

Specific Features of Criminal Liability for Forcing a Person to Consent to the Removing of Organs and (Or) Tissues for Transplantation in Foreign States

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Annotation: This article argues that the criminal liability for forcing a person to consent to the removal of their organs and (or) tissues for transplantation is even wider in foreign countries, including in the field of transplantology. Also, it is explained that in foreign countries, not only human organs and tissues, but also human cells, the law and its components, the products of living human vital activity, legal transplantology of gametes are also under criminal legal protection. It has been analyzed that the Georgian Criminal Code specifically identifies the purpose of removing the victim's organs and tissues as an aggravating circumstance. It has also been scientifically proven that the Criminal Codes of Georgia, Moldova, Armenia, and Kazakhstan provide for liability for coercing consent to the removal of human organs and (or) tissues not only for transplantation purposes, but also for other purposes. In addition, the article analyzes the existence of liability for violation of the procedure and conditions established by law for the conduct of operations on the removal of human organs and (or) tissues in a number of foreign countries. It is scientifically substantiated that the Civil Codes of Latvia and Kazakhstan provide for liability not only for the removal of tissues or organs from a living person, but also for the illegal removal of tissues or organs from a corpse. The article presents substantive proposals and conclusions on the issue of criminal liability in foreign countries for forcing a person to consent to the removal of his organs and (or) tissues for transplantation.

Key words: crime, deed, human, organ, tissue, transplant, liability, cheat, helpless, donor, guilty, intimidate, coerce, anatomical, repeated, physical, mental, bodily injury, alive, corpse.

Article 115¹ of the Criminal Code of the Republic of Uzbekistan establishes criminal liability for “forcing a person to consent to the removal of organs and (or) tissues for transplantation.”

It should be noted that the criminal laws of many foreign countries also prohibit forcing a person to consent to the removal of organs and (or) tissues for transplantation.

In particular, the Criminal Code of Kyrgyzstan [1] provides for “Forcing a person or their relatives to remove organs or tissues for transplantation” (Article 140) to be held liable if it is committed through the use of force or fraud that does not pose a threat to the life or health of the person. The commission of these acts against a person who is financially or otherwise dependent on the perpetrator is an aggravating circumstance.

Article 140 of the Criminal Code of Kyrgyzstan differs from the analogous Article 115¹ of the Criminal Code of Uzbekistan in a number of respects:

- 1) not only the person himself, but also his relatives are covered by criminal law protection;
- 2) the category of violence is clarified - violence that is not dangerous to the life or health of the person must be used;
- 3) deception is also provided for as a method of committing the crime.

At the same time, the Criminal Code of Kyrgyzstan also provides for liability under this chapter for violating the legally established procedure for the transplantation of human organs or tissues, as well as for illegal trade in them (Article 141).

It should be emphasized that forcing a person to consent to the removal of their organs and (or) tissues for transplantation is characterized by a wide range of aggravating circumstances of the crime. Hussein, the son of Hussein, was the son of Hussein (the second son of Hussein), the cousin of Hussein Shah, who died between the ages of 14 and 18, and Aybdor, the son of Hussein Shah, who lived in Aybdor. Nisbatan, tricked or deceived, took the opportunity to kill his victim, and taking advantage of the opportunity, killed her. Unlike other Shakyamuni gurus, one of Shakyamuni's gurus is not Shakyamuni's guru, but Shakyamuni's guru., A criminal organization, unlike a criminal organization, is not a criminal community (the third most important), but is a criminal community.

The Criminal Code of Armenia [2] provides for criminal liability for acts such as violating the rules for performing transplant surgery (Article 125) and coercing the donation of organs or tissues (Article 126).

Forcing someone to donate for transplantation or scientific experiments is a criminal offense if it is committed through the use of force or intimidation. The commission of these acts against persons in a vulnerable position, financially or otherwise dependent on the perpetrator (part two), as well as by an organized group (part three) is an aggravating circumstance.

