

CONTEMPORARY ISSUES OF THE ILLEGAL CIRCULATION OF HUMAN ORGANS OR OTHER OBJECTS DEEMED EQUIVALENT THERETO UNDER THE CRIMINAL CODE

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Abstract. This article is devoted to a comprehensive study of the issues of criminal-legal regulation of the illegal circulation of human embryos, foetuses, human or cadaver cells, tissues, organs, biological materials, or bodily fluids.

The aim of the study is to identify the theoretical and practical issues arising from Article 183 of the Criminal Code of the Republic of Armenia, to assess the compliance of its provisions with contemporary criminal-legal policy and international legal standards, and to propose avenues for legislative improvement.

In the course of the study, both general scientific and special research methods were employed, including analysis, synthesis, generalization, comparative legal analysis, logical analysis, systems-structural analysis, and legal modelling.

The article comprehensively examines the issues relating to the object, objective side, subject, and subjective side of the corpus delicti, as well as the specific features of the criminal-legal assessment of the illegal circulation of human organs. It is substantiated that the current regulation does not fully reflect the graduated differences in the degree of public danger of the criminal conduct and, in certain cases, is inconsistent with the immediate object of criminal-legal protection. As a result, a new structure of Article 183 of the Criminal Code of the Republic of Armenia is proposed, based on the nature of the subject matter of the offence, the degree of public danger, unlawfulness, and the principle of differentiation of the protected legal interests.

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The research findings may contribute to the improvement of national criminal legislation, the effective implementation of international obligations undertaken by the Republic of Armenia, and the harmonization of law enforcement practice.

Keywords – *trafficking in human organs, vital organs, non-vital organs, public health, medical ethics, Oviedo Convention, Convention against Trafficking in Human Organs, organ transplantation, biomedicine technologies, improvement of criminal legislation.*

I. Introduction

The illegal circulation of human organs, or, as it is often referred to, the sale or trafficking of human organs, is a global problem that requires an appropriate and adequate response from States and supranational organizations. The vital necessity of donor organs and the evident imbalance between their supply and demand have led to the development of a transnational business involving the illegal procurement and/or transplantation of human organs. The demand for vital organs, with the exception of one or two organs, is satisfied at the cost of donors' lives, which implies the operation of criminal schemes. It is probably due to these circumstances that the "hunting" for human organs has spread as a form of transnational organized crime. To prevent it, or at least to reduce its scale, States and supranational organizations must adopt the necessary measures, namely the development and/or revision of rules governing organ transplantation, the introduction of the necessary tools for the investigation and detection of this offence, and so on. It should also be noted that the scale of the illegal circulation of human organs is determined by the standard of living of the population of a given State.

Studies show that victims of human organ trafficking are predominantly residents of States with a low standard of living. Therefore, in order to prevent the illegal circulation of human organs, each State should adopt comprehensive measures, not exclusively legal ones. The illegal circulation of human organs is not only a criminal or medical issue, but also a manifestation of social inequality, in which the main providers of biological resources are socially vulnerable groups, while the beneficiaries are more affluent strata of society¹.

In this context, the incorporation into the Criminal Code of an offence establishing liability for the illegal circulation of a human embryo, foetus, human or cadaveric cells, tissues, organs, biological materials, or bodily fluids (Article

¹ Scheper-Hughes N., *The Global Traffic in Human Organs*. *Current Anthropology*. 2000. Vol. 41(2), pp. 191–224.

183, under the heading “Offences Endangering Human Life and Health”) should be regarded as a progressive and welcome development.

The ratification by the Republic of Armenia in 2025 of the European Convention on Human Rights and Biomedicine (“Oviedo Convention”) on the Protection of Human Rights and Dignity with regard to the Application of Biology and Medicine², as well as the ongoing process of ratification of the Council of Europe Convention against Trafficking in Human Organs³, demonstrates that the Republic of Armenia attaches particular importance to this field and has assumed relevant international legal obligations, which necessitates the further harmonization of national legislation and the effective implementation of conventional norms.

Given the relatively recent introduction of the *corpus delicti* under consideration, it has not yet been studied in the Republic of Armenia with sufficient scope or depth. Accordingly, by making the *corpus delicti* the subject of the present research and identifying the shortcomings of the article establishing it, this paper seeks to outline possible approaches to overcoming and/or resolving those deficiencies.

In light of the above, the aim of this article is to examine, on the basis of criminal-legal and comparative legal analysis, the legal regulation establishing liability for the illegal circulation of human organs or other objects equated thereto under the Criminal Code, to identify the problems in the current legislation and law enforcement practice, and to propose possible directions for their resolution and improvement.

1. MAIN RESEARCH

1.1. Object and Objective Side of the Offence

An analysis of the disposition of Article 183 of the Criminal Code of the Republic of Armenia⁴ (hereinafter also referred to as the “Criminal Code”) indicates that the *corpus delicti* of illegal circulation of human organs or other objects provided for in the Article may also be constituted where the relevant objects have been removed

² Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, (*ETS No. 164*). Oviedo, 4 April 1997, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyid=164&utm_source=chatgpt.com

³ Council of Europe. *Council of Europe Convention against Trafficking in Human Organs (CETS No. 216)*. Santiago de Compostela, 25 March 2015, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyid=216&utm_source=chatgpt.com

⁴ Criminal Code of the Republic of Armenia. Adopted on 5 May 2021, entered into force on 1 July 2022, Law No. HO-199-N. In force.

from a cadaver. At the same time, this legislative approach gives rise to a certain theoretical inconsistency between the *corpus delicti* and its specific object, as the latter is classified under the chapter entitled “Offences Endangering Human Life and Health”. Where the conduct concerns a cadaver, human life has already ceased, and the social relations associated with the protection of health no longer exist. Accordingly, the question arises as to whether, in such cases, the social relations that the *corpus delicti* in question is intended to protect are in fact harmed.

