



EUROPEAN PARLIAMENT

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

**DIRECTORATE B
- POLICY DEPARTMENT -**

STUDY

ORGAN TRAFFICKING

Content

The problem of organ trafficking regularly hits the headlines in some of the media; however, it is difficult to establish the facts (and consequently to verify and quantify them). All the same, there are sufficient indications that trafficking exists to have led all the major international and regional organisations to have turned their attention to this issue in recent years.

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Organ trafficking

'In Europe alone, 40 000 patients are waiting for a kidney transplant. The demand for organs is fuelling a whole black market'¹. The WHO is calling for international cooperation; the Council of Europe is working on a Europe-wide strategy; for its part the European Union has extended Europol's mandate to cover organ trafficking and is about to publish a report on this issue.

1. A problem which is recognised internationally

European Union

In 2003 Greece requested, by means of an initiative, a framework decision on organ trafficking. COREPER is currently awaiting the outcome of a Europol study before moving forward on the issue. The study should be published shortly².

The European Parliament had drawn up a report on this Greek initiative, expressing its support for the idea (Evans report).

Council of Europe

In 2003 the Council of Europe, for its part, proposed launching a European strategy to combat organ trafficking and to include a protocol on trafficking in human organs and in tissues under the European Convention on Action against Trafficking in Human Beings.

Mrs Vermot-Mangold, the Member of the Parliamentary Assembly of the Council of Europe who was responsible for the report on organ trafficking in Europe (2003), focused in particular on Turkey and Moldova.

The recommendation adopted by the Parliamentary Assembly on 25 June 2003 analysed the situation as follows:

'Rapid progress in medical science and technology has transformed organ transplantation, and kidney transplantation in particular, into a routine medical procedure practised in hospitals across the world. Five-year survival rates for most organ transplantation programmes are reaching the level of 70%, thereby rapidly increasing the demand for organ donation. [...] International criminal organisations have identified this lucrative opportunity caused by the "gap" between organ supply and demand, putting more pressure on people in extreme poverty to resort to selling their organs.'³

¹ Handelsblatt, Düsseldorf; Jan Dirk Herbermann, June 2005; reproduced in Courrier International No. 763.

² The study's author would be willing to present its conclusions to the Subcommittee on Human Rights prior to publication. It should be noted that, in addition to Europol, the following DGs are responsible for this issue, within their various remits, at the Commission: JLS (Justice, Freedom and Security), DEV (Development), SANCO (Health and Consumer Protection), INFSO (Information Society and Media) and RTD (Research).

³ Parliamentary Assembly of the Council of Europe, Recommendation 1611 (2003), adopted 25 June 2003; Annex II.

The Council of Europe has adopted a new Convention on Action against Trafficking in Human Beings, which was opened for signature on 16 May 2005.

United Nations

At the United Nations, organ trafficking appears in a number of conventions⁴, but since 'organ trafficking' is not defined, it has hitherto proved difficult to apply the provisions of the conventions that might cover it.

Mrs Sigma Huda, Special Rapporteur on trafficking in persons for the UN Commission on Human Rights, stresses that organ trafficking remains a problem under surveillance under her mandate.

The United Nations considers that trafficking in persons and the sale of human organs constitute new forms of slavery⁵.

World Health Organization

In May 2004 the WHO adopted a resolution at its 57th World Health Assembly on human organ and tissue transplantation, with the aim of ensuring the ethics of transplantation. The Member States were called upon, in particular, to take measures to protect the poorest and vulnerable groups from '*transplant tourism*'⁶, and to pay attention to international trafficking in human tissues and organs.

OSCE

Dr Helga Konrad, who was appointed in May 2004 as the OSCE Special Rapporteur on Combating Trafficking in Human Beings, has the task of coordinating, among the 55 OSCE Member States, the implementation of the Action Plan to Combat Trafficking in Human Beings (adopted in July 2003). Organ removal forms part of her mandate.

NGOs

In addition to a few national NGOs, an NGO specialising in the fight against organ trafficking, Organs Watch, comprising a team of anthropologists, doctors and human rights activists at the

⁴ See Annex I.

⁵ The term 'slavery' currently covers various violations of human rights. As well as traditional slavery and slave trading there are the sale of children, child prostitution, child pornography, the exploitation of child labour, the sexual mutilation of female children, the use of children in armed conflicts, debt bondage, trafficking in persons and the sale of human organs, the exploitation of prostitution and certain practices of *apartheid* and colonial regimes.

⁶ World Health Assembly, 57th session, resolution adopted 22 May 2004, which 'urges Member States:

(1) to implement effective national oversight of procurement, processing and transplantation of human cells, tissues and organs, including ensuring accountability for human material for transplantation and its traceability; [...]

(5) to take measures to protect the poorest and vulnerable groups from "transplant tourism" and the sale of tissues and organs, including attention to the wider problem of international trafficking in human tissues and organs;'

The World Health Assembly is the supreme governing body of the WHO.

University of California, Berkeley (United States), has begun to ascertain the state of play with regard to the illegal trade in organs throughout the world⁷.

2. The known facts

According to the Council of Europe report, organ trafficking is not a new problem worldwide. In the 1980s experts began to notice, essentially in Asia, a practice which was subsequently labelled 'transplant tourism'. Since then, other destinations have opened up and the market has expanded⁸.

