

## ORGAN TRANSPLANTATION UNDER THE LEGISLATION OF AZERBAIJAN: A CRIMINAL LAW ANALYSIS

### ТРАНСПЛАНТАЦІЯ ОРГАНІВ ЗА ЗАКОНОДАВСТВОМ АЗЕРБАЙДЖАНУ: КРИМІНАЛЬНО-ПРАВОВИЙ АНАЛІЗ

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The legal regulation of organ transplantation in Azerbaijan is currently in an active phase of development, seeking to balance the significant life-saving potential of transplants with the need for robust ethical standards and effective criminal law safeguards. This article provides a comprehensive analysis of the Azerbaijani legal framework governing organ donation and transplantation, with particular emphasis on the criminal law provisions addressing illegal organ trade and unlawful transplantation practices. The paper traces the evolution of relevant national legislation, beginning with the 1999 Law on Human Organ and (or) Tissue Transplantation and culminating in the adoption of the new Law on Donation and Transplantation of Human Organs and (or) Tissues in 2020. Attention is given to key articles of the Criminal Code that establish liability for offenses such as coercive organ removal, the commercial sale of organs, and trafficking in human beings for the purpose of organ harvesting.

The article also explores law enforcement and judicial practice through the lens of documented cases of illegal transplantation and organ trafficking in Azerbaijan, emphasizing the main difficulties faced in identifying such crimes and bringing perpetrators to justice. In addition, a comparative analysis is conducted to assess the extent to which Azerbaijan's legal framework aligns with international standards, including the World Health Organization's Guiding Principles on Human Cell, Tissue and Organ Transplantation and the relevant conventions of the Council of Europe. Particular focus is placed on the principles of voluntary and informed consent, the absolute prohibition of organ commercialism, the severity of legal sanctions, and the role of international cooperation mechanisms. The study concludes that although Azerbaijani law formally prohibits illegal organ trade and includes penalties that reflect global legal standards, there remain persistent challenges related to law enforcement capacity, public awareness, and the underdevelopment of cadaveric donation systems.

**Key words:** organ transplantation, criminal law, organ trafficking, consent, international standards, illegal organ trade.

Правове регулювання трансплантації органів в Азербайджані перебуває на етапі активного розвитку та спрямоване на досягнення балансу між життєво важливою роллю трансплантації та необхідністю дотримання етичних норм і забезпечення кримінально-правових гарантій. У статті представлено комплексний аналіз законодавчої бази Азербайджану у сфері донорства та трансплантації органів, з особливим акцентом на кримінально-правові положення, що стосуються незаконної торгівлі органами та протиправної трансплантації. Розглянуто етапи еволюції національного законодавства – від Закону 1999 року про трансплантацію органів і (або) тканин людини до прийняття нового Закону про донорство та трансплантацію органів і (або) тканин людини у 2020 році. Особливу увагу приділено статтям Кримінального кодексу, які передбачають відповідальність за примусове вилучення органів, їх комерційний обіг, а також торгівлю людьми з метою вилучення органів.

У статті також проаналізовано правозастосовну практику на основі задокументованих випадків незаконної трансплантації та торгівлі органами в Азербайджані, зосереджуючи увагу на основних труднощах виявлення таких злочинів і притягнення винних до відповідальності. Проведено порівняльний аналіз відповідності національного законодавства міжнародним стандартам, зокрема Керівним принципам Всесвітньої організації охорони здоров'я щодо трансплантації клітин, тканин і органів людини та відповідним конвенціям Ради Європи. Детально розглянуто питання добровільної та інформованої згоди, абсолютної заборони торгівлі органами, суворості санкцій, а також механізмів міжнародної співпраці. У результаті дослідження встановлено, що хоча азербайджанське законодавство формально забороняє торгівлю органами та передбачає покарання відповідно до міжнародних стандартів, на практиці залишаються серйозні виклики, зокрема нестача кадеверного донорства та потреба в посиленні механізмів правозастосування.

**Ключові слова:** трансплантація органів, кримінальне право, торгівля органами, згода, міжнародні стандарти, незаконна трансплантація.

**Introduction. Problem statement.** Organ transplantation is a critical lifesaving medical procedure, but it also raises complex legal and ethical issues. In many countries, including Azerbaijan, the need to regulate organ donation and prevent abuses has led to detailed legislation and criminal law provisions. Globally, a shortage of organs for transplant has contributed to the rise of an illicit trade in human organs, prompting international concern. It is estimated that around 5–10 % of all organ transplants worldwide are conducted illegally, often involving vulnerable donors and transplant tourism across borders. This global context has spurred international organizations to establish norms for ethical transplantation practices. The World Health Organization (WHO) first issued Guiding Principles on Human Organ Transplantation [12] in 1991 (updated in 2010), affirming that organ donations should be obtained voluntarily without commercial payment and with informed consent. Likewise, international agreements such as the Council of Europe's conventions have sought to combat organ trafficking and harmonize legal standards. Azerbaijan has been developing its legal framework on organ transplantation since the late 1990s, in tandem with these international efforts. The country's first dedicated law on organ and tissue transplantation was adopted

in 1999, establishing the basic legal conditions for donation and transplant procedures. This was a period when post-Soviet states were forming new legal approaches, and Azerbaijan's law aimed to enable transplants while preventing organ commerce. The Criminal Code of the Republic of Azerbaijan (1999) was also tailored to include specific crimes related to organ transplantation, such as the illegal sale of human organs and coercion to obtain organs. In the following years, Azerbaijan joined global initiatives against human trafficking, which included provisions addressing trafficking for organ removal. Despite a clear legal prohibition on organ trading, Azerbaijan faced practical challenges in implementation. For more than two decades after the 1999 law, the country performed transplantations only from living donors, as cultural and systemic barriers impeded cadaveric (deceased donor) transplantation. This limitation not only restricted the growth of transplant programs but also meant that patients in need sometimes resorted to seeking organs abroad, creating a risk of involvement (wittingly or unwittingly) in black-market transplant arrangements. Notably, law enforcement authorities in Azerbaijan have investigated and broken up organ trafficking networks operating within or via the country, illustrating that the illicit trade is a real concern. These cases

