

ADMINISTRATIVE AND LEGAL SAFEGUARDING OF THE RIGHT TO HEALTHCARE IN THE FIELD OF TRANSPLANTATION: THE NATIONAL MODEL AND EUROPEAN STANDARDS

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INTRODUCTION

The right to healthcare, enshrined in Article 49 of the Constitution of Ukraine, is a fundamental human right directly linked to values such as life, dignity and personal integrity. The state has a constitutional duty to create conditions for effective and accessible healthcare for all citizens. Among the specialised areas in which this right is exercised, one of the most complex from an administrative and legal perspective remains the field of human organ transplantation, in which medical, ethical, religious and legal aspects are closely intertwined.

Nowadays, more than 4,000 patients in Ukraine are on the national waiting list for organ transplants, whilst only 658 organ transplants were performed in the country throughout 2024, highlighting the urgent need to establish an effective administrative and legal framework to safeguard their right to healthcare¹. With the adoption in 2018 of the Law of Ukraine ‘On the Use of Anatomical Materials for Human Transplantation’, further legislative amendments in 2020–2026, the launch of the Unified State Transplant Information System, and the funding of transplants through the Medical Guarantees Programme of the National Health Service of Ukraine, a fundamentally new model of administrative and legal regulation has emerged in this field. At the same time, its effective functioning is hampered by a number of factors: the mismatch between the capacity of the transplantation system and the actual needs of patients, the underdevelopment of the institution of transplant coordination, the low level of public awareness regarding the procedure for expressing a living will on post-mortem donation, as well as the need to adapt the mechanism to the conditions of the legal regime under martial law.

The issue of aligning the national model of administrative and legal regulation of transplantation with European standards is gaining an additional significance, in particular with the legal positions of the European Court of Human Rights as set out in the cases of ‘Petrova v. Latvia’ (2014) and ‘Elberte v. Latvia’ (2015), which establish requirements regarding clarity, predictability and adequate information provision in administrative procedures relating to post-mortem

¹ Трансплантація: за 2025 рік українські медики виконали понад 650 органних пересадок – підсумки. МОЗ України: вебсайт. URL: <https://moz.gov.ua/uk/transplantaciya-za-2025-rik-ukrayinski-mediki-vikonali-ponad-650-organnih-peresadok-pidsumki> (дата звернення: 19.05.2026).

donation. At the same time, a systematic analysis of the mechanism for safeguarding the right to healthcare by public administration specifically in the field of transplantation, taking into account legislative amendments from 2020 to 2026 and the current law enforcement context, requires further study, which underlines the relevance of the chosen research topic and determines the structure of the material presented in the following three paragraphs.

1. The right to healthcare as a subject of administrative and legal protection in the field of transplantation: a theoretical and legal perspective

The right to healthcare is a natural, inalienable and inviolable human right, enshrined in Article 49 of the Constitution of Ukraine and Article 6 of the Fundamentals of Ukrainian Legislation on Healthcare. This right entails the state-guaranteed ability of an individual to preserve and improve their health, receive necessary medical care, access a wide range of healthcare services, and participate in the formulation of healthcare policy. Within the framework of this right, a number of interrelated entitlements are identified: the right to a standard of living necessary for maintaining health, the right to a natural environment that is safe for life and health, the right to safe conditions of work, education, daily life and leisure, the right to qualified medical and health care and health insurance, and the right to accurate and timely information about one's health condition.²

In the context of transplantation, the right to receive specialised advanced medical care through transplantation takes on particular significance; in accordance with the Law of Ukraine 'On the Use of Anatomical Materials for Human Transplantation' of 17 May 2018 No. 2427-VIII, this constitutes a separate subject of administrative and legal protection. In accordance with Article 4 of this Law, transplantation is carried out on the principles of voluntariness, humanity, anonymity, the provision of donor organs to potential recipients on medical grounds, free of charge, taking into account the order of priority, respectful treatment of the human body in the case of post-mortem donation, and the continuity of medical care for persons who have received anatomical materials, thereby forming a system of fundamental legal guidelines for administrative and legal regulation in the field under consideration³.

