

СБОРНИК
НАУЧНЫХ
ТРУДОВ

SWORLD

входит в РИНЦ
Science Index

2014

Том 31



ЦИТ: 114-117
УДК 342.951:351.82

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**ПРАВОВОЕ ПОЛОЖЕНИЕ ПЕДАГОГОВ В СВЕТЕ НОВОГО
ФЕДЕРАЛЬНОГО ЗАКОНА РФ «ОБ ОБРАЗОВАНИИ В РОССИЙСКОЙ
ФЕДЕРАЦИИ»**

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**LEGAL STATUS OF TEACHERS IN THE LIGHT OF THE NEW FEDERAL
LAW OF THE RUSSIAN FEDERATION "ABOUT EDUCATION IN THE
RUSSIAN FEDERATION"**

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Аннотация: В связи с принятием нового Федерального закона РФ «Об образовании в РФ» произошли изменения в правовом статусе преподавателей и иных педагогических работников. Статья посвящена изучению этого вопроса.

Ключевые слова: педагогический работник, права и обязанности, воспитание и обучение

Abstract: There were changes in legal status of teachers and other pedagogical workers due to the adoption of the new Federal law of the Russian Federation "About education in the Russian Federation". This article is devoted studying of this question.

Key words: the teacher, rights and duties, the education and the training

Педагогический работник - физическое лицо, которое состоит в трудовых, служебных отношениях с организацией, осуществляющей образовательную деятельность, и выполняет обязанности по обучению, воспитанию обучающихся и (или) организации образовательной деятельности. Под правовым статусом педагогического работника понимается совокупность прав и свобод (в том числе академических прав и свобод), трудовых прав, социальных гарантий и компенсаций, обязанностей, обязанностей и ответственности, которые установлены законодательством Российской Федерации и законодательством субъектов Российской Федерации.

Педагогические работники пользуются следующими академическими правами и свободами:

- 1) свобода преподавания, свободное выражение своего мнения, свобода от вмешательства в профессиональную деятельность;
- 2) свобода выбора и использования педагогически обоснованных форм, средств, методов обучения и воспитания;
- 3) право на творческую инициативу, разработку и применение авторских программ и методов обучения и воспитания в пределах реализуемой образовательной программы, отдельного учебного предмета, курса, дисциплины (модуля);

ISSN 2224-0187

УДК 08
ББК 94
С 232

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С 232 **Сборник научных трудов SWorld** – Выпуск 1. Том 31. – Иваново:
МАРКОВА АД, 2014 – 106 с.

УДК 08
ББК 94

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п.1 ст.16 «Компетенция уполномоченного государственного органа по труду в области регулирования трудовых отношений», где изложено, что отраслевым министерство «...координирует деятельность и осуществляет проверку деятельности местного органа по инспекции труда», включены новые подпункты (пп.3-1, 3-2 и др.), в соответствии с которыми министерство «осуществляет координацию и методическое руководство местных исполнительных органов в области регулирования трудовых отношений, запрашивает необходимую информацию от местных органов по инспекции труда по вопросам трудовых отношений». Из содержания указанных пунктов следует, что расширены контролируемые функции МТСН РК, дающие возможность улучшить на местах контроль за соблюдением трудового законодательства.

Наряду с контролирующими функциями центрального органа расширена и компетенция местных исполнительных органов по регулированию трудовых отношений. В своем Послании народу Казахстана от 17 января 2014 года «Казахстанский путь – 2050: Единая цель, единые интересы, единое будущее» Глава государства поручил Правительству РК разработать и внедрить с 1 июля 2015 года новую модель системы оплаты труда гражданских служащих. В настоящее время проект новой модели системы оплаты труда гражданских служащих отраслевым министерством уже разработан [3].

В целях реализации данной работы пп.2 ч.1 ст.18 ТК РК изложен в новой редакции: «по согласованию с местным представительным органом (агт. - акимат) определяют перечень должностей специалистов в области здравоохранения, социального обеспечения, образования, культуры, спорта и ветеринарии, являющихся гражданскими служащими и работающими в сельской местности» [2].

В целях улучшения в республике обстановки с соблюдением трудовых прав работников был обновлен п.22 ч.2 ст.23 ТК РК, в соответствии с которым работодатель обязан «беспрепятственно допускать должностных лиц уполномоченного государственного органа по труду и местного органа по инспекции труда, представителями работников, общественных инспекторов по охране труда для проведения проверок состояния безопасности, условий и охраны труда в организациях и соблюдения законодательства РК о безопасности и охране труда, а также для расследования несчастных случаев на производстве и профессиональных заболеваний».

