

DERLEME MAKALESİ / REVIEW ARTICLE

**THE DARK SIDE OF MEDICINE: CONCEPTUAL
REVIEW ON ORGAN TRAFFICKING¹**

**TIBBIN KARANLIK YÜZÜ:
ORGAN KAÇAKÇILIĞI ÜZERİNE KAVRAMSAL İNCELEME**

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ABSTRACT

Within the scope of the study, organ trafficking, which is seen as an easy way of making money by individuals in the world and in Turkey this study aimed to reveal the dark side with the applications occurring in the medical sector both in Turkey and in the world. The dark side of organ trafficking, which individuals living in poor countries see as an additional source of income and an easy way to earn money, the dark side of applications in the medical sector both Turkey and in the world will be revealed. Each country should act transparently in organ transplantation practices that are accountable to health authorities and whose mandate is derived from national legislation.

Keywords: Organ Trafficking, Unethical Behaviors, Organ Trade, The Dark Side of Medicine.

ÖZET

Çalışma kapsamında dünyada ve Türkiye’de bireyler tarafından kolay para kazanma yolu olarak görülen veya fakir ülkelerde yaşayan bireylerin ekstra bir gelir kapısı olarak gördüğü organ kaçakçılığının, hem Türkiye hem de dünyada tıp sektöründe meydana gelen uygulamalarla karanlık yüzünün ortaya konulması amaçlanmıştır. Ayrıca organ nakli, organ temin yolları, organ naklinin hukuki yönü, organ nakli turizmi, organ kaçakçılığı teorik bir çerçevede ele alınarak; organ kaçakçılığının Türkiye ve dünyada rastlanılan örneklerine yer verilmiştir. Yoksul ülkelerde yaşayan bireylerin ek gelir kaynağı ve kolay para kazanma yolu olarak gördükleri organ kaçakçılığının karanlık yüzü, hem Türkiye’de hem de dünyadaki uygulamaları ile gün yüzüne çıkarılmıştır. Her ülke, sağlık otoritelerine karşı sorumlu olan ve yetkisi ulusal mevzuattan alınan organ nakli uygulamalarında şeffaf davranmalıdır.

Anahtar Kelimeler: Organ Kaçakçılığı, Etik Olmayan Davranışlar, Organ Ticareti, Tıbbın Karanlık Yüzü.

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1. INTRODUCTION

As a result of the damage of the organs in the human body by internal and external elements and their inability to perform their duties as a result, various treatment methods are tried, and transplantation may be required when the organs cannot be repaired. Although the history of organ transplantation goes back to many years, it manifests itself as a treatment method that has been developed scientifically in world history since the 1880s (Schlich, 2010, s. 3; Altınanhtar, 2016, s. 11; Sağlık Bakanlığı, 2021).

Organ transplantation has an extremely important place in human life and health. Failure to transplant organs that have lost their functionality and cannot be repaired also causes many negative effects on the quality of life of people. Organ transfers from living or dead donors are required for treatment of individuals. The prominent problem at this point is the shortage of organs that manifests itself all over the world. There are many reasons underlying the lack of donors experienced. One of them is that the public is unconscious about organ donation.

This lack of donors brings along many problems. Organ scarcity problem causes organ trade to occur and organs to create a market for themselves like a commercial good. Parallel to the increase in the number of patients awaiting organ transplantation in Turkey and the world, there is an increase in organ-tissue trade. Although legal regulations take place in Turkey and the world in these matters, it is still seen that organ purchases and sales are made illegally. Organ trafficking has also emerged among the prominent illegal ways in terms of organ procurement.

Organ trafficking, which constitutes the dark side of medicine, will be discussed within the scope of the study. Although the main purpose of organ transplantation is to save human life, improve health and quality of life, it is thought to be beneficial to examine the dark side of the issue. In this context, the examples of organ transplantation, organ procurement ways, legal aspects of organ transplantation, organ tourism and organ trafficking in Turkey and the world were discussed within the framework of the study.

