TRAFFICKING OF HUMAN`S FOR ORGANS AND ITS ECONOMIC ASPECTS

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Trafficking of Human Beings for organ removal is recognised as a significant violation of the fundamental principles of secular humanist and biomedical ethics.
Organ Trafficking is one of the lesser-known forms of trafficking, mainly because there is a lack of reliable information about it. In the U.S., the only man convicted of this crime was in 2012**. "Despite the general interest in the issue, the crime remains a hidden, underground activity and seems to be greatly underreported,"** says the United Nations Office on Drugs and Crime.[1]

A SHORT HISTORY OF GLOBAL TRAFFICKING IN ORGANS[2] - The first reports on commercial trade in human organs date from the 1980s and concern the selling of kidneys by poverty-stricken Indian citizens to foreign patients, especially from the Middle East. It was reported that around 80% of all kidneys procured for transplantation in Indian hospitals were transplanted into patients from the Gulf states, Malaysia, and Singapore[3]. The first scientific report appeared in the Lancet. It revealed that 131 kidney patients from the UAE and Oman had travelled to Bombay with their doctors and were transplanted there with kidneys from local paid 'donors'. The authors were not so concerned about the commercialism but more about the fact that many recipients had post-operative complications[4]. This occurred before the Indian Transplantation of Human Organs Act in 1994, which outlawed the selling and buying of human organs. But also, after 1994, there are consistent reports of foreign patients travelling to India in search of a paid kidney donor: Goyal reported on over 300 citizens of Chennai who illicitly sold a kidney in the period 1994 to 2000[5]. Even in developed countries where it is claimed that no overt payment for organs is made, there is data that financial incentives may have influenced organ allocation: American and European transplant surgeons during the 1980s solicited wealthy foreign patients to come to their transplant centres for a priority transplant. In the United States in 1984, around 300 kidneys were transplanted into non-residents[6]. Similar allegations were made by the Bellagio Task Force, who reported that Belgian and Austrian transplant centres did not always exchange available organs with collaborating foreign centres. Still, foreign patients must come to their centres to raise their incomes[7]. Early evidence of EU citizens travelling abroad to obtain organs was provided by an article in the British Medical Journal in 1996, describing that two German patients had died of post-transplant complications after having been transplanted in India. It was stated that at least 25 German patients were known to have obtained kidneys abroad. The article requested 'appropriate legislation to prevent such incidents[8]. A high-profile case of organ trafficking was reported in 1988 in the UK when it was discovered that a kidney

[1] What is Organ Trafficking? - Dressember. https://www.dressember.org/blog/organtrafficking

[2] Human hand and three placentas sent from Brazil to Singapore. https://www.dailymail.co.uk/news/article-10550741/Human-hand-three-placentas-sent-Brazil-Singapore-fashion-designers-clothes.html

[3] Price, D., Legal and ethical aspects of organ transplantation, Cambridge Press, 2000.

[4] Salahudeen AK, Woods HF, Pingle A, et al, High mortality among recipients of bought living-unrelated donor kidneys. Lancet, 1990; 336:725-8.

[5] Goel M, Metha RL., Schneidermann LJ. Et al., Economic and Health consequences of selling a kidney in India, JAMA 2002; 288:1589-1593.

[6] Porter S., Organ Transplants: Questions and Controversy, The New Ethics, 1984; 80: 33-37.

[7] Rothman D., et al., The Bellagio Task Force on Transplantation: Bodily Integrity, and the International Traffic in Organs, Transpl Proc 1997, 29: 2739-2741.

[8] Karcher H., German doctors protest organ Tourism, BMJ 1996; 313: 1282.

had been removed from a Turkish peasant in a London private clinic run by a well-known nephrologist. The Turkish 'donor' had been recruited through advertisements in Istanbul newspapers, promising a fee of GBP 2000-3000. When travelling to London, these donors carried a letter of the introduction saying they would support and care for a relative who was to undergo transplantation. There were no criminal charges against the perpetrators. Still, the nephrologist and three other doctors involved in this case (as well as similar other cases) were struck off the register by the General Medical Council. This case speeded the passing of the UK Human Organ Transplant Act (1989), which made organ trafficking a criminal offence[9]. Another case involving the UK concerned a Turkish company (Trans Transplantsyon) that offered UK citizens and other foreign patients a kidney transplant in India or Russia for a fee of GDP 22 000. The company was said to have been in operation on the Continent for six years, facilitating 400 successful transplants and planning to set up an office in London[10]. An important aspect of most of the cases mentioned above of organ trafficking and commercialism is that the reports rely greatly on media and investigative journalism, making it challenging to analyse the events in more detail. In these early cases, no police investigation reports exist, nor has any prosecution. Things started to change in the period after 2000. The Israeli nephrologist Michael Friedlander reported in 2002 that over 80 Arab Israeli patients had travelled to Iraq to obtain a kidney transplant from a paid donor. However, Jewish Israeli patients could not go to Iraq (or other Arab countries). Transplant surgeons from the centre in Tel Aviv, as a solution (circumventing Israeli law), made arrangements to go together with their patients to Estonia, Bulgaria, Turkey, Georgia, Romania and Russia to perform kidney transplants from paid unrelated donors[11]. They charged their patients USD 200000 for such service. It is reported that at least 26 patients were transplanted in this way. This arrangement was made semi-official through the Veterans Health Organisation, run by the Ministry of Defence, and facilitated by the health insurance companies. This began with the extensive involvement of Israeli recipients and transplant physicians in organ tourism and trafficking in the Eastern European region[12]. Further evidence of trafficking in organs, especially in the Eastern European region, came from a fact-finding mission of the special rapporteur Mrs RG Vermont- Mangold to the Parliamentary Assembly of the Council of Europe in 2003. She exchanged views with a representative of Europol and visited Moldova in October 2002[13]. The report stated that trafficking in human beings (especially women and children) was already deemed a serious problem in Moldova, targeting the impoverished rural population. Trafficking in human beings for organ removal, though still small, appeared to be increasing. Several dozen young men, aged between 18 and 28 years, had been taken to Turkey, where - in rented hospital facilities - a kidney was removed and transplanted, sometimes using coercion or force. These victims were paid around USD 2500-3000 but sometimes did not get the full amount promised. From the interviews and research, it came out that this was not an operation confined to Moldova but that 'donors' had also been recruited in the same way from neighbouring Ukraine, Bulgaria, Romania, Russia and Georgia. The operation was run by a well-organised network of brokers, local recruiters, doctors and specialised nursing staff. There also appeared to be strong links with the police and customs, which were open to corruption. Following this report, the Parliamentary Assembly called on the Council of Europe to develop a European strategy for combating trafficking in organs by drafting an additional protocol to the European Convention on Action against Trafficking in Human Beings. At the beginning of 2000, two other European countries were found to be involved in the trafficking of human tissues. The State Forensic Medical Centre in Riga (Latvia), from 1994 to 2003, delivered human tissue material to the German company Tutogen, which paid 'compensation' to the Forensic Centre. Over the ten years, tissues were taken from at least 400 deceased persons. When deceased relatives found out the tissues were retrieved and sold without

[9] Price D., Mackay R., The trade in Human Organs, New Law Journal 1991; 1272 (Part 1) and 1307 (Part 2).

