

Selling Human Organs Between the Controls of Islamic Law and the Limits of Algerian Health Law (Comparative Study)

Dr.Chikh Mohamed Zakaria¹

Dr. Benbadra Affif²

Hachi Mohamed Ismail³

¹Faculty of Law and Political Science, University Center of Maghnia (Algeria)

²Faculty of Law and Political Science/University Abdelhamid ibn badis, mostaganem (Algeria)

³Phd student at the Faculty of Law and Political Science, University of Saida (Algeria)

Received: 01/2023

Published: 01/2023

Abstract:

The trade-in human organs has become one of the popular ways to make money, and despite the criminalization of the phenomenon in most countries of the world, the increase in hotbeds of armed conflicts, the desire to control life, the disparity in the standard of living between individuals, and the high rates of poverty, contributed significantly to the tendency of many to deal with this trade.

From this standpoint, it is necessary to question the position of both jurisprudence and law on the issue of trafficking in human organs, the principle of free dealing, and the legal and legal limits contained therein.

Keywords: sale of human organs, the position of man-made laws, position of Islamic law, principle of freeness, health security.

The authors' email: Zakaria.chikh@cumaghnia.dz¹, affif.benbadra@univ-mosta.dz², hachi.mohamed@hotmail.fr³.

Tob Regul Sci. TM 2023;9(1): 332-347

DOI: doi.org/10.18001/TRS.9.1.23

Introduction:

The phenomenon of selling human organs is one of the modern crimes compared to some criminal phenomena, as its first chapters did not appear until the mid-eighties and early nineties of the last century when the first official market for human organs in the United States of America was established in 1983 by Dr. Barry Jacobs, where the sale of human organs was then permitted. However, after a short time, the United States of America banned trafficking in human organs because of the negative manifestations of such acts that affected the dignity and physical integrity of the human person.

Most of the legislation and man-made laws have gone to prohibit all transactions related to the sale and purchase of human organs and allowed an exception for transplantation and transfer of organs from one person to another based on specific conditions in the law, the most important of which is the principle of free.

Search problem:

Based on the above, the problem of the study is limited to the field of research in the question of the legality of the disposal of human organs and to highlight the position of both Islamic law and Algerian positive legislation and comparative legislation on this issue. Is it permissible to deal with human organs and dispose of them in exceptional cases from the perspective of Islamic law and law, or is the prohibition of dealing with human organs absolute and completely criminalized?

These and other questions we will try to answer based on the analytical and comparative approach so that we address in the first section the concept of selling human organs and the second section we devote to the study of legal protection of the principle of free in dealing with human organs.

Research Objectives:

- Studying the legality of the disposal of human organs in Algerian and comparative legislation, and showing the position of Islamic law on this issue.
- Establishing legal rules that allow the disposal of human organs and emphasizing the legal protection that the Algerian legislature is surrounded by the principle of free treatment of human organs.
- Emphasis on the criminalization of all manifestations of trafficking in human organs in Algerian positive and comparative legislation, highlighting the most important penalties prescribed for these crimes.

Importance of Research:

- Shedding light on the issue of trafficking in human organs, in which a person is often exposed to many violations in his body and organs, which makes him a victim of brokers trafficking in human organs.
- Highlighting the most important controls established by Islamic law and man-made laws regarding the crime of trafficking in human organs, especially since this type of crime has known a terrible spread in societies in recent times, despite its modernity.
- The transformation of organ transplantation and transplantation, from humanitarian donation work for the benefit of patients to illegal trade with its motives, assets, and practices based on the profit of money and illegal violation of human organs.

The first topic: the nature of the sale of human organs

To address the nature of the sale of human organs in a precise manner, it is necessary first to identify the concept of human organs (the first requirement) and then to the ruling on selling them in Islamic law and man-made laws (the second requirement).

The first requirement: the concept of human organs

Jurisprudence has found it very difficult to determine what is meant by the human organ, and therefore we will try to present the most important jurisprudential and legislative definitions that were said in it because finding an accurate definition of human organs would help jurists in adapting criminal responsibility for acts of assault on these members.

Subchapter I: Jurisprudential Definition of Human Organs

Jurisprudence has differed in the definition of the human organ, some define it extensively in view of the biomedical aspect, while others define it narrowly based on the functional criterion of the human organ.

