

## Principle of serviceability and gratuitousness in transplantation?

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### ABSTRACT

**Introduction:** the issue of commercialization of transplantation analyses in the article. Attention is paid to the importance of transplantation as a method of treatment and saving human lives.

**Aim:** the clarify the feasibility of the introduction of donation commercialization as an avenue to solve the shortage of donor organs and means of combating with black organ market and finding alternative avenues solving these problems, which are more morally acceptable for society is the aim of this article.

**Materials and methods:** the experience of foreign countries has been analyses in the research. Additionally, we used data from international organizations, conclusions scientists and report of Global Financial Integrity in the research.

**Results:** it is impossible to solve most problems by means of paid donation.

**Conclusions:** therapeutic organ and tissue cloning based on genetic technology is the best way out and solving ethical transplantation problems.

**Key words:** transplantation, recipient, donor.

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### INTRODUCTION

Transplantology has saved thousands of lives and is a standard treatment for a number of pathologies, and sometimes is the last chance for saving human lives. Taking this into consideration, transplantology can be called the phenomenon of the twentieth century. Therefore, with its methods, the law shall promote the progress of transplantology as a promising and effective treatment. However, in terms of general system of values prevailing in modern society, the law shall comply with ethical requirements. This means that improving the standard of living for some people should not worsen the standard of living and health for others.

Organ donation and transplantation are a complex and sensitive procedure raising ethical, moral, and practical problems. The fact that a number of people in a transplant waiting list is permanently increasing has been complicating the situation [1]. Since the introduction of the transplantation method, a number of people in a transplant waiting list has never coincided with a number of donors [2, p. 456]. As a result, quite a few potential recipients waiting for a donor have ended by dying. [3, p. 13] On the other hand, achievements of transplantology over shadow the facts of using poor people as a source of donor organs for wealthy recipients ("tourists") crossing the borders to search for and buy necessary organs [4].

Continuous improvement of medical technologies to overcome rejection of organs and human tissues has led to the fact that transplantation has become a significant part of the medical services offered to the public. After a successful transplantation, one's lifetime significantly extends and its quality improves [5, p. 472]. Nowadays, organ transplantation is the most efficient

way to treat certain diseases at their end-stage, such as renal insufficiency, and is the only method of treatment in the event of failure of functioning of organs such as the heart, liver and lungs [6, p. 521].

Therefore, the society has realized the importance of transplantation as a method of treatment and saving human lives and turns from undue criticism to thorough philosophical and legal analysis, search for optimal solution of problems existing in the sphere of transplantology.

### AIM

The clarify the feasibility of the introduction of donation commercialization as an avenue to solve the shortage of donor organs and means of combating with black organ market and finding alternative avenues solving these problems, which are more morally acceptable for society is the purpose of this article.

### MATERIALS AND METHODS

The experience of foreign countries has been analyses in the research. In particular, Iran, Singapore, Canada as countries where commercialization is permitted and India, the Philippines and China as countries which had an experience of legal sale of donor organs, but have abandoned this way because of numerous violations of human rights, spread of transplant tourism and long-term negative consequences for human health. Also, we used data from international organizations, conclusions scientists and report of Global Financial Integrity in the research.

As shown in the materials of the International Summit held in 2008 in Istanbul [4], the level of transplant tourism and illegal trafficking of human organs and tissues in the third

world countries, countries involved in military operations and countries where commercialization has been permitted is higher. Commercialization results in the fact that the least socially protected segments of the population often become victims of the black transplantology [4].

WHO claimed that commercialization for organ transplantation is likely to take unfair advantage of the poorest and most vulnerable groups of people, undermines altruistic donation and leads to profiteering and human trafficking [7, p. 572]. The research indicates that illegal organ sales are on the rise, and a recent report of Global Financial Integrity estimates that the illegal organ sales generate profits between \$600 million and \$1.2 billion per year, with a span over many countries [7, p. 572]. These countries include Angola, Brazil, China, India, Pakistan, Mexico, Haiti and others.

## RESULTS

Despite the efforts of international organizations and health authorities, donor organ demand has always exceeded their supply. It is not possible to attract enough donors by means of government programs, benefits. As a result, the controversial issue of legalizing donor organ sales arises to the society.

In general, there is a system of living donation and post-mortal donation. As for living donation, there are restrictions on the subject and a number of people. It is binding to have the voluntary consent of a donor and the medical report. Because of these limitations 90% of organ and tissue transplantations are made from dead people. Many world countries have disagreement presumption on the posthumous donation (fetal materials). Which means that – every adult capable person may give a written agreement or disagreement to donate anatomical materials in case of his or her death. In the absence of such a statement, anatomical materials of a deceased adult capable person can be taken with the consent of spouses or relatives who lived with him or her before death.

The legal model of agreement presumption provides that if a person did not inform about his or her disagreement to transplant their organs during his or her lifetime, it is considered that after death his or her organs can be used as donor's materials, moreover consent of relatives is not required.

