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THE REGULATION OF TRANSPORTING THE BODIES OF THE DEAD OVER THE BORDER OF UKRAINE IN ADMINISTRATIVE LAW¹

To consider the provisions of the legislation of Ukraine governing the procedure of transportation over the border of Ukraine of the bodies of the dead; to explain the necessity of making corresponding amendments to the subject of medical law.

The primary materials for the research were the provisions of the Fundamental principles of legislation of Ukraine on healthcare, the Rules of medico-legal assessment (examination) of corpses in the buros of medico-legal expertise, Procedure of interaction between the bodies and units of the national police, healthcare institutions and prosecutor's offices on establishment of the fact of death of a person, laws of Ukraine On burial and funeral business, On ensuring the sanitary and epidemiological well-being of the population, On the protection from infectious diseases.

The methodological foundation of the research were the general scientific methods and special scientific methods and technics of scientific cognition. The basis of the research is the dialectical method, used to maintain the trustworthi-

ness of the scientific knowledge of the problems connected with the transportation to the territory of Ukraine of the bodies of the dead, the development of legislation in the field and application of law in this sphere. The systematic-structural method and systematic-functional method enabled analysis if the means of administrative-legal regulation in the specified field. The logical-semantic method was used in characteristic of provisions of administrative and sanitary legislation on transportation of the bodies of the dead over the state border of Ukraine.

Among variety of risks concerning the increasing mobility of population in the times of globalization is the risk of death on the territory of a foreign state. In this regard a need for legal regulation of transportation of the bodies of the dead for their burial on the territory of Ukraine or their transportation from Ukraine to other states.

Service, employment or family circumstances often force people to live far from their native places. It happens that death may encounter them there. In such a case, from the diseased will or at will of the relatives the coffin with the corpse (the urn with the ashes) is prepared for transportation over the state border for subsequent burial.

But at the same time, there are cases where the movement of bodies

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of the dead is associated with a certain degree of risk – concealment both in the corpse (or in the corpse) and in the graves of items prohibited to move across the customs border of Ukraine, as well as distribution to the territory of Ukraine (or from the territory of Ukraine) especially dangerous types of quarantine infectious diseases or diseases associated with environmental and man-made disasters. These are challenges to public health, which, according to the WHO definition, relate to all organized activities (both public and private) that are being undertaken to prevent diseases, improve health and extend longevity [1]. This problem became especially important after signing the Association Agreement between Ukraine and the European Union² and undertakings by Ukraine to implement international rules.

Certain aspects of the problem have been researched by I. Pokhylko, O. Rozgon, S. Slipchenko, F. Fedotov [2–5], however the problem requires more profound research, considering the contemporary political and legal realities.

The sanitary and administrative legislation of Ukraine establishes a specific procedure dead bodies' transportation over Ukraine state border³. Thus, transportation of dead bodies from the territory of foreign states to Ukraine is allowed, subject to the fulfillment of a number of legal and technical requirements. Among the legal requirements is the notification of the relevant authorities of the state in the territory of which the death occurred, and the consular authorities of Ukraine for the purpose of state registration of death and the decision on the organization of transportation of the body. Technical requirements

include the embalming of the body and the use of a special sealed container.

The law of Ukraine “On burial and burial” [7] is the main national legislative act that defines the general grounds for activities in the field of burial of the deceased, the provision of ritual services, regulation of relations that arise after death (loss of life) of a person, concerning the burial procedure. According to Art. 6 of the said Law, all citizens have the right to burial their bodies and proper attitude to the body after death, which means the right to be buried in a certain place, according to certain customs, along with certain previously dead persons or to be subjected to cremation and to entrust execution of their will to a certain person. Movement of citizens through the customs border of Ukraine bodies of those who have died in coffins (casks with ashes) or the remnants of the deceased is carried out on the basis of a written application of citizens who carry out such a transfer, in the presence of documents specified in Art. 22 of this Law.

According to Art. 22 of the Law of Ukraine “On burial and funeral”, transportation (transferring) of deceased persons' bodies through the state border of Ukraine (including the movement through the territory of Ukraine in transit) is carried out on condition of presentation to the body of incomes and charges by the person who moves (accompanies) the body of the deceased death certificate or other document certifying the fact of death issued by the competent authority and a certificate that there are no investments in the body and coffin (urn), the movement of which through the state border of Ukraine is prohibited.

