IMPROVING THE EFFECTIVENESS OF THE ORGAN TRADE PROHIBITION IN EUROPE

Recommendations

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www.EULOD.eu
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Transplantation of organs, tissues and cells is one of the leading forms of contemporary medical practice which restores normal life to thousands of patients worldwide. Satisfactory results of organ transplantation, more effective immunosuppression and improved care - all made this treatment a realistic option for a greater number of people. However the success of organ transplantation has led to a variety of challenges ranging from the organizational to the ethical.

According to the Global Observatory on Donation and Transplantation, in 2010, 106,879 solid organs have been transplanted worldwide, which meet 10% of the global need. Thus, each year approximately 13,961 patients die while waiting for a graft.

International organizations as well as responsible government agencies are working to reduce the significant gap between demand and supply by increasing the number of donors and distributing organs in the most medically efficient terms and socially most fair.

The principle of the gift was the pivot on which organ transplantation was based on since the first transplantations from living relatives, such as siblings or parents. With the increasing demand for organs unexpected categories of donors have appeared, often raising embarrassing ethical issues.

Although the concept of "altruistic donation" of organs from genetically unrelated individuals such as spouses, friends, co-workers is becoming acceptable, the questions of motivation or coercion emerged. Some ethicists are warning about a rapid decline in the traditional medicine humanistic values. In their place are arising new relationships between patient care and financial incentives, including those seeking help and those willing to pay for it. In the last decade the increasing public attention was attracted by a new reality that involves the actual buying and selling of organs, which was defined as organ commercialism and organ trafficking.

In the EULOD project we intend to analyse broader ethical, social and legal aspects of donation from living donors, and the effectiveness of legislative provisions in the field of organ trafficking and transplant tourism. Over the two years of the project numerous cases of human trafficking with the purpose of

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1 Source: www.transplant-observatory.org
organ harvesting, organ commercialism, and transplant tourism were identified and analysed\(^3\). A critical approach to current legislation, as well as legal analysis of cases that have reached court, but also to those presented in the media allowed us to identify a number of gaps in the legislation, structural and organizational problems that make transplantation systems in some countries more vulnerable to organ trafficking. Becomes obvious that efforts to prevent and combat trafficking in organs should be directed equally to both the so-called “donor” countries as well as to the countries from where are organ recipients. This brochure presents a number of recommendations that could help to improve the effectiveness of existing legislation and to the strengthening of state bodies that are involved in preventing and combating organ trafficking, as well as in protecting and assisting victims of organ trafficking.

\(^3\) The report can be found on the EULOD project website www.EULOD.eu
ROLE OF INTERNATIONAL ORGANIZATIONS IN LAW ENFORCEMENT

THE PROHIBITION OF ORGAN TRADE IS INSUFFICIENT

The World Health Organization (WHO) first declared the prohibition of organ trade in 1987, affirming that such trade is inconsistent with the most basic human values and contravenes the Universal Declaration of Human Rights. The WHO Guiding Principles state the reason why organ sales are prohibited. The Commentary to Principle 5 states: “Payment for [...] organs is likely to take unfair advantage of the poorest and most vulnerable groups, undermines altruistic donation, and leads to profiteering and human trafficking. Such payment conveys the idea that some persons lack dignity, that they are mere objects to be used by others.”

The organ trade prohibition must be seen in context of when it was formed: at a time when there was no shortage of organs and organ trade and trafficking offences barely occurred. Back then, the prohibition was successful in its aim to prevent trade and trafficking, simply because the root cause of the crime (organ shortage) was not as rampant as it is now. The prohibition worked, not only as a preventative mechanism, but also as a universal norm that organs were not to be used commercially. Almost every single country endorses the non-commerciality principle in organ transplantation and has implemented it into their national laws. The principle of non-commercialization of the human organs has been re-affirmed by the Council of Europe and by the European Union, as well.

Since the nineties however, transplantation has become a victim of its own success, with demand for organs far outpacing their supply. Organs have become more valuable and profitable to sell. Globalization has created a possibility to contact health professionals, organ brokers in the other part of the world, and to travel to distant destinations while medical and patient mobility have significantly increased. This leads to development of black markets that involve various actors who increasingly make use of organs’ high profitability.

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4World Health Organization Guiding Principles on Human Cell, Tissue and Organ Transplantation (last revised on May 26, 2008) www.who.int;
THE GLOBAL ILLICIT FLOW OF ORGS

Together with drugs, humans, arms, diamonds, gold and oil, organs are becoming the subject of an illegal multibillion dollar industry. A recent report by Global Financial Integrity estimates that the illicit organ trade generates illegal profits between $600 million and $1.2 billion per year. It ranks the trade in human organs on number ten of the illegal activities studied in terms of illegal profits made. The report further states that profits from these illicit markets are making their way to transnational crime syndicates through vast international trade networks. These networks take advantage of globalization and new communication and transportation technologies. Key to the growth and success of global criminal networks is their flexibility and versatility, which have expanded their activities to a wide diversity of legal and illegal fields. Many of these networks are successfully integrated in legal structures and institutions.

