

Legal Protection of the Human Body: A Study of the Provisions on Organ Transplantation in Algerian Legislation

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Abstract

This study examines the legal framework and professional regulations governing the removal and transplantation of human organs and tissues under Algerian legislation, particularly in light of Law No. 18-11 on Health. It aims to highlight how the Algerian legislator balances the demands of therapeutic necessity with the constitutional protection of the sanctity of the human body. The study concludes that the Algerian legislator has surrounded these procedures with stringent safeguards, beginning with the requirement of documented informed consent before the judiciary, through the prohibition of organ trafficking and the establishment of the principle of gratuity, and culminating in the restriction of such operations to authorized public hospital institutions under the supervision of the National Agency for Organ Transplantation. The study also emphasizes the importance of adherence to scientific standards and the legal liability arising from their violation, in order to ensure the safety of both the donor and the recipient alike.

Keywords: Organ removal and transplantation; Health Law 18-11; Informed consent; Therapeutic necessity; Medical liability; National Agency for Organ Transplantation.

Introduction

The protection of the right to life and physical integrity ranks among the highest objectives pursued by contemporary legislations, as these are inherent rights closely attached to the human person and admit of no infringement. The Algerian Constitution enshrined this protection in Article 39 of the 2020 Constitutional Amendment¹, which explicitly states: “**The State shall guarantee the**

¹ Presidential Decree No. 20-442 dated 15 Jumada al-Awwal 1442 corresponding to 30 December 2020, on the issuance of the Constitutional Amendment, approved by referendum on 1 November 2020, Official Gazette No. 82 dated 30 December 2020.

inviolability of the human person and shall prohibit any physical or moral violence or any assault on human dignity.”

With the scientific breakthrough in the medical field, techniques for the removal and transplantation of human organs and tissues have emerged as indispensable therapeutic solutions for saving lives. This development has confronted the legislator with a dual challenge: how to reconcile the requirements of therapeutic necessity on the one hand, with the principle of the sanctity of the human body and the guarantee of its dignity on the other, thereby protecting it from all forms of exploitation or degradation.

This study is of considerable importance in view of the legislative transformation brought about by the enactment of Law No. 18-11 on Health² in Algeria. This law introduced a new legal vision aimed at addressing the gaps in previous texts, particularly with regard to the rules governing consent, the prohibition of trafficking, and the determination of medical responsibilities, especially amid the growing national need for these complex surgical procedures.

Based on the foregoing, the central issue of this article revolves around the following main question: *To what extent has the Algerian legislator, through Health Law 18-11, succeeded in establishing a comprehensive legal and professional framework that regulates organ removal and transplantation procedures, while ensuring the protection of the right to physical integrity against medical or financial abuses, in response to the constitutional guarantees provided?*

To address this problem, the study relied on the analytical method of legal texts (the Constitution, the Health Law, and the Penal Code). The research is structured according to the following methodological plan:

- The Substantive Determinants and Legal Controls of Organ Removal and Transplantation.
- Professional and Ethical Controls in the Practice of Transplantation Procedures.

1. The Legislative Determinants of Organ Removal and Transplantation (A Study of Conditions and Controls)

Organ removal and transplantation³ constitute vital matters that directly affect the core of rights inherent to the human personality. Consequently, the Algerian legislator has surrounded these

² Law No. 18/11 on Health dated 18 Shawwal 1439 corresponding to 2 July 2018, Official Gazette No. 46 issued on 19 July 2018.

³ The term “greffe” (transplantation) differs from the term “transplantation” of an organ. “Greffe” refers to the transfer of living cellular or tissue material, whether from one part to another in the same individual or from another individual. It is

procedures with a set of substantive determinants and procedural controls aimed at regulating all issues related to the removal and transplantation of human organs and tissues. The objective is to achieve a precise balance between respect for the sanctity of the human body and the requirements of medical scientific progress.