Under the current legal framework, a certain inconsistency arises between the specific object of the *corpus delicti* and the social relations that are actually harmed, which may adversely affect both the theoretical soundness of the provision and its interpretation in law enforcement practice. In this context, an incomplete definition of the object of criminal-legal protection may give rise to difficulties in assessing the structural elements of the *corpus delicti*, particularly in cases where the objective side is manifested entirely through the unlawful removal of the subject matter of the *corpus delicti* from a cadaver. We believe that, in the case of such *corpus delicti*, where the criminal conduct is directed against a cadaver, the public danger of the act is particularly high due to the victim’s inability to “have a voice” and, consequently, the greater likelihood that it will remain latent; therefore, the existence of such an irremediable legal defect without legislative amendment is unacceptable.

Comparative legal research demonstrates that, in many States belonging to the continental legal family, the provisions establishing liability for the illegal circulation of human organs and other biological materials used for transplantation are structured on the basis of the principle of a clear distinction between the objects of criminal-legal protection. Within this approach, the systematic placement of the *corpus delicti* is determined not only by the nature of the subject matter of the offence but also by the social relations against which the respective encroachment is directed.

In this regard, the Criminal Code of the Italian Republic⁵ is of particular interest, where acts related to the illegal circulation of organs are differentiated depending on whether the subject matter of the offence has been taken from a living person or from a cadaver. As a result of such differentiation, the respective acts are regulated under different generic and specific objects of criminal-legal protection, which makes it possible to more precisely reflect the nature of their public danger.

⁵ Criminal Code of the Italian Republic (Codice Penale), Royal Decree No. 1398 of 19 October 1930, Republic of Italy.

In particular, cases involving the unlawful removal of organs or other biological materials from a cadaver are treated under the Italian Criminal Code as infringements against social relations aimed at ensuring respect for the deceased and are provided for in the section “Offences against religious worship and respect for the dead” (Article 413 of the Criminal Code of the Italian Republic). By contrast, cases involving the unlawful removal or circulation of organs from a living person are classified among offences relating to the protection of the individual and are provided for in the section “Offences against the personality of the individual” (Article 601-bis of the Italian Criminal Code). Such a legal regulation indicates that the Italian Criminal Code, in determining the object of criminal-legal protection, is guided by the nature of the social relations that are actually harmed, thereby ensuring the internal systemic coherence of the *corpus delicti*.

The approach adopted in the Criminal Code of the Russian Federation⁶ is generally consistent with the regulations enshrined in the Criminal Code of the Republic of Armenia. In particular, the generic and specific objects of the *corpus delicti* under discussion are, in structural terms, placed within a similar system of protection of legal interests and values. At the same time, it is noteworthy that the disposition of the provision establishing liability for the illegal circulation of human organs or other objects provided for by law does not include cases involving the circulation of organs or other biological materials taken from a cadaver. This legislative solution is essentially based on the approach according to which, in cases involving acts committed against a cadaver, there is no direct encroachment upon social relations aimed at protecting life and health, which constitute the main object of criminal-legal protection of the given group of offences. In this regard, the Criminal Code of the Russian Federation appears to have sought to ensure a higher degree of systemic consistency between the object of the *corpus delicti* and the social relations that are actually harmed.

In this respect, the Criminal Code of the French Republic⁷ has adopted a distinct approach to the regulation of the issue in question. In particular, liability for the illegal circulation of human organs and other biological materials or objects provided for by law is established in Article 511-2 of the French Criminal Code,

⁶ Criminal Code of the Russian Federation, Federal Law No. 63-FZ of 13 June 1996 (as amended on 9 April 2026).

⁷ Criminal Code of the French Republic (Code pénal), Law No. 92-683 of 22 July 1992, French Republic.

which is located in the section “Offences relating to public health”⁸ within the chapter “Offences against the human body”. Such a systemic solution makes it possible to bring within the scope of criminal-legal protection not only social relations relating to life and health, but also those concerning the inviolability of the human body, medical ethics, and public health. As a result, more comprehensive criminal-legal protection is ensured for the legitimate interests endangered or harmed by the offences under consideration, regardless of whether the subject matter of the offence has been taken from a living person or from a cadaver.

The analysis of the above-mentioned comparative legal experience indicates that the effectiveness of the criminalization of the illegal circulation of human organs and objects equated thereto under the *corpus delicti* is largely determined by the coherence between the object of criminal-legal protection and the systemic placement of the relevant *corpus delicti*. In this context, it is considered appropriate to replace the title of Chapter 25 of the Criminal Code of the Republic of Armenia, “Offences Endangering Human Life and Health,” with “Offences in the Field of Public Health or Medical Ethics”. Such an approach would make it possible to include, within a unified framework of criminal-legal protection, the entire range of social relations that may be harmed by acts related to the illegal circulation of human organs, tissues, and other biological materials. Moreover, such an approach would reduce the theoretical contradictions that arise in cases where the objective side of the *corpus delicti* is manifested in the unlawful removal of objects provided for by the *corpus delicti* from a cadaver, while under the current regulation there is a certain inconsistency between such conduct and the specific object of criminal-legal protection.

