Analysis of the Present Situation and the Crime Legislation of Human Organ Transplant in Europe and America

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Abstract. To establish scientific and rational legal system, especially the criminal law system, limiting the all benefits from the organ transplantation in the proper purpose, in response to the abuse of human organs and organ transplantation. This limitation requires legal procedures and does not objectively inhibit normal activities in the areas of organ transplantation. At present, many countries and regions in the world have systematic legislations of the organ transplantation and some countries have established laws of brain death and body donation to promote organ transplantation. It has very important significance to study these laws and legislations about organ transplantation for building of our own legislation system on organ transplants in China, especially the laws associated with brain death and body donation.

Introduction

The rapid development of organ transplantation brought the Gospel to people enhance public health benefits. It is one of the countries to carry out the organ transplant earlier in our country, it is also one of the organ transplant technology progress relatively quickly. In recent years, the development of organ transplantation in our country is especially rapid scale is growing [1]. Abroad in the field of criminal law protection organ transplantation, organ transplantation is clear, the criminal law protection act concept clear, tight logic, a wide range, is both the countries concerned about the livelihood of the people of organ transplantation, have explained the "nationalism" to "humanistic" "modernization" of the criminal law of the evolution of criminal law developing trend, also to strengthen the protection of the criminal law for transplants [2]. Of organ transplantation in our country law research and legislation is almost in a blank state, this led to some parts of the human organs in our country is abused, while some crime on organ transplantation also occur frequently in our country.

The Legal Attribute of Human Organs

Whether human organs for criminal law is to protect human organ transplantation have to face a problem, because the legal attribute of human organs will directly decide some migration behavior, including criminal liability, a series of legal responsibility. To steal the human organ transplant, for example, if we see human organs as objects, this behavior is clearly theft crime constitution. If we define human organs is a kind of personality right, then the behavior is not conform to the crime of larceny [3]. For the question of human organs legal attribute, there exist four different theories: 1, it says the theories think that the body's tissues or organs as part of the civil law on the matter. 2. The two characters, the thought, whether in human organs and human phase separation is bounded, belong to the category of people before separation, after the separation of content. If human body tissues or organs as the right to mark, is contrary to this principle [4]. But when the body tissues or organs after the separation of nature and the human body, he's not personal, should be legal, before all of the
tissues or organs become holder, can be in accordance with the meaning of the holder for disciplinary action. 3, the category of people said that the said that the body's tissues or organs, not on the res, no matter whether it is separating belongs to the category of people with the human body.

**Domestic and Foreign Legislative Mode**

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. Add the relevant human trafficking, in recent decades has been quite serious. Plus international travel is convenient, can make a lot of patients to the foreign medical institution transplant, these institutions to promote their through multiple channels in organ transplantation have strength and seriously violated the human ethics, serious damage to the social order. In view of this, at present, most countries in the world have made the law of human organ transplantation and specify a series of crime related to human organ transplantation [5].

**The Law in Other Countries**

Analysis of the national legislation of human organs in the world can be found in common law countries, most of them are directly to the corresponding crime stipulated in the human organ transplants. Such as the United States in its unified organization donation act, if the case constitutes a crime, the sale of organs should be fined $50000 and the following 5 years in prison. Australia in its northern region in human tissue transplants stipulated in article 24, engaging in activities of human tissue or organ trafficking, 500 yuan or 3 months in jail. Britain's "human organ transplants" also provisions relating to the human organ transplant crimes, such as organ transplant commercial crime, crime of smuggling of human organs, etc. Hong Kong and Macao special administrative region in our country also has related laws, such as the legislation of the Macao special administrative region of our country stipulates: "if you buy or sell human organs or tissues, others or cause to others will human body organ or tissue and paid or collected the money, not more than three years in prison."

In addition, the United States in the United States code have rules about the crime in the chapter 42: "knowing is the organ to money for transplantation, transshipment, obtain, accept, and its behavior involved in international trade, this is illegal; b. anyone in violation of a fine of no more than $250000, less than five years in prison, or both; c. human organs include: (1) the heart, lungs, corneas, bone marrow, eyes, or be health as part of the human body organ; (2) accept money not including operation, transportation, transplantation, with expenses, save fee, material fee, storage fee or the cost of travel or natural loss; (3) intercontinental trade in chapter 21 have been accounted [6].

