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BODY DONATION FOR EDUCATIONAL PURPOSES AS A TESTAMENTARY DISPOSITION

The education of future medical practitioners and scientists requires adherence to ethical principles, the acquisition of theoretical knowledge, and the continuous development of practical skills. Even today, some of these skills can hardly be acquired without training on human cadavers. While cadaver dissection remains essential to medical education, it also raises important ethical and legal concerns. This article examines how medical schools in Serbia obtain bodies for educational purposes. Voluntary body donation by last will, once the most common practice, remains the only legal mechanism. This creates a significant gap between the need for teaching material and the strict formal requirements prescribed by law. Against the background of previous theoretical and empirical research, the article explores the rationale for these requirements, particularly in light of their inconsistency with related rules of Serbian inheritance law.

Key words: *Anatomical gift. – Body donation in Serbia. – Cadaver dissection. – Form of the will. – Last will.*

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1. INTRODUCTION*

Human anatomy training is a cornerstone of medical curricula (Estai, Bunt 2016, 1). It provides the foundation for further medical education, and its deep understanding is essential for safe clinical practice across all healthcare professions (Bharambe *et al.* 2023, 1; Washmuth *et al.* 2019, 247–248). Although teaching methods and tools have evolved for a number of reasons, particularly through digital technology which enables cadaverless dissection, traditional cadaver-based anatomy teaching – practiced for more than 2,500 years – remains the most powerful means of learning anatomy, offering advantages that are not easy to quantify (Estai, Bunt 2016, 1–2; Washmuth *et al.* 2019, 248; Bharambe *et al.* 2023, 1).

Regardless of how skillfully modern tools replicate body structures, most anatomists prefer cadaver dissection because it situates partial anatomy within the context of whole organism, provides insight into anatomical variability, and enables students to recognize structures while gaining tactile information about tissue texture (Shevelev, Shevelev 2023, 1365; Aneja *et al.* 2013, 2585; Washmuth *et al.* 2019, 252). Beyond technical competence, through encountering cadavers as their "first patients", future doctors develop the professional detachment necessary for becoming objective physicians (Aneja *et al.* 2013, 2589). Also, donor-based surgical simulation has improved surgical procedures and its outcomes (Zdilla, Balta 2022, 1).

Despite efforts to modernize teaching, medical schools and institutes in Serbia still rely on cadavers and "the guidance of silent mentors". The existing legal framework for cadaver procurement in Serbia is defined by the Law on Health Care[1] and the Law on Inheritance[2] with *ex testamentum* body

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1 Zakon o zdravstvenoj zaštiti "Law on Health Care", *Official Gazette of the RS*, 25/19, 92/23 – authentic interpretation, 29/25 – CC decision.

At the session held on September 26, 2024, the Constitutional Court of the Republic of Serbia rendered Decision IUz-106/2019, *https://ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=21869*, last visited March 17,

donation as its central institute. While Serbian civil law generally favors the informality of legal[2] transactions,[3] the Law on Inheritance mandates a strict form for the last will,[4] and the Law on Health Care, as *lex specialis*, further requires a written will, appointment of a will executor, and the authorization by a competent governing body.[5] When contrasted with the apparent benefits of cadaver dissection and the global scarcity of cadaver material (Bharambe *et al.* 2023, 1), these formal requirements appear unnecessary from a formalist perspective.

Proceeding from the premise that legal regulation should ease the process of body donation (Bharambe *et al.* 2023, 4), we examine these inconsistencies: in the first chapter through the lens of medical law, and through the lens of inheritance law in the second chapter, providing arguments *de lege ferenda* for relaxing the current formal rigidity.

2026. According to this decision, two provisions of the then valid Law on Health Care were declared unconstitutional. The first provision allowed healthcare institutions to appropriate bodies of deceased persons without known next of kin, for the purposes of conducting practical training, provided that during their lifetime the deceased had not explicitly objected to such use. The second provision permitted the appropriation of bodies of deceased persons based on the consent of surviving family members, provided that the deceased had not objected during their lifetime.

Amendments to the Law on Health Care were adopted the following year (*Official Gazette of the RS*, 29/2025 – CC decision), repealing the aforementioned provisions of Art. 210 and the related Art. 212.

