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Combating trafficking in human tissues and cells

Reply to Recommendation[1]: Recommendation 2173 (2020)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2173 (2020) "Combating trafficking in human tissues and cells", which it forwarded to the European Committee on Crime Problems (CDPC), to the European Committee on Organ Transplantation (Partial Agreement) (CD-P-TO), to the Committee on Bioethics (DH-BIO) and to the Group of Experts on Action against Trafficking in Human Beings (GRETA), for information and possible comments.

2. The Committee of Ministers considers that the increasing use of human tissues and cells for medical purposes and for research raises important issues around non-compliance with the essential principle that "the human body and its parts shall not give rise, as such, to financial gain". It shares the concern of the Assembly over the risk of illicit and unethical activities associated with the procurement, processing and clinical use of human tissues and cells, the related dangers to health for both living donors and recipients, and the undermining of public trust and support.

3. The Committee of Ministers notes that both the CD-P-TO and the DH-BIO welcomed the recommendation of the Parliamentary Assembly and agreed with the need for a legally binding instrument against trafficking in human cells and tissues. As indicated in paragraph 14 of the Assembly's recommendation, the CD-P-TO already stressed the need for such an instrument in its 2018 report "Illicit and unethical activities with human tissues and cells: addressing the need for the elaboration of an international legal instrument to protect donors and recipients". The Committee shares this opinion and invites the Secretary General to make proposals for carrying this work forward in the next biennium.

4. As regards the form of any future instrument, the Committee of Ministers notes that an additional protocol to the Council of Europe Convention against Trafficking in Human Organs (CETS No. 216) would limit signature and ratification to States Parties to that Convention, thus restricting its broad implementation. Moreover, there are important differences in the regulatory and institutional frameworks governing the removal and transplantation of human organs and the removal, distribution and further use of human tissues and cells. The actors and intermediaries involved in trafficking in human tissues and cells and those concerned with human organs are also different, as are the nature and severity of the risks for health of the two crimes. An autonomous legal instrument in the form of a convention might be a more appropriate and effective way to tackle the crimes involved.

5. The Committee of Ministers agrees that any future instrument should provide a definition of illicit activities in this area as distinct from the legally admissible and legitimate trade of medicines. It should be based on a comprehensive approach covering prevention, detection and prosecution of the relevant crimes, victim protection extending to both donor and recipient, promotion of appropriate policies, as well as national and international co-operation at different levels. A future legal instrument should also include mechanisms for regular data collection and analysis of both legitimate and illegitimate activities in this field. Data could also be disaggregated by sex in order to assess whether trafficking in human tissues and cells disproportionately affects women and girls.

1. Adopted at the 1386th meeting of the Ministers' Deputies (21 October 2020).

6. Finally, the Committee of Ministers invites States which have not yet done so to consider signing and ratifying the treaties cited in paragraph 16.3 of the Assembly's recommendation, as well as the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (ETS No. 186), which would also contribute to the achievement of the United Nations Sustainable Development Goal 3: Good health and well-being and Goal 16: Promote peace, justice and strong institutions.