

Importance of Regulations Framework on Organ Donation and Transplantation*

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In the light of modern-day medical science developments, we see brand-new problems arising beyond their classic problems in medical and law science. Especially the development of technology, the rise of travel opportunities and a new sector called medical tourism coming to existence can turn people's search for healing into a nightmare and can victimise them. From this point of view I will make some explanations about what organ trade is and especially the necessity of battling illegal organ trade and making legal arrangements on this area.

Organ and tissue transplantation can't be made sufficiently due to the lack sufficient number of organs, existence of cultural and educational differences and common opinion that the decedent would suffer in the hereafter if an organ was to be taken off of the decedent's body and that it's inconvenient in terms of religion. When the organ issue became a problem that is common in the world, the illegal trade of that started, and it became a 'source of living' especially for some people in Russia, India and some of the Far East and Africa countries.

In biology, it is defined as that the organ is the tissue group that fulfils a specific duty or body of duties; and tissue is the body of cells that compose one of the building elements of a body or an organ. Organ transplantation is the act of transplanting a solid organ that is taken from an alive donor or a decedent and can take on the same task, in the place of the organ that can't fulfil it's duty in the body. In this day and age, organ transplantation is accepted as a valid treatment method in many advanced organ diseases. The number of people waiting for an organ transplantation in our country is pretty high. While there not being sufficient number of donors to meet this need directs people that are waiting for organs to buy organs; it directs people that are in financial difficulties to sell organs. This case is not different around the world. It is a known fact that rich dialysis patients, especially if organ trade is forbidden by law in their country and is imposed section, travel the world for organ transplantation; English and German go to India, Japanese to USA, North Americans to Peru and Brazil and that this trade is organised professionally under the name of "medical tourism".

Kidney trade composes a big part of organ trade. Unfortunately buying and selling of kidney has become highly widespread in various countries in the world. This case especially purports buying from the poor donor and selling to the rich buyer; in other words putting the poor in jeopardy in order to fulfil the rich buyer's health. Hundreds of kidney patients from Arab countries and Southeastern Asia go to India for transplantation. India became one of the world's kidney

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transplantation centres over the years. Because prices are low and kidneys to find are plentiful. In fact it's called 'kidney market' by medical doctors. A great number of back-alley/under the counter clinics that ply this trade have been opened. Moreover, clinics like these advertise to attract donors and run this business under the name of 'rewarded gift' for not to face a lawful obstacle. Terms like rewarded gift and rewarded donations are further problems organ and tissue trade has brought. Rewarded gift or rewarded donation is the certain amount material benefit that's given to the donor in exchange for the organ he has given. The donor is rewarded for his donation. In an other words it's the softened name of buying and selling in organ trade. Especially, rapidly increasing population in countries that don't have much cadaveric donor organs and that have distinct wealth differences like China, Nepal, Egypt and Turkey that are located in India, The Far and Near East led to the development of international human organ trade. It is known that organ trade increased in Russia, Romania and Moldova in recent years. But unfortunately, always exploited, uneducated and left poor Africa is in a much worse condition, such a bad condition that in most African countries this action is not even regulated as a crime.

As a result of this, a new medical application method, where human kidneys are bought from poor and needy people to be transferred to a rich buyer group and that provides brokers, private hospitals and doctors high profit, arose. Most of the time those poor and needy people that give their kidneys doesn't get the reward that was promised to them to make even the slightest contribution to their financial condition which initially caused them to sell their kidney of necessity and they are just left with what they have done. For example, according to China's 'Human Organ Transplantation Regulations' people who donate their organs can only be married couples or close relatives. Therefore, various mediators to document closeness related to this degree of relationship that is inexistent in material fact with forged documents derived.

World Health Organisation (WHO) allied to The United Nations revealed the terrifying point organ smuggling reached with the statement it made in the middle of 2012. According to the research the organisation made, approximately ten thousand black market kidney sale is made every year, which is more than one kidney per hour. The organisation stated that demand for kidney sale increased because of the increasement of diabetes and suchlike diseases. The organisation also stated that kidneys constitute 75% of illegally made organ transplants and it revealed that patients mostly undergo surgery in China, Pakistan and India and that the buyers can pay a price up to 200 thousand dollars (367 thousand TL) for a single kidney. The organisation also stated that the price paid to the people who gave their kidneys is 5 thousand dollars (9 thousand TL) maximum, and that the rest of the money is shared between the mediators and the doctors. Also, Turkey is a preferable country in the choice of the countries that surgeries gonna be performed due to it's location as a country of transit between poor and rich countries and it's medical sufficiency (in terms of hospitals and doctors).

There are three fundamental principles in organ transplantation made from an alive donor. Firstly, amputation of the donor shall not damage the donor's health, life or operational integrity. Secondly, the donors shall volunteer of their own free will without any pressure or force. Thirdly, the donor shall be fully informed about the possible consequences and risks of the attempt.

