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BODILY REMAINS DONATION CONTRACT FOR EDUCATIONAL PURPOSES IN
THE REPUBLIC OF SERBIA – *DE LEGE FERENDA* ANALYSIS OF ITS LEGAL
NATURE¹

Summary

Because of rapid development of digital technologies, teaching methods and materials in anatomy courses have evolved notably in latest years. However, cadaver dissection, while countless moral and legal dilemmas about this procedure were never truly resolved, was and still is supreme teaching approach.

If we accept the necessity of using cadavers in education, a particularly controversial issue in this field is the one of adequate legal basis for the valid donation of one's own body for educational purposes. Namely, in the Republic of Serbia, imperative norms stipulate that one's own body can only be transferred through a testament, for which, by the way, strict form and content are mandated.

We argue that this type of testamentary disposal is unnecessarily limited by form and content, and that a will is, in fact, not an adequate medium for the "anatomical gift". Therefore, in this paper, relying on analytical and synthetic methods, case studies, and the normative method, we explore the possibility of using contracts as a legal basis. Specifically, the paper presents the results of a theoretical-empirical research of the legal nature and content of contracts for the donating of one's own body for educational purposes, as well as the possibilities and overall necessity of introducing such contracts into future legal texts.

Key words: Anatomical gift, Cadaver dissections, Body donation, Contract, Testament.

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1. INTRODUCTION

Amount of theoretical knowledge that they acquired is main indicator of how effective the training of future medical professionals is. However, their full competence requires, not just a thorough understanding of human anatomy and physiological processes, but also continual development of both general and specialized practical skills. Experience of working with cadaveric material, regardless of ethical scrutiny, was and still is crucial for acquiring and improving anatomical knowledge and functional skills.

Teaching methods and tools used in medical education have evolved in response to social, ethical, and economic factors (Estai & Bunt, 2016, 1-2). Innovations in digital technology, which are a major driver of progress, brought cadaverless dissection as a viable option (Wasmuth *et al.*, 2019, 248). Yet, deep understanding of anatomical relations, both structural and functional, is essential for safe future medical practice (Wasmuth *et al.*, 2019, 247-248). Being so, the use of cadaver dissection as a teaching method remains essential for achieving a comprehensive understanding of human anatomy as a cornerstone of medical curriculum (Estai & Bunt, 2016, 1)

There is a saying that cadavers are future doctors “first patients” (Aneja *et al.*, 2013, 2589), but also their “silent mentors”. And truly, advantages of working on cadaveric material are almost impossible to quantify (Bharambe *et al.*, 2023, 1; Estai & Bunt, 2016, 2). Despite the proficiency of modern teaching tools in replicating body structure (Shevelev & Shevelev, 2023, 1365), the preference for cadaver dissection among anatomists and students is strong and stems from the fact that this method allows students to identify structures and gain tactile experience with tissue texture (Aneja *et al.*, 2013, 2585; Wasmuth *et al.*, 2019, 252). Also, there is psychological and sociological component of working on cadavers. Namely, students learn more than anatomy and practical skills – they build healthy amount of depersonalization and detachment necessary to become objective physician (Aneja *et al.*, 2013, 2589).

Through the ages, donor-based surgical simulation has notably enhanced medical procedures and their outcomes (Zdilla & Balta, 2022, 1). There is even high degree of consensus about the necessity of cadavers for the education of future healthcare workers.

However, the question is how medical institutions, in the Republic of Serbia specifically, acquire bodies on which teaching will be conducted. Current legislation promotes acquiring bodies of deceased individuals without known relatives as acceptable. But, according to the recommendation of the "International Federation of Associations of Anatomists," the only ethical method of obtaining cadavers is purposeful and voluntary donation (Bharambe *et al.*, 2023, 3; Hutchinson *et al.*, 2020, 513; Zdilla, Balta, 2022, 2).

It is important to distinguish between two forms of donation, donation of one's own remains and donation of other persons remains. In this paper, as well as in the preceding one, we focused on the first form of donation. More specifically, in this paper, we first

present arguments in favor of the view that testament, which by law is the only permissible act for the donation of one's own remains after death², is not an adequate legal basis. Then, based on the presented arguments, we consider the possibility of using contracts as a legal basis for the donation of one's own body. Relying on analytical and synthetic methods, as well as case studies and normative methods, the paper presents the results of research on legal nature and partially on the content of this contract.

