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Abstract

This research paper presents the analysis of essential characteristics of the detention process by an authorized official as an institution of criminal procedure. The author's definition of the concept of detention by an authorized official has been formulated.

The authors have proposed to consider the use of this measure to ensure criminal proceedings as a form of proper and immediate response by authorized officials to the discovery of a crime and obtaining primary information that allows to reasonably suspect a person in its commission.

Keywords: *detention on suspicion of committing a crime, an authorized official, measures to ensure criminal proceedings, procedural coercion.*

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MODERN STATE AND SIGNS OF ILLEGAL ACTIVITY IN THE FIELD OF TRANSPLANTATION

Оксана Мислива. СУЧАСНИЙ СТАН ТА ОЗНАКИ НЕЗАКОННОЇ ДІЯЛЬНОСТІ У СФЕРІ ТРАНСПЛАНТАЦІЇ. Визначено основні специфічні ознаки незаконної діяльності у сфері трансплантації. Надано характеристику протиправної діяльності у галузі трансплантації, зокрема, з урахуванням сучасного стану та нових форм протиправних дій у цій сфері, її суб'єктам та їх ролі до розподілу. Наведено кримінологічні особливості протиправної діяльності в галузі трансплантації спираються на емпіричний матеріал. Особлива увага приділяється сучасним методам вчинення розслідуваної злочинної діяльності – вербуванню із застосуванням телекомунікаційних та інформаційних технологій.

Бурхливий розвиток технології трансплантації на початку ХХ століття призвів до появи нового типу соціально небезпечної протиправної діяльності, яка набула значного поширення через

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можливість отримання від неї значних прибутків, і за межами однієї країни. Жага до життя та попит на донорський матеріал призвели до розробки різних способів отримання людських трансплантатів, які є суспільно небезпечними.

Зазначено, що нелегальна діяльність у сфері трансплантації характеризується латентністю, участю чиновників, корисливістю, організованістю, професіоналізмом, транснаціональністю. Членами груп, які займаються незаконною діяльністю у сфері трансплантації, залежно від їх ролі, є клієнти, дилери, торговці людьми, посередники, вербувальники та контрабандисти.

Пропонуються нормативно-правові та організаційні заходи, спрямовані на вдосконалення юридичної відповідальності за незаконну діяльність у сфері трансплантації, заходи її виявлення, запобігання та документування тощо.

В рамках заходів щодо запобігання незаконній діяльності у сфері трансплантації доцільно закріпити у Кодексі України про адміністративні правопорушення відповідальність за рекламу незаконної діяльності у цій сфері.

Ключові слова: *незаконна діяльність у сфері трансплантації, вербування, попередження, злочини, донор, торгівля людьми, інформаційні технології.*

Relevance of the research. The development of biomedicine, which has long aroused the interest of the general public in the problem of inventing a way to obtain "eternal life" for mankind, has prompted science to study the crimes associated with it. The rapid development of transplant technology in the early twentieth century has led to the emergence of a new type of socially dangerous illegal activity, which has become widespread due to the possibility of obtaining significant profits from it, and outside one country. The thirst for life and the demand for donor material have led to the development of various ways to obtain human transplants that are socially dangerous.

Thus, the Criminal Code of Ukraine for the first time in 2001 established liability for violation of the procedure for transplantation of organs and other human anatomical materials (art. 143) and illegal donation (art. 144), trafficking in human beings for the purpose of exploitation, in particular "removal of organs" (art. 149) [1].

This negative phenomenon manifests itself in various forms: from killing people to obtain organs to smuggling donors and their transplants. Moreover, the forms and schemes of illegal activities in the field of transplantation are constantly changing. This necessitates constant monitoring and study of promising areas to prevent illegal activities in the field of transplantation.

Recent publications review. Problems of legal regulation of transplantation, some criminal law and forensic aspects of liability for illegal activities in this area have long been the subject of scientific research. From the criminal doctrine of the times of the Russian Empire, during the Soviet times until Ukraine's independence, the works of well-known domestic and foreign scientists M. Avdeev, F. Berdychevsky, I. Gorelik, V. Glushkov, Ya. Drgonets, A. Krasikov, M. Malein, M. Maleina, M. Shargorodsky, P. Hollender, P. Holmes. In the field of modern domestic science of criminal law, crimes in the field of transplantation were investigated by S. Hrynychak, V. Gryshchuk, A. Musienko, D. Protsenko, O. Sapronov, G. Chebotaryova and foreign - Z. Volozh, D. Kobayakov, O. Kustova, N. Pavlova, S. Tikhonova.