2 Zakon o nasleđivanju "Law on Inheritance", *Official Gazette of the RS*, 46/95, 101/03 – CCRS decision and 6/15.

3 Zakon o obligacionim odnosima "Law on Contract and Torts", *Official Gazette of the SFRY*, 29/78, 39/85, 45/89 – CCY decision, and 57/89*, Official Gazette of the FRY,* 31/93, *Official Gazette of SCG*, 1/2003 – Constitutional Chapter, and *Official Gazette of the RS*, 18/2020, Art. 67.

4 Law on Inheritance, Art. 83.

In the text, although technically incorrect, we will use the terms "last will" and "testament" as synonyms. In order to avoid translation complications, we will ignore the fact that the legal institute of the last will is wider than the term testament, i.e., that the last will can be expressed through a testament, as well as through a contract or, theoretically, in a form of *codicilli*, as known by Roman legal scholars, or even in relatively modern form, as known by the former Serbian Civil Code of 1844 (Art. 431).

5 Law on Health Care, Art. 210 para. 1 it. 1.

2. MEDICAL LAW IMPLICATIONS

Anatomical dissection has a long history of public scrutiny (Hutchinson *et al.* 2020, 513). Yet, voluntary body donation *mortis causa*, for examination,[6] research or educational purposes, is widely regarded as a humane act, comparable to *inter vivos* body part donation and as a significant contribution to the generations to come. An anatomical gift reflects a determined mind and a pious soul dedicated to help humanity by aiding medical science (Aneja *et al.* 2013, 2586). Procedures performed on braindead individuals enhance the understanding of human anatomy, prepare healthcare professionals for complex interventions, and contribute to the development of lifesaving treatments (Sperling 2008, 8).

Some authors emphasize the necessity of national "whole-body donation" programs,[7] as the optimal cadaver-to-student ratio is 1:10 (Bharambe *et al.* 2023, 1–3; Hutchinson *et al.* 2020, 514). There are many challenges in establishing effective programs, varying across cultures and regions (Zdilla, Balta 2022, 2–8).[8] Still, it is safe to say that their success largely depends on the capacity of healthcare professionals to motivate the broader public, since individuals typically lack knowledge of relevant legal and procedural aspects and thus remain reluctant to donate their bodies (Aneja *et al.* 2013, 2586).

Numerous medical and legal questions are raised by *ex testamentum* body donation, which is endorsed by the International Federation of Associations of Anatomists as the only ethically acceptable method of cadaver acquisition (Bharambe *et al.* 2023, 3; Hutchinson *et al.* 2020, 513; Zdilla, Balta 2022, 2). Many of these concerns, particularly from a legal perspective, can be addressed through informed consent.

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[6] To avoid unnecessary confusion, we will not use usual term "postmortem examination" because it refers both to cadaver dissection as complete division of the corpse to anatomical structures and autopsies which are examinations mostly performed to determine cause of death (Claes, 2018, 261). Later is not the subject of this paper or research conducted previously.

[7] In Serbia, there is no national program of this kind nor, to our best knowledge, is there an idea of creating one. Yet, there are great examples in other areas. Probably best known is state organ transplantation program, which is required by law, in order to promote the culture of organ donation among the general public (Zakon o presađivanju ljudskih organa "Law on Human Organ Transplantation", *Official Gazette of the RS*, 57/2018 and 111/2021 – CC RS decision, Art. 8 para, 1, in relation to Art. 9).

[8] Some of them are impossible to predict and prevent. For example, in the post-COVID-19 era, pandemic severely affected all aspects of "silent mentor" programs and significantly reduced the availability of cadavers free from SARS-CoV-2 infection (Wong *et al.* 2023, 559).

Historically, up until the late 19th century, in cases when treatment costs could not be covered, state-funded hospitals would use bodies in anatomical theaters without the consent of patients or their family members. Drawing an analogy to the transformation of natural goods into property through labor, medical professionals argued that their efforts before and after death conferred ownership of the corpse upon them. Accordingly, under prevailing "property law logic", the corpse and all the patient's belongings became the institution's property. As a result, only families with substantial financial means could prevent the dissection of their loved ones if they died in hospital, while those unable to afford treatment settled hospital bills through body donation (Claes 2018, 258–259, 272–273).

Arguments can be made both for and against the "no property rule", particularly from the perspective of the deceased's relatives (Shevelev, Shevelev 2023, 1392). However, the notion of "natural reciprocity", which justified extensive pre – and post-mortem interventions as compensation for prior care, became obsolete. Instead, the doctor–patient relationship, including post-mortem matters, became governed by the principle of consent. This shift was reinforced by court rulings in late 19th-century France, Germany, and England, where physicians were convicted for unauthorized post-mortem medical interventions (Claes 2018, 259–260, 269–270).

