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## LEGAL AND BIOETHICAL PROBLEMS OF ORGAN TRANSPLANTATION IN THE CONTEXT OF RIGHT TO LIFE

**Key words:** organ transplantation, bioethical problem, right to life, brain death, medical tourism

**Açar sözlər:** organ transplantasiyası, bioetik problem, yaşamaq hüququ, beyin ölümü, tibbi turizm

**Ключевые слова:** трансплантация органов, проблема биоэтики, право на жизнь, смерть мозга, медицинский туризм

### 1.1. Introduction

Transplantation of human cells, tissues or organs saves many lives and restores essential functions where no alternatives of comparable effectiveness exist. In 50 years, transplantation has become a successful worldwide practice. However, there are large differences between countries in access to suitable transplantation and in the level of safety, quality, efficacy of donation and transplantation of human cells, tissues and organs. In other word, transplantation is the transfer of human cells, tissues or organs from a donor to a recipient with the aim of restoring functions in the body.

The procurement of organs for transplantation involves the removal of organs from the bodies of deceased persons. This removal must follow legal requirements, including the definition of death and consent. Because of necessity and need this issue should be put into the law. Although organ transplantation is medical procedure, the regulation of all these issues are regulated by law. There are some relations among the amount of deaths, the lack of money, improper regulation of transplantation. These negative conditions cause violation under article 2 of European Convention on Human Rights – “right to life”.

### 1.2. Bioethical problems

Transplants are considered when a major organ of the body is failing and does not respond to all other therapies, but otherwise the health of patient is good. Patients receiving successful transplants are often able to resume their daily lives with no dependence on complicated medical machinery, such as a kidney dialysis machine or a heart pump assistive device. Although transplant recipients must adhere to strict regimens of medications and frequent examinations, increased survival rates at the turn of the century enabled over 75 % of successful transplant recipients to return to a daily work schedule and to recreational activities enjoyed prior to becoming ill. As organ transplant procedures increased and became standard treatment for otherwise fatal illnesses both the medical community and the public at large considered ethical issues brought forth by organ donation. The National Transplantation Act, passed by U.S. Congress in 1984, mandated a centralized system for sharing available organs along with a scientific register to collect and report transplant data. The act also made illegal the sale or purchase of organs. The national system was established to match donors and recipients. It is managed by the United Network for Organ Sharing. UNOS members work with all transplant centers in the United States to ensure that the limited supply of organs is distributed fairly to patients in need regardless of age, sex, race, lifestyle, or financial or social status. Through the UNOS Organ Center, organ donors are matched to waiting recipients every day of the year, around the clock. Organ sharing is based upon scientific criteria including the recipient's acuity of the disease process, compatibility of body size and blood chemistries, as well as length of time on the waiting list. At the same time, transplantation procedures were quickly growing. Organs and tissues were needed for additional types of transplants added to the medical arsenal against disease. Lung, pancreas, bone marrow, small intestine, cornea-all were considered an acceptable part of medical treatment. In last decade world is enlarged and developed. Medicine and genetics gets new achievements and there was a need to combine both sciences. So, the new science was created. It was bioethics. Bioethics involves some problems that existed in biomedical researches, testing of drugs, attitudes towards patients, using new technology in Ohealth care, to comply with the legislation norms and etc. Bioethics also involves some researches in abortion, euthanasia, robot technology, medical genetics, reproductive technology, and also biomedical research above animals and peoples. All over the world looked at the point in this field. And These issues are regulated by international legal acts. This science differs from others. Bioethics touches human existence problems. So It is related confidentiality. To research on human organs also related with human rights. Usually science does not want to connect with law but it is necessary.

Because human rights should be protected by law. Researches rely on consensus, general beliefs. If there is no consensus there is also no research. When scientist do research they must take into consideration fundamental values and ethical norm. Not always applying to the international acts or mechanisms solve the problems. For example, International Committee on Bioethics try to get common values but ethical values are different. The first meeting about bioethics was held in 1946 Nurnberg. At the result of this meeting was Nurnberg Code. It is the first act about bioethics. In 1976 Helsinki Declaration was adopted. They created social structures. Structures are named Bioethics Committee. The deputy of these committees is to regulate the practice of medical experiments, abolish results which are not good for people. Bioethics also protect human's social protection. Today we have Universal Declaration on the Human Genome and Human Rights. The International Bioethics Committee of UNESCO should contribute to the dissemination of the principles set out in this Declaration and to the further examination of issues raised by their applications and by the evolution of the technologies in question. It should organize appropriate consultations with parties concerned, such as vulnerable groups. It should make recommendations, in accordance with UNESCO's statutory procedures, addressed to the General Conference and give advice concerning the follow-up of this Declaration, in particular regarding the identification of practices that could be contrary to human dignity, such as germ-line interventions. No research or research applications concerning the human genome, in particular in the fields of biology, genetics and medicine, should prevail over respect for the human rights, fundamental freedoms and human dignity of individuals or, where applicable, of groups of people. The human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity. Everyone has a right to respect for their dignity and for their rights regardless of their genetic characteristics. The human genome in its natural state shall not give rise to financial gains. Today's problems are that, create Bioethics Committee, good regulation by law, set up control mechanism, state's help about social benefits, and implementation.