В новой редакции изложена ст.307 ТК «Государственное управление, контроль и надзор в области безопасности и охраны труда», в соответствии с которой «госуправление, контроль и надзор в области безопасности и охраны труда осуществляются Правительством РК, уполномоченным госорганом по труду, местным органом по инспекции труда и иными уполномоченными госорганами в соответствии с их компетенцией» [2]. В компетенцию местных органов по инспекции труда по вопросам контроля и надзора в области безопасности и охраны труда, а также расследования несчастных случаев на производстве также внесены ряд поправок, отвечающих принципам уважения, соблюдения и защиты прав и свобод работников, законности, объективности,

независимости и гласности.

За соблюдением трудового законодательства в организации согласно ст. 340 ТК РК устанавливается и общественный контроль, осуществляемый общественным инспектором по охране труда. Республиканское, отраслевые, региональные объединения работников вправе осуществлять общественный контроль за соблюдением трудового законодательства в организациях при условии закрепления такого права в соглашениях и коллективных договорах. Однако на практике ни работники, ни профсоюзные организации не используют данное право в полной мере, что говорит о недостаточной правовой грамотности и активной позиции самих работников в вопросах соблюдения трудового законодательства и защиты своих прав, чем и пользуются недобросовестные работодатели.

Таким образом, совершенствование трудового законодательства, конкретизация компетенции государственных органов в области регулирования трудовых отношений – это объективные шаги, направленные на повышение качества жизни населения, развитие и реализацию потенциала человеческого ресурса, лежащие в основе государственной политики Казахстана.

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Статья отправлена: 15.03.2014г.

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ЦИТ: 114-766

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COMMERCIALIZATION OF ORGAN TRANSPLANTATION

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COMMERCIALIZATION OF ORGAN TRANSPLANTATION

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This paper is focused on the analysis of business aspect of organ transplantation. The author focuses on the following issues of the problem as: acute shortage of organs for transplantation that has such results as transplant tourism, organ trafficking and selling of organs. The article also notes the need for strict regulation of indicated problems in the EU legislation.

Key words: transplantation, organ trafficking, transplant tourism, cloning,

artificial organs, selling of organs, commercialization.

Даная считатъя сосредоточена на анализе бизнес аспекта трансплантации органов. Автор акцентирует внимание на таких проблемах как: острый дефицит органов для трансплантации, который имеет результатом туризм с целью трансплантации органов, торговли органами и продаже органов. В статье также отмечается необходимость строгого регулирования указанных проблем в законодательстве ЕС.

Ключевые слова: трансплантация, торговля органами, туризм с целью трансплантации, клонирование, искусственные органы, продажа органов, коммерциализация.

Introduction. Organ transplantation is a developing branch of medicine, which combines in it various ethical, business, practical, legal, religious, technical and other aspects. The human right to health is guaranteed by all major international instruments. It can be concluded that the right to transplantation is a component of the right to health and also a subject to protection by the competent authorities, and the breach of this right has its consequence the right to appeal for the protection before the court.

One of the problems which occur during the protection of the rights to transplantation is that due to the economic inequality of people there is a high probability of occurrence of commercialization of transplantation. The main tasks of the article are: to analyze the reasons of business aspect of transplantation; to distinguish between such categories as transplant tourism, organ trafficking and trafficking of human beings with the purpose of organ transplantation; to suggest possible ways of solving the problem of acute shortage of organs for transplantation.

Prohibition of selling organs. Transplantation as the science confronts before doctors and lawyers many unresolved issues. One of these is the issue of commercialization in transplantation. It is a well-known fact that the purchase and sale of organs is prohibited. Such provision is highlighted in the article 13 of the Directive 2010/45/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation, which states, that donation of organs and tissues must be based on the voluntary and unpaid principle, with compensations regarding conducting the surgery and postoperative period; States shall prohibit advertising which is directed "...to offering or seeking financial gain or comparable advantage" and Member States "...shall ensure that the procurement of organs is carried out on a non-profit basis [1].

Unfortunately, reality shows that "in today's world, the current framework that relies upon altruism only simply doesn't provide the quantity of organs needed" [2, p.98].

