

Parliamentary Assembly Assemblée parlementaire

Parliamentary Assembly
Assemblée parlementaire



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Recommendation 1611 (2003)¹

Trafficking in organs in Europe

1. Rapid progress in medical science and technology has transformed organ transplantation, and kidney transplantation in particular, into a routine medical procedure practised in hospitals across the world. Five-year survival rates for most organ transplantation programmes are reaching the level of 70%, thereby rapidly increasing the demand for organ donation.

2. Medical research demonstrates that renal transplantation increases the life expectancy of patients. The supply of organs from cadaveric, but particularly from living, donors is very limited and strictly controlled in Europe. There are currently 120 000 patients on chronic dialysis treatment and nearly 40 000 patients waiting for a kidney transplant in western Europe alone. Some 15% to 30% of patients die on waiting lists, as a result of chronic shortage of organs. The waiting time for transplantation, currently about three years, will reach almost ten years by the year 2010.

3. International criminal organisations have identified this lucrative opportunity caused by the “gap” between organ supply and demand, putting more pressure on people in extreme poverty to resort to selling their organs.

4. Worldwide, the issue of organ trafficking is not new. In the 1980s experts began to notice what was to become known as “transplant tourism” when prosperous Asians began travelling to India and other parts of Southeast Asia to receive organs from poor donors. Since then other routes have opened up, such as to Brazil and the Philippines. Allegations have been made against China of commercial use of organs from executed prisoners. Organ sale continues in India despite new laws, which make the practice illegal in most regions.

5. While current estimations show that organ trafficking remains on a relatively modest scale in Europe, the issue is nevertheless of serious concern, since it is very likely that further progress in medical science will continue to increase the gap between the supply of, and demand for, organs.

6. As a result of poverty, young people in some parts of eastern Europe have sold one of their kidneys for sums of US\$2 500 to US\$3 000, while recipients are

said to pay between US\$100 000 and US\$200 000 per transplant. It is a matter of grave concern that following illegal transplants the donor's state of health generally worsens in the medium term, due to the absence of any kind of medical follow-up, hard physical work and an unhealthy lifestyle connected to inadequate nutrition and a high consumption of alcohol. Most illegal donors will thus be forced in time to live on dialysis treatment or await, in turn, a kidney transplant.

7. This situation raises a number of ethical questions: Should the poor provide for the health of the rich? Should the price of alleviating poverty be human health? Should poverty compromise human dignity and health? And in terms of medical ethics, should help to recipients be counterbalanced by neglect of, and harm to, donors?

8. The Parliamentary Assembly therefore disapproves of recent trends in some western European countries towards less restrictive laws, which would allow greater scope for unrelated living donation.

9. Trafficking in organs – like trafficking in human beings or drugs – is demand driven. Combating this type of crime should not remain the sole responsibility of countries in eastern Europe. Examples of measures to be taken by all member states in order to minimise the risk of organ trafficking in Europe include reducing demand, promoting organ donation more effectively, maintaining strict legislation in regard to living unrelated donors, guaranteeing the transparency of national registers and waiting lists, establishing the legal responsibility of the medical profession for tracking irregularities and sharing information.

10. The Assembly therefore recalls Committee of Ministers' Recommendation No. R (97) 16 on liver transplantation from living related donors, and Recommendation Rec(2001)5 on the management of organ transplant waiting lists and waiting times, and welcomes Recommendation Rec(2003)12 on organ donor registers.

11. The principle according to which the human body and its parts shall not, as such, give rise to financial gain is part of the legal *acquis* of the Council of Europe. This principle, already present in Resolution (78) 29 of the Committee of Ministers and confirmed, in particular, by the final declaration of the 3rd Conference of European Health Ministers, which was held in Paris in 1987, was enacted by Article 21 of the Convention on Human Rights and Biomedicine (ETS No. 164). The principle was reiterated in its Additional Protocol on Transplantation of Organs and Tissues of Human Origin (ETS No. 186), opened for signature in January 2002.

12. While the prohibition of organ trafficking is legally established in the Council of Europe member states, most countries still have legislative loopholes in this domain. Criminal responsibility in organ trafficking is rarely clearly specified in national criminal codes. Criminal responsibility should include brokers, intermediaries, hospital/nursing staff and medical laboratory technicians involved in the illegal transplant procedure. Medical staff who encourage and provide information on "transplant tourism" should also be liable to prosecution. The medical staff involved in follow-up care of patients who have purchased organs should be accountable if they fail to alert the health authorities of the situation.

13. Organ trafficking, like most criminal activities, is difficult to prove. But it should not be left to the media alone to investigate. Member states have a common responsibility to deal openly with this problem nationally, but also – through multilateral co-operation at European level – bringing together ministries of health, the interior and justice.

