

Legality versus organ trafficking. Regulations at the limits of international treaties

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Abstract

Considered by the medical world to be the greatest achievement of modern medicine, organ transplantation has posed major challenges for society, medical professionals, and legislators. Given the growing demand, transplantation has required an increasing number of organs to be available. This has come up against societal attitudes, with religious views still prohibiting procedures that remove certain organs from the human body. International and European organisations understood the challenges from the outset and have made sustained efforts to provide guidance on creating a unified legislative framework at the global and European levels. Principles have been established, terms have been defined, and international acts have been adopted to support those involved in transplantation. However, there have also been regulations in some countries that contradict those established at the international level. One example is the legislation in China, which has allowed the harvesting of organs from executed prisoners and prisoners, generating widespread international criticism and many questions about the existence of freely given consent from donors. It also allowed organ trading until 2006, even though the international community promotes financial neutrality in organ transplantation. Another country whose legislation allows donors to be compensated is Iran, which has regulated a transplant system that permits financial rewards to donors.

Keywords: transplant, financial reward, prisoners, consent, regulation

Introduction

Emerging in the context of medical advances and the search for solutions to diseases for which traditional medicine had no cure, organ transplantation was a lifesaving solution, one that filled the medical world with hope when the first transplants were performed.

However, hope came with new challenges, given the increasing demand for organs and the limited supply. The small number of donors is also a result of certain beliefs and ideas, often religious, that do not allow organ donation. In this context, a wide variety of

solutions have emerged, with states attempting to compensate for the organ shortage through various regulations, such as allowing harvesting from executed prisoners or regulating financial rewards for donors who are not blood relatives.

It was then up to international bodies to react to the way in which states chose to regulate the transplantation of organs, human cells, and tissues, as well as to the numerous cases of violations of existing regulations.

Materials and methods

Materials

In writing this article, we used international conventions, regulations from European bodies, like the European Parliament and the United States Congress, and studies and articles on organ trafficking.

Methods

Several research methods were used to conduct the study, including analysis, historical analysis, empirical analysis, and comparative analysis.

Results and discussion

A brief overview of international regulations

The challenge of regulating organ transplantation has been and remains a topical issue for the international community. Advances in medicine must be reflected in the evolution of regulations that prevent violations of the rights of those involved, both donors and recipients of organs. Only through clear and, as far as possible, uniform regulation of activities related to organ donation and transplantation can the abuses that have overshadowed and continue to overshadow one of the greatest advances in medicine be eliminated.

Since the adoption of the Universal Declaration of Human Rights in 1948, it has been generally recognised that "every human being has the right to life, liberty, and security of person" Universal Declaration of Human Rights, available at <https://legislatie.just.ro/Public/DetaliuDocument/22751>, accessed on 07.10.2025).

The Charter of Fundamental Rights of the European Union also enshrines the right to physical and mental integrity of the person, adding, given the time of its adoption, guarantees in the fields of medicine and biology. Thus, according to the Charter, "the free and informed consent of the person concerned must be obtained in accordance with the procedures laid down by law," and "the use of the human body and its parts as such for profit" is prohibited (Charter of Fundamental Rights of the European Union, available at <https://eur-lex.europa.eu/RO/legal-content/summary/charter-of-fundamental-rights-of-the-european-union.htm>, accessed on 07.10.2025).

Because organ transplantation has become increasingly common in the medical field, the international community felt it was time to respond and establish principles, so in 2008 the Istanbul Declaration was adopted. This document was initially the result of a meeting between the Transplantation Society and the International Society of Nephrology. The Declaration was intended to support not only medical professionals but also the authorities involved in the legislative regulation of organ transplantation. To ensure continuous analysis of the challenges arising from medical developments, the Istanbul Declaration Custodian Group was created two years later. In February-May 2018, a broad consultation was held to

update the declaration, as it was necessary in response to medical, legal, and social progress. Thus, in July 2018, in Madrid, during the International Congress of the Transplant Society, the initial form of the declaration was revised. This declaration is a true guide and establishes the principles necessary to help understand and regulate situations arising from organ transplantation.

The declaration includes the conclusions of professionals working in the field of organ donation and transplantation and related fields, concluding that the benefits of organ transplantation must be increased, but without "relying on unethical practices and abuses that have harmed poor and vulnerable people around the world."

Eleven principles have been established, including "Each country or jurisdiction should develop and implement legislation and rules governing the procurement of organs from deceased and living donors and transplantation practices, in accordance with international standards," and "Organ donation must be a financially neutral act." In this regard, the Declaration defines "financial neutrality in the field of organ trafficking" as neutrality that "presupposes that donors and their families do not suffer financial loss or gain as a result of the act of donation" (Istanbul Declaration on Organ Trafficking and Transplant Tourism - 2018 Edition), available at https://www.declarationofistanbul.org/images/documents/doi_2018_Romanian.pdf, accessed on 09.10.2025).

