

## Legal regulation of human organ transplantation in Ukraine

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On the 1<sup>st</sup> of January, 2019 is due to come into force law on organ transplantation in Ukraine, which was accepted May 17<sup>th</sup>, 2018. The development of transplantology is a significant achievement of medicine, but without proper legal regulation, it can turn into mass crime against life, health, personal immunity. The transplantation of organs according to The Declaration of Istanbul on organ trafficking and transplant tourism is one of the wonders of the twentieth century.

The development of medicine has so far surpassed that in the modern world it is possible to transplant almost any human organ. Today, transplantation is considered as a very effective and almost non-alternative way of treating diseases and injuries of vital organs such as kidneys, liver, pancreas, lungs, heart, etc. Currently, the world has more than 1 million people with transplanted organs that lead an active lifestyle. The global rate of increase in the number of transplantation operations allows us to predict that in 20-30 years, 50% to 60% of all surgical interventions will be associated with the transplantation of organs, tissues and cells.

It should be noted that transplantation in Ukraine, in comparison with European countries, is very low. The world's leader in organ transplant operations are the United States, which carried out 34,768 such operations in 2017. Approximately the same figure is for the whole of the European Union, for comparison it makes 130-140 transactions per year in Ukraine. If we take statistics on the number of donors per million population (this figure is taken into account by the WHO), then for the 25 years, Spain ranks first with a figure of just over 43 donors per 1 million people. In the USA this figure is 28.2 donors, in France - 28.1, in Germany - 10.9.

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[https://www.ostinstitut.de/documents/Yanchuk\\_Kuznichenko\\_Hradova\\_Legal\\_regulation\\_of\\_human\\_organ\\_transplantation\\_in\\_Ukraine\\_OL\\_3\\_2018.pdf](https://www.ostinstitut.de/documents/Yanchuk_Kuznichenko_Hradova_Legal_regulation_of_human_organ_transplantation_in_Ukraine_OL_3_2018.pdf).

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The successful experience of transplantation in the progressive countries of the world, the increase in the number of patients for whom organ transplants are the only way to save lives, prompts legislation to be brought in line with the standards of the 21st century. Transplantation as a method of treating a number of the most severe human diseases is used when eliminating the danger to life or restoring the patient's health with other methods of treatment is impossible.

Annually in Ukraine, from 40 to 60 potential donors per million population dying from around 3,000 donors dies. Deleted organs from one donor could save lives of 8 and improve it to 50 people. Organ transplantation in Ukraine is very low. So, in 2014, only 134 organ transplants were performed in Ukraine, including 16 kidney transplants (with annual needs exceeding 2500); 17 transplants of the liver (1000-1500 if necessary). For the last 20 years, only 8 heart transplants have been conducted in Ukraine (with a total need of 1,000-1,500 per year).

National legislation on the transplantation of human organs comprises the Constitution of Ukraine, 1996, till January 1, 2019, it is the Law of Ukraine "On the Transplantation of organs and Other Anatomical Materials to Person", from January 1, 2019, the Law of Ukraine "On the Application of the Transplantation of Anatomical Materials to Person" comes into force, the Law of Ukraine "Fundamentals of the Ukrainian legislation on health care", the Law of Ukraine "On burial and funeral", the Criminal Procedure Code of Ukraine and the Criminal Code of Ukraine.

Part 2 of Article 28 of the Constitution of Ukraine stipulates that no one can be subjected to medical, scientific or other experiments without his or her free consent. Article 49 of the Constitution provides that everyone has the right to safeguarding, medical care and medical insurance. Health care is provided by state financing of the corresponding socio-economic, health-sanitary and health-prevention programs. The state creates conditions for effective and accessible to all citizens of medical care.

The Law of Ukraine "On the application of transplantation of anatomical materials to a person" introduces new standards for the regulation of transplant-related activities, changes the system of state control, increases the level of protection of information about donors and recipients. Consider transcripts of the legislation on transplantation.

1. There appeared articles defining the subjects of the organization and provision of medical care with the use of transplantation and activities related to transplantation and their powers. 2. The next innovation is the position of the health care provider's transplant coordinator, who identifies the potential donor, establishes the presence in the Unified State Information System for Transplantation of information about the presumption of consent or disagreement on post-mortem donation, obtains consent for the removal from the body of a potential donor of anatomical materials, organizes the removal, storage and transportation of human anatomical materials. 3. One of the most important novel piece is that each person has the right to give lifetime consent or disagreement to become an

donor of anatomical materials after his death. If there is no such agreement / disagreement, the decision on taking the anatomical materials is possible by written consent of the other spouse or one of the closest relatives (parents, children). 4. There appeared such a kind of donation as cross-border donation, which means the exchange of living immunologically compatible donors between recipients. 5. Decreased age of the recipient from 15 to 14 years. 6. The list of living persons, for which it is prohibited to extract anatomical materials, is extended at the expense of people held in places of pre-trial detention and pregnant. 7. Transfer of human organs and other animal anatomical materials is prohibited. In this case, the use of xenomplants is allowed. 8. The ban on the extraction of anatomical materials in deceased person belonging to the category of orphans and children deprived of parental care, incapacitated persons, unidentified persons, as well as persons who died as a result of an anti-terrorist operation and other hostilities was established. 9. The state should conduct an active information policy in the field of the application of transplantation of anatomical materials to a person in order to form a positive attitude towards life-long and post-mortem donations from the population. 10. The conclusion or offering of contracts for the sale and purchase of human anatomical materials as well as any advertising of such materials is prohibited. 11. International cooperation in the field of the application of transplantation of anatomical materials to a person in the different areas.

The next national legal act in the field of transplantation is the Law of Ukraine "Fundamentals of the legislation of Ukraine on health care". It determines that the transplantation of organs and / or other anatomical materials to a person is carried out in accordance with the law, in the presence of the consent of the donor and the recipient or the consent of their legal representatives, and provided that the use of other medical care methods does not produce the desired results, but caused thereby the harm to the donor is less than that which threatened the recipient. A donor of organs and other anatomical materials may be an individual with full civil capacity. Such a person may give written consent to the donation of her anatomical materials in case of his death or to prohibit it.

The Law of Ukraine "On burial and funeral" specifies the right of citizens to bury their bodies and expresses their willful attitude to the body after death. Such an expression of will can be expressed in: consent or disagreement with conducting pathologic-anatomical sections; agree or disagree with the removal of organs and / or other anatomical material; an instruction to fulfill one's will and some other person's will. In the absence of the will of the deceased, removal of organs and / or other anatomical material is carried out in accordance with the procedure established by law.

The Criminal Code of Ukraine provides for liability: for transgression of organs and (or) other anatomical materials of a person or an animal established by law; for extraction in a person by coercion or deception of its organs and (or) other anatomical materials for the purpose of their transplantation; for illegal trade in organs and (or) other anatomical materials of a person or an animal.

Summing up our monitoring research, we would like to note that, currently, there is a fairly extensive system of legislation in the field of transplantation of human organs in Ukraine. But unfortunately, this does not solve all the problems in this area. First, there is a problem with the lack of donor organs and the second problem is illegal seizure of human organs, their sale. Transplantation as the only way for many to prolong life should not be a way of gaining on someone else's misfortune. If there were enough donor organs in the world for all patients, trafficking in human beings for the purpose of transplantation of their organs disappeared as unnecessary. Therefore, the solution of this problem depends only on us with you: when everyone will reconsider their positions on transplantation and agrees to post-mortem donation, only then we can speak about positive results in the field of transplantation.

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