Issues of criminal liability and combating trafficking in human beings, in particular, for the purpose of human exploitation as a donor are mentioned in the scientific works of A. Wilks, T. Voznaya, S. Denisov, V. Ivashchenko, V. Kozak, V. Kuts, I. Lyzogub, A. Orleans, V. Pidgorodinsky, S. Kapitanchuk and others.

The works of these scientists, of course, have significant scientific and practical significance, although in fact they have lost their relevance, because they rely on outdated legislation in the field, do not take into account their criminological conditionality, new methods and technologies for detecting and investigating crimes.

The article's objective is to detect specific signs of illegal activity in the field of transplantation and features of modern methods of its commission.

Discussion. There is various information about the extent of illegal activities in the field of transplantation of human organs and tissues. Foreign experts claim that organ trafficking exists in almost every country, each year the amount of "shadow" profits is 6-8 trillion dollars [2; 3]. According to research, in a year the world initiates an average of more than 50 criminal proceedings for the illegal sale of human organs [4, c. 161] and thanks to a network of criminal groups that specialize in receiving and delivering donors and their organs, the criminal business in this area has become transnational. Also, three Ukrainians were detained who, with the help of social networks, were looking for minors who were ready to become organ donors for a monetary reward, and tried to take them to the Russian Federation to get about \$ 200,000 for it [5].

Ukraine's geopolitical location determines the supply of illegal donors and their transplants to more affluent countries, or their transit through Ukraine from Asian countries to Europe, etc. The use of the victim as an organ or tissue donor is also manifested through human trafficking. The significant dynamics of human trafficking and the involvement of organized groups in its commission against the background of a small number of sentences for the punishment of persons engaged in such activities, gives grounds to conclude that trafficking in human beings as donors is a latent crime. This is facilitated by the difficulty of identifying transit donors who are trying to leave the territory of Ukraine or enter and move on its territory legally. Analysis of empirical data indicates the commission the sale of children abroad as transplant donors (Odessa region), transplant smuggling (Kherson region) and trade in abortive tissues under the guise of immunobiological drugs (Crimea); illegal receipt of abortion materials and trafficking in juvenile organs, "smuggling" of cryopreserved cells (Kharkiv region); sale of fetal materials in injections, organization of illegal transplants (Donetsk region); illegal removal of organs from a corpse donor, illegal receipt of organs and other anatomical material, their illegal transplantation and trafficking in human beings as donors (Dnipropetrovsk and Kyiv regions); illegal use of road accident victims as donors, forgery of medical documents to obtain organs, conclusion of illegal agreements regarding transplants (Lviv and Ternopil regions).

There are no separate official data on transplant crimes in Ukraine, and various government sources provide quite contradictory data and "underestimate" the indicators called by international and non-governmental organizations [6; 7]. Quantitative indicators of crime in the field of transplantation are incorrect for several reasons: 1) there is no single reporting system of different law enforcement agencies, including in the structural units of one department; 2) criminal statistics do not reflect operational information on cases pending, as well as crimes that begin in Ukraine or by citizens of Ukraine, and continue in other countries. For example, the facts of committing citizens of Ukraine: organization of a clinic in India for the illegal treatment of stem cells and the export to Hungary of stem cells of human abortive materials [8].

Observance of objective quantitative indicators of crime in the field of transplantation is also hindered by its latency related to the specificity of the objective side and the subject of the crime - medical workers and their special knowledge in the field of transplantation; significant corporatism of medical workers, which ensures their deep secrecy; lack of a source of evidence - the death of the donor and (or) the recipient or the rapid deterioration of physical evidence in the form of organs or other human anatomical material; lack of criminal liability for certain forms of illegal activities in the field of transplantation. For example, the police learned that a surgeon had removed a patient's kidney without her consent, which was confirmed by tests, but the hospital's medical record did not contain any information about the operation, so the criminal proceedings for illegal removal of human organs were terminated [9], as well as on the fact of illegal sending from Ukraine to the United States 420 kilograms of bones of human origin for 13.5 thousand US dollars [10, p. 6], because human bones were outside the scope of the crime defined by the legislator.

