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Special characteristics of a person who commits a crime associated with the illegal transplantation of human anatomical materials

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Abstract

This article aims to clarify the features of the forensic characteristics of a person involved in the commission of crimes related to the illegal transplantation of human anatomical material. This research uses a comprehensive approach to study the problems under analysis; systematic method and methods of comparative law to analyses judicial practice and cases of illegal transplantation of anatomical parts from various countries in order to establish the moral and psychological characteristics of the offender and, finally, to determine the possibility of using this information during the pre-trial investigation of criminal proceedings of this category; statistical: to collect and analyze empirical data on research practice in the transplantation of anatomical materials to confirm the representativeness of the results. It is concluded that, as a rule, the person who commits these crimes is male from 25 to 50 years old, unmarried, works in a medical institution or organization, has a complete higher education, as well as special medical knowledge and skills. However, the geography of these criminal offenses showed that the location for illegal transplantation is irrelevant.

Keywords: forensic characteristics; criminal; illegal transplantation; human anatomical materials; pre-trial investigation.

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Características especiales de una persona que comete un delito asociado con el trasplante ilegal de materiales anatómicos humanos

Resumen

Este artículo tiene como objetivo esclarecer los rasgos de las características forenses de una persona involucrada en la comisión de delitos relacionados con el trasplante ilegal de material anatómico humano. Esta investigación utiliza un enfoque integral para estudiar los problemas bajo análisis; método sistemático y métodos de derecho comparado para analizar la práctica judicial y los casos de trasplante ilegal de partes anatómicas de varios países con el fin de establecer las características morales y psicológicas del delincuente y, finalmente, determinar la posibilidad de utilizar esta información durante la investigación previa al juicio de los procesos penales de esta categoría; estadístico: para recopilar y analizar datos empíricos sobre la práctica de investigación en el trasplante de materiales anatómicos para confirmar la representatividad de los resultados. Se concluye que, por regla general, la persona que comete estos delitos es masculina de 25 a 50 años, soltera, trabaja en una institución u organización médica, tiene una educación superior completa, así como conocimientos y habilidades médicas especiales. Sin embargo, la geografía de estos delitos penales mostró que la ubicación para el trasplante ilegal es irrelevante.

Palabras clave: características forenses; delincuente; trasplante ilegal; materiales anatómicos humanos; investigación previa al juicio.

Introduction

The increasing need for transplantation as a method of treatment of persons whose lives are in real danger, the difficulty in obtaining material from living donors, the problem of “maintaining the health of the living”, the lack of evident differences in the effectiveness of transplantation of organs and tissues from living and non-living donors, all these factors foreground the problem of donating transplant material from the dead.

Although in the case of organ transplantation from living persons there are some positive aspects connected with the quality of the donated organs, the development of better methods of removal and keeping organs obtained from the corpse opens unlimited perspectives for transplantation and guarantee health maintaining options for living persons who, as a result of the organ removal and surgical intervention experience serious

difficulties. Therefore, solving the problem by expanding the circle of living donors, indications for such surgery, agitation of relatives of patients to donate their organs for transplantation is unacceptable, because in this situation saving lives and health maintaining is done by harming the health of another person.

The way to obtain donor material from a corpse today is the most adequate. Many people die every year in the world, their organs can be used to save the lives and health of millions of patients in need. However, the process of obtaining a donor organ from a corpse from a legal point of view is not sufficiently resolved. In addition, the problem of crime control in the field of posthumous organ and tissue donation is aggravated.

Such criminal acts may take place by violating the statutory procedure for the transplantation of human organs or tissues. In addition, they may be related to: 1) illegal trade of human organs or tissues; 2) participation in a transnational organization engaged in such activities; 3) the murder of a donor before the use of his organs or tissues after death. The first two types of criminal acts fall under the signs of a crime under Part 1, 4, and 5 of Art. 143 of the Criminal Code of Ukraine (Law of Ukraine, 2001).

However, in terms of this problem, they have special features. Thus, the specifics of violation of the statutory procedure for transplantation of human organs or tissues in such cases may be in the form of non-compliance with regulatory restrictions on obtaining consent for their use.

1. Methodology and methods

Conducting this research, we have taken into account the objectives of the study, and therefore we have used both general and special scientific methods. The first group includes the following ones: logical method, dialectical method, comparative method, statistical method, and systems analysis method.

The group of special scientific methods includes survey methods (in the form of an anonymous survey conducted in the second quarter of 2021 and covered 65 investigators) and expert assessments, testing, experimentation, method of generalizing indicators, and study and analysis of forensic documents. The main criteria for choosing the empirical material were the purpose of the study, the resonance of the studied problem in the society, and the quantitative level of accumulated facts in this sphere.

