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CONTEMPORARY DILEMMAS OF TRANSPLANTOLOGY IN POLAND IN THE LIGHT OF LAW AND BIOETHICS

WSPÓŁCZESNE DYLEMATY TRANSPLANTOLOGII W POLSCE W ŚWIETLE PRAWA I BIOETYKI

Streszczenie

Zagadnienie przeszczepiania narządów jako formy ratowania życia ludzkiego w Polsce nadal jest tematem kontrowersyjnym. Wciąż toczące się dyskusje dotyczą tak regulacji prawnych, jak aspektu etycznego i moralnego dokonywania transplantacji. Choć w naszym kraju przeszczepy są rutynowymi zabiegami, to jednak, z powodu niewiedzy i braku jasnych norm legislacyjnych, wykonuje się ich zbyt mało – mówi się nawet o kryzysie polskiej transplantologii. Temat ten nie może pozostawać tematem tabu. Należy go podnosić i zwracać uwagę na jego znaczenie w środowiskach medycznych i prawnych, ponieważ w grę wchodzi ludzkie zdrowie i życie.

Słowa kluczowe: *transplantologia, transplantacja, przeszczepy, prawo medyczne, śmierć pnia mózgu*

Summary

The issue of organ transplantation as a form of saving human life in Poland is still a controversial topic. The ongoing discussions concern both the legal regulations and the ethical and moral aspect of transplantation. Although transplants are routine procedures in our country, due to ignorance and the lack of clear legislative standards, too few of them are performed – there is even talk of a crisis in Polish transplantology. This subject must not remain taboo. It must be raised and its importance highlighted in medical and legal circles, because human health and life are at stake.

Keywords: *transplantology, transplantation, organ transplants, medical law, brain stem death*

Introduction

Transplantology constitutes a specialized field of medicine focused on organ transplantation. The performance of such procedures requires comprehensive diagnostic evaluations as well as rigorous histocompatibility testing. While the idea of organ transplantation can be traced back to antiquity, the origins of modern transplantology are generally ascribed to the turn of the 19th and 20th centuries.[1] Currently, transplantology is one of the most dynamically developing fields of medicine.[2] *The concept of transplantation* (Latin: *transplantare* – to graft, *plantare* – to plant) refers to the transfer of an organ (or a part thereof) within the body of a single individual, or between two different individuals (either of the same species or across species).[3]

The particular significance in scientific and social debates is attributed to xenotransplantation, which, on the one hand, appears to be a forward-looking solution to the organ shortage for transplants, while on the other hand, raises serious concerns related to the risk of cross-species disease transmission, animal welfare issues, and bioethical and religious dilemmas. The development of transplantation medicine, although undeniably spectacular, is not without its challenges. In addition to strictly medical issues, legal, ethical, and social aspects remain highly significant, determining clinical practice and influencing the level of public trust in transplants. In the Polish context, there is still talk of a shortage of donors, insufficient hospital activity in identifying potential donors, and a lack of transparent legal regulations and adequate social education. Therefore, the analysis of transplantation medicine must be

1 B. Rutkowski, P. Kaliciński, Z. Śledziński, M. Wujtewicz, A. Milecka (red.), *Wytyczne dotyczące zasad zgłaszania, kwalifikacji i przygotowania zmarłych dawców do pobrania narządów*, Wydawca Via Medica, Gdańsk 2009, s. 128.

2 P. Kołodyński, P. Drab, *Prawne regulacje pobierania i transplantacji narządów oraz tkanek w ujęciu europejskiej konwencji bioetycznej*, w: Przegląd Europejski, Nr 1(39), 2016, s. 53-54.

3 B. Król, J. Zembala-John, *Transplantacja narządów, aspekty medyczne, prawne i organizacyjne*, Wydawca Fundacja Ślaskiego Centrum Chorób Serca w Zabrzu, Zabrze 2013, s.78.

conducted in an interdisciplinary framework – integrating medicine, law, bioethics, and social sciences. Only such an approach allows for understanding contemporary challenges and identifying the directions for the development of this field, which is directly related to the protection of the highest value – human life and health.

