

# DETERMINATION PROCESSES OF CRIMINAL VIOLATIONS IN THE FIELD OF TRANSPLANTATION IN RUSSIA AND UKRAINE

<sup>1</sup>Dmitry Vladimirovich Babich,<sup>2</sup>Badma Vladimirovich Sangadzhiev,

<sup>3</sup>Lyudmila Alexandrovna Bukalerova

**ABSTRACT--***The processes of crimes determination of in the field of transplantation and organs on the example of Russia and Ukraine, with consideration to the common features and ongoing political processes are discussed in the scientific article The issues of the criminal world (the underworld) development and adaptation to the changes that have occurred and are ongoing in two countries, as well as the causes of occurrence of criminal acts in this area are considered. Based on the consideration of features, specifics, and isolation, the problem of latency in the sphere of crimes of organ and tissue transplantation is considered.*

**Keyword--** *the criminal world.Organ trade, corruption.*

## I. INTRODUCTION

Common features in the historical processes that have taken place are characteristic and peculiar for the contemporary history of Russia and Ukraine despite the political crisis in interstate relations. Fundamental changes affecting the social, economic and political spheres of life in the former union republics of a single state, as well as the profoundness of reforms carried out in Ukraine and Russia, led not only to positive transformations, but had negative consequences to a large extent, which led to the snowballing growth and the transformation of the criminal world, which began to develop faster than the adoption of measures to prevent crime in the 90s.

The negative consequences of the historical and social processes that have taken place have influenced in turn the development of new criminal phenomena in the healthcare sector of Russia and Ukraine, the appearance of a new vector in the criminal world. A kind of crime evolution took place, its nature changed, which affected the change in the behavior of the subjects of crimes.

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<sup>1</sup> Department of Criminal Law, Criminal Procedure and Criminalistics, Peoples' Friendship University of Russia, Moscow, Russia, djankoy.biz@yandex.ru

<sup>2</sup>Department of the judiciary, law enforcement and human rights activities Peoples' Friendship University of Russia Moscow, Russia,, sangadzhiev\_bv@rudn.university

<sup>3</sup> Department of Criminal Law, Criminal Procedure and Criminalistics Peoples' Friendship University of Russia, Moscow,Russia,,bukalerovala@rudn.ru

## **II. PURPOSE OF THE STUDY**

The purpose of the study is to identify and study individual problems in the field of determination of criminal violations in the field of transplantation in Russia and Ukraine, as well as to develop appropriate recommendations for their elimination.

## **III. MATERIALS AND METHODS**

Methods of scientific knowledge were applied in the process of writing the scientific work. With regards to general scientific methods, the system-structural, dialysis method was used, and for a more detailed study of the problem posed in the determination of criminal violations in the field of transplantation in Russia and Ukraine, methods such as analysis, synthesis and generalization were applied.

The regulatory legal acts in the field of transplantation of human organs and tissues in Russia and Ukraine were analyzed during the study. The special methods were applied to analyze documents in the studied field of knowledge for this process.

Since, in the study of the criminal violations determination in the field of transplantation, two or more states are encountered, a comparative legal approach was applied.

## **IV. PROBLEM STATEMENT**

Like all other negative and unlawful manifestations, the crime committed in the field of such a branch of medical activity as transplantation need to establish the causes and conditions that contribute to their appearance and affect them. Focusing on the importance of studying the factors determining the crime, Professor Yu.M. Antonyan notes that "... the efforts of all the generations of the domestic and foreign criminologists have always been concentrated on finding out the reasons that cause the crime ..." [3].

As a result of the reforms the possibilities for the criminal world to use all those transformations in the economy and other areas that have been made, have not been fully taken into account. And the negative consequences were not long in coming.

Self-interest and motivation for actions in the realities of capitalism in Russia and Ukraine led to the practical destruction of moral and ethic principles.

