



UDC 347.151-347.41

DOI: 10.31548/law/2.2023.52

Analysis of international experience in the legal regulation of posthumous consent for donation and its implementation in Ukraine

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Article's History:

Abstract

Received: 2.01.23

Revised: 13.03.23

Accepted: 26.04.23

The relevance of this study is associated with the acute shortage of organs for transplantation, which is a widespread issue in healthcare systems worldwide. The purpose of the study is to identify potential ways to increase the number of individuals providing posthumous consent for donation and, consequently, the availability of donor material in Ukraine, based on the experience of foreign countries. The study utilises general scientific methods (formal-logical, analysis, synthesis, comparison) and specific legal methods (formal-legal, comparative-legal) to gather, process, and present information. The paper analyses the international experience in the legal regulation of posthumous consent for donation and explores its implementation in Ukraine. The study establishes that some countries have partially addressed the problem of organ

Suggested Citation:

Melnyk, A., & Avramenko, S. (2023). Analysis of international experience in the legal regulation of posthumous consent for donation and its implementation in Ukraine. *Law. Human. Environment*, 14(2), 52-64. doi: 10.31548/law/2.2023.52.



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shortage through legislative provisions allowing for the transplantation of organs from deceased donors. Ukraine has also conducted operations using posthumous donor material. During the investigation, it was found that in certain countries, including Ukraine, there is a presumption of donor dissent, meaning that a person is considered not willing to be a donor if they have not expressed their consent during their lifetime. Conversely, the concept of presumed consent considers a person to be a posthumous donor if they have not explicitly refused to be one during their lifetime. The study proposes and justifies the expediency of potential solutions to the organ shortage problem, including conducting extensive public awareness campaigns to promote the idea of posthumous donation, implementing presumed consent for posthumous donation, and continuing efforts to provide individuals with the option to make their choices regarding posthumous donation electronically. The results of this paper can be utilised to improve Ukrainian legislation in the field of posthumous donation and can be directly applied in the practices of legal professionals working in civil and medical law, and medical practitioners

Keywords: presumption of consent; active disagreement; presumption of disagreement; active consent; transplantation

Introduction

The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2008) begins with the following words: “Organ transplantation, one of the greatest medical success stories of the twentieth century, has prolonged and improved the lives of hundreds of thousands of patients worldwide.” Each day, organ transplantation truly saves the lives of people, and with the development and expansion of deceased donor transplants, the number of saved lives has significantly increased.

According to the International Registry in Organ Donation and Transplantation 2021 (IRO-DaT, 2022), in Ukraine, the number of individuals agreeing to posthumous donation is 7.71 per 1 million population. The global leaders in this indicator are the United States with 41.60 per 1 million population, followed by Spain with 40.80 individuals and Iceland with 36.70 individuals. The lowest rates are found in the Philippines with 0.02 individuals, Guatemala with 0.10 individuals, and Jordan with 0.19 individuals.

According to information from the Cabinet of Ministers of Ukraine in 2022, Ukrainian doctors

performed 384 organ transplants, which is 20% more than in 2021. It is important that the percentage of organ transplants from a deceased donor is gradually increasing: from 53.7% in 2021 to 55% in 2022 (Ministry of Health of Ukraine, 2023).

Despite the positive trend of increased surgeries, including those from deceased donors, there still exists a severe shortage of donor organs for transplantation in Ukraine and worldwide, making this topic issue relevant.

The issue of posthumous consent for donation has been a subject of study for many Ukrainian and foreign researchers. In Ukraine, the legal regulation of consent for posthumous donation was studied by M. Novytska in 2019, who concluded that “due to such a critical situation with the transfer of anatomical materials and in view of the European integration course of our country, Ukraine should borrow and implement the successful experience of foreign countries to create a truly effective system of transplantation.”

