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OPERATIONAL-INVESTIGATION CHARACTERISTICS OF CRIMES RELATED TO ILLEGAL TRANSPLANTATIONS OF HUMAN ORGANS AND TISSUES

The article discusses the elements of operational-investigation characteristics of crimes occurring in the process of preparing, making and disguise traces of criminal transplantation.

Keywords: transplant of organs and tissues of the human; criminal transplantation; operational-investigation characteristics; operatively significant behavior; personality of criminal; subjects and objects representing an operational interest.

Проаналізовано елементи оперативно-розшукової характеристики злочинів, що вчиняються в процесі підготування й здійснення кримінальної трансплантації та маскування її слідів.

Ключові слова: пересадка органів і тканин людини; кримінальна трансплантація; оперативно-розшукова характеристика; оперативно значуща поведінка; особа злочинця; суб'єкти й об'єкти, які становлять оперативний інтерес.

Проанализированы элементы оперативно-розыскной характеристики преступлений, совершающихся в процессе подготовки, совершения и маскировки следов криминальной трансплантации.

Ключевые слова: пересадка органов и тканей человека; криминальная трансплантация; оперативно-розыскная характеристика; оперативно значимое поведение; личность преступника; субъекты и объекты, представляющие оперативный интерес.

⌈ The official statistics in Ukraine shows that approximate the annual need for transplant in Ukraine is: nephros – 2 500; liver – 1 500; hearts – 1 500 [1]. In countries with high development of medicine the number of donors is 20-40 persons per 1 million of the population. The number of nephros transplant operations does not

exceed 50 – 70 in all transplant centers together and each year is decreasing (in the artificial nephros live about 1 600 people of every million population [2]), and heart and liver in Ukraine are not transplanted at all, mainly due to lack of donor material. But it is these official statistics. One of the factors that causes the specified statistics is the fact that operations on transplantation of organs and tissues of the person in the US allowed exclusively in public medical institutions, and not all. This means that when the transplant doctors are eligible and can use only the organs or tissue that officially received. But due to the shortcomings of legislation that regulates the procedure of transplantation (starting from the extraction of organs and tissues and ending post-operative rehabilitation) of organs and tissues officially received is miserable.

As explained by the chief transplantologist Alexandr Nikonenko, Ukrainians are frightened with stories about «black» transplantologists and do not even realize how many lives could be saved with it. For comparison, it may be noted that in the performance of approximately 100–120 transplants (transplantation of nephros and liver) in 2013, was in the presence of about 2 thousand of possible donors for transplantation of nephross, about 1,000 for a liver transplant, about 700 for transplants of the heart and about 700 for transplantations of cornea of the eye. [3, 6]. So, when there were a practical availability of organs for transplantation, for psychological and legal reasons (e.g. refusal to relatives of the deceased from the granting of permission for the removal of organs), the operations were not conducted. However, the demand for such operations continues to grow because of the development of Medicine provides more opportunities for carrying out transplants of other organs. It is known that demand breeds supply. Official statistics are practically non-existent, but content analysis of open source attests to the widespread proliferation of monkey business in the field of transplantation. This promotes and distinct value, which rises from the donor to the recipient in hundred times. In some Asian countries poor people sell a nephros for a few hundred dollars, in Moldova and Romania this organ is already 2500–3000 dollars. In Germany a nephros transplantation is provided by Center realizes (the name is conditional) or mediator for 8,000 euros. The following additional cost is composed directly when implementing a nephros to a patient

recipient, among the latest prices, in 2013, a seriously ill person in Germany paid for a donor nephros nearly 90 thousand euros. [4, 5] If you add to this the cost of surgery and postoperative period suggests, the possibility of obtaining profits from such operations gets higher. On the other hand, analyzing a law-enforcement practice it can be argued that only the «tip of the iceberg» is revealed, according to the materials DIAZ of MIA of Ukraine testify, in 2006 4 facts of criminal in transplantation were revealed, in 2007 – 1, in 2008 – 1, in 2009 – 0, in 2010 – 2, in 2011 – 25, in 2012 – 1, in 2013 – 6. As for the quality metric, the most of these facts are the removal of the placenta with subsequent use as transplant, the sale of separate organs – mainly nephros, extracting the cornea of the eye in deceased persons without the consent of relatives.

Assessing the situation, we can conclude: the MINISTRY does not interfere the situation, since it does not have the appropriate levers of influence, patients continue to die, in the relevant Parliament Committee the situation is not considered to be a disaster, they don't see the reasons to change the law (because the facts of criminal transplant are not fixed), a desire to help patients, on the one hand, and the desire to earn excess profits-on the other hand, forms a «black market» transplantation with million funds rotating and a huge number of crimes made. At that, the responsibility is augmented only by a units, real punishment is not incurred to any person [5, p. 10].