This prohibitive principle is located on the same level with the fundamental law of the moral relationship between people, meaning that a person cannot be considered as a means to achieve the goals of another person and ethical understanding as human beings (not a thing), which owns the dignity and freedom of the will. With this ethical position is closely related the question of the legal status of the grafts. The ban on the purchase or sale of a person extends to his organs and tissues, in the case of turning into the "biological materials" and providing a means of transplantation, they should



not become a means of commercialization. Nevertheless, similar sales transactions exist. This is because the medical authority for the removal of the body becomes the owner of cadaveric transplant material. In a market economy status of the owner which such medical authority receives, transforms organs and tissues, which are already separated from the person, into objects with the status of things. It is easy to determine the degree of public danger which might arise in the case of ignoring the ethical values as the fundamentals of social life. Such understanding found its consolidation in article 21 of the Convention on Human rights and Biomedicine (1996): "The human body and its parts shall not, as such, give rise to financial gain" [3].

Organ and human trafficking. It is logically, that problems of organ trafficking is closely related with the human trafficking in general. From the standpoint of human rights in recent years was developed big amount of international instruments against human trafficking such as: The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, adopted by the Ministerial Conference under the Presidency of the European Union, The Hague, 24-26 April 1997, United Nations Convention against Transnational Organized Crime and the Protocols Thereto (2000), Brussels Declaration on Preventing and Combating Trafficking in Human Beings from the 29th of November 2002 and others. Problems occur during the transition from declarative provisions to the policy of "positive action" based on improving and enhancing the status of the individuals in society, their rights, that in the perspective excludes the possibility of selling or buying people.

Among the reasons for the spreading of human trafficking (internal and external) are also seen some dynamics. Yes, traditionally among such reasons scientists and professionals emphasize unemployment, low living standards, legal illiteracy of the public, the lack of real information about the problem, an internationalization of the economy, active international labor migration and much more. On the first place among the internal factors remains to a difficult economic situation.

The lack of organs for transplantation on the real example can be shown in the report of the World Health Organization: "approximately 100,800 solid-organ transplants are performed every year worldwide, including 69,400 kidney transplants and 20,200 liver transplants. Furthermore, forty-six percent of transplanted kidneys come from living donors" [4, p.433].

Talking about organ trafficking, it is important to distinguish between two main categories – trafficking in organs, tissues and cells and trafficking in human being for the purpose of the removal of organs.

According to the article 3 (a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a





position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" [5].

According to the Joint Council of Europe and United Nation study on Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs "...trafficking in organs, tissues and cells could preliminarily be described as follows: trafficking in OTC occurs when there is (a) the illicit removal, preparation, preservation, storage, offering, distribution, brokerage, transport or implantation of organs, tissues or cells (cells for the purpose of therapeutic transplantation); and (b) the possession or purchase of organs, tissues or cells with a view to conducting one of the activities listed in (a); solely for financial or other economic gain (for this or a third person's benefit)" [6].

As it can be concluded, the first difference is directly in the definitions, and means that trafficking on human being for the purpose of removal of organs in contrast to trafficking in organs, tissues and cells requires combination of action, means and purpose. If we examine the very essence of both crimes, we will see, that the main issue of the trafficking of organs, tissues and cells requires two main points: the existence of the organ as such and the use of it. As it was mentioned above, trafficking of human being requires combination of three elements. Moreover, for trafficking of organs is not important the status of the person, from which the organ was removed (living or diseased person), while all existing legislation protects only living persons from the human trafficking. The last difference between these two crimes lies in its scope, and differs in the aims of the crimes. Trafficking of the organs, tissues and cells can be committed separately from trafficking of human beings.

It is a well-known fact that trafficking of human beings is a transnational organized crime, which involves in its planning and implementation a lot of people in different countries. Organized crime can be classified into two categories: one characterized by the provision of goods and services between consenting parties, and the other characterized by the abuse or infiltration of legitimate businesses through threats, coercion, or violence. Silke Meyer classifies trafficking in human organs as falling into the first category because the transaction is often based on mutual consent. Generally, those donating their organs on the black market are lured, not forced, into selling their organs. The brokers pay only \$1,000 to \$5,000 to the donor, but sell the organ to recipients for hundreds of thousands of dollars [4, p.436].

Both these crimes create such concept as transplant commercialism, which is defined in the Declaration of Istanbul on Organ Trafficking and Transplant Tourism as "...a policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain". [7]

Within the European Union were adopted only laws, which deal with questions of trafficking of human beings in general, and did not pay enough attention and did not resolve the problems of the trafficking in organs at all. Among such legal acts are: Council Framework Decision of 19 July 2002 on combating trafficking in human



beings, Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells, Commission Directive 2006/17/EC of 8 February 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells which do not. Only the Council of Europe by adopting the Recommendation 7 on 2004 of the Committee of Ministers to member States on organ trafficking fixes the main issues of preventing of organ trafficking and international cooperation in this direction.

