

Chinese Criminal Law Associated with Human Organ Transplantation Crimes

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Abstract—In China, comprehensive criminal law system is not established about human organ crimes. At present, many countries and regions in the world has established the legal system about the organ transplantation, brain death and body donation which is in great need in China to relieve graft shortage. It is necessary to study from these countries and regions about organ transplantation and the related aspects of the basic legislation content.

Keywords—*criminal law; human organ transplantation; crimes; law construction*

Now that organ transplantation has not been stipulated in Chinese present criminal law, under the condition of organ transplantation in the practice of for some involved organ transplants of criminal behavior, criminal law can only be convicted and punished in accordance with the stipulations of the existing some, but not free of these regulations. This article will present some of the major crimes against the criminal law related to organ transplants.

I. THE STATUS OF ORGAN TRANSPLANTATION IN CHINA

Due to a serious imbalance between supply and demand ratio of human organs, not only has prompted many countries through the establishment of procedures and systems in order to increase supply, but also stimulate the sale of human organs.

A. *The concept and constitutive requirements of medical accident crime*

At present, has not stipulated in China's present criminal law crime, under the condition of organ transplantation will present some of the major crime in criminal law related to organ transplantation to introduce. The concept and constitutive requirements of medical accident crime refers to due to a serious irresponsible of medical personnel, medical personnel serious injury or death caused by behavior. Medical accident crime has the following aspects of elements.

This crime subject is the medical staff [1]. This is a kind of special subject. It includes medical personnel, epidemic prevention staff, nursing staff, agents and other technical personnel. It is subjective fault. Director of aspect of the crime of medical accident only faults, deliberately not constitute this crime. According to the provisions of the criminal law in our country, it includes fault negligence fault and overconfident

negligence two cases. The fault of both medical accident crime and the objective aspects of crime show the serious irresponsible, causing serious human health injury of patient behavior or to see a doctor in death. Specifically include the following aspects: one is the medical staff in medical care has serious irresponsible behavior, such as using the wrong drug, mistyped blood and an error condition, et al. Second is the behavior of severe human health caused by irresponsible of patient person or to see a doctor in death results. A third is medical personnel death or serious irresponsible behavior and of patient health severely damaged the results between causality in criminal law. The object of this crime is complicated, which is normal management activities of the medical units and medical personnel's life and health.

II. THE MEDICAL ACCIDENTS IN ORGAN TRANSPLANTATION

Medical malpractice refers to the medical staff due to violation of the rules and regulations, such as medical care routine malpractice caused by the accident, the consequences are patient death, disability, tissue damage leads to dysfunction. Medical accident is not necessarily constitutes the medical organ transplants of criminal legislation research. Treatment accident crime, but the medical accident crime needs to constitute the premise of medical accident conditions. Organ transplantation is a high risk of medical surgery for other normal operation, the operation risk is obvious. Thus, organ transplant failure, cause patient death, disability, or severely damaged the normal function of organ or tissue and the reason may be that complicated, not universally regarded as medical accidents, but from a doctor or medical treatment unit with and without fault on the subjective and objective point of view for exploration. Specifically: belongs to the scope of hospital make a diagnosis and give treatment of acute and dangerous, heavy, have confirmed or can be diagnosed, pretended to shuffle, helped, or in our hospital's medical condition is limited, but the doctors didn't check the patient without processing, irresponsible to patient referral, change one's major, delay or loss of medical staff rescue treatment timing and causes death or severe physical health injury of patient results [2].

B. *The concept of criminal offense of negligence and composition.*

The doctor on duty AWOL or careless work understand the patient's medical history, not carefully check the patient,

engaged in sloppy, caused the death or serious damage to the patient's health. In organ transplantation receptor transplant surgery soon, still needs special care, nursing work irresponsible, observe the illness is not careful, not timely wards, condition changes found not in time, causing serious consequences, and so on.

These behaviors are the manifestation of medical accident crime in organ transplantation. For these actions, as long as once produce harm result, namely, make crime of medical accident, shall be convicted and punished in accordance with the stipulations of article 335 of the criminal law in China.

The crime of illegal medical practice is a person who has not obtained the doctor qualification of illegal medical practice, if the circumstances are serious behavior. The subject of this crime is general subject, namely reach criminal responsibility age, can be a man with a criminal responsibility this crime subject of crime. This crime subjective aspect is intentionally, namely person knowing you have made the doctor qualification, but in practice in order to seek illegal interests. The objective aspects of crime show the behavior person obtained the doctor qualification before cases, illegal medical practice, if the circumstances are serious behavior. Actors practicing ways mainly have the following kinds: one is for the doctor or pharmacy sitting on the judgment seat. It is listed on its own or affiliated organizations on the street, the villages and towns medical and health institutions and other units in practice. Flow three stalls in the bazaar is a doctor, medicine and so on. Actor in what way does not affect the establishment of this crime.