At first, medical professionals were accountable to medical institutions, not directly to patients, however, the long-dominant utilitarian humanity-centered approach gradually gave way to a predominantly individual-oriented deontological ethic, which emphasizes the principle of *primum non nocere* ("first, do no harm") and asserts that not all outcomes justify the means used to achieve them (Claes 2018, 270). With the paradigm shift, post-mortem examinations became unlawful without prior consent from the deceased or their relatives.

The 1948 Universal Declaration of Human Rights explicitly prohibited any form of inhumane or degrading treatment,[9] and the 1964 Declaration of Helsinki, adopted by the World Medical Association, clarified that this prohibition applies to all medical treatments and experiments – regardless of their potential benefit for humanity.[10] Given that cadaver dissection is a form of medical experiment, the ethical principle of consent was consequently extended to the deceased (Claes 2018, 271). Today, obtaining informed consent for cadaver dissection is standard practice in bequeathal programs (Hutchinson *et al.* 2020, 513).

[9] Universal Declaration of Human Rights, Art. 5.

[10] Declaration of Helsinki, Arts. 25–32.

However, the phenomenon of the human corpse challenges the conventional subject–object divide (Claes 2018, 271). A person and their dignity cannot be separated from their body; one cannot possess what is not distinct from oneself, as Lord Bingham argued in *Regina v. Bentham* (Singh 2021, 570). Despite its mitigation regarding separated body parts (Singh 2021, 567), the maxim *dominus membrorum suorum nemo videtur* still applies: the human body, its parts, and remains cannot be treated as objects since they cannot be possessed, used, disposed of, or excluded. Also, the alienability of the body or its parts is, at best, questionable, as carefully elaborated in the "anti-separation thesis" (Singh 2021, 565–577). Even John Locke's labor theory of ownership, which posits that a person owns their body as the primary instrument of labor, and its numerous proponents, cannot demonstrate otherwise; this applies to any abstract theory of ownership over the body (Shevelev, Shevelev 2023, 1405, 1414–1417).[11]

Human corpse also challenges the premise that legal subjectivity ceases upon death. If a deceased person can be harmed, it implies that the subject capable of being harmed still exists as the same individual (Sperling 2008, 8). However, extending legal subjectivity beyond death would be impractical, as it could generate an entirely new set of legal issues.

If property rights are limited to goods and personal rights (which can be transferred) and legally recognized interests belong only to living individuals, it follows that the corpse falls outside the scope of the law (Claes 2018, 273), and thus the legal and philosophical status of the corpse remains largely *terra incognita* in theoretical debates (Shevelev, Shevelev 2023, 1366).[12] However, as legal interpretations shifted from viewing the body as property to the "*notre corps, c'est nous-mêmes*" (our bodies, that's who we are) principle, the requirement for consent could no longer be ignored; this perspective was reinforced in a prominent 1899 case concerning the disposal of the mortal remains of Jules Libert (Claes 2018, 271, 274–275). The court decision in this case had two significant implications: it affirmed the right to dispose of one's body as a natural right, and it established a legal precedent allowing close family members to veto dissection.

[11] This issue is particularly significant for heirs, as they can inherit only what belonged to the deceased (Shevelev, Shevelev 2023, 1405). Under the *nemo plus iuris ad alium transferre potest quam ipse habet* principle, ownership over the corpse cannot be transferred because the deceased never held property rights over their body.

[12] Historically, gravediggers were particularly prone to exploit this ambiguity (Mason, Laurie 2001, 64; Shevelev, Shevelev 2023, 1394–1395).

Despite the general consensus that consent is the primary condition for lawful cadaver dissections – regardless of theoretical positions on the legal status of the body – numerous legal and ethical questions remain unresolved. From both the legal and practical perspectives, specific pre– and post-consent issues must be addressed.

The concept of consent is rooted in the principle of autonomy of the will, the prohibition of *contra factum proprium* behavior, and the legal institute of consent of the injured party.[13] Autonomy of the will affirms individual sovereignty over one's body, while the consent of the injured party permits exposure of one's property or body to potentially "harmful" acts by others. However, such dispositions – particularly concerning the body or its parts – are legally valid only if specific preconditions are satisfied.[14]

First, to legally expose their goods to the harmful acts by others, a person must possess adequate legal capacity. In the context of *ex testamentum* body donation, according to the law, such capacity is attained at the age of fifteen.[15] This aligns with the Serbian Law on Patients' Rights, which recognizes the ability of fifteen-year-olds to independently consent to medical procedures.[16] The legislation presumes that individuals of this age are capable of managing almost all matters concerning their bodies. However, this presumption is relative and can be disproven – despite formal age requirements, a person may lack the capacity to autonomously make decisions.