Moving slightly away from the main subject of this study and turning to the normative legal acts regulating social relations related to a cadaver, the Law on Medical Care and Services for the Population⁹ has also been examined, in which there are likewise certain shortcomings with regard to the issue of concern. In particular, Article 41 of the said Law regulates pathological-anatomical activity, and its Part 4 provides that autopsies may not be performed on the basis of the deceased person’s expressed will during their lifetime, or upon a written

⁸ The “Offences relating to public health” section of the French Criminal Code is composed of two chapters:

- 1) Offences related to biomedical ethics;
- 2) Offences against the human body.

⁹ The Law of the Republic of Armenia “On Medical Care and Services for the Population”, adopted on 04.03.1996, entered into force on 16.05.1996, HO-42. In force.

application by a parent, spouse, children, or legal representative, and only three exceptions are provided, namely:

- in cases where there is the presence or suspicion of an infectious disease, or of any disease included in the list approved by the Government as posing a danger to others;
- in cases of death resulting from neoplasms, where histological confirmation (verification) thereof is absent;
- in cases of perinatal mortality.

Discussions with morgue staff indicate that consideration is also given to whether death occurred outside a hospital setting and to the absence of signs of violence on the body. However, with regard to the issue under discussion, we consider that the existence of such a provision is unacceptable, as under such regulation there is a high likelihood of endangering the legitimate interests protected by criminal law. In this context, it is appropriate to consider the possibility of revising the current legal regulation, by more clearly defining the permissible cases in which a pathological-anatomical autopsy may not be performed. In particular, the approach according to which the primary basis for refusal of an autopsy may be exclusively the will expressed by the deceased person during their lifetime in accordance with the procedure established by law appears to be justified. Such regulation, on the one hand, would ensure respect for personal autonomy and the deceased person's will after death, and on the other hand, would reduce the risk of weakening the protection of legitimate interests safeguarded by criminal law.

Turning to the structure of the objective side of the *corpus delicti* under consideration, it should be noted that the current regulation does not sufficiently reflect the significant differences in the degree of public danger between various manifestations of criminal conduct. In particular, within the same *corpus delicti*, a unified regulatory approach has been adopted with regard to both cases of the illegal circulation of organs, tissues, and other biological materials taken from a cadaver, and cases of the illegal circulation of vital and non-vital organs or other objects taken from a living person.

However, these acts differ in terms of the degree of public danger and the potential harmful consequences. It is evident that the illegal circulation of a vital organ taken from a living person differs substantially, from the perspective of public danger, from cases involving the removal of an organ or biological material from a cadaver. Accordingly, in establishing criminal liability, it is necessary to ensure a differentiated legal approach consistent with the nature and degree of

danger of the act. From this perspective, the current regulation, which treats the above-mentioned different situations within the same *corpus delicti* and without sufficient differentiation, does not correspond to the fundamental approach of criminal law, according to which the criminal-legal response must be proportionate to the public danger of the committed act¹⁰.

When analysing the scope of social relations harmed by the offence, it was noted that in cases where the subject matter of the offence is taken from a cadaver, and in the absence of life as an object of criminal-legal protection, the social relations aimed at the protection of life and health are not directly harmed. That circumstance also affects the assessment of the nature and degree of the public danger posed by such acts. Similar theoretical issues arise with regard to the criminal-legal status of the embryo and foetus constituting the subject matter of the *corpus delicti* under consideration, as in their case there is likewise a legal and bioethical debate concerning the beginning of life and the boundaries of the scope of criminal-legal protection.

At the same time, the development of modern biomedical technologies has led to the emergence of social relations directly connected with the potential use of embryonic and foetal cells, tissues, and organs and, consequently, requiring adequate legal protection, including protection under criminal law. It is noteworthy that the well-known xenotransplantation experiment “Baby Fae”, performed on 15 November 1984 by paediatric surgeon Leonard Bailey, during which a newborn infant received a baboon heart transplant, made a significant contribution to the development of transplantation medicine by demonstrating the prospects for expanding the possibilities of biomedical interventions¹¹. Subsequent scientific and technological advances have made the issues of the use and circulation of embryonic and foetal biological materials, as well as the legal regulation of the social relations associated with them, increasingly relevant.

Each new achievement in biomedical technology expands not only the possibilities of medicine but also gives rise to new legal and ethical challenges that require appropriate legal regulation¹². Accordingly, such advances in medicine have also made it necessary to extend protection to situations in which the illegal circulation of an embryo or foetus is aimed at obtaining the foetal organs or other objects provided for by the *corpus delicti* (as both at the embryonic and foetal

¹⁰ Von Hirsch A., *Doing Justice: The Choice of Punishments*. Northeastern University Press, 1976, p. 55,

Ashworth A., *Sentencing and Criminal Justice*. 6th ed. Cambridge University Press, 2015, p. 97.

¹¹ “Baby Fae and the Baboon Heart Transplant”, BBC News, 19 November 2012.

¹² Harris J., *Wonderwoman and Superman: The Ethics of Human Biotechnology*. Oxford University Press, 1992.

stages, the subject matter of the offence is already formed during specific periods of development)¹³. This gives rise to a situation in which one subject matter of the offence (the embryo or foetus) may be obtained for the purpose of removing from it another subject matter provided for by the corpus delicti.