2. ORGAN TRANSPLANTATION

Although the foundations of organ transplantation were laid in the course of history, organ transplantation is an issue that came to the agenda in the 1880s in the scientific World (Schlich, 2010: 3). In Turkey, the history of organ transplantation dates back to 1962 (Yıldız, 2016: 3). Today, it is a known fact that organs can lose their functionality and cause internal diseases and this can be treated by transplantation. Between the years of 1880-1930, this reality of today found an echo in the scientific world and organ transplantation studies started. Organ transplantation was not a treatment method that was put forward by a single scientist at once, but it has shown itself as a method developed by many physicians and scientists over the years, and its application methods have been transformed (Schlich, 2010, s. 3-4).

Organ transplantation refers to the situation where the organs in the human body are damaged by internal and external factors and when this damage cannot be repaired, the organ loses its functionality and the organ is replaced (Altınanhtar, 2016, s. 11). Organ transplant defined as *"It is the transplantation of an organ that cannot perform its function in the body, instead of a healthy organ taken from a living donor or a dead organ that will undertake the same task"* by Ministry of Health (Sağlık Bakanlığı, 2021).

Organ transplantation is of vital importance for humans. Through organ transplantation, many people with fatal diseases have the opportunity to regain their health to a great extent (Adams

III, et al., 1999, s. 147). Transplantation of kidney, liver, pancreas and heart-like organs contributed to the health improvement of many recipients (Liverman and Childress, 2006, s. 1).

There are basically two models for organ procurement. These are organ donation (altruism) and organ sales. Although organ donation and organ sales stand apart conceptually, there are points where they intertwine especially at the application point (such as organ exchange) (Yaman and Çağatay, 2020: 377). As can be seen in the "Law about Organ and Tissue Removal, Storage, Vaccination and Transplantation" procurement of organs (and tissues) can be provided within the framework of the law determined from living persons and dead (T.C. Ministry of Health, 1979).

Before discussing organ donation, it is useful to talk about the organ sales model in general. Although the organ sales are carried out in different ways, the most striking form is; organ market / organ exchange where the prices of organs are determined by free market conditions like other consumer goods and where the state is not in the position of buyer or regulator. Iran is the only country where organ sales are legal, and although there are ethical discussions, people who sell their kidneys are paid by both the state and the patient (Yaman and Çağatay, 2020, s. 380-381).

Organ donation, which is considered more favorably in terms of ethics; it has been defined as "It is the permission of a person to use his / her tissues and organs for the treatment of other patients after his / her free will while he / she ends his / her medical life and certify this" by the Ministry of Health (Sağlık Bakanlığı, 2021). Although organ donation rates have increased over the years, the list of people waiting for organs is also increasing day by day and the gap between waiting lists and donors is widening (Liverman and Childress, 2006, s. 1-2). Although these differences and rates vary from country to country, donor deficiency is an important issue that manifests itself all over the world. At this point, various strategies are developed to increase donor rates. The ethical and legal dimensions of these strategies are also important (Rudge et al., 2012, s. i48).

The most striking problem in organ procurement is the scarcity of cadaveric organs (Adams III, et al., 1999, s. 147). Organ scarcity is an extremely limiting factor in transplantation. For this reason, different opinions are raised about organ procurement and allocation. Pressures are manifested in ensuring fair access to organ procurement and allocation, achieving the best results, and ensuring efficiency (Olbrisch, et al., 2002, s. 771). The fact that organ transplantation is in such a vital position and the organ scarcity experienced has also led to organ transplant tourism. Organ transplant tourism and organ trade issues will be discussed in the following parts of the study.

2.1. Legal Aspect of Organ Transplantation

As mentioned, organ transplantation has an extremely important position on human life and health, so it is also important to consider the legal aspect of the issue. Under the title, information on the subject will be given in general terms.

The fact that transfers have the purpose of saving people's lives also creates the principle of compliance with the law. At this point, the consent of the donor is a condition, and organ transplants in the absence of consent are considered as an interference with the donor's body integrity and personality rights and constitute a crime (Süren, 2007, s. 174).