Organs concerned

The trade in kidneys is the most widespread, but the press and Organs Watch investigations have also revealed illegal trafficking in corneas, lungs, livers and hearts.

Tissues concerned

Trade in blood and plasma is the most obvious but there is also trafficking in skin (arms, legs, torso), sperm and ovocytes.

Countries concerned

Organs Watch has carried out investigations in 12 countries (Argentina, Brazil, Cuba, India, Iran, Israel, Moldova/Romania, Philippines, Russia, Turkey, the United States and South Africa).

The organisation has found, on the basis of these investigations, that all these countries have a real problem with organ trafficking. This exists in both rich countries and in poor ones. The absence of stringent regulations in some countries has enabled networks to develop. This is the case in the United States and in Europe, but also in Latin America and in a whole range of third-world countries. However, the investigations converge on certain countries; the ones most frequently mentioned are **Moldova, China⁹, Mozambique, Brazil** and also the **Philippines**.

Nancy Scheper-Hughes, a researcher who founded Organs Watch, explains that the worst place for organ trafficking is undoubtedly the *Philippines*, which is in the process of becoming a real open-air human organ market. Kidneys are sold there for less than US\$ 1000 (the price of a motorcycle or a television). The new route for this clandestine surgery is said to link primarily three countries: Israel, Turkey and Moldova. Three countries with three separate functions: Israel provides the purchasers, Moldova the vendors and Turkey is the location for these rather special transplant operations¹⁰. Along the same lines, a network linking Brazil (vendors), Israel (purchasers) and the port of Durban in South Africa (clinic) was dismantled in 2004¹¹.

⁷ See <http://sunsite.berkeley.edu/biotech/organswatch/>

⁸ Council of Europe, Vermot-Mangold report, 2003.

⁹ Many sources claim that the organs of those sentenced to death are used for transplantation, usually without the consent of those concerned; it is difficult to estimate the scale of this phenomenon.

¹⁰ Radio France International (see <http://rfi.fr/fichiers/MFI/Economie/Developpement/625.asp>), Le Monde (see article of 25 March 2005 by Mirel Bran: '*En Moldavie, le trafic d'organes prospère sur fond d'exploitation de la misère*').

¹¹ Source: WHO Bulletin, Vol. 82, No. 9, September 2004, p. 715.

Concerning **China**, some aspects should be developed more in depth:

There is no doubt any longer that the trafficking of organs of sentenced to death prisoners actually existed. It is established that the organs of those sentenced to death were (and still are?) used for transplants without the consent of the prisoners concerned. It is difficult, however, to estimate the scale of this phenomenon. Moreover, there are many doubts on the frequency of the executions. It could be a function of the request for organs: the executions could be carried out according to the prisoner's medical profile (ex: the prisoner with the requested blood group would be executed first).

In addition, allegations of organs harvesting of Falun Gong practitioners are propagated. Serious elements lead to think that Falun Gong practitioners are victims of live organ harvesting: harvesting would be inflicted on unwilling Falun Gong practitioners in many locations throughout China, pursuant to a systematic policy. This practice would be in conformity with the repression's policy carried out by the authorities in order to eradicate Falun Gong practitioners, considered dangerous by the power in place. Either the practitioners concerned would die because of the surgical intervention, or they would be killed after it. But, in all the cases, they would be incinerated. An independent investigation published in July 2006¹² concludes that "*the government of China and its agencies in numerous parts of the country, in particular hospitals but also detention centres and 'people's courts', since 1999 have put to death a large but unknown number of Falun Gong prisoners of conscience. Their vital organs, including hearts, kidneys, livers and corneas, were virtually simultaneously seized involuntarily for sale at high prices, sometimes to foreigners, who normally face long waits for voluntary donations of such organs in their home countries.*"¹³

Legalise a clandestine market?

Organ theft and trafficking are prohibited in most countries' legislation, which according to the experts is not stopping them becoming increasingly important¹⁴. The police have virtually no chance against the organ mafia. And when the trade is permitted, the police are up against the silence of a donor who has been rewarded, a recipient who has gained a few years of life, and an intermediary who has taken his cut. The differences between legislation add further to the difficulties.

The trade in organs is inexorably linked to the procedures for organ donation, which vary from one country to another. The legal organisation of organ donation determines the possible existence of illegal trading: where donation is tightly regulated, there are optimum conditions of

¹² See David Matas and David Kilgour, *Report into allegations of organ harvesting of Falun Gong practitioners in China*, 6 July 2006. Report presented at the EP by D. Kilgour on the 12/07/06, at the meeting of the parliamentary delegation in charge of the relations EU/China. Report available in English version on Internet site: <http://Investigation.redirectme.net> (Contact: dwkilgour@gmail.com ou dmatas@mts.net).

