A new Convention to combat trafficking in human organs

Key points

- The shortage of organs, the disparity accentuated by the economic crisis, the vast differences between health systems and the greed of unscrupulous traffickers have in recent years led to an increase in transplant tourism and human organ trafficking.

- Trafficking in human organs violates human dignity and the right to life, and represents a serious threat to public health. There is therefore a real need to put in place measures to protect the most vulnerable individuals.

- The Council of Europe drew up a Convention to punish trafficking in human organs, to protect the rights of victims and to facilitate co-operation at both national and international levels.

- Adopted on 9 July by the Committee of Ministers, this Convention has a worldwide scope and, is therefore open to Council of Europe member states and non-member states.

- In parallel, the Council of Europe is running organ donation awareness-raising campaigns with the aim of increasing the number of organs for transplants, so that there is no longer a need for trafficking.

FAQ

What is trafficking in human organs?

Organ trafficking is an illegal practice, often undertaken by mafia-like networks that remove tissues or organs from living or deceased persons. This trafficking is often at the expense of poor people or occurs in under-developed countries.

There has been an improvement in the quality of transplants and a 42% increase in the number of such operations over the last 20 years, but that is far from enough to compensate for the shortage of organs and put an end to the trafficking that takes place as a result.

In 2012, 68,073 people were waiting for a kidney transplant in Europe. Each day, 12 people on a transplant list died because of the lack of available organs; in other words, 12 people who would have had the chance of being saved had an organ arrived on time (see Newsletter Transplant 2013, EDQM).

How big is the problem?

Trafficking in human organs is a major threat to public health and has reached global proportions. It is to be found world-wide and we are increasingly seeing instances of “transplant tourism”, a term used to refer to an organ purchaser who travels to the country of the seller. The exchange may also take place in the purchaser’s own country or in another country to ensure greater discretion.
However it is very difficult to provide precise figures on organ trafficking or illegal transplants. More and more websites are offering to sell organs at very high prices. The World Health Organisation (WHO) estimates that approximately 10,000 of clandestine operations are performed each year worldwide.

The Council of Europe Convention will help stem the growth of this market and provides for the punishment of any act involving this trade.

**What acts are punishable under the Convention?**

Governments will be required to take the necessary measures, including the passing of legislation, to establish as a criminal offence the illegal removal 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 authorised 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.

**What are the penalties provided for in the Convention?**

Those found guilty of trafficking in organs will be given effective, proportional and deterrent criminal sanctions laid down by the States Parties to the Convention.

Furthermore, sanctions and criminal, civil and administrative measures could also be taken against legal persons, such as:
- temporary or permanent disqualification from engaging in commercial activities;
- placing under judicial supervision;
- a judicial winding-up order.

The intention is to make commercial companies, associations and similar legal entities (“legal persons”) liable for criminal actions performed on their behalf by anyone in a leading position in them.

The Convention considers the following as aggravating circumstances:
- where the offence has caused the death of the victim, or serious damage to his or her physical or mental health;
- where the offence has been committed by a person abusing his or her position;
- where the offence has been committed against a child or any other particularly vulnerable person.

**Why is trafficking in human organs regarded as a criminal offence?**

Transplants are complex medical procedures which should be performed by highly qualified professionals. They are carried out under the strict control of the public authorities and the necessary precautions must be taken to ensure that the patient’s life is not put in jeopardy. Illegal transplants connected with organ trafficking are not subject to proper controls and can endanger the lives, not only of living donors but also of recipients.

The Convention aims to harmonise the penal system in Europe to prosecute more effectively individuals and criminal organisations responsible for trafficking.
Does the Convention criminalise the donor or the recipient?

A number of States have indicated that they would – under any circumstances – refrain from prosecuting organ donors for committing these offences. Other States have indicated that organ donors could under their domestic law, under certain conditions, also be considered as having participated in, or even instigated, the trafficking in human organs.

The Convention leaves it open for Parties to decide on this question.

However, the surgeon carrying out the removal or implantation will always be covered by the criminalisation obligation.

How does the Convention protect victims?

Not only must those responsible for organ trafficking be punished, the victims must also be protected and when that is possible, be given reparation. The Convention provides for them to be assisted in their physical, psychological and social recovery. In addition, they are also guaranteed compensation from the perpetrators.

Does the Convention also provide for prevention measures to be taken?

The Council of Europe Convention also provides prevention measures. It is essential to raise citizens’ awareness of organ donation and put in place a system which will encourage people to become donors.

First of all, each country must ensure that there is a transparent domestic system for transplants of human organs. The issue of “transparency” is important, because it reduces the risk of illicitly-removed organs being introduced into the legitimate domestic transplantation system.

Patients must also be guaranteed equitable access to transplant services, so that no individual is given priority consideration, for example, because of his or her social class.

Lastly, to prevent organ trafficking and the related offences, it is essential that there be close co-operation between the competent authorities for the collection, analysis and sharing of information.
European Day for Organ Donation

Each year, on European Day for Organ Donation, the Council of Europe and its European Directorate for the Quality of Medicines and Healthcare (EDQM) carry out a campaign to raise awareness of organ donation in order to increase the number of registered donors throughout Europe, to help bring down the shocking statistics of patients dying while waiting for organs and to fight against organ trafficking.

Kidney, liver, heart, lung, pancreas, intestine, bone marrow and many other tissues and cells can be transplanted and anyone could become a donor, regardless of age. Becoming an organ donor could potentially mean saving the lives of 8 people. Donated tissues and cells have the potential to save or improve the lives of up to 100 people.

In 2013, the campaign included online video animation clips, with the stories of Julia, Anna, Daniel and George available on YouTube.

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Updated: 08.07.2014