

Human body donation in foreign legislations

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Background: Investigation of the features of foreign legislations governing the donation of human body is required to solve the issues pertaining to the legal regulation of body donation in Ukraine.

Purpose: To examine the features of foreign legislations governing the donation of human body for research and educational purposes.

Materials and Methods: Systemic-and-structural and comparative legal methods of research were used. In addition, relevant regulatory foreign legal acts and works of foreign scientists were examined.

Results: A comparative legal study of national legal frameworks on body donation with regard to some foreign countries was conducted. The main legal provisions regulating the procedure for handing over the cadaver to and its use in research and educational institutions were examined.

Conclusion: The most commonly used grounds for handing over the cadaver to relevant institutions for research or educational purposes were determined.

Introduction

To date, Ukraine does not have legal provisions regulating post mortem human body donation for research and education. The only legal act related to regulation of cadaveric tissue and organ donation in this country is the Law of Ukraine on Transplantation of Human Organs and Other Anatomic Materials of 16.07.1999 [1]. Under article 16 of the Law, “the individual has the right to make arrangements for post mortem handing over his or her organs and other anatomic materials to research, medical or educational institutions.” The issues related to the procedure of such handing over or disposal of the above human organs, tissues or the body are not yet legally regulated in Ukraine. However, medical educational and research institutions are in great need for anatomico-pathological materials for research and educational purposes, whereas the cadaveric materials that have been kept at these since the Soviet era should be disposed.

The purpose of this article was to examine the features of foreign legislations governing the donation of human body for research and educational purposes.

Materials and Methods

The relevant legal framework, empirical and theoretical bases were examined. In particular, we examined regulatory foreign legal acts, relevant legal practice and works of domestic and foreign scientists like I. Gorelyk,

S. Goriunova, L. Julian, B. Ieshmurotov, A. Iskandarov, D. Kuldashiev, M. Prakash, V. Stetsenko, Z. Salnokov, S. Rokad, S. Taylor, V. Kryshko, Shulha, and others. Systemic-and-structural and comparative legal methods of research were used.

Results

Provisions for legitimating the donation of human cadavers for education and research can be found in the legislations of most foreign countries. Of importance are legal regulation of ethical considerations, definition of the grounds for the origin of right of ownership in respect of the donated cadavers, regulations on the handing over and use of cadavers, exchange of cadavers among educational and research institutions, disposal of cadavers, and etc.

Australia

A number of universities and research organizations in Australia are licensed to accept body donation, and, under the Australian law, an individual can make arrangements with any of these located in his state to donate his/her body after death. This requires completing and signing the relevant donor forms by the individual and his/her next of kin. Depending on the rules of the university, there are

a number of reasons why the body may be rejected or disqualified from donation, including the following: cause of death was due to a significant disease; an autopsy was performed; the body is too far away from the university, etc. The university or research organization will meet part or all of burial expenses [2].

The United Kingdom

The process involving communicating with potential donors and giving consent for body donation is governed by the legislation: detailed information about the storage and future use of the body for potential donors must be provided to enable them to come to their decision, and, in order to make a bequest of a body for anatomical examination, education and training, they are required to complete and sign special donor bequest forms. No guarantee can be given that a bequest will be accepted. Bequeathals are normally only accepted from those residing within approximately 50 miles of the educational or research institution. In addition, certain medical conditions may lead to the offer being declined [3].

India

Many people in India donate their bodies after death by signing an approved form with two accompanying witness signatures.

In 1948, the Anatomy Act was passed in all of India's states. This allows bodies to be donated by the donor and bodies to be claimed for medical and research use if there is no claim to one's body within a 48-hour timeframe. India has specific guidelines for accepting bodies for donations. Donations that are not deemed suitable include bodies with HIV/AIDS, hepatitis (A, B, and C), or skin diseases, etc [4].

Italy

Although a specific law regarding body donation is not present in Italy, some references clearly permit the use of cadavers for anatomical dissection and, in some Italian Universities, anatomical dissections are still performed according to these rules. The provisions of "Regio Decreto" no. 1592 of August 31 1933 about University Education state that "cadavers ... whose transport is not performed at the expense of relatives up to the sixth degree or by confraternities or associations who may have made commitments for the funerary transport of associates and those [cadavers] coming from medico-legal investigations (apart from suicides) and not claimed by relatives in the family group, are reserved for teaching and scientific study". According to Decree of the President of the Republic no. 285/1990, delivery to the university Anatomical Institutes of cadavers for teaching and scientific study must occur after the period of observation prescribed of 24 hours after death. In addition, the acquisition and conservation of cadavers and anatomical specimens must be authorized

by the Local Health Authority. Unfortunately, in Italy, specific law proposals concerning the donation of bodies for anatomical education and research have been not yet approved [3].

Spain

The body donation procedure has been defined by the Spanish legislation. A potential donor's informed consent to post-mortem donation of the whole body or of specific organs is an essential element of the procedure. The individual cannot offer both his/her whole body and individual organs. The special donation forms should be completed, witnessed by a friend or neighbor, and signed. A donation may be not accepted if amputation occurred; the deceased had certain infectious diseases or was emaciated or obese, etc. Death certificates will be prepared and handed to the relatives in about 5 days after the death confirmation papers have been presented to the Justice of the Peace for the official registration of the donor's death.