The used general scientific methods have enabled us to conduct a multifaceted study of the forensic characteristics of the offender. The comparative method, in particular, has allowed analyzing cases of the illegal transplantation of the anatomical parts in different countries to identify

typical social, demographic, moral, and psychological characteristics of the offender and to establish the possibility to use them in the pre-trial investigation of criminal proceedings of this category.

Survey methods have been used to get to know the situation with criminal offenses in the field of illegal transplantation in Ukraine and a method of generalizing indicators has been used to establish quantitative data on the state of the investigative practice connected with the transplantation of donor organs. Some forensic characteristics of a person who commits criminal offenses in the field of illegal transplantation have been found out with the help of expert assessments method, testing, experiments, and study and analysis of forensic documents.

The analysis of the obtained data has allowed establishing the norms of development and interrelation of the illegal transplantology determinants in Ukraine, as well as to single out quantitative and qualitative indicators of the characteristics of a criminal, confirming the representativeness of the results.

2. Results of the research

During the pre-trial investigation of a criminal offense, the identity of the offender or the identity of the crime victim is a key element of the forensic depiction. The offender identity is studied in various sciences, such as criminal law, criminal procedure, criminology, forensic science, etc. It is difficult to overestimate the importance of studying the identity of the offender for the science of criminology.

The study of forensic features of certain categories of criminals allows to development of typical models of offenders, so this knowledge will facilitate the process of identifying and finding a criminal, studying the personality of an accused, choosing the most effective tactics and methods of pre-trial investigation, identifying causes and conditions.

Today it is impossible to achieve a high quality of crime investigation without the use of knowledge from various fields of science and technology in the process of its implementation (Ruvyn, 2019). The urgent task of forensic science today is the need to achieve a state in which a set of tools and methods of crime investigation, in conjunction with the provisions of the science of criminal procedure, would be the only legal mechanism that can effectively ensure the solution of criminal proceedings in article 2 of the Code of Criminal Procedure (Law of Ukraine, 2019).

In the forensic literature, there are significant differences in opinion about the structure and content of the personality of the offender as a central element of forensic characteristics. Based on the analysis of

existing points of view (Belkin, 2000; Kudriavtsev, 2011; Sierhieiev, 1971; Matusovskiy, 1999), etc.) on this issue concerning crimes such as trafficking in minors, illegal adoption and substitution of children, we introduce the most acceptable, in our opinion, the structure of the forensic characteristics of the offender, consisting of the following items:

- 1) social-demographic, legal and moral-psychological characteristics, and properties;
- 2) natural connections with other elements of the forensic characteristics of a certain criminal offense.

Thus, the elements of social-demographic nature include the following: gender, age, education, profession or occupation, marital status, place of residence, social origin, social role in social-political life, civil relations, production, family, and household sphere. In turn, the indicators of moral and psychological nature include psychological peculiarities and characteristics (level of mental development and intelligence, abilities, skills and abilities, emotionality, temperament, volitional qualities) and moral qualities (interests and needs, values, attitudes to various social and moral values, capabilities and habits).

Under the signs that characterize the degree of legal awareness of the offender, it is accepted to understand his/her attitude to the law, legal behavior in the norm or pathology, etc. It is important to confirm the presence or absence of facts of past anti-social or illegal behavior (record of past administrative offenses, detention, criminal conviction).

According to the stated above, we can judge the predisposition of the individual to commit criminal offenses, alone or in a group, and about the motivation of their anti-social behavior. The act of buying and selling anatomical transplantation involves the presence of at least two perpetrators, the seller, and the buyer, as well as the recipients who receive them for themselves and the donors who have agreed to give the organ or tissue for transplantation for a reward.

However, as noted by Kozachenko O.I., an interesting experience in resolving the issue of informers has been gained in Spain, where there are no legal norms that would regulate or at least provide the possibility of using informers during illegal transplantation (Hribov and Kozachenko, 2019).

In this context, it should be noted that illegal transplantation can be performed only by a transplant surgeon with the use of appropriate special equipment and strict rules of transportation. Such specialists are divided into the following categories: 1) doctors who have licenses and they operate because they have a strong need of financial resources; 2) doctors who have a license and have the funds, but participate in an illegal operation, because transplantation is a hobby in life, but this type of surgeons is a very rare

phenomenon; 3) a doctor, from whom a license has been taken away for another type of offense; 4) a final year student who, for known or unknown reasons, has not received a diploma or certificate. The second case is when a certified doctor could not find a job according to the diploma or just has difficulty getting a job (Vilks, 2005).

Organized crime groups are diversifying their criminal activities and therefore have the opportunity to respond quickly to the situation, without forgetting to make a profit in new markets and detect new illegal sources, which in the future give them huge profits and is not associated with a high risk of detecting criminal activity.

