



HOW TO COMBAT ORGAN TRAFFICKING AND TRANSPLANT TOURISM ?

In the Light of Declaration of Istanbul



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LEGAL DOCUMENTS ON ORGAN TRAFFICKING

Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (1997)

It is allowed that organ and tissue removal from living donors for transplantation purposes **BUT**

Article 21 – Prohibition of financial gain

The human body and its parts shall not, as such, give rise to financial gain.





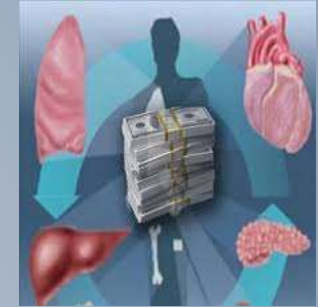
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (2000)

The Council of Europe Convention on Action against Trafficking in Human Beings (2005)

Even though these Conventions did not sign to specifically to prevent organ trafficking "removal of organs" illegally which is prescribed by article 4 is accepted as human trafficking and must be punished.

Council of Europe Convention against Trafficking in Human Organs (2015)

› Which acts should be criminalised?



Article 4 – Illicit removal of human organs

- a) where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;
- b) where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage;
- c) where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage.





› **Article 5 –Use of illicitly removed organs for purposes of implantation or other purposes than implantation**

What can be “other purposes”? Scientific researchs, collection of organs or tissues such as removing cardiac valve from heart, usage of organs for illicit cellular therapy



- › **Article 6 – Implantation of organs outside of the domestic transplantation system or in breach of essential principles of national transplantation law**
- › Each Party shall consider taking the necessary legislative or other measures to establish as a criminal offence under its domestic law, when committed intentionally, the implantation of human organs from living or deceased donors where the implantation is performed outside of the framework of its domestic transplantation system, or where the implantation is performed in breach of essential principles of national transplantation laws or rules. If a Party establishes criminal offences in accordance with this provision, it shall endeavor to apply also Articles 9 to 22 to such offences.



Article 7 – Illicit solicitation, recruitment, offering and requesting of undue advantages

1 Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when **committed intentionally, the solicitation and recruitment of an organ donor or a recipient, where carried out for financial gain or comparable advantage for the person soliciting or recruiting, or for a third party.**

2 Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, **the promising, offering or giving by any person, directly or indirectly, of any undue advantage to healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, with a view to having a removal or implantation of a human organ performed or facilitated,** where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1, or Article 5 and where appropriate Article 4, paragraph 4 or Article 6.

3 Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, **the request or receipt by healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, of any undue advantage with a view to performing or facilitating the performance of a removal or implantation of a human organ,** where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1 or Article 5 and where appropriate Article 4, paragraph 4 or Article 6.



Article 8 – Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs

Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally:

- a) **the preparation, preservation, and storage of illicitly removed human organs** as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4;
- b) **the transportation, transfer, receipt, import and export of illicitly removed human organs** as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4.



› Article 9 – Aiding or abetting and attempt

- › 1 Each Party shall take the necessary legislative and other measures to establish as criminal offences, when committed intentionally, **aiding or abetting the commission of any of the criminal offences** established in accordance with this Convention.
- › 2 Each Party shall take the necessary legislative and other measures to establish as a criminal offence the intentional **attempt to commit any of the criminal offences** established in accordance with this Convention.



The **DECLARATION** of **ISTANBUL**

on **ORGAN TRAFFICKING** and **TRANSPLANT TOURISM**

In 2008, medical experts around the world gathered in Istanbul to define the standards on organ transplantation and preventing organ trafficking under the leadership of the Transplantation Society and The International Society of Nephrology. At the end of meeting, they agreed on a bunch of principles which is called as Declaration of Istanbul on Organ Trafficking and Transplant Tourism to advise countries to take steps by preparing legislation which can lead to encourage states to transplant from deceased and living organism. Although the Declaration is not binding document from legal aspect, it is prominent for standardization on transplantation.



FROM LEGAL PERSPECTIVE?

- › It is not legally binding. However it brought out such principles to distinguish organ trafficking from organ transplantation.