Indeed, an increasing number of organ trafficking rings are globally active that involve actors who operate in different countries from where recipients and donors are recruited. Organ trafficking accounts come from all over the world, including Egypt, India, South Africa, the Philippines, Israel, Colombia, the Balkan Region, Turkey and Eastern Europe. A growing number of countries, including

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the US, the UK, Macedonia and Canada report on patients leaving to well-known organ exporting countries who allegedly buy organs on the black market.\(^9\)

Only in very few cases have crime control efforts led to accusations by victims and prosecutions of the accused. Indeed, organ trafficking may be one of the most difficult crimes to detect. Moreover, its enforcement is not a priority of local, national and international law enforcement institutions. The universal response to the crime is characterized by punitive condemnation through legislation but awareness and expertise on how to detect and enforce the crime is practically non-existent.

**THE PROHIBITION OF TRANSPLANT COMMERCIALISM IS NOT EFFECTIVE**

Chapter 1 of the scientific report *Improving the Effectiveness of the Organ Trade Prohibition in Europe*\(^10\) has illustrated how a universal condemnation against transplant commercialism exists. However, a closer look at how the prohibition of commercialism is formulated reveals that there is a lack of criminological and legal expertise about what exactly we are trying to prevent by prohibition.\(^11\)

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\(^10\)www.EULOD.eu, Deliverable No. 9: Scientific report (recommendations), Improving the effectiveness of the organ trade prohibition in Europe;

instance in the Declaration of Istanbul,\textsuperscript{12} commercialism and trafficking are presented as being equally problematic crimes. However, coercion and exploitation of donors (trafficking) differs from the sale and purchase of organs (commercialism). Both acts warrant a different policy approach.

Many instruments designed to tackle organ trafficking and transplant commercialism do not take account of this distinction. They can improve their strategy to prevent and deter commercialism and trafficking in a number of ways. In the following paragraphs we explain why and how. We focus especially on the prohibitionist discourse by the Declaration of Istanbul and the WHO and it’s \textit{Guiding Principles on Human Cell, Tissue and Organ Transplantation}. Whereas the Declaration is intended to influence transplant professionals and societies, the WHO intends to influence governments. Both act in concert to address growing problems of transplant commercialism, transplant tourism and trafficking by strict prohibition and penalization. While WHO developed a policy to tackled organ trade, the Council of Europe took a human rights approach in dealing with the questions of organ trade. The European Union approached the same question from the aspects of security and traceability.

\textbf{WHAT WORKS AND THE WAY FORWARD FOR THE DECLARATION OF ISTANBUL}

To assess what works, we need to get our definitions straight. Organ trade takes on a wide variety of forms: only after we agree on the definition of commercialism and trafficking, and on what we find condemnable, can we agree on their prohibition. Putting a price on organs (commercialism) is different from coercing someone into selling one (trafficking).

The Declaration correctly defines and differentiates trafficking from commercialism, yet it does not mention how both acts should be approached by policy. Its principles in our opinion wrongly conflate organ trafficking and transplant commercialism to constitute one and the same problem that both warrant equally repressive, punitive responses. We therefore claim that the

\textsuperscript{12}Participants in the International Summit on Transplant Tourism and Organ Trafficking Convened by the Transplantation Society and International Society of Nephrology. The Declaration of Istanbul on Organ Trafficking and Transplant Tourism. Transplantation, vol. 88, no. 8 (2008): 1013–1018;
Declaration should clearly differentiate between policies needed to address commercialism and those needed to address trafficking.

First of all, to tackle and prevent organ trade, the root cause of the problem (organ scarcity) should be addressed. This ultimately means boosting organ supply. One such strategy that the Declaration already strongly supports is to help governments implement deceased donation programmes to increase deceased donation rates and achieve self-sufficiency. Such initiatives are being conducted in the Balkans and Black Sea region with the support of the Custodian Group, the WHO and European Union. Yet promotion of deceased donation alone is not enough to fill the gap between demand and supply of organs.

The WHO and Custodian Group should therefore, secondly, also encourage expansion of living donation in the same manner as they encourage deceased donation. They should do so by explicitly stating the need to promote living donation in the text of the Declaration and Guiding Principles. The Custodian Group and WHO should furthermore encourage governments to remove restrictions regarding living unrelated or anonymous donation to make alternative living donation programmes possible. Such programs should be implemented in consistence with international standards to ensure quality and safety of donors and recipients. Current restrictions to unrelated donation are based on the belief that living unrelated donation induces trade. However, there is no evidence of illegal trade in countries with well-organized systems allowing for high numbers of living unrelated donation such as in the US, the Netherlands, Norway and the UK.