2. TESTAMENT AS (IN)ADEQUATE LEGAL BASIS

Voluntary *mortis causa* body donation is probably most profound and humane gift for following generations. Each medical procedure on brain-dead individuals, thus every single body donation, is priceless for understanding the human body, training of healthcare professionals, and improving treatments that can save lives (Sperling, 2008, 8). Thus, anatomical gift signifies a determined mind, and a pious soul dedicated to help humanity by aiding medical science (Aneja *et al.*, 2013, 2586).

There is a high degree of public scrutiny towards anatomical dissection (Hutchinson *et al.*, 2020, 513). Nonetheless, even in environment filled with ethical scrutiny, the demand for cadavers remain strong and rising (Aneja *et al.*, 2013, 2586). To be precise, to ensure adequate quality in the teaching process, it is necessary to provide at least one cadaver for every ten students (Bharambe *et al.*, 2023, 3; Hutchinson *et al.*, 2020, 514).

Legal system of Republic of Serbia allows for three different methods of obtaining cadavers by medical institutions – one based on conditional legal authorization for body acquisition³ and two based on declaration of will⁴. Acquiring cadavers based on the will of the "donor" comes in form of another person's body donation and in form of one's own body donation.

Donation of another person's body for educational purposes is an especially complex issue, far more complex than donating own body, but our attention was drawn to the latter form. Specifically, we focused on the donation of one's own body, not due to the numerous legal, ethical, sociological, or cultural uncertainties it raises. With full respect for the highly altruistic nature of this act, we have deliberately set these aside and shifted our focus on how it is realized, particularly on legal basis of this donation – testament.

In the Republic of Serbia contract is not recognized as legal basis for inheritance. Thus, since current Law on Inheritance consists mainly of dispositive legal provisions, testamentary provisions are superior to most of them, which makes a testament primary legal basis for inheritance.

² Law on Health Care, "Official Gazette RS", no. 25/19, art. 210, p. 1 and 2.

³ Law on Health Care, art. 210, p. 1, i. 2.

⁴ Law on Health Care, art. 210, p. 1, i. 1 and 3.

Testament, as a legal act, is strictly defined by legislator. According to this definition a testament is a unilateral, personal, revocable at any time, declaration made by a capable person, in legally prescribed form, regarding the allocation of their estate upon death⁵. It is a formal legal transaction, which is made in a form given by law, according to a prescribed procedure (Milović, 2020, 82). As a follow up to this definition, legislator asserts that estate from previous provision is a collection of rights (and duties) suitable for inheritance that belonged to the testator at the time of death⁶.

We encounter illogicalities at the very first step when we speak about use of testament as medium and legal basis for donation of one's own body for educational purposes. Inheritance law seen in the objective sense regulates inheritance as a derivative method of acquiring property and other material rights that are suitable and free to be inherited. In other words, it is exclusively focused on the material relations that the deceased was involved in at the time of death and their fate after death (Svorcan, 2009, 9-10).

Human body, during life nor after death, cannot be perceived as property, not even in most abstract sense of the word. Being so, human body nor its remains cannot be the subject of either universal or singular succession. Also, the right to dispose of one's own body is not material in nature, thus it doesn't meet primary and the most important criteria to be donated *ex testamentum* as defined by law. Rights over the body by nature are personal and non-material, consequently not suitable for testamentary dispositions which are, we can't emphasize this enough, strictly reserved for transfer of material rights, and not even all of them. Nonmaterial rights are without exception extinguished with the death of a person who was their holder during lifetime. In other words, the Law on Health Care's provision that a body donation statement can only be valid if part of a testament contradicts the fundamental legal nature of testamentary dispositions.

However, although we firmly stand on the position that a testament cannot be validly used for this type of disposal, this strict position can be softened. Arguments can be made that there are no obstacles for having a clause about body donation included in a testament. First, autonomy of the donor should be respected, also the immense social importance of this type of donation requires for it not to be hindered by formalities. We agree with this, but it is necessary to make some clarifications.

