



**State of Israel
Ministry of Justice**

The Office of the Deputy Attorney General (International Law)

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The State of Israel's Efforts to Counter Trafficking for Organ

Removal

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I. Israeli Legislative Framework

The Organ Transplant Law 5768-2008

- On March 24, 2008, the Knesset (the Israeli parliament) enacted the *Organ Transplant Law 5768-2008* (hereinafter: the "*Organ Transplant Law*"), which provides comprehensive regulation of organ transplantation in Israel.
- **The objective of the Law is to prevent trafficking in organs through a multifaceted approach: First, the Law prohibits organ transplantation from a living donor, except in particular cases in which a professional committee determined no risk of trafficking in organs; second, it establishes criminal jurisdiction for mediating, directly or indirectly, between a donor and a recipient for the purpose of organ removal or transplantation; third, under this law the State's health insurance does not allow the funding of organ transplantation abroad if there is a risk of trafficking in organs. Alongside the prohibition, the Law establishes a compensation mechanism for donors with the aim of providing them a safety net for potential financial or health damage such as loss of employment, travel fees, fees for psychological treatment, health insurance, loss of employment capabilities and life insurance.**
- **Section 3 of the *Organ Transplant Law* prohibits trade in organs, stipulating a prohibition on receiving and paying remuneration for an organ removed from a person's body, or for an organ intended to be removed, **whether the removal is from a living donor or postmortem removal.****
- **Section 4 of the Law further prohibits a person from mediating, directly or indirectly, between a donor and a recipient for the purpose of organ removal or transplantation, in circumstances where another person was promised remuneration as prohibited under Section 3 of the Law. Section 4 also prohibits the acceptance of remuneration for mediation under these circumstances.**
- **Section 36 of the Law establishes a criminal sanction - three (3) years imprisonment or a fine - for a person who violates one of the aforementioned**

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obligations, as well as committing any of the acts described under Section 36. Note that with regard to offences concerning the receiving or giving of a reward for an organ transplanted or removed, or for brokering an arrangement between a donor and a recipient (Sections 36(a)(1)-(3)), the Law applies, whether the organ removal or transplant is intended to take place **in Israel or outside its borders.**

- The Law established an efficient regulatory framework in the field of organ transplantation by providing a comprehensive mechanism, which is based on **full-consent and altruistic donation.** The mechanism is aimed at safeguarding the organ transplantation system in Israel, in order to prevent any form of exploitation in this field and to eliminate human trafficking for the purpose of organ removal. As will be elaborated below, the approval process to be an organ donor is meticulous and comprehensive.
- Additionally, the Law grants priority in organ allocation for transplantation to candidates who have registered as organ donors.¹ In recent years, this has resulted in an increase in the rate of organ donation in Israel,² thus, further reducing the need for the "transplantation tourism" abroad.

The Penal Law 5737-1977

- Alongside the *Organ Transplant Law*, the Israeli *Penal Law 5737-1977* (hereinafter: the "*Penal Law*") includes a **trafficking in persons** offence for trafficking with the purpose of removing an organ from the person's body (hereinafter: "trafficking in persons for the purpose of organ removal")
- This offence, set out in Section 377A of the *Penal Law*, carries a maximum penalty of 16 years imprisonment, or 20 years imprisonment if the victim is a minor. The crime includes two (2) elements: 1) A transaction *in* a person (as distinguished from a transaction *with* a person, thus denoting objectification of the victim). For this matter, "transaction in a person" means selling or buying a

¹ *The Organ Transplant Law*, Section 9(b)(4). See also see in: http://www.health.gov.il/Subjects/Organ_transplant/priority/Pages/default.aspx

² Lavee and Brock Prioritizing registered donors in organ allocation: an ethical appraisal of the Israeli *Organ Transplant Law*, 18 *Wolters Kluwer Health (Lippincott Williams & Wilkins)*, 2012). Available at: <https://www.TheNTC.gov.il/media/1449/currop.pdf>

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person or carrying out another transaction in a person, whether or not for compensation. 2) It was committed for one of seven purposes, *inter alia*, removing an organ from the person's body; giving birth to a child and taking the child away; subjecting the person to slavery or forced labor; inducing the person to commit an act of prostitution and more. Section 377A of the *Penal Law* also forbids trafficking in a person if in doing so the offender exposes the victim to the risk of one of the purposes listed above. Section 377A(c) of the *Penal Law* provides that the middleman in trafficking in a person, whether or not for compensation, shall be liable to the same penalty as the actual trafficker.

