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TRANSPLANTATION OF HUMAN ORGANS AND TISSUES AS A CIVIL LAW RELATIONSHIP

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Abstract. *This scientific article is devoted to the contemporary problems of legal regulation of the transplantation of human organs and tissues as an object of civil law relationships. The study conducts a comprehensive analysis of the legal status of organs and tissues of the human body, their property law nature, and their degree of negotiability in civil circulation. Furthermore, during the research, the theory of somatic rights, the presumption of consent, contractual relations, and the principles of prohibiting commercialization were examined using the examples of international law and the experience of foreign countries. It is substantiated that human organs and tissues are not ordinary objects of property (commodities) but rather specific (sui generis) objects with restricted circulation. The experience of foreign countries and national legislation, in particular the Civil Code of the Republic of Uzbekistan and special normative-legal acts in this field, were analyzed, and practical proposals were developed to eliminate existing legal gaps and ensure citizens' constitutional rights to the protection of life and health.*

Keywords: *transplantation, object of civil law, human organs, tissues, somatic rights, presumption of consent, objects with restricted circulation, medical service contract, legislative gaps, bioethics*

Introduction

The achievements of modern medical science have developed transplantology, one of the most unique methods of prolonging human life and improving its quality, to an unprecedented level. Looking at history, the world's first organ transplantation was performed in 1933 by the Kharkov surgeon Yuri Voronoy, who transplanted a foreign kidney into a human (Dzyuba, 2022). Since that time, transplantology has developed rapidly, and today the transplantation of vital organs such as the heart, liver, kidney, lungs, and various tissues has become the only and most effective method of treating many diseases (Baumova, 2017, p. 68).

However, these processes not only have medical and biological characteristics but also encompass deep ethical, social, and legal problems. One of the primary and most complex issues facing the legislator is the classification of human organs and tissues as objects of civil law relationships and the regulation of their participation in civil circulation (Ivayev & Berdegulova, 2017, p. 1190). Gaps in legislation create numerous problems in this field and, on the one hand, lay the groundwork for various abuses, the black market, and human organ trafficking, while on the other hand, they hinder the development of transplantation as a method of treatment (Romanova, 2023, p. 23).

In civil law theory, a unified approach to the legal status of the human body and its parts has not yet been formed. On the one hand, after the parts of the human body are separated, they become objects (things) of the material world and acquire a certain economic value (Kartashkov, 2021, p. 405). On the other hand, introducing these objects into free circulation like ordinary things (commodities) contradicts human dignity, their inherent and inalienable rights, as well as the principles of international bioethics (Serebryakova et al., 2011, p. 156).

In the new edition of the Constitution of the Republic of Uzbekistan, it is strictly established that a human being, their life, freedom, honor, dignity, and other inalienable rights are considered the highest value (Republic of Uzbekistan, 2023). These constitutional provisions serve as the foundation for the legal regulation of the field of transplantation of human organs and tissues. The Law of the Republic of Uzbekistan “On the Transplantation of Human Organs and Tissues” adopted in 2022, was an important step related to the field (Republic of Uzbekistan, 2022). Despite this, in civil legislation, particularly in the Civil Code of the Republic of Uzbekistan, the role of human organs and tissues as objects of civil rights is not clearly defined (Republic of Uzbekistan, 1997). This creates collisions and legal uncertainties in practice.

The main purpose of this article is to systematically analyze the legal nature of human organs and tissues as objects of civil rights, their capacity for circulation, and the specific features of contractual relations in this field based on international, regional, and national legal experience, as well as to develop proposals for improving legislation.

Methods

During the research process, a set of general scientific and special legal methods of understanding legal reality was utilized. In particular, using the comparative-legal method, the normative-legal framework in the field of transplantation, as well as the legislation and judicial practice of the Republic of Uzbekistan, the Russian Federation, Ukraine, Armenia, Kazakhstan, and Western European countries, were mutually compared (Martirosyan, 2021, p. 52). This method played an important role in evaluating the opt-in (express consent) and opt-out (presumed consent) models adopted in different jurisdictions.

The method of systemic-structural analysis allowed for determining the place of human organs and tissues within the system of civil rights objects (things, intangible benefits, personal non-property rights) and their interrelation. Based on the dialectical method of cognition, the objective contradictions arising in the legalization of subjective rights related to donation and contractual relations (for example, the contradiction between the necessity of saving human life and the prohibition of commercialization) were analyzed. The doctrinal basis of the research consisted of scientific articles, dissertations, and approaches of scholars in the field of civil and medical law.