The Criminal Code of Armenia differs from the Criminal Code of Uzbekistan in the following aspects:

- 1) the subjective aspect of the crime is broader, that is, the purpose of the crime includes not only transplantation, but also conducting scientific experiments;
- 2) the range of aggravating circumstances is broader, including the commission of this crime by an organized group.

The Criminal Code of Tajikistan [3] also provides for criminal liability for coercion to remove human organs or tissues for transplantation. In particular, in accordance with Article 122 of the JC of Tajikistan, the guilty person is punished with imprisonment for a period of up to three years without the right to hold a certain position or engage in certain activities, if the victim is forced to take the body or tissue for transplantation, basharti threatens to use or apply violence to him or his loved ones.

Aggravating circumstances of this crime include: committing the crime against a person who is obviously incapacitated, financially or otherwise dependent on the perpetrator, a minor, two or more persons (part two), or by a group of persons, an organized group, or a criminal association (part three).

Article 122 of the Criminal Code of Tajikistan differs from Article 115¹ of the Criminal Code of Uzbekistan in the following respects:

- 1) not only the individual, but also his/her relatives are covered by criminal legal protection;
- 2) the range of aggravating circumstances is wider, including the commission of this crime against a minor, two or more persons, by a group of persons, an organized group or a criminal association;
- 3) Threatening to destroy property is also considered as a method of committing an objective offense.

Article 120 of the Criminal Code of the Russian Federation [4] establishes liability for "forcing the removal of human organs or tissues for transplantation." Article 120 of the Criminal Code of the Russian Federation is similar to Article 115¹ of the Criminal Code of Uzbekistan:

committed by the objective through the use of force or coercion by intimidation;

the subjective side is characterized by the purpose of the crime, that is, the accused commits it with the aim of transplantation;

the fact that the victim is in a vulnerable position, financially or otherwise dependent on the accused is considered an aggravating circumstance.

Article 120 of the RF Criminal Code is punishable by imprisonment for a term of up to four years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.

The Criminal Code of Azerbaijan [5] consolidates liability for the sale, purchase, and illegal donation and transplantation of human organs and tissues into a single article consisting of six parts (Article 137). Within the framework of this article, human organs and tissues, including donor members, received and sold (part one); obtaining or transplanting donor organs in medical institutions or outside medical institutions that are not part of the list approved by the relevant competent executive authorities (Part Two); obtaining a donor member for transplantation without the consent of a person or forcing a; obtaining a donor member is prohibited by law to transplant a member of individuals (Part Four), repeat these actions, by a group of individuals by prior agreement, by an organized group or criminal association, to commit a victim using a helpless condition, material, Service or other dependence (part five), to carry out the death of a person after negligence as a result of.

In this case, taking a donor organ for transplantation without the consent of the person or forcing a person to donate a donor organ for this purpose is punishable by imprisonment for a term of up to four years with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.

The Criminal Code of Azerbaijan differs from the Criminal Code of Uzbekistan in the following aspects:

- 1) liability for coercion to donate is provided for in a single article, along with actions such as the purchase and sale of human organs and tissues, illegal donation and transplantation (in the Criminal Code of Uzbekistan, these actions are provided for in separate articles (Articles 115¹, 133, 133¹, 133²);
- 2) the method of commission of the crime includes the taking of a donor organ for transplantation without the consent of the person;
- 3) the range of aggravating circumstances is wider, including the commission of this crime repeatedly, by a group of persons on the basis of prior agreement, by an organized group or criminal association;
- 4) the death of a person due to negligence as a result of this crime is also included within the aggravating elements of this crime (such actions are additionally qualified by other articles in the Criminal Code of Uzbekistan).

The Criminal Code of Ukraine [6], Chapter “Crimes against Life and Health”, provides for liability for “Violation of the procedure established by law for the transplantation of human anatomical materials” (Article 143) and “Compulsory donation” (Article 144).