- **The offence of trafficking in a person for the purpose of removing an organ from their body is separate from offences relating to illegal trade in organs (hereinafter: "trafficking in organs").** Trafficking for the purpose of organ removal is concerned with protecting *the person* said to have been trafficked, who has been used as a resource. The law banning trafficking in a person is concerned with a person being utilized as a repository for organs, and protecting against that persons' deprivation of liberty and personhood, whereas the offences related to trafficking in organs are concerned with the prevention of unregulated and unsupervised trafficking in *organs*. If a person willingly and freely sold his/her organs, the transaction will be criminalized, but it will not constitute trafficking in that person. An example of trafficking for the purpose of organ removal may be seen in the case of *The State of Israel v. John Allen and Hassan Zahlaka* (Cr.C 4044/07, Haifa District Court). The case presents an array of circumstances indicating the treatment of the donors as mere resources: those recruited were extremely vulnerable and in need, one of them mentally disabled; the offenders referred to them as blood types rather than people (dehumanizing language is often viewed as an indicator of trafficking); they were provided with misleading explanations about the nature of the procedure, significantly downplaying its health consequences; those who changed their minds were pressured back into "donation"; the victims were not paid in full even the small sum advertised (\$7,000); one (1) victim received only 500\$, and was threatened when he asked for more. All those elements, taken together, indicate that the victims were trafficked for the purpose of organ removal.

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The Medical Bio-Ethic Code

The Israeli Bio-Ethic Code includes different guidelines on the issue of organ trade. For example, according to the Code, a physician must refrain from imposing any pressure on a patient to provide consent for organ donation.

II. Israel's Engagement in International Agreements Concerning the Efforts to Eradicate Trafficking in Organs

- *The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (15 November 2000)*: In 2008, Israel ratified this Protocol (hereinafter: the "TIP Protocol"). The definition of Trafficking in Persons according to the TIP Protocol includes trafficking for the purpose of removal of organs under Article 3.³
- *The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)*:⁴ One of the objects of this Protocol is to prevent the transfer of organs of the child for profit. In 2008, Israel ratified this Protocol, and it reports to the Committee of the Rights of the Child on its efforts to comply with its obligations under the Protocol.
- *The Istanbul Declaration*: In 2009, the Israel Medical Association endorsed the Declaration of Istanbul on Organ Trafficking and Transplantation Tourism (2008). The Declaration serves to "*inspire and unite all those engaged in combating unethical practices in organ transplantation*".⁵ Professor Jacob Lavee, the Director of Heart Transplantation Unit at Chaim Sheba Medical Center in Israel, is a board member of the Declaration Steering Committee. The

³ (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude **or the removal of organs**;

⁴ The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2008), Article 3(1)(b).

⁵ <http://www.declarationofistanbul.org/about-the-declaration/history-and-development>.

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goal of the Declaration is to lay the foundations for universally defining organ trafficking, transplant tourism, and to achieve universal consensus regarding principles of practice and recommended alternatives to address the shortage of organs.

III. Prosecution Efforts

- Both the State Attorney's Office and the Police are handling cases regarding organ trafficking and are doing their utmost efforts to expose such cases, and these efforts are maintained with colleagues world-wide. In 2016, for example, two (2) indictments were submitted regarding the issue of trafficking for organ removal under the *Organ Transplant Law*, both of which concluded in convictions.

Recent Highlighted Cases:

1. ***Margolit v. Israel Ministry of Health*** (H.C.J 3986/19): On 30 August 2020, the Supreme Court dismissed a petition to cancel the limitations set forth in Section 5 of the *Organ Transplant Law*, which mandates that any organ transplantation procedure abroad must be conducted by the laws of the foreign country, and in accordance with the Law in regards to trafficking in organs. The petitioners claimed that these limitations are in breach of their constitutional rights to health, dignity, life and equality. The Court rejected the claims, finding no breach of constitutional rights in Section 5. Moreover, the Court noted that the Law is in line with international legal principles, citing the Declaration of Istanbul, which the Israel Medical Association endorsed. The petition was unanimously dismissed.
2. ***Mishali v. Meuhedet Health Insurance*** (54921-02-17): On 12 May 2020, the Be'er-Sheva District Labor Court rejected a suit for reparations filed by a Plaintiff who underwent an illegal organ transplantation procedure in Kosovo. The Plaintiff, who sought 380,000 NIS (105,555 USD) as compensation for the procedure and additional reparations for non-monetary harm caused by Meuhedet's (HMO) alleged negligence in her care, underwent a kidney transplant in Kosovo and claimed that the Respondent provided assurance that she would be compensated in the sum of 100,000 USD. The Court rejected the suit on several grounds. First, according to Section 3 of the *Organ Transplant Law*, which entered into force prior

