

## **Abstract**

Over the last decades, we could witness an enormous scientific progress causing us to be able to heal diseases we could not just couple years ago. Though, this progress often interferes with bodily integrity of others as a part of their personality rights. It is therefore a challenge for the legislator to set firm borders. The purpose of my thesis is to discuss the legal nature of human body as well as current legislation on the disposal with it in Czech Republic and in Germany. Also some proposals are made at the end of the thesis on how to moderate the organ shortage.

The uncertain legal nature of dead human body and separated body parts hinders accurate regulation of the matter in civil law. While living human body is generally seen as an integral part of the personality, there are two ways in which dead human body is looked upon. One considers it as an integral part of personality, which cannot be separated even after death. The other connects the personality strictly to the ability of thinking and acting. Thus the body becomes a subject upon the death. Synthesis of these approaches finds the regime of dead human body depending on the sort of disposal. While donating ones body to certain person indicates personality rights, donating it anonymously speaks rather for right in rem. What the human body parts concerns, most of the jurists nowadays subsume it under the right in rem regime.

The legal disposal with human body is strictly limited to certain acts. Donation for the purposes of transplantation is in Czech Republic regulated by Transplantation Act. Disposals for medical and scientific purposes are regulated in Public Health Care Act and some others.

Czech Transplantation Act was adopted in compliance with the Biomedicine Convention. It also seems to be more appropriate to current social conditions than similar act adopted in Germany.

Firstly it is based on Opt-Out system which provides the society with more donated organs. Persons not willing to donate upon their death need to be registered in National Register. In Germany the Opt-In system was adopted and thus to donate upon ones death, he or she must have proclaimed it expressly. This causes Germany to face enormous organ shortage.

Another advantage of Czech regulation is that it makes the donation of organ to anonymous recipient possible. It steps back from the original premise that only personal or familial relationship can prevent the non-voluntariness of the donation. Likewise other

legislators in Europe seem to be walking the same path by adopting special guidelines to assure the voluntariness rather than restricting the donors range. German legislation on the other hand limits the range strictly.

Both Czech and German acts set the subsidiarity rule strict (the priority of post mortal donation over living donation), so that current formulation interferes with the autonomy of the recipient. Also the ban on compensation is formulated in a way that restrains reasonable models to reduce the long term organ scarcity.

The disposal with human body for scientific and medical purposes is regulated by a sole section 26 in Public Health Care Act. Although it is in compliance with the Biomedicine Convention, the whole concept of the act was adopted under political and social conditions that are no longer appropriate and amendment is required. Still the situation is better than in Germany, where no general act governing this matter exists.

Most serious problem of transplant medicine is the scarcity of donated organs. That is why the organ commerce question was opened by many jurists. It is for the dignity of human that the international community remains on its negative position.

It is though questionable if strict ban on commerce did not miss the aim. It prevents also models that are capable of increasing the number of people willing to donate. By allowing the risk insurance the willingness to donate could increase without harming the autonomy of the donor.

The organ scarcity is causing one more phenomenon – the black market with human organs. The solution demands brisk reaction of law on this scrupulous exploitation.