Through this section, we shall examine the nature of the conditions and controls established by Health Law 18-11. In essence, these provisions seek to ensure the legitimacy of such operations and to protect all parties involved, as will be addressed in the following two demands:

- The Requirements of Medical Necessity and the Prohibition of Organ Trafficking.
- The Procedural Controls for the Consent of the Parties to the Transplantation Procedure.

1.1. The Requirements of Medical Necessity and the Prohibition of Organ Trafficking

The substantive determinants in Algerian legislation revolve around two fundamental ideas: first, the necessity that justifies any interference with the body, and second, the principle of gratuity that protects the body from being transformed into a commodity. These two aspects will be elaborated in the following subsections:

1.1.1. The Condition of Therapeutic and Diagnostic Necessity

The Algerian legislator did not leave any interference with physical integrity subject to absolute discretion. Rather, it restricted such interference to cases of necessity dictated by the patient's condition⁴, in accordance with the following controls:

Article 355 of Law 18-11 stipulates that the removal or transplantation of organs shall only be permitted if the purpose is therapeutic, aimed at curing a disease, or diagnostic, aimed at determining the nature of a specific ailment. In doing so, the legislator explicitly excluded operations conducted for experimental purposes with uncertain outcomes, as well as cosmetic procedures not required by medical necessity.

Furthermore, Article 364 of Law 18-11 requires that transplantation must constitute the final and inevitable medical option. Recourse to it is permissible only when it is medically established that

a tissue graft or patch, for example, skin grafting due to burns. In contrast, organ transplantation specifically means the grafting of vital organs that require immediate restoration of their vascular and arterial activity, such as the liver, heart, or kidneys. Reference: *Ahmed Abdel Daim, Human Body Organs within the Legal Transaction, PhD Thesis, Al-Halabi Legal Publications, Lebanon, 1999, p. 23*. As for the term "human organs," it refers to a set of different tissues that perform a specific function and contribute to the completion of a particular task, such as the heart, eye, or stomach. There are also organic systems that contribute to the same function, such as the skeletal, respiratory, and pharyngeal systems, as well as the circulatory system and the heart. If the human organ is a set of tissues, then tissues are defined as a group of cells that work together to perform a function. Reference: *Lalou Rabah, "Organ and Tissue Transplantation in Algerian Legislation," Journal of Legal Research and Studies, 06. 01,2017. p. 164*.

⁴ Article 21/4 of Health Law No. 18-11 states: "The physical integrity of a person may not be subjected to any interference except in the case of medically proven necessity, in accordance with the provisions stipulated in this law."

it represents the sole means of preserving the recipient's life or physical integrity. This control imposes upon the medical team the obligation to exhaust all less invasive therapeutic alternatives before deciding to proceed with transplantation.

The requirement of necessity is also linked, pursuant to Article 360 of Law 18-11, to the principle of not causing greater harm. Accordingly, the removal of an organ from a living person is prohibited if it exposes that person's life to danger, thereby giving precedence to the principle that **“harm shall not be removed by an equivalent or greater harm.”**

1.1.2. The Establishment of the Principle of Gratuity and the Prohibition of Organ Trafficking

The principle of gratuitous organ donation constitutes one of the peremptory rules linked to public policy in Algeria. Its primary objective is to safeguard human dignity from material degradation. This principle is clearly manifested in the following:

- **Nullity of financial transactions:** Article 358 of Law 18-11 explicitly provides that human organs and tissues may not be the subject of any financial transaction. Consequently, any agreement involving monetary or in-kind consideration in exchange for an organ is deemed absolutely null and void and produces no legal effect.
- The legislator did not limit itself to civil nullity; it also imposed stringent punitive protection against trafficking offences. Pursuant to Articles 303 bis 16 and 303 bis 18 of the Penal Code, any person who obtains organs for financial consideration or acts as an intermediary in such acts shall be punished by imprisonment for a term of three to ten years.