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to the Plaintiff's procedure, "no one shall provide compensation in exchange for an organ transplanted in his or in another's body, or destined to be transplanted therein." Section 5 of the Law extends this rule to transplants conducted abroad. Moreover, prior to the entry of the Law into force, this issue was regulated by the State, and strict and uniform standards were adopted in order to ensure that transplants conducted abroad were not conducted with trafficked organs. The Court noted that health insurance companies have no room for discretion in this matter. Second, the Court noted that the Plaintiff failed to fulfill the proper procedures in place; she did not notify the Respondent regarding the procedure in Kosovo, nor did she obtain the necessary paperwork, and she knowingly received a transplant from a live donor. Third, in light of testimony, the Court held that the Respondent did not assure the Plaintiff that she would be compensated, and that even if such an assurance did take place, any administrative action in contravention of the law and public conscience is null and void.

3. ***The State of Israel v. Avigad Sandler, et. al.*** (26462-05-15): Between May to July 2019 the Tel Aviv-Jaffa Magistrates Court convicted seven (7) defendants for trafficking in organs and for organizing illegal transplants in Kosovo, Azerbaijan, Sri Lanka and Turkey. This case dealt with the case of one of the defendants (Mr. Avigad Sandler). Between 2008 to 2014, the Defendant engaged, collectively and individually, in the trafficking of organs and in the organization of illegal transplants. The Defendant participated in many cases of illegal actions including, *inter alia*, locating sick persons in need of transplants and individuals in economic despair who were willing to donate organs, coordinating illegal transplants with surgeons and hospitals abroad, engaging in transplant tourism by assisting recipients throughout the process, and providing false information and documentation regarding the legality of the transplants and the familial connections between donors and recipients to organ transplantation committees abroad, all for financial profit. The Defendant was charged with multiple counts of conspiracy to commit a misdemeanor under Section 499 (a)(2) of the *Penal Law 5737 – 1977*, organ trafficking and brokering organ trafficking, aiding in organ trafficking and brokering organ trafficking, and attempt to commit organ trafficking under Sections 36 (a)(1), 36 (a)(2) and 36 (a)(3) of the *Organ Transplant Law 5768-2008*, among other charges. Defendant 1 was sentenced to 24 months of imprisonment, 6 months of conditioned suspended sentence, a 3,000 NIS (833 USD) fine and 10,000 NIS

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(2,777 USD) in reparations. In a series of plea bargains conducted between 2018 and 2019, the other perpetrators were convicted for their participation in the organ transplantation scheme as follow: Defendant 2 was sentenced to 5 months of imprisonment by way of community service and was ordered to pay 10,000 NIS (2,777 USD) in reparations. Defendant 3 was sentenced to 6 months of imprisonment by way of community service, and a 5,000 NIS (1,388 USD) fine. Defendant 4 was sentenced to 24 months of imprisonment, and ordered to pay a 30,000 NIS (8,333 USD) fine and 10,000 NIS (2,777 USD) in reparations. Defendant 5 was exempt from imprisonment due to medical reasons, but was sentenced to an 8-month suspended sentence and a 40,000 NIS (22,222 USD) fine. Defendant 6 was sentenced to 23 months of imprisonment and a 20,000 NIS (11,111 USD) fine. The proceedings against Defendant 7 have been postponed as he was residing outside of the country. In March 2017, the Haifa Magistrate Court rendered a 200,000 NIS (57,928 USD) compensation to a victim of human trafficking for the purpose of organ removal. This compensation was awarded to the victim in a civil procedure, in addition to compensation they received in the criminal case.

