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Organ transplant tourism

Report[1]
Committee on Social Affairs, Health and Sustainable Development
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Summary

Organ transplant tourism is one of the most lucrative illegal activities worldwide, making it extremely difficult to eradicate. While the number of transplants performed worldwide has been steadily increasing, the need for transplants is also increasing. Demand far outstrips supply.

The disparity between the need for and supply of organs prompts some patients to try to purchase an illicitly-obtained organ. Despite a solid legal framework at Council of Europe and international level, organ transplant tourism subsists, including in Europe and in China.

The Assembly should thus recommend that member States:

– sign, ratify and implement all relevant global and Council of Europe Conventions and invite all states interested in joining the fight to do likewise;

– develop and improve existing transplant programmes;

– develop and implement population-based prevention strategies to prevent (and treat) organ failure;

– improve transplant oversight through intergovernmental efforts, in Europe and globally;

– effectively combat trafficking in human beings for the purpose of organ removal and trafficking in organs;

– exercise particular caution when co-operating with the China Organ Transplant Response System and the Red Cross Society of China.

1. Reference to committee: Doc. 14190, Reference 4290 of 28 April 2017.

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A. Draft resolution[2]

1. Organ transplant tourism is one of the most lucrative illegal activities worldwide, making it extremely difficult to eradicate. This is because organ transplantation is the best – and frequently the only – lifesaving treatment for end-stage organ failure. While the number of transplants performed worldwide has been steadily increasing, the need for transplants is also increasing. Demand far outstrips supply.

2. The disparity between the need for and supply of organs prompts some patients to try to purchase an illicitly obtained organ, often involving travelling abroad to countries where laws prohibiting organ sales are poorly enforced or marred by loopholes. This practice has been consistently and uniformly condemned by the Council of Europe, the World Health Organization (WHO) and by professional organisations such as the World Medical Association and the Transplantation Society.

3. The Declaration of Istanbul defines "organ transplant tourism" as travel for transplantation involving: trafficking in persons for the purpose of organ removal; organ trafficking; or when the resources (organs, professionals and transplant centres) devoted to providing transplants to non-residents undermine the country's ability to provide transplant services for its own population.

4. Both at global and at European level, widely-ratified Conventions with effective monitoring mechanisms are in force which combat trafficking in human beings including for the purpose of organ removal. The Council of Europe has also elaborated the Convention against Trafficking in Human Organs (CETS No. 216, 2015), which constitutes the only international criminal law framework addressing organ trafficking. It entered into force on 1 March 2018 but has, so far, only been ratified by nine member States, and its Committee of the Parties has yet to be established. The use of transplant resources that undermines a country's ability to provide transplant services for its own population is not explicitly addressed by the above-mentioned Conventions. The Council of Europe 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) and its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin (ETS No. 186) establish the principle that the human body and its parts shall not, as such, give rise to financial gain.

5. Unfortunately, despite this solid legal framework, organ transplant tourism subsists, including in Europe and in China, though its magnitude is not well known. Organ transplant tourism may involve the use of organs from deceased persons (who may not have given proper consent, as in the case of executed prisoners in China, or whose organs were properly donated but later diverted for illicit use by physicians providing transplant services to patients who do not qualify to receive them within national programs or at facilities that serve "transplant tourists") or, in its most pervasive and hideous form, from living persons. Organ sellers often come from the poorest strata of society (including migrants and refugees). They usually only co-operate because of their desperate financial situation and because they are misled about the nature of the surgery and the consequences of giving up an organ. Medical reports of the health status of returning transplant tourists emphasise that transplant tourism frequently also negatively affects the interests of the recipients, their families and communities. Combined with the financial sacrifices that they have made to obtain an organ, transplant tourists thus run a real risk of being exploited themselves and of suffering severe health consequences. The only profits made are by corrupted health professionals, middlemen, and other criminals. However, these profits are huge and there is often little risk of punishment.

6. A holistic approach is necessary to solve the problem of organ transplant tourism. At its root, there is a need to close the gap between the demand for and the supply of organs, in the face of desperate people needing an organ whose number will only increase in the future.

7. The Parliamentary Assembly thus recommends that member States of the Council of Europe:

7.1. sign, ratify and implement all relevant global and Council of Europe Conventions: the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Council of Europe's Convention on Human Rights and Biomedicine and its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin, the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and the Council of Europe Convention against Trafficking in Human Organs;

2. Draft resolution adopted unanimously by the committee on 3 December 2019.

7.2. develop and improve existing transplant programmes in accordance with good practice examples, through professional education and training and collaboration across countries, with the aim of striving for national self-sufficiency in organ donation and transplantation: this can involve establishing and resourcing National Transplant Organisations, training critical care professionals in deceased donation to maximise the detection of potential organ donors, appointing transplant "donor co-ordinators" in every hospital with an intensive care unit, and developing and optimising ethically-sound living donation programmes;