Finally, we think that international strategy to combat organ trafficking should be improved by prioritizing enforcement. There is no doubt that organ trafficking is and should remain prohibited universally. The text of the Declaration already emphasizes the prohibition and penalization of acts

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13 The Transplantation Society. Balkan Initiative in Deceased Donation Meeting, Skopje, Macedonia Tribune 2011 April;
14 European Directorate for the Quality of Medicines and Health Care. Launch of a 3 year programme for the development of donation and transplantation activities in the Black Sea area. Strasbourg, France. Council of Europe 2011 www.edqm.eu;
including brokering and other (medical) practices that aid or encourage trafficking. Indeed, organ trafficking cannot occur without the involvement of medical staff. A recent organ trafficking network uncovered in South Africa illustrates the criminal involvement of medical staff, including nephrologists, surgeons and administrative staff who were found guilty of performing over one hundred illegal kidney transplants and receiving payments for them. This case also demonstrates the immense investment that is needed to eventually bring perpetrators to justice. It took investigators seven years to succeed in gathering enough evidence to bring the case to court. However, dedicated investigations and efforts to identify collusion in hospitals and other criminal activities, in short, the *enforcement* and police intelligence necessary to bring such cases to court, does not exist in other countries. Organ trafficking case law is practically non-existent. Prohibition of organ trafficking largely remains a paper exercise. Strict, legislative prohibitionist efforts, no matter how sophisticated, are fruitless if they are not accompanied by *enforcement* by local, national and international policing agencies.

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THE ROLE OF LAW ENFORCEMENT

The organ trafficking and transplant commercialism are prohibited practically worldwide, yet non-legislative responses to halt these crimes are almost non-existent. In June 2010, in Vienna, the United Nations Office on Drugs and Crime (UNODC) organized an expert meeting about the incidence of trafficking in persons for the removal of organs. ELPAT and EULOD representatives were invited to participate.

At this meeting three issues became evident: first, organ trafficking researchers have strong knowledge and information about organ trafficking, but this information is hardly shared amongst them. Doctors also do not share information about organ trafficking. Second, there are no partnerships between researchers, transplant doctors and judicial/law enforcers. Third, there is no awareness of the crime with judicial / law enforcement authorities. Organ trafficking is not on the ‘enforcement agenda’ of these authorities. The lack of multinational partnerships hampers effective, non-legislative response to organ trafficking.

Perhaps the most active anti-organ trafficking instrument is the Declaration of Istanbul on Organ Trafficking and Transplant Tourism. Drawn up by the international transplant community, the Declaration has proven to have significant influence. Over one hundred transplant organizations endorse its principles. The Declaration’s Custodian Group and four task forces have been established to implement and monitor its effects. Perhaps the greatest achievement for the Declaration will thus lie in bridging the gap between the medical field and the criminal justice realm. Indeed, the Declaration does not have a binding force but it may be the most influential force to stimulate governments into addressing enforcement strategies.

Recommendation 1: Develop enforcement strategies

- Awareness about the crime should be raised with local, national and international law enforcement institutions. Examples are INTERPOL, EUROPOL, UNODC, but also more local institutions such as national police service agencies;
- Such awareness should be raised amongst others, by (international) transplant societies and committees such as the Custodian Group of the Declaration of Istanbul;
• Awareness can be reached by sharing information about organ trafficking cases with these institutions. Organ trafficking researchers and other experts could send their reports and research findings to these target groups. Dissemination of information can occur through the competent authorities and Member States of EU and UN bodies;

• Partnerships should be established between various groups. Target groups are e.g.:
  — Judicial and law enforcement authorities (a. those involved in OT data collection and enforcement, i.e. police staff, police investigators, prosecutors b. anti-THB experts, i.e. the national reporters on trafficking in human beings;
  — Transplant professionals (a. surgeons, nephrologists, nurses, transplant coordinators b. representatives of national transplantation authorities and international transplant organizations, e.g. ELPAT, ESOT, The Transplantation Society (TTS), Eurotransplant (ET) and the Declaration of Istanbul Custodian Group);
  — International organizations: UNODC, EUROPOL, IOM, WHO, Council of Europe, European Commission. This group involves policy makers and decision makers;
  — Human Rights NGOs involved in protection of THB victims.

Enhanced collaboration between these partnerships can be encouraged by EU-funding mechanisms for research projects and cooperation actions, such as by the European Commission Home Affairs Program. Other platforms for enhanced collaboration lie with the Council of Europe, the WHO and the OSCE. These organizations are known to have written organ trafficking reports, yet little collaboration exists between these organizations and law enforcement institutions. Toolkits for Member States and Competent Authorities should be developed that provide indicators for police personnel to identify organ trafficking activities.

