



# Legal Conditions for the Removal and Transplantation of Human Organs among Living People in Accordance with Algerian Health Law 18-11

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**Abstract:** The purpose of this article is to explain the legal conditions established by the Algerian legislator in Law 18-11 to legalize the removal and transplantation of organs, tissues and human cells among living people. From a review of the provisions of this law, we found that these conditions can be divided into three sections. One section relates to the organ donor, another section relates to the recipient of the organ, and the last technical section relates to the medical work. All of this has been detailed in this article, which we concluded with several findings and suggestions that we are certain would improve these conditions.

**Keywords:** Human organ removal, Human organ transplantation, Algerian health law, Law 18-11.

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## Introduction:

The development of medical works goes with modern scientific development, and most of them resulting in new understanding in different matters, concepts and prevailing general principles, has in turn created a fertile field for legal controversy among jurists, on which legislation has varied, and among the most important topics that raised and still raise much of this controversy is the subject of the removal and transplantation of human organs among living people. Despite this topic is not new, but its aspects make such controversy from time to time, which pushes legislators to reconsider their legislation, and the issue that can be raised in this topic is:

How did the legislator authorize the violation of the body of a living, healthy human being, which is a real and existing interest, to save the life or treat a sick person, which is a potential interest that may not materialize and may be dangerous for both parties? How did the legislator allow himself to take this risk and what are the conditions and guarantees in this area?

It goes without saying that the importance of the subject of this article is justified by the fact that these operations can affect the most sacred, highest and most precious human rights, namely the right to life and the right to physical integrity.

The Algerian legislator is not far from these legislators, as this subject was regulated by law 85-05 on the protection and promotion of health<sup>1</sup>, but he issued another law, law 18-11<sup>2</sup>, which made it related to health and canceled the previous law, naturally, the new law reorganized the removal and transplantation of human organs through articles 355 to 367, so this article comes to show how the Algerian legislator

reorganized the conditions of these operations and discusses them and are these conditions and guarantees considered sufficient?

Through a review of the provisions of the new health law 18-11, we have divided the conditions required by the legislator for the removal and transplantation of human organs between living people in Algerian legislation into legal conditions related to the organ donor, legal conditions related to the donor, legal conditions related to the recipient, and technical legal conditions related to medical procedures, which will be addressed successively in these three sections.

### **First Section: Conditions related to the human organ donor**

The human organ donor, also called the giver, donor, donor or donor, is the most important axis in the process of removal and transplantation of human organs among the living, and he is the most vulnerable party, so the legislator tried to give him the greatest amount of guarantees, which are what we call the conditions related to the organ donor, the most important of which are: The donor must not endanger the life of the donor, the donor's consent to the human organ, the absence of material compensation in the process of organ donation, and finally, the existence of a certain kinship between the donor of the human organ and the recipient of the organ.

#### **First- Organ donation should not jeopardize the life of the donor:**

The legislator has established this condition in the first paragraph of article 360 of law 18-11 on health, which prohibits the removal of organs, tissues or cells from a living person for transplantation if such act would endanger the life of the donor. This is confirmed by article 361 of the same law in the second part of its first paragraph, which in turn prohibits the removal of organs or tissues from living persons with diseases if such removal would endanger the health of either the donor or the recipient.

Therefore, single organs that do not have a counterpart in the human body, i.e. that are not duplicated and are not renewable, are considered among the organs that may not be removed and donated because this may often lead to the termination of the donor's life<sup>3</sup>, and the legislator went even further to require that the donation should not cause a deterioration in the donor's health. Based on this, it can be said that even in the case of a double organ transplant, the transplant is illegal unless the organ to be removed does not deprive the donor of his anatomical function, i.e. the second remaining organ is capable of performing the same function<sup>4</sup>.

If the donor of the human organ has the right to this renunciation, it is not an absolute right and he does not have the right to renounce his life, for example, by giving up his heart, even if it is with his consent, and this renunciation must not endanger his life or reduce his functional capacity<sup>5</sup>, except to the extent necessary for this operation. It is unreasonable to take the consent of the person who is destined to waste his life, even if the motive for doing so is noble, which is to save the life of another sick person who is in danger of perishing because of his illness, since the lives of all human beings are equal and have the same legal value and therefore receive criminal protection against all forms of assault against them, even if this assault is with the consent of the victim, Therefore, it is unreasonable to sacrifice the life of a healthy person in order to try to save the life of a sick person who may or may not be cured, and while considering that every patient has the right to treatment and recovery, it does not make sense that his treatment should lead to the death of another person or cause him to be paralyzed in the exercise of his normal life<sup>6</sup>.