L. Shepherd *et al.* (2022) investigated the benefits and drawbacks of a presumed consent

system, where a deceased person is considered willing to be a posthumous donor if they have not expressed their dissent during their lifetime. The researchers concluded that “it is important to target the negative affective attitudes that family members and long-standing friends may hold to support the advance directive of the deceased, improve approval of donation, and thus increase organ donation rates.”

Ethical decisions regarding the organ shortage problem have become the subject of study by A. Sterri *et al.* (2022), where researchers found that promoting posthumous donation as an act of altruism can increase the number of individuals who express their consent for posthumous donation during their lifetime since “it facilitates praise by the community and gives the donors security in the conviction that they did the right thing.”

An urgent issue among researchers is the establishment of ways to increase the number of potential posthumous donors. Thus, J.A. Parsons (2021) suggested that the success of Spain in posthumous donation is due to the educational efforts of doctors. X. Symons and B. Poulden (2022) concluded on the necessity of mandatory expression of a person’s position on organ donation after their death.

Every year, the number of organ transplantation surgeries in Ukraine is increasing, as is the number of individuals consenting to posthumous donation. However, the number of posthumous donors does not meet the demand of the country. Hence, the purpose of this paper is to analyse the international experience in the legal regulation of posthumous consent for donation and explore its implementation in Ukraine. To achieve this purpose, the following tasks were performed: analysis of the state of legal regulation of posthumous donation in Ukraine; investigation of the legal regulation of posthumous consent in countries

where presumed donor dissent is applied; examination of the legal regulation of posthumous consent in countries where presumed donor consent is applied; analysis of the experience of foreign countries for possible implementation in Ukraine; development of proposals for implementing the legal regulation of posthumous donation from foreign countries into Ukraine.

Materials and Methods

During the study, the main regulations regarding posthumous donation in Ukraine and posthumous consent in foreign countries, including Spain, the United Kingdom, Germany, the Netherlands, Austria, and others, are analysed.

Most attention is paid to Civil Code of Ukraine (2003), Law of Ukraine “On the Application of Transplantation of Anatomical Materials to Humans” (2018), Law of Ukraine “On Making Changes to Some Laws of Ukraine Regulating the Issue of Transplantation of Anatomical Materials into Humans” (2021), Declaration of Istanbul on organ trafficking and transplant tourism (2008), etc.

In investigating the legal regulation of granting consent to posthumous donation in foreign countries and the possibility of its implementation in Ukraine, a number of research methods are used: description, comparison, system-structural approach, ascending from abstract to concrete, induction, deduction, analysis, synthesis, and the historical method.

Using the comparative method, the global systems of obtaining consent for posthumous donation, namely presumed consent and presumed dissent of the donor, were investigated, and conclusions were drawn regarding the impact of each system on the development of transplantation in the respective country. The descriptive method provided a general understanding of the state and development of posthumous donation worldwide.

The systemic-structural approach was used to investigate the main regulations regarding posthumous consent in Ukraine and some foreign countries. The analysis method helped examine specific elements of the legal system of certain foreign countries concerning the regulation of posthumous donation. Through synthesis, an understanding of the legal system of specific countries as a whole was achieved.

The deductive method facilitated the transition from investigating the legal system of some foreign countries to the regulation of specific legal relations – posthumous consent for donation. The inductive method was applied to elucidate the impact of specific legal phenomena, such as the introduction of presumed donor consent, on the legal system and citizens of the country as a whole.

The historical method was employed to examine the process of some countries transitioning from one system of posthumous consent to another, including additional actions taken by the governments of these countries (writing letters, surveys when obtaining a driver's license, etc.).

Results and Discussion

As of today, there are two global systems for obtaining consent regarding posthumous donation: the opt-in system (active consent) and the opt-out system (active dissent). Under the opt-in system, it is assumed that if a person has not expressed consent for posthumous donation during their lifetime, they are considered not willing to become a posthumous donor. In contrast, under the opt-out system, if a person has not expressed dissent for posthumous donation during their lifetime, they are considered willing to become a posthumous donor. It is known that “both systems are approved by the World Health Organization and both are used in practice in different countries of the world” (Silchenko & Volodina, 2018).