underscore the importance of robust criminal law enforcement as well as effective preventive measures domestically. In light of recent legal reforms and international commitments by Azerbaijan – including a new 2020 law on organ donation and the signing of the Council of Europe Convention against Trafficking in Human Organs [8] in 2023 – it is timely to assess the current state of Azerbaijani law in this field. **The purpose of the article is** to provide a comprehensive analysis of the Azerbaijani legal framework governing organ donation and transplantation, with particular emphasis on the criminal law provisions addressing illegal organ trade and unlawful transplantation practices. This article provides a comprehensive analysis of organ transplantation under Azerbaijan's legislation, with a focus on criminal law aspects. It reviews the national legal framework governing lawful organ donation and transplantation, examines the criminalization of illegal organ removal and trade, evaluates enforcement practice, and considers the alignment of Azerbaijani law with international standards and comparative examples. The goal is to identify both the strengths of the legal regime and the challenges that remain in ensuring that organ transplantation in Azerbaijan is conducted ethically and that crimes such as organ trafficking are effectively prevented and punished.

**Literature Review.** The issue of legal regulation of organ transplantation and combating illegal organ trafficking has become increasingly relevant in the context of transnational crime, advances in biomedicine, and ethical challenges. Modern academic literature demonstrates growing interest in the protection of human rights, adherence to international standards, and criminal law mechanisms related to transplantology.

In particular, Parvina Ismayilova [1], in her study "International standards and domestic legislation on human organ donation and transplantation," examines the extent to which Azerbaijan's legislation complies with international standards, including the Council of Europe Convention against Trafficking in Human Organs and the WHO Guiding Principles. The author emphasizes not only the need for the implementation of legal norms but also the importance of developing organ donation systems, including creating conditions for artificial organ transplantation.

Vladyslava Vikhotska [2], in her publication "Trafficking in Human Organs and Tissues as a Form of Transnational Criminal Activity," highlights the connection between organ trafficking and international criminal networks. She draws attention to the low effectiveness of identifying such crimes due to evidentiary difficulties, lack of international coordination, and weak legal mechanisms for prevention and prosecution.

The national perspective is presented in the work of B.M. Holovkin [3] "Human Organ Trafficking: Ukrainian Realities," which analyzes the situation in Ukraine. The author points out isolated incidents involving the illegal circulation of fetal materials, as well as the involvement of Ukrainian citizens in international criminal schemes.

The legal and ethical dimension is addressed by D.S. Chornenka [4] in her study "Legal Regulation of Somatic Human Rights: Organ and Tissue Transplantation in Ukraine and Abroad." The author explores transplantation as a form of exercising somatic rights and stresses the importance of maintaining a balance between human dignity and access to life-saving medical procedures.

A broader criminological view is provided by V. D'ordyay [5] in "A Criminological View on Transnational Crime Through the Lens of Illegal Human Organ Trafficking," in which the author argues for the need for international cooperation, harmonization of criminal legislation, and the strengthening of prosecution mechanisms to effectively combat organ trafficking.

Overall, these studies reveal a common challenge for many countries—despite the formal existence of criminal prohibitions and sanctions in national law, the practical enforcement remains weak. Systemic issues such as inadequate detection

mechanisms, an underdeveloped culture of organ donation, and insufficient international cooperation continue to hinder the effectiveness of the legal framework in practice.

**Methodology.** The present research adopts a doctrinal and comparative legal methodology, grounded in the analysis of legislation, international instruments, and scholarly sources. Primary sources include Azerbaijan's domestic laws and regulations on organ transplantation (notably the 1999 and 2020 statutes) and relevant provisions of the Criminal Code. These are examined in light of their legislative history and context. A comparative approach is employed by examining international standards – such as WHO Guiding Principles and Council of Europe conventions – and the experiences of other jurisdictions to contextualize Azerbaijani law. The study also utilizes a formal-legal method to interpret statutory provisions and a comparative-legal method to evaluate differences and similarities with foreign laws and treaty requirements. Additionally, case reports and news of enforcement actions are reviewed to gauge how the laws are applied in practice. This mixed methodology enables a thorough understanding of both the letter of the law and its real-world implementation, and helps in formulating an informed analysis of the legal issues surrounding organ transplantation and organ trafficking in Azerbaijan.

**Presentation of the main material.** Azerbaijani Legal Framework for Organ Transplantation

**Legislative Evolution:** Azerbaijan's foundational legal act in the field of organ transplantation was the Law "On Transplantation of Human Organs and (or) Tissues," adopted on October 28, 1999 [10]. This law for the first time established rules for organ donation and transplant procedures in the country. Under this framework, organ transplantation was permitted only for therapeutic purposes – specifically to save a patient's life or restore health when other treatments are ineffective. The law also limited the permissible organs to a specific list approved by the Cabinet of Ministers. Originally, this list included vital organs and tissues such as the heart, lungs (and heart-lung complex), liver, kidneys, pancreas (or segments thereof), bone marrow, spleen, and corneas. Importantly, the 1999 law explicitly prohibited the purchase or sale of these human organs and tissues, mirroring ethical norms against organ commercialism; violation of this prohibition was made a criminal offense under the Criminal Code (Article 137).

Over time, the need to update the transplantation law became apparent due to medical advancements and gaps in the old law's implementation. In 2020, Azerbaijan enacted a new Law "On Donation and Transplantation of Human Organs and Tissues" [7], replacing the 1999 statute. President Ilham Aliyev signed this law in October 2020, and it entered into force in 2021. The 2020 law provides a modernized legal framework, defining the rights and obligations of donors, recipients, medical institutions, and personnel involved in organ transplantation. It introduced clearer procedures for both living and deceased donation and aimed to remove ambiguities that had hindered the practice of cadaveric transplants. For example, it established the creation of an ethics commission and a national registry for organ donors and patients in need, and expanded the list of transplantable organs (e.g. including composite transplants like heart-lung and parts of the pancreas). The reform was influenced by international best practices and the recognition that Azerbaijan's transplant system needed to become more self-sufficient and equitable.