[10] The Sunday Times, 11 May 1997.

[11] Friedlander MM., The right to sell or buy a kidney: are we failing our patients?, Lancet, 2002; 35: 971-73.

[12] Scheper-Hughes., N., Parts unknown, Undercover ethnography of the organ trafficking underworld, Ethnography 2004; 5: 29-73.

[13] Council of Europe, Parliamentary Assembly, Trafficking in organs in Europe: Report by Mrs. Ruth-Gaby Vermot-Mangold (Doc. 9822, 3 June 2003).

valid consent, they informed the police, who started a criminal investigation. In 2005 the Security Police concluded that no one was guilty, as the Latvian law was unclear about human rights protection and the determination of a deceased person's last will[14]. In 2006 the case was reopened, and recently in 2015, the European Court of Human Rights ruled that taking and selling the tissues without consent constituted a violation of articles 3 and 8 of the European Convention of Human Rights (degrading treatment, lack of respect to private life) and that Latvia was to pay financial compensation to the relative of a deceased person[15]. A second case involving the abuse of human tissues took place in the Czech Republic, where, in 2003-04, in the hospital in Brno, employees of the local tissue bank sold skin grafts to a foreign (Dutch) company for a total of USD 340000. Six employees were charged with organ/tissue trafficking; the prosecution took 3.5 years, and the defendants faced prison sentences of [16]. After the year 2000, around 2000 pieces of information on trafficking in organs, which had been scant before, became more prominent. An important role in this was played by the organisation Organs Watch, founded by anthropologist/investigator Nancy Scheper-Hughes. The discovery and criminal prosecution of several high-profile recent trafficking cases have increased the insight and knowledge of how trafficking in organs operates. The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, established in 2008 and the work of its Custodian Group, brought pressure on several countries and governments to effectively change their legislation and ban trafficking in organs. As a consequence, trafficking in organs has decreased in several countries. However, trafficking operations have shifted to other countries and opened new routes. According to recent information from the UN Office on Drugs and Crime (2014), around 0.3 % of all reported persons trafficked are trafficked for organ removal, and some 50 countries around the globe are involved in the trafficking of organs[17]. In Europe, the Council of Europe and the European Union, through the European Parliament, are actively developing new strategies to combat and prevent what is now considered a criminal offence on a global scale. Recently there have been media reports that trafficking in human beings, including for organ removal, may be increasing in Europe because of the economic and financial crisis[18]. Also, it is documented that there is an increase in organ offers over the internet and in newspaper advertisements (solicitation), particularly in Southern Europe and Russia. Serious but unconfirmed reports have been circulating recently on the alleged trafficking of organs from refugees in the Syrian conflict. They're offered on the Lebanese and Turkish 'black market' in organs[19]. Other alarming reports point to a shift of organ trafficking operations to countries in Latin America (Costa Rica, Panama, Peru),[20] which led to a meeting of judicial officials from Central

[14] Olsen S., A Latvian case: The removal of tissue from 400 deceased persons, In: W.Weimar and M.A. Bos: Organ transplantation: Ethical, Legal and Psychosocial Aspects, Towards a common European Policy, Pabst 2008.

[15]European Court of Human Rights, press release on ECHR 005 (2015).

See also: www.coe.int/t/dghl/monitoring/execution

[16] http://www.radio.cz/en/section/curraffrs/six-charged-in-organ-trafficking-case-at-brno-hospital.

[17] UNODC Global Report on Trafficking in Persons, 2014. Vienna/New York.

[18] The New York Times, June 28, 2012, 'Black market for body parts spreads among the poor in Europe'. Bio Edge, 9 June 2012, 'European crisis boosts illegal trade in body parts, www.bioedge.org

[19] Spiegel online International, November 12, 2013, 'Lebanese black market: Syrian refugees sell organs to survive'. Global Research, February 8, 2014, 'Organ smuggling: Turkish hospitals traffic injured Syrian citizens' organs. www.globalresearch.org

[20] La Prensa, Insight Crime, 19 July 2012,'Organized crime in the Americas. Desperation, lack of donors drives organ trafficking in Latin America' www.insightcrime.0rg

America and the Dominican Republic in June 2012. Finally, there is recent evidence of THBOR networks in Vietnam-China, and Cambodia-Thailand[21].

BACKGROUND OF HUMAN ORGAN TRAFFICKING - Transplanting human organs has become a successful medical procedure over the past 15 years. Thousands of seriously ill patients are given new life via the transplantation of healthy hearts, kidneys, livers and lungs. **About 300,000 people receive organ transplants per year worldwide.** Unfortunately, very few countries have sufficient organs to meet patients' needs. In the United States, about 50,000 people are on the waiting list for a transplant, and 15% of patients who need a new heart will die before one becomes available.[22] The unmatched supply and demand generate a massive global search for possible organ donors. To survive, many people, not all of them wealthy-have, have shown their willingness to travel great distances to secure transplants through legal or illegal channels, even though the survival rates are pretty low.[23] In contrast, the sellers are all from poor socio-economic backgrounds. They sell their organs to pay debts, for necessary surgery or for other family needs. The most common problem found in the trafficking of organs is when people agree to sell their organs and enter into a formal or informal contract to do so; however, once the organ **(kidney)** is removed, they are not paid at all or spent only a part of the initially agreed upon price. Recognising the demands, many surgeons, brokers and government officials have commercialised human organs to profit from the shortage. **For example, wealthy people and their doctors buy kidneys from debt-ridden Indian villagers in India**.[24] In desperation, many individuals even resort to illegal means to obtain an organ for transplantation, such as using the black market trade to purchase executive prisoners' organs. In China, officials profitably market organs of executed Chinese prisoners.[25] There are even more scary stories about organ trafficking.[26]

WHAT IS HUMAN TRAFFICKING? - Human Trafficking is defined as "the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery"[27]. It takes the form of forced labour, bonded labour, debt bondage among migrant workers, involuntary domestic servitude, sex trafficking, and organ trafficking. Victims of trafficking have been found in various legal and illegal business settings. This frequently hidden population is most often exploited in the commercial sex industries, hotels, domestic workers, and some adoption firms.[28] Organ trafficking is a form of human trafficking in which an organ trade is induced by force, fraud, or coercion. Trafficking of children most commonly takes the form of forced child labour, child sex trafficking, and organ trafficking.