There are legal regulations on organ (and tissue) transplantation at national and international levels. As stated by Gökçen (2000, s. 63) in his study, the law on organ transplantation was

implemented in Luxembourg and Austria in 1982, in Belgium and New Brunswick in 1986, in Manitoba in Canada in 1987, in Greece and England in 1989. in 1992, in the Russian Federation and Prince Edward Island, and in 1993 in Italy.

Regarding organ (and tissue) transplantation, legal regulations were included in Turkey before many other countries (Gökçen and Balcı, 2013, s. 112). In 1979, the Law No. 2238 on "Law about Organ and Tissue and Transplantation" was enacted. "*Organ and tissue removal, storage, vaccination and transplantation for treatment, diagnosis and scientific purposes are subject to the provisions of this law.*" (T.C. Ministry of Health, 1979: 5153). As can be seen from the work of Bayraktar (1979) in which he expressed his thoughts on the law enacted in 1979; in order to meet the emerging needs, some of the substances of the law were changed and the law was amended by the law no. 2594, dated 21.1.1982 (T.C. Ministry of Health, 1979, s. 5157; Gökçen and Balcı, 2013, s. 112). With the changes in the substances of the law and the added substances, the law took its final form with no. 7151 dated 5.12.2018 (T.C. Ministry of Health, 1979).

As mentioned, situations against organ transplantation based on the law are considered as "Organ or Tissue Trade Crime" in the Turkish Penal Code (TBMM 2004).

(1) Any person who takes an organ from a person without legally valid consent is punished with imprisonment from five to nine years. If the subject of the crime is tissue, a prison sentence of two to five years is imposed.

(2) Anyone who unlawfully takes an organ or tissue from the dead is punished with imprisonment up to one year.

(3) Any person who buys, sells or mediates the sale of organs or tissues is imposed the penalties specified in the first paragraph.

(4) In the event that the crimes defined in the first and third paragraphs are committed within the framework of the activities of an organization, a prison sentence from eight to fifteen years and a judicial fine of up to ten thousand days shall be imposed.

(5) Any person who preserves, transfers or vacaniate an organ or tissue obtained illegally is punished with imprisonment from two to five years.

(6) Anyone who advertises or publishes an advertisement for the procurement of organs or tissues in return for a certain benefit is sentenced to imprisonment up to one year.

(7) In the event that the crimes defined in this article are committed within the framework of the activities of a legal person, security precautions specific to these are imposed on the legal person.

(8) In case the victim dies as a result of the commission of the crime defined in the first paragraph, the provisions regarding the crime of deliberate killing are applied.

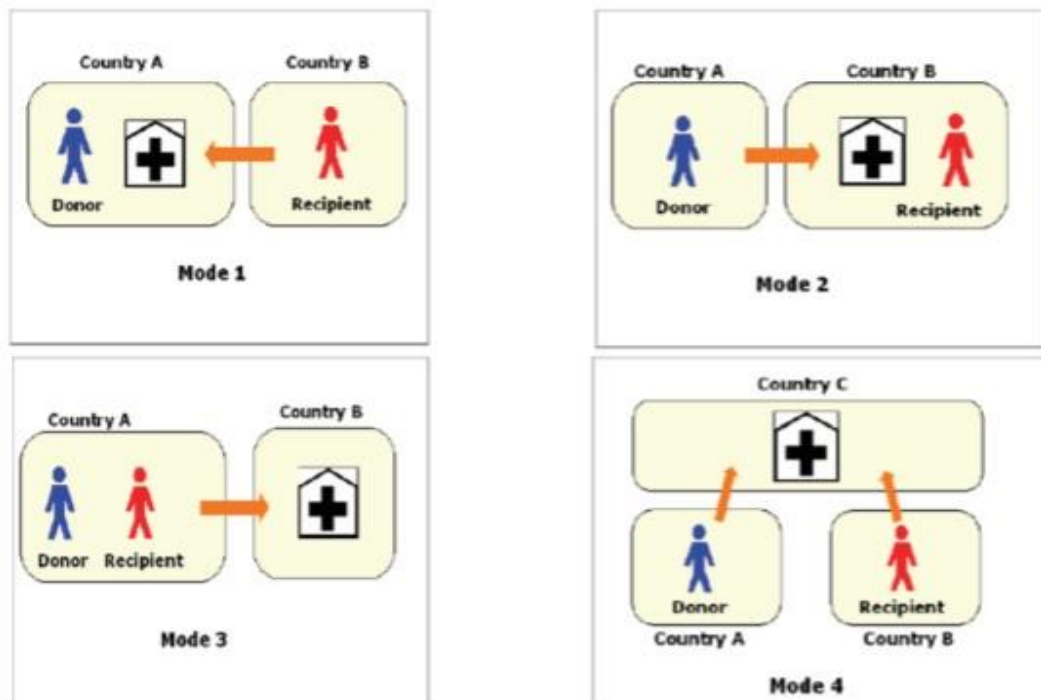
As stated, organ transplants are subject to some legal regulations and in cases contrary to these regulations, the mentioned penal sanctions are applied.