**Consent and Donor Protection:** Azerbaijani legislation places great emphasis on informed consent as a prerequisite for any organ donation. Both the donor and the recipient (or their legal representatives, if the recipient is a minor or incapable) must provide written informed consent to the transplantation procedure. The law stipulates that consent must be free, specific, and informed – the donor and recipient are to be fully apprised of the possible medical complications and consequences of the transplant. The only narrow exception to the consent requirement is in life-threatening emergencies

for the recipient, where delaying a transplant to obtain formal consent could result in the recipient's death. In all other cases, proceeding without consent would be unlawful. Furthermore, confidentiality is protected: it is illegal to divulge information about the donor or transplantation without permission from both parties.

The law also builds in safeguards to ensure that any organ donation by a living person is truly voluntary. It explicitly prohibits organ removal from individuals who are in certain vulnerable categories or relationships of dependence. For instance, a person cannot be accepted as a living donor if they are under pressure or duress, or if they are materially, physically, or psychologically dependent on the recipient (such as an employee donating to an employer, or any scenario suggestive of coercion). Prisoners of war, incarcerated individuals, and persons with mental disabilities are categorically disqualified from being organ donors under the law, given the high risk that their consent could be compromised. Additionally, there are age restrictions: only adults (18 years and older) can be living organ donors (except in the case of bone marrow, where minors may donate with appropriate safeguards). These provisions align with ethical principles intended to prevent exploitation of vulnerable populations and to ensure that organ donation is based on the donor's altruistic choice.

To protect living donors, Azerbaijani law mandates thorough medical evaluation and post-operative care. Prior to donation, a potential donor must undergo extensive medical examinations to confirm the absence of health conditions that would make donation excessively risky. Genetic compatibility tests between the donor and recipient are required (except for organs like bone marrow) to improve transplant success and avoid unnecessary harm. The law also guarantees that after the donation, the donor is entitled to necessary treatment, rehabilitation, and medications free of charge. If a donor were to suffer any health impairment or disability as a result of the donation, they have the right to social protection, such as a disability pension. These measures reflect a "do no harm" principle aimed at minimizing the risks to living donors who selflessly undergo surgery to save another's life.

**Deceased Donor Transplantation:** One of the critical components of the legal framework – and its challenges – concerns cadaveric (deceased) organ donation. Under Azerbaijani law, organs from deceased persons can be used for transplantation provided certain conditions are met. The death of the donor must be established beyond doubt, including confirmation of brain death by a commission of physicians, and the transplant surgeon cannot participate in the death certification process. Consent for deceased donation can be given by the individual during their lifetime (for example, by an advance written consent or an opt-in designation) or, if the individual had not explicitly refused and is now deceased, by the next of kin. However, if the deceased person left a written objection to organ donation (an opt-out), that wish is binding and no organs can be taken. These rules are in line with international ethical norms, striking a balance between enabling post-mortem organ donation and respecting individual autonomy and family rights.

In practice, Azerbaijan historically struggled to implement deceased donor transplantation. Despite the legal allowance for cadaveric transplants, no organ procurement from deceased donors took place for more than 20 years after the adoption of the 1999 law. This was attributed by experts and even members of parliament to a lack of proper implementation mechanisms and perhaps public awareness. The absence of a structured organ donation system (such as a donor registry or an established organ procurement organization), combined with cultural and religious attitudes toward body integrity after death, resulted in continued reliance on living donors. The situation has started to change under the new 2020 law. As of January 1, 2022, Azerbaijan began putting into effect procedures for obtaining organs from deceased donors who experience brain death, with the consent of their relatives

as required by the law. A list of authorized medical facilities has been approved to handle organ recovery, and ethical commissions are being set up to oversee the process. Recognizing the sensitivity of the issue in Azerbaijani society, healthcare officials have even involved religious leaders in public discussions to help build trust and acceptance for cadaveric organ donation. This development marks a significant step toward a more robust transplantation system that could reduce pressure on living donors and help combat organ shortages that drive patients toward the black market.

In summary, Azerbaijan's legal framework provides a comprehensive basis for organ transplantation, emphasizing strict consent requirements, donor protections, and a ban on organ commercialism. It aligns with core international principles by prohibiting organ sales and ensuring that donations are voluntary and ethically sourced. However, as will be discussed later, having laws on the books is only part of the equation – enforcement and practical application are crucial for these provisions to be effective.

**Criminal Law Provisions and Penalties.** Azerbaijani criminal law fortifies the prohibitions in the transplantation law by penalizing activities that undermine voluntary and altruistic organ donation. The primary criminal provision is Article 137 of the Criminal Code of the Republic of Azerbaijan [6], which specifically addresses illegal dealings in human organs and tissues. Article 137 establishes several offenses: the purchase or sale of human organs or tissues, and coercion to withdraw organs or tissues for transplantation. Each carries its own range of penalties reflecting the severity and circumstances of the act.

**Illegal Purchase or Sale of Organs (Article 137.1):** The basic offense under Article 137 is the "illegal purchase and sale of human organs or tissues." This targets any transaction in which a human organ is treated as a commodity – in other words, organ trafficking in the sense of buying or selling organs for profit. Such conduct is criminalized regardless of whether the donor ostensibly "consents," because any consent given in exchange for monetary gain is considered invalid and exploitative under the law. The penalty for organ commercialism is a fine ranging from 2,000 to 5,000 Azerbaijani manats or corrective labor for up to two years, or imprisonment for up to three years; additionally, the convicted person can be barred from certain positions or activities for up to three years. While imprisonment is available, the inclusion of fines and non-custodial penalties signals that basic organ trading (absent aggravating factors) is treated as a serious but mid-level offense under Azerbaijani law. The punishment framework aims to deter organ brokers and those who would attempt to buy an organ from an impoverished donor, by making it unequivocally illegal.

**Coercion to Donate an Organ (Article 137.2 & 137.3):** Recognizing that organ removal can be obtained by force or exploitation, Article 137 also criminalizes compelling someone to give up an organ. Article 137.2 covers coercion to remove organs or tissues by means of violence or threat of violence. This would apply, for example, if a person is kidnapped or physically threatened to make them undergo an organ removal surgery. The prescribed punishment is imprisonment for up to four years, along with a possible ban on certain activities for up to three years. The use of violence elevates the wrongdoing, reflected in a higher penalty than a consensual illegal sale.