Legally valid exercise of personal autonomy requires full engagement of the consenting person's cognitive and intellectual capacities. In other words, to make a body donation *ex testamentum*, the person must possess comprehensive knowledge about the consequences of such a decision, and must be fully capable of understanding them.[17] The Serbian law presumes

[13] Law on Contract and Torts, Arts. 10, 13 and 163.

[14] According to the Law on Contract and Torts, the first precondition for valid consent is that the action or the consequence of such action are not explicitly forbidden by law (Art. 163 para. 2). This is, we believe, an absolutely logical requirement. However, this precondition remains out of our focus because body donation for educational purposes is not prohibited by law; moreover, it is explicitly permitted and even encouraged many times over.

[15] Law on Inheritance, Art. 79.

[16] Zakon o pravima pacijenata "Law on Patients' Rights", *Official Gazette of the RS,* 45/2013, 25/2019, Art. 19 para. 4.

[17] In the ideal situation, ensuring that the person in question is aware of the consequences of body donation and understands them, as well as that the motives are permissible, necessitates counseling with medical experts. Whenever possible, medical institutions even insist on this. However, such counseling is not legally required nor mandatory. Any such mandate would be in contradiction with the

that both cognitive and intellectual capacities were fully engaged at the time the last will was stated. Yet, the consent expressed in the body donation clause in the testament may be nullified if interested parties prove otherwise in legal proceedings.[18]

Contrary to common understanding, consent expressed through a last will does not operate in the same manner as consent given prior to medical interventions. In the context of medical interventions, the doctor–patient relationship is generally understood as contractual; therefore, consent is not a mere unilateral declaration but part of a broader exchange of considerations.

On the other hand, testamentary body donation reflects consent in its strictest sense, as the legal relationship between the testator and the medical institution is established solely through the expression of the testator's will. Yes, the medical institution may refuse the body for a number of reasons,[19] but the act of taking possession of the body is not a constitutive element of the transaction; it is merely a factual occurrence. Regardless of whether the institution chooses to accept the body and perform dissection, the *mortis causa* transaction is already established, and all the obligations of the medical institution arise from the testator's unilateral statement. It should be emphasized that the donor is not bound to adhere to their prior statement as it may be revoked at any time and for any reason.[20] Consequently, there is no basis for claiming that a unilateral revocation is unlawful, as might be argued in a contractual relationship.[21]

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legal presumption of full legal capacity to testate. In other words, the body donation clause in a last will would be valid even if the person did not attend any counseling sessions, and it is up to the parties with recognized legal interests to prove their claims if they feel otherwise.

18 Law on Inheritance, Art. 167, in relation to Art. 165.

19 A medical institution will not accept the body of a deceased person for educational purposes if the person died from a contagious disease or if there are postmortal changes that make fixation of the body impossible (Law on Health Care, Art. 211 para. 4). A medical institution will also not accept a body if an autopsy is mandatory by law (Law on Health Care, Art. 211 para. 3, in relation to Art. 206). Finally, a medical institution will not accept the body of a deceased person if the person died from a contagious disease (Law on Health Care, Art. 211 para. 4) which was actually the case during the COVID-19 pandemic, because the safety of the trainees is naturally prioritized over their current education (Wong *et al.* 2023, 561). The decision on whether a body donation will be accepted is made by the ethics committee of the medical faculty (Law on Health Care, Art. 211 para. 2).

20 Law on Inheritance, Art. 78, in relation to Art. 176.

21 Law on Contract and Torts, Arts. 124–128.

Crucially, there is a widespread misconception that the family of a deceased can override body donation, but the Serbian Law on Health Protection does not support this, even under a broad interpretation. According to this law, voluntary body donation is entirely a unilateral statement, and contrary to popular belief, there is no obligation even to inform family members of a body donation clause. Also, following the general idea of the Law on Inheritance, the last will – body donation clause included – must not be made under the influence of third parties. The testator has no obligation to inform others of such a decision, regardless of whether they are the donor's heirs. Thus, family members become aware of the testator's decision to donate remains only during the formal opening and proclamation of the will.