Types of Grafts and Criteria for Their Classification in Transplantation

In transplantation, there are four types of grafts. The first of these is the allogenic graft. It involves the transplantation of cells, tissues, or organs from a donor who is genetically different from the recipient but compatible in terms of antigens. Cells, tissues, and organs for allogenic transplantation are most often harvested from deceased individuals. Another type of graft is the autogenic graft, which involves the transplantation of stem cells from the same patient. For autogenic grafts, stem cells from peripheral blood or bone marrow are used. This type of graft is applied in cases of scars and burns (skin grafts). We also distinguish the syngeneic graft. This is a graft performed between identical twins, i.e., individuals with the same genetic makeup. The last type of graft is the xenogenic graft, which involves the transplantation of tissues or organs between individuals of different species.[4]The success of such a procedure is closely related to the phylogenetic distance between the donor and the recipient. Currently, the only potential species – donors for humans – are primates (baboons and chimpanzees) and the domestic pig. However, xenotransplantation is a highly controversial topic, both from a medical and ethical and moral perspective. Although this field still requires many analyses, it remains one of the most promising alternatives to classical transplantation.[5]

Another criterion for the division of transplantation is the origin of the transplanted organ. Transplantation *ex mortuo* refers to the process where the graft material is taken from the deceased, while transplantation ex vivo involves the graft material being taken from a living organism.[6] Post-mortem material procurement assumes that the donor of organs can be a person who has been declared dead. The determination of the moment of death consists of several consecutive stages, during which the individual life functions of the organism cease, ultimately leading to biological death. Currently, the cessation of brain stem functions is recognized as the proper moment of death.[7] This is a condition in which the patient's brain has been irreversibly damaged. Brainstem death is diagnosed through a medical consultation held twice, consisting of an anesthesiologist, a neurologist or neurosurgeon, and a phy-

4 L. Cierpka, W. Jędrzejczak, *Transplantologia Kliniczna*, Wydawnictwo Termedia Poznań 2021, s. 400-408.
5 A. Jasiński, R. Słomski, M. Szalata, D. Lipiński, *Transplantacja narządów – wyzwanie dla biotechnologii*, w: Biotechnologia, T.1, 2006 (72), s. 25–28.
6 E. Guzik-Makaruk, *Transplantacja organów, tkanek i komórek w ujęciu prawnym i kryminologicznym*, Wydawnictwo Temida 2, Białystok 2008, s. 56.
7 Ustawa z dnia 5 grudnia 1996 r. *o zawodach lekarza i lekarza dentysty* (Dz.U. z 2024 r. poz. 1287.tj.).

sician from another specialty.[8] After the death has been confirmed, the process of organ harvesting for transplantation can proceed.

The most common cause of death among donors (60%) is hemorrhagic or ischemic strokes. In 30% of cases, donors are individuals who have suffered traumatic brain injuries, while 10% are donors with brain damage resulting from sudden cardiac arrest.[9]

It should be emphasized that the determination of brain death has statutory significance in Poland. This refers to Article 43 of the Act of December 5, 1996, on the professions of doctor and dentist. Brain death is also addressed in the Medical Code of Ethics as well as the Announcement of the Minister of Health from December 4, 2019, regarding the methods and criteria for determining the permanent and irreversible cessation of brain activity. This document provides detailed instructions on how the process should be carried out based on medical knowledge and legal norms. The declaration of brain death not only has medical consequences but also civil and criminal implications. As a result, there is also a change in the status of a potential donor, from an ex vivo donor to an *ex mortuo* donor.[10]

If, after the brain death is confirmed by the commission, the family does not consent to organ transplantation, the patient is disconnected from the ventilator, and their life functions are no longer artificially supported. However, if the family agrees to organ donation, the patient's life functions are maintained by the ventilator equipment.[11]

After obtaining the donor material, an important task is to achieve the quickest possible flushing of the organs with blood and cooling them to a temperature of approximately 4°C, as lower temperatures slow down cellular metabolism and reduce oxygen demand.[12] After the transplantation, the surgical wound is closed, and dressings are applied in such a way as to give the remains an aesthetic appearance.[13]