Article 137.3 further addresses coercion where the perpetrator exploits the victim's vulnerable position rather than using direct violence. It criminalizes the same act (organ removal without real consent) when committed by taking advantage of the victim's helpless state or financial or other dependence on the offender. For instance, if a doctor or caretaker leverages their authority over a patient, or if a person abuses a position of economic dominance to pressure someone into "donating" an organ, it would fall under this clause. The penalty for exploiting such a dependency to obtain an organ is imprison-



ment for 3 to 5 years, plus an optional three-year prohibition from certain roles. The law thus distinguishes between overt violent coercion and more subtle forms of coercion via vulnerability, but both are felonies carrying multi-year prison terms. By explicitly including non-violent coercion, Azerbaijani law acknowledges that consent can be negated not only by physical force but also by circumstances of inequality and duress.

It should be noted that these Article 137 offenses fill an important gap: they punish organ trafficking at the individual level (such as a broker or a person coercing a family member), even if the act does not amount to full-fledged human trafficking as defined in separate laws. Essentially, Article 137 targets the supply side of illegal organ trade (those who obtain organs illicitly, whether by purchase or force). However, the criminal code does not explicitly list a penalty for the recipient of an illegal organ transplant – that is, the person who receives a bought organ is not clearly criminalized by Article 137. The focus is on those who source or extract the organ. In practice, recipients could potentially face liability as accomplices or under general provisions if they actively partake in the illicit deal, but Azerbaijani law, like that of many countries, treads carefully when it comes to criminalizing desperate patients.

Beyond Article 137, Azerbaijan's Criminal Code addresses organ trafficking through the broader lens of human trafficking. In 2005, Azerbaijan amended its criminal laws in line with international anti-trafficking norms (after acceding to the UN Trafficking in Persons Protocol and Council of Europe Convention on Action against Trafficking in Human Beings). Article 144-1 of the Criminal Code was introduced to define and punish "human trafficking", which encompasses various forms of exploitation, including organ removal.

Trafficking in Persons for Organ Removal (Article 144-1): Article 144-1 defines human trafficking as the recruitment, transportation, transfer, harboring, or receipt of persons by illicit means (force, fraud, coercion, etc.) for the purpose of exploitation. The law makes clear that exploitation of a person includes, among other forms, the "unlawful taking of organs or tissues of the person". In other words, if someone is trafficked – tricked or forced – into giving up an organ, this is treated as a human trafficking crime in addition to the organ-specific crime. The base punishment for human trafficking under Article 144-1.1 is 5 to 10 years' imprisonment. However, there are numerous aggravated circumstances which raise the penalties.

One particularly relevant aggravation is if the trafficking is committed for the purpose of removal of the victim's organs or tissues. Article 144-1.2.9 provides that when human trafficking is carried out with the intent to remove organs, the punishment escalates to 8 to 12 years of imprisonment. This reflects the especially heinous nature of organ trafficking as a form of exploitation. If the trafficking for organ removal results in the victim's death or other grave consequences, the penalty can increase further to 10 to 15 years' imprisonment under Article 144-1.3. These sentences are quite severe, comparable to penalties for violent crimes and indicating that organ trafficking is seen as a particularly serious offense against personhood and human dignity. Additionally, Azerbaijani law stipulates that a victim's consent is irrelevant in human trafficking cases – thus, even if an impoverished person "agreed" to sell an organ due to desperation, that would not exonerate the trafficker.

The interplay between Article 137 and Article 144-1 is noteworthy. In essence, an illegal organ removal could be prosecuted under Article 137 if it's more of an isolated transaction or coercion, or under the trafficking provisions if it involves the broader actions of moving or recruiting a person for that purpose. For example, if a criminal group lures donors from abroad into Azerbaijan with false promises and removes their organs for transplant tourists, this would clearly fall under human trafficking (organized, exploitative, cross-border). Indeed, Azerbaijani authorities have faced such scenarios:

cases in the late 2000s and early 2010s involved foreigners and locals being recruited for kidney sales and operations performed clandestinely. In one infamous case connected to the "Medicus" clinic scandal, an international ring arranged transplants in Azerbaijan's capital, leading to arrests in 2010–2011 of several doctors and brokers linked to organ trafficking. Those prosecutions likely invoked the human trafficking statute given the organized nature and the exploitation of multiple victims.

In addition to these specific provisions, other general criminal laws can come into play. If an illegal transplant results in harm or death to the donor, charges such as causing grievous bodily harm or even homicide could theoretically be considered. Likewise, any medical professionals who participate in unauthorized organ removal face legal consequences. Azerbaijani law (outside the Criminal Code) provides administrative and professional sanctions (loss of medical license, etc.) for doctors involved in illicit transplants, and under the criminal law they could be charged as principals or accomplices to the above offenses. However, as of the time of writing, Azerbaijan has not established a separate crime for medical personnel who perform illegal organ transplants (apart from their liability under general provisions). This is an area that may evolve, especially following Azerbaijan's recent international commitments which urge states to criminalize activities like performing or facilitating an illicit organ transplant.

In summary, Azerbaijan's criminal law framework addresses organ transplantation abuses on multiple levels. Article 137 directly criminalizes organ trading and forced organ donation, focusing on individual acts of organ procurement by illicit means. Article 144-1 (trafficking in persons) covers organized or systematic exploitation for organ removal, carrying heavier penalties. Together, these provisions cover a range of scenarios from a one-off black-market kidney sale to a transnational organ trafficking scheme. The penalties are significant – up to 3 years for a basic organ sale, up to 5 years for coerced removal, and up to 12 or even 15 years for trafficking cases – reflecting the legislature's intent to strongly deter such crimes. The next section will consider how these laws have been applied in practice and what challenges remain for enforcement.

