

normative provisions of the legislation. In turn, the constitutional Court of the Russian Federation in the sphere of civil proceedings carries out: interpretation of the Constitution of the Russian Federation; the decision of questions of compliance of the Constitution of the Russian Federation of the legal norms which are subject to application in civil proceedings, at requests of courts; consideration of complaints of violation of constitutional rights and freedoms of citizens by the law applied in a particular case.

A judge or judicial body acting collectively in resolving a case on the merits is guided by legal norms on the basis of internal conviction and judicial discretion, based on an assessment of the actual circumstances of the case, based on their own knowledge, experience and other subjective moments. In this regard, many participants in civil proceedings appeal against the issued judicial act (decision) in the hope that the opinion of a higher court will differ in a more favorable direction for the appellant.

Recognizing that normative legal acts are adopted in a reference form (international treaties, conventions, Constitution), and the legislator does not always have the opportunity due to the intensive development of public relations to adopt a convenient legal act that meets the requirements of the time, judges often have to maneuver, using an expansive form of interpretation of the law.

References:

1. Bonner A. T. Application of the law and judicial discretion // the Soviet state and law. 1979. № 6. P. 37.

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THE EUROPEAN COURT OF HUMAN RIGHTS PRACTICE IN THE ORGAN AND TISSUE TRANSPLANTATION SPHERE

Key words: *transplantation sphere, Convention on Human Rights and Fundamental Freedoms, practice of the ECHR, organs and tissues.*

The work of the European Court of Human Rights is called «a living instrument». Due to the practice of the European Court of Human Rights the list of human rights, which is guaranteed by the 1950 Convention on Human Rights and Fundamental Freedoms and its protocols, is expanding. Medical cases did not become an exception to the evolutionary activity of the European Court of Human Rights. To this cases we can include cases related to transplantology.

The most famous cases concerning transplantation are *Petrova v. Latvia*, Complaint No. 4605/05, judgment of June 24, 2014) [1] and *Elberte v. Latvia* (*Elberte v. Latvia*, complaint No. 61243/08, judgment of 13 January 2015) [2].

The case "*Petrova v. The Republic of Latvia*" concerned the death of the applicant's son from the injuries sustained during road accident, after which he was taken to a hospital where he had a trepanation of the skull. After his death, laparotomy was carried out on his body, during which his kidneys and spleen were removed for the purpose of transplantation of organs. However, the applicant was not informed of the deterioration of her son's health and the removal of her son's organs without her consent or prior consent of her son to these actions. The applicant find out what happened, nine months later, during a criminal case concerning a road accident that killed her son. After filing a claim the applicant made decision that the removal of her son's organs was in accordance with Latvian law and refused to institute a criminal case about the transplant without consent, because at the time of her son's death the law was in force which did not oblige medical workers to seek and inform the deceased relatives about the possible removal of organs, as well as to explain their right to object against the removal of his organs or tissues.

In the case of *Petrova v. Latvia* (*Petrova v. Latvia*, complaint No. 4605/05, judgment of June 24, 2014), the ECHR get a conclusion that there had been a violation of Article 8 (right to respect for private and family life) of the 1950 Convention. [3]. It should be noted that this article is described by international lawyers as "umbrella", which expands the scope of the 1950 Convention and protocols to it. It was established that the law of the Republic of Latvia of organ transplantation at the time of the death of the applicant's son was insufficiently clear, which led to the emergence of circumstances in which the applicant, as the closest relative of her son, had certain rights regarding the removal of his organs, but was not informed. Consequently, the ECHR decided that intervention in the right to respect private life was not provided for by Latvian law, as required by Article 8 of the 1950 Convention, because Latvian law, formally providing close relatives of the deceased right to object the removal of its organs, was not formulated fairly clear and did not provide effective protection against arbitrariness. Latvia's legislation did not ensure proper communication of deceased relatives about the transplantation there organs and tissue. So they could not object it this decision.

In the case of *Elberte v. The Republic of Latvia*, the applicant's husband died as a result of a road accident. The case «*Elberte v. The Republic of Latvia*» concerned the removal of body tissue from applicant's husband by medical experts after his death without her consent. Without the consent of the applicant, due to the State-approved agreement, the tissue was removed from the body after autopsy and sent to a pharmaceutical company in Germany to create bio-implants in accordance with the state contract. She knew about the situation two years after her husband's death, when a criminal investigation was launched in the Republic of Latvia in connection with the assumption of large-scale illegal organs and tissues remove from the dead. However, the local authorities did not establish any form of crime.