¹³ See D. Matas and D. Kilgour, *Report into allegations of organ harvesting of Falun Gong practitioners in China*, 6 July 2006, p. 41. Report available in English version on Internet site: <http://Investigation.redirectme.net>

¹⁴ 'The international trade in human organs is on the increase fuelled by growing demand as well as unscrupulous traffickers. The rising trend has prompted a serious reappraisal of current legislation, while WHO has called for more protection for the most vulnerable people who might be tempted to sell a kidney for as little as US\$ 1000.' According to Nikola Biller-Andorno, who works on the issue in Geneva for the WHO, there are no accurate figures on the scale of trafficking throughout the world, but the number of 'customers' is growing steadily. Source: WHO Bulletin, Vol. 82, No. 9, September 2004, p. 715.

medical safety and ethical slippage is limited. However, medical progress and that in the field of transplantation mean that increased demand is coming up against a lack of donors. In Europe alone, 40 000 patients are waiting for a kidney transplant, and this demand is now fuelling a whole black market. The need to broaden the pool of donors should prompt a debate.

Appealing for organ donations¹⁵: this brings up an ethical issue, because the freedom of the potential donor who is faced with the possible death of a relative and is in a position to help him/her, at the cost of a risk of serious consequences for him- or herself, has to be guaranteed. Common approaches among Member States and exchanges of good practice have emerged over recent years¹⁶.

Legalise the organ market? A fundamental debate sets those who advocate a total ban on the sale of organs (prohibition in law, with effective measures to combat violations) against the supporters of a legal, regulated and controlled market in organs. Since appealing for donations produces few results, there are those who advocate liberalising the market in order to put a stop to its criminal activities¹⁷. Others, such as the WHO, are categorically opposed to legalising a market in the human body.

A compromise solution has been adopted at this stage by the European Community; this provides for compensation for the donor (reimbursement of medical expenses and compensation for the loss sustained). According to the 2004 Directive on human tissues and cells in the European Union¹⁸, compensation is permitted provided that it 'is strictly limited to making good the expenses and inconveniences related to the donation'¹⁹.

How the networks operate

¹⁵ It should be noted that only slightly more than 3 out of 10 Europeans (34%) claim to know the rules in force in their country with regard to organ donation (Eurobarometer survey on organ donation and transplantation carried out between October and December 2002 at the request of DG SANCO).

¹⁶ The Eurotransplant initiative is one example. The Eurotransplant International Foundation manages a partnership for allocating donated organs from Austria, Belgium, Germany, Luxembourg, the Netherlands and Slovenia among all the laboratories and hospitals where organ donations take place. The Commission, for its part, has set up various programmes for exchanging good practice among Member States.

Examples:

- EURODONOR-EUROCET: the creation of a European donation and transplantation registry based on common criteria and protocols (DG INFSO);

- DOPKI: the purpose is to increase organ donation by developing an appropriate methodology (DG RTD);

- ALLIANCE – 0: the purpose is to improve coordination between national research programmes (DG RTD).

In addition, the Commission (DG SANCO) published a report entitled 'Human organ transplantation in Europe: an overview' in 2003. This report reviews the legislation governing transplantation in the 25 Member States and in Turkey, Bulgaria, Norway and Romania, as well. The report reveals that in every country organ donation can take place only on the basis of free, informed consent. In 27 of the countries surveyed remuneration for organ donation is prohibited by law. In the two countries (Romania and Turkey) where there is no legal prohibition, the codes of good practice for the professionals concerned ban remuneration for organ donation.

¹⁷ E.g. Gary Becker, winner of the Nobel Prize for Economics.

¹⁸ Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells.

¹⁹ The European Parliament was also involved in this debate when the 2004 Directive on human tissues and cells was adopted (rapporteur: Peter Liese, November 2003).

Trade and trafficking in organs allegedly involves two types of market: one which is organised on the basis of organs sold 'voluntarily' to willing purchasers, and a coercive market, involving organs removed by force.

In cases where the sale of an organ is voluntary, there is proven organ trading. It must be stressed that the market is sustained by poverty. This market primarily involves the very poorest, who sell an organ to survive. Apart from the ethical problems posed by this market it entails, above all, unacceptable consequences for the donor, who undergoes an operation in dubious circumstances and does not have any serious medical follow-up. The investigations by Organs Watch reveal that donors frequently suffer serious, or even irreversible, medical problems after the organ is removed, and that they are then left to their fate. This type of market is made possible by the existence of organ or tissue banks. In some countries, organ placement agencies flourish. Middlemen, who are paid massive commissions, undertake to recruit donors from the poorest social strata. Recipients are identified by the involvement of surgeons in some developed countries where there is high demand. Their patients are offered a priority place on the waiting list in return for a hefty payment. The operations are mostly carried out in private clinics by unscrupulous surgeons. These operations may take place in the recipient's country, but as some countries become more vigilant in applying the ban on the trade in organs, medical 'transplant' tourism is developing. In this case, arrangements are made for the recipient to stay at well-equipped private clinic in the donor's country, where the legislation is more permissive or the surgeons are less particular. Equally, there is said to be very highly developed medical connivance with this system in those countries where bodily integrity must be preserved after death, i.e. where living donation is the only possibility.

Where human tissues are concerned another kind of commercial activity is developing; while it is tolerated by some States, it nonetheless remains questionable. Unlike organs, which it is vital to implant within 48 hours, human tissues can be kept for far longer in tissue banks. These specialise in collecting, conserving and processing tissues. This work obviously entails costs. So there are two types of bank: non-profit-making tissue banks and commercial operations. The former limit themselves to invoicing for the work of preparing and conserving tissues at cost price. 'No profit' is the rule for them. The latter are run on commercial lines. These privately-owned companies, mostly North American in origin, make substantial profits from processing tissues. Tissue banks are playing a key intermediary role in the process of commercialising the human body²⁰.