Training of police investigators should be encouraged regarding evidence gathering of organ trafficking cases and know-how about the modus operandi of the actors involved, training of prosecutors and judges. Bilateral and/or
multilateral cooperation in cross-border criminal procedures should be encouraged and established.

The crime of trafficking in human beings leads to the direct infringement of a number of the victim’s human rights, including the right to life, the right to human dignity, freedom of movement, the prohibition of torture and other cruel, inhuman and degrading testament, the right to health and the prohibition of discrimination. Since exploitation is generally viewed as fundamental to the trafficking experience, and having in mind Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings which envisages that “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”, we recommend that states provide for explicit right to immunity from prosecution for victims of trafficking in human beings:

**Recommendation 2: Provide non-punishment for victims of trafficking**

- **All states should provide for explicit right to immunity from prosecution for victims of trafficking in human beings on the grounds indicated in Article 26 of European Convention on Action against Trafficking in Human Beings;**
- **Since the omission of the non-punishment provision represents a substantial oversight in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the state parties to the UN Trafficking Protocol should initiate the amendment providing for an explicit legal protection against criminal prosecution of the victims of trafficking, as it has been already envisaged in Article 5 of the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, which like the Trafficking Protocol, also supplements the UN Convention against Transitional Organized Crimes.**

It follows from the principle that human body and its parts shall not, as such, give rise to financial gain, and stressing that the prohibition of financial gain with regard to organ is part of the legal *acquis* of the Council of Europe, but underlying the statement in the transplantation Council of Europe Parliamentary Assembly Recommendation 1611 (2003) that “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...”.

Governments are obliged to protect human rights of its citizens and all others within their jurisdiction, which includes securing them access to health care and legal services, while at the same time addressing and eliminating causes of poverty.

**Recommendation 3: Provide criminal immunity for impoverished and vulnerable sellers**

- **All states should implement legislative measures which will secure criminal immunity for impoverished and vulnerable sellers and potential sellers of organs unless they are not themselves engaged in organ trade as organ brokers.**

As trafficking in human beings for organ removal is a form of an organized transnational crime, we stress that only broad cooperative measures implemented globally, regionally and on the national level could produce effective results in combating trafficking and alleviating the roots of its cause – “poverty, underdevelopment and lack of equal opportunity” (Article 9 of UN Trafficking Protocol). Therefore, to reduce human trafficking for organ removal the improvement of national law enforcement policies should embrace:

**Recommendation 4: Develop law enforcement polices to suppress trafficking in human beings for organ removal**

- **Governments should adopt measures to fight against trafficking in human beings including the trafficking for organ removal in accordance with the European Convention on Action against Trafficking in Human Beings and recommendations issued by GRETA, which is a body responsible for monitoring the implementation of the Convention by Contracting States;**
• States should show strict adherence to the principle aut dedere aut judicare: a state should make every effort either to prosecute the trafficker or extradite him/her to the state having jurisdiction;

• States should adopt legislative measures to establish (a) extraterritorial jurisdiction for instituting the criminal proceedings against the perpetrator and (b) a conditional universal jurisdiction which would provide for prosecution by any state even in the absence of any connection between the state, the perpetrator and the victim, provided that the perpetrator is in custody of the state concerned (forum de prehensionis jurisdiction);

• States should strengthen international police cooperation aimed at better exchange of information between countries of origin and countries of destination through the established networks such are INTERPOL, EUROPOL and SECI (Southeast European Cooperative Initiative Regional centre for Combating Trans-Border Crime) with an aim to eliminate a high number of unreported cases.

Organ trade for the purpose of organ transplantation mainly exists due to shortage of organs. Since organ trade has become a widespread transnational practice, national and international policies to combat organ trade (commercialism) should conform the following:

**Recommendation 5: Adopt measures for the explicit criminalization of organ trade**

• All states should adopt legislative measures which would expressly prohibit making financial gain with human organs and advertising the need for or availability of organs with a view of offering or seeking financial gain;

• To prevent organ trade for organ transplantation purposes organ trade should be criminalized on the national level;

• All states should support the UN and the Council of Europe efforts to adopt international convention that would define trafficking in organs for transplantation purposes and introduce criminal-law measures to fight against such practices.
THE ROLE OF HEALTH CARE PROFESSIONALS

The fight against trafficking in persons for the purpose of organ removal, organ trafficking and organ trade, and organ tourism is complex process. International and national legislative frameworks emphasize the necessity of cooperation amongst various actors involved in this field. While there are many issues that shall be handled with the help of other professionals and institution (police, criminology, departments fighting organized crime, so on) the public health sector and the health care professionals have also some attributions in fighting organ trafficking, organ trade and organ tourism. It is in the paramount interest of the health care professionals involved in transplantation that their day by day life saving efforts not to be shadowed by the phenomena of organ trafficking and trade.