C. Circumstances influence

If the circumstances are serious, mainly including the following: no basic knowledge of medicine and pretend to be a doctor to see a doctor for others, delayed treatment. Medical conditions can't meet the related basic standards stipulated by the state. It has not yet obtained the doctor qualification for others to see the doctor after the relevant departments to investigate and punish the still don't repent. Forge, alter, sell and transfer lend the "practice license of medical institution". The use of medical personnel engaged in the work of the medical care. Charging standards set their prescriptions, the illegal profit large amount of behavior and so on. The object of this crime is complicated, which not only violates the clinic staff's life safety and health, also violated the national management system of medical and health work. Emergency actions the resistance theory not human organs for transplants has its theoretical basis, the existing legislation on "informed consent" or the victim commitment theory as the important human organ transplant legal judgment standard. It is based on the informed consent of the donor organs which usually are associated with human organs of criminal illegality of behavior. Criminal law amendment will organize others to sell human organs for criminal behavior regulation, the illegality is violation of human organs "commercial ban", rather than the destruction of the market order, therefore group betray others organs act doesn't constitute crime of illegal business.

The concept and constitution of intentional injury crime of intentional injury, refers to the act of illegal intentionally damage the health of others. The subject of this crime is

general subject, which reaches a certain criminal responsibility age of criminal responsibility and can become the subject of this crime. Fault cause mayhem, it is to point to negligence injury body and cause other people seriously injured. The main characteristic of this crime is: first, in terms of the object, this crime and intentional injury, the object of infringement is the health of others. Second, this crime in the objective aspect performance for illegal behavior of damage the health of others, the behavior of the person not only have caused others harm as a result, practical and claim the damage reach the level of serious injury, otherwise, can only be tort, and does not constitute a crime. Again, this crime subjective aspect can only be negligence, including negligence fault and overconfident negligence.

D. Criminals related to organ transplantation

The organ transplantation is the mayhem of intentional injury and negligence. Practice, associated with organ transplants the mayhem of intentional injury and negligence realized basically has the following several kinds of forms: because of the uncertain source of donor organs to be used for transplantation, cause infection in patients with other diseases or health decline further. Organ provider, for example, people with HIV/AIDS, doctors did not inspect the organ provider before surgery, lead to HIV infection in patients undergoing surgery. Because of body organs or forced to gather the others steal others body organs and causes damage to others. Responsible for the implementation of organ transplant physicians know less than the appropriate time to organ transplant patients for surgery, patients with patients health go from bad to worse [3].

Knowing that patients don't need to transplant and cheat their transplant operations, its harm. For example, physicians for organ transplant human trials, because can't find voluntarily accept the suitable donor transplant operations and lie to patients, patients with damage. By patients with organ transplants intentionally removed healthy body organs. For physicians and patients have a motive, for example, for patients with kidney transplant for the purpose of revenge, intentionally the resection of the fallopian tubes at the same behavior.

E. Intentional injury crime and harvesting surgery

In organ transplant surgery, it is necessary knowing whether or not if the blood is contaminated and contains source and provider of blood transfusion for patients or organs, causing patients or organ provider of infectious disease, and so on. Behavior person to implement the above behavior with organ transplantation and causes damage to others should according to the result of damage factors, in accordance with the provisions of article 234 and article 234 of the criminal law in our country, the criteria for the conviction. The concept of intentional homicide and murder refers to the act of deliberately illegal deprivation of life. Its main features are the object of this crime is the right to life of others. Murder of object as a natural person of life, that is separated from mother, breathing, independently exists as an independent life, the society of social relations subject qualification [4]. The objective aspect of this crime is the behavior of the criminal law. The behavior of the criminal law could be shooting,

poisoning and knife cut, etc. May also be a kind of inaction, such as responsibility or obligation to treat the victim and the perpetrator conditional, able to save the victim, if it fails to perform the duty and treatment of death, the victim is not an intentional trend.

In the process of organ transplant surgery for others, deliberately not its due responsibilities make the criminal legislation of organ transplantation research into patients or organ of death. Deliberately, for example, surgical instrument left in patients or donors in the body cause of death, the patient or the donor needs a blood transfusion and responsible staff deliberately error type, led to the deaths of patients. Mandatory harvesting the organs causes death to others and others steal his bodily organs killing others [6]. For example, mandatory harvesting the organs for organ transplants or criminals associated with selling and killing are criminals. Steal the vegetative organs for selling or transplant killing vegetative state, and so on.

