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Criminal and legal characteristic of forced and/or the unlawful removal of human organs and tissues for transplants under the legislation of the Republic of Kazakhstan

The article gives a criminal and legal characteristic of the forced and/or unlawful removal of human organs or tissue for transplants, which is criminalized under article 116 of the Criminal Code of the Republic of Kazakhstan dated 3 July 2014. The valuable comments and suggestions provided by the experts and the official national crime statistics were compiled. This offense refers to the formal composition in the current amendment. This is not entirely appropriate, because the harm is done to the victim's health. In order to address this gap in article 116, Part 2, of the Criminal Code of the Republic of Kazakhstan should be provided socially dangerous consequences, in the form of causing serious injury to health.

Key words: transplantation, coercion, unlawful removal, human organs and tissues, organ transplantations, donation.

Transplantation of organs and (or) tissues is a means of saving lives and restoring health, it should be undertaken on the basis of compliance with article 29 of the Constitution of the Republic of Kazakhstan dated from August 30, 1995 (hereinafter RK) and legislation of the Republic of Kazakhstan on protection of people's health and the health system. Transplantation of tissues and organs is carried out strictly according to the recipient's written consent, or legal representative of the juvenile recipient or recipient recognized incapable by court.

In p.106 of article 1 of the Code of the RK «About the health of the nation and health system» from September 18, 2009 No. 193-IV, it is noted that transplantation is the act of transplanting, implantation of tissue and (or) organs (part) to another place in the body or in a different organism. In this case, the licensing of medical and pharmaceutical activity, as well as import, export bodies (part) and (or) tissues of human origin, blood and blood components, is enshrined in art. 13 of the Code [1], tissue transplantation (a part of it) and (or) organs (a part of the organ) and the conditions for their exemption is in art. 169, transplantation procedure (part of) and (or) organs (or its part) is in art. 170, and import, export of bodies (a part of the organ) and (or) tissues of human origin, blood and blood components is in art. 174 of the Code «On health of the nation and health system».

Transplantation is a medical operation where a sick part of the human body is replaced with a healthy one, taken from the same or another body, or a diseased organ is replaced by a healthy one.

Speaking of the history of transplantation it should be noted that the modern era of clinical transplantation began in the 50-s of XX century. In 1954, Joseph Murray in the United States performed a successful transplantation of a kidney to a man. Its foundation was laid much earlier, and leaders were Russian scientists. In 1933, surgeon J. Voronoy produced the world's first kidney transplantation on a man. In 1946 g. V.P. Demihov performed cardiopulmonary transplant complex in experiments. Christiaan Barnard from South Africa (who was believed to be the first in this field) repeated Demikhov in 1967 having successfully transplanted the heart of man in Cape Town.

At the beginning of the 50-s of XX century V.P. Demihov first transplanted liver in an experiment. And only in 1963 the first liver transplantation at the clinic was performed by an American surgeon Thomas Starzl. It was he that performed the first successfully transplanted liver in 1967 in Denver. In 1965, B. Petrovsky performed the first successful kidney transplantation from a sibling donor.

The first liver transplantation in Russia was complied by Professor A.K. Eramishantsev in 1990 in Russian Scientific Center of Surgery (RSCS). The first heart transplantation was made by A.A. Vishnevskiy in 1968 in Leningrad. This was followed by the second one. Unfortunately, both operations ended with the deaths of patients. V. Shumakov, named as «man of the Millennium» and the «Father of domestic transplantology» in 1987 for the first time performed a successful heart transplantation [2].

The issue of organ donation in the modern period in different countries is solved. This is because, first of all, with differing levels of financial security of the countries, medical and legal aspects.

One should note that no country in the world can fully satisfy the needs in human organs for transplantation. The number of people waiting for a transplant operation, is growing faster than supply. According to statistics, the global demand for transplantantah is approximately 1 million units. Legal medicine has reached the highest level in the technique of human organ transplants, but failed to secure the required organs and tissues to all who need them [3; 10].

Medical statistics show that the total demand for transplants with organs only (heart, kidney, liver) ranges from 100 to 250 thousand units a year. Under market conditions, taking into account the financial possibilities of patients the amount of funds that can be mastered in transplantation in the Russian Federation can be from \$500 million up to \$1 billion. At the same time, the need for donor organs was and is still satisfied by the official, legislatively prescribed way by no more than 1–2 % [4].