Between Medicine, Law, and Bioethics – The Contemporary Landscape of Polish Transplantology

The first transplant procedure in Poland was performed in 1966, when a kidney transplant from a living donor was successfully carried out. Another significant achievement was the first heart transplant in the country, performed by Professor

8 K. Hillman, *Oznaki życia. Przypadki z intensywnej terapii*, Wydawnictwo Znak, Kraków 2011, s. 188-191.
9 J. Czerwiński, P. Małkowski, *Medycyna transplantacyjna dla pielęgniarek*, Wydawnictwo PZWL, Warszawa 2017, s. 278-302.
10 J. Duda, *Cywilnoprawna problematyka transplantacji medycznej*, Wolter Kluwer Polska,Warszawa 2011, s. 19-20.
11 A. Mielecka, J. Czerwiński, *Rola i zadania koordynatora transplantacji*, w: B. Rutkowski, P. Kaliciński, Z. Śledziński, M.Wujtewicz, A. Mielecka (red,), *Wytyczne dotyczące zgłaszania kwalifikacji i przygotowania zmarłych dawców do pobrania narządów*, Via Medica, Gdańsk 2009, s.191-199.
12 W. Rowiński, *Podstawy transplantologii*, w: J. Szmidt, J. Kużdżał, Z. Gruca, M. Krawczyk, *Podstawy chirurgii, Medycyna Praktyczna*, T.1, Wydawca Medycyna Praktyczna, Kraków 2009, s.120.
13 P. Domagała, M. Wszoła, *Dawca zmarły narządów, ocena i kwalifikacja dawcy, pobranie wielonarządowe*, Warszawa 2014, s. 5.

Zbigniew Religa in 1985. Despite the death of the recipient two months after the transplant due to sepsis resulting from an infection, the transplant was considered a success.[14] It was one of many operations of this kind performed by Professor Religa's team.[15]

Over the last fifty years, transplantation as a life-saving method has significantly gained in popularity. This is primarily due to substantial technological advancements in medicine, which, in turn, have led to an increase in the number of successful transplants.[16]

Currently, approximately 28 thousand transplants are performed annually in Poland,[17] Around 100 heart transplant procedures are routinely performed.[18] Kidney, pancreas, liver, and intestinal segment transplants are also regularly carried out.[19]

Successfully performed transplants of the upper limb and larynx have been carried out. Skin, bone marrow, bone, cartilage, and heart valve transplants are also performed. In 2013, the first successful face transplant was also carried out.[20]

According to data from the Poltransplant[21] organization, exactly 1,399 organs were transplanted in Poland last year. This is more than 120 organs compared to 2021. However, even before the outbreak of the COVID-19 pandemic in 2019, 1,473 organs were transplanted in Poland from deceased donors – showing an upward trend, although the record from 2012, when the number of transplants reached 1,546, was not surpassed.[22]

The further development of transplantation in our country will primarily depend on an increase in the number of potential deceased donors, as organ transplants from living donors still remain rare in Poland. To date, one of the reasons for the long wait for transplantation has been the constant shortage of material for transplants. On the other hand, a significant issue has been the outdated price list for transplantation procedures, which has not been updated since 2013, adversely affecting the activity of hospitals in acquiring organs. Furthermore, the Minister of Health has indefinitely suspended work on the draft of the Transplantation Law, which had been initiated

14 U. Ołdakowska-Jedynak, M. Krawczyk (red.), *Transplantacja wątroby – „Nowe życie"*, Czelej, Lublin 2012, s. 120-123.

15 P. Łuków, *W poszukiwaniu zrozumienia śmierci – etyczne wyzwanie dla lekarzy*, w: P. Łuków (red.) *Zrozumieć śmierć człowieka*, Polskie Stowarzyszenie Koordynatorów Transplantacyjnych, Warszawa 2015, s.13-30.

16 B. Foroncewicz, K. Mucha, L. Pączek, *Transplantologia praktyczna, t. 10. Transplantologia – medycyna przypadków czy przypadek medyczny?*, Wydawnictwo Naukowe PWN,Warszawa 2019, s. 128-134.