Results

The results of the conducted comprehensive research indicate that after human organs and tissues are separated, they emerge as objects with a distinct, special legal regime.

Their property-law status differs fundamentally from traditional things. Below, the main legal characteristics of these objects are discussed in detail.

In the science of civil law, there are intense debates regarding the inclusion of human organs in the category of things. In ancient Roman law (in the Digests of Gaius and Justinian), it was emphasized that the main feature of a thing is its materiality, that is, being physically perceptible (Kartashkov, 2021, p. 406). In modern civil law doctrine, organs and tissues separated from the human body become separate objects of the material world while retaining their biological characteristics. As D.V. Kartashkov (2021, p. 408) notes in his studies, components of the human body are individualized objects of the material world capable of being possessed and fully fall under the doctrinal definition of a thing in civil law.

However, some scholars (for example, L.O. Krasavchikova) evaluate human organs not as things, but as personal intangible benefits that belong to a person from birth and are inseparable from them. D.S. Dontsov advances the position that although human organs have a physical appearance, recognizing them as ordinary objects of property is contrary to morality (Baumova, 2017, p. 68). A.Ye. Dzyuba (2022) and several other European researchers prefer to refer to human organs as “*sui generis*” (of a special kind) objects. The sole purpose of these objects is to save a life by becoming a part of another organism. Therefore, unlike ordinary things, they must be considered as “vital assets” with special value.

According to civil legislation, objects are divided into types that are in free circulation, restricted in circulation, and withdrawn from circulation (Republic of Uzbekistan, 1997). Human organs and tissues cannot be things in free circulation. The World Health Organization’s (WHO) Guiding Principles on Transplantation and the Council of Europe’s Convention on Human Rights and Biomedicine (Article 21) strictly stipulate that the human body and its parts must not be a source of financial gain (Martirosyan, 2021, p. 53; Alsynbayeva, 2016, p. 131).

However, not all biological materials fall under the same regime. Scientists divide them into groups based on their capacity for circulation:

1. Renewable (regenerating) parts that can be taken without threatening human life, such as hair, nails, blood, and its components. They can participate much more freely in circulation.

2. Paired organs that can be removed during a person’s lifetime (for example, a kidney). These are strictly limited in civil circulation and are donated only on the basis of genetic kinship and special permissions.

3. Vital organs whose removal during a person’s lifetime is strictly prohibited (for example, a heart). They are withdrawn from circulation and can only be obtained within the framework of post-mortem donation (Dzyuba, 2022, p. 134). Thus, transplantation objects cannot be the subject of trade and commercial transactions (purchase and sale); they are mainly the object of contracts such as free (gratuitous) donation and the provision of medical services (Goncharov, 2020, p. 114).

The transplantation process is not just a medical practice but a complex legal fact that gives rise to multiple contractual relationships. According to the studies of E.M. Alsynbayeva (2016) and J.S. Baumova (2017), three main contractual relationships arise in lifetime donation:

- The first is the contract between the donor and the medical institution. This is a bilateral, consensual, and quasi-contract, according to which the donor allows their organ to be taken, and the medical institution undertakes the obligation to safely perform the operation, rehabilitate the donor post-operation, and minimize the harm caused to their health.

- The second is the contract between the medical institution and the recipient. Here, the institution assumes the obligation to provide medical services for transplanting the organ to the recipient, while the recipient assumes the obligation to comply with medical rules (and to pay for the service fee if the system is paid).
- The third is the gratuitous “charity” (donation) contract between the donor and the recipient, in which the donor formalizes in a targeted manner the provision of their organ to a specific individual.

Discussion

As we discuss the legislation and practice in the field of transplantation, a number of serious ethical and legal contradictions emerge. One of the most pressing issues is the theory of somatic rights (from the Greek “soma” — body). According to this concept, a person should be granted the right to fully dispose of their own body. Legal scholars such as O.E. Starovoytova include the right to the entire body, the right to dispose of organs and tissues, and even the right to sell them among somatic rights (Nagorny, & Medvedev, 2014, p. 49). However, other scholars like S.I. Ivent'yev and M.A. Lavrik sharply criticize this approach, emphasizing that viewing a human being as a “collection of replaceable parts” is unacceptable, and the right to bodily integrity should not be equated with property rights. Although the theory of self-ownership may seem philosophically logical, recognizing the human organism as a full-fledged object of property in legislation is difficult to reconcile with contemporary legal principles of human dignity and bodily integrity.