**Enforcement Practices.** The effectiveness of any legal provisions depends on their enforcement. In Azerbaijan, as in many countries, tackling crimes related to organ transplantation presents unique difficulties. These offenses are often covert, involve consenting participants (at least in illegal sales) or intimidated victims afraid to speak out, and can implicate medical professionals as well as criminal intermediaries. Nonetheless, Azerbaijan's law enforcement and security agencies have actively pursued cases of illegal organ procurement and transplantation, especially in the last decade, signaling a commitment to uphold the law.

**Investigation of Organ Trafficking Networks:** A notable enforcement success occurred in 2018, when the Azerbaijani State Security Service (SSS) uncovered a transnational organ trafficking ring. According to official reports, the SSS launched a criminal case into illegal acts of human organ trafficking that involved coercing individuals into organ removal in contravention of national law prohibiting the sale of human organs. The network was described as transnational, indicating that it spanned multiple countries. The investigation led to the arrest of at least one Azerbaijani citizen, Vahib Khudatov, who, along with foreign accomplices, was involved in recruiting people and arranging for the purchase and sale of their organs for transplantation abroad. Victims (the sellers of organs) were identified and placed under medical supervision after the authorities intervened. This case demonstrates Azerbaijani enforcement agencies applying the law – likely Articles 137 and/or 144-1 – to protect citizens from exploitation and to penalize those who orchestrate such schemes. It also underscores the cross-border nature of organ trafficking,

which necessitates international cooperation (the mention of foreign citizens implies coordination with other countries' authorities).

Earlier, in the 2010–2011 period, Azerbaijan was linked to the investigation of the notorious Medicus clinic organ trafficking case in Kosovo. Reports emerged that some organ transplant surgeries had been performed in Baku involving an organ trafficking syndicate run by foreign surgeons. Intelligence sources indicated that a Turkish doctor wanted by Interpol, who was central to the Medicus case, had been observed conducting illicit kidney transplants in Azerbaijan around 2008–2009. The Prosecutor General's Office of Azerbaijan, acting on a tip from Ukrainian police, found that donors from various countries were brought to Baku for illegal kidney removals, and several Ukrainian doctors were arrested for involvement. While details are scant (much of it came to light through international investigations), it appears Azerbaijan cooperated in the legal process by investigating local facilitators. The case highlighted that Azerbaijan, with its developing private healthcare sector, could be targeted by organ trafficking rings seeking venues for transplant surgeries. It likely spurred domestic authorities to be more vigilant. Indeed, the subsequent tightening of oversight on transplant activities and closer monitoring of hospitals can be partly attributed to lessons learned from such incidents.

**Law Enforcement Structure:** Azerbaijan has specialized units and legal mechanisms for combating human trafficking, which encompass organ trafficking. The Ministry of Internal Affairs operates a department for combating human trafficking, and a National Coordinator on trafficking issues issues annual reports. Although these efforts mostly focus on sex and labor trafficking, they also cover trafficking for organ removal as mandated by law. Under the 2005 Law on the Fight Against Trafficking in Persons, victims of trafficking (including those trafficked for organ removal) are entitled to protection and assistance. Shelters and rehabilitation services exist, though in practice identification of organ trafficking victims is rare compared to other forms of trafficking.

One challenge in enforcement is the low incidence (at least detected incidence) of purely domestic organ trafficking cases. Because Azerbaijan had no system for deceased donation until recently and a cultural reluctance to consider organ removal after death, there has not been a problem of, for example, organ theft from morgues or murders for organs within the country. The known cases involve willing sellers who are driven by poverty (thus falling under illegal organ sale or trafficking victim, depending on circumstances) and organized networks that move donors/recipients across borders. The law enforcement response therefore often requires coordination with other countries – sharing intelligence, tracking financial transactions, and extraditing suspects. Azerbaijan has worked with organizations like INTERPOL and with neighboring countries' police in such investigations. For instance, coordination with Ukraine was evident in the case involving Ukrainian donors, as mentioned above.

**Prosecution and Adjudication:** Information on prosecutions under Article 137 specifically is limited in open sources. It's likely that when organ sale arrangements between individuals are discovered, those cases might be quietly handled (and possibly resolved with plea agreements or lesser charges) unless they involve larger syndicates. However, Azerbaijan's judiciary has had at least a few trials related to organ trafficking. Media reports indicate that in some instances, persons who arranged for Azeri citizens to travel abroad (to countries where illicit transplants were available) have been charged under trafficking statutes. One publicized trial in the early 2010s involved a group that sent Azerbaijanis to Pakistan for kidney sales; those recruiters were prosecuted when the scheme was uncovered. The details of convictions and sentences in such cases are not always reported, but given the legal provisions, they faced substantial prison terms if convicted.

It is also worth noting that enforcement is not solely punitive; there have been preventive and administrative measures.

For example, the Ministry of Health in Azerbaijan maintains strict licensing requirements for transplant surgeries. Only certain hospitals with experienced surgeons are authorized to perform transplants, and any unauthorized transplant activity can lead to the revocation of medical licenses and potentially criminal investigation. After the Medicus-related revelations, Azerbaijan reportedly increased scrutiny on transplant programs and may have temporarily halted some activities until clear regulations were in place.

**Challenges in Enforcement:** Despite the above actions, significant challenges remain in effectively enforcing organ transplant laws:

**Undercover Nature of Crimes:** Illegal organ agreements are often made in secret between willing participants (the donor-seller and the recipient-buyer, mediated by brokers). Unless someone complains or a medical complication brings the victim to a hospital, these deals can go undetected. Law enforcement must rely on intelligence and tips, which are not always forthcoming. Societal stigma may deter victims from coming forward – a person who sold a kidney might be reluctant to admit it afterward, and a recipient who bought one will not volunteer that information to authorities.

**Proof and Legal Complexities:** In cases of alleged organ sales, proving the exchange of money and the lack of genuine consent can be challenging. Transactions might be informal or through third-parties. The physical evidence (the organ itself) is inside someone's body, so investigations rely on medical records and testimonies. Additionally, if the transplant occurred outside Azerbaijan, asserting jurisdiction or gathering evidence requires international legal assistance.