4. ***Doron Telmor v. Meuhedet HMO, The State of Israel*** (3153-10-13): In October 2015, the National Labor Court upheld the decision of the District Labor Court to deny refunding a kidney transplant operation an Israeli citizen undertook in the Philippines. The Court emphasized that the burden of proof was on the recipient to prove the transplant was a true donation, as opposed to the result of trafficking. As the recipient did not know the "donor", nor could they contact them after the surgery, this burden was not lifted, and the request for refund was denied.
5. ***The State of Israel v. Uzi Shmueli, Michael Zis, Shlomi Bitton et. al.*** (Cr. C. **28516-08-14**): In August 2014, five (5) defendants were charged with mediating organ trafficking according to the *Organ Transplant Law*. According to the initial indictment in the Petah Tikva Magistrate Court, the defendants operated an international organ trafficking network between 2012 to 2014, operating mainly in Costa Rica and in Turkey. The first Defendant accepted a plea bargain under which he was sentenced for 24 months imprisonment and 50,000 NIS (14,415 USD) in compensation. The second Defendant, due to evidentiary complications, accepted a plea deal for six (6) months imprisonment and a fine of 50,000 NIS (14,415 USD). The third Defendant was sentenced to four (4) months community service and a fine, after the Court considered his unique vulnerability, and the fact that he himself

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sold a kidney due to his dire economic situation. Defendants Zis and continued violating the law after being indicted, and subsequently, in November 2016, were indicted again for trafficking in organs, plead guilty and the united case was brought before the Be'er-Sheva District Court, and they were convicted in February 2018. The Defendant, Dr. Michael Zis, was sentenced to five (5) years imprisonment, 12 months suspended sentence, 350,000 NIS (97,222 USD) in reparations and a 100,000 NIS (27,000 USD) forfeiture. The Court noted the aggravating factors in this Defendant's case, including the defendant's premeditation, his commission of multiple offenses, the gravity of those offenses, the Defendant's significant contribution to the scheme, his exploitation of the victims' vulnerabilities, the extensive harm he caused, and his purely financial motives. However, the Court also considered the Defendant's age and health as mitigating factors. Finally, the fifth Defendant, Bitton, was sentenced to four (4) years imprisonment, 12 months suspended sentence, and 60,000 NIS (17,296 USD) in compensation. In its ruling, the Court noted the Defendant's extensive criminal record as an aggravating factor, but noted several mitigating factors as well, including the Defendant's confession which spared victims of the need to testify, as well as his personal, economic and familial statuses.

In an **appeal to the Supreme Court** regarding the Defendants' sentencing, (Criminal Appeal No. 2683/18 and 2715/18, September 2018) the Court noted that the circumstances of the last two (2) Defendants', (Zis and Bitton) involvement and relative contribution to the commission of the offences justified the vast difference between their sentencing and the sentencing of the first three (3) Defendants. Despite this, due to the fact that all defendants were involved in the same offences, the Supreme Court lessened the sentencings rendered by the Court of Appeals by six (6) months for both defendants.

International Cooperation:

Israel is actively cooperating with other countries in the struggle against trafficking in human organs. For example, the aforementioned case of *The State of Israel v. Avigad Sandler* was initiated through legal assistance that was rendered in 2011 by the Police and the State Attorney's Office to a prosecutor from the European Union Rule of Law Mission to Kosovo. In that case, the State

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Attorney's Office assisted in collecting evidence from the Israeli victims who were involved in the case, and assisted with the testimony procedures which took place in 2012 in the Tel Aviv-Jaffa Magistrate Court. The case concluded with the conviction of most of the defendants. Due to the fact that Israeli victims were involved, the State Attorney's Office recommended initiating a further investigation relating to trafficking in organs. This comprehensive investigation yielded further evidence, which led to the exposure of a network of organ trafficking in Kosovo and Sri Lanka. The suspects (from other countries) contacted Israelis who were in need of transplants, and convinced them to go through illegal transplant procedures in Sri Lanka. In 2014, based on new information, the Police initiated another investigation into the same organ trafficking network, committing illegal transplants in Turkey. Following a detailed investigation, in May 2013, the Central District Attorney's Office filed an indictment to the Tel Aviv-Jaffa Magistrate Court against seven (7) defendants, for trafficking in organs and for organizing illegal transplants in different locations worldwide.

Over the last several years, members of the State Attorney's Office regularly attended international conferences and expert group meetings regarding the issue of trafficking in organs. Additionally, Israeli and Thai authorities conducted successful cooperation regarding an international organ trafficking case in 2016.

IV. The National Transplant Center (NTC)

- In 1994, the Ministry of Health established the National Transplant Center (hereinafter: the "NTC"), for the purpose of creating an independent body to manage and coordinate the organ donation and transplantation system in Israel and to create a national waiting list for organ transplantation. The NTC operates as a unit under the auspices of the Ministry of Health, in accordance with the relevant authorities pursuant to Section 8 of the *Organ Transplant Law*. All of the employees are government employees.⁶

⁶<http://www.health.gov.il/English/MinistryUnits/HealthDivision/MedicalAdministration/Transplant/Pages/default.aspx>.