Thus, an organ can be defined from a biomedical point of view as a group of tissues that work together to perform a certain function ⁽¹⁾, in other words, it is a group of different and intertwined cellular elements capable of performing a certain function, it is not limited to a specific area, but extends to include all the substances secreted by the human organ ⁽²⁾.

The Islamic Fiqh Council, defined the human organ as any part of the human tissue, cells, blood, and the like, such as the cornea of the eye, whether it is connected to it or separated from it ⁽³⁾.

It appears from the previous definitions that they included an expanded definition of the human organ when it considered it to include all components of the human body from blood, tissues, and cells, whether they are connected to it or separate from it, and even more so it considered that every part of the body, whether outwardly or inwardly, liquid or solid, renewable or non-renewable, is a member of the human organs.

All the aforementioned definitions of the human organ were not accurate because they did not differentiate between the human organ and what is considered to be the products of the body and its derivatives, so jurisprudence needed to strive more to give an accurate definition of the human organ.

Part of jurisprudence defined it based on the basic function it performs as a part of the body that performs a specific function such as the heart, lung, or liver... In other words, every part of the body performs an essential function in a person's life.

It appears from these definitions that they came narrow, as they took out some members from the circle of human organs such as tissues, although it is not possible to live without them, and on the other hand, it was considered that the human organ is so when it performs a basic function in a person's life and this is not true, a person may lose an important member of his

human organs without this having an impact on his life, such as a person losing an eye, hand or leg, all these elements are considered as human organs, but it can For a person to live without it.

It is clear from the above that there is an apparent difference in the definition of the human organ according to jurists, which forces us to search for an accurate definition of the human organ in Western and national legislation.

Subchapter II: Legal Definition of Human Organs

Many Western and Arab laws have tended to define the terminological concept of human organs, and therefore I will address the most important comparative legislation that defined human organs in their internal laws (first) and then to the definition of the Algerian legislator (second).

First: Definition of human organs in comparative legislation

The English legislature defined the human organ as each part of the body consisting of a complex and harmonious group of tissues, which the body cannot automatically replace if it is completely removed⁽⁴⁾.

While the Palestinian legislator defined it as including all or part of the entire human organs or tissues and cells except blood and its derivatives⁽⁵⁾.

It is noticeable from the previous definitions that the Palestinian legislator was right when he defined the human organ as every part of the body and all its constituent tissues and accompanying cells, but he took out blood, its derivatives, and organs related to reproduction from the circle of human organs, unlike the English legislator, who was accurate in defining the human organ when he excluded the renewable organs that the body can replace automatically or those that can be regenerated, and thus the English legislator has considered blood and the rest of the body's derivatives of the organs Also.

Second: Definition of human organs in Algerian legislation

Reference to the Algerian laws relating to health, in particular, Law No. 18/11 on health⁽⁶⁾ and Executive Decree No. 92/276 on the Code of Medical Ethics⁽⁷⁾, shows that the Algerian legislator did not give a specific definition of the human organ, but this did not prevent it from using some terms synonymous with it, such as what is stipulated in article 355 of the Health Code, which is as follows: "Human organs, tissues, and cells may not be removed and transplanted except for therapeutic or diagnostic purposes and within the conditions stipulated by law."

Article 358 of the same law reads as follows: "The removal and transplantation of human organs, tissues, and cells cannot be the subject of a financial transaction."

The same was followed by the Algerian legislator in the Penal Code, as the latter did not include a definition of the human organ, despite its provision for crimes related to beating and

wounding and the criminal responsibility that may result in the event of an assault, article 264/2 of which stipulates the following: "Shall be punished by imprisonment..... If the acts of violence described above result in the loss or amputation of a member or deprivation of use."

It is clear from the preceding articles that the Algerian legislator did not differentiate between human organs and their derivatives, including tissues and cells, and considered them one thing when applying the provisions of the articles relating to the organization of the process of transplantation and transplantation of human organs.

The second requirement: the ruling on selling human organs

Despite the success achieved by the transfer and transplantation of human organs, they remained limited due to the lack of healthy organs to be transplanted in the patient and their unavailability in the appropriate quantities, so many patients, especially the rich, resorted to exploiting the harsh conditions experienced by some people due to need and poverty and providing them with financial offers in exchange for obtaining their organs and transplanting them into their bodies to survive themselves from illness or death.