The certificate on the absence of a body and coffin (hives) of investments, the movement of which through the state border of Ukraine is prohibited, issues: in the case of removal of the coffin (urns) abroad – forensic medical expert in the presence of an official of the relevant customs authority; and in case of the import of a coffin (urns) into

² Cooperation, in particular, covers the following areas: a) strengthening the health care system of Ukraine and its potential; b) prevention and control of infectious diseases, increased risk preparedness for outbreaks of highly pathogenic diseases.

³ According to the Customs code of Ukraine, the customs border of Ukraine coincides with the state border.



Control” is affixed. The specified order extends to the movement of the funeral barns with the ashes of the deceased through the customs border.

In some cases, during the hanging and sending of a coffin, the presence of a representative of the consular service of the state in which it is planned to carry out the burial of the body of the deceased is possible. Relatives of the deceased or the funeral agent must duly complete all the necessary documents, including placing on them a special stamp – an apostille provided for by the Hague International Convention for the Certification of Official Documents Abroad.

Further, when moving the body of the deceased through the customs border of Ukraine, persons accompanying the body of the deceased (relatives of the deceased, the funeral agent or employees of the service brigades of the funeral agency, which provide delivery of the container with the coffin to the vehicle, its transfer), the above documents are submitted to officials of the Customs of the State fiscal service of Ukraine.

Despite the rather detailed legal regulation of the procedure for moving through the customs border of Ukraine the bodies of the dead in the coffins (urns with ashes), in practice there are many difficulties. So, moving through the customs border of Ukraine bodies of dead in coffins (buttocks with ashes) are only permitted at checkpoints located on the state border of Ukraine, equipped with such technical means of customs control as X-ray television devices and scanning X-ray machines. The indicated technical

means of customs control are located only on the territories of checkpoints located on the state border of Ukraine for international traffic. At the same time, such equipment is absent at checkpoints located on the state border of Ukraine for interstate communication⁵. As a result, the death of a deceased person in a coffin (an urn with ashes) is visually inspected by an official of the customs of the State Fiscal Service of Ukraine at the border crossing point located on the state border of Ukraine for interstate communication.

It should also be noted that the container with a coffin, prepared for shipment, is quite heavy (about 200 kilograms). Therefore, when delivered to a plane or train, his train is usually accompanied by close relatives of a deceased or a professional brigade of loaders (funeral service, agency). Persons accompanying the container with the coffin and the body of the deceased should have a corresponding package of documents drawn up in the country from which the body of the deceased is taken out.

The opening of the coffin (urns) is possible only in exceptional cases – in the presence of reliable information on investments, the movement of which through the state border of Ukraine is prohibited. Disclosure is made in a special building of the health care institution of Ukraine, in the presence of an official of the body of incomes and charges and the person accompanying the coffin (urn), or the representative of the undertaking that carries out the carriage, as well as other persons in cases stipulated by law, with observance requirements of the sanitary and epidemiological legislation of Ukraine [7].

Speaking about the registration of the death of citizens of Ukraine who have died abroad, it should be noted that it is being conducted by a consul on the last place of residence of the deceased, at the place of death, detection of the body of the deceased or at the burial site. In case of registration of death not in the consular district where the deceased dies, the con-

⁵ Points of passage, in accordance with the Regulation on points of entry through the state border and control points, are classified internationally (passage through the state border of citizens, vehicles and cargoes of any states, as well as stateless persons); interstate (passing through the state border of citizens, vehicles and cargoes of Ukraine and the adjacent state); local (passage through the state border of citizens of Ukraine and the adjacent state living in border areas (areas) and vehicles belonging to them, unless otherwise provided by international treaties of Ukraine).





for examination, within three days after its completion; inform the investigator or the prosecutor in writing informing the corpse of the office, exceeding the terms of the forensic examination and giving the expert opinion; with the written permission of the prosecutor, which is provided immediately after the forensic examination of the corpse and the selection of the necessary samples for the purpose of carrying out laboratory investigations, issued a corpse.

In accordance with the provisions of Art. Art. 72–73 Fundamentals of Ukrainian legislation on health care, mandatory pathoanatomical sections are carried out in the presence of suspicion of violent death, as well as in the event that the death of the patient occurred at a health facility [13].