In the organ trade organisation, most of the donors come from the part of the community where health and nourishment are already restricted due to poverty and economic difficulties. It's not realistic to say that these people genuinely volunteer and they have a non forced consent, in the conditions that they are in. Besides, it is highly likely that the health, operational integrity of his organs and the life of the donor would be damaged in the transplantations that are made in unhealthy conditions in insufficient operating rooms at back-alley clinics, and that are made without questioning the medical knowledge and experience of the doctors performing the surgery. Also the donor's organs so to say are taken forcefully by not informing the donor enough about the transplantation, by ignoring the requests of the donor that backed out in the last minute, by making superficial inculcations in the direction that the operation is simple and by saying that now that you have started this process there's no turning back. In addition to this, receivers are also at the mercy of the hospital and the doctors in terms of expenses, choice of donor and quality of the examination and evaluation.

But, kidneys and livers are provided from alive donors in exchange for money or pecuniary advantage, by gaps in the laws that forbid organ trade, insufficient supervision or unlawful means, especially in countries where social and ethical values are not cared about. Apart from this situation causing a big mistake ethically, it also causes complications to be seen like death, infection (HIV infection, chronic active hepatitis C, Cytomegalovirus - CMV infection), rejection (the rejection of the transplant tissue or the organ), in other words it can cause a number of medical mistakes.

In most Middle East and Asia countries, the religious beliefs or communal resistance arising from traditions make providing cadaveric donor organs difficult. In these countries where ethical problems arising from cadaveric donor organs are constantly discussed, the economical imbalance in the community set ground for the procurement of organs to constitute a trade market, and poor people to become a cheap organ source both nationally and internationally. In order to not allow this occurrence, it is reached a consensus that the common usage of cadaveric organs in transplantation within the framework of ethical rules and in company with scientific facts is the solution.

In the event of the human body being acknowledged as a good that can be sold in exchange of known and determined expenses like ordinary goods, a corruption in community and an unfair and wrongful access and distribution system is invited, because in this system the rich is always in the buyer side, and poor in the donor side. And this will cause the social injustice to reach extreme levels and ruin the social order and peace. Thereby, this law and unethical trade shall be prevented.

In order to prevent organ trade, the organ procurement from donors that are not relatives or don't have emotional intimacy needs to be minimised by the reason of commercialisation danger and should be prescribed by gravitating toward transplantation programs through cadaver, if possible it should be done single handedly by a public authority nationwide. For example, German Organ Transplantation Law only allows transplantation of organs that's not possible to regenerate to first and second degree relatives, spouse, fiancée and persons who have special personal connection with the donor. Hereby, it aimed to prevent organ trade. Both in the world and Turkey, it requires to wait a very long turn for organ transplantation through legal channels and most of the time a patient's turn doesn't come till death. For this reason, organ transplantation through illegal ways is

preferred. Individuals hesitate to donate organs due to religious, economical and social grounds. While there are a lot of receivers waiting in line worldwide, there are difficulties in finding legal donors under these circumstances. Therefore, either people should be encouraged to donate organs - which should be ensured by the government and non-governmental organisations- or organ donation made from an alive person should be cramped and organ transplantation should be made with tight control. As a matter of fact, World Health Assembly expressed it's concerns about profit-oriented trade of human organs between alive people in 1987, and stated that this trade doesn't comply with basic human values, and is against the spirit of UN produced Universal Declaration of Human Rights and World Health Organisation Constitution.

The short term solution in this case is transplantation of organ and tissue from the decedent, medium term solution is the production of artificial organs and tissues. The long term futurist approach is stopping organ and tissue failure with raging or insignificantly slowing. As it is seen, organ and tissue trade is a significant problem of our age. Along with thinking that in the near future it won't be necessary to transplant organs and tissues from alive or dead biological entities with the development of artificial biologic goods, I also think that in existence circumstances such trade will keep posing a significant problem.

For this reason organ and tissue trade shall be acutely competed against in this day and time. The fight put against poverty and lack of education should form the first foot of the fight against organ and tissue trade. Health care providers being on the alert and careful, not getting involved in activities out of deontology and even trying to prevent such activities if possible constitutes the second foot of the fight. Third and another important foot consists of the need for all of the countries in the world fighting these activities. Because organ and tissue trade is a source of income out carried by benefit-oriented criminal enterprises. These crimes are substantially processed as exorbitant crimes. Therefore execution of perpetrators, victims, buyers and operations are each made in different countries. So the jurisdiction of the country numerously becomes the main topic of conversation in such crimes. But when either of these countries or a third party country don't regulate these activities as a crime or don't impose an effective penalty, activities immediately slide to this country and since criminals are not imposed a penalty and the income obtained from this isn't confiscated, organ trade proceeds just the same. The likes of this can be seen in cyber crimes and in the act of laundering crime revenues and places like these are called crime heaven.

In that case, when countries that don't have sufficient opportunities to transplant organ or tissue themselves send a donor or a patient abroad for transplantation, they should pay attention to the medical clearance as well as the legal arrangements of the countries they sent to, and they should protect the safety of life and property of their citizens at a reasonable level.

