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## CRIMINAL-LEGAL ASPECTS OF HUMAN ORGANS AND TISSUES (CELLS) TRANSPLANTATION

**Abstract:** In this article, the history, concept of implantation of human organs and tissues (cells), the indicators and statistics of implantation operations and illegal operations performed by the World Health Organization and other law enforcement agencies, the attitude of organs to implantation on the basis of Sharia law and the views and views given by the scribes, the medical, bioethical, international and legal aspects of implantation of, taking into account the voluntary implementation of the donor, the introduction of a new "mandatory donor" into the Criminal Code on its mandatory implementation, the adoption of Article 133 of the Criminal Code in the new edition, the calculation of important objects of a person's life and health, as well as responsibility for illegal implementation of the plantation and improvement of criminal legislation.

**Key words:** transplplantation, human organs and tissues (cells), donor, recipient, Medical Law, Criminal Law, Criminal Code, responsibility, sanction.

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### Introduction

In the current difficult situation, the healthcare sector is developing as rapidly as other sectors. At the same time, in the conditions of the pandemic COVID – 19, which reigns on a global scale, how important this industry is, the dependence of the life and health of mankind on the whole-headed Health System is manifested once again.

In these processes, the preservation of human life is of great importance, and the right to live and to have a comfortable lifestyle is guaranteed by international and national documents. The technology of human organ transplantation has been shown in the scientific direction as a gift of life to individuals suffering from organ failure, through which it is achieved to preserve the life of many people in the world.

Human health is one of the main factors in the quality of life. In this regard, one of the most important among the human rights is the right to health. That is, when we say the right to health, we must understand that a person has the right not only to

be healthy, but also to be provided with all the conditions necessary for a healthy life, to live a healthy life, to be protected by the state and the international community.

President of The Republic Of Uzbekistan It is not surprising that Mirziyoyev in his appeal to the Oliy Majlis of 2019 said that "Strengthening the health of our people, finding a healthy lifestyle is a vital issue for us".

Even in Article 24 of the Constitution of the Republic of Uzbekistan "residence permit is an integral right of every person. The assassination of a person's life is the most serious crime," it is noted.

Of course, the right to health begins exactly from the right of every person to life.

Also, the issue of implantation of human organs and tissues (cells) is considered one of the main, debatable and pending problems of today, and implantation is being studied as a field of science, Bioethics and law of Medicine.

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In connection with the recent achievements in the field of Medicine, human organs and tissues have "begun to live" their own lives, which differ from their owners, because human organs and tissues are characterized as anatomical formations that do not define personality features.

Terminologically, Transplantology means Latin (transplantare -transplantation). As a science, Transplantation is one of the relatively young disciplines. Its origin is associated with surgery, and its history dates back several centuries.

The implantation of human organs and tissues is an operational procedure for the replacement of damaged organs and tissues that are not in the patient or are performed in any way, based on the collection, input, storage and storage of organs and tissues from the donor or the corpse of the person and carried out with the help of a surgical operation[1].

We, too, added to the views of the above scientists, have found it permissible to describe him as follows: "the implantation of human organs and tissues – organs and tissues from a living person or his body-is a process that is carried out with the help of surgical operation in clinical conditions, by medical means only with consent and without mercantile and commercial.

Now, if we consider chronologically the history of organ transplantation, then the following doctors and Surgeons - transplantologists conducted and tested operations (experiments)in animals and humans:

1902 year-E.Ulman for the first time made an experimental attempt on kidney transplantation in dogs; in 1905 year for the first time carried out an experimental transplant on heart transplantation in dogs; in 1923 year in the US for the first time transplanted the skin of his mother to a child who was injured by Burns, in 1933 year y.u. For the first time in the world, Voronov knows that the procedure for transplanting the body kidney was conducted.

After that, even in the USSR, such an experiment was tested, 1965 year B. For the first time by Petrovsky successfully carried out kidney transplantation in clinical conditions;

After the listed operations, one after another, such test operations on different organs began to be carried out. For example, in 1966 year in London, a legal picture of the concept of brain death,

In 1968, the Harvard Medical School established specific criteria (criteria) related to brain death.

Even today, it is considered to be urgent, the first heart transplant operation to save the life of mankind

As all actions are proved by Scientific Foundations, the scientific basis of organ transplantation was created at the beginning of the XIX century.

In addition, if we pay attention to statistics, according to statistics provided by the World Health Organization, only in 2015 year 27397 donors received 119873 organ transplants, while 79984

kidney and 26151 liver organs from donors were transplanted to the recipient. This makes up 10% in tonsillitis, where in there is a queue of citizens waiting for the body [2].

