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**THE ANALYSIS OF THE CHARACTERISTIC
CONCEPTS OF THE ESTABLISHMENT AND
DEVELOPMENT OF UKRAINIAN SOCIETY IN THE
CONTEXT OF THE HISTORICAL, SCIENTIFIC AND
PHILOSOPHICAL APPROACHES**

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Bogatchuk S., Mazylo I., Belkin I., Mangora V., Makarov Z.

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TABLE OF CONTENTS

| | | |
|-----|---|-----|
| 1. | <p>Bogatchuk S.¹</p> <p>DEVELOPMENT OF THE AGRARIAN SECTOR OF THE PODIL REGION IN THE 19TH CENTURY</p> <p>¹ Candidate of Historical Sciences, Associate Professor Department History of Ukraine and Philosophy, Vinnytsia National Agrarian University, Vinnytsia, Ukraine</p> | 7 |
| 1.1 | <p>DEVELOPMENT OF THE AGRARIAN SECTOR OF THE PODIL REGION IN THE FIRST HALF OF THE XIX TH CENTURY</p> | 9 |
| 1.2 | <p>THE ROLE OF CHUMATSKY FISHING IN THE DEVELOPMENT OF TRADE</p> | 14 |
| 1.3 | <p>DEVELOPMENT OF THE AGRICULTURAL SECTOR OF PODILSK PROVINCE IN THE SECOND HALF OF THE XIX TH CENTURY</p> | 20 |
| 1.4 | <p>INTERNAL TRADE RELATIONS IN RIGHT BANK UKRAINE AT THE END OF THE XIX TH CENTURY</p> | 37 |
| 2. | <p>Mazylo I.¹</p> <p>RAILWAY TRANSPORT OF UKRAINE DURING THE GERMAN-SOVIET WAR THE WAR AND THE FIRST POST-WAR YEARS</p> <p>¹ Candidate of Historical Sciences, Associate Professor Department History of Ukraine and Philosophy, Vinnytsia National Agrarian University, Vinnytsia, Ukraine</p> | 44 |
| 3. | <p>Belkin I.¹</p> <p>ORGANIZATION AND ANALYSIS OF A PEDAGOGICAL EXPERIMENT IN THE CONDITIONS OF STUDENT TRAINING IN INSTITUTIONS OF HIGHER EDUCATION</p> <p>¹ Candidate of Pedagogical Sciences, Doctor of Philosophy, Senior Lecturer at Department of Agricultural Management and Marketing, Vinnytsia National Agrarian University, Vinnytsia, Ukraine</p> | 71 |
| 4. | <p>Mangora V.¹</p> <p>PREVENTION OF ILLEGAL TRADE IN HUMAN ORGANS AND TISSUES IN UKRAINE AND EUROPEAN COUNTRIES (COMPARATIVE CHARACTERISTICS)</p> <p>¹ Candidate of Pedagogic Sciences, Associate Professor, Department History of Ukraine and Philosophy, Vinnytsia National Agrarian University, Vinnytsia, Ukraine</p> | 91 |
| 4.1 | <p>THE CONCEPT OF ILLEGAL TRADE IN HUMAN ORGANS AND TISSUES</p> | 91 |
| 4.2 | <p>HISTORY OF THE DEVELOPMENT OF PREVENTION OF ILLEGAL TRADE IN HUMAN ORGANS AND TISSUES</p> | 100 |
| 4.3 | <p>NORMATIVE AND LEGAL REGULATION OF PREVENTION OF ILLEGAL TRADE IN HUMAN ORGANS AND TISSUES IN UKRAINE AND EUROPEAN COUNTRIES</p> | 108 |

THE ANALYSIS OF THE CHARACTERISTIC CONCEPTS OF THE ESTABLISHMENT AND
DEVELOPMENT OF UKRAINIAN SOCIETY IN THE CONTEXT OF THE HISTORICAL,
SCIENTIFIC AND PHILOSOPHICAL APPROACHES

| | | |
|------|--|-----|
| 5. | Makarov Z. ¹ CHANGES IN RENAISSANCE RATIONALITY: FROM THE REVIVAL OF ANTIQUITY TO THE FOUNDATION OF MODERNITY ¹ PhD of Philosophy, Senior Lecturer at Department History of Ukraine and Philosophy, Vinnytsia National Agrarian University, Ukraine | 126 |
| 5.1 | INTRODUCTION | 126 |
| 5.2 | ACADEMIC STATUS OF RENAISSANCE THOUGHT | 127 |
| 5.3 | RATIONALITY IN SEARCH OF THE SUBSTRATE OF HUMAN CREATIVITY | 129 |
| 5.4 | RATIONAL PHILOSOPHY AS A CREATIVE RECEPTION OF ANTIQUITY | 133 |
| 5.5 | HUMANISTIC STUDIES: THE CHANGE OF GENERATIONS | 135 |
| 5.6 | RENAISSANCE PREREQUISITES FOR THE MATHEMATIZATION OF CLASSICAL EUROPEAN SCIENCE | 140 |
| 5.7 | HISTORICAL-POLITICAL MOTIVES OF LATE RENAISSANCE RATIONALITY | 145 |
| 5.8 | HUMANISTIC AND SCHOLASTIC MOTIVES OF NATURAL PHILOSOPHICAL RATIONALITY | 147 |
| 5.9 | INSTRUMENTAL FORM OF RATIONALITY OF THE REFORMATION AND THE BIRTH OF CLASSICAL SCIENCE | 152 |
| 5.10 | CONCLUSIONS | 160 |
| | REFERENCES | 164 |

4. Prevention of illegal trade in human organs and tissues in Ukraine and European countries (comparative characteristics)

4.1 The concept of illegal trade in human organs and tissues

Every person has the right to life and health, as well as their state-guaranteed protection from criminal encroachments. The protection of this right acquires a special meaning in the framework of the introduction of the latest methods of treatment and, in particular, transplantation of human organs or tissues, blood donation. Their use is usually almost the only means of returning to life or significantly improving its quality. Therefore, modern achievements of medicine in the field of transplantology and blood donation are increasingly being used for criminal purposes, with the aim of illegal enrichment.

Illegal activity in the field of transplantation is a modern criminal phenomenon, one of the complex social problems of both the world community and Ukrainian society.

There is various information about the scale of illegal activity in the field of transplantation of human organs and tissues. However, the researchers point out that on average more than 50 criminal cases of illegal sale of human organs are instituted in the world per year, and thanks to the "network of criminal groups that specialize in obtaining and delivering donors and their organs", the criminal business in this area has acquired a transnational character [137, p. 87].

Traffickers of human organs or human tissues are active in Eastern European countries and, in particular, in Ukraine. Such a tendency will, in fact, intensify, taking into account the aggravation of the socio-economic and political situation in the state.

Therefore, there is an urgent need to prevent illegal trade in human organs and tissues in Ukraine.

The works of M. Yu. Azarova, L. P. Brych, B. M. Golovkina, S. V. Grinchak, V. K. Hryshchuk, O. O. Dudorov, V. V. Koloskova, M. I. Melnyka, A. L. Menka, O.

O. Myslivoy, A. V. Musienka, V. O. Navrotskyi, I. L. Nevzorov, O. V. Sapronova, Z. A. Trostyuk, M. I. Havronyuka, G. V. Chebotaryova, O.O. Yukhna, N.M. Yarmysh, S.S. Yatsenko.

Human activity in any sphere is most often manifested through activity, which is a system of interconnected single needs, motives and sequences of actions, deeds and less voluminous activities. Each of these manifestations has its own subject, motive and purpose. However, as a whole, all its elements (components) are aimed at realizing a single need and ultimate goal. Such activity can be unlawful (illegal), in particular criminal [138, p. 140–141].

The study of criminal activity in the field of transplantation shows that it manifests itself not in a single-element act, which corresponds to a single consequence (a single crime), and not in the traditional understanding of crime, but as socially dangerous, destructive, relatively stable and mass actions that contradict the legislation in this areas that form "a certain type of human activity... that reflects the social essence of crime and criminality, as social elements of society's vital activities" [139, p. 242–243].