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- The NTC is the sole body in Israel where enrollments for transplants are made, and through which organs for transplant are allocated. This is the **only body in Israel** where patients can be registered on the national organ transplantation waiting list, as it exclusively manages and coordinates the organ donation system in Israel.
- The NTC is also in charge of increasing the number of organ and tissue donations in Israel. They do this through, *inter alia*, encouraging donations through public education and requesting potential donors to apply to the NTC's "Donor Card Program". The program aims to raise public awareness and willingness towards organ donation; implement an egalitarian and transparent organ allocation policy; manage quality assurance system; offer support and guidance for families that have donated the organs of their loved ones, by means of memorials and support groups.⁷
- In addition, Section 8(4) of the *Organ Transplant Law* mandates the NTC to collaborate with foreign countries and organizations with respect to the removal and transplant of organs.
- The NTC policy is outlined by a **Steering Committee**, a high-level professional body, appointed by the Minister of Health and headed by the chairman of the NTC.⁸ The Steering Committee is composed of leading transplant surgeons, professionals from the fields of psychology, law and bio-ethics, NTC representatives, clergy, and representatives of the patients associations. The Steering Committee meets 4-6 times a year.
- In addition, there are several **professional committees** (Heart and Lung Committee, Liver Committee, Kidney Committee, Harvesting Committee, Tissues Committee and Research Committee), whose members are transplant specialists that are tasked with advising the Steering Committee as to organ allocation, procedures, transplant education programs and quality assurance.⁹

⁷ *The Organ Transplant Law*, Section 8. For further information see: <https://www.adi.gov.il/en/about-us/>

⁸ *The Organ Transplant Law*, Section 9. See also: <https://www.adi.gov.il/en/about-us/>

⁹ <https://www.adi.gov.il/en/about-us/> .

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- According to the Law, the NTC appoints registered nurses as Transplant Coordinators to coordinate between the NTC, their approved medical center and other approved medical centers in the field of organ removal and transplant. The law also specifies the appointment of a specialist physician to act as an inspecting physician who is, *inter alia*, in charge of examining the quality of operational procedures in the field of organ removal and transplant. These procedures range from locating the deceased persons whose organs may be suitable for transplant to completing the removal and transplant. The inspecting physician must submit reports to the NTC Director and the Steering Committee regarding the possible ways to encourage organ donation in approved medical centers.

V. Regulated Mechanism for Donation of a Living Donor's Organ

- A donation from a live donor occurs when a healthy person is willing to donate an organ to a person who needs the organ in order to better their quality of life.
- Chapter 4 of the *Organ Transplant Law* is specifically designated to regulate donations of organs from living donors. In addition, The Ministry of Health Director General Circular No. 10/13 (2013) on Organ Donation, updates the regulations and procedures of organ donation from a live donor (hereinafter: "Director General Circular").¹⁰ This Circular was recently updated in 2021, adding a duty of notification and the issuance of a uniform report regarding every Israeli resident who conducted transplantations internationally. The duty applies to hospitals and HMO's, through the physicians caring for and monitoring persons who underwent transplantations abroad (hereinafter: "Updated Director General Circular").¹¹
- There are three (3) categories of live donors: relatives, non-relatives, and Exceptional Donation.¹²

¹⁰ Ministry of Health Director General Circular, August 1, 2013, No. 10/13. (hereinafter: "Director General Circular").

¹¹ Ministry of Health Director General Circular, August 28, 2021, No. 4/21. (hereinafter: "Updated Director General Circular").

¹² Director General Circular, p.2.

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- "Exceptional Donations" include donations from non-residents of Israel (most of them are relatives of the recipient), donations that are not designated to a specific person, Matched organ donation and internationally coordinated matched organ donation.

Remuneration in exchange for an organ donation is prohibited by law in Israel, except for one concession provided under the *Organs Transplant Law*

The Donor Compensation Program – According to section 22 of the Law, reimbursement of expenses is provided by the State of Israel and transferred to the donor by the NTC, on the condition that the donor is a permanent resident in Israel.¹³ In 2010, the program was initiated by NTC and approved by the Knesset. The purpose of the program is to protect the donor both medically and financially. It ensures that the donor does not suffer from loss of earnings during the period following the surgery, and protects the donor's future physical and mental health.¹⁴ Furthermore, **the institutional compensation given to the donor by the Government reduces the risk of black market trading and other ways of exploiting donors.** The Compensation Package