Transplantology is essential, but is not in the best of times. To save thousands of people's lives the transplantation of organs is required. Some certain work on creation of artificial and clone bodies are being held, however there is still much to work to do to complete (as artificial kidney is not equivalent to the natural one). It is still too early to speak about xenotransplantation, i.e. transplantation of animals' organs to the human body. The only way out is to apply the donor organs from dead bodies or alive relatives for liver or kidney transplantation.

To make human organ transplantation more intensive we think Kazakhstan should adopt State Programme and transplantation support policy.

Spain makes number one in the world with operations for an organ transplant in per capita. However it was not so long before, and once it was on one of the last places. There is a state program of donations there. The Spanish government, the mass media launched an extensive propaganda of the correct understanding of donation: it is humane, a part of a man can exist in another man's body giving him a chance to live. Even on the doors of the churches there are signs that say «Don't take your organs to Heaven. You will not need them. Leave them here, someone needs them on the Earth». In Spain an annual budget planned to fulfil the programme of transplantation makes €180 million, no less than 10 % of which is dedicated to the organ transplantation which makes €18 million. By the way, donation (donation after death of the donor) was officially approved by the Russian Orthodox Church.

The development of transplant is economically profitable. The western experts found out that in fact the transplant operations are very expensive. However, complex therapy of the patient with terminal cirrhosis within a certain period of time is much more expensive. Annual dialysis (artificial kidney) obviously exceeds the cost of transplantation. When all the expenses were counted, they found out that it is cheaper to perform a transplant operation after which a patient lives a normal life and works (consequently, participates in increasing the national GDP), and does not spend the rest of his life in hospital.

There are many cases of selling human organs, for example, in India, and Arab countries. However, it is legalized there. The transplant recipient is chosen by a computer by the criterion of maximum compatibility of both patient and donor. This is the key to the successful operation. Otherwise, the organ is rejected by the human body and doesn't function long.

There is a deficiency of donated organs in the world. The bases of the «black» market of donated organs is the brain death diagnosis. If a curing doctor suspects the patient has this diagnosis, he calls for neurophysiologists who either rejects the diagnosis and the patient continues his treatment, or confirms it. It should be noted that the diagnosis is not set at once. In accordance with the instructions there is an observation period which is 6 hours long in a common case. If there is an intoxication found, the observation period is prolonged up to 36 hours. Only after this procedure the death of the brain is stated and an official document is given at the presence of the forensic medical examiner. Then the collection of the organs is

performed. It normally takes from 2 to 4 hours, in some cases it is longer. Like an operation on a human body, it cannot be performed in an ordinary room with no conditions of sterility, special tools and expensive equipment. The main participants are the medical staff of the operating unit, resuscitation department, and the laboratory of the hospital where the donation operation is performed. The permission for withdrawal is given by the head physician of the hospital or the executive administrator. The donation operation is done in the presence of three teams of transplantologists (3–4 doctors in each team) from different centers and a big nursing staff (all in all about 17 people). In addition there is a clinical department where the donation operation is to be done with the medical staff of their own specialises. It usually goes further than performing operation only. A patient is under constant observation of various specialist both before and after the operation. It is impossible to do this complex work secretly to draw illegal money from the rich patient.

The Netherlands has introduced a presumption of donation. Its meaning is in the following: if there is an indication to donation, it must take place. The result is that in the Netherlands the total number of transplant operations has increased to 30 %. Collection of organs is done only after the brain death or biological death official statement. One should note that for autopsy the specialists must receive permission from the dead person's relatives as it is said in the Law «On the burial and funeral matter». It does not oppose the law on transplantation. An autopsy is performed to confirm the diagnosis in quite different conditions and later after the patient's death [2].

The Head of the Scientific Research Institute of transplantology and artificial organs in the Russian Federation, academician V. Shumakov says: «the problem is that the number of donating organs is not enough for all those who need them. That is the deficiency of donating organs is a worldwide fundamental truth» [5; 85–91].