Hence, their work has taken the form of selling, which I will try to answer in this requirement by addressing the position of Islamic law and positive law on the process of selling human organs to man.

Subchapter I: Ruling on Selling Human Organs in Islamic Sharia

Islamic jurists have differed in the ruling on the sale of human organs between forbidden and permissible, and therefore the differences can be limited to two directions, the first direction allows the circulation of human organs in case of permissible necessity for treatment (first) and the second direction prohibits circulation and dealing with them (second), a trend adopted by the majority of jurisprudence academics and researchers.

First: The trend that it is permissible to sell human organs in case of permissible necessity for treatment

The proponents of this trend believe that the sale of human organs is forbidden whenever it is for profit, trade, and obtaining material gain⁽⁸⁾, because the matter contradicts the principle of human dignity on the one hand, and because the use of the organ for a function other than the function for which it was created is considered haram on the other hand, but if human organs are sold to be placed in a position through which they perform the same function that God employed them in when creating them, there is no conflict here with human dignity and there is no contempt or humiliation in that. Even if the owner of the transferred member takes financial consideration.

The proponents of this trend in their opinion are inferred by analogy from several aspects, such as blood money, for example, they consider that just as a person may take blood money for his member, he may sell it and take its price, and there is no sanctity in that.

However, this view has been criticized, because blood money is prescribed by God Almighty so that the soul is not wasted for free, and therefore there is no analogy between the vulgar owner and the possessive owner⁽⁹⁾.

Second: The trend that criminalizes the sale of human organs

The proponents of this trend ⁽¹⁰⁾ believe that it is forbidden to sell human organs, and their evidence for this is from the Qur'an, the Sunnah, and the reason.

As it came in the Holy Quran says: "We have honored the children of Adam and carried them on land and sea", and therefore God Almighty honored man over other creatures by creating him in a good image, and therefore every sale of human organs in it is an insult and vulgarity for this dignity and a heart for the divine truth that honored him with all these qualities.

It was also narrated from Abu Hurayrah that the Prophet (peace and blessings of Allaah be upon him) said: "Allaah said, 'I am their adversary on the Day of Resurrection, a man who gave to me and then treacherously, a man who sold freely and ate its price, and a man who rented a wage and paid it but did not give his reward.'"

This hadeeth implies that it is haraam to sell free and invalid and it is haraam to eat its price, and therefore it is not permissible for a person to sell his organs, otherwise he is sinful.

It should be noted that the most correct opinion in Islamic law is the opinion that it is not permissible to sell human organs, and perhaps the reason for this is due to the strength of the evidence on which the owners of this opinion relied on the fact that the human body is the property of God alone and man is only a trustee of it, and therefore the latter cannot dispose of it by selling its organs, otherwise, it was a traitor to his honesty and angry with his Lord, the owner of his body and soul.

Subchapter II: Ruling on the sale of human organs in positive law

Man-made legislation did not agree on a unified position on the issue of the disposal of human organs and tissues through sale, and therefore positive law was divided into two parts, the first prohibits the sale of human organs and the second permits them, and this is what I will address successively, highlighting, in the end, the position of the Algerian legislator on the sale of human organs.

First: Man-made laws that prohibit the sale of human organs

Some legislations hold that the sale and trade of human organs violate the prevailing moral values in society and that human organs cannot be treated as auto parts or subject to financial transactions.

Most man-made laws have gone in this direction, and we find that the French legislature prohibited dealing with human organs by selling or buying them and preventing any agreement that includes the sale of an organ of the human body ⁽¹¹⁾.

The English legislator also prohibited dealing with human organs for financial consideration by selling or buying them and considered that receiving or paying any financial consideration in exchange for obtaining a human organ or seeking to do so from a living or dead person is considered a misdemeanor punishable by law ⁽¹²⁾.

In line with the aforementioned Western legislation, the majority of Arab laws agreed to criminalize the sale of human organs and stipulated in their transfer between individuals that this should be motivated by love, solidarity, and social solidarity and under predetermined conditions in their internal laws, which is what the Palestinian legislator went to when he prohibited any financing, sale or purchase of human body parts for a fee, whether inside or outside the country ⁽¹³⁾.

This is also the case when the Egyptian legislator prohibited dealing in any member of the human body, part of it, or one of its tissues for sale, purchase, or for a fee, whatever its nature ⁽¹⁴⁾.