No anatomical institution in Spain is taking money from donors for covering expenses; on the contrary, expenses for transportation and cremation are covered by the receiving institution. The legislation in Spain does not provide for monetary reward for donors [5].

The Netherlands

It was emphasized in the provisions of the Burial and Cremation Act of 1991 that human corpses can only be dissected in the interest of science or scientific education. Dissection can only take place (a) when the deceased have bequeathed their bodies for this purpose, and (b) with the written permission of the mayor, which has to be issued within three days. By the acceptance of a corpse for dissection the anatomical institutes are obliged to pay the costs for the cremation and final disposition of the remains. The ashes of body donors are to be scattered on special fields for this purpose. The body donor contract is tied to a particular institute. However, Dutch law permits a dissected body to be given to another party if by this means the wish of the deceased to be dissected in the interest of science or scientific education can be realized. The contract may have provisions for the exchange of body parts between the Dutch anatomical institutes. The anatomical institutes do not guarantee the acceptance of a corpse. The body must be delivered to the anatomical institute within 24 hours after death. In addition, the reasons for rejection may be as follows: death abroad, severe damage to the body, severe obesity or being underweight, contamination with a contagious disease, or severe burns [3].

Germany

Selling anatomical specimens for profit is prohibited in the German legislation. Individuals donate their bodies after death to the institutes of anatomy to ensure medical education and clinical training. The donation of the body is

regulated in a specific legacy. The specific legacy contains the donor's agreement or objection to the preservation of parts of his or her body as permanent specimens for the anatomical collection. These parts of the body are then not buried. A national body donation program was founded in 1982 [6].

Portugal

The Portuguese law also mentions "bequest for teaching and research". Bequesting the body for teaching and research does not include public exhibition of the whole or parts of the body. Informed consent is necessary for body donation. Organizing courses or workshops that use donor bodies or body parts to make profit would not be ethically or legally acceptable. Exhibiting donated cadavers at human anatomy exhibitions is not prohibited in the legislation of Portugal [3].

The Unite States

There are many private body donation programs in the Unites States. Each of these private programs accepts bodies from certain surrounding areas. Generally, programs will not accept bodies that are positive for Hepatitis (A, B, and C), HIV/AIDS, history of illegal drug use, or fall within an extreme category for their body mass index [7]. The legislation allows the donor to select which program will receive the donation. In the absence of the donor's valid pre-mortem consent for postmortem donation, the legal next of kin is the only person who can give consent for cadaver donation.

Turkey

Until recently, the major source of cadavers has been the unclaimed bodies from mental and state hospitals. At present, the "Regulation Concerning Scientific Research on Human Cadavers" defines the latter as "those who make testaments for their bodies to be donated to scientific research, and those who die while in a medical facility and are brought to the morgues of such institutions, can be used for scientific research at Higher Education Institutions if claim is not made by family or next of kin within 6 months of the date of death, provided that the person was not in any way a subject of judicial prosecution, unless otherwise stated in their will". Departments of Anatomy at Faculties of Medicine are responsible for taking measures for storage, usage, keeping records and appropriate burial of the cadavers [3].

France

The principles of indivisibility of the human body, its respect, its non commerciality, and the need for informed consent for each donation were confirmed by a decision of the Constitutional Council in 1994. According to Article 16-1-1, Paragraph 2, of the Civil Code, the remains of deceased people should be treated with respect, dignity,

and decency and exhibitions of cadavers for financial gain contradict this requirement [3].

Switzerland

By Swiss laws, the use of human bodies is defined in different ways. Nevertheless, some basic principles apply, in that informed consent is necessary for donation and the human body or body parts do not serve to make profit. Informed consent is given while the donor is still living. Nevertheless, if a potential donor has not announced his/her will, the family can still declare that the deceased relative is willing to participate in a donation program. Prior to any use, a project needs to be defined and approved by the local ethical committee [3].

Japan

The legal basis for cadaver dissection performed by medical students is the Law Concerning Cadaver Dissection and Preservation enacted in 1949. It stipulates that dissection must be conducted in appropriate places (in anatomy dissection rooms), with instruction by appropriate teachers (by professors and associate professors in anatomy), and for appropriate purposes (to serve for medical and dental education). The Body Donation Law was enacted and enforced in 1983.

Conclusion

Almost all foreign legal acts related to body donation regulations in foreign countries require body donation to be altruistic and ethically acceptable. A donated body can be used for a number of purposes, which may include research, education and exhibiting at human anatomy exhibitions.

In foreign legislations, the main grounds for handing over the cadaver for research or education are as follows: a will made by the testator; consent given in writing in the presence of witnesses or relatives; statement of consent given in writing and not signed by witnesses or relatives; and/or the unclaimed bodies from mental and state hospitals.

The most common grounds for non-acceptance of a body donation are infectious diseases; history of a severe disease; severe damage to the body; history of illegal drug use; over- or underweight body; the body is too far away from the research or educational institution, etc.

The research or educational institution is responsible for taking measures for burial of the cadavers.

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