


ISSUES OF INVESTIGATION OF CRIMES IN THE FIELD OF MEDICAL TRANSPLANTOLOGY

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Article Info	ABSTRACT
<p>Article history: Received July 05, 2024 Revised July 25, 2024 Accepted Aug 05, 2024</p> <p>Keywords: transplantation, human rights, investigation, organs', transplantation, clinical approach, medical error</p>	<p>The fourth generation rights, which include somatic rights, evoke several controversies. One of the rights is considered human right to organ and tissue transplantation. Issues of investigation of crimes in this sphere are discussed in the article. The author notes that there are a number of problems, including moral and legal ones, in the investigation of these acts. It is necessary to develop high technologies that will improve the level of medical knowledge of crime investigators, as well as, introduce a system of independent examination to solve most of the legal and forensic problems; otherwise, there is a high probability of abuse, both by doctors and by criminal groups.</p> <p>This is an open-access article under the CC-BY 4.0 license.</p> 

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INTRODUCTION

When investigating medical crimes in such a specific area as transplantology, the theoretical and practical recommendations developed by criminalistics, forensic medicine and the practice of investigating certain types of crimes are quite applicable. Until now, works of criminalist-scientists and forensic doctors Y.P. Ishchenko, M.M. Yakovlev, O.A. Kustova, N.S. Karpov, Y.D. Sergeev, S.V. Yerofeev, etc. have been devoted to methods of investigating crimes in general and, in particular, medical crimes.

One of the most developed systems of general and private methods is the system of methods of preliminary investigation in criminal cases. It consists of:

- 1) Methods for solving typical investigative problems arising in cases of various categories;
- 2) Methods of investigation of certain groups of forensically similar types of crimes
- 3) Methods of investigation of certain types and varieties of crimes [1].

One of the initial investigative actions in cases of medical crimes under Art. 133 of the Criminal Code, which provides for liability for the illegal removal of human organs or tissues, is an examination of the scene of the incident, the corpse of a deceased patient, of medical documentation (patient record) and the seizure of this documentation.

External examination of the corpse at the place of its detection is carried out by the criminal prosecution body (investigator) with the participation of a forensic medical expert, and in the absence of such, with the participation of another doctor. Here the question arises: who is a forensic expert, which department does he report to, what are his competences, rights and obligations?

METHODS

A research method based on theoretical review and case analysis to discuss the investigation of crimes in the field of illegal organ transplantation. This method involves a review of scientific literature and works of forensic and forensic experts, such as those written by Y.P. Ishchenko, M.M. Yakovlev, and O.A. Kustova, which discuss methods of criminal investigation in general and medical crimes in particular. The study also reviews the practice of real-life case investigations, including the analysis of investigative steps such as crime scene examination, autopsy, and review of medical documentation. In addition, the authors highlight the problems encountered in the investigation, such as the lack of cooperation from medical institutions and bureaucratic obstacles, as well as the need for cooperation between law enforcement agencies and medical experts during the investigation process.

RESULT AND DISCUSSION

An analysis of the investigative practice shows that neither an employee of the criminal prosecution body (interrogator, investigator) nor a forensic expert go to the scene of the incident (to medical institutions), examine the corpse and medical documentation, and they do not take measures for collection and consolidation of evidences. This also happens because the administration of the medical institution does not notify the investigating bodies about the death of patients and does not incur liability for cover-up of these crimes.

Article 241 of the Criminal Code of the Republic of Uzbekistan speaks of responsibility only for the concealment, which was not promised in advance, of a grave or especially grave crime; but medical crimes, even with grave consequences, do not belong to these categories of crimes.

On the contrary, without waiting for the results of the investigation of the criminal case, the heads of hospitals always take the position that the doctor is not guilty of the death of the patient on the day of his death or on the second day. Therefore, medical crimes are mostly disclosed because of patient's complaint or, in the event of their death, by their relatives.

Meanwhile, according to the information of the Ministry of Internal Affairs of Kazakhstan, an organized criminal group in the field of human organ transplantation operated in the territory of the republic in 2017-2018. Uzbeks, Kyrgyzs and Ukrainians in need of money gave their kidneys.

So, in Kazakhstan, police officers arrested A. Donbai, the chief doctor of the City Clinical Hospital No. 1 of the city of Shymkent, and held him criminally responsible for 2 articles of Criminal Code of Kazakhstan: participation in a transnational criminal group and illegal removal of human organs [2].

During the pre-trial investigation, it was found that they attracted citizens of Uzbekistan, Kyrgyzstan and Ukraine as donors, who had to sell their kidneys due to their difficult financial situation. The recipients were well-off people from the far abroad, mainly Israel.

There is now an activation of cases in this field. In this connection, Prof. Y.P. Ishchenko notes that “there are the growth of crime, especially organized crime, the more frequent events of illegal influence on witnesses and victims by the guilty persons and their connections, difficulties in the material and technical support for law enforcement agencies against the background of the active use of the latest achievements of scientific and technological progress by criminal elements. they put before scientists and legislators the question of the need to protect the interests of law-abiding citizens through the use of non-traditional means of obtaining forensically significant information during the investigation of crimes” [3].