It is true that there are no obstacles for body donation statement to made through a testament. However, even when it is nominally included in a testament, this statement does not acquire testamentary character through the form in which it is presented. A statement about the donation of one's own body, when communicated in a testament, can be interpreted in several different ways – as a wish, recommendation, or even authorization –

⁵ Law on Inheritance RS, “*Official Gazette RS*”, no. 46/95, 101/2003 – CC RS decision and 6/2015, art. 78 in relation to art. 1, p. 1.

⁶ Law on Inheritance RS, art. 1, p. 2.

but its legal nature is not determined by the nature of the act in which it is contained, but by the donor's intent⁷.

As per the explicit command of the legislator, testamentary provisions should be interpreted according to the testator's intention, so it is very important to emphasize the following. The donor's intention is not to make a disposition of the estate, nor is it possible, since the donor's body after death, as we have seen, cannot be considered part of the estate. The donor's intention is also not, and cannot be, to use this statement to nominate their heirs. This is because the institution to which the body is donated does not acquire any inheritance rights. The institution is neither a universal nor a singular successor – it only acquires a very exclusive, somewhat special, and very narrowly defined right to perform a certain type of procedure on the body, of an educational, and partly experimental nature. In this sense, although it may seem anachronistic today, it is entirely justified in this case to refer to the teachings of Roman jurists, but also to the relatively newer provisions of the Serbian Civil Code of 1844, which very correctly observed and insisted on the differences between testamentary dispositions in the narrower sense and codicils. A provision about the donation of one's own body, when included in a will, would in fact be more akin to a codicil in its nature.

However, while a testament may be used as a document for donating one's body, it is important to acknowledge that such a disposition is not inherently testamentary in nature. The manner in which the legislator has regulated this issue invites at least two serious critiques. In fact, these two observations motivated us to explore the possibility of using an alternative instrument that might be more appropriate and better aligned with the spirit of donation, while also addressing the growing demand for cadavers.

The first critique concerns the form, while the second pertains to the content of the testament, specifically the very strict and, in our opinion, wholly unnecessary requirements imposed by the legislator. Namely, the legislator mandates, under the threat of nullity, that a testament containing a provision for the donation of one's body for educational purposes after death must be in written form and notarized by the competent authority⁸. If we accept that body donation can be executed via a testament, we honestly see no reason for insisting on such a stringent form.

It is easy to recognize that the legislator's intent was motivated by the significance of this type of donation and the desire to prevent any abuse of this act. However, while the

⁷ This is important to emphasize because it opens up space for resolving the dilemma of whether an institution can issue a negative inheritance statement and reject to receive remains, especially since this right is denied to the Republic due to the need to protect general interests. On subjects who are denied to make negative inheritance statement and negative statement itself in detail, Milović, 2018, 149-150.

⁸ Law on Health Care, art. 210, p. 2.

The question remains whether the testament drafted by competent authority, that is notary, from another country should be accepted because, in general, this testament would not be accepted in the Republic of Serbia (Milović, 2020, 84)

legislator correctly recognized the importance of body donation, the response was improper. The significance of this type of donation requires oversight even through the form of the act, but not to the extent that it deters potential donors or invalidates donations made in good faith. Given the chronic shortage of cadavers, this approach is fundamentally flawed. Specifically, we argue that any testament recognized by the legal system of the Republic of Serbia, including even oral testaments, should be effectively used for body donation. Therefore, the legal text should be revised to ease the strict requirements.

In this context, as previously stated, it is clear that the legislator's intention was also to prevent potential abuses of body donation. However, it should be noted that under the current regulations and measures, neither the donor during their lifetime nor their heirs or close family members after the donor's death receive any privileges due to the donation. It is certainly debatable whether incentive measures would be beneficial in facilitating access to new cadavers, but body donation remains a purely altruistic act. As such, the act of donation could not be abused by either the donor, their heirs, or family members, as there is no objective to be achieved through abusive behavior. Additionally, this act, perhaps theoretically, could be abused by the medical institution entrusted with the body for further use. But series of very detailed legal and professional regulations prevents any such possibility. Moreover, given that the body is entrusted to medical educational institutions known for their high ethical standards and meticulousness, there is no reason for inherent distrust.