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[21] South China Morning Post Agence France-Presse, 27 October 2014, 'Cambodia-Thailand kidney trafficking case sparks fears of new organ market', www.scmp.com. Tuoi Tre News, 7 March 2013 'Human trafficking on the rise in Vietnam: police warns', www.tuoitrenews.vn

[22] Rothman, 2002 Yellow Times

[23] Schepter-Hughes 2000, "The Global Traffic in Human Organs" current anthropology volume-41, number-2, April-2000

[24] Ahmed, RZ (2002), 'India might be world's leading human organ market', Times News Network.

[25] Rothman, D 2002, 'Ethical and Social Consequences of Selling a Kidney'; Elvin, J 2001, 'World Trade and Black Market Body Parts in China'

[26] GTZ 2004, Coercion in the Kidney Trade? A Background Study on Trafficking in Human Organs Worldwide.

[27] U.S. Department of State. Trafficking in persons report, 2018.

[28] Human Trafficking | ACOG. https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2019/09/human-trafficking

THE ROOT CAUSE OF HUMAN TRAFFICKING IS TRAFFICKERS[29] - Traffickers prey on others' weaknesses, unfortunate circumstances, unfamiliarity, and inexperience. Traffickers are trained to identify vulnerability and use expert manipulation tactics to persuade and control their victims. Individuals living in difficult conditions can become desperate, making them vulnerable. While the following categories do not cause human trafficking, they create a state of vulnerability and ideal opportunities for traffickers to strike.

CONDITIONS THAT CREATE VULNERABILITY[30] - They are as follows :-

- **Poverty –** When someone living in poverty, such as a widow or single mother who struggles to provide for her children, is desperate to meet a basic need, she is in a vulnerable position. A trafficker familiar with this scenario might offer her a job that enables her to feed her children. If this appears to be her only option, she may accept and be willing to do whatever the trafficker asks her[31].
- **Unemployment –** Traffickers target unemployed individuals and often use deception to persuade them to leave home and take a job in another city or country. The position may initially sound promising, but once the individual arrives at the destination, it is often much different than what was described. Traffickers may confiscate their victim's passports or IDs to keep them from leaving. They might also pay for transportation, shelter, clothing, or food, so their victims are indebted to them and feel obligated to work.[32]
- **Displacement –** War, political instability, and natural disasters can displace individuals or entire families. When people are forced to flee their homes and communities, they can experience financial hardship, homelessness, and cultural shock. Children who have lost their parents are easy targets for traffickers.[33]
- **Lack of Knowledge or Experience –** Inexperience may lead individuals down a path that ends in exploitation. A teenager whom a trafficker approaches may accept an attractive job offer, seeing it as a great opportunity at a young age. Immigrants who arrive in a foreign country may not understand their rights, be unfamiliar with the nation's laws, or not know the national language. A trafficker will quickly take advantage of these types of situations.[34]
- **Broken Families –** Individuals cast out of their homes, abandoned, or placed into the child welfare system are highly vulnerable to human trafficking. Runaways, youth experiencing homelessness, and those who live in isolation are often targeted. When someone feels alone or unloved or has been abused in the past, they may be willing to take significant risks[35]. They may feel they have little to lose or even find comfort living with their traffickers. Some traffickers offer love and acceptance to lure individuals to work for them.[36]
- **Cultural Practices –** In some societies, devaluing and abusing women and children is widely accepted. This outlook is ingrained into the minds of men and women in certain cultures, which creates a massive opportunity for traffickers. A parent may be willing to sell a daughter and send her into a world of
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[29] Causes and Effects of Human Trafficking - The Exodus Road. https://theexodusroad.com/causes-effects-of-human-trafficking/

[30] Causes and Effects of Human Trafficking - The Exodus Road. https://theexodusroad.com/causes-effects-of-human-trafficking/

[31] https://docplayer.net/229495245-04-ias-mains-contemporary-issues-of-society-iasscore-in.html
[32] https://foundation.elegalonline.com/human-trafficking-its-effect-on-women-in-nigeria/
[33] https://theexodusroad.com/causes-effects-of-human-trafficking/
[34] https://www.coursehero.com/file/96070818/sociology-pdf-sem-2pdf/
[35] https://www.coursehero.com/file/96070779/Human-Traffickingdocx/
[36] https://link.springer.com/chapter/10.1007/978-3-030-82163-0_4/

exploitation. In traditional cultures where arranged marriages are common, girls are sometimes forced into child marriages, which can also be identified as a form of human trafficking.[37]

EFFECTS OF HUMAN TRAFFICKING ON THE VICTIMS –

- **Mental Trauma –** Victims of human trafficking can experience psychological effects during and after their trafficking experience. Many survivors may end up experiencing post-traumatic stress, difficulty in relationships, depression, memory loss, anxiety, fear, guilt, shame, and other severe forms of mental trauma.[38]
- **Physical Trauma –** Many victims also experience physical injuries. Their traffickers and customers often abuse those who have been sexually exploited. They may be raped, beaten and used over a long period. A lack of proper medical care worsens these conditions, often permanently affecting an individual's health.
- **Ostracism –** Individuals who are being trafficked can quickly become isolated from friends, family, and other social circles. This may be due to their personal feelings of guilt and shame or because they have relocated and now live far away from their community. Either way, victims can become isolated and withdrawn and lose contact with most people[39].
- **Lack of Independent Living Skills –** Many victims who escape a trafficking situation lack advanced education and the resources needed to live independently. They may not understand laws in the country where they now reside or may not speak the language, and may have a hard time living independently[40].

CURRENT SITUATION CONCERNING ORGAN TRAFFICKING[41] - In this chapter, the nature of trafficking in organs is analysed in its different forms. The relation to trafficking in human beings and the legal status as a criminal offence involving organised crime networks are explained. Its current scope and geography are described. The role of relevant stakeholders in trafficking and the financial aspects of trafficking are analysed. The modus operandi of organ traffickers is defined based on recently prosecuted cases. The general term 'trafficking in organs' covers a range of illicit activities that aim to commercialise human organs and tissues needed for therapeutic transplantation. Although transplantation medicine has seen enormous advances over the last decades and the number of transplants performed has grown to around 115000 globally[42], this covers only the needs of about 15 % of all patients on the waiting list. Undoubtedly, the resulting structural shortage of legally obtained organs is the leading cause of trafficking in organs.

TRAFFICKING IN HUMAN BEINGS FOR ORGAN REMOVAL (THBOR)[43] - The trafficking of persons for organ removal is clearly defined in the Palermo Protocol to the UN Convention against Transnational Organized Crime[44]. Article 3a states

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[37] https://theexodusroad.com/causes-effects-of-human-trafficking/

[38] HUMAN TRAFFICKING; ITS EFFECT ON WOMEN IN NIGERIA. https://foundation.elegalonline.com/human-trafficking-its-effect-on-women-in-nigeria/

[39] https://www.zerotrafficking.com/post/why-don-t-human-trafficking-victims-come-forward-or-cooperate

[40] https://portal.abuad.edu.ng/Assignments/1593189915HUMAN_TRAFFICKING.docx

[41] Definitions | Accountability Framework. https://accountability-framework.org/the-framework/contents/definitions/

[42] Global Observatory on Donation and Transplantation, Newsletter Transplant vol. 19, no.1, 2014

[43] WHO IS AT RISK FOR TRAFFICKING? - Greater New Orleans Human Trafficking .... http://www.nolatrafficking.org/what-is-human-trafficking

[44] United Nations, Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention on Transnational Crime Res 53/111, 2000.

that: 'Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, using the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.'

