COMMERCIALIZATION OF ORGAN TRANSPLANTATION

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This paper is focused on the analysis of business aspect of organ transplantation. The author focuses on the following issues of the problem as: acute shortage of organs for transplantation that has such results as transplant tourism, organ trafficking and selling of organs. The article also notes the need for strict regulation of indicated problems in the EU legislation.

Key words: transplantation, organ trafficking, transplant tourism, cloning, artificial organs, selling of organs, commercialization.

Даная статья сосредоточена на анализе бизнес аспекта трансплантации органов. Автор акцентирует внимание на таких проблемах как: острый дефицит органов для трансплантации, который имеет своим результатом туризм с целью трансплантации органов, торговлю органами и продажу органов. В статье также отмечается необходимость строгого регулирования указанных проблем в законодательстве ЕС.

Ключевые слова: трансплантация, торговля органами, туризм с целью трансплантации, клонирование, искусственные органы, продажа органов, коммерциализация.
**Introduction.** Organ transplantation is a developing branch of medicine, which combines in it various ethical, business, practical, legal, religious, technical and other aspects. The human right to health is guaranteed by all major international instruments. It can be concluded that the right to transplantation is a component of the right to health and also a subject to protection by the competent authorities, and the breach of this right has its consequence the right to appeal for the protection before the court.

One of the problems which occur during the protection of the rights to transplantation is that due to the economic inequality of people there is a high probability of occurrence of commercialization of transplantation. The main tasks of the article are: to analyze the reasons of business aspect of transplantation; to distinguish between such categories as transplant tourism, organ trafficking and trafficking of human beings with the purpose of organ transplantation; to suggest possible ways of solving the problem of acute shortage of organs for transplantation.

**Prohibition of selling organs.** Transplantology as the science confronts before doctors and lawyers many unresolved issues. One of these is the issue of commercialization in transplantation. It is a well-known fact that the purchase and sale of organs is prohibited. Such provision is highlighted in the article 13 of the Directive 2010/45/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation, which states, that donation of organs and tissues must be based on the voluntary and unpaid principle, with compensations regarding conducting the surgery and postoperative period; States shall prohibit advertising which is directed “…to offering or seeking financial gain or comparable advantage” and Member States “…shall ensure that the procurement of organs is carried out on a non-profit basis [1].

Unfortunately, reality shows that “in today's world, the current framework that relies upon altruism only simply doesn't provide the quantity of organs needed” [2, p.98].

This prohibitive principle is located on the same level with the fundamental law of the moral relationship between people, meaning that a person cannot be
considered as a means to achieve the goals of another person and ethical understanding as human beings (not a thing), which owns the dignity and freedom of the will. With this ethical position is closely related the question of the legal status of the grafts. The ban on the purchase or sale of a person extends to his organs and tissues, in the case of turning into the "biological materials" and providing a means of transplantation, they should not become a means of commercialization. Nevertheless, similar sales transactions exist. This is because the medical authority for the removal of the body becomes the owner of cadaveric transplant material. In a market economy status of the owner which such medical authority receives, transforms organs and tissues, which are already separated from the person, into objects with the status of things. It is easy to determine the degree of public danger which might arise in the case of ignoring the ethical values as the fundamentals of social life. Such understanding found its consolidation in article 21 of the Convention on Human rights and Biomedicine (1996): “The human body and its parts shall not, as such, give rise to financial gain” [3].

**Organ and human trafficking.** It is logically, that problems of organ trafficking is closely related with the human trafficking in general. From the standpoint of human rights in recent years was developed big amount of international instruments against human trafficking such as: The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, adopted by the Ministerial Conference under the Presidency of the European Union, The Hague, 24-26 April 1997, United Nations Convention against Transnational Organized Crime and the Protocols Thereto (2000), Brussels Declaration on Preventing and Combating Trafficking in Human Beings from the 29th of November 2002 and others. Problems occur during the transition from declarative provisions to the policy of "positive action" based on improving and enhancing the status of the individuals in society, their rights, that in the perspective excludes the possibility of selling or buying people.
Among the reasons for the spreading of human trafficking (internal and external) are also seen some dynamics. Yes, traditionally among such reasons scientists and professionals emphasize unemployment, low living standards, legal illiteracy of the public, the lack of real information about the problem, an internationalization of the economy, active international labor migration and much more. On the first place among the internal factors remains to a difficult economic situation.

The lack of organs for transplantation on the real example can be shown in the report of the World Health Organization: “approximately 100,800 solid-organ transplants are performed every year worldwide, including 69,400 kidney transplants and 20,200 liver transplants. Furthermore, forty-six percent of transplanted kidneys come from living donors” [4, p.433].

Talking about organ trafficking, it is important to distinguish between two main categories – trafficking in organs, tissues and cells and trafficking in human being for the purpose of the removal of organs.

According to the article 3 (a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” [5].

According to the Joint Council of Europe and United Nation study on Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs “…trafficking in organs, tissues and cells could preliminarily be described as follows: trafficking in OTC occurs when there is (a) the
illicit removal, preparation, preservation, storage, offering, distribution, brokerage, transport or implantation of organs, tissues or cells (cells for the purpose of therapeutic transplantation); and (b) the possession or purchase of organs, tissues or cells with a view to conducting one of the activities listed in (a); solely for financial or other economic gain (for this or a third person’s benefit)” [6].