Illegal trade in human organs or tissues has gained significant momentum in the world, precisely because of this, this issue requires qualitative analysis in order to create and implement measures to combat the above-mentioned phenomenon. According to the research carried out by scientist O. V. Ilyashenko, it turned out that a significant number of respondents today consider the existence of an illegal market for donor organs and tissues in Ukraine to be real (88.2% - medical workers; 82.6% - ordinary citizens; 67.7 % - employees of operational units), as well as in other states (88.2% - medical workers; 82.6% - ordinary citizens; 80.6% - employees of operational units). However, the majority of law enforcement officers (77.8%) believe that the existence of an illegal market for human donor organs and tissues in Ukraine is unrealistic today, and only 22.2% of people indicated the possibility of such a situation in Ukraine [140, p. 148].

As for the issue of the real existence of an illegal market for donor organs and human tissues in other countries, a significant number of representatives of law

enforcement agencies answered negatively - 55.6%, and 44.4% gave a positive answer [140, p. 149]. It should be noted that Ukrainian criminal legislation has a direct prohibition on illegal trade in human organs and tissues, in accordance with Art. 143 of the Criminal Code of Ukraine, illegal trade in human organs or tissues, committed by a prior conspiracy by a group of persons, or with the participation of transnational organizations engaged in such activities, is punishable by imprisonment for a term of five to seven years with deprivation of the right to hold certain positions and engage in certain activity for a period of up to three years [141, p. 370]. It should be noted that at the international level, the Declaration on the Transplantation of Human Organs, adopted by the 39th World Medical Assembly back in October 1987, "condemns the sale and purchase of human organs for transplantation." It is worth noting that in the above wording we are talking only about "organs" and not about "tissues" [142].

Therefore, illegal trade in human organs and tissues is the conclusion of agreements involving their purchase and sale, including foreign trade agreements. Organ trafficking (also known as the Red Market) is the illegal practice of organ trafficking, which involves the removal of an organ or human tissue from living or dead people for transplantation. According to the World Health Organization (WHO), organ trafficking is commercial transplantation that takes place outside of national medical systems and is illegal.

A systematic analysis of the Law of Ukraine "On Transplantation of Human Organs and Other Anatomical Materials" (in particular, part 1 of article 5, part 1 of article 10) makes it possible to determine that activities in the field of transplantation consist of "application of transplantation" and "activities related to transplantation", as well as "state policy in the field of transplantation", "public control" of compliance with legislation in this area, "social protection of living donors", "international cooperation" and responsibility for violations of the norms established by this Law [143].

The specified Law in Art. 1 provides a list of types of "activities related to transplantation" as medical services with:

- removal of anatomical materials from living donors;

- removal of anatomical materials from a cadaver donor, which is carried out by health care institutions, forensic medical examination bureaus or other business entities that, according to the law, have the right to carry out such activities and/or services for the storage and transportation of human anatomical materials, intended for transplantation;

- removal of anatomical materials from a cadaver donor for the manufacture of bio-implants;

– storage and transportation of such materials;

– graft-coordination;

- ensuring the functioning of information systems and registers in the field of transplantation.

This fundamentally differs the current edition of the Law on Transplantation from the previous one, in Art. 9 of which the concept of "transplantation-related activity" was differentiated, which meant the application of transplantation, the actual transplantation (implantation) of organs or other anatomical materials, and "other activity related to it", which included taking, storing, transportation of organs or other anatomical materials and production of bio-implants from them [143].

Analysis of the content of the Law on Transplantation makes it possible to differentiate the rules of the relevant activity established in it by order and conditions:

1) transplants (application of transplantation);

2) donation (removal/provision of anatomical materials of a living or dead person);

3) circulation of human anatomical material and materials artificially made from them. Their violations form the main content of the investigated illegal activity.

Thus, illegal activity in the field of transplantation in the broadest sense represents conscious willful and purposeful actions that are prohibited or contrary to the rules of obtaining or circulation (trade or sale, transfer, donation, storage, exchange) or use (transplantation, manufacture of drugs) in force in the legislation, in particular bio-implants) of any human anatomical materials, including blood and (or) its components, gonads, reproductive cells and live embryos, fetal materials, own tissues

or artificially produced, non-compliance with the rules of control in this area, social protection of the donor and other accompanying previous or subsequent illegal acts aimed at the realization of a single need and final goal, as well as determined by a common motive.

Along with this, the concept of criminal activity in the field of transplantation is narrower in content, because it is contextually tied to the content of current criminal law norms. In the current legislation, the concept of "criminal activity" is not disclosed, although it is a contextual feature of many types of crimes in the Criminal Code of Ukraine (Part 3 of Article 27, Part 4 of Article 28, Part 1 of Article 255, Article 304). In the theory of criminal law and criminology, there is no single approach to understanding "...what and according to what criteria should be classified as criminal activity", since "it can be a set of different crimes, each of which is provided for in a separate norm of the criminal law, and in the same time of the system of actions provided for in the Criminal Code, aimed at the same motive" [144, p. 98].

Criminal activity in the field of transplantation consists of a certain array of human acts prohibited in special legislation, defined as crimes in the Criminal Code of Ukraine. Thus, according to A. V. Musienko, crimes in the field of transplantation of human organs and tissues in the Criminal Code of Ukraine include those in which the purpose of extracting (using) human organs and (or) tissues: a) is provided as a mandatory feature of the composition (Articles 143 and 149); b) does not affect qualification (Articles 115, 120–122, 146, 151, 297) [145, p. 8].

Attention is drawn to the fact that in the text of Art. 143 of the Criminal Code of Ukraine uses the term "activity", and it definitely has the meaning "criminal", since it is recognized as a criminal offense. In general, this criminal law most likely contains in its parts a certain system of crimes that are elements of illegal activities in the field of transplantation.

It is not about a simple sum of systemically connected action manifestations. In contrast to a crime as a single act, criminal activity has a more complex mental content and specific consistent goal formation, including adaptation to social conditions and, if necessary, their changes to achieve the ultimate goal, to which all components

(elements) of activity are subordinated. It consists of Criminal law characteristics and prevention of illegal activity in the field of transplantation of a number of such manifestations of human activity, such as "deed - behavior - activity" [137, p. 14].

In the scientific literature, it is emphasized that in criminal activity "its lower level is considered as a way of realizing the higher" [146, p. 3], therefore, the structure of criminal activity in the field of transplantation consists of single-element illegal actions (acts, deeds) that violate the rules of obtaining, circulating or transplanting donor material. A specific criminal goal "may lead to the commission of other types of crimes that can act as a means of achieving it" [147, p. 26], and in case of committing illegal activity, it is possible to transform the goal into a motive for the crime or vice versa.

According to the definition of M. I. Panov, "some actions that constitute criminal activity may go beyond the corresponding composition of the crime" [148, p. 12, 167, 176, 180]. They are additional acts of an auxiliary, facilitating nature that create conditions for the commission of crimes directly related to transplantation. At the same time, they do not form a method of committing a crime in its traditional sense, but constitute a previous or subsequent criminal action (activity). Such accompanying actions may be the consequences of crimes that go beyond the relevant composition of the crime (because criminologists are right that there are no crimes without consequences, but they may contain signs of other crimes).

For example, preliminary criminal actions regarding the illegal acquisition and transplantation of human organs or tissues in the Criminal Code of Ukraine are intentional killing for the purpose of further use of human organs or tissues (clause 6, part 2 of Article 115), failure to provide assistance to a patient (Article 139 or 140), causing bodily harm (Articles 121, 122), leading to suicide (Article 120), illegal deprivation of liberty or abduction of a person (Article 146), human trafficking or other illegal agreement regarding a person (Article 149), illegal adoption and illegal crossing of the state border. Both pre- and post-criminal actions can be forgery or destruction of documents; improper performance of professional duties; abuse of office; illegal abortion.

Empirical studies confirm that the receipt of donor material is most often preceded by human trafficking, which is accompanied by the illegal transfer of the donor to the place where the illegal transplant is to take place, or murder associated with the falsification of medical documentation on the subject of biological death [149, p. 18–20].

Transplantation-related criminal activity is formed by the system of crimes provided for in the Criminal Code of Ukraine, which involve the receipt, circulation (trade or sale, transfer, donation, storage, exchange) and use (transplantation, production of bio-implants) of human organs or tissues and which are aimed at the sale of a single need and ultimate goal, although each of them may have its own object, motive and purpose, namely: a) deliberate violation of the procedure established by law for the application of transplantation of human anatomical materials, which caused significant damage to the health of the victim (Part 1 of Article 143); b) removal of anatomical materials from the victim by coercion or deception, use of helplessness or material or other dependence for the purpose of their transplantation (Parts 2–3 of Article 143); c) illegal trade in human anatomical materials (Part 4 of Article 143), as well as their consequences, which go beyond the limits of the specified compositions.