¹³ *The Organ Transplant Law*, Section 22:

a) With the consent of the Minister of Finance and the Knesset Labor, Welfare and Health Committee, the Minister of Health shall determine a uniform sum of money to be paid to all organ donors as compensation for the monetary loss reasonably attributable to the procedures associated with organ removal, and shall also determine rules and conditions for the reimbursement of the donor's expenses on the following —

(1) Taking out private health care insurance, or procuring supplementary health care services under section 10 of the *National Health Insurance Law 5755-1994* (in this Law — the *National Health Insurance Law*), taking out insurance against loss of the ability to work or loss of earning power, taking out life insurance, all the above for a period and to an amount which shall be determined in the said manner;

(2) Psychological care, under terms, for a period and to an amount which shall be determined in the said manner;

(3) Convalescence immediately after the organ removal, under terms, for a period and to an amount which shall be determined in the said manner;

(b) The uniform payment and reimbursement of expenses under this section shall be paid to each donor through the agency of the Transplant Center, after removal of the organ, provided that the donor is a resident of Israel, and that he has a certificate from the Transplant Center certifying that he donated an organ for another's medical needs.

(c) The provisions of Clause 22(a) notwithstanding, the Minister of Health, with the consent of the Minister of Finance and the approval of the Knesset Labor and Welfare Committee, may fix the monetary reimbursement for loss of earning power not at a flat rate for every donor.

(d) Without detracting from the provisions of Clauses 22(a)-(c), for the purposes of Clause 8(a1)(2)(c)(6) of the *National Health Insurance Law* donors shall be deemed to be chronically ill.

(e) The uniform payment and reimbursement of expenses under this section are not transferable, nor subject to attachment or lien.

¹⁴ http://www.health.gov.il/English/Topics/organ_transplant/live_donors/Pages/compensation_live_donors.aspx
http://www.health.gov.il/LegislationLibrary/Hashtala_02.pdf

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includes,¹⁵ *inter alia*, refund due to loss of earnings; refund of travel expenses; private medical insurance; loss of working capacity insurance; life insurance counseling; recovery leave; and an exemption for three (3) years from paying the health levy.

The Donation Procedure from a Live Donor

A person who wishes to donate an organ undergoes a comprehensive medical and psychological assessment. The objective of the assessment is to ensure that the donor is fit to donate, and that no aspect of his/her medical or psychological status will jeopardize his/her health or function due to the donation. Only if he/she is found to be fit will he/she be able to continue the process.

Donations from a live donor must be approved, according to the following procedure:

- 1) **Donation to a relative**: A donor seeking to donate an organ to his/her relative must submit a request to the **Local Evaluation Board**, i.e. the Evaluation Board of the hospital where the donation and transplant are performed. A "relative" includes the following: spouse, parent, child, sibling, grandparent, grandchild, uncle/aunt, nephew/niece, cousin, father/mother in-law, brother/sister in-law, and daughter/son in-law.¹⁶
- 2) **Donation to a non-relative**: A donor who seeks to donate an organ to a non-relative must submit a request to the **Central Evaluation Board** of the Ministry of Health.¹⁷ (Liver-lobe donation is allowed from a relative only.)¹⁸

The Evaluation Boards

- The Local and Central Evaluation Boards includes five (5) members: (1) Chairman – a specialist physician and head of a hospital department or unit not performing transplants; (2) a psychiatrist or clinical psychologist with a specialist qualification under the *Psychologists Law 5737-1977*; (3) a social worker as defined by the *Social Workers Law 5756-1996*; (4) a public

¹⁵http://www.health.gov.il/English/Topics/organ_transplant/live_donors/Pages/compensation_live_donors.aspx

¹⁶ *The Organ Transplant Law*, Section 13; Director General Circular, p.2.

¹⁷ *The Organ Transplant Law*, Section 13. Ministry of Health Director General Circular 10/13, para 2(a).