WHAT DOES THE DECLARATION AIM?

- (1) maximize the use of de-ceased donor organs;
- (2) encourage countries with established deceased donor programs (or living donor programs, for that matter) to share their knowledge with countries that lack these programs;
- (3) protect vulnerable populations from abusive acts;
- (4) ensure the equitable allocation of donor organs based on sound ethical principles and
- (5) prevent organ trafficking.



ORGAN TRAFFICKING

the recruitment, transport, transfer, harboring or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation



TRANSPLANT COMMERCIALISM

a policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain.





TRAVEL FOR TRANSPLANTATION

- › 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/or transplant commercialism or if the resources (organs, professionals, and transplant centers) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population.



WHAT DID 2018 VERSION OF DECLARATION BRING?

QID PRO QUO TRANSPLANTATION is also TRAFFICKING





2008 version of the Declaration did not take the removal of organ according the consent of the donor illicitly. Donor had to be victim of trafficking by being forced, threatened such as

by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation



However 2018 version of the Declaration

accepts that as organ trafficking by being compatible with article 4/b of Council of Europe Convention against Trafficking in Human Organs.

“where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage”

!!!!!! Which is also compatible with human dignity and the aim to protect public health



AN EXAMPLE FROM TURKISH CRIMINAL CODE

Trading of organs and tissues

ARTICLE 91-(1) Any person who takes an organ from another person without his lawful consent is punished with imprisonment from five years to nine years. If the case is unlawful delivery of a tissue, then the offender is sentenced to imprisonment from two years to five years.

(2) Any person who unlawfully takes an organ or tissue from a deceased person is punished with imprisonment up to one year.

(3) Any person who engages in purchase, **sale of an organ** or tissue, or acts as intermediary in such activities is sentenced to punishments listed in first subsection.

What if the person was obliged to sell his/her organ?

Still he/she is the perpetrator of the crime BUT Turkish Criminal Code has specific state of destitute as

ARTICLE 92-(1) The punishment to be imposed may be reduced or entirely lifted in consideration of the social and economic conditions of the person selling his organs or tissues.



It widened the scope of the definition of organ trafficking

Organ trafficking consists of any of the following activities:

- (a) removing organs from living or deceased donors without valid consent or authorisation or in exchange for financial gain or comparable advantage to the donor and/or a third person;
- (b) any transportation, manipulation, transplantation or other use of such organs;
- (c) offering any undue advantage to, or requesting the same by a healthcare professional, public official, or employee of a private sector entity to facilitate or perform such removal or use;
- (d) soliciting or recruiting donors or recipients, where carried out for financial gain or comparable advantage; or
- (e) attempting to commit, or aiding or abetting the commission of, any of these acts. (which is brought by 2018 version of the Declaration as being compatible with Commission of Europe Convention on Organ Trafficking)



It brought new category additional to organ trafficking as:

Trafficking in persons for the purpose of organ removal

the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of the removal of organs



New Criteria : Resident/ Non Resident

- › a person who makes their life within a country, whether or not as a citizen **resident**
- › all persons who are not residents, including those who travel to, and then reside temporarily within, a country for the purpose of obtaining a transplant **non resident**
- › This criteria helps out to differentiate transplant tourism



TRAVEL FOR TRANSPLANTATION

movement of persons across **jurisdictional** borders for transplantation purposes. Travel for transplantation becomes transplant tourism , and thus unethical, if it involves trafficking in persons for the purpose of organ removal or trafficking in human organs, or if the resources (organs, professionals transplant centres) devoted to providing transplants to non-resident patients undermine the country's ability to provide transplant services for its own population.

- › What is jurisdictional? not only nations but also states , provinces, other formally defined areas within countries, and regional or other supra-national legal entities with the authority to regulate organ donation and transplantation



CRIMINAL LAW IS THE ONLY WAY TO COMBAT ORGAN TRAFFICKING?

- › To combat organ trafficking and illicit organ transplantation, it is not only via criminalise and penal these acts but also institute an efficient donation system so that people do not need to incline.
- › It must be taken advantage of new methods as stem cell threaphy to reduce the need of organ transplantation.