The procedure for conducting a pathoanatomical section is determined by the Ministry of Health of Ukraine. In case of disagreement with the citizen with the conclusions of the state medical examination and in other cases stipulated by law, an alternative medical (medical-social, military-medical) examination or pathoanatomical section is carried out by the specialists of the corresponding profile and qualification at the request of the citizen. In this case, the expert institution and experts are chosen by the citizens on their own.

Authorized employees of the bodies and units of the National Police of Ukraine in the matter of establishing the fact of death of a person without signs of violent death or suspicion of such a place of residence:

- make registration in the magazine of a single record of applications and reports of criminal offenses committed and other events, the form of which is given in Annex 2 to the Regulations on the procedure for maintaining a unified record in the police authorities statements and reports of criminal offenses and other events, approved by the order of the Ministry of Internal Affairs of Ukraine from 06.11.2015 № 1377;

- leave immediately upon notice of the fact of the death of a person at the place of residence without signs of violent death or suspicion of such a place of occurrence, together with a medical practitioner and, if necessary, with other specialists;

- according to the results of the inspection of the corpse, after finding out the circumstances of death and in the absence of signs of violent death or suspicion of such – make a conclusion on the non-violent death of a person at the place of residence.

In the case of a notification of a fact of violent death of a person or suspicion of such or establishing such facts during the inspection of the corpse (part of the corpse) of a person who died suddenly or in an uncertain circumstances, as well as the body of an unidentified person, the investigatory and operational the group, the experts of the Expert Service of the Ministry of Internal Affairs of Ukraine and the forensic expert (if it is impossible to involve a forensic medical expert in a timely manner – a doctor) and, if necessary, other specialists.

Must be sent for the forensic examination of corpses (parts of corpses) of people: with signs of violent death or suspicion of such death; the death of which occurred suddenly or in uncertain circumstances; the death of which occurred beyond the place of their residence; whose person is not installed.

The procedure for carrying out forensic medical examination of the corpse is regulated by the Fundamentals of Ukrainian Health Law, the Law of Ukraine “On Funeral and Funeral”, the Law of Ukraine “On Forensic Examination”, procedural law, other legislative acts, the Instruction on conducting forensic examinations, Rules for carrying out forensic medical examinations (investigations) of corpses at the bureau of forensic medical examination.

Regarding the registration of deaths of citizens of Ukraine who died on the road on a sea, river, aircraft, train or other vehicle, it is carried out at the nearest diplomatic mission or





the dead across the customs border of Ukraine are insignificant (and in relation to transit traffic of such bodies of the dead in general rare), this movement is still carried out, but due to increasing mobility of the population and the risks arising from it and tend to to growth, there is a need for a legal settlement of issues related to such a move, as well as to systematize the relevant legislation.

Статтю присвячено характеристиці положень законодавства України, якими регламентовано порядок перевезення тіл померлих через кордон України та врегульовано питання охорони здоров'я і гарантування санітарно-епідеміологічної безпеки населення, організації патологоанатомічної та судово-медичної експертизи з метою надання необхідних документів для переміщення тіл загиблих через митний кордон України. Встановлено, що хоча статистика переміщень через митний кордон України тіл померлих є незначною (а щодо транзитних перевезень таких тіл взагалі рідкісною), усе ж таке переміщення здійснюється, а у зв'язку зі зростаючою мобільністю населення та ризиками, що виникають внаслідок цього та мають тенденцію до зростання, постає необхідність у правовому врегулюванні питань, пов'язаних із таким переміщенням, а також систематизації відповідного законодавства.

Стаття посвячена характеристиці положень законодавства України, котрими регламентован порядок перевезення тіл умерших через границу Украины и урегулированы вопросы здравоохранения и обеспечения санитарно-эпидемиологической безопасности населения, организации патологоанатомической и судебно-медицинской экспертизы с целью предоставления необходимых документов для перемещения тел погибших через

таможенную границу Украины. Установлено, что хотя статистика перемещения через таможенную границу Украины тел умерших незначительна (а транзитные перевозки таких тел вообще являются редкостью), все же такое перемещение осуществляется, а в связи с растущей мобильностью населения и рисками, возникающими вследствие этого и имеющими тенденцию к росту, возникает необходимость в правовом урегулировании вопросов, связанных с таким перемещением, а также в систематизации соответствующего законодательства.

