

FIGHT ORGANS HUMAN TRAFFICKING ON EU LEVEL

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Abstract: *Organ trade is the trade involving inner human organs (heart, liver, kidneys etc.) for organ transplantation. There is a worldwide shortage of organs available for transplantation, yet commercial trade in human organs was a while ago illegal in all countries except Iran. The problem of illegal organ trafficking is widespread, although data on the exact scale of the organ market is difficult to obtain. Whether or not to legalize the organ trade to combat illegal trafficking and organ shortage is a subject of much debate. Now monetary compensations for organ donors are being legalized in Australia and Singapore too. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons includes “organ removal” and its subsequent sale as on and purpose of trafficking, in Article 3. In Strasbourg, 09.07.2014 – the Committee of Ministers of the Council of Europe has adopted an international convention to make trafficking in human organs for transplant a criminal offence, to protect victims and to facilitate cooperation at national and international levels in order to prosecute more effectively those responsible for trafficking.*

Keywords: *organ trade, trafficking, international convention, organ removal, criminal offences*

As demonstrated in the joint Council of Europe/United Nations Study on trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs from 2009, the trafficking in human organs, tissues and cells is a problem of global proportions that violates basic human rights and constitutes a direct threat to individual and public health.²

In 13 October 2009 – a new, binding international treaty is needed to prevent trafficking in organs, tissues and cells (OTC), protect victims and prosecute offenders in this exploitation of the deeply impoverished, according to a joint study launched today by the United Nations and the Council of Europe.³

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² UNODC on human trafficking and migrant smuggling. Unodc.org. 2011. Retrieved 2011-03-22.

³ <http://www.un.org/apps/news/story.asp?NewsID=32521#.VPhiOHyUffl>

It calls for the prohibition of financial gain from the human body or its parts as the basis of all legislation on organ transplants, adding that organ donation should be promoted to increase availability, with preference given to OTC donation from the deceased.

Secretary-General Ban Ki-moon's Special Adviser on Gender Issues and Advancement of Women Rachel Mayanja said she hoped the UN General Assembly would lay the groundwork for such a treaty expeditiously. *"This is the study that we have just launched, we hope that the study will be presented to the Assembly, and that the issue will be put on the agenda so that they can start working and debating this issue,"* she told a news briefing in New York. *"We would like, of course, to see work on a convention, a binding convention, start as soon as possible."*

Arthur Caplan, co-author of the study and Chair of the Department of Medical Ethics and Director of the Center for Bioethics of the University of Pennsylvania, stressed that money for body parts exploited the poor, who do not improve their situation post-sale or work their way out of poverty. *"The poor person is usually illiterate, not given any choice in the sense that they have no other job or occupation to make the sale, they wind up sicker, they wind up with no one paying attention to them, they sometimes wind up dead, they usually wind up regretting from the studies that we've seen that they did the sale because they have no follow-up,"* he said.

"What looks like perhaps a chance to take somebody out of poverty winds up being a situation in which the deeply impoverished are exploited for the sale, because there is no other way for them to make a living, they can only do it once, and the people who deal with the sellers don't care about them," he added. *"Then it violates medical ethics to be involved in practices where you harm people just so they can sell a body part."*

Summing up the legal pillars of a proposed treaty, co-author and Public Prosecutor of Austria Carmen Prior said: *"Prevention, protection and prosecution"* is the solution.

Trafficking in OTC should be clearly distinguished from trafficking in human beings for the removal of organs, a small part of the wider problem, pointing to widespread confusion in the legal and scientific communities between the two types of trafficking, which require different solutions. It notes the possibility of a high number of unreported cases of both crimes, due to low risks and huge profits for perpetrators. OTC trafficking often takes the form of what is known as *"transplant tourism"*, with recipients travelling, usually from wealthier nations, to acquire organs in countries where measures to prevent the crime or protect live donors are not in place or not implemented.

It is estimated that 5 per cent to 10 per cent of kidney transplants performed annually around the world are the result of trafficking.

The report calls for the collection of reliable data on trafficking in OTC and in human beings for organ removal, separated by sex to assess if the problem impacts women and men differently.

The Council of Europe Convention on Action against Trafficking in Human Beings, and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, already contain appropriate measures to combat trafficking in human beings for organ removal.

Under the authority of the European Committee on Crime Problems (CDPC) and taking into account the Council of Europe Convention of Human Rights and Biomedicine and its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin, the Council of Europe Convention on Action against Trafficking in Human Beings, the WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation, the Declaration of Istanbul on Organ Trafficking and Transplant Tourism, the joint Council of Europe/United Nations Study "*Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*" and the additional opinion of the Steering Committee on Bioethics (CDBI), the European Committee of Crime Problems (CDPC) and the European Committee on Transplantation of Organs (CD-P-TO) prepared by experts of the three steering committees, the PC-TO shall prepare i) a draft criminal law convention against trafficking in human organs and, if appropriate, ii) a draft additional protocol to the aforesaid draft criminal law convention against trafficking in human tissues and cells (terms of reference).

Organ trafficking brings little regard for the wellbeing of the donor. Who cares for the donor in the early period following transplantation or in the long term, especially if complications arise? This report will describe the organ trafficking known to the authors by their visits to many countries on behalf of The Transplantation Society (TTS) and the World Health Organization and by the field research and advocacy work with commercial living donors (CLDs) of the Coalition for Organ-Failure Solutions (COFS). It introduces alternative approaches that must be addressed by each country to combat organ trafficking.