However, annually tens thousands of people get lost in Ukraine, mostly in the best age for the removal of organs; there are rare cases of artificial (without the consent, or by insertion of misleading future mothers) abortion in the final terms [6, p.??]; the possibilities of harvesting organs during the autopsy the bodies of the dead people are practically not monitored and not considered. All of the mentioned above, in the context of the possibilities of obtaining super-profits makes the scope of criminal transplanting and allows to declare the participation in the processes of removal of organized crime groups with international relations. A low result of detection of crimes in this sphere we explain the weak knowledge of the operational units of the peculiarities of criminal behavior, the ways of committing crimes, as well as high latency of the specified crimes. For a successful detection of crimes, their disclosure and investigation, operational employees should have information about the specifics of

the criminal manifestation and how they can fully discover and explore the correlation links, by which is characterized the specified event. In this regard, it's reasonable the consideration of the basic operational-investigation characteristics of crimes, the classic elements of which include: the subject of criminal assaults, the situation and ways of training, committing and hiding the crime, objects-carriers of operationally significant information, personal data, criminals, reasons and purposes of criminal acts. But it should be noted that for various kinds of crimes the elements of operational-investigation characteristics of crimes will be different, because some of them are optional, and some more operatively significant. In our opinion, the elements of operational and investigation of criminal transplantation include: the concept of the specific crime; qualification of the characterized action; operationally-significant behavior (to which we attribute methods of preparation, committing and hiding the crime); the personality of the criminal (specific characteristics of individuals who organize or provide criminal actions) and the victim; operatively significant behavior frequency; the reasons and conditions of committing crimes; subjects and objects that make up an operational interest; the ways and means used by criminals, committing and hiding criminal actions (scientists in similar situations use «phase» approach that involves the description of phases (stages) of criminal activity, including: collection and assessment of data on the basis of which the decision about the possibility of committing criminal actions in the particular situation (first phase); changing the existing situation, formation of a criminal group, the adjustment plan, training tools, etc. (the second); the illegal obtaining of material or financial resources, their appropriation, distribution, usage, legalization (third); expansion of criminal ties, the increase in the scale of operations, improving facilities and technology (fourth) [7, s. 101]); signs of criminal transplantation.

As for the legal assessment of the criminal law provides a number of rules which qualify the actions of criminal transplantation. The main norm we define the art. 143 of the CRIMINAL CODE of Ukraine. (Violation of law transplantation of human organs or tissue).

Besides, the CRIMINAL CODE contains a number of provisions which can qualify the actions of criminals who remove human organs and organize the illegal transplant operations, namely:

violent donation (art. 144 of the CRIMINAL CODE of Ukraine);

illegal research providing over a human, because in the process of transplantation, series of actions that are carried out by doctors, are not stipulated by the regulations of the MINISTRY OF HEALTH, therefore, can be regarded as experiments (article 142 of the CRIMINAL CODE of Ukraine);

violation of the right to free medical care, because in the process of transplantation in the State establishments doctors require payment for their services (article 184 of the CRIMINAL CODE of Ukraine);

illegal medical activity, because in the process of transplantation an individual performs acts which could not be provided by special permission (since obtaining such a permit is a priori impossible), and the person does not have the ability to obtain appropriate specialization (failing of such specialization in educational institutions of the MINISTRY OF HEALTH) and is therefore it can be considered that the operation is conducted by a person who does not have the proper medical education (art. 138 of the CRIMINAL CODE of Ukraine);

Actions of people who receive organs without the consent of the complainant can be classified as:

intentional homicide (art. 115 of the Criminal Code of Ukraine);

intentional severe bodily injury, life-threatening at the moment of causation, or which caused a loss of any organ or its functions, mental illness, or another health disorder (including abortion) (art. 121 of the Criminal Code of Ukraine);

torture that is the intentional infliction of severe physical pain or physical suffering through torture or other violent acts (art. 127 of the Criminal Code of Ukraine);

abuse of corpse (art. 297 of the Criminal Code of Ukraine) [8].

Considering the formal side, it is possible to note the following – a crime is:

a violation of statute-established order of transplantation of human organs or tissues;

an avulsion of organs or tissues of the person by coercion or deception for the purpose of their transplantation (including of a person who was in a helpless state, or financially or otherwise, depending on the guilty);

an illicit market of human organs or tissues;
a participation in transnational organizations engaged in such activities.

Operational significant behavior is the violation of the statute-established order of transplantation of human organs or tissues, which is defined by the Law of Ukraine «On the transplantation of organs and other anatomical human materials» [9] and normative acts of the Ministry of Health of Ukraine. Therefore, a violation of these conditions means the following:

absence of medical indications of a recipient for the use of transplants established by council of physicians;

realization of transplantation in not accredited in statute-established order national and municipal health care institutions and national scientific institutions according to the list approved by the Cabinet of Ministers of Ukraine;

absence of a written statement of consent to be donors;

absence of statement of spouses or relatives who lived with the deceased before his death as to the consent of anatomical material avulsion in adult capable dead person (anatomical materials in dead juveniles, reduced able-bodied or disabled persons can be taken with the consent of their legal representatives);

lack of awareness of donors about possible consequences for their health.