A distinctive feature of the exercise of the right to healthcare in the field of transplantation lies in its dual legal nature: on the one hand, it is exercised by the recipient, for whom transplantation is a means of preserving life and restoring health; on the other hand, it is exercised by the (living) donor, who enters into a

² Основи законодавства України про охорону здоров'я: Закон України від 19 листопада 1992 року № 2801-XII. URL: <https://zakon.rada.gov.ua/laws/show/2801-12#Text> (дата звернення: 19.05.2026).

³ Про застосування трансплантації анатомічних матеріалів людині: Закон України від 17 травня 2018 р. № 2427-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2427-19#top> (дата звернення: 19.05.2026).

legal relationship concerning the removal of anatomical materials from their body. This duality necessitates separate administrative and legal safeguards for the rights of both parties and the balancing of their interests through administrative procedures that must meet the criteria of clarity, predictability, and impartiality.

International standards governing the right to health are set out in a number of documents, among which the 1997 Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (the Oviedo Convention) and its 2002 Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin hold a special place⁴. Documents of the World Health Organisation, in particular the 2010 Guidelines on Human Cell, Tissue and Organ Transplantation, enshrine fundamental principles: voluntary donation, prohibition of commercialisation, transparency of allocation, and ensuring free access⁵. In light of this, it is worth noting that effective administrative and legal regulation of transplantation in Ukraine is impossible without taking into account the international standards adopted within the Council of Europe and the European Union, particularly given Ukraine's course towards European integration.

Public administration, as the entity responsible for safeguarding the right to healthcare, is a system comprising executive bodies and other public administration entities administratively empowered to ensure the realisation of this right. In Ukraine, this system includes: the Cabinet of Ministers of Ukraine, which is responsible for formulating state policy in the field of transplantation, the Ministry of Health of Ukraine, which carries out regulatory and legal oversight of transplantation and coordinates the activities of relevant institutions, the specialised state institution 'Ukrainian Transplant Coordination Centre', which provides organisational and methodological guidance to healthcare facilities carrying out transplant activities, the National Health Service of Ukraine as the strategic purchaser of medical services involving transplantation, local authorities and municipal healthcare institutions as direct providers of medical care⁶, licensing and accreditation bodies, and bodies of the State Service of Ukraine for Medicines and Drug Control. The effectiveness of public administration in this field is determined precisely by the quality of interaction between these entities, and its main objective is to improve the effectiveness of transplantation and ensure its accessibility to the entire population.

⁴ Конвенція про захист прав і гідності людини щодо застосування біології та медицини (Конвенція про права людини та біомедицину) : міжнар. док. Ради Європи від 4 квітня 1997 р. URL: https://zakon.rada.gov.ua/laws/show/994_334 (дата звернення: 19.05.2026).

⁵ WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation. WHO/HTP/EHT/CPR/2010.01. URL: <https://iris.who.int/server/api/core/bitstreams/53e1102b-4874-49bf-97bc-c529b1c246f0/content> (дата звернення: 19.05.2026).

⁶ Про застосування трансплантації анатомічних матеріалів людини.

Administrative and legal protection of the right to healthcare in the field of transplantation is ensured through a system of forms and methods of administrative activity, including: regulatory control (the issuance of subordinate legislation by the Ministry of Health of Ukraine and the Cabinet of Ministers of Ukraine), licensing of activities related to transplantation, state supervision and control over compliance with legislation, information provision through the Unified State Transplant Information System (hereinafter – USTIS), the provision of administrative services, in particular regarding the acceptance of a person's expression of will concerning post-mortem donation, and the application of administrative enforcement measures and liability in the event of detected violations. Z.S. Gladun quite rightly emphasises that administrative and legal regulation in the field of healthcare must, in essence, be based on the principles of an optimal balance between state influence and patient autonomy, whilst safeguarding both public interests and individual rights⁷.

From a structural and functional perspective, the administrative and legal protection of the right to healthcare in the field of transplantation can be viewed at two levels: a general level, which applies to all individuals as potential participants in transplantation-related legal relationships (provision of information, regulatory control), and an individual level, which is implemented in relation to a specific donor or recipient (inclusion in the USTIS registers, matching of 'donor-recipient' pairs, monitoring the safety of transplant procedures, post-transplant support). The combination of these levels forms a system of administrative and legal safeguards, in which the public administration acts as both regulator and organiser.