17 U. Ołdakowska-Jedynak, M. Krawczyk (red.), *Transplantacja wątroby – „Nowe życie"*, Czelej, Lublin 2012, s. 122.

18 B. Rutkowski, P. Kaliciński, Z. Śledziński, M. Wujtewicz, A. Milecka (red.), *Wytyczne dotyczące zasad zgłaszania, kwalifikacji i przygotowania zmarłych dawców do pobrania narządów*, Wydawca Via Medica, Gdańsk 2009, s.135.

19 A. Barański, *Przeszczepianie nerek*, Wydawnictwo PZWL, Warszawa 2017, s. 290-294.

20 A. Jasiński, R. Słomski, M. Szalata, D. Lipiński, *Transplantacja narządów – wyzwanie dla biotechnologii*, w: Biotechnologia, T.1, 2006 (72), s. 17-18.

21 Centrum Organizacyjno-Koordynacyjne do Spraw Transplantacji „Poltransplant" jest państwową jednostką budżetową podlegającą Ministrowi Zdrowia, z siedzibą w Warszawie. Istnieje od 1996 roku. Główne zadania Centrum definiuje art. 38 ust. 3 Ustawy z dnia 1 lipca 2005 r. *o pobieraniu, przechowywaniu i przeszczepianiu komórek, tkanek i narządów*. (Dz.U. z 2023 r. poz. 1185.tj.).

22 *W 2022 roku w Polsce przeszczepiono niemal 1,4 tys. narządów. Transplantologia odrabia straty z pandemii*, Polska Agencja Prasowa S.A., 5 stycznia 2023, *https://www.rynekzdrowia.pl/Polityka-zdrowotna/W-2022-roku-w-Polsce-przeczepiono-niemal-1-4-tys-narzadow-Transplantologia-odrabia-straty-z-pandemii,241024,14.html*, (dostęp: 15.08.2025 r.).

by the ministry as early as 2017.[23] Therefore, no changes were introduced that could impact the improvement of the transplantology system in Poland.

Another serious problem is the insufficient involvement of hospitals in the organ donation procedure, especially in facilities located outside transplant centers. The medical community has shown inadequate activity in identifying and reporting potential donors, which has led to a lack of organ availability for transplantation.[24]

In legal terms, numerous regulations have been established worldwide regarding the procurement of organs from both living and deceased donors.[25] In Poland, legal norms related to transplantation were introduced only in 1991, in the Act on Healthcare Institutions.[26] The development and commercialization of transplantology have led to the necessity of regulating legal norms regarding the material benefits derived from performing transplants within Poland.[27]

Since 19 April 2017, the amended Act of 1 July 2005 on the Collection, Storage, and Transplantation of Cells, Tissues, and Organs has been in force in our country.[28] It implements the provisions of Article 21 of the Convention on Human Rights and the Dignity of the Human Being with regard to the Application of Biology and Medicine,[29] Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 r.,[30] Directives of the Commission (EU) 2015/565 and 2015/566 of 8 April 2015 r.[31] An act prohibited under Article 44(1) of the Act on Counteracting Drug Addiction,[32] The acquisition or disposal of another person's cell, tissue, or organ for the purpose of obtaining financial or personal gain, the mediation in their acquisition or disposal, as well as participation in the transplantation or dissemination of cells, tissues, or organs obtained in violation of statutory provisions – whether originating from a living donor or from a human cadaver – are subject to prohibition. An additional emphasis on the importance of these provisions is found in Article 43 of the Act on Cells, Tissues and Organs, which criminalizes the dissemination of advertisements concerning the remunerated disposal, acquisition, or mediation in the remunerated disposal or acquisition of a cell, tissue, or organ intended for transplantation.

23 Polska transplantologia w kryzysie, wyniki kontroli NIK, 27 maja 2022, *https://www.nik.gov.pl/aktualnosci/polska-transplantologia-w-kryzysie.html*, (dostęp: 15.08.2025 r.).

