

The Alienation Of The Rights To Life And Health: The Institutional Dimension*

J. KOLESNIKOVA, Anastasia V. KAMASHEVA
Kazan State Federal University

Abstract. *The article deals with the property rights of the individual at different levels: physiological, intellectual and spiritual. The alienation of the rights of intangible property was considered as one of the criteria required for its commercialization. In this research the intangible rights and alienation of material objects of the individual property were explored. Authors examined income alienation of objects from the perspective of the concomitant alienation of rights. In the article there are scientific methods: analysis, synthesis, abstraction and analogy. In the study of somatic alienation of rights a systematic approach and classification were applied by authors. We have identified types of somatic alienation of rights, as well as discussed the boundaries of somatic rights in different countries, which made it possible to draw conclusions on the possibility of commercializing somatic rights. In the transition to the information society of alienation physiological level does not lose its relevance, but is transformed using new technologies.*

Keywords: health, intangible property, donation, transplantation, alienation of property rights.

Introduction

From the point of view of the institutional economics, the individual has a number of rights to tangible and intangible objects. There is a certain bundle of property rights, which includes a number of powers in relation to each object: possession, use, disposal (legal approach) or a bundle of 11 rights (A. Onore's classification). As a rule, the commercialization of property rights is directly related to the possibility of their alienation.¹ The purpose of this work is to consider the alienation of rights directly related to the individual, that is, the human capital is the object of these rights, and the individual is the subject of property rights.

Labor activity is inevitably connected with the alienation of rights to intellectual capital (highly intellectual labor) or alienation of human (biological) capital (physical labor). The alienation of rights to intellectual capital and copyright is a separate area of study. We will dwell on the issue of alienation of physical capital and the emergence of an intangible right to it (The Average Salary of a

* The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

¹ T. G. Belozerova, D. V. Lugovsky, R. A. Thagapso "Intangible Assets: Problems of Identification, Evaluation and Classification," in *Bulletin of the Adyge State University*, Series 5 Economivs, V (2014), no. 3, p. 190; M. A. Bukhareva, "Economic behavior of the Individual as a Phenomenon of the Institutional Economics," in *Actual Problems of Economics and Law*, IV ((2009), p. 115; E. Fakhrutdinova, J. Kolesnikova, O. Yurieva, A. Kamasheva, "The commercialization of intangible assets in the information society," in *World Applied Sciences Journal*, XXVII (2013), Issue 13, p. 82-86; J. Kolesnikova, C. Ricaud, A. Kamasheva, Y. Zhao, "Current trends of realization of the intellectual capital and problems of intellectual migration," in *Procedia Economics and Finance*, XIV (2014), p. 130; V. Pavlov, "The Property Category in the Russian Civil Law," in *Economic Science of Modern Russia*, I (2000), p. 140; E. V. Popov, "Transactional Dimension of Institutions," in *Economic Science of Contemporary Russia*, II (2011), p. 32; O. Yu. Shcherbakova, "Specificity of Interaction between Human Resources and Labor Market," in *Vector of Science of Togliatti State University*, I (2015), no. 20, p. 126.

Football Player of the Russian Premier League Amounts to 66 Million Roubles per Year. Business Petersburg. The most vivid example of obtaining income from the alienation of rights to physical capital is professional sports. Thus, the average salary of a football player of the Premier League of Russia amounts to 66 million rubles per year.² However, the alienation of property rights at the physiological level can be associated not with the alienation of skills, but, directly, with the alienation of tissues, organs, biological material, etc.

Methods and course of study

We used the general scientific methods of research, as well as the methods for selecting units of observation and collection of statistical information in this work. Comparative analysis and grouping were selected as the main research methods.

The issue of alienation of rights to organs, biological material, the right to death was more often considered from a legal point of view. Little attention was paid to the essential nature of the emergence, classification and alienation of these rights. The natural human rights include the right to have normal physiology (health) and psychology, the right to life and the right to natural death, as well as the right to reproduce and have a family.³

There is the concept of somatic (Greek "soma" - body) human rights in jurisprudence. It is based on the postulate of the inalienable right of citizens to independently dispose of their own body.⁴ The somatic rights include: the right to death (including euthanasia), sex change, abortion, sterilization, free use of drugs, sexual rights (the right to freely choose a partner, skin trade - legalization of prostitution), as well as the rights in the field of transplantation (the right to the human body after death, the right to biological materials, etc.). According to E. Richardson and B. Turner, three points should be distinguished in the matter of the right to the body: 1) the right to whole bodies (that is, the right to people); 2) the right to purchase, sell or store a part of the body (at organ transplantations, donations and sale); 3) the right to "particles" of bodies (DNA codes, genetic material related to human reproduction, for example, the egg cell), that is, to the elements that are below the whole organism.⁵ Having studied the existing classifications of somatic rights and applying a systemic approach, we have developed a classification of alienation of somatic rights depending on the degree of risk to the health of the individual. (Table 1.)

