

Combating the illegal transplantation as a prerequisite for the sustainable development of regions (on the example of Sverdlovsk region)

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Abstract. The text of this article emphasizes that the history of transplantation as an independent medical industry originated in the Union of Soviet Socialist Republics, the first successful operation to transplant human organs and tissues was performed there by the surgeon Yuri Voronoy. Today Russia is one of the world-leading powers where human organ and tissue transplant operations are performed. Among all the subjects of Russia where transplant operations are carried out, Sverdlovsk region occupies a special place: doctors in this region conduct successful operations on organ and tissue transplantation and make discoveries that are significant for Russian transplantology. The study of Russian laws and regulations regulating relations in the field of transplantology conducted by authors, as well as an analysis of the scientific literature showed that relations in the field of transplantology are not fully regulated by Russian legislation, including criminal law. On the territory of Sverdlovsk region in particular, as well as on the territory of Sverdlovsk region as a whole, it is possible, for example, to carry out transactions for the sale and purchase of human organs and tissues with impunity, if such transactions are not related to causing harm to the life and health of the victim. These deals are illegal, but not punishable. As the analysis of the practice carried out in the framework of this study has shown, the inhabitants of Sverdlovsk region suffered from the imperfection of the norms of Russian legislation regulating relations in the field of transplantology. While the residents of Sverdlovsk region are suffering from illegal transplantation, one cannot speak of the sustainable development of this region. The authors of the study, in order to combat illegal transplantation in Sverdlovsk region, propose that the regional authorities strengthen measures to improve the general legal literacy of the population, introduce a register of citizens' opinions on the posthumous transplantation of their organs and tissues, and introduce mandatory registration of transactions made in Sverdlovsk region, a subject of which are human organs and tissues.

1 Introduction

Today transplantology is an important part of medicine. Thanks to transplant operations, doctors save the lives of many patients every day. The first doctor who performed an organ

transplant operation was a Soviet surgeon, Doctor of Medicine Yuri Voronoy. In 1933, a doctor transplanted a deceased donor's kidney into a patient. This operation marked a new stage in the development of medicine not only in the Union of Soviet Socialist Republics, but all over the world: before Yuri Voronoy, no one was able to successfully transplant an organ to the recipient [1].

It follows that transplantology is one of the youngest, but dynamically developing areas in the field of medicine.

Today, human organ and tissue transplant operations are carried out all over the world. There are many outstanding doctors in the Russian Federation who are successfully engaged in transplantology. Sverdlovsk Region is a region where human organ (tissue) transplantation operations are often performed [2]. Most often in this region, transplant operations are performed in the regional center – the city of Yekaterinburg [3, 4].

The legal regulation of transplantology causes a lot of discussion among scholars in the field of jurisprudence [5]. In modern Russian legislation, there are several norms that are equivalent in force and which relate differently, for example, to the presumption of posthumous consent to transplant human organs or tissues for donor purposes.

In the criminal legislation of the Russian Federation, there is no norm that directly and clearly establishes criminal liability for criminal transplantation of human organs and tissues. The exception is Article 120 and clause “g” Part 2 of Art. 127.1 of the Criminal Code of the Russian Federation – “coercion to remove human organs or tissues for transplantation” and “trafficking in persons for the purpose of removing organs and tissues from them”.

However, in the case of Art. 120 of the Criminal Code of the Russian Federation, the criminal act will not be the operation of transplanting human organs or tissues, but the compulsion to remove them.

Item “f” part 2 of Art. 127.1 of the Criminal Code of the Russian Federation also provides for punishment not for the removal of organs and tissues of a person, but for trafficking in persons, that is, a sale and purchase transaction, the subject of which will be a person committed in order to use the organs and tissues of the victim (a person acting as an object transaction).

Nevertheless, the practice and scientific research confirm that cases of illegal transplantation are known all over the world. However, given the fact that Russian criminal legislation does not provide for criminal transplantation, but other regulatory legal acts of the Russian Federation, such as the Law of December 22, 1992 No. 4180-1 “On organ transplantation and (or) human tissues”, the Federal Law “On fundamental healthcare principles in the Russian Federation” dated November 21, 2011 No. 323-FZ, etc., from the point of view of the law on the territory of Russia, it is correct to use the broader concept of “illegal transplantation”, rather than the concept of “criminal transplantation”.