7.3. develop and implement population-based prevention strategies to prevent (and treat) organ failure in the first place by, for example, encouraging a healthy lifestyle and providing universal healthcare;

7.4. improve transplant oversight through intergovernmental efforts, in Europe and globally, by putting into place comprehensive mechanisms of traceability for donors and recipients, including transnationally; recording information about transnational transplant activities, including by joining the International Network of National Focal Points on Travel for Transplantation and providing information to their International Database on Travel for Transplantation; enforcing international referral systems before any travel for organ transplantation; and informing and training health-care, judicial and other professionals about their roles in recognising, preventing and combating organ transplant tourism;

7.5. effectively combat trafficking in human beings for the purpose of organ removal and trafficking in organs, including through transnational and international co-operation, while ensuring adequate protection, compensation and assistance of victims (as stipulated, inter alia, in the Human Trafficking and Organ Trafficking Conventions), including by closing legal loopholes and establishing persuasive legal sanctions, increasing collaboration between monitoring bodies, professional organisations, and law enforcement agencies, and strengthening partnerships between global actors (e.g. UN Office on Drugs and Crime (UNODC), Office of the UN High Commissioner for Refugees (HCR), WHO, Interpol), regional actors (e.g. the Council of Europe, OSCE, Europol, Eurojust), professional actors (e.g. World Medical Association, The Transplantation Society, International Society of Nephrology), NGOs and others (e.g. the Declaration of Istanbul Custodian Group).

8. In the light of the above, the Assembly believes that there is an urgent need to strengthen the role of national parliaments in tackling organ transplant tourism. It invites them to promote public awareness, adopt relevant legislation and ratify international legal instruments, and monitor their effective implementation.

9. In view of the global nature of the phenomenon of organ transplant tourism, the Assembly invites all states interested in joining the fight, but particularly Council of Europe observer states and the states whose parliaments hold observer or partner for democracy status with the Assembly, to do likewise and, in particular, to accede to the relevant Council of Europe Conventions open to them.

10. Finally, the Assembly recommends that member States exercise particular caution when co-operating with the China Organ Transplant Response System and the Red Cross Society of China, in view of a recent study casting doubt on the credibility of China's organ transplant reform.

B. Explanatory memorandum by Mr Stefan Schennach, rapporteur

1. Introduction

1. Organ transplant tourism is one of the most lucrative illegal activities worldwide, making it extremely difficult to eradicate. On 18 October 2016, Ms Lotta Johnsson Fornarve and 20 other Assembly members presented a motion for a resolution on "Organ transplant tourism to China". Based on a report concluding that, in China, the source of most transplant organs was the killing of prisoners of conscience (primarily practitioners of the spiritual practice Falun Gong), the motion called for measures to put an end to this practice.

2. This motion was referred to the Committee on Social Affairs, Health and Sustainable Development for consultation on possible follow-up. On 24 March 2017, the committee examined the motion and agreed to prepare a report on the more general issue of organ transplant tourism (including in China) and therefore to request that the Bureau propose to the Assembly to refer the above-mentioned motion to it for report. On 27 June 2017, Ms Liliane Maury Pasquier (Switzerland, SOC) was appointed rapporteur and, following her election to the Presidency of the Assembly, Ms Stella Kyriakides (Cyprus, EPP/CD) was appointed as the new rapporteur on 17 September 2018.

3. At its meeting on 4 December 2018, the committee held an exchange of views with Mr Kristof Van Assche, Research Professor in Health Law and Kinship Studies, from the University of Antwerp (Belgium),[3] who presented his expert memorandum on the subject.[4] On 28 February 2019, the Bureau of the Assembly authorised the rapporteur to undertake a fact-finding visit to Israel. I was appointed rapporteur on 2 October 2019 and undertook a most interesting fact-finding visit to Israel on 10-12 November 2019, which I will present as a good practice example in this report.[5] I hope that this report can be presented to the Assembly jointly with the committee's report on "Combating trafficking in human tissues and cells".[6]

2. Definitions, aim and scope of the report

4. Organ transplantation is the best, and frequently the only, lifesaving treatment for end-stage organ failure. While the number of transplants performed worldwide has been steadily increasing, the need for transplants is also increasing. Demand far outstrips supply: it is now estimated that only 5-6% of those who need a transplant may get one.[7] The disparity between the need and supply of organs prompts some patients to try to purchase an illicitly obtained organ, often involving travelling abroad to countries where laws prohibiting organ sales are poorly enforced or marred by loopholes. This practice has been consistently and uniformly condemned by intergovernmental organisations such as the World Health Organization (WHO) and the Council of Europe, and by professional organisations such as the World Medical Association and the Transplantation Society.