However, despite these precautions, the donor may be exposed to some physical harms that may affect his physical integrity as a result of the removal of the human organ from him, whether these harms are possible or unforeseen.

For this reason, a large body of jurisprudence in this area has suggested that the solution should be insurance in favor of the donor, either by the State or by the patient who will benefit from the transplanted organ, in anticipation of any danger that may threaten his physical integrity or life as a result of the removal process, either during the removal process itself or in the future as a result of it, As long as the donor's behavior is gratuitous and charitable and dominated by humanitarianism, social solidarity, and altruism,

there is nothing wrong and no objection in encouraging him to donate on the one hand, and reassuring him and providing him with sufficient protection by insuring him as a reward for his charity<sup>7</sup>, says God the Almighty: "Is the reward of goodness anything except goodness<sup>8</sup>"

### **Second- the consent of the human organ donor:**

The legislator has established this condition in the fourth, fifth and sixth paragraphs of article 360 of the Health Code 18-11, where the fourth paragraph stipulates that organs and cells cannot be removed from a living person for transplantation without the informed consent of the donor. The fifth paragraph establishes that this consent must be given in the presence of the president of the competent regional court, who must ensure beforehand that this consent is free and informed and that this donation complies with the conditions established by law. The sixth paragraph stipulates that the donor may withdraw his consent at any time and without any procedure.

The justification for requiring donor consent is easy. If it is a well-established principle of medical law that the consent of the patient must be obtained for treatment. Therefore, it is the consent of the donor of the human organ, first, who does not suffer from any disease, to the removal of that organ from him. In addition, allowing these operations for the removal and transplantation of human organs does not mean that the doctor can remove the organ from the donor's body without his consent<sup>9</sup>. The reason why the legislator requires the consent of the human organ donor is due to the degree of danger involved in this kind of operation, according to certain characteristics and specific formalities, and gives the donor the possibility of withdrawing his consent at any time and without any procedure, which we will elaborate on below:

**1 - Characteristics of Donor Consent to Removing and Transplanting Human Organs:** The legislator has stipulated several conditions for the donor's consent in the removal and transplantation of human organs, the most important of which are: The consent must be free, be informed, be issued by a person with legal capacity, and can be revoked at any time and without any procedure. Thus, the legislator stipulates certain formalities for this consent.

**1-a-Free consent:** It is not enough for the organ donor to give any consent, but it must be free, which means that the will of the organ donor must be intact and clear, without mistake, fraud and exploitation<sup>10</sup>. Therefore, the consent must be given by a donor with full mental capacity, and this consent must continue until the organ is removed. Because law 18-11 authorizes the donor to withdraw his consent at any time and without any procedures.

However, if the donor is under the influence of one of the defects of consent, such as being coerced, whether it is physical or moral, or is absent from consciousness and awareness, or under the influence of anesthesia, hypnosis or deception, as in the case of delusion that the organ donation will not entail any long-term complications, the consent here is defective<sup>11</sup>, and therefore not valid as a basis for disposing of the human organ.

**1-b-Informed consent:** Informed consent is the physician's obligation to inform the donor, i.e. the physician informs the donor of the nature of the organ removal and transplantation process and of all the risks to which he or she may be exposed in the immediate or future, so that the donor can assess the risks to which he or she may be exposed. The seventh paragraph of article 360 of law 18-11 stipulates that the expert committee must inform the donor in advance of the risks to which he may be exposed and the possible effects of the removal, as well as the desired results of the transplantation process for the recipient.

The legislator did well in Law 18-11 by entrusting the act of informing the donor to a committee of experts, and not to a single doctor as in Law 85-05, and by obliging it to inform the donor in advance about the nature of the organ removal and transplantation process and all the possible risks and consequences that may result from the removal process, whether present or future, because the donor does not actually benefit from this. The purpose of informing the donor is to enable him to assess the extent of these risks to him and the benefits that may accrue to the patient as a result of the transplantation<sup>12</sup>, to weigh them up and then to take the correct or most likely position, so that the judge can re-inform him, while ensuring that

the conditions of the donor's consent are in accordance with the provisions of Law 18-11, and so that it can be used as evidence by the doctor, the expert committee for any events that may occur in the future.

In this area, a question may arise as to the extent to which a doctor or expert committee commits the crime of revealing a professional secret when he informs the donor about the nature of the process of removing and transplanting a human organ for the donor and the recipient, i.e. the doctor or expert committee is obliged to inform the donor about the recipient's health status, does this behavior not constitute a crime?