The insistence on specific content elements of the testament seems even more illogical. Specifically, we refer to the mandatory appointment of an executor of the testament⁹. The role of the executor is generally to ensure that the testator's last wishes are carried out as intended¹⁰. However, if the testator has not specified particular tasks for the executor, their duties are limited to managing the estate¹¹. When it comes to body donation for educational purposes, first, the body is not part of the estate, and it is unclear how the executor would manage this donation, especially since the procedure for handling a cadaver, from body reception to the burial of remains, is regulated in detail by health protection regulations of imperative nature. In other words, the executor would have little to no room to intervene. Moreover, since neither legal nor testamentary heirs have any material interests, and especially since there are no third-party interests that could possibly be harmed by donation, there is truly no reason to insist on appointing an executor. The executor, while potentially having a role in body donation, should be an option rather than a requirement.

⁹ Law on Health Care, art. 210, p. 2.

¹⁰ Law on Inheritance, art. 173, p. 1.

¹¹ Law on Inheritance, art. 173, p. 1.

3. CONTRACT AS LEGAL BASIS FOR OWN BODY DONATION AND ITS LEGAL NATURE

Only property can be disposed of by testament. In fact, not even the entire property, but only the parts that are eligible and freely inheritable. Since neither the human body nor its remains are considered a person's property in any way, the question arises, which act manifesting the will *mortis causa* can serve as an adequate legal basis for donating a body for educational purposes? We believe that a contract is a far more appropriate instrument for this purpose.

There are numerous uncertainties regarding the contract that could be used for body donation, and resolving these uncertainties determines its legal nature. Since it is not possible to address all of them within the scope of this work, we will focus on the most important issues. The first question is whether this contract falls under public or private law. Depending on the answer, different clusters of questions must be considered. The uncertainties in this regard stem from the nature of the interests that the contract aims to satisfy.

In the previous section, we discussed the immense social importance of cadaver dissection. It is an indisputable fact that training on a cadaver is essential for reinforcing theoretical knowledge and developing the practical skills of future healthcare professionals. Their readiness to work with patients is of primary interest to society as a whole and directly contributes to the realization of the constitutionally guaranteed right to health. Therefore, it can be argued that the body donation contract falls under public law.

However, despite the fact that it primarily contributes to the promotion and realization of public interests, it would be incorrect to classify this contract as one of public law. For a contract to fall under public law, one of the parties in the contractual relationship must hold a legally dominant and hierarchically superior position. The institution to which the body is donated does not meet this criterion. It does not act as a bearer of public authority in this relationship, nor does it hold any superiority over the donor. In other words, in this context, both parties – the donor and the receiving institution – are formally and legally equal, making this a private law contract, or more precisely, a civil law contract. Let us now clarify this further.

First and foremost, this contract is not explicitly recognized and named in current legislation of Republic of Serbia. We firmly believe that *de lege ferenda* it should be regulated as a separate legal instrument. Until a new legislative initiative is introduced, it is valuable to analyze its legal nature in the context of the contract's purpose and the general provisions of existing contract law.

From the perspective of the mutual rights and obligations of the contracting parties, the body donation contract can be characterized as mutually binding. There are several reasons for this, but two are particularly significant. First, upon concluding this contract, both parties assume a set of obligations. However, what truly makes it mutually binding is

that the obligations of one party simultaneously serve as the legal basis for the obligations of the other. They are logically and functionally interconnected.

However, we believe that this contract does not fall under the category of true mutually binding, or synallagmatic, contracts. The obligations to which the parties commit themselves do not have the character of counter-performance, nor do they operate according to the *do ut des* system. Therefore, it would be incorrect to state, for example, that a medical institution commits to performing a dissection of a cadaver in exchange for the donor's donation of the body. Similarly, it would be equally incorrect to say that the donor decides to donate the body in order to have a dissection performed on him as a counter-performance, because the donor does not provide the body for his own benefit.