This extensive definition is widely used by all organisations active in combating and preventing human trafficking, such as UNODC and OSCE[45]. It is also included in the 2005 Council of Europe Convention on Action against Trafficking in Human Beings[46].

In the Palermo Protocol, THBOR is thus defined as a specific form of trafficking in persons (THB), in which internationally operating networks, through deception and coercion, lure or compel persons in acute poverty into selling an organ. As such, it focuses specifically on the victims of trafficking, in the case of organ removal, the organ supplier. In the context of organ transplantation, this refers to a living person. From a legal point of view, THBOR constitutes, like all other forms of trafficking of persons, a violation of the fundamental human rights and the dignity of the individual and is thus defined as a criminal offence, typically committed by transnational organised crime networks[47].

To be defined as 'trafficking in persons' and to carry criminal liability, the act must comply with a strict set of criteria (see figure 1). The scheme above means that to be classified as human trafficking and thus as a criminal act, the removal of an organ would have to be the result of (one or more of) the mentioned acts and means. The Palermo Protocol emphasises that, in the case of trafficking, any agreement or consent on the victim's side is irrelevant and invalid since it is obtained under pressure. The Palermo Protocol created a legally binding instrument against trafficking in persons (including for organ removal) for the first time.

ORGAN TOURISM OR TRANSPLANT TOURISM - Another term that is widely used in the context of trafficking in organs is 'organ tourism' or 'transplant tourism. In contrast to THBOR, it focuses more on the recipient of a commercially obtained organ: the patient who travels abroad searching for an (illegal) transplant. This term is not uniformly defined nor widely used in official documents[48].

The 2008 Declaration of Istanbul[49] (DOI) has proposed the definition of 'transplant tourism' – **"Travel for transplantation is the movement of organs, donors, recipients, or transplant professionals across jurisdictional borders for transplantation purposes. Travel for transplantation becomes transplant tourism if it involves organ trafficking and commercialism or the resources devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its population."[50]**

[45] United Nations Office on Drugs and Crime: Global Report on trafficking in persons 2012; Organization for Security and Cooperation in Europe: Trafficking in human beings for the purpose of organ removal in the OSCE Region, 2013.

[46] https://www.un.org/en/observances/slavery-abolition-day/

[47] https://docplayer.net/15045089-Trafficking-in-human-organs.html

[48] https://1library.net/document/yr0d157y-trafficking-in-human-organs.html

[49] The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (convened by The Transplantation Society and International Society of Nephrology in Istanbul, Turkey, April 30 – May 2, 2008. See also par. 4.9.

[50] The Hazards of Transplant Tourism - American Society of Nephrology. https://cjasn.asnjournals.org/content/4/2/249

The assumption is often that in transplant tourism, the organ is obtained through a more or less overt financial transaction with the supplier ('vendor'), who has consented willingly to having his kidney removed. There would be no need for force, coercion or deception to obtain the organ. These vendors are usually impoverished local inhabitants and are not transported across boundaries[51]. Strictly following the THBOR definition, transplant tourism would not meet all the criteria for trafficking and fall outside the description of the crime. However, based on the knowledge gained from numerous transplant tourism cases, there appears to be considerable overlap between transplant tourism and THBOR. Given the vendor's poverty and vulnerability, organ removal consent cannot be seen as based on autonomy and a voluntary decision; deception and fraud in the payment are frequent, and brokers and recruiters target specific vulnerable populations. Also, the vendor's lack of post-operative care strengthens the exploitation element.

TRAFFICKING IN ORGANS, TISSUES AND CELLS (OTC) -

> **Trafficking in OTC may be defined as:** *"The handling of any human organ, tissue or cell obtained and transacted outside the national legal system for organ transplantation"*.

In contrast to THBOR, the term 'trafficking in OTC' focuses on the trafficking of human body parts deriving from living or deceased persons (donors)[52].

THIS KIND OF TRAFFICKING HAS A BROAD SCOPE - It may occur as buying and selling organs/tissues from living persons and stealing organs/tissues from deceased persons. This form of trafficking does not fall under the definition of trafficking in persons, as described in the UN Palermo Protocol. Consequently, it is not an act punishable as a crime in the trafficking of persons (THB). However, trafficking in OTC does imply the selling and buying of body parts (organs) and, as such, falls under the universal prohibition of gaining profit from the human body and its features (commodification and commercialisation), which is prohibited and punishable under international conventions[53], as well as under national transplant legislation. Trafficking in persons for organ removal (THBOR) is a crime where the exploitation of an individual is the central aspect (a combination of three elements: action, means and purpose has to apply for the offence to be constituted). The definition is precise and uniform, and the framework is widely used. Trafficking in OTC is a crime where the organ and its use are the central elements (illegally removed organs (and tissue and cells) from either living or deceased persons are entered into the regular legal transplant system). So far, there has been no precise and uniform definition of trafficking in OTC.[54] From a legal/criminal perspective, it appears that sanctions for committing trafficking in persons are more severe than for violating the prohibition on gaining profit from the human body. For an effective strategy against all forms of trafficking in organs, it is necessary to have at one's disposal a uniform and legally binding instrument that includes both THBOR and trafficking in OTC elements. The Declaration of Istanbul has attempted this approach, but it is not a legally binding instrument. As will be described later, the CoE Convention against Trafficking in Human Organs, finalised in July 2014 and opened for signature end of March 2015, has also taken this approach[55].

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[51] https://docplayer.net/15045089-Trafficking-in-human-organs.html
[52] https://www.europarl.europa.eu/RegData/etudes/STUD/2015/549055/EXPO_STU(2015)549055_EN.pdf

[53] Council of Europe, Convention for the protection of human rights and dignity of the human body about the application of biology and medicine (CETS No. 164, 1997), and its Additional Protocol (CETS No. 186, 2001). WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation, revised version, 2010. WMA statement on Human Organ Donation and Transplantation, revised version 2006.

[54] https://1library.net/document/yr0d157y-trafficking-in-human-organs.html

[55] Council of Europe Convention against Trafficking in Human Organs. CM92013479 final, of 9 July 2014.

