



LEGAL LIABILITY RESULTING FROM MEDICAL ERRORS IN HUMAN ORGAN TRANSPLANTATION

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Abstract:

The legal protection that the legislator has approved for the human body from all harm that may befall it is necessary to ensure that its physical safety is not exposed to any kind of harm, but this may be necessary in order to save the life of a patient from death or to achieve happiness for humans by eliminating the disease and controlling it, then it becomes justified by allowing the transfer of human organs between the living or even between the dead and the living, but this will not be done with complete freedom, as the legislator has worked to restrict this transfer process to a set of strict legal conditions, whether it is related to the body of the recipient patient or the body of the third party donor, and made the breach of them inevitably lead to the establishment of legal responsibility that falls on the doctor in charge of the operations of transferring and transplanting human organs on the one hand, or that this responsibility falls even on the hospital as a public facility through which these operations are carried out on the other hand, and this is in addition to criminal prosecution in the event that the matter requires it.

Keywords: Human organ transplantation, physician civil liability, hospital liability, donor, recipient.

INTRODUCTION:

The rapid scientific progress that the world is witnessing in the current era has had a positive impact on the development of medicine, as its specializations have branched out and its fields have diversified. Extremely precise and sensitive surgical operations have been performed inside the human body, which later developed into operations to transfer organs into the body of a living human being and implant them into the body of another living human being, so that this operation has developed further to become between the body of a recently deceased human being and a living human being. However, this type of operation will affect the physical safety of the human being whose organs are removed, or it may even affect his life, which is in conflict with the fact that the right to life is one of the personal rights that the law has guaranteed to be preserved. However, because there is a practical benefit from transferring and transplanting organs in a way that contributes to saving a human being's life from death, it has prompted the legislator to accept this type of operation, but this will not be done with complete freedom, but rather it must be subject to a set of conditions that would guarantee the rights of all parties to the surgical operation, provided that violating these conditions results in legal responsibility falling on the perpetrators.

Accordingly, we will divide this study into two axes. In the first axis, we will discuss the conditions that must be met to carry out human organ transplantation operations, and then in the second axis, we will discuss the responsibility resulting from failure to meet the conditions for human organ transplantation operations.

The first axis: The conditions that must be met to carry out human organ transplantation operations

Human organ transplantation operations are medical operations performed on the human body, whereby a healthy organ that is bilateral, i.e. paired, is removed from a living or dead person called the donor, to be transplanted into another person called the recipient, who is in dire need of this organ to save his life, provided that this operation is controlled according to specific legal and regulatory frameworks.

What is certain about the process of transplantation and transfer of human organs is that it is based on exchanging an organ or tissue that is infected or a missing or missing organ in the body of a person



with another healthy and new human organ to perform all the missing physiological functions in a person suffering from certain diseases¹ and to save him from death.

The transplantation operation is therefore based on two operations, the first of which is to remove the damaged organ from the body of the sick person, and then comes another operation to fix the transferred organ in place of the damaged organ².

The current common and recognized organ transplantation operations are multifaceted and may include skin transplantation, kidney transplantation, heart and liver transplantation, and other operations. However, no matter how different the type of these operations is, the legislator has required many different conditions for carrying them out, some of which are related to the organ transplantation operation itself and others related to the person performing this operation.

First - Conditions for organ transfer and transplantation:

Before talking about the process of transferring human organs between living people, it is necessary to verify the presence of a set of conditions that either relate to the parties to the transfer process or to the transfer process itself.

1- Conditions related to the parties to the transfer process:

The Algerian legislator imposed a set of conditions on the persons concerned with the process of transferring and transplanting human organs, which are: the express consent of the donor, the presence of a person with a certain degree of kinship to the recipient, eligibility, and non-disclosure of the identity of the parties to the transfer process if it is from a dead person.

A-Explicit consent from the donor:

The conditions that must be met by the parties to the transplant process are primarily linked to the necessity of the existence of explicit and free consent that leaves no room for doubt about the hesitation of its owner or his lack of conviction in the idea of donation on the part of the living donor, and to confirm the existence of consent in the donation process, we find that the legislator has ordered the donor to express this consent before the president of the regionally competent court, while ensuring that the donor does not withdraw this consent, even if he had previously agreed to the donation; the consent of the donor is therefore an essential condition for the expert committee to issue a license to remove organs after verifying the existence of this consent explicitly; it also provides detailed explanations of all the risks that may affect the donor as a result of the transplant process; the committee also provides a sufficient analysis of the expected benefit from this process for the recipient.

