensed by the Minister of Health, after consulting with the National Organ Removal and Transplantation Agency.

This approach largely ensures the preservation of human moral values and prevents these operations from being conducted in the private sector, where financial gain might be prioritized over ethical considerations. Additionally, the public sector is more easily monitored by security services tasked with addressing human organ trafficking[22].

In conclusion, the stringent conditions outlined in Health Law No. 18-11 for the removal and transplantation of human organs are designed to ensure the highest levels of safety, efficacy, and ethical conduct. By adhering to these rules, the medical community can provide life-saving treatments while protecting the rights and well-being of both donors and recipients. These measures reflect a commitment to upholding human dignity and advancing medical science within a framework of robust legal and ethical standards.

2-2 Conditions of the Donor and the Recipient Concerning Human Organ Removal and Transplantation:

The operation of organ removal and transplantation requires a healthy person (the donor) and a sick person (the recipient). To perform the operation within a legal framework, the legislator has outlined a set of conditions to be considered in order to protect the life, physical integrity, and human dignity of both parties. These conditions include:

Preventing harm to the donor's life :

It is essential to ensure that the operation does not cause any harm to the donor's life and that their health and physical integrity are preserved.

Requirements of the family relationship between the donor and the recipient to achieve immune compatibility:

There must be a familial relationship between the donor and the recipient to ensure the necessary immune compatibility for the success of the transplantation and to avoid the body rejecting the new organ.

Consent requirement for the donation operation :

The free and informed consent of the donor is essential for proceeding with the transplantation, ensuring that the donor fully understands the implications of the operation and consents voluntarily.

2-2-1 Preventing Harm to the Donor's Life:

Article 360 explicitly prohibits the removal of organs, tissues, and cells from a living person for transplantation if their life would be endangered. This prohibition aligns logically with the principle that the primary aim of the donation process is treatment. If the process endangers the donor's life, the organ should not be removed, as preserving the donor's life takes precedence.

In Sharia law, a jurisprudential rule states, "harm should be removed," but this should not be done using the same harm or a greater one, as it poses a threat to the donor's life. Using a suspect operation that could override a greater interest is also prohibited. Consequently, an organ should not be removed if it would seriously harm the donor or disrupt an essential life function, even with the donor's consent. Sharia law emphasizes equality among all people and prohibits killing one person to save another.

The Islamic Fiqh Academy in Jeddah has agreed to prohibit the transfer of organs essential for life, such as the heart and lungs, and the donation of a diseased paired organ. It also prohibits the transplantation of organs that would disrupt an essential function, such as the cornea, or disfigure the human body, like a leg or hand. In 1990, the Islamic Fiqh Council in Jeddah decided against the transplantation of gonads to prevent genetic traits transfer and the mixing of lineages, as with testicle transplants.

Meanwhile, health law does not specify which organs can and cannot be donated in the section on the removal and transplantation of human organs. This lack of specificity represents a deficiency in protection. The only exception is Article 374, which prohibits transactions for scientific research involving the donation, sale, or any form of transaction related to sperm or eggs.

2-2-2 Requirement of the Family Relationship Between the Donor and the Recipient to Achieve the Immune Match:

The second paragraph of Article 360 clearly outlines the specific family relationships required for a donor to be eligible. It states: "The donor must be the father, mother, brother, sister, son, daughter, grandmother, grandfather, maternal uncle, paternal uncle, maternal aunt, paternal aunt, paternal cousin, maternal cousin, aunt's son, nephew, niece, husband, wife, stepmother, or stepfather of the recipient." This extensive list ensures that a wide range of family members are considered eligible to donate, thus increasing the potential pool of donors and enhancing the chances of finding a suitable match.

The rationale behind this requirement is to streamline the donation process and enhance the likelihood of an immune match between the donor and the recipient. Achieving a good immune match is crucial because one of the major risks in organ donation is the rejection of the transplanted organ by the recipient's body, a phenomenon scientifically known as histocompatibility. By limiting donors to those within the fourth degree of kinship, the likelihood of histocompatibility is significantly increased, thereby reducing the risk of organ rejection[27].

However, there are scenarios where an immunological mismatch between the donor and the recipient cannot be avoided. In such cases, the legislator has introduced the concept of "organs cross-over donation." This innovative approach involves forming bilateral "donor-recipient" pairs without retaining their anonymity. This means that a donor who is not a perfect match for their intended recipient can still donate their organ to another recipient who is a match, while their intended recipient receives an organ from a different donor who is a match. This cross-over donation system ensures that more patients can receive the organs they need, even if their family members are not perfect matches.