Based on the above, illegal activity in the field of transplantation is of a professional nature, because its commission is impossible without the involvement of a surgeon. Illegal receipt or implantation of a transplant (except for ready-made suspensions of the embryonic-placental complex) can be performed only by a specialist with the specialty "transplantologist" or a former specialist. Other crimes in the field of transplantation can be committed by hospital staff or other individuals as intermediaries (morgue, prenatal center, forensic bureau).

Illegal activities in the field of transplantation are manifested in various forms: from killing people to obtain organs to smuggling donors and their transplants. The implementation of illegal activities in the field of transplantation can be divided into several stages: recruitment of victims; communication, which may involve the perpetrators, victims and third parties; exploitation of the victim. Thus, the subjects of such crimes can be classified by role distribution: a) the customer (recipient or his relatives); b) a dealer or trafficker (engaged in the purchase, sale or resale of parts of the human body); c) a mercenary (kidnaps or kills a donor); d) intermediary (searches / selects donors and buyers); e) recruiter (persuades to agree to donation); f) smuggler (moves donors or their anatomical material on the territory or across the border of Ukraine); g) organizer of criminal activity related to transplantation.

Illegal activities in the field of transplantation are characterized by the participation of officials who provide speed and cover for criminal operations (chief physician, chairman of the

adoption committee), as well as selfish and violent nature.

Empirical analysis shows that 95% of illegal activities in the field of transplantation were committed by a group of persons by prior conspiracy with a clear role distribution. Criminal groups are characterized by the following structure: leader and (or) organizer; a group of performers from among medical workers (surgeon, resuscitator, anesthesiologist, operating room nurse) and technical staff; group of assistants (extras of medical institutions, employees of cemeteries and crematoria, drivers of vehicles); the customer (recipient, his relatives or acquaintances); "Cover" (civil servants). The organized nature of such activities is caused by the impossibility of carrying out a criminal act alone: it requires coherence and confidentiality.

Illegal activities in the field of transplantation are characterized by transnationality, as it is carried out by international criminal structures, which have significant financial resources and the necessary information and technical support, technical and telecommunications means of receiving and delivering "living goods". Illegal transplant activities can start in one country and end in another. For example, in the hospital in Tallinn (Republic of Estonia), among others, a Ukrainian was arrested who illegally crossed the border to sell his kidneys to citizens of the State of Israel [11, p. 7], and in Ukraine criminal proceedings were instituted against an Israeli transplantologist for illegal kidney transplantation in a private clinic in Mariupol [12].

Recruitment can also be done through a special agent or advertising in the print media, but preferably on the Internet. Assistance can be provided by checking the compatibility of donor tissues (laboratory staff) or searching for compatible donors in confidential automated registries (average user or network administrator). Currently, the most popular way to obtain human organs has been to recruit donors using information technology, through the conclusion of agreements through the Internet. Ads are posted on popular sites, social networks and online stores in real time ("on-line organ shops"). Criminals who recruit victims usually place ads on several electronic person-moderated or automatic bulletin boards at the same time, ie on websites on a paid or free basis. The use of information technology to recruit victims is a new tool for trafficking in human beings, rather than a form of crime in which organ trafficking remains a major form of human exploitation [13, c. 21]. It was reported that a deal for the sale of a kidney for 45 thousand US dollars at the auction "e-Bay" [14, c. 7]

Monitoring of the Internet for such advertisements in free access clearly shows the many pages with advertisements for trade in donor organs. For example, a site with a fake address "<http://renels.co/rd.com>" an ad with the following content is placed in capital letters: "We will buy your kidney. Fee on hand before surgery. Donor Registration", and also noted that the branch of a large organization in Europe (Cologne, Germany), which is engaged in the selection of compatible pairs donor - recipient", provides organizational and legal support and control of the agreement between donor and recipient on a commercial basis from the stage acquaintance and collection of documents for kidney removal surgery before the rehabilitation period. The anonymity and mass use of users of online services contributes to the spread and receipt of income from these services, which significantly complicates the investigation of such crimes using only traditional approaches.