In terms of the amount of conducting transplantation processes, the US is in the first place in the countries of the world, American doctors annually conduct 10 thousand Kidney, 4 thousand liver and 2 thousand heart transplants.

In the Republic of Uzbekistan, also plantation operations were carried out, for the first time on September 14, 1972 academic year. A.Aripov conducted the first kidney transplantation.

If we look at the statistics of transplantation in our country, the number of kidney transplants in 1972-1975 - 348, of which 311 were from deceased donors, 1997-2006 - 42 living donors, 2011-2015 - 48 living donors, Cabinet of Ministers of October 23, 2017.

On the basis of the decision No. 859 in 2017-2019 at the Republican Specialized Surgical Center named after Academician V.Vakhidov under the leadership of Academician FG Nazirova and Academician SV Goethe performed 4 orthopedic liver transplants from a living person, a donor.

On average, in one day 15 people die waiting for the organs, but someone could save them (save) this is everyone. It means that someone dies in 96 minutes[3].

"Every year, thousands of people die for organ transplantation in cases where prevention can be removed" [4].

The emergence of transplantology in Russia is associated with the name of the Russian surgeon NI Pirogov, who in the literature by him As early as 1835, "Plastic surgery of the nasal organ was an important part of the operation. Many religions around the world forbid harm to the body of the deceased. From a secular point of view, a person's death does not break the influence of his will in relation to what belongs to him. The expression of this will may be his written presentation (will) or his oral will.

There are ethical issues related to the procedure of organ transplantation and the lack of transplantology resources among potential recipients when performing organ transplants in corpses.[5]

N.Pirogov's conclusions in his early work were very important for that time and were strictly documented, scientifically based and at the same time the result of in-depth analysis and surgical practice. They were based on observations and preliminary experiments and also presented as concrete facts. They were the basis of the doctrine of the transfer of parts, tissues and organs of animal organs.

In those years N. Pirogov's partner is the associate professor of Kiev University Shimanovsky, he made it, in particular, by offering a bone transplant, and for the first time came to the following conclusion more complex parts of the organism can be isolated

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from its true owner in a favorable environment and transferred to another without losing any of its vital activity"[6]. Some of his hypotheses refer to the 30-year-old Mr Smith and other American surgeons can witness spotted[7] who found their practical confirmation in the works.

Thus, the above-mentioned new methods of transplantology have made a turn in this area and have brought tremendous results in medicine.

Many religions around the world prohibit harm to the body of the deceased. From a secular point of view, the death of a person does not violate the influence of his will on what belongs to him. The expression of this will can be its written presentation (will) or verbal will.

In the implementation of organ transplantation in corpses, there are moral problems associated with the mode of organ reception and the lack of transplantological resources among potential recipients.

We could imagine that the organs are exactly as long as it is desirable to be taken from the deadlift. But who actually owns the organs from the mounds. And this is both an ethical and legal aspect. O about this .B.Victor and I.G.Belyaeva writes in her article titled "organ transplantation: moral and legal aspects": "three approaches are used in this issue: the principles of conscious consent (information consent), the presumption of consent and the regular collection of organs. In our country, the regular meeting of organs suitable for the cultivation of corpses has long been the main type of solution to this issue. At the same time, the authorities can voluntarily manage the body of the deceased. In this case, the installation of utilitarian ethics is carried out, according to which, if the action brings the most benefit to many, it is morally justified. However, it violates the right to control the body of a person (even after death) and affects the moral values of the family of the deceased, in some cases causes additional moral damage to relatives[8].

It can be seen that it is allowed by the government to collect and store the bodies of the deceased, but the bodies that are to be obtained must necessarily bring benefits, but it affects the moral values of the family of the deceased, in some cases, it is possible to cause additional moral damage to relatives, for example, later discontent may arise, demand

Now we will get acquainted with the opinions of Islamic scholars on the process of human organ transplantation in the Republic of Uzbekistan and the board of fatwas of the Office of Muslims of Uzbekistan:

"Bismillahir Rahmanir Rahim. Allah Almighty has blessed man in living things. About this in the Qur'an it is blessed: "indeed, we have blessed the children of Adam (Saints and Angels), and have placed them in the land and the sea (horses and boats), and have provided them with clean things, and have

preferred them above the many creatures that we have created" (Surat an-ISRA, verse 70).

