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VIOLATION OF THE BODILY INTEGRITY AS A VIOLATION OF THE FUNDAMENTAL HUMAN RIGHT

When discussing the right of ownership of our body, there is no need for elaboration since our instant answer will be that we are the sole owners of our bodies and nobody can tell us what to do with it, while we are alive and when we die. Therefore, every human being should have the right to protect and have a saying in regards to their own body.

But in regards of the process of removing or donating an organ the question appears whether there is a breach of the bodily integrity? In regards to this question there is the physical and moral view of this issue which stands on the answer whether in this process there is a violation of the bodily integrity which if there is a violation then there is a violation of a fundamental human right.

Keywords: *bodily integrity, human rights, violation, donation and transplantation of organs.*

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1. Introduction to the concepts of integrity and bodily integrity

First let's begin by explaining the concepts of integrity and bodily integrity. The Charter of Fundamental Rights of the European Union states that all human beings have the right to respect towards their physical and mental integrity. If the physical and mental integrity are respected then there is protection of the human dignity. In the Charter, the integrity in the biological and medical spheres is discussed as the fundamental good, which needs to be maintained and protected. Also, bodily integrity is not only linked to the physical integrity, there is the psychological integrity, and personal integrity. The concept of integrity is very fragile and it can easily be violated which is shown in the United Nations Population Fund report from 2021 stating that many people especially women experience losses of bodily integrity and autonomy during their life span (Ott, Dabrock, 2023).

To continue with, we need to ask the question of what does the body represent in legal terms. The definition for the body in legal terms, is that it is the biological matter constructed from blood, bones, and flesh. Therefore, the human body is a term that is protected by human rights and legal regulations. These regulations protect the body from physical harm as well as giving approval about applying medical procedures. There are also some international norms that directly refer to the body, like the European Charter of Fundamental Rights and Freedoms and the Convention on Rights of Persons with Disabilities presenting respect for the physical and mental integrity of the body. But the body has been, and still is, a subject of controversy and argument, by politicians, civil rights representatives, as well as legislations and regulations (Bublitz, 2022).

Therefore, if we combine the two terms body and integrity, we end up with the word bodily integrity, a term which refers to the fundamental right of every individual to have autonomy and sovereignty over their own body. This means that every human being has the authority to make decisions regarding their

own body in regards to the moral, ethical but also the physical and personal autonomy.¹ The concept of bodily integrity has been established in legal doctrines and has been elaborated in legal debates at national and supra-national level. Many authors have stated that the term may represent the main legal value which establishes the health law. Although the power of the term is recognized, still as a term it is problematic to use due to its uncertainty in applicability and cultural beliefs and differences, the gender differences and probabilities, as well as the religious circumstances which influence how the term will be used in practice (Fox, Thomson, 2017). Furthermore, what we do to our own bodies and the bodies of our loved ones should be our own decision not anyone else. It is believed that holding on to the physical integrity of the body is inherent right and by breaching this integrity we are breaching the law (Viens, 2020). Therefore, bodily integrity is a civil right and may be the most important of all human rights (Herring, 2017). It is primary and sacred and it is a fundamental right. The term influences self-determination, ownership, personal autonomy, and so on, and that is why this term is so fragile and it needs to be protected by the legal system, and especially by the health law (Kovačević, 2020).

2. Difference between bodily integrity and autonomy

Bodily autonomy is the right of a person to make decisions about what happens to their body. For example, there is a difference between cases where a patient is accepting treatment and cases where a patient is refusing treatment. A patient right of autonomy is to refuse treatment if he/she wants to or deems right. By enforcing a treatment on a patient when they don't want it, is interfering with their autonomy and bodily integrity. The right to bodily integrity is enhancing the one's autonomy. Bodily integrity is the right of the person not to have their body touched or interfered with without their approval. The right to life is interlinked with the right to bodily integrity and autonomy, therefore we have the right to have our own body's whole and untouched and we have the right to take decisions

¹ Bodily Integrity from class: Civil Rights and Civil Liberties Retrieved from: Bodily Integrity - Vocab, Definition, and Must Know Facts | Fiveable

about our own body and what we do with it. This protects us from physical assaults, torture, medical or other experimentation, forced immunization, sterilization, cruel or degrading treatment or punishment and so many more assaults imaginable (Herring, 2017).

