



Journal Website:
<https://theusajournals.com/index.php/ijlc>

Copyright: Original
content from this work
may be used under the
terms of the creative
commons attributes
4.0 licence.

FORMATION AND DEVELOPMENT OF RESPONSIBILITY FOR CRIMES RELATED TO THE ILLEGAL REMOVAL OF HUMAN ORGANS AND (OR) TISSUES IN THE REPUBLIC OF UZBEKISTAN

Submission Date: May 13, 2024, Accepted Date: April 18, 2024,

Published Date: May 23, 2024

Crossref doi: <https://doi.org/10.37547/ijlc/Volume04Issue05-08>

Sultonov Nodirbek Ulug'bekovich

Master Student 1 Course Of The Law Enforcement Academy Under The Prosecutor General's Office Of The Republic Of Uzbekistan

ABSTRACT

Modern advances in medicine, such as transplantology, genetics, embryo transfer and artificial insemination require careful legal regulation. However, so far no state has adopted the most complete legislation providing for both medical and legal regulation of all issues of organ and tissue transplantation. The relevance of this issue requires the attention of both medical workers and lawyers; both practitioners and scientists.

KEYWORDS

Crimes, regulation of relations in the field of transplantation of human organs and tissues, removal of human organs or tissues, socially dangerous acts, dignity of citizens of the Republic of Uzbekistan.

INTRODUCTION

Crimes in transplantation should be understood as intentional, socially dangerous acts that violate the rules and standards for the donation of relevant objects and their transplantation, regulated by the laws of countries. In the Republic of Uzbekistan, there is currently no universal document regulating all aspects of the organ transplantation process. This issue is partially resolved in the temporary Regulations on the procedure for transplantation of a kidney and (or) liver lobe, as well as hematopoietic stem cells of the bone marrow, as amended by Resolution of the

Cabinet of Ministers of the Republic of Uzbekistan dated June 21, 2021 No. 387, as well as Article 133 of the Criminal Code of the Republic of Uzbekistan, providing for criminal liability for the removal of organs or tissues of a deceased person for transplantation, conservation for scientific or educational purposes without the lifetime consent of the deceased or the consent of his close relatives. In addition, Article 135 of the Criminal Code of the Republic of Uzbekistan provides for criminal liability for trafficking in persons to obtain a transplant. And Article 97 of the Criminal Code of the Republic of Uzbekistan provides for criminal liability for

murder to obtain a transplant. At the same time, a draft of a new law of the Republic of Uzbekistan “On transplantation of human organs and tissues” has been developed. The purpose of this law is to regulate relations in the field of transplantation of human organs and tissues. The draft stipulates that this Law does not apply to: the transplantation of organs and tissues related to human reproduction (egg, sperm, ovaries, testicles or embryos); autogenous (living donor and recipient are one person) transplantation of organs and tissues; relations in the field of blood donation and its components. Many foreign countries have a fairly wide list of crimes in the field of transplantation. At the same time, in contrast to our legislation, the subject of illegal seizure and use, along with organs and tissues, are cells, blood and its components, waste products of a living person, and gametes. In some countries, as in our country, legislators specifically identify a special purpose as a qualifying feature - the removal and use of organs and tissues of the victim. For example, the Criminal Code of Georgia provides for the intentional infliction of grievous bodily harm “to transplant organs, parts of organs or tissues of the victim’s body” (clause “n”, part 2 of article 117),

Qualification of an act on this basis occurs equally in the case of harm to health when violence is used to obtain a transplant and in the case of harm caused by the fact of removal of organs or tissues. It is necessary to note such a significant circumstance that this crime is committed exclusively in the case of intravital seizure of transplantation objects. Several countries regulate forcing a person to remove organs or tissues not only for transplantation, but also for other reasons. So, part 1 of Art. 134 of the Criminal Code of Georgia - provides for seizure for treatment, experiments, or production of medicinal products; Art. 158 of the Criminal Code of Moldova for other purposes; Part 1 Art. 126 of the Criminal Code of Armenia - for scientific experiments;

Part 1 Art. 113 of the Criminal Code of Kazakhstan - other uses. In the Russian Federation, the medical aspect of organ and tissue transplantation is more carefully regulated in legislation, in particular by the Law of the Russian Federation of December 22, 1992 No. 4180-1 “On transplantation of human organs and (or) tissues” (as amended on December 8, 2020), Federal laws dated November 21, 2011 No. 323-FZ, dated July 20, 2012 No. 125-FZ “On the donation of blood and its components”, the Procedure for the provision of medical care in the field of “surgery (transplantation of organs and (or) human tissues)” (Order of the Ministry of Health of the Russian Federation dated October 31, 2012 No. 567n). However, criminal liability for illegal transplantation of human organs is provided only by Article Art. 120 of the Criminal Code of the Russian Federation “Forcing to remove human organs or tissues for transplantation, committed with the use of violence or the threat of its use.” There is also Murder to use the victim’s organs and tissues (Clause, Part 2, Article 105 of the Criminal Code of the Russian Federation) as an aggravating circumstance for murder.

