

The Criminal Protection for Cells and Tissues Donation in the UAE Legislation

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Abstract

The right to physical and mental well-being and bodily autonomy is legally protected, as recognized in various constitutions, including the UAE's. Article 19 of the UAE Constitution ensures medical care and prevention for citizens, supporting public and private healthcare institutions. Similarly, Egypt's constitution prohibits medical or scientific experiments without voluntary consent, affirming the right to physical safety as a constitutional right. Legislation cannot compel individuals to donate cells or tissues without explicit consent, as protected by Article 3 of the Universal Declaration of Human Rights, which upholds personal safety and freedom as fundamental rights. This study examines the legal and criminal issues surrounding the protection of cell and tissue donations under UAE law, focusing on criminal responsibility, related crimes, and the accountability of doctors and medical centres. Using a descriptive-analytical approach, the study aims to propose solutions to these issues and concludes with important findings and recommendations for legislative amendments.

Keywords: Criminal Law, Criminal Responsibility, Crimes, Legal Protection, Human Cells and Tissues, Donation, the UAE Laws.

Introduction

The intervention of criminal law has enhanced the legal protection by including constitutional safeguards. This is accomplished by making all attacks that could result in the infringement of an individual's right to life or impede their physical body from carrying out its inherent functions illegal. This approach acknowledges the importance of finding a middle ground between an individual's right to safeguard their body and the imperative to enable doctors to explore new breakthroughs that benefit humanity and promote well-being.

The UAE legislator's action in Federal Decree-Law No. 25 of 2023 highlights the significance of adhering to legal regulations for the removal and transplantation of human organs and tissues. Article 3 of this decree-law confirms that it aims to regulate the operations and procedures of removal, transfer, transplantation and donation of organs, parts thereof, and human tissues to ensure the effectiveness of the health system in the State. This is accomplished by a range

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of strategies, such as guaranteeing equitable allocation of donated human organs, parts, and tissues, protecting the rights of both the donor and the recipient, and providing suitable healthcare for both. Any individual is allowed to donate any organ, part, or tissue either during their lifetime or after their death. Removing an organ, part, or human tissue, or multiple organs, parts, or tissues from a deceased person is strictly prohibited without considering the regulations outlined in Articles 12 and 13 of this decree-law.

The significance of studying the legal protections available for cell and tissue donation in UAE legislation stems from its relationship with two crucial domains: jurisprudence and healthcare. On one hand, it clarifies the legal governance of the donation of these cells and tissues. On the other hand, it guarantees a secure and lawful sanctuary for the doctors, absolving them of any criminal liability for conducting transplants and removal operations.

This study aims to recognize the criminal policy of the United Arab Emirates (UAE) in relation to the removal and transplantation of tissues and cells by tracing its development over time. The objective is to examine the terms of Federal Law No. 5 of 2023 about organ and tissue donation and transplantation, following the revocation of Federal Law No. 5 of 2016 concerning the regulation of human organ transfer and transplantation. In addition, it will consult the UAE medical texts to have a comprehensive grasp of the UAE legislator's position on this issue.

Literature Review

The right to life is a fundamental aspect of advanced societies that prioritize citizen welfare (Kamel, 2021, p.149). However, there is no global consensus on criminal policies regarding organ donation, leading to debates among legal, medical, and religious authorities (Al-Zubairi, 2015, p. 514). Organ donation poses significant risks to the donor's life, potentially resulting in death and criminal responsibility. Legal frameworks are essential to balance the benefits and dangers of tissue and cell transplantation (Tafaq, 2019, p.15). UAE Medical Liability Law No. 40 of 2019 emphasizes the need for informed consent in stem cell donations, with no legal liability for donors or doctors, adhering to Article 12 of Decree No. 25 of 2023, which prohibits organ or tissue removal for experiments without proper consent (Khalifa, 2004). Human cloning is forbidden, and doctors must provide detailed information about treatments to obtain informed consent (Khalil, 2000, p. 13).

