



Recommendation 2009 (2013)¹

Final version

Towards a Council of Europe convention to combat trafficking in organs, tissues and cells of human origin

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the draft Council of Europe convention against trafficking in human organs. Closely associated with the preparation of the convention from the outset, the Assembly considers that this text represents the culmination of several years of efforts by the Council of Europe in the field of organ trafficking.
2. The Assembly notes that, at this stage, it has not been considered advisable to prepare an additional protocol against trafficking in human tissues and cells, largely due to the absence at both national and international levels of complete and harmonised regulation regarding the removal and use of tissues and cells. It nevertheless emphasises that, like organ trafficking, the trafficking of tissues and cells of human origin constitutes a grave threat to human rights and to public and individual health.
3. The Assembly points out that, once it has been adopted, the convention will be the first legally binding international instrument devoted solely to organ trafficking. This is why the Assembly takes the view that the convention must be as complete as possible in order to prevent and combat this worldwide phenomenon which contravenes the most basic standards in terms of human rights and human dignity.
4. In this context, the Assembly notes that questions relating to the prevention of organ trafficking, the protection of victims and national and international co-operation to combat such trafficking are not sufficiently detailed in the draft convention. It also notes that the draft leaves States complete freedom to decide whether donors and recipients may be prosecuted when they are involved in organ trafficking. Whatever position member States may take on this matter, the Assembly argues that these two categories of persons, because of the specific nature of their situation, which can sometimes be summed up as a matter of life or death, may find themselves extremely vulnerable.
5. The Assembly underlines the utmost importance of protecting vulnerable persons, in particular persons deprived of their liberty and persons who are unable to give full and valid consent to an intervention due to either their age (in the case of minors) or their mental incapacity. In this connection, it welcomes the provision in the draft convention defining as illicit any removal of organs without the free, informed and specific consent of the living donor. This is in line with the provisions of the 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 (ETS No. 164, "Oviedo Convention"), which prohibit organ removal from persons who do not have the capacity to consent, thereby affording special protection to that group of persons. The Assembly notes that, while it is possible for States to reserve the right not to apply this article, such a reservation would be accepted only in exceptional cases and in accordance with appropriate safeguards or consent provisions under their domestic law. The possibility of making a reservation is intended to facilitate access to the convention for States whose legislation is less restrictive than the principles set out in the Oviedo Convention in relation to consent, while respecting the fundamental rights of the persons concerned.

1. *Assembly debate* on 23 January 2013 (6th Sitting) (see [Doc. 13082](#) and [Addendum](#), report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Marquet). *Text adopted by the Assembly* on 23 January 2013 (6th Sitting).



6. The Assembly notes with concern the practice followed by certain patients who travel abroad in order to obtain organs in return for payment, a practice widely referred to as “transplant tourism”. In this context, it is particularly concerned about allegations that some States which are not members of the Council of Europe trade organs removed from prisoners and from executed detainees.

7. Given that organ trafficking occurs worldwide, extending beyond the territory of the Council of Europe's member States, the Assembly welcomes the provision made in the draft convention for its opening to signature by States that are not members of the Council of Europe, even prior to its entry into force, which will foster the broadest possible geographical scope. It also emphasises the importance of stringent and effective implementation of the convention, so that it can bring the desired added value to the work of the Council of Europe.

8. Consequently, the Assembly recommends that the Committee of Ministers:

8.1. complete the provisions of the draft convention relating to measures for the prevention of organ trafficking, the protection of victims and national and international co-operation against such trafficking, paying particular attention to measures to deal with the shortage of organs which is one of the main reasons for that trafficking, in particular by encouraging the parties to contribute, by all means at their disposal, to an increase in the supply of organs available for transplantation, including by seeking alternative methods and by setting up a system of presumed consent for the removal of organs from deceased persons;

8.2. include a provision in the convention on “mitigating circumstances” which includes, *inter alia*, the consideration of the particular vulnerability of organ donors and/or recipients who have committed the offences established in the convention, or refer to that particular vulnerability in the explanatory report to the convention, specifying that it should be taken into account when the penalties which may be applicable to these two categories of persons are determined;

8.3. include a provision in the convention whereby the usual dual criminality rule is not applicable, in order to combat transplant tourism;

8.4. include a provision in the convention prohibiting the removal and use for transplantation or other purposes of organs from persons deprived of their liberty, living or deceased;

8.5. provide for an independent, strong and effective committee of the parties assigned a clear function of co-ordination and monitoring on the basis, *inter alia*, of reporting requirements for the parties, while entrusting the competent committees – the European Committee on Crime Problems (CDPC) and the Committee of Bioethics (DH-BIO) – with a role in supervising the convention's implementation;

8.6. decide on a roadmap for the preparation of the additional protocol against trafficking in human tissues and cells;

8.7. call on those member States wishing to reserve the right not to apply the provision defining as illicit any removal of organs without the free, informed and specific consent of the living donor to instead revise their legislation in order to bring it into line with this provision and the Oviedo Convention.

9. The Assembly also recommends that the Committee of Ministers urge those member States which have not yet done so to sign and ratify the other two Council of Europe conventions which relate to the combating of trafficking in human organs, namely:

9.1. the Convention on Human Rights and Biomedicine and its additional protocol concerning the transplantation of organs and tissues of human origin (ETS No. 186);

9.2. the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).