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CRIMINAL LEGAL PROTECTION OF THE ESTABLISHED BY LAW ORDER OF TRANSPLANTATION OF ANATOMICAL MATERIALS OF HUMAN

Due to the adoption on May 17, 2018 of the Law of Ukraine «On the Application of Transplantation of Anatomical Materials to Human» [1] for domestic criminal law the urgent task of providing reliable protection of the established by law order of transplantation of anatomical materials of human has emerged. It should be emphasized that the effect of this Law extends to the transplantation of anatomical materials to human, the carrying out of activities related to transplantation, the receipt of human anatomical materials for the manufacture of bioimplants, the determination of the conditions for the use of xenoimplants. This Law, after its signing by the President of Ukraine, enters into force from the day following the day of its publication, and is put into operation on January 1, 2019, except Paragraph 4 of Section VIII of this Law, which shall be put into operation on the day following the day of the publication of this Law.

It is projected that soon up to 50.0 % of all surgical operations will be associated with the transplantation of human organs. In addition, according to statistics, in Ukraine, every year, up to 3,000 people die, which could become donors and save lives of 10,000 people. Thus, the analyzed Law establishes new principles, conditions and procedures for the application of transplantation. This normative-legal act has improved the legal procedure for obtaining «clearly expressed consent» («presumption of disagreement») on post-mortem donation. A person must document his/her consent to become a donor after death, and unless this is done, and by the default it means the reluctance of such a person to transfer organs and/or anatomical materials. The law clearly states that documentary

consent can be made in the form of a written application, a mark in the passport or another document. After giving permission to a potential donor, a state-confirmed card is issued. Information about individuals who have agreed to donate will be fixed into the Unified State Information System for Transplantation. In this case, the information given by consent will be considered confidential and not subject to disclosure. At the same time, the application for a permit for transplantation can be withdrawn.

The Law of Ukraine «On the Application of Transplantation of Anatomical Materials to Human» prohibits commercialization in the field of transplantation and advertising of organs. According to Article 24 «Responsibility for violation of transplant legislation» of this Law, legal and natural persons guilty of violating the transplant legislation, are liable in accordance with the law. In these conditions, it also speaks of criminal liability, which in Ukraine concerns only individuals. For certain reasons, only criminal legal measures, the essence of which is defined in Section XIV-1 of the General Part of the Criminal Code of Ukraine (hereinafter referred to as the CCU), may be applied to legal persons [2, c. 240]. Moreover, Clause 3 of Section VII «Final and Transitional Provisions» of this Law provides for amendments to Article 143 of the CCU in relation to the prevention of illegal transplantation and trafficking in organs, as well as more severe punishment for the committing of this crime.

In particular, the title of Article 143 of the CCU is proposed as follows: «Violation of the established by law order of transplantation of anatomical materials of human». Paragraph 1 of this Article provides for liability for violation of established by law order of transplantation of anatomical materials of human (such actions will be punishable by a fine of up to fifty minimum revenues of citizens not levied by tax or correctional labor for a term up to two years, or limitation of freedom for a term up to three years, with or without deprivation of the right to hold determined posts or to engage in a determined activity for a term of up to three years). The separate corpus delicti is «Removing a human by coercion or deception of its anatomical materials for the purpose of their transplantation» (Paragraph 2 of Article 143 of the CCU). The punishment for such actions is a deprivation of liberty for a term up to five years with

deprivation of the right to hold determined posts or to engage in a determined activity for a term of up to three years. Paragraph 3 of this Article establishes liability for actions provided for in Paragraph two of this Article committed against a person who was in a helpless state or materially or otherwise dependent on the perpetrator (punishment for this is a deprivation of liberty for a term of five to seven years with deprivation of the right to hold determined posts or to engage in a determined activity for a term of up to three years). Also, the separate corpus delicti is «Illegal trade in human anatomical materials» (Paragraph 4 of Article 143 of the CCU). Such actions are punishable by a deprivation of liberty for a term up to five years. If the actions envisaged by the second, third, or fourth paragraphs parts of this Article, committed by prior arrangement by a group of persons, or participation in transnational organizations engaging in such activity (Paragraph 5 of Article 173 of the CCU), they shall be punishable by a deprivation of liberty for a term of five to eight years with deprivation of the right to hold determined posts or to engage in a determined activity for a term of up to three years.

In spite of the existing changes and additions to the current CCU, in our opinion, there are remaining the issues of the application of the norm on criminal liability for violation of established by law order of transplantation of anatomical materials of human in the part of a fairly wide range of social relations, forming the object of this crime, the absence of a clear differentiation of actions, which constitute its objective side, finding out the content of the subjective side of the crime, the lack of the possibility to apply criminal legal measures to the legal persons the authorized natural persons of whom have committed the analyzed in this paper crime, and so on.

List of references:

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