SCOPE OF TRAFFICKING IN ORGANS[56] - The development of organ transplant medicine over the last 25 years has been so rapid that transplants are now literally performed around the globe. In 2012 over 114000 transplants were done in 109 countries, of which some 70 % (77800) were kidney transplants (from both living and deceased donors)[57]. These numbers include commercial transplants from paid donors. However, it is difficult to determine the true extent of trafficking in organs, as reliable data is absent due to the clandestine nature of trafficking. Another reason may be that 'such trafficking has not yet received priority attention or scrutiny from member states, as the UNODC Secretary-General remarked in his 2006 report[58]. In 2012 and again in 2014, the UNODC published its Global Report on trafficking in persons, based on official information from law enforcement agencies around the world concerning suspected, investigated and prosecuted cases of trafficking[59]. The report states that trafficking in persons for organ removal (THBOR) has been reported in 16 countries and all regions around the globe (the report says that about 50 victims of THBOR were detected during the 2010-2012 period in Europe and Central Asia). It was estimated that trafficking for organ removal accounted for 0.3 % of all detected human trafficking cases—a small proportion, but with a wide geographical spread. However, since this number is based on detected issues only, it is most probably underestimated.

In 2007 the World Health Organization assessed, based on data from member states around the world, that 5 to 10 % of kidney transplants are performed annually with organs from commercial donors (3400- 6800 in 2007)[60].

Recently the WHO Office has confirmed that an estimate of at least 5000-7000 annual commercial kidney transplants is more realistic. Although there was a temporary drop in 2006-07, the number has been growing ever since, and the organ trade has shifted from former 'hubs' (e.g. Pakistan, the Philippines and Israel) to new countries, such as Costa Rica, Colombia, Egypt, Vietnam and Lebanon. Recent local reports on trafficking around the world have been published on the website of the Declaration of Istanbul Custodian Group[61]. For the European Region, current data on trafficking in persons has been presented in the 2014 Eurostat Report[62]. Over 30000 registered victims of THB have been reported in the 28 member states (in the 2010-2012 period); the breakdown for the type of exploitation is as follows: 69 % sexual exploitation, 19 % forced labour, and 12 % other forms of exploitation (including trafficking for organ removal and child selling). There is no detailed information on the number of THBOR cases, in total or per country.

STAKEHOLDERS IN TRAFFICKING OPERATIONS - Trafficking (THBOR) networks show a wide variation in size, division of labour between the actors, and geographical scope. However, in all networks, some essential roles and tasks should be fulfilled, and conditions required for the operation to be successful.
Emphasizing the transnational character of THBOR, each box may represent a function located in a different country.
In the following sections, the roles of different actors and stakeholders in the network are described: -

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[56] Living Donor Kidney Transplant - Henry Ford Health - Detroit, MI.
https://www.henryford.com/services/transplant/kidney/living-donor

[57] GODT, Newsletter Transplant 2014 vol 19, September 2014.

[58] UNODC CCPGJ, Report of the Secretary-General on preventing, combating and punishing trafficking in human organs, 2006.

[59] UNODC Global Report on trafficking in persons, 2012.

[60] Shimazono Y., The state of the international organ trade: a provisional picture based on integration of available information, Bulletin of the World Health Organization, 2007; 85.

[61] DICG: www.declarationofistanbul.org

[62] Eurostat, Statistical working papers: Trafficking in human beings, European Union, 2014 edition.

Brokers - A criminal network that specialises in trafficking in organs (THBOR) is usually led by an international coordinator, who is generally also the person who established the network. The often used term 'broker' has no uniform definition. Still, the description used by Yea[63] is an apt one: ***"an intermediary between a kidney buyer and seller who connects the two using their knowledge of medical personnel and facilities that engage in illegal transplantations. The broker's key asset in this market is their greater knowledge of other stakeholders to whom the seller does not have direct access."***

The broker is the one who makes the strategic decisions for operating the network and is generally also the person with whom potential recipients come first in contact (through the internet or word of mouth) in their search for an organ. In most networks, the broker's primary role is to establish and regulate the supply of recipients, channel all payments, and oversee the matching logistics with the potential organ suppliers[64]. In more extensive transnational networks, there may be more than one broker. Brokers often see themselves as business executives who negotiate the price of the transplant package offered to the recipient and set the fee for the organ supplier (in the most profitable way for the network). In some cases, brokers are doctors/surgeons or directors of hospitals or tissue-matching laboratories. Actual prosecution cases against criminal trafficking networks and their brokers have shown that the more the broker acts as an international 'business executive', the greater the chance of engaging in trafficking in persons (THBOR), targeting vulnerable people as potential sellers, and exploiting these victims.

- **Local recruiters and other facilitators -** Brokers should be distinguished from local recruiters: persons who are employed to find or identify the actual organ sellers/suppliers. Recruiters (or scouts) usually operate within one country or a specific geographical area (such as a Philippines slum or a refugee camp). Recruiters are sometimes involved in other forms of human trafficking (sexual exploitation, forced labour). In some cases, they are (corrupt) local police officers, but they have often been former organ sellers. Recruiters are usually paid per successful recruit, resulting in a transplant.

TRAFFICKING ALSO DEPENDS ON OTHER FACILITATORS WHO COLLABORATE WITHIN THE NETWORK:

- **'minders'** accompany the recipients during their travel and while they are lodged in hotels/safe houses waiting for the transplant;
- **'enforcers'** ensure that the organ sellers/suppliers go through with the contract; drivers take care of the 'safe' transport of the recipients in the foreign country.

Also important are interpreters facilitating communication with recipients or suppliers, local doctors, and hospital staff.

MEDICAL PROFESSIONALS AND LOCAL HOSPITALS - Crucial to the trafficking network is a collaboration with medical professionals, local transplant hospitals, and matching laboratories. One needs surgeons, nephrologists/hepatologists and anaesthesiologists to perform organ removal and transplant operations. Additionally, nurses and lab technicians are involved. The illicit transplants have been performed by doctors employed by or even were themselves the coordinators of the trafficking network (e.g. the Medicus case). In other cases, the broker/co-ordinator of the network has to contract local hospitals and medical staff, which are open to a lucrative – but illegal – deal (e.g. in Turkey and the Philippines). In more rare cases, the transplants are performed in hospitals in developed countries, where hospital staff and executives have no idea that these are, in fact, illicit transplants, making use of paid

[63] Yea S., Trafficking in part(s): The commercial kidney market in a Manila slum, the Philippines, Global Social Policy. 2010; 10:358- 75.

[64] In the Rosenbaum case, the broker referred to himself as the 'matchmaker', who – as head of a Jewish charity – brought recipients and donors together.

non-related donors (e.g. the Rosenbaum network in the USA presented the donors as genetically related or emotionally related family volunteers)[65].
A difficult question is to what extent medical personnel, nurses, lab technicians and others in a transplant hospital contracted by a trafficking network to perform illicit transplants are aware that they are engaging in criminal acts and are seen as accessories (e.g. in the Netcare case). It is even more complicated to establish to what extent doctors in European or American hospitals can be held criminally liable for facilitating organ trafficking or transplant tourism when they counsel or prepare their patients for trying to have a transplant abroad[66].