The relevance of this study lies in the fact that cases of illegal transplantation are relevant for all regions where human organ (tissue) transplantation operations are successfully carried out. Sverdlovsk Region, as mentioned above, is one of those constituent entities of the Russian Federation where transplant surgeries are regularly performed. This means that the territory of Sverdlovsk region is a platform for potential violations of the norms of medical law governing relations in the field of transplantology.

It should also be noted that talented doctors work in the capital of Sverdlovsk region, the city of Yekaterinburg, whose contribution to the development of domestic transplantology is invaluable: for example, it was the doctors of Yekaterinburg who were among the first in the Russian Federation to conduct operations on a successful liver from a dead donor to a living recipient, which helped significantly expand the practice of transplanting human organs and tissues and make a number of scientific discoveries in the field of transplantology [3, 4]. These outstanding physicians can potentially become victims in accordance with the provisions of Art. 120 of the Criminal Code of the Russian Federation. With their special

knowledge and rich practical experience, they are of interest to criminals who can force doctors to illegally remove human organs and tissues from a donor.

Taking into account the imperfection of the federal medical and criminal Russian legislation in the field of regulation of relations related to transplantation of human organs and tissues, the regions should take independent measures aimed at combating illegal transplantation. This struggle is a prerequisite for the sustainable development of each constituent entity of the Russian Federation, including where organ and tissue transplant operations are performed. This is especially true of Sverdlovsk Region, where some of the best Russian transplantologists work. Medical institutions in the region have extensive experience in operations for transplanting human organs and tissues, and the development of transplantology in Sverdlovsk region has the great potential [7].

The objective of this study is to provide specific proposals for combating illegal transplantation at the level of the constituent entities of the Russian Federation using the example of Sverdlovsk region.

2 Methods and Materials

In the course of writing this article, the authors used both general scientific and private legal methods. The general scientific methods to which the authors of this work turned to when writing it include the following methods.

The comparison method was used in the analysis of normative acts and established practice in the field of legal regulation of relations associated with transplantation of human organs and tissues.

The work also used the deductive method when it came to extrapolating the provisions of federal legal norms to the realities of the regions.

The induction method, on the contrary, was used when transferring the methods of combating the regions of the Russian Federation with criminal transplantology to the federal level.

As for private scientific legal methods, the hermeneutics should be noted as a way of interpretation in the field of law. As practice shows, the concepts used in Russian legal and scientific sources often do not have a legitimate definition. In order to work with such concepts further, it is necessary to interpret them.

The works of Russian and foreign scientists in the field of medicine and law were used as a scientific basis for the study.

Human life and health are the highest constitutional value in accordance with the text of the Constitution of the Russian Federation. Transplantologists of Sverdlovsk region have repeatedly helped to preserve this value, which is a very important fact in the context of the development and preservation of constitutional values at the present stage of development of Russian law [8].

Notwithstanding the above-mentioned, the criminal law of the Russian Federation does not provide the responsibility for illegal transplantation of human organs and tissues, there are a number of rules providing for liability for crimes that are (or may be) related to organs and tissues of the victim. These are Art. 120 of the Criminal Code of the Russian Federation, which establishes responsibility for coercion to remove human organs and tissues for transplantation and clause "f" part 2 of Art. 127.1 of the Criminal Code of the Russian Federation, the disposition of which refers to trafficking in persons for the purpose of using the organs and tissues of the victim.

Also, the authors propose to attribute to this kind of crimes the acts provided for in clause "m" of part 2 of Article 105 and clause "f" of part 2 of Article 111 of the Criminal Code of the Russian Federation – murder and infliction of grievous bodily harm, respectively, for the purpose of using the organs and tissues of the victim.