Of course, the answer is no, because the legislator has authorized the doctor or the expert committee to do so, and what the law authorizes is considered a reason for permissibility according to Article 39 of the Criminal Code.

**2-The eligibility of the organ donor:** The first paragraph of article 361 of law 18-11 states that it is not permissible to remove organs, tissues or human cells from minors or disabled people, as well as from living people with diseases, if such removal or transplantation would harm the donor's health or the recipient.

Through this paragraph, we find that the legislator has explicitly excluded minors, disabled people or with diseases that are harmful to their health or the health of the recipient in the case of donation, leaving only qualified persons, in other words, a fully competent and healthy person.

A competent person who has reached the age of majority and who is deprived of the capacity to discriminate is according to the provisions of article 42 of the Civil Code, a competent person who has reached the age of majority and who is deprived of the capacity to discriminate is not competent to exercise his civil rights, which is confirmed by article 361 of law 18-11 in the first part of its first paragraph regarding the donation of human organs and tissues, so the donor must be fully competent, healthy and satisfied with the donation process.

However, Article 361 of Law 18-11, in its second and third paragraphs, makes an exception to this prohibition for minors. The second paragraph allows for the removal of hematopoietic stem cells from a minor donor if it is for the benefit of a brother or sister.

The third paragraph stipulates the possibility of this removal from a minor for the benefit of cousins, aunts, uncles and aunts in the absence of other therapeutic solutions, and requires the informed consent of both parents or their legal representative. The legislator has permitted the removal of hematopoietic stem cells as an exception because they are renewable cells.

**3-The right to revoke consent at any time:** The sixth paragraph of article 360 of law 18-11 stipulates that consent to organ donation may be withdrawn by the donor at any time, without any procedures, limitation or condition, consequences, and without the need to give any reason<sup>13</sup>. Jurists have considered the right to withdraw consent to organ removal to be one of the rights related to public order, as it relates to the protection of human dignity, since this dignity refuses to impose on a person to dispose of his or her body parts, and therefore he or she may exercise his or her right to withdraw consent<sup>14</sup>.

Similar to the majority of legislations that allow revocation of consent, the Algerian legislation does not specify the time of revocation, but it is general. However, this does not mean that revocation is allowed after the organ has been removed and transplanted into the patient, as this would cause harm to the patient. However, some laws have specified the time of revocation, such as the Qatari legislation in Law No. 21 of 1997 on Organ Transplantation, Article 6 of which allows the donor to revoke his donation at any time without restriction or condition before the removal of the organ. Similarly, the UAE law was more precise, in Article 5 of the Law No. 15 of 1993 regulating the transfer and transplantation of human organs, where the legislator allows the donor to return his donation at any time without restriction or condition, but he may not retrieve the organ removed after he has donated it according to the law<sup>15</sup>.

For example, if the recipient dies during surgery, can the donor revoke the donation and request that the organ be transplanted again? In the case of cross donation, if one of the recipients dies and the donor whose relative died revokes his donation after the organ has been removed from the other donor, what will

be the solution? Therefore, we believe that it is very important to specify the time of revocation so that all matters are clear.

**4- Form of consent:** The fifth paragraph of article 360 of law 18-11 stipulates that the donor must give his consent before the president of the competent court, who must ensure that the consent is free and informed and that the donation complies with the conditions established by law.

The seventh paragraph of Article 360 of Law 18-11 stipulates that the expert committee must inform the donor in advance of the risks and possible effects of the removal, as well as the desired results of the transplantation for the recipient.

The eighth paragraph stipulates that the expert committee shall grant a license for the removal, after ensuring that the consent is free, informed and in accordance with the conditions established by the law.

What is to be considered about Article 360 of Law 18-11 is that it has an error in the order of the paragraphs, since the paragraph informing the donor of the risks and possible consequences of the removal and the expected results of the transplantation should have preceded the paragraph in which the donor expresses his free and informed consent in front of the president of the territorially competent court. Therefore, we suggested that the expert committee should inform the donor in writing so that the president of the court can ensure that the informed consent has been given, and then the expert committee should authorize the removal after confirming with the president of the court that the donor's consent is free, informed and in compliance with the conditions established by law.