5. Indeed, the Council of Europe's Convention on Human Rights and Biomedicine (CETS No. 164) and its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin (CETS No. 186), establish the principle that the human body and its parts shall not, as such, give rise to financial gain.[8] In a declaration adopted on 24 June 2014, our committee reiterated the fundamental importance of the principle of non-commercialisation for the protection of human dignity.[9]

6. The Declaration of Istanbul[10] defines "transplant tourism" as travel for transplantation involving: *(a)* trafficking in persons for the purpose of organ removal; *(b)* organ trafficking; or *(c)* use of transplant resources that undermines the country's ability to provide transplant services for its own population.

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3. For the minutes of the exchange of views please see AS/Soc (2018) PV 07, pp. 6-7.
4. http://www.assembly.coe.int/LifeRay/SOC/Pdf/DocsAndDecs/2018/AS-SOC-INF-2018-07-EN.pdf.
5. My particular thanks go to the Secretary to the Israeli observer delegation to the Assembly, Mr Yaron Gamburg, and Prosecutor Gilad Erlich, who organised a very comprehensive fact-finding visit for me. I would also like to thank all the interlocutors who took the time to meet me.
6. Organs, cells and tissues, and blood are three different issues, and different approaches are required for each of them. I believe our committee should consider looking at problems in the area of blood donations next.
7. Matesanz, R. The Threat of Transplant Tourism, EFE, 26 September 2017, available at https://www.efe.com/efe/english/efe-opinion-makers/the-threat-of-transplant-tourism/50001053-3390795.
8. Article 21 of the Convention and the Protocol. See also the European Union Charter of Fundamental Rights.
9. On 17 September 2018, it adopted a similar declaration condemning the global kidney exchange concept, noting that the latter may amount to a violation of the principle of non-commercialisation. Both declarations are available on the committee website.

7. It is important to underline, however, that not all travel for transplantation is illegitimate. Patients may decide to travel for personal or family reasons (e.g. better social or family support post-transplantation in another country), for financial or medical reasons (e.g. better or more affordable medical care in another country) or in the context of transparent bilateral arrangements between countries based on reciprocity or compassionate care. Ultimately, ethical travel for transplantation – as opposed to transplant tourism – should never entail organ trafficking, trafficking in persons for the purpose of organ removal or reduce the ability of countries of destination to cover the transplantation needs of their own patients.

8. *(a)* "Trafficking in persons for the purpose of organ removal" occurs when, with the aim of having a person's organ removed, that person is recruited, transported, transferred, harboured or received by making use 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."[11] Since 2000, an international criminal law framework addressing trafficking in persons for the purpose of organ removal has been elaborated by the United Nations (Protocol to the Convention against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons 2000), the Council of Europe (Convention on Action against Trafficking in Human Beings 2005), and the European Union (Directive 2011/36/EU). The great majority of cases of transplant tourism involve organ sellers who have been subjected to trafficking in persons. The Council of Europe Anti-Trafficking Convention is in force in all Council of Europe member States (with the exception of the Russian Federation) and in Belarus, and is equipped with an effective monitoring mechanism, the Group of Experts on Action against Trafficking in Human Beings (GRETA).[12]

9. *(b)* "Organ trafficking" occurs when an organ has been illicitly removed, either because it was removed without valid consent or authorisation or because it was removed in exchange for financial gain to the donor or a third person.[13] Any further acts involving illicitly removed organs, such as the use, preparation, preservation, storage, transportation, transfer, receipt, import and export of the said organs, as well as the solicitation or recruitment of donors or recipients for financial gain, or the "promising, offering or giving of any undue advantage to" or "the request or receipt of any undue advantage by," healthcare professionals, public officials, or persons who direct or work for private institutions "for the illicit removal of organs or for the use of organs that have been illicitly removed" are also considered organ trafficking. To solidify the principle of non-commercialisation of the human body through criminal sanctions and to overcome the limitations of the framework of trafficking in persons, the Council of Europe elaborated the Convention against Trafficking in Human Organs (2015), which constitutes the international criminal law framework addressing organ trafficking. It entered into force on 1 March 2018 but has, so far, only been ratified by nine member States, and its Committee of Parties has yet to be established.

10. More specifically, this Convention allows for the prosecution of transplant tourism in cases where the organ was removed from a living person who had adequately consented (i.e. when no illegal activities or means have been used with respect to a living donor) but had been paid, or where the organ was illicitly removed from a deceased person. Moreover, the framework on organ trafficking allows easier prosecution of transplant tourism, because it does not require proof that specific illicit means have been used to obtain a paid organ transplant. The secretariat of the committee has prepared a handbook for parliamentarians on the Convention,[14] in collaboration with the consultant expert Mr Kristof Van Assche. An event to launch the handbook took place during the October 2019 part-session of the Assembly, with a view to raising parliamentarians' awareness of the importance of wider signature and ratification of the Convention[15].