That is why the illicit trafficking of human organs and tissues is very attractive and profitable, because of high demand and a constant shortage of supply, as organs can be taken from living or non-living without consent of relatives or can be abducted from the morgue under the guise of legal medical activity.

Today, the Unified Register of Judgments contains only one justifiable sentence concerning illegal transplantation (Judicial bodies of Ukraine, 2012). Thus, according to the verdict of the Ivano-Frankivsk Town Court of Ivano-Frankivsk region from January 20, 2014, it is stated that in the actions of the accused PERSON_7, PERSON_8, PERSON_9, PERSON_10, PERSON_11 there is no corpus delicti provided for in parts one and five of Art. 143 of the Criminal Code of Ukraine, as the latter did not perform transplantation, which as a special method of treatment is to transplant a recipient of an organ or other anatomical material taken from a person (donor-corpse), but removed anatomical materials for further manufacture of bioimplants.

The removed tissues from the dead were collected all over Ukraine, sent to Germany, and ready-made bioimplants were received from there. Relatives of the deceased were asked if they agreed to remove cartilage or bone elements when dissecting the corpse. Relatives of the dead were promised quick and free autopsy procedures so that they would not oppose the removal of tissues. There was no specific package of documents for these seizures. The forensic experts who performed these procedures do not consider themselves guilty. It is said that the discrepancy could only be in the technical non-compliance with the law.

However, in relation to the actions of the accused PERSON_7, PERSON_8, PERSON_9, PERSON_10, PERSON_11 incriminated in the indictment, which were expressed in the fact that the latter by deception selected consent to take anatomical formations, tissues, components and fragments of victims, without informing them of the possible number of anatomical formations that will be removed, taking the consent of persons who do not belong to the category of close relatives of the deceased and other

persons who undertook to bury the deceased and have a death certificate, getting illegal benefits (funds) in envelopes for hard working conditions, whether it is possible to trade anatomical formations, or any other actions brought in the prosecution, which the prosecution considers illegal – in this case, the pre-trial investigation body during the pre-trial investigation have to determine the correct legal qualification of these acts and incriminate the accused, in case of corpus delicti, the relevant articles of the Criminal Code of Ukraine, as these acts of the accused in the removal of anatomical formations were carried out without a specified purpose (transplantation), so these acts are not covered by Article 143 (Judicial bodies of Ukraine, 2012).

This may indicate gaps in existing legislation and the need for additional changes that could prevent any misconduct and manipulation in this area. The presence of only one sentence in the Unified Register of Judgments indicates the high latency of this type of crime, as well as the complexity of the evidentiary procedure during the pre-trial investigation because, given the situation with supply and demand in the transplant market, the issue of illegal organ transplantation of poor countries (including Ukraine) is a serious problem (see Fig. 1) (Khidhir, 2019).

MOVEMENT OF DONOR KIDNEYS AROUND THE WORLD

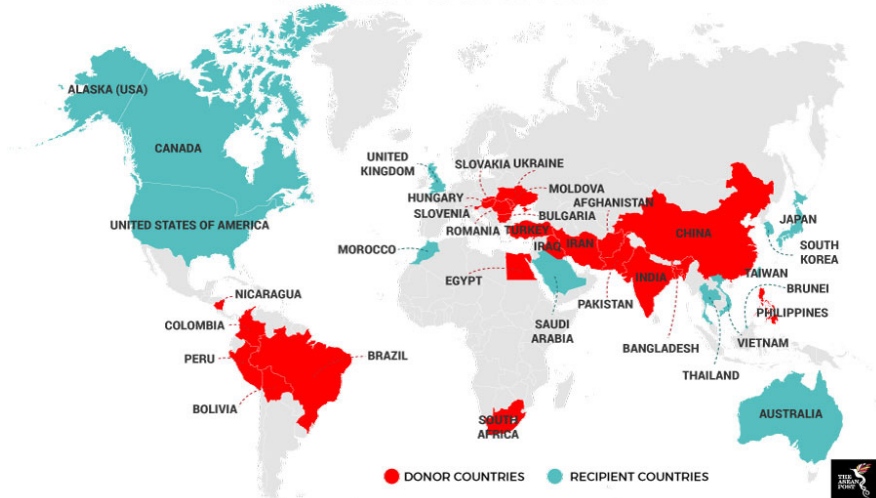


Fig.1 The survey of respondents revealed that a characteristic feature of the perpetrators of such crimes is that they are committed by males – 78.3% and females – 22.7%.