So it turns out that the person and his members are essential, and even the judgment of the deceased person remains the same, that is, to humiliate the body of the deceased person or to cut off a member is considered a grave sin. It is not permissible to sell human organs, since it is not considered a commodity of trade. Members of Man are not property, they are not allowed to sell it, money is also not taken, since this is the sale of something that is not in their property. Similarly, the heirs of the members of Man are also not property, they cannot sell the members of the dead. The sale of members of the man contradicts his respect, nobility. Another original rule of Shariat: whether a Muslim is alive or dead, it is unlawful for him to offend with or cutting. If there is no evidence to force the transition or exclusion from one rule to another, the original rule will remain in its place. The scribes took as the basis of the Shariat rule "to give interest to a person and to repel harm from him" to the permissible practice of transferring (transferring) human organs. According to this rule, in the process of practice it will be necessary not to expose another person to destruction. The reason why there is so much interest in the life of another in carrying out this procedure is not contrary to the notion of keeping that the members of a person are essential, that they are allowed to take their own members and put them in need. In the event that the two parties agree, the procedure for moving the member will be possible under the following conditions:

1. The fact that his life is not at risk when a member of a person who donated a member is taken;
2. The fact that the person who donated his / her member voluntarily, is not obliged by anyone;
3. The reason for the relocation of the member is the conclusion that the disease of a patient who really needs it can be cured only in this way in terms of Medicine;
4. For both parties to which the member is being taken and the new member is being placed, it is necessary that the surgical procedure has been successfully conducted and that the expected result has been observed and assured in the experiments.

Members that cannot be moved:

- hereditary members (male and female sexual organs), which cause the transition of one person to another, bearing the same qualities and causing pregnancy;
- members such as the heart, which is directly related to the residence of a person;
- a member, like an eyelid, which is indirectly related to the fullness of a person;

In general, all medical practices that have a negative impact on human dignity, reputation and life are strictly prohibited. As mentioned above, there are several conditions for moving members if necessary. The most important point-even when the member is

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transferred, it is not sold, but discharged (donated). Now, in the case of the abduction of children who sometimes fall into the ears and the sale of their body organs, a few big sins will accumulate. Here there is a person's suicide. In the Qur'an it is said that the unjust killing of a person is equal to the killing of all people. On top of this, the sale of something (members of a person) that is not considered a commodity (commodity) in our Sharia is to earn dirty money. Those who turn to such a disgusting sin expect humiliation in the world and painful punishment in the hereafter, if they do not repent[9].

Proceeding from this fatwa, we will be able to come to such a conclusion. It should be concluded that giving someone their organs to another person does not pose a risk to his life, that the person who donated his organs should be voluntary, that it should not be carried out forcibly by anyone, that the disease of the patient who really needs the reason for the removal of the organ can be cured only in this way in

So, even in our country, the practice of implantation of organs should be carried out based on the rules specified in the fatwa.

In addition, at present, a number of works are being carried out in our country on improvement and development of the normative-documentation base regulating the Institute of plantations in the field of Medicine. According to the current order, the Cabinet of Ministers of the Republic of Uzbekistan, which regulates the cultivation of human organs and tissues, has a decision №1035 "on approval of the temporary regulation on the procedure for the cultivation of kidney and (or) liver fragments among relatives", which includes general rules, instructions and contraindications to transplantation, the procedure for the execution of Transplantation But since the process, standards and interrelationships of the implementation of transplantation are not reflected in it, it requires the adoption and implementation of the law "on the transplantation of human organs, tissues and (or) cells", which is developed and commercialized in accordance with international standards, taking documents into account the procedure for transplantations of organs and tissues regulated by the World Medical Association and the official it is required to adopt and implement into practice the law **"On the transplantation of human organs, tissues and (or) cells"**, which is developed in accordance with international standards and completely excludes commercialization, taking into account the procedure for the cultivation of organs and tissues regulated by official documents for their intended purpose.

In addition, to the following international documents, which should be considered as the basis for legislation, almost all countries are now joining, implementing their own legislation, we must also ratify and implementation:

Who's the leader (Chief) in 2010 year on human organs, tissues and cells transplantation;

Appeal of the Association of Physicians "on trade in living organs "in 1985 year;

- Statement of the World Doctors Association on trade in living organisms (1985 y.),

Declaration of the Association of doctors "on organ transplantation " in 1987;

The resolution of the World Doctors ' Association on "issues of the behavior of doctors in Human Organs Transplantation" in 1994;

From the sentence" ways of conducting and encouraging international cooperation in the field of donor and organ transplantation in order to effectively solve the seizure of human organs and the stimulation and cessation of human organ trafficking".

At the same time, in all the above-mentioned normative documents, the responsibility for illegal and commercial use of human organs is established. In particular, both at GFR[10] and Japan[11] have established responsibility for commercial use of human organs.