Therefore, criminal activity in the field of transplantation should be understood as a system of willful, conscious and purposeful violations of the legislation on transplantation with a single need, motive and ultimate goal regarding the receipt, circulation of human anatomical materials, non-compliance with the rules of control in this field and social protection of the donor, as well as related actions, which contribute to their commission (preliminary or subsequent criminal actions), forming a set of crimes provided for in the Criminal Code of Ukraine.

The illegal circulation of donor material should be understood as those that contradict the Law on Transplantation of the acquisition, sale, storage, movement of any human materials and the manufacture of medical preparations from them. In particular:

- 1) acquisition – paid or otherwise irrevocable acquisition of actual possession of human anatomical material (purchase, exchange for valuables, goods);

2) sale – any paid form of sale of human anatomical material (sale, payment of debt, exchange for value, goods or things);

3) storage - actual possession by a person of another person's donor material, which must be stored in specialized places (accredited state and communal health care institutions, scientific institutions);

4) transfer - transportation or forwarding within Ukraine from one place to another by an employee of a health care institution not authorized to do so in the absence of relevant documents or if the anatomical materials of a living donor are transferred to another country without equivalent exchange;

5) production of bio-implants – processing of anatomical material of the deceased into medical devices without a license, written consent of the pregnant woman, forensic medical expert or legal representatives of the deceased or if this led to the disfigurement of the body of the deceased [150, p. 477–478]. The above makes it possible to group crimes in the field of transplantation into those that, according to their content: 1) directly involve responsibility for illegal transplantation, that is, violation of the rules of obtaining, circulation and use of donor material (Articles 143 and 144); 2) have signs of other crimes, which are actions of an auxiliary nature, create conditions for committing illegal transplantation or accompanying it (Articles 115, 119, 121, 128, 137, 141, 142, 146, 149, 151).

Violation of the above laws is quite common in Ukraine. In particular, there is a concept of "black transplatnology". In 2017, the Shevchenkiv Court of the city of Kyiv chose a preventive measure for "black transplant specialists". In total, four persons, citizens of Ukraine and Turkey, were involved in the case. All of them were accused of recruiting donors by misleading. Potential donors were not informed of the negative consequences of kidney removal surgery. Black transplant specialists took advantage of their vulnerable state, sought out victims through social networks." One of the defendants personally recruited people on the territory of Ukraine and accompanied them to clinics in Turkey and the Philippines for operations [151].

As the scientist O. V. Ilyashenko notes, there are also opposite cases when people travel to other countries to perform an operation. Today, the so-called

"transplant tourism" is spreading rapidly: rich patients go to transplant organs and tissues to those countries where the rights of donors are not properly protected, in particular to India, Iran, China, Moldova, Turkey, Romania, Egypt, Bolivia, Peru and the Philippines. Most often, emigrants, refugees, soldiers, as well as young and naive people go to donate. After all, it is poverty, unemployment, hunger, and debts that push people to sell their organs or tissues. Today, the largest importers of donor organs in the world are: USA, Israel, Canada, Saudi Arabia, Italy and Japan. Ukraine is also included in this list, but from the point of view of latent, black transplantology [152, p. 195].

It should be noted that Art. 143 of the Criminal Code of Ukraine provides that the objective side of the crime can be expressed in different forms:

1) violation of the procedure established by law for transplantation of human organs or tissues (Part 1 of Article 143);

2) removal of organs or tissues from a person by coercion or deception (Part 2 of Article 143);

3) illegal trade in human organs or tissues (Part 4 of Article 143);

4) participation in transnational organizations engaged in:

a) removal from a person by coercion or deception of his organs or tissues for the purpose of their transplantation or

b) illegal trade in human organs or tissues (Part 5 of Article 143).

Qualifying signs for illegal trade in human organs or tissues (Part 5 of Article 143 of the Criminal Code) are their commission by a group of persons or a person participating in transnational (that is, those operating on the territory of two or more countries) organizations. It is worth noting that a crime committed by a prior conspiracy by a group of persons is a crime committed by two or more persons who agreed in advance to commit it [154, p. 99].

In the case of illegal trafficking in human organs or tissues, a transnational organization will be considered to be systematically engaged in the removal of organs or tissues from people by coercion or deception for the purpose of transplanting them

to recipients located in other countries, and/or international illegal trafficking in organs or tissues living or dead people.

In the case of illegal trafficking in human organs or tissues, a transnational organization will be considered to be systematically engaged in the removal of organs or tissues from people by coercion or deception for the purpose of transplanting them to recipients located in other countries, and/or international illegal trafficking in organs or tissues living or dead people. It is transnational black transplantology that poses a serious threat to the security of Ukraine and society. It is recognized as the highest manifestation of organized crime.

So, from all of the above, it can be concluded that the illegal trade in human organs and tissues, committed by a group of individuals or transnational organizations based on prior collusion, is quite dangerous for society and the state. At the international level, this issue is constantly being discussed, and the search for optimal means of protection against the trade in human organs and tissues and the conduct of illegal transplant operations is ongoing. As international practice shows, the majority of donors are women and children. This phenomenon once again reminds us of the need to identify and fight against black transplant organizations. In Ukraine, there are laws prohibiting trade in organs and tissues, but more often citizens of Ukraine suffer from the above-mentioned problem outside the borders of our country. Therefore, law enforcement agencies, mass media and public organizations, state bodies should carry out explanatory work about the consequences of transplantology in order to protect citizens from reckless actions.

4.2 History of the development of prevention of illegal trade in human organs and tissues

The implementation of the idea of transplantation into medical practice began with blood transfusion. Considerations about the use of blood for the treatment of patients can be found in the works of thinkers even before our era. Thus, in Homer's "Odyssey" (VIII-XII centuries BC), as well as Hippocrates (400 BC), there are already

clear recommendations on the treatment of patients with mental disorders by blood transfusions of healthy people. The expediency of blood transfusion was first mentioned in the scientific works of the Italian doctor Hieronimo Cordenius (1505–1576). The first four cases of blood transfusions (from a lamb to a person), carried out by the professor of mathematics and philosophy Jean Denis, date back to 1666. In two cases, this led to the death of patients, as a result of which a criminal case was opened against Jean Denis, but the court found him innocent. Due to this extremely high-profile event, the use of blood transfusions for the treatment of patients was stopped. Scientists of the Faculty of Medicine of the University of Paris spoke out against this method of treatment, whose special permission became mandatory [137, p. 17].

Human organ transplantation was first performed in the 20th century. In particular, in 1933, the Ukrainian surgeon Yu. Yu. Voronyi performed a kidney transplant. Subsequent research by scientists made it possible to carry out such operations at a higher scientific level. The initial milestones in the development of transplantology are considered to be the year 1954, when the American Joseph Murray successfully transplanted a human kidney, and the year 1967, when the American surgeon Thomas Starles successfully performed the first liver transplant, and Christian Bernard from South Africa successfully transplanted a human heart in Cape Town.

Some kidney transplants have extended people's lives by 40 years, and heart and liver transplants by 25-30 years.

Today, in Ukraine, 2% of the annual need for such operations are transplanted. In terms of the number of kidney transplants, Ukraine occupies one of the last places in the world. According to official data, every year 2,500 people need a kidney transplant, 1,500 need a heart transplant, and the same number need a liver transplant. Many of them do not survive this year, while every year there are about 5 thousand more patients who need to be connected to an "artificial kidney" device or hemodialysis. There are about 25,000 such patients in total, and no more than two thousand patients can actually be treated. Among them there are those who, having exhausted their financial means, gradually stop coming to hemodialysis centers and quietly die at home [155]. All over the world, it is believed that transplantation is more

cost-effective than dialysis. And Ukraine is no exception. According to experts, the cost of one kidney transplant in our country is about 10,000 dollars, while annual hemodialysis for one patient costs more than 200,000 hryvnias, excluding social benefits and the cost of immunosuppressants [156]. If such patients were given a kidney transplant, they could live fully for at least 30 years. For example, in the USA, 165,000 people are on the "artificial kidney" device, 10,000 patients are transplanted with an organ from a donor a year. At the same time, in Ukraine, 100–120 transplants are performed per year in five regional centers - in Kyiv, Odesa, Zaporizhzhia, Donetsk, and Lviv [155].