11. *(c)* In addition to cases that constitute outright trafficking in persons or organ trafficking, transplant tourism occurs when domestic transplant resources are used to the benefit of foreigners to an extent that it undermines the country's ability to provide transplant services for its own population. This may, for instance,

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10. https://www.declarationofistanbul.org. The Istanbul Declaration is the outcome of a recommendation by the World Health Assembly in 2004 that measures be taken to protect the poor and vulnerable from transplant tourism and to address the wider problem of international trafficking of human organs and tissues. It involved the Transplantation Society, the International Society of Nephrology, and stakeholders from 78 countries. The 2018 update of the Declaration was prepared by its Custodian Group (DICG).
11. Declaration of Istanbul, 2018, p. 2.
12. In the second round GRETA reports, there are sections on preventing trafficking for the purpose of organ removal.
13. A good distinction between trafficking in human beings for the purpose of organ removal and trafficking in organs is also given in the Joint CoE/UN Study on Trafficking in organs, tissues and cells and Trafficking in Human Beings for the purpose of the removal of organs, 2009, pp. 55-56.
14. http://www.assembly.coe.int/LifeRay/SOC/Pdf/DocsAndDecs/STCE216-Handbook-EN.pdf.
15. http://www.assembly.coe.int/LifeRay/SOC/Pdf/DocsAndDecs/2019/AS-SOC-2019-PV-07-ADD2-EN.pdf.

involve the allocation of organs from deceased donors to foreigners with the subsequent impact on the national waiting list and waiting time to receive an organ, or the use of the few available transplant centres and transplant professionals by patients from abroad at the expense of resident patients.

12. This report will address these three different aspects of organ transplant tourism and will analyse their characteristics (*modus operandi*, different actors involved, etc.) and their effects. It will also present the state of play on organ transplant tourism in Europe and in the world (including in China, within the limits of available data), and identify the key challenges in order to address this issue, with a view to proposing policy responses to Council of Europe member States. It relies heavily on the expert memorandum prepared by Mr Kristof Van Assche,[16] and on the results of my fact-finding visit to Israel.

3. The overall picture

13. Transplant tourism is fuelled by the demand of desperate patients who are willing to pay large sums of money to obtain a kidney or, less frequently, a liver lobe from a living donor. It is also fuelled by the willingness of some physicians to take part in this criminal activity, in order to profit from it. Transplant tourism typically involves the movement of recipients to countries where the vulnerable and impoverished serve as an organ source and where the surgical procedures are undertaken. However, recently other forms of transplant tourism have emerged. For instance, recipients and organ sellers may travel from the same country to the country of destination where the surgery is undertaken; they may travel from different countries to the country of destination where the surgery is undertaken; or the organ seller may travel to the country where the recipient and the transplant centre are located. Organ sellers or organ recipients may even make a stop on the way in another country where preparatory laboratory work and/or the cross-matching takes place.

14. As a rule, transplant tourism takes place within authorised transplant systems that exist in the countries of destination. In those cases, local transplant professionals and even hospitals may be knowingly and willingly involved in these illegal activities or, alternatively, the recipient and the organ seller may have found a way to deceive established screening mechanisms. However, on occasion, illicit activities occur completely outside of the scope of the country of destination's legitimate transplantation programmes, for instance in unauthorised clinics, private houses or hotel rooms.

15. Australia, Canada, Japan, South Korea, the United States of America and countries in the Middle East and Western Europe have been identified as countries of origin of transplant tourists. Recently, due to a rapid expansion of dialysis programs in some parts of Africa and Asia, transplant tourists from additional countries, including Nigeria, have come onto the scene. Common destinations include Bangladesh, Bolivia, Brazil, China, Colombia, Costa Rica, Egypt, India, Iraq, Kazakhstan, Lebanon, the Republic of Moldova, Pakistan, Peru, the Philippines, Sri Lanka, Turkey, the United States of America and Vietnam.[17] The most recent anecdotal reports indicate that transplant tourism is currently rampant in India, Pakistan, Egypt and Lebanon, and continuing at a considerable scale in China, Sri Lanka and Turkey.[18] As a result of war and natural catastrophes, transplant tourism has recently also emerged in countries such as Iraq, Nepal and Yemen, and is increasingly targeting refugees (e.g. from Syria and Sub-Saharan Africa) in countries such as Egypt, Lebanon and Turkey.[19]

16. Organ sellers usually come from the poorest strata of society and only co-operate because of their desperate financial situation and because they are misled about the nature of the surgery and the consequences of giving up an organ. Their position of extreme vulnerability, lack of alternatives and lack of education is ruthlessly exploited. For medical reasons, organ sellers between 20 and 40 years of age are preferred; they are predominantly male, except in India. Organ sellers are recruited through advertisements in