However, in both the case of the embryo or foetus and the case of a cadaver, life is absent from the perspective of criminal law, therefore, taking this characteristic as the point of departure, the same part should provide for the illegal circulation of the embryo or foetus itself, as well as of the objects provided for by the corpus delicti that have been taken from a cadaver.

In light of the foregoing, we propose that Part 1 of Article 183 be revised as follows: “*The unlawful acquisition, sale, possession, transportation, or delivery of an embryo or foetus, or of cells, tissues, organs, biological materials, or fluids of a cadaver*”.

The matter provided for by the corpus delicti under examination are generally classified in medicine¹⁴ into two groups:

1. **Vital** cells, tissues, organs, and biological materials or fluids¹⁵,
2. **Non-vital** cells, tissues, organs, and biological materials or fluids¹⁶.

In light of this distinction, it also becomes necessary to differentiate between cases involving the removal of vital and non-vital subject matter of the offence from a living person. The various manifestations of the illegal circulation of organs cannot be assessed within the same criminal-legal framework, since their degree of public danger is determined not only by the act committed but also by the extent of the risks posed to the donor’s life, health, and dignity¹⁷.

Since non-vital subject matter of the offence is medically compatible with life, we propose that Part 2 of the Article should cover its unlawful circulation when taken from a living person, while the removal of vital (life-incompatible) subject matter of the offence, due to its higher public danger and unlawfulness, should be provided for in Part 3, resulting in the following wording of the Article:

(...)

2. *The unlawful acquisition, sale, possession, transportation, or delivery of non-vital cells, tissues, organs, biological materials, or fluids of a living person.*

¹³ Studenikina T. M., Embryogenesis and Early Postnatal Development of Human Tissues and Organs, YSMU, 2020, pp. 3–49.

¹⁴ “Pathophysiology”, ed. by V. V. Novitsky, E. D. Goldberg, O. I. Urazova, 2009, p. 92.

¹⁵ The loss is incompatible with life; it leads to death immediately or within a short period of time.

¹⁶ The loss is compatible with life; removal does not endanger a person’s life or health.

¹⁷ Delmonico F., Shimazono Y., The Declaration of Istanbul on Organ Trafficking and Transplant Tourism. Transplantation. 2008. Vol. 86(8). pp. 1013–1018

3. *The unlawful acquisition, sale, possession, transportation, or delivery of vital cells, tissues, organs, biological materials, or fluids of a living person.*

(...)

Under the current wording of Article 183 of the Criminal Code of the Republic of Armenia, the aggravating circumstances provided for in Part 2 (qualified corpus delicti) also do not demonstrate a uniform regulatory approach in comparison with other offences, where the negligent occurrence of a more serious consequence is likewise provided as an aggravating circumstance. The regulation of the current Criminal Code is, in most cases, based on the justified approach that the occurrence of a more serious consequence is included among the most aggravating circumstances (for example, Articles 198, 205, etc.), thereby emphasizing the greater dangerousness of the respective act.

By recognizing the human being and human life as the highest value under the constitutional norm, it is impermissible to equate the deprivation of a person's life as a result of an offence with the commission of an offence by a group of persons or with cases committed through the use of official or service authority or the influence derived therefrom.

Among the aggravating circumstances, it is also necessary to provide for cases of unlawful circulation committed by persons engaged in professional activity in this field, since there are many latent instances in which, for example, medical personnel offer such unlawful services to individuals in need of medical care and provide information on possible suppliers, thereby acting in violation of professional medical ethics.

Based on the results of the study conducted within the framework of this article, we propose that Article 183 of the Criminal Code be rephrased as follows:

“Article 183. Illegal circulation of human embryos, foetuses, human or cadaver cells, tissues, organs, biological materials or fluids

1. *The unlawful acquisition, sale, possession, transportation or delivery of a human embryo, foetus, or cells, tissues, organs, biological materials or fluids of a cadaver shall be punishable by (...)*

2. *The unlawful acquisition, sale, possession, transportation or delivery of non-vital cells, tissues, organs, biological materials or fluids of a living person shall be punishable by (...)*

3. *The unlawful acquisition, sale, possession, transportation or delivery of vital cells, tissues, organs, biological materials or fluids of a living person shall be punishable by*

(...)

4. ***An act provided for in Parts 1, 2, 3 or 4 of this Article, if committed***

1) by a group of persons by prior agreement, or
 2) through the use of official or service authority, or the influence derived therefrom, or through the **use of professional activity**,
 shall be punishable by (...)

5. An act provided for in Parts 1, 2, 3 or 4 of this Article, if committed by a criminal organization or if it negligently caused the death of a person, serious harm to health, or other grave consequences, shall be punishable by (...)”.