24 Polska transplantologia w kryzysie, wyniki kontroli NIK, 27 maja 2022, *https://www.nik.gov.pl/aktualnosci/polska-transplantologia-w-kryzysie.html*, (dostęp: 15.08.2025 r.).

25 A. Jasiński, R. Słomski, M. Szalata, D. Lipiński, *Transplantacja narządów – wyzwanie dla biotechnologii*, w: Biotechnologia, T.1, 2006 (72), s. 19-21.

26 Dz.U. z 2007 r. nr 14 poz. 89, nr 123 poz. 849, nr 166 poz. 1172, nr 176 poz. 1240, nr 181 poz. 1290, z 2008 r. nr 171 poz. 1056, nr 234 poz. 1570, z 2009 r. nr 19 poz. 100, nr 76 poz. 641, nr 98 poz. 817, nr 157 poz. 1241, nr 219 poz. 1707, z 2010 r. nr 96 poz. 620, nr 107 poz. 679, nr 230 poz. 1507, z 2011 r. nr 45 poz. 235.

27 K. Soroka, *Komercjalizacja ciała ludzkiego*, w: Z. Lasocik, E. Rekosz (red.), *Handel narządami. Spory wokół interpretacji przepisów karnych ustawy transplantacyjnej*, Wydawnictwo Ośrodek Badań Handlu Ludźmi Uniwersytetu Warszawskiego, Warszawa 2011, s. 14–16.

28 Ustawa z dnia 1 lipca 2005 r. *o pobieraniu, przechowywaniu i przeszczepianiu komórek, tkanek i narządów* (Dz.U. z 2017 r. poz. 1000).

29 Konwencja o prawach człowieka i biomedycynie, zawarta 4 kwietnia 1997 r. w Oviedo, *https://www.coe.int/t/dg3/healthbioethic/texts_and_documents/ETS164Polish.pdf*, (dostęp: 7.02.2023 r.).

30 Dyrektywa 2004/23/WE Parlamentu Europejskiego i Rady z dnia 31 marca 2004 r. (Dz. Urz. UE L 102 z 07.04.2004, str. 48, z późn. zm.).

31 Dyrektywa Komisji (UE) 2015/565 oraz 2015/566 z dnia 8 kwietnia 2015 r. (Dz. Urz. UE L 93 z 09.04.2015, str. 43; Dz. Urz. UE L 93 z 09.04.2015).

32 Ustawa z dnia 1 lipca 2005 r. *o pobieraniu, przechowywaniu i przeszczepianiu komórek, tkanek i narządów* (Dz.U. z 2017 r. poz. 1000).

One of the significant issues in the field of criminal law concerning transplantology is the penalization of organ trafficking and all forms of related brokerage. The Polish legislator, by implementing the provisions of international and European Union law, has chosen to introduce particularly stringent regulations aimed at safeguarding human dignity and preventing abuses in the procurement of organs for transplantation. Of particular importance is the amendment to the Act of 1 July 2005 on the Collection, Storage and Transplantation of Cells, Tissues and Organs[33] as a result of which the criminal liability related to the publication of advertisements concerning the paid sale or purchase of organs was tightened. Under the previous legal framework, Article 43 of the Act on the Collection, Storage, and Transplantation of Cells, Tissues, and Organs penalized only the "dissemination of advertisements," which meant that the prohibited act had to encompass at least two advertisements (plural form).[34] In judicial practice, this led to significant interpretative doubts and, consequently, to a considerable limitation of the effectiveness of the provision, since a single announcement did not fulfill the elements of the prohibited act.

From the perspective of criminal law, this constitutes an example of an expansion of the scope of criminalization – the legislator not only clarified the provision but also effectively broadened the possibility of prosecuting socially undesirable conduct. The amendment was aimed at: tightening the legal system by eliminating interpretative gaps, enhancing both general and individual prevention by discouraging potential actors from engaging in organ trafficking, and adapting the law to contemporary modes of communication, in which a single online announcement may reach millions of recipients, thereby carrying a greater potential for social harm than a dozen printed advertisements published several years ago.