14. In the light of the above, the Assembly recommends that the Committee of Ministers:

i. invite all member states:

a. to sign and ratify the Convention on Human Rights and Biomedicine, and its Additional Protocol on Transplantation of Organs and Tissues of Human Origin;

b. to sign and ratify the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish the Trafficking of Persons, especially Women and Children, and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, as trafficking in organs is closely linked to trafficking in people;

c. to recognise their common responsibility in minimising the risk of organ trafficking by strengthening existing mechanisms of co-operation at the Council of Europe level by the Committee on the Organisation Aspects of Co-operation in Organ Transplantation (SP-CTO) and stepping up funding for assistance activities in this area, which is crucial in helping to put efficient transplant systems in place;

d. to adopt and apply the recommendations in the World Medical Association's (WMA) Statement on Human Organ and Tissue Donation and Transplantation, adopted by the 52nd WMA General Assembly in Edinburgh, Scotland, in October 2000;

ii. urge the member states to intensify their co-operation under the auspices of Interpol and Europol in order to address the problem of trafficking in organs more effectively. Stepping up the funding of the two agencies in this domain is equally crucial since they are both running on extremely low budgetary and staff levels in this field;

iii. invite the so-called "donor countries":

a. to improve primary prevention through awareness-

raising and peer education, particularly in rural areas, in partnership with NGOs, the media, and relevant international agencies;

b. to undertake measures to improve primary health care;

c. to take steps to identify illegal donors and provide for their medical follow-up;

d. to strengthen existing transplant systems, with the assistance of the Council of Europe,;

e. with legal support from the competent services of the Council of Europe, to amend, where necessary, their criminal codes, in order to ensure that those responsible for organ trafficking are adequately punished, including sanctions for medical staff involved in transplanting organs obtained through illegal trafficking;

f. to restrict the donation of organs and tissues from prisoners and other individuals in custody, as they are not in a position to give informed consent freely and can be subject to coercion, with the exception of donations for members of their immediate family;

g. to undertake effective measures to combat trafficking in general;

h. to provide special facilities at border crossings with a view to identifying potential victims;

i. to implement national anti-corruption programmes;

j. to implement national poverty reduction strategies and create conditions for investment;

iv. invite the so-called “demand countries”:

a. to maintain strict laws in regard to transplantation from unrelated living donors;

b. to deny national medical insurance reimbursements for illegal transplants abroad;

c. to deny national insurance payments for follow-up care of illicit transplants, except where such a refusal would endanger the life or health of patients unable to cover the cost of vital treatment themselves;

d. to improve donor awareness by organising national campaigns and by actively supporting the regular organisation of the European Day for Organ Donation and Transplantation;

e. to take appropriate measures to encourage individuals to indicate, by means of statements of “consent”, their wish to donate their organs after their death, in order to increase the availability of organs and tissues obtained *post mortem*;

f. to ensure strict control and transparency of organ registers and waiting lists, and establish clear responsibilities for tracking irregularities;

g. to harmonise data and strengthen co-operation mechanisms for the allocation of organs in donation procedures;

h. to take steps to track down “broker” advertising (through newspapers, agencies, etc.);

i. to co-operate and provide expertise to “donor” countries in connection with trafficking in human beings and organs;

j. to ensure the flow of case-related information and provide necessary support to Interpol and Europol in this domain;

v. instruct the relevant bodies of the Council of Europe:

a. to develop, in co-operation with relevant organisations, a European strategy for combating trafficking in organs and to consider, in the framework of the drafting of the future convention on trafficking in human beings, the inclusion of an additional protocol covering trafficking in organs and tissues of human origin;

b. to advise and assist member states on organisational measures necessary for putting in place an efficient transplant system to minimise the risk of organ trafficking;

c. to provide legal assistance in drafting specific amendments to national criminal codes;

d. wherever applicable, to widen their existing

activities to include organ trafficking;

vi. use its influence, in terms of more specific regional co-operation in South-eastern Europe, to broaden the activities of the Stability Pact Task Force on Trafficking in Human Beings (Working Table III) to cover the issue of trafficking in organs;

vii. call on all member states to demonstrate European solidarity towards the countries in eastern Europe which are most affected by the vicious cycle of poverty and to assist them, in co-operation with the international financing institutions and the international donor community, in developing measures to reduce poverty and create a secure business environment for investment.

1. *Assembly debate* on 25 June 2003 (21st Sitting) (see [Doc. 9822](#), report of the Social, Health and Family Affairs Committee, rapporteur: Mrs Vermot-Mangold; and [Doc. 9845](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Dees).

Text adopted by the Assembly on 25 June 2003 (21st Sitting).