2.2. Organ Transplant Tourism / Organ Trade

Organ transplant is an application that saves life and quality of life for patients with recent organ-insufficiency. Despite efforts to increase the awareness of the local people and increasing the number of organ donations, the organ donation does not meet the demonstration. Therefore the concept of organ transplant tourism has emerged (Schiano and Rhodes 2013, s.

113). Organ transplant tourism or transplanted tourism is defined as the world's health organization "to travel to the country's boundaries in order to transfer the organs. For example, buyers are to travel from Moldova to America or Nepal to India (Shimazono, 2007). Organ transplanted tourism; Organ trade, organ sales, organ collection, organ trafficking leads to the emergence of terms. Organ trade; Organ transplant tourism (traveling through the organism to purchase organizations), organ sales (commercial location exchange of an organ), organ collection (forced by an organ of an organ), organ trafficking (human trafficking of an organ), organ trafficking (human trafficking to take organs) consists of various applications. However, organ trade is mostly known as organ trafficking. Evidence-based investigations reveal that organ trade is better characterized by organ transplant tourism and organ sales (Columb, 2015, s. 21). The following figure will be better understood in how organ trade or organ trafficking is made.

Figure 1: International Organ Trade and Organ Trafficking Models



Source: Budiani-Saberi and Delmonico, 2008: 926

As the international organ trade and organ trafficking is seen in the fourth model, a donor from the country A is carried out from the country of C. There is a donor in Model 2 to the country of the buyer and the transport center of the transport center. In Model 1, a recipient is located in the country of the donor and the transmission center to be opposed to Model 3. In Model 3, it is seen that the donor and receiver in the country in the most simple form is increasingly transplanted to the B country.

The organ transplant tourism is the first to wait for those who do not want to wait in very advanced countries with a long waiting list, and the second is that organ purchases and sales are not forbidden to make money in poor countries (Brumand and Said, 2017, s. 49). As the demand for organ transplant tourism has started to increase, illegal crime elements such as

human trafficking, organ sales of organ sales advertisements, organ sales ads (Ambagtsheer et al., 2013, s. 3; Bagheri, 2016, s. 239).