Transplant tourism. Severe shortage of organs for transplantation, increasing the number of people that need transplantation created new direction in the human trafficking – transplant tourism. Countries prohibit tourism with the purpose of selling organs due to different reasons, among which the most important is to be sure that the organ is fit and healthy enough to be transplanted and to function in another person. In accordance with the principle, that every human being has equal rights, possibility to buy organs in the scope of such kind of "tourism" gives rich people special treatment.

Firstly, definition of the transplant tourism was fixed in The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (adopted by Participants in the International Summit on Transplant Tourism and Organ Trafficking convened by The Transplantation Society and International Society of Nephrology in Istanbul, Turkey, April 30–May 2, 2008) and means:

Travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centers) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population. Travel for transplantation is the movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes[7].

From the above mentioned information about reasons of the developing of transplant tourism follows that nowadays becomes more popular using of such concept as "black market". "Black markets are especially prevalent in poorer regions largely due to the extreme poverty, desperation, long waiting lists, and the fact that higher quality organs come from living donors." [4, p.435]

Possibility of solving the problems of selling organs. In the modern world there are three possible ways to solve the problem of severe shortage of organs: transplantation of artificial organs, transplantation of embryonic cells and tissues and transplantation of cloned organs. All these procedures has their own pros and cons. For example, transplantation of embryonic cells has some aesthetic reasons, which are often dominated rather than medical ones. Indeed, the introduction of embryonic stem cells in the adult organism and their engraftment between aging and abnormal cells creates a unique situation - most powerful factors of renewal and development begin to operate on the old cells and organs, so that it becomes possible to "rejuvenate" the body. However, this raises other issues – will be able the aging body

to survive in such a massive boost, will its internal resources be sufficient to adapt to new circumstances, do not serve this expansion not only push the "rejuvenation", but also the beginning of the "break" some adaptive capabilities to the development disasters in the vascular, immune and other spheres.

Another issue that arises when there is the transplantation of stem cells is the ability of tumor growth. Although this method is used for patients with malignant tumors for rehabilitation therapy after X-ray or chemotherapy, the stem cell transplantation may have an impact on sometimes uncontrolled cell growth, in particular - the tumor.

However, the most problematic question nowadays is possibility to use cloned organs in transplantology. The lack of consensus on the morality of cloning in general, there is still much disagreement over the legitimacy of cloning to save lives. However, even if there was greater support for human cloning in general, the existence of a clone would not necessarily guarantee the availability of organs and tissues for transplantation. A clone would presumably be a person in his or her own right, not an object from which to pick and choose organs. Consequently, the laws that currently govern organ donation would apply to clone donation as well. It would be up to the clone to decide whether or not to donate organs, not the DNA donor [8, p.369].

Conclusions. To summarize all above mentioned is it necessary to note, that the legislation of the European Union requires improving in the direction of consolidation and regulation of such crimes as trafficking of human beings with the purpose of removing of organs and trafficking of organs, tissues and cells, conducting of their legal separation for future prevention (for deceased persons due to the fact that they do not need the protection and compensation) and making the compensation account possibility to use clones organs (with regards to living persons). However, taking into to adopt special regulation about prohibition of commercialization in this field. There is the sharp need to protect embryos and mothers (especially it concerns low-developed countries) from illegal abortions.

Moreover, Member States have to build their national policy and programs on the prohibition of creation financial advances using the human body and its parts. Additionally, international cooperation between States must be based on understanding that any actions, which are relevant with organ donation and transplantation outside the territory of each single State should be understood as cases of trafficking. There is also a need of creation of special list for collecting all for the purpose of organ removal and relevant governmental authorities should have access for such information base.

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ЦИТ: 114-216
UDC 341.63

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FOREIGN EXPERIENCE OF ARBITRATION

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Annotation. This article is devoted to studying of foreign experience of arbitration in the most dynamically progressing in this direction countries, to detection of prerequisites which led to development and arbitration distribution, the analysis of reforming arbitration institute, application of positive foreign experience of arbitration in modern Russia.

Keywords: arbitration court, arbitration examination, arbitration, international commercial arbitration, international arbitration.

Speaking about modern realities of legal proceedings, it is necessary to