It should be noted that globally there is no single convention or imperative act that would optimize the issues of organ and tissue transplantation. However, international acts of soft law adopted in the framework of intergovernmental organizations are fairly widespread and cover these issues. They concern the issues of commercialization as well.

The World Health Organization has repeatedly adopted resolutions concerning prevention of commercialization in organ and tissue transplantation. Declarations of scientific transplantologists' societies, adopted on the basis of conventions or other formal events, are important political instruments. For example, the Istanbul Declaration on Organ Trafficking and Transplant Tourism [4]. This is a detailing document which defines the terms of «organ trade», «transplant tourism». Similar declarations have been adopted as a result of the Amsterdam [8] and Vancouver [9] Transplantologists' Forums. These declarations have attracted considerable attention among experts.

The basic principles of these acts are to condemn commercial relations while receiving donor organs, voluntary donation, priority of the donor's life and health and priority of cadaveric

organ donation, and so on. All the above mentioned acts have non-normative character and, therefore, can not be considered a source of law of full value.

Speaking about regional acts having conventional nature that regulate relations concerning organ and tissue transplantation, above all, those adopted within the Council of Europe should be noted. In particular, the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine of April 04, 1997 [10], Additional Protocols to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin [11], Declaration on Human Organ Transplantation of October 30, 1987 [12]. The main purpose of the Convention and Protocols is to protect honor and dignity, personal immunity and other rights and freedoms associated with transplantology [10, 11].

The fact that the Convention's acts do not apply to reproductive and embryonic organs and tissues as well as blood and its components seems rather interesting. This means that bone marrow tissue sales are also prohibited, although in practice, in most countries, including Ukraine, bone marrow tissue sales are permitted.

Currently, organ sales are prohibited in most countries. Countries of Europe, North and Latin America have some forms of legislation aimed to prevent illegal organ sales, both through direct prohibition and through legislation restricting how and by whom donation can be made. However, leading European surgeons and other experts emphasize that such policies will not tackle existing transplantation problems.

Thus, A. Friedman believes that human organ trade should be legalized because it will assist to tackle a global problem of donor organ shortage. The demand for organ transplantation to save lives outstrips supply so much that patients are desperate. Increasing percentage of successful cases combined with steady expansion of indications for transplantation makes an acute shortage progressing. International crime syndicates are making a profit out of the shortage, seeking high income originating from illegal human organ sales [13]. A. Friedman's call was joined in by other experts [13]. H. Nadey claims that it is impossible to ignore the black organ market, and the risk of unregulated organ sales outweigh the danger of its legalization. If this trade is still on, why do not we make it controllable? If that case, if someone wants to give a kidney for a price, it would be acceptable. If it is safe to do this, a donor will not be affected [14, p. 15-16]. This view was supported by Professor R. Mendoza [15].

Y. Dangata believes that commercialization is the only way to tackle the problem of donor organ shortage. Given a significant gap between a number of donors and a number of people in organ waiting lists in countries where organ donation still remains a display of altruism, it is high time to amend legislation to adjust it to requirements of the present time. The choice is between rigidity in maintaining altruism which leads to an increased death rate, on the one hand, and flexibility of a multisystem organ donation strategy that would revolutionize availability of organs to redeem more lives [16, p. 26].

C. Erin and J. Harris advocate commercialization and believe that all the problems can be tackled in a way that the national health system will be the only buyer of organs [17, p. 217]. J. Harris

considers persons who become donors after death as “former people” who are alive can neither harm nor do good [18, p. 123].

Some experts advocate the idea that each individual owns oneself, as well as own property, so only he/she can decide what will happen to his/her body, dead or alive [19, p. 631]. Therefore, a potential organ donor can decide how to dispose of his/her body. The issue of donation serviceability is inextricably linked with the issue of the legal status of human organs and tissues. Serviceability will mean that the human body is just equal to the things that will have a certain price. This will lead to social inequality when some (rich people) will live or improve life at the expense of others (socially unprotected people). Discussions on the establishment of paid donation can be linked with constantly augmentative differences between rich and poor, which is a natural trend nowadays.

That immunity and autonomy of the individual have given altruistic nature rather than made it a duty to the organ donation in most civilized countries [16, p. 23].

Paid donation raises a number of questions. What is the legal status of the human body? What is its price? Who has the right to dispose of it especially if it concerns the body of the deceased? What if the donor will require an organ transplant? From the moral point of view, will it lead to the commercialization when a seller is “supporting himself/herself with his/her body”, because such is, for example, the prostitution situation? What might be the likely consequences for the seller’s health in the short, medium and long term? [16, p. 26]

Let us refer to the experience of the world. In world practice, Iran, Singapore and Australia are the only countries which have legally allowed organ and tissue buying and selling. For example, the Iranian organ market is internal, that is, foreigners are not allowed to buy the Iranian citizens’ organs. Additionally, organs can only be transplanted between people of the same nationality - so, for example, an Iranian national cannot purchase a kidney from a refugee from another country [20, p. 503]. That is why proponents of legalized organ sales mark the Iranian model as an effective and safe example of organ sales. It is noted that the Iranian model help avoid quite a few problems associated with organ sales. [21, p. 1136].