At first glance, it may seem logical to consider the contract for the donation of one's body for educational purposes as onerous in nature, given its mutually binding character. Indeed, it could be characterized as onerous, and this possibility could be included in future regulations. Furthermore, such an approach would align with the principles and norms of the modern capitalist social order. However, while we do not oppose this idea and acknowledge that it could contribute to a greater influx of necessary cadaveric material, we are more inclined to believe that this contract should maintain a charitable character. This is because any provision of compensation would be incompatible with the humane nature of this act. For this reason, we emphasize the concept of donation in its name. We firmly believe that it would not be morally permissible to trade in one's own body or its remains. While we respect the arguments of those who hold an opposing view, the more natural approach is to encourage the donation of body remains through various types of incentives for the donor or their family members, such as reduced treatment costs or co-payments, free public transportation, extended annual leave, and so on.

Positive contract law in the Republic of Serbia is based on two interrelated principles, the principle of consensuality and the informality of the contract. Accordingly, the contract we propose should be regulated as both consensual and informal. Regarding consensuality, there are no significant doubts. The category of real contracts is considered outdated in modern law. A body donation contract is formed when the consent of the parties is obtained. The handover of any "thing" – in this case, the remains of the body – would not be considered the act that creates the contract, but rather its implementation. However, it may seem unusual that we believe this contract should be regulated as informal.

The fact remains that this is a contract with very significant consequences, and the potential for abuse seems to increase accordingly. Therefore, it might appear that a strict form of contract is the only means to protect the contracting parties – primarily the donor – both from impulsiveness and haste, as well as from potential abuse. However, we firmly maintain the position that this contract should be exempt from any formal requirements for its creation and validity. There are several reasons for this. First, imposing formal requirements would likely deter many potential donors. Second, this contract must be regulated in a way that allows the donor to terminate it at any time during their lifetime –

thus, informality is essential for this goal to be achieved. Third, while the possibility of abuse does exist, the risk is minimized if the contract retains its charitable nature. This is especially true considering that the remains are entrusted to institutions and employees whose work is strictly governed by professional and ethical regulations of an imperative nature, and who are presumed to operate with a high level of ethics. Therefore, we believe that this contract can be validly formed in any permissible manner; however, if it were regulated as formal, the form would need to be probationary, not constitutive.

It is evident that we support the autonomy of the will and contractual freedom in this area. Indeed, we believe these principles are essential for promoting the donation of remains as a cultural phenomenon, which, in turn, is a prerequisite for ensuring a sufficient number of cadavers for optimal training. However, we do not believe that autonomy can or should be absolute, i.e., unlimited. Its limitation is necessary, for instance, to ensure the absolute transparency of the relationship established by this contract. In this regard, we believe that this contract should not, under any circumstances, be concluded as either aleatory or abstract.

In addition to everything discussed in the previous sections, to fully understand its legal nature, it is important to emphasize that this contract belongs to the category of complex contracts. Complex contracts, by their classical definition, are agreements that contain elements of two or more different types of contracts. The contract for the donation of one's body is exactly that. The research conducted previously unequivocally shows that this contract includes elements of a gift contract, a *comodatum* contract, a service contract, and a mandate agreement. However, the contract under investigation is clearly distinguished from the aforementioned contracts in terms of its purpose and scope, which makes it fully individualized and not merely a simple conglomerate of elements.

1) The gift contract in the Republic of Serbia is not explicitly named. In legal theory, there are occasional disagreements about its definition, but it is most commonly defined as a contract in which one party transfers, or undertakes to transfer, to another party, without compensation, the right of ownership of a certain thing or some other right. Therefore, the main characteristic of a gift contract is that it serves to transfer individual rights or even the entire property without the expectation of a counter-prestation. It is based on the idea of "intentional and conscious disproportion" (Lalić & Rančić, 2021,118), and the nature of the cause is not motivated by either the reciprocity of the prestation's or their equivalence (Čuvardić, 2013,4).