As for the deceased donor, the search for his consent is done by the medical team in charge of the removal verifying that there is no objection to the removal of the donor's organs recorded in the refusal register kept by the National Agency for Organ Transplantation, and searching for various means to prove the absence of refusal, especially since the legislator has allowed proof of the deceased's refusal to donate, such as leaving a will, for example, or witness testimony during his lifetime, and other means permitted as means to prove the fact of refusal.

After searching for the absence of refusal from the deceased, whether in the register or otherwise, the team in charge of the transplant process moves on to search for the extent of the consent of the deceased donor's family members to the process of donating his organs by consulting them according to an order subject to the following priority: starting with the father, then the mother, then the children, then the brothers and sisters, the legislator also stipulated the necessity of consent even from the deceased who does not have a family, provided that it is through the explicit expression of the legal representative of this deceased, which is what Article 362, paragraph 3 of Health Law 18-11.

¹- Yasser Hussein Bahnas, Human Organ Transplantation between Criminalization and Permissibility - A Comparative Study - Between Sharia and Law, Arab Studies Center for Publishing and Distribution, 2012, Egypt, p. 29.

²- Boujemaa Chahrazad, Consent in Human Organ Transplantation Operations According to Algerian Legislation, Journal of Legal and Social Sciences, Issue 1, Volume 9, March 2024, p. 205.



Went to once consent is proven, whether through prior consent by the deceased or subsequent consent by the family, the family is informed of the removal operations that were performed on the body of the deceased.

Therefore, there is no room to talk about the removal of human organs in the event of an explicit refusal to perform the operation, whether by a living person or even a corpse, therefore, the legislator here has established the sanctity of the human body, whether in life or even after death, not violating the sanctity of the human body, dead or alive, is a priority for the legislator over treatment and medical care.

B- The presence of a person with a certain degree of kinship to the recipient:

The legislator has stipulated a certain degree of kinship in the recipient of human organs, and this is by way of limitation and not by way of example, so he mentioned a group of relatives who can donate to include all the ancestors represented by the father, mother, grandfather and grandmother, and the descendants "son and daughter" in addition to the marginals brother and sister, uncle and aunt, uncle and aunt, son of the maternal uncle and son of the maternal uncle, son of the paternal uncle and son of the paternal uncle, son of the paternal uncle and son of the paternal aunt, son of the nephew of the nephew, daughter of the nephew, daughter of the niece, in addition to the husband and wife as well as the stepmother and stepfather of the recipient, in accordance with Article 360, paragraph 2 of Law 18-11 on health.

C- Capacity:

The legislator has also stipulated that the donor be of full capacity and not be afflicted with any of the factors affecting capacity, such as insanity or dementia. In addition to stipulating capacity in the transfer process, he also stipulated that it should not affect the health of the donor, so the legislator prohibited the transfer of tissues that could affect the health of the donor, especially if the latter is sick.

Perhaps the reason for requiring full capacity in the donor is clear, since this act is purely harmful to him, as for the recipient, the decision to accept the transplant must also be issued by the beneficiary himself, provided that the latter expresses his consent in the presence of the doctor who heads the department in which he was accepted and in the presence of two witnesses, if he is unable to do so due to his deteriorating health condition, such as if he is in a coma or in a state in which he cannot speak or express his acceptance of the transplant, in this case one of his adult family members can undertake this in writing as a form of assistance.

Although the legislator did not enable the incapacitated to donate, he allowed the recipient to obtain organs even if it was from an incapacitated person or a minor, but he linked it to a basic condition, which is the availability of the consent of the father or mother or the legal representative of the child or the incapacitated person, as the case may be.

The recipient must also be registered on the waiting list of the National Organ Transplantation Agency.