In Ukraine, the right to donation, including an individual's right to independently allow or prohibit the use of their organs and other anatomical materials after death, is established in the Civil Code of Ukraine (2003). A person can provide written consent for the donation of their organs and other anatomical materials in case of their death or prohibit it.

If a person has not expressed consent or dissent for posthumous donation during their lifetime, their consent is requested from their relatives. Law of Ukraine “On the Application of Transplantation of Anatomical Materials to Humans” (2018) defines the list of persons who can provide consent for organ retrieval – the spouse or one of the close relatives of the deceased (children, parents, siblings). In the absence of a spouse or close relatives, consent is requested from the person who undertook to bury the deceased.

Thus, in Ukraine, the presumption of dissent for posthumous donation is in effect, which means that a person is considered not willing to become a posthumous donor if they have not consented to it during their lifetime according to the established legislation.

To register their consent for posthumous donation in Ukraine, a person must personally fill out the relevant paperwork at one of the medical facilities in Ukraine. However Law of Ukraine “On Making Changes to Some Laws of Ukraine Regulating the Issue of Transplantation of Anatomical Materials into Humans” (2021) allows individuals to provide their consent or dissent for organ retrieval in electronic form.

According to the information posted on the website of the specialised state institution Ukrainian Transplant Coordination Centre, “before the full-scale invasion, work had been made on the development of the submission of lifetime consent or disagreement for posthumous donation in

the Diia system. Due to the ongoing war, the development of the mechanism for submitting applications regarding organ donation in electronic form has not been completed in Ukraine” (Ukrainian Transplant Coordination Centre, 2023). However, there are reasons to believe that the possibility of expressing one’s position regarding posthumous donation electronically would increase the number of posthumous donors in Ukraine.

In Australia, the opt-in system, which allows active consent during an individual’s lifetime, is also in effect. However, when a registered posthumous donor passes away, “their family or next-of-kin must also be consulted and give consent for organs and tissues to be donated. Families also have the right to choose for their loved ones to become donors after their death even if they are not registered” (Symons & Poulden, 2022). This system may not be as effective in potentially increasing the number of posthumous donors since relatives have the authority to prohibit the use of a person’s organs after their death, even if the individual expressed consent during their lifetime.

In Denmark, there is also an opt-in model with the possibility for family members to veto the individual’s intention to become a donor. The issue of the persuasive arguments for the existence of the family veto in cases of genuine conflict, where the wishes of registered organ donors are rejected if family members object to donation, has been covered by A. Albertsen (2020). He argues that “arguments for upholding the family veto in cases of genuine conflict follow one of two paths: It is argued either that upholding the veto is in tune with some important value or that removing it would produce unfavourable consequences.” However, there can be objections to the family’s right to override an individual’s posthumous donation intention, as it is an unethical approach towards the deceased person and should not be applied.

As emphasised by D.M. Shaw (2017), three types of veto can be distinguished: new evidence provided by an authorised person demonstrating the deceased’s own refusal; assumptions by authorised persons that the deceased would be against donation under certain circumstances; and objections based on the wishes of authorised persons. However, in practice, it may be challenging to distinguish between these types, making the wishes of authorised persons akin to the deceased person’s own desires. Besides, Shaw notes four harmful consequences of the unclear position on posthumous donation: “first, the information provided to most people registering as organ donors is very vague in terms of what is actually involved in donation. Second, the vagueness regarding consent to donation increases the distress of families of patients who are potential organ donors, both during and following the discussion about donation. Third, vagueness also increases the chances that the patient’s intention to donate will not be fulfilled due to the family’s distress. Fourth, the consequent reduction in the number of donated organs leads to avoidable deaths and increased suffering among potential recipients, and distresses them and their families” (Shaw, 2017). One can agree with this perspective, as the issue of organ utilisation from a deceased donor is time-sensitive (physicians have a limited window to use such organs for transplantation), and the individuals authorised to make the decision are generally in a state of shock after receiving news of the death of their close relative. Moreover, they may have different views on posthumous donation and may disagree with each other, potentially jeopardising the use of the deceased person’s organs and, as a result, saving lives.