It is important to emphasise that the administrative and legal protection of the right to healthcare in the context of transplantation is not limited solely to ensuring patients' access to medical services. It also encompasses a wide range of safeguards aimed at preventing abuse, the illegal trade in anatomical materials, the commercialisation of transplantation, discrimination on any grounds when compiling waiting lists, as well as protection against transplant tourism and illegal human testing. All these aspects are enshrined in the principles of transplantation set out in Article 4 of the Law of Ukraine 'On the Use of Anatomical Materials for Human Transplantation', which serve as guiding legal principles for all public administration bodies involved in this field.

⁷ Гладун З. С. Адміністративно-правове регулювання відносин у сфері охорони здоров'я за законодавством України. *Вісник Національної академії правових наук України*. 2014. № 1 (76). С. 107.

2. The administrative and legal framework for safeguarding the right to healthcare in the field of human organ and tissue transplantation

The current administrative and legal framework for safeguarding the right to healthcare in the field of human organ and tissue transplantation in Ukraine was established on the basis of the Law of Ukraine ‘On the Use of Anatomical Materials for Human Transplantation’ of 17 May 2018 No. 2427-VIII⁸, which replaced the 1999 Law and established fundamentally new principles of organisational and legal regulation in this field. Milestone stages in the development of the regulatory framework also included the adoption of Law No. 1967-IX of 17 December 2020, which improved the procedures for the activities of transplant coordinators and the functioning of the USTIS⁹, as well as Law No. 4203-IX of 9 January 2025, which introduced ‘domino-style’ transplantation, strengthened safeguards for the protection of donors’ and recipients’ rights, and established specific restrictions on the removal of anatomical materials from certain categories of deceased persons¹⁰.

The 1999 Act, which for a long time remained the sole specific piece of legislation in the field of transplantation, was based on the model of presumed consent, yet did not provide for effective administrative and legal instruments to implement this principle: there was no unified information system, no institution of transplant coordinators, and no clear procedures for cooperation between healthcare facilities. According to M.M. Novytska, the key innovation of the 2018 Law was the introduction of a comprehensive administrative and legal framework for transplantation, in particular the USTIS and the institution of the authorised representative¹¹. V.I. Pishta notes that prior to the adoption of Law No. 2427-VIII, transplantation as a systematic phenomenon was virtually non-existent in Ukraine, as evidenced by the disparity between the demand for organ transplants and the actual number of transplants performed¹². Law No. 2427-VIII introduced a comprehensive model of administrative and legal regulation that complies with modern European standards, provides a clear institutional structure and establishes procedural safeguards to ensure the rights of all parties involved in transplant-related legal relationships are upheld.

⁸ Про застосування трансплантації анатомічних матеріалів людині.

⁹ Про внесення змін до деяких законодавчих актів України, що регулюють питання трансплантації анатомічних матеріалів людині : Закон України від 17 грудня 2020 р. № 1967-IX. URL: <https://zakon.rada.gov.ua/laws/show/1967-20#Text> (дата звернення: 19.05.2026).

¹⁰ Про внесення змін до деяких законів України щодо удосконалення організації надання медичної допомоги із застосуванням трансплантації, інших питань у сфері охорони здоров'я: Закон України від 9 січня 2025 р. № 4203-IX <https://zakon.rada.gov.ua/laws/show/4203-20#Text> (дата звернення: 19.05.2026).

¹¹ Новицька М. М. Основні зміни до законодавства України у сфері трансплантації анатомічних матеріалів людині. *Підприємництво, господарство і право*. 2018. № 9. С. 133-134.

¹² Пішта В. І. Адміністративно-правове регулювання трансплантації в Україні : дис.... д-ра філософії : 081 / ДВНЗ «Ужгородський національний університет». Ужгород, 2020. С. 17.

