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SOME FEATURES OF THE FOREIGN NATIONAL PRACTICE OF REGULATION OF TRANSPLANTATION BY CRIMINAL LAW

Transplantation of human organs, tissues and cells in the Ukraine is not regulated by sufficiently developed legal system and needs to turn to foreign experience. The purpose of the article is to study the experience of developed countries on the legal regulation of transplantation.

Legislation of many countries prohibits human organs trade. However, some states avoid tough policy regulating organ donation and enshrine mechanisms for providing compensation to donor for certain anatomical material.

In view of the above, Ukrainian legislator should determine priorities: the development of transplantation or integration into the European Union, which categorically refuses to regulate this matter except banning it.

According to experts, supply of human organs and tissues from the countries of the “third world” (Argentina, Brazil, Honduras, Mexico, Peru, Paraguay) into Europe is highly popular. According to American experts, the market of organs exists in some countries of Latin America.

In France, Poland, Bulgaria, the Czech Republic, the Netherlands, Finland, Sweden, the United Kingdom, Algeria, Argentina, USA, India, Bogota,

according to data studied by NCB of Interpol in Ukraine, there are no reported cases on the illegal sale of human organs, which police in these countries has already called “criminal phenomenon”. This is determined by the fact that these countries, especially in Eastern Europe, are transit territories for moving donors or their anatomical components.

The use of criminal norms in these circumstances actually resulted in the application of the criminal law by analogy, contrary to the principles of criminal justice and prohibited Part 4, Art. 3 of the Criminal Code of Ukraine.

Ignoring scientific provisions of the theory of criminalization has led to gaps in criminal law and reduction of the quality of the regulatory tool of crime prevention. The low efficiency of application of Art. 143 of the Criminal Code of Ukraine demonstrates the need for improvement, while non-application of Art. 144 and Part 3 of Art. 149 of the Criminal Code of Ukraine favors decriminalization.

Thus, in order to scientifically substantiate structural changes in the criminal law of Ukraine, criminological analysis of crimes related to transplantation and use the experience of foreign countries on the legal regulation of transplantation should be implemented.