The mass media also made the negative contribution to the minds of people, which created under the influence of not even ordinary capitalism, but accelerated, with a harsh form of ideology the favorable conditions for the emergence of illegal actions, replacing and destroying the principles of honor, morality, ethics, etc.

The intellectual culture of Russia and Ukraine has evolved from the beginning of the origins of Rus' under the influence of many factors, that's why different characteristic features of it reside in different social groups , and the

intellectual culture is subject to a significant degree to various negative influences, effects and penetration of deviant morality.

## V. RESEARCH QUESTIONS

A specific feature of the acts under consideration, namely, illegal transplantation, is increased latency, which is the main sign, a factor that contributes to the wrongdoing. After all, a condition for confidence in the absence of punishment is created, thereby provoking a specific person to commit new crimes of this kind. The latency issue is significant not only for determining the volume, intensity (level) of crime and identifying its objective indicators, but also as an essential criminogenic factor.

The latency and causes of special crimes directed against the transplantation procedure are very numerous and diverse, both objective important and subjective factors are inherent in them. In particular, insufficiently effective performance of law enforcement agencies in these countries; difficulty in detecting crimes of this category; imperfection of legislation.

The presence of latent crime entails a distortion of the idea of the actual state, level, structure, dynamics of crime, the magnitude and the character of the damage caused to society by these criminal activities; creates an obstacle to the implementation of the principle of the inevitability of responsibility for crimes committed, reduces the reliability of crime forecasts, etc. [6].

An important cause of crime in the field of transplantation is the imperfection and weakness of the legislation. Criminal law standards on responsibility for crimes in this area are designed to solve both of these interrelated tasks. However, it is important to know that the formal elements of the crimes should be formulated in such a way that it would be possible to really apply the relevant criminal law standards to punish the guilty, and not just to prevent such acts by an indefinite number of people. It is unlikely that one can count on general prevention if the inevitability of punishment as a principle does not work. There is only one standard in the Russian criminal law prohibiting violation of the procedure for transplanting organs and tissues in the form of coercion, and we clearly see that other violations of the transplantation law do not form criminal behaviors, although the types and varieties of violations are quite large and varied.

A criminal law establishing responsibility for a certain type of acts can be practically functional and quite effective only if all the signs of a crime stipulated by the standard are normally provable [8]. In other words, the necessary condition for the criminalization of an act is the procedural feasibility of criminal prosecution.

The procedural feasibility of criminal prosecution for violation of the legislation on transplantation is a condition for the successful solution of the problem of private prevention, and, therefore, creates the prerequisites for a general preventive effect.

It should be noted that the state of the sectoral legislation regulating the proper functioning of relations in the field of transplantation in Ukraine and Russia is far from perfect. Activities in the field of medicine are regulated mainly by legally enforceable enactments of the department, namely health care, such as orders and instructions, which are practically not available to a wide range of people and the population of the countries as a whole, which is also a factor in reducing the doctor's responsibility for the discharge of professional duty and the health care management as a whole. I agree that it is rather difficult to regulate all relationships according to the doctor-patient scheme, but a reflection of the most important thing in the legislation of the two countries, with a clear division, structure is necessary.

Many problems and issues related to transplantation remain open, because in addition to the criminogenic factor, a significant barrier is created for the proper development of this high-tech area in medicine. In particular, the presumed refusal is valid in Ukraine, as a result of which organ and tissue transplants are single, and thousands needing them; the problem of child donation in Russia, which depends on the absence of instructions for stating death in children, has not been resolved. We can only guess what methods this problem for the smallest patients is solved with.

The feature of sectoral legislation in the field of transplantation is the absence of any regulation of relations in the field of other areas of transplantation. The prepared bill drafts, in particular, "On Biomedical Cell Technologies," are criticized by the medical community and do not reflect all areas of these high-tech treatment methods. At the same time, trade in fetal materials and special-order abortions gained a large scale. The proposals of a number of deputies to adopt a law recognizing the right to life of unborn children are met with misunderstanding in society and negative comments in the mass media. The work in the field of cell technologies is prohibited completely in Ukraine, since the regulatory framework is completely absent and there are problems with the unaccountability of institutions involved in work in this area.