I can without a doubt say that Turkey, in terms of both judicial and medical, is at an advanced level on this matter. How organ and tissue transplantation shall be carried out and the offence of organ trade have been regulated in Turkey before numerous countries. According to the Article 17, Paragraph 2 of the 1982 dated Constitution of The Republic of Turkey, *"The corporeal integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his/her consent."*

In this direction how organ transplantations will be made is regulated with Harvesting, Storage, Grafting and Transplantation of Organs and Tissues Law (HSGTOL) no. 2238. Also illegal organ and tissue transplantation and trade offences are regulated in Turkish Criminal Code (TCC) no 5237, a. 91 —93. Along with regulating a type of crime related to this in the Article 15 of HSGTOL, since being the latter law effectuated, the regulations of the TCC are applied. But, since the Article 91 of TCC allows criminal sanction relating to the matter without specifying the provisions of organ and tissue transplantation, the regulations of HSGTOL regarding organ and tissue transplantation provisions are effectual. Also, provision of execution in article 15 of HSGTOL is in use in respect of activities that are regulated in HSGTOL rather than TCC. For example, in the case of the donor being married, finding out by investigating whether the spouse, which the donor is living with is aware about the donor's decision of donating his/her organs and tissues and record the information with a report according to the article 7/d of HSGTOL, or not revealing the donor's identity, with exception of blood and those who are related to the recipient by marriage or close personal relationships according to the article 7/f of HSGTOL, or health organizations authorized to harvest, store, and graft organs and tissues must provide the specially-trained personnel, instruments and materials necessary according to the article 10 of HSGTOL. As it is seen, In Turkey, unlawful acts at every stage of this issue are regulated as a crime with the regulations partaking in HSGTOL and TCC. That way, it aimed to not leave an open door for anyone intending to commit crime.

Along with these regulations Turkey signed the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (European Convention of Human Rights and Biomedicine), agreed to the approval of the convention mentioned with the Law no 5013 published in Official Gazette on 9.12.2003, but made a reservation on the article 20, clause 2 on account of the fact that it doesn't comply with the article 5 of HSGTOL. The scope of the related provisions of 2012 dated Organ and Tissue Transplantation Regulations and TCC are explained in the article 2 of HSGTOL. Blood transfusion with the harvesting, grafting and transplantation of autografts, hair, skin is not included in the scope of this and will happen in the framework of the current health regulations.

The fundamental distinction of harvesting organ and tissue is made with both from decedent and alive person. Regulations related to organ transfer both in our country and other countries in the world are subjected to several provisions. In our law, interdictum regulation related to the organ or tissue trade being carried out of the allowed scope is in article 91, 92, 93 of TCC. According to the data of the developments of medicine at the present time, the measure of determining the moment of death of a person is cerebral death and in the moment cerebral death happens, a living creature can no longer be mentioned. Organ and tissue transplantation from an alive person is regulated according to the provisions of HSGTOL.

Article 91 of TCL regulates the transplantation of organ and tissue from a person without a legal consent, illegal organ and tissue transplantation from a decedent, purchasing, selling and mediating organ and tissue, storage, transplantation and grafting of illegally obtained organ and tissue, the acts of advertising or publishing intended for organ and tissue recruitment in exchange for a certain amount of profit. Finding a reason of compliance with laws in the way of obtaining organs from the organ donor depends on the purpose of the donor's recovery. The consent given for

reasons other than that or to the intervention that is disproportionate to the suitability to recovery purpose won't be valid. Within this framework, especially the issue of the donation of organs and tissues with commercial purposes arise. According to the article 21 of Convention of Human Rights and Biomedicine "the human body and its parts shall not, as such, give rise to financial gain". Thusly, World Medical Association reprimanded the sale of human organs for organ transplantation with an announcement they made at the 37th International General Meeting in Brussels in October 1985. However this case isn't valid from the point of the person the organ is transplanted to. Because, the validity of this person's consent should be approved since his original purpose is to save his health or life even if he/she agreed to pay money to obtain the organ. However the consent given to the organ transplantation is considered illegal and immoral in the case of the obtained organ carrying importance for donor to maintain a life and the amputation creating a disproportionate danger for this person's health. There is an agreement that the doctor's obligation to enlighten needs to be broadly dealt with in the case of organ and tissue transplantation, since it isn't for the recovery of the donor. Everything that could affect the donor's decision should be notified and nothing should be kept secret.

According to article 3 of HSGTOL, "*Buying and selling of organs and tissues against a monetary amount or another interest are forbidden*". The sanction of this is regulated in TCC. Thereby, organ and tissue trade is forbidden in Turkish law.

As a result, it can be seen that some people (especially organised crime syndicates) derive high amount of improper personal benefit by misusing treatment modalities that heal and give people hope and victimising the parties. However these bad consequences should not prevent the application of these treatments and scientific works in this area. Legal legislations about these developments' scientific work conditions and applications should be composed without delaying, illegal conditions should be determined and they should be regulated as a crime, by making effective inquiries about perpetrators, the ones who have been confirmed to commit a crime should be penalised and uniform rules should be definitely established by doing international collaborative work.