In the case of involuntary sales, various types of situation are mentioned, such as abductions, trafficking in children, criminal acts and false adoptions, but with a few rare exceptions (for example, the strong elements of organs harvesting of Falun Gong practitioners), no tangible proof has emerged to corroborate the existence of a market in organs removed by force. Some organisations continue to claim that this type of trafficking exists, but without being able to prove it. For Nancy Scheper-Hughes (Organs Watch) this type of trafficking remains open to doubt.

²⁰ Sperm banks, for example, are part of the American medical landscape. Internet purchasing sites are legion, and single women and lesbian or infertile couples have access to catalogues with lists of meticulously classified donors. By paying in advance these potential recipients can obtain a detailed portrait of the anonymous parent. In overall terms, Europe stands outside this trade. Like blood and tissues, gametes may not be traded here; donation based on the principle of solidarity is the rule. However, given the shortage donors use the Internet to offer sperm in return for remuneration which varies in accordance with the laws of a free, albeit illegal, market.

- All the same, there have been proven cases of patients in hospital where the surgeon has taken the opportunity of an operation to remove a kidney without their knowledge. Such coercive practices have been reported in Brazil, Argentina²¹ and India²², where criminal proceedings have been taken against the hospitals responsible.
- Cases of trafficking in organs without consent have also been known where trafficking in migrants intertwines with that in organs: migrants or those heading into exile are taken up by middlemen who promise them work. Once they find themselves in a country where they have no resources (linguistic or material) and are regarded as illegal, the migrants see the promised work vanish and it is proposed that they donate blood in return for payment.
- Most cases of forced removal of organs from living donors arise from situations where the donor originally consents to the sale. In this case, the trafficking is fuelled by deception: the donor is cheated and receives nothing or only part of the agreed payment, or those concerned are migrants in desperate circumstances, as indicated above.
- However, the majority of cases of organ removal without consent appear to occur in connection with dead bodies. It is very difficult to put a figure on such practices, but they nonetheless appear to be corroborated by a number of investigations by Organs Watch. Corruption continues to be a major factor in the trade. Corruption on the part of staff working in morgues makes it possible to obtain an organ without the prior consent of the person or his/her family. Staff steal organs or tissues and sell them on the local clandestine market. The same thing happens in hospitals, where there have been cases of organs being removed from brain-dead bodies without the consent of the families.

3. The legal framework

Although the legislation banning the trade in parts of the human body differs in scope among the 25 EU Member States, there is nonetheless no legal void. Each country has legal provisions prohibiting the sale of human organs or tissues. Within the European Union, in the absence of Community harmonisation human organ donation and transplantation are governed by national law.

The situation varies widely. Where there is legislation on organ trafficking, this is treated as a lesser indictable offence. Only the United Kingdom classifies the trade in organs as a serious indictable offence. All the same, it is not the country which sanctions this trade most severely, because some countries, such as Poland, punish perpetrators with prison sentences of up to two years, while Germany goes up to five years. However, it is France which holds the record for severity: Articles 511(2)-511(4) of the Criminal Code provide for seven years' imprisonment

²¹ Elaine Pearson, *Coercion in the Kidney Trade? A background study on trafficking in human organs worldwide*, 2004 report for the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, Division 42, Governance and Democracy.

²² P. Swami, *Punjab's kidney industry*, *Frontline*, Vol. 20, No. 3, 2003, quoted in Elaine Pearson, *Coercion in the Kidney Trade? A background study on trafficking in human organs worldwide*, 2004, op. cit.

and a fine of € 106 710 for anyone obtaining an organ in return for payment, and five years' imprisonment and a fine of € 76 220 in the case of human tissues.

The legislation prohibiting organ trafficking is often not clear enough; it does not lay down criteria making it possible to criminalise the act, whether on the part of the medical staff involved, the middlemen or the recipient. Nor does it criminalise the practices associated with trafficking, such as incitement through advertising²³.

²³ In 1995, for example, an American offered his kidney for sale on eBay. The auction peaked before eBay reacted and removed the offer; neither eBay, nor the vendor, nor the potential purchasers were worried.

The legal framework

1. European Union

Documents which are binding

Directive 2004/23/EC of the European Parliament and the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells

OJ L 102, 7.4.2004, p. 48

Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components

OJ L 91, 30.3.2004, p. 25

Documents which are not binding

The Charter

Charter of Fundamental Rights of the European Union (2000)

(Article 3: Right to the integrity of the person; 'prohibition on making the human body and its parts as such a source of financial gain')

The Hellenic Republic Initiative

Communication from the Hellenic Republic: Initiative of the Hellenic Republic for the adoption by the Council of a draft Framework Decision on the prevention and the control of trafficking in human organs and tissues

6290/03 Subject-matter: DROIPEN 8 Document Date: 13.2.2003

Brussels, 24 February 2003, 6290/1/03 REV 1 and explanatory note 6290/03 ADD 1

Initiative of the Hellenic Republic for the adoption by the Council of a draft Framework Decision on the prevention and the control of trafficking in human organs and tissues

Brussels, 19 March 2003, 7339/03 Subject-matter: DROIPEN 16

Still waiting for the Council final decision

(Definition of trafficking in organs, list of punishable acts and orientations for a criminal penalty system)