A key element of the administrative and legal framework is the Unified State Information System for Organ and Tissue Transplantation – an electronic, automated information and telecommunications system established pursuant to Resolution No. 1366 of the Cabinet of Ministers of Ukraine dated 23 December 2020¹³. The functionality of the USTIS is designed to prevent any manipulation and minimise the human factor during the matching of ‘donor-recipient’ pairs: the search for a suitable pair is carried out automatically according to clearly defined criteria based on medical compatibility, the urgency of the transplant, and the proximity of the hospitals where the donor and recipient are located. The system contains the following information: 1) the declaration of intent by a person who, following their death, became a donor of human anatomical materials, regarding their consent or refusal to posthumous donation; 2) the declaration of intent by the spouse or one of the close relatives of that person (children, parents, siblings), or the person who has undertaken to bury the deceased, who has given consent, in accordance with the procedure established by this Act, to the removal of anatomical materials for transplantation and/or the manufacture of bioimplants from the body of the deceased, 3) human anatomical materials intended for transplantation and/or the manufacture of bioimplants, 4) living donors to the extent specified in the person’s consent, 5) recipients to the extent specified in the person’s consent, 6) details of the recipient’s written informed consent, in the prescribed form, to the provision of medical care involving transplantation, 7) persons with transplanted anatomical material, to the extent specified in the person’s consent, 8) healthcare establishments providing medical care involving transplantation and/or carrying out activities related to transplantation, and other business entities carrying out activities related to transplantation, 9) transplant coordinators, 10) other data¹⁴.

The administrative and legal framework for transplantation also includes a system for the licensing and accreditation of medical practices. In accordance with Article 6 of Law No. 2427-VIII, activities related to transplantation are carried out exclusively by healthcare facilities that hold the relevant licence to conduct economic activities in the field of medical practice, comply with established industry standards, and are listed in the register in the USTIS¹⁵.

A distinct instrument of administrative and legal protection is the funding of transplantation through the Medical Guarantees Programme, implemented by the National Health Service of Ukraine. From 2024, organ and haematopoietic stem cell transplants will be fully funded by the National Health Service of Ukraine

¹³ Про затвердження Положення про Єдину державну інформаційну систему трансплантації органів та тканин: постанова Кабінету Міністрів України від 23 грудня 2020 р. № 1366. URL: <https://zakon.rada.gov.ua/laws/show/1366-2020-%D0%BF#Text> (дата звернення: 19.05.2026).

¹⁴ Про застосування трансплантації анатомічних матеріалів людини.

¹⁵ Про застосування трансплантації анатомічних матеріалів людини.

under two separate packages: ‘treatment of adults and children by organ transplantation’ and ‘treatment of adults and children by haematopoietic stem cell transplantation’¹⁶. This ensures the implementation of the constitutional guarantee of free medical care for patients requiring transplants and is a striking example of the state fulfilling its positive obligations to ensure the right to healthcare.

The model for expressing an individual’s wishes regarding post-mortem donation plays a particularly significant role in the administrative and legal framework. In Ukraine, in accordance with Article 16 of Law No. 2427-VIII, the presumption of non-consent model (the so-called ‘opt-in’ model) is established: anatomical materials from the body of a deceased person may be removed for transplantation only if there is written consent given during their lifetime, drawn up in the prescribed manner, or the consent of the spouse or close relatives, in the absence of an expression of will during their lifetime. A person may give such consent or declare their refusal, in which case the information is entered into the Electronic Health System. Furthermore, at the person’s request, this information may be recorded by means of a corresponding mark in their Ukrainian passport or driving licence¹⁷. This model is based on the principle of respect for the individual’s personal autonomy and the full clarity of their will.

From the perspective of comparative legal analysis, many European countries have adopted the opposite model – the presumption of consent (‘opt-out’). The most striking example is the so-called Spanish model, introduced as far back as 1979: here, any person who has not expressed their refusal to donate during their lifetime is considered a potential donor. Thanks to this model and an extensive transplant coordination infrastructure, Spain has achieved the world’s highest rate of post-mortem donation¹⁸.

K.O. Ilyushchenkova quite rightly points out that directly transplanting the Spanish model onto Ukrainian soil without the necessary institutional preparation is unlikely to be effective¹⁹.

By adopting the opt-in model, Ukraine is guided by the principle of maximising the protection of an individual’s personal autonomy. This model is better aligned with the established socio-cultural and religious traditions of Ukrainian society and eliminates the risk of unjustified interference with an individual’s bodily integrity. At the same time, it results in a smaller potential donor pool and requires active administrative efforts to encourage citizens to participate in the system of advance directives.