Ukrainian scholars N. Karpov and Ye. Aleksandrenko also write about it. They note, “In modern conditions of combating crime, counteraction to the disclosure and investigation of crimes has become widespread and endangers seriously to the proper performance of state’s law enforcement functions. Insufficiently effective and timely overcoming of that counteraction is one of the main reasons for the deterioration of the performance of law enforcement agencies. A fairly high level of latent crime, a significant number of undetected crimes, among other reasons, is also explained by the successful counteraction of the criminal environment to the activities of law enforcement agencies” [4].

Favorable conditions for counteracting the investigation of these medical crimes are created because, as already noted, the investigators do not go to the scene of the incident, the medical documentation is not seized, as a result, it makes possible for the suspects to falsify it and enter unreliable information into this documentation. The suspects in these cases are not detained, arrested, interrogated. They are not caught in a crime “while the scent is still hot”.

The investigation, in most cases, ends with a known result: forensic experts give a conclusion that the doctor is not guilty, and the case is terminated due to the absence of an event or corpus delicti, without carrying out any investigative actions to expose guilty persons. Criminal cases are initiated with a great delay based on victims’ complaints, and not according to reports from the administration of the hospital where the patient died.

Some of the guidelines developed by O.A. Kustova, are applicable in the investigation of medical crimes against the life and health of patients. When investigating such crimes, a number of basic circumstances are subject to proof:

a) Event of crime.

The time of the crime - it can be any time of the day, depending on the circumstances. Most often this happens at night, when the duty personnel remains uncontrolled and can accept an illegal patient, or act with a patient who is legally in the hospital as he pleases, or even with no worry take him out to the place designated for the transplant operation.

Crime scene – as a rule, medical institution.

Methods of direct perpetration - actions aimed at transplantation (weaning) of internal organs and tissues, leading to death; turning off the devices that temporarily support the functions of the human body, again at night, uncontrollably and without witnesses; signing of the relevant medical working documents and protocols.

Methods of cover-up – forging signatures regarding a voluntary permission for organ and tissue transplantation; destruction of documents that based on the appropriate surgical procedures were carried out.

b) The culpability of person in the commission of a crime – deliberately, with express malice.

c) The nature and amount of damage caused by the crime – damage to property, physical and moral damage, the amount that the court establishes.

Well-established interaction and cooperation between all law enforcement agencies, removal of artificially created barriers to information exchange and overcoming interdepartmental disunity are necessary for effectively investigation of such crimes, as, indeed, any other category of crimes.

It is specific to the investigation of medical crimes that the criminal prosecution officer (investigator) must be in permanent contact with a medical specialist at all stages of the preliminary investigation. But, this is not always possible if we take into account the corporate solidarity of medical workers, their unwillingness to admit, analyze and correct medical errors and provide assistance to judicial power to bring the guilty to justice.

In many cases, surgeons deceive in order to persuade the patient and his relatives to an expensive and deadly organ transplant operation, introducing them at huge costs. This fact confirms the reluctance of medical workers to admit and correct their mistakes, as well as to cooperate with the investigation. In addition, what will be its result – they do not care, since their income comes from the profit from the transplantation of illegally obtained organs.

This is a criminally thoughtless and absolutely unacceptable attitude to one's work and its results.

Understanding the legal consequences of the death of a patient due to ill-considered, unjustified surgical intervention, abroad doctors refuse operations for illegal

organ transplantation [5]. However, doctors in our republic do not feel any legal consequences due to the death of a patient as a result of a "successful" operation, since the level of legal awareness of the population and doctors, in general, as well as the low level of medical knowledge of investigators leads to irresponsibility

M.M. Yakovlev brings an approximate list of questions that are put before the accused in cases of medical crimes:

1. Has the accused diagnosed the patient correctly?
2. Has the patient been examined in full in the conditions of a medical institution?
3. Was the patient's treatment consistent with the established diagnosis?
4. Was the treatment applied to this patient contra-indicated?
- 5) Were alternative treatments possible?
- 6) Was the patient's post-surgical care and treatment performed correctly? [6]

Moreover, one more question is asked for:

Has the patient been informed about the mortal danger of the proposed surgical intervention, has there been a written agreement between the patient and the medical institution indicating the rights, obligations and responsibilities of the parties for non-compliance with the terms of the agreement?

Considering the concrete circumstances of the case, these and other methodological recommendations should be taken into account in the investigation of criminal cases on medical crimes in the field of illegal transplantation.

CONCLUSION

In conclusion, the investigation of crimes in the field of illegal organ transplantation faces a number of challenges, including moral, legal and technical obstacles. This study shows that the lack of cooperation between law enforcement agencies and medical institutions, as well as difficulties in accessing and verifying medical documentation, exacerbates this situation. Improvements in medical and forensic technology and a more coordinated investigative approach are needed to address these issues. Without these measures, there is a high risk of abuse, both by medical personnel and organised criminal groups, which could undermine the integrity of the health and legal systems.

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