Thus, the legislator has provided all possible reasons to preserve the physical safety of the donor and to ensure the explicit consent of the living donor when he stressed the necessity of the consent of a sane adult who is not coerced into donating, and the same applies to the recipient even if his consent to accept the donation is less stringent and severe than when he was competent, with the condition that consent is mandatory; thus the doctor performing the operation will inform him of all information related to the transplant operation, such as the presence of medical risks in this operation, and remind him that the operation may fail and he may need a second transplant operation, and he will also inform him of what is medically known as the body's rejection of foreign and alien organs in his body, so that even if the operation is successful, he will continue to take medications throughout his life, but even with the doctor explaining the patient's need to undergo the operation and that it is the only way to save his life from destruction, the doctor will be required not to pressure the patient if he refuses to do it¹.

¹-Saeedan Asmaa, The Position of the Algerian Legislator on the Operations of Transferring and Transplanting Human Organs, Algerian Journal of Legal, Economic and Political Sciences, Volume 48, Issue 04, 2011, p. 339.



D- Not disclosing the identity of the parties to the transplant if it is from a dead person:

The Algerian legislator has prohibited the disclosure of the identity of the dead donor to the recipient on the one hand, and has also prohibited the disclosure of the identity of the recipient to the donor's family; perhaps the reasons behind which the legislator intended to conceal the identity are purely psychological, such that we always find the family of the deceased in a state of sadness whenever they find the recipient and remember their loss, as well as the possibility of the recipient being blackmailed by the family of the deceased and requesting sums of money in exchange for the organ that they took from the dead person.

2- Conditions related to the transplant process itself:

The process of organ transplantation and transplantation requires a set of conditions related to this process itself, which are that the transplantation and transplantation process does not violate public order and public morals and that the transplantation and transplantation process is not the subject of a financial transaction, in addition to the availability of the therapeutic goal of the transplant process.

A- The transfer and transplantation process does not violate public order and public morals:

The conditions for the transfer and transplantation process are primarily related to the fact that this process does not violate public order and public morals, such as if the purpose is to obtain a disability grant or to escape from performing the national service duty by amputating an organ. The purpose here is to circumvent the law and not for treatment, and the same applies to the transfer of organs for reaching scientific facts, however if these experiments are for therapeutic purposes that may lead to the patient's recovery, there is no objection to doing so.

B- The transfer and transplantation process should not be the subject of a financial transaction:

Just as the legislator did not permit the removal of organs that could expose the donor to danger, the legislator also required that the transfer and transplantation process of organs be without financial compensation, otherwise it will be considered criminal trafficking, which was confirmed by Articles 360, paragraph 1¹, Law 18-11 on health and Article 358 of the previous repealed health law; a person does not have the right to dispose of his body through financial transactions, but the organ must be relinquished through a donation.

C- Providing the therapeutic goal of the transplantation and transfer process:

It is necessary to ensure that organ transplantation and transfer processes are related to treating patients and saving their lives from death, as it is the only way to save the recipient patient by balancing between the organ that will be damaged from the donor's body on the one hand and saving the life of the recipient patient on the other hand; the greater the interest of the latter in preserving his life compared to the minor harm caused to the donor so that it does not affect his health in the future, the donation process is permissible, which is confirmed by Article 355 of Law 18-11 on health.

D- That the transplantation and transfer process of human organs is related to a specific type of organs:

Not all organs of the human body can be transferred and transplanted, so the legislator has required for the validity of the transplant process that these organs either be dual organs, which are those that have a counterpart in the body, as is the case with the eye, kidney, ear, hand and foot, and it is forbidden to remove them together because that would expose the donor's life to the risk of death, and at the same time donating one of them does not pose a risk to the donor's life and his body continues to function normally.

Regenerated tissues and organs can also be donated if they are partially removed, as is the case with stem cells, skin, blood, etc.

Secondly - Conditions related to the doctor performing the transplant:

The conditions related to the doctor performing the transplant are represented by all of the general conditions required for practicing health professions in general and medicine in particular, not to mention the necessity of respecting all professional ethics, in addition to the doctor maintaining the patient's professional confidentiality.

¹-Law No. 18-11 issued on: 02-07-2018, relating to health, Official Gazette No. 46, issued on: 29-07-2018.



