

Legal Issues Related to Donation of Organs, Tissues and Cells of Human Origin

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Abstract: Scientific developments, positive changes in attitude of the man and the new legal framework allow the donation of organs, tissues and cells of human origin. In this context it is necessary to clarify whether the donation covered by the special law is, legally, one and the same as that covered by the Romanian Civil Code in force and qualified the successor's right to accept or reject late withdrawals for transplantation. The right to life and physical integrity is personal patrimony; it is a subjective civil right that has no economic content and it cannot be measured in money. Consequently, the content of these rights can not be expressed in money, the property does not belong to their owner. Given the above view, "the right of disposal" to donation of organs, tissues and cells of human origin is an attribute of ownership, right to life and physical integrity, as a personal right that is an intimate attribute patrimonial related to the person's right to dispose of his body as it wishes, within the law. Addressing these issues it is necessary to clarify the legal consequences of donating organs, tissues and cells of human origin, considering that medical activities are becoming more numerous.

Keywords: civil code; ownership; right of disposal; donation; succession

1. Regulation

Romanian Civil Code in force does not regulate organ donation of human tissues and cells.

Special regulation of donation of organs, tissues and cells of human origin¹ is given by: Constitution of Romania;nr.17/2001 Law on ratification of European Convention for the protection of human rights and human dignity to the application of biology and medicine, The Convention of Human Rights and Biomedicine signed in Oviedo on April 4, 1997, and the Additional Protocol to the Convention for the

¹ The new Civil Code (Law no. 287/2009) contains provisions regarding such a "donation", covering differently the collecting and transplant from a living donor or from deceased person, as follows:

- article 68: "collecting and transplant from living persons. (A) Collecting and transplant of organs, tissues and cells of human origin from living donors are made only in cases provided by law, written agreement, free, and only after having been informed in advance about the risks of the intervention. In all cases, the donor may change his mind, until the levy.

(2) It is prohibited the removal of organs, tissues and cells of human origin from children and from alive people, without discrimination because of their mental disability, a severe mental disorder or a similar reason, outside cases expressly provided by law."

- article 81. "collecting from deceased person. Collecting organs, tissues and cells for therapeutic or scientific purposes from the deceased can be made only as provided by law, written agreement, expressed during the life of deceased or, failing that, by written agreement, free, prior and expressly given by the surviving spouse, parents, offspring or, finally, the relatives of the sideline including the fourth degree."

protection of human rights and human dignity to the application of biology and medicine, a ban on cloning human beings, signed in Paris on January 12, 1998;

- No. 46/2003 law, patient rights law;
- Law no. 104/2003 handling human corpses and organs and tissues from cadavers for transplantation;
- Law 95/2006 on healthcare reform, with subsequent amendments;
- No. 79/2004 Government Ordinance establishing the National Agency of Transplantation approved with amendments by Law nr.588/2004, because these special rules do not contain provisions regarding civil capacity of the person shall apply the rules common law.

2. Regulations in the Romanian Constitution the Right Person to Decide on Your Body

According to:

- Article 15 (1) All citizens enjoy the rights and freedoms enshrined in the Constitution and other laws and have obligations under them;
- Article 22 (1) The right to life and right to physical and mental integrity of person guaranteed;
- Article 26 (2) natural person has the right to dispose of herself, if not infringe the rights and freedoms of others, public order and morals.

3. The Qualification "Right of Disposal" for the Donation of Organs, Tissues and Cells of Human Origin

In the analysis we start from the definition of ownership and attributes that are conferred by this owner.

The property is right on that one thing that gives expression approach, as that allows its holder to possess, use and dispose of the thing in its power in their own interest and in compliance with existing legislation. (Bîrsan, Gaiță, & Pivnicieru, 1997, p. 22)

Ownership gives the owner three attributes:

- use property (jus utendi);
- you reap the fruits (jus fruendi);
- to have the object (jus abutendi).

Jus abutendi is attribute of ownership consisting of power or property owner to dispose of his rights to be real to other people (legal provision) or to have good substance (transform, consume, destroy) in compliance with regulations force. (Bîrsan, Gaiță, & Pivnicieru, 1997, p. 27)

It is useful in the characterization of "right of disposal is to classify the right to life and physical integrity. Right to life and physical integrity is personal patrimonial and a subjective civil right that has economic content and can not be assessed in money. In consequently, the content of these rights

could not be expressed in money, not part of the property of the owner. (Lupan & Sabău-Pop, 2006, p. 111)

Given the above view that "the right of disposal" to donation of organs, tissues and cells of human origin is an attribute of ownership, right to life and physical integrity as a personal right that is an attribute intimate patrimonial related to the right person to have her body as it wishes, within the law.¹

4. The Human Body is not a "Good"

It means a good economic value is useful for material or spiritual satisfaction of human needs and is likely close as economic rights. (Beleiu, 2007, p. 96)

Property resulting from the definition of cumulative requirements necessary for a good purpose in the presence of civil law, unfulfilled conditions because the human body, organs, tissues and cells of human origin have economic value, they can not be source of gain. In this respect we quote and the provisions of Article 21 of the European Convention to protect human rights and human dignity to the application of biology and medicine: "The human body and its parts should not be a source of financial gain." Underline that in accordance with law European provisions are art.144 e) of the Law 95/2006: "donation and transplantation of organs, tissues and cells of human origin may be subject to legal acts in order to obtain a material benefit or other." Not a good body, organs, tissues and cells of human origin is not in any civil circuit, in which case they can not be the object of the contract of donation.