The most aggravating circumstance, formulated as “*negligently causing the death of a person, serious harm to health, or other grave consequences*”, also occupies a problematic position from a scientific and practical perspective, due to the fact that the offences referred to are, by their legislative design, formal in nature, whereas the offence committed under the most aggravating circumstance is material (i.e., completion of the offence requires the occurrence of a consequence), therefore, under such a regulatory framework, it is necessary that the act provided for in Parts 1, 2, 3 or 4 be completed, and only under such conditions would it be possible to qualify the act under Part 5 of Article 183 in the presence of the discussed most aggravating circumstance. The point is that the described act should be understood as referring only to a completed offence, whereas in cases of preparation for the offence or attempted offences, if the described dangerous consequence occurs, providing a criminal-legal assessment under the qualified corpus delicti in question would directly contradict the theory of criminal law and the logic of the Criminal Code. To illustrate this more clearly, let us consider the following example:

A, acting out of mercenary motives and being unaware of the congenital defect of unilateral renal agenesis¹⁸, gives his consent for the removal of one of his kidneys. B, through a professional (medical) intervention, intends to unlawfully acquire the kidney; however, only after incising the relevant part of the body and causing internal injuries with a medical instrument does he realize the absence of the organ. Some time later, A dies from complications arising after the surgical removal of the kidney.

Under the operation of the proposed regulation, in the given example B. is subject to criminal liability for attempted acquisition of a vital organ from a living person (Article 44-183, Part 3) and for negligent deprivation of life (Article 165), in cumulative concurrence of offences.

¹⁸ Agenesis means the congenital absence of an organ. Renal agenesis means the congenital absence of a kidney.

The criminal-legal assessment of the illegal circulation of organs is based on Part 1 of Article 44 of the Criminal Code, according to which an attempted offence is understood as an intentional act or omission directly aimed at the commission of an offence, containing the elements of *corpus delicti* provided for by the Special Part of the Code, where the offence envisaged by the person's intention is not committed due to circumstances beyond his/her control, resulting from the absence of some of the elements of the *corpus delicti* in question.

The analysis of the cited provision shows that the subject matter provided for by the *corpus delicti* is absent, without which a formal offence cannot be considered completed. Therefore, in accordance with the direction of intent, the act is to be qualified as an attempted acquisition of a vital organ from a living person (Articles 44–183, Part 3), and as regards the other part, concerning the two forms of realization of the subjective element of the most aggravating circumstance, it should be noted that in this case we are dealing with a material *corpus delicti* requiring the occurrence of a consequence; however, since the basic act described under the formal *corpus delicti* has not been completed, it is not possible to qualify the conduct under the most aggravating material offence. In other words, an act characterized by an aggravating or the most aggravating circumstance defined by a material *corpus delicti* may be qualified as such only where the basic *corpus delicti* (formal or material) has been completed. Therefore, in the present case, the conduct shall be qualified separately as an attempted acquisition of a vital organ from a living person (Articles 44–183, Part 3) and, where a causal link is established, as negligent deprivation of life as a separate offence.

It is also considered necessary to clarify the qualification features of the aggravating circumstance committed by a group of persons by prior agreement. Due to the fact that the *corpus delicti* under study is characterized by a dual-structured objective side, certain difficulties may arise with regard to its qualification as co-perpetration. In this context, as a preliminary clarification, it should be noted that in the *corpus delicti* characterized by a dual-structured objective side, co-perpetration may exist both in cases where the accomplices simultaneously perform the same act constituting the objective side, and in cases where, on the basis of a common intent and through the complementary nature of their conduct, they perform different acts falling within the objective side of the *corpus delicti*. For a more illustrative presentation, let us consider an example:

For the purpose of unlawfully acquiring a kidney, A had an agreement with physician K, pursuant to which physician K removed the organ from Z, who had consented to the unlawful removal of his organ, while A subsequently acquired and disposed of it.

In the present example, in addition to the proposed aggravating circumstances, due to the dual structure of the objective side of the *corpus delicti*, there is also commission by a group of persons by prior agreement, since one of the perpetrators was aware that his conduct, consisting of performing a different element of the dual structure of the objective side, served to complement the conduct of the other; accordingly, in cases of co-perpetration, the realization of the objective side involves a temporal gap, which is determined by the extended and temporally prolonged nature of the criminal conduct. Thus, due to the dual structure of the objective side of the *corpus delicti*, this feature may also be manifested in such cases, where, despite the presence of all the elements of co-perpetration, co-perpetration in its classical sense as simultaneous execution is not the only form that can be recognized.

The disposition of the *corpus delicti* under study uses the term “**illegal circulation**”, which implies that circulation of the subject matter of the *corpus delicti* may also be carried out within legally permissible limits. In order to understand the scope and procedure, it is also necessary to examine the Law of the Republic of Armenia “On Transplantation of Human Organs and (or) Tissues”¹⁹, the provisions of which are also problematic and for which we will propose possible amendments.

First, the first requirement of legality is reflected in the provision of the law stipulating that the use of organs and tissues obtained from living or deceased donors as a source of profit²⁰ is prohibited. Therefore, in any case where all stages of organ procurement comply with the legally established rules, the act becomes unlawful from the moment profit is obtained within the meaning of the law, by exceeding the permitted legal framework, which in turn gives rise to the elements of the *corpus delicti* and, consequently, criminal liability.

In this context, it is necessary to note that such regulations are consistent with the international obligations undertaken by the Republic of Armenia. Thus, on 18 April 2025, the Republic of Armenia ratified the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (the Oviedo Convention)²¹.

¹⁹ The law of the Republic of Armenia “On Transplantation of Human Organs and (or) Tissues”. Adopted on 16.04.2002, entered into force on 25.11.2002, HO-324. In force.

²⁰ According to the Law of the Republic of Armenia “On Transplantation of Human Organs and (or) Tissues”, profit is defined as the receipt, demand, or acceptance of a promise of money, property, property rights, securities, or any other advantage for oneself or another person, whether directly or through an intermediary.