A- Possessing the status of a doctor as the person authorized to practice surgery:

The legislator has stipulated in the person performing medical work in general and surgical work in particular a set of qualifications and competencies that must be available in the doctor who provides the necessary care for the patient, whether it is related to diagnosing the disease or choosing or implementing the treatment, therefore, the person was informed of the necessity of providing a set of conditions for practicing medicine stipulated in Law 18-11 related, especially in Articles 166 and 167 thereof.

In comparative legislation, we find that the legislator has stipulated, in addition to the general conditions that must be met by the surgeon practicing human organ transplantation operations, other duties related to this doctor having special skills and competencies in this type of operation¹, such as the French legislator stipulating that the doctor performing kidney removal operations must be a urologist².

As for the Algerian legislator, he has only stipulated that the doctors who perform the organ transplantation operation must not have witnessed and proven the death of the donor, in accordance with the text of Article 363, paragraph 2 of the Health Code, perhaps the reason for stipulating such a condition is to remove all suspicion from the doctor who performs such operations, such as believing that he has contributed to the killing of the donor or other justifications in order to benefit from his organs.

B- The doctor's maintenance of the patient's professional secret:

The doctor is obligated to maintain the patient's professional secret regardless of the legal basis for this, which may find justification for this obligation either within the framework of the contract concluded between the doctor and the patient, whether this contract is written or oral and results from the consent of both parties, which creates a set of obligations on the doctor, including the necessity of keeping the patient's professional secret; the legal basis for maintaining professional secret may also be due to the doctor's obligation not to breach his professional obligations, which is to maintain the patient's professional secret one of the most important of these obligations³; this obligation is then an absolute general obligation because the doctor cannot, under any circumstances, disclose the patient's professional secret unless the legislator explicitly permits it.

In addition to the above, we find that the doctor is obligated to make a correct medical diagnosis by using the necessary means for diagnosis and providing the necessary care in this regard; the doctor is also obligated to choose the treatment according to what is required by the approved scientific and medical principles, in addition to the doctor's allowance for the necessary care to implement the treatment, in order to ensure achieving the desired result from the therapeutic work.

We also find that the doctor is bound by some duties with an ethical and humanitarian dimension, such as the necessity of providing treatment to the patient, as well as the doctor's obligation to inform the patient of the nature of the treatment, its risks, and the alternatives available to him, not to mention obtaining the patient's consent in order to perform a surgical operation on his body.

Second axis: Liability resulting from breaching the conditions of organ transfer and transplantation operations

Addressing the liability resulting from breaching the conditions of organ transfer and transplantation operations leads us to talk about the legal liability of the doctor resulting from the transplant and transfer of human organs, in addition to the hospital's liability resulting from human organ transfer and transplantation operations.

First -The legal liability of the doctor resulting from human organ transplantation operations:

¹-Mamoun Abdel Karim, Patient Satisfaction with Medical and Surgical Procedures, A Comparative Study, University Publications House, Alexandria, 2006, Egypt, p. 470.

²--Ahmed Abdel Daim, Human Body Parts in Legal Transactions, Al-Halabi Legal Publications, 1999, Lebanon, p. 104.

³-Omar Sidi, Criminal Liability of the Physician for Disclosing Medical Secrets, Al-Ijtihad Journal of Legal and Economic Studies, Volume 09, Issue 03, Year 2020, p. 109.



The legal liability of the doctor is of great importance, so it must be viewed from two different angles. On the one hand, the doctor is obligated to do his job to the fullest, so he must be given a great deal of freedom and enjoy trust and reassurance in his profession; on the other hand, the doctor deals with human bodies, so it is necessary to be careful to protect the human being in his body; therefore, we find that the legislator has tried to create a kind of balance between protecting the doctor and ensuring his stability in his work on the one hand and protecting the patient in his body on the other hand, he established civil liability for the doctor when errors occur to certain degrees, in connection with the process of transferring and transplanting human organs, and he also established criminal liability when he commits certain crimes.

1- The foundations of establishing liability for the doctor for the process of transferring and transplanting organs:

The failure of one of the aforementioned conditions for the process of transferring and transplanting human organs and tissues is a reason for the occurrence of civil liability, as establishing medical liability requires the availability of the three pillars, which are error, harm, and causal relationship.