### 1.3. Legal problems

In Azerbaijan the issue of organ transplantation is regulated by law "On donation and transplantation of human organs". Article 11 says that state, municipal, private health care structures that are authorized will be able to remove organs from a living person or corpse. First of all, before removing organs from a corpse it is necessary to define brain death. But the law does not define the notion of "brain death". So, brain death is the total and irreversible loss of all brain function and the circumstance under which the donation of vital organs most commonly takes place. Brain death occurs when a person has an irreversible, catastrophic brain injury, which causes total cessation of all brain function (the upper brain structure and brain stem). Brain death is not a coma or persistent vegetative state. Brain death is determined in the hospital by one or more physicians not associated with a transplantation team. When someone is brain dead, it means that the brain is no longer working in any capacity and never will again. Other organs, such as the heart, kidneys or liver, can still work for a short time if the breathing machine is left in place, but when brain death is declared, it means the person has died. Doctors examining the patient will conduct a battery of tests to determine whether any brain activity is present. If all brain activity is absent, the patient is dead. So, what is the legal time of death for a brain dead patient? The legal time of death is the date and time that doctors determine that all brain activity has ceased. This is the time that is noted on the patient's death certificate. Brain death is not the same as being in a coma or persistent vegetative state. Brain death is death. A patient who is in a coma or persistent vegetative state typically has some brain stem function (which controls breathing) and possibly other brain function. When a person is brain dead, no part of the brain is functioning any longer. If the living person gives his organ to another person, there is no guarantee that the donor will be healthy man at the end of his life or there will be no disability. We know that, for this reason as article 8 says there must be recipient's consent. It is important. If the recipient does not have consent the removal of organ is criminal procedure. And it is named organ trafficking. Transplant tourism and organ trafficking have pervasive negative effects. Organ trafficking exploits poor individuals who are desperate to make money for survival. Because profit-motivated facilitators negotiate most transactions, donor compensation is often extremely low. For example, kidney donors frequently receive less than one-third of the price that recipients pay for the organ, despite initial promises of higher payment. Furthermore, donors rarely receive adequate health care after the transplant, generating negative health outcomes that impede their ability to work and worsening their financial and physical condition in the long run. As a result, donors rarely succeed in paying off the very debts that often lead them to sell the organ in the first place. International organizations have made more serious efforts to combat human trafficking for organ removal. The UN and Council of Europe have utilized broader human trafficking protocols to address human trafficking for organ removal. The 1990 UN Convention on the Rights of the Child prohibits

the “sale of children.” Its 2002 Optional Protocol to the Convention on the Rights of the Child adds organ removal to the definition of “sale of children,” thus creating the first binding international legal instrument to explicitly prohibit human trafficking for organ removal. So, “Medical Tourism” is the travel of residents of one country to another country for treatment. There are three important players in the international market for organs: sellers, recipients, and brokers. Should we prohibit transplant tourism? Three arguments are commonly deployed against organ sale generally: corruption, crowding out and coercion. Transplant tourism involves a complex and expensive medical process. Home countries can discourage their citizens from engaging in transplant tourism by making these patients ineligible for insurance coverage relating to an illegal kidney transplant. Transplant tourism is a tragic and increasingly common response to worldwide shortages of organs. Attempting to prohibit transplant tourism also raises a series of difficult regulatory design choices. Along with the work of international societies and institutions and increased attempts to increase the supply of organs in tourists’ home countries, will significantly reduce transplant tourism.

#### 1.4. Conclusion

Today, for every country, protection of all human health and life must be first aim. Right to life is the highest right among all rights. It is not casual that, European Convention reflected this issue, and put positive commitments on states. The states should prevent illegal organ transplantation, regulate the law, give every citizen equal rights about transplantation regardless of their sex, social status and etc., provide them social benefit after transplantation, respect human’s values, help them for living.

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#### Yaşamaq hüququ kontekstində organ transplantasiyasının hüquqi və bioetik problemləri

##### Xülasə

Müasir dövrdə bütün dünyada pasiyent hüquqları ilə bağlı məlumat qıtlığı mövcuddur. Qanuni orqan köçürülməsinin qanunsuz olmadığına çalışmalıyıq. Korrupsiyanın qarşısını almaq üçün məcburiyyət dünyanın aparıcı məqsədlərindən biridir. Lakin nəzərə almaq lazımdır ki, bu hüquqlara əməl olunmaması Avropa İnsan Hüquqları Konvensiyasının 2-ci maddəsində əks olunan və ən fundamental insan hüquqlarından olan yaşamaq hüququnun pozulması ilə nəticələnir. Ona görə də bu məsələ üzrə maarifçiliyin aparılması çox lazımdır. Bu məqalə də məhz həmin kontekstdə və həmin məqsədlə yazılmışdır. Orqan transplantasiyasının düzgün həyata keçirilməsi, orqanın canlı insandan deyil də, meyiddən alınmasının nə kimi üstünlüklərinin olduğu məqalədə göstərilmişdir. Həmçinin, organ transplantasiyasının hüquqi və bioetik kontekstdə düzgün həyata keçirilməsi üçün Bioetika Komitələrinin rolunun vacibliyi vurğulanmışdır.

#### Правовые и биоэтические проблемы трансплантации органов в контексте права на жизнь

##### Резюме

В наше время во всем мире не хватает информации о правах пациентов. Мы должны попытаться сделать легальную трансплантацию органов не незаконной. Для предотвращения коррупции приращение является одной из ведущих целей в мире. Однако следует иметь в виду, что несоблюдение этих прав приводит к нарушению права на жизнь, одного из самых основных прав человека, закреп-

ленных в статье 2 Европейской конвенции о правах человека. Поэтому очень важно повышать осведомленность по этому вопросу. Эта статья была написана в том же контексте и с той же целью. В статье показаны преимущества правильной трансплантации органов и преимущества удаления органа из трупа, а не из живого человека. Была также подчеркнута важность роли комитетов по биоэтике для надлежащего осуществления трансплантации органов в юридическом и биоэтическом контексте

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