16. http://www.assembly.coe.int/LifeRay/SOC/Pdf/DocsAndDecs/2018/AS-SOC-INF-2018-07-EN.pdf. The expert memorandum also provides all sources and an extensive bibliography.
17. López-Fraga, M; Van Assche, K; Domínguez-Gil, B; Delmonico, FL & Capron, AM. Human Trafficking for the Purpose of Organ Removal, in Piotrowicz, R; Rijken, C & Uhl, BH. (Eds.). Routledge Handbook of Human Trafficking (New York: Routledge, 2017), 120-134.
18. ARTE. Turkey: Organ Trafficking, ARTE TV, 2017, available at https://www.arte.tv/en/videos/075284-000-A/turkey-organ-trafficking/.
19. Gregory, K. Syrian Refugees Selling their Organs on the Black Market to Get to Europe: Experts, ABC News, 4 January 2017, available at https://www.abc.net.au/news/2017-01-04/syrian-refugees-selling-their-organs-onthe-black-market/8160496; Irvine, J. Desperate Syrian Refugees Selling their Organs to Finance Travel to Europe, ITV, 19 June 2018, available at https://www.itv.com/news/2018-06-19/refugees-selling-organs/.

local newspapers, on the Internet, by scouts working for recruiters or they may present themselves directly to persons or medical facilities known to be involved. Due to their precarious situation, organ sellers generally have no real choice but to submit to the violation of their physical integrity.

17. Studies highlight that a huge majority later express serious regrets, stating that they would not have agreed if they had been properly informed and if their situation had not been so hopeless. In addition, fraud, deception, intimidation and coercion are frequently used to force recruited organ sellers to co-operate and to dissuade them from engaging law enforcement officials. Moreover, organ sellers are further exploited in that the sum that they eventually receive is generally much less than what had been promised, if money is paid at all.[20] There is even some anecdotal evidence of blatant organ theft from persons undergoing unrelated surgery, from patients in psychiatric institutions, and from persons abducted for their organs.

18. Studies on transplant tourism indicate that, even apart from their exploitation, organ sellers suffer from very negative post-operative consequences. Their hope of paying off crippling debts and securing a minimum level of subsistence by selling an organ quickly proves illusory. Few, if any, organ sellers manage to improve their financial situation in the medium term. Within a couple of years, most of them are back in significant debt and, in addition, they also experience a significant decline in household income because their physical condition has deteriorated as a result of the organ removal and this prevents them from sustaining the demands of hard physical labour. A large majority of organ sellers report that their health worsened significantly, due to pre-existing compromised health conditions, a lack of post-operative care and a continuing unhealthy lifestyle or environment. Because of their inability to pay for medical assistance many, in time, suffer organ failure, which is most likely to lead to early death. Furthermore, these studies indicate that the organ sellers also suffer from severe stigmatisation and social isolation, and many also report depression and anxiety.

19. Transplant tourists who seek a transplant abroad may arrange the contact with the organ seller and the transplant professionals themselves. This scenario is most likely for patients who had earlier migrated from, or have a close cultural affinity with, the destination country. These patients may use local advertisements or personal acquaintances in the country of destination to engage with the local black market in organs. Alternatively, transplant tourists rely on transplant 'package deals' that include travel and accommodation expenses, payments to the broker and the organ seller and coverage of the medical procedure. These deals are offered by transplant centres and brokers operating in international trafficking rings, and contacted through dedicated websites or through contact persons in the country of origin.

20. Medical reports of the health status of returning transplant tourists emphasise that transplant tourism frequently also negatively affects the interests of the recipients, their families and communities. Compared to transplantation within the regulated domestic system, transplant tourists run significantly higher risks of mortality and morbidity. More in particular, data reveal a higher frequency of complications due to a higher incidence of unconventional, occasionally even life-threatening infections, resulting in a significantly lower survival rate of the graft and the patient. This poor outcome is caused by a variety of factors, including inadequate pre-transplantation health screening of organ sellers, worse initial health of the recipients who are generally older or sometimes even excluded from their domestic waiting list for medical reasons, substandard medical facilities and medical aftercare, and compromised follow-up when they return home, as a result of the lack of intelligible medical documentation. Combined with the financial sacrifices that they have made to obtain an organ, transplant tourists thus run a real risk of being exploited themselves.

21. Several categories of health-care professionals may be implicated in transplant tourism, including transplant surgeons and anaesthesiologists, nephrologists or hepatologists, nursing staff, and lab technicians and technical personnel to perform ancillary medical tests. Depending on the circumstances of the case and of the technical organisation of the medical interventions, these health-care professionals may or may not be aware that they are involved in an illicit transplant activity. In addition, the success of these illicit activities often depends upon the support of a range of facilitators, which may include directors of transplant units and hospitals, administrators of medical and testing facilities, corrupt members of law enforcement and public officials who facilitate illegal entries, arrange forged documents or turn a blind eye to the illegal operations of transplant clinics. Other types of support may be provided by so-called minders, who accompany the recruited organ seller and may act as enforcers, and by translators, drivers, travel agencies, insurance companies.