The buying and selling of organs in the global markets has become an ethical issue for transplant clinicians everywhere in the world. Even physicians who would have no part in the organ trade now bear a responsibility for the medical care of those recipients who return to their home countries having undergone organ transplantation from an unknown vendor. These recipients arrive at physician offices in widespread locations such as Tel Aviv, Toronto and Trinidad. Some patients return home with

inadequate reports of operative events and unknown risks of donor-transmitted infection (such as hepatitis or tuberculosis) or a donor-transmitted malignancy. The source of their allograft is mainly from the poor and vulnerable in the developing world. These vendors or commercial living donors resort to an organ sale because they have virtually no other means to provide support for themselves or their families. Selling kidneys may be a consideration of 'autonomy' in academic debate but it is not the coercive reality of experience when a kidney sale is a desperate alternative available to the poor. (Epstein, 2007, pp. 473-474)

The discourse on the market of organs has used various terms to describe the commercialism at the core of organ trafficking. The seller of a kidney is not only the donor source of an organ but a vendor whose motivation is monetary gain. The following definition of organ trafficking is derived from the United Nations Trafficking in Persons¹.

Organ trafficking entails the recruitment, transport, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, of a position of vulnerability, of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation by the removal of organs, tissues or cells for transplantation. The reason to oppose organ trafficking is the global injustice of using a vulnerable segment of a country or population as a source of organs (vulnerable defined by social status, ethnicity, gender or age).²

This definition of organ trafficking captures the various exploitative measures used in the processes of soliciting a donor in a commercial transplant. Exploitation is the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability. The commercial transaction is a central aspect of organ trafficking; the organ becomes a commodity and financial considerations become the priority for the involved parties instead of the health and well-being of the donors and recipients. (Haken, 2011)

Transplant Tourism has become a connotation for organ trafficking. The United Network for Organ Sharing (UNOS), recently defined transplant tourism as 'the purchase of a transplant organ abroad that includes access to an organ while bypassing laws, rules, or processes of any or all countries involved'. However, not all medical tourism that entails the travel of transplant recipients or

¹*UNODC and human trafficking*. Available at: <http://www.unodc.org/unodc/en/human-trafficking/index.html>. Accessed February 19, 2007.

²*Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*(PDF). United Nations. 2009. Retrieved 2014-01-18.

donors across national borders is organ trafficking.¹ Transplant tourism may be legal and appropriate. Examples include, when travel of a related donor and recipient pair is from countries without transplant services to countries where organ transplantation is performed or if an individual travels across borders to donate or receive a transplant via a relative. Any official regulated bilateral or multi-lateral organ sharing program is not considered transplant tourism if it is based on a reciprocated organ sharing programs among jurisdictions.

The modes of illicit transplant tourism were recently illustrated by Yosuke Shimazono at the Second Global Consultation on Human Transplantation at the WHO headquarters in Geneva in 2007 and capture the various ways recipients, CLDs, and transplant centers may be coordinated for such a transplant. In addition to these modes that occur across national borders, organ trafficking may also occur at transplant centers within the same country of residence of the CLD and recipient.

Strasbourg, 09.07.2014 – The Committee of Ministers of the Council of Europe has adopted an international convention to make trafficking in human organs for transplant a criminal offence, to protect victims and to facilitate cooperation at national and international levels in order to prosecute more effectively those responsible for trafficking.

The Convention calls on governments to establish as a criminal offence the illegal removal² of human organs from living or deceased donors:

- where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorized under its domestic law;
- where, in exchange for the removal of organs, the living donor, or a third party, receives a financial gain or comparable advantage;
- where in exchange for the removal of organs from a deceased donor, a third party receives a financial gain or comparable advantage.

The Convention also provides protection measures and compensation for victims as well as prevention measures to ensure transparency and equitable access to transplantation services. Due to its worldwide scope, the Convention was open shortly for signature by member states and non-member states of the Council of Europe.

¹http://inst.uchicago.edu/sites/inst.uchicago.edu/files/uploads/2013%20BA%20Thesis_Cruz%20Leo_PDF.pdf.

²*Human Trafficking Statistics and Facts* accessible at havoscope.com. Havocs Scope. Retrieved 20 January 2015.

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THE CONCEPT OF COMPETENCE OF FISCAL AUTHORITIES IN NEW FISCAL PROCEDURAL LAW

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Abstract: *Fiscal authorities competence has been analyzed in the research literature in terms of certain expressions common in practice, namely that of financial apparatus or fiscal apparatus. Broadly the financial apparatus of the state includes all state bodies that contribute directly or which only facilitate the achievement of financial activities by means of which the financial policy of the state is applied. In a narrow sense, the financial apparatus includes specialized state bodies with responsibilities in financial matters. Legally, the issue of competence has been studied by all branches of law, on its value depending the knowledge of the authorities called to address the problem regarding the observance of rights and of the interests of natural persons and legal persons.*

Keywords: *competence of the fiscal authorities, general, territorial and special competence, The Fiscal Procedure Code*

Fiscal authorities competence has been analyzed in the research literature in terms of certain expressions common in practice, namely that of financial apparatus (Șaguna, 2013, pp. 89-90) or *fiscal apparatus* (Condor, 1994, pp. 432-436). Broadly the financial apparatus of the state includes all state bodies that contribute directly or which only facilitate the achievement of financial activities by means of which the financial policy of the state is applied.

In a narrow sense, the financial apparatus includes specialized state bodies with responsibilities in financial matters. From the above, it results that there are two categories of bodies in the financial apparatus, namely:

1. *state bodies that have general jurisdiction*, which includes the Parliament, the Presidency, the Government, the county and local councils, other central and local bodies of state administration and public institutions of central and local subordination;

2. *state bodies that have special jurisdiction* which includes:

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