European Parliament

On the Hellenic Republic Initiative

Report and EP legislative resolution on the Initiative of the Hellenic Republic with a view to adopting a Council Framework Decision concerning the prevention and the control of trafficking in humans organs and tissues

(7247/2003 – C5-0166/2003 – 2003/0812(CNS) (P5_TA-PROV(2003)0457, 23.10.2003

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Robert J.E. Evans (PSE, UK)

Endorsed by EP (432 votes for, 25 abstentions and no vote against) subject to certain amendments aimed at: pointing out the illegal nature of trafficking in human organs and tissues, so as not to undermine the legitimate system; making it clear that the use of cells to manufacture pharmaceutical products is permissible; prohibiting the removal of an organ from a living donor who has no close personal relationship with the recipient; providing for legitimate donor involvement; creating a database of legally available organs; encouraging organ donation via information campaigns; compensating donors; extending the scope of the framework decision to trafficking in blood, blood derivatives, reproductive organs and embryonic tissues; ensuring protection of minors and other vulnerable persons.

On specific situations

Resolution on the sale of organs of persons sentenced to death in China (14 May 1998)

B4-0496, 0500, 0510 and 0519/98 OJ C 167, 1/6/1998, p. 224

European Commission

DG SANCO

There are obvious links between trafficking in organs and the work of this DG. Indeed, trafficking in organs is facilitated by a shortage of organs available *vis-à-vis* growing demand due to medical progress. The treatment of trafficking in organs, while combating the illegal trade, should not prevent legal and necessary transplantations for the public health. This DG must ensure that donation is encouraged and takes place under the best conditions. Moreover, it will focus increasingly on the health of the donors after transplantation (many donors in the new Member States).

DG DEV

The fight against trafficking in organs implies attacking its causes. And poverty is the principal factor feeding this traffic: the donors are often in a situation of extreme poverty. Trafficking in organs is concentrated in destitute countries like Angola. There is a need to be involved in the campaigns against poverty and in the way in which they include trafficking in organs.

DG JLS

Donor participation in trafficking in organs can be both voluntary and forced (abduction, murder). This illegal traffic is attributable to crime in networks organised by transnational mafias. In addition, this form of crime can be described as white-collar crime in that it involves surgeons and corrupt politicians.

Europol

Illegal trafficking in organs and human material is mentioned among the serious forms of international crime and is covered by Europol's mandate with regard to Article 2 of the Annex to

the Europol Convention (decision to this effect taken by the JHA Council of 6 December 2001). Since 1 January 2002, Europol's remit covers illegal trafficking in organs and human material. It is also a question of envisaging sufficiently severe sanctions to include trafficking in organs in the scope of the instruments already adopted to fight organised crime.

2. Council of Europe

Prohibition on principle in general terms. While the prohibition on making money with the human body and its parts is a legal plus, trafficking in organs is not subject to specific provisions and doesn't have a definition making it possible to determine criminal liability. However, initiatives by the Parliamentary Assembly are moving in this direction.

Documents which are binding once ratified by Member States

Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (1997)
(Article 21: 'The human body and its parts shall not, as such, give rise to financial gain.')

(Article 22: 'When in the course of an intervention any part of a human body is removed, it may be stored and used for a purpose other than that for which it was removed, only if this is done in conformity with appropriate information and consent procedures.')

Additional Protocol to the Convention on Human Rights and Biomedicine, on Transplantation of Organs and Tissues of Human Origin (2002)
(Article 1: no marketing of human organs and organisation of legal transplantation which respects fundamental rights)

Convention on Action against Trafficking in Human Beings (2005).
CM(2005)32 Addendum 1 final
(Article 4: the definition of trafficking in human beings includes 'the removal of organs')

Documents which are not binding

Resolution (78)29 on Harmonization of Legislation of Member States relating to Removal, Grafting and Transplantation of Human Substances (1978)
Assertion that the human body and its elements cannot be used for profit

Meeting the organ shortage (1999)
Current status and strategies for improvement of organ donation
Council of Europe: a European consensus document

Parliamentary Assembly report on trafficking in organs in Europe (2003)
Doc. 9822, 3 June 2003
Report by the Social, Health and Family Affairs Committee
Rapporteur: Mrs Ruth-Gaby Vermot-Mangold, Switzerland, SOC
and doc. 9845, 24 June 2003, Opinion of the Committee on Legal Affairs and Human Rights
Rapporteur: Mr Dirk Dees, Netherlands, Liberal, Democratic and Reformer's Group
Opinion approved by the committee on 24 June 2003

Parliamentary Assembly recommendation (2003)

Doc. 1611, 25 June 2003

Call to develop, in cooperation with relevant organisations, a European strategy for combating trafficking in organs and to consider, in the framework of the drafting of the future convention on trafficking in human beings, the inclusion of an additional protocol covering trafficking in organs and tissues of human origin.

3. United Nations

Convention against Transnational Organized Crime (2000)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Article 3: the removal of organs is part of the definition of 'trafficking in persons' and is to be covered under criminal law)

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (came into force in 2002)

(Article 3: obligation for each State Party to cover 'the transfer of organs of the child for profit' under its criminal or penal law)

World Health Organization

World Health Assembly resolutions are not binding.