Although the laws of many countries of the world have established the maximum guarantees of human rights and freedoms, but in the following years, the "black market" of human organs (tissues) "bought-sold relations" is observed, especially as a result of the development of human trafficking, the emergence of ethical and legal problems related to it in science and practice. In the world, unemployment, need for money, getting rid of debts on liabilities, doing good deeds, as well as for other purposes, the donor activity is intensified, and the tort between the donor and the recipient of the "buy – sell agreements" is also continuing to be established.

According to the legislation of our country, human organs and tissues cannot be subject to the contract of sale. In this case, criminal liability is established, and there is still no special law that completely regulates the social relations that arise on legal grounds, like some foreign countries. The development and implementation of this law in many countries, where this procedure has been established, has caused a number of medical, innovative, economic, legal and ethical problems. Among the problems enumerated were considered critical opinion of the society on the implementation of neck-to-neck type operations on the other hand if there are issues such as donor organ and tissue scarcity for individuals in need of carrying out this type of operation in the country.

In Uzbekistan, legal communication is not prohibited, but when its special legal basis is not established, the circumstances of its illegal implementation can lead to an increase in the latency of the crime.

The Criminal Code of the Republic of Uzbekistan for crimes committed for the purpose of Article 133 (separation of human organs or tissues);



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Part 2 of Article 97 of the Criminal Code (intentional killing of a person for the purpose of cutting off the members of a person and moving them to another person or using parts of a corpse); part 104 paragraph "i" (intentional infliction of severe injury on the body with the aim of cutting off the members; Article 135, paragraph 2 "k" (trafficking in persons for the purpose of resettlement (transplantation) by cutting off the members of a person) is defined in articles criminal responsibility, and these substances should have a blanket disposition. So should be airlifted to another special law for bringing criminal to responsibility for these actions, its component should be covered. In its place, it is desirable to describe Article 133 of the CC in the following edition:

### **Article 133. Illegally distinguish or take-sell human organs and (or) tissues (cells)**

For scientific work or educational work without the permission of the head physician in places outside the state health institutions without the consent of one of the close relatives after his death or without his consent, without the consent of the person when he is alive, or for the purpose of maintaining (conservation) the corpse's members and (or) tissues (cells) illegally

— shall be punished by a fine in the amount of twenty-five to fifty times the amount of the base calculation, or by deprivation of a certain right for a term of up to five years, or by compulsory public works up to three hundred and sixty hours, or by correctional labor up to three years.

We also consider that the second and third parts of this article should be stated in the following edition:

Those actions:

- a) in case of strangeness or other low intentions;
- b) using the service position;
- c) repeated or dangerous residivist committed

by, —

shall be punished by restraint of liberty for a term of three to five years, or by imprisonment for a term of three to five years.

Those actions:

- a) in relation to a person who is clearly guilty of not reaching the age of eighteen;
- b) by an extremely dangerous resident;
- c) if committed by an organized group or in the interests of it, —

shall be punished by imprisonment for a term of five to eight years.

Along with this, it is also worthwhile to introduce a new "mandatory donation" into the

Criminal Code on the mandatory implementation of the donation, taking into account the voluntary implementation of the donation. The reason is that according to the Criminal Code, the life and health of an individual are important objects. The guilty person can force him to compulsory donor care through mental or physical exertion against the victim.

Taking into account the above, it is necessary to adopt the law "on the nutrition of human organs, tissues and (or) cells" in our country and reflect in it the following:

first, the definition of general rules, such as specific tariffs on the relations of transplantasiya, its objects, subjects recipient and the rights and obligations of the donor, guarantees;

secondly, the peculiarities of the implementation of transplantasiya in relation to a living person or corpse;

third, it is necessary to establish the legal status of medical institutions carrying out transplantation (their rights and obligations, requirements for them (licensing, obtaining consent).

In order to ensure the implementation of the Bunda law, it is necessary to carry out these actions:

1. Expand the ranks of special doctors (doctors-plantologists) carrying out transplantation, improve their skills;
2. Cooperation with special doctors operating in foreign countries;
3. Provision of modern and innovative medical equipment and equipment for the implementation of plantations of medical institutions;
4. To create a special base (Internet site or a special platform), in order to register persons who carry out the donation at their own discretion, as well as to ensure openness and transparency of all activities;
5. Introduction of some amendments and additions to the Criminal Code of the Republic of Uzbekistan on violation of the law.

Considering the fact that some of the human organs restore their function (regeneration process), plantation plays an important role in the preservation of the lives of many oaks, their normal life expectancy.

It should be noted that medical legislation is not a sphere of law that must be hardened in one place, the relationship with the maintenance of Health is one of the areas of law that must be changed over time, and when new social relations arise, they must be renewed.

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