Blood is living tissue. Transfusion of blood or its components from a donor to a recipient (hemotransfusion) is, in fact, transplantation (tissue transplant). In many cases, it is donor blood that saves a patient's life.

Patients with oncological diseases need donor blood. Treatment of malignant tumors, in turn, causes the presumed killing of tumor cells. Together with the tumor cells, normal hematopoiesis stops for a while. It is during this period that the patient needs supportive therapy with components of donor blood, in particular platelets, for which there is no substitute and currently it is not even theoretically envisaged [157].

Donor blood is needed for patients with surgical pathology. These are people who need prosthetic joints; cardiac surgery patients; patients in need of organ transplantation; persons brought to the hospital by "ambulance" with various types of bleeding.

The objective need for legal regulation of transplantation became a historical prerequisite for the establishment of criminal law norms. The mostly negative results of transplantation, which harmed both the donor (due to the taking of his anatomical parts) and the recipient (due to their transplantation), resonated in society and inevitably caused discussions among scientists about their qualifications.

The harmful consequences of donation and transplantation for human life and health have been known since ancient times [158]. However, illegal activity in this area spread only in the 20th century due to the widespread use of transplantation for the treatment of many diseases, in cosmetology and pharmaceuticals. Transplants of

organs affected by tuberculosis, as well as tissues with oncological pathology, were discovered in Soviet times [159, p. 7, 244].

From the time of "Salichna pravda" to the first codified norms of criminal law in 1743, "Laws by which the Malorossiysk people are tried", the negative consequences of transplantation in the form of the death of the patient were punished by the execution of doctors, and limb injuries - by differentiated fines. The latter also existed in the norms of the "Code of Punishments" of 1845 and the "Criminal Code" of 1903 and were abolished in the Criminal Code of the Ukrainian SSR in 1922. In particular, in the "Criminal Code" of 1903, the killing of a person at the beginning of physiological childbirth is recognized as a crime against life [160, p. 391].

The periodization of the stages of legal regulation of state administration in the field of transplantation was formulated in the scientific works of V. Shulga. The scientist singled out five periods. The first - until 1937; the next - covers activities related to transplantation, starting with the Resolution of the USSR Council of Ministers "On the Procedure for Medical Operations" adopted in September 1937 (1937–1985); the scientist associates the third period with the approval by the Ministry of Health of the USSR of the Provisional Instructions on Death, which allowed transplantation of various organs of the human body (1985–1992); the fourth period is focused on the adoption of the Law of Ukraine on November 19, 1992, "Basics of the Legislation of Ukraine on Health Care", which established the use of the method of transplantation from the donor to the recipient of human organs and tissues (1992–1999); the adoption of a special law "On Transplantation of Human Organs and Other Anatomical Materials" (1999) became the criterion for distinguishing the fifth period [161, p. 153].

The new stage of legal regulation of the transplantation of anatomical materials into humans is connected with the adoption of the Law of Ukraine "On the Application of Transplantation of Anatomical Materials into Humans" dated May 17, 2018 [162].

Regarding the legal regulation of blood donation, the first official regulatory act regulating blood donation relations was the Instruction on the Application of the Therapeutic Method of Blood Transfusion, adopted on August 14, 1928, which

officially provides for the use of blood transfusion in the practice of providing medical care for certain specified diseases. Subsequently, the following were adopted: Decree of the Council of People's Commissars of the USSR of September 15, 1937 No. 1607 "On the procedure for conducting medical operations"; Instructions of the Ministry of Health (hereinafter - Ministry of Health) of the USSR dated May 3, 1956 "On medical examination, accounting and the procedure for receiving blood from donors of the blood service", "Regulations on the work of health care bodies and Red Cross associations and of the Red Crescent for recruiting donors", approved by the Ministry of Health of the USSR on May 26, 1958.

M. S. Tagantsev noted that carrying out transplantation puts every surgeon on the verge of a conflict situation with the norms of criminal law, because such treatment is carried out at the expense of harming the patient's health. The legality of the harm caused is achieved by compliance with the law, professional duties and norms of medical ethics, the therapeutic purpose of the intervention and the consent of the culpable donor (except for consent to murder) [160]. To a certain extent, a similar reason was tried to be reflected by the legislator in the Criminal Code of the Ukrainian SSR in 1922, which, for non-compliance with the safety rules established by law, which led to bodily injury, allowed the court to increase the term of imprisonment up to a year and for the same period to engage in certain activities, the performance of which led to to the specified consequences (Part 2 of Article 154).

In general, Chapter VI "Crimes against life, health and dignity of the person" of the Criminal Code of the Ukrainian SSR of 1922 provided for responsibility for: intentional killing for selfish motives and taking advantage of the helpless state of the victim (clauses "a" and "e" of Article 142), expulsion of the fetus with the consent of the mother by a person who does not have a medical education or in improper conditions (Article 146), intentional infliction of bodily injuries of varying degrees of severity (Articles 149, 150, 153), theft of a child for selfish purposes (Article 162), failure to provide and refusal to provide assistance to a patient (Article 165) [163, p. 142–179]. These regulations do not separately provide for liability for crimes in the field of transplantation. At the same time, crimes committed by medical workers

against human life, including violations of the rules established in the legislation, are singled out in a special chapter of the Criminal Code, as an understanding of the need to establish special norms.

In the revision of the Criminal Code of the Ukrainian SSR in 1927, in Chapter VI "Crimes against life, health, will and dignity of a person", the composition of intentional murder using the helpless state of the victim (item "e" of Article 138), aiding suicide (Article 145), murder by the mother of her newborn child (Article 142) and illegal abortion in the form of procuring or without the mother's consent or as a result of which her death was caused (Part 2 of Article 143). Currently, the composition of the latter potentiated criminal liability for the illegal use of abortion material for transplantation. However, a step back was the return of non-provision of assistance or refusal of assistance by a medical worker (Article 55) to crimes against life and health [164].

In the Basic principles of the criminal legislation of the Union of the SSR and the Union republics, the following are provided as circumstances aggravating the crime: self-serving purpose, hunger, needs, coincidence of grave personal or family circumstances [165, p. 14–15], which are recognized as a "vulnerable state" in the current Criminal Code of Ukraine (Note 2 of Article 149).

Soviet criminologists paid sufficient attention to the criminal and legal problems of transplantation. They carefully investigated the socially dangerous violations of the rules of activity in the field of transplantation in force at that time, in particular the following instructions: on the use of organs of vision of deceased blind persons for cornea transplant surgery (1938), on the introduction of cornea transplant surgery into the practice of ophthalmologists (1954 .), on the collection of cadaveric blood, bone marrow and tissues (1972), on the definition of biological death and the conditions that allow the removal of a kidney for transplantation (1977), etc. [166].

In 1947, M. D. Shargorodskyi called the occurrence of death during any scientific experiment with or without the consent of the victim as "murder for good reasons" and "possible intent" without mitigating or aggravating circumstances [167, p. 206], and causing damage to the donor during the removal of transplants is an

"extreme clinical necessity", which he proposed to enshrine in the General Part of the Criminal Code of Ukraine as a circumstance that excludes criminal liability [167, p. 102].

During the 1960s and 1970s, the attention of scientists was focused on the responsibility of a medical worker for the violation of professional duties in the field of transplantation and the importance of consent to transplantation (M. I. Avdeev, M. I. Averbakh, V. I. Alisievich, F. Yu. Berdychevskiy, A. P. Gromov, I. A. Kontsevich, O. M. Krasikov, I. F. Ogarkova, Yu. Radzytskyi, B. Cheyovych). The criteria for the legality of surgical intervention, regardless of the outcome of the operation, are recognized as the patient's consent to the operation or its absence in the case of emergency intervention, compliance with the requirements of science, a therapeutic goal that excludes any experimental, and preliminary testing of new means of treatment on animals.

In 1971, I. I. Gorelyk for the first time justified the need to criminalize acts in the field of transplantation and to establish in the Special Part of the Criminal Code a separate composition of violations of the rules of transplantation of human organs and tissues, the conditions for which are created by premature ascertainment of the death of the donor and driving the donor to suicide [168].