² S. E. Wilson, "The Health Capital of Families: An Investigation of the Inter-spousal Correlation in Health Status," in *Social Science and Medicine*, LV (2002), no. 7, p. 1157–1172.

³ P. Townsend, *Poverty in the United Kingdom: A Survey of Household Resources and Standards of Living*, London, Allen Lane, 2009, p. 29-31.

⁴ E. N. Richardson B. S. Turner, "Sexual, Intimate or Reproductive Citizenship," in *Citizenship Studies*, V (2001), no. 3, p. 329-338.

⁵ Surrogate Motherhood in Russia: Statistics Analysis for 5 years - URL: <http://www.sweetchild.ru/press/novosti-kompanii/surrogatnoe-materinstvo-v-rossii-analiz-statistiki-za-5-let#sthash.XYgrQEGu.dpuf> accessed 05. 01. 2016.

The state acts as an institution regulating the right to alienate somatic rights. Thus, the right to trade one's own body (prostitution) is permitted in a number of states, while in some cases it is permitted to organize "brothels" (Germany, Lebanon, Netherlands, New Zealand, Turkey, Switzerland, some counties of Nevada state in the USA). Euthanasia, as the right to the death of a person, is permitted only in the Netherlands, Belgium, Luxembourg, Canada and several US states. Using the general scientific methods of cognition: analysis, synthesis, abstraction and formalization, we have investigated and identified the boundaries of the alienation of somatic rights in various states.

Study results

Let us consider the somatic rights from the point of view of human health. There are a number of rights, the alienation of which does not entail a risk to the health of the subject of ownership, or the risk is associated solely with the violation of the alienation process technology (sperm donation, blood and plasma donation, sale of hair), alienation is associated with the medium-population risk (surrogate motherhood, egg cell donation) alienation leads to a decrease in the quality of life (donation of the liver, kidneys, bone marrow, etc.), postmortem alienation (donation of the heart, lungs, etc.), alienation of intangible rights (the right to life, the right to motherhood, the right to the existing sex, sexual rights).

Table 1 .Classification of alienation of the somatic rights

LOW-RISK ALIENATION		HIGH-RISK ALIENATION		ALIENATION OF RIGHTS
The rights, the alienation of which does not entail any risk to health or rights, in the event of the alienation of which the risk is related solely to the violation of the alienation process technology	The rights, the alienation of which is connected with the medium-population risk	The rights, the alienation of which leads to a decline in the quality of life	Postmortem alienation of rights	Alienation of intangible biological rights

Sale of hair donation, Sperm donation, Blood donation, Plasma donation	Egg cell donation, Surrogacy, Bone marrow donation	Live, Small intestine, Kidney, Pancreas	Lung donation, Heart donation, Bones of the cranial vault, Endocrine glands, etc.	Right to life (euthanasia), Right to maternity (abortion, sterilization), Right to an existing sex (sex change), Sexual rights (prostitution)
--	--	---	---	---

Source: compiled by the authors

The cost of egg cells may vary from 35 to 50 thousand rubles. Surrogate motherhood may also be considered as one of the examples of the alienation of vital capital, as a woman, in fact, wastes her health for child bearing. The cost of surrogate motherhood services amounts to more than 500 thousand rubles, which is the compensation of monthly expenses. According to the Federal Service of State Statistics, the Russian Association of Human Reproduction, the Birth Formula Fund, the surrogate motherhood increased to 336 people/1 million inhabitants in 2012 compared to 282 people/1 million inhabitants in 2011.⁶

The alienation of intangible biological rights depends on the subject, time, country and specific situation. Thus, the alienation of the right to life is available to a physically healthy person in the form of suicide and is not available with medical assistance (in a number of countries). At the same time, the application of the death penalty (forcible alienation of the right to life by the state) is allowed in some countries.

The alienation of organs is possible in some countries on a commercial or non-reimbursable basis. The difference in the institutional aspects of regulation in different countries and the shortage of goods leads to the possibility of the emergence of "black markets" on the one hand and the development of medical tourism on the other hand (Korea, Turkey, Israel, etc.). At the same time, an important object of intangible property is the register of possible donors and their compatibility characteristics. In its

⁶ A. Dreher, F. Schneider, 2009. "Corruption and the Shadow Economy: An Empirical Analysis," in *Public Choice*, CVIL (2009), no. 4, p. 67-78.

essential characteristic, it is the accumulated information without which the object of alienation (kidney) will not have any value.

The surgeries associated with postmortem transplantation are more often carried out in Russia. Since 2011, Russia has a presumption of consent to postmortem donation. The state monopolizes the right to dispose of the body after death based on humanistic goals. According to expert opinion, transplantation in China is developed due to the presence of donors for whom a death sentence has been imposed. To some extent, the implementation of this right by the state can be regarded as the deprivation of somatic rights.