¹⁶ Трансплантація органів у Програмі медичних гарантій. Кабінет Міністрів України: вебсайт. URL: <https://www.kmu.gov.ua/news/transplantatsiia-orhaniv-u-prohrami-medychnykh-harantii> (дата звернення: 19.05.2026).

¹⁷ Про застосування трансплантації анатомічних матеріалів людини.

¹⁸ Льющенко К. О. Іспанська юридична модель трансплантології й можливість застосування її в Україні. *Jurnalul juridic national: teorie și practică*. 2015. № 6. С. 145.

¹⁹ Льющенко К. О. С. 146.

The introduction of a points-based system for determining ‘donor-recipient’ matches has also become a key tool in administrative and legal regulation. Under the current version of Article 13 of Law No. 2427-VIII, the matching of pairs is carried out automatically via the USTIS system, taking into account compatibility indicators based on medical criteria, the urgency of the case, and the proximity of hospitals, all of which are assessed on a points basis. The criteria for awarding points are approved by the Ministry of Health of Ukraine. This system minimises the subjective factor as much as possible and guarantees the impartiality of the selection process, in line with the principles set out in Article 4 of the aforementioned law. The introduction in 2025 of ‘domino-style’ transplantation, whereby the first recipient, after receiving anatomical material from a cadaveric donor, donates their own organ to a second recipient, is a further example of a flexible regulatory response to the needs of clinical practice and technological progress²⁰.

3. Challenges and areas for improvement in the administrative and legal protection of the right to healthcare in the field of transplantation in Ukraine

Despite significant progress in developing the administrative and legal framework for protecting the right to healthcare in the field of transplantation, an analysis of legislation and law enforcement practice indicates the existence of problems that necessitate further improvement of regulatory frameworks and institutional infrastructure.

The primary problem remains the mismatch between the capacity of the transplant system and the actual needs of patients. As of 2025, there were over 4,000 patients on the national waiting list²¹. Despite this, for a significant proportion of patients, the realistic prospect of receiving surgery is measured in years, and a certain proportion of patients die before receiving a transplant. This situation highlights the question of whether the state is adequately fulfilling its positive obligation to ensure access to urgent specialist medical care.

The second significant problem concerns the insufficient development of the transplant coordination institute. In the leading EU countries, in particular in Spain, the success of the transplant system is due precisely to the presence of a network of highly professional transplant coordinators – specialised medical professionals who ensure the timely identification of potential donors, delicate communication with the families of the deceased, and logistical and legal support for transplantation²².

²⁰ Про внесення змін до деяких законів України щодо удосконалення організації надання медичної допомоги із застосуванням трансплантації, інших питань у сфері охорони здоров'я.

²¹ Трансплантація: за 2025 рік українські медики виконали понад 650 органних пересадок – підсумки.

²² Matesanz R., Domínguez-Gil B., Coll E., Mahillo B., Marazuela R. How Spain Reached 40 Deceased Organ Donors per Million Population. *Am J Transplant.* 2017. № 17(6). P. 1447-1454. doi: 10.1111/ajt.14104.

In particular, it seems appropriate to foresee the corresponding positions in the staff lists of healthcare institutions at the supracluster and cluster levels, as well as to improve the professional standards of such specialists in close cooperation with the relevant structures of the European Union and Eurotransplant member states. Of particular importance for Ukraine, as a candidate country for accession to the EU, is the gradual harmonisation of national legislation in the field of transplantology with Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation. This regulatory act establishes uniform requirements for EU countries regarding the identification of donors, assessment of their condition, traceability of anatomical materials, and response to serious adverse reactions, which must be implemented in the Ukrainian legal framework within the framework of the implementation of the Association Agreement with the European Union.

At the same time, it should be noted that on June 13, 2024, the European Union adopted Regulation (EU) 2024/1938 on the quality and safety standards of substances of human origin intended for use in humans (the so-called SoHO Regulation)²³, which enters into force on August 7, 2027. Although solid organs remain outside the scope of the SoHO Regulation (their regulation remains within the framework of Directive 2010/53/EC), its provisions will directly apply to the transplantation of other anatomical materials – tissues, cells, including hematopoietic stem cells, which is actively used in Ukraine. The SoHO Regulation introduces enhanced traceability standards, a single digital platform EU SoHO Platform, the SoHO Coordination Council, and a harmonised procedure for the authorisation of new drugs. The gradual approximation of Ukrainian legislation to the requirements of the above-mentioned EU acts should become one of the priority areas of administrative and legal policy in the field of transplantation²³.