Another highly pressing and controversial issue is the models of “presumption of consent” and “presumption of refusal” used in post-mortem donation. According to the presumption of consent (opting-out) model, if a citizen during their lifetime or their close relatives immediately after their death do not state that they are against the removal of their organs, they are considered to have consented to be a donor. This model is reflected in the legislation of the Russian Federation (Article 8 of the Law “On Transplantation of Human Organs and Tissues”) (Fedorova, 2021, p. 268). A similar norm also exists in the Code of the Republic of Kazakhstan (Dzyuba, 2022, p. 131). This model is highly effective in terms of reducing the shortage of donor organs and saving the lives of many people (for example, the experience of Spain) (Nagorny & Medvedev, 2014, p. 51).

However, human rights defenders strongly criticize this model. The main objection is that the majority of citizens are unaware of this “presumption of silence” in the law, and their organs are practically taken without permission. As D.P. Romanova (2023) cites, the cases of “Sablina and others” and the “Biryukova case” that occurred in Russia showed that removing a deceased person’s organs without notifying close relatives caused serious psychological and moral harm, even though the Constitutional Court found it legal. For this reason, the “presumption of refusal” (opting-in) is used in the USA and the UK, meaning that donation is permitted only when there is a special “donor card” or strictly on the basis of explicit written consent (Serebryakova et al., 2011, p. 157).

The problem of commercialization is also debatable. International law, CIS, and European countries consider making human organs an object of commerce a crime (Martirosyan, 2021, p. 54). However, some lawyers argue that in conditions of organ shortages and against the backdrop of a flourishing “black market” the time has come to consider introducing a strictly regulated compensation (financial incentive) system under state control to help those in need. Currently, biopharmaceutical companies are making millions of dollars in profit by selling “cell lines” and biomedical products derived from donors’ cells, while the donor, who is the original owner of the material, has no rights

whatsoever. This is an injustice between bioethics and the rights of the owner (Kartashkov, 2021, p. 417).

With regard to the legal framework of the Republic of Uzbekistan, the adoption of the Law “On the Transplantation of Human Organs and Tissues” in 2022 marked an important development in the legal regulation of transplantation. The Law established fundamental requirements concerning the donation and transplantation of human organs and tissues, including the requirement of consent, thereby providing legal safeguards for personal autonomy and bodily integrity (Republic of Uzbekistan, 2022). Nevertheless, certain issues concerning the civil-law status of human organs and tissues remain insufficiently addressed. In particular, Article 81 of the Civil Code, which defines the general categories of objects of civil rights, does not expressly identify human organs and tissues as a distinct category of objects subject to a special legal regime (Republic of Uzbekistan, 1997). Furthermore, the protection of personal and medical data contained in the state transplantation registry requires particular attention to ensure confidentiality and the lawful processing of sensitive information.

Conclusion

The conducted research and comparative analysis of national and foreign legislation allow the following conclusions to be drawn.

First, once separated from the human body, human organs and tissues acquire a distinct legal status due to their material nature, biological significance, and close connection with human dignity and bodily integrity. Therefore, they should not be treated as ordinary property or commodities. Rather, they may be regarded as “*sui generis*” objects of civil rights subject to a special legal regime and strict limitations on commercial circulation.

Second, the legal status of human organs and tissues should be more clearly defined in the Civil Code of the Republic of Uzbekistan. In particular, consideration should be given to expressly recognizing human organs, tissues, and relevant biological materials as special objects of civil rights subject to a restricted legal regime and the principle of non-commercialization. Such clarification would provide a more coherent legal basis for regulating their removal, preservation, transportation, transplantation, storage, and disposal.

Third, the protection of personal autonomy and bodily integrity in post-mortem donation requires clear and accessible mechanisms for expressing an individual’s consent or refusal. Public awareness of the applicable consent framework should therefore be strengthened, while public trust in transplantation procedures and medical institutions should be promoted through transparency, appropriate safeguards, and accessible information.

Fourth, legal relationships arising in connection with transplantation should be clearly regulated, with particular attention to the rights and legitimate interests of living donors. The legislation should provide effective safeguards concerning informed consent, medical care, post-donation monitoring and rehabilitation, and other forms of legally established support for donors.

Overall, the transplantation of human organs and tissues represents a complex field in which advances in life-saving medicine intersect with fundamental principles of civil law, bioethics, human dignity, bodily integrity, and personal autonomy. The further development of a coherent legal framework for transplantation in Uzbekistan should therefore seek to balance medical needs with the protection of individual rights and the non-commercialization of the human body and its parts.

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