Finally, as previously noted, medical institutions are not strictly obligated to accept body donations. Yet, if they choose to accept a donation, certain responsibilities arise, two of which are especially significant.

First, after completing the dissection process, the medical institution is obligated[22] to arrange the funeral, strictly adhering to the wishes of the testator,[23] unless the testator has explicitly consented to using their remains to create an osteological set (skeleton) for practical anatomy lessons.[24] This specifically pertains to the testator's specific wishes regarding funeral rites, cremation, and religious ceremonies.[25] All reasonable wishes,[26] must be fulfilled, paid for by the medical institution.[27]

However, the anatomists' primary responsibility is to acquire and utilize donated bodies in a manner that aligns with the societal moral and ethical norms (Hutchinson *et al.* 2020, 512). Therefore, the medical institution and all participants in the dissection process are legally obligated to treat the deceased with dignity. This duty commences upon the arrival of the body and extends throughout the entire process,[28] through to the burial.[29]

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[22] One has to be very careful when interpreting this obligation as a strict duty. We believe that this norm should be viewed as dispositive, meaning that the testator, or members of their family (if that does not contradict the deceased's last wishes), may choose to release the medical institution from this duty and organize the funeral themselves.

[23] Law on Health Care, Art. 215 para. 1.

[24] Law on Health Care, Art. 213 para. 3.

[25] Law on Health Care, Art. 215 para. 3.

[26] Law on Health Care, Art. 215 para. 3.

[27] Law on Health Care, Art. 215 para. 1.

[28] Law on Health Care, Art. 213 para. 1.

[29] Law on Health Care, Art. 215 para. 2.

In fact, this duty extends beyond the burial ceremony, as legal provisions require medical institutions to permanently store all pertinent medical data and maintain confidentiality.[30] Consequently, it becomes challenging to support the argument that the bodily remains are merely an object from a legal standpoint. Simply put, individual rights stemming from the obligation to treat remains with dignity are inherently personal in nature – and personal rights can only pertain to individuals, not objects.[31] Moreover, since this duty, theoretically, may begin during the testator's lifetime, a case can be made for the continuation of legal subjectivity after death.

3. INHERITANCE LAW IMPLICATIONS

During probate proceedings, once it has been clearly established that the necessary conditions are met (the individual's death, the existence of an estate, and the presence of heirs), the focus shifts to determining whether a valid basis for inheritance exists. The legislator unequivocally recognizes only two such bases: the law and the testament.[32] Their hierarchy is established through the precise wording of the relevant norms.

The norms of the Serbian Law on Inheritance, as is generally the case in civil law, are predominantly dispositive in nature, which implies that the testament constitutes the primary basis for inheritance. In other words, testamentary provisions are, with a few reasonable exceptions, superior to legal norms, which apply only when a testament has not been made, is incomplete, or is entirely or partially invalid.

Although not common, the legislator offers a definition of a testament, according to which a testament is unilateral, personal, and always revocable declaration of intent made by a legally capable person,[33] given in a legally

[30] Law on Health Care, Art. 214.

[31] Court rulings according to which these rights belong to the family members of the deceased and not deceased themselves are unacceptable – if nothing else, because of the fact that this duty and the rights derived from it remain in effect even if the deceased had no living next of kin. In that case the question is who do these rights belong to. The only acceptable answer is that they belong to the deceased, so why would it be any different if the deceased has living next of kin?

[32] Law on Inheritance, Art. 2.

[33] Modern anatomy also requires cadavers of persons under the age of 15, for the purposes of practical teaching and systematization of knowledge necessary for high quality health care of the children. This opens up a series of particularly complex ethical and legal problems, which fall beyond the scope of this paper. Nevertheless, in the context of the inadequacy of the will as a medium for body donation, we feel

prescribed form, by which they allocate their property (i.e., their estate) in the event of their death.[34] The estate is further defined as the collection of rights and obligations suitable for inheritance that belonged to the testator at the time of their death.[35] Already in this initial step we encounter fundamental inconsistencies – especially considering the intention to retain this formulation in the future Serbian Civil Code.[36] These relate to the strictness of the testamentary form, particularly with regard to the donation of bodies for educational purposes, and, more generally, to the use of a testament as the instrument for this charitable act.

Namely, the human body cannot be regarded as property – neither during life nor after death, as noted previously – and therefore cannot form part of an estate. All rights of a personal nature, whether material or immaterial, are extinguished upon a person's death. Accordingly, the rights we hold over our body, however they may be interpreted theoretically, fail to meet the three basic conditions for transfer by testament: they are personal, they are not of a material nature, and they are not suitable for inheritance in the broadest sense of the term.