One of the first international instruments on this filed, Council of Europe Recommendation no. 1611 of 2003 on Trafficking in organs in Europe propose introduction of sanctions also for the medical staff involved in transplanting organs obtained through illegal trafficking; the denial of national medical insurance reimbursements for illegal transplants abroad; the denial of 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.\(^{17}\) The WMA and WHO Guidelines on human organ and tissue transplantation also address the issue of the professional obligation of physicians.\(^{18}\)

Recommendation 6: Strengthen the responsibilities of health professionals in case of living organ donation

- Medical staff should seriously consider proposing a donation in case of emergencies when the seriousness of the recipient health may imply a

\(^{17}\) Council of Europe Parliamentary Assembly Recommendation 1611 (2003) Trafficking in organs in Europe;
\(^{18}\) WMA Guidelines, WHO Guiding Principles.
pressure loud that could interfere in the potential donor’s information and decision making process;

- Medical staff shall carefully assess the risk benefit balance for donor and recipient. Donors should not be called on to donate in clinically hopeless situations;
- Medical staff shall periodically overview the informed consent guidelines to verify that they contain all the possible and up to date information about the conditions of the donation and its effects (including in them the latest results of research on the long term effects of donation, for example);
- Commitment to observe WMA guiding principles on human organ and tissue donation and transplantation.

It follows from our study that victims of organ trade and trafficking are often the poorest that have difficulties to access even basic health care services. Based on the basic ethical and legal norms these victims should have access to health care to save their lives and prevent the deterioration of their health condition.

**Recommendation 7: Strengthen the responsibilities of health professionals towards the victims of organ trafficking, trade, or tourism (to organ providers)**

- Adequate information should be provided to all living organ donors (and if applicable to their families) about the medical, health and legal impact of organ donation;
- Medical records should be adequately kept;
- Assessment of the nature of relationship between the donor and recipient should be made according to the relevant laws, but in case of doubt legal and psychological consultation should be conducted;
- In case of clandestine organ removal, victims shall be eligible for emergency and post-operative medical treatment;
- Information should be provided to the victims on the accessibility of health care and legal aid;
 Independently to the legal (criminal sanctions) imposed on the intermediates and health professionals institutional ethics committees (in the lack of ethics committees) the head of the institution should be notified about the case to make necessary preventative steps.

It is almost impossible to prove whether instances of patients travelling abroad for organ transplants constitute ‘real’ cases of transplant tourism. The cross-border and complex nature of this act possibly makes it one of the most difficult crimes to prove and prosecute. This complexity raises challenges for doctors and other health care providers confronted with patients who opt for transplants abroad.

Recommendation 8: Strengthen the responsibilities of health care professionals in case of transplant tourism (organ receivers)

- By providing information about the laws relevant to the procedure;
- By providing information about the risks of the pre-and post-operative journey;
- Before transplantation: it is important to identify patients at risk for organ tourism, information on risk and dangers, moral aspects, cooperation in preparing organ tourists;
- After transplantation: care should be provided to returning organ tourists, (obligation of care);
- Rules for re-admittance to the waiting list (in case another transplantation becomes necessary) should be respected;
- Medical records should be adequately kept.

Transplant tourism shifts the traditional role of doctors as health care providers to “agents”, encouraged to deter and prevent transplant tourism.\(^9\) Below, we

present recommendations for health care professionals confronted with patients who – presumably – bought organs for transplants abroad.\textsuperscript{20,21}

\textit{Recommendation 9: Health care providers should dissuade patients from seeking organs abroad}

- Considering the medical complications that accompany transplants abroad, health care providers should dissuade the patient from going abroad by warning him/her against the medical risks;
- Doctors should refrain from informing or “educating” all patients about going abroad: this may bring the unintended consequence of putting ideas into the heads of patients who otherwise might not have considered the possibility at all. Such warnings should only be directed towards the individual patient who has expressed an interest or desire to undergo a transplant abroad.

While the international law is clear in its intension to prohibit all forms of organ trade, health care professionals often meet ambiguous cases when (suspected) organ tourists come for pre- or post-operative treatment. Therefore we think it is essential to provide professional guidelines also for practitioners that help to translate international norms in context of the everyday life.