The legislator's foresight in incorporating such a mechanism demonstrates a commitment to maximizing the efficiency and fairness of the organ donation process. By allowing for cross-over donations, the legislator ensures that even if the recipient is reliant on the donor or one of their relatives, there are alternative pathways to facilitate a successful donation. This flexibility is crucial in addressing the dynamic and often complex nature of organ transplantation, where the primary goal is to save lives and improve the quality of life for recipients.

In conclusion, the requirement for a family relationship up to the fourth degree between the donor and the recipient is a strategic measure to increase the chances of immune compatibility and reduce the risk of organ rejection. Additionally, the provision for organs cross-over donation reflects the legislator's adaptive and inclusive approach, ensuring that all possible avenues are explored to facilitate successful organ transplants. This comprehensive legislative framework not only enhances the efficiency of the donation process but also ensures that the needs of recipients are met in the most effective manner possible.

2-2-3 Consent Requirement for the Donation Process:

The donation operation necessitates the involvement of both a donor and a recipient. The donor is an individual who willingly chooses to donate one of their permitted organs, while the recipient is a sick person whose life or the safety of their organ depends on receiving the donor's organ. The consent process for organ donation is crucial and multifaceted, ensuring that all parties involved are fully aware and agreeable to the procedure.

Consent of the Living Donor

For living donors, consent must be explicit and voluntary. This means that the individual donating an organ must provide informed consent, fully understanding the risks, benefits, and implications of the donation. The donor must be in sound mental health and capable of making such a decision without any form of coercion. The process includes thorough medical and psychological evaluations to ensure the donor's suitability and to confirm their willingness to proceed with the donation. This aspect of consent ensures that the donor is fully committed and aware of the consequences of their decision, thereby safeguarding their well-being[28].

Non-Refusal of the Deceased Donor

In cases where the donor is deceased, the consent requirement involves ensuring that the deceased had not expressed any refusal to donate their organs prior to death. Many jurisdictions have systems in place, such as organ donor registries, where individuals can indicate their willingness or refusal to donate their organs upon death. If the deceased had registered as a donor or had not explicitly refused, their organs can be used for transplantation. This non-refusal principle respects the autonomy of the deceased while also addressing the urgent need for donor organs.

The recipient of the organ must also provide consent. This consent is based on a comprehensive understanding of the procedure, the risks involved, the potential outcomes, and the necessity of the transplant for their health. The medical team provides detailed information to the recipient, ensuring they are fully informed before agreeing to receive the organ. This step is crucial as it respects the recipient's autonomy and right to make informed decisions about their own body and health.

In conclusion, the consent requirement for the donation process is a critical component that involves multiple layers of approval and understanding. The donor, whether living or deceased, must provide explicit or implied consent, ensuring their willingness to donate. Similarly, the recipient must also consent to receive the organ, fully aware of the procedure's implications. These comprehensive consent requirements are designed to protect the rights and well-being of both donors and recipients, ensuring that the donation process is ethical, transparent, and respectful of all parties involved.

2-2-3-1 Approval Requirement of the Living Donor

Informed Consent and Legal Framework

The organ removal and transplant operation is a voluntary process, and its validity hinges on informed consent as stipulated in Article 360, paragraph four, of the health code. This consent is vital due to the significant compromise to physical and bodily integrity that occurs when an organ is removed from the body. The donor must express their approval for the donation, including cross-over donations if necessary, before the inspectorate presiding judge. The judge's role is to ensure that this approval is both free and informed, and that the donation adheres to the conditions set forth by law (paragraph 5 of Article 360 of the health code). Notably, the donor has the right to withdraw their consent at any time without undergoing any formal procedure.

Verification and Licensing by Experts

After the donation is confirmed, a panel of experts issues the removal license, ensuring that the donor's consent is free, affirmed, and compliant with legal conditions. If the approval condition is breached, Article 303 bis 17 of Law No. 09-01 is invoked. This law punishes unauthorized organ removal from a living person with imprisonment ranging from 5 to 10 years and a fine between 500,000 DZD and 1,000,000 DZD.

Islamic Jurisprudence on Organ Donation

In Islamic jurisprudence, it is obligatory to obtain the donor's permission before any organ removal. If a doctor removes an organ without the patient's knowledge, it is considered theft, and the doctor must provide material compensation, known as *Diyah*. This principle emphasizes the importance of informed consent and the protection of individual rights[29].