Another act adopted by the Council of Europe on April 4, 1997, is the European Convention on Biomedicine, also known as the Oviedo Convention. It protects fundamental human rights in relation to the transplantation of human organs, tissues, and cells. The Convention stipulates the obligation to give informed consent. The importance of expressing consent stems from the way in which the need for consent is regulated, with an entire chapter of the Convention devoted to it. According to Article 5, *the Convention* establishes as a general rule that "A health intervention may only be carried out after the person concerned has given free and informed consent. This person shall receive adequate information in advance about the purpose and nature of the intervention, as well as about the consequences and risks. The person concerned may freely withdraw consent at any time." Chapter 6 - Removal of organs and tissues from living donors for transplantation establishes the situations in which removal may be carried out from living donors, consent being an essential element to which reference is made. The Convention also prohibits, in Article 21, financial gain, stating that "The human body and its parts shall not be a source of financial gain" (European Convention of 4 April 1997 on the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, Convention on Human Rights and Biomedicine*, available at <https://legislatie.just.ro/public/detaliidocument/27007>, accessed on 07.10.2025).

Following the same direction and reaffirming its position on organ trafficking, the Council of Europe adopted on July 9, 2014, its Convention against Trafficking in Human Organs, which aims to criminalize organ trafficking by prohibiting certain practices, such as the harvesting of organs from living or deceased donors without their free and informed consent, and also by criminalizing the making of profits from organ transplants (Council of Europe Convention against Trafficking in Human Organs of 25 March 2015, available at: <https://rm.coe.int/1680abceaf>, accessed on 05.10.2025).

We cannot fail to mention the ongoing concerns of the World Health Organization and the United Nations in the field of organ transplantation, with particular importance in this

regard being attached to the resolution adopted by the UN General Assembly on September 8, 2017, No. 71/322, entitled "Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs."

According to this resolution, "Adopting appropriate legislative measures necessary to ensure that organ donation is guided by clinical criteria and ethical standards, based on the informed and voluntary consent of donors, as an altruistic act, performed without monetary payment or other monetary reward, which does not prevent the reimbursement of reasonable and verifiable expenses incurred by the donor"(UN General Assembly Resolution No. 71/322 of 8 September 2017, "Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs," available at: <https://docs.un.org/en/A/RES/71/322>, accessed on 05.10.2025).

China – healing through abuse

Despite all the efforts of the international community and the international instruments adopted, including those mentioned above, there have been situations in which national regulations have either been slow to transpose global standards or have regulated certain situations in a manner that contradicts international regulations.

As early as 1984, China adopted legislation allowing the harvesting of organs from executed prisoners. The regulation came as a solution to the acute organ crisis in China, with the demand for organs far exceeding the existing organs available for transplantation, but this practice has been a cause for concern for the international community from the outset.

As it was unanimously accepted by international bodies and the medical world that an essential condition for organ donation is the donor's consent without any form of coercion, voices were raised questioning whether consent could be considered validly expressed in the case of prisoners. Given their situation, even if they had given their consent, it would have been impossible to verify whether it had been given freely, without any form of coercion or alteration.

The international community's concerns initially appeared in the press, relating to the harvesting of organs from Falun Gong practitioners, imprisoned for their beliefs, who had their organs secretly removed against their will. The press articles triggered an independent investigation by David Kilgour, former Secretary of State in Canada, and David Matas, a human rights lawyer. The conclusions of the investigation, completed in 2006, were published on January 31, 2007. They were later included in the book "Bloody Harvest," published in 2009.

David Matas and David Kilgour outlined in the report the allegations under consideration, the investigative methods used, and the difficulties encountered due to the authorities' lack of transparency. The report also presented Chinese legislation on transplants, compared with international legislation.

In the report's conclusions, the investigators concluded that the allegations of organ harvesting from so-called prisoners of conscience appear to be true, with the evidence available to the two investigators leading to this conclusion (Matas, D., Kilgour, D An Independent Investigation into Allegations of Organ Harvesting of Falun Gong practitioners in China, available at <https://organharvestinvestigation.net/> accessed on 06.10.2025).

The efforts of these two individuals did not go unnoticed by the international community. Although they did not win the Nobel Peace Prize, for which they were nominated in 2010, their book and work resonated internationally and across Europe.