Resolution WHA40.13, adopted in May 1987 by the 40th World Health Assembly

It requested the Director-General 'to study, in collaboration with other organizations concerned, the possibility of developing appropriate guiding principles for human organ transplants'.

Resolution WHA42.5 Preventing the purchase and sale of human organs, adopted in May 1989 by the 42nd World Health Assembly

The Assembly expressed its concern about commercial trafficking in the organs of healthy donors, which exploited human distress and put the health of donors at increased risk. Aware that commercial arrangements for organ transplants were nevertheless being undertaken, it called upon Member States to take appropriate measures to prevent the purchase and sale of human organs for transplantation, including the adoption of legislative measures to prohibit trafficking in organs.

Resolution WHA44.25 Human organ transplantation, adopted in May 1991 by the 44th World Health Assembly

The Assembly approved the Director-General's report on human organ transplantation and recommended that Member States take account of the Guiding Principles contained in the report (the Guiding Principles relating to organ donation stress the necessarily voluntary nature of any donation, the principle of no commercial trading, and the preference for deceased donors over living donors and over donors who are genetically related to the recipient)²⁴.

²⁴ For the list of Principles, see the WHO Internet site:

http://www.who.int/ethics/topics/transplantation_guiding_principles/en/index.html

Resolution WHA57.18 Human organ and tissue transplantation, adopted in May 2004 by the 57th World Health Assembly.

The Assembly, concerned by the growing insufficiency of available human material for transplantation to meet patient needs, stated that it was aware of the need for special attention to the risks of organ trafficking. It recognised the ethical and safety risks, and those relating to legal principles, entailed by the different types of cell, tissue and organ transplantation and asked Member States to take the requisite measures to ensure effective national oversight and to cooperate in formulating principles to harmonise global practices.

Legal framework outside Europe

Africa

In Africa, legislation on organ trafficking exists only in Algeria, Tunisia, South Africa and Zimbabwe.

Middle East

The following countries have no legislation: Iraq, Kuwait, Lebanon, Syria and Turkey.

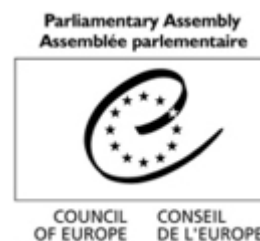
Asia

Only Indonesia and Sri Lanka have legislation. In India, the Federal Parliament passed a law in 1994 which laid down heavy penalties for the sale of organs. However, responsibility for public health is a matter for each of the 25 States, only five of which have ratified the law to date.

The Pacific

In this region, only Australia and Singapore have legislation. There is no legislation in major States such as Japan or the Philippines, but a text is being drafted in the Philippines.

Parliamentary Assembly
Assemblée parlementaire



Recommendation 1611 (2003)¹

Trafficking in organs in Europe

1. Rapid progress in medical science and technology has transformed organ transplantation, and kidney transplantation in particular, into a routine medical procedure practised in hospitals across the world. Five-year survival rates for most organ transplantation programmes are reaching the level of 70%, thereby rapidly increasing the demand for organ donation.

2. Medical research demonstrates that renal transplantation increases the life expectancy of patients. The supply of organs from cadaveric, but particularly from living, donors is very limited and strictly controlled in Europe. There are currently 120 000 patients on chronic dialysis treatment and nearly 40 000 patients waiting for a kidney transplant in western Europe alone. Some 15% to 30% of patients die on waiting lists, as a result of chronic shortage of organs. The waiting time for transplantation, currently about three years, will reach almost ten years by the year 2010.

3. International criminal organisations have identified this lucrative opportunity caused by the “gap” between organ supply and demand, putting more pressure on people in extreme poverty to resort to selling their organs.

4. Worldwide, the issue of organ trafficking is not new. In the 1980s experts began to notice what was to become known as “transplant tourism” when prosperous Asians began travelling to India and other parts of Southeast Asia to receive organs from poor donors. Since then other routes have opened up, such as to Brazil and the Philippines. Allegations have been made against China of commercial use of organs from executed prisoners. Organ sale continues in India despite new laws, which make the practice illegal in most regions.

5. While current estimations show that organ trafficking remains on a relatively modest scale in Europe, the issue is nevertheless of serious concern, since it is very likely that further progress in medical science will continue to increase the gap between the supply of, and demand for, organs.

6. As a result of poverty, young people in some parts of eastern Europe have sold one of their kidneys for sums of US\$2 500 to US\$3 000, while recipients are said to pay between US\$100 000 and US\$200 000 per transplant. It is a matter of grave concern that following illegal

transplants the donor's state of health generally worsens in the medium term, due to the absence of any kind of medical follow-up, hard physical work and an unhealthy lifestyle connected to inadequate nutrition and a high consumption of alcohol. Most illegal donors will thus be forced in time to live on dialysis treatment or await, in turn, a kidney transplant.

7. This situation raises a number of ethical questions: Should the poor provide for the health of the rich? Should the price of alleviating poverty be human health? Should poverty compromise human dignity and health? And in terms of medical ethics, should help to recipients be counterbalanced by neglect of, and harm to, donors?

8. The Parliamentary Assembly therefore disapproves of recent trends in some western European countries towards less restrictive laws, which would allow greater scope for unrelated living donation.