22. Similar to other regions of the world, the real magnitude of transplant tourism in Europe is not well known. The few documented cases or trafficking attempts have involved Sweden, North Macedonia, Israel, Turkey, Ukraine and Spain,[21] as well as Bulgaria and Azerbaijan.[22] On-going work by the Council of Europe

20. The organ recipient usually pays between $100,000 and $200,000, but the organ seller only receives between $1,000 and $10,000, at most.

Network of National Focal Points on Travel for Transplantation indicate that many other countries may be concerned by these illicit practices, either as countries of origin or countries of destination of transplant tourists. In a few countries, it seems to be difficult to completely eradicate illicit activities undertaken in private transplant hospitals; in others, it remains possible to cheat the system or exploit loopholes in national legislation to access domestic waiting lists and receive organs from deceased donors. There is surprisingly little information about migrants and refugees trafficked for organ transplant tourism.[23] In Egypt, several surgeons have recently been investigated in the framework of an organ trafficking scandal (involving Sub-Saharan immigrants). However, we must keep in mind that it is quite possible that people whose organs have been removed do not ever make it to Europe in the first place.

4. The situation in China

23. Compared to western countries, China has a transplant system that is fairly recent and has undergone significant changes in the last two of years. A system of regulatory oversight of organ transplantation was established in 2006 and transplant legislation adopted in 2007. In 2007, it was acknowledged that more than 90% of transplanted organs were obtained from executed prisoners. In response to international pressure to stop this practice and to align itself with the international guidelines issued by WHO, initiatives were undertaken to reform the transplant system, with sustained support from the international community and with the help of dedicated transplant professionals from the West. As a result, in October of 2014, the Hangzhou Resolution was promulgated in which China committed itself to terminate its dependence upon organs from executed prisoners and to prohibit organ trafficking and transplant tourism.

24. The Hangzhou Resolution also announced measures to promote altruistic deceased organ donation and transparency in organ allocation through a national computerised waitlist and matching system, to standardise the quality of organ transplantation by reducing the number of transplant hospitals from more than 600 to 169, to establish scientific registry systems for organ transplantation and to increase regulatory oversight. In 2014, it was also proclaimed that China was implementing a new national programme for deceased organ donation and that all transplant hospitals would be required to stop using organs from executed prisoners as of January 2015. A recent report indicates that, as a result of these structural changes, the deceased organ donation rate in China has dramatically increased from 0.03 per million population in 2010 to 3.71 per million population in 2017. Most experts maintained a stance of guarded optimism until recently, emphasising that only through unwavering support from the international community will China be able to complete the ethical reform of its transplant system.

25. China's announcements of its huge progress have not been uniformly well-received by international observers. Some transplant professionals working outside of China emphasise that transplant tourism to China has not been eradicated. Moreover, it is feared by some that deceased organ donation rates are being boosted by providing families of a deceased person large sums of money in return for their approval. Some critics are even more sceptical and their suspicions are fuelled by the lack of transparency on the part of the Chinese government. They suggest that it might well be that China is transplanting many more organs than it officially wants to acknowledge and that prisoners, including prisoners of conscience, such as Falun Gong practitioners, and other minority groups such as Uighur Muslims, Tibetans and Christians, may still be killed in secret prisons for their organs, which are subsequently transplanted in military hospitals. These statements are based on personal testimonies and undercover documentaries and on reports presented by the authors David Matas, David Kilgour and Ethan Gutmann, who allege that, on the basis of their own calculations, China is transplanting between 60,000 to 100,000 organs a year, predominantly procured from prisoners of conscience.

26. Indeed, a recently published analysis of official deceased organ donation data casts doubt on the credibility of China's organ transplant reform.[24] This analysis used forensic statistical methods to examine key deceased organ donation datasets from 2010 to 2018, including two central-level datasets published by the China Organ Transplant Response System (COTRS) and the Red Cross Society of China. The authors of the

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21. Expert memorandum, pp. 6-7. http://www.assembly.coe.int/LifeRay/SOC/Pdf/DocsAndDecs/2018/AS-SOC-INF-2018-07-EN.pdf.