As practice shows, not only the organ of a living donor, but also the organ or tissue of a deceased person can be used for transplantation. Accordingly, it is reasonable to say about the illegal removal of organs and tissues from a corpse for donor purposes as an outrage over the body of the deceased, that is, an act, the responsibility for which is provided for in Art. 244 of the Criminal Code of the Russian Federation. In this regard, it should be noted that the Criminal Code of the Russian Federation does not provide for liability for the illegal removal of organs and tissues from a victim for donor purposes. On the one hand, this act, it would seem, is covered by the disposition of Art. 244 of the Criminal Code of Russia, and on the other hand, Art. 8 of the Law dd. December 22, 1992 No. 4180-1 "On transplantation of human organs and (or) tissues" establishes a presumption of consent for the posthumous removal of human organs and tissues. This norm means that if a person during his lifetime did not leave clear indications that he is against the use of his organs (tissues), then immediately after his death, medical workers have the right to remove his organs for further donor purposes.

In accordance with Art. 8 of the Law dd. December 22, 1992 No. 4180-1 "On transplantation of human organs and (or) tissues", after the death of a person, organs (tissues) can be removed from him, arguing that this biological material will be used for donor purposes, but if the seized organs are used for other purposes, the perpetrators will not face any liability for this.

Residents of Russia, in particular those who live in Sverdlovsk region, regularly suffer from such collisions of Russian legislation. Thus, a native of the city of Yekaterinburg, a student Alina Sablina, while staying in Moscow, had an accident and died. An autopsy of the girl's body was carried out in the capital of Russia, after which she was sent to Yekaterinburg for burial. Moscow doctors handed over documents to their Sverdlovsk colleagues, according to which, immediately after Alina's death, four of her organs were removed for donor purposes. However, experts from Yekaterinburg, after conducting a second autopsy of Sablina's body, found that not four, but seven organs were removed from the girl. Where three more organs of the young deceased student disappeared remains unknown to this day [9, 10].

Alina Sablina's parents and grandmother appealed to state bodies with a request to find out where the organs and tissues of the body of their deceased daughter and granddaughter had gone. The last instance in the Russian Federation where the student's relatives applied was the Constitutional Court of the Russian Federation. The Constitutional Court of Russia issued a Ruling dated February 10, 2016 No. 224-O on the refusal to accept for consideration the complaint of citizens Biryukova Tatyana Mikhailovna, Sablina Elena Vladimirovna and Sablina Nelli Stepanovna on violation of their constitutional rights by Article 8 of the Law of the Russian Federation "On organ transplantation and (or) human tissue". According to the text of this Ruling, the lives of recipients who were or could be saved with the help of donor organs by Alina Sablina means much more than the hurt feelings of the girl's relatives. And for the fact that three organs disappeared from the girl's body somewhere, no one incurred responsibility, because, from the point of view of the Constitutional Court of the Russian Federation, they were withdrawn for donor purposes, which means that one cannot talk about the desecration of the body of the deceased and initiate a criminal the case under Art. 244 of the Criminal Code of the Russian Federation.

In accordance with the norms analyzed above, an offender can remove organs and tissues from a person who has just died, arguing that these organs and tissues will be used for donor purposes. However, if the seized human organs and tissues do not reach the recipients, no one will incur any criminal liability. In the scientific literature, it is noted that crimes related to transplantation are committed mainly for selfish purposes, since the price of human organs and tissues on the black market is quite high [5, 6]. The paradox is that on the territory of the Russian Federation, including the territory of Sverdlovsk region, it is possible to trade with

impunity in human organs (tissues). Despite the fact that the norms of the Law of December 22, 1992 No. 4180-1 "On the transplantation of human organs and (or) tissues" speak of the establishment of criminal liability for the sale and purchase of human organs and tissues, the Criminal Code of the Russian Federation itself does not contain a norm, which would establish criminal punishment precisely for the purchase and sale of human organs and tissues. This collision reflects the complexity of the legal impact model formation in relation to the legal regulation of relations associated with transplantology on the territory of the Russian Federation [11].

In addition to transactions on the sale and purchase of human organs and tissues, which is formally prohibited only by the provisions of the Law of December 22, 1992 No. 4180-1 "On transplantation of human organs and (or) tissues", however, in reality, no responsibility can be obtained for such transactions, organs and human tissues can become subjects of other civil law deals, if this does not lead to harm to the life and health of the donor. Formally, human organs (tissues) can be donated, for example.