The Emirati Medical Liability Law requires patient consent before treatment, except in emergencies, with severe penalties for unauthorized organ or tissue removal outlined in Article 20 of Decree 2023. The law emphasizes tangible

criminal actions rather than mere thoughts (Shams, 2011, p.475). Article 31 of the Federal Penal Code defines criminal acts as illegal conduct, including unauthorized cell and tissue removal for transplantation. Decree 2023 permits voluntary organ donation by individuals over 18 and prohibits unauthorized tissue removal unless consent is compromised (Mustafa, 2012, p. 39). Deception in organ removal is criminal, with penalties outlined in Article 20. Doctors must inform donors of health risks, with exceptions for consent during the donor's lifetime or posthumously in Article 10 of Decree 2023. Article 7 restricts cell transfers outside family circles, with penalties for violations specified in Article 25. Decree No. 25 of 2023 sets clear legal requirements for organ transplantation from deceased individuals, outlining three legal modalities for these procedures (Al-Shanawi, 2014, p. 451).

Research Questions

- How is the regulation of cell and tissue donation addressed under the UAE Penal Code?
- What constitutes the subject of crime in the context of cell and tissue donation?
- What are the requirements for donor eligibility and approval for tissue and cell donation?
- What are the guidelines for tissue and cell donation after death?
- What regulations exist regarding tissues and cells trafficking?
- What criminal liability arises from the misuse of human tissues and cells?

Methodology

This study will examine the criminal protection of cell and tissue donation under UAE legislation using a descriptive-analytical approach. Additionally, it will employ an inductive method to analyse relevant legal documents, aiming to draw conclusions that enhance the legal understanding of the subject. Comparative analysis will be used where necessary to clarify the UAE legislator's stance relative to other criminal laws, ensuring a comprehensive understanding of the legislative position on specific aspects that require clear judgment.

By reviewing and analysing legal materials, the study aims to provide a thorough understanding of the laws governing cell and tissue donation in the UAE. The use of comparative analysis will help highlight differences and similarities between UAE legislation and other legal systems, providing a clearer picture of how the UAE addresses these issues. This approach will allow for a well-rounded analysis, offering insights into the effectiveness and

comprehensiveness of the UAE's legal framework in protecting cell and tissue donations.

Discussion and Analysis

i. Regulation of Cell and Tissue Donation under the UAE Penal Code

The significance of dealing with the legal regulations regarding tissue and cell transplantation is further demonstrated by the stance of the UAE legislator, who stays updated by making the trafficking of human organs and tissues a criminal offense in Federal Decree-Law No. 25 of December 2023 concerning the donation and transplantation of human organs and tissues. Article 2 of this decree specifically defines the geographical extent to which the decree's provisions apply, including the legal regulation of cell and tissue donation.

ii. Subject of Crime

The authorization to donate stem cells and the lack of legal responsibility for both the donor and the doctor can be confirmed by consulting the UAE Medical Liability Law No. 40 of 2019. The legislator establishes this responsibility, stating that the regulations outlined in Article 12 of this decree align with the regulations stated in paragraph "b" of Article 2 of Decree No. 25 of 2023 concerning the donation of organs and tissues (Kamel, 2021, p.149). This decree explicitly prohibits the application of its provisions to the removal of organs or tissues for scientific experiments and clinical studies (Khalifa, 2004). According to the first paragraph of the twelfth article of the Medical Liability Law, human cloning processes are explicitly forbidden (Khalil, 2000).

Nevertheless, the legislator did not address the regulation of the provisions outlined in paragraph "A" of paragraph 2 of Article 2 in Decree 25 of 2023 under the Medical Liability Law. This serves as another validation for the authorization of utilizing this sort of cells in the realm of medicine and therapy.

iii. Donor's Eligibility (Approval)

The objectives, scope, and licensing requirements for healthcare and medical institutions are clearly defined in the provisions of Decree No. 25 of 2023. They permit the removal and transplantation of cells, which falls within the purview of legalization. Nevertheless, this legalization is contingent upon the fulfilment of specific conditions (Al-Zubairi, 2015, p. 514). A transition from the domain of legalization to the realm of criminalization would occur if these conditions were not met (Kamel, 2021). Consequently, the commission of this offense necessitates the fulfilment of specific conditions, such as those that pertain to the donor's eligibility and their well-being (Diat, 2004, p. 7).