THE ROLE OF CORRUPTION - Corruption is an essential ingredient and prerequisite for trafficking in organs. The trafficking in persons (THBOR) for organ removal on a larger scale would not be possible without the assistance of corrupt police officials, customs officers, officials giving out visa and travel documents, and sometimes officials in the health administration who issue false licenses to hospitals and doctors (see the Medicus case). In some instances, networks have close links with existing organised crime groups engaged in 'traditional' human trafficking (prostitution, sexual exploitation, forced labour)[67].

THE BACKGROUND OF ORGAN BUYERS/RECIPIENTS - In contrast to the suppliers of organs (victims of THBOR), there has been the surprisingly little academic study or media attention on the recipients who travel abroad searching for an illegal transplant. They are not systematically reported to the health care system in their home country, although their treating nephrologist/hospital will know the circumstances. The confidentiality rules in medicine and the fact that most recipients of bought organs are aware that they have committed an illegal act (although they avoid the term 'crime') make it difficult to trace and interview these recipients.
The anthropologist Nancy Scheper-Hughes has given a very general indication of the background of recipients: ***"From North to South, from poor to rich, from young to old"***[68].
From existing trafficking cases, there is more detailed information on the background and motives of recipients:

- Long waitlists and waiting times (enhancing the risk of dying on dialysis)
- Not being admitted to the waitlist or being de-listed because of a health condition
- Seeking a pre-emptive transplant (before starting dialysis)
- Not wanting to ask relatives for a live donation
- No possibility of or access to transplantation in the home country (e.g. African countries)
- Belonging to an ethnic minority in the country of residence; having the idea that one has better access to a transplant in the land of origin or the possibility of a better-matched kidney[69]
- No difference has been observed between recipients of organs retrieved through THBOR and from transplant tourism.

Although it has been reported that not all patients who travel to obtain a purchased kidney are necessarily rich or come from a wealthy background, their economic situation is generally markedly better than that of the organ suppliers[70].

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[65] https://1library.net/document/yr0d157y-trafficking-in-human-organs.html
[66] https://www.europarl.europa.eu/RegData/etudes/STUD/2015/549055/EXPO_STU(2015)549055_EN.pdf
[67] OSCE Report, 2013.

[68] Scheper-Hughes N., Neo-cannibalism: the global trade in human organs, Hedgehog Rev, 2002; 381: 16

[69] Cronin A., Solving the kidney transplant crisis for minority ethnic groups in the UK: Is being transplanted overseas the answer? in: W. Weimar, MA Bos (Eds.): Expanding the European Platform, 2011, p. 62-72.

[70] In the recent past insurance companies in some countries would fully reimburse overseas transplants, irrespective of the illicit mode of organ removal (e.g., Israel, the Netherlands).

Another undeniable fact is that the recipients provide the funds that make trafficking in organs possible and 'drive the business.

CHARACTERISTICS OF ORGAN SUPPLIERS/VICTIMS - There is vast literature on the background and characteristics of organ suppliers (sellers) that explains their motives for giving up an organ. The available features are:

- Coming from poor developing countries (often indicated as 'organ-exporting countries)[71], or belonging to a part of the population living below the poverty line
- Being in a position of vulnerability (being poor, an illegal immigrant, a refugee)
- Lack of basic medical knowledge, not aware of potential health consequences of having a kidney removed
- Low education level, being illiterate
- Young age group (18-30 years), primarily males
- Often lured into organ removal by fraud and deception, or coercion
- From a home country that lacks a legislative system to prohibit and prosecute trafficking in persons effectively, there is a high level of corruption.

The organ supplier is not considered a participant in the trafficking network but is seen as a victim of exploitation, needing care and protection[72].

MODUS OPERANDI OF ORGAN TRAFFICKERS[73] - A description of the modus operandi of an organ trafficking network is already implied in the definition of 'organ trafficking' as proposed by the Declaration of Istanbul (and derived/adapted from the UN Palermo Protocol): ***"The recruitment, transport, transfer, harboring or receipt of living or deceased persons or their organs using the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability, or the giving to, or receiving by, a third party of payments or benefits to achieve the transfer or control over the potential donor, for exploitation by the removal of organs for transplantation"***[74].

As can be seen, this definition covers THBOR and transplant tourism, as well as trafficking in organs from deceased persons.

Mode: 1 - shows a recipient travelling from country A to country B, where the organ supplier and the transplant center are located.

Mode: 2 - shows an organ supplier travelling from country A to country B, where the recipient and the transplant center are located.

Mode: 3 - shows a situation where both recipient and organ supplier from country A travel to country B, where the transplant center is located.

Mode: 4 - shows a situation where the recipient from country A and the organ supplier from country B travel to region C, where the transplant center is located. An important issue is that for both the recipient and the organ supplier, the preparation of both the removal and the transplant must be done well in advance so that the recipient and the supplier

[71] The most often named are India, Pakistan, China, the Philippines Bangladesh, Ukraine, Kazakhstan, Russia, Iraq, Jordan, Egypt, Romania, Moldova, Kosovo, Turkey, Israel, Brazil, Colombia, Peru, and Bolivia.

[72] Gunnarson M, Lundin S., The complexities of Victimhood: Insights from the Organ Trade, Somatechnics, 2015 (in press).

[73] DILG Chief Optimistic of ASEAN States' Support vs. Trafficking in Persons." MENA Report, Albawaba (London) Ltd., May 2017, p. n/a.

[74] Declaration of Istanbul on organ trafficking and transplant tourism, 2008.

stay as short as possible in the country where the transplant is to be performed. This is done to diminish the risk of detection of the operation: in many cases, both the recipient and the supplier are discharged and sent back home within a week, with grave risks to their health[75].

FINANCIAL ASPECTS OF TRAFFICKING IN ORGANS - There can be no doubt that the aim of organ traffickers is material gain rather than delivering safe and good quality medical care, although some claim that commercial transplants relieve the shortage of transplantable organs. The massive profit from illicit transplants is also achieved with a relatively small risk of prosecution for the perpetrators. The US-based Institute for Global Financial Integrity, in its 2011 report, presented a rough estimate that organ trafficking may generate illegal profits in the range of USD 600 million to USD 1.2 billion per year[76]. In the following section, the financial consequences for organ suppliers (vendors) and recipients are analysed; an estimate of the illegal profits made by the traffickers is presented.

PAYMENTS TO ORGAN SUPPLIERS - The amounts of money paid to organ suppliers (victims of trafficking) show significant variation across the globe. Media reports and police investigations in several prosecuted cases have yielded credible information. The amounts above originate from studies and surveys where a sizable number of vendors (30-300) could be interviewed. In most cases, the vendors' part received was 25 to 50 % lower than the initially promised sum.

The cash payment was usually made in instalments:

- an initial amount at the time of recruitment and
- the final price after the transplant had been performed.