In Kazakhstan the practice of transplantology is being developed. To create the legal bases for transplant activity the following orders of the Ministry of Health Care and Social development of the Republic of Kazakhstan:

- «On approval of the Rules of withdrawal, preparation, storage, conservation, transporting, transplantation of tissues (tissue part) and (or) organs (parts of organs) from the donor to the recipient", October 30th, 2009, № 623 (rev. and ext. from September 12th, 2011, № 615; from October 3rd, 2013, № 573, from May 28th, 2015, № 406);
- «On approval of the Rules life-long and voluntary tissue donation (tissue part) and (or) organs (parts of organs) after the patient's death in transplantation purposes» from May 18th, 2015, № 360;
- «On approval of the Regulations on the formation of the list of health care organizations specializing in withdrawal, preparation, storage, preservation, transportation of tissues (tissue part) or organs (parts of organs), and tissue transplantation (parts and tissues) or organs (parts of organs)», from June 29th, 2015, №534.

General director of A.Syzganov National Research Centre of Surgery (NRCS), professor Zh. Arzykulov noted that the state of transplantation is the integral indicator of medicine in a country. Transplantation is the only drastic, socially and economically beneficial method of treatment for the country, which shows the level of quality of medical service. Transplantation of an organ helps to save the patient's life. Medicine has reached such a level that it became possible to transplant several organs at once — heart, lungs, liver, pancreas gland, etc. Nowadays there are approximately from 4,000 to 10,000 patients waiting for transplant operation. The main partner of Kazakhstan is Belarus. It is Belarus that has performed more than 50 successful heart transplant operations within 2010–2011 and became number one in CIS and Europe.

The head of the organs and tissue transplantation department of the NRCS E. Sultanov on this occasion said: «It is necessary to change the attitude of patients and society to this field of medicine. Potential donors of organs are the patients whose brains are ascertained to be dead. The basis for the collection of the organ is the presumption of consent of the donor and his relatives. Purchase of organs is out of questions» [6].

Modern programmes of transplantation face with the problem of getting new donors while the number of those who wait for the organ in a queue, increases faster than the supply of latest. In this connection the number of people who would like to undergo organ transplant operation illegally increases exponentially.

N. Coach was saying about imperfections of modern laws regarding the tasks of transplantation in his special report on the 1st International Congress on Transplantation (Paris, June 1967). The laws of different countries concerning medical and legal issues, were taken at the times when it was too early to speak about the possibility to perform transplant operation.

This explains the opinion of many doctors about the necessity to work out new laws that contain normative acts defining the opportunity to transplant organs from both alive donors and dead bodies.

We believe that we should agree with the statements of N. Couch, that such an «ideal» law should, first of all, allow doctors to extract the body of the deceased patient immediately after his death, without requiring time-consuming procedure of its detection, completely relying on the knowledge, conscience and honesty of doctors, as it is done in many other areas of medical practice; secondly, to allow each person to dispose his body as he does it with his personal property; third, release the doctors from civil liability for removal of the tissue for transplantation; fourth, be unified for all countries.

For the recent years around 40 countries have adopted laws which allow people give their tissues after their death for the scientific and medical purposes. However, there are still some countries where self-sacrifice is recognized yet. On the other hand, taking organs from dead on forensic medical indications without permission of the relatives poses a question on the opportunity to apply such an approach to the transplantation issue. In France, for instance, the Minister of Health Care authorizes the removal of organs if the head of the medical establishment considers that it should be done for therapeutic or scientific purposes. As for the USA, there is no such a law that would allow medical experts to make a contribution to remove an organ from the dead body. A member of the family has an exclusive right for the relative that has recently passed away, and it is him that has a permission to use the tissues for transplant purposes [7; 132, 133].

Legal issues connected with the human organ transplantation are solved differently in various countries. There is no country that has absolutely complete and full normative and legislative acts that regulate the problem of organ and tissue removal [8; 130–139].

According to the data provided by the Committee of legal statistics and special recordings of the General Prosecutor's Office of the Republic of Kazakhstan the criminal statistics in the country from 2008 to 2015 is as follows:

Reporting period	2008 y.	2009 y.	2010 y.	2011 y.	2012 y.	2013 y.	2014 y.	2015 y.
Crimes (total)	127478	121667	131896	206801	287681	359844	341291	386718
Crimes against person – Chapter 1 of the Criminal Code of the Republic of Kazakh- stan	8189	8019	7626	8448	9958	12618	10862	15376
Coercion for removal or illegal removal of human body organs and tissues (Article 116 of the Criminal Code of the Republic of Ka- zakhstan, from 3.07.2014)	0	0	0	0	0	0	0	1

Modern criminal situation in Kazakhstan is characterized with the increase of registered number of crimes against personality, and, therefore, with the latency of forcing to remove or illegal removal of human body organ or tissue. This is because of the difficulty to prove the crime fact. The difficulty is not in the problem of qualification of criminal actions of the guilty, it is in problem of collection of evidence bases and timeliness of initiating criminal proceedings in accordance with Art.116 of the Criminal Code of the Republic of Kazakhstan from July 3rd, 2014.