In the doctrine of criminal law, it is emphasized that this amendment reflects a tendency toward the absolutization of the protection of legal interests in the field of transplantology – specifically, human dignity, health, and life, as well as the public interest in ensuring that transplant procedures are carried out solely in accordance with the principle of altruism and gratuitous donation. Moreover, the adopted solution aligns with the broader European trend of tightening regulations aimed at counteracting so-called "transplant tourism" and the illicit trade in organs, which, according to WHO data, constitute one of the most serious threats to health care systems and human rights worldwide.

The overall assessment of the criminalization of remunerated activities related to transplantation and the authorization of organ trade is not uniform, either in Poland

33 Ustawa z dnia 1 lipca 2005 r. *o pobieraniu, przechowywaniu i przeszczepianiu komórek, tkanek i narządów* (Dz.U. z 2017 r. poz. 1000).
34 Wyrok Sądu Apelacyjnego w Krakowie – sygn. akt II K 394/16.

or worldwide.[35] There have emerged opinions indicating the necessity of refraining from holding organ donors who sell their organs criminally liable, as they ought to be regarded not as perpetrators of a punishable act, but rather as victims.[36] In light of Article 11 of the Act on the Public Blood Service, blood donors with rare blood groups, as well as donors who, prior to blood collection, underwent immunization procedures or other procedures aimed at obtaining plasma or diagnostic sera, are entitled to monetary compensation "for the inconveniences associated with the obligation to appear at the request of any organizational unit of the public blood service."[37]. This raises the question of whether, since an exception to the principle of gratuitous, voluntary blood donation has been provided for rare blood groups, a similar exception should not be introduced for donors of an even more valuable material.

The prohibition of commercialization stems from the view that the sole basis for performing a transplant should be altruistic motives, while commercialization threatens their disappearance. This prohibition was formulated out of concern over the potential increase in criminal activity and abuses on the part of physicians.[38] The trade in human organs, understood as a transaction between donor and recipient, ought to be prohibited not merely as a safeguard of one party's dignity, but rather to prevent the exploitation of the weaker party by the stronger. An individual is also entitled to the right of self-determination; therefore, any decision in this respect should remain free from external pressure or manipulation, which, in crisis situations, may lead to actions causing harm to another person.[39]

The decriminalization of disseminating advertisements concerning the acquisition or disposal of cells, tissues, and organs, as well as the acquisition or disposal – whether for oneself or for close relatives – of another person's cells, tissues, and organs, combined with high standards of control and supervision, could ensure the proper protection of health and prevent the circulation of organs of unknown origin.[40] However, the intermediation in such transactions, the participation of minors therein, or the coercion of either party to engage in them should be deemed inadmissible.

35 E. A. Friedman, A.L. Friedman, *Payment for donor kidneys: Pros and cons* w: Kidney International T. 69, Nr 6, 2006, s. 960-962.
36 Z. Lasocik, *Debata na temat interpretacji przepisów karnych tzw. ustawy transplantacyjnej*, w: Z. Lasocik, E. Rekosz (red.), *Handel narządami. Spory wokół interpretacji przepisów karnych ustawy transplantacyjnej*, Wydawnictwo Ośrodek Badań Handlu Ludźmi Uniwersytetu Warszawskiego, Warszawa 2011, s. 83.
37 Ustawa z dnia 22 sierpnia 1997 r. o publicznej służbie krwi (tekst jedn.: Dz. U. z 2017 r. poz. 1371 ze zm.). Zob. też Rozporządzenie Ministra Zdrowia z dnia 6 lutego 2017 r. w sprawie określenia rzadkich grup krwi, rodzajów osocza i surowic diagnostycznych, których uzyskanie wymaga przed pobraniem krwi lub jej składników wykonania zabiegu uodpornienia dawcy lub innych zabiegów, oraz wysokości rekompensaty (Dz. U. poz. 235).
38 W. Rowiński, *Prawne i etyczne aspekty przeszczepiania narządów w Polsce. Historia, stan obecny i problemy czekające nas w najbliższej przyszłości*, w: A. Łopatka (red.), *Prawo-Społeczeństwo-Jednostka. Księga jubileuszowa dedykowana Profesorowi Leszkowi Kubickiemu*, ABC, Warszawa 2003, s. 315-320.
39 Por. O. Sitarz, *Kryminalizacja odpłatnych czynności związanych z transplantacją (art. 43 i 44 ustawy z dnia 1 lipca 2005 r. o pobieraniu, przechowywaniu i przeszczepianiu komórek, tkanek i narządów)*, w: Z. Lasocik, E. Rekosz (red.), *Handel narządami. Spory wokół interpretacji przepisów karnych ustawy transplantacyjnej*, Wydawnictwo Ośrodek Badań Handlu Ludźmi Uniwersytetu Warszawskiego, Warszawa 2011, s.25-42.
40 A. Złotek, *Odpowiedzialność karna lekarza transplantologa*, w: Czasopismo Prawa Karnego i Nauk Penalnych, 2010 (1), s.37-42.