As per Article 1 of Decree No. 25 of 2023, a donor is defined by the legislator as “anyone who has completed eighteen (18) calendar years of age, who enjoys his mental faculties and is not affected by any of the Impediments to legal capacity (Khalil, 2000, p. 13). According to the same article, donation is defined as “a legal act indicating that a person agrees, during his life or after his death, with the consent of his relatives specified in Article (12) of this Law by Decree, to remove one or more organs, part thereof, or human tissue, with the aim of transplanting it into the body of a living person without compensation (Tafaq, 2019, p.15).

The Emirati Medical Liability Law requires doctors to obtain patient consent before administering treatment, except in emergencies. Article 20 of Decree 2023 establishes penalties for removing organs or human tissue from a living person without consent, through fraud, or by coercion (Barak, 2024, p. 138). If such an act is carried out by someone without legal capacity, the punishment is death or life imprisonment, accompanied by a fine of one to two million AED if the act leads to death or disability:

A. In the case of discontent or lack of eligibility

According to Article 31 of the Federal Penal Code and its revisions, the material aspect of a crime refers to any illegal conduct that involves either doing something that is against the law or not doing something that is required by law and either doing or not doing is subject to punishment. This crime involves two distinct actions: the unlawful removal of cells and tissues from the victim, and the subsequent transplantation of the removed parts into a patient without the agreement of the donor or their parents (Shams, 2011, p.475, Faqir, 2023).

As to Article 6 of Decree 2023, individuals who are at least 18 years old are permitted to voluntarily donate any organ, part thereof, or tissue during their lives. Taking tissue or cells without the person's consent is prohibited, save in cases where the person's ability to give consent is compromised (Mustafa, 2012. 39.). Under certain circumstances, the donor may be incapable of providing consent, not because of a lack of willingness, but rather due to situations that can be classified as criminal acts, such as removing organs without consent when the donor is asleep or under the influence of narcotics. Under these circumstances, the medical practitioner or group can be held legally responsible for the offense of removing cells or tissue from an individual's body without their explicit agreement, as outlined in Article 20 of Decree 2023.

Moreover, the criminal conduct in this offense may manifest as deception, wherein the perpetrator deceives the donor and misleads them into believing that

the cell or tissue removal is intended for medicinal purposes, when it is intended for transplantation into another human body.

B. Transferring cells and tissues outside the family

The second paragraph of article 7 states that “It is not permissible to donate any organ, part thereof, or human tissue, except in the following cases: A. Donation to relatives up to the fourth degree. B. Donation to the relatives of either spouse by the other spouse up to the fourth degree. C. Mutual donation of human organs and tissues in accordance with the controls specified by the Executive Regulation.”

Article 25 outlines the penalty for this offense, stating that “a fine not less than one hundred thousand (100,000) AED and not exceeding two million (2,000,000) AED shall be imposed on3. Anyone who removes an organ, part of it, or one or more human tissues from the body of a living person without observing the provisions of Article (7) of this Law by Decree.”

If this crime is done due to negligence, error, or error in material facts, it will not be subject to punishment. However, it is important to note that this crime must be intentional and founded on the elements of knowledge and will for it to be punishable.

iv. Tissue and Cell Donation after Death

To guarantee the authenticity of transferring organs from deceased individuals to living ones, the UAE legislature has included the subject of human organ, cell, and tissue transplantation in Decree No. 25 of 2023. The decree outlines specific and unambiguous requirements for the transfer of these cells from those who have died to the living and establishes legal responsibility for failure to comply (Al-Shanawi, 2014, p. 451). The UAE legislature has established three legal modalities for the removal of organs from people who passed away and their subsequent transplantation into living recipients.

A. The Donor's Acceptance of Donation after Death

According to the initial paragraph of Article 6 of this decree, “1-Every person may donate during his life or bequest the donation after his death of any of his organs, parts thereof, or tissues. 2- If a person expresses his desire to donate during his life or bequests donation after his death, the expression of desire or will must be written and documented, in accordance with what is specified in the Executive Regulation.”

According to Article 1 of the Emirati legislation, a donation is “A legal act indicating that a person agrees, during his life or after his death, with the consent of his relatives specified in Article (12) of this Law by Decree, to remove one or more organs, part thereof, or human tissue, with the aim of transplanting it into the body of a living person without compensation (Bouaziz, 2022, p. 37).