Second: Man-made laws that allow the sale of human organs

Some other legislations believe that legal actions, whether donations or compensations, are all legitimate actions as long as the shop is legitimate, and they consider that the material compensation is compensation for the damages suffered by the donor as a result of the deduction process, which does not bring him any direct benefit but aims to achieve the social interest by preserving the health of individuals.

Very few legislations have followed this approach, the most important of which is the Iranian legal system in addition to the Philippines, Colombia, and Bolivia, all of these countries allow the sale and purchase of human organs, and these acts do not fall within the scope of criminalization, but they require that the goal of the sale process is not profit and trade, but that the sale aims to benefit from these organs in the manner for which it was created, and that the seller has paid a greater risk than the damage of losing his member, in addition to the requirement that the sale is made under Supervision of specialized government institutions.

It should be noted that the Iranian legislator guarantees the donor medical coverage for a year, in addition to granting him a sum of money in exchange for donating his organ, and the beneficiary is also obligated to provide a reward to the donor as an expression of his compliance and thanks to him.

Third: The position of the Algerian legislator

The position of the Algerian legislator on the issue of the sale of human organs did not differ from that of most man-made laws and legislations that prohibited dealing with human organs, and he affirmed this position in article 355 of the Health Code when it stipulated that human organs, tissues, and cells may not be removed and transplanted except for therapeutic or diagnostic purposes and within the conditions stipulated in the law.

Article 358 of the same law stipulates that the removal and transplantation of human organs, tissues, and cells cannot be the subject of a financial transaction.

The Algerian legislator also prohibited the sale and purchase of human organs, tissues, and cells only, but also extended it to include its derivatives, preventing all profitable activity related to human blood, plasma, or its derivatives ⁽¹⁵⁾, in addition to criminalizing all acts and behaviors that require the transfer of organs and selling them for a fee between individuals and will come in detail in these penalties in the second section of this study.

Extrapolating from all previous Western and Arab legal texts, we find that most of them prohibit the sale and purchase of human organs, as the assignment of human organs, cells and tissues must be done legally and only by way of donation, so that organ transfers do not deviate from their noble goals and so as not to be a pretext for trafficking in human organs.

The second topic: legal protection of the principle of free in dealing with human organs

Ensuring the application of the principle of free handling of human organs and avoiding trade requires the provision of a set of legal conditions necessary to provide appropriate protection (the first requirement) in addition to the development of international and national legal texts criminalizing deviation from the principle of free in the field of transfer and transplantation of human organs (the second requirement).

The first requirement: the general rules guaranteeing the principle of free

The fear that human organ transplantation will turn into an illegal business practiced by some prompted most man-made legislation to adopt a set of rules that work to ensure the integrity of donation and to avoid the exploitation of human organs in suspicious and illegal operations.

Referring to Algerian law, we find that the latter stipulated a set of general conditions and rules in Law 18/11 on health mentioned above, aimed at protecting the principle of free treatment of human organs, which I will address successively in the following sections.

Subchapter I: The transaction aims to achieve a therapeutic interest for others

This condition is one of the most important conditions required to activate the principle of free treatment of human organs, which is that the transfer of the human organ from one living person to another is the only way to save the patient's life.

Therefore, if the patient can be saved by another means, this denies this operation the character of necessity, as if there were an artificial organ that acts in the place of a human organ or it was possible to obtain the human organ from the body of the deceased, which is confirmed by Article 364 of the Algerian Health Code by stipulating that transplantation of human organs, tissues or cells can only be carried out if this represents the only means of preserving the life and physical integrity of the recipient.

This is the same thing that is most likely in Islamic law, according to the jurisprudential rule that "chooses the lesser of two evils"⁽¹⁶⁾, for example, it is not permissible to transfer an organ from a living person when it is possible to obtain a replacement artificial organ or obtain it from a dead person, because the damage that can occur in the case of transferring an organ from a living person is not envisaged in the case of transfer from a dead person.

The therapeutic interest also requires that the transfer of the human organ should not be harmful to the donor, and this is confirmed by the Algerian legislator in Article 360/1 of the Algerian Health Code when it stipulated that it is not permissible to practice the removal of organs, tissues or cells on a living person for transplantation if he endangers the life of the donor, which is in line with the provisions of Islamic law, which stipulates that the damage is still the same or more than it when the damage of deduction is greater than the damage of transfer or the like, Transplantation of the human organ, in this case, is not permissible.