**Organized Networks:** High-level organ trafficking often involves corrupt medical personnel and forged documents (for example, falsifying donor relationships or consent forms). This requires sophisticated investigation techniques. Azerbaijan, by committing to international conventions, is improving its toolkit – including mutual legal assistance treaties and extradition agreements – but investigating a network that spans several countries is a resource-intensive process.

**Preventive Measures:** Enforcement isn't only about catching criminals after the fact; it's also about preventing vulnerable individuals from falling prey. This means raising public awareness that selling an organ is illegal and dangerous, and ensuring that patients are informed of legal and ethical ways to seek transplants. It also means reducing demand for black-market organs by expanding legitimate donation. Azerbaijan's push to develop deceased donor transplantation is partly an enforcement strategy as well – if patients can get a legal transplant at home, they are less likely to engage in transplant tourism that could involve illicit organs.

In conclusion, Azerbaijan's enforcement of organ transplant laws has seen both successes and difficulties. High-profile cases show that the authorities are capable of uncovering and prosecuting organ trafficking operations, especially with international cooperation. At the same time, the covert and transnational nature of these crimes means that some incidents may go undetected. Strengthening enforcement will depend on continued vigilance by investigative agencies, international collaboration, and the success of preventive healthcare strategies that undercut the illegal market.

#### Comparative and International Perspectives

Azerbaijan's legal approach to organ transplantation and organ trafficking can be better understood in light of international standards and the practices of other jurisdictions. Broadly speaking, Azerbaijan's laws align with the global consensus that organ commerce must be banned and that transplantation should occur within a regulated, ethical framework. However, comparing the specifics reveals areas for further development and harmonization, especially as Azerbaijan moves to ratify new international conventions.

**WHO Guiding Principles:** The World Health Organization's Guiding Principles on Human Cell, Tissue and Organ

Transplantation serve as a baseline for national laws. Key principles include: voluntary and unpaid donation of organs, accurate determination of death for deceased donation, equitable allocation of organs, and transparency and oversight in the transplant system. Azerbaijan's laws reflect these principles. The prohibition of organ purchase or sale in Azerbaijani law directly mirrors the WHO principle that organs should not be objects of commerce. The emphasis on informed consent and the protection of donors (e.g., banning donations from vulnerable persons) also hews closely to WHO's ethical guidelines. Additionally, WHO encourages countries to maximize deceased organ donation to meet patient needs and discourage transplant tourism; Azerbaijan's policy shift to enable cadaveric donation by 2022 is consistent with this advice, indicating an effort to fulfill the principle of "the preferred source of organs is deceased donors" noted by WHO and others.

One point of comparison is that some countries have adopted presumed consent (opt-out) systems to improve deceased donation rates, whereas Azerbaijan requires explicit consent (opt-in) or family consent after death. Culturally, an opt-in system may be more acceptable in Azerbaijan at present. The establishment of donor registries under the new law will be critical for capturing those willing to donate organs post-mortem.

Council of Europe Standards: Although Azerbaijan is not a member of the European Union, it is a member of the Council of Europe (CoE) and has engaged with its normative instruments. The CoE has two notable treaties in this realm: the Convention on Human Rights and Biomedicine (Oviedo Convention, 1997) with an Additional Protocol on Transplantation (2002), and the Convention against Trafficking in Human Organs (CETS No. 216, 2015). Azerbaijan has not signed the Oviedo Convention to date, but in October 2023 it signed the Convention against Trafficking in Human Organs, signaling an intention to adopt its standards.

The Council of Europe Convention against Trafficking in Human Organs (2015) is the first international treaty focused specifically on organ trafficking as distinct from human trafficking. It requires states to criminalize certain acts, including: the illicit removal of organs from living or deceased donors without valid consent or authorization, and any removal for financial gain; the use of such illicitly removed organs in transplantation; the solicitation or recruitment of organ donors or recipients for profit; and aiding or abetting these offenses. Essentially, it closes loopholes by targeting not only those who extract organs, but also intermediaries and medical staff who knowingly transplant illicit organs. The convention also calls for victim protection measures and fosters international cooperation in tracking organ trafficking networks.

Azerbaijan's existing laws already cover much of this ground. For example, removing an organ without the donor's consent is punishable (that would be coercion under Article 137 or trafficking under 144-1), and removal for financial gain is explicitly outlawed. However, the CoE convention may require some fine-tuning of national law. One area is criminalizing the use of illicit organs – i.e., holding doctors accountable if they perform a transplant knowing the organ was obtained illegally. Azerbaijan could introduce a provision making it a crime for a surgeon or hospital to conduct a transplant with an organ purchased or taken without consent. Another area is penalties for intermediaries such as brokers or those who advertise organ trading; currently, they would be captured by Article 137 as accomplices or conspirators, but the convention encourages explicit criminalization of solicitation and recruitment for organ trade. Upon ratification, Azerbaijan will likely conduct a legislative review to ensure full compliance. The positive aspect is that by signing the convention, Azerbaijan has shown commitment to the highest standards of combating organ trafficking and will benefit from cooperation mechanisms under that treaty.

UN and Other International Initiatives: Azerbaijan is a party to the United Nations Convention against Transnational Organized

Crime (UNTOC) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). While the UN Trafficking Protocol primarily addresses exploitation such as sexual or labor exploitation, it explicitly includes organ removal in the definition of exploitation. Azerbaijan's human trafficking law and Article 144-1 of the Criminal Code were modeled on this, as discussed. Azerbaijan also aligns with UN General Assembly resolutions condemning organ trafficking [11] and urging member states to take action. For instance, recent UN General Assembly resolutions have encouraged states to adopt measures similar to the CoE convention (even for states outside the CoE).