Their research was duly recognised in *the European Parliament Resolution* of December 12, 2013. In this document, reports of organ harvesting in the People's Republic of China were assessed as "persistent and credible." The elements identified by the resolution as "worrying" were that organ harvesting was carried out systematically, with state support, from so-called prisoners of conscience, including numerous Falun Gong practitioners detained for their religious beliefs, as well as members of other groups; so-called prisoners of conscience, including numerous Falun Gong practitioners detained for their religious beliefs, as well as members of other ethnic or religious minority groups;

The European Parliament called on the European Union and its member states to publicly condemn the abuses, while calling for a full investigation and "prosecution of those found to have been involved in unethical practices";

Given that the Chinese state had announced internationally that it would phase out organ harvesting from executed prisoners by 2015, Parliament considered that a phased elimination was unacceptable and called for an immediate end to this practice.

Another request made by the European Parliament in the resolution was that the European Union and its Member States publicly condemn the abuses taking place in the field of organ transplantation in China, and for *the Union* to conduct a full and transparent investigation into practices in this area, followed by the prosecution of those who have violated internationally agreed ethical standards.

Last but not least, the resolution called on the Chinese authorities "to respond in detail to requests for information and to provide explanations regarding the source of additional organs in view of the increase in the number of organ transplant operations," by the UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment and the European Union Special Rapporteur on freedom of religion or belief (European Parliament resolution of 12 December 2013 on organ harvesting in China, available at https://www.europarl.europa.eu/doceo/document/TA-7-2013-0603_RO.html, accessed on 06.10.2025).

However, the situation did not seem to have improved, so it was the turn of the European Parliament to express its position. Thus, on July 27, 2016, Declaration 0048/2016 was adopted, condemning the harvesting of organs from prisoners of conscience in China, a document that calls on the European Commission to implement the resolution adopted by the European Parliament on December 12, 2013.

The actions of European bodies are not the only ones that have condemned the situation in China. Across the ocean, in the United States Congress, a resolution was adopted on June 13, 2016, by unanimous vote. The goal was the same - to condemn China's practices regarding forced organ harvesting, while also calling for an end to these practices(European Parliament – resolution to stop organ harvesting from "prisoners of conscience", available at <https://cursdeguvernare.ro/parlamentul-european-rezolutie-pentru-stoparea-recoltarii-de-organe-de-la-prizonierii-de-constiinta.html> accessed on 06.10.2025).

Similar to the requests in the European Parliament resolution, the resolution called on the Chinese state to allow an independent investigation into the allegations contained in the documents brought to the attention of Congress (H.Res.343 - Expressing concern

regarding persistent and credible reports of systematic, state-sanctioned organ harvesting from non-consenting prisoners of conscience in the People's Republic of China, including from large numbers of Falun Gong practitioners and members of other religious and ethnic minority groups, available at <https://www.congress.gov/bill/114th-congress/house-resolution/343/text0> accessed on 06.10.2025).

Following the path paved by David Matas and David Kilgour, Ethan Gutman conducted an independent investigation based on extensive research into the forced organ harvesting of Falun Gong practitioners in China. Over a period of six years, he interviewed more than 100 Chinese refugees, doctors, and judicial officials. In 2014, he published the results of his research in a book entitled "The Slaughter." The results of Gutman's investigations were presented to the United States Congress, the US Central Intelligence Agency, the European Parliament, the United Nations, and the parliaments of several countries worldwide. (FalunGong, https://www.ro.faluninfo.eu/2017/04/30/et_han-gutmann-nominalizat-la-premiul-nobel-pentru-pace?from=success_stories accessed on 09.10.2022)

Following the European Parliament's resolution calling for an investigation into the situation in China and for those involved in unethical practices to be held accountable, the China Tribunal was established in 2019 and headed by Sir Geoffrey Nice.

The China Tribunal was initiated by the International Coalition to End Transplant Abuse in China, an international non-profit organization based in Australia with national committees in the United Kingdom, the United States, Canada, New Zealand, and Australia. It is a coalition of lawyers, academics, ethicists, medical professionals, researchers, and human rights advocates dedicated to ending forced organ harvesting (a form of organ trafficking) in China (China Tribunal, at <https://chinatribunal.com/about/> accessed on 07.10.2025).

The work of this independent tribunal focused on investigating the situation in China regarding organ transplants and investigating what criminal offenses, if any, were committed by state or state-approved bodies, organizations, or individuals in China that may have been involved in forced organ harvesting.

This Tribunal conducted the first detailed analysis of the situation in China. The work was extensive, with over 50 witnesses, experts, investigators, and analysts being heard. Investigation reports and academic papers were taken into consideration. (China Tribunal, final judgement, available at <https://chinatribunal.com/china-tribunal-final-judgement-and-report-17th-june-2019/> accessed on 07.10.2025)

The Tribunal examined the evidence available, including the number of transplants, medical tests on prisoners, recorded telephone calls to transplant hospitals, and the testimonies of surgeons and prisoners. The final conclusion was issued in March 2020 and "confirmed beyond reasonable doubt" that China had been using executed prisoners of conscience as a source of organs for transplantation for many years.