The third problem is the imperfection of the procedure for obtaining a person's will regarding posthumous donation. The introduced model of making a mark in the passport or driver's license in practice turned out to be ineffective, and the mechanism for obtaining consent to enter information into the USTIS has not gained proper distribution among the population due to the lack of a systematic information campaign. This leads to a low level of coverage of citizens by the system of intra-life will expression and complicates the work of medical personnel in cases of ascertaining the brain death of a potential donor.

Among the main problems of forming state policy in the field of transplantation is the lack of understanding in society of the importance of transplantation as a method of preserving life and improving health, which is largely a consequence of a passive information policy on the part of the Ministry

²³ European Parliament. European Council. On Standards of Quality and Safety for Substances of Human Origin Intended for Human Application and Repealing Directives 2002/98/EC and 2004/23/EC. URL: <https://eur-lex.europa.eu/eli/reg/2024/1938/oj/> (дата звернення: 19.05.2026).

of Health of Ukraine, since without systematic information and explanatory work, the legal mechanism for expressing will cannot achieve its goal²⁴.

An important factor in the formation of an administrative-legal mechanism in the field of transplantation is the practice of the ECtHR, which has repeatedly considered cases of violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the context of transplantation. Of particular importance are the decisions in the cases of *Petrova v. Latvia* (2014)²⁵ and *Elberte v. Latvia* (2015)²⁶, which formed important standards of procedural protection of the right to respect for private life. In the case of *Petrova v. Latvia*, the ECtHR found a violation of Article 8 of the Convention, since Latvian legislation was not formulated with sufficient precision and did not provide adequate legal protection against arbitrariness in cases where the close relatives of the deceased were not informed about the possible removal of organs. In the case of *Elberte v. Latvia*, the ECtHR established that the systematic nature of the removal of tissues from the bodies of the deceased in the absence of appropriate legal regulation is a gross violation of the state's positive obligations. These decisions are of fundamental importance for the Ukrainian legislator, as they require maximum clarity, predictability, and information support for administrative procedures in transplantology, as well as proper protection of the rights of relatives of a potential donor.

The above-mentioned legal positions of the ECtHR are particularly relevant for Ukraine in view of the fact that the national legislation, like the Latvian one at the time of consideration of the mentioned cases, is based on the model of presumption of disagreement. This imposes increased requirements on the Ukrainian public administration regarding the clarity of administrative procedures, the availability of information for citizens and relatives of potential donors, as well as the documentation of decisions on the removal of anatomical materials. In the context of Ukraine's implementation of its international obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms, the legal mechanism should be built in such a way as to exclude any possibility of uncertainty in the application of the norms on posthumous donation. This involves not only proper regulatory consolidation of the procedures, but also professional training of transplant coordinators and doctors who must interact with the families of the deceased in compliance with the standards of ethics, informativeness and respect for human dignity.

²⁴ Пішта В. І. Адміністративно-правове регулювання трансплантації в Україні : дис.... д-ра філософії: 081 / ДВНЗ «Ужгородський національний університет». Ужгород, 2020. С. 138

²⁵ Case of *Petrova v. Latvia* : judgment of the European Court of Human Rights of 24 June 2014, application no. 4605/05. URL: <https://hudoc.echr.coe.int/ukr#%7B%22itemid%22:%5B%22001-144997%22%5D%7D> (дата звернення: 19.05.2026).

²⁶ Case of *Elberte v. Latvia* : judgment of the European Court of Human Rights of 13 January 2015, application no. 61243/08. URL: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-150234%22%5D%7D> (дата звернення: 19.05.2026).

A separate aspect of the administrative and legal support for transplantation is its functioning under the legal regime of martial law. The armed aggression of the Russian Federation against Ukraine has created a number of new challenges for the transplant system: the closure of airspace has significantly complicated the logistics of moving anatomical materials, and the need for transplantation for a larger number of people has increased²⁷.