Thus, it is clear from the preceding paragraphs of art. 360 that the legislator was not content with the consent to organ donation being expressed in any way, in accordance with the general rules established by the Civil Code, but subjected it to a certain formality, namely, that this consent must be given in front of an official body that is not affiliated to the hospital where the operation is to be performed, not even to the Ministry of Health, and has nothing to do with medicine. The official body is the President of the Regional Court, who ensures that the donor's consent is free, informed and the donation process meets the conditions established by law. The committee of experts then authorizes the removal, after verifying with the president of the court that the consent is free and informed and that it complies with the conditions established by law.

### **Third- Prohibition of material consideration for the donation of a human organ:**

Article 358 of Law 18-11 establishes that the removal of organs, tissues or parts cannot be for material consideration:

Article 358 of Law 18-11 stipulates that the removal and transplantation of human organs, tissues or cells cannot be the subject of a financial transaction.

It is well known that a person has a right over his body, but this right has a subjectivity and independence that is different from other rights, on the one hand, it is a non-financial right, and therefore the human right over his body and each of its organs and their integrity is not considered money, because it cannot have a material value in the trade, even if human organs can be preserved for a certain period of time through medical progress and development, the valuation of these organs would be contrary to public order and morality, and this would result in their illegality from a legal point of view.

The principle of gratuitous donation of human organs, tissues or cells has been recognized by the majority of laws regulating the removal and transplantation of human organs and even by international conferences. So, the motive for donating a human organ should be love, human solidarity, compassion, sacrifice and altruism, not profit and material compensation<sup>16</sup>.

On the other hand, the donor should not be required to pay the costs of treatment and medical services provided to him, whether before or after organ removal, as well as the costs of transportation, accommodation and other expenses caused by this operation, but should be paid a wage or compensation

for his inability to work and the damage caused by this operation. Therefore, we have proposed that the donor be socially insured, preferably by the state.

Article 359, paragraph 2, of Law 18-11 stipulates that the health institution to which the recipient belongs must take care of the medical examinations of both parties to the operation, the donor and the recipient, as well as their medical follow-up.

Article 367 of the same law also stipulates that doctors who perform removal and those who perform transplants of human organs, tissues or cells may not receive any remuneration for these operations.

**Forth - The existence of a family relationship between the donor of the human organ and the recipient:**

Article 359 of Law 18-11 states that the removal and transplantation of human organs or cells from living donors who are related to the recipient may be carried out in strict compliance with medical rules. The legislator has not limited the number of relatives who can donate human organs, tissues or cells, as stated in Article 360, paragraph 2 of Law 18-11, which states that the donor must be the recipient's mother, father, sister, brother, daughter, son, grandmother, grandfather, grandfather, aunt, uncle, cousin, aunt's daughter, niece, nephew, nephew's wife, husband, stepmother or stepfather.

However, in the case of immunological incompatibility between the donor and the recipient who are related, it is permissible to resort to cross-transplantation by forming two identical "donor-recipient" pairs by exchanging the donor's organ for the first recipient with the donor's organ for the second recipient, provided that three conditions are met: The first is that this process begins in the form of a proposal to the donors and recipients and is not automated, if the donors and recipients give their consent, we proceed to the second condition, which is the existence of an immunological match between the two pairs. The third condition is the anonymity of the donor and recipient, all in accordance with the third paragraph of article 360 of law 18-11.

The legislator's requirement of a family relationship between the donor and the recipient and the anonymity of the donor and the recipient in the case of cross donation is a condition that helps to keep the human body out of the scope of financial transactions, and this is logical because the transaction and the contract are not concluded without knowing the identity of the contracting parties, in order to enshrine that human organ donation remains human and ethical on the one hand, and to avoid commercial or financial transactions and physical and moral extortion on the other<sup>17</sup>.

**Second Section: Conditions related to the recipient of the human organ**

According to Article 364 of Law 18-11, the conditions legally required to be met by the organ or tissue donor are two: The first is that transplanting the organ or tissue is the only way to preserve the life or physical integrity of the recipient, and the second is the consent of the recipient.

**First- the transplantation of the organ or tissue is the only means of preserving the life or physical integrity of the recipient:**

This condition is established in Article 355 of Law 18-11, which prohibits the removal and transplantation of human organs, tissues or cells, except for therapeutic or diagnostic purposes and under the conditions established by law. The first paragraph of article 364 of the same law adds that this can also be done when it is the only way to preserve the life or physical integrity of the recipient.

From these two articles, it can be concluded that the legislator considers the transplantation of human organs, tissues or cells to be exceptional, to be used only for the purpose of preserving life or for treatment or diagnosis, and can be used only if it is the only way to preserve the life or physical integrity of the recipient, and it is the competent doctor who assesses the degree of necessity of such operations.