The penalty is further aggravated under Articles 303 bis 17, 19, and 20 bis, reaching the level of a felony if the act is committed through coercion or threat, or by forcibly removing the organ, or if the victim is a minor or a person suffering from physical or mental incapacity. This reflects the legislator's firm commitment to protecting vulnerable groups from organ trafficking networks.

1.2. The Procedural Controls for the Consent of the Parties to the Transplantation Procedure

The legitimacy of organ removal and transplantation procedures is not fulfilled merely by satisfying the substantive conditions; it must also be accompanied by formal and legal procedures that guarantee the validity and integrity of consent. In this regard, the Algerian legislator has distinguished between the consent of the donor and that of the recipient, while providing for exceptions dictated by cases of necessity. These will be detailed in the following subsections:

1.2.1. Informed Consent of the Donor and Judicial Oversight

The donor's consent constitutes the fundamental pillar for the legitimacy of any interference with his or her physical integrity. To ensure the seriousness of this consent and that it is free from defects, the removal of human organs from minors or persons lacking legal capacity is strictly prohibited, even with the approval of their guardian or trustee⁵.

The Algerian legislator has established strict formal safeguards that underwent a radical transformation with the enactment of the current Health Law compared to the repealed legislation. Under the former Law No. 85-05 on the Protection and Promotion of Health⁶ (now repealed), a mere written agreement in the presence of two witnesses was sufficient. Article 162 of that law required only that such consent be expressed in writing before two witnesses. This system was purely administrative in nature, as the procedure took place within the confines of the hospital institution under its administration. At the time, this approach faced widespread doctrinal criticism; some legal scholars argued that hospital management could find itself in the conflicting position of being both party and judge, potentially opening the door to moral pressure on the donor or inaccuracies in documenting free will⁷.

To remedy these shortcomings, the current Law No. 18-11 introduced a more robust and impartial mechanism: attestation before the President of the competent court. Pursuant to Articles 360 and 361, simple written or administrative consent is no longer acceptable. Instead, the donor must express his or her explicit and informed consent before the territorially competent President of the Court. This shift from administrative formality to judicial oversight primarily aims to elevate consent from the realm of informal contracts to that of official acts subject to judicial authority. The President of the Court is legally required to verify in advance that the consent is free, conscious, and free from any element of coercion or hidden material inducement—guarantees that a simple written consent system may not adequately provide.

This legislative transformation yields dual protection. On the one hand, it offers the physician and the hospital institution definitive legal protection against any subsequent claims of deception or lack of knowledge, given that the judicial record enjoys absolute probative value. On the other hand,

⁵ Alaa Nasser Hussein and Ammar Salim Hashem, "The Legal Regulation of the Crime of Transferring Human Organs from the Deceased to the Living," *Journal of Legal Sciences*, College of Law, University of Baghdad, Special Issue No. 5 (Faculty Research with Postgraduate Students), 2019, p. 487.

⁶ Law No. 85-05 dated 16/02/1985 on the Protection and Promotion of Health, as amended and supplemented by Law No. 90-17 dated 31/07/1990 (repealed), Official Gazette No. 35 of 1990.

⁷ Marouk Nasr Eddine, "Legal Problems Raised by Human Organ and Tissue Transplantation Operations," *Algerian Journal of Legal, Economic and Political Sciences*, Faculty of Law, University of Algiers, Vol. 36, No. 3, Algeria, 1999, p. 24.

it grants the donor sufficient time and psychological space to reconsider and withdraw his or her decision away from medical or family pressures. This embodies the highest degree of respect for the individual's sovereignty over his or her own body as a constitutional right that cannot be waived. Thus, the legislator has successfully positioned the judiciary as a guardian of human dignity and an organizer of the donation process in a manner that ensures its integrity and alignment with humanitarian and legitimate objectives.