2.3. Organ Trafficking

The organ trafficking has begun to become more pronounced in 21 century with the results of globalization (Budiani, 2008, s. 48). Organ trafficking can be carried out through living or dead people. The basis of organ trafficking is the provision of transfer control over potential donors by means of threats, fraud, coercion or by taking advantage of the difficult situation of people. In organ trafficking, organs are procured or transplanted for the purpose of using organs by giving money, buying or obtaining benefits (www.uncjin.org, aktaran www.tonv.org.tr). Although the donor pool expansion strategies all over the world is continuing organ shortage. Under these conditions, the helpless patients are developing various strategies to obtain organ other than their own countries. The increasing the value of the bodies is organized by the organ of the profitability and the organization of legally demand cannot be met (Ambagtsheer et al., 2013, s. 3). Due to the increase in organ trade and the inability to respond adequately to the global demand for organs, a declaration called "Istanbul Declaration on Organ Trafficking and Transplant Tourism", accepted by more than 110 professional and official organizations, was put into effect in 2008 in order to clarify organ transplantation standards. In particular, it is aimed to prohibit unethical practices of all countries and to reveal a transparent and regulatory system with specific standards in this declaration that draws attention to ethical issues in organ transplantation and donation (www.declarationofistanbul.org). With this declaration, although it is tried to prevent organ trafficking, the scope of organ trafficking, which has started to become evident but is difficult to implement and measure; It is also directly related to situations such as human trafficking and organ transplantation. Human trafficking is a continuous increasing international trade earned by billions of dollars. By the United Nations, "human trafficking" force use, abduction, force, fraud, deceit, threat to abuse, transport, transportation, hosting, abuse of others, sexual exploitation, service slavery and bondage forms of these people described as (BM, 2007). Efrat (2016, s. 35); Human trafficking has identified organ trafficking, prostitution and labor without consent. Yılmaz (2017, s. 950), TCK although organ trade crimes are different with human trafficking. m. 80 has expressed organ trade as a sub-branch of human trafficking because the difference in the tissue concept is not included in the concept of tissue (TBMM, 2004). This situation has been revealed by the World Health Organization (WHO, 2007) in 2007 by 5 to 10% of the transplanted organs from organ trafficking. 12,000 illegal organ transplants from human trafficking worldwide are estimated to be obtained approximately 1.5 billion dollars each year (www.gfintegrity.org). In addition, in 2011, the global financial integrity institute in Washington estimates that the illegal organ trade is achieved between 600 million and 1.2 billion dollars. The most commonly reported organ trade is a vivid renal trade (Shimazono, 2007). In the renal trade, global capital is in a stream to whites from the niggers, the poor towards rich (Schepper- Hughes, 2003, s. 1645). The fact that the figures are so great, organ trade is even more attractive for vulnerable people due to the weakness of strength.

Unfortunately, immigrants are one of the most vulnerable communities about organ trafficking. Most migrants are facing poor socio-economic and political conditions in their own countries (WHO). However, immigrants may be exposed to the exploitation of smugglers and opportunists. It is a global situation of organ trafficking health and human rights, especially for millions of people in poor countries, especially in poor countries, especially in poor countries. For this, it is the essential to address and examine organ trafficking from

globally. In the next section of the organ trafficking in the world, which is seen in Turkey, will be included in detail in the next section.

2.4. Organ Trafficking in Turkey and The Earth

In Turkey and the Earth is an increase in organ-tissue trade in parallel to the increase in the number of patients waiting for organ transplantation. According to the Organ Donation statistics described by the Government of the United States, more than 107,000 people were queued for organ transplants. Although 39,000 people in 2020 is made of organ transplantation every nine minutes is added to the standby order. In addition, 17 people per day lose their life while waiting for organ transplant (www.organdonor.gov). Even for a country, it prepares the ground to increase the demand for organ trade / organ trafficking.

The human trafficking towards developed countries from less developed or developing countries causes organ trafficking to increase (Bozdemir, 2020, s. 368). Despite legal regulations or prohibitions determined by the countries, organ trafficking examples are found. In 2007, the World Health Organization has described countries such as China, Philippines, Pakistan, Egypt and Colombia as countries selling organ (Shimazono, 2007). In South America, Asia, Africa, Eastern European countries, people are in line to be the donor (Danovitch et al., 2013).