A-Medical error in organ transplantation:

Medical error generally occurs when the doctor who caused the harm deviates from the behavior of a professional and careful doctor who is placed in the same circumstances, which confirms the existence of an error¹, and thus there is a failure by the doctor to provide the necessary care regarding necessarily known scientific facts that could lead him to make an error.

Medical liability in all its forms is established through those errors that the doctor can commit in the course of his work, as there is no liability without error, so civil liability was previously linked to error, so it was the duty of the plaintiff to prove the doctor's deviation from the behavior of the ordinary person, which constitutes an assault on morals in order to establish liability², but with the intellectual development and the emergence of great difficulties in proving the error, it is no longer useful to link liability to error only, so liability was linked - in addition to the basis of error - to another basis, which is the element of harm, in order to protect the injured party from the person responsible for this harm.

If the doctor's responsibility is clear with regard to gross and serious errors that result in harm that may cause permanent disability or expose the person's life to danger, leading to his death, and this is according to what the Algerian legislator stated in Article 353 of Health Law 18-11, then this error is classified as a professional error of the doctor³, and the error committed by the doctor may also be a personal error, as is the case when he performs an operation while intoxicated and other errors.

Applying what we have previously concluded, we find that the doctor's responsibility in the process of transferring and transplanting organs is based on the element of error; the error is then serious for the doctor when he removes an organ without ensuring that all the legally required conditions are present; the error here may result from violating the controls related to individuals, such as the case of the lack of consent from the donor or recipient, and the lack of the condition of free organ transfer; the error may also be related to violating the controls related to medical work, so he violates the established and stable medical scientific principles, such as using unsterilized surgical tools that the doctor is required to clean in order not to harm the patient, or that the doctor has used new methods of diagnosis or treatment that have not been subjected to the necessary scientific tests and have not been licensed by the relevant authorities.

¹-The Specialized Group on the Legal Responsibility of Professionals, Medical Responsibility, Vol. 1, no publication date, p. 145.

²-Taha Abdel Mawla Ibrahim, Problems of Compensating for Bodily Injuries in Civil Law in Light of Jurisprudence and the Judiciary, 1st ed., Dar Al Fikr Wal Qanun, Mansoura, 2000, Egypt, p. 288.

³-The doctor's professional error is linked to those actions related to the principles of the wrong technical profession. The doctor may make a mistake in diagnosing the disease and give the patient a medication that is not compatible with his disease, according to what was stated in the decision of the Supreme Court - Misdemeanors and Violations Chamber on: 05-30-1995, file number 118720 - issue 2, year 1996, p. 179 and following.



As for simple errors of the doctor, they remain a controversial issue between those who acknowledge the doctor's responsibility for the error regardless of its type, based on the idea of ensuring the greatest possible protection for the injured party, while according to another trend, they see that simple errors are not subject to accountability based on the principle of providing protection for the medical profession and consider it a mere ordinary mistake of the doctor.

B-The element of harm:

Harm is considered a second pillar of medical liability, and the element of harm can be imagined in organ transplant operations when the physical safety of the sick or recipient is affected due to the doctor's error, which is certain to occur in the present or even in the future, which will lead to a decrease in the physical integrity of the injured party, here we are faced with the realization of material harm resulting from the harm to the safety of the body, which makes the person unable to earn in the future or makes him bear losses for treatment or even leads the injured person to death. The harm caused by the doctor to the person concerned, whether a donor or recipient, can be moral harm that will affect his emotions and make him feel that he is an incomplete and disabled person or a disability to society and unable to perform his daily work normally.

C- Causal relationship:

In order for the elements of medical liability to be complete, the element of causal relationship must be present, which means that the harm was the result of an error by the doctor performing the organ transplantation operation, which does not negate the doctor's responsibility unless it is proven that there is an external cause in which the doctor has no role.

2- Legal penalty resulting from failure to perform the organ removal and transplantation operation:

The establishment of legal responsibility, both civil and criminal, against the person responsible for human organ transplantation operations is primarily due to the doctor's violation of the various legal controls that hold him responsible, on the occasion of performing this type of operation, if this is proven against the doctor, he will be subject to either a civil or criminal penalty that varies according to the type of responsibility against him.