Thus, Russian criminal law is in the process of determining the scope of criminal liability for illegal trafficking in human organs and tissues and for other crimes in the field of transplantation. In addition to criminal liability for illegal trafficking in human organs and tissues, another crime in the field of transplantology is the violation of the conditions and procedures established by law for transplantation of human organs or tissues. Criminal liability for this violation is provided for in the legislation of Armenia (Article 125 of the Criminal Code), Belarus (Article 164 of the Criminal Code), Kyrgyzstan (Article 115 of the Criminal Code), Tajikistan (Article 121 of the Criminal Code), Ukraine (Part 1 of Article 143 of the Criminal Code).

In all countries, regulatory legal acts regulate the conditions and procedures for collecting organs or tissues for transplantation (transplantation). In the Republic of Latvia, as in our country, violation of the rules and standards for the removal of human organs or tissues is not tied exclusively to transplantation. Article 139 of the Criminal Code of Latvia provides for liability for the illegal removal of tissues or organs of a living or dead person for the purpose of use in medicine, committed by a medical professional. Under criminal legislation in Tajikistan, Belarus and Armenia, both the donor and the recipient are recognized as victims of this crime. According to the legislation of the Kyrgyz Republic, the victim of this crime is exclusively the recipient. Various socially dangerous acts may accompany violations of the procedures established by law for the transplantation of human organs and tissues. These socially dangerous acts may include organ transplantation without informing the donor or recipient about possible health complications in connection with the upcoming surgical intervention; in the removal of organs and tissues from a person without legally formalized consent for the operation; in the removal of organs and tissues from a person who has not reached the age of legal capacity or an incompetent person; in the removal of an organ from a person suffering from a disease that poses a danger to the life and health of the recipient; in transplantation of infected tissues or organs; in the removal of an organ or tissue and its transplantation to a recipient who is not genetically related to the donor. In addition, a socially dangerous act may involve performing transplantation operations of human organs or tissues outside a medical institution, or in unaccredited medical institutions. According to the legislation of Latvia and Kazakhstan, there is a special clause that the illegal removal of tissues and organs for their use in medicine can be carried out not only from a living donor but also from a corpse (Article 139 of the

Criminal Code of Latvia and Article 275 of the Criminal Code of Kazakhstan). And the legislation of Ukraine (Article 144 of the Criminal Code) prohibits the forcible removal of blood and its components, the illegal removal of tissue or cells, or the collection of waste products of an adult living person, without his consent.

Legislation in the field of transplantology in our country is at the stage of development and improvement. When developing it, in all cases it is necessary to put the protection of human rights and freedoms first. Because the removal of an organ for transplantation, blood and its components, as well as the collection or removal of gametes from a living person, is associated with an invasion of the body and is often fraught with harm to the health, or even death, of both the donor and the recipient. Using the positive experience of foreign countries can serve to improve domestic legislation and formulate the principles of similar criminal law norms. Ultimately, improving legislation in the field of transplantation will serve to better protect the rights, freedoms, health and dignity of citizens of the Republic of Uzbekistan.

Another method of obtaining organs is to lure people abroad with false promises, such as job opportunities or economic benefits, that are not fulfilled. In destination countries, victims are either persuaded or forced to sell their organs to pay off travel debts and often receive little if any financial reward. As for organ recipients, they have to pay a much higher price, part of which goes to brokers, surgeons and hospital directors allegedly operating as part of an organized criminal network.

Organized crime groups are diversifying their criminal activities. They react flexibly and quickly to the current situation, profiting from new markets and discovering new illegal goods that promise high profits and are not

associated with a high risk of detecting criminal activity.

Therefore, trafficking in human organs is an attractive and profitable business, given the high demand and constant shortage of supply. Organs can be taken from living or deceased people without the consent of their relatives, or stolen from morgues.

Illicit trafficking in human organs reflects the socio-economic realities that exist in donor and recipient countries. Illegal trade thrives where governance institutions are weak or corrupt. In addition, poverty is an important and persistent factor determining the supply of human organs on the market.

There is also a close connection between corruption and trafficking in human organs. The serious influence of corruption is evidenced by the desire to circumvent the rules and regulations regarding human organ transplantation: for example, rewards are set to increase the income of hospital workers or medical institutions themselves, or so that rich patients can be among the first on the waiting list awaiting transplantation.

Human organ trafficking is a complex criminal enterprise that often requires the cooperation of a variety of individuals, including police officers, mortuary workers, medical personnel, ambulance drivers, recipients and donors. In addition, surgery to remove, for example, a kidney cannot be performed anywhere, as it requires specialized skills, as well as proper medical equipment and personnel experience. In addition, donors and recipients must be carefully screened for compatibility, and organs must be transplanted within a few hours.