¹⁸*The Organ Transplant Law*, Section 13. See also in: http://www.health.gov.il/Subjects/Organ_transplant/donation_of_organ/Pages/organs_donors.aspx

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representative – the donor may request a public representative who will be, if possible, of the same religious, social or cultural group as the donor; (5) and an attorney who is qualified to be appointed as a District Court judge.¹⁹

- The Local Evaluation Board is appointed by the head of each medical center, while the Central Evaluation Board is appointed by the head of the NTC.²⁰
- The Director General Circular contains provisions that ensure the impartiality of the Board. For example, none of the Board members shall be from transplant or nephrology wards, from clinics managing organ transplant waiting lists, or part of the medical staff associated with the patient awaiting the donation.²¹

The Assessment Process

- The *Organ Transplantation Law* and the Director General Circular provide a comprehensive list of conditions that must be met in order to approve a donor's application.²² The criteria for approving a transplant relate, *inter alia*, to the donor's medical, psychological and cognitive health, personal background, relation to the recipient, motive for donation, and stipulate that informed consent is given of the donor's free will and full lucid comprehension, with no pressure or coercion, and that the donation must be made without the receipt of compensation or benefits.
- The assessment process includes: (1) a medical test to ensure the patients match each other medically in accordance with the organ being donated, (2) a psychiatric/psychological evaluation conducted by a psychiatrist/psychologist, and (3) a social evaluation conducted by a social worker.²³ (4) Additionally, in the event of a donor seeking to donate to a non-relative, they are required to undergo a psycho-diagnostic evaluation as well.²⁴
- Following the Assessment Process carried by the Central or Local Board, the Medical Center shall approve the evaluation and examinations, ensure that the

¹⁹ *The Organ Transplant Law*, Section 14(c).

²⁰ *The Organ Transplant Law*, Section 14 (a)-(b).

²¹ Director General Circular, para 5(c), 13 (c).

²² *The Organ Transplant law*, section 15; Director General Circular, para 6(2), 7.

²³ Director General Circular, para 6(2).

²⁴ Director General Circular, para 14.

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donor and recipient fully comprehend the risks entailed in the procedure, and have both parties sign documents agreeing to the procedure. The Law specifically requires that the Evaluation Board be fully convinced that the donor gave his/her consent for donation out of his/her free will and with a sound mind, and not as the result of family, social, economic or other pressure.²⁵

- Note that the Evaluation Board will not hear cases involving persons who are staying illegally in the country or who have entry visas expiring within three (3) months.²⁶

The Evaluation Board's Decision

- **An Evaluation Board shall only accept a request to donate an organ if convinced that the following criteria are met:**
 1. The donor is both medically and psychologically suitable to donate the organ, and there is no concern that his/her current medical or psychological state may lead to increased risks to his/her health or ability to function, beyond the expected risks entailed in the procedure.
 2. The donor gave his/her full consent to the donation out of free will and with a sound mind, and not due to any familial, financial, social or other pressure.²⁷
 3. Both the donor and recipient gave their full consent to undergo the medical procedures entailed in the organ transplantation, in accordance with Section 13 of the *Patients' Rights Law 5756-1996*.²⁸
 4. The donor's consent was not given in exchange for payment or a promise of payment, which are illegal in accordance with Section 3 of the *Organ Transplant Law*, or solely in order to receive the compensation package owed to him/her by law under Section 22 of the *Organ Transplant Law*.²⁹

²⁵ Director General Circular, para 15(b)-(e).

²⁶ Director General Circular, para 22.2.

²⁷ Director General Circular, para 7(c), 2 (c) and 15(c)

²⁸ Director General Circular, para 7(c), and 15(c).

²⁹ Director General Circular, para 7(d), 15(d).

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5. The donor recognizes that he/she may change their mind up until the procedure itself, and will be free from any civil or criminal liability in a case of withdrawal of their consent.³⁰
 6. The recipient is both medically and psychologically suitable to receive the organ.³¹
 7. There are no other reasons that arise which may prevent accepting the request of donation, including the donor's familial status.³²
- **In the event that the Board is unconvinced that all or part of the criteria listed above were met, it shall reject the request.**³³
 - In the event that the Board is convinced that all of the criteria were met, the Board shall accept the request and send its decision to the Director General of the Ministry of Health for approval.³⁴
 - The Evaluation Board's decision will be made by a majority vote of its members.³⁵ However, in the event that a Local Evaluation Board member disagreed with the decision to accept a request, that member may bring the decision before the Central Evaluation Board. Once the decision is referred to the Central Evaluation Board, the Local Evaluation Board's decision would be void.³⁶
- **Consent is a prominent aspect of the *Organ Transplants Law*. The decision to be a live donor is a sensitive and complex one. The Evaluation Board must be fully convinced that the donor gave his/her consent for donation out of his/her free will and with sound mind, and not as a result of family, social, economic or other pressure.**³⁷

³⁰ Director General Circular, paras 7(e) 15(e).

³¹ Director General Circular, paras 7(g), 15(g).