In particular, Part 2 of Article 143 of the Criminal Code of Ukraine stipulates that the forcible or fraudulent acquisition of human anatomical material for transplantation purposes is punishable by imprisonment for a term of up to five years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years. The aggravating circumstances of this act are its commission against a person in a vulnerable position, a person financially or otherwise dependent on the perpetrator (part three), by a group of persons on the basis of a prior agreement, or participation in transnational organizations engaged in such activities (part five).

Article 144 of the Criminal Code of Ukraine provides for liability for forced donation, that is, for taking blood from a person by force or fraud with the aim of using him as a donor. This crime also has similar aggravating circumstances as the above crime.

The Ukrainian Criminal Code differs from the Uzbek Criminal Code in the following respects:

- 1) the subject of the crime is significantly broader, that is, it includes human anatomical materials and blood, while in the Uzbek Criminal Code the subject of the crime is limited only to human organs and tissues;
- 2) the objective side also includes deception as a method of commission;
- 3) the range of aggravating circumstances is wider, including the commission of this crime by a group of persons, participation in transnational organizations engaged in such activities.

The Moldovan Criminal Code [7] contains 2 articles in this regard:

- ✓ Article 158 (Trading in human organs, tissues and cells);
- ✓ Article 213¹ (Illegal procurement of human organs, tissues and cells or advertising them for the purpose of illegal donation).

In particular, in accordance with Article 158 of the JC, violation of legal regulations relating to the consent of a person for illegal acquisition or donation by non-authorized persons and (or) non-authorized institutions from a living or non-living human body through the separation of human organs and (or) tissues, as well as violation of legal regulations relating to the consent of a person for.

As aggravating circumstances of this crime, by repeated, physical or psychological coercion, to two or more persons, a pregnant woman or child, two or more persons, a public person, an official, by a responsible official, committed by a taasub Zamiri (part three), by an organized group or a criminal association, causing a person a serious bodily injury or other severe harm to his health, death or self-murder (Part Four). As we have seen, the Moldovan Criminal Code differs significantly from the Uzbek Criminal Code and does not provide for liability for forcing a person in the pure sense to consent to the removal of his organs and (or) tissues for transplantation.

In foreign countries, the range of crimes in the field of transplantology is even wider. Analyzes in this regard show the feasibility of developing national legislation in the following directions:

First, in foreign countries, not only human organs and tissues, but also human cells, the law and its components, the products of living human vital activity, legal transplantology of gametes are also under criminal law protection (Article 144 of the Criminal Code of Ukraine).

Secondly, in some countries, the purpose of removing the victim's organs and tissues is specifically listed as an aggravating circumstance. For example, the Georgian Criminal Code [8] establishes liability for intentionally causing grievous bodily harm to the victim's health with the aim of transplanting organs, parts of organs, or body tissues (Article 117, Part 2, Clause "n" of the Criminal Code).

Thirdly, in a number of countries, liability is provided for forcing consent to the removal of human organs and (or) tissues not only for transplantation purposes, but also for other purposes. In particular, in Georgia, liability is provided for transplantation "for treatment, experimentation or preparation of medicines" (Article 134, Part 1 of the Criminal Code), in Moldova "for other purposes" (Article 158, Part 1 of the Criminal Code), in Armenia "for scientific experiments" (Article 126, Part 1 of the Criminal Code), and in Kazakhstan [9] "for other use" (Article 113, Part 1 of the Criminal Code).

Fourth, in a number of foreign countries, liability has been established for violation of the procedure and conditions established by law for the conduct of operations on the removal of human organs and (or) tissues (Article 125 of the Criminal Code of Armenia, Article 164 of the Criminal Code of Belarus, Article 115 of the Criminal Code of Kyrgyzstan, Article 121 of the Criminal Code of Tajikistan, Article 143 of the Criminal Code of Ukraine) [10].