In Germany, there is a system for expressing active consent (refusal) during a person’s lifetime. If there is no agreement or objection from a

potential organ donor, their closest relative is asked if they are aware of their position on organ donation. If the potential donor's position remains unknown, the closest relatives make the decision at their discretion (Englbrecht & Holling, 2023). However, this system is also not perfect, as the authorised person may impose their own opinion as the potential donor's position.

A comparison of the approaches to posthumous organ donation in Belgium and Greece was conducted by M. Novytska (2019), according to which "the Belgian Law about the removal and transplantation of organs says that the consent of the donor must be expressed in writing and signed in the presence of a capable witness." Regarding posthumous donation in Greece, "a written form with a notaries certificate, a written form with a donor signature in the police and an oral form of consent in the presence of two witnesses with a record in the special register" is required (Novytska, 2019). Moreover, in both Belgium and Greece, obtaining consent for the use of a person's organs after their death requires not only the individual's agreement but also the agreement of their spouse. It should be noted that the necessity of involving witnesses and recording the consent procedure for posthumous donation may potentially reduce the number of people who agree to become posthumous donors during their lifetime. Furthermore, the requirement for mandatory spousal consent for posthumous donation may also potentially decrease the number of posthumous organ and material donors in these countries.

Another approach to post-mortem donation involves a system based on the presumption of consent (opt-out, active refusal). Presumed consent has long been discussed as a potential solution to the problem of organ shortages for transplantation. According to M. Briukhovetska (2016), "presumed consent is based, on the

one hand, on the recognition that causing additional emotional suffering to family members is inhumane and, on the other hand, on the assumption that in the current stage of transplantology, it is impossible to ascertain the will of these individuals after the death of the person within the time frame required to preserve the transplant." It is reasonable to agree with this perspective, as time is often critical in transplantology matters.

Statistical data (IRODaT, 2021; 2022) indicate an increase in consent rates and transplantations after the introduction of presumed consent, and the success of organ donation in Spain is often attributed to its envisaged consent. However, some question whether it is solely the responsibility of the legislation, suggesting that "it is the role of transplant coordinators in Spanish hospitals that has improved transplantation figures and that the law itself is dormant" (Briukhovetska, 2016). Nevertheless, there is a direct correlation between the system of consent for posthumous donation in Spain and its leading position in this matter. In addition, Spanish law does not require additional conditions for posthumous donation, such as spousal consent or notarisation of their lifelong consent.

Currently, the UK is in the process of transitioning from one system of posthumous organ donation to another. Wales was the first country in the UK to introduce the presumed consent system, which was implemented in 2015. Under this system, "any deceased adult who is not excepted is deemed to consent to organ donation" (Parsons, 2021), and exceptions include cases where the person did not express their objection or appointed an authorised person to decide on this matter. Wales legislation also allows close relatives of the deceased to prove that the deceased had expressed opposition to posthumous organ donation during their lifetime. This is a reasona-

ble position since other individuals may influence whether their close relative becomes a posthumous donor, but the basis for this influence should be the will of the deceased, not the personal opinions of those close (authorised) individuals.

In England, the presumed consent system (deemed consent) was implemented in May 2020. According to the new system in England, in the absence of officially registered objection, any person aged 18 and above is considered to have consented to donation unless the person who was in a close relationship with the potential donor just before their death provides information that would lead to the conclusion that the person would not have given consent. However, if it is not possible to speak with those who have a relevant relationship with the deceased, "donation should not proceed" (Parsons, 2021). This position is not very successful, since the country may lose a potential posthumous donor just because they could not find one's close relatives (authorised persons).