²¹ The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, (*ETS*

According to Article 20 of the Convention (“Protection of persons who are not able to consent to organ removal”), “1. It is prohibited to remove an organ or tissue from a person who does not have the capacity to give the necessary consent provided for in Article 5. In exceptional cases and under conditions of legally established protection, the removal of regenerative tissue from a person who does not have the capacity to consent is permitted if the following conditions are met: i. there is no suitable donor who has the capacity to consent; ii. the recipient is the donor’s brother or sister; iii. the donation must have the potential to save the recipient’s life; iv. explicit and written authorization has been given in accordance with Article 6(2) and (3), in compliance with legal requirements and with the approval of the competent authority; v. the potential donor does not object”.

According to Article 21 of the Convention (“Prohibition of financial gain”), the human body and its parts shall not, as such, be a source of financial gain. According to Article 22 (“Disposal of a part of the human body”), where any part of the human body is removed in the course of an intervention, it may be stored and used for a purpose other than that for which it was originally removed only if this is done in accordance with appropriate procedures of information and consent.

One of the fundamental principles of contemporary bioethics is that the human body and its individual parts cannot be regarded as ordinary objects of economic circulation, since human dignity prevails over market values²².

The next issue of interest in the context of criminal law, the violation of which may lead to criminal liability, is the scope of permissible organs and tissues, distinguished between living donors and cadaveric donors.

In the case of a living donor, the regulation is as follows: for transplantation purposes, only one of a pair of organs²³, a part of an unpaired organ, or tissue may be removed from a living donor, provided that its absence cannot cause changes posing a threat to the donor’s life. In this context, a question may arise as to whether, notwithstanding the fact that the “victim” has given consent, criminal liability for causing serious harm to health may nevertheless arise, since the objective side of causing serious harm to health may be manifested by an act, such as the surgical removal of an organ, that results in the impairment of any human organ or of its function. However, this issue will be addressed in the final part of the article, where the legislatively inevitable concurrence of the *corpus delicti* of

No. 164). Oviedo, 4 April 1997, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=164&utm_source=chatgpt.com

²² Andorno R., *Human Dignity and Human Rights as a Common Ground for a Global Bioethics*. *Journal of Medicine and Philosophy*, 2009, Vol. 34(3), pp. 223–240.

²³ Human paired organs include the eyes, ears, kidneys, and lungs.

the illegal circulation of organs and other subject matter covered by it with certain other corpus delicti will be examined.

In the case of a cadaveric donor, the regulation is different: after confirmation of the fact of brain death or biological death of a person, the lists of organs or tissues that may be removed for transplantation purposes are determined by the competent authority.

In this case, the competent authority is the Ministry of Health, and according to the relevant lists, the classification is made on two grounds: the list of organs and tissues in cases of brain death²⁴ and the list of organs and tissues in cases of biological death²⁵.

The next essential regulation provides that the removal and processing of organs and/or tissues for transplantation, as well as their transplantation, are permitted only in duly licensed medical institutions. Particular attention should also be paid to the fact that, under the same Law, transplantation requires a medical opinion confirming the necessity of the transplantation. The Law also addresses the recipient's²⁶ consent.

It is also necessary to examine the specific features of the removal of organs and tissues from a cadaveric donor, which are likewise regulated by the Law under consideration. In particular, it provides that *organs and tissues may not be removed from a cadaver for transplantation purposes only where the person, during his or her lifetime, has declared, in accordance with the procedure established by the legislation of the Republic of Armenia, his or her refusal to act as an organ and tissue donor after death. In the absence, in the Register of Organ and Tissue Donors and Recipients, of the person's written refusal to act as a cadaveric donor, organs and tissues may be removed from the cadaver for transplantation purposes with the consent his or her relatives (next of kin).*

In our view, this regulation is justified, since it essentially operates on the presumption that organ removal is permissible upon the consent of any of the persons specified by law, unless it is established that the individual, during his or her lifetime, submitted a declaration of refusal in accordance with the prescribed procedure.

²⁴ According to Order No. 236-N of the Minister of Health, the list of organs and tissues in cases of brain death includes the kidneys, liver, liver lobe, heart, lungs, pancreas, bone tissue, cartilage tissue, cornea, heart valves, blood vessels, and skin.

²⁵ According to Order No. 236-N of the Minister of Health, the list of organs and tissues in cases of biological death includes the cornea, heart valves, blood vessels, skin, bone tissue, and cartilage tissue.

²⁶ A natural person to whom organs and/or tissues are to be transplanted for therapeutic purposes.

The Law also establishes the procedure and conditions for the removal of organs and/or tissues from a living donor, the specific features of which are likewise justified, as they are aimed at ensuring all the necessary safeguards for the protection of human life and/or health.

The Law also defines the categories of persons from whom the removal of organs and/or tissues is permissible.

The violation of the procedure or conditions governing at least one of the above-mentioned essential regulations that intersect with criminal law will result in the illegal circulation of organs and give rise to criminal liability, since the organs and/or tissues will have been removed in violation of the legally prescribed permissible procedure, that is, unlawfully, and such conduct is provided for and prohibited under the Criminal Code under threat of punishment.