Subchapter II: Dealing with Members should not be contrary to public order and morals

The permissibility of free organ transplants is linked to the basic principle of non-violation of public order and morals.

Therefore, it is forbidden to transfer reproductive organs, tissues, and cells that carry genetic traits in men or women, and the reason for this is the prevention of mixing lineages due to the genetic characteristics of these organs on the one hand, as well as the violation of these behaviors to the teachings of monotheistic religions, moral values and public morals on the other hand⁽¹⁷⁾.

It should be noted that, unlike some comparative legislations, the Algerian legislator has been silent on the issue of genital transfer, which requires a review of this issue under legal texts.

All agreements related to reproduction and pregnancy for the benefit of others, or what is known as surrogacy, are also considered contrary to public order and morals, and this is confirmed by some man-made laws, including French law, when it was considered that every agreement related to reproduction or pregnancy for the benefit of others is considered null and void⁽¹⁸⁾.

Subchapter III: Determining the location of organ transplantation

Most of the legislations regulating the process of organ transplantation, including Algeria, believe that it must be surrounded by a set of guarantees for its success, the most important of

which is that these operations must be performed in specialized state hospitals, to avoid trafficking in human organs on the one hand, and so as not to endanger the lives and safety of people on the other hand. This is confirmed by the Algerian legislator in Article 366 of the Health Code, which stipulates that the removal or transplantation of human organs, tissues, or cells can only be carried out at the level of public hospital institutions licensed by the Minister in charge of Health, after the opinion of the National Agency for Organ Transplantation.

It is clear from this article that the removal of human organs and tissues is carried out only at the level of specialized public institutions, and therefore the Algerian legislator has excluded private clinics and thus has closed the door to them so that financial profit does not motivate them to perform such operations suspiciously, especially with the decline in religious scruples and the predominance of the material aspect over human values and morals at present.

The Minister of Health has issued a ministerial decision⁽¹⁹⁾ specifying the names of public hospitals that are authorized to carry out human organ transfers and transplants, and this determination came exclusively so that only these hospital institutions can start organ removal and transplantation operations with another person⁽²⁰⁾.

It is noteworthy that the Algerian legislator, contrary to comparative legislation⁽²¹⁾, did not specify the validity period of the license granted to these institutions to carry out the removal and transplantation of human organs, which calls for work to fill this gap and remedy the situation with legal texts regulating this issue.

Subchapter IV: Confidentiality during Donation

Confidentiality is an essential condition that will help the human body to remain outside the scope of transactions, as the transaction is concluded only when the identity of the seller and the buyer is identified, and therefore we find that most laws, including Algerian law, recognized the principle of confidentiality in the field of human organ transfer.

It is noted that this principle cannot be raised when the donor is a relative mentioned in Article 360 of the Algerian Health Code, because in all previous cases, the recipient and the donor are close relatives and the problem of financial compensation will not be raised in this case.

However, the forms occur when a donor is a person foreign to the recipient, in this case, the man-made laws require the availability of the confidentiality condition in the field of human organ transfer, so that the act or donation remains humane and ethical on the one hand, and to avoid trafficking in human organs, financial transactions and extortion on the other hand⁽²²⁾.

The second requirement: criminalizing deviation from the principle of free

If man-made legislation has allowed the transfer and transplantation of human organs free of charge and based on specific conditions in the law, then deviation from this principle would turn the act of benefiting from the human organ - as it is legally permissible and legitimate - into the

act of trafficking in it - as it is a criminal act legally and legally - and thus the act of donating a human organ based on solidarity and social solidarity turns into a crime punishable by law.

Based on the above, I will briefly address the concept of trafficking in human organs (Section I) and then the penalties prescribed for the act of trafficking in Islamic law and man-made laws (Section II).

Section I: The concept of the crime of trafficking in human organs

There are many jurisprudential opinions in defining the crime of trafficking in human organs, there are those who defined it as every process of buying and selling tissues or one or more human organs.

While others defined it as any act that leads to the exploitation of a human organ without his consent through coercive means, such as material or moral coercion, or deception and trickery to exploit it as a commodity and profit from it⁽²³⁾.