9. Trafficking in organs – like trafficking in human beings or drugs – is demand driven. Combating this type of crime should not remain the sole responsibility of countries in eastern Europe. Examples of measures to be taken by all member states in order to minimise the risk of organ trafficking in Europe include reducing demand, promoting organ donation more effectively, maintaining strict legislation in regard to living unrelated donors, guaranteeing the transparency of national registers and waiting lists, establishing the legal responsibility of the medical profession for tracking irregularities and sharing information.

10. The Assembly therefore recalls Committee of Ministers' Recommendation No. R (97) 16 on liver transplantation from living related donors, and Recommendation Rec(2001)5 on the management of organ transplant waiting lists and waiting times, and welcomes Recommendation Rec(2003)12 on organ donor registers.

11. The principle according to which the human body and its parts shall not, as such, give rise to financial gain is part of the legal *acquis* of the Council of Europe. This principle, already present in Resolution (78) 29 of the Committee of Ministers and confirmed, in particular, by the final declaration of the 3rd Conference of European Health Ministers, which was held in Paris in 1987, was enacted by Article 21 of the Convention on Human Rights and Biomedicine (ETS No. 164). The principle was reiterated in its Additional Protocol on Transplantation of Organs and Tissues of Human Origin (ETS No. 186), opened for signature in January 2002.

12. While the prohibition of organ trafficking is legally established in the Council of Europe member states, most countries still have legislative loopholes in this domain. Criminal responsibility in organ trafficking is rarely clearly specified in national criminal codes. Criminal responsibility should include brokers, intermediaries, hospital/nursing staff and medical laboratory technicians involved in the illegal transplant procedure. Medical staff who encourage and provide information on "transplant tourism" should also be liable to prosecution. The medical staff involved in follow-up care of patients who have purchased organs should be accountable if they fail to alert the health authorities of the situation.

13. Organ trafficking, like most criminal activities, is difficult to prove. But it should not be left to the media alone to investigate. Member states have a common responsibility to deal openly with this problem nationally, but also – through multilateral co-operation at European level – bringing together ministries of health, the interior and justice.

14. In the light of the above, the Assembly recommends that the Committee of Ministers:

i. invite all member states:

a. to sign and ratify the Convention on Human Rights and Biomedicine, and its Additional Protocol on Transplantation of Organs and Tissues of Human Origin;

b. to sign and ratify the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish the Trafficking of Persons, especially Women and Children, and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, as trafficking in organs is closely linked to trafficking in people;

c. to recognise their common responsibility in minimising the risk of organ trafficking by strengthening existing mechanisms of co-operation at the Council of Europe level by the Committee on the Organisation Aspects of Co-operation in Organ Transplantation (SP-CTO) and stepping up funding for assistance activities in this area, which is crucial in helping to put efficient transplant systems in place;

d. to adopt and apply the recommendations in the World Medical Association's (WMA) Statement on Human Organ and Tissue Donation and Transplantation, adopted by the 52nd WMA General Assembly in Edinburgh, Scotland, in October 2000;

ii. urge the member states to intensify their co-operation under the auspices of Interpol and Europol in order to address the problem of trafficking in organs more effectively. Stepping up the funding of the two agencies in this domain is equally crucial since they are both running on extremely low budgetary and staff levels in this field;

iii. invite the so-called "donor countries":

a. to improve primary prevention through awareness-raising and peer education, particularly in rural areas, in partnership with NGOs, the media, and relevant international agencies;

b. to undertake measures to improve primary health care;

c. to take steps to identify illegal donors and provide for their medical follow-up;

d. to strengthen existing transplant systems, with the assistance of the Council of Europe;

e. with legal support from the competent services of the Council of Europe, to amend, where necessary, their criminal codes, in order to ensure that those responsible for organ trafficking are adequately punished, including sanctions for medical staff involved in transplanting organs obtained through illegal trafficking;

f. to restrict the donation of organs and tissues from prisoners and other individuals in custody, as they are not in a position to give informed consent freely and can be subject to coercion, with the exception of donations for members of their immediate family;

- g. to undertake effective measures to combat trafficking in general;
- h. to provide special facilities at border crossings with a view to identifying potential victims;
- i. to implement national anti-corruption programmes;
- j. to implement national poverty reduction strategies and create conditions for investment;
- iv. invite the so-called “demand countries”:
 - a. to maintain strict laws in regard to transplantation from unrelated living donors;
 - b. to deny national medical insurance reimbursements for illegal transplants abroad;
 - c. to deny national insurance payments for follow-up care of illicit transplants, except where such a refusal would endanger the life or health of patients unable to cover the cost of vital treatment themselves;
 - d. to improve donor awareness by organising national campaigns and by actively supporting the regular organisation of the European Day for Organ Donation and Transplantation;
 - e. to take appropriate measures to encourage individuals to indicate, by means of statements of “consent”, their wish to donate their organs after their death, in order to increase the availability of organs and tissues obtained *post mortem*;
 - f. to ensure strict control and transparency of organ registers and waiting lists, and establish clear responsibilities for tracking irregularities;
 - g. to harmonise data and strengthen co-operation mechanisms for the allocation of organs in donation procedures;
 - h. to take steps to track down “broker” advertising (through newspapers, agencies, etc.);
 - i. to co-operate and provide expertise to “donor” countries in connection with trafficking in human beings and organs;
 - j. to ensure the flow of case-related information and provide necessary support to Interpol and Europol in this domain;
- v. instruct the relevant bodies of the Council of Europe:
 - a. to develop, in co-operation with relevant organisations, a European strategy for combating trafficking in organs and to consider, in the framework of the drafting of the future convention on trafficking in human beings, the inclusion of an additional protocol covering trafficking in organs and tissues of human origin;