As it can be concluded, the first difference is directly in the definitions, and means that trafficking on human being for the purpose of removal of organs in contrast to trafficking in organs, tissues and cells requires combination of action, means and purpose. If we examine the very essence of both crimes, we will see, that the main issue of the trafficking of organs, tissues and cells requires two main points: the existence of the organ as such and the use of it. As it was mentioned above, trafficking of human being requires combination of three elements. Moreover, for trafficking of organs is not important the status of the person, from which the organ was removed (living or diseased person), while all existing legislation protects only living persons from the human trafficking. The last difference between these two crimes lies in its scope, and differs in the aims of the crimes. Trafficking of the organs, tissues and cells can be committed separately from trafficking of human beings.

It is a well-known fact that trafficking of human beings is a transnational organized crime, which involves in its planning and implementation a lot of people in different countries. Organized crime can be classified into two categories: one characterized by the provision of goods and services between consenting parties, and the other characterized by the abuse or infiltration of legitimate businesses through threats, coercion, or violence. Silke Meyer classifies trafficking in human organs as falling into the first category because the transaction is often based on mutual consent. Generally, those donating their organs on the black market are lured, not forced, into selling their organs. The brokers pay only $1,000 to $5,000 to the donor, but sell the organ to recipients for hundreds of thousands of dollars [4, p.436].

Both these crimes create such concept as transplant commercialism, which is defined in the Declaration of Istanbul on Organ Trafficking and Transplant Tourism.
as “…a policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain”. [7]


Transplant tourism. Severe shortage of organs for transplantation, increasing the number of people that need transplantation created new direction in the human trafficking – transplant tourism. Countries prohibit tourism with the purpose of selling organs due to different reasons, among which the most important is to be sure that the organ is fit and healthy enough to be transplanted and to function in another person. In accordance with the principle, that every human being has equal rights, possibility to buy organs in the scope of such kind of “tourism” gives rich people special treatment.

Firstly, definition of the transplant tourism was fixed in The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (adopted by Participants in the International Summit on Transplant Tourism and Organ Trafficking convened by The Transplantation Society and International Society of Nephrology in Istanbul, Turkey, April 30–May 2, 2008) and means:
Travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centers) devoted to providing transplants to patients from outside a country undermine the country’s ability to provide transplant services for its own population. Travel for transplantation is the movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes[7].

From the above mentioned information about reasons of the developing of transplant tourism follows that nowadays becomes more popular using of such concept as “black market”. “Black markets are especially prevalent in poorer regions largely due to the extreme poverty, desperation, long waiting lists, and the fact that higher quality organs come from living donors.” [4, p.435]

**Possibility of solving the problems of selling organs.** In the modern world there are three possible ways to solve the problem of severe shortage of organs: transplantation of artificial organs, transplantation of embryonic cells and tissues and transplantation of cloned organs. All these procedures has their own pros and cons. For example, transplantation of embryonic cells has some aesthetic reasons, which are often dominated rather than medical ones. Indeed, the introduction of embryonic stem cells in the adult organism and their engraftment between aging and abnormal cells creates a unique situation - most powerful factors of renewal and development begin to operate on the old cells and organs, so that it becomes possible to "rejuvenate" the body. However, this raises other issues – will be able the aging body to survive in such a massive boost, will its internal resources be sufficient to adapt to new circumstances, do not serve this expansion not only push the "rejuvenation", but also the beginning of the "break" some adaptive capabilities to the development disasters in the vascular, immune and other spheres.

Another issue that arises when there is the transplantation of stem cells is the ability of tumor growth. Although this method is used for patients with malignant tumors for rehabilitation therapy after X-ray or chemotherapy, the stem cell
transplantation may have an impact on sometimes uncontrolled cell growth, in particular - the tumor.

However, the most problematic question nowadays is possibility to use cloned organs in transplantology. The lack of consensus on the morality of cloning in general, there is still much disagreement over the legitimacy of cloning to save lives. However, even if there was greater support for human cloning in general, the existence of a clone would not necessarily guarantee the availability of organs and tissues for transplantation. A clone would presumably be a person in his or her own right, not an object from which to pick and choose organs. Consequently, the laws that currently govern organ donation would apply to clone donation as well. It would be up to the clone to decide whether or not to donate organs, not the DNA donor [8, p.369].

**Conclusions.** To summarize all above mentioned is it necessary to note, that the legislation of the European Union requires improving in the direction of consolidation and regulation of such crimes as trafficking of human beings with the purpose of removing of organs and trafficking of organs, tissues and cells, conducting of their legal separation for future prevention (for deceased persons due to the fact that they do not need the protection and compensation) and making the compensation for the victims of such crimes (with regards to living persons). However, taking into account possibility to use clones organs and embryonic cells in future, it is necessary to adopt special regulation about prohibition of commercialization in this felid. There is the sharp need to protect embryos and mothers (especially it concerns low-developed countries) from illegal abortions.

Moreover, Member States have to build their national policy and programs on the prohibition of creation financial advances using the human body and its parts. Additionally, international cooperation between States must be based on understanding that any actions, which are relevant with organ donation and transplantation outside the territory of each single State should be understood as organ trafficking. There is also a need of creation of special list for collecting all cases of trafficking in organs, tissues and cells, as well as trafficking in human beings...
for the purpose of organ removal and relevant governmental authorities should have access for such information base.

Литература:


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