Individual cases are reported where the vendor received no payment because of costs of travel, lodging and documents that had to be paid back.

Table 1 presents some of this data:

COUNTRY OF ORIGIN	AMOUNT RECEIVED	SOURCE
INDIA	USD 1400	GOYAL
THE PHILLIPPINES	USD 2300-USD 6300	PADILLA, AWAYA
BANGLADESH	USD 1400	MONIRUZZAMAN
COLOMBIA	USD 1700	MENDOZA
BRAZIL	USD 3000	NETCARE CASE
ROMANIA	USD 6000	NETCARE CASE
MOLDOVA	USD 2500-USD 3000	VERMOT-MANGOLD, LUNDIN
ISRAEL	USD 20000	NETCARE CASE
TURKEY	USD 10000-USD 20000	MEDICUS CASE
ISRAEL	USD 10000	ROSENBAUM CASE

SUMS PAID BY ORGAN RECIPIENTS - Patients searching for illicitly obtained organs (buyers) must expect to be charged considerable amounts by the brokers/traffickers who provide such 'services. Reports by the CoE and the WHO mention black market prices for kidneys ranging from USD 100 000 to USD 200000[77]. However, a literature study by the HOTT Project consortium found that the amount of money paid by recipients varies extensively[78].

[75] https://1library.net/document/yr0d157y-trafficking-in-human-organs.html

[76] Haken J., Transnational crime in the Developing World, Washington DC: Global Financial Integrity, 2011.

[77] Vermot-Mangold, RG., Trafficking in organs in Europe, Report to the CoE Parliamentary Assembly, 2003, and WHO Bulletin, 2004; 82: 639-718.

[78] HOTT-Project, combating trafficking in persons for the purpose of organ removal, see www.hottproject.com

Table 2 shows this data:

COUNTRY OF ORIGIN	TRANSPLANTED IN	ORGAN	AMOUNT	SOURCE
TURKEY	IRAQ/INDIA	KIDNEY	USD 20000	ERIKOGLU
EGYPT	CHINA	LIVER	USD 40000-USD75000	ABDELDAYEM
PAKISTAN	PAKISTAN	KIDNEY	USD 7300	RIZVI
FOREIGN	PAKISTAN	KIDNEY	USD 25000	RIZVI
TURKEY	EGYPT	KIDNEY	USD 35000-USD40000	YAKUPAGLU
KOREA	CHINA	KIDNEY	USD 42000	KWON
KOREA	CHINA	LIVER	USD 63000	KWON
ISRAEL, USA	SOUTH AFRICA	KIDNEY	USD 100000-USD 120000	NETCARE CASE
USA	USA	KIDNEY	USD 120000-USD 160000	ROSENBAUM CASE
GERMANY/ISRAEL	KOSOVO	KIDNEY	USD 108000	MEDICUS CASE

In some cases (Pakistan, Iraq, Philippines), the recipients are offered 'transplant packages' covering the payment to the organ vendor, surgery, hospital stay and immunosuppressive drugs. In other cases, recipients would have to make additional payments for travel, tests, documents, and accommodation[79].

PROFITS GAINED BY TRAFFICKERS - The existing data on the proceedings in trafficking in organs is incomplete and does not give a good insight into the money flows involved in this operation. However, what is clear from the cases that have been investigated and prosecuted, is that the (international) brokers are pivotal to the trafficking network and consequently stand to receive the highest profits (more than 50 % of the sums paid by recipients). Usually, these brokers fix the price for the illegal transplant and the 'fee' for the organ supplier, depending on their insight into the 'market' and the recipients' circumstances. In most cases, the recipients pay directly to the brokers, who are their first contacts; in some cases, payments have also been made to the hospital or doctor. What is also clear from the investigated cases is that the broker has to spend money on local recruiters, people who accompany the recipient during his travel and stay ('minders'), pay bribes to police and customs officers, and of course, has to pay the hospital/surgeon. From many reports on trafficking cases, one issue stands out: the level of corruption in a country is an essential prerequisite for successful trafficking. In the India Gurgaon trafficking case, the central broker had bribed his way out of prison several times, paid extortion money to the local mafia, and was finally arrested in Nepal while on the run carrying more than USD 200000 in cash for bribes[80].

[79] https://1library.net/document/yr0d157y-trafficking-in-human-organs.html
[80] Discover Magazine, April 2010,' The Downfall of India's kidney kingpin'.

Table 3 sums up the information from a selected number of trafficking cases that were investigated and prosecuted.

CASE	PAYMENTS BY RECIPIENTS	FEES PAID TO SUPPLIER	NO. OF TRANSPLANTS	COMMENTS
GURGAON, INDIA	USD 37500-USD 60000	USD 400-USD 1200	500-600 (ESTIMATE)	TRAFFICKING OVER A 10 YEAR PERIOD
ROSENBAUM CASE, USA	USD 120000-USD 160000	USD 25000	3 CASES IDENTIFIED AND CHARGED	TRAFFICKING OVER THE 2001-2008 PERIOD
NETCARE CASE, SOUTH AFRICA	USD 120000	USD 6000-USD 20000	109 CASES IDENTIFIED AND CHARGED	TRAFFICKING OVER THE 2001-2003 PERIOD
MEDICUS CASE, KOSOVO	USD 108000	USD 20000-USD 30000	24 CASES IDENTIFIED AND CHARGED	TRAFFICKING OVER THE 2005-2008 PERIOD
SHALIMOV INSTITUTE CASE, UKRAINE	USD 100000	USD 10000-USD 15000	25 CASES IDENTIFIED, ESTIMATE 100 CASES	TRAFFICKING OVER THE 2009-2010 PERIOD

From this information, it becomes clear that trafficking in organs can become a multimillion-dollar business, and such an operation can go on for several years before being detected. Although the main perpetrators were sentenced to pay considerable fines in the above cases, the criminal proceeds of their trafficking were not always traced and seized.

RISKS OF ORGAN TRAFFICKING: TO SUPPLIERS/RECIPIENTS - Health risks to suppliers the existing reports on THBOR make it very clear that traffickers chose their organ suppliers from the most vulnerable populations. Also, the experiences of these victims during the trafficking event, based on witness reports, show that the traffickers have little consideration for their victim`s wellbeing. From the available information and surveys where the suppliers of trafficked organs have been interviewed concerning their experiences, it comes out that most of them are left to care for themselves once the organ removal and transplant have been performed. The final payment for their services has been made. Many suppliers know that selling a kidney is illegal and punishable and, therefore, will not go to the police or other authorities in case of problems; in some cases, they are threatened by local recruiters to prevent them from making complaints. Besides violating their human rights, suppliers also face many other severe consequences of losing a kidney. Reports show that most suppliers do not benefit economically from having sold a kidney in the long run; energy loss, pain, and health complications lead to deterioration of health, loss of a job and relapse into debt and poverty[81]. Most victims have no access to post-op care or check-up. There are frequent reports of depression and shame, and in some societies being an organ seller carries social stigma[82]. Problematic is that in many cases of THBOR and transplant tourism, the organ suppliers cannot be traced to see if help is needed.