Comparative National Approaches: Looking at other countries, Azerbaijan's penalties for organ trade are broadly in line with those in the region. For example, Russia and Kazakhstan also criminalize the sale of organs with several years of imprisonment. European countries that have implemented the CoE convention, such as Spain or Norway, have a range of penalties often comparable for organ trafficking offenses (typically 3–6 years for basic offenses, higher for aggravating circumstances). One difference is that some countries impose higher maximum sentences for organ trading than Azerbaijan's Article 137 does. Azerbaijan's maximum of 3 years for the basic sale/purchase is on the lower end; some jurisdictions treat any organ trade as a very serious crime (e.g., punishable by up to 7 or 10 years). However, Azerbaijan addresses the worst cases under the trafficking article with up to 12–15 years, which is quite stringent. This two-tier structure (distinguishing organ trade versus organ trafficking) is somewhat unique; many countries either don't differentiate or they haven't explicitly criminalized a standalone organ sale outside of trafficking. Azerbaijan's approach could be seen as ensuring that even absent full trafficking, the act of buying or selling an organ is criminal – which is a strength in compliance with international norms.

Another comparative point is how countries regulate citizens seeking transplants abroad. Some nations have started to penalize "transplant tourism" – for instance, Israel and Taiwan passed laws to punish brokers and even discourage patients from obtaining organs illegally overseas, by making it illegal to organize or fund such travel. Azerbaijan currently does not have specific provisions about receiving an organ abroad illegally, aside from the general prohibitions and the ability to prosecute nationals for crimes committed extraterritorially in certain cases. If organ trafficking abroad is discovered (e.g., an Azerbaijani citizen sold a kidney in another country), Azerbaijani law could, in theory, apply if elements of trafficking occurred (like recruitment in Azerbaijan). Strengthening international collaboration is key; Azerbaijan's engagement with bodies like INTERPOL and cooperative agreements (for example, with Turkey or Iran, where some Azeri patients go for transplants) will bolster its comparative effectiveness.

International Cooperation: By aligning with international standards, Azerbaijan also gains access to cooperative frameworks. The newly signed CoE Convention on organ trafficking provides for information exchange and mutual assistance among parties in investigating organ trafficking offenses. It complements existing agreements on human trafficking. Cooperation was evidenced in cases like the one involving Ukraine and Kosovo – sharing of intelligence was crucial. Another example is the cooperation with Turkey and Israel in cases where citizens of those countries have been involved (Azerbaijan has worked with Turkish authorities when Turkish nationals were suspect surgeons, and with Israel when Israeli recipients or brokers were involved, as referenced indirectly in media on past cases).

In conclusion, from a comparative and international perspective, Azerbaijan is broadly consistent with global norms: organ sales are banned, consent is paramount, and organ trafficking is criminalized with significant penalties. The country's recent steps – updating domestic law and joining interna-



tional conventions – demonstrate a responsiveness to evolving standards. Going forward, the challenge will be to implement these standards effectively. Experiences from other countries show that strong laws must be accompanied by public education (to promote deceased donation and reduce black market demand) and international partnerships (since organ trafficking often crosses borders). Azerbaijan's commitment to these avenues will determine how well the lofty ideals in its laws translate into reality.

#### Challenges and Future Directions

While Azerbaijan has made substantial progress in establishing a legal framework aligned with international principles, several challenges persist in the area of organ transplantation and its regulation. Addressing these issues is critical for the legal regime to have its intended effect – saving lives through ethical transplants while preventing abuse and criminal activity. Here we outline the key challenges and consider potential future directions.

1. **Implementation of Deceased Donation:** Perhaps the most significant challenge is operationalizing a viable deceased donor program. As noted, for decades the absence of cadaveric organ transplants in Azerbaijan was a glaring gap. The new law and regulations are a step in the right direction, but cultural acceptance remains a hurdle. Many Azerbaijanis may be hesitant to consent to organ removal after death due to religious or traditional beliefs about the integrity of the body. This is not unique to Azerbaijan – many countries have faced similar reluctance. The involvement of religious authorities to endorse organ donation as a charitable act (*sadaqah*) could help shift perceptions, as could public campaigns sharing stories of lives saved by donors. From a legal standpoint, the challenge will be fine-tuning consent systems and ensuring that hospital staff are fully trained and prepared to identify potential donors and approach families appropriately. If the deceased donation program remains limited, patients will continue to seek organs from living donors or abroad, which in turn keeps the door open for illicit brokers. Thus, successfully implementing the cadaveric donation framework is both a medical and a law enforcement priority.

2. **Ensuring Enforcement and Detecting Violations:** As discussed in the enforcement section, detecting organ trade violations is inherently difficult. Azerbaijan will need to bolster inter-agency coordination – for instance, between healthcare regulators and law enforcement. One practical step could be auditing transplant practices: keeping detailed records of each transplant and periodically reviewing them for any irregularities (such as a suspicious pattern of “directed” donations to unrelated people, which might mask organ sales). Another measure is encouraging a reporting mechanism – whistleblowing by medical professionals who suspect organ trafficking. Physicians are often the first to notice a patient who has obtained a transplant under questionable circumstances. Establishing clear guidelines about reporting such cases (while respecting patient confidentiality to the extent possible) can aid enforcement. However, as highlighted in one bioethics commentary, doctors face ethical dilemmas in reporting patients who received illegal organs. Legal reform could be considered to give doctors protection or even a mandate to anonymously report organ trafficking incidents to authorities without breaching doctor-patient privilege.

3. **International Cooperation and Extradition:** Organ trafficking cases often involve multiple jurisdictions. Going forward, Azerbaijan should continue to deepen cooperation with destination and source countries for organ trafficking. Signing the CoE Convention against organ trafficking will facilitate this, but bilateral efforts are also useful. For example, if many Azeri citizens go to country X for transplants, Azerbaijan could work with country X to monitor those activities and vice versa. Joint investigations can be conducted for transnational syndicates. Extradition agreements are crucial to ensure that if a ringleader of an organ trafficking network operates from

abroad (or escapes abroad), they can be brought to justice. Azerbaijan has extradition treaties with several countries and is part of the Minsk Convention (CIS countries) for legal assistance. Utilizing these to prosecute organ trafficking is part of the challenge, as such requests require substantial evidence and legal groundwork.