1.2.2. The Recipient Patient's Consent and the Obligation of Medical Disclosure

Since the recipient patient is the original holder of the right to bodily integrity and wholeness, his or her will forms the cornerstone upon which the medical intervention for transplantation rests⁸. The Algerian legislator, in Article 364 of Law 18-11, emphasized the necessity of obtaining the recipient's explicit consent, which must be given before the head of the medical department and in the presence of two witnesses, thereby ensuring the formal character of the procedure and clarifying legal responsibilities.

This consent is only valid and productive of legal effects if preceded by the physician's legal obligation of medical disclosure. Under Article 364(5) of Law 18-11, the treating physician is required to inform the patient or his or her legal representative of all relevant information concerning the patient's health condition. This includes emphasizing that the transplantation procedure is the only available means to ensure the continued physiological function of the organs, while clearly explaining the success rates and potential risks. The purpose of this procedure is to ensure that the patient's decision constitutes truly informed consent based on full awareness of the medical reality. This approach enshrines the principle of the right to knowledge and the individual's freedom to accept or refuse treatment. Consequently, the physician may not impose any alternative intervention if the patient refuses, as the patient remains the primary decision-maker regarding his or her health and bodily integrity.

If the patient is unable to express explicit consent due to lack of the required legal capacity—whether because of minority or any other cause affecting capacity—Article 364 of Health Law 18-11 authorizes the father, mother, or legal representative to provide consent. This must occur only after the treating physician has informed the patient or his or her representative of the risks associated with the procedure.

1.2.3. The Exception to the Consent Requirement in Cases of Extreme Emergency

Despite the strictness of the general rules requiring prior consent from the parties involved, the Algerian legislator introduced a substantive exception dictated by urgent therapeutic necessity aimed at saving human life—the highest legal value. In cases of extreme emergency where any delay would seriously endanger the recipient's life, the legislator permits the physician to intervene directly and perform the operation without waiting for the consent of the patient's family or legal representative,

⁸ Azzouz Ben Tamsak, "Legal Controls for Human Organ and Tissue Transplantation Procedures," *Annals of the University of Algiers 1*, pp. 124-125.

provided that obtaining such consent in time is impossible and that any delay would inevitably lead to death.

Articles 364(6) and (7) of Law 18-11 regulate this exception through stringent documentation mechanisms to prevent abuse. The physician, in his or her capacity as head of the department, is required to record the state of extreme emergency and the critical medical condition in an official report prepared in the presence of two witnesses. This exception does not constitute an abandonment of the consent requirement; rather, it represents an elevation of the right to life and a prioritization of the patient's rescue in exceptional circumstances where the expression of will is impossible. It thereby provides the physician with legal cover to exercise his or her profession in the service of protecting lives without incurring liability for interfering with the body in the absence of consent.

2. Professional and Ethical Controls in the Practice of Transplantation Procedures

The medical profession is subject to a set of scientific principles known as the fundamental, stable, and well-established rules—both theoretically and practically—among physicians. These controls are embodied in the scientific data and professional customs that physicians are required to observe⁹. Given the high-risk nature of organ removal and transplantation procedures, any deviation from these principles does not merely constitute professional misconduct, but rather an infringement upon the constitutionally and legally protected right to physical integrity. In this section, we shall address the technical and institutional controls that ensure the success of these operations through the following two demands:

2.1. Scientific Principles and Technical Obligations of the Medical Team

Scientific principles represent the primary safeguard for minimizing medical errors and risks. These principles manifest themselves in obligations that precede the procedure as well as those that accompany it. This will be elaborated in the following subsections:

⁹ Boukhars Belaid, *Medical Error during Surgical Intervention in Light of the Rules of Civil Liability*, PhD Thesis in Legal Sciences, Faculty of Law and Political Science, University of Mouloud Mammeri, Tizi Ouzou, 2018, p. 36.