A- The civil penalty stipulated for violating the rules of transferring and transplanting human organs:

What results from the realization of civil liability is, of course, the civil penalty, which is in the form of compensation or specific execution, but in human organ transfer operations, it is not possible to imagine specific execution because the person who died due to the doctor's error or the person who lost one of his organs for the same reason, the judge cannot oblige the doctor to return the situation to what it was before, whether by restoring life to the deceased or returning the organ that was removed, such as the hand or other, to the patient; therefore, what we can imagine as a civil penalty resulting from the doctor's error in human organ transfer operations is the injured party's insistence on compensating for the damage through compensation, so the purpose of approving compensation is to compensate for the damage that befell the injured party and not to erase its effects.

Referring to the general rules of compensation, we find that the judge has full discretionary power to determine the value of compensation, considering it a matter of fact that the judge is independent in estimating. Compensation takes the form of monetary compensation provided by the doctor to the injured donor or recipient, to be appointed in most cases with the assistance of experts according to what they decide, so that the final word is for the judge in taking the amount of compensation assessed by the expert or increasing or decreasing it.

The judge can rule on monetary compensation, which is paid in one payment or in installments according to the circumstances and conditions of the case.

B- Penalties prescribed for violating the rules of transferring and transplanting human organs:

The Algerian legislator punishes the doctor who performs the transfer and transplantation of human organs in a manner that violates the legislation in force in this regard, with original and



supplementary penalties in accordance with what the legislator stipulated in Law 18-11 on health and the Algerian Penal Code¹.

The penalty imposed on a doctor in human organ transplant operations varies depending on the type of crime committed. Penalties are imposed for the crime of organ trafficking, as well as for the crime of not obtaining the patient's consent and the crime of carrying out the transplant of human organs in an unlicensed institution.

- Penalties imposed for the crime of organ trafficking:

The crime of organ trafficking can be viewed from two angles, the first is when a person offers one of his organs in exchange for money, so we find that the legislator, through the Health Law in Articles 430 and 431, has referred the penalties for the crime of offering organs from a specific person's body in exchange for money that he offers to a doctor, for example, to Articles 303 bis 16 and 330 bis 20 of the Penal Code, so the person who commits this crime in exchange for a financial benefit is punished with imprisonment from 3 years to 10 years in addition to a fine, so the imprisonment penalty is increased for the doctor if his job facilitates the commission of this crime or in the event of multiple persons contributing to its commission or if the victim is a minor or mentally disabled, so that the imprisonment penalty then ranges from 5 years to 15 years and the fine from 500,000 DZD to 1,500,000 DZD, provided that the penalty is increased more if there is a financial benefit in addition to the availability of other circumstances such as the victim being a minor and others.

This crime is also viewed from the perspective of a doctor who offers to remove an organ from a person in exchange for money; the doctor is then punished with imprisonment from one to five years and a fine from 100,000 DZD to 500,000 DZD, in accordance with the text of Article 303 bis 18 of the Penal Code.

- Penalties imposed for the crime of not obtaining the patient's consent:

The legislator punishes the doctor for the crime of not obtaining the consent of the human body in the operations of removing a human organ according to Article 303 bis 17 and Article 330 bis 20 of the Penal Code with imprisonment and a fine as well.

The legislator also punishes the doctor for the crime of not obtaining the consent of the human body in the operations of removing tissues or cells or collecting material from the patient's body according to Article 303 bis 19 of the Penal Code with imprisonment and a fine as well.

- Penalties imposed for the crime of carrying out the transfer and transplantation of human organs in an unlicensed institution:

Anyone who commits the crime of transporting and transplanting human organs in an unlicensed institution, including the doctor, according to Article 433 of the Health Code shall be punished with imprisonment from two to five years and a fine from 500,000 DZD to 1,000,000 DZD.