The contract by which a body is entrusted to a medical educational institution, being charitable in nature, shares many common characteristics with a gift contract. Every gift is testament of persons altruism and their need to think of others (Cvetković, 2015, 1). So, logically, body donation contract includes certain elements of a gift as part of its structure. To be precise, the contract for the donation of one's own body most closely resembles the modality known as a gift with a mandate (*donatio sub modo*). This modality limits the

possibility of using the gift, as the gift must be used in a precisely specified way (Morait, 1997, 292), and the gift itself is reduced to a purposeful one.

Indeed, the mandate is an essential element of the contract by which the body would be donated for educational purposes. By granting certain rights and powers, the donor limits the use of their remains with the mandate. In other words, the recipient – in this case, a medical institution – can use the donated remains only for the purpose of forming a cadaver and conducting teaching. The consequence of this is that the heirs, just as in the case of a classic donation with a mandate, have the right to terminate the contract if the recipient does not act in accordance with the mandate and seek compensation for any damage caused as a result.

2) As a complex contract, the contract for the donation of bodily remains for educational purposes also contains elements of another contract not named in the law of the Republic of Serbia, *comodatum* (or so-called gracious loan). In this contract, one party agrees to hand over a certain "thing" for free use to the other party, who agrees to return it after the expiration of the contractually specified period or upon the fulfillment of certain conditions (Kovačević-Kuštrimović, 1988, 79). In both contracts, one party transfers a certain "thing" to the other and authorizes its use without expecting compensation. At first glance, the only difference is that in *comodatum*, the thing is expected to be returned in kind. It is returned to its owner or handed over to a third party upon the owner's authorization.

In a contract for the donation of remains, there is, in principle, no duty to return the body. The institution to which the body is transferred has a legal obligation to bury it at its own expense, respecting the reasonable wishes of the deceased and in accordance with local customs¹². However, we believe that this norm is dispositive in nature. Namely, a donation contract may provide for the obligation to return the remains once the cadaver's potential has been fully utilized, if the family members wish to perform the funeral ceremony themselves.

3) The contract by which one donates their own bodily remains contains elements of a service contract. A service contract is a legal agreement in which one party agrees to perform a specific task, whether physical or intellectual, for the other party¹³. It may seem unusual that we consider a body donation contract to contain elements of a service contract, given that a typical service contract always involves compensation for performing the task.

Let's set aside for a moment the possibility that a contract for the donation of one's own remains could be regulated in a way that includes compensation, as well as the arguments supporting that position. A service contract is the only named contract that allows a person to hire the physical and intellectual capacities of another for the purpose of performing a precisely defined job or task of a factual nature. In the absence of a named contract that specifically regulates the donation of bodies for educational purposes, certain

¹² Law on Health Care, art. 215.

¹³ Law on Obligations RS, art. 600.

norms governing service contracts can be applied analogously to the body donation contract, as it also involves the performance of a specific factual task. In this case, we refer to provisions related to the receipt of remains, strict requirements for professional conduct, the implied professional standards for performing dissection, liability for damage caused to the donor by the person performing the task, and entrusting the remains and dissection to third parties. These provisions are particularly important in the context of handling remains after the use of a cadaver, when the institution remains obligated to carry out burial procedures.

4) The mandate agreement is also partially part of the complex body donation contract for educational purposes. By accepting a mandate agreement, one person is authorized and simultaneously obliged to undertake certain tasks on behalf of another person as their direct or indirect representative¹⁴. Performing dissection and training medical students is done not on behalf of the donor but for the benefit of society as a whole. In this context, the provisions of a mandate agreement would hardly be applicable. However, unless otherwise agreed, the institution to which the body is entrusted is obligated to arrange for the burial of the remains once the work on the cadaver is completed. In this regard, the healthcare institution performs tasks related to the burial of the remains not only for the benefit of but also for the account of the donor. While the effects of representation have *mortis causa* implications, this does not alter the true legal nature of such an agreement – it remains a mandate contract, with all the legal consequences that arise from this classification.

4. CONCLUSIONS

Number of social, historical, religious, but also economic reasons, makes people in the Republic of Serbia question all aspects of body donation for educational purposes. General public, also, typically, lacks knowledge regarding legal and procedural aspects of donation and dissection (Aneja *et al.*, 2013, 2589). Finally, even people who appreciate body donation for educational purposes are generally hesitant towards donating their own bodies (Aneja *et al.*, 2013, 2590).