This idea was implemented in the light of the Criminal Code of Ukraine in 1960 by V. O. Glushkov, who emphasized that without this step, killing a donor for the purpose of obtaining a transplant, carrying out an unjustified transplant or blood transfusion to a recipient, in particular, by a person who does not have the right to do so or who took it upon himself it is a bribe, will be qualified according to the "analogy" to the criminal law: according to the elements of intentional murder, causing bodily harm, receiving illegal remuneration in the field of medical care, abuse of power or exceeding official duties, etc. [169, p. 47–60, 213–215]. According to the scientist, the inadmissibility of such a practice of bringing medical workers to criminal liability inevitably required the provision in the Criminal Code of Ukraine of the crime of "violation of the rules of transplantation of human organs and tissues": "Intentional violation by a medical worker of the established rules of transplantation of organs and

tissues of the human body, which resulted in serious consequences , - is punishable by deprivation of liberty for a term of up to... years with deprivation of the right to engage in medical activity for a term of up to five years or without it" [170, p. 16].

At the same time, there was no question of establishing criminal liability in the field of transplantation until the abolition of Soviet legislation. The first criminal ban on the use of a person as a donor was carried out within the framework of the fight against the exploitation of prostitution and slavery. The Criminal Code of Ukraine of 1998 provides for the composition of human trafficking for the purpose of extracting their organs or tissues for transplantation or forced donation (Part 3 of Article 1241). Human protection in the field of transplantation was a background task here, and the norm itself had significant structural flaws [171, p. 4]. This situation did not change significantly with the adoption in 2001 of the second edition of Art. 149 of the Criminal Code [172, c. 37, p. 107; 174, p. 11; 175, p. 25], which led to new changes in 2006, as well as to repeated changes in the future until the last changes in September 2018. The legislator repeatedly changed the composition of human trafficking (Article 149 of the Criminal Code of Ukraine) in connection with its shortcomings, which hindered prosecution.

Only in 2001, the Criminal Code of Ukraine introduced the offenses of violating the procedure for transplantation (Article 143) and forced donation (Article 144). In December 2019, the wording of Art. 143 of the Criminal Code of Ukraine in connection with the transformation of the Law of Ukraine "On Transplantation of Organs and Other Anatomical Materials to Humans" of 1999 into the new Law "On the Application of Transplantation of Anatomical Materials to Humans" of 2018 [162].

In modern society, law cannot and should not lag behind scientific and technical progress. Unfortunately, this rule is not observed in regard to transplantation in Ukraine. For a long time, there was no proper legal regulation of the prohibition of trade in human organs and tissues, and only in the 90s of the last century did positive developments begin in this direction.

4.3 Normative and legal regulation of prevention of illegal trade in human organs and tissues in Ukraine and European countries

The legal basis for the regulation of any social relations in our country is primarily the Constitution of Ukraine, which stipulates that a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine (Article 3). One of the legal guarantees for the implementation of the above constitutional provisions is the Criminal Code of Ukraine, which, as part of the legal protection of the rights and freedoms of a person and a citizen, provides for criminal liability for violating the procedure established by law for transplanting human organs or tissues (Article 143) [143, p. 43] and forced donation (Article 144).

Even before the adoption of the Constitution (1992), the Law of Ukraine "Basics of the legislation of Ukraine on health care" dated November 19, 1992 No. 2801-XII (hereinafter - Basics of the legislation on health care) entered into force, where health care is defined as a system of measures aimed at ensuring the preservation and development of physiological and mental functions, optimal working capacity and social activity of a person for the maximum biologically possible individual life expectancy (Article 3). In the Basics, the issues that are fundamental for the transplantation of organs and other anatomical materials to a person are settled. Among them, in particular: referral of patients for treatment abroad (Article 36); provision of medical assistance in urgent and extreme situations (Article 37); the choice of a doctor and medical institution (Article 38); obligation to provide medical information (Article 39); medicinal secrecy (Article 40); general conditions of medical intervention (Article 42); consent to medical intervention (Article 43); application of methods of prevention, diagnosis, treatment and medicines (Article 44); medical and biological experiments on humans (Article 45); donation of blood and its components (Article 46); transplantation of organs and other anatomical materials (Article 47); provision of medical assistance to a patient in a life-critical condition (Article 52); procedure for providing medical and immunobiological transplants (Article 54); production of medicines and immunobiological preparations (Article 55), etc. [157].

In Ukraine, a number of normative legal acts were adopted that regulate various types of activities in the field of biomedicine, in particular special laws: "Basics of Ukrainian legislation on health care" (hereinafter - Basics of health care) [176], "On blood donation and its components" (hereinafter referred to as the Law on Donation), "On the Prohibition of Human Reproductive Cloning" [176], "On the Transplantation of Organs and Other Anatomical Materials to Humans" (its current version "On the Application of Transplantation of Anatomical Materials to Humans" [177]). They provided for norms that assumed the establishment and specification of criminal liability for activities that contradict this legislation, because the Criminal Code of Ukraine of 1960 did not yet contain separate special independent categories of crimes in the field of transplantation.

Yes, in Art. 80 "Responsibility for violation of health care legislation" of the Fundamentals of Health Care states that persons guilty of violating health care legislation bear civil, administrative or criminal liability in accordance with the law [157], so specification has become relevant namely criminal responsibility and the establishment of relevant criminal law norms.

Provisions of Art. 20 "Responsibility for violation of the rights of donors, the procedure for taking, processing, storage, sale and use of donor blood, its components and drugs" and Art. 21 "Liability of the donor" of the Law on Donation assumed criminal liability for violation of the rights of blood donors, the procedure for its collection, processing, storage, sale and use, as well as intentional concealment of information or provision of false information about the donor's state of health, if these actions could cause or harmed the health of blood recipients.

Article 4 of the Law of Ukraine "On the Prohibition of Human Reproductive Cloning" provides for bringing a person to criminal liability for creating a person who is genetically identical to another living or dead person by transferring the nucleus of a human somatic cell into a female germ cell left without a nucleus, as well as importing to Ukraine or export of cloned human embryos from Ukraine. In Art. 24 of the Law of Ukraine "On Transplantation of Organs and Other Anatomic Materials to Humans" dated July 16, 1999 No. 1007-XIV (expired in connection with the adoption of a new

version of this Law) required, for committing a socially dangerous violation of the rules established therein, to attract persons, in including criminal liability.

By-laws that established the rules of activity in the field of medicine and business activity, the main of which were:

– About the establishment of diagnostic criteria for brain death and the procedure for ascertaining the moment of a person's death;

- On the approval of regulatory documents on transplantation, which approved the Instruction on the removal of human organs from a cadaver donor; Instructions for removing anatomical formations, tissues, their components and fragments from a cadaver donor; List of human organs allowed to be removed from a cadaver donor; List of anatomical formations, tissues, their components and fragments, and fetal materials allowed for removal from a cadaver donor and a dead human fetus; Conditions for ensuring the preservation of anatomical materials during their transportation;

- The procedure for taking, storing and using bone marrow;

– List of state and communal health care institutions and state scientific institutions that have the right to carry out activities related to transplantation of organs and other anatomical materials to humans [157];

- On the approval of the Instructions on determining the criteria for the perinatal period, live births and stillbirths, the procedure for registering live births and stillbirths;

– On approval of the Procedure for providing comprehensive medical care to a pregnant woman during an unwanted pregnancy, forms of primary accounting documentation and instructions for filling them out;

– About licensing of types of economic activity [179];

– About medical centers (departments) for transplantation of organs and other anatomical materials [180] and others [181].

Pursuant to the Transplantation Law of Ukraine, on September 25, 2000, the Ministry of Health of Ukraine issued Order No. 226 "On Approval of Regulatory Documents on Transplantation" [182]. This order approved: "Instructions on the removal of human organs from a cadaver donor"; "Instructions for the removal of anatomical formations, tissues, their components and fragments from a cadaver donor";

"List of human organs permitted to be removed from a cadaver donor"; "List of anatomical formations, tissues, their components and fragments and fetal materials allowed to be removed from a cadaver donor and a dead human fetus"; "Instructions for manufacturing bio-implants"; "Conditions for ensuring the preservation of anatomical materials during their transportation."

Despite a significant number of secondary regulatory legal acts, which to some extent contribute to the achievement of effective protection of human life and health, the legislation regulating the procedure and conditions of transplantation still does not correspond to modern realities. Therefore, first of all, there is a need to implement and create and develop at the national level the system of the national strategy for the development of transplant coordination.

International protection of human rights is a complex of mutually agreed actions of the state, as well as non-governmental international organizations, aimed at the full and harmonious functioning of a person, and the provision of international assistance to individuals, especially from those developing countries.

