Economic and Legal Development of Ukraine under Conditions of Post-industrial Society

16th All-Ukrainian Scientific and Practical Conference for Students and Cadets

UNIVERSITY OF STATE FISCAL SERVICE OF UKRAINE
EDUCATIONAL AND SCIENTIFIC INSTITUTE OF HUMANITIES
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DIRECTIONS OF IMPROVEMENT OF CRIMINAL LAW REGARDING LIABILITY FOR CRIMES RELATED TO ILLEGAL TRANSPLANTATION

In recent years, the problem of spreading illegal organ transplantation and anatomical materials is acute in Ukraine. The problem situation is caused by various factors, but first of all it consists in the absence of a perfect legal framework that would regulate the whole process of conducting transplant operations in Ukraine: from searching for a donor to transplanting the organ to the recipient and conducting a rehabilitation period for both parties. In addition, the improvement of legislation is the basis for counteracting such a socially dangerous act as illegal transplantation.

The relevance of this topic is due to the fact that the current regulatory and legal acts regulating issues in the field of transplantation and combating it are obsolete and do not meet the requirements of the present. The law of Ukraine "On transplantation of organs and other materials to man" (hereinafter – the Law) was adopted in 1999, so do not take into account organizational changes in the health sector.

Transplantation as a special method of treatment is the most important direction in the development of medicine. As I. Kirilyuk notes, transplantation of human organs and tissues is an effective and promising branch of medicine, it helps to save lives of people who were previously considered hopelessly sick.

However, in practice there are many problems, especially in that transplantation of human organs and tissues as a special method of treatment develops at an extremely rapid pace, constantly creating legal collisions in the current regulatory and legal acts regulating transplant activity. Such conflicts allow criminals to neglect legal norms and commit criminal offenses. According to the International Organization for Migration in Ukraine, which began to provide assistance to Ukrainian victims of human trafficking since 2000, recorded during the 2004–2016 years, twenty cases of illegal removal of organs and another attempt to carry out such an exemption.

The current Law of Ukraine "On transplantation of organs and other materials to humans" at that time was adopted taking into account international legal experience. It contains clear provisions on the conditions and procedures for the use of transplantation as a special treatment method designed to ensure the observance of human rights in Ukraine and the protection of human dignity in the application of transplantation. However, it should be noted that in this Law there

are a lot of unresolved issues that need to be changed on the basis of positive international experience.

The first and probably the most common problem in the spread of illegal transplantation in Ukraine is an exhaustive list of individuals who can provide their organs or tissues for transplantation. In accordance with Art. 12 of the Law, taking a homo-transplant (with the exception of anatomical materials that are capable of regeneration) from a living donor is allowed in cases when the recipient and the donor are married or are close relatives (father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece). The provisions of this article severely restricts a person's right to freedom of choice and is the cause of the spread of illegal transplantation through a fairly narrow list of possible donor individuals.

In our opinion, the impossibility of other relatives, acquaintances or just a person who wants to help the patient, become donors (cousins or godparents) leads to the fact that Ukrainian patients are forced to go abroad for treatment, where the law permits transplantation from a person, who are not close relatives, that is, bypassing the law. Quite often, such people simply fall into the "network of black transplantologists" from the hopeless situation.

Another issue is the issue of postmortem donation. According to the Law, every adult in full capacity can give written consent or disagreement to become a donor of anatomical materials in case of his death. In the absence of such an application, anatomical materials may be taken by agreement of spouses or relatives who lived with him to death. The prescribed law does not correspond to the reality. As the statistical data of the Ministry of Health of Ukraine show, our state ranks last among European countries in terms of postmortem donorship. In Ukraine, it is only 0.15 cases per million. The population is 100 times less than in neighboring Poland and 230 than in Spain.

Improvements are required by the current Criminal Code of Ukraine. Art. 143 of the Criminal Code of Ukraine does not have clear forms of criminal conduct, which objectively exist in practice. In addition, under the laws of Ukraine, a person who advertises or offers for sale human organs does not bear any responsibility. In our opinion, this is certainly a negative moment – a gap in the legislation of Ukraine, because in many cases such persons become victims, they are abducted or seized by other organs and tissues without consent.

So, the reform of the current legislation in the sphere of organ and tissue transplantation is conditioned by the needs of today. Indeed, with the development of science, technology, the increasing role of international relations, there is a need to revise certain obsolete positions and provisions. It is the improvement of legislation that is the basis for counteracting such a socially dangerous act as illegal transplantation that existed, exists and will exist. Only with the help of an integrated approach to this problem, it is possible to identify and overcome it.

Наукове видання

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