Currently, the legislation in the field of healthcare consists of numerous by-laws, and not laws [4,10]. The high technologies development in the field of medicine is moving forward, however, the existing legal system has been quixotic and does not fully protect the rights and interests of patients from the illegal actions of medical workers. To understand and eliminate the causes and conditions of this type of crime it is necessary to know its volumes, methods of commission, and the impact on the normal development of relations in the medical field. However, the crime of medical personnel is not identified separately in the statistical reporting; accordingly, its proper statistical accounting is absent, and we can only guess about its size.

Features of the crime in the field of transplantation determined the specificity of its causative complex. According to the medical staff themselves, the main problems are the insufficient level of health care financing; shortage of medical personnel due to low wages; inconsistencies of the continuing education system for medical personnel with the needs of practical healthcare and international standards.

A social survey of medical workers showed that low wages and the inability to improve their financial situation put doctors in a situation where they are ready to receive payment for their services from patients, realizing the

unethical nature of their actions in Russia and criminality in Ukraine. Low wages lead to the development of official crime.

The series of economic reasons caused by the crisis negatively affected the real state of social protection of medical workers. The social guarantees declared by the state and their actual implementation were in discord. As noted above, there is a clear regional differentiation in the level of salary of medical workers. The same is referred to social support measures for medical workers. These measures are established by the Government of Russia, healthcare organizations under the jurisdiction of the territorial entities Russia, and state authorities of the territorial entities of Russia. The indicated separation of medical workers in the matters of social support at the federal and regional levels creates inequality in the medical community, which is a powerful criminogenic factor [13, 15].

Patients also faced the same problems. The stratification of the Russian healthcare into elite and medicine for the poor is clearly visible. At the present stage, economic stratification has manifested itself in the breakdown of society, which actually led to the formation of two unequal social zones: zones of wealth and zones of poverty. Two living standards were formed with their incomes and sets of consumer goods, with their own culture and values, with different legal and social status and, accordingly, with different levels of protection for their representatives. The fact of the presence of two areas of health care in society, unequal in level of elite medicine and the medicine for the poor, is recognized and perceived extremely negatively and painfully.

First of all, crimes in the field of transplantation are official crimes in the field of medicine, associated with a violation of the basic legal and moral and ethical principles [15].

There is one reason that the transplant crime is directly based on: the lack of organs and tissues for transplantation. All other circumstances noted above create a favorable background for the development of any criminal activity in this area.

Interruption of the order of priorities is not the only problem with the official crimes in this area, provoked by a shortage of donor organs.

It is obvious for many law enforcement agencies that there is an illegal market for donor services in Russia. The fact that the grey market of organs and tissues really exists, but "there is practically no opposition to it," said Professor V. Ovchinsky in an interview with the newspaper.

The same position is taken by the Doctor of Medicine Anatoly Troshin.

One of the specialists who created the Moscow Organ Bank A. Troshin described the approximate scheme of the criminal business on donor organs in an interview with the newspaper *Komsomolskaya Pravda* dated May 27, 2010: "Some southerner comes to some large boss who is engaged in transplantation. With a case full of dollars. His nephew is in the clinic, and they can't get his kidney transplanted. The southerner puts the case on the table and asks for help. If it's a gangster, argue .... The boss takes out a pack of dollars, say, ten thousand from the case. He calls a person who is responsible for organ harvesting, gives him money and says: "So the kidney must be delivered in two or three days." So the orders are orders. Companion goes to his office. Calls a young doctor who just graduated. His salary is small. And here he is given two thousand dollars: "The kidney must be delivered!" This

companion goes with his friend to the hospital, where their coursemate works. And asks the question: “How many dying patients on the apparatus?” -”Four” -”Is there any with the first group?” - ”There is”. -“Here is a thousand dollars for you, provide for a donor.” “All right. Will be done. Come at night. ” They arrive officially at this hospital by car at the Organ Bank. To a patient who, perhaps, would survive, or maybe not, because he is on the gate, with a craniocerebral injury.”