The purpose of removing an organ for transplantation into the body of another human being - the patient - must be either to save that person from certain death or to cure him or her of a disease. While the performance of medical experiments on human beings is not considered treatment or diagnosis, even if

such experiments are subsequently beneficial to society, because there is a human being who will be the victim. So, it clashes with public order as long as there are other alternatives that can be conducted on them, such as conducting them on animals like rats and others, and the jurisprudence on the therapeutic interest of the patient has divided into two directions:

**1-The first trend:** The proponents of this trend believe that in the case of organ transplants between living people, the existence of a therapeutic interest can only be said to exist if both the removal and the transplantation have a therapeutic interest, as in the case where the donor suffers from a disease in one of his eyes that requires its removal, and thus this is a therapeutic act for him. Then, there is no objection to using some parts of the removed eye to transfer it to another person suffering from a visual defect, and the intention to treat the two people, one by removing his diseased eye and the other by using some parts of it, is fulfilled.

**2-The second trend:** The proponents of this trend believe that the intention to treat is evident through the relationship between the donor and the recipient, considering that the donor fulfills a real interest for the recipient by saving his life, even if it is by sacrificing part of his body, and therefore the waiver cannot be rejected in this case. This is because the honor of the motive here fulfills the therapeutic interest for both the donor and the recipient, and they gave an example of this: a mother who donates one of her kidneys to her sick child<sup>18</sup>.

### **Secondly- the satisfaction of the recipient:**

Article 364 of Law 18-11 shows that before any transplantation of organs, tissues or human cells, the legislator requires the consent of the recipient patient, and even goes further by stipulating that this consent must be informed and given by a legally competent person in a specific manner, and the conditions or characteristics of this consent can be detailed as follows:

**1- The consent must be informed:** The fifth paragraph of Article 364 of Law 18-11 states: "Consent may be given only after the attending physician has informed the recipient or the people referred to in paragraphs 3 and 4 above of the medical risks that may arise." The fifth paragraph of Article 364 of Law 18-11 states: "Consent may be given only after the attending physician has informed the recipient or the people mentioned in paragraphs 3 and 4 above of the medical risks that may occur."

The patient's consent to medical treatment is generally recognized in the field of medicine, but in the field of organ, tissue or cell transplantation, the legislator did not content himself with ordinary consent, but required it to be informed because of the risks involved in these operations, which may affect the patient both during and after the transplantation process.

Therefore, it imposes an obligation on the attending physician to provide the patient with clear, accurate and truthful information about his illness and to inform him that there is no way to save his life or preserve his physical integrity except by using other non-traditional means of treatment, namely organ transplantation, due to the inability and ineffectiveness of traditional therapeutic methods in his health condition. The surgeon must explain and inform him honestly about the risks, effects and expected results of this operation, so that he can measure the risks and give his consent or refusal in full knowledge of the truth of the matter, and the surgeon cannot touch the patient's body and may not do so without his informed consent<sup>19</sup>.

**2- Consent must be given by a person with legal capacity:** The general principle of consent for organ transplantation is that the consent must be given by the patient in person, provided that he is competent and capable of expressing his will. If the patient is a competent adult who is unable to express his or her will, a member of his or her family may give written consent instead, in the order specified in article 362 of law 1811, in accordance with the second paragraph of article 364 of the same law.

The third paragraph of Article 362 of the same law establishes the order of priority of adult family members who may give consent on behalf of the patient receiving the organ or tissue, as follows "...adults in the following order of priority: Father, mother, spouse, children, brothers, sisters, legal representative..."

With regard to people who do not have legal capacity due to their young age or mental disability, the legislator considered that the consent for transplantation can only be given by the father, mother or legal person, according to the third and fourth paragraphs of Article 364 of Law 18-11.

However, the legislator has considered that there are cases in which, due to exceptional circumstances, it is necessary to depart from this principle and to carry out the transplantation without the above-mentioned consent. Article 364, in its sixth and seventh paragraphs, specifies these cases and their conditions, authorizing the practice of organ, tissue or cell transplantation without the required consent, and this in cases of urgency in which the family or legal representatives of the recipient cannot be contacted in time, and he is in a situation where it is impossible for him to express his consent, and any delay in the operation may lead to his death. This situation is proven by the head doctor of the department and two witnesses.

In this case, it can be said that the legislator has made the head of the department the natural representative of the recipient, if the legal conditions are met, including necessity, urgency and proof of the situation by two witnesses.