In international legislation, we find that the United Nations Protocol to Prevent and Suppress and Punish Trafficking in Persons does not deal specifically with the crime of trafficking in human organs, but rather its general definition of the crime of trafficking in human beings, defining it as the recruitment, transportation, deportation, harboring or receipt of persons using the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of authority, exploitation of a situation of vulnerability, giving or receiving payments or benefits. To convey the consent of a person who has control over another person for exploitation⁽²⁴⁾.

Subchapter II: Penalties for the crime of trafficking in human organs

In this section, I will address the penalties prescribed for the perpetrators of the crime of trafficking in human organs in Islamic law (first) and then in Algerian law (second).

First: Punishment for trafficking in human organs in Islamic law

It is not possible to talk about the punishment prescribed for the perpetrators of the crimes of trafficking in human organs in Islamic law before carefully tracking how these organs were obtained and researching the reasons for their purchase while identifying all the persons involved in them.

If the trafficking in human organs is limited to the sale of the organ from a specific person to another person without endangering the life of the seller, the penalty for the perpetrators of the act, i.e. the recipient and the seller, shall be one of the punitive penalties determined by the rulers, given the personality of the offender and the circumstances motivating the commission of the crime.

If trafficking in human organs harms the lives and physical integrity of individuals, such as the crimes of kidnapping, murder, and beating to rob people's organs, the punishment of the

perpetrators shall be such as retribution crimes because of the grave evils resulting from their commission⁽²⁵⁾.

While if trafficking in human organs includes the abduction of people and the extraction of their organs by surgical operations without exposing them to death, this is considered a hudud crime in Islamic law, in addition to the punishment of retribution for damaging the organs of the victim and exposing him to serious injuries.

Second: Punishment for trafficking in human organs in Algerian law

The Algerian legislature has regulated the penalties imposed on perpetrators of trafficking in human organs when they are natural persons, in articles 303 bis 16 to article 303 bis 20 of the Algerian Penal Code, but if the perpetrators of the offense are legal persons, the provisions of article 303 bis 26 of the Penal Code shall apply to them.

1. Penalties prescribed for a natural person in trafficking in human organs

A penalty of imprisonment from three to ten years and a fine of 300,000 to one million Algerian dinars⁽²⁶⁾ shall be imposed on anyone who obtains from a person one of its members in exchange for a financial benefit or any other benefit of whatever nature.

Anyone who removes an organ from a living person without obtaining consent, under the conditions stipulated in the legislation in force, shall be punished by imprisonment from five to ten years and a fine of 500,000 to one million Algerian dinars.

Anyone who extracts tissues or cells or collects material from a person's body in exchange for payment of money or any other benefit of any nature shall be punished by imprisonment from one to five years and a fine of 100,000 to 500,000 Algerian dinars.

It should be noted that the Algerian legislator has tightened the penalties described above for a group of persons who meet the conditions stipulated in Article 303 bis 20 of the Algerian Penal Code, with penalties ranging from five to 15 years imprisonment and a fine of 500,000 dinars to one million and 500,000 dinars when the crime is committed under aggravating circumstances⁽²⁷⁾.

2. Penalties prescribed for legal person trafficking in human organs

The Algerian legislator did not exempt the legal person from criminal accountability for the crimes of trafficking in human organs, subjecting it to the same penalties provided for in article 303 bis 18 of the Penal Code, to which reference was previously made, and thus the legal person is criminally responsible for crimes committed on its behalf by its organs or legal representatives when the law so provides.

Conclusion:

My study, which I devoted to the sale of human organs between the controls of Islamic law and the limits of the law, resulted in a set of results and recommendations, the most outlined of which are as follows:

Results:

- Most Western and Arab legislation has agreed to criminalize the sale of human organs.
- Most man-made legislation agrees on the permissibility of transplantation and transfer of human organs, when this is done under the conditions specified under internal laws, and when the donation is based on the principle of free of charge.
- The inclusion in their internal laws of various man-made legislations of legal provisions recognizing the guarantee of the principle of free treatment of human organs, and any deviation from this principle would turn the act of donation into an act of trafficking, thus making the act criminalized by law and law.
- Although the crime of human trafficking is new, Islamic law has surrounded and criminalized the phenomenon, a trend that modern Islamic jurisprudence has supported in many of its fatwas.