Despite the national differences in the existing systems for the protection of patients' rights in different countries, including Europe, most countries have a basic list of rights that are reflected in various agreements, in particular: Recommendations on medical care, which was adopted by the International Labor Organization in 1944 .; the Universal Declaration of Human Rights, which was adopted by the UN General Assembly in 1948; the Lisbon Declaration of Patients' Rights, which was adopted by the World Medical Association in 1981 and revised in 1995; the European Charter on Patients' Rights, which was adopted by the European Parliament in 1984; WHO declaration on the development of patients' rights in Europe, which was adopted in 1994; Agreement on human rights and biomedicine, adopted by the Council of Europe in 1996, etc.).

The problem of trafficking in human organs is constantly updated by international organizations at the global and regional levels, in particular the UN, the Council of Europe and the European Union.

Illegal extraction of human anatomical materials, as well as their transportation, trade and transplantation are crimes of international scale, directed against human life. This problem affects every country in the world, because according to the UN Office on Drugs and Crime, the International Organization for Migration, UNICEF and other international organizations, the country has been affected by human trafficking, being a source, transit or destination country. Healthy young people aged 18 to 30, as well as children, are increasingly becoming victims. The goal of international cooperation is to prevent the development of illegal trade in human anatomical materials and the sale of people for the purpose of extracting their organs.

The World Health Organization (WHO) as an international intergovernmental organization and specialized UN institution plays an important role in the development of international norms and standards of human rights in the field of health care. The World Health Assembly (WHA) is its highest governing body, according to the WHO Charter, adopted at the International Health Conference on July 22, 1946 in New York and ratified on April 7, 1948. In its WHA Resolution 40.13 “Development of Guidelines for Human Organ Transplantation”, adopted in May 1987 at the 40th session of the WHA, the organization notes: “...recognizing the scientific progress made in human organ transplantation in many Member States; concerned about trade in organs of living people; affirming that such trade is incompatible with fundamental human values and contrary to the Universal Declaration of Human Rights and the spirit of the WHO Constitution; highly appreciating the measures taken by some member states to regulate the transplantation of human organs and their decision to develop a single legal instrument to regulate these operations" [183, p. 332], on the basis of which it was proposed to develop guiding principles for transplantation of human organs. Adoption of this document initiated work in the direction of prohibition of commercialization in the field of the use of human organs (their sale for transplantation).

Norms and recommendations of the World Medical Association (World Medical Association, WMA) also play an important role. In particular, the Declaration on the trade in living organs, adopted at the 37th World Medical Assembly in Brussels

(Belgium) in October 1985, states: "In view of the fact that the financially profitable trade in live kidneys from underdeveloped countries has recently expanded significantly for transplantation in Europe and the United States of America, the World Medical Association condemns the buying and selling of human organs for transplantation. The World Medical Association calls on the governments of all countries to take effective measures to prevent the commercial use of human organs." The issue of the prohibition of receiving financial benefit from the use of human organs is also enshrined in the Declaration on Transplantation of Human Organs, adopted at the 39th World Medical Assembly in Madrid (Spain) in October 1987: "The purchase and sale of human organs for transplantation is condemned." This provision was subsequently reflected in the 1991 Transplantation Guidelines.

WHA Resolution 42.5 "On the Prohibition of the Buying and Selling of Human Organs" of 10 May 1989 first expressed concern about the trade in organs and the need to create global standards in the field of transplantation to prevent the buying and selling of human organs. At the 44th session of the WHO in 1991, Resolution WHA 44.25 was adopted, which adopted the WHO Guidelines for transplantation of human organs, which were constantly updated in connection with progress in biomedicine. In WHA Resolution 57.18, Transplantation of Human Organs and Tissues, adopted on 22 May 2004 at the 57th session of the WHA, "recognizing that transplantation involves not only medical, but also legal and ethical aspects", and expressing concern over the lack of human material for transplantation", emphasizes the importance of "taking measures to protect the poorest and most vulnerable groups from "transplant tourism", as well as the sale of tissues and organs, taking into account the spread of the problem of international trade in cells and organs", as well as considering the risks of clandestine trade.

WHA Resolution 63.22 "Transplantation of human organs and tissues" of May 21, 2010, adopted at the 63rd session of the WHO, which approved the updated WHO Guidelines for transplantation of human cells, tissues and organs, which influenced the legislation of countries around the world, is also of great importance., the general purpose of which is to call on countries to prevent the sale and purchase of donor organs

for transplantation. They contain provisions that are based on the fact that donation is free of charge and that financial benefits are prohibited [183, p. 334].

Paragraph 2 of the preamble to the Guidelines states: "The lack of organs available for transplantation has not only encouraged the development in many countries of developing procedures and systems to increase the supply, but has also facilitated the commercial traffic (illegal trade) in human organs, especially from living donors who are not have family ties with the recipients. In recent decades, compelling evidence of such trafficking and related human trafficking has emerged. In addition, the ease of international communication and travel has resulted in many patients traveling abroad to medical centers that advertise their ability to perform transplants and donate organs for a single co-payment."

The 5th guiding principle declares: "The living donor provides cells, tissues and organs only on a free basis, without any monetary payment or other remuneration in the monetary equivalent. It is necessary to prohibit the purchase or offer to purchase cells, tissues or organs for transplantation, or their sale by a living donor or the next of kin of the deceased. The ban on the sale or purchase of cells, tissues or organs does not exclude compensation for reasonable and controllable costs incurred by the donor, including: loss of income, payment of costs related to the care, processing, preservation and transfer of cells, tissues or human organs for transplantation".

Guiding principle 6 defines: "Promoting the development of free donation of human cells, tissues or organs using advertising or addressing the public can be carried out in accordance with domestic norms and rules. Advertising the need for or availability of cells, tissues, or organs for the purpose of offering payment or soliciting funds to pay individuals for their cells, tissues, or organs or the next of kin of a deceased donor should be prohibited. Intermediation of payments to such persons or a third party should also be prohibited." In the commentary to this principle, attention is focused on the fact that it "... does not apply to advertisements or appeals to the public of a general nature, aimed at encouraging the selfless donation of human cells, tissues and organs, if they do not contradict the distribution systems established by law bodies This principle is aimed at prohibiting offers of deals for profit, including offers to pay donors, the next of kin of a

deceased person, as well as other parties in possession of donor material (for example, funeral home employees), for cells, tissues or organs. It is aimed at commercial ag
Guiding Principle 7 warns: "Physicians and other health care professionals should not participate in organ transplant procedures, and health insurers and other potential payers should not reimburse the costs of these procedures if the cells , tissues and organs for transplantation were obtained as a result of unfair use, or coercion, or payment of services to a living donor or a close relative of a deceased donor."

Guiding Principle 8 prohibits unreasonable financial remuneration for medical services in the field of transplantation: "All medical institutions and professionals involved in the procurement and transplantation of cells, tissues or organs should be prohibited from receiving any payment that exceeds a reasonable amount remuneration for services rendered".

The 9th guiding principle defines: "During the distribution of organs, cells and tissues, clinical criteria and ethical norms should be guided, not financial or any other considerations" [183, p. 336].

At the same time, the prohibition of obtaining financial benefit for donation does not contradict the making of payments that do not contain financial benefit, in particular: compensation for loss of wages and other legal expenses of living donors related to the removal of organs or tissues, with medical examination, as well as with the provision of other medical or technical services in connection with transplantation. Consideration should be given to the need for compensation in case of unforeseen damage due to the removal of organs or tissues.

Commercialization in the field of donation contributes to the development of illegal voluntary trade in human organs for transplantation and in people for the purpose of forced removal of their organs. Such activities are usually carried out by organized criminal groups and other intermediaries, as well as directly at buyers.

The main international document to combat such criminal activity is the UN Convention against Transnational Organized Crime, adopted by Resolution 55/25 of the General Assembly on November 15, 2000 in New York (USA), open for signature by

member states at a conference convened for this purpose in Palermo (Italy) on December 12-15, 2000 and entered into force on September 29, 2003.

The adoption of the Convention reflected the awareness of the UN member states of the seriousness and global scale of this problem, as well as the need to strengthen international cooperation in order to solve it. States that ratify this document undertake to take measures against transnational organized crime.