There is a splitting of the right of alienation in a number of cases (alienation of the embryo, surrogate motherhood). For example, a surrogate mother, if there is the alienation of the right to reproduction, has right to a biologically alien child, in accordance with Russian legislation, that is, there is an expansion of property rights. Joint ownership of property arises in relation to embryos (artificial insemination). There is the question about the right to dispose of embryos deposited for storage in the sense of deferred parenthood.

Despite the trend of humanization of social development, when humanism acts as one of the progress factors, the state acts as the main regulator, including the natural human rights connected directly with his body. It is the state that monopolizes the right to alienate and dispose of physical rights. If we compare countries in terms of the extent to which the rights are exercised, then we come to the following regional picture. In a number of countries, euthanasia (the Netherlands, Belgium, Sweden, Switzerland, the United States (Oregon and Washington states)), surrogate motherhood (alienation of the right to motherhood) are completely permitted (in Russia, Ukraine, some US states, Kazakhstan). In a number of countries, the state monopolizes some of the natural rights and the possibility of alienating them, so the death penalty is applied (the right to life is alienated by the state) in the USA, Belarus, a number of Arab and Asian countries.

Table 2. The boundary of somatic rights in various states

	Euthanasia	Surrogacy	Death penalty	Unrelated donation on a commercial basis	Legal prostitution	Therapeutic cloning
Netherlands	+	-	-	-	+	-
Belgium	+	-	-	-	+	-

Sweden	+	-	-	-	-	-
Switzerland	+		-	-	+	-
USA	+	+	+	-	- (in most states)	+
Great Britain	-	-	-	-	-	+
Australia	-	-	-	-	-	+
Russia	-	+	-	-	-	-
Ukraine	-	+	-	-	-	-
Kazakhstan	-	+	-	-	-	-
Greece	-	-	-	-	+	-
Italy	-	-	-	-	+	-
Spain	-	Not regulated	-	-	+	-
France	-	-	-	-	-	-
China	-	-	+	+	-	
Belarus	-	-	+	-	-	-
Iran	-	-	-	+	-	-
Turkey	-	-	-	+	+	-
Brazil	-	-	-	+	-	-

Source: compiled by the authors

Thus, according to Table 2, we see what level of rights different states provide regarding the implementation of somatic rights. Thus, in most European countries, the right to motherhood is limited, euthanasia as an opportunity to alienate the right to life is prohibited, for example in China and Belarus, but the death penalty is allowed (deprivation of the right to life by the state). If we analyze the data of Table 2, we can make a conclusion about the level of monopolization of somatic rights at the state level. Thus, the death penalty and cloning can be regarded as a monopolized right of the state to dispose of the right to life and the alienation of the right to uniqueness. The experiments on therapeutic cloning are being carried out in a number of countries, including Great Britain, USA, Austria. The death penalty is imposed in the USA, China and Belarus. Thus, we believe that despite the recited observance of human rights and freedoms from the legal point of view, the somatic rights in these countries are monopolized by the state from the standpoint of the institutional theory. Switzerland, Turkey, Belgium and the Netherlands provide relatively large opportunities to manage the somatic rights. There was not a single country where the

euthanasia, surrogate motherhood and legalized prostitution were allowed at the same time. It is easier to realize the right to parenthood in the CIS countries.

Conclusions

Thus, to obtain the right to income, the individual alienates some of the rights that he has. The principle of any work is built on this basis⁷. In the modern information society, the share of alienation of information and other types of intangible property is growing. The somatic rights can be attributed to natural rights, but not the alienation of the intellectual rights is developed, but there is also a new spiral of development in somatic property rights in modern society, with the growth of scientific and technological capabilities (transplantation). Those objects and rights that could not be alienated earlier, can be alienated now. There is splitting and development of property rights to somatic rights, which leads to the formation of new markets. The emergence of "black markets" indicates the development of the institution of intangible property (the institution of somatic property rights, the object of which is vital capital), which is not fully regulated by the state. The state institute acts as a regulator, and partly as a monopolist in access to the somatic rights, but the institution of law is not always able to keep pace with the scientific and technological progress and the development of the intangible property institution at the moment.

Summary

At present, despite the transition to the information society, where the share of exchange of services and information is increasing, the market for sale and purchase of vital capital continues to increase its volumes, there are new alienation opportunities due to the development of science and technology. This trend indicates that moving to the information society, the physiological level of alienation does not lose its relevance, but is transformed using new technologies, as well as new forms of alienation of tangible and intangible property (transplantology, sports industry, show business, etc.).

⁷ E. R. Valeev, A. V. Kamasheva, "The Human Health Capital as a Basic Condition of Social and Economic Development," in *Economic Sciences*, CXX (2014), p. 17; R. Kh.Yagudin, "Intellectual Property is an Important Component of Innovation Processes," in *Practical Medicine*, IV (2014), no. 80, p. 21-24; R. Kh. Yagudin, "Health of the Population: Institutional Approach," in *Contemporary Art of Economics*, II (2011), no. 2, p. 25-30.

*The Alienation Of The Rights To Life And Health: The Institutional Dimension, Astra
Salvensis, V (2017), no. 10, p. 59-65*