Recommendations:

- International and regional legislation should develop serious mechanisms to reduce the phenomenon of trafficking in human organs.
- Work to eliminate hotbeds of poverty, misery, and political instability as the main causes that develop the phenomenon of trafficking in human organs.
- The need for international cooperation to eliminate illegal migration or at least reduce it, and the assumption by States of their responsibilities in this area to find a solution to this phenomenon, which often turns into a crime of trafficking in human beings.
- Advocating for and implementing a comprehensive strategy to combat trafficking in human organs, through strengthening national capacities and harmonizing the use and application of United Nations standards in crime prevention and social justice.

Marginalization list:

⁽¹⁾Hassan Odeh Zaal, *Illegal Disposal of Human Organs in Criminal Law, A Comparative Study*, International Scientific House and Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2004, p. 50.

⁽²⁾Alexine Carrel, *The Unknown Man*, a book translated into Arabic by Shafiq Asaad Farid, Al-Maaref Foundation, Beirut, Lebanon, p. 140.

⁽³⁾Islamic Fiqh Council Resolution No. 26 (1/4) held in Jeddah, Kingdom of Saudi Arabia, on the date from six to 11 February 1988, concerning the use of human body parts by another living or dead human being.

⁽⁴⁾Article VII of the English Law on Human Organ Transplantation was issued on 27/07/1989.

⁽⁵⁾The draft law on the transfer and transplantation of Palestinian human organs No. 02 of 2003, which was then canceled by Law by Decree No. 06 of 2017 regarding the regulation of the transfer and transplantation of human organs, is being reviewed, as the latter did not refer to the definition of the human organ unlike the repealed law, and it should be noted that the latter law applies in the West Bank of Palestine only and not the Gaza Strip due to the difference in legal legislation between the two geographical areas.

⁽⁶⁾Law No. 18/11 of 02 July 2018 on Health (Official Gazette No. 46, issued on 29 June 2018).

⁽⁷⁾Executive Decree No. 92/276 of 06 July 1992 (Official Gazette No. 52, issued on 08/07/1992).

⁽⁸⁾See Hossam El-Din Al-Ahwani in his book *The Legal Problems Raised by Human Organ Transplantation*, Ain Shams Press, Cairo, 1975, p. 141, and Ahmed Mohamed Saad in his book *Organ Transplantation between Prohibition and Permissibility*, Dar Al-Nahda Al-Arabiya, Cairo, 1986, p. 143.

⁽⁹⁾See Al-Maisi, *Human Benefit from the Body Parts of Another Human Being, Alive or Dead*, Journal of the Islamic Fiqh Academy, Part One, Issue IV, 1988, p. 400.

⁽¹⁰⁾Among the most important supporters of this trend are the jurist Jad al-Haq Ali Jad al-Haq, Yusuf al-Qaradawi, Attia Saqr, Muhammad Sayyid Tantawi, Ali Gomaa, Muhammad Naim Yassin, and others, along with the Islamic Fiqh Academy that was previously referred to.

⁽¹¹⁾This is confirmed in Article 1211/4 of the French Public Health Code, which stipulates that the transplantation and transfer of human organs are free of charge and that they are not subject to any financial compensation.

⁽¹²⁾Article 1 of the English Law on Human Organ Transplantation above.

⁽¹³⁾Article III of the Palestinian Law No. 06 of 2017 regulating the transfer and transplantation of human organs.

⁽¹⁴⁾Article VI of Egyptian Law No. 05 of 2010 regulating human organ transplantation.

⁽¹⁵⁾Article 263 of the Algerian Health Code.

⁽¹⁶⁾Article 29 of the Code of Judicial Judgments, which is considered a codification of the Hanafi School.

⁽¹⁷⁾This is confirmed by most religious scholars, including Yusuf al-Qaradawi, in his book *Organ Transplantation in the Light of Islamic Law*, when he pointed out that the public of scholars unanimously agreed that testicular transfer is not permissible in Sharia, as specialized scientists decide that it is a store of semen, which transmits the genetic characteristics of men, his family, and his species, and that they continue to carry and secrete the genetic code of the transferee even after transplanting it into a new recipient, and this is one of the colors of mixing lineages that prevented it. *Islamic Sharia by All Means*, Dar Al-Shorouk for Publishing and Distribution, Egypt, 2010.