The civil legislation of the Russian Federation does not provide for the procedure for transactions involving human organs and tissues. Thus, for example, the law does not say that such transactions must be concluded in a mandatory written form and also be registered. At the same time, civil law does not establish that such transactions should be formalized only orally. The lack of registration of such transactions does not allow them to be identified and have a complete picture of what is happening. In the opinion of the authors of this study, this is one of the reasons for the high latency of crimes related to the transplantation of human organs and tissues, as well as the high latency of other illegal actions with human organs and tissues, which occur not only in Sverdlovsk region, but throughout Russia.

3 Results and Discussions

Taking into account the general level of legal nihilism inherent for the majority of the population of the Russian Federation in general and its subjects in particular [5, 6], as well as relying on judicial practice, we can conclude that a significant part of people living in Sverdlovsk region do not know about the presumption for the removal of human organs and tissues for donor purposes after the death of a potential donor. It should be noted that there is a similar presumption in France. Clause 3 of Art. L. 1232-1 of the French Health Code establishes: "The removal of organs can be carried out from an adult, if he did not declare his opposition to such removal during his lifetime." Clause 1 of Art. L. 1232-2 says that if the deceased was a minor (or an adult under guardianship), then the decision on transplantation is made with the written permission of each person vested with parental or guardian rights in relation to the deceased. In this case, the disagreement must be officially registered in the national automated register in both cases [12].

In the opinion of this study authors, it is required to improve the legal literacy of the population of Sverdlovsk region. For this work, it is proposed to involve regional mass media, organize legal education lessons in educational institutions of Sverdlovsk region, etc.

By analogy with the experience of colleagues from France, he proposes to introduce a register on the territory of Sverdlovsk region, where residents of the region can express their position on the posthumous use of organs and tissues. This register should be publicly available to doctors. A doctor who ascertains the death of a person on the territory of Sverdlovsk region will have to make a note that he is familiar with the expression of the will of the deceased in life regarding the disposal of the organs and tissues of his body after death. It is assumed that in this registry, each potential donor will give permission or prohibition for the further use of his organs and tissues. As of all organs and tissues of the body, as well as individual ones. For example, a person can give permission for the posthumous use of his

particular organ for donor purposes, but give a ban on transplantation of other organs of his body.

It is assumed that capable residents of the region will be able to independently express their will regarding the future fate of their body, and for minors or citizens who are legally incapacitated, such a decision can be made by legal representatives or guardians.

Considering the changeability of human nature, it is proposed to introduce the function of changing the decision regarding the disposal of the organs (tissues) of a citizen after his death.

Citizens (their representatives) shall make all entries to the register in state institutions (for example, in a multi-functional center), voluntarily, being of sound mind and sober memory.

Such a measure will reduce the number of cases of human organs and tissue removal for their further use for illegal purposes. For example, for sale in the black market both in Russia and abroad.

It is also proposed to introduce obligatory registration of transactions with human organs and tissues in the territory of Sverdlovsk Region; the transactions themselves are proposed to be drawn up in writing. The proposed measure does not contradict either criminal or civil Russian federal legislation, but it will help reduce cases of illegal transplantology in Sverdlovsk region.

4 Conclusions

Sverdlovsk Region is one of the leading Russian regions in terms of transplantation (including postmortem) of human organs and tissues. But even the most positive relations, aimed at preserving human life and health and protected by law, can become the object of illegal encroachments.

Practice has shown that due to the imperfection of Russian federal legislation, due to the low level of legal literacy among the population, residents of Sverdlovsk region suffer from intruders who use the organs and tissues of victims for criminal purposes.

For the further region sustainable development, including the transplantology development resulting in saving lives and preserving the health of patients in Sverdlovsk medical institutions, the following measures must be taken:

1. Increase of the general legal literacy of the region's population. In particular, an explanation of the basics of medical law.
2. Introduction of the register where citizens will be able to dispose the further fate of their organs and tissues after death and where it will be possible to trace the further path of human biological material in the event of its removal.
3. Introduction on the region territory a written form of transactions, the subject of which are human organs and tissues, with further registration of such transactions.

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