The applicant complained in particular that the removal of her husband's tissue was without her prior consent. She complained that her husband's

dignity, individual integrity and the inviolability had been violated. She also complained about psychological suffering, when she remained in a state of uncertainty about the circumstances of removing tissue from the body of her husband and her husband's body was returned to her after the opening with his legs connected.

This case also concerned the gaps in the Law of the Republic of Latvia "On the protection of the body of the deceased and the use of human organs and tissues in medicine," as in the case of *Petrov v. The Republic of Latvia*.

The ECHR made a decision that there had been a violation of Article 8 (right to respect for private and family life) and violation of Article 3 (inhuman or degrading treatment) of the 1950 Convention. It was established, in particular, that the law of the Republic of Latvia regarding requirements for obtaining consent for tissue removal has lack of clarity and does not have sufficient legal safeguards against arbitrariness, although it lays down the legal framework that allows the closest relatives to consent or refuse to remove tissue, this law does not clearly define the obligations or decision-making procedure by experts for obtaining consent [3]. The method used to implement the rights of relatives to express their wishes and the extent of the responsibilities for obtaining consent have become like stumbling block in national practice. The governance of Latvia differed in their opinion on the meaning of the applicable norms of domestic law. The Center for Forensic Medicine and the Latvian Security Police came from the fact that there is a system of "alleged consent" in the state, while investigators believed that the legal system of Latvia was based on the principle of "informed consent", and the removal of organs and tissues is possible only with the consent a donor (in his life) or his relatives [4, c. 38]. For that time when the Latvian security police agreed with the interpretation proposed by the prosecutor's office, and decided that it was necessary to obtain the consent of the applicant, the limitation period for prosecution had already expired. Similar disagreements between the governance give us an opinion that there is a lack of clarity in the legislation of Latvia.

The ECHR also found that the applicant had a long period of suffering because she did not know method and purpose of removing tissue from her husband's body. According to Article 3 of the 1950 Convention human body must be kept even after death in the organ transplantation.

The practice of the ECHR says that there must be the right to consent to the transplantation of human organs and tissues, as well as the right to dignity during transplantation. Thus, the decision in *Petrov v. Latvia* and *Elberte v. Latvia* affects the extension of the substantive jurisdiction of the ECHR, as well as the importance of ethical medical standards in the realization of human rights.

References:

1. Case of *Petrova v. Latvia* (Application no. 4605/05) // <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-144997%22%5D%7D>
2. *Dzintra Elberte against Latvia* // <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001...>

3. Практика ЄСПЛ: Фактичні дані – Здоров'я // <http://unba.org.ua/publications/1262-praktika-espl-faktichni-dani-zdorov-ya.html>
4. Козлова А.А. Обзор практики Европейского суда по правам человека в области трансплантологии и донорства / А.А. Козлова // Вестник экономической безопасности, № 3 / 2017. – С. 36-39.

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**CONTINUITY IN UKRAINE'S ADMINISTRATIVE-TORT LAW:
LEGISLATION, NECESSITY OR VECTOR FOR DEVELOPMENT**

Key words: administrative social relations, Code of Ukraine on Administrative Offenses.

The contemporary development of Ukrainian society, including its legal system, necessitates a conscious scientific approach to the reception of foreign experience in the legal regulation of administrative and delinquent social relations and the continuity of the legal system of the Soviet period of the country's existence. Despite the political vectors of the direction of the development of the legal system in the national legal systems of the countries of the European Union, as constantly emphasized by Ukrainian politicians and statesmen, V. Averianov wrote that domestic law of law in its considerable part continues to exist in captivity of theoretical contradictions and even erroneous postulates [1, p.16] formed in Soviet times. Unfortunately, we note that most of the research in the field of administrative and tort law is introverted, when the scientific research and the basis for their implementation are exclusively addressed to the analysis of the doctrinal views of domestic scholars, as well as the succession in the approaches to the formation of amendments and additions to the current legislation on administrative offenses are exclusively in the practice of the Soviet period.

As a result, the current norms of Code of Ukraine on Administrative Offenses (CUAO) not only track the continuity of the Soviet period of Ukraine's existence, when issues of state-and-state regulation of all social relations without exception, including those involving the bringing of a person to administrative liability, were put on the foreground, and changes to CUAO occur in not the best traditions of succession as separate norms of law, as well as institutes and branches of administrative-tort law. In this context, a clear line is followed not only by neglect of the rights and freedoms of a person and a citizen, which must be based on universally recognized principles of the rule of law, respect for the rights, freedoms and interests of