Indeed, the classic textbook definition of inheritance reduces it to entering into property relations in which the testator was engaged at the time of death, provided that such relations are suitable for succession (Svorcan 2009, 9–10). In other words, inheritance is a derivative method of acquiring ownership and other material rights, and no authority regarding a person's body can arise through inheritance. The right to dispose of one's body has neither a material basis nor can it be the subject of singular or universal succession, regardless of the possibility of delegating certain powers to representatives. Any other interpretation directly contradicts the very essence of the legal relationship with our own body and seriously undermines the purpose of testamentary dispositions. This makes all more

that it is necessary to emphasize this. As we previously said, the capacity to declare will *ex testamentum* is legally obtained at the age of fifteen (Law on Inheritance, Art. 79). Since a testament is the only way to donate a body, it means that there is no possibility of obtaining the necessary cadavers of persons younger than 15 years of age. Following the exceptional example of the Law on Patients' Rights, which allows persons under the age of 15 to be involved in deciding about medical intervention, even though they are not legally capable of independent consent (Law on Patients' Rights, Art. 11 para. 8, and Art. 19 para. 2), we believe that it is similarly necessary to at least soften the strictness of the testamentary form regarding body donation.

34 Law on Inheritance, Art. 78, in relation to Art. 1 para. 1.

35 Law on Inheritance, Art. 1 para. 2.

36 Civil Code of the Republic of Serbia, Draft prepared for public discussion, with alternative proposals, Art. 2672.

illogical and highly inconsistent the wording of the Serbian Law on Health Care, which treats the donor's statement and the act of donation as the *bequest* of the body.[37]

Specifically, a declaration of body donation may exist as an integral part of a will; there are no obstacles in this respect. The intention to donate one's body for educational purposes can certainly be expressed in a will. However, even when included, such a clause cannot be regarded as a testamentary disposition, at least not in the narrow sense of the term. The Law on Inheritance explicitly requires that provisions in a will be interpreted according to the *intent* of the testator.[38] In this case, the intent is neither to make a testamentary disposition, nor to transfer any property right, nor to designate a "successor to one's body"; rather, the statement may be understood as permission, authorization, or even a wish. Yet, the legal nature of this declaration of intent is not determined – nor should it be – by the nature of the act in which it is contained, but by the essence of the declaration itself, which is clearly non-testamentary.

Two conclusions follow from this reasoning. First, the rules of inheritance law cannot, or can only partially, be applied to this disposition. Second, in general, we agree that testamentary disposition should in principle be subject to formal requirements. The prescribed form of a will performs a protective function by safeguarding the authenticity and seriousness of the testator's final intent, but it also ensures legal certainty and distinguishes testamentary dispositions from other legal acts (Krstić 2025, 60). Still, we do not find the insistence on a strict testamentary form to be an adequate means of control of the body donation process, especially with additional requirements regarding the executor of the will.

Our position is supported by several arguments. First, the norms imposing strict requirements on the form of a will containing a provision for posthumous body donation, as well as other norms limiting the freedom of testamentary dispositions, are primarily intended to prevent various forms of abuse. However, one may ask: how could this altruistic act be abused, and, more importantly, by whom?

Since this act is purely charitable and involves no compensation, reward, or other incentives, we see no possibility of abuse by either the donor or the heirs, especially not by medical institutions. In this context, not only is abuse improbable, but there is also no realistic risk of fraudulent behavior.

[37] Law on Health Care, Art. 210 para. 2.

[38] Law on Inheritance, Art. 135 para. 1.

However, body donation could theoretically be abused, or involve fraudulent conduct, but we regard this as purely a theoretical concern. There are no real reasons for preconceived skepticism toward scientific and healthcare institutions which, we cannot emphasize this enough, protect our most fundamental values – life and health. The profoundly humane nature of their profession, together with the complex legal and professional regulations governing their work, leaves no grounds for a priori doubt in this regard.

Furthermore, under the Law on Inheritance, a will made in a formally defective manner is voidable.[39] Voidability indicates, first, that the will is not strictly a formal legal act, and second, that the legislator does not regard a form violation as infringing on social interests. On the contrary, the law treats the will (which does not comply with the prescribed form) as a disposition that affects private interests (Antić, Balinovac 1996, 455; Stojanović 2022, 312). Practically, this means that such a will is not automatically invalid: it retains legal effect unless challenged, with valid evidence within the legally prescribed deadline.[40] If this opportunity is missed, the will, or rather its deficiencies, are considered to have been validated.