The Protocol on the Prevention and Suppression of Trafficking in Persons, First of all Women and Children, and its Punishment, supplementing the UN Convention against Transnational Organized Crime, adopted by Resolution 55/25 of the General Assembly on November 15, 2000, in Art. 3 defines the meaning of the concept of "trafficking in human beings", which it interprets as follows: "carried out for the purpose of exploitation, recruitment, transportation, transfer, concealment or acquisition of people through the threat of force or its use or other forms of coercion, kidnapping, fraud, deception, abuse of power or helpless status, or by bribery, in the form of payments or benefits, to obtain the consent of a person who controls another person. Exploitation includes... removal of organs." Therefore, this Protocol is an important step of the international community in the direction of preventing international crimes in the field of illegal trade and transplantation of organs.

This is the first legally binding international document of a universal level with an agreed definition of the concept of human trafficking, the purpose of which is to promote the convergence of national approaches to establish the content of this crime, to promote international cooperation in the investigation and prosecution of cases of human trafficking, as well as to protect and assist victims of human trafficking. Before becoming parties to the protocol, countries must be parties to the Convention itself.

In Resolution A/RES 59/156 "Preventing, combating and punishing trafficking in human organs", adopted on December 20, 2004, the UN General Assembly, discussing at the 59th session the problems of trafficking in persons in the context of transnational organized crime, "being concerned about the potential increase the level of use by criminal groups of human needs, poverty and vagrancy for the illegal trafficking of human organs with the use of violence, coercion and abduction of people, primarily

children, for the purpose of their use in organ transplantation operations", noted that "illegal trafficking of human organs, regardless of , where it takes place, is a significant violation of human rights, in particular the right to physical integrity of the victims of such trafficking." Emphasis is placed on the need to strengthen international cooperation to effectively prevent and counter such activities. Regarding the spread of commercialization of the human body, a call was made to the member states "to take the necessary measures to prevent the illegal removal and trade of human organs, as well as to oppose such activity and punish it" [183, p. 339].

Pursuant to the direction contained in this Resolution, the UN Secretary-General prepared a report on the extent of this phenomenon to the Commission on Crime Prevention and Criminal Justice at its 15th session, which took place on 24-28 April 2006 in Vienna, Austria. In particular, the report highlighted the issue of the participation of organized criminal groups (which included brokers, surgeons, hospital directors and other intermediaries) in the illegal trade in human organs and tissues; stated the need to clearly distinguish individual cases of voluntary sale of organs for illegal transplants from their organized illegal trade carried out by criminal groups (paragraph 73), which refers to "participation in organized crime and related kidnappings and murders of people" (paragraph 85), which is becoming more and more common. The problem of trafficking in children for the purpose of extracting their organs is singled out (paragraph 82).

In addition, the rapid development of genetics and the discovery of the human genome have become an additional niche for abuse in this area. The Universal Declaration on the Human Genome and Human Rights (adopted by UNESCO on November 11, 1997) declares: "The human genome in its natural state should not be a source of profit" (Article 4).

Important instruments for establishing the prohibition of commercialization of human anatomical materials are the norms of the Council of Europe on human rights in the context of bioethics, among which the leading place is the Convention on Human Rights and Biomedicine of April 4, 1997, known as the Oviedo Convention, as well as the Additional Protocol to Convention on human rights and biomedicine regarding the

transplantation of human organs and tissues (January 24, 2002) (Additional Protocol to the Oviedo Convention on Transplantation).

Article 21 of the Oviedo Convention establishes the prohibition of financial gain: "The human body and its parts shall not be a source of financial gain." The donation system in general is based on this principle.

This provision duplicates Art. 21 of the Additional Protocol to the Oviedo Convention on Transplantation: "The human body and its parts shall not be used for financial gain or advantage" (Part 1). The prohibition also applies to "announcements about the need or availability of organs or tissues for the purpose of offering or receiving financial benefits and comparable advantages" (Part 2, Article 21). In addition, Art. 22 directly prohibits trade in organs and tissues: "Trading in organs and tissues is prohibited."

At the same time, Art. 25 of the Oviedo Convention imposes on member states the obligation to provide for appropriate sanctions in national legislation for violations of established norms.

Recommendation Rec (2006) 4 of the Committee of Ministers of the member states of the Council of Europe on research on biological materials of human origin, opened for signature on 15 March 2006, also defines the prohibition of financial gain: "Biological materials must not lead to financial gain" (Article 7).

Based on the principles of the Universal Declaration of Human Rights (December 10, 1948), the participants of the Istanbul Summit held in Istanbul (Turkey) from April 30 to May 2, 2008 by the Transplantation Society (TTS) and the International Society of Nephrology (ISN) adopted the Istanbul Declaration on Organ Trafficking and transplant tourism (Istanbul Declaration). She identified the need to create a unified international legal and professional framework based on ethical principles and standards, as well as to counter the illegal trade in human organs and tissues "in the conditions of the urgency of the problems caused by the growing level of transplant tourism and the illegal circulation of donor organs against the background of their global shortage." The declaration established the meaning of the concept of "trafficking in human organs and tissues", which includes "recruitment, transportation, transfer, concealment or

acquisition of living or dead persons or their organs by means of threats or use of force, other forms of coercion, kidnapping, fraud, deception, abuse of power, helplessness, or the giving or receiving by a third party of payment or benefits, to achieve a transfer of control over a potential donor for the purpose of exploitation by removing organs for transplantation." This definition is based on the content of Art. 3a of the Protocol on Prevention and Suppression of Trafficking in Human Beings, primarily in Women and Children, and its Punishment, which supplements the UN Convention against Transnational Organized Crime [183, p. 338].

According to the provisions of the Istanbul Declaration, "full compensation for the act of donation that has taken place should not be considered as payment for the organ, but as compensation for the treatment of the recipient:

a) such reimbursement of the cost of expenses may be carried out by the party responsible for the costs of the recipient's treatment (government health care authority, insurance companies);

b) the calculation of the cost of expenses must be carried out on the basis of a transparent methodology that corresponds to national standards;

c) compensation in the amount of the approved amount must be made directly by the inpatient facility (hospital) that provides the donor's treatment;

d) compensation for damages and lost income of the donor is carried out by the institution that provides the transplant, and not directly from the recipient to the donor" (paragraph 6).

"Payments related to a documented act of donation also include:

a) the cost of psychosocial and medical examinations of a potential living donor who did not become such a donor due to medical and immunological problems detected during the examination;

b) the cost of organizational costs arising from the preparation and implementation of the donation process (before, after and during the operation) and at all stages (long-distance telephone calls, transport costs, accommodation and food provision);

c) medical expenses related to the treatment of the donor after discharge;

d) lost income in connection with donation (in accordance with national norms)" (clause 7).

The Council of Europe Convention on Measures to Combat Trafficking in Human Beings, opened for signature on May 16, 2005, entered into force on February 1, 2008, and covers, in particular, trafficking in human beings for the purpose of harvesting their organs. Clause "a" of Art. 4 defines the main concepts of the Convention. Its norms also provide for the liability of a legal entity for crimes "committed for the benefit of this legal entity by any natural person" (Article 22).

In addition, in 2009, the results of a joint study within the framework of cooperation between the Council of Europe and the UN were presented at the UN headquarters in New York (USA), which emphasized the global scale of the problem of trafficking and illegal transplantation of human organs. At the same time, it is noted that international law does not contain these definitions, which would make it possible to qualify them as international crimes, especially given the fact that in some countries these actions are not even recognized as illegal. Only a complete prohibition of financial gain from the use of the human body and its parts is the only way to overcome this problem. The result of the joint work was to be the draft of the international Convention on the prohibition of trade in human organs and tissues.

At the UN level, the adoption of such a Convention remains relevant. At the same time, the Council of Europe adopted a regional Convention against trafficking in human organs (opened for signature on March 25, 2015), which defines certain types of activities that constitute "trafficking in human organs." The main concept is "illegal removal of human organs", which also covers such removal from a living or deceased donor, for which the donor (or a third person) was offered or given a financial benefit or advantage (clause "b" of part. 1 of Article 4).

The prohibition of financial gain is directly related to another fundamental principle, which concerns the obtaining of voluntary informed consent for biomedical interventions, which is an additional guarantee of the protection of minors and incapacitated persons against illegal organ harvesting.

The Charter of Fundamental Rights of the European Union dated December 7, 2000, in the context of the right to the integrity of a person in the field of biology and medicine, defines the important principle of "the prohibition of the use of the human body and its parts as a source of financial gain" (Part 2, Article 3) [158].

