



Protection of persons targeted or trafficked for the purpose of organ removal:

Recommendations

Assya Pascalev, Bulgarian Center for Bioethics, Bulgaria (chair)

Kristof Van Assche, Bioethics Institute Ghent, Belgium

Judit Sándor, Center for Ethics and Law in Biomedicine, Hungary

Natalia Codreanu, Renal Foundation, Moldova

Anwar Naqvi, Sindh Institute of Urology and Transplantation, Pakistan

Martin Gunnarson, Lund University, Sweden

Mihaela Frunza, Academic Society for the Research of Religions and Ideologies, Romania

Jordan Yankov, Bulgarian Center for Bioethics, Bulgaria

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1. Trafficking in human beings for the purpose of organ removal: a comprehensive literature review (December 2013)
2. Organ recipients who paid for kidney transplantations abroad: a report (November 2014)
3. Trafficking in human beings for the purpose of organ removal: a case study report (November 2014)
4. Indicators to help data collection and identification of trafficking in persons for the purpose of organ removal (August 2015)
5. **Recommendations to improve non-legislative response (August 2015)**

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Comments on the report are welcome and can be sent to:

Assya Pascalev, apascal2003@gmail.com

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1. Introduction

Objectives

The primary purpose of the recommendations presented hereafter is to contribute to the development of a non-legislative response to trafficking in human beings for the purpose of organ removal (hereafter THBOR) by focusing on the necessary measures to ensure the protection of victims of THBOR. Guided by the definition of THBOR given in the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (1), we posit that an individual who parts with an organ (usually a kidney) for money within an illegal scheme becomes *ipso facto* a victim¹. Our aim is to facilitate the exchange of knowledge and best practices in the area of victim protection, which could help the relevant target groups to identify, detect and protect individuals, who have been victims of THBOR, or are targeted for THBOR. It is our hope that the recommendations will help policy makers and other authorities at the EU level to develop a policy-driven EU action plan for the protection of victims of THBOR in the EU and in the respective countries of origin and transfer of victims.

The proposed recommendations are guided by the general requirements for the protection of victims of THBOR stated in three binding international legal instruments: the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (1) the Council of Europe Convention on Action against Trafficking in Human Beings (3), and the EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (4). These recommendations reflect the views and expertise of its authors and incorporate the invaluable input of numerous international experts, who participated in a Writers Workshop and a day-long international Symposium at the EUROPOL Headquarters at The Hague in November, 2014. The recommendations aim to identify areas of particular need and concern to the protection of victims of THBOR and in no way represent an exhaustive list of measures.

Target groups

The group identified the following parties to be key stakeholders in the protection of persons targeted or trafficked for the purpose of organ removal: states, law enforcement agencies and judiciary, non-governmental organizations working in the areas of human rights and anti-trafficking, transplant centers and professionals, other health professionals involved in transplant medicine, oversight bodies, and financial institutions. While not all of the identified stakeholders are in a position to offer direct assistance to persons who are targeted or trafficked for organ removal², all of them can play a part in the fight against THBOR and, consequently, they need to be informed, aware and integrated into a comprehensive system of measures aimed at eradicating THBOR.

¹ For a discussion of the definition of THBOR and a THBOR victim, see (2).

² E.g., financial institutions do not interact directly with THBOR victims who are paid in cash, if at all. Nonetheless, banks might play a role in the process of protection, prevention and prosecution of THBOR by enforcing the recommendations of the Financial Action Task Force (5) which sets the global anti-money laundering standard. The approach to money laundering could help to identify financial transactions between individuals involved in THBOR.

2. Specific recommendations by target group

2.1 Recommendations concerning the role of non-governmental organizations

The crime of trafficking in persons for the purpose of organ removal intersects with the crimes of trafficking in human beings and trafficking in organs. Therefore, preventing and combating THBOR requires collaboration and co-operation between actors involved in combating human trafficking and those combating organ-related crimes, such as health organizations and survivor support services, and those involved in combating trafficking in persons, such as the criminal justice sectors (6). The protection of victims should be a priority for all actors involved in anti-trafficking activities. Taking into account the special characteristics of THBOR identified by the HOTT project and other experts in the field, the NGOs, which assist victims of THBOR should:

- a) have sufficient specialization required for the assistance of victims of THBOR. Anti-trafficking NGOs should use the available know-how and accumulated experience, methodologies and tools to help to detect, identify and assist victims of THBOR;
- b) receive support from public authorities so as to allow the NGOs to provide tailored psychosocial, medical, legal and vocational assistance to victims of THBOR;
- c) implement a pro-active approach to victim identification with special efforts focused on rural and remote areas (7);
- d) undertake awareness-raising campaigns and prevention campaigns focusing on THBOR (8);
- e) assure the protection of the privacy of THBOR victims in their field work, advocacy efforts and when communicating with the authorities;
- f) coordinate legal assistance for protection of victims; and
- g) facilitate long term medical follow-up for victims of THBOR and help them in accessing the health care system in order to identify, report and manage any negative consequences that may result from the illegal donation (9).