\textit{Recommendation 10: Develop professional guidelines for professionals who may be in contact with organ tourists}

\textsuperscript{20}This section is based on a paper by FrederikeAmbagtsheer, DamiánZaitch, René van Swaanningen, Wilma Duijst, WillijZuidema, and Willem Weimar, “Cross-border quest: The reality and legality of transplant tourism” in the Journal of Transplantation (forthcoming in 2012);
• Patients in general have a right to access their medical records and to receive a copy of it;

• Whereas the patient’s right to receive medical care remains untouched, it could be claimed that the doctor may consider disclosing patient information to the police. This consideration may arise in the situation where the patient outright declares to his doctor that he is going to buy an organ for transplant abroad from a trafficked donor;

• Medical doctors should receive clear guidance (in the framework of their training) that they should not assist patients in buying organs, even if they would go abroad to do that. The collision of professional duties; respect the patients’ privacy on one hand and the duty not to commit and to assist crime, on the other hand should be eliminated by informing patients’ about the law and the health risks. Beyond these activities health care professionals should not promote or assist in any way the activity of buying organs by their patients.
THE ROLE OF PREVENTION: EDUCATING HEALTH CARE PROFESSIONALS

According to international instruments on trafficking with human beings for the purpose of organ removal or organ trafficking prevention shall have a very important role in the fight against these negative phenomena. As it is stated in the reports on this phenomenon organ trade, trafficking and tourism is demand driven. One way of combating it is to increase the availability of legally procured organs and to keep in the framework of the legality the donation process. In a first step the volume of deceased donation shall be maximized, and living organ donation must be deemed a subsidiary practice. One measure towards this major goal can be the education of the healthcare professionals (and of the media), which is regarded as the most cost effective means of increasing the public’s willingness to donate. For increasing the rate of deceased donations a special attention shall be provided for improving the knowledge of health professionals not directly involved in transplantation about transplantation issues.

The Spanish Model of Organ Donation can be regarded as a best practice in this regard and a great effort in training programs targeted to all the professionals directly or indirectly involved in the process of donation was one of the main elements of this model. These training programs cover each step in the process of donation from donor detection and maintenance to legal aspects including brain death diagnosis, family approach, and organizational issues. In addition, training in areas such as management of resources or relation to the mass media has been also developed.

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22 Council of Europe Convention on Action against Trafficking in Human Beings, Chapter II, Article 5; Article 6; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention on Organized Crime (2000), Art.9;
24 Council of Europe. Organ shortage: current status and strategies for improvement of organ donation - A European consensus document. Xii;
In the context of living organ donations the educational process could aim to improve the functioning of the committees involved in living organ decision making in order to be more efficient in preventing the attempts of illegal activities that might occur in the transplantation process. Finally it would also involve raising awareness on the existence of the negative phenomenon of organ trafficking, trade and tourism, for making health care professionals alert to the detection of possible frauds.
There can be observed a growing role of ethics in regulating organ transplantation in Europe. New legislative measures in public health law have stipulated the presence of bio-ethicist in the specialized committees supervising the living organ donation process (in Romania, etc.), prescribed the creation of a local or central Ethics Committee dealing with transplantation (for ex. Slovenia, Check Republic, Bulgaria), or required the involvement of Hospital Ethics Committee in the evaluation of living organ donation process (for example Hungary). The major role of such requirements is to ensure the observance of major ethical principles and requirements related to transplantation; to wither suspicions surrounding paid organ exchanges between donors and recipients and wither potential organ trafficking schemes or organ trade. The relevance of the activity of these Committees is enhanced in countries permitting unrelated living donations where the potential of abuse is much higher.

By strengthening the role of ethics in LOD decision making process violations of the transplantation law could be minimized, the suspicions can be eliminated, and this can result in a better context in which LOD is carried out.

However, at present the decision-making practice of such committees is far from being unitary in translating the law into practice through purely objective criteria. While there are some shared principles that shall guide Ethics Committees’ decision making, such as objectivity, impartiality, professionalism, transparency there exists a diversity in application and evaluation of principles in practice. The actual functioning of the committees are correlated with such contextual factors as: the institutional environment; the role of ethics in clinical decision making in that country/the transplantation unit (preparation of doctors in the field, good will, etc.); the experience and professional background of the committee members; the larger socio economic and cultural context. The context therefore matters, however some organizational steps could be
recommended cross-nationally for an enhanced transparency in LOD decision-making. These are the followings:

**Recommendation 11: Empower the work of ethics committees**

- **Legislators should provide the possibility of two alternate commissions in one hospital unit** (the potential donor and recipient to be assessed by separate health care team if possible)
- **Clear cut rules should be developed on the term limit and on formation and membership changes within the commission**
- **Precise definition of the Committee’s roles is necessary to avoid debates on competence**
- **Material/financial conditions for the work of the Committees should be provided**
- **The decision making process of this Committees should be transparent and accountable**
- **A member of the Ethics Committee shall act as the “donors defender”**
- **Establish procedures to follow when donation does not proceed for various reasons (medical, donor’s change of mind)**
- **Higher heterogeneity of members’ backgrounds and affiliations**
- **Bringing non-transplantation unit members within, or rotating the membership of commissions among transplantation centres**
- **Ensuring the presence of a professional with specialization in medical ethics/bio-ethics**
- **External supervisory body overseeing the commission’s work**
- **More research on the activity of the Committees**
- **Education and training for the members of the Committee**
EDUCATION AND TRAINING FOR THE MEMBERS OF THE COMMITTEES AND OTHER HEALTHCARE PROFESSIONALS INVOLVED IN LIVING ORGAN DONATIONS