⁽¹⁸⁾Article 16/7 of the aforementioned French Public Health Code.

⁽¹⁹⁾ Ministerial Decision dated 23/03/1991 repealed by Decision dated 02/10/2002 containing the names of hospitals legally licensed to perform organ transplants and transplants.

⁽²⁰⁾ Among the most important of these institutions are the Mustapha Pacha University Hospital Center in Algeria, the Beni Messous Hospital Center in Algeria, and the Hospital Specialized in Ophthalmology in Oran, as well as many other institutions specified by the aforementioned decree.

⁽²¹⁾ Such as the French legislation, which specified the license period to 5 years, renewable in the text of Article 1232/1 of the French Public Health Code, and the Egyptian legislator, which specified it to a period of one year, renewable for three years, when the institution adheres to the legally specified standards, see Article 12 of Law 05 of 2010 mentioned above.

⁽²²⁾ The Algerian legislator affirmed this principle in Article 363 of the Algerian Health Code, which stipulates that it is forbidden to reveal the identity of the deceased donor to the recipient, and the identity of the recipient to the donor's family.

⁽²³⁾ Rami Metwally Al-Qadi, Combating Human Organ Trafficking in Egyptian and Comparative Legislation, First Edition, Dar Al-Nahda Al-Arabiya, Egypt, 2011, p. 21.

⁽²⁴⁾ Article III, paragraph a, of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, which is the same definition as the European Convention on Action against Trafficking in Human Beings in Article IV, paragraph a, thereof.

⁽²⁵⁾ Whoever abducts or kills a person to extract his organs and benefit from their sale can not only be punished for the act of trafficking, but also for the act of murder, which is punishable by retribution, and the same legal ruling applies to the recipient of the human organ as an accomplice when he is aware of the crime of murder. As for those who sell human organs by stealing them from organ banks or places where donated organs are kept, the act of theft is punished by Sharia with the possibility of aggravation in the penalty for being related to the act of trafficking in things that are prohibited by Sharia.

⁽²⁶⁾ This is roughly equivalent to 7580 US dollars, and 6200 euros.

⁽²⁷⁾ For example, if the victim is a minor or a person with an intellectual disability, if the perpetrator's position or profession facilitates the commission of the crime, if the crime is committed by more than one person, or if the crime is committed with the carrying or threat of a weapon, or if the offense is committed by an organized or transnational criminal group.

Bibliography:

1. Ahmed Mohamed Saad in his book Organ Transplantation between Prohibition and Permissibility, Dar Al-Nahda Al-Arabiya, Cairo, 1986.
2. Alexine Carrel, The Unknown Man, a book translated into Arabic by Shafik Asaad Farid, Knowledge Foundation, Beirut, Lebanon.
3. Hossam El-Din Al-Ahwani in his book The Legal Problems Raised by Human Organ Transplantation, Ain Shams Press, Cairo, 1975.

4. Hassan Odeh Zaal, *Illegal Disposal of Human Organs in Criminal Law, A Comparative Study*, International Scientific House and Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2004.
5. Rami Metwally Al-Qadi, *Combating Trafficking in Human Organs in Egyptian and Comparative Legislation*, First Edition, Dar Al-Nahda Al-Arabiya, Egypt, 2011.
6. Abdul Hafez Abdul Hadi Abdul Hamid, *The Economic and Social Effects of the Phenomenon of Trafficking in Persons*, Research in the Book of Combating Trafficking in Persons, Naif Arab University, Riyadh, 2005.
7. **Laws:**
8. The English Law on Human Organ Transplantation issued on 27/07/1989.
9. Moroccan Act No. 98/16, as amended and supplemented by Act No. 26/05 on the donation, collection, and transplantation of human organs and tissues.
10. Egyptian Law No. 05 of 2010 regulating the transplantation of human organs.
11. Palestinian Law No. 06 of 2017 regulating the transfer and transplantation of human organs.
12. Law No. 18/11 of 02 July 2018 on Health (Official Gazette No. 46 of 29 June 2018).
13. Executive Decree No. 92/276 of 06 July 1992 on the Code of Medical Ethics (Official Gazette No. 52 of 08/07/1992).
14. Ministerial Decision of 23/03/1991 repealed by Decision of 02/10/2002 containing the names of hospitals legally licensed to perform organ transplantation and transplantation.