Moreover, the donation of organs, tissues and cells of human health needs and not only meet a person's material, failed to fulfil this condition is either "good". Does not that preclude living donor or those who may have body of the deceased to satisfy a spiritual need that way through good, unpaid, as it were?

The body not part of the heritage human beings, whether living or the heirs of its heritage are considered in the literature as "all rights and obligations of economic value, which are a matter of law." (Bîrsan, Gaiță, & Pivnicieru, 1997, p. 8) That being so, it should be clarified if the body is or not an item of property a person in life, or becomes part of legacy picked successors deceased.

Clarifying the fact that the right to life and physical integrity is personal patrimonial consider the human body is not part of the estate it can not be lawfully economically exploited, in whole or in part.

Another reason to reject the idea that a human body can be part of the assets, the human body or its components can not be used to ensure an obligation.

5. The Donation of Organs, Tissues and Cells of Human Origin is not a Contract Donation within the Meaning of the Civil Code

Special law analysis leads to the conclusion that the donation of organs, tissues and cells of human origin is not a contract of donation within the meaning of Romanian Civil Code.

¹ A limitation would be assisted death.

To reach this conclusion we considered the definition of the contract of donation: "Donation is the contract whereby one party, called the donor, intentionally reduced its heritage with a liberal law for the other party, called the grantee, without watch for obtaining benefits." (Toader, 2005, p. 111)

The definition is clear that the donor reduces its heritage as for its a body donatarului. Deoarece not part of the assets of the person, it can not be the subject of a gift within the meaning of Civil Code in force, -not that a human body a "good" can not be covered by a contract of donation, donation, that revocation, the exception to the rule of irrevocability donations is not applicable to the donation of organs, tissues and cells of human origin.

Since it was made, for example, transplant or transfusion, for any of the grounds for revocation of a gift under the Civil Code, you can not revoke transplantation or transfusion. Moreover Art. 144 points. c) Law. 95/2006 on the revocation order gift for the removal of organs, tissues and cells of human origin, "the donor may return to the consent given, until the levy." Thus, made a "donation", the donor can no longer "revoke"

- that, unlike the parties of the contract of donation called donor and grantee parties for donation of organs, tissues and cells of donor and recipient are human¹
- way of expressing that consent to donation is regulated differently as we are currently governed by Civil Code donation or the donation of organs, tissues and cells human origin. Thus, if the donation contract covered by existing civil code, the donor must have discretion when concluding the contract. If "donor" is dead with cardiac activity or is dead without cardiac activity, if there are found irreversible damages of all brain functions, according to the protocol for declaring brain death, nor can any question express consent. In this case we consider that a valid consent may be expressed by major family members or relatives or the legal representative of the deceased, unless they have full legal capacity.

6. The Qualification of Successors Right to Accept or Reject Late Withdrawals for Transplant

A living person may, by statutory requirements, that after death his body be used for sampling.² In this situation, the successors of that person can only accept late unable to resist the desire can not ask the reduction of life. They samples, none of them having a reserve succession on dead body, not feasible patrimonial rights can not be transmitted or via inheritance. (Lupan & Sabău-Pop, 2006, p. 111)

In the case where a person died without leaving a note which agrees with the levy, relatives or the person authorized to represent the deceased or can not give permission for sampling. In according to section 4 of 147 Law 95/2006: "removal of organs, tissues and / or cells from dead people is only with the written consent of at least one of the major members of the family or relatives in the following order: spouse, parent, child, brother and sister. ³In their absence, consent will be taken from the person authorized to legally under legislation, to represent the deceased, in both cases shall be prescribed in Annex 4. "Following the death of a person opens heritage. By heritage it means the transmission assets

¹ Recipient-subject receiving transplant organs and / or tissues and / or cells (article 142 of Law no. 95/2006).

² According to article 142 letter d) of Law no. 95/2006, it is stated that: collecting organs and / or tissues and / or cells of human origin morphologically and functionally sound, except auto transplant hematopoietic stem cells when the cells are collected from the patient to achieve a transplant.

³ It is unclear why the legislator placed in order of priority, the brother before the sister of the deceased.

of individuals killed by one or more persons in being (natural person, corporation or state) and those who acquire property are called "heirs", "success" or "heresy". (Deak, 2002, p. 5)

The question is whether his successors acquired ownership of the deceased body and their act authorizing the levy is one available.

Is out of the question that the deceased's heirs on the body not acquire ownership rights and no right of disposal of property as an attribute.

That is, we believe that the presence of a right conferred by special law, which has no relation to their rights derive from the common law.

In conclusion, we say about the human body that it must, on its physical integrity, such as the person is alive and after her death, the respect. We can also say about the human body that he is part of life or property of the person its successors therefore not subject to a document available as an attribute of ownership.

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