B. Regulations for the Removal of Organs and Tissues after Death

Tissues and cells obtained from a deceased person are integral parts of the physical structure of the body or constituents of the human body (Malouhi, 2021, p. 39). The individual does not possess exclusive ownership of their body; rather, it is a sacred responsibility bestowed upon them by God (Al-Masrawa, 2000, Pp. 97-98).

Therefore, the ownership a person has over their body is not based on financial considerations, but rather on moral considerations (Filali, 2000, Pp. 48-49). Consequently, it is not legally permissible to transfer a human body to heirs as an inheritance, as it is not considered as owned property (Hussein, 2019, p. 457). (Al-Fadl, 2002, p. 41). Thus, a human body cannot be possessed by its owner and is not regarded as an asset, so it cannot be included in a legally valid will on this premise.

This printing is achieved by utilizing animals, plants, fungi, bacteria, and viruses either partially or completely in order to produce beneficial materials needed by humans. This can be accomplished by employing biological substances such as proteins and enzymes to enhance existing organisms, by stimulating living cells to perform specific and predictable tasks that can be controlled. (Hammouda, 2023, p. 586, Ali and Faqir, 2024)

The position of the UAE legislator regarding the criminalization of cloning was clear, as stated in Article 38 of Federal Decree Law No. 49 of 2023 on the regulation of human genome use. The article states that "Anyone who does the following shall be punished by imprisonment and a fine of no less than AED (100,000) one hundred thousand and no more than AED (300,000) three hundred thousand, or one of these two penalties.

According to article (12), the notion of assuming consent from relatives is completely removed, as express approval must be gained from them. The consent for organ donation is founded on the legislator's effort to balance the necessity of using the deceased's organs to save the life of a person who can only be saved through transplantation, with the requirement that the removal or removal of organs from the deceased is carried out with proper safeguards, respecting the sanctity of the deceased's body (Al-Fadl, 2002, p. 84).

The legislator has limited the number of relatives, which makes it easier to obtain quick approval. This is specified in Article 12 of this decree, which states that the consent of the guardian of the deceased or any of his relatives including: A. The father. B. The mother. C. The children. D. The spouse. E. The grandfather. F. The siblings. G. The paternal uncle and the full uncle"

V. Tissues and Cells Trafficking

The Emirati legislator has been alerted to this issue and has regulated it under this decree-law, clarifying the concept of human organ trafficking. Article 21 states that "A penalty of imprisonment for a period not less than five (5) years and a fine not less than two hundred thousand (200,000) AED and not exceeding two million (2,000,000) AED shall be imposed on anyone who commits trafficking or mediates with the intention of trafficking in organs, parts thereof, or human tissues by any means, including information technology means."

Additionally, Article 22 of the same decree-law states that "A penalty of imprisonment and a fine not less than one hundred thousand (100,000) AED and not exceeding one million (1,000,000) AED shall be imposed on anyone who sells, purchase, offers, advertises, or promotes the sale or purchase, or mediates the sale or purchase of an organ or part thereof, or human tissue, or finances the sale process."

Criminal behaviour, in general, refers to the physical activity carried out by the perpetrator in the external world, through which they achieve their criminal goal (Sanad, 2012, p. 27.) This behaviour is realized in this crime through the criminal activity performed by the perpetrator, which involves the removal of organs (Al-Ansari, 2002, Pp. 31-32), cells, or human tissue from the victim's body (Al. Qadi, 2011, p. 150)

Through articles 21 and 22 of this decree, it is evident that the UAE legislator has confronted the trafficking of human organs and tissues in all its forms. These articles criminalize any commercial transaction involving human organs, and prohibit the financial transaction pertaining to any organ, tissue, cell, or part of the human body, regardless of its nature, for sale or purchase.