[81] Goyal M., Mehta RL. et al., Economic and health consequences of selling a kidney in India, J Am Med Assoc 2002; 288: 1589-93. Naqvi S., Ali B. et al., A socioeconomic survey of kidney vendors in Pakistan, Transplant Int. 2007; 20: 034-9. Paguirigan MS., Sacrificing something important: the lived experience of compensated kidney donors in the Philippines, Nephrol Nurs J. 2012; 39: 107- 17. Budiani-Saberi, D. et al., Care for commercial living donors: the experience of an NGO's outreach in Egypt, Transplant Int. 2011; 24:317-23

[82] Lundin S., Organ economy: organ trafficking in Moldova and Israel, Public Underst Sci. 2012; 21: 226-41. BBC News, 'Moldova's desperate organ donors', 21 May 2003. Codreanu I., Codreanu N. et al., The long-term consequences of

HEALTH RISKS TO RECIPIENTS - Whereas the evidence that selling a kidney in a trafficking operation leads to severe health and social risk for the organ seller (victim) is overwhelming, things are less clear for the recipients of commercial transplants. Data on the outcome of overseas commercial transplants in recipients from western countries are scarce and give a diffuse picture that is not easy to interpret. Sajjad et al. conducted a systematic review of 29 studies in 2008 and compared the medical outcomes of both recipients (buyers) and suppliers (sellers)[83]. They conclude that most studies show that the results of transplants received abroad by patients from developed countries (USA, Canada, Australia, Turkey, UK) are (moderately to seriously) worse than those of transplants performed in the patients' home countries (post-operative complications, graft and patient survival). Transplants performed in India and Pakistan showed the worst results; those performed in China and the Philippines did not give significantly inferior results. Transplants performed over the 1990–00 period showed worse outcomes than transplants after 2000. Complications that recipients reported are: surgical complications, postoperative hernia, wound infections, donor-derived infections (HIV, Hepatitis B, CMV, fungal infections), acute myocardial infarction, steroid diabetes, and also a higher risk of acute rejection, inferior graft and patient survival. An additional problem in treating post-transplant complications is that the documentation from the overseas transplant centre is usually lacking in detail; donor information is often absent. A striking observation is that there is very little information on the outcome of commercial transplants in European patients who travelled abroad. This may be because the numbers per country are relatively small, and commercial transplants have no systematic follow-up. Exceptions are reports from the UK[84] and Macedonia[85] that show that the risk associated with overseas transplants (Pakistan, India) is three times as high as for transplants performed in the home country. Because of the risk of post-transplant complications, sometimes even death, recipients of trafficked organs are also seen by some as victims of trafficking in organs. In general, however, their fate is not comparable to the hardship and suffering of the organ suppliers.

CONCLUSION

Currently there is a wide difference of opinion among states concerning the question whether a person who sells an organ (with or without his consent) should be prosecuted for committing a criminal offence, or whether this person should always be treated as a 'victim' of a trafficking offence. Most national laws define the selling of an organ as a criminal act, for which the perpetrator can be prosecuted and penalised. On the other hand, in actual prosecution cases the organ suppliers/sellers are almost always considered victims and do not face prosecution and punishment, but are offered assistance and protection (e.g. when the act as witness for the prosecution). Most legal instruments do not make a clear distinction between organ sellers (e.g. a person who offers an organ for money on the internet, without the context of a trafficking network), and organ suppliers who become ensnared in a trafficking operation (through coercion, fraud or deception).

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kidney donation in the victims of trafficking in human beings for the purpose of organ removal, Transplantation 2010: 90. Vermot-Mangold RG., Trafficking in organs in Europe CoE 2003, Doc. 9822

[83] Sajjad I, Baines LS, et al., Commercialization of kidney transplants, a systematic review of outcomes in recipients and donors. Am J of Nephrol 2008; 28: 744-54.

[84] Cronin A, Johnson R et al., 'Solving the kidney transplant crisis for minority groups in the UK: Is being transplanted overseas the answer?', Organ Transplantation: Ethical, Legal and Psychosocial Aspects. Expanding the European Platform, W. Weimar, M. A. Bos, J. J. V. Busschbach (Eds.), 2011.

[85] Ivanovski N et al., The organ shortage in the Balkans. Pakistan – the new hope on the horizon? Organ Transplantation: Ethical, Legal and Psychosocial Aspects. Expanding the European Platform, W. Weimar, M. A. Bos, J. J. V. Busschbach (Eds.), 2011.

Likewise the position of recipients of illicitly removed organs also poses a problem in law enforcement. Under (inter)national legislation the buying of organs is universally prohibited and criminalised. This means that patients who engage in solicitation (requesting an organ and offering payment) risk sanctions. However, there is as yet no system or obligation for doctors to report returning transplant tourists to the police or health authorities. On the contrary, most doctors would consider such reporting as a breach of professional confidentiality. In view of the fact that many recipients of illegally obtained organs experience serious complications and health risks, many would see these recipients as victims of trafficking rather than as perpetrators. Some advocate that the fact that a patient has obtained an illegal organ abroad should be included in his medical record (for medical reasons), but not reported to authorities. Others have proposed that recipients of illegally obtained organs should be penalised by withholding reimbursement for the transplant. Some countries (e.g. Canada) however are taking steps to take legal action against these recipients by introducing extraterritorial jurisdiction that makes it possible to prosecute them for committing a criminal act abroad. Again, the current legal instruments do not clearly define under which conditions organ buyers/recipients may not be criminally liable.

The past 20 years have seen a lot of efforts being made to create a legal framework that is suitable for tackling trafficking in organs. The recently adopted CoE Convention against trafficking in organs, that is open for signature since March 2015, covers 47 European countries but is also open for non-CoE member states to join, may provide this ‘missing link’ in the legal framework, and offer complementary possibilities for effective criminal justice response. This Convention has a broad scope where it comes to criminalising 'illegal acts in respect to human organs', and offers targeted legal instruments, but it also shows some flaws that may weaken its effectiveness.

The combat against trafficking in organs and illegal transplants has been relatively successful in recent years, in Europe as well as in other parts of the world. However, there is a downside to this success: better investigation and tougher prosecution, combined with more effective prevention, have not made trafficking in organs disappear. It rather causes traffickers and brokers to shift their operations to other countries and continents, where widespread corruption and political instability create a good breeding ground for trafficking (e.g. parts of Latin America, North Africa and South East Asia). New target populations are illegal immigrants, inhabitants of refugee camps and those who are badly hit by the economic crisis. Only increased international cooperation in law enforcement; and also joint efforts to increase the supply of legally retrieved organs for transplantation will bring progress.