- b.* to advise and assist member states on organisational measures necessary for putting in place an efficient transplant system to minimise the risk of organ trafficking;
- c.* to provide legal assistance in drafting specific amendments to national criminal codes;
- d.* wherever applicable, to widen their existing activities to include organ trafficking;
- vi.* use its influence, in terms of more specific regional co-operation in South-eastern Europe, to broaden the activities of the Stability Pact Task Force on Trafficking in Human Beings (Working Table III) to cover the issue of trafficking in organs;
- vii.* call on all member states to demonstrate European solidarity towards the countries in eastern Europe which are most affected by the vicious cycle of poverty and to assist them, in co-operation with the international financing institutions and the international donor community, in developing measures to reduce poverty and create a secure business environment for investment.

1. *Assembly debate* on 25 June 2003 (21st Sitting) (see [Doc. 9822](#), report of the Social, Health and Family Affairs Committee, rapporteur: Mrs Vermot-Mangold; and [Doc. 9845](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Dees).

Text adopted by the Assembly on 25 June 2003 (21st Sitting).

Agenda item 12.14 22 May 2004

Human organ and tissue transplantation

The Fifty-seventh World Health Assembly,

Recalling resolutions WHA40.13, WHA42.5 and WHA44.25 on organ procurement and transplantation;

Having considered the report on human organ and tissue transplantation;

Noting the global increase in allogeneic transplantation of cells, tissues and organs;

Concerned by the growing insufficiency of available human material for transplantation to meet patient needs;

Aware of ethical and safety risks arising in the transplantation of allogeneic cells, tissues and organs, and the need for special attention to the risks of organ trafficking;

Recognizing that living xenogeneic cells, tissues or organs, and human bodily fluids, cells, tissues or organs that have had *ex vivo* contact with these living xenogeneic materials, have the potential to be used in human beings when suitable human material is not available;

Mindful of the risk associated with xenogeneic transplantation of the transmission of known or as yet unrecognized xenogeneic infectious agents from animals to human beings and from recipients of xenogeneic transplants to their contacts and the public at large;

Recognizing that transplantation encompasses not only medical but also legal and ethical aspects, and involves economic and psychological issues,

I

Allogeneic transplantation

1. URGES Member States:

(1) to implement effective national oversight of procurement, processing and transplantation of human cells, tissues and organs, including ensuring accountability for human material for transplantation and its traceability;

(2) to cooperate in the formulation of recommendations and guidelines to harmonize global practices in the procurement, processing and transplantation of human cells, tissues and organs, including development of minimum criteria for suitability of donors of tissues and cells;

(3) to consider setting up ethics commissions to ensure the ethics of cell, tissue and organ transplantation;

(4) to extend the use of living kidney donations when possible, in addition to donations from deceased donors;

(5) to take measures to protect the poorest and vulnerable groups from “transplant tourism” and the sale of tissues and organs, including attention to the wider problem of international trafficking in human tissues and organs;

2. REQUESTS the Director-General:

(1) to continue examining and collecting global data on the practices, safety, quality, efficacy and epidemiology of allogeneic transplantation and on ethical issues, including living donation, in order to update the Guiding Principles on Human Organ Transplantation;²⁵

(2) to promote international cooperation so as to increase the access of citizens to these therapeutic procedures;

(3) to provide, in response to requests from Member States, technical support for developing suitable transplantation of cells, tissues or organs, in particular by facilitating international cooperation;

(4) to provide support for Member States in their endeavours to prevent organ trafficking, including drawing up guidelines to protect the poorest and most vulnerable groups from being victims of organ trafficking;

II

Xenogeneic transplantation

1. URGES Member States:

(1) to allow xenogeneic transplantation only when effective national regulatory control and surveillance mechanisms overseen by national health authorities are in place;

(2) to cooperate in the formulation of recommendations and guidelines to harmonize global practices, including protective measures in accordance with internationally accepted scientific standards to prevent the risk of potential secondary transmission of any xenogeneic infectious agent that could have infected recipients of xenogeneic transplants or contacts of recipients, and especially across national borders;

(3) to support international collaboration and coordination for the prevention and surveillance of infections resulting from xenogeneic transplantation;

²⁵ Document WHA44/1991/REC/1, Annex 6.

2. REQUESTS the Director-General:

(1) to facilitate communication and international collaboration among health authorities in Member States on issues relating to xenogeneic transplantation;

(2) to collect data globally for the evaluation of practices in xenogeneic transplantation;

(3) to inform proactively Member States of infectious events of xenogeneic origin arising from xenogeneic transplantation;

(4) to provide, in response to requests from Member States, technical support in strengthening capacity and expertise in the field of xenogeneic transplantation, including policy-making and oversight by national regulatory authorities;

(5) to report at an appropriate time to the Health Assembly, through the Executive Board, on implementation of this resolution.

Eighth plenary meeting, 22 May 2004
A57/VR/8

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