The next important social-demographic feature of the forensic characteristics of the offender is his educational level. In science, it is believed that a low level of education is more indicative of the criminal behavior of the person. However, in our case, the criminal factor is not the low level of education of criminals, but the level of personal culture associated with it, which is determined, in addition to education, by the content of spiritual needs, leisure, and social-political activity.

The study found that higher education had – 82.3%; incomplete higher education – 5.2% and secondary special education – 7.1%; complete secondary education – 4.2% and no education and prior work experience – 1.2%. Thus, it can be argued that those involved in the commission of criminal offenses related to illegal transplantation are characterized by a highly educated presence of a significant arsenal of medical knowledge, which is inherent in medical professionals, including heads of departments, doctors.

Still, on the subject of social-demographic components, there is an interesting trend when a married person is more prone to committing official crimes than an unmarried person. At the same time, the criminological literature unanimously recognizes that the presence of a family stabilizes a person's behavior, strengthens his social and role functions, and, therefore, is a deterrent to committing a crime. As noted by I.V. Kyrlyuk, and we can agree with this, medical workers who are married are most prone to committing official crimes, because low incomes of doctors to support and meet the needs of the family can be a catalyst for extortion, bribery, corruption, etc. (Kyrlyuk, 2012).

Our study found that a significant proportion of criminals were in a family relationship of 34.2%, were not married – 61.1% and divorced 4.7%.

Regarding the social role of a person in society, our study showed that the most criminal offenses are committed by employees of medical institutions – 42.9%, followed by persons holding managerial positions – 15.2%, students – 7.8%, persons who do not work anywhere – 11.5%; temporarily not working – 9.9% and entrepreneurs – 12.7%.

Regarding the geography of the crime, it should be noted that these criminal offenses are not tied to the place, as they are committed both in cities (67.5%) and in villages (31.2%) and other settlements (1.3%).

3. Discussion

Nowadays, a medical professional, who can act as a seller and a buyer, is a person from medical personnel engaged in the transplantation of organs or tissues and who violates the established procedure. These are usually

people aged between 25 and 50, with higher or secondary medical education. This is primarily because most criminals are formed as individuals with significant life experience and relevant skills. As a rule, these persons are appointed to responsible positions when they have significant work and life experience.

As a rule, they illegally transplant anatomical parts being a part of a group by prior conspiracy or as part of an organized group created to commit the specified criminal offense. Groups can be formed both within one institution (sale of anatomical materials by the chief medical officer with the help of service personnel) and within several organizations (sale of anatomical materials using morgues, private medical companies, etc.).

The nature of illegal offenses connected with transplantation indicates the group nature of criminal acts, which was confirmed among the respondents (87.3%). These criminal offenses are committed by several criminals or criminal international groups, which include persons of different fields of knowledge, professions, and social status, and perform, accordingly, clearly assigned functions for the preparation, commission, and concealment of these crimes.

However, the efforts of organized groups are coordinated and cover several operations and logistics functions, in particular: organizing a trip to another country: booking tickets, opening a visa, making passports; hotel reservation; development of relevant documents; financial transactions; medical records; blood and tissue testing, etc.

Thus, it was found that forensic characteristics are important for the pre-trial investigation of criminal offenses related to the illegal transplantation of anatomical materials. Knowing this characteristic will help the pre-trial investigation authorities to plan and carry out investigative (search) actions of particular criminal offenses. Filling the gaps in the existing legislation and understanding the need for additional changes would prevent any wrongdoings and manipulation.

This is considered to be a crucial task in the development of the transplantation market in Ukraine, as our country is listed among the donor countries, not recipients. Having basic information about the criminal who commits illegal transplantation will ensure better and faster investigation. The study provides an opportunity to form a forensic portrait of a person who commits criminal offenses in the field of illegal transplantation, as follows: a male person aged 25-50 years, single, with a complete higher education, working in medical institutions and organizations, having special medical knowledge and skills.

Conclusion

Transplantation is comparatively new and that's why a difficult and not fully regulated field of crime procedures. It is for sure the worldwide problem which is especially grave during unstable social and political situations. The main studied by us aspect is the work of pre-trial investigators and prosecutors.

Based on the stated above, it can be noted that knowledge of the forensic characteristics of a criminal person committing criminal offenses related to illegal transplantation of anatomical materials will enable pre-trial investigators and prosecutors to perform their functions more actively: to identify and assess shortcomings in the planning and implementation of the investigation of these criminal offenses.

Thus, our study provided an opportunity to form a forensic portrait of a criminal who commits criminal offenses in the field of illegal transplantation, which includes the following characteristics: a male person aged 25-50 years, single, working in a medical institution or organization, has complete higher education, as well as special medical knowledge and skills. However, the geography of these criminal offenses showed that the location for illegal transplantation is irrelevant.

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