Solely organs or tissues belong to the subject of this crime, so the illegal actions with such biomaterials as heterotransplantats and bioimplants remain out of sight of the Criminal Law.

In addition, the anatomical materials of dead embryo (fetus) of a person are included to the subjects of crime, which in accordance with the Law of Ukraine [9] can be used for transplantation. In the list of anatomical structures of tissues, their components, fragments and fetal material approved for avulsion from the corpse donor , and the corpse of a dead human fetus , approved by the order of the Ministry of Health N° 226 of 25th of September 2000 [10] the following types of tissues are distinguished: soft tissues; tissues of the locomotor system; blood vessels and valves; other tissues (auditory ossicles, drum membrane, bone marrow, skin, cornea, teeth, trachea), fetal materials (after abortion and delivery) (fetal materials include amniotic membrane, umbilical cord, placenta and fetal cells).

Analyzing the subject of a crime, it is possible to determine the types of operational and meaningful behavior that are not generally interpreted as a crime. In modern medicine exactly a cell transplantation is rapidly developing, so fetal (stem) cells and tissues are particularly almost uncontrollably applied. But the use of fetal (stem) cells is considered to be anti-aging procedure, etc., not a transplantation, so this application comes with numerous violations of the statute-established order. The most common example is the use of transplantation in private medical centres (clinics, centers, etc.), although it is exclusively allowed only to accredited in established order national and municipal health care institutions and to public scientific institutions, according to the list approved by the Cabinet of Ministers of Ukraine of 24th of April 2000 [11].

The terms of legality of transplantation include the presence of a written statement of consent to be a donor, and in the case of transplantation of fetal materials, consent of a woman who has taken the final decision regarding abortion (abortion). But nobody actually asks the permission of these women, and the embryos are used at discretion. Under current legislation, the initial moment of life is the beginning of physiological birth, including premature or artificially induced. From that very moment, any attempt upon the life would be qualified as a murder. According to the current law, a human embryo does not use any criminal law protection. Using these factors and patient ignorance of the rules, doctors cause premature birth on the last months of pregnancy, and then sell the taken materials practically causing a crime.

As for to significant operational entities, we refer:

recipient in the cases when he: was willing to make a contract as to provision medical services in a form of transplantation with a healthcare institution that performs similar operations, he requires treatment with transplantation of organs and tissues for the medical conditions. The signs of committing a crime will be observed if there appear signs of executed operation without recorded fact of the receipt of donor organs;

medical institutions workers during transplantation using postmortem grafts in the presence of performed operations without legal obtaining of organs or tissues of human for transplantation;

donor in cases of transplantation with donation of living persons in the absence of appropriate conditions: voluntary making of donation contract with transplantation hospital; full capability owning (in the case of minors, with the consent of the legal representatives); age not less than 18 years (except the cases of bone marrow transplantation); absence of medical contraindications for transplantation, the absence of official or other dependence on the recipient;

workers of non-governmental medical institution in the absence of certain conditions: making contracts with the recipient and donor on the provision of health services in the form of transplantation, in one case, and the donation contract otherwise; the permission of the Ministry of Health to perform transplantations; proper documented qualification of a surgeon who performs surgery on transplantation of organs and tissues. The absence of the given above signs will witness the absence of legal personality of the participants of legal relationship in the transplantation of organs and tissues, which make donation contract or contract for provision of medical services in transplantation illegal;

persons who offer to buy donor organs. The issue of compensation for organ transplant donation was repeatedly debated in the medical and legal literature. The problem of compensated or uncompensated organ donation is associated primarily with the definition of the legal status of transplants – organs and tissues, separated from the body of the donor. Scientists believe that as the needs and interests of the individual are recognized to be of higher standard, the content of social development of a society, so a person is free in realization of the rights in relation to his own body, is free in deciding on the avulsion of his organs or tissues, is rightful to dispose of fragments of his body and, therefore, is free to choose their customers. Under this point, the economic assessment of the causes of the emergence and development of illegal markets of transplants is also brought: banning of the sale of organs and tissues can not devalue their product, but it prevents people, the owners of the organs (living or families of deceased donors) to find out their real economic value. As a result, many people are forced to either manage without legal transplants and to deal with black market dealers or to stay without prospects for avulsion and prolonging life. Lack of legal transplants market from this point of view leads to the loss of many billions of both potential donors and recipients [12, p. 21]. But for now, following acts

are considered to be criminal actions - illicit market of human organs or tissue by the criminal law. Thus we can say that a chain of criminal acts consists of certain interrelated operations, some of which can be qualified as a crim

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