Several countries have indicated that they are parties to one or both of the following legal instruments: the Optional Protocol to the Convention on the Rights of

the Child on the Sale of Children, child prostitution and Child Pornography; and the Additional Protocol to the Convention on Human Rights and Biomedicine concerning the transplantation of organs and tissues of human origin.

In terms of best practices and lessons learned, the Czech Republic recommended establishing, in cooperation with the Ministry of Health and financial authorities, a financial control or reporting system for the procurement of human organs. Germany reported successful enforcement of criminal sanctions at the earliest stage of trafficking in human organs, before transplantation. Illegal trafficking refers to activities aimed at obtaining personal gain and aimed at selling goods. Criminalization of such actions at an early stage had a preventive effect. Norway has indicated that it is a member of the Council of European Committee of Experts on Institutional Aspects of Cooperation in the Field of Organ Transplantation and is responsible for developing a draft recommendation on the use of kidneys by living donors who are not genetically related to the recipients. Slovenia emphasized the need and importance of training. The country has established a training system for police officers on trafficking in persons, which covers all forms of exploitation. The United Arab Emirates noted that it is participating in the work of the Council of Arab Ministers of Justice within the framework of the League of Arab States, aimed at preparing a framework legislation for Arab countries on the removal of human organs, preventing and combating illicit trafficking in organs.

Another method of obtaining organs is to lure people abroad with false promises, such as job opportunities or economic benefits, that are not fulfilled. In destination countries, victims are either convinced or forced to sell their organs to pay off travel debts and often receive little if any financial reward. As for organ

recipients, they have to pay a much higher price, part of which goes to brokers, surgeons and hospital directors allegedly operating as part of an organized criminal network.

Organized crime groups are diversifying their criminal activities. They react flexibly and quickly to the current situation, profiting from new markets and discovering new illegal goods that promise high profits and are not associated with a high risk of detecting criminal activity. Therefore, trafficking in human organs is an attractive and profitable business, given the high demand and constant shortage of supply. Organs can be taken from living or deceased people without the consent of their relatives, or stolen from morgues. Illicit trafficking in human organs reflects the socio-economic realities that exist in donor and recipient countries. Illegal trade thrives where governance institutions are weak or corrupt. In addition, poverty is an important and persistent factor determining the supply of human organs on the market.

There is also a close connection between corruption and trafficking in human organs. The serious influence of corruption is evidenced by the desire to circumvent the rules and regulations regarding human organ transplantation: for example, rewards are set to increase the income of hospital workers or medical institutions themselves, or so that rich patients can be among the first on the waiting list awaiting transplantation. Human organ trafficking is a complex criminal enterprise that often requires the cooperation of a variety of individuals, including police officers, mortuary workers, medical personnel, ambulance drivers, recipients and donors. In addition, surgery to remove, for example, a kidney cannot be performed anywhere, as it requires specialized skills, as well as proper medical equipment and personnel experience. In addition, donors and recipients must be carefully

screened for compatibility, and organs must be transplanted within a few hours.

REFERENCES

1. Положение о порядке проведения трансплантации почки и (или) доли печени, а также гемопоэтических стволовых клеток костного мозга, утвержденное Постановлением Кабинета Министров Республики Узбекистан от 21.06.2021 г. № 387
2. Проект закона “О трансплантации органов и тканей человека” Сайт Законодательной палаты Олий Мажлиса РУз <https://parliament.gov.uz/ru/laws/discussed/35809/>
3. Уголовный кодекс Республики Узбекистан / вступит. сл. М.Х. Рустамбаева, А. С. Якубова, З. Х. Гулямова. СПб., 2001. (с послед. изм. и доп.)
4. Закон о трансплантации органов и (или) тканей человека (в ред. Федеральных законов от 20.06.2000 N 91-ФЗ, ... , от 23.05.2016 N 149-ФЗ, от 08.12.2020 N 429-ФЗ) <https://normativ.kontur.ru/document?moduleId=1&documentId=98490>
5. Блинов А. Г. Уголовно-правовая охрана пациента в международном и зарубежном законодательстве / под ред. Б. Г. Разгильдиева. М., 2010. С. 58 – 59.
6. Преступления против личности в уголовном праве Беларуси, России и Украины / П. А. Андрушко, А. А. Арямов, Н. А. Бабий [и др.]; отв. ред. А. И. Чучаев. М., 2014. С. 86.
7. Уголовный кодекс Республики Армения / науч. ред. Е. Р. Азаряна, Н. И. Мацнева; предисл. Е. Р. Азаряна; пер. с арм. Р. З. Авакяна. СПб., 2004.