In Scotland, the opinion of the close relatives of the potential posthumous donor carries less weight, as in cases where communication with them is not possible, the requirement to cease donation is absent. Such formulation of the legislation is more sensible from the perspective of increasing the number of posthumous donors in the country.

Posthumous donation in Mexico operates on the principle of "presumed" or "explicit consent". "Presumed consent" is applied if a person did not express their refusal for the use of their body for transplantation during their lifetime and consent is obtained from any of the following present individuals: wife, concubine, descendants, descendants in the ascending line, brothers and sisters, adopted or adoptive parents (Zamora Torres & Díaz Barajas, 2021). The drawback of such an approach is that the necessity of obtaining permission for the use of a deceased person's organs

essentially negates the principle of presumed consent by potentially reducing the number of posthumous donors.

The main idea of presumed consent models is that explicit consent is not required. In the absence of a clearly recorded wish of the deceased, the donation is considered legal. However, J.A. Parsons (2021) distinguishes hard deemed consent and soft silent consent, while "hard deemed consent is, in a sense, pure deemed consent. Where such a law operates, all that can prevent an individual becoming an organ donor upon their death is a formally recorded objection made by them prior to their death." In soft deemed consent, in addition to the absence of written objection, the consent of the deceased's family members is required.

Some researchers (Shepherd *et al.*, 2023) also support the implementation of presumed consent for organ donation, where individuals have to express their refusal to be donors after death during their lifetime. The possibilities of increasing organ donation rates are seen in "targeting the negative affective attitudes that family members and long-standing friends may hold to support the advance directive of the deceased, improve approval of donation and thus increase organ donation rates". These authors express reasonable opinions because increasing the level of approval of donation in society directly affects the number of posthumous donors.

Some researchers emphasise the need to consider the family's opinion when applying a presumed consent system, especially if the person is not registered as a donor. "The family opinion should be considered in these situations to reduce the probability of injustices. Organ donation should be avoided if the family is unanimously against it" (Formoso *et al.*, 2021). The disadvantage of this position is that the attitude of a person

and their relatives to posthumous donation may differ fundamentally.

There is an opinion (Shepherd *et al.*, 2023) that the decision of relatives to grant or deny permission for organ retrieval after a person's death is not always based on the deceased's desires. When people have a negative attitude towards donation, they are less likely to decide based on the deceased's wishes and instead rely on their own attitudes. However, "when people have a negative attitude towards donation, they are less likely to decide based on the deceased's wishes and instead use the heuristic of relying on their own attitudes".

The issue of post-mortem organ donation has been considered by the European Court of Human Rights. In the case of *Elberte v. Latvia* in 2015, the Court opined that if the deceased's wishes are not sufficiently clear, the state must make reasonable inquiries to ascertain whether the deceased objected to the donation. The failure of the state to do so in the *Elberte* case led to a successful claim by the deceased's wife for a violation of her right to respect for private and family life and an award of €16,000 in moral damages (Judgment of the European Court..., 2015).

The experience of the Netherlands, where the system changed from "active consent" to "active refusal", is interesting. In 2020, all citizens who were not registered as donors or non-donors were sent a letter asking them to make a choice and register it in the donor registry. "That is, people receive a letter in which they are asked to make a choice; six weeks later they receive a reminder letter and another six weeks a notification letter that they are defaulted into the 'no objection' group" (Wachner *et al.*, 2022). This experience, particularly the use of letters (paper or electronic) to ascertain people's real wishes, can be beneficial to apply in Ukraine, as it allows discovering the person's true will during their lifetime.