Thus, to meet growing demands for cadaveric materials, promotion of functional national body donation programs is crucial. Additionally, success of these programs depends primarily upon the ability of health care professionals in motivating society at large (Aneja *et al.*, 2013, 2586). Still, this idea encounters numerous obstacles depending on the region and cultural context (Zdilla & Balta, 2022, 2-8). As consequence, despite all efforts, even the most developed countries face a chronic shortage of cadaveric material.

In the Republic of Serbia, there is no national program of this kind, nor is there even a minimum of enthusiasm for its development¹⁵. On top of that, although there is a broad

¹⁴ Law on Obligations RS, art. 749.

¹⁵ Republic of Serbia, interestingly enough, takes duty of implementing the promotion of voluntary donation of human organs, in order to inform the public and raise social awareness about the importance of donating human organs after death, and in that context is obligated to create Republic

legislative framework that offers triple possibility for obtaining cadavers, one of the options – testament, is not formally correct and therefore not usable. As this results in a reduced inflow of cadaveric material, in this paper we addressed an alternative to the existing legal solution.

Testament, as we said, is not an adequate legal basis for achieving the effects of a donation, but we believe that body donation can and should be carried out by a simple, unformal and unilateral declaration of the donor's will. However, it is not possible to present all the convincing arguments to support this standpoint in a paper of this type and scope, so this very question will be the subject of consideration in the following paper.

On the other hand, although not ideal, we believe that a contract is a far more suitable instrument for body donation than testament. Therefore, in this paper we have reflected on the legal nature and, in part, content of this contract. The conclusion is that in order to achieve its social purpose, it is necessary for this contract with *mortis causa* effect to be bilaterally binding, charitable, consensual, commutative, informal, named, and, as a rule, impersonal. It is a complex contract that contains elements of a gift, bailment, service and mandate agreement.

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program for the transplantation of human organs (Law on Human Organ Transplantation, “*Official Gazette RS*”, no. 57/2018 and 111/2021 – CC RS decision, art. 8, p. 1 in relation to art. 9). And since whole body donation for education purposes is as humane act as organ donation for transplantation, it is highly important to follow this example and develop similar national program for body donation.

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Др Срђан РАДУЛОВИЋ*

УГОВОР О ДОНАЦИЈИ СОПСТВЕНИХ ОСТАКА У ЕДУКАТИВНЕ СВРХЕ У
РЕПУБЛИЦИ СРБИЈИ – *DE LEGE FERENDA* АНАЛИЗА ЊЕГОВЕ ПРАВНЕ
ПРИРОДЕ

Апстракт

Због убрзаног развоја, пре свега дигиталне технологије, методи и материјали за извођење наставе на часовима анатомије значајно су унапређени претходних година. Ипак, дисекција кадавера, без обзира на то што бројне етичке и правне дилеме везане за овај поступак никада нису до краја разрешене, била је и остаје супериоран метод извођења практичне наставе.

Уколико прихватимо идеју о потреби употребе кадавера у настави, а оставимо по страни макар на тренутак поменуто дилеме, као нарочито спорно у овој области издваја се питање ваљаног правног основа за донирање сопственог тела у едукативне сврхе. Наиме, у правном поретку Републике Србије императивним нормама је прописано да се сопствено тело може уступити установи само тестаментом, а за који су, узгред, постављени строги захтеви и у погледу форме и у погледу садржине.

Ми чврсто стојимо на становишту да су ограничења и у погледу форме и у погледу садржине непотребно постављена. Штавише, сматрамо да тестамент нипошто није адекватан медијум за „анатомски поклон“. Стога, у овом раду, с ослоном на технике аналитичког и синтетичког метода, студије случаја и нормативни метод, истражујемо идеју о уговору као правном основу за ово уступање. Прецизније, у раду су презентовани резултати теоријско-емпиријског истраживања о правној природи и садржини уговора о донацији сопственог тела у едукативне сврхе, као и могућности и уопште потреби увођења овог правног института у правни поредак Републике Србије.

Кључне речи: анатомски поклон, дисекција кадавера, донација тела, уговор, тестамент.

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