Therefore, any person raising an objection – heirs in this case – must demonstrate that their private interests have been harmed by the body donation for educational purposes.[41] A logical question arises: which interests could be affected and how? It is conceivable that some heirs might have personal, emotional, or even religious reasons why the donation could interfere with their internal or, potentially, legal sphere. However, under the Serbian legal system, the relationship between the heir and the testator is exclusively material – personal or emotional concerns are not considered. The legislator identifies only interests related to inheritance status, the size of the inheritance share, and the extent of burdens established – not the personal interests mentioned above. Furthermore, individual interests must be weighed against the indisputable interests of the community and scientific advancement, which far outweigh the very personal – and arguably self-interested – reasons heirs might invoke when challenging a will on formal grounds.

There is also the issue of testamentary freedom. For a statement of post-mortem body donation to produce legal effect, it must be authenticated. Serbian law does not recognize the possibility of partial authentication

39 Law on Inheritance, Art. 168.

40 Law on Inheritance, Art. 170.

41 Law on Inheritance, Art. 165.

of a legal act, so authentication of this single clause confers a public-law character on the entire will that contains it. However, what if an individual wishes to execute a private will? Under the current normative framework, one cannot simultaneously make a private will and donate their body; due to a single clause – one that does not even possess a testamentary character – the testator's freedom to choose the form of the will is effectively suspended.

Finally, when interpreting a will – or any act containing individual declarations of intent – it is essential to interpret it in a manner that preserves the act. This principle is the gold standard of interpretation in civil law, including inheritance law. Therefore, when interpretation is necessary due to potentially invalid provisions caused by a lack of form, every effort should be made to uphold the will and its clauses. This is entirely possible based on the arguments presented: the disposition is not testamentary in the narrow sense, no private interests are violated, social interests outweigh private ones, and the risk of abuse is negligible. Moreover, although a contrary interpretation might seem more logical,[42] the legislator explicitly requires that a testament be interpreted in a manner favorable to statutory heirs or those burdened with obligations.[43] Since the interests of the statutory heirs cannot be compromised, due to the inherently charitable and non-material nature of this disposition, and since no individuals bear material obligations related to it, there is no justification for invalidating a will on the grounds of non-compliance with formal requirements.

So far, it is evident that strict formal requirements are poorly considered. While recognizing that these norms were established with the best intentions, they are ultimately ineffective. Rather than facilitating donation, they complicate a deeply altruistic act and may preemptively discourage potential donors, thereby significantly reducing the influx of cadavers essential for the benefit of the entire community.

Furthermore, one particular complication demands attention: the legislator's insistence that the testator must designate an executor of the will, in addition to complying with strict formal requirements. This raises several important questions.

First, the question arises whether the legislator had in mind a general or a special executor of the will. In other words, it is debatable whether a will that includes a provision for body donation remains valid if the designated executor is responsible for the will's entire execution. Based on systematic

[42] For example, in Croatia, the legislator opted for such a solution. Law on Inheritance of the Republic of Croatia, Art. 50 para. 2.

[43] Law on Inheritance of the Republic of Serbia, Art. 135 para. 2.

and teleological interpretation, it appears that the legislator envisaged a special executor – a person specifically responsible for overseeing and executing the segment of the will concerning body donation.

Furthermore, it is questionable how the probate court should proceed when no executor is designated in the will, when a designated executor declines the duty,[44] or when the executor lacks or has lost legal capacity,[45] even if all other formal requirements have been met. Should the court automatically declare the body donation clause invalid under the Law on Health Care, or appoint an executor, referencing Article 172 para. 4 of the Law on Inheritance? Setting aside our view that appointing an executor is entirely unnecessary, we contend that the latter approach is preferable, reasoning *in favorem testamentum*. This is especially true since appointment of an executor is generally optional, yet in this case it is mandated. If our reasoning is correct, the imperative rule regarding the executor in the Law on Health Care partially loses its mandatory character and is largely rendered moot.