Thus, there is a case which is firstly initiated in Kazakhstan and connected with illegal human organ removal. In connection with the crime reporting statement of a 40-year-old local citizen of Aktubinskaya oblast there is a preliminary investigation in relation with a woman living in Astana city. She is suspected in making an illegal purchase and sell deal of a human body organ. As it says in local official reports a man had his kidney cut off because of the debts he had. But he was defrauded by a local woman who was planning to purchase his kidney for her daughter for 14,300 dollars. In connection with this fact according to Art.116 of the Criminal Code of the Republic of Kazakhstan “Coercion for removal or illegal removal of human body organs and tissues” a criminal case was initiated, a number of examinations was set [9].

Domestic criminal law determines liability for the actions connected with coercion for removal or illegal removal of human body organs and tissues, they are as follows:

- murder committed with the purpose of implementation of the victim's organs or tissues (Paragraph 12, Part 2 of Article 99 of the Criminal Code);
- intentional infliction of grievous bodily harm with the purpose of implementation of the victim's organs or tissues (Paragraph 9, Part 2 of Article 106 of the Criminal Code);
- human trafficking with the purpose of the victim's organ or tissue removal for transplantation or other purposes (Paragraph 7, Part 2 of Article 128 of the Criminal Code);
- trafficking in underaged with the purpose of organ or tissue removal for transplantation or other purposes (Paragraph 6, Part 2 of Article 135 of the Criminal Code).

The purpose of human organ or tissue removal may lead to perpetration of other crimes that can serve as a means of its performance:

1. Incitement of suicide — Article 105 of the Criminal Code;
2. Intentional infliction of medium-gravity damage to health — Article 107 of the Criminal Code;
3. Kidnapping — Article 125 of the Criminal Code;
4. Illegal deprivation of freedom — Article 126 of the Criminal Code;
5. Unlawful commitment to a psychiatric hospital — Article 127 of the Criminal Code;
6. Abuse of corpse and burial places — Article 314 of the Criminal Code;
7. Illegal removal of organs and tissues of human corpses — Article 315 of the Criminal Code.

A high public level of crime danger presupposed in Article 116 of the Criminal Code is determined with sophisticated way of committing the crime, which makes it difficult to solve. It also undermines confidence of people in medical health care institutions and transplantation in particular

Progress in medicine and technology development lead not only to new types of medical services and treatment of patients, but also to abuse in medicine, expressed in unacceptable attempt to rescue one person at the expense of harm to life and health of others.

The matter of illegal removal of organs and tissues was considered in some works of Russian scientists: M. Awerbach, I. Gorelik, V. Glushkov, G. Krasnovski, N. Krylov, B. Petrovski, V. Smirnov, S. Tikhonova, B. Cheyovich. The issue of criminal liability for coercion for removal of human body organs and tissues for transplantation was considered by T. Fabrika [10].

The *object* of the crime considered is the life and health of a human being. T. Fabrika notes that the proximate object of the crime lies in the public relations that provide adequate functioning of a man's health and his right for non-interference into his health and body unity. The supplementary object is the freedom of will to dispose his body and its parts [10; 13].

The *subject* of the crime is presented by any organ or a tissue of a victim.

An *organ* is a part of body is a collection of different tissues joined in structural unit to serve a common function. Some of them are: a heart, kidneys, liver, etc.

A *tissue* is a cellular organizational level intermediate between cells and a complete organ. A tissue is an ensemble of similar cells from the same origin that together carry out a specific function [11; 281, 282; 52–53].

The *objective element* of the crime regarded is determined with the acts of coercion for removal of organs and tissues or illegal removal of an alive person's organs and tissues for transplantation or other purposes, which is equal to making illegal deals regarding an alive person's organs and tissues.

From the disposition given in Part 1 of Article 116 of the Criminal Code it become evident that the actions of the suspect may cause one of the following actions:

- 1 — coercion for removal of the organs and tissues of an alive person;
- 2 — illegal removal of organs and tissues of an alive person for transplantation or other purposes;
- 3 — making illegal deals about an alive person's organs and tissues.