In Ukraine, when a living organ is transplanted, only relatives or legal spouses of a recipient requiring an organ transplant can legally be donors. However, the Ukrainian newspaper “Facts” indicates that the law can be circumvented in a simple way: a foreigner who needs transplantation must marry a citizen of Ukraine.

Studies conducted by both foreign and domestic scientists within the victimology field of criminology have shown convincingly that it is impossible to fully understand the reasons and conditions that contributed to law violation commission without taking into account the role of the victim in its situation , [1, 2, 5, 9, 12, 14].

In the field of transplantation, victims are divided into two groups. The first group is represented by persons directly involved in the illicit traffic of organs and tissues as donors [7]. According to representatives of Russian and Ukrainian law enforcement agencies, these are primarily young people, men, under the age of thirty, who want to receive quick and easy income, who do not think about the negative consequences of the deal they made. The second group consists of transplantologist’s patients and their relatives, ready for any risks and costs to save lives, for which transplantation is the last chance for survival. The motivation of victims of this crime type is different, but the initiative to commit a crime against them comes from the victims themselves. Some offer parts of their body for sale, others are willing to pay anyone even for the illusion of helping. The actions of victims as a significant criminogenic factor cannot be discounted when analyzing the causes and conditions of crime in the field of transplantation.

## VI. RESULTS

So, it is important to note that legislation in the field of healthcare should be developed in the following areas: conducting a comprehensive assessment of regulatory legal acts in the field of healthcare, identifying contradictions and inconsistencies between them, codifying all laws and bylaws in the field of healthcare, combining them into a single Medical Code.

After codification and the deep theoretical analysis of the legislation in the field of health care, we would consider combining crimes related to the provision of certain types of medical care in the separate chapter “Crimes in health care”. Further, it would be advisable to supplement the section VII indicated by chapter - “Crimes against the person”, after chapter 16 “Crimes against life and health”, assigning it number 16<sup>1</sup>. This approach is due to the fact that in accordance with the Constitution of the Russian Federation, the right to life and the right to protection of health is closely related to the right to medical care.

Unfortunately, all this is impossible, since the weakening of the system of criminal punitive measure by the state leads to the criminalization of various spheres of public relations, as a result of which new forms of crime develop

and corruption increase, as a result of which organization and development of criminal communities happens, where illegal organ transplantation and tissues, as well as trafficking in persons for the purpose of illegal transplantation of organs and tissues, murder and other related crimes, are used to finance criminal communities, replenishment criminal "Common fund", we consider it advisable and logical to create an independent structure for the fight against the organized criminality [11].

## VII. DISCUSSION

On the basis of the foregoing we can draw the following conclusion.

The crimes in the field of transplantation are among the most latent in Russia and Ukraine. The official crime in the field of transplantation are extremely rare in the forensic statistics. At the same time, a significant part of the crimes in the field of transplantation can be referred to the category of official with corruption element .

Circumstances general in nature and circumstances contributing to the commission of crimes in the field of transplantation are interrelated to each other and it is difficult to find a distinction between them. In particular, such as insufficiently effective performance of law enforcement agencies in the field of transplantation in the pointed countries; the difficulty of crime detection in this category; imperfection of the legislative framework; disagreements among forensic scientists and practitioners regarding the qualification of criminal offenses in this area can be attributed to their number. Insufficiency of health care financing; low wages of medical workers, and the associated shortage of medical personnel; stratification in the medical environment, associated with regional inequality in the level of salaries of medical workers, stratification of medical workers by the quality of social support into federal and regional is becoming a powerful criminogenic factor. The main factor of crime in this field is the lack of donor organs for transplantation. In combination with the above mentioned conditions and reasons, this creates the basis for the formation of an illegal market for organ and tissue transplants.

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