Protection of Minors and Incapacitated Individuals

The legislator also prohibits the removal of organs from living minors or individuals with incapacity, as their consent is legally irrelevant. Furthermore, it is forbidden to remove organs from individuals suffering from diseases that could adversely affect the health of the donor or recipient (Article 361 of the health code). This prohibition underscores the legislator's commitment to protecting vulnerable populations and ensuring ethical medical practices.

Historical Context and Modern Regulations

The legislator's decision to prevent organ removal from minors without specifying an age limit is prudent. This approach allows for reference to the civil law, which sets the age of majority at 19, or the Child Protection Act, which sets it at 18. The latter is more suitable as it specifically addresses minors. Historically, the Old Health Code set the age limit at just 10 years, which posed significant health risks to children.

Ethical and Legal Safeguards

In conclusion, the legislator has implemented comprehensive measures to ensure that the consent requirement for living donors is robust and respects individual autonomy. These measures include judicial oversight, the right to withdraw consent, and stringent penalties for violations. Additionally, protecting minors and incapacitated individuals underscores the legislator's dedication to ethical and safe medical practices. By addressing these various aspects, the legislation not only enhances the integrity of the donation process but also ensures the well-being and rights of all involved parties.

2-2-3-2 No-Refusal Requirement of the Deceased to Donate His Organs After His Death

Protection of the Deceased's Cadaver

Organ removal can also be performed on deceased individuals. The legislator has taken steps to ensure that the cadaver is treated with respect and dignity, compatible with human dignity. According to the first paragraph of Article 362, the organs of a deceased person may be removed only if the individual did not explicitly refuse organ donation prior to their death. This safeguard ensures that the wishes of the deceased are honored and that the removal process is conducted ethically.

Expression of Refusal

Under the health code, a deceased individual's refusal to donate their organs can be expressed through various means. Specifically, Article 362, second paragraph, mentions the registration of refusal in the rejection register at the National Organ Transplant Agency. This registry serves as a formal and accessible method for individuals to record their refusal, ensuring their wishes are respected after death. However, it is important to note that many people do not consider the disposition of their organs posthumously, even when facing severe illness or hospitalization. Asking a patient about organ donation during their lifetime can be sensitive, as it may impact their psychological well-being and overall health.

Challenges in Obtaining Consent

One of the significant challenges in the organ donation process is obtaining explicit consent or refusal from individuals while they are alive. Many people are reluctant to discuss or decide on organ donation, which can complicate matters when they pass away. This reluctance often stems from a lack of awareness, cultural beliefs, or fear of the implications of discussing death and organ donation. Health professionals are often hesitant to raise the topic with patients, especially those in critical conditions, as it may cause distress or negatively impact their mental health.

Legislative Measures and Ethical Considerations

To address these challenges, the legislator has implemented measures to respect both the deceased's wishes and the ethical considerations surrounding organ donation. The requirement for explicit refusal ensures that those who do not wish to donate their organs have a clear and formal avenue to express their decision. At the same time, it allows for the possibility of organ donation from those who did not explicitly refuse, potentially increasing the number of available organs for transplantation.

Balancing Respect and Need

In conclusion, the no-refusal requirement for the deceased to donate their organs after death is a carefully balanced approach. It respects the dignity and wishes of the deceased while addressing the critical need for organs for transplantation. By providing a formal mechanism for refusal and acknowledging the challenges in obtaining explicit

consent, the legislation strives to protect individuals' rights and ensure that organ donation is conducted ethically and respectfully. This approach helps maximize the potential for life-saving transplants while maintaining the highest standards of respect for the deceased^[30].

In the absence of any explicit proof that the deceased person refused organ donation, the law requires that adults from the deceased's family be consulted to determine their stance on the matter. The consultation follows a specific order of priority: starting with the father, followed by the mother, the spouse, the children, the brothers, and the sisters. If none of these relatives are available or willing to provide an opinion, the law then turns to the legal representative of the deceased. This representative is expected to provide insights regarding the deceased person's wishes about organ donation, especially if the deceased was not a family member.

Once the organ removal operation is performed, the adults from the deceased's family are to be informed about the procedure. This notification occurs post-operation, ensuring that the family members are aware of the steps taken. This process is outlined in the last paragraph of Article 362 of the relevant legal document.

It is important to note a specific linguistic choice made by the legislator in drafting this law. The preposition "or" is used to convey the idea of choice rather than a strict order of priority. However, for the purpose of clarity and to accurately reflect the intended process, the legislator should have employed a preposition that clearly indicates the intended order of priority. The current use of "or" may lead to misunderstandings or misinterpretations regarding the consultation process, potentially causing confusion among those responsible for making these critical decisions.