Despite all the international attention focused on the situation in China, it could not be said that the Chinese state's unethical practices regarding organ harvesting and transplantation had ceased. In response to the seemingly unchanged situation in China, the European Parliament resolution of May 5, 2022, on reports of continued organ harvesting in China (2022/2657(RSP) (2022/C 465/09) was adopted. This took into account all the work

done to document the situation regarding organ harvesting in China up to the time of its adoption.

The European Parliament expressed concern about "reports of persistent, systematic, inhumane, and state-sanctioned organ harvesting from prisoners in the People's Republic of China." Another cause for concern expressed at international level and noted in the Resolution is the lack of independent oversight to establish when prisoners have given valid consent, with the authorities being "urged" to request and ensure that donors have given their free and informed consent. It also considers it necessary for the Chinese state to "adopt a regulatory framework, in accordance with international conventions, for a voluntary and transparent organ donation system."

Requests have also been made to the European Union and its member states to address the issue of organ harvesting in China during human rights dialogues and to publicly condemn any abuses in organ transplantation, as well as to prevent transplant tourism in China (European Parliament resolution of May 5, 2022, on reports of continued organ harvesting in China (2022/2657(RSP)), available at <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52022IP0200> accessed on 07.10.2025).

Returning to the independent investigation conducted by David Matas and David Kilgour, we note from their published report that until July 1, 2006, the practice of organ selling in China was legal. That is the date on which a law prohibiting their sale came into force.

We thus note that Chinese legislation on organ transplantation has, over time, included several regulations that have contradicted international standards in the field.

Iran – a different kind of organ "trade"

Another example of regulations that contravene international principles is found in Iran. Although, as we have shown, the international community has established the principle of so-called "financial neutrality" in organ transplantation, some states have also accepted the remuneration of organ donors at the legislative level. These regulations were the result of opinions, some among representatives of the medical world, that a financial incentive would increase the number of donors, which is generally quite low.

However, since the 1980s, more and more countries have banned financial compensation for organ donation, arguing that donation should be an altruistic act. As mentioned above, even China, whose legislation has been found to violate international principles, banned the sale of organs on July 1, 2006.

Currently, Iran is the only country where financial rewards for donors are legal. In 1988, Iran legalized kidney donation from living, unrelated donors and established a related transplant system. Through this government-organised system, organ donation was regulated, including compensation for donors. This system regulated and financed the transplant process and compensated donors for their organs.

According to Iranian law, in addition to payment from the government, donors receive free insurance and, in some cases, payment from the organ recipient or a charitable organization.

However, the legislation also provides for certain prohibitions: it is illegal for the medical and surgical teams involved or any "intermediary" to receive any payment, with compensation being provided exclusively to organ donors.

Contact between the donor and recipient is made by an independent third party, the Dialysis and Transplant Patients Association, an independent third-party association created to arrange contact between donors and recipients. This agency is made up of volunteers from patients with end-stage renal failure. (Paying kidney donors: time to follow Iran? , available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC2322914/> accessed on 09.10.2025)

Although the Iranian transplant system allows monetary compensation for kidney transplants, organ trading is not tolerated. This system was created based on the need to overcome the shortage of organ donors in the country. When the legislation on donor compensation was adopted, it was believed that this would reduce the illegal trade in organs on the black market. (Reem M. Alameer, Ahmed A. Alhammadi, Yusri Taha, Talal Al Goufi, and Reem S. Almaghrabi, The Dilemma of Organ Transplantation in the Middle East, available at <https://bmccmedicine.biomedcentral.com/articles/10.1186/s12916-024-03547-0> accessed on 09.10.2025)

We believe that, although it is a lifesaving solution for reducing or eliminating waiting lists for patients on transplant lists, the solution adopted by Iran does not ensure that human rights are respected, even if the remuneration solution has been legislated. Organs have become a "commodity," and for people from poor backgrounds, this is the only way to earn money, even at the expense of their own health.

In accordance with international regulations, we believe that there are situations in which certain compensation may be granted to the donor, but this can only cover the costs of the donor's medical evaluations, post-donation care, or compensation for loss of income during the recovery period, so that the donor can benefit from the same income as before the transplant during the recovery period. We consider such compensation fair, as it is even regulated by various laws.

Conclusions

Although it is necessary for organ donation to increase significantly, this goal must respect human rights and international regulations. Any legislative measure adopted must respect both the donor's rights and the recipient's rights. Only in this way will this remarkable medical progress achieve its goal of saving lives without being overshadowed by violations of donors' fundamental rights.

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