1.2. The Subject and the Subjective Side of the Offence

The next element of the *corpus delicti* under consideration that deserves separate attention is the subjective side. In legal literature²⁷, it is generally stated that the *corpus delicti*, from the perspective of the subjective side, may be manifested only through direct intent. Although the offence is most commonly committed and, indeed, in all cases known in practice, has been committed through direct intent, we believe that there may also be cases in which the *corpus delicti* under consideration manifests itself, from the subjective side, through indirect intent, particularly in light of the conceptually revised understanding of indirect intent reflected in the 2003²⁸ and 2022 Criminal Codes.

Given the nature of a material *corpus delicti*, which is linked to the occurrence of a consequence, indirect intent under the former Criminal Code was possible only in relation to material *corpus delicti*, since, as is well known, in the case of a formal *corpus delicti*, a consequence is not an element of the *corpus delicti* and the offence is deemed completed upon the commission of the act. By contrast, under the current regulation, the definition of indirect intent fully allows for the possibility of this form of the subjective side in the case of formal *corpus delicti* as well, since the key criterion is no longer the foreseeability of a consequence but rather the awareness of the factual circumstances constituting elements of the *corpus delicti*. To illustrate this more concretely, let us consider the following example:

²⁷ Arakelyan S. V., Barseghyan A. V., *Offences against the Person under the New Criminal Code of the Republic of Armenia*, Yerevan: Academy of Justice, 2023, p. 170.

²⁸ Criminal Code of the Republic of Armenia. Adopted on 18.04.2003, entered into force on 01.08.2022, HO-528-N. No longer in force (repealed on 01.07.2022).

A is driving a taxi when he overhears the passengers' conversation, which allows him to understand that kidneys are being unlawfully transported in the vehicle he is driving, and he continues driving, thereby unlawfully transporting the organs and delivering the passengers to the relevant destination.

In the presented example, A, being aware of the factual circumstances constituting elements of the *corpus delicti* under consideration and without having the purpose of committing or carrying out the offence, nevertheless performs the act constituting the objective side, namely the unlawful transportation of kidneys. A commits the act prohibited under the Criminal Code, under threat of punishment, with indirect intent. Accordingly, it follows that the *corpus delicti* under consideration may be manifested, from the subjective perspective, both through direct intent and through indirect intent.

The subject of the offence under consideration may be both a sane natural person who has reached the age of criminal responsibility, as well as a legal person, in the presence of the grounds provided for by Article 123 of the Criminal Code.

1.3. Other issues of legal qualification of the offence

One of the next issues of scientific and practical interest and complexity relates to the problem of *the inevitable statutory concurrence* between the *corpus delicti* under consideration and the offences of Murder (Article 155), Causing Serious Harm to Health (Article 166), and Causing Moderate Harm to Health (Article 167) in cases where these offences are committed under aggravating circumstances involving the taking of the victim's cells, tissues, organs, or biological materials or fluids. The issue is that the said aggravating circumstance treats the purpose of taking the listed items as an aggravating factor; therefore, in such cases, the realization of that purpose does not constitute an element of the *corpus delicti*. Accordingly, in all cases where the act is committed under the said aggravating circumstance, and subject to the relevant conditions under the statutory regulation of the stages of the offence, the act will be qualified as a multiplicity of offences. To illustrate this more concretely, let us consider an example:

A kills B for the purpose of taking his kidneys. At the scene of the crime, A is immediately arrested before having the opportunity to carry out any act aimed at the removal of the organ.

In the cited example, A's act will be qualified as murder committed for the purpose of taking cells, tissues, organs, or biological materials or fluids from the victim (Article 155, Part 2), and as preparation for the offence of the illegal circulation of human embryos, foetuses, human or cadaveric cells, tissues, organs, or biological materials or fluids (Articles 43–183).

As follows from the definition of preparation for an offence, in the example under consideration the murder serves as the intentional creation of another condition (the perpetrator, acting with direct intent, deprives the victim of life for the purpose of removing an organ).

Let us consider a case of an attempted offence through the following example: *A kills B for the purpose of taking his kidneys. At the scene of the crime, A. is arrested at the moment when, using a scalpel that he had brought with him in advance, he had already made an incision in the relevant part of the body.*

A's act will be qualified as murder committed for the purpose of taking cells, tissues, organs, or biological materials or fluids from the victim (Article 155, Part 2) and attempted offence of the illegal circulation of human embryos, fetuses, human or cadaveric cells, tissues, organs, or biological materials or fluids (Articles 44–183).

The legal rules and qualification peculiarities applicable to the cases discussed above should likewise be applied to other corpus delicti that contain the aggravating circumstance under consideration.

From the perspective of distinguishing between the objective sides of trafficking and the illegal circulation of organs and other objects covered by the corpus delicti under consideration, it is important to bear in mind that Part 4 of Article 188 of the Criminal Code provides that *exploitation includes (...) the taking of another person's cells, organs, tissues, or biological materials or fluids.*

The interpretation of this provision allows for the logical conclusion that where the subject matter of the offence is taken from a person against that person's will or in disregard of their will, the act will contain the elements of trafficking, since the objective side of trafficking links such conduct to exploitation and includes it within the concept of exploitation. Conversely, where the subject matters of the offence are taken with the person's consent, the act should be qualified under Article 183 of the Criminal Code. Accordingly, based on a combined and comprehensive analysis of the dispositions of the provisions defining the two corpus delicti, whether a particular course of conduct contains the elements of trafficking or of the illegal circulation of organs is determined by the victim's expression of will. In such cases, multiplicity of offences will be absent.