**3- Form of the recipient's consent:** Article 364 of Law 18-11 stipulates, in the last part of the first paragraph, that the recipient must give his consent in the presence of the doctor, the head of the department where he was admitted and two witnesses. The second paragraph of the article regulates the case in which the recipient is not able to express his consent, in which case one of his adult family members may give his written consent in the order of priority mentioned above and established in article 362.

From the two previous texts, it is clear that Law 18-11 requires that the consent of the patient receiving a human organ, whether it is given personally or by proxy, must be given in writing and in the presence of the physician who is the head of the department and two witnesses, for whom no condition is established.

### **Third Section: Technical legal conditions related to medical procedures**

These conditions are, in fact, general legal conditions, mainly represented in the conditions related to the practice of medical work, on the basis of which medical intervention in its ordinary or surgical form, or even in the field of removal and transplantation of human organs, is carried out, in addition to the technical conditions that are mainly related to the world of medicine<sup>20</sup>. We focus on the provisions of Law 18-11 in the field of removal and transplantation of human organs, tissues and cells among living people, because it is the subject of the article.

#### **First- Conditions for practicing medical work:**

These conditions are generally characterized by the status of the physician, the goal of achieving recovery and the need to follow professional principles in medical intervention. The legislator has included these conditions in the provisions of the Code of Medical Ethics, as well as in the Law on Health, which includes complete health care, disease prevention, diagnosis and treatment.

Article 17 of the Code of Medical Ethics stipulates that a physician must aim at healing, regardless of the type of medical intervention he or she performs.

Regarding the observance of the principles of the medical profession, or what is known as the obligation to abide by the medical work contract, jurists agree that the doctor must be careful, give the medical work its due, and take the necessary precautions in this field<sup>21</sup>.

#### **Second- Medical conditions of a technical nature in the field of removal and transplantation of human organs among living people:**

According to the provisions of Law 18-11, these conditions include the health status of the donor and the recipient, the preservation of the human organ, the compatibility of tissues between the donor and the recipient, and finally the place where organ removal and transplantation operations are performed:

**1- The state of health of the donor and the recipient:** The donation must not harm the physical integrity of the donor, nor threaten his life, which has already been discussed in this regard, and that the two parties



do not suffer from diseases that would affect them<sup>22</sup>. This is what the legislator stipulated in the last part of the first paragraph of Article 361 of Law 18-11.

**2- Organ preservation:** The shelf life of human organs and tissues varies from one organ or tissue to another according to its anatomical composition, as it is an established scientific fact in this field that some bone tissues and arteries can remain valid for a long time, while the rest of the organs may not exceed hours, such as hands, kidneys and others. Doctors have tried to overcome this phenomenon by using various medical techniques<sup>23</sup>. It must be emphasized that organs removed for the purpose of re-transplantation must be preserved, because their damage will cause serious material and moral damage to both the donor and the recipient.

Article 357 of Law 18-11 recommends the establishment of a structure in charge of preserving tissues and cells, when necessary, in institutions licensed to remove tissues and cells, after requesting the National Agency for Organ Transplantation, and the task of determining how this structure will operate is entrusted to the regulation.

**3 - Tissue compatibility between donor and recipient:** Donor-recipient tissue compatibility is one of the most important factors in the success of organ transplants. The most serious threat to these operations is the phenomenon of foreign body expulsion, as after the developments in the medical field, the surgical art of organ removal and transplantation no longer represents any issue. However, the continued stimulation of the body to expel the transplanted and foreign organ is the issue, which reduces the chances of success of these operations, as it is not necessary to remove a healthy organ from a living person, if the success rate of the operation is small, due to the rejection of the organ by the body of the recipient patient, which is contrary to the main purpose for which these operations are allowed<sup>24</sup>.

In the first paragraph of Article 359 of Law 18-11, the legislator indicated that there must be this immunological compatibility between the donor and the recipient in the removal and transplantation of human organs and cells among people. In the first paragraph of Article 359 of Law 18-11, the law provides for the possibility of resorting to the process of cross-organ donation, which consists of forming two identical "donor-recipient" pairs, according to the third paragraph of Article 360 of the same law.

**4 - Place of removal and transplantation:** Article 366 of Law 18-11 stipulates that the removal or transplantation of human organs, tissues or cells can only be performed in public hospitals authorized by the Minister in charge of Health, after obtaining the agreement of the National Agency for Organ Transplantation. The same article stipulates that these hospitals must have a medical and technical organization and hospital coordination in order to obtain a license to perform organ and tissue removal operations, and refers to the regulation that establishes the terms and conditions for licensing these institutions.