2.1.1. The Obligation to Conduct Preliminary Examinations and Provide Medical Enlightenment

The Algerian legislator has ensured that organ removal and transplantation procedures are directed toward preserving the patient's life or alleviating his or her suffering, while simultaneously guaranteeing the donor's physical and psychological safety. Accordingly, intensive medical examinations must be performed on both parties to verify organ compatibility, the absence of infectious diseases, and the donor's ability to donate without incurring serious harm or health impairment, as clearly stipulated in Article 361(1) of Law No. 18-11. The removal of a diseased or non-viable organ is also prohibited.

Given that transplantation procedures are highly precise surgical interventions, they impose upon the physician a heightened professional responsibility. While the physician is generally bound by the duty of care, the gravity of transplantation operations raises this duty to a stricter level, requiring strict adherence to established technical and scientific protocols. Any negligence in the post-operative follow-up of the donor or recipient, failure to sterilize transferred organs, or lack of verification of tissue compatibility exposes both the physician and the hospital institution to civil and criminal liability. In this way, the legislator has struck a balance between granting the physician permission to interfere with the human body for therapeutic purposes and imposing upon him or her the highest standards of caution and diligence to protect human life¹⁰.

The law also imposes strict ethical obligations on the medical team prior to undertaking any procedure. In the case of removal from a deceased person, the legislator prohibits the commencement of organ extraction until brain death has been definitively confirmed according to approved medical criteria. Moreover, the physicians certifying death must be completely independent from the transplantation team in order to eliminate any suspicion of conflict of interest. In the case of a living donor, the physician bears a legal obligation to conduct thorough and comprehensive examinations to ensure, on the one hand, the suitability of the organ for the recipient and, on the other, that its removal does not pose a serious risk to the donor's life. This reaffirms that the primary purpose of medicine is healing and not the infliction of harm.

The physician's obligation does not end with the physical examination; due to the serious nature of these procedures, it extends to informing both parties of all potential risks and adverse effects, and obtaining their free and informed consent prior to any medical intervention. The physician must

¹⁰ Ben Ali Khaldoun and Ben Saliha, "The Adequacy of Legal Controls for the Removal and Transplantation of Human Organs, Tissues and Cells in Algerian Legislation," *Journal of Legal and Political Research*, Vol. 7, No. 2, 2022, p. 71.

respect the patient's will after providing full information about the consequences of his or her choices. This is expressly provided for in Article 343, paragraphs 1 and 2, of Law 18-11 and in Articles 43 and 44 of the Code of Medical Ethics.

2.1.2. The Rule of the Paired Organ and Tissue Compatibility

Although Law 18-11 does not provide an exhaustive list of organs, established medical principles dictate that living donation must be limited to paired organs whose removal does not result in the donor's death, disability, or physical disfigurement that would impair the body's structure or functions—such as the hands, legs, or eyes. Donation in such cases would inevitably compromise the donor's physical integrity and ability to perform normal functions, in addition to causing permanent disfigurement¹¹.

Consequently, a living person may not donate unpaired vital organs, such as the heart, which may only be removed after death.

In addition, tissue compatibility (histocompatibility) constitutes the technical cornerstone for the success of the transplantation procedure. Under Article 359 of Law 18-11, the legislator has entrusted the assessment of such compatibility to the discretionary authority of specialized medical committees. This measure aims to prevent the phenomenon of foreign body rejection, which could lead to severe consequences for the recipient and render the donor's sacrifice futile.

2.2. Institutional Organization and Administrative and Punitive Oversight

The legislator has not left transplantation procedures to individual initiatives or non-specialized structures. Instead, it has surrounded them with a strict licensing system and a central regulatory body, as will be explained below:

2.2.1. Restriction of Procedures to Judicially and Administratively Licensed Institutions

Pursuant to Article 366 of Health Law 18-11, organ removal and transplantation operations may only be performed in public hospital institutions that hold a license issued by the Minister responsible for health. This restriction aims to ensure the availability of qualified human resources and necessary material capabilities, while keeping the activity under state supervision to prevent ethical deviations, particularly organ trafficking. The National Agency for Organ Transplantation plays a pivotal

¹¹ Chaib Zarif, "Controls on the Removal and Transplantation of Human Organs in Algerian Health Law," *African Journal of Legal and Political Studies*, University of Ahmed Draia, Adrar, Algeria, Vol. 06, No. 01, 2022, p. 326.

regulatory role by providing technical opinions on the competence of institutions and coordinating removal and transplantation activities to guarantee their safety and legality.