The intention behind consulting family members or a legal representative is to ensure that the wishes of the deceased are respected to the greatest extent possible, even in the absence of explicit documentation. This process highlights the importance of having clear and accessible records of an individual's preferences regarding organ donation, as it ultimately facilitates the decision-making process during such sensitive times. Additionally, the law aims to balance the need for timely medical intervention with the respect for the deceased person's wishes and the family's right to be informed and involved in the decision-making process.

To further enhance the clarity of this legal requirement, it would be beneficial for the legislator to consider revising the language used, thereby ensuring that all parties involved have a clear understanding of the procedural steps and the order of priority when consulting family members or legal representatives about organ donation.

"then ^[31]",

There are those who believe it is better to start with the spouse because he or she is the closest, unlike the father or mother who might be distant. The spouse shares daily life and is more involved in everyday concerns and interests, making them the most suitable person for communication and important decision-making. Additionally, marital relationships are built on mutual understanding and support, which makes it easier to build bridges of trust and cooperation. Parents, on the other hand, may be physically distant or less involved in the daily intricacies of your life, which can make immediate and intimate communication more challenging.

This closeness with a spouse can foster a deeper connection and a more effective partnership in navigating life's complexities.^[32] This distance can make it difficult to contact them, and it may contribute to misunderstandings or delays in communication, which can harm the desired relationship dynamics. When immediate and close contact is lacking, it can be challenging to maintain effective collaboration and timely responses. This is why many believe that starting with the spouse, who is more readily available and intimately connected, is crucial for sustaining a healthy and supportive relationship environment. The daily interaction with a spouse provides a stronger foundation for addressing issues promptly and effectively, reducing the risk of damaging the desired relationship.

Additionally, the legislator did not specify the standard adopted in the arrangement, whether it is based on the order of inheritance or on compassion. This lack of clarity extends to the definition of the legal representative of the deceased who has the right to dispose of their organs. It is unclear if this is related to the legal prosecution system, which typically deals with the disposition of assets belonging to individuals who are incompetent or of diminished capacity, and may not extend to the organs of the deceased. This ambiguity in the legislation creates confusion and potential legal challenges in determining who has the rightful authority to make such critical decisions. Without clear guidelines, the process of organ disposition can be fraught with legal and ethical complications, further emphasizing the importance of involving the spouse who is likely to have a better understanding of the deceased's wishes and a closer emotional connection^[33].

The legislator needed to define the term "legal representative" clearly in this context, as it pertains to someone entitled to a special inviolability. This definition is crucial to ensure that the legal framework respects and upholds the rights of the deceased and their representatives.

Additionally, it is noteworthy that the legislator did not specify the exact number or types of organs that could be removed from a deceased person. This omission represents a significant deficiency in the legislation. The removal of certain organs could lead to the mutilation of the corpse, thus violating its inviolability and dignity.

In this regard, the Jordanian legislator has taken commendable steps by establishing stringent controls over the removal of organs from deceased individuals. These controls are designed to ensure that the process of organ transfer does not result in any obvious deformity of the corpse or affront to the dignity of the deceased. By setting these boundaries, the legislation aims to balance the need for organ donation with the respect owed to the deceased. This approach ensures that the act of organ donation is conducted with the utmost respect for human dignity, maintaining a careful consideration of ethical and moral implications^[34].

In any case, the removal of organs from a deceased body for transplantation purposes cannot be performed unless it follows a thorough legal and medical examination of death according to the scientific standards determined by law. According to the first paragraph of Article 362, these standards include the complete cessation of consciousness, spontaneous vital activity, lack of brainstem reflexes, absence of brain activity, and total absence of spontaneous (natural) ventilation.

These conditions must be carefully monitored and confirmed through specific tests, such as the measurement of brain cell death using electroencephalography (EEG). This procedure must be conducted twice and overseen by independent doctors to ensure accuracy and objectivity.

Furthermore, it is essential to understand that the stringent criteria set forth by the law are in place to protect the dignity of the deceased and ensure that the determination of death is beyond any reasonable doubt. The involvement of independent medical professionals is a critical safeguard to prevent any potential conflicts of interest and to uphold the integrity of the process.