In order to carry out financial transactions, as well as the distribution of funds obtained by criminal means, organized criminal groups use electronic payment systems (Privat24, GlobalMoney, Easypay), and of particular interest to their participants are international payment systems that allow transfers between countries (PayPal, PerfectMoney, WebMoney, Western Union, MoneyGram). Cryptocurrency is becoming increasingly popular (in particular, there have been cases of using the cryptocurrency Bitcoin).

Conclusions. Thus, 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. The spread of crimes in the field of transplantation, the specifics of their causes and conditions, methods of their commission, the identity of the offender and the resulting features of prevention make it appropriate to study and scientifically integrate the theoretical basis for further improvement and development and effective implementation of new practical measures to prevent crimes in transplantation.

Illegal activities in the field of transplantation are characterized by latency, participation of officials, selfishness, organization, professionalism, transnationality. Members of groups engaged in illegal activities in the field of transplantation, depending on their role, are customers, dealers, traffickers, intermediaries, recruiters and smugglers.

The specifics of transplantation presuppose that the person committing the crime has special knowledge or professional skills (a medical worker or a person who has been specially

trained to commit a crime). The special subject has the following characteristics: a) educational and qualification level in the specialty; b) permission (license) for the right to engage in this type of medical activity; c) a position in a state or municipal health care institution or a state scientific institution; d) the presence of official and professional responsibilities.

With the development of mobile Internet technologies and VoIP-telephony applications, members of criminal groups are increasingly using messengers (in Ukraine the most popular are WhatsApp, Viber, Telegram), as well as social networks (Facebook, Instagram, "In touch", etc.). As a rule, recruitment takes place both through direct communication (calls, chat) and communication in communities (can be closed and public), advertising, and so on. Most messengers have a secure connection between subscribers and allow you to exchange data in encrypted form. These technologies add confidence to criminals that law enforcement will not be able to access this data.

Within the framework of measures to prevent illegal activities in the field of transplantation, it is expedient to enshrine in the Code of Ukraine on Administrative Offenses the responsibility for advertising illegal activities in this area.

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Abstract

The article describes the illegal activities in the field of transplantation, in particular, taking into account the current state and new forms of illegal actions in this area, its subjects and their role distribution. These criminological features of illegal activities in the field of transplantation are based on empirical material. Particular attention is paid to modern methods of committing the investigated criminal activity - recruitment using telecommunications and information technology.

The normative-legal and organizational measures aimed at improving the legal responsibility for illegal activity in the field of transplantation, measures of its detection, prevention and documentation, etc. are offered.

Keywords: *illegal activities in the field of transplantation, recruitment, prevention, crimes, donor, human trafficking, information technology.*

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OPERATIONAL-SEARCH SUPPORT OF SEARCHES

Сергій Обшалов. ОПЕРАТИВНО-РОЗШУКОВЕ ЗАБЕЗПЕЧЕННЯ ПРОВЕДЕННЯ ОБШУКІВ. Розглянуто особливості оперативно-розшукового забезпечення проведення обшуків. Розслідування тяжких і особливо тяжких злочинів, особливо вчинених кримінальними угрупованнями, супроводжується формуванням несприятливих слідчих ситуацій, зокрема, відсутність слідів злочину, наявність незначного обсягу орієнтуючої інформації, відсутність очевидців злочинної події, не встановлення особи потерпілого, активна протидія досудовому розслідуванню та ін.

Зазначене вимагає удосконалення організаційно-тактичних заходів щодо проведення окремих слідчих (розшукових) дій, зокрема, обшуків. Обшук є невідкладною процесуальною дією, що дозволяє на початковому етапі розслідування виявити знаряддя і сліди злочину, встановити особу злочинця, висунути правильні слідчі версії. Невідкладне й якісне проведення процесуальної дії з урахуванням особливостей розслідування тяжких і особливо тяжких злочинів може сприяти одержанню важливих доказів, які свідчать про причетність членів кримінальних угруповань, їх лідерів та організаторів конкретних злочинів до організованої злочинної діяльності. Наголошено, що слідчі, розслідуючи тяжкі та особливі тяжкі злочини, повинні враховувати, що злочинці не завжди можуть зберігати зброю, засоби вчинення злочинів, викрадені предмети, цінності та інші об'єкти,

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