Coercion is the practice of forcing another party to act in an involuntary manner, aimed at getting his consent to donate under the threat of having unfavourable consequences in case of refusal.

Linguistic meaning of coercion is given as «forcing, making someone do something», «enforced — dependent» [12; 483]; «to force» — «to make someone do something» [13; 431]. In other words, coercion stands for the action of one person towards another one, aimed at making him do something involuntary, do something unwillingly. At the same time the second person tends to get proper and corresponding behavior from his victim.

The means of forcing someone is violence or threat of its use, i.e. pressure, impact on a person to donate unwillingly or without his consent. Coercion in this case is aimed at using an alive person's organs or tissues.

Violation can be expressed in two forms. *Physical violation* regards causing bodily harm of light (Article 108 of Criminal Code) and average severity (Article 107 of Criminal Code). In case of causing grievous bodily harm or decease of the donor with specific intent, one should classify the case in accordance with Paragraph 9, Part 2 of Article 106 of Criminal Code, or Paragraph 12, Part 2 of Article 99 of Criminal Code. *Psychological violation* is expressed in the threat of death or threat of causing bodily harm of any severity for a victim. To initiate criminal liability upon Article 116 of Criminal Code it is quite enough for the guilty to use at least one of the means, i.e. violation or threat of its use.

A. Lyovina [14; 1–5] supports the idea of S. Tikhonova about changing the phrase «coercion for organs or tissues of a person» into «forcing a person to give his consent for the organs or tissues to be removed» in Part 1 of Article 120 of Criminal Code of Russian Federation (similar to Article 116 of Criminal Code of the Republic of Kazakhstan) [15; 97].

In our opinion, we should agree with the statements of these scientists as the circumstance expressed in the new formulation would essentially simplify the work of law enforcers.

Deception can also be a means of coercion, for example, if a person is told to have a fatal malady, and the possibility for further recovery depends on his consent to undergo transplant operation.

T. Fabrika does not agree with this statement, she notes that «when defrauding an important and constructive element of corpus delicti is missing, i.e. the use of violation or threat of using it. If a deceived person gave his consent to have his vitally needed organ to be removed, the absence of which will lead to inevitable decease, we must regard this as preparation for murder» [16; 102–107].

Illegal removal of organs and tissues of an alive person may be done with transplantation or other purposes. *Transplantation* means moving of an organ from one body to another or from a donor site to another location on the person's own body, to replace the recipient's damaged or absent organ.

Violation of the established order of transplantation of an alive person's organs and tissues can be expressed in various actions:

- conducting transplant operations in unauthorized places;
- conducting an operation without a written statement of an alive person to be a donor.

The other ways of using an alive person's organs and tissues are possible: cannibalism, sadism, sexual fetishism, etc. It is possible to use human body organs and tissues for industrial purposes as well.

The illegal deals referring to an alive person's organs and tissues include:

- 1 — purchase-sale of organs and tissues;
- 2 — donation (giving an organ and tissues to another person for free);
- 3 — swap (changing organs and tissues for something else);
- 4 — change/ exchange (changing organs and tissues of one person for those of another man)
- 5 — having organs and tissues as security for full completion of terms of an agreement made by the parties.

- 6 — disposal of organs and tissues for lucre;

- 7 — circumstances that are not considered in laws.

Violation regarded in Article 116 of Criminal Code of the Republic of Kazakhstan determines coercion to agree to remove any organs or tissues, not only those listed in the Code of the Republic of Kazakhstan «About the Health of People Health Care System» and dedicated for transplantation use.

Corpus delicti implied in Article 116 of Criminal Code of the Republic of Kazakhstan is formal. It is believed to be terminated from the moment of coercion (forcing a person), which is expressed in violence abuse of threatening a person to use violence, no matter whether the suspect has already made the victim to sacrifice his organs and tissues for transplant purposes or not. If coercion has been done and the organs and tissues of the victim have already been removed, the actions must be qualified in total: the crime committed in accordance with Article 116 of Criminal Code and with reference to Article 106 and 107 for causing serious or moderate bodily harm depending on the consequences. In case of death, the crime must be qualified in total according to Article 116 and Paragraph 12, Part 2 of Article 99 of Criminal Code of the Republic of Kazakhstan.