By adhering to these rigorous standards, the law aims to balance the urgent need for organ donations with the ethical obligation to respect the deceased. This approach not only helps to facilitate organ transplants but also ensures that the procedures are carried out in a manner that is respectful and dignified. Thus, the legal and medical framework serves to uphold the highest ethical standards in the practice of organ transplantation^[35].

2-2-3-3 The Recipient's Consent to Transplant the Organ in His Body:

Given that the legislator stipulates the consent of the deceased donor who did not refuse to remove his organ after death, or his family or his legal representative, he also stipulates the recipient's consent which is expressed in the presence of the head service doctor accepted by two witnesses (Article 364- first paragraph of the health code).

If the recipient did not express his consent, an adult person from his family could give written approval according to the priority order provided in Article 362 of the health code (Article 364 P2). However, if the person is incompetent, the approval could be given by the father, the mother, or the legal representative as appropriate. In the case of a minor, the approval could be given by the father, the mother, or by the legal representative in their absence.

The legislative framework surrounding organ transplantation ensures that the donor's consent, whether given explicitly before death or implicitly through the absence of refusal, is respected. This framework also emphasizes the recipient's consent, a critical component in the transplantation process, ensuring the procedure is conducted ethically and legally. For cases where the recipient cannot provide consent due to incompetence or minority, the law provides a clear hierarchy of family members or legal representatives who can authorize the procedure. This meticulous attention to consent underscores the importance of ethical considerations in medical practices, particularly in sensitive areas such as organ transplantation, ensuring all parties' rights and wishes are appropriately respected and safeguarded.

The intervention of a doctor relies primarily on the consent of the patient or the request of their guardian in cases where the patient is a minor. However, a person cannot be compelled to undergo treatment except in situations where it is in the best interest of public health or the individual's wellbeing, such as with infectious diseases. In these instances, the necessity for treatment overrides personal consent. Additionally, in urgent or emergency cases, the requirement for obtaining permission from the patient or their guardian is waived to ensure immediate medical intervention. This ensures that essential and potentially life-saving medical care is provided without delay, thereby prioritizing the health and safety of the individual and the broader community.

Healthcare professionals must navigate the delicate balance between respecting patient autonomy and ensuring public health safety. This often involves making critical decisions in high-pressure situations. The ethical framework guiding these decisions emphasizes the importance of patient consent, yet recognizes the need for exceptions under specific circumstances. For instance, in the event of a contagious disease outbreak, enforcing treatment may be necessary

to prevent widespread transmission and protect public health. Similarly, during medical emergencies, quick decision-making without waiting for consent can be crucial to saving lives. Thus, while patient consent remains a cornerstone of medical ethics, there are justified scenarios where the imperative to provide immediate care takes precedence^[36]. In exceptional circumstances, when it is impossible to contact the family or legal representative of a transplant recipient, the doctor is compelled to perform the transplant operation without prior approval. These exceptional circumstances must be life-threatening, and the necessity of immediate action should be evident to avoid the patient's death. This dire situation must be documented and validated by the head service doctor and corroborated by two witnesses, as stipulated in the last paragraph of Article 365 of the Health Code.

According to the public provisions, any medical intervention carried out by a doctor without the patient's explicit consent is regarded as a medical error, making the doctor liable for civil and criminal consequences. The importance of obtaining consent cannot be overstated, as it protects the patient's rights and ensures ethical medical practice. However, in life-or-death situations where consent cannot be obtained in time, the law provides a narrowly defined exception to save the patient's life. Despite this allowance, the doctor must still follow strict protocols and obtain proper documentation to justify the emergency procedure. This balance between patient autonomy and the necessity of immediate medical intervention is crucial to maintaining trust in the healthcare system and ensuring that doctors act within the legal and ethical boundaries established by the health code^[37]. To ensure the validity of the consent, the treating doctor must inform the recipient or their representative of the potential medical risks (364 paragraph 5). In light of this legal judgment, contemporary Islamic jurists (Fuqaha) agree that the patient should permit the specialist treating doctor to proceed with the transplantation operation if the doctor insists that the patient will die without it.

Refusing the operation would be considered sinful based on several pieces of evidence, including the Quranic verse: "And do not throw [yourselves] with your [own] hands into destruction [by refraining]" (2:195).

Given this context, the responsibility lies with the treating physician to clearly communicate the potential consequences of not undergoing the necessary medical procedure. This communication ensures that the patient's consent is informed and voluntary, aligning with both legal and ethical standards. The Fuqaha's concurrence underscores the importance of preserving life, a principle deeply rooted in Islamic teachings. By acknowledging the medical risks and the urgency conveyed by the specialist, the patient or their representative can make a well-informed decision that upholds both legal requirements and religious obligations. Thus, the informed consent process becomes a vital component of medical ethics and patient care in such critical situations^[38].