Fifth, in a group of countries, liability is provided not only for the removal of tissues or organs from a living person, but also for the illegal removal of tissues or organs from a corpse (Article 139 of the Latvian Criminal Code [11], Article 275 of the Kazakh Criminal Code [9]) [12].

Based on the above, the following proposals and conclusions can be put forward on the issue of applying criminal liability in some foreign countries for forcing a person to consent to the removal of his organs and (or) tissues for transplantation:

First, the Criminal Code of Kyrgyzstan stipulates that “forcing a person or their relatives to remove organs or tissues for transplantation” is punishable if it is committed through the use of force or deception that does not pose a threat to the person's life or health. The Kyrgyz Criminal Code differs from this article of the Uzbek Criminal Code in a number of respects: not only the individual, but also his or her relatives are covered by criminal law protection; the category of violence is clarified - violence that is not dangerous to the life or health of the individual must be used; deception is also envisaged as a method of committing the crime.

Secondly, the Criminal Code of Armenia provides for criminal liability for acts such as violating the rules of transplant surgery and forcing the donation of organs or tissues. The Criminal Code of Armenia differs from the Criminal Code of Uzbekistan in the following aspects: the subjective aspect of the crime is broader, that is, the purpose of the crime includes not only transplantation, but also conducting scientific experiments; the range of aggravating circumstances is broader, including the commission of this crime by an organized group.

Third, the Criminal Code of Tajikistan also provides for criminal liability for coercion to remove human organs or tissues for transplantation. The Civil Code of Tajikistan differs from this article of the Civil Code of Uzbekistan in the following aspects: under criminal law protection, not only the individual, but also his loved ones are covered; the range of cases aggravating liability is wider, they also include the commission of this crime in relation to a minor, two or more persons, by a group of individuals, an organized group or a criminal association; as a way of committing an objective party, it is also implied.

Fourth, the Criminal Code of the Russian Federation also establishes liability for «forcing the removal of human organs or tissues for transplantation». RF JK Uzbekistan similar aspects of this article of JK include those below: committed by the objective through the use of violence or its coercion with intimidation; the objective of the crime by the subjective is taken as a necessary sign, that is, the accused is committed for the purpose of transplantation; the fact that the victim is in a helpless state, material or otherwise dependent.

Fifth, the Criminal Code of Azerbaijan combines liability for the sale, purchase, and illegal donation and transplantation of human organs and tissues into a single article consisting of six parts. The Criminal Code of Azerbaijan differs from the Criminal Code of Uzbekistan in the following aspects: responsibility for forcing donation received and sold human organs and tissues, along with such actions as illegal donation and transplantation, provided for in the unified article (in the Criminal Code of Uzbekistan, these actions are provided for in separate articles (articles 115¹, 133, 133¹, 133²); the objective; the range of aggravating circumstances is wider, they also include the repeated occurrence of this crime, by a group of individuals, by prior agreement, by an organized group or a criminal association; the occurrence of a person's death from the back of negligence as a result of this crime is also covered within the aggravating composition of the crime in question (in the Criminal Code of Uzbekistan).

Sixth, the Criminal Code of Ukraine, in its chapter “Crimes against Life and Health,” provides for liability for “violation of the legally established procedure for the transplantation of human anatomical materials” and “forced donation”. This article in the JK of Ukraine is distinguished by the following

aspects: the subject of the crime is significantly wider, that is, it covers the anatomical material and blood of a person, while in the JK of Uzbekistan, the subject of the crime is limited only to human organs and tissues; deception is also provided as a way of committing an objective side; the range of.

Seventh, the Moldovan Criminal Code contains two articles in this regard: trafficking in human organs, tissues and cells and illegal procurement of human organs, tissues and cells or advertising them for the purpose of illegal donation. The Moldovan Criminal Code differs significantly from the Uzbek Criminal Code and does not provide for liability for forcing a person in the pure sense to consent to the removal of his organs and (or) tissues for transplantation.

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