Among the areas of further improvement of the administrative and legal mechanism for protecting the right to health care in the field of transplantation, in our opinion, the following should be highlighted: 1) strengthening information and explanatory work among the population regarding the essence of transplantation and the procedure for expressing will during life regarding posthumous donation, which will contribute to increasing the donor pool; 2) institutional development of the system of transplant coordinators through the creation of specialised educational programs and improving the legal and social status of these specialists; 3) improving the functionality of the USTIS through its full integration with the electronic health care system eHealth; 4) strengthening interdepartmental coordination between the Ministry of Health of Ukraine, the National Health Insurance Fund, the Ukrainian Transplant Coordination Centre, the Ministry of Internal Affairs and other entities of public administration, in particular through the creation of the Interdepartmental Coordination Commission on Transplantation under the Cabinet of Ministers of Ukraine²⁸; 5) introduction of effective mechanisms of administrative liability for violations of legislation in the field of transplantation with differentiation of sanctions depending on the nature of the offense; 6) conducting a phased analysis of the possibility of introducing elements of the presumption of consent model, taking into account European experience, but only after a broad public discussion and proper information provision. The implementation of the proposed measures will contribute to increasing the effectiveness of administrative and legal protection of the right to health care in one of the most complex and sensitive areas of modern medicine.

CONCLUSIONS

Comparative legal analysis shows that the effectiveness of the transplantation system is determined not so much by the legal model of consent – "opt-in" or "opt-out", but by the quality of the administrative and legal infrastructure, primarily the institute of transplant coordinators, the information system, financial support and interdepartmental coordination. The Ukrainian model of the presumption of disagreement is justified in view of the constitutional value of private autonomy, but requires a significant strengthening of the information and coordination components.

²⁷ Трансплантація в Україні: функціонування системи в умовах війни. Health-ua: вебсайт. URL: <https://health-ua.com/terapiya-i-semeynaya-meditsina/transplantologiya/76475-transplantatsiya-vukran--funktsionuvannya-sistemi-vumovah-vjnyi> (дата звернення: 19.05.2026).

²⁸ Пішта В. І. Адміністративно-правове регулювання трансплантації в Україні : дис.... д-ра філософії : 081 / ДВНЗ «Ужгородський національний університет». Ужгород, 2020. С. 110-112.

Optimization of administrative and legal protection of the right to health care in the field of transplantation should be based on a comprehensive approach that combines regulatory and legal, institutional, information, and financial and economic means. Only such an approach can ensure the true implementation of Article 49 of the Constitution of Ukraine in the area where the patient's life directly depends on the effectiveness of administrative procedures and timely actions of the public administration. Further scientific developments in this direction should be focused on the study of European standards for the traceability of anatomical materials, models of legal liability for violations of transplantation legislation, as well as mechanisms for international cooperation between Ukraine and organisations such as Eurotransplant and other organisations of EU member states within the framework of the implementation of Ukraine's European integration course.

SUMMARY

This study is devoted to a comprehensive analysis of the administrative and legal mechanisms by which public administration safeguards the right to healthcare in the field of human organ transplantation. It analyses the constitutional and legal foundations of the right to healthcare as an object of administrative and legal protection, and justifies the special legal status of public administration as the entity responsible for ensuring this right in the field of transplantation. The system of public administration bodies in the field under study is outlined, which includes the Ministry of Health of Ukraine, the Ukrainian Transplant Coordination Centre, the National Health Service of Ukraine and healthcare institutions. Particular attention is paid to the functioning of the Unified State Transplant Information System as a key administrative and legal instrument for ensuring transparency and impartiality in the allocation of anatomical materials. The content of the principle of presumed refusal to post-mortem donation is outlined and compared with the model of presumed consent implemented in Spain. The decisions of the European Court of Human Rights in the cases of 'Petrova v. Latvia' (2014) and 'Elberte v. Latvia' (2015) are analysed, which establish standards for the procedural protection of the right to respect for private life in the context of transplantation. Based on a synthesis of domestic and international experience, proposals are formulated for improving the administrative and legal mechanism for protecting the right to healthcare in the field of transplantation, in particular regarding the institutionalisation of the transplant coordinator system, strengthening information and awareness-raising efforts, and adapting the mechanism to the conditions of martial law.

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