F. *Organ trading*

About the behavior of human organ transplantation such as organ trading shall stipulate for the crime, it has already been, go here [7]. Chinese criminal law is not its provisions for the crime, for many reasons, mainly include: Lawmakers insufficient understanding. Due to the development of organ transplant later, at the time was still in the stage of exploration, prompted by an organ transplant problem especially legal problem has not been highlighted. Due to historical and social conditions at that time, meet to lawmakers may not accurately by the social problems caused by organ transplantation, legal issues, and even though there have been some problems at the time, but because of this problem has not yet reach the level of crime, so the provisions of the criminal law is not relevant [8]. But with the development of the society, organ transplant technology has also obtained the rapid development of the related problem increasingly prominent, serious damage to the social order, the social harmfulness is growing, in order to maintain social stability, punishing crime and protecting the people, it is necessary to carry out the criminal law.

G. *Severe reality*

According to the ministry of health of people, the ministry of health and the ministry of public security has a clear attitude, for some of the medical staff involved, could sell human organs to the organization crime handed over to the justice department. In addition, the further defined on the basis of specific medical institutions and personnel, will also to punishment of agency, the agency shall impose administrative punishments against the administrative head of, at the same time doctor the qualifications of the revocation of the parties. Since this year, the ministry of health has increased the punishment of medical staff. According to the ministry of health, illegal organ transplantation by health authorities will be received punishment of hospitals and doctors. In addition, the some provinces' hospital in the case of has not obtained the corresponding qualification for organ transplant, was ordered to rectify, the hospital heart transplant qualification suspended for five years, the relevant administrative personnel by warning punishment. Due to the violation in the people's hospital of some provinces for more than ten cases of

transplantation, the ministry of health, health department of some provinces obliged to serious processing.

Before the adoption of the criminal law amendment, and more such cases to illegal business charged, object mainly renal source mediation, the medical staff are often not involved shall be investigated. In fact, in most cases, the hospital's cooperation is a key link in the process of illegal organ transplantation chain. The experts' confession to the police, the hospital's vulnerability and the interests of all parties, is the root of the industry.

The theory research is insufficient. Lawmakers about the conduct of the organ transplantation appeared opposite to criminal law regulation, first of all want to transplant this kind of behavior to have a comprehensive understanding, should not only understand its characteristics, and to understand its developing trend, and the resulting social problems. Due to organ transplantation are a kind of medical technology, medicine and two areas of law, which requires the researchers in solid skills of law under the premise of must have a certain foundation of medicine [9].

III. SUMMARY

Our country has not yet a nationwide on organ transplantation of laws and regulations [10]. Continental law system is generally divided into two forms, a separate legislation, that is a delegate with France will transplant crime separately listed in criminal law, another is a delegate with German hybrid legislation. Legislation in our country is introduced in the Macao special administrative region of the norms of human organ and tissue donation, harvesting and transplantation of, the law has the characteristics of the four aspects, and in about organ transplantation building is of positive significance to our country's legislation.

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REFERENCES

- [1] Marcia Mobilia Boumil. *The Law of Medical Liability*. 1995
- [2] Lloyd R. Cohen. *Increasing the Supply of Transplant Organs: The Virtue of a Futures Market*. *Geo Wash L Rev*.
- [3] Ohnuki-Tierney E. "Brain Death and Organ Transplantation: Cultural Bases of Medical Technology". *Currnt Anthropology*. 1994
- [4] Radecki CM, Jaccard J. *Psychological aspects of organ donation: A critical review and synthesis of individual and next-of-kin donation decisions*. *Health Psychology*. 1997
- [5] Scheper-Hughes N. *Truth and Rumor on the Organ Trail*. *Natural History*. 1998
- [6] Sharp LA. *Commodified Kin: Death, Mourning, and Competing Claims on the Bodies of Organ Donors in the United States*. *American Anthropologist*. 2001
- [7] Marshall PA. *Anthropology and Bioethics*. *Medical Anthropology Quarterly*. 1992
- [8] Price D. *Organ and Tissue Transplantation*. 2006
- [9] Price D. *Legal and Ethical Aspects of organ transplantation*. 2000
- [10] Alden DL, Cheung AHS. *Organ Donation and Culture: A Comparison of Asian American and European American Beliefs, Attitudes, and Behaviors*. *Journal of Applied Social Psychology*. 2000