References

1. Public Health. World Health Organization. 2014. URL: <http://www.who.int/trade/glossary> (accessed: 10.03.2019).
2. Pohilenko I. Pravove reguluvannya nadannja ritualnih poslug. Chasopis Kijivskogo universitetu prava. 2015. № 4. P. 176–179. URL: http://nbuv.gov.ua/UJRN/Chkup_2015_4_40 (accessed: 10.03.2019).
3. Rozgon O. Rozporjadgennja zapovidachja, jaki stosuutsja porjadku pochovannja, uvichnennja pamjati jogo pamjati. Mala enciklopedja notariusa nauk-pract. Jurnal Asociacii privatnih notariusov Kharkivskoi oblasti. 2016. № 4. P. 128–138.
4. Slipchenko S. Tilo ludini, jaka pomerla, jak ob'ekt tchivilnogo prava. Problemi tchivilnogo prava ta protsesu : materialy Nauk-prakt. konferentchii, 27 travnja 2016. Kharkiv, 2016. 400 p.
5. Fedotov A. Peremeshcheniye cherez granitsu Ukrainy tel umershikh: organizatsionno-pravovyye aspekty. Mitna gazeta. 2005. № 5. P. 29–44.
6. Mytnyy kodeks Ukrayiny : Zakon Ukrayiny vid 13.03.2012. № 4495–VI. Ofitsiyyny visnyk Ukrayiny. 2012. № 32. St. 1175.
7. Pro pokhovannya ta pokhoronnu spravu : Zakon Ukrayiny vid 10.07.2003 № 1102-IV. Ofitsiyyny visnyk Ukrayiny. 2003. № 33. St. 1777.
8. Shchodo peremishchennya til pomerlykh cherez derzhavnyy kordon Ukrayiny : Lyst Derzhavnoyi mytnoyi sluzhby vid 08.10.2004 № 16/16-4450-EP URL: <https://zakon.rada.gov.ua/rada/show/v4450342-04> (accessed: 10.03.2019).





9. Pro zakhyst naseleण्या vid infektsiynykh khvorob : Zakon Ukrayiny vid 06.04.2000 № 1645-III. URL: <https://zakon.rada.gov.ua/laws/show/> (accessed: 10.03.2019).

10. Polozhennya pro Derzhavnu sanitarno-epidemiologichnu sluzhbu Ukrayiny : Ukaz Prezydenta Ukrayiny vid 06.04.2011 № 400/2011. URL: <https://zakon.rada.gov.ua/go/400/2011> (accessed: 10.03.2019).

11. Polozhennya pro punkty propusku cherez derzhavnyy kordon ta punkty kontrolyu, zatverdzheno postanovoyu Kabinetu Ministriv Ukrayiny vid 18.08.2010 № 751. URL: <https://zakon.rada.gov.ua/go/400/2011> (accessed: 10.03.2019).

12. Poryadok vzayemodiyi mizh orhanamy ta pidrozdilamy natsional'noyi politysi, zakladamy okhorony zdorov'ya ta orhanamy prokuratury Ukrayiny pry ustanovlenni faktu smerti lyudyny: nakaz Ministerstva vnutrishnikh sprav Ukrayiny, Ministerstva okhorony

zdorov'ya Ukrayiny, Heneral'noyi prokuratury Ukrayiny vid 29.09.2017 № 807/1193/279. URL: <https://zakon.rada.gov.ua/laws/show/> (accessed: 10.03.2019).

13. Osnovy zakonodavstva Ukrayiny pro okhoronu zdorov'ya vid 19.11.1992 № 2801-XII. URL: zakon.rada.gov.ua/laws/show/ (accessed: 10.03.2019).

14. Pro zabezpechennya sanitarnoho ta epidemichnoho blahopoluchchya naseleण्या : Zakon Ukrayiny vid 24.02.1994 № 4004-XII. URL: zakon.rada.gov.ua/laws/show/ (accessed: 10.03.2019).

15. Stetsenko V. Predmet, metod i systema medychnoho prava. Medychne pravo Ukrayiny: problemy stanovlennya ta rozvytku. Materialy I Vseukrayins'koyi naukovo-praktychnoyi konferentsiyi, 19–20 kvitn. 2007, L'viv. P. 297–301.

16. Hladun Z. Problemy formuvannya medychnoho prava v Ukrayini. Visnyk L'vivs'koho. nats. med. un-tu. 2005. № 3. P. 66–70.