Some researchers (Silchenko & Volodina, 2018) propose the implementation of a compulsory choice system to increase the number of potential donors, where individuals are required to officially express their position on organ donation after death. They suggest that consent or refusal should be expressed during political elections. In contrast to this proposal, there is an opinion that when people are asked whether they want to donate an organ while waiting for their driver's license, they may respond "no" only to avoid being forced to do something they had not properly considered, not because they are against post-mortem organ donation (Thaysen & Albertsen, 2021).

The conclusion of the study is that the introduction of a compulsory choice system should be preceded by a broad public awareness campaign, which would explain to the population the importance of post-mortem organ donation and assure them of the safety of such donation. Without these preparatory measures, the result may be counterproductive, leading to an increase in refusals for post-mortem donation. For example, when Chile introduced a compulsory choice system in 2010, it resulted in a 29% decrease in deceased donors in the following year. This was likely due to serious misinformation about the system, including the belief that only wealthy people would receive kidneys (Domínguez & Rojas, 2013).

Another reason that deters people from giving consent for post-mortem donation is the imperfection of legal regulation. In China, for example, "deceased donors account for a substantial portion of organ donations, but brain death was not adopted as a standard until now" (Mi *et al.*, 2022). Furthermore, the main problems with the transplantation system in China are "the lack of publicity and education and the difficulty of standardizing legislation about ethical issues arousing ethical problems" (Wu *et al.*, 2022).

Consequently, to increase the level of post-mortem donation in this country, it is necessary to improve national health legislation.

A study conducted in Jordan showed that religious beliefs (36%) and the absence of financial incentives (44%) are significant reasons for refusing organ donation (Hammad *et al.*, 2017). To improve the situation with organ donation in this country, it is necessary to conduct educational activities, with the mandatory involvement of religious organisations. Special attention should be given to investigating the possibility of providing financial incentives to people for giving consent to the use of their organs after death for transplantation purposes.

A study conducted in Saudi Arabia showed that humanitarian reasons (68%) and religious beliefs (62%) are the most important factors influencing the decision to become an organ donor, while financial reasons account for only 0.6% (Alam, 2007). This could be related to the high standard of living in the country, where the financial factor does not considerably influence a person's decision regarding donation.

The attitude to donation in Syria was the subject of a cross-sectional study by a group of researchers in 2020. While the first kidney transplantation from a living donor was performed in Syria in 1979, and the country granted permission for the use of organs from deceased donors legislatively in 2003, "the majority of these organs have been donated from living donors, mostly related, while deceased organ donation is still an unmet need" (Tarzi *et al.*, 2020). This can be attributed to the lack of public awareness on this topic, so the situation can be affected by the conduct of appropriate educational work among the population.

The position of this paper is that to improve the situation and increase the number of post-mortem donors in Ukraine, it is advisable

to implement the experience of the United Kingdom (including Wales, England, and Scotland) in transitioning from presumed refusal to presumed consent of the donor without the need for additional permission from the deceased's relatives.

The transition should be gradual, following the example of the Netherlands, with prior notice to the population and providing citizens with the opportunity to actively express their position on post-mortem organ donation. For those who do not utilise this option, presumed consent of the donor should be applied.

A crucial means of increasing the number of post-mortem donors is to adopt the experience of Spain in the widespread promotion of donation and conduct various explanatory discussions, implement educational projects on this issue for the entire population and medical professionals, including nurses and transplant coordinators.

The application of the principle of compulsory choice regarding post-mortem organ donation when exercising free will (e.g., during general elections) or obtaining documents (e.g., driver's licenses) may be premature at this stage and should be implemented after conducting campaigns to promote donation.

Furthermore, the Ukrainian government needs to continue its efforts to enable the legislative possibility of expressing consent for post-mortem donation without physically visiting a healthcare facility, by allowing the submission of electronic consent applications using information technology.