The other forcing actions of non-violent manner are (threat of destruction of victim's property, or dissemination of information that defames victim, etc.) must not be regarded within the frame of Article 116 of Criminal Code of the Republic of Kazakhstan, as coercion with threat to abuse violence, and therefore cannot form the corpus delicti.

The subject of the crime is a sane 16-year-old person. This might refer to a medical worker or any other person who is interested in removal of human body organs and tissues. If the organs are being removed for transplantation purposes it will definitely be done by a person of special knowledge and skills [10; 25].

The state of mind of the crime is in the intentional guilt expressed in the form of specific intent. T. Fabrika notes that the state of mind does not include psychological relation to the consequences. In other words, intellectual intent goes within the awareness of socially dangerous manner of the crime to be committed [10; 24]. The guilty is conscious that he commits a crime with a certain purpose, i.e. force a victim to give his consent to donate an organ or a tissue.

An obligatory characteristic of the state of mind is the aim of the forced actions which lies in the use of the organs and tissues to be removed for transplantation or another purpose. That is why any other direct aim of the person (to sell an organ, for instance) excludes their qualification in accordance with Article 120 of Criminal Code of the Russian Federation (similar to 116 of Criminal Code of the Republic of Kazakhstan) [10; 25].

It is motive and purpose that influences on qualification of the crime. The motive is the desire to help a relative at the cost of the victim's health, which is equal to selfish motives. The purpose consists in getting victim's organs or tissues for transplantation or other purposes [11; 281–282; 52–53].

For example, Musienko A.V. examining this problem in Ukraine noticed: «The fight against illegal traffic of organs and tissues is extremely urgent. An analysis of the criminal legislation of the Republic of Kazakhstan and Ukraine demonstrates the presence of credible criminal policy with respect to crimes related to the illegal withdrawal of donor organs and tissues. The norms of the criminal legislation of the Republic of Kazakhstan and Ukraine take into account public danger and features of the mechanism of this type of crime in accordance with the recommendations of international organizations. The legal model of consent for the removal of the donor organ does not have a decisive influence on the shortage of donor material. Precedence reason for this deficit is unclearness and low efficiency of the state policy in the field of transplantation, rather than the legal model of obtaining consent to withdraw. The absence of large-scale and effective public policies to promote the popularization and development of transplantation has led to distrust of the population. Needless to say, obtain the consent of the donor to the removal of anatomical material without changing the image of the transplant will not be easy. The effectiveness of the mechanisms of withdrawal of anatomical materials is more dependent on socio-economic development of society as a whole, humanitarian and informational impact on the level of state development programs, including the transplant. Formalize the consent of the donor to the removal of anatomical material is possible by the introduction of such document as «donor card».

We agree with the statements of the author that such complex actions can significantly improve the situation with the donor material and allow what is important, to prevent the criminalization of transplantation. But mostly, according Musienko A.V., it is that on the basis of the indisputable priority of human rights, the need to guarantee the right to life and physical integrity, regardless of the legal model of consent for the removal of anatomical materials, the state should provide an effective mechanism for effective monitoring producing and fixing a potential donor's consent. It should be emphasized that the example of legislation on transplants traced harmonious implementation of the constitutional principles of the Republic of Kazakhstan, including in the criminal policy relating to the protection of life and freedom. A further embodiment of all innovations need to be implemented in the name of protecting the highest social values, which are undoubtedly the man, his life, rights and freedom» [17; 80].

The appearance of criminal business in medicine allows to react to such a phenomenon adequately. In this connection we believe that in order to improve criminal legislation of the Republic of Kazakhstan it is recommended to enforce the action of criminal legal regulation of public relations in transplantation sphere.

First of all, it is necessary to work out and adopt a special Law of the Republic of Kazakhstan «On Transplantation of human body organs and/or tissues», as it was done in the Russian Federation.

Secondly, on the bases of the analysis and concluding everything mentioned above, we come to a conclusion that the statements of the Criminal Code of the Republic of Kazakhstan of 2014 do not completely regulate criminal liability for illegal removal of human organs and tissues for transplantation or other purposes. Thus, for example, in the current wording of Article 116 of Criminal Code of the Republic of Kazakhstan the corpus delicti is presented as formal one. It is not quite justified, because coercion for removal or illegal removal of an alive person's organs and tissues, or making illegal deals about organs and tissues of an alive person equally, cause bodily harm. This therefore means that disposition of Part 1 of the article must imply dangerous consequences in the form of grievous bodily harm.