However, the greatest uncertainty concerns the role of the executor in the context of body donation for educational purposes. By law, the executor's duties generally involve ensuring that the will is carried out in accordance with the testator's wishes, primarily through managing the estate, overseeing its preservation, and handling debts and distributions.[46] Since the testator's body is not part of the estate, it is reasonable to question the executor's actual responsibilities in this context. While the presence of an executor may generally help fulfill the testator's wish to become a "silent mentor" – it is not necessary. This is particularly true given that the body is entrusted to highly trained professionals who are presumed to act with impeccable conscientiousness and ethics, and whose work is strictly regulated by law at all stages: before receiving the body, during handling, and after completion of all work on the cadaver.

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44 Law on Inheritance, Art. 172 para. 3.

45 Law on Inheritance, Art. 172 para. 2.

46 Law on Inheritance, Art. 173 para. 1. General provisions like this one leave a lot of room for different interpretations of the actual duties of the executor of the will. In that context, there is an interesting provision in Croatian law according to which the court can issue a certificate of authority of the executor specifying and listing duties and rights they actually have. Law on Inheritance of the Republic of Croatia, Art. 61 para. 2

Finally, the issue of compensation and remuneration for the executor may be contentious, albeit largely theoretical. Since the executor is entitled by law to reimbursement for expenses and an appropriate fee,[47] the act of body donation for educational purposes – a profoundly humanitarian gesture – may in part lose its charitable character. Moreover, this arrangement could create opportunities for various forms of abuse.

4. CONCLUSION

The transition to fully-consented bequeathal programs will require time, small incremental changes in policies, processes, the reduction of language barriers, and improved comprehension of medical terminology can facilitate this shift (Hutchinson *et al.* 2020, 517). The legal framework of the Republic of Serbia appears largely oriented toward this goal. However, the legislator overlooked the need for the cadaver donation processes to be organized in accordance with fundamental legal principles – particularly those of civil law.

From the preceding discussion, two conclusions emerge. First, cadavers as a resource and their dissection as a method for educating future healthcare professionals remain unrivaled in many respects. Even today, the demand for such material is substantial and not fully met – even in the developed countries. Consequently, educational institutions face a chronic shortage of cadavers, leading to significant challenges in planning and conducting practical anatomy classes.

Under the current Serbian law, a will that is not executed in the form prescribed by the Law on Health Care directly violates imperative regulations and is therefore void. However – and this leads to the second conclusion – a will is fundamentally an inadequate legal instrument for body donation. Imposing strict formal and substantive requirements on an already unsuitable medium unnecessarily complicates the donation process. This directly contributes to the shortage of cadavers for teaching purposes and, indirectly, to the insufficient practical training of medical students.

Fortunately, this problem is relatively straightforward to address. One approach is to consider alternative legal instruments for body donation, primarily *sui generis* donation contracts concluded between the institution and the donor. The legal nature of such a contract is complex, as it would

[47] Law on Inheritance of the Republic of Serbia, Art. 174 para. 2.

incorporate elements from multiple types of contracts. The detailed legal analysis of its nature and content was not the topic of this paper. At this stage, however, it is clear that we advocate for the informality of this contract. Moreover, we believe it could even be executed simply by signing a form prepared and customized by the institution receiving the body.

As emphasized in this paper, there are theoretically no obstacles to body donation being made through a living will, even if the act of donation is not testamentary in nature. Moreover, the will can remain the sole medium for body donation until ambiguities surrounding other potential legal instruments are resolved. At the same time, if the will continues to be used, it should be relieved of strict formal and substantive requirements.

In this context, we argue that future wills should be freed of the requirement to specify or appoint an executor; such an appointment should remain optional, as is generally the case. More importantly, the drafting of the will should not be constrained by formal requirements. Essentially, there is no reason why the intention to donate a body – a distinctly altruistic act – cannot be expressed in any legally recognized form of will under Serbian law. This includes not only "regular" forms of wills but also "irregular" forms, including oral testaments.

Finally, if any doubt remains, one trend is clear: while the basic structure of wills has changed very little since Roman times, society has evolved tremendously, enabling possibilities that seemed unattainable even a decade ago (Klasiček 2019, 29). Although other branches of law have long ago adapted to the rapid development of new technologies, inheritance law is only gradually recognizing the gap between strict formal requirements and the dynamics of modern social life.[48] This trend in modern legal systems, we contend, should extend to the formal requirements governing the legal institute of the last will. However, until the advantages and disadvantages of these highly informal methods of disposition are fully understood, we are firmly convinced that, given their enormous social importance, it is necessary to simplify the body donation for educational purposes within the framework of existing forms of will.

[48] Australia is probably the best example in this context, followed by the United States of America (Klasiček 2019, 34–40).

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