**Evaluation of Human Organ Transplant Crimes Legislation Abroad**

Throughout the legislation of the countries around the world took place in the serious harm social behavior of human organ transplantation, all need to criminal law regulation, has no doubt on this point. It need to be pointed out that occur in the human organ transplant those serious harm social behavior belongs to a kind of crime, in order to facilitate the judicial practice, so this kind of crime in the penal code should be clear. Although legislation in countries around the world have different pattern, but its about organ transplant the provisions of the criminal mainly has the following categories:

**In violation of the principle of informed consent and kind of crimes**

Informed consent principle is that the human organ transplant should follow a basic principle. In human organ transplantation, whether to accept organ transplantation receptor, or donate organ donor, have right of informed consent. Therefore, any violence, coercion against others will gather the others
organs for organ transplants are prohibited by law, if the circumstances are serious, constitute the crime.

Depending on the object of fraud, this kind of crimes includes two categories: one is to defraud the organ donation or sin, as long as refers to cheat others donate organs by fraudulent means, if the circumstances are serious behavior. Secondly, diddle transplant crimes, namely, cheat the receptors for organ transplant, become organ transplantation experiment under the knife, if the circumstances are serious behavior. In general, are deceived by some people who don't have full capacity for action, such as severe Alzheimer's patients, minors and the mental patient. On the problem of the substantial requirements of establishment of the crime, due to differences in the organ transplant policy, the law for specific actions implementation to which step to constitute a crime, there are different provisions. In some countries, for example, as long as behavior implemented to defraud a person will constitute a crime, but there are some countries require behavior person the actual implementation of the organ transplantation, otherwise, will not to crime [7].

It refers to only those for the purpose of organ transplantation or determines the behavior of death associated with organ transplantation. Because the law allows harvesting organs from the dead, as a result, some doctors or medical units in order to obtain the appropriate organ transplant donor, in patients actually had not yet announced the death of death case, and to as a donor organ transplantation. This kind of behavior in some countries, especially the established state of brain death, usually charged with crime of illegal determine death and be shall be investigated for criminal responsibility according to law.

In violation of the rules of information crime

Organ transplantation is both donor and receptor organ donation and receive and the doctor or medical institutions to help process, and receive organ donation is also a donor and receptor with a doctor or medical institutions in the information communication process. In this process, protect the legitimate rights and interests for the receptor and the need of safeguard normal order of medical supervision, all countries require a doctor or medical institutions to comply with certain rules of information. Here the information including associated with organ transplants and donor and receptor status information. Usually, the national legal requirements, the data must be carefully stored at any time and medical institutions, and shall report to the competent authority at the appropriate time, no legal situation, it is forbidden to the public or to tamper with, broken in.

Business class crime

Business crime is a crime in most of the arguments about the kind of organ transplantation crime. Organ transplantation in business class crime so worrying, so much so that some countries and regions of organ transplants in fact became an inhibition of the commercial law, such as the human organ transplants in the UK, the human organ transplant ordinance of Hong Kong, etc. While more declared world health is by the organ transplant business in the international position of the crime. In 1989 it banned buying and selling human organs of the 42nd congress resolution [8].

Other forms of crimes of organ transplantation

In addition to the above several forms, organ transplantation and there are many other forms of crime. For example, the use of illegal behavior of joining together the dead bodies of organ transplant technology, illegal experiments using organ transplant technology, degrading the dignity or make the person suffered the social value of the derogatory organ transplant act. These act as severely hinder the healthy development of organ transplantation and the hazards of the normal order of medical supervision behavior, has the quite big social harmfulness, also belong to organ transplantation of crime.
Summary

Organ transplantation crime as a new type of crime also should have the above three characteristics. But, because of organ transplant technology was in recent years developed a kind of medical technology, national regulation of criminal legislation has not yet been mostly, so the organ transplant crime also had not been exposed. Is in view of this, the author thinks that the part of organ transplant technology related behavior is defined as a crime, mainly due to its serious social harmfulness and punishment when the penalty, that is, it is a serious harm to society, should be punished by law. What are contained different sizes according to our press charges to criminal crimes and the division of a crime, crimes should belong to organ transplantation. This paper defines it as: on the implementation of the relevant units and individuals related to human organ transplantation of various serious anti-social behaviors.

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References