A systemic analysis of the Criminal Code demonstrates that, in the case of similar corpus delicti (such as the illegal circulation of weapons, the illegal circulation of narcotic drugs, etc.), the theft of the subject matter of the corpus delicti is criminalized as a separate corpus delicti. In the case of the corpus delicti under consideration, however, it follows that the theft of the subject matter of the offence would be qualified under the same article. In this regard, the

characterization of the subject matter of the *corpus delicti* as a possible subject matter of theft appears problematic. The issue is that, pursuant to Point 16 of Part 1 of Article 3 of the Criminal Code, **the subject matter of theft is another person's property**. The subject matter of theft is characterized by four features: physical, economic, social, and legal. With regard to the theft of organs and other objects covered by the *corpus delicti* under consideration, compliance with the characteristics of the subject matter of theft appears debatable, particularly in relation to the social and legal characteristics. The social characteristic requires that property consist of objects that are the result of human labour or investment, have been created, processed, transformed, or separated from nature through human effort, and constitute objects of social relations²⁹. Accordingly, with respect to the social characteristic, while it is clear that a narcotic drug is created or processed by a person and that a weapon likewise comes into existence as a result of human activity, in the case of organs and the other objects covered by the *corpus delicti* under consideration, it may only be argued, under a broad interpretation, that they satisfy this characteristic insofar as they are separated from the victim's body through human intervention. Although problematic, the social characteristic may be overcome, as regards the legal characteristic, however, the contradictions and grounds for debate are considerably greater. A question may arise in the context of whether, for example, a person's hand belongs to anyone under a right of ownership. According to the scientific commentary, the essence of the legal characteristic of property is that an object which is the result of human labour and possesses economic value must be the property of a natural person, a legal person, or the State, and the offender must have no rights in relation to it³⁰. Although discussions with specialists in the field indicate that customs authorities, when importing human organs (where such importation is permitted by law and the applicable requirements are met), register them as property, it nevertheless remains ambiguous, from the perspective of satisfying the characteristics of the subject matter of theft, whether organs or the other objects covered by the *corpus delicti* under consideration may be regarded as subject matters of theft. Nevertheless, the issue of the theft of the objects covered by the *corpus delicti* under consideration remains unresolved and has not been subjected to comprehensive and consistent regulation, despite the fact that, in our view, it is no less dangerous than, for example, the theft of narcotic drugs. This gives rise to a situation in which both the

²⁹ Arakelyan S. V., Baghdasaryan G. S., and Petrosyan P. D., *Crimes Against Property under the New Criminal Code of the Republic of Armenia*, Yerevan: Academy of Justice, 2024, pp. 9-10.

³⁰ Arakelyan S. V., Baghdasaryan G. S., and Petrosyan P. D., *Crimes Against Property under the New Criminal Code of the Republic of Armenia*, Yerevan: Academy of Justice, 2024, p. 10.

unlawful acquisition of such objects and the theft of objects already unlawfully acquired receive the same criminal-legal assessment, leaving it to the law-enforcement authorities and courts to address the issue by imposing a more severe assessment of theft cases within the limits of the applicable sanction.

2. CONCLUSION

Based on the findings of the research conducted in this article, we have arrived at a number of conclusions, the principal ones of which are as follows:

1. We propose that Article 183 of the Criminal Code of the Republic of Armenia be revised to read as follows:

“Article 183. Illegal circulation of human embryos, foetuses, human or cadaver cells, tissues, organs, biological materials or fluids

1. The unlawful acquisition, sale, possession, transportation or delivery of a human embryo, foetus, or cells, tissues, organs, biological materials or fluids of a cadaver shall be punishable by (...)

2. The unlawful acquisition, sale, possession, transportation or delivery of non-vital cells, tissues, organs, biological materials or fluids of a living person shall be punishable by (...)

3. The unlawful acquisition, sale, possession, transportation or delivery of vital cells, tissues, organs, biological materials or fluids of a living person shall be punishable by

(...)

4. An act provided for in Parts 1, 2, 3 or 4 of this Article, if committed

1) by a group of persons by prior agreement, or

2) through the use of official or service authority, or the influence derived therefrom, or through the use of professional activity,

shall be punishable by (...)

5. An act provided for in Parts 1, 2, 3 or 4 of this Article, if committed by a criminal organization or if it negligently caused the death of a person, serious harm to health, or other grave consequences,

shall be punishable by (...).”

2. We propose that Chapter 25 of the Criminal Code be renamed “Offences in the Field of Public Health or Medical Ethics”.

3. From the subjective perspective, the offence may be committed with either direct or indirect intent.

4. Due to the fact that the corpus delicti under study is characterized by a dual-structured objective side, certain difficulties and shortcomings may arise with

regard to its qualification as co-perpetration. In this context, as a preliminary clarification, it should be noted that in the corpus delicti characterized by a dual-structured objective side, co-perpetration may exist both in cases where the accomplices simultaneously perform the same act constituting the objective side, and in cases where, on the basis of a common intent and through the complementary nature of their conduct, they perform different acts falling within the objective side of the corpus delicti.

5. Amendments should be made to the related legislation cited above concerning pathological autopsies and transplantation in order to prevent potential harm to the interests protected by criminal law.

6. In our view, the possibility of criminalizing the theft of the objects referred to in Article 183 under a separate corpus delicti should be made the subject of further discussion.

Conflict of Interests

The authors declare no ethical issues or conflicts of interest in this research.

Ethical Standards

The authors affirm this research did not involve human subjects.

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