Some critics argue that the Iranian system is coercive in some ways, as over 70% of donors are considered poor by Iranian standards [22, p. 7] and the donation is the last chance of survival. In fact, there is evidence that Iranian donors experience highly negative outcomes, both in terms of health and emotional well-being [23, p. 10].

Before 2008, the organ sale was legal in the Philippines, and the country was a popular destination for transplant tourism. The Philippine Information Agency, a governmental agency, even promoted “all-inclusive” kidney transplant packages that retailed for roughly \$25,000 [24, p. 193]. The government banned the organ sale in March, 2008.

Before the Transplantation of Human Organs Act (THOA) was passed in 1994, India had a successful legal organ sales market. Low costs and high availability turned India into one of the largest kidney transplant centers in the world.

However, several problems began to surface. In some cases, patients even were unaware that kidney transplantation was done. In other cases, patients were promised payments that were much higher than what they actually received. These and

other ethical issues pushed the Indian government into passing a legislation prohibiting organ sales [25]. Nevertheless, current laws still contain some loopholes. For example, the THOA states that an organ donor shall be a relative, spouse, or an individual donating for reasons of “affection” for the recipient. Often, claims of “affection” are unfounded and the organ donor has no connection to the recipient. [26, p. 21].

In China, in 1984, forced extraction of executed prisoners’ organs was established by law, but under pressure from the European community, the government pledged to cease such operations by 2015. However, in fact, this was not done. In 2007, its borders were sealed for «transplant tourism» foreigners. By the time, China had been one of the largest service providers in the field of transplantation for foreigners.

So, the legalization of organ and tissue sales has not resulted in the desired effect, it only generates some additional ethical issues. The black transplantology is a phenomenon that has been a matter regardless of whether the organ sale has been authorized or not.

Ukraine is in difficult social and economic conditions now, there is a constant increase in the number of socially disadvantaged groups (due refugees). That It is therefore necessary to adhere to the prohibition of any trade schemes and control of the state. The government should take the compensation liability to the donor, not the recipient [27, p. 38].

## DISCUSSION

So, instead of fighting the black transplantology and transplant tourism, the governments strive to raise the level of GDP through the commercialization of organ donation and automatically recognize legitimate illegal profits by listing them in the budget. Such a policy is unacceptable.

The idea of cell, tissue and organ serviceability threatens taking unfair advantage of the poorest and most vulnerable groups of people, thus undermining the idea of gratuitous donation, which ultimately leads to profiteering and human trafficking. Such payments seem to point out that some people are deprived of dignity and are just objects to be used by others. The aim of this principle, in addition to preventing human material trafficking, is to mark the special merit, which is the gratuitous provision of human materials to save and prolong human life.

To combat the illegal organ sales, M. Moniruzzman recommends: 1) global governance; 2) transparency and accountability; 3) preference of cadaveric organ donation [28]. So, as we can see, the paid donation is out of question.

In addition, experts suggest several ways to solve the problem. For example, creation of artificial organs on the basis of «artificial kidney» apparatus, transplantation of animal organs from to humans (xenotransplantation), cloning organs [29].

By the way, nowadays there have been some attempts to clone whole organs, particularly, the liver. This method is called therapeutic cloning. Therapeutic cloning is the same as reproductive cloning, but limited to 14 day term of the embryo’s growth. For the first 14 days, embryonic cells are formed that can continue to turn into specific tissue cells of individual organs –the heart, kidneys, liver, pancreas and others, and be used for treatment of many diseases in medicine. In many countries, scientists are allowed to use therapeutic

cloning and conduct experiments on stem cells for medical purposes [29].

That is true, no one resents buying and selling hair. Even less public resentment is caused by an opportunity of intake of blood, sperm, skin parts, placenta and others. The problem is being aggravated when the subject of discussion is human organs: kidneys, lungs, liver, heart, etc. However, the principle of non-commercialization should be a guarantee of human rights, freedoms and interests, reasonable balance between the rights of a donor and recipient until the moment when artificial organ and tissue growing or therapeutic cloning become common.

## CONCLUSIONS

In our opinion, therapeutic organ and tissue cloning based on genetic technology is the best way out and solving ethical transplantation problems. By the time of the proper development of specified vector of medicine, the ban on the human organ and tissue sales should be in force.

In addition, we should raise a question at UN level of adopting a single imperative conventional act that prohibits commercial relations in the field of transplantology, optimizes organ and tissue transplantation. You should also raise a question of responsibility, not only persons who are engaged illegal transplantation, but also transplant tourists.

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