Certain transplantation centres are in the position to evaluate more living organ donors than others due to the difference in rate of living organ donors among countries in Europe, therefore in their day by day experience have to face more cases which inevitably raise more issues to solve and decide on. Other centres have more experience in ethical deliberations, or have been functioning for a longer period of time already. Therefore it would be beneficial if members of various committees could be able to discuss the issues raised during the evaluation with their colleagues working in other Committees in different clinical settings or in different counties, and to exchange opinion and discuss possible solutions. During such meetings they could be also updated by other experts about issues related to organ trafficking and other illegal activities related to organ transplantation and how they could be helpful in preventing them.

Recommendation 12: Provide policy training for committee members and other healthcare professionals involved in living organ donations on the fight against organ trade and organ trafficking

- Organize workshops/meetings where exchange of best practices on the work of the Committees is made possible;
- Periodically invite also experts in the field of anti-trafficking who could give update information for the medical staff on the current issues related to organ trade and trafficking.
Professional associations involved in transplantation might facilitate the organization of workshops during which the professionals involved in living organ donation decision making would be able to exchange best practices and to discuss the issues emerging during LOD decision making.

The workshops shall also include awareness raising on illegal activities in organ transplantation. Such workshops or trainings could be organized as satellite meetings of congresses, for example.

Education materials could be generated based on the previously mentioned research.

An important educational tool could be the professional guidelines for the evaluation of living organs donors. These already exist in many transplant centres but still not in each country.
Mapping various organ trade and trafficking cases and laws that try to prevent them it is striking that although legal provisions in the countries where our studies were made are consistent in prohibiting organ trafficking and organ trade still many violations of the legal norms are justified by the phenomenon of organ scarcity. Scarcity seems to be a magic word as it often indicates the necessity to shift and change the previous legal policy. In the legal debates on organ transplantation scarcity of organs is often serves as the ultima ratio.

And, of course, in the careful analysis of the situation it is not the scarcity of organs, as such that provides challenges to health care. It is the combination of many other things, such as the lack of information, trust or poor infrastructure or lack of solidarity. In fact, number of transplantation is increasing annually and by now scientific developments have made it medically possible to replace both structural and cellular human body parts. Transplant procedures continue to develop and in the future that may offer good alternative treatment for diabetes mellitus and even for some malignant diseases. Despite the technological development experts still warn policy makers that there is a serious organ scarcity. On the other hand social scientists and the public often feel that we live an age when human tissues, organs are collected in an unprecedented scale.

There are many reasons for the shortage of donors (rather than organ scarcity. The majority of organ donors are patients who die in hospitals and “less than 3% of the deaths in hospitals are diagnosed with brain related criteria before cardiac arrest, and therefore the number of potential organ donors is low.”

Indeed, if one looks at the long waiting lists for organs and slow progress of alternative therapeutic possibilities (such as stem cell research) one may see the need to re-examine the current legal policy for organ donation. Paradoxically when transplantation were relatively new, dangerous and rare, donors could feel more like heroes while when it has become a “routine” treatment donors are less likely want to participate in something that is not so heroic any longer.

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26 Organ Donation and Transplantation Policy Options at EU Level, Consultation Document, 27 June, 2006, EU Commission
Incentives as a solution for “organ scarcity” were several times recommended during the EU-LOD workshops. While the European legal framework in several instances (repeatedly and consistently) emphasize the prohibition of financial gain, little gap has remained for offering some benefit in kind. In the literature for instance, Eugene Volokh argues that a "right of medical self-defence ... makes [an] organ sales ban presumptively improper and unconstitutional when the organs are needed to protect people's lives.

From our case studies we concluded it is usually the poor who donate and poverty is perhaps the most significant factor in making a person vulnerable to coercion. As it follows any measure that might be implemented here should take into account vulnerability. First we believe more information were necessary to notify the public about the phenomenon of “organ scarcity”.

Second, in places where anomalies, such as violation of legal norms, organ trade, and organ trafficking cases were observed usually the infrastructure for legal forms of transplantation is poor.

As it follows a more even distribution, if necessary possibility for European education, exchange programs on organ transplantation and the possibility to apply for funding in poor regions were a good option to tackle the problems of health inequalities. In our study it did not come as surprise that the major cause for organ trafficking was not so much the legal lacuna but more the problems with enforcement and health inequalities.

Recitals of the EU directive clearly engage with the cultivation of altruism. For instance, recital (19) mentions altruism as an important factor in organ donations. In the spirit of the directive non-payment is directly linked to security.

