



38. Trading in organs and organ donation (*)

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Background

The sensitive issue of organ trade continues to appear in the public discourse and is from time to time pushed to center stage. This subject naturally arouses strong feelings and penetrating arguments and creates an urgent need to bridge conflicting and uncompromising positions. On the one hand, we must solve the problem of patients waiting for transplants, while on the other hand it is difficult, and perhaps impossible, to accept the idea that it is permissible to trade in human organs and tissues.

The need for organs for transplantation considerably exceeds the existing supply from donations from deceased persons. For example, in Israel about 600 persons are waiting for kidney transplants, while the number of transplants actually performed does not exceed about 150 operations per year. The list of people waiting increases by between 10-20% per year. It is not surprising that some of the patients waiting die before the awaited transplant.

Until now, organs have come from a deceased donor or from a living relative, for purely altruistic motives, without any direct or indirect financial remuneration. Since the demand exceeds the supply, those needing a transplant approach in despair other, generally anonymous, donors. When the buyer meets the seller, a worldwide black market is created, which crosses borders and countries and to which all the rules of supply and demand apply.

A patient in one country may contact an intermediary in another country. The latter locates a donor in a third country, while the operation itself is performed in a fourth country. Everything is done covertly or at least with the authorities turning a blind eye, and always against the laws of the countries involved. In this complex process a great deal of money changes hands, going to the intermediary, the surgeon, the hospital, and the organ donor. In most cases, the latter receives a marginal sum from the money involved in the transaction.

The directives of the Head of Medical Administration at the Ministry of Health (68/97) prohibit all trading in organs as well as the transplantation of organs received in consideration for payment. A physician who infringes these rules risks disciplinary and criminal proceedings against him and the loss of his license to practice medicine. The position paper of the Ethics Board of the Israeli Medical Association (December 1997) also prohibits trading in and using such organs, in the spirit of the stance of the Ministry of Health. This is also the position adopted in all countries in the western world, including all international medical organizations.

In this vein, the government submitted to the Knesset a bill for amendment of the Public



Health Order (No. 13), 5751-1991. Pursuant to this bill, it is prohibited to sell or purchase organs. The transaction itself is null and void, and the parties to it are subject to criminal proceedings.

However, reality forces us to re-consider the issue. It is necessary to find an urgent solution to the distress of patients and their desperate need for organs available for transplant, which is not met by the current situation. Many voices advocate allowing trading in organs, from a living donor, within a national framework in which all trade will be conducted through a central organization rather than directly between parties. This organization will be responsible for compensating the donor and will transfer the donated organs to those for whom the organ is most suitable.

The Supreme Court addressed this issue in a single hearing (SC Atri, M.I. 161/94) in which it rejected the petitioner's application that the Court order the Minister of Health to enact regulations that would permit the plaintiff to sell a kidney and thus solve his financial problems. The Court agreed with the position of the Minister of Health that a solution for this complex and sensitive subject should be decided in primary legislation that addresses the legal, moral, and ethical aspects.

Against this background, the Ministry of Health recently completed a "Bill for Organ Transplants, 5762-2002", which permits, in specific circumstances, compensation to a living organ donor for the costs involved in execution of the medical activities, including loss of time, loss of income, and temporary loss of earning ability. The compensation shall be paid to the donor by the national transplanting center. In addition, any form of brokerage between the donor and the recipient is absolutely prohibited. The social debate on this proposal has only begun.

The Ethics Board held a protracted debate on the subject of organ trade, in order to find the correct moral and ethical balance between the needs of patients requiring transplanting and the possible harm to the sellers of the organs, and the broader social significance of such trade. The position of most members of the Ethics Board, as emerged during this debate, appears here. The members of the Ethics Board are aware that this position expresses a sensitive balance between conflicting approaches- a compromise between profit and loss, some tangible and immediate, some intangible, relating to abstract values of social morality that determine the nature of our existence as a human society. Since these values are not absolute, but are liable to change in the future, this position of the Ethics Board should be raised for renewed debate in the future.

Position paper

- The donation of organs is a moral obligation imposed on society in general.
- State authorities should take steps to educate and explain this matter to physicians and to the public.
- It is preferable that individuals donate organs for altruistic motives only.



- In the event of a donation from a deceased person, the State shall be entitled to compensate the family of the donor.
- The donation and the compensation shall be done by means of a central national organization.
- No direct link shall exist between the family of the donor and the recipient.
- Compensation shall be made in the form of medical- economic benefits and not direct financial payment.
- Trading in organs from a living donor creates class discrimination, is unethical, and ab initio improper.
- Consequently, organs may not be sold or bought from a living person.
- A physician may not be directly or indirectly involved in the purchase or sale of organs.
- A physician may not transplant an organ purchased from a living person.
- This position shall be re-examined if the legislation or the positions of the public change.

(*) This position paper should be read subject to the Transplantation Law, 5768-2008.