To ensure the validity of the approval expression, the treating doctor should inform the recipient or their representative of the medical risks that could occur (364 paragraph 5). This legal judgment has led modern Islamic jurists (Fuqaha) to concur that the patient should permit the specialist treating doctor to perform the transplantation operation if the doctor insists it is necessary to prevent death. Failure to consent would be considered sinful based on evidences such as Allah's command: "And do not throw [yourselves] with your [own] hands into destruction [by refraining]" (Quran 2:195). This highlights the importance of preserving life in Islamic teachings and the ethical duty of the physician to ensure informed consent^[39].

Conclusion :

Through the analysis of the controls governing the removal and transplantation of human organs as outlined in the Algerian Health Code, it is evident that the legislator has established robust legal protections for human organs. This protection is achieved through a set of regulations that govern the donation process, clearly defining the justifications for organ removal and transplantation. These regulations are detailed in the health law 18-11, which stipulates precise conditions for such procedures. When these legal controls are adhered to by medical professionals and those responsible for removal and transplant operations, they effectively mitigate both civil and criminal liabilities. Moreover, these controls strike a balance between the recipient's interest in benefiting from the organ and the donor's interest in avoiding exploitation due to organ removal.

The most significant findings of the research can be summarized as follows:

- The legislator has explicitly defined the sole purpose of human organ removal and transplantation as being for treatment and diagnostic purposes only.
- The legislator did not specify the types or quantities of organs that can be donated, whether from living or deceased persons.
- Consent is a mandatory prerequisite for the donation process, and non-compliance is subject to legal sanctions.
- Donation operations are strictly conducted in licensed hospitals, adhering to stringent legal regulations.

- There is a lack of clear guidelines regarding the hierarchy of guardians who have the authority to consent to organ donation from deceased individuals, leading to potential conflicts among family members.
- The legislator has not provided legal provisions for situations where a patient refuses an organ transplant.

Based on these findings, several recommendations have been proposed:

- The legislator should impose penalties on individuals who agree to sell their organs for payment, thereby violating the principle of altruistic organ donation.
- Community awareness should be raised regarding the importance of making a declaration to donate one's organs after death.
- The legislator should clearly define the legal representative of a deceased individual who has the authority to consent to organ donation.
- The legislator should establish the number of organs that can be removed from deceased individuals to ensure that the process does not desecrate the corpse, which is protected by law and considered sacred. Additionally, the legislator should specify the number of donable organs in accordance with Islamic Fiqh principles.

Further elaboration on these points reveals a nuanced approach to organ donation and transplantation. The legislator's focus on the purpose of organ removal and transplantation being limited to treatment and diagnostics ensures that these procedures are conducted ethically and with the primary aim of preserving life and health. The absence of specific regulations on the types and numbers of organs that can be donated necessitates a framework that can adapt to various medical and ethical considerations.

The requirement for explicit consent underscores the importance of autonomy and informed decision-making in the donation process. This consent must be obtained in a transparent and legally compliant manner to protect all parties involved. The regulation that donation operations must occur in licensed hospitals ensures that these procedures are performed under optimal conditions, minimizing risks and ensuring compliance with legal and medical standards.

The ambiguity regarding the hierarchy of guardians authorized to consent to organ donation from deceased individuals highlights a critical area for legislative improvement. Clear guidelines are essential to prevent conflicts and ensure that the wishes of the deceased are respected. Similarly, the lack of legal provisions for patient refusal of organ transplants points to a need for comprehensive policies that respect patient autonomy and provide clear directives for healthcare providers.

The proposed recommendations aim to strengthen the legal framework surrounding organ donation and transplantation. Penalizing the sale of organs reinforces the ethical foundation of the donation process. Promoting community awareness about the importance of organ donation can increase the number of donors and enhance the overall effectiveness of the transplantation system. Defining the legal representative of deceased individuals and specifying the permissible number of organs for removal are crucial steps in ensuring that the process is conducted with dignity and respect for both donors and recipients.

In conclusion, the analysis of the Algerian Health Code's regulations on organ removal and transplantation reveals a well-intentioned but incomplete legal framework. By addressing the identified gaps and implementing the proposed recommendations, the legal system can better protect the rights and interests of both donors and recipients, fostering a more ethical and effective organ donation and transplantation process.

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