22. The Israeli authorities are aware of one case each in Bulgaria, and most recently (August 2019) in Azerbaijan.

23. See GRETA's second report on Italy, para. 128 – NGOs reported that in 2016 there was a case of traffickers allegedly selling organs of migrants who could not pay for their passage to Italy. According to media reports, 38 suspected migrant smugglers, who are also alleged to have been involved in organ trafficking, were arrested across Italy in July 2016. According to a collaborator with the judicial authorities in this case, migrants who were not able to pay the fee for their journey were sold (for roughly 15,000 euros) to Egyptians who harvested their organs. See also GRETA's second report on Spain, para. 105 and 106, for other cases. https://rm.coe.int/greta-2018-7-frg-esp-en/16808b51e0.

study conclude that "given the current information, the only plausible explanation that accounts for all our observations is that the three datasets were manufactured and manipulated from the central levels of the Chinese medical bureaucracy. The goal of these elaborate efforts appears to have been to create a misleading impression to the international transplantation community about the successes of China's voluntary organ donation reform, and to neutralize the criticism of activists who allege that crimes against humanity have been committed in the acquisition of organs for transplant".[25]

27. The authors of the study acknowledge that genuine efforts of voluntary organ donations are also underway but that the – often cash-incentivised – voluntary donation programme is apparently used alongside nonvoluntary donors (executed prisoners) who are marked down as "citizen donors",[26] and that the apparent prisoner donors may be up to seven times more numerous than the apparently voluntary donors in some instances. In these circumstances, I believe it would be wise for member States to exercise particular caution when co-operating with the COTRS and the Red Cross Society of China.

5. Israel: a good practice example

28. Before the Israeli Knesset adopted the Organ Transplant Act of 2008, many Israelis went abroad, including to China, to receive (illicit) organ transplants, as the national organ transplant system suffered from a severe shortage of organs, and Israeli health insurance providers reimbursed (a significant part of) the transplant expenses to organ transplant recipients. I believe the best illustration I have come across of the situation before the law was enacted is an article entitled: "Mr Tati's Holiday and João's Safari – Seeing the World through Transplant Tourism" by Nancy Scheper-Hughes,[27] which tells the story of Moshe Tati, a sanitation worker in Jerusalem, who, in 1999, "was among the first of more than a thousand mortally sick Israelis who signed up for illicit and clandestine 'transplant tour' packages that included: travel to an undisclosed foreign and exotic setting; five-star hotel accommodation; surgery in a private hospital unit; a 'fresh' kidney purchased from a perfect stranger trafficked from a third country". Mr Tati's "holiday", however, turned into a nightmare and he had to be emergency air-lifted from a rented transplant unit in a private hospital in Adana (Turkey) back to Israel, as Ms Scheper-Hughes describes the story, having met him shortly after his near-death experience. However, there were also organ "donors" recruited amongst the Israeli vulnerable population, such as people freshly released from prison, persons with disabilities, drug addicts, prostitutes, people in debt.

29. The reimbursement of transplant tourists was motivated by the desire to help patients in need and was provided irrespective of the legality of the process. Thus, in the early 2000s, renal transplantations performed through transplant tourism exceeded overall numbers of kidney transplants performed in Israel.[28] However, even when transplants went horribly wrong, or it was clear that organised crime was involved, it was extremely difficult to prosecute because of the lack of a clear legal basis.[29] This changed with the 2008 Organ Transplant Act, enacted just before the Declaration of Istanbul was signed, but already incorporating its main provisions:

– prohibition of the trade in organs (no person shall receive or give a reward for an organ removed or transplanted, no person shall act as a broker between donor and recipient, or receive a reward for brokerage);

– punishment of organ trafficking with up to three years in prison and a large fine (no punishment for the organ "donor" or the organ recipient);[30]

– extraterritorial jurisdiction (prosecution independent of whether trafficking takes place within or outside of Israel);[31]

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24. Robertson, M. P.; Hinde, R.L.; and Lavee, J.: Analysis of official deceased organ donation data casts doubt on the credibility of China's organ transplant reform, in: BMC Medical Ethics, (2019) 20:79.
25. Ibid, p. 17.
26. Ibid, p. 18.
27. First published 2 June 2011, by Body and Society: https://journals.sagepub.com/doi/abs/10.1177/1357034X11402858.
28. Ashkenazi, T.; Lavee, J.; and Mor, E.: Organ Donation in Israel – Achievements and Challenges, published in Transplantation, February 2015, Volume 99, Number 2, p. 265.
29. There would have been a legal basis for prosecuting trafficking in persons for the purpose of organ removal, but it is difficult to prove all the parts of the "chain", e.g. that a health-care professional knew that the organ "donor" had been trafficked.
30. Recipients are the main source of evidence for Israeli prosecutions.
31. This is exceptional in Israel: the only other crime with extraterritorial jurisdiction is the prosecution of Nazi-era criminals.

– no reimbursement of organ transplantation performed abroad if it involves illegal organ procurement or trade.

