

THE CONSTITUTIONAL INFLUENCE ON ORGAN TRANSPLANTS WITH SPECIFIC REFERENCE TO ORGAN PROCUREMENT*

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SUMMARY

This article assesses the influence of the Constitution of the Republic of South Africa, 1996 on the law pertaining to organ transplants with specific reference to methods of organ procurement. These methods include a system of opting-in, presumed consent, required request, required response, the sale of organs, and organ procurement from prisoners. It is argued, in view of the acute shortage of organs, that the various organ procurement methods are in need of review in the context of the question of whether they are acceptable and sustainable within the constitutional framework. To this end, the article deals with the application, limitation and interpretation of the rights in the Bill of Rights and its interface with the various organ procurement methods in the context of a discussion of applicable legislation and relevant case law. It is argued that a constitutional analysis of the topic is indicative that the State has indeed failed to provide a proper or satisfactory legislative and regulatory framework to relieve the critical shortage of human organs available for transplantation, by ultimately failing to uphold the applicable constitutional rights and values as discussed.

KEYWORDS: Organ procurement methods; organ transplants; organ shortage; opting-in; presumed consent; required request; required response; the sale of organs; organ procurement from prisoners; Constitution; Bill of Rights; constitutional

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values; interpretation; limitation; national legislation; case law; bioethics; equality; autonomy; dignity; privacy.