2.2.2. The Supervisory Role of the National Agency for Organ Transplantation

The National Agency for Organ Transplantation constitutes the cornerstone of the professional system. It is the body entrusted with regulating and organizing all activities related to organ removal and transplantation at the national level. Its supervisory functions include overseeing waiting lists to ensure the fair and objective distribution of organs according to purely medical criteria, free from any favoritism. The Agency is also responsible for licensing hospital institutions and monitoring their activities. The existence of this Agency imparts an institutional character to transplantation procedures, transforming them from isolated medical practices into a comprehensive national system that ensures transparency and prevents any attempts at exploitation or manipulation of citizens' health rights.

2.2.3. Legal and Criminal Liability for Violation of the Controls

To reinforce this oversight system, the Algerian legislator has established stringent punitive protection. Article 433 of Health Law 18-11 provides for penalties involving deprivation of liberty (imprisonment from two to five years) and heavy financial fines against anyone who dares to perform these procedures in unlicensed institutions. Liability does not stop at the criminal level; it also extends to civil and professional liability of the healthcare institution and the physician in cases of failure to exercise due caution and diligence or negligence in the post-operative medical follow-up of the donor and recipient. Thus, scientific principles and administrative licensing form an unbreakable legal barrier that cannot be circumvented.

Conclusion

In conclusion, it can be stated that organ and tissue removal and transplantation procedures in Algerian legislation are now governed by a strict legal regime grounded in the principle of therapeutic necessity as the sole criterion of legitimacy. The legislator has taken care to surround these procedures with essential procedural safeguards, foremost among which is the explicit, free, and enlightened consent of both the donor and the recipient. This includes enshrining the donor's right to withdraw his or her consent at any time, even immediately before the commencement of the surgical procedure.

Consequently, the physician incurs civil liability if he or she compels the donor to proceed with the operation despite such withdrawal. The physician is also held liable for any error in diagnosing the degree of tissue compatibility between the parties. On the penal level, the legislator has established

aggravated criminal liability in cases where these procedures are performed without prior authorization or outside the approved public hospital institutions licensed by the Minister responsible for health. All of these measures are designed to preserve the sanctity of the human body and to protect both the donor and the recipient from any medical deviations or material exploitation.

Recommendations

Based on the findings of this study, the following set of recommendations is proposed with a view to developing the legal and regulatory framework for transplantation procedures:

- At the legislative level: It is necessary to issue regulatory texts that precisely define the list of paired organs eligible for donation by living persons, in order to avoid interpretations that may compromise the donor's physical integrity.
- At the level of protection: A special legal system should be established for compensation for occupational risks (mandatory insurance scheme) to cover donors against any complications or potential risks that may arise during or after the procedure.
- At the organizational level: The licensing map for qualified hospitals should be expanded to cover various regions of the country (particularly the South and the High Plateaus) in order to bring health services closer to citizens and reduce the burden of travel.

The possibility of involving the specialized private sector under strict supervision by the National Agency for Organ Transplantation should be reconsidered. This would help reduce waiting lists and alleviate pressure on public institutions.

- At the digital and technical level: A national donor card should be created and incorporated into personal data records to facilitate knowledge of the individual's wishes in the event of brain death.

A centralized national digital platform should be established under the supervision of the National Agency for Organ Transplantation to manage waiting lists and allocate organs according to criteria of transparency and medical priority.

- At the awareness-raising level: National campaigns should be intensified to promote the ethical and social values that encourage organ donation as a noble humanitarian act, with the involvement of civil society institutions and religious bodies in this awareness effort.

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