30. At the same time, the law set up a clear, transparent, well-documented and strict national transplant system, including Central and Local Evaluation Boards composed of a chairperson (a specialist physician and head of a hospital department or unit not performing transplants), a psychiatrist or clinical psychologist, a social worker, a representative of the public and an attorney qualified to be appointed a District Court Judge. The Evaluation Boards verify all documents submitted, medical and mental fitness and interview both donors and recipients to ensure there is full, free and informed consent and no pressure of any kind. Thus, in 2018, 184 requests for live donation kidney transplants were made in Israel, of which 161 were approved and 132 actually took place.

31. Our interlocutors were confident that the conditions inside Israel are now so strict that no illicit organ transplants are taking place any more in the national system (which runs 6 kidney transplant programmes, 2 heart and lung transplant programmes, 2 paediatric kidney transplant programmes and 1 paediatric liver transplant programme in Israeli public hospitals).[32] To increase live organ donation within Israel, the Organ Transplant Law also removed several financial disincentives for live donation by providing earning loss reimbursement of 40 days, reimbursement for transportation covering all commuting to and from the hospital for the entire hospitalisation and follow-up period; reimbursement for 7 days of recovery in a recuperation facility within 3 months after donation; 5 years reimbursement of medical, work capability loss, and life insurances; and reimbursement of up to 5 psychological consultations.[33] As a result, a marked increase in live kidney transplantation has been observed; interestingly, up to 30% of live, unrelated donors are altruistic donors originating from Jewish religious groups wishing to give the "gift of life".[34]

32. Another problem leading to organ shortage in Israel which needed to be overcome were cultural and religious barriers to donation following death determined by neurologic criteria (brain death), rather than death determined by circulatory criteria (this is actually also a problem in China). In practice, if only one family member objects to a (deceased) donation in Israel, a transplant surgeon will not go ahead. To overcome this problem, the 2008 law instituted a points-based transplant waiting list and, following a big public campaign, in 2012 introduced a donor-card system which attributes extra points on the waiting list. Thus, for example, 30 points are added to the list for a live kidney donor who needs a transplant him/-herself, and 3.5 points for the first-degree relative of a deceased organ donor, 2 points for carriers of an organ-donation card, and 0.5 points for the first-degree relative of such carriers. This system of incentivisation for organ donation is not without criticism but does seem to have worked: the consent rate of families to deceased donation has gone up from 40-45% before to almost 65% in 2018 (close to the US average of 70%).

33. Israel is one of the few countries which has successfully prosecuted organ trafficking under its 2008 law. In 2014-2016, three cases led to convictions:

– *State of Israel vs. Sendler, Wolfman and others*: This criminal ring operated in Kosovo,[35] Azerbaijan, Sri Lanka and Turkey. The "donors" were from Israel and former Soviet Union republics;

– *State of Israel vs. Ziss, Biton and others*: This criminal ring operated in Turkey. The "donors" were from Israel;

– *State of Israel vs. Mordechayev and Shimishishvili*: This criminal ring operated in Turkey, Thailand and the Philippines. The "donors" were from former Soviet Union republics.

34. There is debate on whether the maximum prison sentence should be upped to between five and ten years (from the current three).

6. Key challenges and possible policy responses

35. The example of Israel clearly shows that a holistic approach is necessary to solve the problem of organ transplant tourism. At its root, there is a need to close the gap between the demand for and the supply of organs, in the face of desperate people needing an organ whose number will only increase in the future.

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32. Israeli hospitals are required to report foreign transplant patients.
33. Ashkenazi, T.; Lavee, J.; and Mor, E., op.cit., p. 266.
34. The association was founded by a Rabbi in 2011. The only criticism made was that the Rabbi was apparently involved in making the initial connection between the donors and the recipients.
35. * All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Criminalising transplant tourism alone is not the answer in my opinion. There also needs to be awareness raising, public debate, properly organised and monitored national transplant systems, as well as full transnational and international co-operation.

36. What policy responses should such a holistic approach therefore entail? I would see the need for member States to:

– sign, ratify and implement all relevant global and Council of Europe Conventions;

– develop and improve existing transplant programmes in accordance with good practice examples, through professional education and training and collaboration across countries, with the aim of striving for national self-sufficiency in organ donation and transplantation;

– develop and implement population-based prevention strategies to prevent (and treat) organ failure in the first place;

– improve transplant oversight through intergovernmental efforts, in Europe and globally;

– effectively combat trafficking in human beings for the purpose of organ removal, and trafficking in organs, including through transnational and international co-operation, while ensuring adequate protection and assistance of victims.

37. There is an urgent need to strengthen the role of national parliaments in tackling organ transplant tourism. Parliaments have a vital role to play in promoting public awareness, adopting relevant legislation and ratifying international legal instruments, and monitoring their effective implementation.

38. In view of the global nature of the phenomenon of organ transplant tourism, all states interested in joining the fight should be invited to do so, but particularly Council of Europe observer states and the states whose parliaments hold observer or partner for democracy status with the Assembly. They are invited to accede to the relevant Council of Europe Conventions open to them.