When this case, especially in Turkey and the Earth organ trafficking examples are found. It was noted that many people who are poorly poor in Pakistan, who sold the kidneys to make a better life of money. Mohammed to express the kidneys of more than 20 relatives without noticing the kidneys, "If someone coming to me to come and sell the kidney to \$ 10,000, even if it is unethical, wrong, even if it is illegal, I find the way to buy that kidney to save the life of my daughter" (CNN, 2004). The individuals can also apply to unethical methods in the case of health.

There has been a report by the BBC about organ trafficking from African immigrants and refugees trying to collect money from Egypt to go to Europe. In this report, where one of the organ trafficking members was interviewed, it was pointed out that the donors were paid after the operation and the organ trafficking performs 20-30 illegal kidney transplants every week (BBC, 2016). As can be understood from this news, organ trafficking continues to become widespread, especially among disadvantaged groups. In a news published by the Turkish Medical Association; In 1998, a Moldovan citizen came to Istanbul to sell his kidney. Salomon, who decided to sell her kidney after being influenced by a friend who had sold her kidney before, stayed in Istanbul for a month for 2800 Euros and sold her kidney (TTB, 2004). Journalist Carney stated that people who cannot find an organ legally resort to illegal ways. Drawing attention to the use of both powerless and refugee people to provide these organs. In 2004 Carney said it was revealed that post-Tsunami organ traffickers offered money to India in exchange for selling the kidneys of many desperate people, and the supplied organs were generally sold to foreigners (BBC, 2016). In Egypt, too, pressures are being made to sell their kidneys in order to live a better life, using the desperation of Sudanese and Eritrean refugees (BBC, 2017). Again, the organs of some refugees living in difficult conditions are taken to hospitals where they are taken with health checks or false statements (avim.org.tr).

In 2012, an American citizen of Israeli origin who made the rich people who did not want to wait in line for a new kidney in the USA to come to America by introducing the poor people who migrated from Israel or Eastern European countries as their cousins, illegally sold the kidneys that they bought for \$ 25,000 from poor people for \$ 120-160,000 (DW, 2012a). Also in 2012, a physician at the University of Gottingen in Germany manipulated the patient data,

showing the patients' condition worse and unethically seized the organs of these patients. On the other hand, the physician in question was accused of illegally selling these organs to patients awaiting organ transplantation for high fees (DW, 2012b). In 2016, it was stated that the kidneys of patients invited to a private hospital in the capital of India to operate on people in need were taken and therefore five people were arrested from the hospital (BBC, 2007). As can be understood from such examples; Organ trafficking members who engage in organ trafficking and unethical behavior can also be physicians, nurses and health personnel working at the hospital.

In 2017, the Kriminologist from the Netherlands Erasmus University has discussed a person with an organ trafficking. The organ trafficker who does not feel the need to hide the face in the face of the camera, has purchased at least thirty people's kidneys, and these people stated that they went to Germany, France, The Netherlands, England, Ireland, Sweden and Norway (BBC, 2020).

A refugee who fled the civil war in Syria and came to Turkey and lived in Hatay in 2019 wanted to sell his kidney due to financial difficulties. A physician who advertised on the social media site to sell his kidney for 10,000 dollars and gave consultancy for organ transplantation for 8,000 euros was arrested (onedio.com). According to a report published in China in November 2020, six people, including several doctors, who illegally harvested organs, were imprisoned. Liver and kidneys were taken from 11 people in a hospital in Anhui province in 2017-2018. Persons in the hospital deceived the families of the deceased into believing that they were donating official organs, and the organs were sold to persons or hospitals with whom the trafficking gang members had secretly contacted (BBC, 2020). According to a report published in Turkey in February 2020, it was stated that while 40,000 dollars were planned to be paid to the donor for the sale of kidneys, the organ gang demanded 55,000 Euros and illegal organs were sold like cheese and bread (www.sozcu.com.tr).