³² Director General Circular, paras 7(h), 15(h).

³³ Director General Circular, paras 9(c), 1(c), and 17(c), 1 (c).

³⁴ Director General Circular, paras 9(b), 17(b).

³⁵ Director General Circular, paras 8(g), 16(f).

³⁶ Director General Circular, paras 9(c), 3(c).

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- Moreover, the donor may withdraw his/her consent at any time during the process, up until the moment that he/she enters the operating room. Section 34 of the Law ensures that the donor will not carry any civil or criminal liability if she/he decides to withdraw consent.

The Ministry of Health's Decision

- In the event that the Ministry of Health's Director General approves the decision, he/she shall notify the National Transplant Center.³⁸
- In the event that the Ministry of Health's Director General is not convinced that the exhaustive list of criteria were met (all or part of it), he/she would deny the request and notify the donor and the recipient within seven (7) days, including the full reasoning for the decision.³⁹
- In order to ensure maximum transparency in the organ transplantation process, the donor and the recipient may receive, upon request, the detailed decision of the Evaluation Board and the results of the evaluations and examinations, unless the Board decided against relaying this information for reasons of the donor/recipient's best interest.⁴⁰
- **In 2020, a total of 250 requests to donate organs (unrelated donors) were submitted to the Central Evaluation Board, out of which 239 requests were approved.**

VI. Organ Transplantation Conducted Outside Israel

- The *Organ Transplants Law* does not prohibit organ transplantation conducted outside Israel, including when an Israeli entity is funding such transplantation, as long as the following two (2) conditions are met: first, the organ removal and transplant are carried out in accordance with the laws of the foreign country; and second, that all the provisions in the *Organ Transplant Law* prohibiting trafficking in organs are fully adhered to.⁴¹

³⁸ Director General Circular, paras 10 and 18.

³⁹ Director General Circular, paras 10 and 18.

⁴⁰ Director General Circular, para 2.

⁴¹ *The Organ Transplant Law*, Section 5.

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- However, no organ shall be brought into, or taken out of, Israel for the purpose of transplanting into a human being, other than in accordance with the directives laid down by the Minister of Health, in consultation with the Minister of Foreign Affairs, and with the approval of the Knesset Labor, Welfare and Health Committee. In a case where the organ has been removed from a human body post-mortem, it shall be brought into, or taken out of Israel in accordance with the law of the state in which the organ was removed, and, if removed in Israel, according to the *Anatomy and Pathology Law 5713-1953*.⁴²
- The Ministry of Health Updated Director General Circular from 2021 (4/2021), obligates hospitals and HMO's, through the physicians caring for and monitoring persons who underwent transplantations abroad, to report any organ transplantations conducted outside of Israel. Israel reports all data regarding international organ transplantations in accordance with the European Directorate for the Quality of Medicine and Health Care, as part of its commitment to fight trafficking in persons. Reports are submitted via form to the NTC, and include information regarding the country in which the transplant was conducted.
- **Since the *Organ Transplant Law* was enacted, the number of Israelis that applying to undergo transplantation abroad decreased from approximately 160 people a year to 30-40 people a year.**

VII. Raising Public Awareness

- Increasing the number of donations in Israel can be expected to decrease the number of Israelis that would turn to "Transplant Tourism" abroad. Therefore, Israel is making notable efforts to encourage organ donations from live and deceased donors. *Inter alia*, the NTC initiates special campaigns aimed at different communities and in different languages, including through social media (Facebook, Twitter etc.).
- For example:

⁴² *The Organ Transplant Law*, Section 6.

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1. **The Organ Donor Card – known as the "ADI Card":** This card acts as proof of registration to the database of the NTC, and an indication that the holder of the Card is willing to donate his/her organs after death. 97% of the families of a deceased person who owned an ADI Card provide consent to donate their family member's organs (in Israel there is an Informed Consent System). The database of the NTC Donor Cards signatories is confidential and managed by the NTC.⁴³
2. **Meetings with clergies** – meetings between representatives of the NTC and high ranked clergies, including rabbis and imams in Israel, are conducted in order to encourage religious leaders and their congregation to endorse organ donations.
3. Note that the *Organ Transplant Law* grants priority in organ allocation for transplantation to candidates who have registered as organ donors.⁴⁴

⁴³ <https://www.adi.gov.il/en/>

⁴⁴ *The Organ Transplant Law*, Section 9(b)(4). See also in: http://www.health.gov.il/Subjects/Organ_transplant/priority/Pages/default.aspx.