3. Legality of the bodily integrity

Fox and Thomson, believe that the right to bodily integrity is the most important of all human rights, and it protects the sovereignty of the body and it should be respected. But in Anglo-American legal culture, it is rarely discussed, why bodily integrity should be valued or why it should be protected. As an example, for bodily integrity Fox and Thomson use the separation of conjoint twins who would both die if not separated. Surgery would offer the stronger twin a chance to survive, but the weaker twin would die. By approving this kind of surgery, the weaker twin will receive the bodily integrity and dignity. The proposed operation would give these twins the integrity which nature denied them. If they stay conjoined, they would be deprived from the bodily integrity and human dignity which is their right and also, they will not have the chance to live life (Fox, Thomson, 2017). The bodily integrity is closely linked to the right to life and should be observed equally (Vujović, 2020). So this is also debatable since one of the twins will die but she will die as a unity and would own her own body. But the operation will also give the chance to the other twin to live life and have sovereignty over her own body. So, in this respect only one of the twins will have the chance to life, but the other one will receive the bodily integrity and dignity she was denied during her life.

4. Organ donation and the legal process

Organ donation was created on the pillars of altruism. Altruism is the moral value of an individual's actions which are to help another individual, by disregarding the consequences for themselves. Altruism can be obligatory and supererogatory. Obligatory altruism is defined as a moral duty to help others. *Supererogatory* altruism is defined as doing morally good, but it is not required. As the demand for organs donation and transplantation increases, it is essential to

ensure that laws, policies and strategies are ethical, moral and altruistic, and govern the bodily integrity and autonomy (Dalal, 2015).

For organ donation and organ transplantation there are international organizations, conventions and other doctrines that govern these terms and procedures, like the World Health Organization, the European Convention on Human Rights and Biomedicine and its additional Protocols. The European Union, has adopted several action plans, as well as systems and regulations. There are also European organizations that work in this field for organ exchange like Euro transplant, Scan Dia transplant, and The South Alliance for Transplantation (SAT). But in all EU countries, transplantation and organ donation are regulated differently. There are also two organ donation systems: opt-in and opt-out. The main idea behind these systems is to regard people as potential donors. Both systems give the chance for the family to have their saying on the final decision. The opt-out system is a system of presumed approval so organs are taken from deceased if the patient did not oppose the procedure while he/she was alive. Even if there is dilemma about what the deceased wanted, using his/her organs is allowed. Countries that practice this model are: Italy, France, Spain, Belgium, Poland, Austria, Sweden, Croatia. The “soft” version of the opt-out system is in favor of donation, but the family has the last word. The opt-in system refers to the system of specific approval/agreement. Therefore, certain approval must be given as stated in the law. In this case the family has the right to a different decision, opposite of the one the deceased had. Countries that have this system are: Denmark, Germany, and the Netherlands. It needs to be acknowledged that in both of these systems the bodily integrity of the donor is recognized and the donation is in the best interests of the donor (Kovačević, 2020).

5. Organ transplantation

Organ transplantation is a medical procedure that is used to reestablish specific bodily functions of an organ by replacing it with a donor’s organ (this is governed by the Transplantation Act). Legally, the process of transplantation is based on donation of an organ for the purpose of placing the organ in another

person so he/she can live a healthy life. Furthermore, organ trafficking is not allowed, because it will place the donor in a state of extortion, since the act of donation is an act of altruism. The organ transplantation principle follows:

- a) Removal of organs or tissues from living donors may be carried out solely for the therapeutic benefit of the recipient and if there is no suitable organ or tissue available from a deceased person (cadaver) and no other alternative therapeutic method of comparable effectiveness (Convention of Human Rights and Biomedicine).
- b) In addition to medical requirements for transplantation, it is also necessary to satisfy legal requirements referring to the donor's and the recipient's competencies for judging and declaring their relevant wills related to their consents for donating organs.
- c) Legal rules should ensure the observance of their autonomy, their rights to self-determination and bodily integrity, and enable them to freely express their will whether they want to donate or to receive an organ for treatment.
- d) According to the Human Organs Transplantation Act, a living organ donor must be an adult person of full legal capacity who is required to provide a written consent, as an expression of free will that he/she understands the nature, purpose and duration of the intervention, and that he/she has been sufficiently informed in advance about possible risks and expected successful outcome.
- e) It excludes children as donors as well as adult persons fully deprived of legal capacity.
- f) When making a decision on behalf of another person, the "best" interest of the person should be assessed and protected.
- g) The problem is legally eliminated by allowing the legal representatives (husband, adult child, parent) to decide, or by establishing a professional and ethical team for making a decision related to donating organ after one's death, and under a presumed consent.
- h) Organ removal from deceased persons should prevail since this procedure precludes the risk of any potential threat to the health of living donors (Lazić, 2020).

The basic legal and ethical issues of cadaveric organ transplantation are:

- a) establishing the moment of death of a potential donor,
- b) respecting the deceased persons expressed will,
- c) and respecting the family members' belief (Lazić, 2020).

By establishing the above criteria, with the application of advanced medical technology the organs are maintained so they can be used for transplantation and with this act and principle there is increase in the number of organs for transplantation (Lazić, 2020). Organ transplantation has given us another concept to the body image Zwart, 2016).

6. Organ transplantation through the eyes of religion, culture

6.1. The shortage of organs leads to organ trafficking and unlawfulness

Organ transplantation has been transformed from an experimental procedure to an intervention carried out in hospitals all over the world. In the upcoming years heart, liver, and lung transplantation will become standard operations in medical care. 75% of the procedures are successful. Transplantation is saving lives all around the world. But there is no sufficient inflow of organs in order these procedures to happen. The United States, even though it has well-organized distribution system, and a law it still falls behind of around 37,800 people on organ waiting lists. Annually 10% of patients awaiting a heart transplant die (Rothamn et al, 1997). The demand for organs in the EU exceeds the supply. At the end of 2015, a total of 56,000 patients were on waiting lists in the EU (Kovačević, 2020). The gap between demand and supply of organs is even higher in countries where there is higher influence of religious or cultural influences. In the Middle East, religion discourages and prohibits organ donation from dead people. Furthermore, Islam points out the need to maintain the integrity of the body at burial. Other cultures and religions reject the principle of brain death making organ retrieval impossible. Asian cultures also object the idea of brain death and eliminate organ donation from deceased people. Therefore, transplantation from deceased is more rear due to the above. Cultural and religious barriers present a burden to the system for donation and transplantation of organs. In the United

States almost 53% of families refused to allow their deceased to become organ donors. Organ donation is still a taboo subject (Rothamn et al, 1997).

Due to cultural and religious influences as well as other beliefs many patients are willing to pay a lot of money and travel to other countries to secure a transplant. And they do not care how the organ was obtained. These actions have encouraged the trafficking of organs in India, from executed prisoners in China. Also, the cost of the procedure in the eastern countries is lower than that of the western countries ranging from \$15,000 to \$20000, compared to \$40.000 to \$70.000 in the west. For the patient, the savings for the surgery may not be important as the availability of the organ. But from the perspective of an Indian or Chinese hospital, the income that is earned is significant. This also leads to other unlawful doings and allegations, like in South America, kidnapping of babies and children and murdering them for their organs (Rothamn et al, 1997). Therefore, organ trafficking is a big problem which leads to many other unlawful doings.

7. Conclusion

To conclude, the right of sovereignty and the right to bodily integrity and autonomy are terms which need to be respected and protected, since they are interlinked to the right to life and they are fundamental human right. As an example of governing these rights we took the organ transplantation and organ donation which are acts of moral and ethical doing, and they are altruistic. A characteristic that few of us as humans possess. Furthermore, there is also the fact that when we give consent to organ donation and transplantation there is no breach of our bodily integrity and autonomy since we as human beings are giving this consent. The only breach of bodily integrity and autonomy is when there exists the unauthorized approval, meaning when there is organ trafficking, and the organs are taken without consent by unlawful means, also when there is a breach in the legal system or breach in the system of organ donation and so on, then there is violation not only of the bodily integrity but there is also a violation of all human rights especially the right to life of one being.

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