4. **Legislative Gaps:** Although Azerbaijan's laws are robust, there is always room for refinement. One gap, as identified, is the liability of medical professionals who knowingly engage in illegal organ removal or transplantation. The CoE convention will likely prompt an amendment to criminalize illicit transplant operations explicitly. Furthermore, creating a legal obligation for healthcare institutions to verify that any organ used in a transplant was obtained in accordance with law could be considered. Another possible legislative development could be to criminalize the act of advertising organ transactions (for instance, someone posting an offer to sell a kidney online) – though such acts might already fall under the attempt or preparation of Article 137, making it explicit could enhance deterrence. Additionally, Azerbaijan might consider aligning the penalties of Article 137 with international practice by raising the maximum sentences if organ trading crimes increase. Currently, a broker might view a 2,000–5,000 manat fine or even a short jail term as a risk worth taking given the huge sums of money involved in organ trafficking. Increasing fines and imprisonment terms for organ sale/purchase could strengthen deterrence, although that must be balanced against proportionality for less culpable offenders.

5. **Victim Protection and Rehabilitation:** In organ trafficking scenarios, the sellers of organs are often left with health problems and little support. Azerbaijan's trafficking victim support system should integrate services for organ trafficking victims. This includes medical follow-up (ensuring those who parted with an organ get necessary care) and possibly financial or social assistance since many were driven by economic desperation. If organ sellers know they can seek help without punishment, they may be more willing to come forward, which in turn aids law enforcement. On the other side, recipients of illicit organs are also in a vulnerable position – medically and legally. While they are not labeled “victims” in the same sense, they have been part of a crime (even if motivated by illness). A compassionate approach might focus on educating such patients rather than punishing them, reserving criminal penalties for the organizers.

6. **Sustainable Organ Donation System:** In the long term, the best antidote to organ trafficking is a well-functioning, self-sufficient organ donation and transplant system domestically. Azerbaijan's future efforts could include joining international organ exchange organizations (for example, the Eurotransplant network) if feasible, or developing a robust national registry that optimizes use of available organs. The new law's provision for a donor/recipient registry is promising. Ensuring transparency and public trust in that system will be key – any scandal or corruption in organ allocation could severely undermine public willingness to donate. The law already mandates equitable allocation based on medical criteria, which aligns with WHO's principle of justice in transplantation. Vigilant oversight is needed to maintain fairness. If patients trust the system, fewer will resort to underground means.

7. **Ongoing Training and Education:** Finally, continuous training for law enforcement, prosecutors, and judges on the nuances of organ trafficking cases is important. These cases can be complex and technical, involving medical facts and international law. Building expertise within the justice system will result in more effective prosecutions. Similarly, educating healthcare providers about the legal boundaries and their roles (for example, how to handle offers of payment for organs, or what to do if they suspect a patient was trafficked) will help prevent unintentional complicity. Many transplant surgeons in Azerbaijan likely welcome the clearer rules, as it protects the integrity of their profession and the trust of patients. In

conclusion, Azerbaijan faces a pivotal moment where the laws are largely in place and the focus must shift to diligent implementation and refinement. Challenges like cultural attitudes, detecting clandestine crimes, and coordinating across borders are not easily solved, but with sustained commitment they can be mitigated. The trajectory is positive: the government's willingness to update laws and engage internationally suggests a recognition that safe and ethical organ transplantation is a national priority. By continuing to strengthen its systems and addressing the above challenges, Azerbaijan can better assure that organ transplantation serves the public good without becoming tainted by criminal exploitation.

**Conclusions.** Azerbaijan's experience with organ transplantation law illustrates the delicate balance between enabling medical progress and guarding against human exploitation. Over the past two decades, the country has developed a comprehensive legal framework that prohibits the commercialization of human organs and seeks to ensure that all organ transplants occur with free and informed consent. The Criminal Code provisions, particularly Article 137 on illegal organ transactions and Article 144-1 on human trafficking for organ removal, underscore Azerbaijan's resolve to treat violations not merely as ethical lapses but as serious crimes. These laws are consistent with international standards set by the WHO and the Council of Europe, affirming Azerbaijan's integration into the global consensus that organ trade must be eradicated.

The analysis of Azerbaijani legislation reveals several key points. First, the legal framework strongly upholds the principle of altruism in organ donation – making it unlawful to buy or sell organs and punishing those who attempt to do so. Second, the law provides for rigorous consent and donor protection measures, reflecting a human-rights-oriented approach to transplantation. Third, Azerbaijan's recent reforms, including the 2020 transplantation law and the 2023 signing of the CoE Convention, demonstrate a commitment to improving its transplantation system and closing any loopholes that traffickers might exploit.

Enforcement practices have shown both successes and ongoing challenges. Azerbaijani authorities have actively collaborated internationally to crack down on organ trafficking

rings, and they have used their legal tools to prosecute offenders. However, the clandestine nature of illegal organ removal means constant vigilance is required. The lack of deceased donor transplants until recently was a limiting factor that inadvertently sustained organ scarcity and opportunities for illicit brokers. With new policies to promote cadaveric donation now in motion, there is hope that the dependency on living unrelated donors (and thus the black market) will diminish.

In a comparative perspective, Azerbaijan's legal stance is on par with many advanced legal systems: it outlaws organ commercialism, includes organ trafficking in its anti-trafficking laws, and is aligning with international treaties that demand criminalization of all aspects of organ trafficking. One can observe that as Azerbaijan's laws converge with European standards, the country is better positioned to cooperate in transnational investigations and benefit from shared strategies to combat organ trafficking.

The research highlights that a solid legal foundation, while necessary, is not by itself sufficient. Public awareness, ethical medical practice, and diligent law enforcement are the pillars that give life to the law's intent. Azerbaijan will need to continue training professionals and informing citizens about the dangers and illegality of organ trade. It will also need to monitor the application of its laws, ensuring that those who violate them are held accountable and that victims are protected and assisted.

In conclusion, Azerbaijan has built a framework that, if effectively implemented, can safeguard the dignity and rights of organ donors and recipients alike. The country's legislation on organ transplantation – buttressed by criminal law provisions against illicit organ removal and trade – provides a strong example of how national law can reflect and reinforce international norms. The ongoing efforts to improve enforcement and encourage lawful organ donation will determine the ultimate success of this framework. With continued dedication to both the spirit and letter of the law, Azerbaijan can advance the noble goal of saving lives through transplantation without compromising the fundamental values of human rights and justice.

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