Clause "d" of Art. 4 Directive 2001/20/EC of the European Parliament and of the Council of April 4, 2001 on the approximation of the laws, regulations and administrative provisions of the Member States regarding the implementation of good clinical practice during clinical trials of medicinal products for human use (known as the "Clinical trials Directive"), regarding the issue of conducting clinical trials on minors states: "In addition to any other appropriate restriction, a clinical trial on minors may be conducted only if: (d) there are no incentives or financial incentives other than compensation." The same restrictions are set in relation to clinical trials on adult incapacitated persons who cannot give informed consent to them, as well as who did not give or refused informed consent before the onset of their incapacity, are allowed only if: "there are no incentives or financial incentives, except compensation" (clause "d" of Article 5).

Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 establishing quality and safety standards for the collection, testing, processing, storage and distribution of human blood and its components, replacing Directive 2001/83/EC (known as "Blood Safety Directive"), in Part 1 of Art. 20 enshrines the principle of voluntary and gratuitous blood donation: "Member States shall take the necessary measures to encourage voluntary and gratuitous blood donation in order to ensure that blood and blood components are, as far as possible, provided from such donations."

Directive 2004/23/EC of the European Parliament and of the Council of March 31, 2004 on the establishment of quality and safety standards for the donation, procurement, testing, processing, storage, preservation and distribution of human tissues and cells (known as the "Human Tissue Directive") in Art. . 12 establishes the main principles governing the donation of tissues and cells: "States should strive to ensure voluntary and free donation of tissues and cells. Donors may receive compensation that

is strictly limited to the cost and inconvenience of donating. In such a case, the member states shall determine the conditions under which compensation may be granted" (clause 1). "Member States shall take all necessary measures to ensure that any promotion and promotional activities in support of human tissue and cell donation comply with the guidelines or legal provisions established by Member States. Such guidelines or legal provisions should contain appropriate restrictions or prohibitions on advertising the need or availability of human tissues and cells for the purpose of offering or receiving financial gain or advantage. Member States should try to ensure that the procurement of tissues and cells is carried out on a non-commercial basis" (clause 2).

In clause 15 of the declarative part of Regulation (EC) No. 1394/2007 of the European Parliament and of the Council of November 13, 2007 on high-tech medicinal products and amending Directive 2001/83/EC and Regulation (EC) No. 726/2004 (known as "Advanced Therapy Regulation") states: "regarding the donation of human cells or tissues, such principles as the anonymity of both the donor and the recipient, altruism of the donor and solidarity between the donor and the recipient should be respected. Human cells or tissues contained in high-tech medicinal products must be obtained as a result of voluntary and unpaid donation. Member States are recommended to take all necessary measures to encourage the active participation of the public and the non-profit sector in the procurement of human cells or tissues, as voluntary and unpaid donations of cells and tissues can contribute to high standards of safety for cells and tissues and thus to the protection of human health".

The importance of the moral admissibility of certain scientific achievements prevailing over their commercial component should be a determining criterion for their further legal introduction.

Legalizing the organ market will only increase financial incentives for the unscrupulous use of disadvantaged people as sources of donor organs. This is unacceptable from a moral and ethical point of view, or from a legal point of view, as it contradicts the main purpose of donation - its charity and the desire to save another person's life. Under other conditions, donation will turn into a civil contract of sale, even human trafficking, thanks to which financially well-off citizens will be able to use the

right to health care, in return, the least socially protected strata will pay for it with their health, and in most cases, with their lives. This will lead to the humiliation of a person's dignity, the violation of his basic rights, when a person from the subject of legal relations turns into their object, which will be used for the needs of other people.

The need for the state to ensure the availability of transplantation is a guarantee of limiting abuses in the field of illegal provision of paid medical services, which should be based on the principle of free donation (with the exception of receiving compensation for the donor). At the same time, such compensation should not be the main incentive for the extraction of human anatomical materials. In addition, it should be based on the principle of non-discrimination: "the cost of transplantation and follow-up care... should be affordable for all interested patients, that is, no recipient should be excluded for financial reasons" (commentary to Guideline 9) [183, p. 342].

Prohibition of financial benefit for donation (its gratuity) to both the donor and his close relatives, as well as suppliers or intermediaries is an important preventive measure to prevent abuse in this area and a guarantee of preserving human health and life.

The implementation of international legal standards in national legislation is important, both by adopting new national norms and by incorporating international legal norms into national legislation. Thanks to this, the ban on payment for the provision of human anatomical materials can be extended to all individuals, in particular those recipients who try to circumvent national legislation by going to countries where there is no ban on the use of donation for commercial purposes.

The creation of publicly available international donor registers with their regular updating is the key to ensuring transparency of access to human anatomical materials needed by recipients. It should be noted the unity of the European legal system in the direction of banning the commercialization of the human body and its parts, which is based on the interconnection of the legal framework (correspondence of norms) of the Council of Europe and the European Union. At the same time, establishing an international ban on trade in human organs and tissues at the universal level of international law is an urgent issue. This will provide an opportunity to unify legal regulation in this area in order to meet the needs of donor anatomical materials as quickly

as possible to save the lives of millions of people around the world (both donors and recipients). In order to achieve a global consensus in the international work in the field of donation and transplantation, as well as in order to approve the idea of "donating life from one person to another, as well as preventing the appearance of victims of illegal organ trafficking and transplant tourism", it is necessary to adhere to ethical norms, which are the basis for ensuring proper protection rights and dignity of a person in important matters of preserving his life.

Therefore, an obstacle to the illegal trade in human organs and tissues should be the presence of laws that would protect against illegal encroachments and strict control over their compliance.

Conclusions. Illegal trade in human organs and tissues is the conclusion of agreements involving their purchase and sale, including foreign trade agreements. Organ trafficking (also known as the Red Market) is the illegal practice of organ trafficking, which involves the removal of a human organ or tissue from a living or deceased person for transplantation. According to the WHO, organ trafficking is commercial transplantation that takes place outside national medical systems and is illegal.

The periodization of the stages of legal regulation of state administration in the field of transplantation can be divided into five periods. The first - until 1937; the next one - covers activities related to transplantation, starting with the resolution of the RNA of the USSR "On the procedure for conducting medical operations" adopted on September 15, 1937 (1937–1985); the third period is associated with the approval by the Ministry of Health of the USSR of the Provisional Instruction on Death, which allowed the transplantation of various organs of the human body (1985–1992); the fourth period is focused on the adoption of the Law of Ukraine on November 19, 1992, "Basics of the Legislation of Ukraine on Health Care", which established the use of the method of transplantation from the donor to the recipient of human organs and tissues (1992–1999); the criterion for distinguishing the fifth period was the adoption of a special law "On transplantation of human organs and other anatomical materials" (1999). The new stage of legal regulation of the transplantation of anatomical materials into humans is

connected with the adoption of the Law of Ukraine "On the Application of Transplantation of Anatomical Materials into Humans" dated May 17, 2018.

Ukrainian legislation has a direct ban on illegal trade in human organs and tissues, in accordance with Art. 143 of the Criminal Code of Ukraine, illegal trade in human organs or tissues, committed by a prior conspiracy by a group of persons, or with the participation of transnational organizations engaged in such activities, is punishable by imprisonment for a term of five to seven years with deprivation of the right to hold certain positions and engage in certain activity for a period of up to three years. It should be noted that at the international level, the Declaration on the Transplantation of Human Organs, adopted by the 39th World Medical Assembly back in October 1987, "condemns the sale and purchase of human organs for transplantation." It is worth noting that in the above wording we are talking only about "organs" and not about "tissues".

The problem of the ineffectiveness of combating the illegal trade in human organs and tissues in modern Ukraine lies primarily in the lack of actual implementation and a clear program of the prevention system. Such a system should be built evenly and consist primarily of general social and general criminological prevention. In general, the purpose of such measures is not to have a direct impact on crime, but to solve certain problems of social life (for example, ensuring an adequate standard of living of citizens and social protection of the population, creating conditions for full employment of the population, overcoming the phenomenon of alcoholism and drug addiction). During their resolution, conditions are created that eliminate or minimize the very possibility of committing certain illegal acts.

7. Based on the research, it was concluded that in order to settle this issue, it is necessary to improve the legislative framework, provide for sufficient state funding, and also implement the best practices of European countries regarding the regulation of human tissue or organ transplantation. We also consider it necessary to carry out educational work among population groups that are potentially able to put their own organs up for sale regarding the harm to health of such operations and the high probability of becoming a victim of fraudulent actions.

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