Article 29 explicitly states that "Any perpetrator who takes the initiative to inform the Judicial or Administrative Authorities of what he knows about the crime before being committed in a way leading to discovering the crime before occurrence, arresting perpetrators, or preventing completion thereof, shall be exempted from the penalties stipulated in Articles (20), (21), (22), (23) and (24) of this Law by Decree. If the perpetrator enables the competent authorities during the investigation to arrest other perpetrators of the crime, he may be exempted from the penalty, or his penalty may be reduced."

vi. Criminal Liability Arising from the Misuse of Human Tissues and Cells

The concept of criminal responsibility can be understood as the "obligation that falls on the person who commits an act that is considered a crime from a legal perspective and bears the legal consequences resulting from that

violation" (Al-Imam, 2020). This obligation can either be a punishment or one of the criminal measures imposed by the law on the perpetrator or criminal responsible for the act" (Sweilam, 2014, p. 14, Faqir, 2013).

A. Criminal Responsibility of the Doctor

Medical responsibility can be defined as "a condition that reflects a breach of the obligations imposed on medical practitioners" (Abdullah, 2012, p. 5).

This responsibility is a subject of legal interest, as it is related to the moral responsibility of the doctor, driven by the ethical commitment of medical practice (Fatma, 2015, p. 46). It also encompasses medical criminal liability, which can be defined as "a legal obligation that holds the doctor accountable for punishment or penalty as a result of proving an act or omission that constitutes a violation of the rules and regulations established by criminal or medical legislation" (Ibrahim, 2004, p. 520).

Medical liability is defined as the "accountability of a doctor for actions that constitute a criminal offense punishable by law, making it subject to monitoring and specific penalties" (Abdul Basit, 2014, p. 12). To hold the perpetrator criminally liable, they must engage in behaviour that is punishable by law, or refrain from engaging in behaviour required of them by law and prove that their actions are not arbitrary and that they have free will when committing the criminal act.

Generally, criminal liability is established by two types of attribution: material, which is proven by the person's actions constituting the material aspect of the crime, meaning that what happened can be attributed to the perpetrator's physical activity; and moral, which means that these actions are the result of free will. Will is a fundamental requirement in all crimes, whether they are intentional or unintentional, to bear criminal consequences. (Ajaj, 2017, p. 153, Abdulghani, 2017, p. 25, Alrousan and Faqir, 2023).

Regarding the decree-law that defines the criminal liability of doctors, it encompasses various criminal acts that may hold direct responsibility exclusively for the doctor or for any other person who is not a doctor (Al-Saadi, 2018, p. 16). These acts include: the crime of removing tissue from a living person without their consent (Article 20 of the decree), the crime of removing or transplanting an organ or part thereof, or human tissue, outside licensed healthcare facilities (Article 23), and the crime of a doctor tampering with medical examinations for donation (Al-Saadi, 2018, p. 16).

B. Criminal Responsibility of the Healthcare Facility

A legal person possesses great and vital potentials and abilities that may be applied in the domain of crime. Sound legal reasoning demands holding legal people responsible when they engage in illegal activities since the law safeguards actions taken by legal people (Al-Istanbuli, 1999, p. 261). Furthermore, a person with legal character has different interests than their constituents or members and an independent will be different from that of natural people.

This is what prompted jurisprudence and comparative criminal legislation to adopt the theory of the true identity of the legal person, likening it to the natural person based on the fact that the individuals comprising it represent its cells and organs, and the collective wills of these individuals give rise to an independent and separate will from them, which is the self-will of the legal person (Al-Khawli, 2001, p. 53.)

The provisions of Law No. 25 of 2023 regarding organ and tissue donation, specifically Article 5, emphasize the responsibilities of the National Centre for Organ and Tissue Donation. It states that “The National Centre is responsible for regulating donation procedures and the operations of removing, preserving, distributing, transferring and transplanting organs, parts thereof, and human tissues. It may carry out the following competences:2. Supervision and control of health establishments licensed to perform the removal, transfer, and transplantation of human organs and tissues.” This legal text establishes the general framework and conditions that must be met for donation procedures in specific healthcare facilities, as determined by the UAE Ministry of Health. These facilities are listed in the following table:

Healthcare facilities licensed for organs’ transplantation in the United Arab Emirates

| Facility name | Licensed operation |
|--|--|
| Cleveland Hospital - Abu Dhabi | Kidney, liver, heart, lungs and pancreas transplantation |
| Sheikh Khalifa Medical City - Abu Dhabi | Kidney transplantation for adults and children |
| Shak bout Medical City - Abu Dhabi | Kidney transplant for adults |
| Dubai Hospital - Dubai | Kidney transplant for adults |
| Med Clinic Hospital - Dubai | Kidney transplant for adults |
| Al Jalila Children's Specialized Hospital. Dubai | Kidney transplant for children |
| Al Qassimi Hospital - Sharjah | Kidney transplant for adults |