2.2 Recommendations concerning the role of states

States should offer victims of THBOR the same kind of protection and services that they provide to other victims of human trafficking, i.e., victims of labor and sex trafficking. States are also uniquely positioned to prevent THBOR by removing socio-economic conditions that make persons vulnerable to trafficking and by implementing measures to reduce the demand for organs. To this effect, states should:

- a) develop campaigns to promote public awareness regarding the threat posed by THBOR, its causes and gravity and encourage research on best practices, methods and strategies for preventing THBOR;
- b) develop strategies to alleviate the factors that make persons vulnerable to trafficking, such as poverty, underdevelopment and lack of opportunity;
- c) take measures to discourage and reduce the demand through campaigns to promote healthy lifestyle (to counter increasing incidence of diabetes and kidney failure), maximization of deceased donation rates, improvement of regular living donation programs in the countries of origin of recipients of organs obtained from victims of THBOR;

- d) enable the temporary or permanent closure of medical facilities used to carry out THBOR and impose temporary or permanent suspension of practice privileges and professional licenses of medical professionals implicated in the commission of THBOR;
- e) support programs designed to assist victims of THBOR (10) [p.11];
- f) implement measures to aid THBOR victims by offering “temporary visas, permanent residency, healthcare, housing and rehabilitative services, and witness protection program eligibility for victims who are willing to aid in the prosecution of human trafficking” (10) [p.10];
- g) ensure that THBOR victims have access to information on relevant judicial and administrative proceedings, have the right to legal assistance and are guaranteed full compensation;
- h) recognize the vital importance of early identification of victims of THBOR and ensure that officials who may come into contact with trafficked persons, such as anti-trafficking agencies, border police and medical personnel are adequately trained to identify and assist victims of THBOR;
- i) ensure that specific assistance, support and protective measures are available to child victims, consistent with a child rights approach (4) [§ 22 and 25]; and
- j) design and develop, together with specialized NGOs, suitable programs for research, education and training to better assist the victims of THBOR (4) [§ 6].

2.3 Recommendations to law enforcement agencies and judiciary

Law enforcement agencies and the judiciary should be made aware that they are under the obligation not to punish victims of THBOR. Victims of THBOR may have been involved in unlawful activities as a direct consequence of being subject to trafficking. Accordingly, they may risk criminal liability for the sale of an organ and possibly also for other criminal offenses directly linked to their experience as a trafficked person, such as the use of forged or altered documents, illegal border crossings or participation in a criminal organization (8) [p. 49, 50]. Following the recommendation of the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking, Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings and Article 8 of the EU Directive 2011/36/EU, victims of THBOR are to be protected from prosecution or punishment for criminal activities that they have been compelled to commit as a direct consequence of being subject to trafficking. This obligation of non-punishment of victims of THBOR creates an absolute legal right on their part. Consequently:

- a) law enforcement agencies and the judiciary are not allowed to make exemption from criminal liability conditional upon the co-operation of victims in the identification and prosecution of the perpetrators;
- b) persons should be kept immune from prosecution, detention and the applicability of a penalty not only when it becomes evident that they are a victim of THBOR but as soon as there is credible suspicion that they might have been trafficked (8) [p. 16 and 23]; and
- c) regular training should also be provided to prosecutors and judges so that they are aware of the specificities of THBOR and the circumstances under which victims of THBOR may commit offenses.