As the examples of the given examples, the perpetrators of organ trafficking have social legitimacy. The administrative staff in hospitals commercial transplantation are not seen as professional criminals, which are unethical, illegal exploitation of the insurers and transplanted patients who pay for commercial transplants (EFRAT, 2013). The reasons caused by this situation continue to be made of organ trafficking due to the fact that legal gaps are not filled in and inadequate sanctions in countries. As the examples given in the scope of the study, the physicians in very few countries such as Germany and China are illegally sentenced to the aggregate of organ transplants. However, it is still thought that these situations are not deterred and these physicians, administrative personnel, insurance companies in the duty of insurance companies (Shimazono, 2007; Budiani-Saberi and Delmonico 2008).

3. CONCLUSION

In the study, it has been revealed how important organ transplantation is for human life. In this context, it has been stated that organ transplantation is necessary at the point where other treatment methods are insufficient for people whose organs are damaged to regain their health and this situation affects the quality of life of the people.

Organ donation has an important place in organ procurement. Although the levels of organ donation are increasing day by day, the number of people waiting for organs tends to increase gradually. It is worth mentioning here that; it is important to provide information on organ donation and to make lightings especially for people who refrain from donating their organs considering this in religious aspects. Looking at the example of Turkey; Religious Affairs

Presidency, High Board of Religious Affairs has statements on this subject. "*Religious Affairs Presidency, High Board of Religious Affairs has defined organ donation as the greatest aid that a person can make to human.*" (Sağlık Bakanlığı, 2021). It is thought that such information positively affects the perspective on donation.

As mentioned in the study; The organ shortage problem, which manifested itself in Turkey and in the world, has brought with it different ways in organ procurement. Although organ transplantation shows us the bright side of medicine as it has many positive effects for human life, the shortage of organs has also caused the dark side of medicine to be born. Difficulties in obtaining organ donor finding difficulty, which increases the sensitivity of the subject and experienced organ shortage has paved the society to want to have fair and equal rights regarding the issue. At this point, legal arrangements have been made regarding the issue both in Turkey and in the world. Unfortunately, although there are legal regulations, the provision of organs through illegal means is also on the agenda. The purchase and sale of organs like commercial goods, organ trade and organ trafficking cause serious problems. The examples given within the framework of the study also reveal the gravity of this situation. It is seen that those who are experiencing economic difficulties sell their organs by disregarding their lives. Organ trafficking, which is the dark side of medicine; The negative effects especially on vulnerable groups were also seen within the scope of the study. In addition, the presence of physicians, nurses and other healthcare professionals within the members of organ trafficking gangs is thought-provoking. For this reason, some measures should be taken in order to prevent such negative situations and to be able to trust the healthcare professionals and the health system.

The suggestions that can be given to prevent organ trafficking are as follows (Shimazono, 2007; Budiani-Saberi and Delmonico, 2008; BM, 2007):

- Each country should develop a legal framework for organ donation, according to its national competencies in organ transplantation.
- Human trafficking, which sets the stage for organ trafficking, should be fought. Funding projects that commit to ending human trafficking around the world should be developed.
- Awareness should be raised about the organ trafficking crime.
- Providing protection, accommodation and counseling services to vulnerable groups and refugees; medical, psychological and financial assistance should be provided.
- Regional and thematic networks should be developed between civil society, intergovernmental organizations and private organizations.
- Countries where organ trading is prohibited should not allow their citizens to travel to other countries for this issue.
- Insurance companies should not support illegal practices in some countries.
- Each country should act transparently in organ transplantation practices that are accountable to health authorities and whose mandate is derived from national legislation.
- Social benefit programs should be developed for donor needs. These programs should be under the supervision of the Ministry of Health, which is authorized by national

legislation in each country and directed by the decision of the World Health Organization.

- International organ transplant community; It should send the message that organs from organ markets that exploit poor, vulnerable individuals and refugees are unacceptable.
- International organ trade, international agreements and policy harmonization should be effectively monitored.
- A platform should be created where researchers, policy makers, professional societies and international governing bodies collaborate to collect and share information.
- Action plans that are sensitive to regional and local standards and needs should be created to deal with organ trafficking in Africa, America, Asia, Europe and Central Asia, and these plans should be in line with international standards.

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