“To ensure the quality and safety of organs, organ transplantation programs should be founded on the principles of voluntary and unpaid donation. This is essential because the violation of these principles might be associated with unacceptable risks. Where donation is not voluntary and/or is undertaken with a view to financial gain, the quality of the process of donation could be jeopardized because improving the quality of life or saving the life of a person is not the main and/or the unique objective. “
Recommendation 13: Ethical incentives: The necessity to promote voluntariness

- Donation should be voluntary and independent from direct financial incentives and it should be based on clear and accurate legal and ethical arrangements. Public exhortation campaign and cost of treatment should be compensated;
- Donation may be stimulated by health care benefits but in general solidarity should be promoted with a combination of different legal policy instruments.

Examples of successful alternative living donation programs are national kidney-exchange, ABO incompatible programs and domino-paired anonymous donation. Involving patient groups in home-based education programs is another possible solution. By delivering an educational program in the patient’s home, it is possible to more effectively reach specific patient groups and their family and friends about the option of living donation.

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RECOMMENDATIONS ON IDENTIFICATION, PROTECTION AND ASSISTANCE OF (POTENTIAL) VICTIMS OF ORGAN TRAFFICKING

Earlier identification of (potential) victims of organ trafficking is crucial to ensure the protection of rights of victims and to prevent the trafficking in the case of potential victims. It is also very important in ensuring a successful prosecution of the traffickers.

In the last years, the majority of European countries have made important progress in identifying and assisting victims of trafficking in human beings by implementing local referral mechanisms.

However, it looks like these systems are more efficient in case of victims of sexual, labor and children exploitation. Identification of victims of trafficking with purpose of organ removal is relatively new issue in the global context of trafficking. Most of the analysed data faced that the number of identified victims of organ trafficking represent a small part of the number of actual victims. Many of the victims are identified long after the episode of trafficking. The self-identification is very difficult in cases of organ trafficking, because of the consent for organ commercialization given by the victim. In addition, there are many barriers for victims to go forward; fear, shame, lack of information about the possibilities of assistance and how to get assistance, etc.

Recommendation 14: To increase the earlier identification of victims of organ trafficking

• The National Authorities and the NGO-s involved in identification of organ trafficking victims should implement the pro-active approach of identification process. Efforts should be focused on rural and remote areas;
• The range of actors participating in the identification process should be expanded by involving the family doctors, the transplant coordinators and other medical staff involved in organ donation process;
- Specific trainings and guidelines dedicated to identification methodology should be elaborated and incorporated into existing training modules. Early identification requires training on a regular basis of all actors likely to come into contact with (potential) trafficked persons;
  - Hot-lines dedicated to organ donation and transplantation should be set up;
  - Regular national info campaigns on organ trafficking;
  - Efficient mechanism for collecting data on organ trafficking victims should be implemented;
  - More research in the field should be encouraged in order to develop more effective approaches and methods of identification of victims.

Once the person has been identified as victim of organ trafficking she/he has the right to receive protection and assistance - unconditional of cooperation with law enforcement bodies. International instruments indicate a minimum standard of assistance measures which must be ensured to trafficked persons. However, the states should ensure to any trafficked person the assistance measures which are appropriate, taking into account the individual needs of the person involved and the type of exploitation. The types of assistance made available to any trafficked persons should help them in their physical and psycho-social recovery. It is known that the organ trafficking can lead to serious and long-time negative health consequences. So, the assistance should aim to prevent the health damage in time.

Recommendation 15: The assistance measures should be adequate to the real victim’s needs

- The rights to assistance and protection should be free and not conditioned by the victim’s consent to cooperate with law enforcement bodies;
- Standard operating procedures concerning the protection of victims should form a part of any memorandum of understanding between international and non-governmental organization and law enforcement agencies;
• Assistance of victims of organ trafficking should include accommodation, counselling and information, legal assistance, health care, psychological services, vocational training, employment opportunities, and protective measures;

• Long term medical follow-up should be ensured to victims of organ trafficking in order to identify report and manage any negative consequences that may result from the illegal donation.

According to the Article 11 of Council of Europe Convention on Action against Trafficking in Human Beings, each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co regulatory measures.

Although rare, but there are still cases when private data on victims of organ trafficking appear (ex. place of residence of victim) in mass-media articles. Newspapers also often offer a superficial look at human trafficking, put it in a general context, and do not provide enough information about solutions for people at risk. Revealing of victims’ identity publicly can have many negative consequences, like increasing their shame and making it more difficult to identify and reintegrate into society, as well as putting victims at risk from their traffickers. Journalists should exercise their professional duties with utmost care and responsibility, avoiding publishing any indices or personal information about victims.

Recommendation 16: Mass media should became an efficient instrument to prevent the organ trafficking and to educate the general public

• Protection of victims should be a continuous process, and a priority for all actors involved in anti-trafficking activities;
• Training models for journalists should be developed and implemented on regular basis focusing on the strategies to prevent the trafficking and protect the victims.