Thus, according to the previous article, private hospital institutions cannot perform these operations, and even public hospital institutions are not authorized to do so unless they have, on the one hand, specialized medical and technical staff and, on the other hand, modern and advanced technical means that are sufficient for the purpose. This is due to the seriousness of these operations, and also for the sake of state control over these operations, so that they do not deviate from the goal of free humanitarian treatment<sup>25</sup>.

With reference to article 449 of law 18-11, we note that it repealed law 85-05 on the protection and promotion of health, but maintained the texts adopted for its implementation in force until the issuance of the regulatory texts provided for in this law. Accordingly, the regulatory texts in the field of determining the places for the removal and transplantation of human organs, tissues and cells are governed by the regulatory texts for the implementation of Law 85-05. In this regard, the Minister of Health had previously issued Ministerial Resolution No. 30 dated 10/2/2002, in which he established the list of hospitals authorized to perform these operations. This Resolution was subsequently repealed following Article 6 of Resolution No. 29, dated: 6/14/2012, which specified in Article 2 the list of hospital institutions authorized to perform the removal or transplantation of human organs, tissues and cells, as follows<sup>26</sup>:

**4-a - Regarding corneal transplantation:** There are eight centers for corneal transplantation in the country, six in the north and four in the city of Algiers: Mustapha University Hospital Center - Hussein Dey University Hospital Center - Beni Messous University Hospital Center - Bab El Oued University Hospital Center. A center in Blida, which is Blida University Hospital Center, and finally a center in Tizi Ouzou, which is Tizi Ouzou University Hospital.

And two other centers, one in the east, which is Annaba University Hospital Center, and the other in the west, which is the hospital institution specialized in ophthalmology in Oran.

**4-b - For kidney transplantation:** Thirteen kidney transplantation centers have been identified, seven of which are located in the north and five of which are located in the city of Algiers, namely — Mustafa University Hospital Center — Hussein Dey University Hospital Center — Beni Messous University Hospital Center — Bab El Oued University Hospital Center — Dr. Maouche Specialized Hospital Institution (formerly the National Center for Sports Medicine), while the other two centers are: — Blida University Hospital Center — Tizi Ouzou University Hospital.

And two centers in the East: — University Hospital Center of Annaba — Specialized Hospital Institution, Daksi Clinic, Constantine.

And four centers in the west: — University Hospital Center of Oran — University Hospital Institution of Oran — University Hospital Center of Sidi Bel Abbas — University Hospital Center of Tlemcen.

**4-c — for liver transplantation:** In liver transplantation, there are four centers at the national level:

- Specialized Hospital Institution "Pierre and Marie Curie Center" Algeria
- University Hospital Annaba Center
- University Hospital Blida Center
- University Hospital Oran Center.

**4-d — for bone marrow transplantation:** In the field of bone marrow transplantation, there are three institutions at the national level:

-- Specialized Hospital Institution "Pierre and Marie Curie Center", Algeria — Health Hospital Institution, Cancer Control Center, Batna — University Hospital Institution of Oran.

## **Conclusion:**

Finally, the results achieved by this article can be summarized as follows:

- The legislator has tried to give the greatest possible guarantees to the donor of organs or human tissues, including that the donation of the organ should not endanger the life or physical safety of the donor, and it has also provided for his free and informed consent, and that this consent should be given in front of the regionally competent court president. It has also obliged a committee of experts, not a single doctor, to inform the donor of the potential risks of this operation and its expected results, in addition to the possibility of withdrawing his consent at any time, without any procedures and without any liability. Thus, the necessity of a kinship between him and the recipient of the organ, whether the donation is direct or cross-transplantation, and he excluded the financial compensation in these operations, so that the social, moral and altruistic motive that led the donor to give this organ remains.

- Resorting to human organ removal and transplantation operations is an exception and the only solution to save the life of the recipient patient or preserve his physical safety.

- The written consent of the recipient patient or his representative is required if it is not possible to express it or he is not qualified to do so.

- It has also become clear to us through the previous data that Algeria's capabilities in the field of organ, tissue and human cell removal and transplantation operations are still limited in terms of type, as these operations are represented in only four types: Cornea transplantation, Kidney transplantation, Liver

transplantation and Bone marrow transplantation, as well as in terms of the place where they are performed and their coverage of the national territory, as most of them are located in the capital Algiers and a few of them in the East and West, and this is due to the lack of sufficient specialized medical staff as well as the necessary equipment to perform these operations in the rest of the national territory.