Of course, the subject under discussion is, and will continue to be, associated with numerous controversies, both in the scientific and the ethical domain.[41] The issue of determining death, the unequivocal definition of death, as well as the problem of the integrity of the human body and the respect due to it, remains a matter of debate.[42] It is necessary to pose the question as to what constitutes the proper definition of human dignity and whether the sale of organs in fact violates it. Human dignity is protected under Article 30 of the Constitution of the Republic of Poland, which provides: *"The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable, and its respect and protection shall be the duty of public authorities."*[43]. The concept has hitherto been interpreted in various ways; however, it has always remained closely linked to the conviction of human rationality and freedom.[44] Since the essence of humanity lies in free choice, the prohibition on selling one's organs constitutes a significant restriction of that choice. No one has the right to compel another person to act or refrain from acting on the grounds that, in the opinion of others, such a course of action would be better, wiser, or more appropriate for them.[45] Regardless of the nature of specific amendments to the legal system concerning transplantology, it is essential that all regulations restricting the autonomy of participants in the transplantation process raise the question of the protection of fundamental rights, while at the same time respecting every individual's right to self-determination.

Grounds for Discontinuance of Proceedings in Cases Concerning Advertisements on the Sale of Organs in Poland

The issue of criminal liability for publishing advertisements concerning the sale of human organs, in particular kidneys, in Poland constitutes not only the subject of prosecutorial practice but also of ongoing debate within the doctrine of criminal and medical law. Despite the unequivocal prohibition of organ trafficking enshrined in Article 43 of the Act of 1 July 2005 on *the Collection, Storage, and Transplantation of Cells*, Tissues, and Organs, in practice some criminal proceedings are ultimately discontinued. An analysis of these cases reveals the significant role of both procedural and substantive grounds in the legal assessment of such acts.[46].

41 P. Kołodyński, P. Drab, *Prawne regulacje pobierania i transplantacji narządów oraz tkanek w ujęciu europejskiej konwencji bioetycznej,* w: Przegląd Europejski, Nr 1(39), 2016, s.s. 60–65.
42 E. Olejniczak, B. Kukiela, *Medialny obraz transplantacji ex mortuo a przepisy prawa*, w: Acta Universitatis Lodziensis, Folia Linguistica, 46/2012, s. 86-102.
43 Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz. U. Nr 78, poz. 483 ze zm.).
44 Por. M. Środa, *Idea godności w etyce i kulturze*, Wydawnictwo Filozofii i Socjologii Uniwersytetu Warszawskiego,Warszawa 1993, s. 25-30.
45 S. Mill, *Utylitaryzm. O wolności*, PWN,Warszawa 1959, s. 129.
46 *https://kurierlubelski.pl/sad-w-krasnymstawie-dwoje-mlodych-ludzi-probowalo-sprzedac-nerki-w-internecie/ar/677863?utm_source=chatgpt.com* (dostęp: 24.08.2025).

The issue of criminal liability for publishing advertisements concerning the sale of human organs, particularly kidneys, constitutes a significant element of medical criminal law. Poland, similarly to the majority of European states, has adopted a restrictive model of penalization of all manifestations of organ trafficking, recognizing that it poses a threat not only to the protection of human life and health but also to the axiological foundations of the legal system, which are grounded in the principle of respect for human dignity.