Source (The UAE Telecommunications and Digital Government Regulatory and Digital Government Regulatory Authority, 2024)

The exclusive nature of these facilities is confirmed by Article 4 of this decree, which states that "It is prohibited to remove and transplant organs, parts thereof, and human tissues except by Federal Decree by Law of 2023 Concerning Donation and Transplantation of Human Organs and Tissues 4 specialised doctors who are licensed to do so, and in health establishments licensed to do so by the Ministry or Health Authority."

This explanation has been confirmed by referring to Article 23 of the same decree, which holds the doctor criminally responsible when performing organ and tissue removal and transplantation operations outside licensed healthcare facilities. " A penalty of imprisonment and a fine not less than fifty thousand (50,000) AED and not exceeding one million (1,000,000) AED shall be imposed on any licensed doctor who removes or transplants an organ, part thereof, or human tissue outside licensed health establishments." Additionally, anyone who establishes or operates a healthcare facility for organ and tissue removal or transplantation without obtaining a license, in accordance with the provisions of Article 4 of this decree, shall be punished with imprisonment and a fine of not less than AED 100,000 (one hundred thousand dirhams) and not exceeding AED 2,000,000 (two million dirhams) anyone who: establishes or operates a private healthcare facility for the removal or transplantation of human organs and tissues without obtaining the necessary license, according to the provisions of Article (4) of this decree by law, is considered responsible for these crimes." (Fahmy, 2021, p. 105).

Results

The objectives of this decree confirm the UAE law's absolute rejection of the use or trafficking of human tissues and cells. This is ensured by the inclusion of provisions that criminalize such practices.

1. The legislator made it clear that stem cells are excluded from the scope of this decree, which means that donating them is allowed without imposing any criminal liability on the donor, according to the provisions of this decree.
2. The legislator allowed donation from living individuals, subject to specific conditions, including that the donation be based on the will and consent of a competent person.
3. The legislator allowed the use of organs from a deceased person who did not express their willingness to donate during their lifetime, but this donation can only take place with the exclusive consent of the

heirs, as determined by them, and with priority given to their agreement. This also applies if the donor is legally incapacitated.

4. The legislator has imposed a set of obligations on doctors, and if they violate them, they may be held criminally responsible.
5. The legislator has assigned criminal responsibility to healthcare facilities overseeing surgical and transplantation procedures if they are not licensed to perform such operations.
6. The UAE legislator has implemented strict control and legal regulations on organ removal and transplantation procedures. These operations are exclusively carried out under the supervision of specialized government medical centres, which are solely responsible for regulating transplantation and removal operations.

Conclusion

This research examines the criminal protection of tissue and cell donation in the UAE law, in accordance with the recent amendment to Federal Decree Law No. 25 of 2023 regarding human organ and tissue donation and transplantation. We have achieved some results and recommendations. The legal significance of donating tissues and human cells arises from the strong interest in protecting human beings. Many legislations explicitly ban them from financial transactions and categorically refuse to consider them as a commodity eligible for buying and selling. Consequently, individuals who engage in improper behaviour towards human being are penalized for infringing upon their dignity and integrity. The UAE legislature has also implemented comparable measures. To what degree does the criminal protection of tissue and cell donation in UAE legislation ensure the preservation of the human right to protect their body, both during their lifetime and after death?

Recommendations

1. We urge the legislator to amend paragraph 2 of Article 2 of this decree to include stem cells, with clear specifications on methods of donation due to the medical importance of this type of cells and the potential problems it may cause related to human cloning.
2. The legislator should add provisions that criminalize healthcare facilities, especially in cases where they collude with doctors in disregarding the legal regulations for cell donation.
3. The legislator should dedicate criminal protection for the fetus and prohibit the donation of its organs to safeguard its right to life and bodily integrity.

4. Efforts should be made to establish committees and regulatory bodies within hospitals and medical associations to supervise and monitor, as well as prevent, crimes related to trafficking of human organs and tissues.

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