Based on these results, and in order to improve some of these conditions, we propose the following:

- It would be preferable for the legislator to provide that the notification of the donor of the human organ by the expert committee be written, so that the president of the competent court can inform him of it again. While verifying that the conditions of the donor's consent are in accordance with law 18-11, and so that it can be evidence for the doctor or the expert committee or against them in the event of a future dispute.
- We recommend that the donor be socially insured, and it is preferable that the insurance be provided by the State, in anticipation of the risks that may befall him either during or after the operation and because of it, and to cover all the costs of the operation, including compensation for the recovery period and inability to work.
- It would have been more appropriate for the legislator to specify the end of the time for withdrawing consent for the donor, so that we can avoid falling into some of the problems that we gave examples of in the research presentation.
- We also propose that the paragraphs of the text of Article 360 of Law 18-11 be rearranged in accordance with what we indicated in the research presentation.
- We also propose, in order to reduce this delay in the field of human organ removal and transplantation operations, to form specialized medical teams abroad in the leading countries in this field, so that they themselves become the ones who form the medical teams inside the country. In addition to providing the hospital institutions with the necessary means for these operations.

#### **Research margins:**

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<sup>1</sup>Law No. 85-05 relating to the protection and promotion of health, dated: 2/16/1985, Official Gazette, No. 8, dated: 2/17/1985.

<sup>2</sup>-Law No. 18-11 relating to health, dated: 7/2/2018, Official Gazette, No. 46, dated: 7/29/2018.

<sup>3</sup> Abou Anissa, Legal Controls of Consent in the Field of Human Organ Transplantation and Transfer in Algerian Law, PhD Thesis in Law, Faculty of Law and Political Science, Mouloud Mammeri University - Tizi Ouzou -, Discussion Date: 02/13/2022, p. 38.

<sup>4</sup> Tariq Surur, quoted from: Maachou Lakhdar, The Legal System for the Transfer and Transplantation of Human Organs - A Comparative Study -, PhD Thesis in Private Law, Faculty of Law and Political Science, Abu Bakr Belkaid University, Tlemcen, 1014 2015, p. 232.

<sup>5</sup> Kamel Abdel Aziz, Ahmed Shawqi Abu Khatwa, quoted from: Maachou Lakhdar, the same reference, p. 151.

<sup>6</sup> Abou Anissa, the previous reference, pp. 27, 28

<sup>7</sup> Marouk Nasreddine, Criminal Protection of the Right to Bodily Integrity in Algerian and Comparative Law and Islamic Law, A Comparative Study, First Edition, National Office of Educational Works, Algeria, p. 32

<sup>8</sup> Verse 60 of Surah Ar-Rahman narrated by Hafis from Asim.

<sup>9</sup> Maasho Lakhdar, previous reference, p. 150.

<sup>10</sup> Marouk Nasreddine, previous reference, p. 194.

<sup>11</sup> Maasho Lakhdar, previous reference, pp.178.

<sup>12</sup> Ibid, p. 183.

<sup>13</sup> Abou Anissa, previous reference, p.26-27.

<sup>14</sup> Tariq Surur, previous reference, p.221.

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- <sup>15</sup> Maasho Lakhdar, previous reference, pp.223-224.
- <sup>16</sup> IBID, p.192-193.
- <sup>17</sup> Abou Anissa, previous reference, p.21.
- <sup>18</sup> Maasho Lakhdar, previous reference, pp.228,231.
- <sup>19</sup> Marouk Nasreddine, previous reference, p.248.
- <sup>20</sup> IBID, P. 258.
- <sup>21</sup> Samira Ayad AL-Diyat, Human Organ Transplantation Operations between Sharia and law, Dar AL-Thaqafa library for publishing and distribution, Jordan, 1999, p.65.
- <sup>22</sup> Jari Basma, Disposal of Human Organs between Sharia and Law - A Comparative Study -, Planet of Sciences, Algeria, 2012, p. 119.
- <sup>23</sup> IBID, p. 120.
- <sup>24</sup> Marouk Nasreddine, previous reference, p. 141.
- <sup>25</sup> Al-Alja Mawasi, quoted from: Abbou Anissa, previous reference, p. 62.
- <sup>26</sup> Decision No. 29 dated: 6/14/2012 determines the list of health institutions licensed to perform the removal or transplantation of human cells, tissues or organs, Official Bulletin of the Ministry of Health, Population and Hospital Reform for the year 2012, p. 14.