Second -Hospital liability resulting from human organ transplantation and transplantation operations:

Medical liability can also be based on the hospital - or as the legislator called it, on the institutions licensed to remove tissues and cells - as a general principle, this liability is based on the facility error regardless of the nature of this error, whether it is a simple or serious error; in fact, in many cases, liability has been established on the hospital even in the absence of an error, based on risks, whether these risks are medical risks or therapeutic risks; rather, the mere failure to meet the condition stipulated in the current Algerian Health Law in its Article 357, paragraph one, regarding the necessity of transferring and transplanting organs within institutions licensed to remove tissues, which are those hospitals specified by the Minister of Health, is considered a facility error and Article 167, paragraph 1 of the previous repealed Health Law.

The French judiciary has also recognized a new form of medical damage, which is the result of the error attributed to the hospital according to the theory of missing the opportunity for recovery, as an attempt to find a solution to the case of the absence of a causal relationship or even its mere ambiguity.

¹-Order 66-156 issued on 06-08-1966 including the Penal Code, Official Gazette No. 49, issued on: 06-11-1966, amended and supplemented.



CONCLUSION:

The sensitivity and danger of human organ transplantation operations on the physical safety of the human being has prompted the Algerian legislator to surround them with a set of legal conditions and controls that doctors must adhere to, and failure to take them into account may lead to legal responsibility that may expose its owner to civil penalties and payment of compensation to the injured person; some actions may also result in criminal responsibility for the person who performs them if these actions are classified as crimes such as the crime of trafficking in human organs and the crime of the absence of the element of consent on the part of the donor and others, which result in penalties of imprisonment and financial fines for the person who performs them: these operations may also place responsibility on hospitals as a public facility when the conditions for this responsibility are met.

Perhaps the most important results and recommendations that we can reach are not to exaggerate in criminalization and punishment for doctors, as this may limit the doctor's work and make him afraid to perform any work even if there is a rush and its purpose is to preserve human life, for fear of punishment.

Working to facilitate the process of transferring and transplanting organs from the dead in order to preserve the lives of patients in need of these organs and allowing the family's consent to be accepted in the event that the deceased was not accepted during his lifetime.

Working to educate people about the necessity of donating their organs, especially after death, and agreeing to that during their lifetime to contribute to saving human lives.

REFERENCES:

[1] First - Legal texts:

- 1-Law No. 18-11 issued on: 02-07-2018, relating to health, Official Gazette No. 46, issued on: 29-07-2018.
- 2-Order 66-156 issued on 08-06-1966 including the Penal Code, Official Gazette No. 49, issued on: 11-06-1966, amended and supplemented.
- 3-Decision of the Supreme Court - Misdemeanors and Violations Chamber on: 30-05-1995 File No. 118720 - No. 2 of 1996.

[2] Second - Books:

- 1-The specialized group in the legal responsibility of professionals, medical responsibility, Part 1, no publication date.
- 2-Taha Abdel Mawla Ibrahim, Problems of Compensating for Bodily Injuries in Civil Law in Light of Jurisprudence and Judiciary, 1st ed., Dar Al Fikr Wal Qanun, Mansoura, 2000, Egypt.
- 3-Mamoun Abdel Karim, Patient Satisfaction with Medical and Surgical Procedures, Comparative Study, Dar Al Matbouat Al Jamia, Alexandria, 2006, Egypt.
- 4-Ahmed Abdel Daim, Human Body Organs in Legal Transactions, Al Halabi Legal Publications, 199, Lebanon.
- 5-Yasser Hussein Bahnas, Human Organ Transplantation between Criminalization and Permissibility - A Comparative Study - Between Sharia and Law, Arab Studies Center for Publishing and Distribution, 2012, Egypt.

[3] Third - Articles:

- 1-Omar Sidi, Criminal Liability of the Doctor for Disclosing Medical Secrets, Al-Ijtihad Journal of Legal and Economic Studies, Volume 09, Issue: 03, Year 2020.
- 2-Saidan Asmaa, The Position of the Algerian Legislator on the Operations of Transferring and Transplanting Human Organs, Algerian Journal of Legal, Economic and Political Sciences, Volume 48, Issue 04, Year 2011.
- 3-Boujemaa Chahrazad, Consent in the Operations of Transferring and Transplanting Human Organs According to Algerian Legislation, Journal of Legal and Social Sciences, Issue 1, Volume 9, March 2024.