Conclusions

The purpose of the paper, which was to find possible ways to increase the number of post-mortem donors in Ukraine based on the experience of foreign countries, can be considered fully achieved. The study analysed the legislation of foreign

countries regarding the forms and methods of granting consent to post-mortem donation. There are two main systems in the world: the presumed refusal, where a person is considered not willing to become a post-mortem donor unless they have explicitly expressed consent during their lifetime, and the presumed consent of the donor, where a person is considered willing to become a post-mortem donor if they have not expressed refusal during their lifetime. The study concluded that the rate of donors per population unit is higher in countries with the presumed consent of the donor, making it advisable to implement such a system in Ukraine.

The study also analysed the experience of foreign countries in transitioning from presumed refusal to presumed consent of the donor and emphasised the appropriateness of implementing the experience of the Netherlands, which involves repeatedly inviting citizens to make their choice before the legislative change in the system of providing consent for post-mortem donation.

Special attention was paid to other ways to increase the number of post-mortem donors in Ukraine. The experience of Spain was examined, where success in this field is attributed not only to the existing presumed consent of the donor but

also to the quality work of healthcare professionals and other social workers who conduct awareness and explanatory campaigns. The reasons for the low number of post-mortem donors in some countries were also analysed, with the main factors being the imperfection of medical legislation, lack of financial incentives, and religious beliefs. The conclusion was made that in Ukraine, a broad awareness campaign on post-mortem donation should be conducted to encourage citizens to make their choice. Another way to increase the number of donors in Ukraine is by simplifying the process of providing consent for post-mortem donation, including the option of making such a choice in electronic form.

The prospects for further studies on forms and methods to increase the popularity of donation among the population of Ukraine and foreign countries remain promising.

Acknowledgements

We express our gratitude to the National University of Life and Environmental Sciences, which made this research possible.

Conflict of Interest

There is no conflict of interest.

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Аналіз зарубіжного досвіду правового регулювання надання згоди на посмертне донорство та можливість його імплементації в Україні

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Анотація

Актуальність роботи пов'язана з тим, що гостра нестача органів для проведення операцій з трансплантації – поширене явище систем охорони здоров'я в усьому світі. Метою роботи було на підставі досвіду зарубіжних країн віднайти можливі шляхи збільшення кількості осіб, які нададуть свою згоду на посмертне донорство, і як наслідок – донорського матеріалу в Україні. Під час дослідження використано загальнонаукові (формально-логічний, аналізу та синтезу, порівняння) та спеціально-юридичні (формально-юридичний, порівняльно-правовий) методи – для отримання, обробки та викладення інформації. У статті проаналізовано зарубіжний досвід правового регулювання надання згоди на посмертне донорство та можливість його імплементації в Україні. За результатами дослідження виявлено, що частково проблему нестачі донорського матеріалу вдалося вирішити шляхом закріплення на законодавчому рівні можливості трансплантації органів від померлих донорів. В Україні також проводяться операції з використанням матеріалу посмертного донорства. У процесі дослідження також з'ясовано, що в деяких країнах світу, зокрема й в Україні, діє презумпція незгоди донора, за якої особа вважається такою, яка не бажає бути донором, якщо за життя вона не висловила свою згоду. Протилежна за суттю концепція – це презумпція згоди, за якої особа вважається такою, яка бажає стати посмертним донором, якщо за життя вона не висловила своєї незгоди. Запропоновано та обґрунтовано доцільність можливих шляхів розв'язання проблеми нестачі донорського матеріалу, а саме: проведення широкої правопросвітницької роботи серед населення, з метою популяризації ідеї посмертного донорства, упровадження презумпції згоди на посмертне донорство, а також продовження роботи з надання населенню можливості зробити власний вибір щодо посмертного донорства в електронному вигляді. Результати цього дослідження можуть бути використані для вдосконалення українського законодавства в сфері посмертного донорства, а також застосовані безпосередньо в практиці юристів, що працюють у сфері цивільного та медичного права, й медичних працівників

Ключові слова: презумпція згоди; активна незгода; презумпція незгоди; активна згода; трансплантація