We also think that the heading of Article 116 of Criminal Code of the Republic of Kazakhstan should be changed into «Violation of the terms and the order of removal of an alive person's organs and tissues or the conditions and procedure of transplantation». Disposition of Part 1 of Article 116 of the Criminal Code of the Republic of Kazakhstan, as we believe, should be presented in the following wording:

«1. «Violation of the terms and the order removal of an alive person's organs and tissues, as well as violation of conditions and the order of transplantation established by the law, which negligently caused serious harm to the victim's health».

Consequently, if a guilty commits a crime a criminal liability must be initiated for real removal of human body organs and tissues of an alive person (including cases with both coercion and illegal deals) or for violation of the terms and order of transplantation. Thus, according to this wording, the corpus delicti will be material, and, as a result of the crime socially dangerous consequences in the form of grievous bodily harm by negligence will be provided. In this case, the aggravating and particularly aggravating features of the crime should remain unchanged.

Thirdly, Paragraph 7, Part 2 of Article 128 of Criminal Code of the Republic of Kazakhstan determined criminal liability for human trafficking for removal of the victim's organs and tissues for transplantation or any other purpose; Paragraph 6, Part 2 of Article 135 of Criminal Code of the Republic of Kazakhstan defines criminal liability for trafficking on underage for removal their organs and tissues for transplantation or any other purpose. In these cases they say about human trafficking or trafficking of underage.

At the same time, we consider it expedient for current Criminal Code of RK to add a new Article 116-1 «Illegal trafficking of human organs and tissues». The disposition of this article would be formulated as follows:

«1. Illegal purchase and sale, exchange, storage, transportation or shipment with the purpose of sale, which is equal to illegal sale of an alive person's organs and tissues for transplantation or any other purpose».

At the same time, qualifying and particularly qualifying features of the new Article 116-1 of Criminal Code of the Republic of Kazakhstan should be regarded similar to aggravating and particularly aggravating features, provided in Part 2 and 3 of Article 116 of Criminal Code of the Republic of Kazakhstan.

New wording of Part 1 of Article 116 and new Article 116-1 of Criminal Code of RK would adequately reflect the needs of criminal legal aspect of protection of people's health. Thus, improving the norms of the criminal laws considered above, we ground the necessity to work out the best ways and provide opportunities to solve the problems of criminal liability for removal of human body organs and tissues for transplantation or any other purpose.

In order to prevent and combat crimes of this type a large-scale campaign to promote the posthumous donation is required; this must involve the media (mass media), widespread regular Donor Days, drawing all the citizens to this event.

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Қазақстан Республикасының заңнамасы бойынша адамның ағзалары мен тіндерін алып қоюға мәжбүрлеу немесе заңсыз алып қоюдың қылмыстық-құқықтық сипаттамасы

Мақалада 2014 жылдың 3 шілдесіндегі ҚР Қылмыстық кодексінің 116-бабында қарастырылған адамның ағзалары мен тіндерін алып қоюға мәжбүрлеу немесе заңсыз алып қою үшін жауапкершіліктің қылмыстық-құқықтық сипаттамасы берілді. Зерттеу нәтижесінде қылмыстық статистика, ғалым-заңгерлердің көзқарастары келтірілді. Қолданыстағы заң редакциясында талданылып отырған қылмыс құрамы формалды түрде зерттелген, себебі оны жасағанда жәбірленушінің денсаулығына зиян келеді. Авторлардың ойынша, осы норманың диспозициясының 1-бөлімінде денсаулыққа ауыр зиян келтіру түрінде қоғамға қауіпті салдарын қарастыру қажет.

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Уголовно-правовая характеристика принуждения к изъятию или незаконное изъятие органов и тканей человека по законодательству Республики Казахстан

В статье дана уголовно-правовая характеристика принуждению к изъятию или незаконному изъятию органов и тканей человека, предусматривающему ответственность по ст. 116 Уголовного кодекса РК от 3 июля 2014 г. В ходе исследования подверглись обобщению уголовная статистика, позиции ученых-юристов. Отмечено, что в действующей редакции состав анализируемого преступления является формальным, что не совсем оправданно, так как при его совершении потерпевшему причиняется вред здоровью. Полагаем, что в диспозиции части 1 данной нормы должны быть предусмотрены общественно опасные последствия в виде причинения тяжкого вреда здоровью.

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