2.4 Recommendations concerning the role of health professionals.

- a) Medical and other professionals involved in organ transplantation and transplant centers can contribute substantially to the prevention of THBOR and the protection of victims and potential victims of THBOR by following the recommendations of the Declaration of Istanbul (11), and of the Amsterdam (12) and Vancouver Forums (13). These call for addressing the safety and health needs of the donor *before, during, and after* donation. They stress that “mechanisms for informed consent should incorporate provisions for evaluating the donor’s understanding, including assessment of the psychological impact of the process” and that all “donors should undergo psychosocial evaluation by mental health professionals during screening.” (11). Equally relevant are Recommendations 3, 4 and 5 of the Declaration of Istanbul. They require the establishment of standardized, transparent and accountable systems of donation and emphasize the need to obtain informed consent for donation. In addition, they require the provision of appropriate care, including medical and psychosocial care, at the time of donation and during follow-up, where particular attention should be paid to victims of THBOR. Professionals “should ensure proper knowledge of the origin of every single organ for transplantation and confirm that it has been obtained in accordance with international standards and local legislation” (14) [p. 95].
- b) Health professionals have an important role to play in the prevention of THBOR also by discouraging waitlisted patients from resorting to illicit means in order to obtain an organ. Apart from the obligation to refrain from directly participating in or facilitating THBOR, health professionals confronted with patients who are considering the use of illicit means to receive an organ should inform patients about the exploitative nature of THBOR and the likely poor health outcomes for the recipient and donor, as well as the fact that in many countries knowingly receiving an organ from a victim of THBOR is a serious crime.
- c) Professionals of any discipline involved in transplantation shall be aware, sensitized, informed and trained in the identification of a victim or potential victim of trafficking for the purpose of organ removal. This includes the medical personnel, the nursing staff and the administrative staff involved in the preoperative assessment and pre- and postoperative care of donors.
- d) To facilitate early identification of victims or potential victims before transplantation, a transparent decision-making protocol and evaluation process should be implemented with representation of professionals from all disciplines involved in the transplantation process.
- e) Transplant centers should appoint a dedicated donor advocate to accompany the donor throughout all stages of the evaluation procedure. The advocate should provide the donor with information to assure adequate understanding of the organ removal and its risks. Advocates should also be adequately trained to providing information about THBOR, the relevant laws and protections against THBOR, and the traffickers’ interests and manipulations to pressure vulnerable individuals to participate in the illegal activity. In addition to their own assessments, transplant centers should require documentation from the donor’s primary physician or the Ministry of Health in the country of origin about the donor’s medical history and health insurance, the donor-recipient relationship, the donor’s circumstances and health status.

2.5 Recommendations concerning the role of oversight bodies.

Strengthening the role, capacity and effectiveness of the different oversight bodies involved in organ transplantation may greatly contribute to curtailing THBOR and protecting potential victims. In this respect, two types of oversight bodies can be discerned: the national transplant authorities responsible for the supervision of all transplant activities carried out on national territory and the bodies responsible for final approval of living organ donation.

Ideally, a tightly regulated transplantation system should be established at national level, governed by a national transplant authority with extensive powers of supervision. This central competent body should ensure the implementation of a variety of measures which could effectively reduce the risk of THBOR and protect potential victims. Following the best practice examples set forth i.e., the EU Directive 2010/53/EU on Standards of Quality and Safety of Human Organs Intended for Transplantation (15) and the Canadian Safety of Human Cells, Tissues and Organs for Transplantation Regulations (16), these measures should include:

- a) strict requirements for the accreditation of organ procurement and transplantation centers;
- b) regular inspection of accredited establishments by independent medical experts who have the obligation to notify authorities of criminal offenses;
- c) issuing Codes of Practice which lay down standards to enhance transparency, safety and accountability in organ procurement and transplantation;
- d) development of a centralized system for organ traceability at each stage in the chain from donation to transplantation; and
- e) establishment of a central living organ donor registry and a reporting and management system for serious adverse events and reactions.

In addition to the national transplant authority, a crucial role is also played by the bodies responsible for final approval of living organ donation. Depending on the national approach favored, authorization may be given by the transplant team or by an independent body such as a medical council or multidisciplinary ethics committee at the level of the healthcare facility, a multidisciplinary ethics committee at state or regional level, a notary or a judge. In countries at increased risk of THBOR, final approval of living donation should not be left to the discretion of the transplant team itself but should be subject to an examination by an independent body such as a local or national ethics committee unaffiliated with the transplant center (17). Where an independent authorizing body exists, it should have the following responsibilities:

- f) determining the identity of the prospective donor and intended recipient and ensuring that they stand in a qualifying relationship which under domestic law allows living organ donation;
- g) ensuring that the prospective donor is able to give consent;
- h) ensuring that the prospective donor has received and understood the legally required information, including on the prohibition of the illicit transplant-related activities; and
- i) ensuring the voluntary and altruistic nature of the donation. Should any doubts arise on the part of the authorizing body, organ removal must be prohibited and the relevant authorities should be notified.

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