Pursuant to Article 43(1) of the cited Act, the *ratio legis* of this provision consists not only in the criminalization of the actual execution of a transaction, but also of the preparatory act itself, namely the intention to dispose of an organ for remuneration. At the same time, under Article 17 § 1 of the Code of Criminal Procedure[47] "with reference to Article 1 § 2 of the Polish Criminal Code[48] proceedings may be discontinued if: there is no indication of a prohibited act, there is insufficient evidence to justify the suspicion of its commission, or the act does not exhibit a degree of social harmfulness exceeding the negligible level.

An analysis of law enforcement practice and media reports indicates that, in cases concerning advertisements for the sale of human organs, the most common grounds for discontinuance include:

- *Absence of genuine intent to conclude a transaction* – the announcements were published as a joke, as a form of provocation, or as an act of desperation, thus without an authentic will to undertake a legal act;
- *Minimal social harmfulness of the act* – in incidental cases where the announcement was promptly removed, no actual contact with potential buyers occurred, and the perpetrator expressed remorse;
- *Lack of evidence of perpetration* – discontinuance also occurred in situations where it was not possible to unequivocally link the individual to the content of the announcement;
- *Conduct of the perpetrator* – confession, cooperation with law enforcement authorities, and an unambiguous withdrawal from the intention led to the conclusion that the continuation of proceedings would be purposeless.

An example may be found in the decision of the District Court in Warsaw of 4 May 2011, in which it was held that an online advertisement offering a kidney for sale, posted in a state of severe personal crisis and without any real possibility of completing the transaction, should be regarded as an act of negligible social harm, thereby justifying its discontinuance.[49]

47 Ustawa z dnia 6 czerwca 1997 r. Kodeks postepowania karnego (Dz. U. 2025 poz. 46. tj.)
48 Ustawa z dnia 6 czerwca 1997 r. Kodeks postepowania karnego (Dz. U. 2025 poz. 383. tj.)
49 Postanowienie SR dla m.st. Warszawy z dnia 4 maja 2011 r., sygn. akt III Kp 123/11 (niepubl.)

From the perspective of criminal law dogmatics, such situations raise fundamental questions about the limits of penalization. Should every instance of posting an advertisement for the sale of an organ trigger the machinery of criminal repression? Or should the legislator and law-enforcement practice differentiate the response depending on the degree of actual threat to the legal interests protected by statute? It appears that the current model, while maintaining a formal prohibition, allows for the application of the guarantee instruments of criminal law – in particular, the principle of *nullum crimen sine periculo sociali* expressed in Article 1 § 2 of the Criminal Code. This implies that penalization should be confined to cases in which the offender's conduct genuinely poses a danger to the transplantation market and to public health.

In conclusion, the practice of discontinuing proceedings in cases concerning advertisements for the sale of organs demonstrates that, despite the formal penalization, law enforcement authorities and courts also take into account the factual and motivational context. From the perspective of criminal policy, such an approach appears rational, as it prevents excessive repression of conduct of marginal social significance, while at the same time ensuring a strict response in cases involving genuine attempts at illegal organ trafficking.

Conclusion

Transplantology in Poland remains a field where the dynamic development of medicine, legal regulations, and bioethical dilemmas collide. On one hand, transplants save lives and represent one of the greatest achievements of modern medicine. On the other hand, the system struggles with a shortage of donors, regulatory ambiguity, and insufficient public awareness.

In the context of criminal law, particular significance lies in the criminalization of organ trafficking and related advertisements. Polish law provides stringent solutions, yet the practice of judicial authorities reveals that in individual cases, where there is no real threat, the principle of proportionality and minimal social harm is applied. This approach allows for maintaining a balance between the protection of human dignity, health, and life and the humane aspect of criminal law.

Looking towards the further development of transplantology, transparent regulations, effective public education, and a cohesive health policy will be of paramount importance. Only in this way will it be possible to create a system that both protects human rights and ensures the effectiveness of life-saving procedures.

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